



Georgia Bar Journal

August 2006 ■ Volume 12 ■ Number 1

Jay Cook
44th State Bar President

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Photo by Hollis Ellison

Pictured on the cover are Jay Cook (middle) and his family at the arches at the University of Georgia. (Clockwise from the top) Jeff Wallace (son-in-law), Jay Wright Cook (son), Lea Anne Wallace (daughter), Anne Keese Wallace (granddaughter), Wright Wallace (grandson) and Frankie Cook (wife).

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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Caren Henderson, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; phone: (404) 527-8736; caren@gabar.org.

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Aero Toy Store, LLC v. Grieves

An Update on Personal Jurisdiction in Georgia Over Claims Arising from Business Conducted Over the Internet


by Steven W. Hardy

In its June 2006 issue, the *Georgia Bar Journal* published an article titled “Personal Jurisdiction in Georgia Over Claims Arising from Business Conducted Over the Internet”¹ (the “Article”). The Article discussed the exercise of personal jurisdiction in cases involving e-business in light of the Supreme Court of Georgia’s recent holding in *Innovative Clinical Consulting Services LLC v. First National Bank*.² After the June issue went to press, however, the Court of Appeals of Georgia rendered an opinion in *Aero Toy Store, LLC v. Grieves*³ that addressed many of the issues discussed in the Article.

Aero Toy Store involved the purchase by a Georgia resident of an automobile from a Florida seller using an eBay motor auction website. The buyer and seller exchanged several emails about the car and the seller faxed to the buyer a purchase contract, which the buyer signed and faxed back. The buyer mailed the seller a check, and the seller delivered the car to the buyer in Georgia. The buyer later sued for breach of contract and fraud based upon several alleged misrepresentations made by the seller. The seller moved to dismiss for lack of personal jurisdiction and the trial court denied the motion.

The Court of Appeals affirmed the trial court’s order denying the seller’s motion to dismiss. The Court reviewed the cases applying the Georgia Long Arm

Statute⁴ to claims arising from the transaction of business in the state, culminating with the opinion in *Innovative Clinical*, and held that paragraph (1) of the Long Arm Statute does not impose any requirements on persons transacting business within the state other than those required by due process. The Court then adopted the test from *Zippo Manufacturing Co. v. Zippo Dot Com*⁵ (also discussed in the Article) and held that, through its interactive website, the seller reached out to and did business with persons in Georgia, and thus its contacts were sufficient to establish minimum contacts with the state in a case involving the exercise of specific jurisdiction.

The Court’s approach to these issues is consistent with the approach taken in other jurisdictions and confirms the conclusion of the Article that, in cases in Georgia arising from the transaction of business over the Internet, a plaintiff need only establish that a non-resident defendant’s activities satisfy minimum contacts. 



Steven W. Hardy specializes in intellectual property litigation and business litigation at Friend, Hudak & Harris, LLP, in Atlanta. He graduated from Brigham Young University (B.A. 1987) and earned his law degree from the University of California at Berkeley (Boalt Hall) in 1990. He may be reached at 770-399-9500 or shardy@fh2.co.

Endnotes

1. Steven W. Hardy, *Personal Jurisdiction in Georgia Over Claims Arising from Business Conducted Over the Internet*, GA BAR J., June 2006, at 20.
2. 279 Ga. 672, 620 S.E.2d 352 (2005).
3. No. A06A0741, 2006 Ga. App. LEXIS 626 (May 23, 2006).
4. See O.C.G.A. § 9-10-91 (2005).
5. 952 F. Supp. 1119 (W.D. Pa. 1997).

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TOTAL PRACTICE SOLUTIONS
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by Jay Cook



Photo by Hollis Ellison

Restoring the Public Value of 'Justice For All'

Many years ago, U.S. Supreme Court Justice George Sutherland wrote: "A little water, trickling here and there through a dam, is a small matter in itself; but it may be a sinister menace to the security of the dam, which those living in the valley below will do well to heed."

The "dam" Justice Sutherland referred to is the First Amendment. The "trickling water" is the indirect threat to Freedom of the Press that he perceived in the dissenting opinion he wrote in the 1937 case *Associated Press v. the National Labor Relations Board*.

This year, as president of the State Bar of Georgia, I will focus my energy on repairing a more menacing rupture in the dam protecting our treasured American liberties — *the escalating attacks from powerful special interest groups on the judiciary and our system of justice*.

Thus far, these attacks have mostly been carried out below the water level of public perception. But, thank-

fully, they are beginning to attract backlash at the highest levels. As Bar Past President Robert Ingram reported, U.S. Supreme Court Justice Clarence Thomas recently expressed his concerns about these attacks to the Bar's Executive Committee. Justice Thomas particularly decried the pervasive negativity that's been manifesting itself through increasing public attacks on judges — both violent and political.

Justice Antonin Scalia recently rebuked Congress for having gone too far in trying to prevent the Supreme Court from using foreign law in its constitutional rulings. "It's none of your business," he told the members of the overreaching legislative branch. "I'm darned if I think it's up to Congress to direct the court how to make its decisions."

In May, while addressing law school graduates at William and Mary College, Sandra Day O'Connor said: "Judicial independence does not happen all by itself. It's tremendously hard to create, and it's easier to destroy than most people imagine. We must be vigilant against those who would retaliate against judges for specific judicial decisions, or who seek to undermine the ability of the courts to play their constitutionally ordained roles."

"This year, as president of the State Bar of Georgia, I will focus my energy on repairing a more menacing rupture in the dam protecting our treasured American liberties."

Unfortunately, the damage these attacks have done to public confidence in our judicial system cannot be repaired overnight.

The appalling failure of civic education in this country to provide Americans with basic knowledge about our system of government was confirmed recently by Michael Greco, president of the American Bar Association. Greco, speaking to the Foundations of Freedom Commission committee leaders in June, summarized for us the findings of an ABA public survey: 48 percent of respondents could not define “separation of powers”; 44 percent could not name the three branches of government; and 38 percent could not identify the duties of judges.

Last year, independent research to explore Georgians’ current beliefs about the condition of the justice system was conducted on behalf of the Georgia Civil Justice Foundation. Some of the key findings were eye-opening: the respondents believe, for example, that money buys a better result in our courtrooms—something they see as a fundamental failure of our justice system. Not surprisingly, they mostly repeated erroneous, contrived abstractions about our courts that collapsed when applied to actualities.

I don’t have to tell you that as members of the Bar we are sworn to defend the U.S. Constitution. In fact, immediately after being sworn in as president, I asked those assembled at the annual meeting at Hilton Head Island to recite with me the Attorney’s Oath. It was not merely for my own edification (or to exercise my new presidential prerogatives) that I made this request. I did so to make a point: our professional oath extends our responsibility beyond the ethical and professional practice of law, beyond superb service to our clients, beyond even the walls of the courthouse.

I believe that as members of the Bar we are bound by our oath to fulfill this state and this nation’s

constitutional promise of “justice for all” to every citizen.

I believe the American justice system, while imperfect, remains the envy of the world. I believe “justice for all” is a precious American legacy, hard-won for us by our founding fathers. I believe “justice for all” is the guardian of democratic order and individual liberties. I believe “justice for all” promises equal protection under the law and equal rights for all citizens. I believe “justice for all” protects the well being of all Americans by promoting safer products, higher standards, and better practices.

Moreover, I believe “justice for all” means revering that founding document, which demands three separate branches of government to protect our democratic ideals from corruption, secrecy, favoritism, and domination. And I believe “justice for all” means honoring the independence of all three branches of government, including the judiciary, so that each can fulfill its sacred obligation in the separation of powers.

As defenders of the Constitution and officers of the court, it is vital that we recommit, refocus, recalibrate, and reinvigorate the roles we play in redeeming the image of our justice system. We must work harder to restore a healthy, balanced vision of the American justice system and the paramount role it plays in preserving and protecting a democratic society.

Thanks to my predecessor, Robert Ingram, the Bar already has established a framework to fulfill this essential goal: the Foundations of Freedom Commission. Through the continued communications and education initiatives of the Commission, we have the opportunity to reframe public discourse about the legal system to trigger a positive, values-based conversation about American justice.

This conversation must take place on higher ground, under a standard of American values, and through a clear, truthful message that resonates deeply with our citizens.

This conversation must convey the intrinsic value of the American justice system. It must convey how this value serves society and why this value is worth defending, preserving, and restoring. It must make clear why the justice system should matter to ordinary American citizens. And it must communicate how ordinary citizens can safeguard the justice system against efforts to dismantle it.

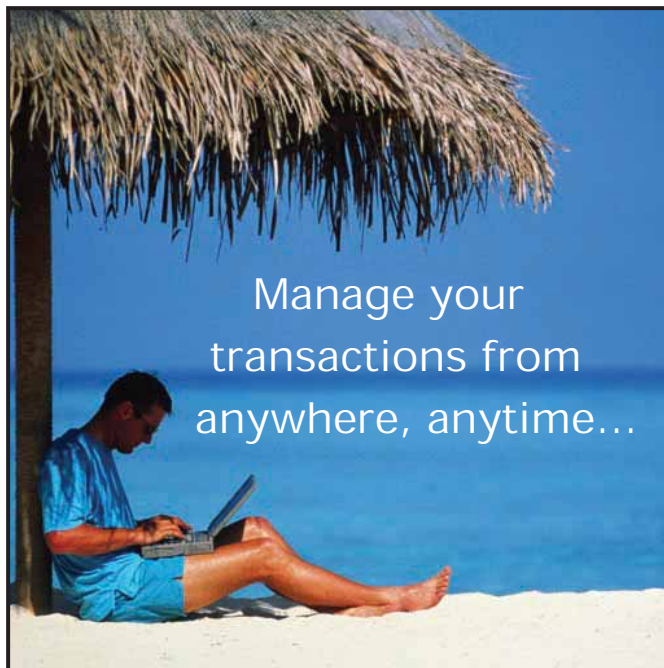
This conversation must begin right this minute and continue far into the future!

I am pleased to tell you that your Executive Committee has made the necessary commitment to sparking and sustaining this values-based conversation about American justice. We understand that we cannot win back public confidence in one, two, or five years. Public education must be a permanent fixture in our strategy

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for safeguarding the judiciary's important role in preserving the American way of life.

In the coming year, we will extend the reach of this message into schools, jury boxes, community and civic organizations, municipal governments, and hometown newspapers.

The success of our outreach efforts will depend greatly on effective communication among our members. We need the cooperation and commitment of local bar associations, judicial councils, law firms, and individual lawyers and judges who make up our membership of more than 37,000 dedicated public servants.

Whenever there is good news in your hometown about you, one of your fellow lawyers, or the local bar association, I want to know about it. In turn, I will write a letter to the editor of your local newspaper, commending this achievement.

Whenever you or someone else from your community receives an award from the Bar, your hometown newspaper will receive a press release announcing this recognition.


Whenever a school group from your hometown takes advantage of the educational enrichment opportunities that exist at the Bar Center in Atlanta, again, your local newspaper will hear about it.

We will establish a program of "eggs and issues" meetings with local elected officials, community leaders, local news media and especially state legislators in your hometowns. For far too long, these groups have heard from everyone but the legal community. We're going to change that, and we need your help.

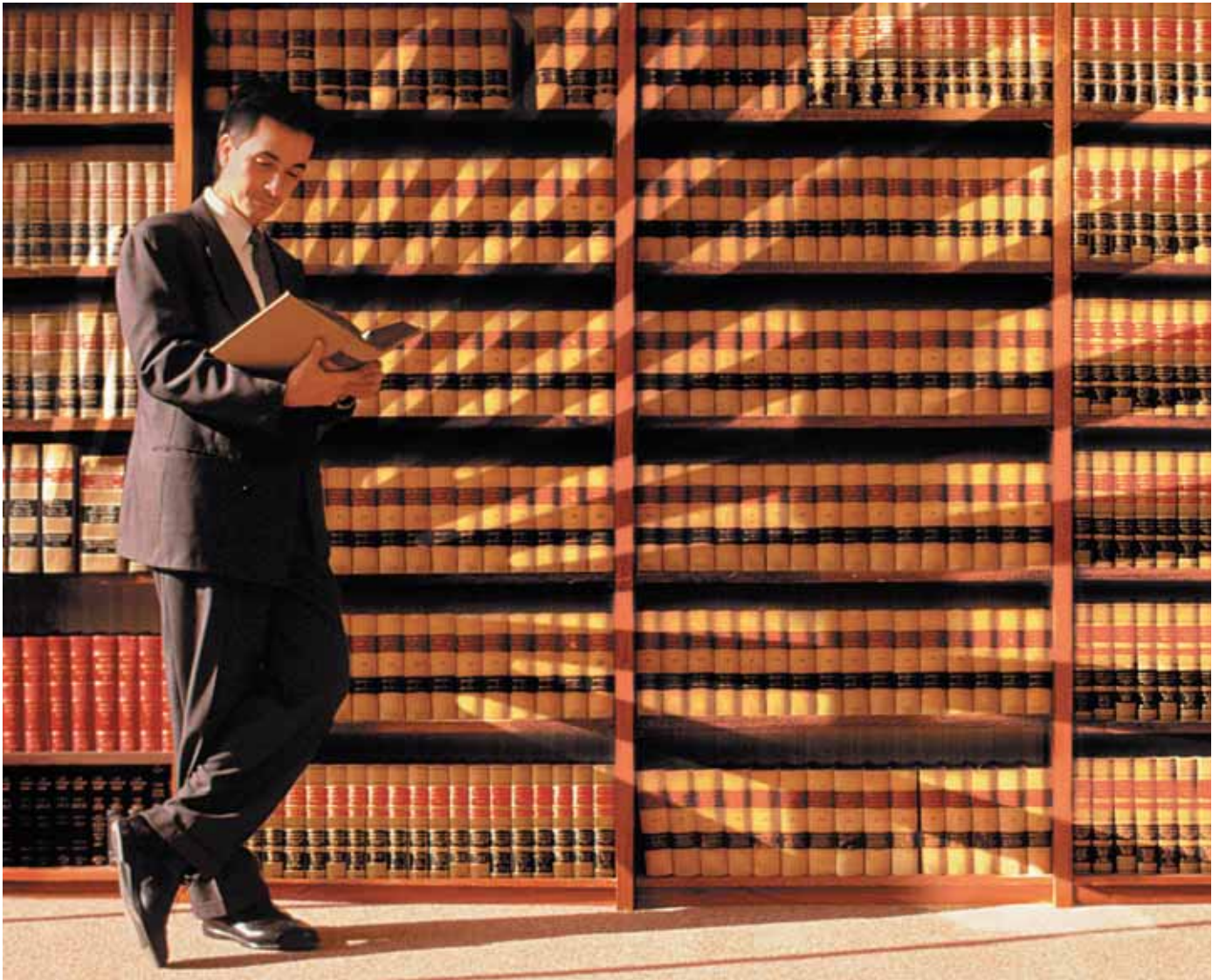
Finally, whenever an attack on our justice system is launched, there will be an appropriate public response from the Bar. We have a system in place to coordinate the type of response, the individual who will make the response and the means of delivering the response in a timely manner.

While I have emphasized our communications and education initiatives for 2006-07 in this article, I want you to know that this is not the Bar's only major program for this year. We also intend to address the issues of judicial compensation, the funding of Georgia Legal Services, legislation, lawyer advertising, Casemaker, consumer assistance and many other priorities of the Bar leadership. You will be provided the details of these programs in future articles, for they too are crucial to the protecting "justice for all."

I'd like to close with another quote from Justice Sutherland: "For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

As your new president, as a lawyer, as a Georgian, and as an American citizen, I leave you with this: *If there is yet time, let us not waste another moment of it!* 

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



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by Cliff Brashier



Every Lawyer Can Make a Difference

In this issue of the *Georgia Bar Journal*, Bar President Jay Cook discusses the public's lack of education about and confidence in our judicial system. On a similar note, YLD President John Pope

addresses the issue of the negative public perception of lawyers. In some ways, I believe these two issues are tied together. The image of lawyers is not

just a matter of professional or personal pride. It affects the public's belief in our justice system, and ultimately, their faith in our democracy.

The public's confidence in our system of justice is rooted in the perception of fairness and equality. Our profession is entrusted with the keys to the judicial sys-

tem with the premise that we lawyers remain vigilant of our duty to serve the public with integrity. The rule of law is fundamental to the operation of our society, yet there are perceptions that lawyers are disconnected from the public they serve. Findings from a 2002 American Bar Association study about the public perception of lawyers indicate that personal experiences

with lawyers substantiate the positive beliefs that lawyers are knowledgeable about the law, and can help clients navigate through difficult situations. The majority of consumers who have hired a lawyer were satisfied with the service their lawyer provided.

So, given this information we know that generally when the pub-

lic interacts with lawyers they tend to form positive impressions. This is borne out by the same study that found public confidence in the courts, lawyers and institutions generally improved in the wake of Sept. 11, 2001. For example, a representative sample in April 2001 found that only 24 percent of the public had confidence in the U.S. justice system in general. That number rose to 39 percent in January 2002.

"Working for people with limited or no income, for marginalized and unpopular clients, for charitable organizations and for very personal and private causes you hold dear, is work that cannot be assailed."

This increase is due to the fact that during those months after the terrorist attacks, lawyers were out in front, providing free legal help to thousands of victims and their families and military personnel. They were advising our leaders and speaking out in their communities for tolerance and understanding.

These findings would indicate that positive interactions with lawyers lead to increased confidence in the justice system. But we can do better than 39 percent. We know that our profession provides the valuable service of guiding the public through the judicial system and, in turn, the judicial system cannot function without the availability of counsel to ensure that all people have access to the legal system.

Access to legal representation and information are key components to educating the public. I believe that when people feel they do not have access to legal representation or are uninformed, their confidence in our justice system is significantly diminished. You as an individual and the State Bar as an organization can do much to improve upon 39 percent.

Among the many services our profession provides in the name of the public good, pro bono work and educational outreach are perhaps our best tools to address the lack of knowledge and negative perceptions often associated with our profession and the judicial system.

For one, several opportunities for pro bono work exist through the State Bar's Pro Bono Project. Working with Georgia Legal Services, the Atlanta Legal Aid Society and other similar organizations, you can help fill the gap where legal representation is lacking. Low-income and moderate income Georgians by virtue of their financial means often do not seek representation. Many are not even aware of their legal rights. Because this population is underserved, they also provide the greatest


opportunity for lawyers to make an impact. They are the least likely to understand the judicial system, yet they have the greatest need for representation. Not only do we have a moral obligation to ensure fair and equal representation for all, but also pro bono service helps restore the public's faith in the system they often believe is not designed for them.

In addition, a new initiative at the State Bar will serve to reinforce and support your individual efforts. Through the Foundations of Freedom initiative, Bar President Jay Cook and the State Bar are already working to stimulate public discourse about the legal system, in an effort to re-invigorate the public's interest in defending, preserving and restoring the American justice system. The primary thrust of this initiative is education and outreach, including educational opportunities for school groups at the Bar Center; radio and television public service announcements; an educational video for jurors; and speeches to civic and other public groups. These are just some of the activities the Foundations of Freedom initiative will promote.

Lawyers cannot avoid wading into difficult and controversial matters, sometimes even matters of life and death, which may lead to unmerited and negative publicity. But lawyers knowingly put themselves in these situations to ensure the rule of law prevails and the system works as intended. But you already know that.

If you participate regularly in pro bono work, I applaud your efforts. Working for people with limited or no income, for marginalized and unpopular clients, for charitable organizations and for very personal and private causes you hold dear, is work that cannot be assailed. For those of you who have not yet experienced the personal satisfaction garnered by giving back to your profession, I would encourage you to get involved. Additionally, we will rely on you to use the important messages imparted by the Foundations of Freedom initiative wherever and whenever possible. It can be as simple as explaining to a client or friend the importance of the rule of law in a free society. Discussing emotional and controversial cases can offset much of the negative publicity that usually accompanies them. Reinforcing these important messages and getting involved in your community are important mechanisms for promoting public understanding of our profession and confidence in the judicial system.

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).

For more information about pro bono opportunities around the state, please contact Mike Monahan at 404-527-8762 or mike@gabar.org. 

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by Jonathan A. Pope

YLD Gets Set for a New Bar Year

It is with great pleasure and enthusiasm that I deliver my first column as the newly elected Young Lawyers Division president during the commencement of the YLD's 60th year. I want to talk to you today about where YLD has been as an organization, but also, and more importantly, where we are going.

Many of you may think of the YLD as a social organization or a networking group for young lawyers. But the YLD is much more than that—we are 8,600 young lawyers in Georgia charged with the obligation of providing community service on behalf of the State Bar of Georgia. We are the foot soldiers out in the community working to improve the image of all lawyers throughout Georgia. The bottom line is that when the YLD is successful, the entire Bar benefits. And that is just one reason that it is so important for the YLD to have support within the Bar.

The image of the YLD goes hand-in-hand with a more global problem for lawyers—and that is public perception. The public perception of lawyers is at an all time low.

Among our profession, we need to support one another and that is where I am asking for your help in shaping the way other members of the Bar regard the YLD.

I want to provide you with a brief overview of the many good things that are being done day-by-day, year-by-year, by the YLD. I hope this knowledge will help garner your support and assist me in improving the organization's image, and the image of lawyers generally.

As an organization, the YLD has had tremendous success in accomplishing its mission of providing community service on behalf of the Bar. From providing disaster relief to helping educate elementary and high school students on the justice system, the YLD has a wide range of projects that help improve the image of lawyers all over Georgia. In fact, these programs have helped the YLD achieve national recognition. Over the past 10 years, the YLD has consistently been recognized as one of the top three young lawyer divisions by the American Bar Association. That recognition is even more impressive when you com-

pare our size and budget to our competitors like the State Bars of Texas and California. We have been doing good things for the Bar and the community and we will continue that work during my term as president.

“From providing disaster relief to helping educate elementary and high school students on the justice system, the YLD has a wide range of projects that help improve the image of lawyers all over Georgia.”

I look forward to moving the YLD forward in its goal of providing community service to the public on behalf of the Bar. I have three primary goals for the YLD this year. My first goal is membership.

