

Georgia Bar Journal

October 2006 ■ Volume 12 ■ Number 2

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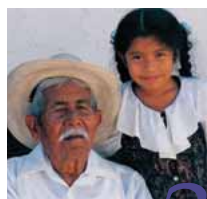
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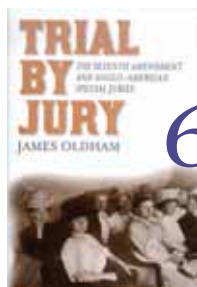
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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Caren Henderson,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

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Photo by Hollis Ellison

by Jay Cook

United We Stand, Divided We Fall

Aesop's ancient moral lesson, united we stand, divided we fall, from "The Four Oxen and the Lion" fable, rings especially true today, as we in the legal community watch—often frustrated and bewildered—as attacks escalate on the American judiciary. Although judicial independence has been on the agenda since pre-Revolutionary Colonial America, the resurgence of attacks upon it in recent years has been astonishing.

Time and again we've seen evidence that the general public doesn't know or doesn't care about the role courts, judges and lawyers play in protecting and preserving the Constitution and the rule of law. Time and again we've heard that our fellow citizens have failed to learn or have forgotten that the founding fathers (at the federal and state levels) insisted on an independent judiciary as a fundamental protection of American liberties. And time and

again we've been told that many people don't understand what we mean when we say "independent" judiciary.

The founders referred to the judiciary as the "least dangerous branch," not because they wanted it weak, but rather because they wanted it to operate independent of political agendas, insulated from special interest pressures and protected from capricious voters.

Sandra Day O'Connor recently said, "Judicial independence does not happen all by itself. It's tremendously hard to create and it's easier than most people imagine to destroy. 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."

We must be vigilant, she said. Who do you think she means? The retired Supreme Court justice delivered the

speech at a law school graduation. But I believe she was speaking to a wider audience. I believe she was addressing the entire legal community. I believe she was asking for vigilance from the bar.

There can be no doubt that's what U.S. Supreme Court Justice Stephen Breyer meant when he said "Ultimately the bar is the group that both is in touch with the public on the one hand and understands the

**"Together we have
established one strong voice.
Let us now raise it in defense
of our founding principles.
These are not times for
summer soldiers."**

judicial institution on the other. And I had hoped that the bar associations would take the lead and try and think about the problem and educate the public."

So the relevant question is, as posed by a federal judge recently "How do we as the legal community, preserve judicial independence, the rule of law, protect the judiciary as an institution, and lessen the attacks on the judicial system that threaten to weaken the constitutional structure of this nation?"

His answer, with which I wholeheartedly concur, "The preservation of judicial independence is a responsibility that is within the province of the bar. The bar should serve as the mechanism through which the judiciary opposes institutional infringement and should present a unified voice when the decisional independence of judges is challenged.

"The responsibility of the organized bar to defend the judiciary from unjust attack transcends not just its ethical obligation as officers


of the court, but is also based on the hard reality that the bar is the only group that can and will undertake such a defense. When judges are forced to come to their own defense, they are accused of self-interest, and are demeaned by the necessity of publicly defending a position."

U.S. Supreme Court Justice Anthony Kennedy agrees, "The bar must support the judiciary in its cause when it is under attack. Without the assistance of the bar, I am afraid that the judiciary will be reduced to an irrelevant institution."

But first, we must agree that we have a common interest in turning back the attack. Because the same powerful special interests whose self-serving fingerprints identify campaigns marring public trust in the judiciary, are now plotting "divide and conquer" attacks on the bar. Recent developments in California, Florida, New Hampshire, and Wisconsin suggest it's a tactic that might soon be used to drive a wedge between lawyers in Georgia.

Believe me, that wedge is meant to split open a chasm of polarization that will pave the way for partisan judicial elections and a bench that is beholden to special interests, not public interests.

Judges should be beholden only to the Constitution, the Bill of Rights, and the rule of law. Judges should be fair and impartial. Judges should have clean hands. And clean hands and dirty politics don't mix.

As members of the State Bar of Georgia, together we have established one strong voice. Let us now raise it in defense of our founding principles. These are not times for summer soldiers. These are times that challenge the legitimacy of the American experience. Let our legal community stand together so that our song of freedom will be heard. 

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

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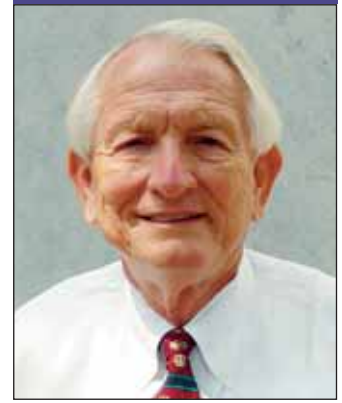
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by Cliff Brashier



Working Together We Made a Difference

As Aug. 29 came and went this year, I am sure we all paused to remember the devastation caused by Hurricane Katrina. When we think of that day, we think of the immediate needs for shelter, food and health care for the many residents of the Gulf Coast. So many of you generously donated money to various relief organizations, volunteered time at shelters and contributed clothing and other items.

What is not so widely known or talked about, is the tremendous response efforts put forth by Georgia attorneys and others members of the legal community to address the emergency and on-going legal needs of those most impacted by the disaster.

"If there is a silver lining to this tragedy it's that it brought out the best in the legal community, and we are now more prepared and ready to respond should another disaster strike."

To highlight the short- and long-term legal needs that resulted from Hurricane Katrina and to recognize the important contributions from our members, we are focusing this issue of the *Georgia Bar Journal* on the response efforts of just a few of the many individuals who worked to bridge the gaps created by displaced legal service programs and pro bono attorneys. There are so many compelling stories to tell and heroic efforts to report. Unfortunately, there just are not enough pages to acknowledge them all. For this issue we have narrowed it down to just a few. The theme of this issue is "Hurricane Katrina: The Legal Impact."

So many legal issues arose from this disaster — some were to be expected, many were not. Immediate issues included access to Social Security, Medicare/Medicaid, unemployment and welfare benefits. Succession cases abound. Custody cases. FEMA grant applications and denials. The list goes on and on. The loss of records, displacement of both attorneys and clients, and the slow and unpredictable response from government agencies further complicated all of these issues.

Recognizing that many of these displaced attorneys fled to our state, the State Bar provided office space, computer equipment, supplies—whatever our colleagues needed to help them pick up the pieces of their practice. A special thank you to Rodd Walton, a member of the Bar's YLD and the Gate City Bar Association, for helping us get the word out.

Speaking of the YLD, as the service arm of the State Bar, this group of young attorneys leveraged their considerable talents and boundless energy to respond to this disaster. The YLD has a long history of responding to disasters, most notably in 1994 when they responded with a very successful YLD hotline, disaster CLE program and manual for victims of Tropical Storm Alberto, and again in 2000 in southwest Georgia following an outbreak of deadly and destructive tornadoes.

Last October, the YLD Disaster Legal Assistance Committee, co-chaired by Tonya Boga and Michelle Ruff, formed to mobilize YLD members in an organized response to Katrina. Among its many activities, the YLD activated a hotline in partnership with the ABA YLD hotline and other YLD hotlines in Louisiana and Mississippi. In addition, YLD volunteers handed out more than 1,000 copies of the YLD disaster manual, "Legal Assistance for Victims of Natural Disasters" in 17 area shelters. Boga also spearheaded the effort to develop and implement a disaster-focused CLE. Attended by more than 200 Georgia attorneys, the CLE focused on a number of topics relevant to disaster victims including flood insurance, housing, emergency benefits, insurance claims, landlord/tenant issues and family law.

This year the YLD, in partnership with the State Bar of Louisiana's YLD, has chosen to focus its service project on raising funds to purchase musical instruments for public schools affected by Hurricane Katrina. The YLD will hold instrument drives and a number of fundraisers to benefit

Tipitina's Foundation, a New Orleans non-profit organization dedicated to providing area schools with musical instruments. YLD fundraisers are also planned across the state to generate funds for this important cause. This year-long initiative will culminate with a clean-up project scheduled during the YLD's Spring Meeting in April 2007. Interestingly, as a sign of solidarity with the city of New Orleans, the YLD has chosen the Big Easy as the site of their 2007 Spring Meeting.


It was of no surprise to me that this enthusiastic group of young lawyers won best overall YLD in the Comprehensive Category at the 2006 ABA Annual Meeting in Hawaii. Congratulations to Damon Elmore, immediate past president of the YLD, for leading this organization to this award.

Complementing the hands-on approach taken by the YLD, the State Bar's Pro Bono Project served as a match making service, connecting lawyers with volunteer opportunities. In addition, the Project's staff kept busy gathering, updating and disseminating disaster relief information to legal services attorneys, pro bono volunteers and shelter workers. Everything from "how-to" legal manuals to "who-to-call-for-what" contact lists were made available to volunteers through the Pro Bono Project's website www.georgiaadvocates.org and distributed through list serves and emails. As the government's response to the

disaster evolved, the Pro Bono Project updated forms and information daily to ensure volunteers were working with the most accurate information possible.

The Pro Bono Project made these reference materials available to similar pro bono programs in states across the country, to give to their volunteers and post on their websites. In doing so, the Project created a network of pro bono organizations working together to increase efficiencies and reduce duplicative efforts. This spirit of cooperation and collaboration meant that volunteers could focus on the task at hand—helping the victims, instead of tracking down information.

In closing, I want to reiterate that these are just a few of the many individuals that participated in some way to offer relief to citizens of New Orleans and the greater Gulf Coast community. If there is a silver lining to this tragedy it's that it brought out the best in the legal community, and we are now more prepared and ready to respond should another disaster strike.

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

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

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by Jonathan A. Pope

Your YLD Continues to Thrive and Succeed

In my previous column, I reported about the consistent national recognition your Young Lawyers Division has received in the past from the American Bar Association for its programs aimed at service to the public and service to the Bar. The Young Lawyers Division of the ABA presents the Awards of Achievement to YLD affiliates that have accomplished the most during the previous bar year. The Awards of Achievement provide an opportunity for local, state and national YLD affiliates to obtain national recognition for well-planned and well-executed programs that contribute significantly to the public good and to the betterment of the profession.

The Awards of Achievement are an invaluable tool for YLD affiliates to exchange ideas on important programs and projects affecting the public and the profession.

I was fortunate enough to represent your YLD at the ABA Annual Meeting in Hawaii Aug. 2-6, 2006, and am proud to report that your YLD was awarded first place in the Overall/Comprehensive Category by the Young Lawyers Division of the ABA. This achievement is even more significant in light of the rigorous competition for

the award from other YLD affiliates whose membership and budgets are exponentially larger, including YLD affiliates in California, New York and Texas.

This prestigious recognition by the ABA is a direct reflection of the tremendous work and effort put forth by YLD Immediate Past President Damon Elmore and YLD Director Deidra Sanderson during the 2005-06 Bar year.

The accolades do not stop with the first place award in the Overall/Comprehensive Category.

Numerous committee projects and programs also received recognition at the meeting in Hawaii, including first place in the Minority Project Category for the YLD Minorities in the Profession Committee's hosting

"I want to encourage all members of the YLD to participate in the organization. Whether it's running for office, joining a committee, or simply attending a meeting, your involvement is paramount to our continued success."

of An Evening with the Justices and second place in the Service to the Public Category for the YLD and Georgia Pro Bono Project's Stop Domestic Violence Project. The YLD Leadership Academy also won second place in the Service to the Profession Category. I would like to extend my gratitude to all of the members of the Minorities in the Profession Committee, the Leadership Academy team, and those who worked on the Stop Domestic Violence Project for their efforts on these projects, with special thanks to their committee chairs and project leaders, Mawuli Davis and Holly Geerdes (Minorities in the Profession), Mike Monahan and Tracey Roberts (Stop Domestic Violence Project) and Laurel Landon, Tonya Boga and Leigh Martin May (Leadership Academy). Finally, I would like to thank last year's co-editors of *The YLD Review*, Bryan Scott and Amy

Howell, for their contribution in helping achieve second place in the Newsletter Category.

While we remain proud of these wonderful accomplishments, we also recognize that there is more work to be done. In that regard, I would like to update you on some of the programs we are working on now and those we have planned for the future.

Numerous YLD members, including members of the YLD Litigation Committee, agreed to partner with the Mock Interview program at Georgia State College of Law on Sept. 6-7. The program consisted of a series of mock interviews conducted by practicing attorneys with second- and third-year law students in an effort to help the students improve their interviewing skills. The program was very helpful and I would like to give special thanks to YLD Litigation Committee Co-Chairs Scott Masterson and Shane Mayes

and *The YLD Review* Co-Editor Stacy Silverstone for helping coordinate our involvement.

The YLD Community Service Committee hosted a happy hour with the Atlanta Young Certified Public Accountants at Park Tavern on Aug. 29. In addition, the Committee conducted its first project on Sept. 23, by assisting Habitat for Humanity to construct a home in Atlanta. The events were a success thanks to the leadership of Committee Co-Chairs Terri Gordon and Shariki Cavitt.

The YLD completed the inaugural year of its Leadership Academy in June. The YLD's Leadership Academy recognized a need for continued access to a seasoned practitioner, and combined a mentor relationship with organized workshops examining appropriate areas crucial to young lawyer development. These areas are also identified as those that routinely affect the image of the lawyer by

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the public at large. They include: professionalism; firm leadership; community and public service; service on corporate and nonprofit boards; and lawyers as elected officials.

