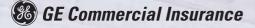
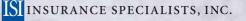
Georgia Bar OULTINA

June 2008 Volume 13 Number 7

Maintaining Judicial Independence in Drug Courts





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Number of claims/incidents filed against firm during the past 5 year	rs: Filed	Pending	Total Paid	Total Reserved		
 Number of Docket Control System Has any attorney with the firm ever 			omputerized? I Y It to practice? I Y			

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Area	Percentage
Area	Percentage

Areas of Practice: Abstracting / Title, Ad Valorem Tax, Admiralty - Plaintiff, Admiralty - Defendant, Antitrust / Trade Regulation, Banking, Bankruptcy, Bonds, Civil Rights, Collections, Commercial Lit. - Plaintiff, Commercial Lit. - Defendant, Communication (FCC), Copyright / Patent / Trademark, Corporate Administrative Law, Corporate Formation, Corporate Mergers & Acquisitions, Corporate General, Criminal, Domestic and Family Relations, Entertainment, Environmental, Estate Planning, Estate / Probate / Trust, ERISA, Financial Planning & Investment Counseling, Foreclosure / Repossession, Health, Housing Court, Immigration, Insurance Co. - Defendant, International, Juvenile Proceedings, Labor - Management, Labor - Union, Limited Partnerships, Mediation / Arbitration, Municipal (Do not include Bond Practice - Reflect Bonds in Bond category), Oil and Gas, Personal Injury - Plaintiff, Personal Injury - Defendant, Plaintiff Class Action (Mass Tort/Toxic Tort), Public Utilities, Real Estate - Commercial, Real Estate - Residential, Social Security Admin., Taxation - Individual, Taxation - Corporate, Water Law, Wills and Trusts, Workers Comp. - Plaintiff, Workers Comp. - Defendant, Other, Federal Exemptions, Federal SEC, Private Placements, State SEC, Syndication

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Publisher's Statement

The Georgia Bar Journal (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) with a special issue in November by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, Georgia 30303. ©State Bar of Georgia 2008. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia and additional mailing offices. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMAS-TER: Send address changes to same address.



by Gerald M. Edenfield

Judicial Pay Legislation: A True Team Effort

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thousands of e-mails from

around the state."

wenty-three minutes before midnight on April 4, the final day of the 2008 session of the Georgia General Assembly, the Senate gave final passage to legislation that calls for the first substantial salary increase for judges in our state in nine years. Unfortunately, on May 14, just before this edition

of the *Georgia Bar Journal* went to press, Gov. Sonny Perdue vetoed the legislation.

We are extremely disappointed by the governor's veto of House Bill 119, which would have raised the salaries of

Georgia's judges and district attorneys by a modest 5 percent. But our success in the legislature, where the bill passed by overwhelming margins in both the House and Senate, is the result of a monumental, two-year effort as a top item on the State Bar's legislative agenda for 2007 and 2008. It is also a testament as to what can be accomplished through teamwork and bringing people together.

The process actually began in 2006, when the Bar's Commission on Judicial Service completed a comprehensive study of a number of issues involving the work of our Superior Court judges, Court of Appeals judges and Supreme Court judges, including salary stagnation at the state level.

Chaired by Larry Walker, a Perry lawyer and former state House Majority Leader, this blue-ribbon commission's findings uncovered an alarming disparity between judicial compensation in Georgia and that offered in private law practice. Among other revelations, it was learned that first-year associates in some of the major Atlanta law firms were paid more than the base salary of our Superior Court judges and not much less than the chief justice of the Supreme Court.

> Other than small cost of living adjustments, Georgia judicial salaries had not been increased since 1999. During that time, income for lawyers in private practice continued to grow significantly. Judges began leaving the bench before retirement for greener pastures in the private sector. To address the widening compensation

gap and enable the state to continue attracting and retaining the best and brightest legal minds to judicial service, the commission recommended a 20 percent across-the-board pay increase.

During the term of my predecessor, Jay Cook, the Board of Governors took an official position in support of the commission's recommendation, and the Bar undertook an intense lobbying effort at the State Capitol.

Rep. Wendall Willard (R-Atlanta), chairman of the House Judiciary Committee, introduced HB 119, which proposed the 20 percent increase in the early part of the 2007 legislative session. The House soon passed a reduced version (10 percent for Superior Court judges and 5 percent for appellate judges), but the measure was not taken up in the Senate before the 2007 session adjourned.

Upon taking office last summer, I pledged to continue to make the judicial compensation issue a top priority for the Bar's legislative advocacy program. Also since that time, the Bar has reached out to our state representatives and senators like never before in an effort to enhance the working relationship between the judicial branch of government, which we represent, and the legislative branch.

Also, we broadened the scope of support beyond the legal community by enlisting some of Georgia's most influential business and political leaders to join us on this issue. In December, Georgia Chamber of Commerce President George Israel III, former U.S. Sen. Sam Nunn, Georgia Republican Party General Counsel Randy Evans, Commission on Judicial Service Chairman Larry Walker and I co-authored a letter of support that appeared in a number of newspapers and was also sent to each member of the General Assembly.

The diverse and bipartisan nature of this group sent a clear message that maintaining the quality of our judges and judicial candidates is important to all Georgians. I want to thank George Israel and the entire business community for their support of the judicial pay increase.

Working with the Bar's legislative advocacy team led by Tom Boller and Rusty Sewell of Capitol Partners, I was personally involved in the lobbying effort before and during the 2008 session. We met with Gov. Perdue, Lt. Gov. Casey Cagle, Speaker Glenn Richardson and numerous key legislators over a period of several months in support of HB 119. We also visited the editorial boards of several of the state's major newspapers and received positive coverage on the pay raise issue – further solidifying the message to our legislators.

The Bar sponsored a very successful legislative luncheon early in

the session. It was well attended by lawmakers and judges and provided an opportunity for the one-onone communication and relationship-building that will help shape public policy on legal issues in a positive way now and in the future.

Perhaps the most crucial component of this effort was the response of Bar members to our Legislative Action Network e-mail alerts during the 2008 session. Because of your efforts, our lawmakers received literally thousands of emails from around the state. Legislators will politely listen to and perhaps act when they are approached by the State Bar president or our lobbyists, but nothing is more effective than when they hear directly from you, their constituents from back home. Thank you again for such a tremendous response to our calls for action.

Later in the session, I testified before a special Senate Appropriations subcommittee that was considering HB 119 and had the opportunity to share the Bar's position in a public forum. Chaired by Sen. Preston Smith (R-Rome), chairman of the Senate Judiciary Committee, the panel favorably reported the legislation. On April 2, the full Senate adopted an amended version that implements a 5 percent increase for our judges on July 1, 2009, following a 2.5 percent cost of living adjustment on Jan. 1, 2009. The House agreed to those changes and also a 5 percent pay increase for district attorneys.

Despite the governor's veto, we consider the legislature's approval of a 5 percent increase a positive first step toward closing the compensation gap for our judges. I am most appreciative to everyone who helped see the measure through the legislature and onto the governor's desk, and we will continue working on behalf of adequate compensation for members of our judiciary.

* * *

It is hard to believe how quickly the past year has come and gone, but this is my final president's page commentary for 2007-08. It has been a wonderful year and a very interesting one as well. A full report on the year's activities will be published in the August issue, with appropriate acknowledgements, but I would like to take a moment right now to thank my wife Sharon for her support and patience during my term as Bar president.

Sharon retired from her position with the school system so she could travel with me around the state, and I am most grateful that she did. While I spent our time on Georgia's highways and byways, either on the cell phone or the laptop, Sharon did all the driving. We would often travel from Statesboro to Atlanta without exchanging a word, and she was most understanding of how this helped me meet the demands of this office, along with keeping up a law practice.

Speaking of my law practice, I also want to thank my law partners, associates and law firm staff for carrying the load for me during my extensive travel on State Bar business. I could not have fulfilled my obligations without their tremendous support the past 12 months.

It was about this time last year when we posed for a family photograph for the *Bar Journal* at our farm outside Statesboro, and I have scarcely had time to set foot on the farm since then. But Sharon and I have come to know all of the bell staff, waiters and custodial crewmembers at the Omni Hotel down the street from the Bar Center in Atlanta on a first-name basis!

Seriously, we have had an exciting year, and I hope that Jeff Bramlett and all who follow him as State Bar president have an equally rewarding experience. I thank all of you once again for this opportunity!

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



by Cliff Brashier

Advantages of Being a Section Member

hat's a better way to get to know others who practice the same type of law as you? Get up-to-date information about your area of the law? Earn CLE credit by going to luncheons and seminars

that cover topics relevant to your practice? The answer is to become a member of a section of the State Bar of Georgia. It's a great way to be informed, network with your peers and get involved in the Bar.

"As you can see, the Bar's sections play an important role not only in enhancing the practice of law in Georgia for the section members, but also protecting the rights of all Georgians."

ers. For the public, sections are particularly effective in helping to pass legislation that serves the public and improves the delivery of legal services to all Georgians.

One of the most valuable commodities for any attorney is knowledge, and one of the best ways to provide a constant flow of accurate and timely information is through CLE seminars. The Institute of Continuing Legal Education in Georgia (ICLE) is the professional

> education arm of the Bar. ICLE is a consortium whose Board of Trustees is composed of officers of the Bar and the Young Lawyers Division, representatives of Georgia's five ABA accredited law schools and at-large members from the Bar.

> ICLE values the relationship with its members and is especially mindful of the correlative obligation it has to the sections of the Bar. Many of ICLE's seminars

Currently, there are 40 sections of the Bar. These sections not only provide service to the legal profession, but also to the public. As a conduit for information in particular areas of law, sections provide newsletters, programs and the chance to exchange ideas with other practitionand institutes are co-sponsored by these sections. They look to these groups to provide leadership and to plan seminars that deal with the most relevant subject matter within their respective practice areas or areas of interest. ICLE dedicates its resources to ensure that these legal educational events provide the highest possible quality at the lowest possible cost to Georgia attorneys. Steve Harper, director of programs at ICLE, said, "It is this special and continuing relationship with the State Bar of Georgia and Georgia's ABA accredited law schools that is one of the single most important factors in allowing ICLE to meet the challenge of providing highquality seminars."

"The CLEs, which we do in conjunction with ICLE, are fantastic," said Jan Rosser, chair of the Creditors Rights Section. "Several years ago, the section began seminars that focused on more advanced subjects for the more experienced practitioner. We also retain speakers who are known experts in particular subject matters, and of course, we always have excellent local attorneys participate."

The Real Property Law Section is just one of many sections who work with ICLE to provide seminars that their members find beneficial. They annually co-sponsor five seminars with ICLE: the Title Standards seminar, the Commercial Real Estate seminar, the Residential Real Estate seminar, the Georgia Foreclosure seminar and the Real Property Law Institute. According to Edward P. Hudson, chair of the section, "The benefit of receiving CLE credit through sectionsponsored seminars is that an attorney has the opportunity to hear top speakers on topics that are focused on the section's area of interest."

When asked what he felt like the biggest advantage of being a section member was, John P. Hutchins, chair of the Technology Law Section, said, "I think the greatest advantage of being a section member is that it gives you a place, outside of your law firm, to 'belong' and helps you have a professional identity in this enormous Georgia Bar that is broader than just your own law firm."

Sections work closely with the Bar's Advisory Committee on Legislation (ACL). The ACL reviews legislative recommendations generated from the various sections of the Bar. The Bar's Board of Governors, in turn, debates the merits of each recommendation and decides whether to endorse a particular measure for inclusion in the annual legislative agenda. Then, the Bar's professional

We asked our section chairs:

Personally, how has being a section member benefited you?

John P. Hutchins, chair, Technology Law Section

A: Being a member of the Technology Law Section has benefited me in many ways, too numerous to list. But examples of the ways it has benefited me are that it has greatly expanded my professional network, helped build my reputation in the field and provided a way for me to give back to the Bar through section leadership.

Beth Crocker, chair, Agriculture Law Section

A: Being a section member has benefited me personally because it has increased my name recognition and other lawyers' awareness of my specialization in agricultural legal issues.

William J. Linkous III, chair,

Labor and Employment Law Section

A: I have gained friendships, knowledge and important contacts in my area of law.

Melinda Hart, co-chair, Military/Veterans Section

A: Being a section member has greatly benefited our members' ability to network with other attorneys who practice this type of law. We have held section breakfasts during the annual and semi-annual meetings of the Bar, which allow time for planning future events for our section. This is a critical time for our members to have sufficient knowledge and training to be able to serve our returning heroes.

Dale C. Hetzler, chair, Dispute Resolution Section

A: The greatest benefit is knowing the other professionals that are interested in the same area of practice that attracts my attention. It is a group that speaks the same language, and that helps raise the profile of the profession and of the attorneys involved.

Jan Rosser, chair, Creditors' Rights Section

A: One of the big advantages of being a member of the Creditor's Rights Section is that the membership creates a resource database for discussion of all of the obscure issues that arise and appear to have no precedent in the law. Each time I have had an issue I have found someone that has experienced a similar set of facts and has been able to help me resolve the matter.

Martin A. Shelton, chair, Environmental Law Section

A: I think it has allowed me to get to know more environmental practitioners in Georgia than I would have normally though practice. Because I do a lot of environmental litigation, I often do not deal with my environmental peers on the other side, so the section is a nice way to keep in touch with other like-minded professionals.

Ward Stone, incoming chair, Bankruptcy Law Section

A: Personally, I have most enjoyed the opportunity section membership has provided for meeting and working with other section members. Membership on the Board of the Bankruptcy Section is a five-year program. Those who agree to serve on the board rotate through the positions of legislative liaison, treasurer, secretary, vice-chairman, chairman and immediate past chairman. Of course, the most coveted position is immediate past chairman. Each addition to the board injects fresh ideas and additional contacts, both of which I have found to be invaluable.

Edward P. Hudson, chair, Real Property Law Section

A: I have personally benefited from membership in the Real Property Law Section in a number of ways. For example, I feel that I have had the opportunity to stay informed about the latest developments in Georgia real property law. Section membership has also given me the opportunity to meet other real property attorneys throughout the state.

lobbyists create and implement a plan for navigating the agenda through the legislative process.

"Sections are critical for our program. Not only do sections generate most of our legislative agenda," said Tom Boller, legislative consultant with Capitol Partners Public Affairs Group, Inc., "but they review legislation introduced by others so the legislative team can respond to legislators. Their expertise in developing, reviewing and advocating is essential."

The Business Law, Real Property, Fiduciary, Family Law,

General Practice and Trial Law, Judicial Administration and Procedures, Appellate Practice, Criminal Law and Elder Law sections are just a few of the sections that work diligently with the Bar's consultants and the ACL to ensure that legislation is kept on track.

As you can see, the Bar's sections play an important role not only in enhancing the practice of law in Georgia for the section members, but also protecting the rights of all Georgians. For a complete list of sections and more information, visit www.gabar.org/sections. The Bar welcomes your participation in our profession through the section or sections most helpful to your law practice.

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 cliffb@gabar.org.

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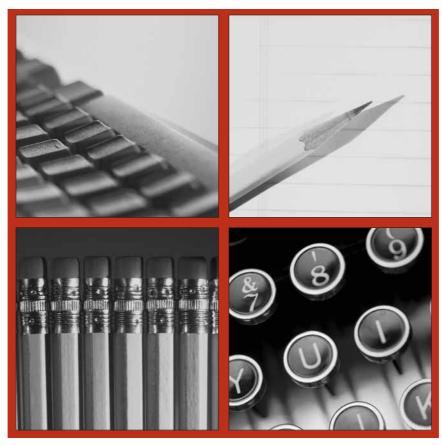
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*Not all submitted articles are deemed appropriate for the Journal. The Editorial Board will review all submissions and decide on publication.



by Elena Kaplan

Stepping Up to the Bar

came kicking and screaming into the world in June of 1971. That same year, both houses of Congress, by joint resolution, designated that

August 26 of each year would be Women's Equality Day, commemorating the day in 1920 when women were granted the right to vote in this country. The president has issued a proclamation every year of my life honoring this day.

Throughout my childhood, women made great strides towards equality. The movement was aided by Congress enacting non-discrimination laws regarding employment and education, and the Supreme Court applying those laws in a variety of situations. The collective efforts of many resulted in the elimination of a variety of discriminatory practices, such as: employers refusing to hire pregnant women or women with young children; help wanted ads specifying the required gender of applicants; women being excluded from juries; unemployment benefits being denied to women in their last trimester of pregnancy; discrimination against women in the sale or rental of housing; state laws specifying that a husband has unilateral control over joint property; civic organizations limiting membership to men; and law firms discriminating on the basis of gender in promoting lawyers to partnership.

"Because women compose a substantial percentage of Bar membership, it is important that Bar leadership is aware of the needs and concerns of this demographic in order that they may be addressed."

My parents were proponents of the women's rights movement and saw a future of limitless opportunity for their daughter. They told me that I could grow up to be anything I wanted. Encouraged by their confidence, as a young girl, I alternately stated that I wanted to be an angel (so I could fly-I'm not sure I actually knew about the pilot option) or president of the United States. I recall being distinctly annoved with Geraldine Ferraro, as not only did I want to be president, I wanted to be

the first female president – and she was working to prevent me from reaching that goal!

I think my parents, like many people during the early 1970s, believed that complete equality between men and women was just around the corner. Fifteen, twenty-years max, and women would be on par with men in all respects in our society. Thirty-seven years later, we have moved mountains; but we can't truly say that women and men are on par in all respects.

The mountains we have moved resulted in my not experiencing discrimination in school admission or seeking employment. My law school class was almost 60 percent female. The junior associate ranks of the firms for which I have worked have had large female populations. I have been but one of many active women in our own Young Lawyers Division, which boasts great diversity at all levels of involvement.

However, the longer I practice law, the thinner the ranks of women in my peer group. Numbers of my female peers have opted out of practice or scaled back. They have chosen to leave the partnership path or to not seek to move up in in-house or governmental roles. This lack of women is evident not just in the legal workplace. In fact, it is somewhat more marked in State Bar of Georgia leadership positions, where women are underrepresented relative to the number of women practicing law. Both the State Bar Board of Governors and the State Bar Executive Committee are compromised of a smaller percentage of women than compromise the Bar membership from which they are drawn.

State Bar Board of Governors

The State Bar is governed by a 158 member Board of Governors (the Board), with members elected from each of the various judicial circuits.¹ Currently 23 (or 14.6 percent) members of the Board are women. While the percentage of women in the pool of members from which Board members are generally drawn is not as large as the percentage of women in the general population, the number of female members on the Board would still have to almost double in order to achieve full representation of female members of the State Bar.

Board members tend to be instate, practicing lawyers.² In addition, there is not a significant overlap with members of the YLD, so they tend to be over age 36. There are 19,831 members of the Bar who meet these characteristics—active, in-state members who are over 36; 27.67 percent of them, or 5,488, are women. So while women comprise 27.67 percent of the members who would tend to run for Board seats, they only comprise 14.6 percent of Board members. Full representation (at least of the demographic that the Board is drawn from) would require increasing the number of female Board members by 21 to a total of 44.

When you look at total Bar membership, the numbers are slightly different. There are 27,169 active, in-state members of the Bar of any age. 33.63 percent of them, or 9,137, are women. So to achieve full representation based on all of the members, the number of female Board members would need to increase by 30 to 53. Of course, as law schools continue to graduate classes of new lawyers that are composed of nearly equal numbers of men and women, the number of women that must seek and win seats on the Board in order for the Board to be representative of the membership would continue to increase.

State Bar Executive Committee

The Executive Committee of the Board is a 14-member body that acts on behalf of the Board in between Board meetings. The Executive Committee is composed of: the five State Bar Officers; the president, president-elect, and immediate past president of the YLD (the YLD Officers); and six representatives who are elected for staggered two year terms by the members of the Board (the Board Representatives).

In the first two years I have served on the Executive Committee, the female representation, in addition to me, has been composed of either one or two female Board Representatives. For the 2008-09 Bar



year, Amy Howell will join me as a YLD Officer on the Executive Committee. Elections for Board Representatives have not yet occurred as we go to press, so it remains to be seen how many will be women, but two women have declared their intention to run for the three seats up for election.

If both women who are running prevail, the female representation on the Executive Committee over this three-year period will range from a low of two out of 14 (14.29 percent) to a potential high of four out of 14 (28.57 percent). If you look at the female representation of the Executive Committee excluding YLD Officers, the female representation ranges from one out of 11 (9.09 percent) to two out of 11 (18.18 percent). In order to achieve full representation of women based on current Bar membership, the Board would need to include four female members who are not YLD Officers and at least one additional female member who is a YLD Officer.

Why Women Are Underrepresented

There are doubtless a variety of reasons why women are underrepresented in State Bar leadership. Certainly, the traditional roles of women and men in society have played a part. The practice of law is demanding enough. If you add raising a family to the mix, that may make Bar service become one thing too many for a female lawyer. Further, many female lawyers who marry and have children opt out of practice or scale back. Perhaps they don't see the Bar as relevant to their lives and choose not to participate.

The disparate impact of family on a woman's Bar service can be seen by looking at the women and men who have served as YLD president. Of the eight women who have served as YLD president, four were married when they served and only two had young children.³ By comparison, of the eight men who have been elected YLD president since 1998, seven were married when they served and the same seven had young children.

Why It Is Important for Women to Serve as Leaders in the State Bar

The percentage of lawyers who are female has increased dramatically and will continue to do so.4 Because women compose a substantial percentage of Bar membership, it is important that State Bar leadership is aware of the needs and concerns of this demographic in order that they may be addressed. Women serving as Bar leaders is the best way to achieve this. Of course, it will not do for only single gals like me to serve as Bar leaders. Female lawyers who are married and have children will undoubtedly be a much better voice than me for their specific needs and concerns.

How to Fix It

As mentioned earlier, the YLD has had great success in attracting women to serve in leadership positions. This may be a function of the large numbers of women now entering law school, providing women with experiences that lead them to be comfortable taking the lead in Bar service. If this bears out, then the issue of underrepresentation may right itself as more and more women come to the point in their career when lawyers typically run for a Board seat.

But waiting for the issue to right itself is not enough. The bottom line is that more women must step up and run for State Bar leadership positions. The solution is simple in theory and difficult in practice. There are societal issues standing in the way that we can't fix in a global fashion. However, what we can do is provide encouragement and support to make it easier for women to step up. That is your charge: if you are a woman, consider seeking a State Bar leadership position; if you know a woman who you think would make a great State Bar leader, encourage her to run and support her in that endeavor.

As this is my last article as YLD president, I want to thank all of you for this incredible opportunity. I have very much enjoyed working with and for lawyers all over the state during the past year. In addition, I appreciate your indulgence in allowing me to author these columns and hopefully provide useful insight into the thoughts and feelings and viewpoints of one young lawyer.

Elena Kaplan is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at ekaplan@jonesday.com or 404-581-8653.

Endnotes

- 1. Board members are elected based on the judicial circuit in which they live or work. There are two out-of-state member seats on the Board.
- 2. While the State Bar does not track whether members are practicing law or not, we might assume that lawyers who are not practicing would choose inactive status for the benefit of lower dues and the elimination of the CLE requirement. There are 1,890 in-state members over age 36 who are inactive. Of those, 912 (or 48.25 percent) are women. There are 275 in-state members 36 years old and under who are inactive. Of those, 176 (or 64.0 percent) are women.
- 3. The first female YLD president was Donna Barwick, who served during the 1988-89 Bar year. Seven women have served since. Amy Howell was recently elected YLD president-elect and will be the ninth female YLD president when she takes office in 2009.
- 4. While only 27.67 percent of active, in-state members over age 36 are female, 49.73 percent of active, in-state members age 36 or under are female.

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A Look at the Law

Maintaining Judicial Independence in Drug Courts

by Hon. Jeffrey S. Bagley

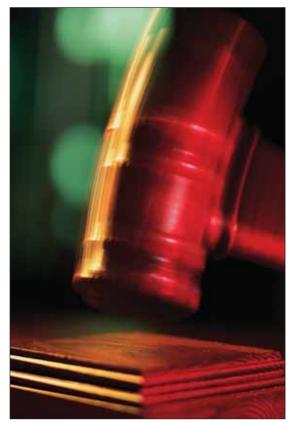
he judicial system is notorious for its tendency to be highly resistant to change. The courts and attendant legal procedures have experienced little change over the last 200 years as compared to other professions such as the medical and engineering disciplines. The concept of a court with rehabilitation as its primary focus has existed for only approximately 18 years.¹ In 1989, the nation's first drug court program was established, which ushered in the drug court revolution.²

Drug court judges are forced to remove themselves from the "comfort zone" of traditional criminal procedure. Judges, who are accustomed to making decisions alone, become part of a collaborative decision-making team made up of the district attorney, defense counsel, coordinator, law enforcement, treatment providers, as well as many others.³ This article is intended to focus on the drug court judge's challenge to maintain judicial independence while, at the same time, recognizing and participating in a coordinated team approach, which is vital to the drug court program's success.

Drug Courts: How Do They Work and Why Are They Necessary?

Any analysis of judicial independence in the context of a drug court setting requires a thorough review of how a drug court functions and why independence is necessary in courts processing felony drug cases. In such courts, the volume of drug cases processed may cause the judge to consider an alternative to traditional sentencing primarily due to the frustrations associated with the attempt to rehabilitate a drug addict.

Drug courts are unique in the criminal justice system. Before the



advent of the drug court movement, a defendant's typical sentence in a simple possession case, emphasizing rehabilitation, included as its primary component a substance abuse evaluation with treatment and counseling. This succeeded approach rarely because most addicts managed to feign compliance, all the while fully intending to return to their old lifestyle once they became free of probation supervision. Because the court would never see a defendant again unless he were arrested for a probation violation, there was never any direct court supervision and certainly no encouragement from the court to a defendant to make profound changes in his life. If the defendant could pass enough drug screens through deception, including adulteration of screens, he would be free to continue his lifestyle almost as if he had never been arrested. It is, however, inevitable that a defendant who continues in the same lifestyle will continue to burden the criminal

justice system as a recidivist.⁴

Because the traditional rehabilitative sentence of a drug addict rarely met with success, drug courts were therefore conceived to legitimize the rehabilitation function of the courts. The first drug court was conceived in Miami, Fla., where the courts were being overwhelmed with the cocaine trade and the prisons were not equipped to handle the rapidly-growing inmate population.⁵ It was there that the model of drug courts was tried and tested in an attempt to halt the cycle of addiction due to the failure of traditional penal-

related methods.⁶ In the typical drug court model, treatment, which was always present, is combined with judicial accountability and is appropriately termed "coerced treatment."⁷ One notable author describes how drug courts function as follows:

In the context of treatment, the term coercion-used more or less interchangeably with "compulsory treatment," "mandated treatment," "involuntary treatment," "legal pressure into treatment," and "criminal justice referral to treatment"-refers to an array of strategies that shape behavior by responding to specific actions with external pressure and predictable consequences. Coercive drug treatment strategies are already common. Both the criminal justice system and the workplace, for example, have proven to be excellent venues for identifying individuals with drug problems, then exerting external leverage, from risk of jail to threat of job loss, and providing powerful incentives for individuals to start and stay in treatment.⁸

That author specifically found that

addicts need not be internally motivated at the outset of treatment in order to benefit from it. Indeed, addicts who are legally pressured into treatment may outperform voluntary patients, because they are likely to stay in treatment longer and are more likely to graduate. Without formal coercive mechanisms, the treatment system would not attract many of the most dysfunctional addicts and surely would not retain them.⁹

As previously noted, drug courts have been proven to be effective in reducing recidivism.¹⁰ As a result of this success, drug courts have been established on a national level and are continuing to increase in number.¹¹ The Georgia General Assembly has recognized the importance and effectiveness of drug courts through the enactment of an enabling statute, which formalizes the creation of a drug court division of the superior court at the discretion of each circuit.¹²

How Do Drug Courts Procedurally Differ From Traditional Criminal Justice System Courts?

In traditional criminal jurisprudence, the determination of guilt and imposition of sentence essentially mark the end of the criminal law process. In the drug court division, the determination of addiction and referral to drug court signals the beginning of the process. Drug court procedures, while bearing many similarities, differ from jurisdiction to jurisdiction.¹³ Typically, drug courts are preadjudication courts where a defendant, charged with a felony drug possession offense, enters a plea of guilty with sentencing postponed. The goal is for the defendant to graduate from the program, usually in 18 to 24 months, resulting in a complete dismissal of the charges by the district attorney.¹⁴

The Drug Court Standards Committee of the U.S. Department of Justice's Office of Justice Programs established the Ten Key Components, which form the basic foundation of most legitimate drug courts.¹⁵ The Ten Key Components were designed to serve as a benchmark of best practices to be employed within adult drug court programs.¹⁶ Key Component six emphasizes a collaborative team effort and approach. The drug court judge cannot manage and operate a drug court alone or in a vacuum. Yet, it is the collaborative team approach to the decisions regarding responses to participants' compliance, as emphasized by Key Component six, which appears to create a significant conflict with the drug court judge's duty to maintain judicial independence.

First, judicial independence is in jeopardy of being compromised in a drug court because drug court judges who attempt to comply with Key Component six may be pressured to make drug court decisions based upon a majority vote of the drug court team members. If the judge disagrees with the majority, he is subject to criticism from the rest of the team for not operating within the "team approach" concept as contemplated by Key Component six. This is especially true where drug court team members include social workers and treatment providers who bring valuable subject-matter expertise to the unique drug court judicial process. The judge must routinely rely on the input of these members. Decisions inconsistent with the recommendations of these experts typically create friction. Nevertheless, the judge must remain steadfast in the decisionmaking process and not permit the team to exert unnecessary pressure and effectively invade the province of the judiciary.