I became involved in YLD in the summer of 1998 after the annual meeting in Hilton Head Island. I worked on special committees and programs through the YLD's Executive Council and the Board of Directors. In 2001, I worked on a membership initiative. That may surprise some of you based on the fact that every member of the Bar under the age of 36 or in their first five years of practice is automatically a member. But it was a challenge to get active members. We had competition from other bar and law school alumni organizations, most notably the Atlanta Bar Association. Our membership was lacking in the Atlanta area—right where the Bar is located. Our membership drive brought in many young lawyers from big firms and kept them actively involved. We are only as strong as our members so we need to increase participation and encourage members to stay active. We can do that by helping them reach out to the community in a valuable and meaningful way. The fact remains that we need to grow our membership among the ranks of young lawyers in Metro Atlanta and South Georgia. To that end, I will work with the director of the YLD to develop a plan to increase and sustain our membership among young lawyers in these areas.

In addition to recruiting and maintaining active members, my second goal is to streamline the work that we do. I will look for areas where YLD committees can partner in projects with State Bar committees and other community service organizations for a more successful outcome. Because we compete with other metro area organizations for young lawyers, we can also develop partnerships with them so that members can participate in multiple organizations without being over committed.

As we reduce overlap, we are also looking for new ways to get involved in and provide service to the community. We have already begun discussions with the Department of Juvenile Justice to volunteer YLD members for pro bono work in child deprivation cases. In most counties in Georgia, children who are the subject of deprivation cases simply are not represented in the initial stages of the process. In conjunction with the Department of Juvenile Justice and Georgia's First Lady Mary Perdue, the YLD will assist in starting a program to provide representation to these children. This is an initiative which can help the YLD gain state-wide recognition for the program and, simultaneously, improve the image of lawyers.

That brings me to my third goal for the YLD—improving the public image of lawyers. We need to continue seeking state-wide press opportunities that will help shape the perception of lawyers in a positive way. We will continue to work towards gaining media coverage for YLD community service projects—resulting in goodwill for the Bar.


As all of you know, the Bar is developing a public relations campaign designed to improve the image of lawyers. The YLD wants to be an active participant in the campaign. As the community service arm of the Bar, a focused approach to identify and pursue earned media opportunities can enhance the Bar's developing public relations strategy. We stand ready and willing to assist the Bar in the advancement of this public relations campaign.

The YLD is a strong organization with a tradition of excellence. We have a unique opportunity to reach out to the community in a way that helps define the image of lawyers. I am honored to lead this group of dedicated, young attorneys—and I ask for your support as we raise the profile our good works.

If you have been recently admitted to the Bar or are a young lawyer who has never participated

in the YLD, I urge you to get involved today. You can start by simply attending a YLD meeting. The meetings schedule for the 2006-07 Bar year is as follows:

- **Summer** Aug. 24-27, 2006; Waldorf Astoria; New York, N.Y.
- **Fall** Oct. 6-8, 2006; Hilton Gardens Inn; Athens, Ga.
- **Midyear** Jan. 18-20, 2007; Hyatt Regency Hotel; Savannah, Ga.
- **Spring** April 26-29, 2007; W Hotel; New Orleans, La.
- **Annual Meeting** June 14-17, 2007; Sawgrass Marriott Resort; Ponte Vedra, Fla.

I look forward to some hard work and some good times during the upcoming year. I hope you will join in the effort. If you have any ideas for new programs or suggestions as to how we can improve our mission, please do not hesitate to let me know. 

Jonathan A. Pope is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at jpope@hpb-law.com.

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FREE PICKUP

The Georgia Direct Action Statute

by Michael L. Goldberg

For lawyers handling personal injury cases, the word “insurance” is considered a dirty word to be banned from one’s vocabulary.

Any witness who says this word on the stand at trial causes the hairs on the back of the lawyer’s neck to bristle and the trial judge to roll his eyes. Fear of the I-word has driven lawyers to spend days reviewing and redacting documents and countless hours cautioning witnesses and clients on the evils of the unspeakable. Lawyers know that in a personal injury trial an inadvertent slip of the tongue saying the word “insurance” can result in an immediate mistrial because of its prejudicial effect on the jury.¹

But there is one context in a personal injury case in which the term is welcomed with open arms. The Georgia Direct Action Statute, codified at O.C.G.A. § 46-7-12.1, allows plaintiffs injured in an accident with a motor carrier of property or passengers not only to mention the word “insurance” at trial but also to name

the insurer as a party to the action. This year is the 75th anniversary of the passage of the Direct Action Statute. Despite the longevity of the statute, many practitioners still do not fully understand the requirements of the statute and its applicability.

History of the Direct Action Statute

The Motor Common Carriers Act was originally adopted in 1931. The original statute was silent as to the joinder of the insurer in suits against the motor carrier.² The statute was amended in 1937 to include the provision: “it shall be permissible to join the motor carrier and the insurance carrier in the same action, whether arising in tort or contract.”³ The law then became known as the Direct Action Statute because it allowed the plaintiff to file suit against the insurer before a judgment was obtained against the insured.⁴ Although the language of this section of the statute has been slightly modified over the years, the statute continues to include similar language and currently states, “it shall be permissible ... for any person having a cause of action arising under this article to join in the same action the motor common or motor contract carrier and the insurance carrier, whether arising in tort or contract.”⁵

The original statute also required the motor carrier to file a certificate of financial responsibility with the Public Service Commission (“PSC” or “Commission”) (now state revenue commission) covering injury to the public caused by the negligence of the carrier.⁶ For years, the filing of the certificate was a prerequisite to



an action against the insurer.⁷ This loophole allowed the insurer to avoid a direct action if the carrier had simply failed to file the certificate with the Commission.⁸

In 2000, the legislature revised the Direct Action Statute to dispense with the mandatory precondition to suit that the carrier's insurance policy or certificate of insurance be on file with the PSC.⁹ The legislature explained that "the failure to file any form ... shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer."¹⁰ Under the amended statute, the obligation to file the certificate of insurance is imposed upon the insurer instead of the carrier, and the failure to file the certificate does not affect the plaintiff's ability to file suit against the insurer.¹¹ The current version of the Direct Action Statute became effective on July 1, 2005, and is codified at O.C.G.A. § 46-7-12.1. The only significant change from the 2000 statute is that the responsibility of monitoring the motor carrier's filings is now placed on the state revenue commission instead of the PSC.¹²

The Direct Action Statute has survived attacks on its constitutionality,¹³ including challenges based on the equal protection clause in the Georgia Constitution¹⁴ and due process.¹⁵ Federal law does not preempt the statute due to the state's interest in providing plaintiffs with the right to bring direct actions against insurers of motor carriers to protect its citizens.¹⁶

Prejudicial Effect of Insurance

The mention of liability insurance is ordinarily forbidden at trial because of the assumed prejudicial effect on the jury.¹⁷ Georgia courts have repeatedly adhered to the rule that evidence of insurance coverage is so prejudicial by nature that it should not be admitted unless it is clearly relevant to some issue in the case.¹⁸ The fear is that the jury will give an award based on the existence of insurance

rather than the merits of the case. It is thought by some to be beneficial to the plaintiff to have jurors believe that an award will be paid by an insurer rather than an individual defendant. The Direct Action Statute places the motor carrier's liability insurance directly in front of the jurors for their consideration. Despite the supposed prejudicial effect of the existence of insurance, the Supreme Court of Georgia has held that the statute does not unfairly prejudice defendants by providing the jury with evidence of insurance.¹⁹

Applicability of the Statute

While most people think of the Direct Action Statute as only applying to tractor-trailers, the statute is very broad in defining its scope and literally applies to any "vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power" that transports goods for hire on the roadways in Georgia.²⁰ The statute applies to "every person ... owning, controlling, operating, or managing any motor-propelled vehicle including the lessees or trustees of such persons or receivers appointed by any court used in the business of transporting persons or property for hire over any public highway in this state and not operated exclusively within the corporate limits of any city."²¹ "For hire" means "an activity wherein for compensation a motor vehicle and driver are furnished to a person by another person, acting directly or knowingly and willfully acting with another to provide the combined service of the vehicle and driver."²² The statute appears at first glance to apply to any vehicle hired to carry property or passengers on a public highway in Georgia.

Exemptions and Limitations

Although it purports to cover all "for hire" vehicles on the public

streets, the Direct Action Statute has several limiting provisions and exemptions to its applicability. The Direct Action Statute does not apply to private carriers "engaged exclusively in the transportation of goods belonging to the individual, firm, partnership, corporation, or association owning, controlling, operating, or managing the motor vehicle in private transportation."²³ If the vehicle is used entirely to transport the owner's property and is not held out for hire to the public, then the insurer is not subject to a direct action.²⁴

The statute does not apply to buses, taxi cabs, hotel vans, granite trucks, motor trucks of railway companies, vehicles owned by the government, or trucks used exclusively in the transportation of agricultural or dairy products.²⁵ The burden of proof as to whether an exemption is applicable lies with the person claiming the exemption.²⁶ A motor carrier must have fully complied with any conditions applicable to an exemption for the insurer to claim the exemption.²⁷ If the claimed exemption is that the truck is used exclusively in transporting exempt commodities, then the exemption will only apply if the tractor-trailer was used in the transportation of exempt products at all times prior to the accident.²⁸ If the insurer can prove that the truck was only used to haul exempt commodities, then the plaintiff cannot bring a direct action against the insurer.²⁹ The statute is applicable to a permissive passenger in the tractor of the motor carrier,³⁰ but is not applicable to a fellow servant or agent of the motor carrier.³¹ Because the exemptions and limitations significantly curtail the applicability of the statute, the end result is that the statute essentially only applies to tractor-trailers, moving vans, dump trucks, bus lines and other similar commercial vehicles.

Interstate vs. Intrastate Commerce

By the terms of the statute, its provisions apply to motor carriers

involved in intrastate transportation or carriers involved in both interstate and intrastate transportation as long as the accident occurs in Georgia.³² Based on common law applications, however, the statute is also applicable to motor carriers involved solely in interstate commerce.³³ The Court of Appeals of Georgia has also extended the applicability of the statute to accidents outside the state of Georgia.³⁴ As a result, the Direct Action Statute is applicable whether or not the motor carrier is an interstate or intrastate carrier and regardless of the origin and destination of the load at issue.³⁵

The Insurance Policy

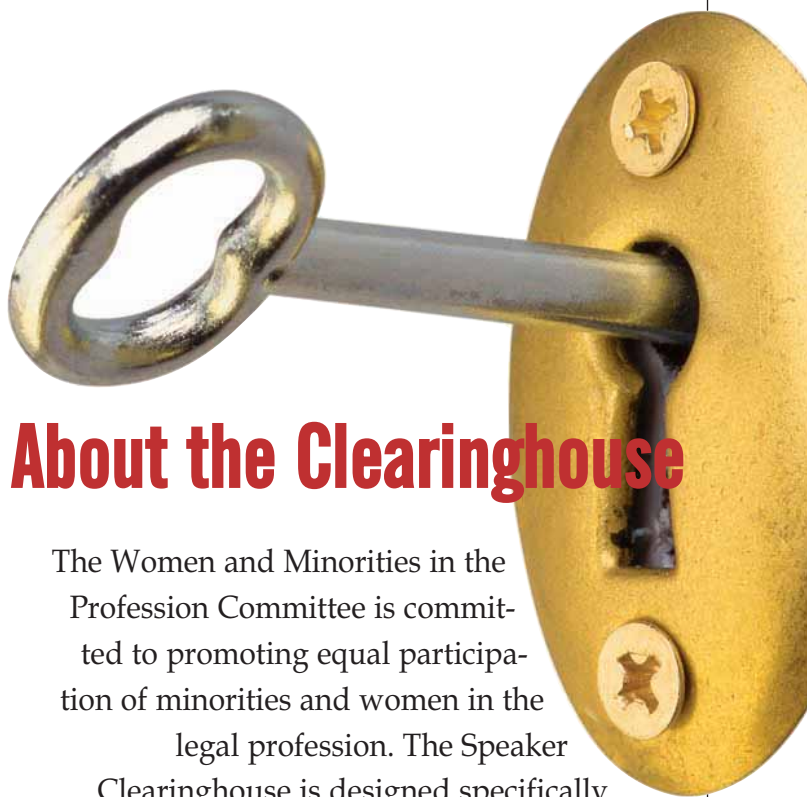
The Direct Action Statute requires the motor carrier to maintain financial responsibility for its negligence as evidenced by a bond, an indemnity insurance policy, or self-insurance.³⁶ The method that the motor carrier chooses to demonstrate its financial responsibility to the public (i.e., the bond, insurance or self-insured plan) is a direct and primary obligation to any person who sustains an actionable injury or loss as a result of the motor carrier's negligence.³⁷ At trial, the plaintiff must prove the existence of an insurance policy in effect at the time of the accident in order to recover against the insurer.³⁸ The plaintiff is not allowed to present evidence as to the policy limits of coverage at trial because of the perceived prejudicial effects that may be caused by a jury's knowledge of the amounts of coverage.³⁹ In the event the plaintiff obtains a judgment against the insurer, the plaintiff cannot recover more than the policy limits of coverage from the insurer.⁴⁰ The insurer is responsible for the amount of the policy and is not limited to the statutory minimum.⁴¹ Excess insurance is not regarded as collectible insurance until the primary policy is exhausted, and excess insurers are not subject to the Direct Action Statute.⁴²

Actionable Injury

The sustaining of an actionable injury is a condition precedent to suit on the policy against the insurer.⁴³ An actionable injury means an injury to a person who could bring suit against the motor carrier and obtain a judgment for the injuries sustained.⁴⁴ If the plaintiff is barred from bringing suit against the motor carrier, then the plaintiff cannot bring a direct action against the insurer.⁴⁵ Likewise, if the motor carrier is not liable as a result of the driver's actions, then the insurer is not responsible for the loss.⁴⁶ If the plaintiff cannot bring suit in Georgia against the motor carrier because of lack of personal jurisdiction, then there is no actionable injury against the motor carrier in Georgia courts and suit cannot be maintained against the insurer.⁴⁷ The expiration of the statute of limitations on claims against the motor carrier

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does not bar claims against the insurer where the complaint against the insurer was filed before the statute of limitations had run against the motor carrier.⁴⁸

Parties & Venue


The Direct Action Statute allows joinder of the driver, motor carrier, and insurer in one action.⁴⁹ Although the injured party may join the insurer as a party defendant, he is not required to join the insurer to collect on a judgment against the driver or motor carrier.⁵⁰ If the plaintiff decides to bring suit against the driver or motor carrier and not against the insurer, the plaintiff may still recover from the insurer after judgment is entered against the driver or motor carrier.⁵¹ The plaintiff may also maintain separate suits in different counties against both the motor carrier and insurer because the Direct Action Statute creates an independent cause of action against the insurer.⁵² If the case against the motor carrier

proceeds to judgment, then the judgment will be *res judicata* in regards to the claims against the insurer because there will no longer be an actionable injury available against the motor carrier.⁵³ If the case against the insurer proceeds to judgment before the action against the motor carrier, the judgment will not be *res judicata* in regards to the claims against the motor carrier since the insurer is not in privity with the motor carrier,⁵⁴ but the plaintiff's claims may be subject to issue preclusion if the judgment was based on the motor carrier's lack of negligence.⁵⁵

Although the Direct Action Statute permits the injured person to join the insurer as a party defendant with the motor carrier, the insurer is neither a joint tortfeasor nor responsible for the motor carrier's actions under a theory of vicarious liability.⁵⁶ Accordingly, the plaintiff must comply with the applicable constitutional venue requirements as to each defendant.⁵⁷ As a result, the motor

carrier cannot be sued in a county other than that of its residence regardless as to whether venue is proper as to the insurer.⁵⁸

Conclusion

The existence of insurance is usually taboo in a personal injury action. But the Direct Action Statute allows a plaintiff injured in an accident with a motor carrier to join the insurer as a named defendant. In order to pursue a claim against the insurer, the tortfeasor must fall under the definition of a motor carrier, and the transportation cannot be exempted from the statute's application. The plaintiff must also have an actionable injury for which he could seek recovery against the motor carrier. The plaintiff is then allowed to reveal to the jury the existence of insurance coverage but not the amounts of coverage. The Direct Action State is one of the few exceptions to the rule that insurance is not to be mentioned in a civil case. 

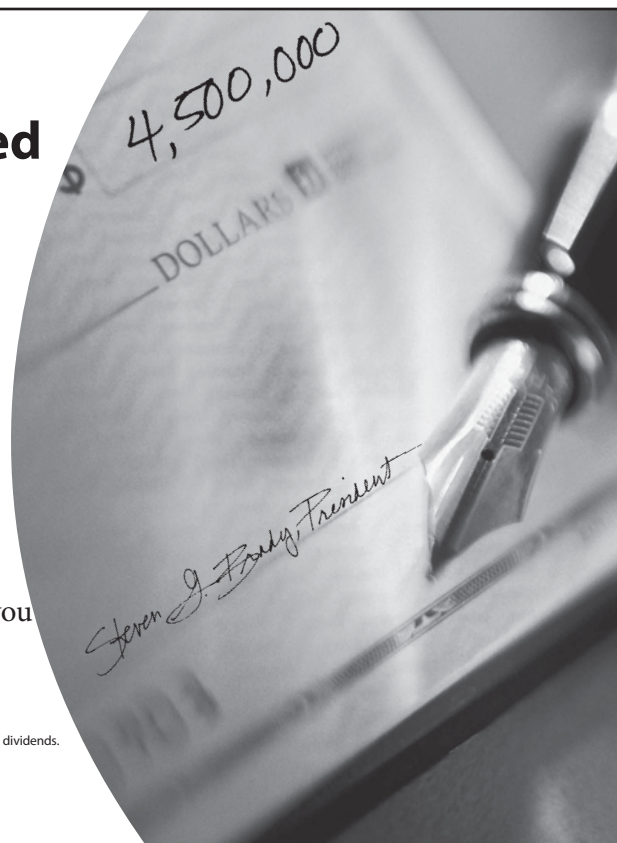
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tims suffering catastrophic personal injuries or wrongful death in the areas of vehicular accidents, motor carrier liability, premises liability, medical malpractice, constitutional rights, and products liability. He obtained a Political Science degree from Mercer University in 1994 and a Juris Doctor from the University of Georgia School of Law in 1997.

Endnotes

1. Gonzalez v. Wells, 213 Ga. App. 494, 495, 445 S.E.2d 332 (1994).
2. Harper Motor Lines, Inc. v. Roling, 218 Ga. 812, 814, 130 S.E.2d 817 (1963).
3. Ga. Code 1933, § 68-612; O.C.G.A. § 46-7-12 (2005).
4. See Harper Motor Lines at 816.
5. O.C.G.A. § 46-7-12.1.
6. Ga. Code 1933 § 68-612.
7. McAdams v. U.S. Fire Ins. Co., 234 Ga. App. 324, 326, 506 S.E.2d 679 (1998); Lockhart v. S. Gen. Ins. Co., 231 Ga. App. 311, 313, 498 S.E.2d 161 (1998); S. Gen. Ins. Co. v. Waymond, 221 Ga. App. 613, 616, 472 S.E.2d 325 (1996); Canal Ins. Co. v. Farmer, 222 Ga. App. 539, 540, 474 S.E.2d 732 (1996).
8. See Lockhart at 313.
9. O.C.G.A. § 46-7-12.
10. *Id.*
11. Jackson v. Sluder, 256 Ga. App. 812, 816, 569 S.E.2d 893 (2002).
12. O.C.G.A. § 46-7-12.1.
13. Lloyds Am. v. Brown, 187 Ga. 240, 243, 200 S.E. 292 (1937).
14. Grissom v. Gleason, 262 Ga. 374, 378, 418 S.E.2d 27 (1992).
15. Harper Motor Lines, Inc. v. Roling, 218 Ga. 812, 818, 130 S.E.2d 817 (1963).
16. Caudill v. Strickland, 230 Ga. App. 644, 645, 498 S.E.2d 81 (1998); Watkins v. H.O. Croley Granary, 555 F.Supp. 458, 461 (N.D. Ga. 1982); Kimberly v. Bankers & Shippers Ins. Co., 490 F.Supp 93, 95 (N.D. Ga. 1980).
17. Corley v. Harris, 171 Ga. App. 688, 320 S.E.2d 833 (1984).
18. McKin v. Gilbert, 208 Ga. App. 788, 790, 432 S.E.2d 233 (1993).
19. See Grissom at 375; Harper Motor Lines, Inc. at 818.
20. O.C.G.A. § 46-1-1(18) (2005).
21. *Id.* § 46-1-1(9).
22. *Id.* § 46-1-1(6).
23. *Id.* § 46-7-37.
24. National Union Fire Ins. Co. v. Sorrow, 202 Ga. App. 517, 518, 414 S.E.2d 731 (1992).
25. O.C.G.A. § 46-1-1(9)(c).
26. Jarrard v. Clarendon Nat'l Ins. Co., 267 Ga. App. 594, 595, 600 S.E.2d 689 (2004); Progressive Cas. Ins. Co. v. Scott, 188 Ga. App. 75, 76, 371 S.E.2d 881 (1988).
27. Stewart v. Liberty Mut. Ins. Co., 221 Ga. App. 813, 814, 472 S.E.2d 704 (1996).
28. Jarrard at 595-96; Smith v. Commercial Transp., Inc., 220 Ga. App. 866, 868, 470 S.E.2d 446 (1996); Ga. Cas. & Sur. Co. v. Jernigan, 166 Ga. App. 872, 875, 305 S.E.2d 611 (1983).
29. Smith v. S. Gen. Ins. Co. 222 Ga. App. 582, 583, 474 S.E.2d 745 (1996); Bailey v. Occidental Fire & Cas. Co. of N.C., 193 Ga. App. 710, 711, 388 S.E.2d 899 (1989); Nat'l Indem. Co. v. Tatum, 193 Ga. App. 698, 700, 388 S.E.2d 896 (1989).
30. Guinn Transp., Inc. v. Canal Ins. Co., 234 Ga. App. 235, 237, 507 S.E.2d 144 (1998).
31. Combs v. Carolina Cas. Ins. Co., 90 Ga. App. 90, 92, 82 S.E.2d 32 (1954).
32. O.C.G.A. § 46-7-36 (2005).
33. Westport Trucking Co. v. Griffin, 254 Ga. 361, 363, 329 S.E.2d 487 (1985).
34. Dehart v. Liberty Mut. Ins. Co., 270 Ga. 381, 385, 509 S.E.2d 913 (1998); Johnson v. Woodard, 208 Ga. App. 41, 45, 429 S.E.2d 701 (1993). *But see* Nat'l Fire Ins. Co. v. Marty, 197 Ga. App. 642, 644, 399 S.E.2d 260 (1990).
35. Xpress Cargo Sys., Inc. v. McMath, 225 Ga. App. 32, 34, 481 S.E.2d 885 (1997); Williams v. S. Drayage, Inc., 213 Ga. App. 895, 896, 446 S.E.2d 758 (1994); Kimberly v. Bankers & Shippers Ins. Co., 490 F.Supp. 93, 95 (N.D. Ga. 1980); Acme Freight Lines v. Blackmon, 131 F.2d 62, 64 (5th Cir. 1942); Harper Motor Lines, Inc. v. Roling, 218 Ga. 812, 818, 130 S.E.2d 817 (1963).
36. O.C.G.A. § 46-7-12.1.
37. Ross v. Stephens, 269 Ga. 266, 267, 496 S.E.2d 705 (1998).
38. Ashley v. Goss Bros. Trucking, 269 Ga. 449, 450, 499 S.E.2d 638 (1998).
39. Carolina Cas. Ins. Co. v. Davalos 246 Ga. 746, 747, 272 S.E.2d 702 (1980).
40. Gates v. DeWitt, Inc., 528 F.2d 405, 412 (1976), *opinion corrected* 532 F.2d 1052 (1976).
41. Progressive Preferred Ins. Co. v. Ramirez, 277 Ga. 392, 394, 588 S.E.2d 751 (2003).
42. Jackson v. Sluder, 256 Ga. App. 812, 818, 569 S.E.2d 893 (2002).
43. Dundee Mills, Inc. v. John Deere Ins. Co., 248 Ga. App. 39, 40, 545 S.E.2d 604 (2001).
44. Tuck v. Cummins Trucking Co., 171 Ga. App. 485, 487, 320 S.E.2d 265 (1984).
45. See *id.*
46. Spicer v. Am. Home Assurance Co., 292 F.Supp. 27, 32 (N.D. Ga. 1967).
47. Matthews v. Rail Exp., Inc., 836 F.Supp. 873, 876 (N.D. Ga. 1993).
48. Employers Ins. Co. of Wausau v. Dawson, 194 Ga. App. 247, 248, 390 S.E.2d 261 (1990).
49. Spicer at 31-32; Pilot Freight Carriers v. Parks, 80 Ga. App. 137, 138, 55 S.E.2d 746 (1949); Tarrant v. Davis, 62 Ga. App. 880, 10 S.E.2d 636 (1940).
50. Seawheels v. Bankers & Shippers Ins. Co. of NY, 175 Ga. App. 528, 532, 333 S.E.2d 650 (1985); Griffin v. Johnson 157 Ga. App. 657, 658, 278 S.E.2d 422 (1981).
51. Spicer at 33.
52. Jackson v. Sluder, 256 Ga. App. 812, 817, 569 S.E.2d 893 (2002).
53. Spicer at 33.
54. Gilmer v. Porterfield, 233 Ga. 671, 674, 212 S.E.2d 842 (1975).
55. Jordan Trucking, Inc. v. Wiley, 199 Ga. App. 635, 405 S.E.2d 734 (1991).
56. Myrick v. Stephanos, 220 Ga. App. 520, 472 S.E.2d 431 (1996).
57. Thomas v. Bobby Stevens Hauling Contractors, Inc., 165 Ga. App. 710, 712, 302 S.E.2d 585 (1983).
58. Bolin v. Penn. Thresherman & Farmers Mut. Cas. Ins. Co., 92 Ga. App. 726, 89 S.E.2d 831 (1955).