The Leadership Academy selects 40 YLD members to participate in the program each year. The Leadership Academy holds one meeting each month from January to June that involves the participation of judges and lawyers across Georgia. The program culminates with a graduation ceremony in June. The Leadership Academy for 2007 will be led by YLD Immediate Past President Damon Elmore, Tonya Boga and 2006 Leadership Academy graduate Sharri Edenfield, and is accepting nominations and applications. If you would like more information on the YLD Leadership Academy, please contact YLD Director Deidra Sanderson at 404-527-8778.

One of our oldest and most successful committees, the High School Mock Trial Committee, is in need of volunteers to serve as team coaches beginning in October and judging panel members in February and March for the regional and state finals competitions.

YLD Meetings

Fall Meeting

Oct. 6-8, 2006

Hilton Garden Inn
Athens, Ga.

Georgia v. Tennessee

Midyear Meeting

Jan. 18-20, 2007

Hyatt Regency Hotel
Savannah, Ga.

Spring Meeting

April 26-29, 2007

W New Orleans
New Orleans, La.

First weekend of Jazzfest

Annual Meeting

June 14-17, 2007

Sawgrass Marriot Resort
Ponte Vedra Beach, Fla.

The regional level of the competition will be held on the weekends of Feb. 17 and Feb. 24 in 15 cities around the state. The state finals competition will be held on March 10 and 11 at the Gwinnett Justice and Administration Center in Lawrenceville. The YLD Litigation Committee has graciously agreed to coordinate with the High School Mock Trial Committee to locate volunteers, but because we need more than 800 total judging panel volunteers alone each year, all members of the State Bar of Georgia are invited to participate in this wonderful program. To volunteer, please contact High School Mock Trial Coordinator Stacy Rieke at 404-527-8779.

The YLD is planning a project to be held in conjunction with the YLD Spring Meeting in New Orleans April 26-29, 2007. From now until the meeting we will be raising funds for Tipitina's Foundation, a charitable organization that provides musical instruments to the music programs of affected schools in the New Orleans area. We will present the funds raised at the Spring Meeting in New Orleans. In addition, we are working with the YLD of the State Bar of Louisiana to organize a group clean up effort during the meeting to help remove debris left from Hurricane Katrina.

In my first column, I outlined my goal to assist State Bar President Jay Cook and the State Bar Executive Committee's efforts to educate the public on our civil justice system. To that end, we will be using the State Bar of Georgia's public relations consultants to help disseminate information to the public about YLD awards, programs and projects in an effort to support President Cook's efforts.


The YLD Summer Meeting took place in New York City Aug. 24-27. A special highlight of the meeting was the CLE held on Aug. 26, which focused on lawyers and politics. The speakers explored various topics involving the benefits and burdens of the marriage between practicing

law and political involvement and provided some tips for those considering a political future. The keynote speakers included former Congressman and McKenna Long & Aldridge attorney Buddy Darden, and Georgia Court of Appeals Judge John Ellington. Both Judge Ellington and former Congressman Darden stressed the importance of lawyers continued involvement in government and running for elected office. The seminar concluded with a panel of speakers including YLD members Ashley Harris of Carlock, Copeland, Semler & Stair, LLP; Elena Kaplan of Parker, Hudson, Rainer & Dobbs, LLP; Stephanie Kirijan of DeKalb County District Attorney's Office; Ryan Teague of McKenna, Long & Aldridge; Ben Vinson of McKenna Long & Aldridge; as well as Judge Ellington and Buddy Darden. I want to thank all of the speakers for a wonderful seminar. I would also like to give special thanks to Stephanie Kirijan for coordinating the CLE and securing the wonderful panel of speakers.

We will have a CLE at each of the upcoming YLD meetings. If you have ideas for a CLE or would like to participate in a YLD CLE event, please contact Deidra Sanderson.

Finally, I would like to extend an invitation to all members of the YLD to attend at least one YLD meeting this year (list of upcoming meetings appears to the left).

Moreover, I want to encourage all members of the YLD to participate in the organization. Whether it's running for office, joining a committee, or simply attending a meeting, your involvement is paramount to our continued success.

As always, if you have ideas for new programs, suggestions as to how we can improve our services, or if I can help you in any way, please do not hesitate to contact me. 

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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Pandemic Preparation in the Workplace

by Donald W. Benson

How should employers prepare their workplaces for possible pandemics of avian influenza, Severe Acute Respiratory Syndrome (SARS) or illness spread by bioterrorism? Is the risk of a pandemic illness significant enough to merit the devotion of time and resources necessary to secure the continuity of business operations? What is the employer's role in promoting quarantine effectiveness, social distancing, or preventative hygiene?

Or, is the near hysteria over the possibility of a pandemic caused by avian influenza or another similarly contagious illness merely the latest version of a doomsday forecast, similar to the prediction that Y2K would shut down global business operations? That prediction

spawned an entire industry devoted to business preparations for the millennium, and almost every company of significant size devoted considerable amounts of management and IT time and capital to achieving readiness for Y2K.

Of course, many attorneys, accountants, consultants and vendors profited handsomely from these efforts; but it should be noted that business productivity gains in the early years of this century may be due, in no small part to the updating and planning that occurred in advance of Y2K. Accordingly, it is possible that the current alarmist news coverage focused on the possibility of a pandemic may encourage similarly creative business and legal planning that will not only help to minimize the effects of any such pandemic, but also foster the type of productivity gains that resulted from the attention devoted to the threat of Y2K.

This article will first examine the nature and threat of the pandemic occurrence of a disease such as avian influenza and its possible effects on business operations. It will then discuss pertinent governmental regulations and guidelines that may come into play should a pandemic arise. Finally, the remainder of the article will



highlight some of the major legal and logistical issues on which counsel should advise business clients in an effort to ensure that they are properly prepared for a possible pandemic.

Pandemic: A Global Outbreak of Disease

The United States Centers for Disease Control and Prevention (CDC) has set forth three conditions that must exist in order for a global outbreak of a disease to occur: (1) the emergence of a new type of virus for which humans have little or no immunity; (2) the capability of this new virus to infect and cause illness in humans; and (3) the capability of the virus to spread easily and without interruption among humans.¹ A pandemic

results when these three factors converge with regard to a disease.

We have experienced three influenza pandemics in the previous century: “Spanish influenza” in 1918, “Asian influenza” in 1957, and “Hong Kong influenza” in 1968.² The 1918 pandemic killed an estimated forty to fifty million people worldwide.³ Although the 1918 “Spanish influenza” was exceptionally deadly, the two subsequent pandemics also caused significant human deaths, including an estimated two million deaths in 1957 and one million deaths in 1968.⁴

Currently, public health officials are alarmed over the pandemic potential of the current strain of avian influenza, H5N1. Although the vast majority of avian influenza viruses do not infect humans, on rare occasions these bird viruses

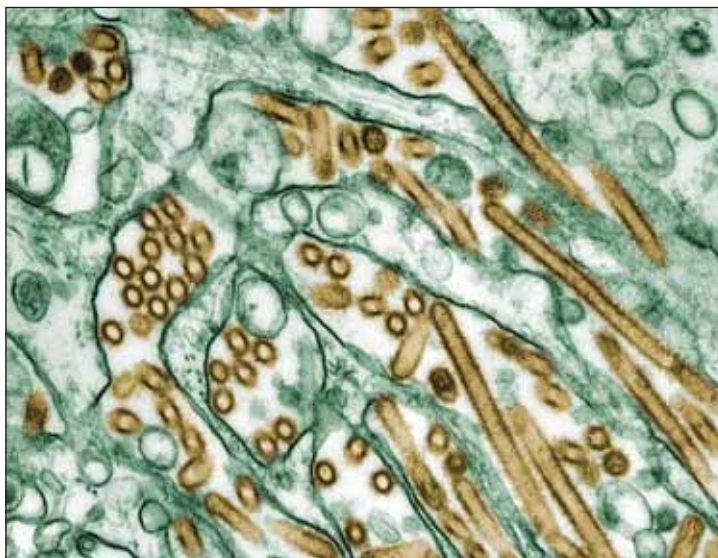
can infect other species, including pigs and humans.⁵ H5N1 has spread by bird migration and commerce into the domestic and wild bird populations of fifty countries in Asia, parts of Europe, the Middle East and Africa.⁶ Transmission from birds to humans has been relatively rare, but 232 confirmed cases have resulted in 132 deaths in a wide geographic area including Azerbaijan, Cambodia, China, Djibouti, Egypt, Indonesia, Iraq, Thailand, Turkey and Vietnam.⁷

An influenza pandemic occurs when a new virus subtype emerges that has not previously circulated in humans and “starts spreading as easily as normal influenza—by coughing and sneezing.”⁸ Public health experts are particularly concerned that H5N1 might ultimately

mutate into a strain that is contagious among humans because it is an influenza A subtype and has genetic similarities to influenza strains that have spread among humans.⁹ With such a genetic adaptation, H5N1 would no longer be a bird virus, but a new human influenza virus to which the human immune system would have no pre-existing immunity.¹⁰ This lack of immune defense makes it likely that people who contract such a type of influenza will experience more serious disease than that caused by normal influenza to which humans have already been exposed.¹¹

What is the Threat of the Occurrence of a Pandemic and Potential Level of Disruption?

The emergence of a virus that meets the biological characteristics set forth by the CDC seems quite plausible given the rapidity with which viruses develop and change. Moreover, viruses that have these characteristics are assisted in their spread through populations and from one population to the next by the reality of a truly global economy in which people travel far more than they did fifty years ago. Many more American companies now have their own sales, logistics, operations and financial employees who regularly travel to their companies' overseas plants, or to those of their vendors or buyers. Similarly, personnel from these vendors and buyers are making on-site calls to businesses in the United States. The prevalence of these international trips has led the World Health Organization (WHO) to estimate that a global pandemic for a highly contagious airborne disease like avian influenza could reach pandemic distribution in as little as three months.¹²



Colorized transmission electron micrograph of Avian influenza A H5N1 viruses (seen in gold) grown in MDCK cells (seen in green).

Photo by Cynthia Goldsmith/Centers for Disease Control and Prevention

The WHO is currently working under three assumptions with regard to planning for a possible pandemic. The first assumption is that a pandemic would spread to all continents in less than three months.¹³ The second assumption is that significant portions of the world's population would require medical care, and the third is that medical supplies will be inadequate in all countries due to limited supplies of vaccines and anti-viral drugs.¹⁴ Based on the comparatively mild 1957 influenza pandemic, the WHO projects approximately 2 million to 7.4 million deaths worldwide.¹⁵ The level of disruption to business that may be posed by a pandemic will depend in part on the stage of the pandemic. Past pandemics have generally occurred in two or three waves, so that not all countries experienced the same level of disruption at the same time.¹⁶ Thus, employers may face various stages of disruption caused by a pandemic including: (1) overseas occurrence affecting travel and foreign suppliers and customers; (2) high absenteeism at home, but with the ability to maintain near-normal operations; and (3) near total absenteeism at home, making it difficult to keep operations open, along with possible disruption of utilities and quarantines of the facility area.

Business disruption levels also will be significantly affected by the level of interdependence between a business's operations in the United States and businesses in other areas of the world in which the pandemic is most likely to start. Many American businesses are now directly a part of, or directly affected by, the global economy. These companies sell to or buy from locations in other countries. If those countries experience a pandemic that significantly limits their ability to buy American products or to deliver the goods and services that United States companies have purchased, the ability of American plants and operations to stay open in the United States will be affected.

Overall, not only could the lead time for influenza pandemic planning be extremely short, but uncertainty regarding the level of disruption that a particular virus may pose makes the problem even more vexing for planners. SARS was ultimately contained far short of causing massive deaths and disruptions to worldwide commerce, and, to date, the spread of smallpox or anthrax through bioterrorism has been largely avoided. Nevertheless, business planners may do well to heed the current alarms about the potential disruption that a virus such as avian influenza could cause, given the history of past influenza pandemics and the ever-increasing level of global connectivity.

Pertinent Government Regulations and Guidelines

Existing federal regulations and guidelines issued by the Occupational Safety and Health Administration (OSHA), the United States Department of Agriculture (USDA) and the CDC may play a key role in

shaping how businesses in the United States respond to a pandemic. Governmental agencies may be expected to build upon this existing framework in developing new regulations in response to an emerging disease threat.

In a pandemic scenario, OSHA's bloodborne pathogens standard¹⁷ and respiratory protection standard¹⁸ would come into play. In addition, the "general duty" clause of the Occupational Safety and Health Act¹⁹ requires an employer to provide a safe and healthy work environment for employees, thus giving OSHA broad statutory authority for issuing new regulations. Regulations might be expected to take the form of guidance documents issued by OSHA and/or the CDC for various types of persons who may be affected by an avian influenza pandemic, such as those who clean areas affected by the virus, airline personnel and citizens living abroad.²⁰

Given the fact that the source of a virus is often birds or animals, the

USDA also can be expected to play a major role in preventing the spread of any pandemic virus. For example, to stem the spread of avian influenza virus to the United States, the USDA helped to enforce a federal ban on the importation of all birds from the Asian countries that experienced an outbreak of the virus.