Second, judicial independence may also be compromised as a result of another glaring departure from traditional criminal jurisprudence which characterizes most drug courts. Participants are typically not afforded the same level of due process as in traditional courts. The degree of diminished due process rights varies from court to court and from state to state; however, most drug courts require a waiver of certain rights in exchange for the privilege of entering the program. From the time that a drug court participant enters a knowing and voluntary guilty plea, until the time that he graduates from the program, the defendant's right to due process of law is usually severely diminished. The drug court judge, being the traditional guardian of truth and justice, including the protection of every person's right to due process of law under the U.S. Constitution and state constitution, must be ever mindful of the oath to uphold and defend these very constitutions and should guard against any attempt to undermine any of their precepts. The judge's duty, in this regard, is what causes the potential for conflict with the judge's desire to effect positive change in the lives of the participants.

In a country that generally takes great pride in ensuring that everyone who is before the bar of justice has due process of law, there must be a meritorious justification for such a departure from centuriesold tried and tested jurisprudence. There are three supporting reasons for this departure. Foremost, studies have shown that swiftness of sanction is critical to the effectiveness of such sanction in changing behavior.¹⁷ If the sanction had to be deferred for a month or more, its effectiveness may be lost.¹⁸ Second, lengthy hearings are not possible in a division of court that is not recognized in standard case counting

methodology. Finally, the district attorney may have agreed to dismiss felony drug charges upon the participant's successful completion of the drug court program.

In some drug courts, participants sign a formal drug court contract. The contract provides for bilateral consideration. The prosecutor gets the benefit of not having to prosecute a felony drug charge, which ultimately helps reduce the prosecutor's case management strains. The defendant gets the benefits of virtually free drug treatment, community support and the dismissal of charges. Given the significant benefits for the defendant, the district attorney may condition consent to the program on the elimination of due process hearings in drug court. This may cause a potential quandary for the court, as the court is required to retain its independence and ensure that a defendant's constitutional rights are protected yet, at the same time, observe the Ten Key Components, one of which requires a team approach to the application of sanctions.

The Independent Judiciary

The Code of Judicial Conduct of Georgia, which tracks the exact language of the ABA Model Code, necessitates an independent judiciary.¹⁹ This requirement appears to collide violently with Key Component six, which provides that "[a] coordinated strategy governs drug court responses to participant's compliance." The referenced coordinated strategy is the collaborative decision-making process in which members of the drug court team, including the judge, district attorney and defense attorney, convene, usually weekly or biweekly, to discuss the progress of the various participants in the program.

Often, and by design, the judge, prosecutor and defense attorney are not accustomed to collaborate with one another to accomplish a collective goal. The collaborative approach requires the drug court team to reach a consensus concerning rewards and sanctions for behaviors discussed at these meetings. The team must be confident in its ability to reach a consensus and have some expectation that it will be followed by the judge in order for the program to work. The judge, on the other hand, cannot delegate judicial responsibility by permitting final decisions to be made by the team.²⁰

In deciding whether to implement a drug court, the judge can conclude that a drug court is absolutely inconsistent with judicial independence and thus continue to process criminal cases in the traditional manner. If this is the decision, there will be no risk of compromise to judicial independence. There will also be very little, if any, gain. Such an approach ignores the problem that initiated consideration of an alternative to traditional sentencing. Drug addicts will not get the help that they need, they will not return to the workforce, they will not regain their families, they may commit additional crimes and they will most likely die a premature death.²¹ Moreover, the prison door will continue to revolve because the board of pardons and paroles will not require drug addicts to serve their full prison terms for simple drug possession charges when there is such a pressing need for long-term imprisonment of violent offenders. On the other hand, the drug court judge can decide that the benefit to society merits creativity and thus deserves significant efforts to ensure its continued success.

Separation of Powers

Central to our U.S. Constitution are the checks and balances provided by the three branches of government, as well as the independence of each through the separation of powers doctrine. In addition to the challenge of compliance with the Code of Judicial Conduct requiring maintenance of an independent judiciary, there is the equally sacrosanct constitutional duty to keep the powers of government separate and independent.

In the context of the criminal justice system, the prosecution arm of government, the district attorney, is endowed with the power of the executive branch of government as the chief law enforcement officer of the judicial circuit and is charged with the duty to ensure that the laws are faithfully executed.

The Georgia Constitution²² vests exclusively the judicial power of this state in the various courts including the superior courts having general jurisdiction. The drug court judge, as a superior court judge, is endowed with the power of the judiciary and the accompanying duty to keep such power separate from the other branches of government. Separation of powers preclude[s] the exercise of arbitrary power."²³ Although absolute separation between the three coordinate branches is not realistic,²⁴ the powers delegated to these branches must remain functionally identifiable without being "'hermetically' sealed from one another."25 The separation of powers doctrine is violated when legislation "either accrete[s] to a single Branch[,] powers more appropriately diffused among separate Branches or undermine[s] the authority and independence of one or another coordinate Branch."26

Fortunately, in Georgia, the General Assembly is aware of the many benefits of a drug court and has therefore drafted a drug court enabling statute, which attempts to respect the coordinate branch powers and helps to establish boundaries within which the drug court judge can operate. Like most such statutes, it seeks to achieve a reduction in recidivism and substance abuse among non-violent substance abusing offenders. The enabling statute, O.C.G.A. § 15-1-15, provides for the creation and recognition of drug courts throughout Georgia. The enabling statute provides, in relevant part:

In any case which arises from the use, addiction, dependency, sale, possession, delivery, distribution, purchase, or manufacture or a controlled substance, noncontrolled substance, dangerous drug, or other drug or is ancillary to such conduct and the defendant meets the eligibility criteria for the drug court division, the *court* may assign the case to the drug court division:

(A) Prior to the entry of the sentence, if the prosecuting attorney consents;

(B) As part of a sentence in a case; or

(C) Upon consideration of a petition to revoke probation.

. . . .

If the drug court division participant successfully completes the drug court division program prior to the entry of judgment, the case against the drug court division participant may be dismissed by the prosecuting attorney.²⁷

Although the Georgia statute recognizes the independence of the judiciary by making assignment to the drug court division discretionary on the part of the court, it may go too far in its delegation of executive powers, namely the decision to prosecute a felony drug charge to the judicial branch. On the other hand, the statute properly recognizes and attempts to balance the district attorney's executive power to prosecute a felony drug case to the fullest extent of the law if the district attorney so desires and chooses not to consent to the assignment of a case to the drug court division.

There are three possible scenarios in which the statute could apply to a pre-adjudication drug court. In the first scenario, both the judge and the district attorney agree that a case should be assigned to the drug court division. The statute, in that scenario, properly permits the case to be assigned without running afoul of separation of powers principles as the judge and prosecutor agree, and neither side is attempting to invade the province of the other branch.

The second scenario involves a disagreement wherein the judge wishes to assign a case to the drug court division but the district attorney does not. In that scenario, the statute properly recognizes that the power to prosecute a felony drug charge rests exclusively within the executive branch; that is, the statute requires "consent of the prosecuting attorney" for the assignment of a case to the drug court division and, without the prosecutor's consent, it cannot be assigned.²⁸

Finally, in the third scenario, the district attorney seeks to assign a case to drug court but the judge does not. In this situation, the statute appears, under one potential interpretation, to rest final discretion within the judicial branch as the "court may assign" the case to the drug court division with the consent of the prosecutor. Therefore, the statute could be interpreted and applied in such a manner wherein the judge has the final and absolute discretion to determine whether a case will be assigned to the drug court division and override the district attorney's decision to not prosecute a felony drug charge. To interpret the statute in such a manner, however, would likely result in a separation of powers violation.

It is clear that the Georgia Legislature has attempted to appropriately recognize the separation of powers doctrine in the statute, and any interpretation of the statute that does not recognize the power of the district attorney to withhold consent for a referral to the program is inconsistent with the separation of powers doctrine. Simply stated, the district attorney cannot make decisions that invade the province of the judiciary. Likewise, the judge may not instruct the district attorney as to his duties in ensuring that the laws are faithfully executed. The district attorney may prosecute the cases that he determines should be prosecuted in the manner that he determines the cases should be prosecuted, and the judge may not interfere. This is the classic "separation of powers" doctrine dating back to the very formation of our democracy. It is a necessary friction.²⁹

Given the current condition of the Georgia statute, in conjunction with the guidelines of Key Component six, does the drug court judge necessarily capitulate in violating separation of powers principles merely by participating in the coordinated strategy? No, but with careful delegation of powers within the drug court team context, the delicate balance of power can be properly maintained. At its essence, the team members, and especially the judge and prosecutors, must be ever mindful of their constitutional duties regardless of any internal pressures exerted by team members. It is not an exact science. Given the constantly evolving nature of drug courts, mistakes will be made. Nevertheless, every effort to maintain the balance must be made, regardless of the consequence or popular beliefs within the team.

In a classic pre-adjudication drug court, consistent with the separation of powers doctrine, the district attorney primarily decides which persons will be referred to the drug court. Once the participant has been accepted, however, the separation of powers tends to become less defined, thus jeopardizing the independence of the two branches. Decisions regarding sanctions and incentives are made by the team, with the final decision reserved for the judge. An order establishing the drug court, which incorporates the policies and procedures adopted by the drug court steering committee, should be entered by the court in the formative stages of a drug court.³⁰ By adopting the policies and procedures, the judge, having consented to those policies and procedures, is able to maintain his independence because he is satisfied with the

rules and procedures such that when a violation occurs, and it is covered by a rule, the judge has already approved the appropriate sanction, which applies uniformly. The policies and procedures appended to the order establishing the drug court should be meticulous in detail, outlining specific sanctions for violations of the rules.

When the drug court team faces the need to address a violation, the judge is able to uniformly apply the appropriate level of sanction(s). This is paramount as it helps to alleviate the appearance that the judge is unbending or unwilling to consider special knowledge of team members or facts that other team members believe are relevant to the sanction. This necessarily assists the judge in being able to maintain his independence while at the same time providing the judge flexibility to consider unique circumstances. If there is a special circumstance, the staff may request the judge to consider deviating from the rules; the final decision,





however, always rests with the judge. Likewise, the district attorney does not give up any of the executive branch powers as he is the "gatekeeper," with the final decision always resting with the district attorney, as to whether a person should be referred into the program.

The judge should be satisfied that the defendant's rights are protected because the defendant is apprised of his right to a trial or to plead guilty and receive a conventional sentence if he so desires. The defendant is also apprised before entry of his plea of guilty as to all the due process rights that he is giving up in exchange for the benefits that he will receive if he graduates from the program, namely a complete dismissal of all charges (in a pre-adjudication program). If the district attorney desires to have a drug court participant terminated from the program, there must be an evidentiary hearing, during which the judge acts as the finder of facts, makes conclusions of law, and, after which, the final decision to terminate always lies with the judge, thus promoting judicial independence.³¹

Conclusion

Drug courts can work without compromising judicial independence or the separation of powers doctrine. Is it worth the effort and risk? Each judge and district attorney will have to decide individually. In so doing, we should keep in mind that as members of the legal profession we have been given much, thus requiring much in return. In the words of the late Supreme Court of Georgia Justice J. Harold Hawkins, "the rendering of useful service is the common duty of mankind, and that only in the purifying fire of sacrifice is the dross of selfishness consumed, and the greatness of the human soul set free."32



Jeffrey S. Bagley is the chief superior court judge of the Bell-Forsyth Judicial Circuit located in Cumming. He is a graduate of the Georgia Institute of Technology and the Emory University School of Law. He has served on the superior court bench since 2000. In addition to his regular superior court duties, he serves as the presiding judge of the Forsyth County Drug Court, and also serves on the Drug Court Standing Committee for the Judicial Council of Georgia. He has also recently been appointed to serve on the Congress of the National Association of Drug Court Professionals, representing the state of Georgia. 💷

Endnotes

- 1. See Drug Courts Program Off., U.S. Dep't of Just., About the Drug Courts Program Office 1 (2000) (explaining that first drug court program was established in 1989 in response to growing concerns about drugs and drug-related crime and effectiveness of existing treatment and enforcement programs) [hereinafter Drug Courts Program Off.].
- Eric Cohen, *The Drug Court Revolution*, WEEKLY STANDARD, No. 15, at 20-23 (1999); *see* Drug Courts Program Off., *supra* note 1.
- 3. The "others" category of this team approach also must include the local public. Although the public is not directly involved in the day-today operations of a drug court, its support is imperative. See, e.g., Marshall v. State, 276 Ga. 854, 858, 583 S.E.2d 884, 888 (2003) (Benham, J., specially concurring) (recognizing that public support is vitally necessary for both the creation and continued existence of drug courts because "[i]f citizens do more on the preventive side, the courts can be more effective on the punishment and rehabilitation side."); see also Nat'l Drug Court Training & Technical Assistance Program ("NDCTTAP") sponsored by the Bureau of Justice Assistance ("BJA"), Office of Justice Programs, U.S. Dep't of Just., and the Office of Juvenile Justice & Delinquency Prevention website at http://dcpi.ncjrs.gov/dcpi/index. html (where DOJ's NDCTTAP provides information related to a formal training initiative designed to help communities develop effec-

tive adult, juvenile, family, and tribal drug court programs).

- 4. See supra note 3.
- Office of Justice Programs, NDCT-TAP, Looking At A Decade of Drug Courts, available at http://www.ncjrs.gov/html/bja/ decade98.htm.
- 6. See supra note 3.
- See Sally L. Satel, M.D., Drug Treatment: The Case For Coercion, 3 NAT'L DRUG COURT INST. REVIEW 1 (Winter 2000).
- 8. Id.
- 9. Id.
- 10. Government Accountability Office ("GAO"), GAO-05-219, Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results Outcomes (Feb. 2005) (where GAO concluded that adult drug court programs substantially reduce crime by lowering re-arrest and conviction rates among drug court graduates well after program completion, providing overall greater cost/benefits for drug court participants and graduates than comparison group members); see National Association of Drug Court Professionals, *The Facts: The Facts* on Drug Courts; see also OJP Drug Court Clearinghouse at American University, Implementation Status of Drug Court Programs (Sept. 2003).
- 11. Office of Justice Programs, NDCT-TAP, Looking At A Decade of Drug Courts, supra note 5.
- 12. O.C.G.A. § 15-1-15 (2005).
- 13. Just as traditional state court procedures vary from jurisdiction to jurisdiction, so do drug courts. The NADCP have published model standards that promote the Ten Key Components. Drug court procedures vary from state to state, and county to county, and can be quite different depending upon whether the court is in a rural, suburban or urban environment. Also, not every court adheres to all of the Ten Key Components suggested in the model standards. Georgia's Judicial Council has adopted standards that each court is urged to incorporate and adopt into its individual drug court program. See Georgia Drug Court Standards, http://www.georgia courts.org/aoc/publications/ Georgia%20Drug%20Court%20 Standards.pdf.
- 14. This is accomplished pre-indict-

ment or post-indictment by the District Attorney, and with the approval of the court if post-indictment, via nolle prosequi. *See, e.g.*, State v. Hanson, 249 Ga. 739, 744, 295 S.E.2d 297, 302 (1982).

- 15. See Ten Key Component benchmarks as specifically set forth in the U.S. Department of Justice, Office of Justice Programs, Drug Court Program Office's publication entitled Defining Drug Courts: The Key Components (Jan. 1997).
- 16. Id. at 3.
- 17. See Hon. William Meyer (ret.), Developing and Delivering Incentives and Sanctions, NAT'L DRUG COURT INST. (Apr. 3, 2007).
- Id. at 9 (citing MOTIVATING BEHAVIOR CHANGE AMONG ILLICIT-DRUG ABUSERS 334 (Stephen T. Higgins & Kenneth Silverman eds. 1999)).
- 19. GA. CODE OF JUD. CONDUCT Canon 1.
- 20. See In re Briggs, 595 S.W.2d 270 (Mo. 1980); see In re Bristol, N.Y. Comm'n on Judicial Conduct (1992).
- See, e.g., J.T. Morey, Lifting the Cover on Drug Courts: Evaluation Findings and Policy Concerns, OFFENDER SUBSTANCE ABUSE REPORT at 73-74 (Sept./Oct. 2007).
- 22. See GA. CONST. art. VI.
- 23. See Myers v. United States, 272 U.S. 52, 84 (1926) (Brandeis, J., dissenting) (explaining that separation of powers doctrine was not adopted to promote an efficient government but, instead, to create friction, which inevitably prevents an autocracy).
- 24. Crossover is allowed where it provides for "convenience and efficiency." Charles S. Abell, Ignoring the Trees for the Forests: How the Citizen Suit Provision of the Clean Water Act Violates the Constitution's Separation of Powers Principle, 81 VA. L. Rev. 1957, 1965-1966 (1995) (discussing Supreme Court's traditional view of separation of powers doctrine) (citing Mistretta v. United States, 488 U.S. 361, 380 (1989)).

- 25. INS v. Chadha, 462 U.S. 919 (1983).
- 26. Abell, *supra* note 24, at 1966; *see Mistretta*, 488 U.S. at 382.
- 27. O.C.G.A. § 15-1-15(a)(2), (b)(2) (2005) (emphasis added).
- 28. See, e.g., State v. DiLuzio, 90 P.3d 1141 (Wash. Ct. App. 2004) (where court held that district attorney's referral power was proper and did not violate separation of powers principles).
- See Myers v. United States, 272
 U.S. 52, 84 (1926) (Brandeis, J., dissenting) (explaining that the doctrine of separation of powers was not adopted to promote an effi-

cient government, but, instead, to create friction which inevitably prevents an autocracy).

- 30. *See* Order Establishing Drug Court as appended to this article.
- 31. *See, e.g.,* Wilkinson v. State, 283 Ga. App. 213, 641 S.E.2d 189 (2006).
- 32. DAVID A. DOSSER, SR., LET JUSTICE BE DONE: THE LIFE AND TIMES OF JUSTICE J. HAROLD HAWKINS 212 (Indigo Custom Publishing, LLC 2007) (speech to the Georgia Bar Association, Savannah, Ga., June 1952, quoting, in part, John D. Rockefeller, Jr.'s radio broadcast of July 8, 1941).

SAMPLE ORDER

IN THE _____COURT OF _____COUNTY STATE OF GEORGIA

ORDER ESTABLISHING DRUG COURT

Pursuant to O.C.G.A. § 15-1-15 (effective July 1, 2005), a Drug Court Division of the _____ Court of _____ County is hereby established. The Drug Court shall be a post-plea, pre-adjudication court pursuant to O.C.G.A. § 15-1-15 (b)(2). A Steering Committee whose members are appointed by the Chief Superior Court Judge and comprised of the Chief Superior Court Judge, Drug Court Coordinator, District Attorney, a representative from the ______ County Criminal Defense Attorney Association, a representative from the Office of State Probation, a representative from the ______ County Office, a treatment provider representative, the ______ Judicial Administrative District Court Administrator, the Director of the _____ County Office of Indigent Defense, and a representative from the ______ County Department of Pre-Trial Services, shall meet from time to time to establish policy and procedure recommendations for the operation of said Drug Court.

A copy of the currently adopted Drug Court Policies and Procedures (hereinafter "Policies and Procedures") is attached hereto as Exhibit "A." The Court hereby approves of the Steering Committee recommendations which are contained within the Policies and Procedures outlined in Exhibit "A." These Policies and Procedures reflect the Drug Court's intent to comply with the Ten Key Component benchmarks as specifically set forth in the U.S. Department of Justice, Office of Justice Programs, Drug Court Program Office's publication entitled *Defining Drug Courts: The Key Components* (January 1997).

The Court, being cognizant of Canon I of the Code of Judicial Conduct, which provides that "a judge should uphold the integrity and independence of the Judiciary," has adopted the Policies and Procedures recommended by the Steering Committee. Therefore, any factual situation covered in the Policies and Procedures shall be dealt with as provided therein. Any factual situations not expressly dealt with in the Policies and Procedures shall be discussed by the Drug Court Team, which shall be comprised of numerous key individuals from departments who have representatives serving as members of the Steering Committee, consistent with the concept of "coordinated strategy" as addressed under Key Component Number 6. See Office of Justice Programs, Drug Courts Program Office, Defining Drug Courts: The Key Components at 23-25 (January 1997). However, in keeping with Canon I of the Code of Judicial Conduct, the final decision shall always rest with the presiding Drug Court Judge.

In the event that a factual situation presented is covered by the Policies and Procedures adopted by the Drug Court and there arise certain extreme or otherwise unusual circumstances, as determined by the Steering Committee and/or the Drug Court Team, in which a deviation from the rules may be warranted, the presiding Drug Court Judge shall first confer with the Drug Court Team, in keeping with Key Component Number 6, which provides that "[a] coordinated strategy governs [D]rug [C]ourt responses to participants' compliance." Following a discussion with the Drug Court Team, the presiding Drug Court Judge shall make the final decision as to whether a deviation from the Policies and Procedures is warranted under such extreme and/or unusual circumstances. As recognized by the Office of Justice Programs, Drug Courts Program Office, because "the field [of Drug Courts] is still too new to codify policies, procedures, and operations" to fit every situation that might arise during the treatment program, the Steering Committee and/or the Drug Court Team must be granted the discretion to determine and define the parameters and contours of what shall qualify as an extreme or unusual circumstances and to fashion an appropriate remedy. *Id.* at 3.

So ORDERED, this ____ day of _____, 20__.

Judge, _____Court of

State Bar Celebrates Successful 2008 General Assembly

fter lengthy debates about tax cuts, transportation initiatives, and trauma care funding, the 2008 Georgia General Assembly will likely be remembered for what did not pass, as it was not able to reach agreement on these issues. However, there were successes, and for the State Bar of Georgia, this year not only brought the passage of legislative items generated by the various sections of the State Bar, success was also measured by the defeat of a number of bills that would have been detrimental to the legal profession.

As usual, attorneys serving in the legislature provided the leadership and support necessary for the successful session. In the Senate, Sen. Preston Smith (R-Rome) authored an important State Bar bill (SB 355), served as chairman of the Senate Judiciary Committee and chaired the Senate Appropriations subcommittee that passed the judicial salary increase. Sen. Michael Meyer von Bremen (D-Albany) served as the chairman

by Mark Middleton

of the Senate Special Judiciary Committee, which favorably passed a number of State Bar bills. Sen. Bill Cowsert (R-Athens) authored the Business Law proposal (SB 436) and carried a Real Property Section bill through the Senate. Sen. Seth Harp (R-Midland) provided timely and critical action on a number of State Bar bills as well.

In the House of Representatives, Rep. Wendell Willard (R-Dunwoody) and Rep. David Ralston (R-Blue Ridge) provided the leadership as chairmen for the two House Judiciary Committees. Chairman Willard authored HB 119 relating to judicial pay and was instrumental in its passage. Rep. Roger Lane (R-Darien) authored HB 1018 and was one of the State Bar's most effective advocates. Rep. Steve Tumlin (R-Marietta) authored HB 972 (UPMIFA) and Rep. Ed Lindsey (R-Atlanta) helped the State Bar on many fronts.

Many other legislators also supported positions of the State Bar, including Sen. David Shafer (R-Duluth), Appropriations Chairs Sen. Jack Hill (R-Reidsville) and Rep. Ben Harbin (R-Evans), Majority Leaders Sen. Tommie Williams (R-Lyons) and Rep. Jerry Keen (R-Saint Simons), Minority Leaders Rep. Dubose Porter (D-Dublin) and Sen. Tim Golden (D-Valdosta). Finally, the State Bar is grateful for the leadership of Lt. Gov. Casey Cagle and Speaker Glenn Richardson.

The State Bar leadership was very active in accomplishing the State Bar agenda. Section leaders, such as Patrise Perkins-Hooker (Real Property Law Section), Bruce Wanamaker and Alan Prince (Business Law Section), and Marshall Sanders (Fiduciary Law Section) devoted numerous hours presenting their section's bills to the legislative committees. Advisory Committee on Legislation (ACL) Chair Matt Patton and Vice Chair Patti Gorham skillfully managed the ACL process and joined President Gerald Edenfield and President Elect Jeff Bramlett in representing the State Bar at various legislative functions during the session.

2008 Board of Governors Agenda

State Bar Bills that Passed

- Commission on Judicial Service: HB 119 is the judicial salary increase that passed the House in 2007 and was passed by the Senate in 2008. The bill provides for a 5 percent raise on July 1, 2009, for Superior Court, Court of Appeals and Supreme Court Justices.
- Real Property Section: HB 1018 creates an affirmative duty for the Superior Court clerk to cross-index real estate cancellations, and authorizes an additional fee for clerks that cross reference cancellations of security instruments filed in real property records.
- Real Property Section: SB 355 is the "good funds" bill that eliminates the exception for certified checks and treasurer's checks from an FDIC bank, and all checks from non-insured banks.
- Business Law Section: SB 436 allows variations from the plurality voting standard to be established for publicly traded corporations in a bylaw adopted by the board of directors. Currently it can be done in the articles of incorporation only.
- Fiduciary Law Section: HB 972
 amends the Uniform
 Management of Institutional
 Funds Act and replaces it with
 a new Uniform Prudent
 Management of Institutional
 Funds Act (UPMIFA) which



clarifies, expands, and modernizes the act, and sets forth the standards for managing and investing charitable funds.

- Legal services for victims of domestic violence receives a continuation appropriation of \$2,134,626.
- Appellate Resource Center receives a continuation appropriation of \$580,000.

Other legislative matters on the State Bar agenda included HB 1493, a bill that provides a basis for the legislative discussion of the Evidence Study Committee's recommendations in regard to Georgia revising the state law on evidence to conform to the federal rules of evidence. The State Bar also testified on behalf of HB 646, a previously introduced bill addressing the situation with pooled trust accounts, which did not pass after objections by Department of Community Health.

The Brian Nichols trial and other issues created a very negative environment for maintaining legislative support for the public defender system. Threats to the organization and funding of the Georgia Public Defender Standards Council were widespread at the beginning of the session, but thanks to the leadership of Director Mack Crawford and others, the program was adequately funded. The total FY '09 appropriation for GPDSC was \$40.4 million. State Bar President Gerald Edenfield attended public defender study committee meetings last fall as well as meeting with legislative leadership about the funding needs of the GPDSC at various times.

The hard work and diligence of the Commission on Judicial Service in educating General Assembly members on the issue of judicial salaries, particularly the efforts of its chairman, former Rep. Larry Walker, paid off with the first judicial salary increase since 1999. This was a huge undertaking, and we are grateful for the support of the Georgia Chamber of Commerce as well as bipartisan support from the House and Senate in our efforts. (On May 14, just before this edition of the Bar Journal went to press, Gov. Sonny Perdue vetoed the legislation.)

Issues that the State Bar Opposed

There were a number of very important issues raised during this General Assembly that would have been detrimental to the practice of law and access to justice. For example, the State Bar opposed the taxation of legal fees for services provided to individuals. Ultimately, the taxation of legal services provision was not part of the tax bill that was passed by the House of Representatives.

The State Bar opposed another measure that would have allowed persons not graduating from an ABA-accredited law school to sit for the Bar exam. The bill did not pass, and the Supreme Court appointed a committee to study the issue. Another bill opposed by the State Bar was SB 271 that would have shortened the period of time within which a tax deed would ripen by prescription. That bill did not pass.

To review the text of any of these bills, go to www.gabar.org and click on State Bar Legislative Tracking, which is found under the "Bar News and Events" section.

State Bar's Legislative Action Network

The State Bar's legislative action network worked effectively in the 2008 General Assembly. This program allows State Bar members to be notified of critical developments in the legislature that require immediate member reaction. Through email, members are provided with the appropriate message points and the means to connect directly with their local senator and representative. This year the system was accessed to create support for the State Bar positions on judicial compensation and the legal services tax. In each instance, the State Bar position ultimately prevailed thanks to the grassroots efforts of our members. Members of the State Bar that provide their home address and contact information to the State Bar for the exclusive purpose of joining the network make the system possible. The

information is used only for that purpose and is not shared with any other group. To join the State Bar's Legislative Action Network (LAN), go to www.gabar.org/member_ essentials; click on address change and enter your home address to automatically sign up for LAN.

Conclusion

The 2008 General Assembly was a success with the passage of several bills of benefit to the practice of law, including the funding of key initiatives, and the defeat of bills that would have been harmful to our profession. The members of the Board of Governors, Executive Committee, ACL, Sections, and all who participated did an outstanding job on behalf of our profession.

The State Bar legislative representatives are **Tom Boller**, **Rusty Sewell**, **Wanda Segars** and **Mark Middleton**. Contact them at 404-872-2373 for further legislative information or visit the State Bar's website at www.gabar.org.



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17th Annual Georgia Bar Media & Judiciary Conference

by Stephanie J. Wilson

and media professionals gathered at the Westin Buckhead in Atlanta for the 17th Annual Georgia Bar Media & Judiciary Conference. Each year, this ICLE event focuses on emerging First Amendment issues and their influence on the law. Everyone from judges and lawyers to journalists are invited for a full day of panel discussions and small

n February, Georgia's legal



Don Samuel, Garland, Samuel & Loeb, P.C.; Robert McBurney, assistant U.S. attorney, Northern District of Georgia; Stephen D. Sencer, deputy general counsel, Emory University; and Jimmy Williamson, police chief, University of Georgia, during "Campus Privacy v. Campus Security in an Electronic World."

group sessions dealing with the latest topics impacting the First Amendment.