Annual Meeting '06: More than a Business Meeting

by Sarah I. Coole

The State Bar of Georgia's 42nd Annual Meeting in Hilton Head Island, S.C., was certainly more than a business meeting. Held June 1-4, attendees, families and friends alike enjoyed three days of fun activities mixed with business here and there.

Opening Night Gala

With the sounds of the Atlantic Ocean in the background, the 2006 Annual Meeting kicked off with the Opening Night Gala. Attendees were treated to island music from the steel drum band and fun was had by all. One of the events included the bobble head music videos, where attendees were draped in green cloth and then lipsynched a song. It was then electronically synched to dancing bobble heads using the attendees head. Once the DVDs were completed, they were able to take one home as a souvenir.

Sections and corporate sponsors made the evening possible with their generous donations of more than \$39,000. (A complete list of sections and sponsors is located on page 28.) The State Bar appreciates the support of all sponsors for providing an enjoyable evening for all.

The Annual Meeting weekend continued with section and alumni functions. Members were able to get together with section colleagues and old law school friends, and enjoy breakfasts, lunches and receptions. The more ambitious attendees also participated in the LFG/YLD 5K Fun Run, the tennis tournament and the YLD golf tournament.

Board Meeting Highlights

A moment of silence was taken during the plenary session for the 114 members of the State Bar who have passed away during the last year. Each generation of lawyers is indebted to the one that precedes it. The State



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

President Robert Ingram welcomes attendees and thanks sponsors at the Opening Night Gala.

Bar is mindful of the contributions of each of these members and their dedication to the practice of law.

At the plenary session on June 2, a report was given on the Investigative Panel by John G. Haubenreich, the Review Panel by Sharon C. Barnes, the Supreme Court of Georgia by Chief Justice Leah Ward Sears, the Court of Appeals of Georgia by Chief Judge John H. Ruffin Jr., the Georgia Law Department by Attorney General Thurbert Baker, the Georgia Senate by Preston Smith (chair of the Judiciary Committee), and the Georgia House of Representatives by Wendell Willard (chair of the Judiciary Committee).

The bylaws of the State Bar specify the duties of the president. One of the responsibilities is to "deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of

office and furnish a copy to the Supreme Court of Georgia." During the plenary session, Robert Ingram delivered his outgoing presidential remarks, which are printed in the June 2006, Volume 11, Number 7, of the *Georgia Bar Journal*.

The Court of Appeals of Georgia was presented with a resolution for their 100th anniversary. The State Bar designated 2006 as a year honoring the Court of Appeals and its one hundred years of existence as an integral part of the system of justice in Georgia. (The full resolution can be found on page 31.)

The 209th Board of Governors meeting took place on Saturday, June 3.

Highlights of the meeting included:

- Damon Elmore reviewed YLD activities for the 2005-06 Bar year. Following that, Incoming YLD President Jonathan A. Pope reported on upcoming activities of the YLD. These activities embody the YLD's commitment to be the service arm of the Bar, increasing public awareness of YLD programs, improving the public perception of attorneys, and continuing to increase membership.
- The Board, by unanimous voice vote, approved the following presidential appointments to the State Disciplinary Board:

Investigative Panel

District 1: Christopher L. Ray, Savannah (2009)

District 2: Joseph W. Dent, Albany (2009)

District 3: Sonja Bernina Profit, Macon (2009)

District 4: R. Javoyne Hicks, Decatur (2009)

Formal Advisory Opinion Board

At-Large: Lance Alan Cooper, Marietta (2008)

James W. Friedewald, Marietta (2008)

Joe Franklin O'Kelley, Jr., Duluth (2008)

Georgia Association Criminal Defense Lawyers: Christopher A. Townley, Rossville (2008)



Board Member Daniel M. King Jr. and his children, Taylor and Julia, make a bobble head music video, one of the attractions at the Opening Night Gala.



Outgoing Bar President Robert Ingram passes the gavel to Incoming Bar President Jay Cook at the Presidential Inaugural Gala.



Alan and Lisa Reeves and Justice Robert Benham and his wife Nell share dinner together at the Opening Night Gala.

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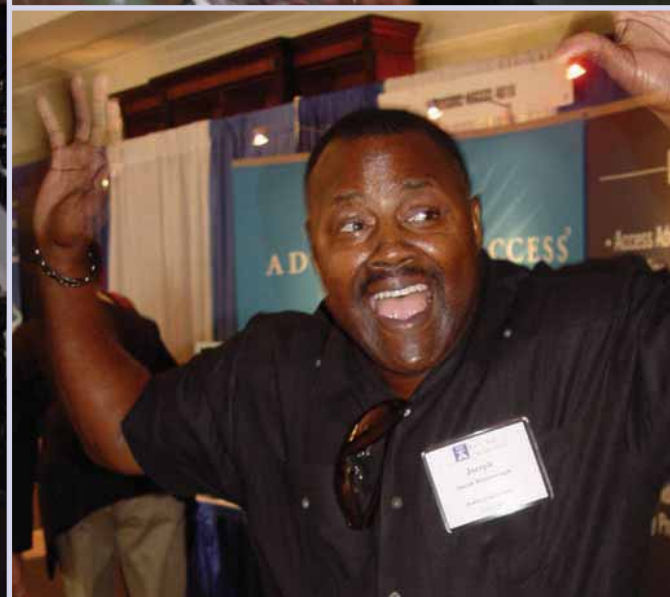
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1. President Robert Ingram joined Rupert's Orchestra for an impromptu rendition of "Johnny Be Good."
2. Tina Shadix Roddenbery participates in exhibitor Thomson-West's money machine.
3. The annual tennis tournament was held on June 3 at the Port Royal Racquet Club.
4. Joseph Roseborough discovers that he is the winner of the drawing for a two-night stay at the Westin Resort Hilton Head Island.
5. Chief Judge John H. Ruffin Jr. thanks the Bar for its recognition of the 100th anniversary of the Court of Appeals of Georgia.
6. Marc Panasuk, exhibitor from the ABA Retirement Funds, practices his short stroke.
7. Cathy Fitch from Stetson University School of Law takes a break between visits from attendees.
8. Chief Justice Leah Ward Sears and her husband Haskell Sears Ward dance to the sounds of Rupert's Orchestra at the festivities following the installation of President Jay Cook.
9. Judge Tony DelCampo and daughter Corina at the Opening Night Gala.

Outgoing YLD President Damon E. Elmore and Incoming YLD Treasurer Josh Bell board a trolley to attend the YLD Dinner.



(Left to right) Winners of the tennis tournament included Henry Walker, Caroline Brashier, Judge Kathryn Tanksley and Len Horton.

Georgia District Attorney's Association: Patrick H. Head, Marietta (2008)

Emory University: Professor James B. Hughes Jr., Atlanta (2008)

Georgia State University: Professor Roy Sobelson, Atlanta (2008)

Investigative Panel: Donald W. Huskins, Eatonton (2007)

Review Panel: James B.

Ellington, Augusta (2007)

- Results of the Executive Committee election were as follows: Phyllis J. Holmen, N. Harvey Weitz and C. Wilson DuBose.

- The Board, by unanimous voice vote, elected Cliff Brashier as Executive Director for the 2006-07 State Bar year.

- Avarita Hanson, the new director of the Chief Justice's Commission on Professionalism, was introduced to the Board. Following that, the Board, by unanimous voice vote, approved the reappointment of Allegra J. Lawrence, for a three-year term, to the Chief Justice's Commission on Professionalism.

- The Board, by unanimous voice vote, approved the appointments of James W. Boswell III, Sarah H. Lamar, and Diane Festin LaRoss, for two-year terms, to the Georgia Legal Services Board of Trustees.

- Following a report by Robert McCormack that the Rules and Bylaws Amendments to be consid-

ered at this Board meeting are not in conflict with any other Rules, Regulations or Bylaws of the State Bar, the Board took the following action:

Standing Board Policy 100, New Section 1.05, Legislative Drafting Services, approved by unanimous voice vote.

Rule 1-404, Eligibility of President-elect, motion to table the recommendation was approved by majority voice vote.

- The Board, by unanimous voice vote, approved the creation of an Equine Law Section.

Annual Awards

The 208th Board of Governors meeting on June 2 provided a time to present some important and well-deserved recognition and awards to members of the law community.

Chief Justice Thomas O. Marshall Professionalism Awards

The **Fifth Annual Chief Justice Thomas O. Marshall Professionalism Awards**, presented by the Bench and Bar Committee of the State Bar of Georgia, honors one lawyer and one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients were the Hon. **Charles B. Mikell Jr.**, Judge, Court of Appeals of Georgia, Atlanta, Ga.; and **Patrick J. Rice**, Hull Towill Norman Barrett & Salley P.C., Augusta, Ga.

Georgia Association of Criminal Defense Lawyers Award

Jim Bonner, director of the Georgia Public Defender Standards Council's Appellate Advocacy Division, was the winner of **GACDL's Indigent Defense Award**. The timing could not have been more appropriate, as 2005 marks the 35th anniversary of his admission to the State Bar of Georgia.

Voluntary Bar Awards

The **Excellence in Bar Leadership Award**, presented annually, honors an individual for a lifetime of commitment to the legal profession and justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar, or area of practice section. This year's recipient was **Hon. Stephen E. Boswell**, from the Clayton County Bar Association.

Awards of Merit are given to voluntary bar associations for their dedication to improving relations



The Executive Committee consists of the officers and six members of the Board of Governors elected by the Board. (Top row, left to right) C. Wilson DuBose, N. Harvey Weitz, Robert D. Ingram, Gerald M. Edenfield, Bryan M. Cavan. (Bottom Row, left to right) Jeffrey O. Bramlett, Phyllis J. Holmen, Jay Cook, Nancy J. Whaley, David S. Lipscomb.

among local lawyers and devoting endless hours to serving their communities. The bar associations are judged according to size.

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

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

The **Best Newsletter Award** is presented to voluntary bars that provide the best informational resource to their membership, according to their size.

- 51 to 100 members: **Fayette County Bar Association**
- 101 to 250 members: **Sandy Springs Bar Association**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Atlanta Bar Association**

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

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

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

Pro Bono Awards

The **H. Sol Clark Award** was named for former Georgia Court of Appeals Judge Clark of Savannah, who is known as the "father of legal aid in Georgia."

2006-07 Executive Committee

President

Jay Cook, *Athens*

President-elect

Gerald M. Edenfield, *Statesboro*

Immediate Past President

Robert D. Ingram, *Marietta*

Treasurer

Bryan M. Cavan, *Atlanta*

Secretary

Jeffrey O. Bramlett, *Atlanta*

YLD President

Jonathan A. Pope, *Canton*

YLD President-elect

Elena Kaplan, *Atlanta*

YLD Immediate Past President

Damon E. Elmore, *Atlanta*

At-large Members

C. Wilson DuBose, *Atlanta*
 Phyllis J. Holmen, *Atlanta*
 David S. Lipscomb, *Lawrenceville*
 S. Lester Tate III, *Cartersville*
 N. Harvey Weitz, *Savannah*
 Nancy J. Whaley, *Atlanta*



Frances Kuo accepts the President's Cup Award on behalf of the Gwinnett County Bar Association from State Bar President Robert Ingram.

The prestigious Clark Award honors an individual lawyer who has excelled in one or more of a variety of activities that extend civil legal services to the poor. The H. Sol Clark Award is presented by the Access to Justice Committee of the

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- Georgia Lawyers Insurance Company

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- Minnesota Lawyers Mutual
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- Legal Leads
- Real Property Law Section of the State Bar of Georgia
- The Coca-Cola Company

Sections & Others

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- Tort & Insurance

Diamond Level

- Corporate Counsel Law

Gold Level

- Bankruptcy
- Business Law
- Elder Law
- Labor & Employment

Silver Level

- Taxation

Bronze Level

- Agriculture Law
- Alternative Dispute Resolution
- Appellate Practice
- Health Law
- Intellectual Property
- LegaLink
- Real Property Law

Copper Level

- Administrative Law
- Antitrust
- Consumer Law
- Creditors Rights
- Environmental Law
- General Practice & Trial
- Individual Rights
- Military & Veterans



Chief Justice Leah Ward Sears inaugurates Jay Cook as the State Bar of Georgia's 44th president at the Presidential Inaugural Gala on June 3.

State Bar of Georgia and the Pro Bono Project. The 2006 award was presented to **Hulett H. "Bucky" Askew**, who has demonstrated professionalism and proven commitment to, and support for, the delivery of civil legal services to the poor.

The **William B. Spann Jr. Award** is given each year either to a local bar association, law firm project or a community organization in Georgia that has developed a pro bono program that has satisfied previously unmet needs or extended services to underserved segments of the population. The award is named for a former president of the American Bar Association and former executive director of the State Bar of Georgia. The William B. Spann Jr. Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to **The Atlanta Bar Association Estate Planning and Probate Section's Probate Information Center** for its strong pro bono commitment to providing high quality legal services through this unique probate court project, as well as its dedication to promoting professionalism through pro bono service.

The **Dan Bradley Award** honors the commitment to the delivery of

high quality legal services of a lawyer of Georgia Legal Services Program or the Atlanta Legal Aid Society. The award honors the memory of Georgia native and Mercer Law graduate Dan J. Bradley, who was president of the federal Legal Services Corporation. The 2006 Dan Bradley Award was presented by the Access to Justice Committee of the State Bar of Georgia to **Deborah Johnson**, Managing Attorney for the Atlanta Legal Aid Society, who, through her quality advocacy and vision for justice, has shown exemplary service and dedication to the delivery of legal services to the poor and to the ideals of the legal profession.

The **A Business Commitment (ABC) Pro Bono Business Law Award** honors the business law pro bono contributions of an individual lawyer, corporate legal department or law firm to the nonprofit and community economic development sectors in Georgia. The 2006 A Business Commitment (ABC) Pro Bono Business Law Award was presented by the State Bar of Georgia's A Business Commitment Committee to **Benjamin Reid Newland** of King and Spalding, LLP, for professionalism and outstanding commitment to the delivery of pro bono business law services to the nonprofit and communi-

ty economic development sectors in Georgia, exemplified by his outstanding pro bono contributions to clients of the Pro Bono Partnership and the A Business Commitment Pro Bono Project.

Section Awards

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

Sections of the Year

- **Family Law** –
Stephen C. Steele, chair
- **Intellectual Property Law** –
Douglas Isenberg, chair

Awards of Achievement

- **Taxation Law** –
Charles E. Hodges II, chair
- **Agriculture Law** –
Allen H. Olson, chair
- **International Law** –
Anton Frans Mertens, chair



Outgoing President Robert Ingram presents Delores Hayes, senior CLE administrator, with the State Bar's Employee of the Year Award.

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General Practice & Trial Section Awards

The **Tradition of Excellence Awards** are presented each year to Bar members in recognition for their commitment of service to the public, Bar activities, civic organizations and those who have reached the age of 50 or older. Receiving the awards for 2006 were: **James B. Franklin** (plaintiff); **Wallace E. Harrell**

(defense); **Judge Willis B. Hunt Jr.** (judicial); and **Hylton B. DuPree Jr.** (general practice).

Young Lawyers Division Awards

Recipients of the Award of Achievement for Outstanding Commitment and Service to the State Bar of Georgia's Young Lawyers Division included:

- Outstanding Service to the Public: **Brandy Daswani**, Aspiring Youth Committee Chair
- Outstanding Service to the Bar: **Elena Kaplan**, Bylaw Rewrite Committee; **Jason Alloy**, Bylaw Rewrite Committee; **Suzanne Alford**, Bylaw Committee; **Jennifer Jordan**, Bylaw Committee
- Outstanding Service to the Profession: **Laurel Payne Landon**, Leadership Academy; **Tonya Boga**, Leadership Academy; **Leigh Martin May**, Leadership Academy
- Outstanding Service to the YLD: **Scott Masterson**, Litigation

Committee Co-Chair; **Jeff Daxe**, Litigation Committee Co-Chair, **Terri Gordon**, **Mike Krause**, **Bryan Scott**, **Amy Howell**, **Brooke Silverthorn**

- Recipients of the Distinguished Judicial Service Award In Recognition of Distinguished Service on the Bench, Commitment to Improving the Practice of Law, and Active Support of the Young Lawyers Division included: **Justice George H. Carley** and **Judge John J. Ellington**
- The recipient of the Young Lawyer Ethics and Professionalism Award was **Christopher Cohilas**.

Changing of the Guard

Each year, a new person steps up to be the leader and president of the Bar. This year, Chief Justice Leah Ward Sears swore in J. Vincent Cook as the 44th president of the State Bar of Georgia. After stepping on stage and placing his left hand on the bible and raising his right, Cook repeated the following:

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

After Cook was sworn in, two important Bar awards were presented. The first of the awards was the **Distinguished Service Award**. This is the highest accolade bestowed on an individual lawyer by the State Bar of Georgia. The recipient is honored for "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia." Past President Robert Ingram presented **Cliff Brashier**, executive director of the State Bar of Georgia, with the 2006 award




President Jay Cook and his family following his installation as the Bar's 44th President.

Annual Meeting Exhibitors

- 10K Wizard Technology
- ABA Retirement Funds
- Advisors Access 401K
- Allen Pritchett & Bassett
- Atlanta Custom Tailors
- Brown Reporting
- Casemaker, State Bar
- D.A. Forensics
- Daily Report
- GeorgiaLawUpdate.com
- Georgia Lawyers Insurance Co.
- Injured Workers Pharmacy
- Insurance Specialists, Inc.
- John Hancock
- LandAmerica 1031 Exchange Services
- Laser Substrates Inc.
- Law Practice Management, State Bar
- Lawgic, LLC
- LawyersUSA
- Lawyers Foundation of Georgia
- Legal Leads
- Legier & Materne, apac
- LexisNexis
- Merrill Lynch
- Minnesota Lawyers Mutual
- Pinkerton Consulting & Investigations
- Pro Bono Project, State Bar
- PureDataCorp
- Sections, State Bar
- Stetson University College of Law
- Thomson-West
- Uniquely Nancy

(more on page 40). Ingram also presented the State Bar of Georgia **Employee of the Year** award to **Delores Hayes** for her dedication and exemplary work since being employed at the State Bar in 1995. Hayes serves as the senior administrator in the continuing legal education department of the State Bar.

This year, the format for the Inaugural Dinner was dramatically changed. All awards and presentations were given at the beginning of the evening in a business session.