Based on guidance issued by governmental agencies thus far, employers may be faced with very detailed governmental workplace regulations in the face of a pandemic. Accordingly, preparation for a pandemic should include identifying the management team responsible for monitoring new governmental regulations and adopting procedures for communicating changes to affected supervisors and employees to ensure compliance with any new requirements.

Preparation in the Workplace

Employers who prepare for a possible pandemic will need to think of

a broad range of issues associated with disaster planning. Preparation should include developing procedures for handling employees who are sick in the workplace and the implementation of health and hygiene measures, such as remote work strategies and crisis management procedures, to promote social distancing and cut down on transmission risks. Employers also should consider implementing health and medical initiatives such as disease screening and vaccination programs. Given that large numbers of employees may be absent from the workplace in the event of a major avian influenza or other disease outbreak, employers should implement plans for new employee training, cross-training of existing employees, and developing a pre-planned communications strategy for contacting large numbers of employees located outside of the work site. Each of these areas for planning and preparation raises its own set of legal issues and potentially far-reaching legal requirements.

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Communicable Disease Policy

Employers should consider adopting a communicable disease policy and procedures as one of the first planning measures to implement in advance of any potential pandemic. Attorneys should advise business clients to consider adopting some version of the following employee policy, tailored, as appropriate, to meet individual business needs and the dangers confronted by the client's specific employees:

COMMUNICABLE ILLNESS

IN ORDER TO HELP KEEP [COMPANY] SAFE, WE NEED YOUR HELP. IF YOU ARE (A) DIAGNOSED WITH AN ILLNESS THAT IS COMMUNICABLE IN OUR WORKPLACE SUCH AS ACTIVE TB (TUBERCULOSIS) OR SARS (SEVERE ACUTE RESPIRATORY SYNDROME), OR AVIAN FLU, (B) IF YOU BELIEVE YOU MAY HAVE BEEN EXPOSED TO A PERSON SO DIAGNOSED, OR (C) IF YOU HAVE RECENTLY VISITED A LOCATION IN WHICH THERE HAS BEEN AN OUTBREAK OF SUCH AN ILLNESS AND YOU DO NOT FEEL WELL OR ARE EXHIBITING ANY SYMPTOMS OF THE ILLNESS IN QUESTION, YOU MUST REPORT THIS TO [INSERT TITLE OF APPROPRIATE COMPANY REPRESENTATIVE]. THIS INFORMATION WILL BE KEPT CONFIDENTIAL TO THE EXTENT REASONABLY POSSIBLE BUT, OBVIOUSLY, FULL CONFIDENTIALITY CANNOT BE GUARANTEED UNDER THESE CIRCUMSTANCES.

Travel and Quarantine Policies

Companies also should consider addressing their employee travel policies regarding foreign travel. Policies should state that travel should be curtailed in accordance with advisories issued by the CDC and the United States Department of State. Employees traveling to areas with current outbreaks of a communicable disease should be required to obtain and maintain all recommended vaccinations and to follow recommended health precautions.

The potential for the imposition of quarantine for travelers to certain areas also must be considered. If an

employee travels for work reasons to a region for which quarantine upon return home is required or advisable, the employer should request the employee to inform his or her supervisor or human resources department immediately so that home work assignments or paid administrative leave can be arranged. If an employee travels on personal business to a region requiring quarantine upon his or her return home, the company should consider allowing the employee to use sick leave, accrued paid-time-off or vacation time, or be placed on unpaid administrative leave. If the employee is diagnosed with a communicable illness or quarantined in association with such an illness, the company should consider requiring a note from a medical provider stating that the employee may safely return to work before permitting the employee to return to the work site.

Compliance with HIPAA

The Privacy Rule regulations issued by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)²¹ require that an employer protect the privacy of its employees' medical information. Businesses should consult with legal counsel to determine which diseases an employee or potential employee must disclose to the employer and who will have access to the information provided. When there is a need to inform other employees of a possible workplace exposure, every effort must be made to maintain the privacy of the infected employee.²²

Workers' Compensation

Employers should ensure that their workers' compensation (W.C.) insurance premiums are paid in full. Without the W.C. exclusive remedy for workplace injuries, employers may be liable under all sorts of creative tort claims for negligence, wrongful death, etc. Some states include communicable diseases that are

contracted at the workplace within the list of work-related injuries that are covered by the W.C. statute.²³ Employers should consult with counsel about whether the W.C. bar is available in the states in which they employ workers, paying particular attention to states in which external sales representatives are based.

Clarify Leave Policies

Employers have a tendency to think of leave policies as a benefit subject to employee abuse and may initially be concerned with ensuring that employees remain at work as absenteeism grows in response to an outbreak of disease. In the various stages of a pandemic, however, the problem may be quite different. First, there may be employees who have traveled for business who find themselves subject to quarantine but can work from home. Second, there may be sick employees, or employees caring for sick family members, whom the employer wants to remain at home in order to reduce the risk of infection to others.²⁴ Third, there may be sick employees who will come to work and will need to be sent home to keep them from spreading the infection. Finally, there may be some employees who are too afraid to venture out in public from fear of contracting illness.

In some or all of these situations, the employer should consider how to use leave policies to keep its worker pool in place. In assessing this issue, employers should be reminded that they need to contend not only with the situation that exists at the height of any pandemic, but also circumstances that arise during any recovery period. As recent experience with Hurricane Katrina has shown, employers may find that it is difficult to keep workers in areas affected by a disaster. Paid leave, or unpaid leave with health benefits, can mean the difference in maintaining the work force in the area or experiencing significant employ-

ee turnover. Avoiding such turnover can be particularly significant as a business seeks to resume normal operating levels. Similarly, fighting every claim for unemployment benefits may not be in the employer's interest if the denial of benefits encourages the pool of available workers to shift to areas unaffected by the disease.

In considering leave issues, business clients should be counseled on the requirements of applicable federal, state and local leave laws that govern paid or unpaid leave for sick employees; employees caring for immediate family members; first-responder health care providers; and employees called to active military service to enforce a quarantine. Leave policies should clearly spell out the following items: (1) how the employee requests leave; (2) any requirements for regularly reporting his or her medical condition; (3) whether the leave is paid leave; (4) whether any benefits (such as health insurance, matching 401k contributions, vacation pay, etc.) are provided or continue to accrue during the leave period; and (5) when the leave is exhausted, whether the employee will be returned to work.

Statutes and Regulations that May Affect Leave Policies

The Family and Medical Leave Act

The federal Family and Medical Leave Act of 1993 (FMLA) and implementing regulations²⁵ may have a significant impact on leave policies. If the employer has more than 50 employees at a location, and an employee who has requested leave has worked at least 1,250 hours within the last twelve months for that employer, the FMLA provides that the employee can elect to take up to 12 weeks of unpaid leave due to a "serious health condition."²⁶ Influenza that requires continuing treatment by a physician over a three-day period will likely be considered a protected "serious health condition" that triggers the FMLA right to return to a substantially equivalent job when the leave ends.²⁷ If the employee is absent from the workplace for several months but was never told that this absence exhausted the FMLA leave period, the employer's obligation to reinstate the employee may extend far into the future.²⁸

The Americans with Disabilities Act

Similarly, those employees who suffer permanent health problems affecting a major life activity like breathing may be entitled to protection under the Americans with Disabilities Act of 1990 (ADA).²⁹ Once the ADA-protected employee returns to work, the employer will likely need to engage in the mandated process to determine whether any reasonable accommodation must be provided to help the employee perform the essential functions of his or her prior position.³⁰

ERISA and Accrued Leave and Benefit Policies

In preparing for a possible pandemic, employers should examine any contractual promises contained in



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handbooks and leave policies. These policies may allow employees to accrue, from year to year, large amounts of paid leave. Employers may need to consider the inclusion of exception clauses for disasters, emergencies and epidemics that limit the lump-sum use of such paid leave. Employers who fail to plan for such contingencies could experience tremendous financial liability for such leave at the time when they can least afford it.

In examining leave and benefit policies, the Employee Retirement Income Security Act of 1974 (ERISA), the federal statute that governs certain types of employee benefit plans, must be considered.³¹ Prudent employers will at once confirm that the proper, updated Summary Plan Descriptions (SPD) of its benefit plan (Plan) are distributed to Plan participants and their covered dependents. Otherwise, the Plan provisions allowing the Plan to be changed may not be enforceable.³² Worse still, if the employer cannot


prove that the participant or beneficiary received a revised SPD, then the employer may be required to provide higher benefits according to some previous, and more generous, version of the Plan.³³ Further, in the event of a pandemic, a self-administered Plan will have an immediate need to increase the size of its administrative staff to handle the anticipated increase in benefit requests and appeals. Unfortunately, under ERISA, the question of whether or not the participant is entitled to benefits will most often be determined based solely on the record before the Plan administrator (whether an in-house benefits administrator or a third-party entity hired to provide and record benefits), not at some future time when lawyers can flesh out the file through discovery. Accordingly, it is crucial that the Plan allocate sufficient resources to develop fully the administrative file, or benefits may be later awarded by the courts to otherwise unqualified applicants.

Examine Pay and Telecommuting Rules

A pandemic may lead to many employees working from home. Those telecommuting employees who are non-exempt employees under the Fair Labor Standards Act of 1938 (FLSA)³⁴ can create off-the-clock and overtime issues for employers. The employee who is performing the normal work activities of the job over a computer from home may be working substantial additional time without management's knowledge or supervision. Additionally, these employees may be checking email and voice mail outside of regular work hours. These off-the-clock activities may push the total hours worked in a week beyond 40, entitling the employee to overtime pay at one and a half times the regular rate of pay.³⁵ In order to avoid problems under the FLSA, employers can require employees to check emails or to perform work only during specified hours of each day,

to carefully record and submit documentation of their time worked, and to ask and receive permission prior to working in excess of 40 hours in a week.

Conclusion

In the very worst of pandemic scenarios, employers may be called upon to be creative and flexible beyond the requirements of employment law in order to assist employees and maintain a stable work force.³⁶ Expanded employee assistance, leave and attendance policies and extra efforts to communicate about benefits and provide arrangements for the continued payment of wages during facility shutdowns can be instrumental steps in maintaining a loyal work force. As employers become more attuned to the significant risks of pandemics, prudent planning for such contingencies will become a normal part of their emergency preparedness. 



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Endnotes

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17. 29 C.F.R. § 1910.1030 (a)-(i) (2006).
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21. 45 CFR §§ 160, 164 (2005).
22. *See id.* § 164.512(b).
23. Under Georgia's Workers' Compensation statute, O.C.G.A. § 34-9-1 to -9-421 (2004), if the employee's disease meets certain tests imposed by law, it can be compensated. There must be a causal relationship between the employment and the disease. It cannot be a disease that is an ordinary disease of life to which others are exposed. GEORGIA STATE BD. OF WORKERS' COMP., EMPLOYEE HANDBOOK 11 (2003).
24. In this regard, employers must be aware of the risk of possible racial and national origin discrimination if groups of workers in affected industries (e.g., poultry processing) who must be sent home are predominantly from a particular ethnic or racial group.
25. 29 U.S.C. §§ 2601-2654 (2005); 29 C.F.R. §§ 825.100-.800 (2005).
26. The term "serious health condition" is defined at 29 U.S.C. § 2611(11) (2005).
27. *See, e.g.,* Miller v. AT&T Corp., 250 F.3d 820, 832-33 (4th Cir. 2001) (holding that flu symptoms and treatment constituted serious health condition requiring FMLA leave).
28. *But see* Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 95-96 (2002) (striking down regulations that prohibited employers from retroactively designating leave as FMLA leave). The effect of this decision is that employees will not be entitled in every case to more than twelve weeks leave if an employer fails to designate time as FMLA qualifying.
29. 42 U.S.C. §§ 12101-12213 (2005).
30. 29 C.F.R. § 1630.9 (2005).
31. 29 U.S.C. §§ 1001-1461 (2005).
32. *See, e.g.,* Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 75 (1995) (holding that an employer could eliminate retiree medical benefits based on reservation of right to amend plan provision set forth in summary plan description).
33. *Id.*
34. 29 U.S.C. §§ 201-219 (2005).
35. "Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked." 29 C.F.R. § 785.16(a) (2005). Generally speaking, if an employer "suffers or permits" the employee to work, knowing or acquiescing in the performance of work, and such work benefits the employer, then the work is compensable. *Id.* § 785.11.
36. Prudent planning for such pandemic contingencies will become a normal part of an employer's emergency preparedness. Creative approaches to preparedness can be developed using the currently voluntary National Fire Protection Association (NFPA 1600) Standard on Disaster/Emergency Management & Business Continuity (2004), which is available at <http://www.nfpa.org/assets/files/PDF/NFPA1600.pdf>. This standard has been endorsed by the United States Department of Homeland Security.

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Responding



to the Hurricanes

by Anthony H. Barash

"Responding to the Hurricanes" by Anthony Barash, published in Dialogue, Volume 10, No. 2, Spring 2006. © 2006 by the American Bar Association. Reprinted with permission.

In late August 2005 the world watched as Hurricane Katrina ravaged the Gulf Coast, only to be followed within weeks by Hurricane Rita. The local and national legal communities reacted, often heroically, to these unprecedented events.