The day began with the first session, "J-School for Judges & Lawyers," led by moderator Jon Shirek, WXIA-TV. Panelists included Hon. Arch W. McGarity, judge, Superior Court, Flint Judicial Circuit; Robin McDonald, *The Fulton County Daily Report*; Bill Rankin, *Atlanta Journal-Constitution*; and Veronica Waters, WSB Radio. In light of the recent recusal of DeKalb County Superior Court Judge Hilton M. Fuller Jr. from the ongoing trial of accused courthouse shooter Brian Nichols, the majority of the discussion focused on the meaning of "on the record." McGarity and the other panelists agreed that the most important action journalists can take when covering a trial is to establish relationships, well before their deadline, with judges or other court personnel to encourage open dialogue.

After a short break, the second session, "Campus Privacy v. Campus Security in an Electronic World," was underway. Interlocutor Richard Griffiths, editorial director, CNN, led the audience and panelists through the scenario of a campus shooting at Lizard Lick State University. Panelists included Hon. David R. Sweat, judge, Superior Court, Western Judicial Circuit; Andrea Jones, Atlanta Journal-Constitution; Frank LoMonte, Student Press Law Center; John D. Marshall Jr., Georgia State University College of Law; Robert McBurney, assistant U.S. attorney, Northern District of Georgia; Chris Megerian, editor-in-chief, Emory Wheel, Emory University; Don Samuel, Garland, Samuel & Loeb, P.C.; Stephen D. Sencer, deputy general counsel, Emory University; Amy Storey, editor-in-chief emeritus, The Sentinel, Kennesaw State University; and Jimmy Williamson, police chief, University of Georgia.

For the luncheon program, "Trying the High Profile Case: A View from the Bar," Billy Martin, Sutherland, Asbill & Brennan, LLP, Washington, D.C., was interviewed by Richard Belcher, WSB-TV. Martin discussed working with such notable clients as former Atlanta mayor Bill Campbell and former Atlanta Falcons' quarterback Michael Vick. The audience was also given a chance to ask Martin questions regarding his practice.

Following lunch was a session titled "Evewitness Identification," moderated by Ronald L. Carlson, Fuller E. Callaway Chair of Law Emeritus, University of Georgia. Hon. Craig L. Schwall, judge, Superior Court, Atlanta Judicial Circuit; Hon. Stephanie Stuckey Benfield (D-Atlanta), Georgia House of Representatives, District 85; Gwendolyn Keyes Fleming, district attorney, Stone Mountain Judicial Circuit; and Aimee Maxwell, Georgia Innocence Project, served as panelists. After a wandering opera singer interrupted the session with a lovely rendition of "Un aura amorosa" from Mozart's Cosí fan tutte, the audience was asked questions to see if they could correctly identify him. This exciting interactive session showed how unreliable evewitness identification can be.

Next, attendees could select from three small group sessions offered on a variety of subjects. The first group session was "How to Talk to a Judge," moderated by Don Plummer,

Fulton County Superior Court, with panelists Hon. Anne Elizabeth Barnes, chief judge, Georgia Court of Appeals; Hon. Cynthia J. Becker, judge, Superior Court, Stone Mountain Judicial Circuit; and Hon. T. Jackson Bedford Jr., judge, Superior Court, Atlanta Judicial Circuit. Attendees second choice was "Citizen Journalists: A New Call for Journalistic Standards?" moderated by Bill Nigut, southeast regional director, Anti-Defamation League, with panelists David Hazinski, professor, associate University of Georgia College Grady of Journalism; and Leonard Witt, professor, Robert D. Fowler Distinguished Chair in Communication, Kennesaw State University. The third group session was "Where the Sun Don't Shine: Hot Topics in Open Government" led by mod-Hollie erator, G Manheimer, executive director, Georgia First Amendment Foundation, with panelists Stefan Ritter, deputy attorney general, State Law Department; and Michael Smith, chief staff attorney,

Clayton County.

The final session of the day was "Georgia & Judicial Independence." Ed Bean, editor-in-chief, *Fulton County Daily Report*, served as moderator. The panel included Hon. Harold Melton, justice, Supreme Court of Georgia; Hon. Gary McCorvey, chief judge, Superior Court, Tifton Judicial Circuit; Tom Boller, Capitol Partners Public Affairs Group; and Gino Brogdon, Brogdon, Davis & Adams. Discussion involved the relationship, public and private, between judges and other public officials. Also at issue were threats to judicial independence.

The seventh annual Weltner Freedom of Information Banquet followed the conference. One highlight



Cynthia Counts, Counts & Associates, presents information during "Eyewitness Identification."



Western Judicial Circuit Superior Court Judge David R. Sweat enjoys a humorous moment during "Campus Privacy v. Campus Security in an Electronic World."

of the banquet is the presentation of the Weltner Award, honoring the memory of former Supreme Court of Georgia Chief Justice Charles L. Weltner, a champion of freedom of information and ethics in state government. This year's Weltner Award honorees were open government pioneers Jim Houston of the *Columbus Ledger-Enquirer* and former Georgia Attorney General Michael Bowers.



Stephanie J. Wilson is the administrative assistant in the Bar's communications department and a contributing writer

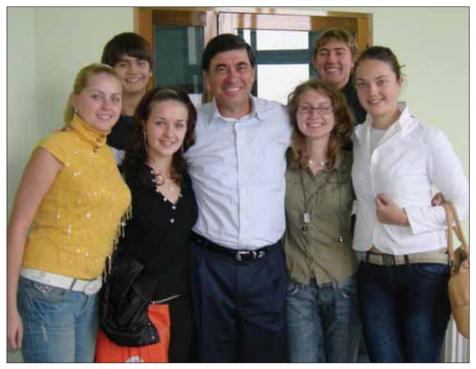
for the Georgia Bar Journal.

Vladivostok Memories

by Nicholas A. Lotito

liver Wendell Holmes is credited with saying, "Old age is fifteen years older than I am." This is a philosophy I have harbored for quite sometime; however, I was not aware that someone so notable had previously articulated it. Despite this optimistic, and at some point inaccurate assessment, I did

something last fall which is worth sharing with fellow youthful, albeit chronologically impaired lawyers. I taught a course in criminal law and procedure at Vladivostok State University Law School in Vladivostok, Russia, an exotic city on the southeast coast of Russia, a mere 6,600 miles and a 16-hour time difference from Atlanta.



Nicholas Lotito posing with some of his very enthusiastic second-year students.

While practicing criminal law for the past 30 plus years, mostly in private practice, I was somewhat envious of various federal prosecutors who traveled to the Czech Republic, Bulgaria, Hungary, Latvia and other places for months at a time, purportedly to assist with the creation of legal systems or teach in those countries. I lamented that those assignments were not available while I was a government prosecutor. Also, as my son, Alex, now 16, got older, I considered several opportunities to combine legal experience and travel. I thought about one of the numerous People to People invitations I received to be a delegate with a group going to China, Russia or elsewhere;



The Schloss Leopoldstrom Palace, where lawyer-teachers "roughed it" during orientation week in Salzburg, Austria.

applying to prosecute or defend war criminals at the Hague, or even becoming involved in the efforts to obtain justice out of the morass in Rwanda. In each case, I determined that the time was not right, the commitment too long or that there was some other reason not to embark on one of those ventures.

A couple of years ago I saw an ad from the Center for International Legal Studies, offering lawyers with 25 years experience the opportunity to teach in their Senior Lawyers Program. Somewhat impulsively, I applied. Several months later I was notified to attend an interview in Chicago, and I did so. Eventually, I was selected for the program and requested assignments in Latvia, Lithuania, the Czech Republic or Croatia. I was assigned to Russia, and only after committing to teach was I notified that I would travel to Vladivostok. It was a venue I had not anticipated. I had a choice of a spring or fall assignment, and after learning that September and October are two of the best months in Vladivostok, I selected the fall of 2007. Teaching assignments are for a minimum of two weeks and can be as long as the institution will have you. One Minnesota lawyer taught in Mongolia for six months. A two- to three- week assignment is fairly typical, and I taught for the last half of October. Teaching is pro bono, although the host institution provides lodging.

A fringe benefit of a Center for International Legal Studies (CILS) teaching assignment is a week-long orientation in Salzburg, Austria, where CILS is based. It operates out of the Schloss Leopoldstrom, a palace that was once owned by Max Reinhardt and used in filming the *Sound of Music*. The week in Salzburg was very enjoyable. There were presentations each day from professors at various host universities, and from attorneys who work with the European Union and in Russia. Kent Harbison, the lawyer who exiled himself to Mongolia, also shared his experiences with the group. There were about 35 lawyers at my session, and it was informative and a pleasure to spend time in Salzburg. Another Atlanta lawyer, Allen Greenberg, who practices copyright law, was in the group and is teaching this spring in Kaliningrad, Russia. Augusta attorney Stanley Jackson attended and then taught at the University of Maribor in Slovenia.

The trip from Salzburg to Vladivostok is a journey unto itself. A train to Vienna, a flight to Moscow and another nine-hour flight covering over 4,000 miles from Moscow to Vladivostok got me there in a fairly bleary-eyed condition on a Sunday morning. Happily, I was met by a Russian student who drove me to the university and helped me get settled in my dorm quarters for my stay in Vladivostok.

Vladivostok has a reported population of about 700,000, with a mixture of many Russians and a growing number of Asians. The topography is somewhat reminiscent of San Francisco with steep hills and a waterfront area. There are islands visible from the coast and an active downtown with restaurants, hotels and various businesses. Ornate Russian orthodox churches are ubiquitous. While in Salzburg, a lawyer from Colorado had put me in touch with a business colleague familiar with Vladivostok. He in turn sent me an e-mail describing Vladivostok as "one of the world's most exotic cities." This preview greatly improved my assessment of my assignment and proved to be extremely accurate. There were many World War II monuments, including a lengthy wall with engraved names, causing me to wonder if it had inspired our Vietnam Memorial. There is also new construction much as Vladivostok is expanding rapidly. It is hosting an Asia Pacific summit conference in 2012, and the city is being transformed to accommodate it, with Putin pledging \$4 billion for growth in the region.

In advance of my trip, I prepared about 150 pages of written presentations on six of the 10 or 11 topics I was asked to cover. I had notes and research materials for the other topics and produced outlines for these other lectures while I was in Vladivostok. I taught about 12 classes ranging from one and a half to three hours on our Constitution and Bill of Rights, an overview of our criminal justice system, a survey of federal crimes, the sentencing process, juvenile proceedings, the death penalty, terrorism, organized crime and corruption, the use of precedents, and assassinations (an unusual topic I was asked to cover). Class size ranged from 20 to 100 students, and I taught at least two classes to each of the five years of law school students and to a class in international relations. The students were

extremely interested in U.S. law and asked good questions. They are generally used to being lectured to, but I tried to get them to participate as much as possible, and they seemed to enjoy that.

When at the law school, I enjoyed minor celebrity status. Students generally stood out of respect prior to a lecture and often applauded at the end of a lecture. This may simply have been a showing of approval that the class had come to a conclusion. Four or five times students wanted to have pictures taken with me, and I have a number of photos that were emailed to me. Of course, I was used to this type of reaction from various jurors I have addressed. (I wish.)

somewhat lacking in creature comforts taken for granted here. For example, four or five of the days I did not have hot water and had to heat water in order to bathe. Perhaps as a vestige of communism, Vladivostok has central heating. When I heard this I thought nothing of it since central heating is common elsewhere. However, in Vladivostok, that means everyone is on the same heating system, and that system was not turned on for the first half of my stay. While October was supposed to be a mild month, it snowed at the end of my first week. This made for some pretty scenery, but it was much colder than I had anticipated.



Vladivostok after an unexpected October snow.

In smaller groups, I had some interesting conversations with students, sharing some personal experiences. I told them of growing up in south Florida, close to Cuba, and sitting around a television with my family as Russian ships approached Cuba. For me, it was a frightening experience at age 13. I explained that it meant a great deal for me to be teaching in Russia after having experienced the earlier tension between our countries. A number of students said they looked forward to traveling to the United States. I thought the students were much like students here.

The overall experience in Vladivostok and in the dorm was

Without heat, I suggested the experience may have amounted to cool and unusual punishment. Oddly, I had an 11 p.m. curfew. I was informed that if I returned after 11 p.m., I would not be allowed in, and if I had someone in my room after 11 p.m., they would not be allowed out.

The businessman who e-mailed me also put me in touch with Eugenia Klokova, an English teacher from Vladivostok who was a wonderful hostess. She frequently had friends of hers pick me up and show me around the city. Eugenia also introduced me to members of the regional bar association and a local rotary group. There were a couple of Americans living in my dorm who were teaching in Vladivostok for varying periods of time, and I also enjoyed meeting them and comparing notes over dinner.

As my time in Vladivostok drew to a close, I left with some sadness. I really enjoyed getting to know some of the students and also found that I took to the process of teaching more than I had expected. It is a lot of work to prepare to teach something for the first time, but I thoroughly immersed myself into the experience. A really good thing about CILS is that once you have been selected to teach in their Senior Lawyers Program, you can reenlist at some future time. While I think I will wait a couple of years before seeking another assignment, I look forward to doing this again, perhaps in another location.

Because I was in a part of the world I was unsure I would revisit, I decided to go to see another country before returning. I chose Thailand because a friend of my brother's had been living there for about six months, and he had offered to show me around. That was another good experience and involved a week of R&R after teaching in Vladivostok. I commend this opportunity to anyone interested in a challenge, a new adventure and an opportunity to share our values with others who are receptive to hearing about them.



Nicholas A. Lotito is a partner at Davis, Zipperman, Kirschenbaum and Lotito. He is a past president of the

Georgia Association of Criminal Defense Lawyers and former federal prosecutor with the Antitrust Division of the Justice Department. He practices criminal defense law, representing clients in federal and state matters. He has been repeatedly named a "Super Lawyer" in the area of white collar criminal defense.



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The Monroe County Courthouse at Forsyth

The Grand Old Courthouses of Georgia

ypical of many prosperous Piedmont counties that were the beneficiaries of early rails, Monroe County would resist the jubilant symbols of the myth of the New South, holding close to traditional architectural forms and keeping her 1825 courthouse for over 70 years. The old two-story brick structure, built in the vernacular style, featured a gabled roof, a broad cornice and four arched entrance doorways. Although the design was simplicity itself, the elegant proportion and considerable scale were particularly impressive, especially for such an early building.

There was wealth here, the wealth of cotton. Like Eatonton and Madison and other prosperous Piedmont towns, Forsyth would develop a society around well-to-do planters and their social urge to congregate in towns. But Forsyth's population would remain static through the closing decades of the 19th century (1,105 in 1880, 1,171 in 1900).

by Wilber W. Caldwell

Finally on June 25, 1895, The Forsyth *Advertiser* published the following notice:

We the Commissioners of Monroe County ... realizing that her Courthouse ... has twice been condemned as unsafe by competent architects, and numerous grand juries, realizing that it was inadequate for the needs of the county, and that the progress of the court was often checked because jurors and witnesses could not be made comfortable in the building we now have recommended the building of a new Courthouse.

And so in 1896, the county built a new courthouse, not out of any euphoric hopes for the future, but simply because one was needed.

The architecture of the 1896 Monroe County Courthouse speaks for the period in several uniquely instructive voices. Despite the power of the American Neoclassical Revival that had been ignited three years earlier by the buildings of The Columbian Exposition at the 1893 Chicago World's Fair, the silhouette here, despite its symmetry, still reflects the old Picturesque Styles. There was a distinct lag in the South when it came to adopting the new Classicism of the budding "American Renaissance." To be sure, this lag had been apparent all along. Italianate buildings were still popular in the South long after the style lost its appeal in the North. The streets of Washington and New York had been lined with Second Empire architecture long before the first court-



Built in 1896, Bruce and Morgan, architects.

houses of that style graced the streets of even the most progressive of southern railroad cities. Despite the progressive verbiage of a generation of young Henry Grady's, architectural lags were something of a southern tradition for 50 years after the Civil War. The depth of the South's wounds and the superficial nature of southern "progress" can not be underestimated in this context, as in so many others.

In 1896, Georgia courthouses may have been slow to don the new neoclassical garments, but the return to symmetry was apparently a welcome trend. For years the asymmetry of Picturesque styles had dominated Georgia town squares, but by the time The Monroe County Commissioners began to consider a plan for the new courthouse at Forsyth, the return to symmetry was in full swing. In the space of only two years, six perfectly balanced Georgia courthouses had been completed. All sang the songs of geometric balance. Several of these, including Reuben Hunt's stunning 1894 Elbert County Courthouse at Elberton, were quoined with low square pavilions topped with pyramidal roofs. Here was the model for the formal arrangement found at Forsyth. This studied symmetry undoubtedly

flowed from the buildings of both the 1893 Chicago and the 1895 Atlanta Expositions, and form the Chateau-like pavilions following the French Renaissance Style exemplified by H. H. Richardson's New York State Capitol Building (1879) and Richard Morris Hunt's monumental work including the Biltmore House at Asheville, N.C., completed in 1895, the year this courthouse was begun. Just before his death in 1886, Richardson had designed his Allegheny County Courthouse in Pittsburgh, a building that almost single-handedly defined the style of American Romanesque courthouses of the era. Here pavilions with pyramidal roofs defined the corners and, like many of Richardson's later designs, the building followed symmetrical forms. By 1890, a decided national trend toward symmetry was under way even among Richardson's most ardent followers. The shift to symmetry was particularly radical for Bruce and Morgan. Although they had begun with symmetrical buildings influenced by the Second Empire Style, by 1895 much of the firm's reputation rested on highly Picturesque designs in the Romanesque Style.

But it appears that Bruce and Morgan borrowed more from the buildings of the 1893 Columbian Exposition than just a return to symmetry. County commissioners all across Georgia may not have been ready for the classical excesses of The World's Fair, but some of the architects were. Monroe County demanded and got a Romanesque building in the mold of Elbert and Emanuel counties, but they got a little more in the bargain. This was still the age of eclecticism, and despite its fundamentally Romanesque silhouette, this building drips with neoclassical detail. Here we see the influence of the Queen Anne Style, not as a reflection of the earlier more historical Shavian Manorial mode, but as a new force of eclecticism in which Classical elements abound in a sort of "free composition with Classical detail." Classical pediments and elegant balustrades flank the central tower, which is decorated with Corinthian pilasters. The cornice is richly inscribed with a flowery Renaissance motif, and beneath the eaves we find bold dentals in the classical tradition. Talbot Hamlin characterizes southern architecture in his discussion of the earlier development of the Greek Revival in the region, "in general work was extremely conservative" and new forms "crept in only gradually." In 1896 here in Monroe County the grandeur of the Renaissance was creeping into Central Georgia. 💷

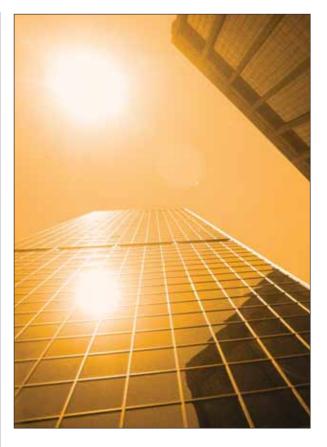
Excerpted by Wilber W. Caldwell, author of The Courthouse and the Depot, The Architecture of Hope in an Age of Despair, A Narrative Guide to Railroad Expansion and its Impact on Public Architecture in Georgia, 1833-1910, (Macon: Mercer University Press, 2001). Hardback, 624 pages, 300 photos, 33 maps,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

2007 Annual Review of Case Law Developments

Georgia Corporate and Business Organization Law

he purpose of this article is to track case law developments in Georgia's state and federal courts dealing with corporate and business organization law issues. Some of the cases reviewed address important, previously unresolved questions. These include the Court of Appeals of Georgia's conflicting decisions on the standard of care for directors and officers of Georgia corporations. Other decisions involve elusive issues, such as the validity of an election of directors of a Georgia membership nonprofit corporation that lacks the officers or the bylaws to authorize a meeting of members. We have included still other decisions, such as those concerning piercing the corporate veil, because they illustrate and confirm settled points of law.

In general, the article is organized by type of entity –corporations, partnerships and limited liability companies, with decisions organized by subject matter within those categories. In several areas–statutes of by Thomas S. Richey



limitations for breach of fiduciary duty, the Business Records Act, director and officer liability insurance and other special issues—the decisions should be applicable to all forms of business organizations, and we have categorized those decisions by issue. Following is a brief summary of these developments.

Business and Nonprofit Corporations

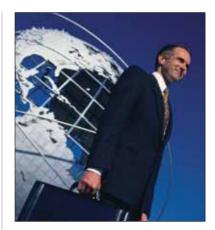
In Flexible Products Co. v. Ervast, 284 Ga. App. 178, 643 S.E.2d 560 (2007) and Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 648 S.E.2d 399 (2007), different divisions of the Court of Appeals of Georgia addressed whether corporate officers and directors are subject to an ordinary negligence standard of care, reaching opposite results. The Flexible Products Co. case, holding that ordinary negligence is not actionable, was decided unanimously and, under the Court of Appeals' Rule 33, is binding precedent, whereas the Rosenfeld decision, holding the standard to care is ordinary negligence, was not unanimously decided and is only physical precedent.

The 11th Circuit Court of Appeals in *TSG Water Resources, Inc. v. D'Alba & Donovan, Certified Pub. Accountants, P.C.,* 260 Fed. Appx. 191 (not published in the Federal Reporter) addressed the business judgment rule as to claims against a Georgia corporate officer, along with the test for corporate citizenship for diversity jurisdiction and issues of reasonable reliance and scienter for common law fraud and fraud under the Georgia securities laws.

In three instructive decisions, Impreglon, Inc. v. Newco Enterprises, Inc., and W. Curt Jarrell, 508 F. Supp. 2d 1222 (N.D. Ga. 2007), Lou Robustelli Mktg. Servs., Inc. v. Robustelli, 286 Ga. App. 816, 650 S.E.2d 326 (2007), and Hilb, Rogal & Hamilton Co. of Atlanta, Inc. v. Holley, 284 Ga. App. 591, 644 S.E.2d 862 (2007), the courts ruled on claims for breach of fiduciary duty by departing personnel, among other things, examining in Impreglon whether advance planning is a breach of fiduciary duty and in Hilb, Rogal and Lou Robustelli Marketing whether particular corporate personnel had fiduciary duties, focusing on whether an officer or employee had authority to bind the corporation.

Several decisions concerned the capacity, authority, rights and liabilities of corporate officers, directors and shareholders in other contexts. The Court of Appeals of Georgia's decision in Keane v. Annice Heygood Trevitt Support *Trust,* 285 Ga. App. 155, 645 S.E.2d 641 (2007) dealt with the capacity in which a guarantee of a corporate indebtedness was executed, rejecting arguments that the defendant could not be personally liable because he executed the guarantee in his capacity as a shareholder or as a director. In Clay v. Oxendine, 285 Ga. App. 50, 645 S.E.2d 553 (2007), the Court of Appeals held that corporate officers could not escape personal liability under Georgia's anti-payday lending statute and the Georgia Industrial Loan Act by arguing that their acts were those of the corporation. The case of *Hinely v. Alliance Metals, Inc.* of Atlanta, 285 Ga. App. 230, 645 S.E.2d 584 (2007) involves claims by a corporate executive that his employer breached his employment contract by, among other things, engaging in allegedly illegal activity. In McKenna v. Capital Resource Partners, IV, L.P., 286 Ga. App. 828, 650 S.E.2d 580 (2007), the Court of Appeals found a triable issue of fact as to the authority of a controlling shareholder to reach an agreement with minority shareholders that could be binding on the corporation without action by its board of directors. The Court of Appeals in Huffman v. Armenia, 284 Ga. App. 822, 645 S.E.2d 23 (2007) held that a corporate president lacked the capacity to file a bankruptcy petition pro se on behalf of the corporation and the filing was also beyond his authority because it was not approved by the board of directors prior to filing.

Three decisions addressed issues of corporate stock valuation and dissenting shareholders' appraisal proceedings. The Supreme Court of



Georgia in Barton v. Barton, 281 Ga. 565, 639 S.E.2d 481 (2007) held as a matter of first impression that, for purposes of dividing marital property, a wife in divorce proceedings is not bound by the valuation of her husband's corporate stock in a shareholder buy-sell agreement. In Suzie Schutt Irrevocable Family Trust v. NAC Holding, Inc., 283 Ga. App. 834, 642 S.E.2d 872 (2007), the Court of Appeals of Georgia held that the sole remedy available to a shareholder of a Delaware corporation under the Delaware short-form merger statute is an appraisal hearing before the Delaware Court of Chancery. In Fansler Foundation v. American Realty Investors, Inc., 2007 WL 2695630 (E.D. Cal., Sept. 11, 2007), a case involving a preferred shareholder's allegations of fraud and breach of fiduciary duty regarding promises to list a Georgia corporation's shares on a stock exchange allegedly made to enlist shareholder support for a reorganization, a California federal district court rejected the defendants' efforts to characterize the claims as claims for fair value governed by the Georgia dissenters' statute

The Court of Appeals of Georgia in *Nyugen v. Tran,* 287 Ga. App. 888, 652 S.E.2d 881 (2007), for purposes of an interlocutory injunction, upheld the actions of a majority of members of a Georgia nonprofit corporation with no officers, directors or bylaws, in calling a meeting of members and electing a board of directors, despite the lack of specific statutory authority for members to call a meeting under those circumstances.

The courts handed down two decisions involving administrative dissolution of Georgia corporations - Foster v. Clayton County Judicial Circuit of the State of Georgia, et al., 2007 WL 569851 (N.D. Ga., Feb. 20, 2007), in which it was held that an administratively dissolved corporation cannot undertake new corporate obligations, and Williams v. Martin Lakes Condominium Association, Inc., 284 Ga. App. 569, 644 S.E.2d 424 (2007), in which it was held that reinstatement of an administratively dissolved nonprofit corporation can take place at any time and enable the corporation to pursue litigation filed during the period of its dissolution.

In B&B Quick Lube, Inc. v. G&K Services Company, 283 Ga. App. 299, 641 S.E.2d 198 (2007), the Court of Appeals of Georgia applied O.C.G.A. § 14-2-504, an alternative method for serving process on a Georgia corporation with requirements that differ from those of the Georgia Civil Practice Act. The Court of Appeals in Wright v. AFLAC, Inc., 283 Ga. App. 890, 643 S.E.2d 233 (2007) discussed a corporate issuer's recordkeeping responsibilities and its burden of proof with respect to claims to ownership of its stock.

Partnerships

In Bloomfield v. Bloomfield, 282 Ga. 108, 646 S.E.2d 207 (2007), the Supreme Court of Georgia held that where the general partner had improperly transferred the sole asset of a family limited partnership, the limited partners were entitled to recover their pro rata share of the value of the property lost, not an award of an undivided interest in the property itself. French v. Sellers, 2007 WL 891306 (M.D. Ga., March 21, 2007) addressed claims that a general partner of an LLLP breached his fiduciary duties in arranging for the purchase of a limited partner's interest by failing to disclose negotiations and offers received for the purchase of the partnership. In re

Newlin, 370 B.R. 870 (Bankr. M.D. Ga., June 29, 2007) held that a bankruptcy trustee who fails to assume the executory provisions of a partnership's buy-sell agreement cannot enforce the agreement. In Hendry v. Wells, 286 Ga. App. 774, 650 S.E.2d 338, (2007), the Court of Appeals of Georgia used a "special injury" rule analysis to decide that certain claims by limited partners of a limited partnership still governed by the now-superseded Uniform Limited Partnership Act were derivative in character and subject to dismissal. Ellison v. Hill, 288 Ga. App. 415, 654 S.E.2d 158 (2007) ruled that it is not necessary to offer expert evidence of profitability in accordance with generally accepted accounting principles in order to establish a claim for a share of partnership profits. The 11th Circuit Court of Appeals in Optimum Techs., Inc. v. Henkel Consumer Adhesives, Inc., 469 F.3d 1231 (11th Cir. 2007) held that the relationship between a manufacturer and distributor did not constitute a partnership or joint venture and did not give rise to fiduciary duties or duties of disclosure. In Leevers v. Bilberry, 2007 WL 315344 (M.D. Ga., Jan. 31, 2007), the court held that a property manager was not an agent of the partnership that owned the property and was not bound by the arbitration provisions of the partnership agreement. The Court of Appeals in Dalton Point, L.P. v. Regions Bank, Inc., 287 Ga. App. 468, 651 S.E.2d 549, (2007), rejected an effort by a limited partnership to hold a depository bank liable for the embezzlement of funds by the partnership's bookkeeper, when the "corporate" resolution expressly authorized the use of partnership funds for personal obligations.

Limited Liability Companies

Megel v. Donaldson, 288 Ga. App. 510, 654 S.E.2d 656 (2007) rejected claims of breach of fiduciary duty against a majority member of a lim-

ited liability company because a development agreement among the members precluded fiduciary duties from arising. A Tennessee bankruptcy court decision, *In re Wheland Foundry, LLC,* 2007 WL 2934869 (Bkrtcy. E.D. Tenn., Oct. 5, 2007), addressed whether two LLC members' claims against a third were direct or derivative, applying Georgia's special injury rule and finding Georgia's direct action exception for closely held entities to be inapplicable.

Statute of Limitations for Breach of Fiduciary Duty

In four cases handed down in July 2007, Hamburger v. PFM Capital Mgmt., Inc., 286 Ga. App. 382, 649 S.E.2d 779 (2007); Cochran Mill Assocs. v. Stephens, 286 Ga. App. 241, 648 S.E.2d 764, (2007); Hendry v. Wells, 286 Ga. App. 774, 650 S.E.2d 328 (2007); In re Pac One, Inc., 2007 WL 2083817 (N.D. Ga., July 17, 2007), the courts addressed statutes of limitations for breaches of fiduciary duty in corporate and partnership contexts, reaching conflicting results as to the applicable limitations period for partnership fiduciary breaches.