Afterward, the attendees rolled out into the evening to find a variety of rooms with different themes. One of the night's biggest hits included a cigar and scotch bar, equipped with leather couches and chairs where you could find a scotch connoisseur and savor a hand-rolled cigar. A nightclub was also set up with a dessert bar and attendees danced to the rockin' sounds of Rupert's Orchestra. At the South Beach room, margaritas, mojitos and Cuban culinary delights were plentiful. Last, but certainly not least, a martini club was setup inside the gazebo room where a wide range of martinis were available and a piano set the ambiance in the background. 



Sarah I. Coole is the assistant director of communications for the State Bar of Georgia and can be reached at sarah@gabar.org.

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State Bar of Georgia Resolution for THE COURT OF APPEALS OF GEORGIA

Congratulating THE COURT OF APPEALS OF GEORGIA on the occasion of its 100th anniversary; and for other purposes,

WHEREAS, THE COURT OF APPEALS OF GEORGIA is celebrating its Centennial during the Year 2006; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA was organized to assist and relieve the Supreme Court of its over burdensome caseload; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA was created by Constitutional Amendment ratified by the public on October 3, 1906; and

WHEREAS, the caseload of THE COURT OF APPEALS OF GEORGIA has increased tremendously through the years; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA has played an integral role in ensuring fairness and adherence to the law and in improving the administration of justice, and its judges have, over the last century, devoted their careers to serving justice; and

WHEREAS, THE COURT OF APPEALS OF GEORGIA invites all citizens of Georgia to celebrate the Centennial by learning about the history of the Court, its judges, and its role in our State's judicial system;

NOW THEREFORE BE IT RESOLVED BY THE STATE BAR OF GEORGIA, that 2006 is hereby designated as a Year Honoring THE COURT OF APPEALS OF GEORGIA and its one hundred years of existence as an integral part of the system of justice in Georgia.

BE IT FURTHER RESOLVED that the Secretary of the State Bar is authorized and directed to transmit an appropriate copy of this resolution to Chief Judge John H. Ruffin Jr. and the other members of THE COURT OF APPEALS OF GEORGIA.

Unanimously adopted this 2nd day of June, 2006.
Robert D. Ingram, President and Cliff Brashier, Executive Director



Chief Judge John H. Ruffin Jr. graciously accepts a resolution honoring the Court of Appeals of Georgia on their 100th anniversary from Outgoing President Robert Ingram.

Jay Cook: Presiding with a Passion

by Linton Johnson

When Jay Cook takes an interest in something, it is never of a half-hearted nature. Whether he is representing a client in a courtroom, broadening his own horizons through a study of religion or wading into a trout stream with fly rod in hand, he often does so, he says, “with a passion.”

There is no reason to believe that Cook will undertake his 2006-07 term as president of the State Bar of Georgia any differently. After all, advocating for justice might well have been his earliest passion.

“I’m one of those fortunate people. I knew from an early age what I wanted to do,” Cook says, reminiscing about reading “To Kill A Mockingbird” and learning about great American lawyers including Clarence Darrow and Abraham Lincoln during his formative years in the public schools of Savannah, his hometown. “In a class one time—either the seventh or eighth grade—the teacher asked us what we wanted to do, and I made the announcement that I was going to be a lawyer.”

After graduating from Savannah High School, Cook’s educational path took him downtown to Armstrong Junior College (now Armstrong Atlantic State University), which at the time was housed in the building now occupied by the law firm of Bouhan, Williams & Levy. Then, in the spring of 1960, Cook made the pilgrimage to Athens and the University of Georgia.

Cook was on the six-year plan as a college student, but not the same one that so many of today’s underclassmen use to pump their parents’ tuition and expenses well to its last drop. By taking summer classes, Cook was able to complete the undergraduate program and law school in a total of six years.

“I had graded papers for James L. Green, an economics professor, and actually taught in the business college while I was in law school,” Cook recalls. “I had planned to go for a Ph.D. in Economics and was accepted into the University of Pennsylvania. But I was broke and had a wife and a child, so it was time to go to work.”

Cook went around to the Athens law firms in search of a job, but none were hiring. Then he found Gary Pleger, who owned a group of H&R Block offices and also had built a law firm from his collections practice. “He offered me a job—if I passed the bar.”

That was on a Friday. Cook graduated on Saturday, received his favorable bar results on Sunday, went to work on Monday morning and found himself standing before a judge on Monday night. “It was in the Clarke County Magistrate’s Court. I handled a landlord and tenant matter.”

That was the genesis of Jay Cook’s four decades as an Athens lawyer. While still working for Pleger in a storefront office on Prince Avenue, Cook hired a law clerk named John Noell, who, after serving in Vietnam, returned to Athens and joined Cook again on a permanent basis.

That partnership led to what is now the firm of Cook, Noell, Tolley, Bates & Michael. Cook is proud of all of his partners and is appreciative of their support as he assumes the State Bar of Georgia presidency and the increased demands on his time that go with it.

Of Noell, Cook says, “He’s been there from the beginning. He’s been a fun person to be with, and he does a great job with the alumni at the University of Georgia.”

Ed Tolley “is known throughout the state as one of the best, if not the best lawyer. He has certainly helped with the University’s Athletics Department.”

Robert Bates “makes a tremendous impression with his ability to do real estate law ... even if he is an Auburn graduate.”

Kim Michael “is one of the best trial lawyers I’ve ever seen. She’s good on her feet and great in the courtroom.”

In 1970, the firm moved to the Learning Foundation building on Milledge Avenue and again in November 1975 to its present downtown Athens location on Washington Street, directly across from the Clarke County Courthouse. The building was acquired from the late former U.S. Rep. Robert Stephens, whose congressional district office was headquartered there, and whose son is Superior Court Judge Lawton Stephens.

The office moves of the 1970s coincided with the evolution of Cook’s practice from a general portfolio of work to a focus on civil litigation. He tried about 100 cases that went to a jury before 1980, when he handled



his first case of medical malpractice, which was to become his specialty and, yes, passion.

"Even at that time, no one would represent people who had been clearly harmed by medical malpractice," Cook said. The student in him came out again, as he read textbook after textbook on medical subjects ranging from infectious disease, to differential diagnosis, to the reading of laboratory results.

At the same time, Cook was challenging his "personal growth" side of life. In 1977, he started taking a course offered by the University of the South in Sewanee, Tennessee, called Theological Education by Extension—a four-year seminary program for the laity.

"I always had an interest in religion," Cook, an Episcopalian, explains. "It has helped me. Having that kind of background helps you understand yourself. After completing that course, I ended up being involved with all three of the learned professions."

Away from the office, Cook and his wife Frankie enjoy spending time with their two children and two grandchildren. His daughter, Lea Anne Wallace of Savannah and her husband Jeff, a CPA in management at Gulfstream, have a daughter, Anne Keese Wallace, and a son, Wright Wallace. His son, Jay Wright Cook graduated from the University of Georgia Law School in May and stood for the bar in July.

Deeply involved in the local community, Cook is past president of the Athens Jaycees and recipient of the Athens Young Man of the Year award; recipient of the American Red Cross Medal for Humanity; past coordinator of the Heart Fund; past coordinator of the Empty Stocking Fund; member of St. Gregory the Great Episcopal Church; past president of the Athens Rotary Club; past member of Cedar Shoals High School and Barnett Shoals Elementary School PTA; past campaign chairman for

the Boy Scouts of America; past Executive Committee member of the Athens Area Chamber of Commerce; contributing member of the YWCO; past master of the Mount Vernon Masonic Lodge #22 A&FM; and a member/supporter of the Council on Aging, Athens Symphony and Sandy Creek Nature Center.

An avid fisherman, Cook says he's "learning how to do the fly rod." His passion for reading adheres to a strict regimen of non-fiction in the morning and fiction in the afternoon and evening. He's also a self-described news junkie.

Cook enters his term as the new Bar president with a wealth of professional leadership experiences. He previously served as treasurer of the Bar and is a member of the Bench & Bar, Communication, Programs, Long Range Planning, and Legislation Committees. In 2001, he received the State Bar's General Practice and Trial Section's Tradition of Excellence Award.

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Each of the above companies are independently owned and operated in the State of Georgia.

Cook also serves as president of the Georgia Civil Justice Foundation, was a board trustee of the National Civil Justice Foundation, is a member of the Birth Trauma Section of the Association of Trial Lawyers of America and is a member of the American Bar Association's litigation section, the Lawyers Foundation of Georgia, the Lawyers Club of Atlanta and the President's Club of the University of Georgia Alumni.

He also served as president of the Georgia Trial Lawyers Association (GTLA) in 1996-97; president of the Athens-Western Bar Circuit in 1973; president of the Georgia Chapter of the American Board of Trial Advocates in 1998; and judge pro hac vice of the Athens-Clarke County Magistrate Court from 1980 to 1984.

"I'm a closet teacher and a closet journalist," says Cook, who has authored chapters on Georgia Negligence and Nuisance, and Privacy and Trespass for Lawyers


Cooperative Publishing's series on *Georgia Jurisprudence*. Cook was also editor of *The Verdict* from 1988 to 1990; a member of the Speakers Bureau since 1985, Continuing Legal Education chairman from 1990 to 1995; author of position papers on tort reform for GTLA in 1986; and author of the GTLA *Trial Practice Manual* chapter of "Lay and Expert Witnesses."

Cook believes that protecting the American justice system is his calling, and that has led him to become the first Bar president from Athens since the late Gene Mac Winburn in 1989-90.

"Our justice system is under siege. These are challenging times," said Cook, whose plans for this year are outlined in his Georgia Bar Journal's President's Page article. "During the next 12 months, the State Bar of Georgia will do everything we can to reinvigorate our membership and remind our fellow Georgians what it means to protect the


Constitution's promise of justice for all, a legacy secured for all Americans by the Founding Fathers, and a promise worth keeping."

The passion that has served so many of Cook's clients well for more than 40 years still remains strong.

"I saw my dad, who worked with the Post Office, not particularly happy when he got up to go to work," Cook recalls. "But I still have this great passion for advocacy. It's a wonderful way to serve. There's nothing in the world like waiting for a verdict; it's one of the few real dramas left in life. Being a lawyer has satisfied my personal needs, and it's a great way to make a living. It sure beats working!" 



Linton Johnson is a media consultant with the State Bar of Georgia.





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SEPTEMBER 18-22, 2006, GRAND HYATT ATLANTA IN BUCKHEAD, ATLANTA, GEORGIA

Foundation Hosts Successful Meeting

by Lauren Larmer Barrett

The Lawyers Foundation Silent Auction, Fellows meeting, LFG/YLD Fun Run, annual dinner, oh my! The Lawyers Foundation of Georgia (LFG) was very busy at the 2006 Annual Meeting of the State Bar of Georgia, held at the Westin Resort on Hilton Head Island. The weather was fabulous, if a bit too breezy for some, as the attorneys in attendance wielded their pens, running shoes and forks at the various events and functions.

The Silent Auction was even bigger and better this year, earning more than \$10 thousand. With 92 items to bid on, the Annual Meeting attendees kept their pens flying at the auction, especially in the last half hour during the Lawyers Foundation/Pro Bono Bloody Mary Reception. Thanks to all those who participated—both the donors and the bidders.

The Fun Run was held on the beach in front of the resort. Each of the more than 30 participants completed the run and were greeted with their just reward of a beautiful t-shirt, and an even more welcome treat, cold water to drink.



Photos by Jennifer R. Mason

Linda Klein, Michael Neuren and Vicky and Charles Cork enjoy the breeze at the Shorehouse.

The Fellows meeting, held each year to provide the Fellows of the Foundation with an update on the Foundation and to elect the officers and trustees of the Foundation, was held on June 1, when many folks may have preferred to be on the beach, in the pool or on the links. Nonetheless, we had a good turnout—with congratulations in order for Bill Nesmith, winner of the iPod® door prize. The slate of trustees and officers for the coming year are in the sidebar.

The annual Fellows dinner was also a celebration of the 35th birthday of Georgia Legal Services Program

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(GLSP). Held in the Shorehouse at the Hilton Oceanfront Resort, the evening was very special. The setting was beautiful, with brisk ocean breezes keeping the temperatures down. More than 200 dinner guests were challenged and enlightened by the presentations by Hal Daniel, former chair of both GLSP and LFG; Linda Klein, current chair of LFG; and Jim Boswell, current chair of GLSP. The guests were also thoroughly entertained

by the antics of Laughing Matters, a terrific improvisational comedy troupe. Thank you to the law firms who hosted the event and to all our sponsors. Platinum, Gold & Silver sponsors included: The Georgia Fund, Ikon, LexisNexis, The Coca-Cola Company, and Insurance Specialists, Inc.

To all those who support of the Lawyers Foundation of Georgia, thank you! The continued growth of the Foundation is due to your

participation and contributions. If you would like more information about the activities, events and programs of the Foundation, please contact Lauren Larmer Barrett at 404-659-6867 or lfg_lauren@bellsouth.net. 



Lauren Larmer Barrett is the executive director of the Lawyers Foundation of Georgia.



Harvey Weitz, Sally and Steve Greenberg pause for a photo.



The crowd at the LFG/GLSP Dinner at the Hilton Shorehouse.

Georgia Legal Services Celebrates

by Jeanette Burroughs

The Fellows of the Lawyers Foundation of Georgia hosted the 35th birthday celebration of Georgia Legal Services at the spectacular Hilton Oceanfront Resort Shorehouse Pavilion on June 2 during the State Bar Annual Meeting. Honored guests included justices of the Supreme Court of Georgia and other judges, visiting State Bar presidents, past State Bar presidents, and founders and past presidents of Georgia Legal Services. Lawyers Foundation of Georgia Chairperson Linda Klein, Executive Director Lauren Barrett, former State Bar and Georgia Legal Services President Hal Daniel, and Executive Director Phyllis J. Holmen originated the event to raise visibility and support for the organization.

A packed crowd of 200 guests celebrated Georgia Legal Services' history of delivering on the promise of equal access to justice for all. The historical accomplishments were highlighted on storyboards donated by Litigation Presentation.

Entertainment for the evening featured the improvisational comedy group Laughing Matters.

A special thanks to the law firms which gave generously in support of the event, including Weissman, Nowack, Curry & Wilco; McKenna Long & Aldridge, LLP; Hunter, Maclean, Exley & Dunn, PC; King & Spalding; the Barnes Law Group, LLC; Bondurant Mixson & Elmore, LLP; Gambrell & Stolz, LLP; Butler Wooten & Fryhofer, LLP; and Sutherland Asbill & Brennan.



Phyllis Holmen at the 35th Birthday Celebration for Georgia Legal Services, hosted by the Lawyers Foundation of Georgia.

Georgia Legal Services is the largest legal aid organization in Georgia that provides high quality legal services in civil matters to low-income individuals and families who reside in 154 counties outside metro-Atlanta. Georgia Legal Services was founded in 1971 by the Younger Lawyers Division of the State Bar. Today, the organization serves 72 percent of Georgia's poverty population or 1.5 million people. Families and individuals are helped to resolve critical and urgent legal problems involving domestic violence, evictions, loss of benefits, school issues, employment, health care, housing problems, and more.

Gearing Up for the 2006-07 Bar Year

by Jay Cook

The following is excerpted from Jay Cook's presidential speech at the 2006 Annual Meeting in Hilton Head Island, S.C.

Good morning.

I'd like to begin my remarks with this quote from former U.S. Supreme Court Justice George Sutherland: "A little water, trickling here and there through a dam, is a small matter in itself; but it may be a sinister menace to the security of the dam, which those living in the valley below will do well to heed."

The "dam" Justice Sutherland refers to is the First Amendment. The "trickling water" is the indirect threat to Freedom of the Press that he perceived in the dissenting opinion he wrote in the 1937 case *Associated Press v. the National Labor Relations Board*.

But I do not wish to speak to you this evening about Freedom of the Press, although I believe its protection as imperative as any other First Amendment guarantee. Instead, I wish to speak to you about another more menacing rupture in the dam protecting our treasured American liberties: the escalating attacks from powerful special interests and the other branches of government on the judiciary and our system of justice.

Thus far, these attacks have mostly been carried out below the water level of public perception. But, thankfully, they are beginning to attract backlash at the highest levels. As you heard from Robert Ingram, U.S. Supreme Court Justice Clarence Thomas recently expressed his concerns about these attacks to the Bar's Executive Committee. Justice Thomas particularly decried the pervasive negativity that's been manifesting itself through increasing public attacks on judges – both violent and political.

Even more recently, Justice Antonin Scalia publicly rebuked Congress for having gone too far in trying to prevent the Supreme Court from using foreign law in its constitutional rulings. "It's none of your business," he told the members of the overreaching legislative branch. "I'm darned if I think it's up to Congress to direct the court how to make its decisions."

I don't have to tell you that as members of the State Bar of Georgia we are sworn to defend the U.S. Constitution.



Photo by Sarah I. Coole

Bar President Jay Cook speaks to the Board of Governors members at the 2006 Annual Meeting in Hilton Head Island, S.C.

In fact, I respectfully request that at this time you all stand and recite with me the Attorney's Oath:

I swear that I will truly and honestly, justly, and uprightly conduct myself as a member of this learned profession and in accordance with the Georgia Rules of Professional Conduct, as an attorney and counselor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God.

That was wonderful and I thank you for your indulgence. But it was not merely for my own edification (or to exercise my new presidential prerogatives) that I asked you to repeat the pledge. I asked you to recite our professional oath because I believe it extends our responsibility beyond the ethical and professional practice of law, beyond superb service to our clients, beyond even the walls of the courthouse.

You see, I believe that as members of the State Bar of Georgia we are bound by our oath to fulfill this state

and this nation's constitutional promise of "justice for all" to every citizen.

I believe "justice for all" is a precious American legacy, hard-won for us by our founding fathers. I believe "justice for all" is the guardian of democratic order and individual liberties. I believe "justice for all" promises equal protection under the law and equal rights for all citizens. I believe "justice for all" protects the well being of all Americans by promoting safer products, standards, and practices.

Moreover, I believe "justice for all" means revering that founding document, which demands three separate branches of government to protect our democratic ideals from corruption, secrecy, favoritism, and domination. And I believe "justice for all" means honoring the independence of all three branches of government, including the judiciary, so that each can fulfill its sacred obligation in the separation of powers.

As defenders of the constitution and officers of the court, it is vital that we recommit, refocus, recalibrate, and reinvigorate the roles we play in redeeming the image of our justice system. We must work harder to restore a healthy, balanced vision of the American justice system and the paramount role it plays in preserving and protecting a democratic society.

Thanks to my predecessors, Robert Ingram and Rob Reinhardt, the State Bar of Georgia already has established a framework to fulfill this essential goal: the Foundations of Freedom Commission. Through the continued communications and education initiatives of the Commission, we have the opportunity to reframe public discourse about the legal system to trigger a positive, values-based conversation about American justice.

This conversation must take place on higher ground, under a standard of American values, and through a clear, truthful message that resonates deeply with our citizens.

This conversation must convey the intrinsic value of the American justice system; it must convey how this value serves society and why this value is worth defending, preserving, and restoring. This conversation must make clear why the justice system should matter to ordinary American citizens and it must communicate how ordinary citizens can safeguard the justice system against efforts to dismantle it.


This conversation must begin right this minute and continue far into the future!

I am pleased to tell you that your Executive Committee has made the necessary commitment to sparking and sustaining this values-based conversation about American justice. We understand that we cannot win back public confidence in one, two, or five years. Public education must be a permanent fixture in our strategy for safeguarding the judiciary's important role in preserving the American way of life.

In the coming year, we will extend the reach of this message into schools, jury boxes, community and civic organizations, municipal governments, and hometown newspapers.

The success of our outreach efforts will depend greatly on effective communication among our members. We need the cooperation and commitment of local bar associations, judicial councils, law firms, and individual lawyers and judges who make up our membership of more than 37,000 dedicated public servants.

I'd like to close with another quote from that dissenting opinion from Justice Sutherland: "For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

As your new president, as a lawyer, as a Georgian, and as an American citizen, I leave you with this: *If there is yet time, let us not waste another moment of it!* 

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Bar's Executive Director Receives Distinguished Service Award

by Jennifer R. Mason

Cliff Brashier, executive director of the State Bar of Georgia, was honored by his colleagues with the 2006 Distinguished Service Award "for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia." This award was presented during the business portion of the Presidential Inaugural Gala on June 3 at the 2006 Annual Meeting in Hilton Head, S.C.

Brashier, a quiet individual who would prefer the attention and accolades be focused elsewhere, was caught off-guard by the announcement. Outgoing President Robert Ingram worked diligently to ensure the surprise was intact. He went so far as to create a mock award for fellow nominee Rob Reinhardt that was approved by Brashier, and work secretly with the Communications Department at the Bar to create a memorable PowerPoint. The presentation commemorated the growth and accomplishments the Bar has enjoyed since Brashier's tenure as executive director began, as well as a few accolades about the man himself. In his acceptance speech, Brashier said he himself had employed sneakiness to surprise former award winners, so he approved of the tactics.

In 1980, when Brashier first began working at the Bar, there were 13,150 members. Twenty-six years later, there are more than 37,000 members. The State Bar of Georgia is currently the fifth largest bar of all mandatory bars in the United States, and ranks as one of the top three along with Texas and Florida for programs benefiting lawyers. Despite having the lowest dues of any comparably sized bar in the country, the



Outgoing President Robert Ingram presents the Distinguished Service Award to State Bar Executive Director Cliff Brashier.

Bar has developed many worthwhile programs under Brashier's leadership, including:

- Consumer Assistance Program;
- Law Practice Management Program;
- Casemaker Legal Research;
- Unauthorized Practice of Law; and the
- Foundations of Freedom Program


Other notable acquisitions over his 25 plus years with the organization include opening the South Georgia office, purchasing the Bar Center and raising \$4 million through grants and donations to build out the third floor conference center including the Legal History Museum and Mock Trial Courtroom.

All of this was accomplished with a staff of 67, well below the 300plus members employed by both the Texas and Florida bars. Brashier cited the staff and the 156-member Board of Governors as a large reason why the Bar has been so successful in creating programs and has become a gathering place that provides quality support to its members.

In addition to sharing information about how the Bar has grown over the past 26 years, Ingram highlighted a few of Brashier's memorable moments. One of the highlights demonstrated his strong work ethic. During "Snow Jam" 1982, the staff was released early in order to minimize the dangers of travel; Brashier contin-

ued working while the streets were covered with several inches of ice and snow. Alerted to the deteriorating conditions, he began to make his way home. Eleven hours later, after one dead battery and an empty gas tank, he arrived at his destination, wet suit and all. The Bar members and staff can rest easy knowing that Brashier is leading the way.