Faced with immediate critical needs for themselves, their families and their professional colleagues, lawyers in the region nonetheless began marshalling basic survival and legal assistance information for victims. FEMA Legal Assistance Disaster Recovery Centers (DRCs) and call centers were established and staffed by the ABA Young Lawyers Division and the state bar young lawyers divisions in the immediately affected states. With a remarkable response by willing but often untrained volunteers, they addressed both logistical and substantive issues.

But there was a shortage of transportation, room and board, office space and supplies, and serious and complex issues impeded deploying, housing and providing for volunteers. Communications were spotty at best as DRCs and volunteers needed to be kept abreast of rapidly changing situations. Training and reference materials, especially in key areas of immediate concern, such as insurance, mortgage obligations, landlord/tenant, domestic relations, creditors rights and bankruptcy, had to be prepared, double checked and updated regularly to reflect constantly changing real world events and developments and then distributed to DRCs and volunteers.

The hurricanes devastated local legal service programs, buildings and staff and the legal services infrastructure in impacted areas, compounding the challenge of providing legal assistance to affected persons.

Facilitating coordination was critical to ensure that legal services providers, private lawyers and law firms, bar organizations, law school faculty and students, and the judiciary—many of whom were themselves severely impacted by the hurricane—were all involved in legal



Photo by Tony Allen-Mills

New Orleans Garden District, after Hurricane Katrina

services delivery efforts. Ongoing needs assessments and mid-course corrections were imperative in this dynamic, chaotic and kaleidoscopic environment.

Those most immediately affected by the hurricane were disproportionately poor, elderly, sick, and disabled. They were joined by a whole new poverty population created by the disaster, people whose experience with poverty and capacity to cope with personal and financial disaster was untested.

From past experience in large-scale disasters, legal services providers and pro bono coordinators knew that legal issues and legal assistance needs would surface slowly, over a matter of months, while out-of-state pro bono volunteers' interest in helping would peak soon after the event. That interest had to be maintained over an extended period of time, both to match the volume of emerging cases and issues and to give the local legal services and pro bono communities sufficient time to develop the infrastructure for managing the volunteer effort.

ABA's online national lawyer volunteer recruitment effort. In addition, the ABA—in partnership with the Legal Services Corporation, the National Legal Aid and Defender Association and probono.net—developed the online Katrina Legal Aid Resource Center (www.katrinalegalaid.org) to complement and augment the ABA's disaster assistance website (www.abanet.org/katrina). The national legal organizations used these resources to provide training and reference materials, to offer information on assistance to victims including lawyers and law firms, to solicit

technical and legal problems had to be resolved. For example, lawyers who wanted to come to the region confronted unlicensed practice of law issues. In due course, both the Mississippi and Louisiana Supreme Courts adopted emergency orders permitting out-of-state lawyers to provide pro bono legal services in those states under the auspices of recognized local legal services and pro bono programs. And conversely, many other states adopted emergency orders to permit displaced lawyers from Louisiana, Mississippi and Alabama to practice, enabling them to assist evacuees as well as to re-establish their practices in certain cases.

A scene epitomizing the destruction found across the region.



Photo courtesy of the American Red Cross

Rebuilding

It has taken many months for the local legal services providers and pro bono programs to regroup. With financial assistance from resources across the country, including many individual lawyers, law firms and bar associations, the legal services community has made major progress in rebuilding its facilities, technology and, most importantly, its

"The critical importance of contingency planning cannot be overemphasized. Be prepared."

The National Response

Meanwhile, at the national level, the response of the American legal community was immediate and significant. ABA President Michael S. Greco quickly appointed the ABA Task Force on Hurricane Katrina to oversee the ABA's multi-faceted response. An ABA Staff Working Group swung into action, focusing on national coordination of needs assessment and response, through a variety of ABA sections and entities.

Technology played an important role, too. The ABA Center for Pro Bono developed and managed the

lawyer volunteers, and to make available a database of legal services resources throughout the country.

Handling Volunteers

Local legal services providers and pro bono coordinators in the region simply could not absorb the immediate outpouring of interest from volunteer lawyers around the country who wanted to help persons affected by the disaster.

In addition to the obvious and pervasive logistical issues inherent in managing significant numbers of volunteers, including both lawyers and law students, some obvious

personnel to address the escalating needs of persons of limited means in their service areas.

In both Mississippi and Louisiana, the generosity of the national legal community has resulted in the funding necessary to hire statewide pro bono volunteer coordinators. A gift of \$75,000 from the ABA Section of Business Law in March supported the hiring of Karen Lash as the statewide disaster legal assistance pro bono coordinator for Mississippi. With financial assistance from the Minnesota law firm of Robins, Kaplan, Miller and Ciresi, and

other resources, Monique Drake was hired as the statewide disaster legal assistance pro bono coordinator for Louisiana.

Planning and Preparation

So, even as legal resources were and continue to be deployed to respond to the needs of Katrina's and Rita's victims, what has the legal community at large learned?

First of all, we must plan for disaster. We must maintain and enhance the organizational networks linking national/local, national/national and local/local response efforts. Websites posting useful training and reference content and links to helpful resources and information are vital, but not necessarily accessible during and immediately after a large-scale disaster. They must be augmented with relevant, user-friendly hard-copy materials that can be delivered to the scene as quickly as possible. Electronic mailing lists and other communications to network interested parties are important tools for managing and accessing a database of volunteers and other resources.

We also must be prepared to bring human resources to the assistance of our colleagues in places hit by disaster, to assume interim management, coordination and technology responsibilities while those immediately affected recover and re-group. This includes coordination between national and local responses, efficient identification and allocation of resources and working groups, such as state-wide pro bono coordinator projects, development of new resources to respond to perceived unmet needs, and solicitation of financial support for programs in the field. And we must encourage and support continuing evaluation of our disaster response efforts, recognizing that, although all disasters have common elements, each is different, and we inevitably must tailor our response, sometimes in mid-course and often on the fly.

Why Your Help Still Matters Today

by Mike Monahan



Property in the Ninth Ward neighborhood of New Orleans destroyed by Hurricane Katrina sits untouched one year after the storm.

Katrina Fatigue. Katrina Drain. These are terms used in the media to describe the public's weariness for last year's disaster; weariness further compounded by a year of worldwide natural disasters. But, for many of Katrina's victims still living day-to-day, it will take years for them to recover from the experience.

There are many components that must be addressed in order to restore some sense of normalcy for those affected: medical care,

housing, employment, insurance, and the list goes on. One of the common denominators is that each of these usually requires some amount of legal assistance from simple advice, to filing claims, to filing suit.

In the early stages, the greatest and most critical need among victims is for legal advice—"I have no ID, no birth certificate, no social security card. How can I apply for benefits without ID?" "I've never needed food stamps before. How do they work?" "Where will my social security check go now that my house is washed away?"

Fortunately these and other critical questions about emergency benefits have largely been answered, thanks to the help of hundreds of pro bono attorneys, legal services lawyers and law students from across the country who rushed to set up triage programs in shelters across the Southeast.

As the victims move along the recovery continuum and begin to look forward, questions and needs change. Today, they are asking for help with FEMA appeals, mortgage and credit problems and insurance claims assistance. Next year they will be dealing with home repairs and contractor disputes; family law crises intensified by the disaster, including divorce, family violence and child support; and real property development pressures from local governments and developers.

Because the individuals most impacted by the disaster were of low- to middle-income household status, they are also the ones with the greatest need for legal assistance and who are the least able to afford it. This population grew significantly due to the numbers of individuals who were on the fringes of poverty pre-Katrina and now, because of their changed circumstances, find themselves coping with the reality of actual poverty.

The increase in this population has stretched legal services programs in a number of states to the breaking point. Programs in Texas, Alabama and here in Georgia still have to serve their traditional clients from their communities, while dealing with the influx of cases brought in by evacuees. Volunteers were integral to the survival of these programs before Katrina and they are needed now more than ever.

How You Can Help

Volunteers in all areas of law are needed to fill the gaps and lighten the load of legal services programs across the Southeast. In addition to taking on cases, you can help by developing reference materials; presenting at CLEs and community education programs; and reviewing insurance policies and contracts for repairs. For more information on how you can get involved, contact your local legal aid office or pro bono project, or contact Mike Monahan, director of the State Bar of Georgia's Pro Bono Project at 404-527-8762 or mike@gabar.org.

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

ARLSA Assists Animal Victims of Katrina

by Jess Davis
and Anna Sumner

Reprinted from the YLD Review

As rescue efforts were launched to evacuate Gulf Coast residents, thousands of family pets were left behind, trapped in buildings and roaming the streets for food. Recognizing the dire situation for these animals, The Humane Society issued a call for assistance to animal rescue organizations across the country. Jess Davis and Anna Sumner, co-founders of the Animal Rescue Legal Society of Georgia (ARLSG) responded by packing up and heading to Louisiana.

Established in 2004, the ARLSG adopted the unique mission of providing legal services to Georgia's animal rescue groups. Although the physical rescue of animals is not part of their normal activities, the co-founders of ARLSG made the trek anyways. "So many rescue groups needed help, I decided to get in my car and drive down," said Davis. "If I don't go do this now, when would I ever?"

Rescue teams met at dawn each morning at the Lamar-Dixon Exposition Center in Gonzales, La., loaded up their vehicles with supplies, and headed for New Orleans's most devastated areas where they faced a mix of toxic mud, stagnant and chemically-laced water, fragile buildings, intense heat and humidity, and stressed animals. And each evening, the same vehicles—now full of tired and hungry dogs and cats (and volunteers)—formed a line in front the facility's in-take tent. Teams of volunteers then removed the rescued animals and carried them to triage stations, where each was evaluated and treated. After receiving medical care the animals were photographed, assigned an ID number and a tracking chip and then assigned to one of five barns, each of which housed approximately 300 animals.

Because the State of Louisiana placed a 1,300-animal-limit on the facility, once capacity was reached, each night's new arrivals meant that an equal number of animals had to exit the facility. Typically, animals were sent in groups of 50 to 100, via large air-conditioned trucks, to animal rescue organizations all around the country.

On Oct. 13, 2005, the Lamar-Dixon shelter closed, ending what many



Jess Davis works with an animal displaced by Hurricane Katrina.

believe was the largest animal rescue and sheltering operation in our nation's history. More than 6,000 animals passed through the facility—and many have ended up here in Georgia due to the large number of excellent rescue organizations around our state.

For more information about the ARLSG, please contact jess.davis@alston.com or asumner@alston.com.


The critical importance of contingency planning cannot be overemphasized. Be prepared:

- Establish and maintain national and local networks to facilitate rapid, meaningful and practical gathering, distribution and sharing of information
- Anticipate unlicensed practice of law issues (both in-bound and out-bound), concerns about professional liability insurance, and other potential concerns of pro bono lawyers
- Think through the tools that were used or that we wished had existed, including those enabled by technology
- Create and archive training and resource information and materials
- Designate and train a disaster coordinator in every legal services, bar association and pro bono organization and at every

level, local, state and national, now — not when it's too late

There is simply no need to reinvent the wheel each time. Logistics are the key to an effective and meaningful early response to disaster needs. The legal community in the impacted region, whether lawyers, pro bono coordinators, bar leaders or judges, must recognize that it, too, suffers personal, financial and psychological losses. They are victims as well as service providers. This places a premium on externally sourced administrative and management resources. But there is also an early "burn-out" factor affecting volunteers and service providers. Recognize the importance of creating "SWAT" teams to provide technology and case management assistance and support for the existing legal services infrastructure. And last, but certainly not least, remem-

ber that dislocation and displacement adversely impact coping skills at all levels within the impacted area.

The legal community plays a critical role in disaster relief. We must, and will, be prepared to continue that help to victims of this and future significant disasters. 

Anthony H. Barash is director of the American Bar Association Center for Pro Bono. Amanda Jones and Peter Carson also contributed to this article. Jones, a partner at Bradley Arant Rose & White LLP, coordinated Mississippi's YLD Disaster Legal Assistance Program as president of the YLD. Carson is a partner at Bingham McCutchen, LLP and serves as co-chair of the Pro Bono Committee of the ABA Section of Business Law.

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Georgia's Legal Community Responds to Hurricane Katrina

How One Firm Mobilized to Make a Difference

by Johanna B. Merrill

The photos are already bound in commemorative coffee table books and television movies are in the making, but the people of the Gulf Coast are still recovering from the 2005 hurricane season. According to the Federal Emergency Management Agency, Hurricane Katrina was the worst natural disaster in U.S. history, destroying more than 93,000 square miles, an area about the size of Great Britain. 950,000 applicants were determined eligible for assistance under the Individuals and Households Program, and more than 99 million cubic yards of debris have been removed in Alabama, Mississippi and Louisiana, paying out \$3.7 billion to date.

Statistics and numbers, however, give an incomplete picture without citing the resilient spirit of the affected people and their neighbors, who by the thousands, reached out to help Gulf Coast residents. Among the ranks of the generous are members of Georgia's legal community. More than a year later, Georgia Legal Services is tracking about 1,000 legal matters related to Hurricane Katrina, while Atlanta

Legal Aid and the Atlanta Volunteer Lawyers Foundation opened about 270 cases.