Business Records

In four cases the Court of Appeals of Georgia has addressed the admissibility of documents under the Georgia Business Records Act. In Ishak v. First Flag Bank, 283 Ga. App. 517, 642 S.E.2d 143 (2007), permitting a loan summary to be introduced through an officer who did not prepare it, in Walter R. Thomas Assocs., Inc. v. Media Dynamite, Inc., 284 Ga. App. 413, 643 S.E.2d 883 (2007), allowing invoices from a third party vendor to be treated as the recipient's business records, and in *Boyd v. Calvary* Portfolio Services, Inc., 285 Ga. App. 390, 646 S.E.2d 496 (2007) and Jenkins v. Sallie Mae, Inc., 286 Ga. App. 502, 649 S.E.2d 802 (2007), permitting introduction of loan records from predecessor lenders.

Corporate Veil Decisions

The decisions of Powell Co. v. McGarey Group, LLC, 508 F. Supp. 2d 1202 (N.D. Ga. 2007), BMC-The Benchmark Mgmt. Co. v. Ceebraid-Signal Corp., 2007 WL 2126272 (N.D. Ga., July 23, 2007) and Adams v. Unum Life Ins. Co. of America, 508 F. Supp. 2d 1302 (N.D. Ga. 2007) rejected efforts to pierce the corporate veil for lack of evidence. The BMC-The Benchmark Mgmt. Co. decision also declined to recognize the theory of aiding and abetting fraud as viable under Georgia law. The Adams case rejected a joint venture basis for liability. Horton Homes, Inc. v. Bandy, 2007 WL 4571251 (M.D. Ala., Dec. 26, 2007) addressed veilpiercing in the context of arbitration agreements and Lollis v. Turner, 288 Ga. App. 419, 654 S.E.2d 229 (2007) refused to permit "outsider reverse veil-piercing."

Insurance Issues

In Executive Risk Indemnity, Inc. v. AFC Enterprises, Inc., 510 F. Supp. 2d 1308 (N.D. Ga. 2007), the court rejected a director and officer liability insurer's efforts to rescind its policy. The Court of Appeals in Fireman's Fund Ins. Co. v. University of Georgia Athletic Assn., Inc., 288 Ga. 355, 654 S.E.2d 207 (2007), held that exclusions in a nonprofit corporation D&O insurance policy for failure to effect or maintain insurance and for bodily injury did not bar coverage for the organization's failure to obtain disability insurance for a student athlete.

Transactional Cases

The decision in *Paul v. Smith, Gambrell & Russell,* 283 Ga. App. 584, 642 S.E.2d 217 (2007), concerns a duty-to read-defense in a legal malpractice action involving the unanimity needed for a shareholders consent to a merger. *Duvall v. Galt Med. Corp.,* 2007 WL 4207792 (N.D. Cal., Nov. 27, 2007) rejected third party beneficiary claims against an acquiring company by a former employee whose promised stock options were not included in the acquisition. In *Automated Print Inc. v. Edgar*, 288 Ga. App. 326, 654 S.E.2d 413 (2007), stock purchase price adjustment provisions in a promissory note were held not to be a matter of setoff or recoupment and evidence should have been allowed of events requiring the price to be adjusted.

Other Issues

The Court of Appeals in *Slater v. Cox*, 287 Ga. App. 738, 653 S.E.2d 58 (2007) decided the applicable deadline for filing an appeal to superior court from an administrative ruling by the Georgia Securities Commissioner is the 20day period specified in O.C.G.A. § 10-5-17, not the 30-day period allowed under Georgia's Administrative Procedure Act.

In Scouten v. Amerisave Mortgage Corp., 284 Ga. App. 242, 643 S.E.2d 759 (2007), reversed on other grounds, 283 Ga. 72, 656 S.E.2d 820 (2008), the Court of Appeals denied standing under Georgia's RICO statute to a whistle-blower who was not directly injured by the alleged predicate acts.

In *Marcum v. Gardner*, 283 Ga. App. 453, 641 S.E.2d 678 (2007), a dispute regarding whether a transaction was intended as an investment or a loan, the Court of Appeals of Georgia held that a check denoted as a "one-third investment" did not decide the character of the transaction, given testimony that it was intended to be a loan.

Finally, in *First Support Services, Inc. v. Trevino,* 288 Ga. App. 850, 655 S.E.2d 627 (2007), the Court of Appeals of Georgia held that the purchaser of a manufacturer was not strictly liable as a "successor corporation" for purposes of O.C.G.A. § 51-1-11(b)(1) because there was no evidence of a merger, assumption of liabilities, commonality of ownership or attempt to commit fraud.

For an extended discussion of each of these cases, please download the document at the following link: http://www.pogolaw.com/articles/ 2498.pdf.

This article is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed in this article are those of the author only and not Powell Goldstein LLP.

The author would like to acknowledge and thank Vjollca Prroni, Ann Ferebee and Lindsay Brewer for their valuable assistance with this article.



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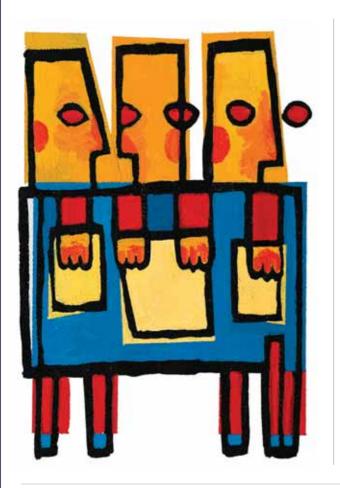
Corporate and Fiduciary Litigation Practice. Richey is the founder of Georgia ICLE's Annual Business Organization Litigation Seminar, now in its 12th year and serves on the State Bar of Georgia's Corporate Code Revision Committee.



What's in Your Client's Employee Handbook?

A Guide to Ensuring Compliance with Georgia Law

by Gina M. Cook



f you have ever reviewed an employee handbook for a client, you are probably aware of the problems that arise when companies choose to obtain legal materials from less than reliable sources. Unfortunately, the most popular source for obtaining an employee handbook today is the Internet. To your client, that seems like a good idea-online employee handbooks are easily accessible, appear to cover all important areas of the employer/employee relationship, and best of all, they are free. However, eventually someone within the company (usually in the legal department, or perhaps not at all if there is no legal department) will have second thoughts as to the handbook's accuracy. Worse yet, the error could raise its ugly head for the first time in a case before a court or a government agency.

Hopefully the client calls a lawyer *before* the disaster occurs. If so, the presentation of the handbook is usually accompanied by the hopeful question "Do you think this looks okay?" Inevitably, your answer will be "No!"

If you are going to undertake writing or reviewing a handbook for a Georgia company, you will want to make sure that the language and policies you include comply with state and federal law. There are a number of specific provisions and important drafting concerns that need to be taken into consideration when creating an employee handbook. If you are ever faced with the abovedescribed circumstances, you need to know what principal areas of the employee handbook to focus on to ensure that your client will not face litigation. When drafting or reviewing an employee handbook under Georgia law, always consider the following general guidelines.

First, an Employer is Not Required to Have an Employee Handbook (But It Should)

Your client may be shocked to hear this, but Georgia law does not require employers to have an employee handbook. However, for a wide variety of reasons, ranging from federal law compliance in the area of harassment to employee understanding of employer expectations, companies should be using a handbook. Employee handbooks serve as introductory guides to new employees and reference guides for incumbent workers. An employee handbook can provide a crucial defense to a discrimination or harassment case, if the handbook properly sets forth how such matters should be handled. The handbook also increases the chances of consistent and proper handling of issues by both human resource professionals and operations managers. Additionally, wellwritten handbooks can eliminate certain concerns, such as the inadvertent creation of an implied contract between an employer and its employees. *There are many other important reasons for having a handbook than are listed here.*

From a Georgia perspective, a handbook is less crucial than in highly regulated states like New Jersey, California and Minnesota. Georgia has few specific state employment laws that affect daily interactions between employers and employees. However, Georgia law regarding at-will employment (discussed below), pay and benefits should be evaluated when considering a handbook. Also, if your client wants to use its Georgia handbook in other states, watch out! Employment laws vary so much from state-to-state that a single handbook approach is essentially impossible.

If Your Client is Going to Have a Handbook, It Must Comply with Federal Law

Your client's handbook should comply with federal law. Work with your client to determine what federal laws cover the employer's workforce. Does the company have enough employees to be a covered employer under the Family and Medical Leave Act (FMLA) or the Americans with Disabilities Act (ADA)? If so, include policies regarding these laws in the employee handbook. If you are reviewing a handbook and determine it already contains policies referencing applicable federal laws, make sure those policies are up to date. For example, the FMLA was recently expanded and now requires employers to grant unpaid leave to immediate family members of reservists and National Guardsmen called to active duty, and to employees providing care to family members wounded while serving in the military.

Also, beware the National Labor Relations Act (NLRA), which many

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ROBERT R. GUNN, II, MANAGING PARTNER Rachel D. McDaniel, Scheduling Coordinator 240 THIRD STREET MACON, GEORGIA 31201 (800) 863-9873 or (478) 746-4524 FAX (478) 745-2026 www.southgeorgiaADR.com employers naively believe applies only to unionized workforces. The NLRA governs many handbook topics ranging from solicitation to confidentiality among employees, to the definition of insubordination (versus something called NLRA-protected, concerted activity). If you're not versed in these areas, talk to someone who is. Many handbooks, which are otherwise well-written, contain provisions that violate the somewhat unusual and occasionally arcane provisions of the NLRA.

Make Sure the Employee Handbook Clearly Explains the Concept of At-Will Employment

In drafting an employee handbook, include a paragraph explain-

> The Lawyer Assistance Program of the State Bar of Georgia

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For more information, please call the confidential hotline number at 800-327-9631. ing the meaning of "at-will" employment. This is a concept that is often difficult for employees to understand. Under Georgia law, both the employer and the employee are free to end the employment relationship at any time, for any reason, as long as that reason is not unlawful (i.e., discrimination or retaliation). Employers are not required to give an employee any amount of notice leading up to the separation of their employment. However, this goes both ways-the employee is not required to give the employer any amount of notice before he or she decides to leave his or her position. An explanation on the front end of the employment relationship will help to ensure employees are not under the impression they have a contract of employment for a certain period, or that they are entitled to their position unless they are terminated "for cause."

Under Georgia Law, Handbooks Are Not Legally Binding Contracts, Except When...

Georgia generally does not consider employee handbooks to constitute legally binding contracts. However, there are some important exceptions to this rule. Georgia courts have held certain language in employee handbooks to be contractually enforceable where the language is related to additional compensation plans and benefits programs. See Fulton-DeKalb Hosp. Auth. v. Metzger, 417 S.E.2d 163 (Ga. Ct. App. 1992) (holding disability policy in handbook extending benefits in event of injury was part of contract of employment); Shannon v. Huntley's Jiffy Stores, 329 S.E.2d 208 (Ga. Ct. App. 1985) (where employee handbook stated terminated employees would not be eligible for vacation pay, former employee was not entitled to pay for unused vacation days). Consequently, use care in drafting sections of the handbook related to compensation plans or benefits programs, as these sections may be contractually enforceable and will be the most susceptible to litigated claims. Also, avoid making guarantees in the handbook—"if ABC happens, you will get a verbal warning before further discipline occurs." The latter type of guarantee (almost always accompanied by the unfortunate words "will" and "must") can create serious legal issues.

Finally, Know Your Own Limitations

Even if you are very familiar with Georgia law, do not undertake the review or drafting of an employee handbook without the advice or assistance of a seasoned employment lawyer. Ask yourself-"Can I draft a dress code policy that will not cause my client to violate the religion provisions of Title VII of the Civil Rights Act of 1964? Do I know how to advise my client on making withholdings from an employee's paycheck without violating federal minimum wage laws? Can I help my client implement a substance abuse policy that will comply with the intricate requirements of the Georgia Drug-Free Workplace Program Act?" These are only a few of the employment law issues that arise when drafting an employee handbook. Seeking the assistance of a lawyer with well-rounded knowledge of employment laws will ensure your client is getting the type of handbook that is needed and one which will be legally compliant under federal and Georgia state law. 💷



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Law Day Rules in Glynn County!

he Law-Related Education Subcommittee of the Foundations of Freedom Commission of the State Bar of Georgia collaborated with the Brunswick-Glynn County Bar Association to bring Law Day 2008 to the people of Glynn County on May 2. This year's theme focused on The Rule of Law: Foundation for Communities of Opportunity and Equity. With the additional collaboration of the public schools, the courts, a significant federal governmental agency, and the business community, this was a Law Day that will not soon be forgotten.

At the founding of this country, Thomas Jefferson noted, "If a nation expects to be ignorant and free, it expects what never was and never will be." As our State Bar presidents, particularly Jay Cook, have told us, we have seen in recent years a general decline in civic education and engagement. People are not as informed as they once were about their government, how it is structured and how it functions in their daily lives. The average American does not appreciate the pivotal role of the independent judiciary in our society. Although the increased involvement of new and former voters in this year's presidential primary elections



by Linda T. Muir

Glynn County Superior Court Judge Amanda Williams engages fourth graders from Goodyear Elementary School in questions and answers at the Open Courthouse Project Law Day celebration.

is encouraging, more needs to be done to bring civics education to young people to better prepare them to be active and informed citizens who vote, serve on juries and appreciate the values of the American form of government rooted in the Constitution and the law. Sustaining our Democracy for future generations depends upon our heeding Jefferson's words to the wise.

Taking this reality to heart with an interest in being a catalyst for improving civics education in Georgia, the Bar's Law-Related Education Subcommittee and the bar association decided to work together to develop a pilot program that would at once export and adapt the mission and messages of the Bar's Foundations of Freedom and LRE programs for use in the local community. Since all Georgia school children cannot come to Atlanta to see the programs available for them at the Bar Center, the idea emerged and crystallized to take the programs to the children. The courthouses in their county could be opened to children and become an extension of their classrooms.

After over a year of planning, the collaborators launched the Open Courthouse Pilot Project in the fall of 2007 to bring students and their teachers into the federal and county courthouses in Glynn County. One by one, key institutions and organizations became involved and momentum for the project began to build. The 2008 chair of the Brunswick-Glynn County Bar Association, Leslie J. Thompson of Hall, Booth, Smith & Slover, and her predecessors, Laura Shiver of the Georgia Legal Services Program, and Susan Thornton, of the Federal Law Enforcement Training Center's Counsel's Office, embraced the idea of the project. Glynn County Public Schools, the U.S. District Court for the Southern District of Georgia and the Glynn County Superior State and Courts embraced it as well, and worked to make it a success. Dr. Michael Bull, superintendent of the Glynn County School System, encouraged the county's principals to incorporate the project into their schools' schedules, and they did. Judges and their staffs set aside an entire day on the courts' dockets to be able to host the students.

As Spring 2008 approached, teachers from across the county orchestrated field trips, and students learned special lessons on The Rule of Law in preparation for their visits. On May 2, the courthouses were open all day only for the students, and the courthouses' staffs enthusiastically and efficiently welcomed them. Ultimately, more than 1,000 students from the county's fourth and eighth grades visited a courthouse to meet the judges and to find out about The Rule of Law. Some students witnessed a mock trial presented by



(*Left to right*) Connie L. Patrick, director of the Federal Law Enforcement Training Center; Linda T. Muir, chair of the LRE Subcommittee of the Foundations of Freedom Committee of the State Bar of Georgia and the chair-elect of the Brunswick-Glynn County Bar Association; Leslie J. Thompson, chair of the Brunswick-Glynn County Bar Association; M.H. "Woody" Woodside, president Brunswick-Golden Isles Chamber of Commerce; Hon. Lisa Godbey Wood, U.S. District Court Judge for the Southern District of Georgia; and Alex Atwood, secretary-treasurer Brunswick-Glynn County Bar Association and former Chief of the FLECTC Legal Division.

the Brunswick High School Mock Trial teams at the federal courthouse. Others sat in the county courthouse jury assembly room and heard about how juries are selected and why they are important. Students in a superior courtroom heard the word "plaintiff" for the first time. All considered why it is critical in our society for the people to know about their government and to be involved in the judicial system.

Throughout the day, lawyers and judges introduced the students to the procedures of the court room and to the significance of an independent judiciary within the American system of government. They engaged them in question and answer sessions so that the students could see first-hand what goes on in the courthouse.

In conjunction with the Open Courthouse Project, the bar association also conducted an essay contest and asked the students to write a 500-word essay on the theme: "How My Life Would Be Different Without the Rule of Law." Hundreds of students participated in three categories—fourth grade, eighth grade and high schoolwhich are the grades in Georgia schools in which students learn about U.S. History, Georgia History and Government. The local branch of BB&T Bank was the sponsor of the Law Day Essay Contest. The city executive, Lance Turpin, presented monetary awards in the form of savings accounts for the first, second and third place winners in each category. The winning essays, which are reprinted with permission at the end of this article, demonstrate how seriously the students at every level considered this question and how attuned they are to the need for laws in a civil society and in their daily lives.

The closing ceremony was held on May 5, when the Brunswick-Glynn County Bar Association and the Federal Law Enforcement Training Center (FLETC), which is based in Brunswick and trains over 55,000 law enforcement personnel from across the country each year, co-hosted a Law Day luncheon in the FLETC dining hall to celebrate the 50th anniversary of Law Day. The bar association presented the Law Day Liberty Bell Award to Woody Woodside, long-time president of the Brunswick-Golden Isles Chamber of Commerce. FLETC Director Connie L. Patrick introduced the Hon. Lisa Godbey Wood, U.S. District Court judge for the Southern District of Georgia. Judge Wood spoke eloquently to the gathering of lawyers, law enforcement personnel, FLETC employees and honored guests about the significant role they play every day in our society and of the value of their contributions.

This Law Day experience demonstrates the singular difference that the State Bar of Georgia and a local bar association working together can make in a community. Moreover, rallying a cross-section of leaders from the community around Law Day is a key opportunity for lawyers to send a positive message about their profession and to improve their visibility and image in the community. Glynn County students, teachers, educators, judges, lawyers, FLETC officials, business leaders and ordinary citizens enthusiastically endorse making the Open Courthouse Law Day Celebration an annual event. Having proven its feasibility and value in Glynn County, this pilot project can be replicated in other communities throughout the state. Local bar associations are encouraged to contact the State Bar for assistance in making plans for their 2009 Law Day celebrations. In Georgia, it is possible and imperative for lawyers to lead the way to bring more civics education to our children to ensure an educated, involved citizenry for years to come.



Linda T. Muir, a partner with The Saylor Law Firm LLP in Atlanta and Saint Simons Island, focuses her practice in the

areas of estate and business planning, wills, trusts and estates. She is the chair of the Law-Related Education Subcommittee of the Foundations of Freedom Commission of the State Bar of Georgia and is the chair-elect of the Brunswick-Glynn County Bar Association. She can be reached by e-mail or phone at Imuir@saylorlaw.com, 404-201-2183 or 912-434-4442.

How My Life Would be Different Without the Rule of Law Fourth Grade Winning Essay | by Erin McQuade, C.B. Greer Elementary School

My life would be completely different if there were no rule of law. I think my life would be horrible, dangerous and unhealthy. There are two different types of laws. There are government laws and social laws. The government laws are made by to maintain order in society. They also help are made to benefit society as whole. Social laws are morals and values. These are kind of common sense laws.

Traffic lights and stop signs are examples of how government laws keep us safe. People would not know who had the right of way on the streets! Government laws protect our homes and lives from danger. Robbers aren't allowed to break into our homes, businesses, cars or property. Without laws robbers would still fear that the owner of the property might harm them, but because of laws they also fear that they will go to jail.

If we did not have laws there wouldn't be any law enforcement officers, postal workers, or public schools. Law enforcement officers keep us safe from harm at home, and the borders of our country. Military officers go to war to prevent any attackers from coming to the United States. They also work to create peace in the world. Without Postal Workers our world would be stopped. We wouldn't be able to send our mail to each other. If we didn't have public schools there might be more uneducated people because not all parents would teach their children.

Laws protect our food. Farmers, restaurants, grocery stores, and schools have to handle food safely. They have to wear gloves and hair nets, and they have to wash their hands regularly. They also have to keep track of expiration dates so that the food is fresh. Without these laws people might get sick from rotten food.

Laws protect children by making sure they are safe from any danger. For example, car seat laws protect children from

dying or being injured from car accidents. If it weren't for these laws I might not be here. Laws also prevent children from going to work too early, while they are in a low level of education. This allows children to get their education first before they think about working.

Laws help to keep us all healthy. Laws require that children get their shots to prevent them from getting terrible diseases. This is best for society because diseases might spread and kill many people. Laws also protect our environment, which also protects our health in the long run. If there weren't laws to protect the environment factories might pollute the water and air. They might not dispose of their waste properly which could damage the soil, air or water. This might make it so that children might have deformities or diseases.

Without the rule of law, National Parks would be gone and historical sites lost. It would be a mystery of how we got here and we might miss out on the ways of the past. Also it would halt curiosity of nature. When I go to National parks and historical sites I learn a lot. If there were no National Parks, I might not have seen Redwood trees, or the Washington Museums.

Our wildlife and pets need somebody to protect them. Even with the current laws people continue to mistreat animals. This makes me very sad. It angers me that some people use animals for profit by having "puppy mills". I feel that animals should have safe and happy homes just like people do. So the law has to protect them.

Without all of these laws our world wouldn't be as beautiful. We need laws to maintain order and to keep peace in our homes, and the world. Although social laws make sense, they do not always work to maintain order. This is why we need government laws so that we all work together in society.

RULE OF LAW Foundation for Communities of Opportunity and Equity

Eighth Grade Winning Essay | by Josiah Wright, Needwood Middle School

Five months have taken place since the downfall of the government, and surprisingly I am still alive. The havoc that erupted from the disintegration of law enforcement is beyond my comprehension. Killings, ranging from drive-bys to bombs, have victimized countless people. Thankfully, my family has not yet experienced any incidents, but I fear something unfortunate will have to happen soon. Furthermore, money is becoming an issue. My father foresaw the impending chaos (when there was still order in the nation) and withdrew all our savings from the bank. However, the few thousands of dollars we have will not sustain us much longer considering the rising cost of food. In all, everyday seems like a struggle for survival.

Once again, the news reported the formation of another "super" gang in New York City. Every city has its hooligans roaming the streets. The hospital is overrun with them, whereas the library is filled with drug dealers between the shelves and mobsters at the computers. Consequently, my mother and I are confined to the house so as to avoid encountering thugs. They try to pilfer anything you have which is why only three in every four trips to the store are successful. Thus my mother and I dread the moment my father departs to buy food.

Beyond the destruction the hoodlums cause, national terrorism is affecting my life as well. In the U.S., arsonists have caused twelve forest fires that burn thousands of acres each day. In our area alone, a nearby fire has depleted twenty percent of our state's woodlands. However, nature is not suffering alone: houses are boarded up, looted, or burned to the ground. Proliferation of "former" illegal weapons has increased allowing for more bomb detonations and shoot-outs on the streets; for nowadays, people are quick to draw their guns. Just the other day, two men across the road shot each other over a deck of cards. A person could be out walking minding his own business and be shot for no reason.

In addition to watching our backs, we must also watch our mirrors while driving. People greatly exceed safe speeds on the roads resulting in innumerable casualties. Moreover, the interstate is practically useless from all the wrecks and traffic. Hit-and-runs are very common; our vehicle received a dent from a small collision. I doubt next time we will be so lucky.

The economy has suffered tremendously also. Some effects of today's uncivilized culture include the facts that the dollar is losing its value on a daily basis, all schools are shut down, and only the most primitive jobs are left. Attempts to rebuild law and order by reconstructing a new government and establishing criminal punishment have been made, but all are to no avail. For example, the most recent effort resulted in five presidential candidates shot; therefore, nobody dares to campaign against today's conditions. Meanwhile, at home, my life is becoming more and more despondent being that civilization is almost non-existent.

My family has had various discussions on how to bear the circumstances and everybody realizes the sensible option: to steal from others so we can live. Most assuredly, this is a lose-lose situation whether we resort to the same methods that caused all the strife or refrain from doing so—and at the same time—suffering in the process. Indeed, the instinct to survive is conflicted by my conscious which shall not let me be without guilt. So the question remains to live with reproach or be afflicted with dignity? Personally...I will hope for a better tomorrow continuing to endure the pain. That's just how it is without the rule of law.

Life Without Rules or Laws

High School Winning Essay | by Eric Kobylanski, Southside Performance Learning Center

It is clear that without law human existence would not be guaranteed. Today's post-apocalyptic movies show struggles within tiny communities as those with varying degrees of power decree what is law and what is free-reign. Now imagine that the environment is just an ordinary small town in Georgia instead of a desolate plain in the middle of nowhere. This town would not even exist if there were no laws as debtors would be free to stay in England. For this example though, if laws were suddenly null and void, my life would change, and most certainly not for the better.

Leading a somewhat dual personality, I've made many enemies through my public schooling in this town. Some individuals I have known since I moved here, and others I have met just recently. Through word of mouth people assume I exude the aura of a geek or an elitist, but I try my hardest not to conform to what people perceive. Still, there are some who I suspect are out to get me. Hesitation and dire consequences are what keep me safe from a merciless beating, but if laws were to disappear and forever banned, I would have a hard time living and an even harder time justifying existence. Of course an option would be to move, but many people would have already come up with the same idea. There is also the fact that laws would not stop a person from harassing me while moving or at the location I move to. Then there is the fact that I do not even know if laws would still apply in the place I moved to. Fighting fire with fire would seem an impossible task, as numbers would always triumph over any advantage in intelligence.

In normal, everyday life I assume that there would be some envious people. Again with laws, I am protected by some invisible force field that prevents a person from acting upon their emotions, but without law I would be afraid to step out of the house for fear of my wellbeing. That is an understatement though, as with no law, a person could form a crude nuclear bomb and detonate it right on my door step. Of course a person with that objective, the assailant would not handle it with the care uranium demands. They in fact die, albeit slowly and very painfully, but what law protects that against the arduous process of a diagnosis? What law would protect them from being assassinated? What law would protect them from being berated by people trespassing?

A world without law has more of an effect on the entire world than just on me. Rules and laws permeate each and every action that a person takes. A minor action that is altered would ripple throughout these connections and chaos would shortly follow. With this anarchy, the human race would quickly descend into madness and life would be as precious as mud. This would directly affect me as, like all other successful humans, I like to live. To fathom a world without laws is something that is usually trifled and looked at in a joking manner, but once a person starts to think of the rippling effect of a slight change, a person's mind can be blown away. Looking at the spectrum of people just in this tiny suburban town, I try not to envision if the immoral criminals gathered their resources together and tried to make a name for themselves.

The Dark Part of the Road

17th Annual Fiction Writing Competition Winner

by Lisa Siegal

17th Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present "The Dark Part of the Road," by Lisa Siegel of Atlanta, as the winner of the 17th Annual Writing Competition.

The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year's entries reflected a wide range of topics and literary styles. In accordance with the competition's rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author's identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Siegel and all of the other entrants for their participation and excellent writing.

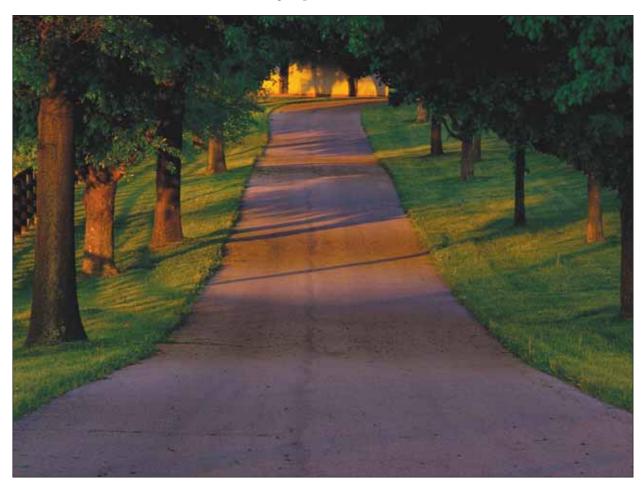
he baggie of crystal meth was Willie's payment for crouching in the dark along the propertied shoreline of Lake Burton with nothing but field mice for company. A thermos of coffee kept his brain cells firing, so that when dawn broke, he could report back to Breeze Diego that the summer cabin of Clyde McDade was as still as a church on a Saturday night. Being on the low end of the Diego's food chain meant spending his evenings here (and at other well-catalogued vacation properties), squatting down amongst the boggy spruces and sumac trees, and eyeballing property all night with binoculars. Once he'd documented an unoccupied cabin, Diego's boys would come in for the night haul, taking out the Bose stereos, laptops, and flat-screens stocked-piled like firewood in these weekend cabins.

Willie rested against a sumac tree that crested the bank of the McDade property. Behind him a black forest of wooded pine disappeared into the expanse of night sky and twitching stars. He opened his thermos for a swig with his shaking, liver-spotted hand, and then stretched the tendons of his legs in front of him trying to wiggle his toes inside his Army boots. The diabetes had stiffened his joints and ulcerated his big toe, making walking hard and self-medicating with meth all the more appealing. He patted the baggie with his free hand and vowed to wait until morning before he opened it.

The weakness in his legs destroyed any likelihood of advancing as a career criminal as Breeze (being a quick study) was apt to point out to him; but at least here in the chill of night he had his barn coat, wool socks, a full stomach,

three cigarettes, a thermos of coffee, and the promise of a morning high. He was a solitary man and he was comforted in his own odd way by the scurry of the red squirrels in the sloping pine needle bluff, more so than if he had been home watching his black-and-white in his bare apartment with the gray-washed walls. Nights like that left him thinking of Sheila and his boys and how he'd let it all go to pot with the drinking. Better to be out here with some hawking Peregrine and the cold, damp, soggy earth than alone in the rental thinking of her.