Brashier began his legal career in the private practice sector in Wichita Falls, Texas, after earning a bachelor's degree *summa cum laude* from Midwestern University and a law degree from the University of Texas School of Law. He also holds an LL.M. (Taxation) from Emory University School of Law and an M.B.A. from Emory

University School of Business, First Honor Graduate. Brashier is a member of both the Texas and Georgia bars. He came to the State Bar of Georgia in 1980 as the director of designation and fee arbitration and has served as the organization's executive director since 1993. Congratulations to Brashier and job well done. 



Jennifer R. Mason is the administrative assistant in the Bar's communications department and a contributing writer to the *Georgia Bar Journal*.



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The Randolph County Courthouse at Cuthbert

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Although untouched by the actual fighting, the Civil War left its ruinous mark on the economy of southwest Georgia, thus further entrenching the region in proud and defiant agrarian traditions. At first blush, it may seem odd that such a place as Cuthbert would eventually turn to Hannibal I. Kimball, a notorious Carpetbagger, for help. But Cuthbert did: not once but twice. Under the leadership of this Northern railroad promoter, The Bainbridge, Cuthbert and Columbus Railroad, chartered in 1869, was brought to financial ruin by 1872. The town then languished for ten years yearning for crossing rails. In the mid-1880s, just as railroad progress seemed again on the wind, Cuthbert once more turned to Kimball, this time for a new courthouse.

Cuthbert had become the county seat of Randolph County back in the 1830 when Stewart County had been split off from Randolph. A crude frame courthouse had been erected in 1837. It was replaced by a slightly more respectable wooden structure in 1840. The Southwestern Railroad had arrived in Cuthbert in 1859, and at war's end. The town suddenly envisioned itself at the crossing of The Southwestern's east-west branch from Macon via Smithville to Eufaula, Alabama, and new north-south rails connecting Bainbridge and Columbus. For years the town's hopes

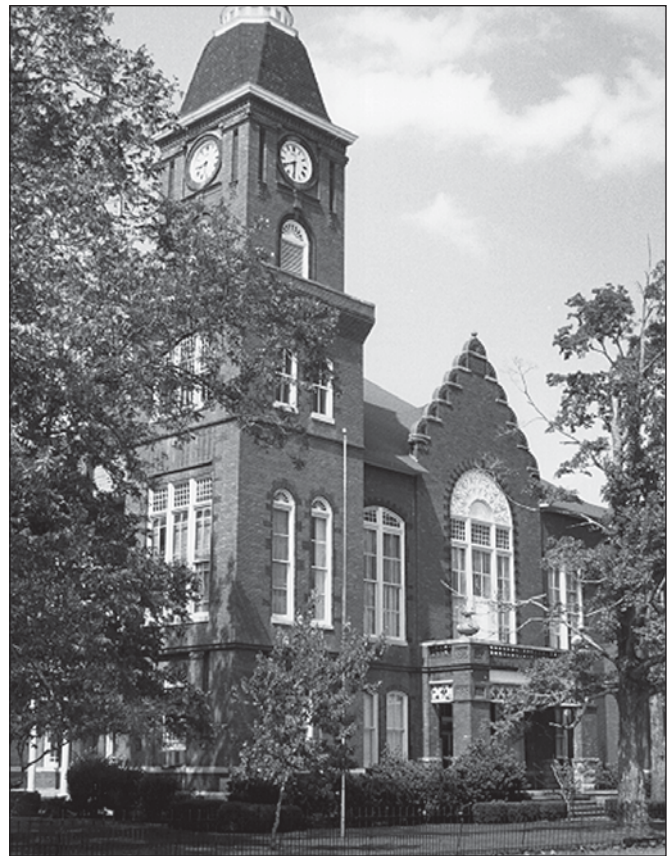


Photo by Wilber W. Caldwell

Built in 1886, Kimball, Wheeler and Parkins, architect.

rose and fell on a series of failed north-south railroad schemes including Kimball's ill-fated venture.

Kimball's appeal in places like Cuthbert is understandable. Despite the fact that he was a Yankee, he was charming, enthusiastic, and he had the governor's ear. Men like Kimball are often viewed as ruthless swindlers driven by exploitive motives for personal gain, but there was a great deal more to Hannibal Kimball than that. Kimball was a true believer. He was convinced of the South's potential. This zeal and confidence, when combined with his notable promotional skills and personal

charm made him a force to be reckoned. Hannibal Kimball may have been among the first of the New South spokesmen. Here was the familiar message of hope and prosperity delivered years before the New South even had a name. Hannibal Kimball dreamed big dreams. To accomplish these dreams he schemed big schemes. In his zeal to succeed he regularly crossed over ethical or even legal boundaries. Thus, like The Bainbridge, Cuthbert and Columbus railroads, many of his teetering towers of finance came tumbling down. Like all good New South spokesmen, Kimball believed his own propaganda. Regardless of all the signs to the contrary, Kimball saw Georgia as a vast untapped resource about to rise from the ashes of war.

One of Kimball's many enterprises of this era was the architectural firm of Kimball, Wheeler and Parkins. Hannibal Kimball was not an architect, and the inclusion of his name on the shingle of Kimball, Wheeler and Parkins tells us something about Kimball the man: he was not one to let facts get in the way of dreams. Armed with this mindset and seemingly endless supplies of optimism, zeal and pure gall, Hannibal Ingalls Kimball might have gone down in history as only another Carpetbagger had he not become caught up in a personal vision of a New South. Instead of exploiting the South, he was seduced by her, and it was often his undoing.


Like many Georgians, the people of Cuthbert were quick to forgive Kimball his failures. When the assets of the old Bainbridge, Cuthbert and Columbus Railroad were purchased by an Alabama company in 1881 and re-chartered as The Chattanooga, Columbus and Southern, hopes in Cuthbert again began to soar. Later that same year, the proposed road became The Chattanooga, Columbus and Florida and renewed hope for crossing rails rekindled talk of a new courthouse.

At that time, the finest courthouse in the state was going up in Atlanta

with William Parkins and Alexander Bruce as architects. When Hannibal Kimball began his second Kimball House Hotel in Atlanta in 1883, he teamed with Parkins, who had designed the first Kimball House in 1870 and Lorenzo Wheeler of New York whose eclectic Dutch Renaissance designs were a novelty in Georgia. We will never know what moved Cuthbert to select the new firm of Kimball, Wheeler and Parkins to design their courthouse. Perhaps it was the town's former association with Kimball and his incredible enthusiasm for Georgia's economic prospects. Perhaps it was William Parkins's reputation as an architect, or Lorenzo Wheeler's new "modern" style.

The Randolph County Courthouse was completed in 1886. Although local sources in Cuthbert establish Parkins as the supervising architect on the project, the style here leads us to speculate that possibly Wheeler was the primary designer. After all, it was he who brought the Northern European Renaissance or Dutch Renaissance Style to Georgia. Georgians first glimpsed graceful Netherlandish scrolling gables in Wheeler's 1884 design for Atlanta's Kimball House II. The scrolling effects are achieved here in Cuthbert through the use of quarter-round terra cotta castings. Also notable is Wheeler's use of wrought iron decoration around the entrance to compliment the terra cotta and the elaborate patterned reliefs above courtroom windows framed by a great bearing

arch. Further ornamental detail is achieved through the use of brick polychromy around window openings also in Dutch 16th century style. There is little here of William Parkins's early work, but many of Parkins's later court buildings reflect Wheeler's influence in their Northern European Renaissance detail and in their tall thin quoining tourelles like those adorning Wheeler's Kimball House II.

If Hannibal Kimball brought failure to Cuthbert in 1871 with the collapse of The Bainbridge, Cuthbert and Columbus Railroad, he brought success a decade and a half later when his firm designed the 1886 Randolph County Courthouse. It is unquestionably one of the finest late nineteenth century picturesque courthouses standing today in 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.

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- > Atlanta immigration lawyer **Gary C. Furin** was listed in **Martindale-Hubbell's Bar Register of Preeminent Lawyers** in the practice areas section of immigration law. Furin was the first recipient of the American Immigration Lawyers Association's "Outstanding Article on Immigration and Nationality Law" and was AILA Atlanta chapter chairman for 2 one-year terms.



- > The **United States Court of International Trade** in New York held a special session for the investiture of its newest member, **Leo M. Gordon**. Judge Gordon was nominated by President George W. Bush in November 2005 to fill the vacancy created by Judge Thomas J. Aquilino Jr.'s transition to senior status. The nomination was confirmed by the U.S. Senate on March 2006. Judge Gordon brings to his judicial post 25 years of experience with the practice and procedure of the Court of International Trade, most recently as the clerk of the court (1999-2006), and previously as the assistant clerk (1981-1999). Judge Gordon began his legal career in 1977 as an assistant counsel at the subcommittee on monopolies and commercial law for the U.S. House of Representatives Judiciary Committee, and served as the principal attorney responsible for the Customs Courts Act of 1980 that created the Court of International Trade.



- > **Carlton Fields** Atlanta shareholder, **John E. Taylor**, participated in two commercial leasing panels as part of a 14-week seminar series sponsored by the American Bar Association Community Outreach Program. Taylor advises and represents clients in all aspects of commercial real estate investment, acquisition, leasing, financing, divestiture, and development. He has experience in retail, office, industrial, office-warehouse, and timberland properties, and also represents clients in low-income housing and community development matters. Taylor also represents financial institutions in closing loans secured by real property, letters of credit, and all types of personal property under the Uniform Commercial Code, including monitored asset-based loans and secured and unsecured corporate loans.

- > The partners at **Fisher & Phillips** re-elected **Roger Quillen** to another **three-year term** on the firm's management committee. Quillen's law practice involves litigation covering a wide range of employment discrimination issues, employee welfare benefit plans, the Railway Labor Act and issues arising before the National Labor Relations Board

and the Equal Employment Opportunity Commission. His special emphasis is in federal appellate litigation. He also represents employers in collective bargaining and counsels them on strategies designed to prevent claims and lawsuits.

The firm also announced that **David C. Whitlock**, partner and head of the Immigration Law Practice, was featured in **Chambers USA: America's Leading Lawyers for Business 2006**. Whitlock was ranked among the top immigration attorneys in the state of Georgia. In addition, the Fisher & Phillips Atlanta office received two distinctions, being ranked among the top two Georgia law firms in both labor & employment and immigration law practices.

The firm's **2005-06 Employment Law Reference Guide** was awarded **first place** in the **2006 Burton Awards Best Legal Compendium** category, given annually to law firm publications in a number of categories. The Reference Guide consists of almost two-dozen separate entries in topics relating to labor and employment law.

- > Atlanta attorney **John Gornall** of **Arnall Golden Gregory** was appointed a **Georgia Special Assistant Attorney General** to assist the Georgia Department of Economic Development with the Kia Motors of America project negotiations and investment.



- > **William M. Ragland Jr.**, a partner with the law firm of **Hunton & Williams LLP** in its Atlanta office, has joined a select group of national business, legal and community leaders as a newly appointed **member** of the **National Board of the Smithsonian Institution**. Active in community and public service, Ragland recently served as president of the Atlanta Bar Association. The focus of his legal practice is complex litigation, intellectual property and technology matters.



- > **Timothy J. Ramsey** was sworn in as the **2006-07 chair** for the **real estate section** of the Atlanta Bar Association at its Annual Meeting and Awards Luncheon held in May at the Capital City Club in Atlanta. Formed in 1888, the Atlanta Bar Association is the largest metropolitan bar association in the Southeast and one of the most active in the country in serving its members, the Atlanta community and legal system. The association has more than 6,300 members in a 12-county area of metropolitan Atlanta. Ramsey practices in the areas of commercial real estate, business trans-

actions and business organizations. He is a founder and managing principal of Bodker, Ramsey, Andrews, Winograd & Wildstein, P.C., which is celebrating its 20th year in 2006.



Hall, Booth, Smith & Slover provided an **appellate practice seminar** for 39 of their associates at the State Bar of Georgia. The educators of this seminar were **Justice P. Harris Hines** of the Supreme Court of Georgia, Judges **Anne Elizabeth Barnes** and **John J. Ellington** of the Court of Appeals of Georgia, and **Amy S. Haney** staff attorney at the Supreme Court of Georgia. The seminar provided the attendees with the fundamentals of appellate practice and procedure.

> The Atlanta chapter of **NALS®**, the association for legal professionals, presented its **Scales of Justice Award** to **Melburne D. McLendon** for his pro bono work with veterans. The award is presented to individuals who improve access to justice, improve the quality of legal services, promote the legal profession, and support the community where they live and work. McLendon volunteers at the Veteran's Administration hospital in Decatur. His influence has prompted other attorneys to decide to help veterans with legal matters.

> The **Family Law Section** of the State Bar of Georgia presented the **Jack P. Turner Award** to **Christopher D. Olmstead**, a partner at McLain & Merritt. The award was established to honor an attorney whose career has exhibited the highest standards of technical expertise and professionalism in the practice of family law. Turner has served as chair of the family law section and is president of the Georgia chapter of the American Academy of Matrimonial Lawyers and is also a member of the Charles Longstreet Weltner Family Law Inn of Court.

> The **Georgia Justice Project (GJP)**, a criminal defense agency serving Atlanta's indigent accused, received a **donation** of computers and accompanying software from **Microsoft** to support a computer-based skills training program, increasing participants' ability to earn a higher-paying income. Microsoft has committed to donating a computer and software package for each person enrolled in the program through 2006. Microsoft

The Court of Appeals of Georgia Centennial Celebration A "Century of Serving Justice"

The 2006 Centennial Celebration began with a proclamation ceremony at the State Capitol with a resolution commemorating the Centennial by Gov. Sonny Perdue, and a resolution by the General Assembly of Georgia in January. The Court is celebrating its centennial with various events throughout the year, including:

- A CLE symposium presented at the State Bar Annual Meeting in June and oral arguments at different locations throughout the state;
- The first High School Oratorical contest, themed "The Separation of Powers and the Judicial Branch of Government," will be held in September at the State Bar;
- A documentary video about the court's 100-year history, is being produced and will premier in October;
- The official Centennial History of the Court of Appeals is being written by notable historians and law professors to be distributed in the fall; and
- A centennial dinner will be held in October at the Georgia Aquarium.

For more information, go to www.gaappeals.us, or call 404-656-2758.

executives—including Vice President of Deputy General Counsel Nancy Anderson and Senior Attorney Mary Jo Schrade—joined GJP staff, volunteers and community leaders to announce the donation. Microsoft's donation was made through the company's Genuine Software Initiative, which was developed to combat software counterfeiting and other forms of software piracy. All of the computers donated to GJP were obtained through Microsoft's test purchase program, which allows Microsoft to purchase computers from companies that are suspected dealers of counterfeit and infringing software. When the computers do not contain any pirated or counterfeit software, many are donated to social service organizations such as GJP.

> The **Leyes Cotidianas** television program won an **Emmy** for outstanding achievement in the category of interview/discussion. The show, translated "Everyday Law," is a Spanish version of "The Layman's Lawyer." It focuses on legal problems and potential solutions. A unique aspect of the program is that it includes English subtitles, so the information is relevant to different groups. The

award was presented at the 2006 Southeast Regional Emmy Awards in June. The show's host is GTLA member **Ralph Perales**. Perales has been the host from the very first taping five years ago, when it was also nominated for an Emmy. Additionally, the show celebrated its 100th taping in June.

- > **Kilpatrick Stockton** announced that the firm earned the highest recognition in the 2006 edition of **Chambers USA: America's Leading Lawyers for Business**. The firm had 15 areas of practice recognized as ranked leaders. The following attorneys from the Atlanta office were named: **Hilary P. Jordan**, banking and finance; **Richard R. Cheatham**, banking and finance; **Alfred Lurey**, **Dennis Meir**, **Todd Meyers** and **Paul M. Rosenblatt**, bankruptcy; **Brian Corgan**, **William Dorris**, **Randall Hafer**, **George Anthony Smith** and **Neal Sweeney**, construction; **Stanley Blackburn**, **Daniel Falstad**, **Rey Pascual** and **David Stockton**, corporate/M&A; **William Boice**, **Richard Boisseau** and **James Coil**, employment; **Richard Horder**, environment; **Phillip Street**, health care; **A. Stephens Clay** international arbitration; **William Boice**, **Susan Cahoon**, **A. Stephens Clay** and **David Zacks**, litigation; **Tim Carsow**, real estate; and **Lynn Fowler**, tax.

Additionally, **Chambers USA** has once again named Kilpatrick Stockton a "Leading Georgia Firm for Intellectual Property." The firm was recognized for its full range of IP disciplines. Kilpatrick Stockton is also highly regarded for its national coverage and handling of matters on a global scale. Kilpatrick Stockton led all Georgia firms with the "Most Ranked Individual Attorneys in Intellectual Property." The recognized attorneys include **Miles Alexander** and **Anthony Askew**, both ranked No. 1; **Joseph Beck**; **William Brewster**; **James Ewing**; **James Johnson**; **John Pratt**, and **Jerre Swann**. The firm's Atlanta office also achieved No. 1 rankings for its leadership in bankruptcy, construction and employment.


On the Move

In Atlanta

- > **Marshall & Lueder, LLC**, announced that **Ray S. Smith III**, former vice chair of the Governor's Commission on Sandy Springs, joined the firm as a **partner** and head of its litigation group and **Melinda Garlington** joined as a litigation **associate**. Smith will continue his practice of real estate litigation and zoning, particularly in Sandy Springs. In addition, he will continue his practice in commercial real estate, probate litigation and election law.

The firm is located at Five Concourse Parkway, Suite 800, Atlanta, GA 30328; 770-518-7830; Fax 770-518-7829; www.marshall-lueder.com.

- > **Carolyn (Keri) Chayavadhanangkur** has joined the Atlanta office of **Nelson Mullins Riley & Scarborough LLP** as an **associate**. She will practice in the areas of bankruptcy and creditors' rights, corporate and securities law. Chayavadhanangkur is experienced in representing creditors and debtors in complex Chapter 11 bankruptcies, as well as in structuring, negotiating and closing business transactions including senior debt financing facilities for large international corporate and middle market borrowers. The office is located at 999 Peachtree St. NE, Suite 1400, Atlanta, GA 30309; 404-817-6000; Fax 404-817-6050; www.nelsonmullins.com.

- >  **Jackson Lewis LLP** has named **Jeffrey M. Mintz** as the new **managing partner** for the firm's Atlanta office. Added to the office's professional staff are two **associates**, **Suzanne M. Alford** and **Melissa Kotun**. Mintz has spent his entire career with Jackson Lewis where he helped establish and grow the Atlanta office. Prior to joining Jackson Lewis, Alford clerked for the Hon. Frank M. Hull of the 11th U.S. Circuit Court of Appeals. She also practiced in the general litigation and employment litigation groups at Sutherland Asbill & Brennan in Atlanta. Kotun served as a law clerk to the Hon. Clay D. Land of the U.S. District Court for the Middle District of Georgia and to the Hon. G.R. Smith of the U.S. District Court for the Southern District of Georgia before joining the firm. The firm's Atlanta office is located at 1900 Marquis One Tower NE, 245 Peachtree Center Ave. NE, Atlanta, GA 30303; 404-525-8200; Fax 404-525-1173; www.jacksonlewis.com.

- > **Fish & Richardson P.C.** announced the addition of **John D. Hamann** and **Paul E. Franz** as **associates** in its patent prosecution and litigation groups. Hamann's practice focuses on patent litigation with an emphasis on telecommunications, electronics and software systems. Before joining Fish & Richardson, he was an associate at Sutherland, Asbill & Brennan in Atlanta. Franz focuses his practice on patent prosecution and litigation with a particular emphasis in the fields of electrical and mechanical engineering. Prior to joining Fish & Richardson, he was an associate at Jones Day in Cleveland, Ohio. The office is located at 1230 Peachtree St. NE, 19th Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; www.fr.com.



LaFiandra



MacDonald



Mann

Ido L. LaFiandra, Ralph F. (Chip) MacDonald III and Timothy Mann Jr. have joined the Atlanta office of **Jones**


Day as **partners**. LaFiandra, formerly a partner at Alston & Bird LLP, practices in the areas of lending and business reorganizations and leads the lending/structured finance practice in the Atlanta office. MacDonald, formerly a partner at Alston & Bird LLP, is focused on the financial services industry. His practice includes securities, mergers and acquisitions, corporate governance and financial products for clients ranging from banks and savings institutions to REITs, investment managers and broker-dealers. Mann, formerly a partner at Kilpatrick Stockton LLP, practices mergers and acquisitions, securities and corporate law. The office is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; www.jonesday.com.


> **Schiff Hardin LLP** has added **Eric L. Barnum** as a **partner** and leader in the labor and employment group in the Atlanta office. He joins the firm from McGuireWoods LLP. Barnum is an experienced trial lawyer practicing in all areas of employment law and employment litigation. His practice also includes workplace violence intervention and evaluation, as well as obtaining temporary restraining orders and permanent injunctions. The Atlanta office is located at One Atlantic Center, Suite 2300, 1201 West Peachtree St., Atlanta, GA 30309; 404-437-7000; Fax 404-437-7100; www.schiffhardin.com.

> **Epstein Becker & Green, P.C.**, announced that **Elizabeth Ann "Betty" Morgan** is a **member** of the firm's Atlanta office. Morgan, who comes to EBG from Hunton & Williams, will practice as part of EBGs growing national litigation practice. Her practice centers on the enforcement and defense of trademark rights, trade secrets, copyrights and patents. In 2005, Morgan was named one of the top 50 women lawyers in Georgia by *Atlanta Magazine*. She is an adjunct professor at Emory University School of Law, where she teaches Trial Techniques and has received accolades for her speaking and legal writing. Previously, she taught at the University of Miami School of Law. The office is located at Resurgens Plaza, 945 East Paces Ferry Road, Suite 2700, Atlanta, GA 30326; 404-923-9000; Fax 404-923-9099; www.ebglaw.com.

> **Mikiel J. Davids** joined **Banta Immigration Law Ltd.** as an **associate** specializing in business law. The firm is located at 1175 Peachtree St. NE, 100 Colony Square, Suite 700, Atlanta, GA 30361; 404-249-9300; Fax 404-249-9291; www.bantalaw.com.