The legal needs of disaster victims are site-specific and ongoing. In the immediate aftermath, survivors needed assistance with housing, FEMA claims, landlord and tenant disputes, insurance, identification and missing persons. Attorneys from around the country stepped in to advise victims about their rights and how to access government benefits. Because so many Katrina victims were unfamiliar operating within a bureaucratic system (as Katrina threw them into a life unknown to them), legal services organizations were in the unique position of trying to reach a previously unserved demographic, in addition to serving their existing clients whose cases may have just become more difficult.

Though the downtown offices of The New Orleans Pro Bono Project (NOPBP), led by Executive Director Rachel Piercey, were unharmed by Hurricane Katrina, the organization lost half its staff to relocation, going from six to three full-time employees. In the aftermath of the storm, they were working with few resources, and little outside help, within a city full of people simply trying to piece together their lives. Since the NOPBP, as well as other local legal service programs, were just as devastated, either physically or through the loss of staff, as other businesses and residences, they needed as much assistance as the clients they were striving to serve. The legal community from surrounding states and the nation, including Georgia, quickly volunteered people and resources to help fill the gap.

Solving the Volunteer Dilemma

Shortly after Katrina, Piercey's friend and colleague, Kilpatrick Stockton's Pro Bono Partner Debbie Segal,

called asking what she could do to help. Piercey told Segal that their greatest need was a way to manage the influx of volunteers that arose after Katrina. "At that time, they simply didn't have the time or resources to handle the number of people who wanted to help them," Segal said.

Last December, Segal spent a week in the NOPBP offices setting up an infrastructure to manage the dozens of law student volunteers who were signing up across the country to roll up their sleeves, pitch in and help. "Initially I thought I would be helping with long-range planning, because it seemed as if the crisis was over, but in reality the city and its residents were still in reaction mode. From the outside, we were all naïve," she observed.

The volunteer-management infrastructure that Segal set up was quickly put to the test as a group of students on winter break from the University of North Carolina's law school arrived in New Orleans ready to work in NOPBP's offices. They researched outstanding cases, tracked down missing clients and paperwork and canvassed neighborhoods and tent cities to let survivors know about the NOPBP and what it could do to assist them with their legal needs. The students stumbled upon roadblocks like disconnected phones, destroyed files and missing people. According to Segal the law students were a good fit for the work and proved to be excellent detectives.

Following that trip, Segal traveled to UNC to meet with the students and faculty to assess their experiences and effectiveness. "The students wanted to go back," she said. "They felt that there was more work they could do and they wanted to spend their spring break doing it. But unfortunately, the Project didn't have adequate supervision or the resources to manage another round of volunteers." So Segal put out a call to Kilpatrick attorneys and the response was overwhelming.

From a Volunteer's View: (forthegoodofthegulf.blogspot.com)

"The point is that you don't have to help someone recover a small fortune to make a difference in a life. To someone who has little or nothing, any amount can be a small fortune."

– Mike Petrusic, UNC law student



Photo courtesy of forthegoodofthegulf.blogspot.com

The following are photos of the Lakeview neighborhood in New Orleans (the homes just on the other side of the breach). These were taken by the student volunteers as they saw it during their visit Dec. 22, 2005, almost four months after the storm.

"I learned what rebuilding really means—that everyone checks their ego at the door, rolls up their sleeves, and digs in to do whatever needs doing as best they can."

– Mandy Hitchcock, UNC law student



Although it's difficult to see, the orange spray paint on the front of this house (which sits directly in front of the breached levee) reads "Danger" with a skull and crossbones symbol and "RIP." In the upper windows, the volunteers could see a lamp and bookcases, signs of a normal home before the disaster struck.

Law Students Pitch in on Succession and Divorce Cases

In March 2006, joined by thousands of students who descended upon the Gulf to work during their spring break instead of hitting the beach and bars, the UNC law students returned to New Orleans. This time two Kilpatrick attorneys were on site to manage their work.

Jasa Gitomer and Daniel Fishbein, associates in Kilpatrick's Atlanta office, were selected to travel to New Orleans to oversee the work of the law students.

training and the ability to share in their legal knowledge and general work experience, their presence removed the supervision burden from the NOPBP's staff attorneys. "Every little bit that we could help, helped them," Gitomer said. Since succession and domestic law cases were significant in numbers, and they also presented the best opportunities for the students to put their current skill set to use, the students were briefly trained in those areas.

Because proof of ownership must be provided before receiving FEMA or insurance monies, succession (probate) was a huge concern

students became detectives, tracking down records that were now housed in non-traditional locations—scattered throughout the New Orleans metropolitan area." The students then followed up with trips to the courthouse and city hall to find and prepare all the needed documents. "While transfer of legal title issues are not unique to New Orleans, Hurricane Katrina put this issue under a national microscope. There was an urgency to resolve these cases, because without proper title the home's rightful owner wouldn't receive consideration, or, at a minimum decide whether to raze or rebuild," added Fishbein.

In an online blog, the students kept a record of their experiences in New Orleans. Diane Standaert, the then UNC law student who organized the trip, wrote about one of the succession cases. A man had been living with his uncle, and though he had a water-logged copy of the will showing him as the rightful heir, he couldn't get another copy, as the drafting attorneys' office had flooded. The man could no longer live in the home because it had been turned "upside down," but he couldn't cash the insurance check until he was legally recognized as the estate's heir. In stepped the NOPBP. "Since the property owned in the destroyed areas is pretty much the only asset they have, without the ability to gain access or title, I feel that these families are literally beginning at ground zero," she wrote.

In addition to the succession cases, domestic law cases were also a significant issue. As part of their training, S. Guy deLaup, president-elect of the State Bar of Louisiana, came to the NOPBP offices to give the students an overview of divorce law in Louisiana. They quickly learned that even divorce is a Katrina issue. In some cases couples that had been separated for years weren't able to get individual FEMA checks or trailers, as they were paid out per household. Separated couples were ineligible



Photo by Hollis Ellison

(Left to right) Daniel Fishbein and Jasa Gitomer, associates in Kilpatrick Stockton's Atlanta office, and Pro Bono Partner Debbie Segal each helped with the efforts to train and manage volunteers.

Gitomer, a Tulane University Law School graduate and Fishbein, a Baton Rouge, La., native, were well suited for the trip as they had personal connections to the region.

Gitomer and Fishbein helped train the students to do more substantive work. In addition to allowing the law students hands-on

following Hurricane Katrina. However, as home tenancy was often passed down from generation to generation, proper legal title was often overlooked. A substantial number of NOPBP's cases dealt with succession. Fishbein, who oversaw the students working on the succession cases, said, "The law

for disaster relief until their divorces were finalized. There were also cases where one spouse would file for FEMA or insurance money without the knowledge of the other spouse, leaving the non-filing person without compensation. There were children who were with their non-custodial parent when the storm hit who evacuated to parts unknown. Families needed to be put back together and the backlog of cases that existed prior to the storm was exacerbated.

Gitomer, who has experience in domestic law, supervised the group of students assigned to these cases. "At first I thought, 'How are divorces important?' but I realized that it was important to help clients move on with their lives, and that helping one client move on helped the community as a whole," she explained. "Their work was as important as gutting homes or picking up debris in the Ninth Ward—it was inspiring. Their excitement renewed my excitement for the law."

Firm Follows Up with Additional Resources


Following the spring break trip, Kilpatrick sent two of its paralegals, Betsy Hale of the Atlanta office and Katie Nowell out of Washington D.C., to the NOPBP offices to input the data the students collected and organize files. Segal commented, "Their work was tremendously valuable as they managed the flow of information that did not stop, and their clean up ensured quality and accuracy." Hale and Nowell returned to their respective cities to log files and data remotely, continuing to unburden the Project's skeleton staff.

In addition to their work, Kilpatrick also set up and staffed 15 "legal triage" tables at the Chamber of Commerce Job Fair, held in Atlanta's World Congress Center on Sept. 27, 2005, along with attorneys from BellSouth and Cingular. The attorneys operated under the umbrella of the Atlanta Volunteer

Lawyers Foundation and took anyone who walked in, as long as their presence in Atlanta resulted from the hurricane. (Attendance at the one-day Job Fair topped 15,000. However only about 1,500 of those people were Katrina evacuees.) Over the course of the day, the triage lawyers saw 110 legal matters ranging from what to do about FEMA and insurance, to a woman who'd rented a car in New Orleans in order to evacuate who now had no way and no place to return it. "After just a month, most people were still dealing with survival issues. They didn't know what their true legal issues were," Segal said.

Eighty attorneys and paralegals volunteered and were trained in "legal triage" a week prior to the

Job Fair. Kilpatrick took on the responsibility of compiling a training manual for the event, and the firm quickly mobilized to pull everything together.

This event was consistent with the culture at Kilpatrick, which is one of pro bono and community service. "I believe the most satisfying thing you can do is help other people," Segal said. "Our volunteers were desperate to help and walked away feeling they had done a good day's work." 



Johanna B. Merrill is the section liaison for the State Bar of Georgia and a contributing writer to the *Georgia Bar Journal*.

Disaster Recovery, by Jennifer R. Mason

There is no way to know for sure if your firm will be spared a disaster, be it weather-related, human-created or just simply the result of bad luck. Having a disaster plan in place will enable you to get your organization back up and running in the event of an interruption.

When you start to develop your disaster plan, consider three subjects: human resources, physical resources and business continuity. Think about how a disaster could affect your employees, customers and workplace. Think about how you could continue doing business if the area around your facility is closed or streets are impassable. Think about what you would need to serve your customers even if your facility is closed. The following questions should serve as a starting point for what you need to include in your plan.

- How will you protect your people?
- How will you protect your information?
- How will you protect your financial assets?
- How will you protect your physical facilities?
- How will you honor your firm's commitments?
- How will you coordinate and implement the plan?

Creating a disaster recovery plan may seem daunting, but it is in your best interest to ensure that your firm is prepared to function at any level, at any time, for your sake, the sake of your employees and colleagues, and the sake of your clients.

There are many resources available for disaster recovery planning. Here are just a few that may be helpful.

- **Nonprofit Coordinating Committee of New York, Inc.:**
Disaster Planning, Emergency Preparedness & Business Continuity
http://www.npccny.org/info/Disaster_Planning.doc
- **FEMA: Emergency Management Guide for Business & Industry**
<http://www.fema.gov/business/guide/toc.shtml>
- **Katrina Legal Aid Resource Center**
<http://www.katrinalegalaid.org/legalaidsubpage19230.cfm#Manuals>
- **Dept. of Health and Human Services: Pandemic Checklist for Business**
<http://www.pandemicflu.gov/plan/businesschecklist.html>

The Newton County Courthouse at Covington

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Newton County was carved from Jasper, Henry and Walton Counties in 1821. The first court was held in the old brick store that was built in 1822 and still stands today in rural Newton County. The town of Covington, originally called Newtonsboro, was laid out in 1822, and a temporary log courthouse was soon built on the side of the square. A brick courthouse was completed a few years later. A second brick courthouse was built on the square in 1856 to replace the earlier brick structure, which burned in that year. That courthouse, along with a sizable portion of the rest of the town, burned in 1883, and a new courthouse, designed by the Atlanta architectural firm of Bruce and Morgan, was complete in 1884.

This is one of only a few courthouses built in Georgia to articulate the full flower of the Second Empire Style. Apart from the simple charm of Alexander Bruce's three nearly identical courthouses at Sparta, Monroe and Gainesville, which reflected only a rather rural and reserved suggestion of the style's ornamental grandeur, there were only three Second Empire courthouses built in the state. These were all in railroad centers: Atlanta (1883); Athens (1876); and Macon (1872). Covington must have viewed her fate as intertwined with these giants of commerce. Indeed, how could she not? After all, in the early 1880s, before the Covington and Macon Railroad was



Photo by Wilber W. Caldwell

Built in 1884, Bruce and Morgan, architects.

routed through Madison, Covington saw herself literally at the crossroads formed by the Augusta-Atlanta road and the proposed rails connecting Macon and Athens.

The choice of the Second Empire style here at Covington reveals a great deal more about the town than a false sense of urbanity. In the late 1860s, and early 1870s, the style took the North by storm. Washington, D.C., became so identified with Second Empire buildings that the style came to be called the

General Grant Style. Its beginnings can be traced to France in 1853 when Baron Haussmann was placed in charge of what turned out to be a veritable rebuilding of the city of Paris. Louis Napoleon was determined to make Paris the premier city of Europe, and in his zeal, he swept aside old buildings by the block and replaced them with the new architecture of the Ecole des Beaux-Arts. For the French, the Second Empire style was not so much a new style as a continuation of familiar Renaissance elements arranged to satisfy a modern functionality and the new French rationalism of the Ecole des Beaux Arts. But in America, it was unlike anything the county had seen. In the New World, Second Empire models were scarce and its progress scribed a rather free and, some might say, creative course, while its symbolism became that of progress, high finance, industry, the railroads, and the Federal Government all rolled into one.

There was much here for Southerners to hate in 1884. Indeed for the South, Second Empire style architecture was triple damned: it was Parisian and thus implied a low moral character, it was Northern and thus represented the victory of industrialism over agrarianism and the individual, and it was called "General Grant" after the so-called "Butcher of the Wilderness." That the Second Empire style graced the streets of Atlanta or Macon less than two decades after the Civil War was one thing. These cities were commercial centers and sought without reserve the riches of Northern capital. But for Covington to build a Second Empire style courthouse is astounding—perhaps a bank or a railroad building—but a courthouse.... Here local businessmen must have bought heavily the stock sold by the purveyors of the myth of the new South. They clothed themselves with the trappings of prosperity as their town grew, unaware that the foundations of their buildings, their railroads and indeed their dreams themselves were nothing but


the flimsy fibers of cotton. Poverty cloaked the countryside. The price of cotton fell to just over five cents a pound by 1894, while a miniature Parisian monument adorned the town square in Covington.