Just as Willie was about to lower his binoculars, a Lexus pulled into the gravel drive, crunching the pebbles and shining its headlights onto the back lawn of the house. Seconds later, a yellow Volkswagen pulled in behind it. The sound of crackling pea stone and the upward beam of lights startled Willie. He fumbled for his knapsack and scrambled up the side of the hill with his knees still bent and aching. His racing heart pumped adrenaline to his working extremities, but his mind was addled as he tried to assess his situation. He felt neither the cold of the air, nor the dampness of his clothes, but saw only too quickly that he was too close to the house. The occupants of the car were getting out and the headlights splayed down into the woods directly onto the spot where he had been. He wasn't much for anticipating disasters, but even he could see that any movement on his part would call attention to his unexplainable situation. He hunched down low against the back of the sumac. Damn! Breeze had not prepared him for this!



A man and a woman exited the car. Willie recognized Clyde McDade from the marina. McDade was over six feet with a mop of wavy, reddish blond hair that seemed boyish for a man in his fifties. At the marina, McDade had a habit of fingering the other crafts with his muscular, stubby hands, and whistling when he did so as if he was counting money in a bank vault. He carried himself with an air of importance that bordered on theatrical. When Willie heard he was a lawyer, it had all made sense.

Willie heard them talking, first softly and then growing a bit louder. Rather than entering the lake house, they started toward the woods, taking the gravel path to the boat dock. Overhead an owl's cry startled Willie, and he pitched forward on a random spread of pinecones and needles. McDade turned and looked out towards the shoreline where Willie lay spreadeagled in the dirt. Willie dared not look up, fearing the worst.

Willie told himself that it would be just a matter of time before McDade located a shotgun and began blowing buckshot into his retreating backside. He scrambled into a thicket of pine trees and determined his quickest get-a-way was to follow the shoreline to the other side of the cabin until he could eye a beeline and access Charlie Mountain Road. One of Diego's boys was scheduled to fetch him at O'Grady's Bar at dawn. He figured he could get back quicker on the main road than risk his bad legs on a nature hike up through the Chattahoochee National Forest on the other side.

Just as Willie was about to hightail it across the property, McDade took the woman by the elbow and steered her down the path to the boat dock. If they kept in this direction, Willie had no chance of escaping via the shoreline. And now it was too late to flee to the other side of the cabin.

The two stopped in the gravel path. Their arguing voices filled the quiet air. Willie fell down on his stomach and rolled towards the boat dock, clutching his knapsack and cursing his bad knees. He scrambled under the dock just on the dry side of the shore.

A woman's voice broke in the air above him. "It's cold out here. I want to go back inside."

"Just listen to me."

Then he heard footsteps approach the wooden ramp way to the dock.

Willie quickly body-rolled down the slope, past a flat bottom aluminum canoe pulled shoreward, and then plunged into the waters that lapped against the lake's edge. He felt the cold of the water saturate his dry clothes. With his pack buoyed against his belly, he floated outward toward the middle of the underside dock. As he did so he heard their footsteps thumping down the plank ramp.

"This isn't what I wanted," she said, "I thought you were going to leave her." Willie heard the unclipping of the lock that moored the flat bottom canoe to the dock's railing.

"You're being overly dramatic here, Diana," McDade said. "Come. Let's go out on the lake."

"We can talk inside."

"There's something I want to give you."

The ground beside Willie was quiet, suggesting the two were studying one another. He saw the woman's feet planted squarely, facing McDade, and then shift, ballerina style, one behind the other.

Finally, she said, "Alright."

A crest of water rushed towards him, splashing up against his whiskered chin, as McDade pushed the boat out into the water and the woman jumped in, unsettling its equilibrium. McDade hopped in quickly behind her. He took the bow seat and pushed off with his thick hands, squeezing the tee grip and the paddle's wood shaft down into the cool black water.

The woman, unsure of what to do, took the stern seat and sat bent-kneed and twisted toward the moonlight.

"You're not getting out of this so easily, Clyde" she said.

"I know that," he said.

There was silence. Willie swallowed his breath in the soggy under-bottom of the dock.

A flock of unsettled, nesting snow geese spread wing with irritation, honked, and lifted up above the shore. Willie watched wideeyed as the unmoored canoe pushed out past him and into the cold black of night on a lake now lit by the white orb of the moon and a hundred overhead pinpoint stars.

Their voices continued in an unsteady rhythm of accusation, whispered placating, more accusation, and then frustrated pleas for "reasonableness." Hanging onto the underside of the dock, Willie tingled with cold and shuddered off the wet drench of the lake water seeping into his pores. The fear of being caught seemed to leave him momentarily like the exhaust of nicotine through a single nostril.

He thought again of Sheila. God, she had been beautiful. She was not the sort of woman who demanded accommodations for herself, or who would put her foot down in frustration or threaten to leave. She had loved him, tolerated him, and then one day when he awoke from a sloppy drunk, he found a twentydollar bill on the counter, a cupboard packed with dry goods and a note that read, "Take care of yourself, Willie."

He let go of the underside of the dock and inched back up onto the sodden shoreline. He reasoned he could crawl like a snake on his belly through the moss lichen until he could see clear enough to steal away. From what he could make out of McDade and the woman, whom he surmised was probably not his wife, the two were continuing a heated conversation that was unwise to have while adrift on a dark lake.

He had been a private in the Marine Corps on Paris Island, crawling through the peat moss when a heat rash and undiagnosed diabetes had caused him to lose consciousness and be shipped back home to Rabun County with a medical discharge and an unmet dream of being part of the "the few and the proud." Twenty years later he was back on his belly, crawling through the stench of soggy-bottomed earth and whiffing lichen dust, only now he was nothing but a two-bit criminal with a drug habit instead of serving his country.

"Clyde! No!" the woman called out in a voice wrenched with panic. In the instant it took Willie to lift his head up and turn toward the moonlit lake, he saw the back of McDade hunched over the woman, the boat's paddle raised behind his right shoulder, the shaft gripped with his thick hands. The paddle blade came forward off his shoulder and towards her cheek. As soon as he struck her, she fell backwards off the edge of the stern seat, splashing into the unbroken water like crystal falling on a glass floor.

As she fell, the gunwale edge of the boat dipped low into the water on the right side, and McDade steadied the boat by rising and shifting his body to the left. The woman cried out for help. She went under and then came back up. Clyde, with the paddle still in his hand, sat down on the thwart at the center of the boat, dipped the blade gently into the water and pushed back.

"Clyde," she called out again, but the voice was fainter. Overhead the squawk of a nighthawk pierced the blue-black sky.

Willie watched, his open mouth drawing in cold air that seemed not to penetrate his lungs, his eyes intent on the hunched back of Clyde McDade as he swiftly paddled backwards towards the dock. The woman continued to struggle in the dark waters as the canoe edged further and further away. The woman was no longer clutching at the air. The underwater waves made by her thrashing legs dissipated and then stilled. Slowly, her head sank under the water, leaving a ripple that spread across the lake.

Shivering, Willie now hid in a thicket of birch on the other side of the dock. He no longer saw the figure of the woman in the water. McDade pulled the canoe ashore, re-hooked it and then hurried up the gravel path, crossing in front of Willie's hidden figure in the trees. Willie heard McDade's Lexus backing out of the driveway, the back tires spitting pea gravel as it made its turn, the headlights burning through the black sky and a fog misting out around the hood of the car as it rose out towards the asphalt road and made its escape.

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Three flights of stairs separated the office the Public Defender of the Mountain Judicial from the District Attorney's Office, both of which were located in the Habersham County Courthouse. The Mountain Judicial District covered three counties, Rabun, Habersham and Stephens, in the northeast rim of Georgia. Owing to limited tax dollars, a thinly spread population, and a fairly law-abiding citizenry, the district offices were small and not particularly overworked.

Morgan Lee, the newly appointed public defender, raced up the wide, marble staircase in Nike running shoes,

Congratulations!

Jonesboro High School earned Georgia's fourth national mock trial title and their first back-to-back win at the National High School Mock Trial Championship in Wilmington, Delaware.

Team Members

Brian Bady, Miguelande Charlestin, Dominique Delgado, Lindsay Hargis, Bridget Harris, Jayda Hazell, Avion Jackson, Jurod James, Tabias Kelly, Adrienne Marshall, Braeden Orr, Laura Parkhouse, Joe Strickland and Ralph Wilson. Teacher coaches: Anna Cox and Andrew Cox;

Attorney coaches: Anna Cox and Andrew Cox; Attorney coaches: Hon. John Carbo, Hon. Deborah Benefield and Tasha Mosley; Student coach: Katie Powers, Mercer Law School

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a blue-stripe seersucker suit, and an Eddie Bauer backpack that served as both her purse and briefcase.

At the top of the stairs, a dirtied, oval window let in the faint hint of morning sun and a glimpse of the burnished mountainside in autumn color. Down the dark corridor of the third floor, Morgan approached the glass-front office door with chipped paint and her name stenciled in black on the frosted glass. She had hired a seasoned secretary from the District Attorney's office. Aileen, a grandmother with black, wingtip-polish hair, teased into a smooth helmet appropriate for inserting sharpened pencils and capped pens, sat at the metal desk and clicked the computer keys. Aileen looked over the top of her glasses as the door opened.

"Sheriff's waiting on you. D.A. Walpole, too. Got a client in the lock-up on a meth possession. Wants to make a plea."

Morgan stopped to check the morning's mail that had accumulated in the "In" box.

"It can't wait until I pour a cup of coffee?"

"The perp ... I mean... your client," said Aileen, "says he saw a murder. Wants his attorney before they question him."

Morgan entered her closet-sized office and switched her running shoes for the blue pumps she kept in desk drawer. Aileen leaned over the desk, watching her.

"Leave the sneakers out. It'll solve our rodent problem," she called out.

Morgan came back into the lobby area.

"We have a rodent problem?"

"Among other things."

"So who is he?"

"Willie McPherson. He was sitting stake-out on Clyde McDade's property. Says he saw Clyde off a woman in the lake; then drive away."

"Off a woman? Sitting stakeout? I thought you said this was a meth possession."

"Oh, yeah. That's what they

arrested him on. Turns out he is also involved in a string of lakeside burglaries. The sheriff's office was doing a shakedown itself. Caught him last night. Limping up Charlie Mountain Road, soaking wet, and carrying binoculars, a bag of meth, and a knapsack full of burglary tools. He's looking at 10 to 20."

"What else?"

"That's all I know on Willie. Better hope there's a dead body in that lake. Although they'll probably claim he did it. Then he'll fry."

"Aileen! Please."

Morgan came from a large public defender's office in Atlanta. When the criminal section of the State Bar approached her about accepting the governor's appointment for this newly created office, she'd had second thoughts. But burnout and a desire to escape the life she'd built in the city had won out. She was, admittedly, out of her element up here in the backwoods of Georgia. It seemed the secretaries and janitors understood the system better than she did.

"Oh, and one more thing," Aileen added, "The Grand Jury true-billed everything Walpole hand-fed them last week, and they're all in the lock-up too."

"Thanks," said Morgan as she grabbed a legal pad and slipped out the door.

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Willie and Morgan sat side by side in the sterile conference room of the District Attorney's office. A blast of steamy, hot air shot through the ventilator by the baseboards every few minutes. Overhead, a ceiling fan spun. Willie, in an orange jumpsuit, had the strained look of a rabid animal, emaciated and dehydrated, but still hoping to escape his confinement. Sheriff Dickerson and D.A. Walpole entered from a side office door, and Morgan rose and shook their hands.

"Getting acquainted with your new office?" Walpole asked. He was a thin man with pale, translucent skin, spread tight across a bony face. When he smiled, which he rarely did, he looked pained.

"Yes, thank you. Everyone's been very accommodating," answered Morgan.

Sheriff Dickerson was tall man with a protruding gut that bulged at the buttons of his uniform. He also wore non-regulation snakeskin cowboy boots that clicked at the linoleum when he entered the room. He took the chair across the table from Willie.

"Deputy says you want to make a deal?"

"My client has evidence of a murder," interjected Morgan. "He'd like reduced charges in exchange for his cooperation."

"I bet he would," said the sheriff. Walpole scratched notes on his legal pad as he took the seat next to Dickerson.

"And what are the charges, Sheriff?"

"Possession of an illegal substance. Trespassing. Burglary. And murder."

"Murder!" Willie and Morgan said in unison.

Morgan put her hand on Willie's knee. "What evidence do you have that Willie committed a murder?"

A close-lipped grin spread across the sheriff's face. "Body surfaced early this morning. Seems Willie knew it would. Somebody in the lock-up must have warned him that decomposing bodies have a way of floating back to the surface. Explains why he was so anxious to tell this cock-and-bull story. Now, very conveniently, Willie has remembered he witnessed a murder."

"But I did!" Willie insisted.

"Did she surprise you when you were in McDade's lake house?"

"No," said Willie.

"Sheriff," said Morgan, but he continued.

"She surprised you, and then you killed her. Whacked her on the head?"

"McDade killed her. I told you ..."

"Killed his own paralegal? Now why would he?"

"His paralegal?" asked Morgan.

The sheriff turned to look at her for the first time. "Yes, ma'am. Diana Sloan. Been with him for ten years. He's broken up about it."

Then turning back to Willie he said, "McDade's got an airtight alibi. But you, Willie, admit you were on his property. Burglarizing his lake house. And the only one who knew she was in the lake."

"I didn't do it."

Walpole stopped writing and leaned over the table toward Morgan. "If you want a plea deal, he'll need to confess."

"He says he didn't do it. He has nothing to confess."

"Then we're going for the death penalty."

"You're what?"

"I didn't do it!" Willie shouted.

The sheriff and Walpole rose at the same time and pushed their metal chairs against the conference table.

"When he's ready to talk, let us know," Walpole said. They exited the room through the same door. A deputy entered and started to take Willie by the elbow.

"Deputy, if we may have a moment." The young deputy nodded and stepped back toward the wall.

"Alone."

Surprised, the deputy left the room and shut the door.

"Miss Lee, I've said I was there. I saw McDade kill her."

"I know Willie. Let's just start from the beginning." Morgan pulled out her legal pad and began to scribble quickly.

"You never went in the house?" "No ma'am."

"Why were there in the first place?"

"Casing the joint." She looked up. "Some guy paid me to. I never did the burglaries."

"Who paid you?"

"Can't say as I remember." She rolled her eyes.

"Well then, I just can't say."

"Okay."

"And you're sure it was McDade?"

"I know him from the marina.

He keeps a boat there. I worked there a few months."

"Can we prove that?"

"Yes ma'am."

"What kind of car does McDade have?"

"Lexus."

"You saw it at the lake house?"

"Yes ma'am."

"What else?"

"They went out in a canoe. They was arguing. He picked up the paddle. Struck her. She fell over, yelling for him to help. He just rowed back to the shore and got in his car."

"Where were you?"

"Under the pier."

"In the water?"

"Yes ma'am"

"Why?"

"Didn't want to get caught."

"I see."

"Then what did you do?"

"Waited for him to leave. Then I headed out to the road. The sheriff picked me up. I didn't say nothin' about it then, but they was going through my stuff. And they had me on the meth and all. The next morning I told them about it when they was questioning me. Thought maybe if I told them, I could get a deal on the possession charge."

"Good Lord!"

"They promised you a deal if you'd talk?"

"Yes ma'am."

"Did you confess to anything?" "No, Miss Lee. I didn't kill that woman."

Morgan stood up and put her hand on Willie's shoulder. He had to be telling the truth, she thought. Innocence always brought out the worst decisions in people.

"I believe you, Willie."

Tears welled up in his bloodshot eyes. "I've got two boys, you know. And an ex-wife. She won't be able to take this."

"I'll do what I can, Willie." She knocked on the door, and the deputy returned for her client.



Morgan returned to her office and slumped down in the lobby chair, a straight-back from someone's dining room set that needed a new cushion.

"Tell me what you know about Clyde McDade," she asked Aileen.

Aileen looked up and stopped typing. "He's from an old family. Father was a judge. He's not the man his father was. Although he's head of the most successful law firm in town. They do mostly defense work. Insurance companies. Businesses. That sort of thing."

"What about his family?"

"Wife plays tennis every day. Volunteers at the school. Has two kids. A boy and a girl. He probably has a pure-bred dog for a pet, but I can't be certain."

Morgan smiled. "You don't like him?"

"He's a pompous you-knowwhat. But I wouldn't believe some two-bit criminal's story that he killed his paralegal. And neither will a jury. Not in this town. Better take a plea. Best thing you can do."

"You're serious?" said Morgan, sitting up.

"As a heart attack."

"But I don't believe Willie McPherson killed the paralegal."

"Well, that's too bad for Willie then. 'Cause the jury will convict him for it."

Morgan sighed, and then stood up.

"Who do we use for an investigator?"

"We don't. Can't afford one."

Morgan sighed again with exasperation. "Well if we could, who would we call?"

"Sam Slotin. But he's probably dead."



Buried in the back of a file cabinet, Morgan found a file on Slotin. Sam Slotin was a former career GBI agent when he and his wife, Fiona, retired to the North Georgia mountains to a log cabin that they'd built by hand on the weekends after their three children left for college. Three months into his retirement, Fiona was diagnosed with liver cancer and died within a year. Sam started doing private investigative work for the local attorneys appointed to defend the indigent. Since the recent change to a public defender, he'd been out of the picture; although his face surfaced a few times in the local paper with prize bass catches and other fishing awards.

"Have a seat," she said when he came into the office. He stood while they both eyed each other. He took a seat when she sat down across from him at her desk. He was over six feet tall with a granite base of shoulders and a lean barrel chest under which he kept his shoulder holster and a clip. His hair was peppered gray and his weathered face and hooded eyes gave away that his best years were behind him.

"I've looked over the file," he said. "It's gonna to be a tough case. You know the McDade family is prominent here."

"I understand that, Mr. Slotin."

"Call me Sam."

"Sam then," she nodded.

"You're not from here, of course."

"No, I'm not."

"And you've got the tight lip that single women who move here from Atlanta to escape their boyfriend problems always seem to have."

Morgan started to take offense, and then she smiled. He was a good detective after all.

"Is it that obvious?"

"I'm afraid so. I mean no offense to you. I'm sure you've got a personal story like everyone else. None of my business. But you're gonna have a hard time with a jury is all I mean to say."

She leaned back in her chair and tapped the eraser end of a pencil on the desk.

"How so?"

"Well, I imagine you've planned on going with that reliable reasonable doubt defense."

"You seem to know a lot about me from an initial meeting."

"No. I gathered that because you said as much on the phone. 'No evidence this.' 'No evidence that.' Anyway, juries around here tend to convict career criminals pretty easily. And they don't tend to convict the local lawyers. Even the guilty ones."

She nodded. "That's why I called you. That part I did gather."

"You want me to find some damning evidence."

"Something like that."

"Wrestle a confession out of McDade? A man with more jury trials under his belt than you and I put together."

Morgan tensed under his stare. "Do you still do PI work for a living or have you given all that up for amateur fishing?"

Then it was Slotin's turn to smile. He shook his head. "No, Miss Lee, I still do detective work. For a price."

"We pay a paltry one, I understand."

He nodded. "I expected as much."



Walpole declared the state ready for trial within a month. Judge Cole denied Willie's request for a third extension. Judge Cole also denied Morgan's subpoena duces tecum on McDade's hard drive as a "fishing expedition." The hard drive on Diana Sloan's computer had mysteriously disappeared before investigators could recover it. The autopsy of Sloan did not reveal a pregnancy as Morgan had predicted it would. If McDade had driven to the lake house, no one could remember seeing the car. According to McDade, he'd been asleep at his house with his wife (albeit in separate bedrooms the investigative notes revealed). If he left home after ten o'clock that night, he never used his cell phone, stopped for gas or got money at an ATM. And to further complicate the mystery, Diana companion Sloan's closest appeared to be her beloved cat, Mr. Whiskers, whom she'd left at the vet the day before she died.

The case against Willie, on the other hand, seemed to be wrapped up airtight. He had a ten-year rap sheet of petty thefts and a drug habit. He admitted to working for Breeze Diego (who'd given state's evidence and pled to a lesser charge). Breeze fingered Willie as a petty thief gone bad when he'd tried to do the burglary himself. Forensics claimed the door was jimmied by a tool in Willie's knapsack, an overturned flower vase indicated a scuffle, and marks on the carpet showed signs of dragging a body. The coroner listed blunt force trauma to the head, although the cause of death was drowning.

According to Walpole, Willie McPherson bungled the burglary when Diana Sloan, McDade's paralegal, entered the lake house for a work-earned vacation weekend. Willie whacked her on the head with a claw hammer. Forensics verified it was the murder weapon. Then he tried to hide the body by dragging her into the canoe and tipping it over. Sheriff's deputies swore they found him soaking wet and limping down Charlie Mountain Road. His cellmate said Willie told him about the murder that night. His statement indicated it was "practically a confession." The cellmate also said he warned Willie that the body would surface in a day or two. The next morning Willie fingered McDade. Willie's death penalty case was set for trial on Monday.

"That's about all I got," Sam said. He shut the manila folder and settled back against the vinyl booth cushion in Gus's Diner. Morgan shook her head.

"It's not enough. We don't have McDade at the scene. We don't have a motive for McDade to kill her. If I put Willie on the stand, he'll crucify himself. And without his own testimony he might as well plead."

"I'm sorry I couldn't help you more."

Morgan looked down at her coffee, which was growing cold. She put her hands to her head and rubbed her forehead in frustration.

"I just didn't think it was going to go like this."

"What do you mean?"

"Everything. The incompetence of the police. The way Judge Cole throws every ruling to the prosecution. The way McDade has put a roadblock up against any decent investigation of his files or office. The way the whole courthouse acts as if my job is to bate-stamp the pleas that come through the office, and be a front for the constitutional right to an attorney in case the defendant has the audacity to appeal. And on top of trying a death penalty case, I have to do it with an eighty-file caseload, an investigator I have to pay for outof-pocket, and a secretary who's sorry she left the D.A.'s office."

Sam took out a pocketknife and began to clean his nail beds.

"Well, cry me a river, Miss Lee. Maybe you should go back to Atlanta where the grass was greener after all."

She cocked her head to one side. "Excuse me?"

"Yeah. It's the same sad story we always get. Let me guess. Some

boyfriend trouble drove you out of your big city job, and you thought, 'Hey, I bet that hick mountain town will be a nice gig. And I won't have to work too hard, and maybe I'll have time to get in a morning run, breathe some fresh air, and everyone up there will appreciate how smart I am. Maybe every year or two some poor schmuck might actually be innocent and I'll get him off. Take a plaque from the county bar that year or something. Now it's not working out like you planned and you're peeved about it."

Morgan crossed her arms.

"Fine. That's pretty much it. You've got me pegged. Now it's my turn. You've been hiding out in your cabin pretending you're dead. You haven't done a decent bit a detective work other than try to analyze me. You numb your own pain by mindlessly going through the motions of a job, and you hide from your daughters and your old work pals by spending every Saturday and Sunday hunkered down in a cove on Lake Burton chasing bass."

To Morgan's surprise, Sam left out a laugh. A passing waitress stopped in her tracks, and he waved her away.

"I was just checking you, Morgan. You seemed about to give up."

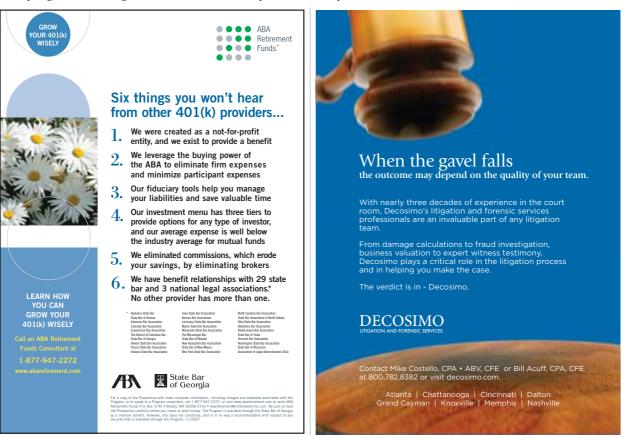
"No you weren't. But it's okay. It's true enough. I couldn't handle the pressure of a large office. Maybe I wasn't good enough. Or maybe I just told myself I wasn't good enough. The boyfriend thing didn't work out so well either. After I introduced him to my family, he suddenly had a change of heart."

"You're from a small town, I bet." "Afraid so."

"Congratulations. And you never thought you'd end up back where you started."

"I thought I'd do this for a few years until I figured out my next move."

"So this is just a shortcut, a detour then, off the main road?"



"Something like that."

"That's why you don't mind taking three flights upstairs to an office that used to be where they stored the mop buckets."

She smiled. "Maybe so."

But Sam's face remained rigid. "Well maybe you ought to care."

"I've cared plenty, believe me. It just never seems to count for much."

"Well too bad for Willie McPherson then. He could use somebody with more gumption than you."

Morgan shook her head. "It's not gumption I'm hurting for, it's a detective. I was counting on you to find the smoking gun."

"You think the calvary will come for you."

"Maybe so. It sure has been slow though."

He leaned back against the seat booth. "I'm looking at the calvary right now. And it's you."

She smiled. "I've been afraid of that."

Sam stood up and threw a tendollar bill on the table.

"You'll do fine," he said. "Detour or not. This is where you find yourself. I tell myself the same thing every morning."

Willie sat next to Morgan in an ill-fitting dark blue suit his ex-wife had brought him. He grinned at her, showing his bad teeth.

"The time in jail has done me some good, I want you to know. I've had time to think. Sheila's come and she brought my boys a time or two. When this is all I over, I'm going to spend more time with my sons.

"Willie ..." Morgan began.

"No. Let me finish. I just want you to know, when you get me off, I'm going straight. You won't be sorry."

Morgan didn't speak. As D.A. Walpole approached the lecturn for his opening argument to the jury, she felt her palms grow sweaty and her voice begin to tighten. From the corner of her eye, she could just see the profile of Clyde McDade. He was moistening his lips and cracking his knuckles in his lap. The prosecution's case, she gathered, would take two days. Walpole was too smart to put McDade on the stand for her cross-examination. If she wanted to question him, she'd have to call him in her case in chief. Even if Judge Cole let her call him as a hostile witness for purposes of cross-examination, she still didn't have anything concrete to nail on him. And he was too good to slip up.

She turned around behind her to check out the visitors in the courtroom. Poor Sheila McPherson, Willie's dedicated, albeit, ex-wife gave her a solemn wave. She saw a few men in the back row that she didn't recognize. Judge Cole was probably going to take a few pleas in between their breaks.

Slotin was right about her, of course. Rather than face up to her problems, she'd sidestepped them by taking this job. Then life had pole-vaulted Willie McPherson at her feet. What she couldn't get Slotin or Willie to accept was that she, Morgan Lee-Irwin County High School valedictorian and UGA law school grad – had done just about as well as someone from a mill worker's family could be expected to do. Despite her near-perfect academic record, she'd been woefully unprepared for big city office politics, had regularly missed important social clues, and had miss-stepped and stumbled through several disastrous personal relationships. Good shoes and a whitewashed accent had only taken her so far. If she was the calvary, she had better surrender.

Willie turned to her look behind him as well.

"Wonder what that rascal Vernon Scruggs is doing here?" he said.

"Who's that?" Morgan was trying to listen to the coroner's testimony at the same time.

"Vernon. He's been out of town since this happened. That investigator tried to find him for me."

Morgan stopped writing and turned to look over her shoulder again. The man Willie named as "Vernon" caught her stare. Then he stood up and slipped out the courtroom door. "Who is he, Willie?"

"Part of Diego's group. He was supposed to pick me up that night. I never heard from him."

The voice of Walpole interrupted. "Your witness," he said.

Morgan stared at Willie, then at Judge Cole who was impatiently waiting on her to cross-examine the coroner, and then she turned to look at McDade. McDade was watching Vernon Scruggs slip out the door. A small bead of sweat traveled down his forehead and formed a puddle at his left ear.

"Your honor," Morgan began, "I'd like to recess for an early lunch."



Calling Sam from her cell phone, she raced down the courthouse steps after Vernon Scruggs. McDade's quick footsteps came from behind. Her called her by name, but she ignored him.

She ran across the front lawn of the Rabun County courthouse, and chased down Scruggs who was reaching for the car door of his truck.

"Please, Mr. Scruggs, I need to talk to you."

Scruggs turned and looked at her. McDade was approaching from the left.

"I can't get involved," he said. He had a sun-burnished face that was lined with years of drinking, and a voice that crackled when he spoke.

"I just need a few minutes of your time."

He looked over his shoulder where McDade was now standing. McDade called him by name. Morgan kept her eyes on Scruggs. "Don't listen to him," she said.

"Get in," said Scruggs, motioning to his truck. She ran around to the passenger's side and climbed in. As they backed out, she saw McDade pull a cell phone from his coat jacket and begin to make a call.

"Why are you here?" she asked.

"I said I didn't want to get involved."

"If that was true, then you wouldn't have been in the courtroom." "Okay, Willie's a friend of mine. I'm hoping things will turn out okay for him."

"Then why does McDade look so nervous?"

Scruggs shot her a look. Then he pulled into a downtown parking spot and shut off his engine. He looked down at his hands, still gripping the steering wheel.

Morgan sighed heavily. "Willie only has about thirty minutes here. So if there is something you need to tell me, you better make it quick. I don't have all day. And neither does he."

"Okay. I told McDade Willie would be at his house."

Morgan sucked in her breath. "He knew he would be there. Why?"

"He asked me about the burglaries. I told him."

"Why would you do that?"

"I was selling meth to McDade. Let's just say we go back a ways."