> The law firm of **Holt Ney Zatzoff & Wasserman, LLP**, announced that **Gregory P. Youra** and **Scott E. Morris** have joined the firm as **partners**, and **Scott M. Bryant** and **Whalen J. Kuller** have joined the firm as **associates**. Youra practices in the area of health care law. Morris will continue his civil trial and appellate litigation practice focusing on commercial disputes, real estate and land-use law, and eminent domain. Bryant practices in real estate development, finance and investment, commercial leasing, telecommunications, zoning law and land-use law. Kuller practices in the areas of business law, corporate law, finance and health care law. The firm is located at 100 Galleria Parkway, Suite 600, Atlanta, GA 30339; 770-956-9600; Fax 770-956-1490; www.hnzw.com.

>  **Stites & Harbison** announced that **LaToya L. Williams** has joined the firm in the Atlanta office as an **associate**. She is a transactional lawyer experienced in real estate development and real estate lending. Her practice focus is in conduit lending. Before joining Stites & Harbison, Williams practiced in a Memphis, Tenn., firm with an emphasis primarily in general business, corporate and real estate. The Atlanta office is located at 303 Peachtree St. NE, 2800 Sun Trust Plaza, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

>  **Parker Hudson Rainer & Dobbs LLP** added **Kathleen O. Currey** as a **partner** and **Ernie L. Cochran** as an **associate** to its commercial finance team and commercial real estate department, respectively. Currey's practice focuses on representing financial institutions in connection with the documentation, closing and administration of revolving credit, term loan and letter of credit facilities for commercial borrowers and their affiliates located in the United States and in other countries. Cochran's practice focuses on representing developers and investors in real estate transactions. The office is located at 285 Peachtree Center Ave. NE, 1500 Marquis Two Tower, Atlanta, GA 30308; 404-523-5300; Fax 404-522-8409; www.phrd.com.

In Athens

> **Jo Carol Nasset-Sale** has resigned her position as associate professor at John Marshall Law School to

return to Athens and establish a **practice** that will concentrate on civil and domestic relations mediation throughout northeast Georgia, ethics consultation, and representation of attorneys in bar discipline matters. Her office is located at One Huntington Road, Suite 806, Athens, GA 30606; 706-296-7116.

In Jonesboro

>



Sandra M. Clarke and Georgetta Glavis-Innis announced the formation of **Clarke, Glaves-Innis & Associates, LLC**. With offices in Jonesboro and

Lawrenceville, the firm will continue to practice in the areas of criminal defense, personal injury, divorce, custody, child support, paternity and legitimation. The Jonesboro office is located at 184 North Ave., Jonesboro, GA 30236; 678-610-8100; Fax 770-236-9228; and the Lawrenceville office is located at Camden Square, 180 Camden Hill Road, Suite C, Lawrenceville, GA 30045; 770-236-9227; Fax 770-236-9228.

In Macon

> The law firm of **Elizabeth F. Thompson, PC**, announced that **Alice Shaw Heard** has joined the firm and the new name of the firm is **Heard & Thompson, PC**. The office is located at 1515 Bass Road, Suite I, Macon, GA 31210; 478-405-6916; Fax 478-405-6944.

> **Groover and Childs** announced that **Sarah Elizabeth White** joined the firm as an **associate**. White's practice areas include business and contract litigation. The firm is located at 165 First St., Macon, GA 31201; 478-745-4712; Fax 478-745-7373; www.grooverchilds.com.

In Marietta

> The Marietta office of **Moore Ingram Johnson & Steele LLP** announced that **Suzanne Henrickson** and **Esther Vayman** have joined the firm as **associates** in its litigation group. Henrickson was formerly an associate with Carlock Copeland Semler & Stair, and staff attorney to Judge Jerry Baxter of the Fulton County Superior Court. Henrickson will focus her practice in the area of commercial litigation. Vayman joins the firm after joining the Bar in the fall of 2005. She is a former intern to Justice Benham in the Supreme Court of Georgia, and the Office of General Counsel for the Centers for Disease Control and Prevention. Vayman will focus her practice in the area of insurance defense. The office is located at 192 Anderson St., Marietta,

GA 30060; 770-429-1499; Fax 770-429-8631; www.mij.com.

In Concord, N.H.

> The **Franklin Pierce Law Center** in Concord, N.H., appointed **J. Scott Anderson** of Atlanta to serve as one of two **graduate fellows** in its new IP Amicus Clinic. Anderson will work with J.D. students in the clinic, while pursuing his LL.M. at Pierce. Most recently, he was an associate at Alston & Bird LLP where he specialized in the solicitation of patents for mechanical devices, logistics systems, financial instruments and structures, avionics equipment, robotics and medical devices. The Center is located at Two White St., Concord, NH 03301; 603-228-1541; Fax 603-228-1074; www.piercelaw.edu.

In Washington, D.C.

> **Amy Wolverton** accepted a position as **senior corporate counsel** for **T-Mobile USA, Inc.** in Washington, D.C. Wolverton will be responsible for federal regulatory affairs on various Internet and telecommunications issues. She is also beginning her second year as a trustee of the Federal Communications Bar Association Foundation. The office is located at 401 9th St. NW, Suite 550, Washington, D.C., 20004; 202-654-5903.

Supreme Court Committee on Civil Justice

The Supreme Court of Georgia has finalized the member selection of the Committee on Civil Justice. The committee will be chaired by Marc Gary, general counsel for BellSouth Corporation. Anne Lewis, a partner at Strickland, Brockington & Lewis, LLP, has been selected to serve as vice chairperson. Created in May 2005, the Committee on Civil Justice will work to strengthen Georgia's civil justice system by developing, coordinating and supporting policy initiatives to expand access to the courts for poor and vulnerable Georgians. Building on the work begun by the State Bar of Georgia, the committee will assist stakeholder organizations in developing strategic alliances, eliminating duplication of effort, and securing the legal, financial, and political support necessary to improve the delivery of services to those in need. Some of the specific initiatives include:

- promoting public understanding of access to justice problems;
- improving collaboration and training for advocate organizations;
- increasing coordination of services; and
- encouraging lawyers and judges to take a leadership role in expanding access to justice.

For more information, visit www.gasupreme.us.



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EIGHTH ANNUAL JUSTICE ROBERT BENHAM AWARDS
FOR COMMUNITY SERVICE**

The Community Service Awards Selection Committee and the State Bar of Georgia invite nominations for the Eighth Annual Justice Robert Benham Awards for Community Service. Awards will be presented at a special ceremony in Atlanta in January 2007.

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

NOMINATING GUIDELINES

Nominees must: **1)** be a member in good standing of the State Bar of Georgia; **2)** have a record of outstanding community service and continuous service over a period of time to one or more cause, organization or activity; **3)** not be a member of the Selection Committee; and **4)** not be in a contested judicial or political election in calendar year 2006. Visit www.gabar.org for information about how to submit an effective nomination. At a minimum, nominations should include:

- I. Nominator:** Name (for organizations, identify a contact person in addition to the name of the organization), address, telephone number and e-mail address.
- II. Nominee:** Name, address, telephone number, and e-mail address.
- III. Nomination Narrative:** Explain how the nominee meets the award criteria described above. Specify the nature of the contributions and identify those who have benefitted from the nominee's involvement. Specify when and how long the nominee participated in each identified activity.
- IV. Biographical Information:** Attach a copy of the Nominee's resume or curriculum vitae.
- V. Letters of Support:** Include two (2) letters of support from individuals and/or organizations in the community that describe the nominee's work and the contributions made.

SUBMISSION OF MATERIALS

Send nominations to Mary McAfee, Chief Justice's Commission on Professionalism, Suite 620
104 Marietta Street, N.W., Atlanta, Georgia 30303 (404) 225-5040

All Nominations must be postmarked by October 2, 2006.

**ACT NOW TO RECOGNIZE THE LAWYERS AND JUDGES IN YOUR
COMMUNITY WHO ARE DOING GOOD DEEDS!**

I Never Saw it Coming...

by Paula Frederick

A fluffy cloud just inside the pearly gates provides the perfect vantage point from which to view the chaos below.

You've got a bird's eye view of your former office, where your recently widowed spouse is rummaging through stacks of folders and loose papers.

"I'm sorry, but I don't see a file with your name on it," she says into the telephone receiver. "There are a few files in his home office; I'll have to look there. I'm trying to find a list of all Joe's cases, so I can let everyone know what happened. I still can't believe he's gone. I *begged* him not to go skydiving for his 65th birthday!"

"That file is under the passenger's seat of my car. She'll never find it!" you exclaim to St. Peter. "I'm mortified that I left things in such shambles. I just didn't expect to go so suddenly."

"No one ever sees it coming," St. Peter confirms.

Any lawyer who practices alone should have a succession plan for her practice. Although Georgia's Rules of Professional Conduct do not specifically address this topic, the rules regarding competence (1.1), diligence (1.3) and communication (1.4) would seem to require that a lawyer take reasonable steps to minimize client harm from a disaster affecting the lawyer.

The American Bar Association recently added a comment to the Model Rules to urge that sole practitioners prepare a plan designating another lawyer to review client files, notify clients, and determine whether immediate protective action is necessary when the solo dies or becomes incapacitated.¹

Even if you haven't formally designated someone to close your practice, every lawyer can take some common-sense steps to ensure the orderly transition of files in the event of an emergency.

Be sure that every file is in order, with notes reflecting the action taken in each. Try to keep open files in a designated physical location. Maintain an up-to-date system for calendaring deadlines and hearings. Keep



meticulous records of all money that you are holding, both in the escrow account and as unearned fees.

These steps will help a successor lawyer who needs to notify current clients, obtain extensions of any imminent deadlines, and deal with demands for money.

The Office of the General Counsel and the Bar's Law Practice Management Program can also provide advice and additional resources for lawyers who either wish to create a succession plan or who are closing the practice of a colleague.

If you don't want to spend eternity embarrassed by the condition of the files you've left behind, prepare now for the possibility that your law practice might outlive you.

And heed your spouse's warnings about skydiving. 



Paula Frederick is the deputy general counsel for the State Bar of Georgia.

Endnotes

1. ABA Model Rules of Professional Conduct, Rule 1.3, Comment 5. When a Georgia lawyer dies and there is no partner, associate or other volunteer to close the practice, the Supreme Court of Georgia may appoint a receiver. The Office of the General Counsel may serve as receiver when there is no other volunteer.



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AL9176

Discipline Summaries

(April 15, 2006 through June 16, 2006)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Steven H. Ballard

McDonough, Ga.

Steven H. Ballard (State Bar No. 035575) has been disbarred from the practice of law in Georgia by Supreme Court order dated May 8, 2006. Six disciplinary matters were before the Court.

Ballard was hired by a client to bid on a commercial contract and accepted \$185,000 to be held in his trust account. He failed to wire the funds to the account. He wrote the client a check from his trust account a few days later, but due to insufficient funds, the bank refused to honor it. He never returned the funds.

In another case Ballard met with a financial services agent to obtain a loan to purchase real estate. He submitted false legal documents and made false statements to the agent. The company relied on the documents and closed the loan. Ballard did not use the money to purchase real estate and did not repay the company.

In yet another case, Ballard informed a client about an opportunity to purchase two parcels of land and said that he was investing money in the venture. The client wired \$209,985 to his escrow account to close on the transaction. Ballard wrote himself a check for \$130,000. He presented documents to the client to sign that contained false information reflecting that she had purchased the real estate, and with other false documents indicating that he had sold the property and generated a profit for the client when he had neither purchased nor sold the property.

In another matter, Ballard was hired to represent a client in a personal injury claim. He filed the suit but subsequently dismissed it with prejudice without telling the client. Ballard then falsely informed the client that the defendant had offered to settle the case and made numerous reports that the case was still pending. By the time the client discovered that the case had been dismissed, the statute of limitations had expired. The client sought to recover damages from Ballard, and Ballard told him he would pay him with proceeds from a real estate transaction. Ballard has not paid any funds to the client.

Ballard was hired in another case to represent a company as a defendant in a dispute regarding commercial real estate. Ballard did not file an answer and the court granted a default judgment. Ballard moved to open the default, but the motion was denied and he never told the client about the default or the subsequent motion. The plaintiff filed a garnishment action against the company and Ballard and signed a consent order on the company's behalf, but he did not have permission to do so. The company directed Ballard to file an appeal from the denial of the motion to open default, but he did not. When the company discovered the appeal had not been filed, its attorney signed Ballard's name to a notice of appeal with Ballard's express permission. The attorney asked Ballard to notify his errors and omission carrier of the company's potential claim against Ballard. Ballard told the attorney the name of a carrier. The attorney contacted that carrier and found that it did not insure Ballard and had no notice of a claim. The plaintiff garnished over \$80,000 from the company. At the same time it hired Ballard for the first case, the company paid Ballard a \$5,000 retainer to obtain a dispossession judgment against a tenant. Ballard told the company that he filed the action. Later the company hired a new attorney who discovered that Ballard never filed the suit. Ballard never returned the retainer.

Lastly, Ballard informed a client about a business opportunity to purchase real estate and that he would serve as the closing attorney. Ballard presented the client documents to sign that would effectuate the purchase, but Ballard had not arranged the purchase. Ballard told the client that he found a buyer to purchase the property at a \$25,000 profit and that the client would receive \$127,500 and the \$25,000 profit. The client wired \$100,000 to his trust account, and hand-delivered a bank check for certified funds of \$27,000 for Ballard to deposit in his trust account. Ballard used the funds for his personal use. The client subsequently told Ballard that he was withdrawing from the transaction and asked for the money. Ballard falsely told the client that the sale had taken place. Although Ballard eventually gave the client a check for \$152,500 from his trust account, the bank did not honor the check due to insufficient funds.

Harvey C. Brown, Jr.
Rome, Ga.

Harvey C. Brown, Jr. (State Bar No. 087850) has been disbarred from the practice of law in Georgia by Supreme Court order dated May 8, 2006. In February and March of 2005, Brown issued two checks from his attorney trust account to make payments on his personal credit card account, and when confronted, blamed his secretary. The Court noted in aggravation that Brown had a lengthy disciplinary history that showed his consistent inability to properly maintain his trust account. Justice Benham dissented.

Timothy Allen Hickey
Atlanta, Ga.

Timothy Allen Hickey (State Bar No. 350620) has been disbarred from the practice of law in Georgia by Supreme Court order dated May 17, 2006. Hickey pled guilty in the Superior Court of DeKalb County to one count of felony sexual exploitation of a child and four misdemeanor counts of sexual exploitation of a child.

Kenneth Dennis Sisk
Richmond, Va.

Kenneth Dennis Sisk (State Bar No. 649364) has been disbarred from the practice of law in Georgia by Supreme Court order dated June 12, 2006. Sisk consented to the August 31, 2005 revocation of his law license in the Commonwealth of Virginia for various instances of misconduct.

Suspensions

Scott M. Schwartz
West Hartford, Conn.

On May 8, 2006, the Supreme Court of Georgia suspended Scott M. Schwartz (State Bar No. 631167) from the practice of law for six months with conditions for reinstatement. The Court further ordered that prior to readmission Schwartz must pass the Multi-State Professional Responsibility Examination; comply with his tending physician's medical treat-

ment plan; and obtain the physician's recommendation that he is fit to re-enter the practice of law. Readmission will be subject to the discretion of the State Bar of Georgia or designated representative, and, if granted, Schwartz must file semi-annual reports of compliance with the medical treatment plan for an additional 18 months.

Mary Kathryn Reagan
Alpharetta, Ga.

On March 1, 2006, the Supreme Court of Georgia interim suspended Mary Kathryn Reagan (State Bar No. 597230) from the practice of law for failing to respond to five notices of investigation. On May 17, 2006, the Court ordered that Reagan shall remain suspended until the final resolution of seven disciplinary matters.

Alice Caldwell Stewart
Atlanta, Ga.

On May 17, 2006, the Supreme Court of Georgia suspended Alice Caldwell Stewart (State Bar No. 525679) from the practice of law for two years with conditions for reinstatement. Stewart agreed to represent a client regarding his petition for habeas corpus relief. After the habeas court denied relief, Stewart informed the client that she would file the documents required to pursue an appeal. The client did not hear anything else from Stewart despite his many inquiries.

Although Stewart failed to file a response, the Court's docket revealed that Stewart did properly and timely file an application for a certificate of probable cause on behalf of the client. The client did not suffer harm from Stewart's actions, however, the Court could not ignore the fact that she failed to respond to disciplinary authorities and that she had a prior disciplinary history.

Stewart must within 120 days of her reinstatement submit to an evaluation by the Law Practice Management Program and within three months thereafter provide


certification from an independent consultant that she has complied with the changes recommended.

Lisa Paige Lenn
Orlando, Fla.

On June 12, 2006, the Supreme Court of Georgia accepted Lisa Paige Lenn's (State Bar No. 446520) petition for voluntary discipline and suspended her from the practice of law for 18 months with conditions for reinstatement. Lenn represented a client in a personal injury matter. She settled the case and deposited the settlement proceeds partially in her trust account and partially in her operating account. She withdrew funds from the trust account that were not earned attorney's fees for her personal use. Lenn failed to return the client's telephone calls regarding the status of the case.

In mitigation, the Court noted that Lenn was suffering from mental health issues. She has since paid full restitution to the client and accepts full responsibility for her actions. The Court imposed conditions on her reinstatement, including written certification by a board certified psychiatrist that she exhibits no symptoms of any condition that would make her a danger to the public in the practice of law.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since April 15, 2006 no lawyers have been suspended for violating this Rule. Two lawyers have been reinstated. 



Connie P. Henry is the clerk of the State Disciplinary Board.

Using Practice Management to Balance Life and Work

by Natalie Thornwell Kelly

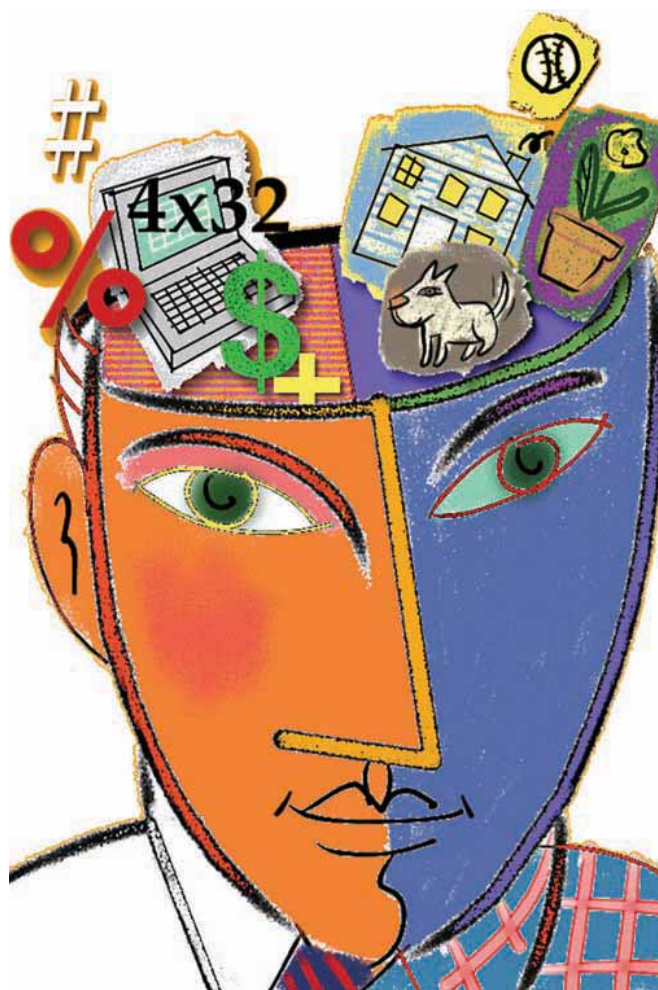
You've read the articles—well, at least skimmed them. You've attended the seminars and bought the tapes. Short of having the souvenir T-shirt and actually wearing it, you've done everything you can think of to control how much time you are spending at work and balancing that with having a decent life at home. What makes it so difficult being a legal professional and maintaining a healthy family life too? And, what does practice management have to do with all of this?

Time management can be generally deemed a subset of practice management. Being able to deal with deadlines and the appropriate division of duties in a law office takes skills—management skills. You can learn these skills though. With a well-managed practice, you are able to balance getting things done in a timely and efficient manner in the office and can enjoy more time with yourself, family and friends while away from the office, too. It just takes some practice.

Here are some tips and resources to help you gain control of your time both in the office and out.

Calendaring

Time management for lawyers in its purest form deals with the calendar or docket. You can choose to manage your calendar on paper, but this may prove to be more cumbersome than an electronic calendar, especially if more than one person needs access to the calendar at the same time. I have been in many firms where the lawyer yells out to the receptionist or paralegal to bring them their calendar. This is even more



inefficient when the calendar can be found on the desk of more than one support staff member—if it can be found at all. Certainly your office does not want to suffer with a misplaced calendar and an inefficient calendaring system.

A good way to deal with a manual calendar is to limit the number of places it can “live” and the number of “gatekeepers” who can place items on the calendar. The person opening the mail is often a good choice for

the one to be responsible for the firm's main calendaring.

With an online calendaring system, you are usually able to avoid this inefficiency. On a networked calendar, you are able to see and even schedule things for every person in the firm without the yelling or "calendar search team" approaches. You may even take advantage of discounts in malpractice coverage because you have automated calendaring that allows for multiple calendars in place for your firm. Many calendars are now built into practice (case) management systems and are also available on smart phones, Palm and BlackBerry devices. Using electronic mobile calendaring to keep up with your schedule while working outside of the office is another great automated calendaring option for lawyers.

Speaking of these devices, you can find yourself becoming addicted to working from these units, so don't forget to take a break from

them. The Sheraton Hotel and Towers in Chicago has started a program where guests can leave their handhelds under lock and key during their stays to gain more focus on specific meetings or family time while at the hotel. This may be an emerging trend for those of us who cannot seem to get away from the email and other trappings of the office and find ourselves with head bent almost running into other people or objects. We did tell you not to use your handheld while driving, right? If you need a written policy for cell phone and/or handheld use during working hours for law offices, please contact us.