When it came to designing courthouses, the Atlanta architects, Alexander C. Bruce and Thomas Henry Morgan, were a team that proved almost as prolific as Atlanta's other premier courthouse architect of the era, J. W. Golucke. The firm of Bruce and Morgan designed sixteen courthouses in Georgia between 1883 and 1898. Earlier, Bruce designed two others in Georgia with William Parkins, and numerous others in his home state of Tennessee, before coming to Atlanta in 1879. Morgan designed two more Georgia courthouses after Bruce's retirement in 1904, thus bringing the total in Georgia to 20.

Unlike Golucke, Bruce and Morgan were architects in every professional sense of the word. Both served long and arduous apprenticeships in architectural offices: Bruce in the shadow of William Strickland in the Nashville offices of H. M. Akeroyd, and the younger Morgan in that same office and later under Parkins and Bruce in Atlanta. Bruce attended school in Nashville, but did not study architecture. The first formal course in architecture in the United States was not begun until 1868 at the Massachusetts Institute of Technology.

Generally speaking, the work of Bruce and Morgan was more

abreast of its times than that of other Georgia architects in the decades before the entrance of the "American Renaissance" into the state around 1900. Most Southern designers of the late nineteenth century copied the reserved character of the Romanesque Revival, and threw in a hint of H. H. Richardson and perhaps even of a bit of the brick vernacular. On the other hand, the early courthouses of Bruce and Morgan flaunt not only the Romanesque Revival, but also the Queen Anne and the Second Empire styles, incorporating all manner of high Victorian eclecticism.

We don't have to look far to find Bruce's model for his creation at Covington. He had designed a similar Second Empire style court building at the blossoming rail center of Chattanooga just before establishing his practice in Atlanta in 1879. 

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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Delivering on the Promise of Equal Justice

by Phyllis J. Holmen

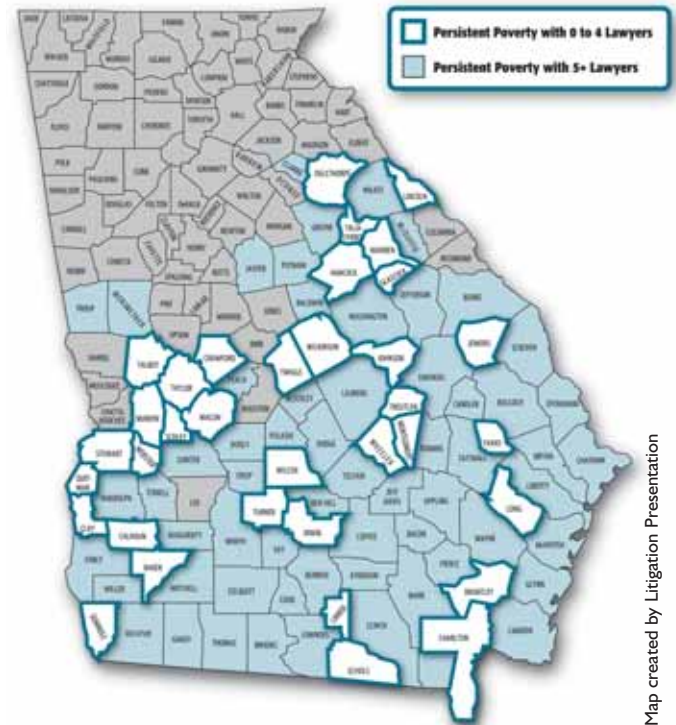
The following article is adapted from remarks delivered to the Supreme Court of Georgia's Civil Justice Committee on June 19, 2006.

Equal justice for all" is the promise that is chiseled in the marble over the entrance to the Supreme Court of the United States. Georgians cherish this principle. In a State Bar of Georgia-commissioned poll in 2005, 84 percent of Georgians said that our court system should provide access to justice for all, without regard to income, race or political affiliation. For 35 years, Georgia Legal Services Program (GLSP) has worked to deliver on that promise.

Solving Critical Civil Legal Problems for the Needy

Our work is about basic human needs and solving critical problems for Georgians with low incomes that involve their families, their homes, their children's education, their health care, their seniors. The majority of our clients are members of families, and most of them are the so-called "working poor." We also welcome the most vulnerable members of our communities, including the homeless, the disabled, the elderly, people who don't speak English. We are the first point of contact with the justice system for many. Our largest offices can get 1,000 calls per week; many of those are referred to private lawyers, some with criminal problems, some with fee-generating cases; those with no legal problem are referred to other sources of help.

GLSP is a nonprofit law firm with a \$12 million budget, 11 regional offices in small cities around the state, and about 160 staff, including 70 lawyers, 35



Delivering good value to Georgia communities: Of the 154 counties (outside metro Atlanta) served by Georgia Legal Services, 91 counties are "persistent poverty" counties (counties highlighted in light blue); and 35 counties have four or fewer lawyers per county (counties outlined in dark blue).

paralegals, and 50 other staff. We do not serve Fulton, DeKalb, Cobb, Gwinnett, or Clayton Counties—they are served by the offices of the Atlanta Legal Aid Society. The annualized income limit for a family of four for our services is \$25,000.

Our staff attorneys provide a full range of legal services to clients, from advice and counsel, to representation at hearings and appeals, to appellate courts. Paralegals have their own caseloads involving public benefits and housing. We recruit private attorneys to take additional cases. We collaborate with other organizations such as domestic violence shelters, homeless serving agencies, local bar associations, and others. We have 11 full- and part-time "specialists" with expertise and experience in areas like

family law, housing law, government benefits, education, and disability law. We have a Farmworker Division with four attorneys and two paralegals, all bilingual, who handle wage claims for Georgia farmworkers.

Every office has a toll-free telephone line, which is available to clients. Lawyers and paralegals circuit ride to counties in their service area. We go to nursing homes, mental institutions, public housing units, senior centers, domestic violence shelters, homeless shelters, farmworker labor camps, hospices, Latino festivals, Law Day programs, and AIDS clinics. We reach out to clients who don't speak English. Our case acceptance decisions are essentially a "triage" process of deciding whose need is most critical, and which solution will have the greatest impact.

Our cases are not about big money, but they are about the things that we all say we value most—our families, our homes, our parents, and our health. We take the cases that would be a huge burden to a private practitioner, though we have hundreds of indispensable volunteers who accept cases from us around the state.

Addressing Basic Needs

Protecting Vulnerable Senior Citizens

In the spring of 2004 the Georgia Department of Community Health announced a change in state policy that threatened to displace as many as 1,300 frail and vulnerable senior citizens from nursing homes because of so-called "excess" income. These individuals included retired teachers and fire fighters with pensions that put them just a few hundred dollars over the Medicaid eligibility limit, but which were nowhere near enough to cover their needed nursing home care. Working together with Atlanta Legal Aid, we assessed the proposed policy and found a method allowed by federal law to

establish Qualified Income Trusts that directed all of the individual's income to nursing home care, re-establishing eligibility for Medicaid. But that required developing and executing trust instruments, powers of attorney, relationships with banks, and willing and trained trustees for hundreds of clients across the state. We enlisted help from the Senior Legal Hotline, the Pro Bono Project, the Elder Law Committee of the YLD, and volunteer lawyers across the state, training them via web presentations and posting forms and instructions on our websites. In the end, no resident was involuntarily discharged, but the effort was massive, crisis-driven, highly technical, and essentially stopped other critical work for other needy clients for many weeks. We are still handling these cases as they come in.

Preventing Homelessness

Welfare reform is being touted as putting thousands of people to work, but there is also some question about the permanence or adequacy of those jobs to lift people out of poverty. Federal law has provided some breaks to help people transition into work. One is a provision that offers public housing residents an "income disregard" for a period of time, keeping their rent low, to help the new worker stabilize in the working world. We had a client who got off welfare and got a job as a teaching assistant at her children's school at \$13,000 per year. The director of the housing authority thought the income disregard didn't apply to someone with such a "high" income. She soon was facing eviction because in addition to a greatly increased rent, she had childcare, transportation, clothing, and other expenses. We intervened and showed the housing authority director how the law did in fact cover her, and saved her and her children from homelessness.

Disaster Legal Assistance

Tropical Storm Alberto in June 2006 reminded many of us of the

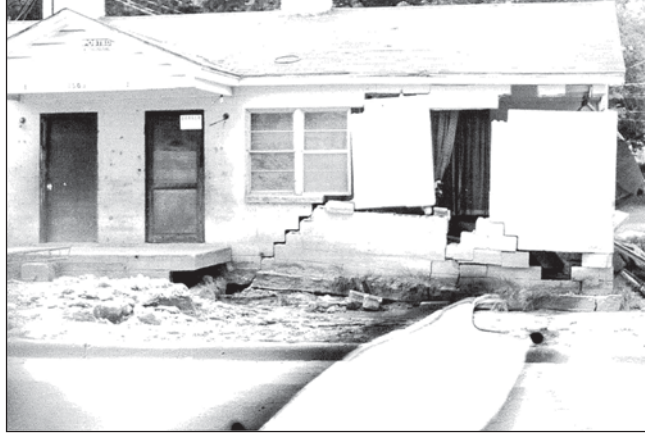
last Alberto, in the summer of 1994. That was the year that GLSP staff became disaster legal assistance benefits experts. That year we had more than 65 counties across the state declared disaster areas, with the area from Albany to Macon hardest hit. The Flint River lapped at the front steps of our office in Albany. We quickly learned about FEMA, disaster unemployment benefits, disaster food stamps, and much more. We learned how to set up shop at Disaster Assistance Centers and work with the Red Cross and GEMA. We subsequently realized how critical this knowledge is every spring when tornado season hits very hard in Southwest and Northeast Georgia.

And we really put it to use when Katrina evacuees came to Georgia. We had lawyers at church basements, state parks, and so-called FEMA hotels working with evacuees to secure replacement ID documents, track misdirected disability checks, establish eligibility for FEMA and other benefits, and secure housing. We worked with city officials when FEMA threatened precipitously to evict tenants from those hotels without legally required assistance to find new housing. Many of these clients were senior citizens or persons with disabilities who were separated from family.

Addressing Language Barriers

Many of us have been in a foreign country where we didn't know the language, needed to get a hotel room or order a meal, and struggled to get basic needs met. Imagine having a serious legal issue and being unable to speak the language. In 2004 and 2005, we began a project in North Georgia to serve the growing Latino population there, with special funding from the Healthcare Georgia Foundation and the Goizueta Foundation. We found many problems with children who should have been getting Medicaid, including some where providers were denying services because

(Middle) Solving critical civil legal problems for the needy: Georgia Legal Services is the non-profit law firm for 1.5 million Georgians in poverty. Its 11 regional offices are located in various small cities and towns across the state. Pictured middle is the Valdosta Regional Office.



(Top) Disaster Legal Assistance: Hundreds of homes were destroyed when tornadoes struck Camilla, Ga., in February 2000. Georgia Legal Services provided legal advice and counsel at the Disaster Recovery Center.



(Bottom) Addressing the causes of poverty not just the crises: Georgia Legal Services attorney Homero Leon (standing) trains local residents seeking to establish a community development corporation in Claxton, Ga.



records were filed under the wrong one of the hyphenated last names that the Latino culture uses. We also found hospitals entering wrong or misspelled names on birth certificates. We undertook dialogue with these institutions to help them be more culturally responsive. We also found state agencies with no bilingual staff and no Spanish language paperwork, despite the requirements of state and federal law. As a result of our efforts, child support and unemployment offices in North Georgia have hired bilingual staff. The state agencies have translated documents, and the Department of Labor has established a Spanish-language hotline for unemployment benefits.

Cutting Government Red Tape

The Medicare Part D Drug Program has its supporters and its critics, but most people will agree that it was a challenge to understand and navigate the enrollment process. Imagine being a senior, especially one with little education or a disability that impaired your

thinking, with no one to help. We trained paralegals and attorneys in this new Program who were able to, and continue to, help many seniors across the state.

Addressing the Causes of Poverty, Not Just the Crises

We have a growing business law practice where we help community-based organizations in small communities all over the state with projects that help develop their own communities. These projects include helping groups that are developing affordable housing, groups that are transforming the abandoned black high schools into community centers for after-school and other activities, groups that are mentoring at-risk kids with programs to build self-esteem and hope, and many more. We do the transactional legal work for these groups that start building their dreams on the dollars they collect from their neighbors up the street or the members of their church. We help them through the process—find resources, meet legal requirements, partner with local banks or government leaders, and structure their project to qualify for

government rural improvement grants or other resources. We are one of the very few legal services programs that provide this service in rural areas.

Like most lawyers, we give a great deal of counsel and advice, trying to help people decide if they have a legal problem and what their options might be. Together with ALAS, we developed a website, which is nationally recognized for its comprehensiveness and quality at www.legalaid-ga.org. This helps us with the struggle over choosing between providing a “little bit of help” to many people who may not be able to make use of it on a pro se basis, to taking fewer cases for more complete representation. We refer people to this website for information, forms and links to other resources. We have a resource for volunteer lawyers at www.georgiaadvocates.org. We also speak to client groups about their legal rights and responsibilities and offer brochures and other materials, to try to prevent legal problems or help them help themselves.