Morgan studied him for a few moments. "McDade knew you were involved somehow with Diego? That there'd been a string of burglaries on the lake cabins?"

"Yeah. He paid me a couple of gees to tell him when his cabin was on the hit list."

"And you told him that Willie was going to be there that night?"

Scruggs sighed and nodded. "I figured Willie was just a joint caser. No harm in handing out that kind of info. Then he asked me if I knew anyone that could kill his girlfriend."

"And you said ...?"

"No."

Morgan nodded, thinking. "But McDade figures if he does it the same night as the burglary, then he can claim someone like Willie did it?"

"I guess that's right."

"Did he pay you to leave town too?" Morgan asked.

Scruggs nodded.

Her body began to shake. She could feel her teeth chattering.

"Will you testify to that, Mr. Scruggs?"

"I reckon you're gonna make me," he said.

"I reckon you kind of want to," she said. Her small-town accent seemed to be returning.



Walpole objected to the introduction of a last minute witness, not identified by the defense. Judge Cole said he was inclined to disallow it, but would give Walpole time to question the witness before Morgan put him on the stand. By the time they had all gathered in the airless conference room of the D.A.'s office, Sam appeared bustling down the hallway, out of breath, but smiling.

Walpole gave Morgan a harsh look when they entered the room.

"This is no way to conduct a death penalty trial, young lady," he said.

"My name isn't young lady," she responded.

"You pulled a last minute witness on me."

"New information has just revealed that Vernon Scruggs told McDade that Willie would be at his house that night. McDade and Scruggs share a bit of a meth habit, it seems. And Scruggs will testify that McDade asked him to kill his girlfriend. Oh, and I forgot to add that bank transfers will show he paid him to leave town."

Sam, who was standing behind her, slipped her a manila envelope when she mentioned the bank transfers. She already knew Sam had slipped her an empty file folder, but the effect worked.

"Why don't we ask the judge for a continuance?" Walpole said.

"Not in the middle of a trial," she said.

Walpole stared her down. "You won't get an acquittal."

"Drop the murder charge, and he'll plea to the rest."

She crossed her arms against her chest so that Walpole would not see her shaking.

Walpole looked at Sheriff Dickerson, and then turned back to her, nodding.

"Okay," he said.



Willie pled to the lesser charges of drug possession and trespassing.

"I won't forget what you done for me," he said as they shook hands in the courthouse.

Morgan tried not to tear up. "I was scared the whole time for you," she admitted.

"Yeah. I know. I seen your hands shaking. But I figured you was as good as I was gonna get. Guess the Good Lord took care of the rest."

She smiled. "Take care of your-self, Willie."



Then she slowly took the three flights of stairs up to her office. Even though Sam was upstairs waiting on her and, no doubt, Aileen had twenty newly opened files to review, she decided against running. She'd been running most of her life, either toward something or away from it. When she reached the landing on the third floor, she stared out the oval window at the rim of mountains, speckled now with autumn color, and lit by the expanse of blue sky.

Ahead, the view seemed endless. Sometimes there are dark parts on the road when you pass through a thick forest of pine. But then the road opens up, and you find you can see again. What she thought was the detour, turned out to be the road after all. Slotin had been right. This is where she found herself. And maybe that was true in more ways than one.



Lisa Siegel is of counsel with the law firm of Katz, Stepp and Miller. Her short fiction has appeared in the GSU Review, the

Pacific Review, Carve Magazine and the Emrys Journal. She was the 2007 winner of the Georgia Bar Journal fiction contest. She was also the 2008 February winner of the Georgia Writer's Association fiction contest. She lives in Atlanta where she practices law part-time and writes part-time. She can be reached at lisasiegel1@mindspring.com.

Kudos

> Thompson, Rollins & Schwartz LLC announced that senior partner Debra Schwartz was inducted as a fellow to the College of Labor and Employment Lawyers. Also, partners Julie Northup and Shanon Stevenson were named as Rising Stars. In addition, Stevenson was appointed by the Supreme Court of Georgia as a mentor to the Bar's Transition Into Law Practice Program.



Kilpatrick Stockton announced that partner Rupert Barkoff was elected vice-chair of the newly formed Franchise Section of the State Bar of Georgia. Barkoff has been practicing

franchise, distribution and corporate law for 35 years. His franchise practice emphasizes solutions to registration and structuring issues and developing individual and collective solutions to franchisor-franchisee relationship problems.

Adwoa Awotwi, an attorney in the firm's corporate department, was selected to serve on the Truancy Intervention Project Georgia, Inc.'s, Board of Directors. Established in 1991, the Truancy Intervention Project provides advocacy and other resources to Georgia's children and their families to prevent school failure.

Partner Scott Dayan was elected vice presidentsecretary of the U.S. branch of the International Fiscal Association. Dayan will also serve as a member of the organization's executive committee.

Partner Randy Hafer was formally admitted as a fellow into the prestigious American College of Construction Lawyers (ACCL) in a ceremony held in San Antonio. ACCL membership is comprised of the top 1 percent of the construction bar in the United States and also includes lawyers and judges from Canada, Britain and France.



Managing Intellectual Property Magazine ranked Kilpatrick Stockton the top patent prosecution firm in the South and among the top nine patent prosecution firms in the country. The firm was ranked among the top 20 firms

in the nation for BioLife Sciences.

The firm also announced that it was named the top trademark firm in the South. Kilpatrick was named the "Tier 1" firm in the entire South, achieving that "Tier 1" ranking for both trademark prosecution and trademark litigation.

Partner Neal Sweeney was appointed to serve on the Advisory Board of the Chastain Park

Conservancy. The Chastain Park Conservancy was formed in 2003 to restore, enhance, maintain and preserve the 286-acre park.



Carlton Fields was recently named in MultiCultural Law's 2008 Top 100 Law Firms for Diversity list. The ranking was based on a diversity survey of minority and women shareholders and associates as a percent of the total number of attorneys, providing diversity totals for the firm.

Atlanta shareholder, Alison Danaceau, was recently appointed to the Atlanta Ballet Board of Directors. Danaceau is a member of the firm's business litigation & trade regulation and real property litigation practice groups.

- > McGuireWoods LLP sponsored five law student scholarships for minority women through the Leadership Institute for Women of Color Attorneys in Law and Business, Inc.'s, annual conference held in March. The Leadership Institute helps women of color attorneys develop their careers and manage diversity issues in the workplace. The firm also sponsors a two-year internship for minority women interested in pursuing a legal career in its Atlanta office with Spelman College, a historically black college for women in Atlanta.
- > Marshall & Lueder, LLC, announced that partner Ray S. Smith III was selected by Gov. Sonny Perdue to the Georgia Judicial Nominating Commission. Smith focuses his practice in commercial real estate and probate litigation.



Morris, Manning & Martin, LLP, senior partner John F. "Sandy" Smith was named founding chairman of the external advisory board of the Institute for Research in the Social Sciences at Stanford University.

- > Fish & Richardson was named one of the leading IP law firms in the U.S. by Managing Intellectual Property Magazine with top rankings in every category, including national and regional patent prosecution and patent litigation, national Bio Life sciences, and national International Trade Commission.
- > Frank K. Martin of The Martin Firm, LLP, in Columbus, announced the publication of his first novel, Sowega: A Tale of Southern Justice. It is the story of how two disparate young men come together in a common cause and the judicial proceedings that ultimately produced celebrity for one

and southern justice for the other. *Sowega* is published by Authorhouse.



Mercer University recently honored John B. Miller, a longtime partner in the law firm of HunterMaclean, at the university's 2008 Law Day Weekend in Macon. Miller, one of 11 remaining members of the Walter F. George

School of Law's Class of 1948, was recognized on the 60th anniversary of his graduating class. Miller presently serves as a senior director of the Board of Directors at SunTrust.

- > The **12th Annual Webby Awards** has **nominated LawHelp.org**—a national network of state portals, including Georgia's LegalAid-GA.org—for the **best law site of 2008**. LawHelp.org offers state-based legal referrals, know-your-rights information and a variety of self-help tools. LawHelp won the 2007 Webby Award for best law website and is the only repeat nominee in the category.
- Locke Lord Bissell & Liddell LLP partner Nigel Wright was named to The International Who's Who of Aviation Lawyers 2008. Wright began his law career in the United Kingdom and has experience in international dispute resolution in more than 50 jurisdictions. His focus on arbitration, international law, aviation and product liability have put him at the forefront of several major cases, with a special emphasis on aviation liability claims on behalf of insurers in Latin America and the Caribbean.

On the Move

In Atlanta

- Thompson, Rollins & Schwartz LLC announced the addition of Brock McCormack as an associate. He practices in the areas of business immigration and employment law. The firm is located at 160 Clairemont Ave., Decatur, GA 30030; 404-377-7717; Fax 404-377-5119; www.trsbattorneys.com.
- Carlock, Copeland, Semler & Stair, LLP, announced the addition of Matthew C. Dalrymple and Chadwick H. Greer as associates. Dalrymple's practice areas include employment litigation and workers' compensation. Greer's practice areas include general liability, health care litigation, malpractice defense, premises liability and product liability. The firm's Atlanta office is located at 2600 Marquis Two Tower, 285 Peachtree Center Ave., Atlanta, GA 30303; 404-522-8220; Fax 404-222-9482; www.carlockcopeland.com.

- > Locke Lord Bissell & Liddell LLP announced the addition of a well-known real estate practice team in its Atlanta office. Aasia Mustakeem joined Locke Lord as a partner, leaving her role as practice group leader for the Atlanta real estate finance and development practice group of Powell Goldstein. Mustakeem practices in the area of commercial real estate. Also having joined the Atlanta office are Crystal W. Cook as senior counsel, and Ianice Y. Island and Toni L. Ross as associates. Cook practices primarily in the areas of financial products and real estate law. Island concentrates her practice in real estate finance and development. Ross focuses her practice on litigation, with an emphasis on insurance bad faith, insurance coverage and reinsurance matters. The firm's Atlanta office is located at 1170 Peachtree St. NE, Suite 1900, Atlanta, GA 30309; 404-870-4600; Fax 404-872-5547; www.lockelord.com.
- Fish & Richardson P.C. announced that Miles E. Hall has joined the firm's Atlanta office as an associate in its patent prosecution group, where he will continue to focus his practice on all aspects of patent prosecution and strategy pertaining to the life sciences, particularly in medical technologies. Prior to joining Fish & Richardson, he was an associate at Needle & Rosenberg, P.C. 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.
- Littler Mendelson, P.C., announced that David C. Whitlock joined the firm as a shareholder and Aimee Todd joined as an associate. Prior to joining the firm, Whitlock and Todd were both with Fisher & Phillips LLP. Whitlock's practice focuses on U.S. business immigration including extensive visa work. Todd's practice concentrates on business immigration, including temporary working status and permanent residence for professionals, international transfers, investors, researchers, artists and athletes. The firm's Atlanta office is located at 3348 Peachtree Road NE, Suite 1100, Atlanta, GA 30326; 404-233-0330; Fax 404-233-2361; www.littler.com.
- Powell Goldstein LLP announced that Roy E. Hadley Jr. joined the Atlanta office as counsel in the business and finance practice. He focuses on complex corporate transactions involving intellectual property and technology matters. The firm's Atlanta office is located at One Atlantic Center, 14th Floor, 1201 West Peachtree St. NW, Atlanta, GA 30309; 404-572-6600; Fax 404-572-6999; www.pogolaw.com.



Fisher & Phillips LLP announced that veteran immigration attorney **Sarah J. Hawk** joined the firm's global immigration practice as a **partner**. Hawk comes from Alston & Bird LLP,

where for eight years she has practiced exclusively in the area of business immigration law.

Also, labor and employment attorney **Tiffani Hiudt** joined the firm's Atlanta office as an **associate**. Hiudt was previously at Nelson, Mullins, Riley & Scarborough LLP, where she advised clients in traditional labor and employment law at the state and federal level. The firm's Atlanta office is located at 1500 Resurgens Plaza, 945 E. Paces Ferry Road, Atlanta, GA 30326; 404-231-1400; Fax 404-240-4249; www.laborlawyers.com.

Morris, Manning & Martin, LLP, announced that M. Allison Gould joined the firm as of counsel. She is an attorney in the firm's lending group. Gould has focused her legal career on Fannie Mae work and served as internal counsel with Fannie Mae for over 21 years. The firm's Atlanta office is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

In Albany

Paul G. Phillips recently joined the law firm of Flynn and Peeler as a partner. The firm will now be known as Flynn, Peeler & Phillips, LLC. His areas of practice include medical malpractice litigation, personal injury, vehicular and trucking litigation, premises liability, product liability and commercial litigation. The firm is located at 517 W. Broad Ave., Albany, GA 31701; 229-446-4886; Fax 229-446-4884; www.fpplaw.com.

In Brunswick

Gilbert, Harrell, Sumerford & Martin, P.C., announced that Robert M. Cunningham joined the firm as a partner and W. Heath Garrett and J. Samuel Choate Jr. joined as of counsel. Cunningham's practice consists of real estate, foreclosure, creditor bankruptcy, estate planning, business formations and Social Security disability. Garrett's practice focuses on public affairs matters. Choate's practice consists of business and litigation representing clients in state and federal courts and in arbitration proceedings. The firm is located at 777 Gloucester St., Suite 200, Brunswick, GA 31520; 912-265-6700; Fax 912-264-0244; www.gilbertharrell law.com.

In Macon

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Sell & Melton, LLP, announced that Blake Edwin Lisenby and Aimee Jackson Hall were named partners in the firm. Lisenby represents clients in a variety of areas, but focuses on real property, environmental law and the representation of non-profit organizations and govern-

mental and quasi-governmental agencies. Hall's practice includes workers' compensation, social security disability and personal injury law. The firm is located at 577 Mulberry St., 14th Floor, Macon, GA 31202; 478-746-8521; Fax 478-745-6426; www.sell-melton.com.



James, Bates, Pope & Spivey LLP announced that Thomas W. Huyck was elected to partnership. Huyck is a member of the firm's litigation department and his practice focuses on business and commercial litigation, eminent domain,

public and affordable housing, and construction law. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jbpslaw.com.



Constangy, Brooks & Smith, LLC, welcomed **associate Jason C. Logan** to its Macon office. Logan has vast experience in all aspects of workers' compensation law, including subsequent injury trust fund, subrogation and the appeals

process. 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 Marietta

David P. Hartin, formerly with Sams, Larkin & Huff, LLP, opened The Law Office of David P. Hartin. Hartin specializes in family law, estate planning and probate, general civil litigation and domestic and civil mediation. Hartin's office is located at 732 Kennesaw Ave., Suite 140, Marietta, GA 30060; 770-424-4848; Fax 678-302-7069; www.hartinlaw.com.

In Roswell

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Morris Hardwick Schneider announced the promotion of senior managing attorney Cheryl Conner King to partner. Prior to being named partner, King served as the head of the Senior Managing Attorneys Council and also

served on the Advisory Council of the LandCastle Foundation. The firm's Roswell office is located at 1585 Holcomb Bridge Road, Roswell, GA 30076; 770-238-0107; Fax 770-238-0109; www.closingsource.net.

2008 Georgia Super Lawyers

Georgia Super Lawyers is published in *Atlanta Magazine*. Super Lawyers names Georgia's top lawyers as chosen by their peers and through the independent research of Law & Politics. 2008 Georgia Super Lawyers is based on the survey of more than 23,000 attorneys across the state.*

Carlock, Copeland, Semler & Stair LLP

Thomas S. Carlock Wade K. Copeland James R. Doyle II Johannes S. Kingman D. Gary Lovell Jr. Wayne D. McGrew III David F. Root Douglas W. Smith Kent T. Stair Frederick M. Valz III

Fisher & Phillips LLP

D. Albert Brannen Jr. F. Kytle Frye III Christine E. Howard Ann Margaret Pointer Thomas P. Rebel John E. Thompson

Hunter Maclean Exley & Dunn, P.C.

LeeAnn W. Aldridge Andrew H. Ernst T. Mills Fleming Robert S. Glenn Jr. Wade W. Herring II Frank S. Macgill Christopher W. Phillips Janet A. Shirley W. Brooks Stillwell III John M. Tatum Harold B. Yellin

Kilpatrick Stockton LLP

Miles J. Alexander W. Benjamin Barkley Rupert M. Barkoff Joseph M. Beck W. Stanley Blackburn William H. Boice James F. Bogan III Richard R. Boisseau William H. Brewster Susan A. Cahoon Richard R. Cheatham Richard Cicchillo Jr. A. Stephens Clay James H. Coil III Brian G. Corgan Theodore H. Davis Jr. Scott M. Dayan William E. Dorris W. Randy Eaddy James L. Ewing IV

Candace Fowler Lynn E. Fowler Peter B. Glass Jamie L. Greene Randall F. Hafer Joseph P. Henner Richard A. Horder Hilary P. Jordan M. Andrew Kauss Alfred S. Lurey Dennis S. Meir Todd C. Meyers George L. Murphy Jr. Matthew H. Patton Mindy S. Planer William R. Poplin Jr. John S. Pratt Diane L. Prucino Susan H. Richardson George Anthony Smith

Kilpatrick Stockton LLP (cont.)

James Steinberg David A. Stockton Phillip H. Street Neal J. Sweeney Virginia S. Taylor William J. Vesely Jr. David M. Zacks

McGuire Woods LLP

Gordon R. Alphonso Tin John C. Beane W

Timothy H. Kratz William B. Marianes

Paul, Hastings, Janofsky & Walker LLP

Richard M. Asbill Jesse H. Austin III Daryl R. Buffenstein Leslie A. Dent John L. Douglas Jr. Weyman T. Johnson Jr. Walter E. Jospin Mark S. Lange H. Franklin Layson III J. Allen Maines Deborah A. Marlowe Philip J. Marzetti Chris D. Molen John G. Parker Reinaldo Pascual Kyle D. Sherman C. Geoffrey Weirich John F. Wymer III

Richard C. Litwin, LLC

Richard C. Litwin

Stites & Harbison, PLLC

R. Daniel DouglassT.J.D. Humphries IIIR

T. Matthew Mashburn Richard W. Stephens

Thompson, Rollins & Schwartz LLC

James E. Rollins Jr. Debra E. Schwartz Kim K. Thompson

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

In Savannah



Inglesby, Falligant, Horne, Courington & Chisholm, P.C., announced that Stephen E. Jackson Jr. was promoted to partner and Paul

W. Painter III and Catherine Clamon Landrum joined the firm as associates. Jackson's practice concentrates primarily in commercial and residential real estate and general corporate matters. Painter focuses his practice on business, construction, and personal injury litigation. Landrum focuses her law practice in the areas of commercial and residential real estate and general corporate matters. The firm is located at 17 W. McDonough St., Savannah, GA 31401; 912-232-7000; Fax 912-232-7300; www.ifhlaw.com.



HunterMaclean announced that Deanne E. Clarke joined the commercial real estate practice group as of counsel at the firm's Savannah office. Before joining HunterMaclean, Clarke served as a partner with the law firm of

Frost Brown Todd LLC in Cincinnati, Ohio. The firm's Savannah office is located at 200 E. Saint Julian St., Savannah, GA 31401: 912-236-0261: Fax 912-236-4936; www.huntermaclean.com.

> Health care attorney Joseph R. "Rusty" Ross of Savannah joined Atlanta-based law firm Morris, Manning & Martin, LLP, as a partner. In addition to focusing his practice on health care matters, Ross also practices with the firm's real estate group. He will remain based in Savannah. The firm's Atlanta office is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

> Wisenbaker Law Offices announced the addition of Matthew A. Bryan to the firm as an associate. Bryan will be in charge of the firm's litigation practice. Wisebaker Law Offices specializes in real estate and creditor's rights. The office is located at 327 Eisenhower Drive, Suite 200, Savannah, GA 31406; 912-927-7779; Fax 912-352-7811; www.wisenbaker law.com.

In Valdosta



Carl Fulp announced the formation of his new firm, Carl G. Fulp III, P.C. The firm specializes in plaintiff's personal injury litigation, medical malpractice, workers' compensation, and general

civil practice. The office is located at 2935 N. Ashley St., Suite 107, Valdosta, GA 31602; 229-242-1434; Fax 229-242-1435; www.fulplaw.com.

In Edwardsville, Ill.



Hepler Broom MacDonald Hebrank True & Noce, LLC, added Kipp C. Knight as an associate in its toxic torts practice area. The firm's Edwardsville office is located at Two Mark Twain Plaza, 103 W. Vandalia St., Suite 300,

Edwardsville, IL 62025; 618-656-0184; Fax 618-656-1364; www.ptrlaw.com.

In Franklin, Tenn.



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Morris Hardwick Schneider announced the promotion of senior managing attorney Jennifer Marler Frank to partner. Frank's office handles conventional and REO closings for Tennessee, Mississippi and Arkansas. She joined the firm in 2001 as a real estate attorney in the Atlanta office. The firm's Franklin office is

located at 810 Crescent Centre Drive, Suite 280, Franklin, TN 37067; 615-503-9901; Fax 615-503-9948; www.closingsource.net.

In New Orleans, La.



McGlinchey Stafford PLLC announced that Suzan N. Richardson has joined the firm as of counsel in the health care section. Richardson brings to the firm more than 15 years of experience handling general litigation and insurance

defense litigation. The firm's office is located at 643 Magazine St., New Orleans, LA 70130; 504-586-1200; Fax 504-596-2800; www.mcglinchey.com.

In Tallahassee, Fla.



Jason S. Lichtstein, a shareholder at the Akerman Senterfitt law firm, recently moved to the firm's Tallahassee office from Miami. Lichtstein practices environmental law and handles a wide range of environmental transactional,

due diligence, regulatory compliance, Florida legislative and agency advocacy, and litigation matters. The firm's Tallahassee office is located at Highpoint Center, 12th Floor, 106 E. College Ave., Tallahassee, FL 32301; 850-224-9634; Fax 850-222-0103; www.akerman.com.

If you have a submission for Bench & Bar, please e-mail stephaniew@gabar.org.

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Client Seeks REAL Lawyer

Responding to Requests for Representation

ey Joe—look at this!" your partner Dottie demands as you walk into her office. "I spotted this posting on the listserv of the

Real Estate Attorneys League-"landlord seeks REAL

lawyer for representation in eviction cases and various busi-

ness matters. Call Mark Doe at 229-555-1212."

"You've been wanting to expand your real estate practice, and this might be a good opportunity. I think you should call," Dottie says, handing you the telephone.

"Not so fast," you warn as she begins to dial the number. "I can't just call this guy and ask him to hire me! Isn't that soliciting? You're going to get me into trouble with the Bar!"

Dottie aborts the call with the push of a button. "Hmmm..." she says. "I guess it *is* direct contact with a prospective client. But surely this is different from calling an accident victim and begging to be hired! This guy sent an e-mail asking for help. Doesn't that change things?"

Does it?

Bar Rule 7.3(d) prohibits private practitioners from soliciting clients either by in-person contact or by live telephone contact. The comments to the rule explain its purpose: to prevent lawyers, who are trained in the art of persuasion, from exercising undue influence or intimidating potential clients in order to gain their business.

Comments 1 and 2 describe the dangers inherent in these situations. The lawyer's personal interest in being hired may conflict with his duty to provide independent legal advice to the potential client. The prospective client might be particularly vulnerable as a result of her underlying legal problem. Because of the potential for abuse, the rules pose an absolute prohibition on in-person solicitation of prospective clients.

But what about situations like the one facing Joe and Dottie, where the potential client has requested contact from a lawyer? The rule only prohibits contact with "a non-lawyer who has not sought advice regarding employment of a lawyer." Since Mark has sought advice, calling him does not violate Rule 7.3.

If Joe decides to make the call, he should begin by clearly explaining who he is. He should tell Mark that he is calling in response to a posting that he saw online, confirm that Mark is in



need of a lawyer, and confirm that Mark has not already hired someone else.

Sometimes it's hard to figure out how the ethics rules apply to new technologies and to different methods of communication. The older portions of the Rules of Professional Conduct certainly weren't written in anticipation of a lawyer soliciting business by responding to postings on a listserv. When in doubt, contact the Office of the General Counsel on the ethics helpline 404-527-8741 or 800-682-9706. We can discuss with you the background and purpose of the soliciting rules, which often helps determine the propriety of proposed conduct.



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

by Paula Frederick

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Lawyer Discipline

Discipline Summaries

(Feb. 21, 2008 - April 11, 2008)

Disbarments

Imrani Muhammad Ali

(formerly known as Sybol Patricia Williams) Concord, N.H.

Admitted to Bar in 1994

On Feb. 25, 2008, the Supreme Court of Georgia disbarred Attorney Imrana Muhammad Ali (State Bar No. 764280). This matter was before the Court on a Notice of Discipline for disbarment. The following allegations are admitted by default.

A client hired Ali to represent him in federal district court in a civil action that he had filed pro se. Ali entered an appearance but was not admitted to practice before the court and did not apply for admission pro hac vice. The court ordered Ali to show cause why her name should not be stricken as counsel for record, but she failed to respond. The court struck Ali's name and the documents she had filed on behalf of her client, including responses to the defendants' motions for summary judgment. Ali failed to inform her client and the court granted summary judgment against the client. Afterwards, Ali failed to communicate with the client or return the file. Although Ali signed an acknowledgment of service of the Notice of Investigation, she failed to submit a response.

Ali was previously suspended for six months for abandoning a legal matter and after reinstatement, she never became a member in good standing because she failed to pay her bar dues and meet the continuing legal education requirements.

Peter S. Manown

Dunwoody, Ga.

Admitted to Bar in 1978

On March 31, 2008, the Supreme Court of Georgia accepted the petition for voluntary surrender of license

of Peter Scott Manown (State Bar No. 469725). On Jan. 7, 2008, Manown pled guilty in Cobb County to three counts of theft by taking.

by Connie P. Henry

R. Joseph Costanzo

Atlanta, Ga.

Admitted to Bar in 1969

On March 31, 2008, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of R. Joseph Costanzo (State Bar No. 189200). On Feb. 1, 2008, Costanzo pled guilty to one count of Conspiracy to Commit Bank Fraud, Mail Fraud and Wire Fraud, and one count of Bank Fraud.

Suspensions

Paul Owen Farr

Americus, Ga.

Admitted to Bar in 1993

On March 10, 2008, the Supreme Court of Georgia accepted the petition for voluntary discipline of Paul Owen Farr (State Bar No. 255432) and imposed an indefinite suspension with conditions for reinstatement. Farr admitted that he is suffering from a mental disorder that impairs his ability to practice law. He is currently receiving treatment and ceased practicing law on or about Dec. 8, 2006.

Alice Caldwell Stewart

Atlanta, Ga.

Admitted to Bar in 1981

On March 10, 2008, the Supreme Court of Georgia imposed an indefinite suspension on Alice Caldwell Stewart (State Bar No. 525679) to run concurrently with previously imposed suspensions. Stewart accepted payment to represent a client in the appeal

of a criminal conviction. She entered an appearance in that case and undertook some actions on the client's behalf, but ceased working on the case before the appeal was heard. Stewart abandoned the client and failed to keep him informed of the status of his case. She never requested that she be allowed to withdraw; she never returned case materials or any unearned fee to the client; and she failed to timely answer the property-served Notice of Investigation. Further, Stewart failed to file a Notice of Rejection despite being properly served by publication with the Notice of Discipline.

The Court found in aggravation of discipline that Stewart has been twice suspended and that she accepted a letter of admonition in 1983 and a Review Panel Reprimand in 2000. The Court noted that the incidents in issue occurred during the same period of time as the incidents which gave rise to Stewart's prior indefinite suspension and that during this time Stewart may have been laboring under a medical impairment.

Prior to reinstatement, Stewart must promptly undergo evaluation and treatment at a medical facility approved by the State Bar and the Lawyer Assistance Program; return all client files; provide an explanation of her inability to return the materials; return all unearned fees; and prove to the Review Panel that her medical providers have certified that she is not impaired and that she has met the above requirements.

Justices Hunstein and Carley dissented.

Dennis P. Cronin

Canton, Ga.

June 2008

Admitted to Bar in 2005

On March 31, 2008, the Supreme Court of Georgia suspended Dennis P. Cronin (State Bar No. 435189) for eleven months and four days, with the suspension being retroactive to the period of March 9, 2007, through Feb. 13, 2008. The Florida Supreme Court issued an order suspending Cronin for 91 days after he admitted "He who is his own lawyer has a fool for his client." BAR COMPLAINTS MALPRACTICE DEFENSE ETHICS CONSULTATION Call Warren R. Hinds, P.C. (770) 993-1414 hindsw@prodigy.net • www.warrenhindslaw.com www.lawyers.com/hindswlaw An Attorney's Attorney **CERTIFIED POLYGRAPH EXPERT** IMBORDINO POLYGRAPH EXAMINATIONS, I "When the Need for the Truth is Important" FORMER FEDERAL POLYGRAPH SUPERVISOR 21 YEARS OF POLYGRAPH EXPERIENCE EXPERT WITNESS AMERICAN POLYGRAPH ASSOCIATION AMERICAN COLLEGE OF FORENSIC EXAMINERS APA CERTIFIED POLYGRAPH INSTRUCTOR DONALD J. IMBORDINO (678) 986-9600 E-mail: dimbordino@earthlink.net Web site: www.ImbordinoPolygraph.com National Legal Research Group CHARLOTTESVILLE, VIRGINIA Put us to work helping you win today. 1-800-727-6574 or research@nlrg.com Fast, Affordable, Specialized Research, Writing and Analysis For more information, and to see what your peers are saying about us: www.nlrg.com

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preparing and recording two fraudulent deeds. While this matter was pending in the Supreme Court of Georgia, the Florida Supreme Court reinstated Cronin and he provided satisfactory proof of his reinstatement to the State Bar of Georgia.