Time and Billing Systems

Time and billing systems can also play a role in making sure you are balancing your work and life. Track your time. Not just to get out bills that reflect the true amount of

work you have done, but to get an idea of how you are actually using your time for both billable and non-billable items. Handhelds can capture this information and can be synched back into the billing systems nowadays. Using time and billing systems and handhelds to capture time anytime and anywhere can help you get more done and hopefully help free up more time for home. Again, take heed to the appropriate time to use these options.

The reporting afforded you in time and billing systems can be helpful in the analysis of how long it is taking you to perform certain tasks, and how much time you are billing. This type of reporting can be used to help you budget your time on client matters, and even help you in looking ahead at how much more billable time you will need to put in to meet your financial goals. Without any form of tracking your time, this becomes an almost impossible task.

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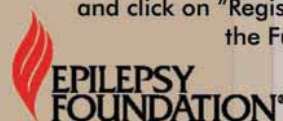
Jeanne A. Carpenter Epilepsy Legal Defense Fund

Attorneys Sought for Epilepsy- related Discrimination Case Referrals

The Epilepsy Foundation's Jeanne A. Carpenter Epilepsy Legal Defense Fund is seeking to expand its growing network of cooperating attorneys. The fund refers cases involving epilepsy-related discrimination to cooperating attorneys around the U.S. Cooperating attorneys are asked to provide up to three hours of pro bono services, and to consider continuing representation on a pro bono, sliding fee or contingency fee basis.

The Fund handles the full range of disability discrimination issues. However, attorneys with little or no experience in disability issues are welcome to participate. Referrals are tailored to address the attorney's interest and availability, and generally involve only short-term legal advice. The Fund's staff will provide extensive technical assistance, including legal research services.

For more information or to register as a cooperating attorney, go to www.epilepsylegal.org and click on "Register as an Attorney," or contact the Fund at legalrights@efa.org or 301.459.3700



Practice Management Systems

We have already noted that these case managers have calendar-ing features included in them. The big advantage with using practice (case) management is that you are storing your information in a central repository and this information is integrated with other record types. For instance, your calendar appointment or “to do” can be accessed from the calendar screens, as well as the case file and contact record screens. The systems have resolved the need to enter information twice into the program.

Having immediate access to case file information is an integral part of your practice too. Firms using practice management software appropriately do not have to worry about hunting down information on their matters. The information is available immediately through a computer network. Aside from instantaneous access to client file information, you are also able to track more billable time and get more done. Again, when used appropriately you will find these systems to be invaluable tools for mastering your time in and out of the office.

Policies and Procedures Manual

A good policies and procedures manual should have guidelines for office procedures and how to use them effectively. If you review your procedures to make sure you have cured any bottlenecks or inefficiencies inherent to the processes you suggest, you are on your way to more balance in your work and life.

For instance, your staff should not be generally surfing the Internet for personal reasons during working hours. Your Internet usage policy will cover what’s allowed and what is not. It will help staff remain focused on the work at hand and keep you from

having to spend too much time monitoring their use of company computers. You should not have to chase down staff free enough to get work done or have to resort to doing paralegal or secretarial work yourself.

Another example is the procedure for confirming office appointments by the receptionist. In advance of all appointments the receptionist or other appropriate staffer should contact with those scheduled. This will help you or other staff leave early instead of staying behind later making sure the client knows about the important meeting or upcoming hearing. This small efficiency step can help with the amount of time it takes to get mundane administrative tasks under control—your control!

Staff Utilization

A top-notch paralegal, legal secretary or associate can really help you achieve balance in your practice. Make good use of your staff by making sure they understand that you rely on their professional skills and knowledge to help you do the important job you do for clients. Make sure you meet with them regularly to understand the cases they are helping you with and their roles in the overall process.


Allow staff meetings on a regular basis. Case review, skills training and other procedural topics make great items for staff meetings. With a greater understanding of the caseload and work expectations, it will be easier to delegate work and follow up on the status of work in your office. This will ultimately lead to more time to perform additional tasks or to go home and spend time with yourself, family and/or friends.

Law Practice Management Library Resources

Here are some books from our Resource Library that may help you on your quest to a more balanced work and family life:

- “Lawyer’s Guide to Balancing Life and Work” by George W. Kaufman
- “Living with the Law: Strategies to Avoid Burnout and Create Balance” Julie M. Tammien, editor
- “Don’t Sweat the Small Stuff at Work” by Richard Carlson, PH.D.

Remember you and your staff can check-out up to two items at a time from the Law Practice Management Resource Library and keep them for two weeks. If you are interested in purchasing the items, give us a call, as there may be a discount in the pricing when purchased through this department.

If you are reading this late in the evening instead of heading home, why not start today and practice some new time-saving techniques. Put a “to do” on your calendar to look at your time management techniques sometime later this week. Make the appointment with yourself for 15 minutes and then commit to keeping this a calendar priority. Next, head home to enjoy some time with yourself, family and friends. By scheduling a specific time to review your time management practices/skills on your calendar, you are being proactive in striking a good balance between your life and work. 



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

Contact the Law Practice Management Department at 404-527-8700 or 800-334-6865 (toll free).

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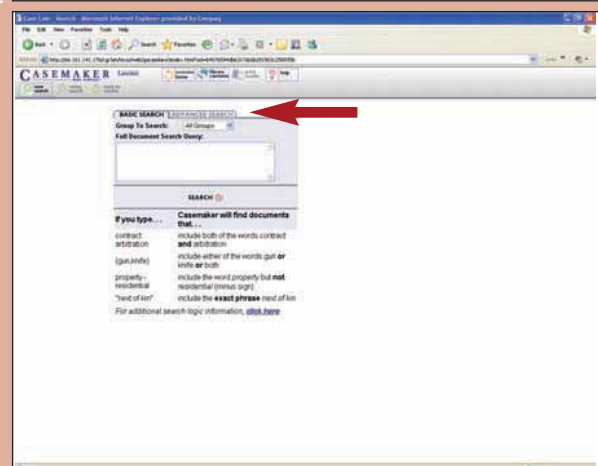
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Getting the Most Out of Casemaker: Advanced Search

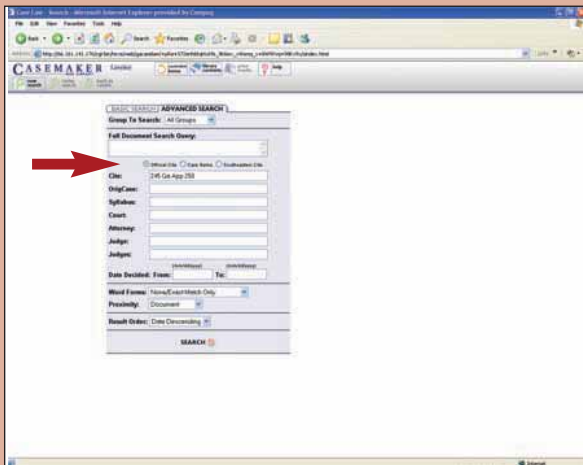
by Jodi McKenzie

As more attorneys begin to use Casemaker, many are realizing the difference between a Basic Search and an Advanced Search. The Basic Search allows you to find case law based on a word or phrase. For example, if you wanted to find cases about "drunk driving," you would enter this phrase in your Basic Search field. But, if you want to find a particular case by the citation number, you will get the best results by using the Advanced Search. Let's take a look at how it works.

In this example, we will search the Georgia Case Law Database. In order to enter this database, you would enter the Georgia Casemaker Library. From here, you would choose to search in Case Law.

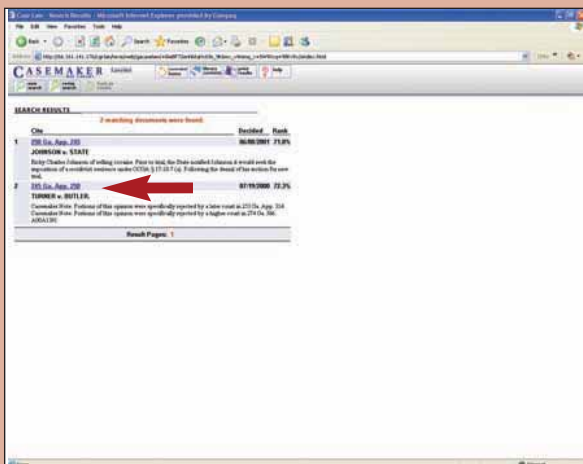


You will then be taken to a basic search screen. This is where you would enter words or phrases related to your search. When searching for a case by citation number, you would choose the Advanced Search option by selecting the Advanced Search tab located next to the Basic Search tab.

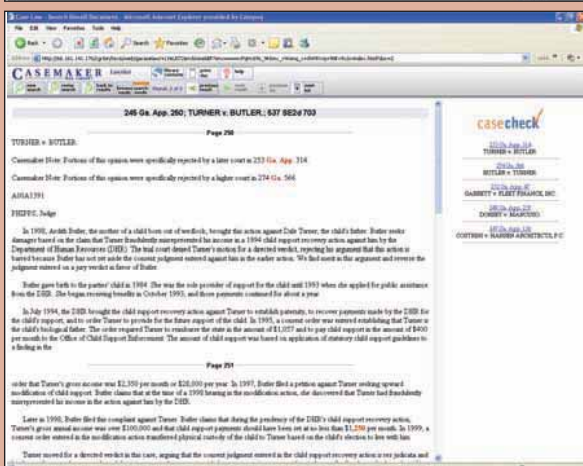


An Advanced Search gives you several options for narrowing down your search. In this example, we want to find case 245 Ga. App. 250. In order to find it by the citation number, we want to choose the official cite option by clicking on the bubble next to it. We will then enter the citation number as 245 Ga App 250

IMPORTANT TIP: Do not enter periods after abbreviations. You will not get any results from your search if you do so.



After entering your citation number, run your search by either pressing the enter button on your computer or scrolling to the bottom of the page and clicking on the search button. Casemaker will pull up all cases with any combination of the numbers you entered, including the one you are looking for. To limit your search results to the exact case, put your citation number in quotation marks before you run your search.



You may now open the case you want by clicking on the cite number of the correct case. In this example, you will see that Casemaker has included notes at the top of the opinion indicating that parts of this opinion have been rejected in subsequent cases. Casemaker training is available at the State Bar of Georgia.

The next training day can be found on the Bar's homepage or in your most recent copy of the Bar Enews.

Please contact Jodi McKenzie, Casemaker Coordinator at 404-526-8618 or jodi@gabar.org if you need further assistance.

Satellite Office Can Help You Plan Events

by Bonne Cella

In any given month there is a wide range of activities associated with the State Bar of Georgia's Satellite Office in Tifton. Normal attorney activities include mediations, depositions, real estate closings, adoption proceedings, planning local bar events, hosting CLE programs, and State Bar Committee meetings via the new interactive video conference system.

Normal activities related to consumers include attorney referrals, providing forms for complaints (not returning a phone call is still the number one grumble), replying to the many letters from prisoners and directing people to the right organization for assistance. Law-related education and community outreach remain a part of the mission of the satellite office. One note about the aforementioned attorney referrals: you may want to slow it down a bit on I-75 in Crisp County as evidenced by the number of calls received each week from motorists who need a good traffic attorney!

It is always enjoyable working with local bar associations to plan a program or event because of the opportunity to interact with interesting people from all over the state. How many of you knew that Attorney General Thurbert Baker was a champion fencer while attending The University of North Carolina? That bit of information was revealed at the Brunswick Bar Association Law Day Luncheon. Attorney General Baker was selected as the keynote speaker for the event



(Left to right) Ken Keene, deputy director of FLETC; Susan Thornton, president of the Brunswick-Glynn County Bar Association; Carl Milazzo, chief of the FLETC legal division; and Willis Hunter, Chief Counsel for the Federal Law Enforcement Training Center.

held in Brunswick at the Federal Law Enforcement Training Center (FLETC) and co hosted by the U.S. Department of Homeland Security. Incidentally, if you have not been to FLETC, it is a very interesting facility. Training is provided to officers and agents of 82 Federal Law enforcement agencies. Tours can be arranged during off-peak times by calling Peggy Dixon, public affairs officer at 912-267-2447. Visit their website at www.fletc.gov.

Each year, the Investigative Panel of the State Bar holds a meeting at the Satellite Office and the evening prior to the meeting, members are treated to a country dinner at the home of lay member Eunice Mixon of Tifton. Well-known for her love of politics and people, her guest list always includes distinguished Georgians



Atlanta attorney Tommy Holland, standing second from left, meets with his high school class of 1955 to plan a reunion.

who join the panel for a lively evening of great food and conversation.

We are happy to facilitate your section meetings or CLE programs. Recently, we assisted Allen H. Olson, section chair of the Agricultural Law with a four-hour CLE program that was held at the University of Georgia Tifton Campus Conference Center. If you need to meet in South Georgia, you might consider The Tifton Campus Conference Center which currently offers 12,000 sq. ft. of flexible meeting space including a 350-seat auditorium (fully equipped for hearing impaired, upon request), eight breakout rooms, exhibit space, business center, banquet facilities/reception area, lobby area with 2,200 square feet of exhibit space and free audio/visual equipment and on-site tech support.

The Secretary of State also has a satellite office located in Tifton and many times events dovetail between our two offices. Sponsored by the Secretary of State and hosted by the State Bar Satellite Office, a High School Outreach Program was held for students in a 10 county area. Among the guest speakers were State Rep. Ellis Black of Valdosta and State Rep. Jay Roberts of Ocilla. Students were given the challenge to become more involved in the electoral process and to encourage their

peers to vote by Alison Bracewell McCullick, statewide voter education Coordinator.

Mike Monahan, the director of the State Bar's Pro Bono Project participated in the Tifton Judicial Circuit Bar Law Day Program. According to Mike, those attorneys who want to add value to their law practice by offering to work pro bono will benefit from the website www.georgiaadvocates.org. A sampling of what is available including disaster legal services materials, child support guidelines and ways to show you how to make time for Pro Bono in your practice.


Atlanta attorney, Tommy Holland has enjoyed meeting at the satellite office to plan his class of 1955 reunion and to renew old friendships in South Georgia. The Children's Advocacy Coalition, The Foundation for Educational Excellence, The



Mike Monahan; Judge Gary McCorvey; Joe Spurlin, President of the Tifton Circuit Bar; Nicole Winter, Essay Contest Winner; Gwen Pate, Clerk of Court and Liberty Bell Recipient; and State Court Judge Larry Mims.

board for the local women's shelter, and Georgia Legal Services are among some of the organizations that also use the satellite facility.

The conference room comfortably holds 35 people and food service and audiovisual equipment are available. All who visit the office will enjoy the beautiful art on display by local artists.

Yes, there is a wide range of events and amenities available at the State Bar's Satellite Office and we always look forward to meeting and serving the membership. We hope to see you soon! 



Bonne Cella is the office administrator for the South Georgia office of the State Bar of Georgia.

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Annual Meeting a Success for Sections

by Johanna B. Merrill

As in years past, sections were an active presence during the State Bar of Georgia's Annual Meeting, held in Hilton Head, S.C., June 2-4. Several Sections sponsored the Opening Night Gala, which was a family-friendly event held by the pool, overlooking the Atlantic Ocean.

These sponsoring sections included: Criminal Law, Tort & Insurance Practice, Corporate Counsel Law, Bankruptcy Law, Business Law, Elder Law, Labor & Employment Law, Taxation Law, Agriculture Law, Dispute Resolution, Appellate Practice, Health Law, Intellectual Property Law, Real Property Law, Administrative Law, Antitrust Law, Consumer Law, Creditors' Rights, Environmental Law, General Practice & Trial, Individual Rights and Military Law/Veterans Affairs.

On June 2, the **Tort & Insurance Practice, Military Law/Veterans Affairs, School and College Law** and **General Practice and Trial** sections held breakfast meetings. The General Practice and Trial Section awarded their annual Tradition of Excellence Awards to the following recipients: James B. Franklin (plaintiff), Wallace E. Harrell (defense), Judge Willis B. Hunt Jr., (judicial), and Hylton B. Dupree Jr. (general practice).

On the evening of June 2, the **General Practice and Trial Section** hosted its Tradition of Excellence Awards Reception to honor the four recipients and their families. The **Criminal Law Section** hosted their second annual "CSI" reception, where Crime Scene Investigator Officer Steve Gatlin of the Macon Police Department Crime lab explained different types blood spatter, complete with examples.

On June 27 the **Technology Law Section** hosted their annual meeting and presented a two-hour CLE luncheon co-sponsored by the Licensing Executive Society on the topic of "Managing Corporate IP



Photos by Johanna B. Merrill

2005-06 Section Chairs Bill Goodman (Dispute Resolution Section) and Myles Eastwood (General Practice and Trial Section) enjoy the Annual Meeting.

Portfolios: Lessons from Two Top Companies," with speakers from BellSouth (Scott Frank, Carol Beckham, Michael Bishop, and Jodi Hartman) and Microsoft (W. Glen Johnson and Ellyn Foltz). The well-attended meeting and luncheon was held at Maggiano's Little Italy Restaurant in Buckhead.

The **Intellectual Property Law Section** hosted their annual summer associate mixer at the Four Seasons Hotel on June 28. David Nahmias (U.S. attorney, northern district), Joseph Bankoff (King & Spalding) and Melissa Howard (Turner Broadcasting Systems) spoke about their different job duties and career paths to the summer associates and attorneys in attendance.

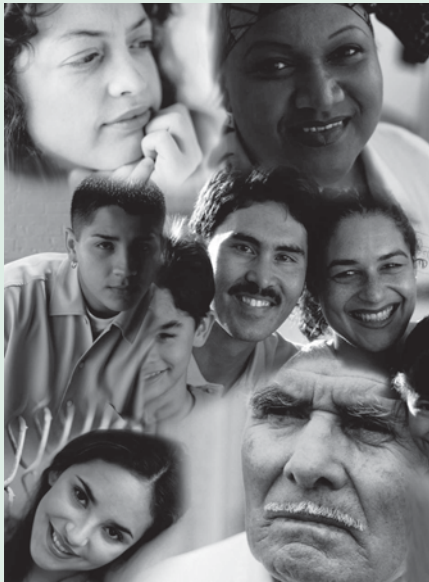
The **Entertainment & Sports Law Section** held their annual meeting at Table 1280 at the Woodruff Arts Center on July 26. Paula Frederick, deputy general counsel for the State Bar, spoke on the topic of "Retainer Agreements for Entertainment Attorneys in Georgia." A representative from the High Museum also spoke to those in attendance about the new "Louvre at the High" exhibit. Attendees received one CLE credit.

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Chuck Hodges, 2005-06 chair of the Taxation Law Section, receives an Award of Achievement from Bar President Robert Ingram

Updates From the Sections

Entertainment & Sports Law and Intellectual Property Law Section Conference Planned November 2-6, in Cancun, Mexico

Entertainment, sports and intellectual property lawyers will gather at the Fiesta Americana Grand Coral Beach in Cancun, Mexico, Nov. 2-6, for a conference on the ever-changing aspects of these specialized legal fields.

Founded in 1987 by Darryl Cohen, the Southern Regional Entertainment Sports and Intellectual Property Law Conference is accredited by the Institute of Continuing Legal Education (ICLE). Participating lawyers will earn 12 CLE hours at the conference. Co-sponsors include the Entertainment and Sports Law and Intellectual Property Law sections of the State Bar, the Entertainment, Arts and Sports Law Section of the Florida Bar, and the Tennessee Bar.

Well-known attorneys, judges, law professors and leaders in the entertainment, sports and intellectual property fields will participate in panel discussions on such topics as ethics, professionalism, intellectual property litigation, first amendment rights, sports and media licensing, reality TV, music touring, and film,



Crime Scene Investigator Officer Steve Gatlin of the Macon Police Department Crime lab explains blood spatter patterns at the Criminal Law Section's second annual "CSI" reception during the Annual Meeting.

television and video deals. Updates on copyright, trademark, and patent laws also will be presented.

Conference sessions are scheduled for the mornings, giving participants afternoons free for sight-seeing tours, shopping excursions and leisure activities. The host hotel, law firms and corporations will sponsor receptions and dinners in the evenings.

Questions about the conference may be directed to Darryl Cohen at Cohen, Cooper, Estep, Mudder & Whiteman, Riverwood 100, Suite 2220, 3350 Riverwood Parkway, Atlanta, GA 30339, 404-814-0000, Fax: 404-816-8900 or dcohen@coco-law.tv. For registration information contact ICLE, P.O. Box 1885, Athens, GA 30603. Register online at www.iclega.org or www.selow.org.

Air/travel packages are available departing from Atlanta, New York, and Miami/Fort Lauderdale. For travel arrangements, contact Donna Robertson with Georgia International Travel at 404-851-9166 or donna@gitravel.com.

Equine Law Section Approved at Board of Governors Meeting in Hilton Head

At the Annual Meeting in Hilton Head Island, S.C., the Board of

Governors adopted the recommendation of the Executive Committee and approved the Equine Law Section.

The new section's organizer, Ed Gadrix, outlined to the Board the section's function and purposes. "Equine law is much further developed in other states, like Florida, Kentucky, California, New York, Maryland, and many others. It's way past time for Georgia residents to stop going to the law firms in those states to get expert legal advice in equine matters. We have legal experts here. They just need to be organized and developed."

The American Horse Council conducted a study last year on the economic impact of horses in 15 states. In Florida alone, the horse industry is a \$2 billion per year business. The 2006 Georgia General Assembly established the Equine Commodities Commission, which was formed for the purposes of conducting and promoting the equine industry through education and research.

Gadrix further said that there are 88 different organizations conducting business for their respective breeds. These organizations have both licensing and disciplinary boards, and they all need legal representation. Equine law covers breeders, stable owners and managers, rodeos, show horses, hunters, jumpers, dressage, thoroughbred, quarter horse and harness racing, polo, trail riding, guest ranches, transportation, equine taxes and insurance, securities, sales contracts and auctions, and many other areas that are unique to the equine business.

"I saw a thoroughbred sell for \$16 million, last spring at the Fasig Tipton Auction in South Florida and I didn't see any Georgia attorneys involved. That convinced me of the need for Georgia lawyers in those transactions."