Sometimes, as I’ve described, we try to work to remove systemic



(Top) Addressing language barriers: The Latino population is growing faster in the South than anywhere else in the United States. Georgia Legal Services' advocacy breaks through barriers to address language access problems for limited English speakers.



(Bottom) Addressing basic needs: In 2004, Georgia Legal Services assisted almost 900 individuals stay in their nursing homes, avoiding the loss of more than \$500,000 in Medicaid benefits threatened by a change in state policy.

obstacles to decrease the number of problems overall. Much of what we do is actually law enforcement, helping people use the rights they have based on existing laws and explaining to government agencies, landlords, and others that our client is in fact entitled to what she is seeking or seeking to avoid.


Delivering good value to Georgia communities

Georgia has 91, or more than one-third, of the 242 "persistent poverty" counties in the Southeast, defined as one where a significant segment of the county has been poor across three census cycles.¹ More than three-quarters of a million Georgians outside metro Atlanta have incomes below the poverty line. Compounding the problem of access to justice is that 35 Georgia counties, or more than one-third, have five or fewer lawyers; five counties have no lawyers at all.²

We bring money and stability to these communities. In 2005 we established more than \$1.4 million in ongoing family support such as child support and alimony. In

many of these cases we helped a victim of family violence escape the abuser and take the first steps out of chaos and toward self-sufficiency. We preserved housing for thousands of families. We secured almost \$25,000 per month in disability and retirement benefits. Last year we leveraged about \$1.2 million in free or reduced cost lawyer time. These are big victories for individual clients, and good things for their communities. Persistent poverty, family violence, homelessness, children not in school, sick people not getting health care, seniors ripped off by consumer frauds—these are not good things for communities, yet few understand how critical legal services are to addressing these problems.

Our vision of justice is a two-part one: (1) equal justice, where people can rely on the justice system to uphold rights and resolve disputes fairly, and (2) social and economic justice, to ameliorate the effects of poverty, eliminate obstacles to self-sufficiency, and create opportunities out of poverty. Our staff is often the embodiment of justice for

our clients, and sometimes for others in our communities as well. The challenge for our profession is to find a way to move beyond providing justice for the small fraction of needy Georgians who know how to access assistance, and make equal justice a reality for all. Legal services for the needy is an essential part of assuring that core value of "equal justice for all" is a reality, and that we walk the walk and not just talk the talk. 



Phyllis J. Holmen is the executive director of the Georgia Legal Services Program. She can be reached at pholmen@glsp.org.

Endnotes

1. See, Dismantling Persistent Poverty in Georgia, Breaking the Cycle, Carl Vinson Institute of Government, University of Georgia, 2003, <http://www.cviog.uga.edu/services/research/poverty/index.php>
2. State Bar of Georgia Membership statistics, 2005.

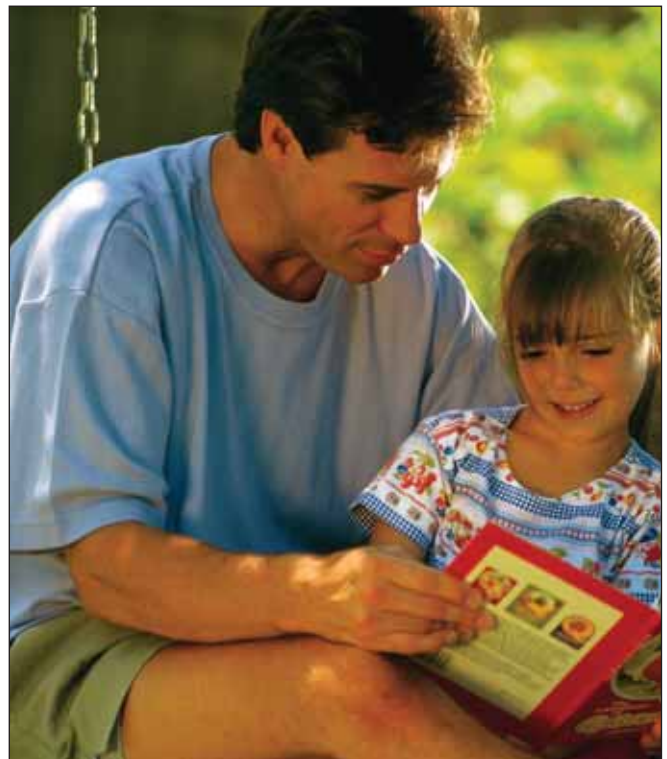
The Committee on Civil Justice

Addressing the Legal Needs of Georgia's Poor

by Caren Henderson

Sarah is an elderly widow who recently had new windows installed in her home. Because the windows were not installed as required by contract, she declined to pay the installer until the work is done properly, which led to a lien being placed on her house. Now, without the help of a pro bono attorney, she must attempt to clear a materialman's lien on her home even though the windows still haven't been properly installed.

Joseph, another Georgia resident, is a divorced father of two who regularly pays his child support. Shortly after a court in Georgia granted his divorce, his ex-wife moved with his son and daughter to Alabama. According to his divorce decree, Joseph was supposed to see his children every other weekend. Because of the distance and the cost of travel, he now rarely sees them. Joseph wants to modify his divorce decree, but because he cannot afford a lawyer, he is faced with trying to navigate these jurisdictional issues alone.



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In any given year nearly 40 percent of the state's poorest citizens have at least one civil legal need, and yet only one in 10 is able to secure legal representation. These Georgians are often our neighbors, elders

and friends, who are left to face complex legal issues without the benefit of a lawyer. Even more troubling is the fact that most poverty-law cases impact areas of fundamental human concern, including family, housing, health and education.

To help people like Sarah and Joseph, and other low-income individuals who live in our state, the Georgia Supreme Court formed the Committee on Civil Justice. The Committee on Civil Justice, which held its first meeting on May 2, will work to strengthen Georgia's civil justice system by developing, coordinating and supporting policy initiatives to expand access to the courts in civil matters for low-income Georgians.

According to Phyllis Holmen, executive director of the Georgia Legal Services Program (GLSP), there are currently more than 750,000 people in Georgia who live below the poverty line in the 154 county area served by the

GLSP. The poverty line is defined as a gross income of approximately \$25,000 per year for a family of four. Similarly, Steven Gottlieb, executive director of the Atlanta Legal Aid Society, reports that preliminary census data indicates that Georgia's poverty population will increase by 94 percent between 2000 and 2010. That means, of course, that the need for civil legal services by low-income Georgians is expected to increase dramatically.

Supreme Court of Georgia Chief Justice Leah Ward Sears recently commented, "Although Georgia has made significant strides in meeting the needs of indigent criminal defendants, for many of its poorest citizens requiring assistance in civil legal matters, the promise of meaningful access to justice has been slow in coming."

Georgia's increasing poverty population, however, is not the only challenge facing legal aid and pro bono providers in the state.

Another challenge arises because legal services providers are sometimes restricted in the types of cases they are authorized to handle. For example, ALAS and GLSP, both of which receive some federal funding from the Legal Services Corporation, cannot initiate, participate or engage in class action lawsuits. An additional challenge to offering legal services to all Georgians is that oftentimes the provider's geographical reach does not extend to citizens living in isolated areas of the state. In five of Georgia's counties there are no lawyers, and in 35 of the state's counties there are five or less.

Six years ago the State Bar of Georgia began studying ways to improve the delivery of civil legal services to the poor through the State Bar's Access to Justice Committee. The Committee concluded its work in 2004, with a recommendation that the State Bar's Board of Governors support a resolution to urge the Supreme Court to

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Special Thanks

A special note of thanks to 2003 Access to Justice Committee Chair P. Todd Carroll III and 2004 Access to Justice Committee Co-Chairs Hulett "Bucky" Askew and Gerald Weber, for their tireless efforts to create the Committee on Civil Justice, an important tool in filling the gaps of providing legal representation to Georgia's poorest populations.

Supreme Court of Georgia
Equal Justice Commission
Committee on Civil Justice
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Atlanta, Georgia 30303
404-920-0038 (o)
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form an Equal Justice Commission. This work ultimately resulted in the Supreme Court creating the Equal Justice Commission, comprised of two independent committees—the Committee on Access and Fairness in the Courts and the Committee on Civil Justice.

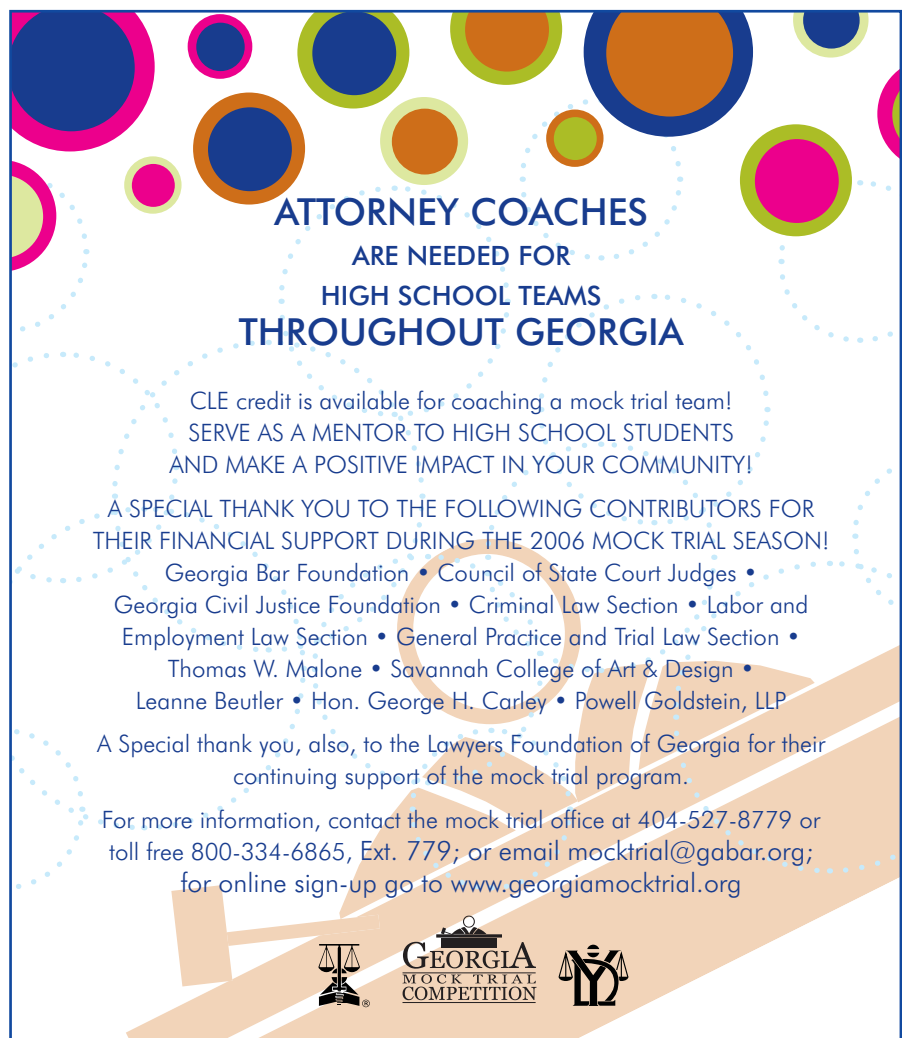
Building on the work initiated by the State Bar's Access to Justice Committee, the Committee on Civil Justice will assist stakeholder organizations in developing strategic alliances; eliminating duplication of effort; and securing the legal, financial and political support necessary to improve the delivery of services to those in need. Judge Wayne M. Purdom says of the Committee's daunting task, "Access to the courts, whether on your own or through an attorney, is protected in Georgia's Bill of Rights, and as judges we take an oath 'to do equal rights to the rich

and the poor.' I look forward to the work of this commission as an opportunity to advance these responsibilities of my office."

Open to the public, the Committee will hold its next two meetings at the State Bar of Georgia. On Oct. 31, at 9:30 a.m. the Committee will discuss "The Justice Gap" and "National Access to Justice Initiatives" will be the topic for the Dec. 4 meeting, at 10 a.m. For more information about the Committee's work, please contact Executive Director Karlise Y. Grier at 404-920-0038. 



Caren Henderson is the director of communications for the State Bar of Georgia. She can be reached at caren@gabar.org.



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ANXIETY ABOUT YOUR PRIOR ACTS?

IT MIGHT BE TIME TO COVER YOUR TAIL.

- Jeffrey H. Fields, CLU

After many years of writing lawyers professional liability insurance, I know that it is essential to listen carefully to every question that my client asks. I find it even more important to listen for the questions that they think they are asking. Great attorneys, precise in their speech, can be heard interchanging the meanings of tail coverage, (extended reporting period), and prior acts coverage. The claims-made policy is an evolved hybrid product, so a little confusion is understandable. However, making the extra effort to fully understand these two features can be quite valuable to your firm.

Confusion results from the fact that the meaning and significance of the terms has evolved since the claims-made form became the standard for lawyer's malpractice. As underwriting approaches change, the underwriter's use of this policy provision will change. Adding to the confusion is the fact that while these are two different provisions, they are designed to accomplish similar objectives.