Kirk Robert Owens

Pensacola, Fla. Admitted to Bar in 1999

On March 31, 2008, the Supreme Court of Georgia suspended Kirk Robert Owens (State Bar No. 557480) indefinitely from the practice of law in Georgia. The Florida Supreme Court suspended Owens nunc pro tunc to March 13, 2006, and until such time as he certified compliance with conditions set forth in a "report of minor misconduct." The misconduct involved Owens' failure to timely file a petition for certiorari and his repeated failure to communicate with his client regarding the petition. Although Owens was personally served with the Notice of Reciprocal Discipline, he did not respond to it.

R. James Babson Jr.

Atlanta, Ga.

Admitted to Bar in 2001

On March 31, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of R. James Babson Jr. (State Bar No. 030295) and ordered that he be suspended for one year with conditions for reinstatement. Babson represented a client in a workers' compensation case. Babson converted the \$44,700 in settlement proceeds for his own use. The client did not learn of the settlement or conversion until the client made inquiry with the insurance company. Six weeks before Babson converted the funds, he had a mental breakdown. During that time he was dealing with his sister's terminal illness and the end of a relationship.

In aggravation of discipline the Court found that Babson committed grave professional offenses, and his conduct was not accidental or merely negligent. Moreover, his client was harmed by the deprivation of the settlement funds for

over four months. The Court found in mitigation of discipline that Babson repaid the \$44,700 to this client; that he had extreme turmoil in his life for which he sought professional help; that he made full disclosure and cooperated with disciplinary authorities; that he has offered to refund the \$15,300 in attorney's fees, with interest, as well as interest on the \$44,700 from March 28, 2006; and that he has expressed remorse for his conduct.

As conditions for reinstatement Babson must provide to the Office of the General Counsel proof that he has paid his client \$15,300 plus interest at the rate of 7 percent from March 28, 2006, to the date of payment, plus interest at the same rate on the amount of \$44,700 from March 28, 2006, to Aug. 11, 2006.

Review Panel Reprimand

Shirley White Edwards

Clarkston, Ga.

Admitted to Bar in 1997

On Feb. 25, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Shirley White Edwards (State Bar No. 755743) and ordered that she be administered a Review Panel reprimand. Edwards admitted that she represented a client in a real estate closing; that she did not have a separate contract to represent the lender at closing; that she did not have a clear understanding as to which parties she was representing; that she made numerous errors in preparing the closing documents; and that she failed to properly disburse the property tax payment indicated in the closing documents; and that her errors cost her client money, time, and anguish.

The Court accepted the facts admitted by Edwards and found in mitigation of discipline that she corrected her errors and reimbursed her client for the costs associated with her errors and for the original legal fee paid by the client; that her errors were caused by negligence rather than malice or self-interest; that she had no prior discipline; that she was cooperative during the investigation; and that she has since educated herself on the written disclosures necessary to clarify representation in real estate closings.

Derrick L. Wallace

Atlanta, Ga. Admitted to Bar in 1992

On March 10, 2008, the Supreme Court of Georgia ordered that Derrick L. Wallace (State Bar No. 733760) be administered a Review Panel reprimand. Wallace entered into a business transaction with an individual at the same time he provided legal services to him and while the individual expected him to exercise professional judgment for the individual's protection. When the relationship between Wallace and the individual terminated, he told the individual that he would refund \$4,000 of the fee paid, but he failed to do so. Wallace offered in mitigation that he had no prior discipline, that he would refund \$4,000, and that he was remorseful.

R. James Babson Jr.

Atlanta, Ga.

Admitted to Bar in 2001

On March 31, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary discipline of R. James Babson Jr. (State Bar No. 030295) and ordered that he receive a Review Panel reprimand. Babson represented a client in a workers' compensation case and failed to respond to his client's telephone calls. After the client discharged Babson, he refused to surrender the client's files until the client paid for copying and mailing. Babson later agreed to return the files without payment of these costs but did not deliver the files to the client's new attorney until after the grievance was filed. In mitigation of discipline, the Court found that Babson cooperated with the State Bar in resolving the matter and he admitted his wrongdoing.

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 Feb. 20, 2008, four lawyers have been suspended for violating this Rule, and four have been reinstated.



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

For the most up-to-date information on lawyer discipline, visit the Bar's website at www.gabar.org/ ethics/recent_discipline/.



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Five Ways to Stay Cool in Your Practice!

t is not often that you find people who think of the practice of law as being synonymous with being cool. But if you talk to some of the more technologically advanced or "techie" lawyers, you may realize that this has actually been changing over the past 10 to 20 years. World changes attributable to technology are present daily, and even the practice of law has not escaped this wave of change. But technology has impacted not only the legal arena, but has changed the ways people socialize and how they expect to live in today's world.

So, amidst all of these modernizations, how can you be a cool lawyer? Try out one of these five ways.

Hire a Coach

Coaches are available for many aspects of life, and the practice of law is no exception. There are coaches for practice development, financial management and even departing from the practice of law. Covering every aspect of life as a lawyer, having a coach is not only cool—it's smart. You can get great advice and create life-long relationships. Robin Hensley, the business by Natalie R. Kelly



development coach of Raising the Bar, recently let me in on a little secret. One of her 7 *Habits of an Effective Rainmaker* is to "get a coach." You can check out more of Hensley's advice at www.raisingthebar.com.

Coaching is an important undertaking because by design it locks you in on the implementation of the goals

you set. Coaching helps you not only analyze what you want, or perhaps should want, but also ensures that you carry out the steps to reaching those goals.

Audit Your Practice

Stand back and really look at the way you are practicing law. What makes this so cool is that you are becoming proactive in practice management, and as you move to make changes (for the better) in the way you practice and/or run your business, you will begin to feel better personally as well. Imagine how impressed others will be with your new lease on doing business.

Members can contact our department for a low-cost, confidential on-site consultation. The general management consultations allow us to come in and see how you operate, giving us a chance to help you improve your system and procedures. Simply contact us to set up a consultation.

Update and Stay on Top of Technology

We hope you can get excited about the latest, coolest gadgets. Who doesn't love the iPhone? From social networking, to blogs, to search engine optimization websites, law firms cannot run effectively without being on top of technology. Today, most firms operate on a two to three year cycle for technology (hardware and software) upgrades.

Be cool and make sure your technology plan and budget are up to date. Remember, we always preach about the absolute need for practice management software in law firms, and how important it is for you to use some type of software other than Word or WordPerfect to generate bills!

Re-Connect With Your Clients

Take a fresh approach to client communications. Understanding that troublesome clients and dog files can wear out the best of practitioners, attempt to refocus your energy so that you look at negative work situations in a more positive light. Devoting a little time to reconnecting can help you feel more refreshed in what you are doing.

We advocate meeting more with some of your troublesome clients. Often just spending additional time with them can help them understand you better, and you can forge a stronger attorneyclient relationship. This will hopefully impact their future interactions with you and your firm in a more positive way. Also, don't forget that you can calendar reminders to contact clients on a set schedule just to make sure you are staying in touch. And for those chronic callers, make use of a sample phone call policy and try to set up blocks of time in which you return calls.

Seek Balance in Work and Life

How many "lovable" hours do you live a week? Don't just focus on the billable hours that may be a requirement for you in your practice. Take advantage of your down or slow time by catching up with yourself and your loved ones. At work, use tips for working smarter and not harder; and at home, work to be your coolest as a parent, spouse, friend or neighbor!

The Law Practice Management Resource Library contains several volumes that have a work-life balance focus. This includes the latest edition of the *Lawyer's Guide to Balancing Life and Work*. You can check out JD Bliss' Attorney Work Life Balance Calculator at http://www.envoyglobal.net/ jdbliss/test/calculator2.htm.

After putting a few of these suggestions to work, you may find yourself thinking, "Hey, I am pretty cool!"



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



Memorial Gifts

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

A meaningful way to honor a loved one or to commemorate a special occasion is through a tribute and memorial gift to the Lawyers Foundation of Georgia. An expression of sympathy or a celebration of a family event that takes the form of a gift to the Lawyers Foundation of Georgia provides a lasting remembrance. Once a gift is received, a written acknowledgement is sent to the contributor, the surviving spouse or other family member, and the Georgia Bar Journal.

Information

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

Lawyer, Scholar, Diplomat and Very Much a Gentleman

Ithough he lives and works for Delta in Atlanta, Tifton proudly lays claim to native son, John Embry Parkerson. "Growing up in Tifton and attending Abraham Baldwin Agriculture College for a period after high school graduation was truly special," said Parkerson. "As a kid, I literally rode my bicycle all over town. I especially remember riding it every Saturday during the summer to the public swimming pool. Tifton also afforded me other liberties – some that I cannot mention – of which I took more than full advantage of as a teenager. I might thank a fairly tolerant community, understanding police, and a good family for keeping me alive and out of jail. Those memories are most pleasant."

After graduating from Tift County High School in 1970, Parkerson received his bachelor's and master's degrees in by Bonne Cella

history (diplomatic) from Emory University. He went on to receive his J.D. from Emory School of Law. He received his second master's degree in International Relations from Boston University in 1985, followed by his LL.M. in International and Comparative Law from The George Washington University in 1990 – all with highest honors.

His classmates in Tifton knew early on that whatever career path Parkerson chose, he would do extremely well. Following his father's¹ example of service to country and armed with integrity, intelligence, courtesy and wit, he soon found himself serving the Pentagon as chief of the international law branch on the Army staff; legal liaison at the U.S. Embassy in Bonn, Germany and international legal advisor at the U.S. Army's headquarters in Heidelberg. As an associate professor of law at West Point, he designed and taught courses in international law and constitutional law.

Speaking of his Army career (1978-1993), Major (Ret.) John Embry Parkerson Jr. says, "Those were some of the best days of my life. Hardly a day goes by when I don't think about some of my Army adventures in Bolivia, Guatemala and Germany. The chance to live overseas and to practice international law, then to teach at West Point, then to work in a place as hallowed as the Pentagon—how could you beat that?"

Parkerson's position with Delta is just as exciting and demanding as his career in the Army. "What I enjoy most about working for Delta is the international practice – the opportunity to work in different countries with incredibly interesting and competent professionals, with an overlay



(Above, left to right) Andras Simonyi, former ambassador for Hungary to the United States; Atlanta Mayor Shirley Franklin; and John Parkerson.

of unique cultures and legal systems that are different from ours." As one of three attorneys who form the International Team within the Law Department at Delta, Parkerson recently completed the legal prerequisites for new service to countries in Africa and the Middle East. He serves as primary legal counsel to the Latin American region and is the chief architect of an evolving industry legal strategy in response to developing areas of international air transport liability, particularly with regard to war/terrorism risk and passenger/crew health matters.

A frequent speaker at legal seminars and universities on international aviation liability and international business practices, Parkerson is credited with numerous publications and serves on various boards in the United States and abroad. He is a trustee and past chair of the Clayton State University Foundation Board of Trustees. A quick "google" search brings up numerous links of Parkerson's work included in a report on terrorism to the U.S. Congress as well as citations in the *Harvard Human Rights Journal*.

Parkerson is married to Jo-Ann—"a real New York Italian-American" and they have two sons, Christopher, a senior at Woodward Academy, and Justin, a senior at Clayton State University.

On May 29, dignitaries from all over the country, local public figures and a large contingent of Parkerson's friends and family gathered on the rooftop of the Atlanta Chamber of Commerce as Ambassador Andras Simonyi of Hungary swore him in as Honorary Consul of Hungary for the states of Georgia, Tennessee, North Carolina and South Carolina. Always, gracious and humble, Parkerson later commented, "I always wanted to be a diplomat, and the Hungarians, bless them, gave me an opportunity of a lifetime!" Ambassador Simonyi was so impressed with Parkerson after meeting him at a Delta function that he chose him to represent Hungary to America's southeast





(*Top*) Consul General of Hungary, Imre Helyes, swears in Parkerson as Honorary Consul of Hungary on the rooftop of the Atlanta Chamber of Commerce. (*Bottom*) Parkerson in Budapest, Hungary on the bank of the Danube with The Hungarian Parliament Building as background.

region. Mr. Ambassador, you could not have chosen a nicer guy!



Bonne Cella is the office administrator at the State Bar of Georgia's South Georgia Office in Tifton and can be

reached at bonnec@gabar.org.

Endnote

1. John Parkerson Sr. landed at Utah Beach in the Normandy invasion. He was company commander of a rifle company in the 4th Infantry Division. He was wounded twice and received two purple hearts. The first was a minor leg wound suffered in France but the other was a serious neck wound that he received just inside the German border near Prum in the closing days of the Battle of the Bulge. He received a Silver Star for bravery during that event because, while wounded, he pulled his 1st Sergeant who had been by his side and seriously hit at the same time, back from the line to safety.

Pro Bono Honor Roll

The Pro Bono Project of the State Bar of Georgia salutes the following attorneys, who demonstrated their commitment to equal access to justice by volunteering their time to represent the indigent in civil pro bono programs during 2007. *denotes attorneys with 3 or more cases



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Sections Share Knowledge Through Events and Newsletters

by Derrick W. Stanley

arch and April saw three successful section events that yielded CLE credit for the attendees.

The **Intellectual Property Section**, chaired by Todd McClelland, hosted two meetings. On March 25, Angela Payne James, Scott Brient and Jennifer Liotta, all from Alston & Bird, presented "Patent Obviousness: Post-KSR Developments in Patent Litigation and Prosecution." This well-attended event discussed points from "obviousness" and "non-obviousness" district court cases to the impact that KSR has had on patent litigation. The litigation committee, chaired by Brad Groff, saw a near capacity crowd at this luncheon that provided one hour of CLE credit.

The licensing committee, chaired by Andria Beeler-Norrhold, and the in-house committee, chaired by Kevin Glidewell, hosted the program entitled: "If Only You'd Asked: The Litigator's Perspective on Drafting Intellectual Property Agreements." This panel discussion took place at the Alston & Bird offices on April 22. Panelists Martin J. Elgison, John P. Hutchins, Edward B. Krugman and Lawrence K. Nodine provided their insights on clauses and phrases commonly used in IP agreements. They also discussed courts, interpretations of these agreements and practical effects of particular clauses and phrases in the event of a dispute. This onehour CLE program was open to section members and law students.



"More Than Fun & Games: The Law and Business of Video Game Development" was presented by the Entertainment and Sports Law section on April 23. Lisa Moore, chair, hosted speakers Clinton Lowe, Marcus Matthews and Cliff Lovette whose presentation included an overview of the industry, revenue models and the legal aspects of the game development industry. This one-hour CLE luncheon was held at Thrive.

In addition to the lunch presentations, many sections also held social functions at various locations. The networking functions allow members to extend their professional networks while sharing expertise.

Sections & Dues Amounts

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Agriculture Law\$2	20
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Appellate Practice\$1	5
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Bankruptcy Law\$3	5
Business Law\$2	
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Several sections also published newsletters over the past two months. The newsletters can be found by visiting the section web pages and downloading them in PDF format.

There are 40 sections to choose from. Your membership can include newsletters, section directories, CLE resources, course materials, sample forms, legislative influence and an opportunity to meet fellow practitioners in your area of interest.

Above is a list of sections and their dues. To join, download the membership form at www.gabar. org/sections/how_to_join_a_ section/. Send in your completed form along with your check made payable to the State Bar of Georgia. You can also join a section by indicating your preference on your annual dues invoice.



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

Earn up to 6 CLE credits for authoring legal articles and having them published.



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by Jodi McKenzie

asemaker has just released Casemaker 2.0,which is guaranteed to improve your legalresearch. Over the past year, the people at

Casemaker have been diligently working on increasing

the benefits of Casemaker.

They have delivered with a product that has access to 3 million more documents, more user-friendly features and a stronger and faster search engine. It has been an ambitious undertaking but worth the effort for our members. Casemaker 2.0 is now even more competitive with other online legal research vendors but is still free of charge to State Bar of Georgia members. Let's take a look at some of the new features.

You will now notice that when you open Casemaker you are taken directly to Georgia's library. The functionality of the state library has not changed. The only difference you will notice on this page is that the "Currency" button, which tells you how current each of the datasets are, is located at the top of the page rather than the bottom (see fig. 1).

Performing a search in the Georgia Caselaw library has not changed either. The only difference you will experience is that when you begin your search you will be taken to the Advanced Search screen rather than the Basic Search screen. You can still access the Basic Search screen by clicking on the "Basic Search" tab (see fig. 2).

One of the new features of the Advanced Search screen is that you can now use the "New Search" button to clear all your Advanced Search fields to begin a new search.

The "cheat sheet" from the Basic Search screen can now be found at the bottom of the Advanced Search screen (see fig. 3). This "cheat sheet" tells you how to do "and" searches, "or" searches, "exclusionary" searches and "exact phrase" searches.

You still have the ability to search the full Casemaker library including every state in the country and federal content by clicking on "Full Library Menu" or the Casemaker logo (see fig. 4).

You will see that the Full Library Menu allows you the same access to the Federal Library and individual state libraries plus the addition of a new Multi-State Search feature (see fig. 5). The Multi-State Search feature will allow you to do searches in either caselaw or ethics opinions across multiple states or all states at once.

The top portion of the Multi-State Search screen will list all states, as well as the District of Columbia, from which you can choose by clicking on the check boxes. You may select to search all states at once by clicking the "Select All" button (see fig. 6).

The bottom part of the screen gives you the same search fields as you have already seen on the Advanced Search screen for an individual state.

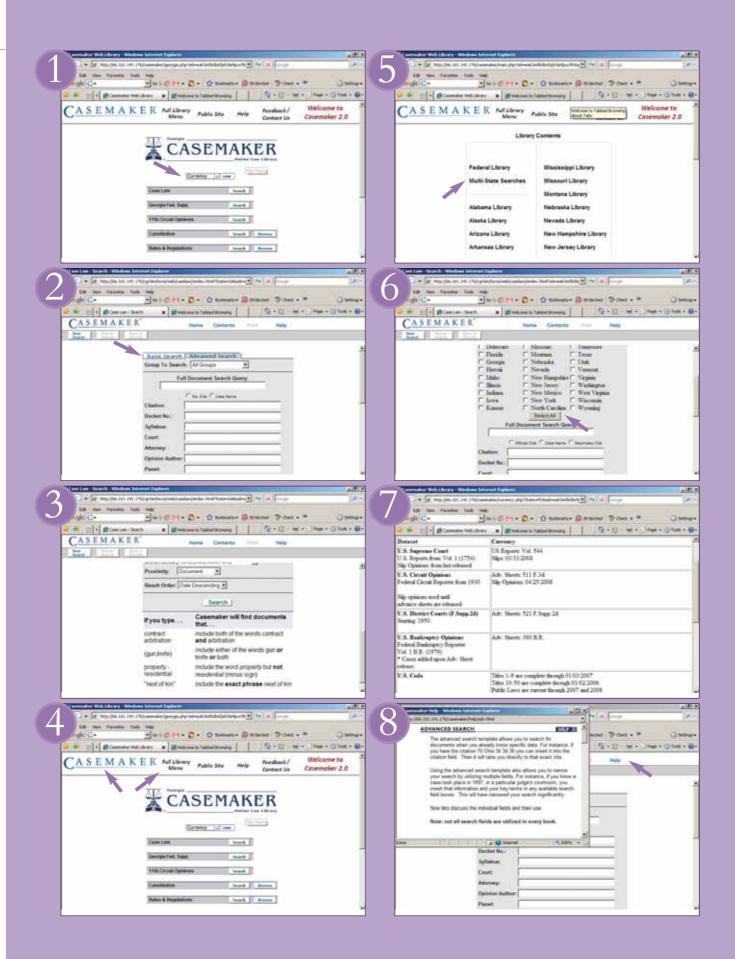
Casemaker 2.0 has added over 3 million new documents to the Federal Library. If you open the Currency page for the Federal Library, you will see that the U.S. Supreme Court dataset now begins in 1754, the U.S. Circuit dataset begins in 1930, and the U.S. District Court dataset begins in 1950 (see fig. 7). The significantly expanded content in the Federal Library is just one of the ways Casemaker 2.0 increases its benefit to you.

Casemaker has also added a "Help" button that appears on every screen. When you click on the "Help" button, Casemaker will produce a Help dialog box that pertains to the screen that you have open (see fig. 8). If you are on the Advanced Search screen, the Help box will be about the Advanced Search screen. If you are on the Basic Search screen, the Help box will apply to the Basic Search screen.

You will also notice that the Casemaker 2.0 search engine will run considerably faster. Casemaker 2.0's faster search engine, expanded content and more flexible search options will greatly improve your online legal research capabilities. In order to get the most out of Casemaker 2.0, sign up for a training class at the Bar Center. Training sessions are offered four times a month. Upcoming dates can be found on the Bar's homepage in the News and Events section. Local bar associations and law libraries can also request that training be made available in their area. Please contact us for more information, or if you have questions regarding Casemaker.



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



Writing Matters

Avoiding Doe Snot While on Trails in Search of Statues

ypographical errors can be funny, as this issue's title hopes to emphasize. Yet, we've all experienced that sinking feeling in the pit of our stomach when we realize that we sent a document to a client or submitted a document to a court with a typographical error on page 2. This installment of *Writing Matters* strives to raise your awareness of the importance of proofreading and to provide some tips to increase your proofreading skills.

In addition to being an embarrassment, typographical errors erode the writer's credibility.¹ Typographical errors can also harm the client. In a recent case, a federal district court observed:

[P]laintiff's response... [is] so riddled with typographical mistakes, grammatical errors, and faulty punctuation that the court had difficulty following plaintiff's arguments. For example... the court has never seen such creative spellings of the words technologist (spelled, alternately, "tecnologist" and "technolgoist") and occasionally (spelled "occassinaly"), and has never heard of the words "accomopdation," "tranprot," "studnet," and "internshp."²

Not only do courts view typographical errors as unprofessional, and clients and opposing counsel as by Karen J. Sneddon and David Hricik



indicating incompetence, they can also cause direct monetary harm. Courts have slashed fee awards in half because of substantial grammatical and typographical errors in briefs.³

While to err is human, you can act to reduce typos. Proofreading is an important step in the writing process. It requires a different kind of attention than necessary to prepare documents, since the focus instead must be on individual words, not the ideas conveyed.

Spell-checkers built into many software programs provide some respite to the hard work of proofreading. The federal district court referenced above "strongly recommend[ed] (and that's one "c" and two "m"s) that in the future, plaintiff's counsel proofread and spell-check all documents submitted to this and any other court."⁴ In fact, the spell-check and auto-correct features built into Word and other programs do catch many common mistakes.

While technology provides great assistance, it can also create problems. Texas federal district judge Sam Sparks published an "ode to the spell-checker" that emphasizes the humor that reliance on technology can create: Eye have a spelling chequer, It came with my pea sea. It plainly marques four my revue Miss Steaks eye kin knot sea. Eye strike a key and type a word and weight four it two say Weather Eye am wrong oar write It shows me strait a weigh. As soon as a mist ache is maid, It nose bee fore two long, and Eye can put the error rite – Its rare lea ever wrong. Eye have run this poem threw it I am shore your pleased two no, Its letter perfect awl the weigh. My spell chequer tolled me sew.⁵

So, don't rely solely on spellcheck. While it is always helpful to have another person proofread your work, proofreading often falls to the writer. For example, software cannot distinguish between homonyms, which can lead to some of the most common errors. Human labor is still necessary. Below are some strategies to maximize your proofreading prowess:

Give Yourself a Break

It is difficult to move from the creation process to the proofreading process. Ideally, you should put any work away for two days before proofreading it. However, even if you can only set the work aside for 30 minutes, you will be a more effective proofreader.

Read it Backwards

No, we don't mean like spinning a Beatles' album to find secret messages! Instead, read the last sentence first, the penultimate sentence next, and so on to allow you to focus on each sentence without getting distracted by substance.

Read it Out of Order

This is another way to avoid getting caught up in the substance and is especially helpful on a large document. Instead of starting at page one and proofreading to page 50, start near the end, then work to the front. Or, when proofreading an appellate brief, start with the statement of facts, then proof the conclusion, then the second argument, and so on.

Create White Space

Sometimes words just blur. To fight this, use two pieces of blank white paper to hide all the text except for one or two lines.

Read it Aloud

Sometimes our eyes deceive us. We don't catch the missing word, or we miss the double word. Reading the work aloud can help you focus on what is on the page and, just as importantly, what is not on the page.

Watch for the Common Typos

The chart to the right identifies common typographical errors (including those spell-check and autocorrect miss).



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



David Hricik is an associate professor at Mercer Law School who has written several books and more than a dozen articles.

Mercer's Legal Writing Program is currently ranked as the number one legal writing program in the country by U.S. News & World Report.

Endnotes

- 1. For an analysis of experiments that assess the impact of spelling errors on the reader's perception of the author's writing ability, see Michael J. Costello et al., *Effects of Spelling Errors on the Perception of Writers*, Journal of General Psychology (2002), available at http://www.encyclopedia.com/doc/1G1-86431655.html.
- Chen v. Galen Hosp. Ill., Inc., 1999 WL 104723, at *1 (N.D. Ill. Feb. 23, 1999). See also Thompson v. Nicholson, 2007 WL 956928, at *3 (Vet. App. Mar. 13, 2007) (emphasizing that poor grammar also

Typo or Mistake	Correction
C	(c) – unless you mean the copy- right symbol
casual	causal
doe snot	does not ⁶
forebear	forbear
fore	for
form	from
heresy	hearsay
libel	liable
loose	lose
no	know
off	of
parole	parol
rational	rationale
rise	risk
statue	statute
tot he	to the ⁷
tortuous	tortious
trail	trial
Untied States	United States
write	writ

"does not reflect well on the practitioner's professionalism").

- See Devore v. City of Philadelphia, 2004 WL 414085, at *3 (E.D. Pa. Feb. 20, 2004).
- 4. Chen, 1999 WL 104723 at *1.
- Reprinted in Jerry Buchmeyer, Ode to the Spell Checker, 64 Tex. B.J. 69 (June 2001).
- 6. Thankfully, Word 2007 will not catch this particular typographical error.
- 7. Thankfully, Word 2007 will not catch this particular typographical error, too.

Respect: Two Views on Professionalism– Here and There

by Avarita L. Hanson



The Supreme Court of Canada

ecently, I had the opportunity to speak at length with Paul Kilpatrick Jr., past State Bar president. I asked him, as a seasoned practitioner and Bar leader, to share his views on professionalism. Last year, Kilpatrick was the worthy recipient of the State Bar's Tradition of Excellence Award. Still humbled by that recognition, he offered to share his sincere and meaningful remarks from that occasion. Kilpatrick's career is not only admirable; his views on professionalism are insightful because they show the wisdom gained in his experiences. (*See Paul Kilpatrick Jr.'s remarks on page 83.*)

Other views on professionalism come from recent experiences outside of Georgia. In late March, I represented the Chief Justice's Commission on Professionalism (the Commission) at a colloquium in Ottawa, Canada by invitation of the Chief Justice of Ontario's Advisory Committee on Professionalism. At the same time, our mentoring program was featured at a conference in Columbia, S.C. Respect abounds as Georgia's bench and bar, through the Commission, continues to provide the template of a professionalism movement that has made, and continues to make, a difference in our profession.

Canada and South Carolina: Georgia's Bench and Bar Exemplify Professionalism

The members of the State Bar of Georgia and the Commission, now approaching its 20th year, do make a difference. The group that shaped and founded the Commission recognized that the Bar could and would

A View on Professionalism

by Paul Kilpatrick Jr.



Those of us who have been engaged in the practice of law for many years recognize, with some degree of sadness, that there has been a general deterioration in the public's opinion as it relates to respect for lawyers. While I agree with a comment that I heard Judge Griffin Bell make one time—that he never thought lawyers were supposed to be popular—there is a difference between popularity and respect. As the number of practicing lawyers has

grown larger, especially here in Georgia, I think we have to understand, but not accept, the fact that a significant deterioration in respect for our profession has taken place. We also have to understand that it may well be our own fault. As the cartoon character, Pogo, once said, "We have met the enemy and they is us." However, we do not need to sit back and accept this decline. We can do something about it.

In my years of service to the Bar, I have been privy to numerous surveys in regard to the public's impression of lawyers. Almost without exception, they currently show that people don't like lawyers, while at the same time showing that people like, respect, and in some cases, love their own lawyer. I believe that tells us that the pressures which many lawyers feel to become successful have driven them away from public service and the concept that it is important to serve.

It would be naive to say that we all do not want to make a good and decent living. Most do and some are very successful financially. At the same time, we have to recognize a need for and a duty to serve. I have always believed that being in some profession carries with it an additional responsibility, both to that profession and the general public, in that we have a duty to serve.

We have an obligation to lead and to give back, whether it is to our community, our church, a deserving charity or in many other similar ways. We need to encourage ourselves, and especially our young lawyers, to become involved in the community, to give their time and talents and to utilize their legal training for the benefit of others, even if it means that their billable hours will not reach a level that they might desire, or that they may have to take one or two fewer cases.

While there is no perfect answer or solution, and no one solution fits every situation, lawyers should still take time, step back and look for opportunities to serve. Take at least one small step in that direction. I believe in doing so, most lawyers will find that leadership and service pay great dividends, which will leave them with a genuine feeling of accomplishment. While a very important aspect is our own self-satisfaction, I believe that if enough of us get involved we all will be very pleasantly surprised with the results.