Gadrix said, "All of us in the new section start out with the basic notion that we all love horses. From there we have different levels of interests and background. Mine is thoroughbred racing and partnerships, but I look forward to other members edu-

cating me in their areas of expertise. For example, Richard Jones, a new member, wrote the 2004 Georgia Stable Lien law. And, Harvey Moskowitz is a long-time horseman with years of equine legal experience. I fully expect our level of expertise to challenge that of the Florida Bar in one year and that of Kentucky in three to five years."

On July 10, members of the newly-formed section held an organizational meeting and elected officers. The officers are: Ed Gadrix, chair; Richard Jones, vice-chair; and Lisa Blackstone, secretary. John Edwards and John Parker round out the executive committee as members-at-large.

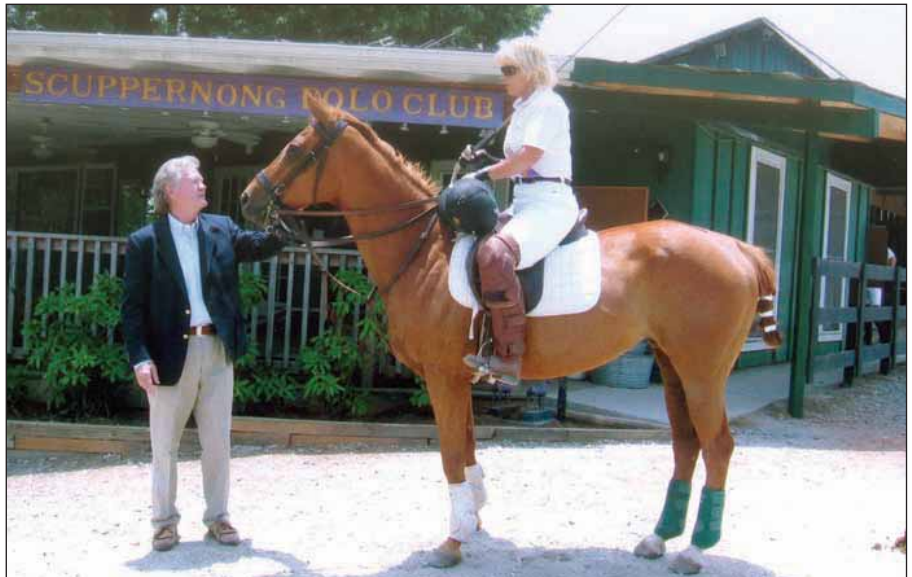
For further information on the Equine Law Section, contact: Edward W. Gadrix Jr., 770 Old Roswell Place, Suite B200, Roswell, Georgia 30076-8636; 678-461-9525; Fax 678-461-9250.

Participate in the Technology Law Section

Get involved with the Technology Law Section! Do you work outside of the metro Atlanta area in Macon, Savannah, Augusta, or other parts of Georgia? Do you want to be more involved with the Technology Law Section and participate on the Technology Law Section's Executive Committee or one of our various sub-committees? We are encouraging interested non-Atlanta Section members to get involved by participating in our monthly Executive Committee meeting and joining one or more of our sub-committees. Our Executive Committee meetings are held on the second Friday of each month. If you are interested in participating or need dial-in information for our Executive Committee meeting, please contact Chris Chan at 404-815-6048 or send an email to CChan@KilpatrickStockton.com. 



Johanna B. Merrill is the section liaison for the State Bar of Georgia.



Ed Gadrix, chair of the newly formed Equine Law Section speaks to polo player Beth Millwood.



Past President James Franklin, who received the General Practice and Trial Section Tradition of Excellence Award, with his family following the award breakfast.



Tradition of Excellence Award recipients (L-R) Hylton B. Dupree Jr., Marietta (General Practice); Judge Willis B. Hunt Jr., Atlanta (Judicial); Wallace E. Harrell, Brunswick (Defense); James B. Franklin, Statesboro (Plaintiff); and Myles Eastwood, chair of the General Practice and Trial Section.

Professionalism: Code Word For Using Your “Inside Voice”

by Joseph R. Bankoff

The Chief Justice’s Commission on Professionalism encourages practitioners to air their views on professionalism. One practitioner, Atlanta attorney Joseph R. Bankoff, did just that by putting professionalism in the real world context of his litigation practice. His commentary first appeared in the March 15, 2006 edition of the Fulton County Daily Report, and is reprinted by permission here.

Modern parents have developed a whole new vocabulary for dealing with screaming toddlers. One of my favorites is: “Johnny, please use your inside voice.”

Modern trial judges who despair of endless lawyers squabbling about trivial discovery disputes are inclined to more traditional remedies of “divide the baby” or “simply ignore” or alternatively, “draconian discipline.” There may be a reason.

Perhaps you have also observed the development of a whole new law specialty. In polite company I refer to it as the “obnoxious 4:30 letter.” This is the missive that arrives just before 5 p.m. and complains in strident tones of a continuing pattern of perceived failures and intentional shortcomings by opposing counsel, and demands an immediate response to a particular most recent failing. The fact that this has not been discussed by telephone, or that the author of the 4:30 letter has similar discovery shortcomings is never noted or deemed relevant.

The stock response is an equally disingenuous but effusive retort listing all the many efforts that have been made to placate the insatiable demands of opposing counsel. Generally these are accompanied by extensive attachments—rendered largely incomprehensible by the requirements of the Confidential Protective Order. This exercise produces a great deal more heat than light. It does however result in billings by both sides of several thousands of dollars in fees.

There may have been a day when the broadax form of discovery would have chased off the spurious claimant or the insincere defense. No more. In these days of word processing (including global search and replace) and electronic scanning of documents and email, there is little advantage to size. Eventually, with competent counsel, all the relevant material is going to be produced and reviewed. The issue is simply the pain, costs and time of the process.

The first casualty of the 4:30 letter process is generally any sense of professionalism among counsel. The second casualty is the loss of focus on the merits. The 4:30 letter generally is a declaration of war and the opening of a second front war on the discovery process. In some instances this may be attributable to a concern about the lack of merits to the claim or defense. Whatever the cause, the result is an expensive sideshow that annoys the judge, exasperates the lawyers and wastes clients’ money.

It may be that the emergence of true e-discovery will give us the opportunity to rethink the discovery process. We now have the tools to make “everything” available. That begs the question as to what is reasonably needed for the claims and defenses raised in the case. Framing the scope of discovery at the outset of litigation appears to be a lost art. Although now limited by the rules, exhaustive interrogatories have been

replaced by broad form requests for documents and admissions that seek meticulous production of "each, every and all."

Some of the current discovery gaming might be avoided if the pretrial scheduling order required short declaratory sentence descriptions of what each party claims is needed for discovery. If the scope of discovery was generically addressed at the outset, it might provide a guidepost and a limitation that would limit later posturing.


Adult Supervision

For counsel who are unable to play nicely without adult supervision, I have been impressed with the effect of staff counsel in the patent disputes before the International Trade Commission. Without fanfare or support, the staff counsel attends the key depositions and propounds modest discovery of both sides. It is amazing how the foolishness at a deposition

will stop when staff counsel begins to inquire of the witness. The reason is that staff will be heard by the Administrative Law Judge on the merits of both procedural and substantive issues. Perhaps in hard civil cases the court should appoint a neutral discovery master to actually participate in the discovery and referee as needed.

But perhaps the simplest and most effective way of avoiding the 4:30 sideshow is maintaining a civil tone in the inevitable disputes that arise. Even in the face of outrageous behavior, raising the temperature of the rhetoric will do nothing to solve the problem. If opposing counsel is hiding the ball, a contrasting cooperative production and attitude and a rational discussion of the shortcomings will highlight the dissimilarities. A display of confidence in the process and a genuine effort to resolve disputes can go a long way in impressing the court and avoiding sideshows.

The effort to maintain a professional tone is also likely to encourage more professionalism in even the most contentious relationship. We simply need to remind ourselves that the alternative generally doesn't work and it will wear out the lawyers on both sides as well as the court.

So don't be surprised someday if a weary court admonishes counsel to use his or her "inside voice." 

Joseph R. Bankoff is a senior partner in King & Spalding's litigation practice group. His practice encompasses patent, copyright, trade-secret, media and technology-related matters. After a brief career as a cub reporter at the *Atlanta Constitution*, he earned his J.D. at the University of Illinois. A long-time arts supporter, he was recently named president and CEO of the Woodruff Arts Center, Atlanta's leading arts organization.

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James T. Bennett Jr.

Valdosta, Ga.
Admitted 1974
Died February 2006

Clifton W. Brannon

Longview, Texas
Admitted 1932
Died August 2005

David A. Brown

Aiken, S.C.
Admitted 1974
Died December 2005

Barbra Rose Cahn

Augusta, Ga.
Admitted 2004
Died May 2006

Paul Thomas Collier

Gainesville, Ga.
Admitted 1962
Died May 2006

Paul L. Coulter

Lexington, Ky.
Admitted 1963
Died November 2005

Alvin Anthony Davis

LaGrange, Ga.
Admitted 1994
Died February 2006

J. Robert Elliott

Columbus, Ga.
Admitted 1934
Died June 2006

Edward P. Ellis

Atlanta, Ga.
Admitted 1956
Died November 2005

Michael Gabel

Decatur, Ga.
Admitted 1987
Died May 2006

Richard S. Greer

Atlanta, Ga.
Admitted 1951
Died June 2006

Michael S. Huff

Kennesaw, Ga.
Admitted 1975
Died April 2006

Ugo F. Ippolito

Atlanta, Ga.
Admitted 1981
Died April 2006

Mary Lyons

Roswell, Ga.
Admitted 1984
Died January 2006

Martha Norton

Loganville, Ga.
Admitted 1965
Died April 2006

Joseph J. O'Reilly

Auburn, Ga.
Admitted 1991
Died April 2006

Elease D. Shelton

Stone Mountain, Ga.
Admitted 2004
Died April 2006

James M. Smith

Byron, Ga.
Admitted 1980
Died May 2006

Charles E. Solomon Jr.

LaGrange, Ga.
Admitted 1969
Died April 2006

Benjamin Spaulding

Atlanta, Ga.
Admitted 1972
Died May 2006

Barry McDonald Staples

Carrollton, Ga.
Admitted 1981
Died August 2005

Lamar D. Stewart

Albany, Ga.
Admitted 1973
Died December 2005

H. Davis Upchurch

St. Augustine, Fla.
Admitted 1951
Died October 2005

William Voynich

Columbus, Ga.
Admitted 1975
Died March 2006

Robert G. Young

Atlanta, Ga.
Admitted 1949
Died May 2006

Judge J. Robert Elliott, 92, died in June. The nation's oldest federal district judge when he ended his 38-year career in 2000 was born in Gainesville, Ga., in 1910. He graduated from Emory in 1930 and taught school in Columbus so that he could save money for his law degree, which he received from

Emory in 1934. After two years of practicing law, Elliott was elected to the state House of Representatives, eventually chairing the powerful House Appropriations Committee. He joined the U.S. Navy when World War II broke out, serving in the Pacific. Elliott was a 52-year-old lawyer when he was nominated for a District Court post by President John F. Kennedy. He was confirmed without objection and was sworn in on March 15, 1962. He presided over cases ranging from desegregation rulings to overturning of the conviction of a U.S. Army lieutenant accused of massacring 102 people during Vietnam. Elliott was the first Columbus attorney and the first Emory University graduate to become a federal judge.

He was known for his dry wit and calm, even tone. He wore a porkpie hat to lunch most days, and puffed on cigars. "He taught you how to try cases with a sense of duty and a sense of honor," said Columbus attorney Bill Norwood, who tried more jury cases in front of Elliott than any other attorney. During one trial, a lawyer approached the bench to ask the judge to wake up a sleeping juror. "You put him to sleep—you wake him up," Elliott replied. GBI



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Business and Commercial Litigation in Federal Courts, 2d ed.

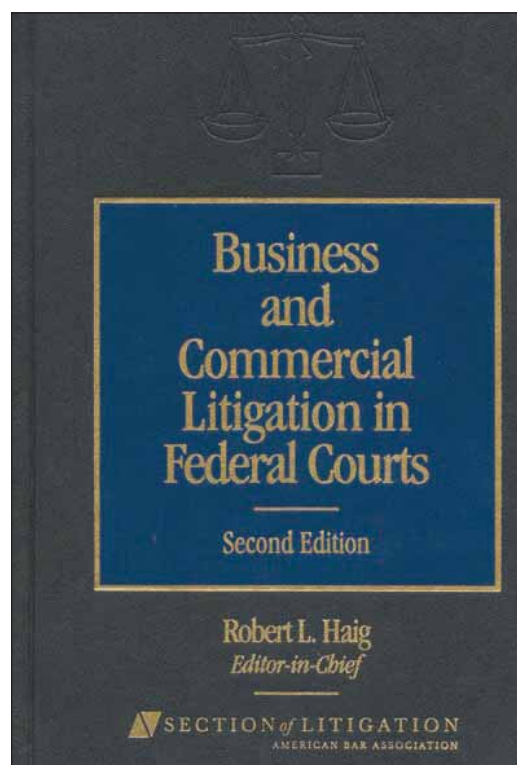
**Editor Robert L. Haig, Thomson-West
(in cooperation with the ABA Section of Litigation, 2005)
9 volume set—including the Index volume**

Book Review by John Chandler and Brian Boone

In the second edition of *Business and Commercial Litigation in Federal Courts*, editor Robert L. Haig, on behalf of the American Bar Association Section of Litigation, has done more than just add length (three volumes of length, to be exact) to the already massive six-volume treatise.

The new edition also fills in some of the cracks from the first edition, adds entirely new substantive content, and updates much of the cited case law. All in all, these changes make an already invaluable litigation resource even more essential for the federal court practitioner. Better yet, this second edition keeps pace by incorporating new chapters devoted to the effects of technology and e-commerce on the business litigation landscape.

In my review of the first edition, printed in the February 1999 issue of the *Georgia Bar Journal*, I pointed out that this treatise provides more than law. This is doubly true of the second edition. The updated treatise includes 16 new chapters, with many of them focusing on case administration and other practical topics that can only be addressed through the eyes of experience. The second edition includes new chapters on e-commerce litigation, electronic discovery, litigation management and commercial real estate. It is in these more practice-focused chapters that the treatise shines. Much of the information provided in these chapters represents the accrued wisdom of seasoned trial attorneys and federal judges. For example, in the new chapter "Litigation Management by Law Firms," experienced federal litigator Harold T. Daniel, Jr. of Holland & Knight, a past president of the State Bar of Georgia,



outlines the "nuts and bolts" of federal litigation management in the firm context. Hal Daniel takes the reader through the planning process, covering everything from developing the case budget and case staffing to strategic case assessment. Such an outline will be extremely valuable to those with their first federal case or to any lawyer wanting to get a sense of case management in federal court.

Substantial updates have been made to existing chapters as well. For instance, the second edition has already incorporated discussion of the 2005 Supreme Court decision in *Dura Pharmaceuticals v. Broudo*, a case

with potentially transformative repercussions for securities class actions. Aside from the citing of much recent Supreme Court precedent, the new edition also expands its treatment of topics that now have generated a more developed body of law than in 1998. For example, the second edition updates the first edition's discussion of pleading requirements under the Private Securities Litigation Reform Act (PSLRA) to reflect that a third "totality of the pleadings" standard has emerged in the circuit courts since 1998 as a middle ground between the Second Circuit's "motive and opportunity" test and the more rigorous 9th Circuit "approaching actual intent" test. This gives the reader a better sense of the uncertainty surrounding pleading requirements under the PSLRA than the first edition did, even if only because it has the benefit of seven more years of decisions to analyze.


Some areas still could stand improvement. While overall the treatise does a wonderful job of synthesizing substantive statutory and case law into a coherent and readable whole, some sections still prove a little thin, even for a broad-brush treatise. The "Antitrust" chapter is illustrative. Typically the chapter is comprehensive; recent cases are includ-

ed, including the *Verizon* case from 2004, as well as helpful sections discussing venue and service of process. Nevertheless, the treatise lacks an analysis of the nuances of Supreme Court precedent in the area. In other words, the coverage in this area seems "wide" but not "deep."

One of criticism of the first edition was that it omitted citations to key federal precedent. The second edition cures this problem by incorporating much more of the recent case law in each area discussed. This adds to the treatise's reliability and should give confidence to the practitioner that the seminal cases in a particular area will be found in the treatise's pages. Several sections remain ripe for updating, however, even if they do provide good starting points for further research. For example, in the "Securities" chapter, the authors cite to 25-year-old precedent for the proposition that a named plaintiff in a class action may not be typical of the class if he or she is subject to unique defenses.

On the whole, these books represent an important update to an already invaluable resource. Given the added chapters and the expansion of previously existing chapters to incorporate recent changes in the law, business litigators of all levels of experience will quickly find in

these pages both needed substantive law and practical litigation advice that has been tested in the real world. Younger lawyers will find the "how to" chapters particularly useful, and all will appreciate the panoply of forms, checklists, and outlines provided in the electronic and print materials (one CD-ROM is included that contains numerous pleadings forms).

In summary, the books provide excellent and comprehensive instruction in many areas and any lawyer who regularly handles business litigation in federal courts needs access to these works. Just make sure to clear enough space on your shelves for the added volumes. 



John A. Chandler is a partner in Sutherland Asbill & Brennan LLP who has represented plaintiffs and defendants in business litigation in federal courts for more than 30 years.



Brian Boone is a 2006 graduate of Emory Law school, currently a law clerk at Sutherland, and will be clerking on the 4th Circuit Court of

Appeals beginning in August.

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AUG 2-5	District of Columbia Bar- Forum Bar Association <i>National Organization of Bar Counsel 2006 Annual Meeting</i> Honolulu, Hawaii 11 CLE Hours	AUG 11	Lorman Education Services <i>Advanced Topics in the Family and Medical Leave Act</i> Atlanta, Ga. 6 CLE Hours
AUG 2	Lorman Education Services <i>Risk Management Issues for the Trucking Industry</i> Multi-Sites, Ga. 1.5 CLE Hours	AUG 15	Lorman Education Services <i>Confidentiality of Medical Records</i> Macon, Ga. 6 CLE Hours
AUG 9-10	Institute of Continuing Legal Education in Georgia <i>Real Property Law Institute- Video Replay</i> Atlanta, Ga. See www.iclega.org for locations 12 CLE Hours	AUG 15	NBI, Inc. <i>Helping Your Client Survive a Child Custody Evaluation</i> Atlanta, Ga. 6 CLE Hours
AUG 9-11	ICJE <i>Annual Seminar for Judicial Law Clerks</i> Athens, Ga. 12 CLE Hours	AUG 19	Lorman Education Services <i>Phase II Storm Water Regulation and Compliance</i> Savannah, Ga. 6 CLE Hours
AUG 9-11	ICJE <i>20-Hour Magistrate Recertification Course</i> Peachtree City, Ga. 14 CLE Hours	AUG 22	Lorman Education Services <i>Employee Discharge and Documentation</i> Atlanta, Ga. 6.7 CLE Hours
AUG 10	ICJE <i>Commercial Leasing- Handling Client Issues</i> Atlanta, Ga. 6 CLE Hours	AUG 22	NBI, Inc. <i>Advanced Section 1031 Exchanges</i> Atlanta, Ga. 6.7 CLE Hours
AUG 10	NBI, Inc. <i>Workers' Compensation Case Preparation Technique</i> Atlanta, Ga. 5 CLE Hours	AUG 23	Lorman Education Services <i>The Basics-Learn to Read and Understand Balance</i> Atlanta, Ga. 6.7 CLE Hours
		AUG 24	Lorman Education Services <i>Real Estate Development from Beginning to End</i> Atlanta, Ga. 6 CLE Hours

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Pursuant to 28 U.S.C. ' 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit, and of proposed amendments to Addendum Four, Eleventh Circuit Plan Under the Criminal Justice Act.

A copy of the proposed amendments may be obtained on and after August 1, 2006, from the court's

website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303, 404-335-6100. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by August 31, 2006.

Proposed Amendments to the Uniform Rules of Superior Court

REPORT OF THE UNIFORM RULES COMMITTEE,
FIRST READING, JANUARY 19, 2006

PROPOSED AMENDMENTS TO THE
UNIFORM RULES OF SUPERIOR COURT

Rule 3.1. Method of assignment.

In multi-judge circuits, unless a majority of the judges in a circuit elect to adopt a different system, all actions, civil and criminal, shall be assigned by the clerk of each superior court according to a plan approved by such judges to the end that each judge is allocated an equal number of cases. The clerk shall have no power or discretion in determining the judge to whom any case is assigned; the clerk's duties are

ministerial only in this respect and the clerk's responsibility is to carry out the method of assignment established by the judges. The assignment system is designed to prevent any persons choosing the judge to whom an action is to be assigned; all persons are directed to refrain from attempting to affect such assignment in any way. If the order or the timing of filing is a factor in determining case assignment, neither the clerk nor any member of the clerk's staff shall disclose to any person the judge to whom a case is or will be assigned until such time as the case is in fact filed and assigned.

Rule 24. Domestic relations.

Delete 24.2. Financial data required.

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Rule 1-207.

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The **Ft. Lauderdale** office of **Hinshaw & Culbertson LLP**, a leading national law firm, is seeking a Senior Associate to join its established trial practice. We are seeking someone with at least five years of civil trial experience with an emphasis in accident reconstruction, products liability, and/or personal injury defense. Top academic credentials are required. This is an excellent opportunity for candidates seeking a high level of responsibility in a diverse and progressive law firm environment. The Firm provides a competitive benefits package and opportunity for advancement. Please submit your resume, cover letter and list of recent trial experience in confidence to: Paula A. Goldberg, Hinshaw & Culbertson LLP, 222 N. LaSalle Street, Suite 300, Chicago, IL 60601-1081, fax: 312-704-3001, email: pgoldberg@hinshawlaw.com; www.hinshawlaw.com. Only candidates contacted for an interview will receive a response. EOE.

Notice

In the Court of Common Pleas of Berks County, Pennsylvania, Civil Action-Law, Docket No. 05-14088, Carissa Gantz vs. Victor Suci, Personal Injury Action. Notice: If you wish to defend you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be

entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee. Lawyer Referral Service, Berks County Bar Association, 544 Court Street, P.O. Box 1058, Reading, PA 19603, 610-375-4591.

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Stan panicked, "this long just to get an application? How long to process a claim?"

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