There may be a lot of unfair assessments, cruel jokes and negative comments about lawyers. Some politicians may feel that it is helpful to their campaigns to be "anti-lawyer." Most of that reflects the old adage, "If you say something often enough, it becomes true." We cannot change negative images or actions in a day. But, to earn our respect, if we all make an effort, we can make a difference.

deserves. In 1988, Chief Justice Thomas O. Marshall invited a small gathering of bench and bar leaders to hear Emory University President James T. Laney speak about "A Moral Authority in the Professions." They were largely concerned with the perceived lack of respect for lawyers by the public and increasing incivility in the practice of law. As a result, the Supreme Court of Georgia created the Chief Justice's Commission on Professionalism in 1989. The mission of the program is to foster professionalism through continuing legal education, bench and bar proand activities. grams The Commission has worked to engage the entire Bar and has met the needs and concerns of all attorneys, through the development of bar and court programs. The meaning of professionalism remains dynamic and is ever evolving with competence, civility, engagement in pro bono and community service at its core.

earn the respect our profession

We are not, however, the only lawyers in the world seeking respect. Due to the Commission's reputation as the first such entity in the nation, I was invited to share the Georgia experience with our colleagues from the practicing bar, judiciary and legal academies of Ontario, Canada, at the 10th Colloquium on the Legal Profession of the Chief Justice of Ontario's Advisory Committee on Professionalism. While taking time to visit the Supreme Court and Parliament, my main objective was to convey hope to our colleagues that while their challenges are great, there are some solutions. I addressed why and how the Commission was started, the areas we focused on as the Commission developed, how all parts of the profession were included, lessons we have learned (and are still learning) and the role of judges in our professionalism effort. This topic was of great interest to the attendees because as Co-Chair Professor Errol Ρ. Mendes, faculty of law,



(*Left to right*) Avarita L. Hanson, director of the Chief Justice's Commission on Professionalism; Hon. Justice Paul M. Perell, Superior Court of Justice; and Prof. Errol P. Mendes, faculty of law, University of Ottawa.

University of Ottawa stated, "We don't have anything like it here."

The topic for the Colloquium, held at the University of Ottawa, "Professionalism: Ideals, was Challenges, Myths and Realities." The agenda for the day showed that Canadian lawyers are tackling the same issues American lawyers face: crowded court calendars, indigent defense issues, the commercialization of the profession and the need to fairly include the increasing numbers of women and visible ethnic minorities in the profession. With the dialogue of the day moving easily in English and French, it is evident that Canada is positively addressing its past and its future as a multicultural, multilingual, multiracial and multiethnic society.

The Right Hon. Justice Beverley McLachlin, Supreme Court of Canada, opened the program stating that a profession is both to hold out oneself as capable and dedicated to serving the public, as well as to one's vocation or calling. She stressed that the challenge of providing access to justice is complex and difficult, but it must be tackled. She went on to sav that it stems from a commitment to the profession and the fundamental role of lawyers. Justice McLachlin noted that the business model of the profession now raises issues of work-life balance. "This is most keenly felt by women who are dropping out of the legal profession." To encourage women to remain in the legal profession, she called upon the bar to attack the problem, to be more open and flexible and not make assumptions. Justice McLachlin then called for the profession to take action to address the issues of access to justice, pro bono, work-life balance and attrition of women.

The first session addressed the issue of challenges to the standards of professionalism in the legal profession. Keynote speaker, Margaret A. Ross, partner, Gowling Lafleur Henderson LLP, highlighted aspects of a "problematique," or

model, utilized by Madam Justice Rosalie Silberman Abella at a 1999 Law Society of Upper Canada Bencher's retreat. The model focused on the economic and competitive pressures faced by the profession and the injustice of process preoccupation that is not serving the public interest in the civil and criminal trial process. "Financial concerns are the guiding force of law firms, but this often excludes other values, when there should be more balance with pro bono work, mentoring and involvement with professional organizations," Ross stated. "New lawyers need options and choices about hours and remuneration because they are not motivated by old success indicators." However, she maintains that "law cannot be a 100 percent flextime job; it can't be nine to five; there is a fiduciary relationship with clients. Lawyers should employ reflection, analysis, confidence in their own ability, and stand by their decisions."

During the second session, attendees were treated to three separate panels focusing on different aspects of possible solutions to the challenges to professionalism in the legal profession. During the first panel, "The Ethical Challenges of Entrepreneurial Lawyers, the Significance of the Strother Decision and Preventing Process from Undermining Justice," Chief Justice Warren K. Winkler, Court of Appeal for Ontario, indicated that he found access to justice the most challenging and important issue of the day. The Hon. Justice Michael J. Moldaver, Court of Appeal for Ontario, advocated for balance and proportionality in the justice system and asked the question, "Where do we draw the line on freeing people whom we know to be guilty?" Prof. Michael Code, faculty of law, University of Toronto, pointed out three problems he saw in the practice: unprofessional conduct, bad judgment and the thinking that the duty to clients always trumps the duty to the court. He called for the bar to promote the teaching of ethics and professionalism in all law schools, the Law Society to enforce ethical standards, a revival of mentoring, and that the judiciary enforce standards and duties of lawyers as officers of the court.

The second panel, "Refashioning the Economic Model to Prevent Marginalization of Women and Minorities," was moderated by Prof. Joanne St. Lewis, faculty of law, University of Ottawa, the first and only black woman to be elected as a Bencher of the Law Society of Upper Canada, the governing body for more than 38,000 lawyers in the province of Ontario in its 211-year history. She posed the question, "Is it realistic that the economic model will be retooled?" Fellow panelist Ronald F. Caza, Heenan Blaikie LLP, advocated for the dignity of choice for French-speaking Canadians, an invisible minority who need French-speaking lawyers and bilingual judges to have meaningful access to justice in Ontario courts. M. Virginia MacLean, Q.C., president of the Women's Law Association of Ontario and municipal law practitioner, presented the bar's gender report, noting that the bar's membership is now almost half female.

During the third session, "The Leadership Role of the Academy, the Bar and the Bench in Finding Solutions; What Can We Learn From Other Jurisdictions?" David W. Scott, O.C., Borden Ladner Gervais LLP, addressed the fact that two-thirds of the population, ordinary citizens, cannot afford a lawyer, resulting in self-representation. He also spoke to the issue of access to justice and how law firms are not addressing it. Scott pointed out that many Canadian lawyers do engage in pro bono work, but that Americans do much more in the way of public and community service. Bernard Amyot, president of the Canadian Bar Association, shared a broader perspective on Canadian lawyers' pro bono activities.

In his remarks summarizing the day's colloquia, the Hon. Paul M. Perrell, Superior Court of Justice, acknowledged that the challenges faced by the legal profession and courts of Canada and more specifically, Ontario, are great and cannot be solved immediately. "I was inspired and recharged by the optimism in Ms. Hanson's remarks where she outlined the courses of actions the Georgia Bar and courts have taken, stemming from the professionalism movement, to address indigent defense, access to civil legal services, diversity and inclusion." Both Justice Perrell and I agreed that there are many issues and challenges the two countries have in common, while the history and approaches differ. "Ms. Hanson's may remarks give our Canadian colleagues lots of ideas and much optimism." In closing, he stated that "while what judges can do in applying substantive legal tools to curb incivility and manage most other aspects of professionalism is severely limited because of the adversary system, their involvement in the Chief Justice of Ontario's Advisory Committee on Professionalism is a way to address professionalism."

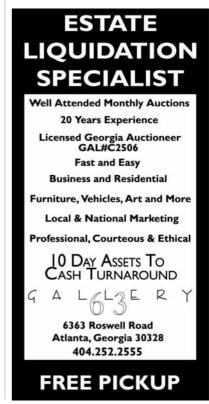
Closer to home, Georgia's Transition Into Law Practice Program (TILPP) was highlighted during the inaugural National Conference on Mentoring in the Legal Profession held in March at the University of South Carolina Law School in Columbia. The event was hosted by the South Carolina Chief Justice's Commission on Professionalism and co-sponsored by the ABA Standing Committee on Professionalism. Doug Ashworth, director of TILPP, presented an update to the 75 attendees who represented 22 different state bars. Sally Lockwood, director of Bar Admissions, was on hand to present a history of how TILPP was developed. Conference attendees included representatives from the two states that have conducted

pilot mentoring projects based upon Georgia's model—Ohio and South Carolina—as well as representatives from Kentucky, the next state that will conduct a similar pilot project. Ashworth noted that the result of the National Conference was a consensus that a multi-jurisdictional panel be formed for the purpose of developing best practices protocol for state bar mentoring programs.

Georgia lawyers may not always get respect, but many of us do much to earn it—every day and in many ways. We, individually and collectively, and through the work of the Commission and the State Bar, are an example of professionalism. We show, not only to the nation, but to the world that we can make a difference.



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



he 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.

Faye Foster Abbott Roswell, Ga.

Woodrow Wilson College of Law (1979) Admitted 1984 Died January 2008

James E. Baker

St. Simons Island, Ga. Emory University School of Law (1963) Admitted 1963 Died March 2008

Fred L. Belcher

Nashville, Ga. University of Georgia School of Law (1947) Admitted 1947 Died March 2008

Jesse Lehmon Brantley

Greenville, S.C. Vanderbilt University Law School (1937) Admitted 1939 Died February 2008

Carl James Byrd Atlanta, Ga. John Marshall Law School (1977) Admitted 1979 Died March 2008

Frank S. Cheatham Jr. Savannah, Ga. University of Georgia School of Law (1948) Admitted 1948 Died March 2008

J. Al Cochran Marietta, Ga. Woodrow Wilson College of Law (1950) Admitted 1951 Died April 2008

John L. Creson Augusta, Ga. University of Georgia School of Law (1973) Admitted 1973 Died April 2008

Carey P. DeDeyn Atlanta, Ga. Emory University School of Law (1969) Admitted 1969 Died April 2008

Christopher Hamilton

Atlanta, Ga. University of Georgia School of Law (1974) Admitted 1974 Died April 2008

Homer A. Houchins Jr. Cumming, Ga.

Emory University School of Law (1961) Admitted 1960 Died March 2008

Noah N. Langdale Jr.

Atlanta, Ga. Harvard Law School (1948) Admitted 1951 Died February 2008

James King Lange Watkinsville, Ga. Mercer University Walter F. George School of Law (1976) Admitted 1976 Died February 2008

Jean W. Levy Atlanta, Ga. Woodrow Wilson College of Law (1958) Admitted 1959 Died December 2007 Lou Litchfield Medina, Ohio University of Georgia School of Law (1978) Admitted 1978 Died April 2008

Silvio L. Mascotti Roswell, Ga. Atlanta Law School (1948) Admitted 1947 Died March 2008

Mary Jo Massey

Atlanta, Ga. Woodrow Wilson College of Law (1980) Admitted 1980 Died February 2008

James B. McGregor Daphne, Ala. Woodrow Wilson College of Law (1952) Admitted 1953 Died February 2008

Archibald L. Morris

Savannah, Ga. University of Georgia School of Law (1949) Admitted 1949 Died January 2008

John E. Owens Sugar Land, Texas

University of Georgia School of Law (1951) Admitted (1950) Died December 2007

Clarence Peeler Jr. Decatur, Ga. Emory University School of Law (1950) Admitted 1945 Died February 2008

Howard J. Perdue

Atlanta, Ga. John Marshall Law School (1949) Admitted 1949 Died May 2008

John G. Puglise

Grayson, Ga. Woodrow Wilson College of Law (1977) Admitted 1977 Died April 2008

Howell Cobb Ravan

Marietta, Ga. Mercer University Walter F. George School of Law (1951) Admitted 1950 Died March 2008

Robert C. Sacks

Molino, Fla. John Marshall School of Law (1976) Admitted 1976 Died January 2008

Joseph B. Testa

Pflugerville, Texas Atlanta Law School (1980) Admitted 1987 Died March 2008

Kiliaen V. R. Townsend

Atlanta, Ga. University of Virginia School of Law (1942) Admitted 1946 Died March 2008

W. McMillan Walker

Eastman, Ga. Mercer University Walter F. George School of Law (1977) Admitted 1977 Died January 2008



Hon. Frank S. Cheatham Jr. died in March 2008. He was born in Savannah in January 1924. He graduated from Savannah

High School in June 1942, Armstrong Junior College in June 1944, and the University of Georgia in June 1948, where he obtained an undergraduate A.B. degree and a graduate LL.B. law degree. He was the president of the freshman and sophomore classes at Armstrong and the senior class of 1946, at the University of Georgia. He was a member of the varsity debate team and various leadership societies and clubs at Georgia as well as Sigma Alpha Epsilon social fraternity.

A lawyer by profession, he became involved in several areas of public service that have provided major benefits to the community and the state. He was elected to the state legislature in 1953, as a candidate of the Citizens Committee, a reform political party, and had a leading role in the passing of a charter converting Savannah to the more efficient council-manager form of government. Within two years the city went from near bankruptcy to the well-run solvent government of today. While in the legislature, he chaired a study committee that resulted in the Board of Regents reversing its policy against junior colleges, which resulted immediately in Armstrong, Augusta and Columbus Junior Colleges being admitted to the University System. Today there are 14 community junior colleges in Georgia plus six former junior colleges that have been elevated to four-year universities, including Armstrong.

While in the legislature he led a successful effort to remove \$50 million from the appropriations bill which the governor had planned to use for political purposes. He was also chairman of the Appropriations Committee during his last two years in the legislature.

After his legislative career, he became heavily involved in the Savannah YMCA. He was president in the 1960s, when the South was changing from a segregated to an integrated society. He led the board of directors in taking a major step forward when they closed an all male YMCA in an antiquated 1912 building and constructed an integrated family YMCA in a new state of the art building on Habersham Street, which was the forerunner of the YMCAs presently operating in Chatham and surrounding counties.

After practicing law for 24 years in associations and partnerships with Luhr Beckmann, Mallie Exley, Joseph Bergen, Charles Sparkman and Douglas, McWhorter & Adams, he was appointed in March 1972, by recently elected Gov. Jimmy Carter, to fill a vacancy on the Chatham County Superior Court, although he had supported the governor's opponent, Carl Sanders, a law school classmate. After serving 21 years, he retired as chief judge to senior status in August 1993. He resigned from senior status in May 2006.

In 1971, he was selected by the state Jaycees as The Most Outstanding Young Man In Georgia. He was past president of the Kiwanis Club, The German Heritage Society, The Savannah Bar Association, The Council of Superior Court Judges of Georgia, and an honorary member of the Rotary Club of Savannah. The Savannah Bar Association in 2005 named the Professionalism Award, its most prestigious award, after him.

Jean William Levy of Atlanta died in December 2007. Levy was born in Evans, Ga., in February 1924. He served in the U.S. Army in World War II and was wounded in action in France in December 1944. Never fully recovering from his wounds, Levy became a disabled veteran and a resident of the Veteran's Hospital in Atlanta for many months. He was also an outpatient for many years.

Levy received a Bachelor of Arts in Industrial Engineering from The Georgia Institute of Technology in June 1948. He earned his LL.B. from the Woodrow Wilson College of Law in 1958 and was admitted to the State Bar of Georgia in June 1959.

Levy practiced law in midtown Atlanta from 1959 until his death. He maintained a very active general civil law practice for 48 years. Levy handled the estates of disabled veterans, as guardian of their property and person, and related matters for some 45 years. For most of those years, he was a sole practitioner.

CLE Calendar

June-August

JUN 5	ICLE Legal Assistance for America's Heroes Amelia Island, Fla. See www.iclega.org for locations 3 CLE Hours	JUN 6	NBI, Inc. Estate Administration Procedure – Why Each Step is Important Atlanta, Ga. 6.7 CLE Hours
JUN 5	ICLE <i>Lobbying Law</i> Amelia Island, Fla. See www.iclega.org for locations 3 CLE Hours	JUN 6	ICLE <i>E-Lawyering Practice Management</i> <i>in 2008</i> Amelia Island, Fla. See www.iclega.org for locations 3 CLE Hours
JUN 5	ICLE War Stories IX Plus Proposed Georgia Evidence Rules Amelia Island, Fla. 3 CLE Hours	JUN 7-13	Prosecuting Attorneys' Council of Georgia 2008 Basic Litigation Course Forsyth, Ga. 26.3 CLE Hours
JUN 5	ICLE <i>Georgia Committee On Civil Justice</i> Amelia Island, Fla. See www.iclega.org for locations 3 CLE Hours	9 JUN	Lexis-Nexis <i>Billing Matters Boot Camp</i> Atlanta, Ga. 6.6 CLE Hours
JUN 5	Lorman Education Services <i>The 8 Greatest Estate Planning</i> <i>Techniques</i> Atlanta, Ga. 6.7 CLE Hours	JUN 11	Lorman Education Services Commercial and Real Estate Loan Documents – More Than Just Papers Atlanta, Ga. 6 CLE Hours
JUN 5	ICLE So You Want to be Corporate Counsel: A Young Lawyer's Guide to Going In-House Amelia Island, Fla.	JUN 12-13	Law Seminars International <i>Energy in the Southeast</i> Atlanta, Ga. 11.8 CLE Hours
JUN 6	See www.iclega.org for locations 3 CLE Hours ICLE	JUN12	Lorman Education Services <i>Construction Lien Law</i> Savannah, Ga. 6.7 CLE Hours
-	Prompting Professionalism & Civility in Adversarial Proceeding Amelia Island, Fla. See www.iclega.org for locations 1 CLE Hours	JUN 12-15	Georgia Defense Lawyers Association 2008 Annual Meeting Amelia Island, Fla. 6 CLE Hours

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

CLE Calendar



JUN 17	Lorman Education Services <i>Document Retention and Destruction</i> Atlanta, Ga. 6.7 CLE Hours	JUN 27	Lorman Education Services What To Do When Construction Projects Go Bad Atlanta, Ga. 6.7 CLE Hours
JUN 18	NBI, Inc. Practical Guide to Zoning and Land Use Law Atlanta, Ga. 6 CLE Hours	JUN 27	Lorman Education Services <i>Real Estate Development From</i> <i>Beginning to End</i> Savannah, Ga. 6 CLE Hours
JUN 19-22	ICLE Georgia Trial Skills Clinic Athens, Ga. UGA Law School 6 CLE Hours	JUL 8	Lorman Education Services <i>Medical Records Law</i> Albany, Ga. 6 CLE Hours
JUN 19-22	ICLE Georgia Trial Skills Clinic Athens, Ga. See www.iclega.org for locations 24 CLE Hours	JUL 17	Lorman Education Services <i>Taxation of Real Estate Entities</i> – <i>Basic to Advanced</i> Atlanta, Ga. 7 CLE Hours
JUN 20	Lorman Education Services Your 401k Plan – What You Can't See is Costing You Plenty Atlanta, Ga. 6.7 CLE Hours	JUL 17-19	ICLE 2008 Fiduciary Law Institute St. Simons Island, Ga. See www.iclega.org for location 12 CLE Hours
JUN 20-21	ICLE Southeastern Admiralty Law Institute Atlanta, Ga. See www.iclega.org for locations 10 CLE Hours	JUL 22	Lorman Education Services <i>Affordable Housing</i> Atlanta, Ga. 6 CLE Hours
JUN 23	NBI, Inc. <i>Limited Liability Compliance</i> Atlanta, Ga. 6.7 CLE Hours	JUL 23	Lorman Education Services <i>Managing Construction Projects</i> Athens, Ga. 6 CLE Hours
JUN 27-28	ICLE Southeastern Admiralty Law Institute (SEALI) Atlanta, Ga. See www.iclega.org for location 9 CLE Hours	JUL 24	Lorman Education Services Weathering the Storm 2008 – Issues Facing Contractors in the Current Economic and Regulatory Environment Macon, Ga. 6.7 CLE Hours

CLE Calendar

June-August

JUL 24	Lorman Education Services What You Need to Know About Public Records and Open Meetings Atlanta, Ga. 6 CLE Hours	AUG 22	ICLE <i>Contract Litigation</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
JUL 29	Lorman Education Services <i>Construction Lien Law</i> Atlanta, Ga. 6.7 CLE Hours	AUG 22	ICLE <i>Nuts & Bolts of Family Law</i> Savannah, Ga. See www.iclega.org for location 6 CLE Hours
AUG 1-2	ICLE Environmental Law Summer Seminar Hilton Head, S.C. See www.iclega.org for location 8 CLE Hours	AUG 22	ICLE <i>Eminent Domain</i> Atlanta, Ga. See www.iclega.org for location 3 CLE Hours
AUG 4	NBI, Inc. Drafting Commercial Real Estate Leases Atlanta, Ga. 6 CLE Hours	AUG 22-26	Commission on Continuing Lawyer Competency Homeland Security Federal Law – Police Legal Advisor Training Program
AUG 7-8	ICLE Real Property Law Institute Video Replay Atlanta, Ga.	AUG 26	Atlanta, Ga. 23 CLE Hours NBI, Inc.
AUG 7-14	See www.iclega.org for location 12 CLE Hours		Rules and Procedures for Federal Court Success Atlanta, Ga.
AUG /-14	NBI, Inc. Resolving Problems and Disputes on Construction Projects Savannah, Ga. 6 CLE Hours	AUG 29	6 CLE Hours ICLE <i>Selected Video Replays (Tentative)</i> Atlanta, Ga. See www.iclega.org for location
AUG 14	NBI, Inc. Top 10 Estate Planning Techniques	AUG 29	6 CLE Hours
	Atlanta, Ga. 6 CLE Hours	AUG 25	<i>Common Carrier Liability</i> Atlanta, Ga.
AUG 19	NBI, Inc. The Legalities of Doing Business in China		See www.iclega.org for location 6 CLE Hours
	Atlanta, Ga. 6 CLE Hours	AUG 29-30	ICLE <i>Urgent Legal Matters</i> St. Simons Island, Ga. See www.iclega.org for location 12 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.



State Bar of Georgia Committee on Professionalism



Chief Justice's Commission on Professionalism

SIGN UP NOW FOR THE 2008 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM Two (2.0) hours of CLE credit, including 1.0 hour of Ethics and 1.0 hour of Professionalism

Demonstrating that professionalism is the hallmark of the practice of law, the Law School Orientations have become a central feature of the orientation process for entering students at each of the state's law schools over the past 16 years. The Professionalism Committee is now seeking lawyers and judges to volunteer to return to your alma maters or to any of the schools to help give back part of what the profession has given you by dedicating a half day of your time this August. You will be paired with a co-leader and will lead students in a discussion of hypothetical professionalism and ethics issues. Minimal preparation is necessary for the leaders. Review the provided hypos, which include annotations and suggested questions, and arrive at the school 15 minutes prior to the program. Pair up with a friend or classmate to co-lead a group (Please note, if you are both recent graduates we will pair you with a more experienced co-leader).

Please consider participation in this project and encourage your colleagues to volunteer. You may respond by completing the form below or calling the Chief Justice's Commission on Professionalism at (404) 225-5040; fax: (404) 225-5041. Thank you.

ATTORNEY VOLUNTEER FORM 2008 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM Full Name (Mr./Ms./Judge)				
-	•			
Address: (where we	will send your group	leader materials via	0525):	
 Telephone:Fax:				
Email Address:				
Area(s) of Practice:				
	-			
	(Ple	ase check appropria [.]	te box)	
LAW SCHOOL	DATE	TIME	RECEPTION/LUNCH	SPEAKER
Emory*	Fri., August 22	*Emory does not need anymore volunteers* TBD		TBD
🗆 Georgia State	Tues., August 12	3:30-5:30 p.m.	5:30-6:30 p.m.	TBD
🗆 John Marshall	Sat., August 16	9:00-11:30 a.m.	11:30 - 12:30	TBD
🗆 Mercer	Fri., August 15	1:30-3:30 p.m.	3:30-4:30 p.m.	TBD
🗆 UGA	Fri., August 15	2:30-4:30 p.m.	4:30-5:30 p.m.	Hon. Richard W. Story
Please return to: State Bar Committee on Professionalism; Attn: Nneka Harris-Daniel• Suite 620				
104 Marietta Street, N.W. • Atlanta, Georgia 30303 • ph: (404) 225-5040				
fax (404) 225-5041 • email: Nneka@cjcpga.org. Thank You!				

Notice of Modification of Formal Advisory Opinion No. 05-8

Supreme Court Approves Modification of Formal Advisory Opinion No. 05-8 Pursuant to Supreme Court Order Issued April 11, 2008 Case No. S06U0800

Members of the State Bar of Georgia are NOTIFIED that Formal Advisory Opinion No. 05-8 has been modified to correct an error, pursuant to a Supreme Court Order issued on April 11, 2008, which states verbatim:

"Pursuant to Bar Rule 4-403, this Court approved Formal Advisory Opinion No. 05-8 as presented by the State Bar of Georgia on April 4, 2006. In its last sentence, however, this opinion erroneously indicates that a violation of Bar Rule 1.8(h) could result in disbarment. In fact, the maximum penalty for a violation of Bar Rule 1.8(h) is a public reprimand. To correct this error, the State Bar asked this Court of approve a modified version of Formal Advisory Opinion No. 05-8 in which this error has been corrected. We grant State Bar's request and with this order hereby approve the modified version of Formal Advisory Opinion No. 05-8."

Publication of Modified Formal Advisory Opinion No. 05-8

STATE BAR OF GEORGIA

FORMAL ADVISORY OPINION NO. 05-8 Approved And Issued On April 4, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 96-2 Supreme Court Docket No. S06U0800 (Modified to Correct Error Pursuant to Supreme Court Order on April 11, 2008)

QUESTION PRESENTED:

The question presented is whether an attorney may stamp client correspondence with a notice stating that the client has a particular period of time to notify the lawyer if he/she is dissatisfied with the lawyer and that if the client did not notify the lawyer of his/her dissatisfaction within that period of time, the client would waive any claim for malpractice.

SUMMARY ANSWER:

A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. Therefore, in the absence of independent representation of the client, the lawyer should not condition the representation of a client upon the waiver of any claim for malpractice and should not attempt to cause the waiver of any claim for malpractice by the inclusion of language amounting to such a waiver in correspondence with a client.

OPINION:

A member of the Investigative Panel of the State Disciplinary Board has brought to the attention of the Formal Advisory Opinion Board a practice by lawyers of adding the following language (by rubber stamp) to correspondence with clients:

Important Message

If you disagree with anything set forth in this communication or the way I have represented you to date, please notify me by certified mail at the address set forth herein immediately. If I do not hear from you, it shall be an acknowledgment by you per our agreement that you are satisfied with my representation of you to date and you agree with my statements in this communication.

The intended effect of this "message" is to create a short period of time within which the client must decide whether he or she is satisfied with the representation, and if not satisfied, the client must notify the lawyer "immediately." If such notification is not provided "immediately," the client will have acknowledged an "agreement" that the client is satisfied with the representation.

It is apparent from reviewing this "message" that the lawyer is attempting to exonerate himself or herself from any claim of malpractice or to cause a waiver of any claim for malpractice by the client against the lawyer. By attempting to limit his or her liability for malpractice or to cause a waiver of any claim for malpractice, the lawyer is putting himself or herself into an adversarial relationship with the client. While providing advice to the client on the one hand, the lawyer is attempting to limit or excuse his or her liability for claims of malpractice resulting from the provision of such advice on the other hand. Such conduct places the lawyer's personal interests ahead of the interests of the client. This conduct is expressly forbidden by Rule 1.8(h), which provides that "A lawyer shall not make an

Unlock your

Potential

agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement."

In summary, the use of a message or notice, such as described herein, is a violation of Rule 1.8(h), and subjects an attorney to discipline, for which the maximum penalty is a public reprimand.

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

About the Clearinghouse

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

Let CAP Lend a Helping Hand!

What is the Consumer Assistance Program?

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

Does CAP assist attorneys as well as consumers?

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

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

What doesn't CAP do?

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

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

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

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

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

Classified Resources



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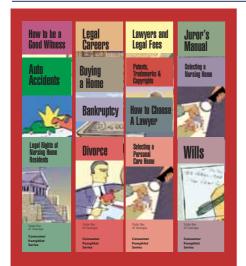
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Consumer Pamphlet Series



The State Bar of Georgia's Consumer Pamphlet Series is available at cost to Bar members, non-Bar members and organizations. Pamphlets are priced at cost plus tax and shipping. Questions? Call 404-527-8792.

The following pamphlets are available:

Auto Accidents
Bankruptcy
Buying a Home
Divorce How to Be a Good Witness How to
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Juror's Manual Lawyers and
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Legal Rights of Nursing
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and Copyrights
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Robert L. Kushner, Jr. MD, Board Certified in Radiology and Bariatrics. Licensed in NC, GA, FL, AL, TN and CO. Available for medical-legal consultation. Has been in the practice of Medicine for 40 years, with a past history of medical-legal consultation. Contact rkushner@bellsouth.net. **EXPERT WITNESS/FORENSIC ACCOUNTING:** M. Martin Mercer is an Attorney, CPA, Certified Fraud Examiner (CFE), and Forensic CPA (FCPA). Mr. Mercer leads the B2B CFO[®] Litigation Services Practice which offers over 80 partners with, on average, over 25 years of experience in virtually every area of finance, accounting and business to litigating attorneys in the areas of forensic accounting, financial fraud investigations, litigation support and expert witness services. Contact: M. Martin Mercer: (303) 621-5825; Email: mmercer@b2bcfo.com; www.mmartinmercer.com.

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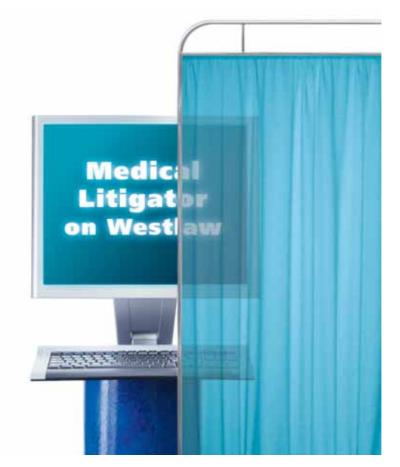




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