Unlike the better understood "occurrence" insurance policy form, coverage under a claims-made form is triggered by the reporting of a claim within the policy period. The claims-made form has some real advantages for the insurance company's actuary who must try to predict the losses for a category of insurance in which losses often take many years to develop and resolve. While this claims-made approach solved that big problem for the actuary, it created two new problems. First, how do we cover acts that happened before the policy period started, but were reported during the policy period? Answer: prior acts coverage. Second, how do we cover claims that do not get reported until after the policy period? Answer: tail coverage.

Prior acts coverage is determined when your policy is first written. This establishes how far back into the past your acts or omissions will be covered. Conversely, tail coverage is elected only when the policy term ends. If purchased for an additional premium, the tail will determine how far into the future you may report claims under the expired policy.

There are certainly large premiums at stake. Tail coverage will cost as much or more than the policy did in the first place. On the other hand, buying new coverage without prior acts coverage will probably be 60% less expensive than coverage with full prior acts. Understanding these options and features becomes particularly valuable when a change in your practice involves both an expiring policy and a new policy.

As you consider how to best manage your coverage, there are four typical policy provisions (check your own policy and underwriter to make sure that yours is typical) that will influence your decision.



1) When you leave a firm, the work that you did for that firm remains covered by that firm's professional liability insurance policy and you continue to be an "Insured" under their policy for all work done on behalf of that firm.

2) When you create a gap in your prior acts coverage by failing to keep that coverage in force, it becomes virtually impossible to restore full prior acts coverage.

3) When you bring a new lawyer into your firm, many insurers will allow you to do so either with or without prior acts coverage (provided that work is currently insured).

4) With only very limited exceptions, tail coverage must be purchased on behalf of the entire firm, rather than by individual members of a firm.

With these provisions in mind, let's consider a few examples of how this knowledge can help you:

- If you are in solo practice and decide to join a firm, consider negotiating the firm's addition of you to their coverage, with your prior acts coverage. You may decide that this agreement can save you from buying that expensive tail coverage. A note of caution: If you subsequently leave this new firm, the prior acts coverage that they were providing for your solo days will be lost.

- If you are a member of a firm and decide to go into solo practice, evaluate the likely perpetuation and continuity of professional liability insurance for the firm that you are leaving. If that firm is expected to be stable in the future, you may decide that you can buy new coverage without prior acts coverage since your work at the old firm remains covered.

- If yours is a firm that regularly adds new lawyers, consider making it firm procedure always to add new lawyers without prior acts coverage, subject to exceptions negotiated with management in advance. Write this provision in your employee handbook to avoid misunderstandings. Make exceptions only for those new hires that can neither have prior acts covered by their prior firm, nor purchase a tail. In the long run, your firm's premium will be lower as a result of not insuring unrelated prior acts. You will also avoid exposing your deductible and your valuable time to non-firm losses.

- If your firm's insurability suddenly suffers (e. g. several losses caused by an impaired lawyer), you obviously will first need to deal with the problem. In this example, if the offending member is removed from the roster, the firm can then buy tail coverage for their expiring policy, thereby locking in coverage for the past, including problems still to be discovered. New coverage for the firm could then be sought (from other carriers) without those risky prior acts and without the problem member.

Understanding how to manage your firm's prior acts coverage and knowing when to buy tail coverage will be valuable. If you change insurance carriers without buying a tail (the norm), verify that the prior acts coverage is identical on the new policy to avoid creating gaps. Practices and provisions can vary significantly between carriers, so it is vitally important to make sure you have the right coverage as well as the knowledge to put it to good use. ■

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Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2007. These incumbents and those interested in running for a specific post, should refer to the election schedule (posted below) for important dates.

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 Atlantic Circuit Post 2Joseph D. McGovern, Glennville
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 Augusta Circuit Post 3Thomas R. Burnside Jr., Augusta
 Blue Ridge Circuit Post 2Gregory A. Hicks, Woodstock
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 Chattahoochee Circuit Post 2.....William C. Rumer, Columbus
 Chattahoochee Circuit Post 4Earle F. Lasseeter, Columbus
 Cherokee Circuit Post 2J. Lane Bearden, Calhoun
 Clayton Circuit Post 1H. Emily George, Forest Park
 Clayton Circuit Post 3Charles J. Driebe, Jonesboro
 Cobb Circuit Post 2.....Hon. Adele L. Grubbs, Marietta
 Cobb Circuit Post 4Patrick H. Head, Marietta
 Cobb Circuit Post 6John Kevin Moore, Marietta
 Cobb Circuit Post 7Andrew W. Jones, Marietta
 Conasauga Circuit Post 2.....Henry C. Tharpe, J., Dalton
 Cordele CircuitHon. John Carswell Pridgen, Cordele
 Coweta Circuit Post 2.....Delia T. Crouch, Newnan

Dougherty Circuit Post 2Hon. Gordon R. Zeese, Albany
 Dublin CircuitDaniel M. King Jr., Dublin
 Eastern Circuit Post 2Lester B. Johnson III, Savannah
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 Ogeechee Circuit Post 2.....Susan Warren Cox, Statesboro
 Pataula Circuit.....C. Truitt Martin Jr., Dawson
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 Rome Circuit Post 1Paul T. Carroll III, Rome
 South Georgia Circuit Post 2Gary O. Allen, Pelham
 Southern Circuit Post 2Brian A. McDaniel, Moultrie
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 Stone Mountain Circuit Post 2Hon. Johnny W. Mason Jr., Atlanta/Decatur
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 Member at Large Post 2*Paul T. Kim, Atlanta

* Post to be appointed by President-elect

State Bar of Georgia 2007 Proposed Election Schedule

OCT Official Election Notice, October Issue Georgia Bar Journal
DEC 4 Mail Nominating Petition Package to incumbent Board of Governor Members and other members who request a package
JAN 18-20 Nomination of Officers at Midyear Board Meeting, Hyatt Regency, Savannah
JAN 30 Deadline for receipt of nominating petitions for incumbent Board Members (Article VII, Section 2.)

MAR 2 Deadline for receipt of nominating petitions by new candidates
MAR 16 Deadline for write-in candidates for Officer to file a written statement (not less than 10 days prior to mailing of ballots (Article VII, Section 1 (c))
MAR 30 Ballots mailed
APR 30 12 p.m. Deadline for ballots to be cast in order to be valid
MAY 2 Election Results Available

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Kudos

- > **Fisher & Phillips LLP** announced that the **Labor Relations Institute**, a 28-year-old organization dedicated to maintaining union-free work environments, included **four** attorneys from the Atlanta office among its annual listing of "**Top 100 Labor Attorneys**:" **Robert W. Ashmore, Steven M. Bernstein, Douglas R. Sullenberger, and James M. Walters.** Ashmore's practice includes defense against union organizing; supervisory training; operating through strikes; mergers, acquisitions and reductions in force; collective bargaining; and the arbitration and litigation of disputes arising under collective bargaining agreements. A significant portion of Bernstein's practice is devoted to the implementation of preventive employee relations programs that include supervisory training, as well as the development and administration of effective human resources policies and practices. Sullenberger has practiced labor and employment law on behalf of employers for approximately 27 years. During that time period, he has assisted more than 600 employers in their efforts to successfully fend off union organizing activities. Walters' practice emphasizes the representation of employers in collective bargaining and labor arbitration, maintaining union-free status, union organizing drives and unfair labor practice defense.



Brannen

The firm also announced that partner **D. Albert Brannen** has been elected **treasurer** of the **Labor & Employment Law Section** of the **State Bar of Georgia**. His election begins a five-year tenure of service, which includes a term as chairman of the section in four years. Brannen has represented employers in virtually every area of labor and employment law.



Attorney General Baker and Kristin LeBlanc

Attorney General Thurbert Baker addressed attorneys of **Hall Booth Smith & Slover, P.C.** during a recent breakfast meeting. Attorney General Baker spoke generally of his long service since 1997,

as well as his newly appointed position as president of the National Association of Attorney Generals. He also spoke of some successes he has experienced within and throughout Georgia, such as domestic violence, identity theft, and mortgage fraud.



Additionally, **HBSS** announced that shareholder **T. Andrew Graham** was appointed to the advisory board of **Atlanta's Table**, a project of the Atlanta Community Food Bank.

Graham and his family have been actively involved in the ACFB since 1999. He has personally provided photography services free-of-charge to the organization since 2000. His work has been used in various development and recruiting materials produced by the ACFB. The ACFB is the firms designated community volunteer project with total employee contributions surpassing 300 hours to date in addition to monetary contributions. Graham, a shareholder in the firm's Atlanta office, has been with the firm since 1992. He serves as the chair of the firm's marketing business development committee and concentrates his practice in general liability defense, including the representation of hospitals, health care providers and long-term care facilities. In addition to his legal practice, Graham is currently an instructor for the Emory Trial Techniques program and a frequent presenter on legal issues.



> **Carlton Fields** associate **M. Derek Harris** was appointed **advisor** of the **Children & the Courts Committee** by the **State Bar of Georgia**. The purpose of the Children & the Courts Committee is to protect the interest of

children in the judicial system. The committee advises the State Bar of Georgia Executive Committee and Board of Governors so that all people, including children, have equal access to justice. Over the past two years, Harris has been involved with the Truancy Intervention Project, which works in conjunction with the Fulton County Juvenile Court, Atlanta City and Fulton County Public School Systems to resolve truancy issues and get children on track to achieve academic and personal success. Harris practices in the firm's Atlanta office in the business and trade regulation practice group. He represents clients in civil matters in the areas of product liability, government regulation, antitrust, and general litigation.

- > **IP Law & Business** named the law firm of **Fish & Richardson P.C.** the **top patent litigation firm** in the country. In a survey published in their July 2006 issue, *IP Law & Business* found that Fish & Richardson handles more patent litigation than any other firm. The firm was involved in a total of 75 new cases compared to 53 cases for its nearest competitor. Specifically, they filed 21 new patent cases and entered appearances defending 54 new patent

cases. Fish & Richardson has ranked number one on the survey for five out of the six years that *IP Law & Business* has been publishing its survey of top patent litigation firms. The firm was also ranked the law firm with the **best intellectual property practice** in the 2007 edition of *The Vault Guide to the Top 100 Law Firms*.

- > The **Gwinnett County District Attorney and Solicitor General offices** selected **CIBER, Inc.** to implement a case management IT solution to help the agency more efficiently administer its growing legal caseload. CIBER's solution, called SecureLaw™ CRIMES, will automate routine legal functions and track cases as they move through the legal system. As a result, the county attorney's offices can minimize data entry tasks and the potential for error; reallocate staff from data entry tasks to more critical assignments, and know the precise status and progress of each case. The SecureLaw™ CRIMES solution will provide Gwinnett with a standard database and a customizable user interface that can be quickly and easily tailored to meet the county's specific needs and preferences.
- > **Twenty-six Kilpatrick Stockton LLP** attorneys earned recognition in *The International Who's Who of Business Lawyers for 2006*. The Atlanta attorneys recognized in the publication are **Brian G. Corgan**, **William E. Dorris**, **A. Elizabeth Patrick**, **George Anthony Smith** and **Neal J. Sweeney**, construction; **Rick A. Horder** and **Steven J. Levitas**, environment; **Rupert Barkoff**, franchising; **Alfred S. Lurey**, insolvency; **William H. Boice**, **Richard R. Boisseau** and **James H. Coil**, labor and employment; **Tim Carssow**, **Peter Glass** and **M. Andrew Kauss**, real estate; **Miles J. Alexander**, **William H. Brewster**, **Chris Bussert**, **Theodore Davis Jr.**, **Jerre B. Swann** and **Virginia Taylor**, trademarks. Two of those attorneys were named **Most Highly Regarded Individuals** in their field, **Barkoff** for franchising and **Alexander** for trademarks. Additionally, **Boisseau** was named to the list of **Top One Hundred Labor Attorneys** for 2006, and **Patrick** was named to the **Governing Committee for the American Bar Association Forum on the Construction Industry**, as well as accepting an invitation to join the **American Arbitration Association's National Panel of Neutrals**, where she will serve as a mediator or arbitrator in construction-related matters. Also, **Susan Cahoon**, partner in the litigation department, was named to the **Lawdragon 500 Leading Litigators in America**. The firm itself was recognized in *The American Lawyer* magazine as one of the country's leaders in

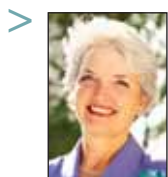
providing pro bono services. Kilpatrick Stockton earned a **No. 4** ranking for attorney participation with 81.5 percent of the firm's attorneys providing at least 20 hours of pro bono services in 2005. Overall, the firm is ranked **No. 17** for pro bono.

The firm also announced that their intellectual property department achieved a **No. 10** national ranking for the most patent cases initiated or defended in 2005 according to *IP Law & Business* magazine. The national ranking includes a No. 6 ranking for the number of plaintiff's cases initiated and a No. 22 ranking for defense cases initiated.

- > **Crowell & Moring LLP** has teamed with **General Electric Company's** former chief privacy leader and senior counsel for e-Commerce & Information Technology, **James M. Jordan III**, to boost its growing Privacy & Data Protection Group. In this new relationship, Jordan's Atlanta-based law firm, **Jordan Legal Counsel, P.C.**, will work as co-counsel with Crowell & Moring to help clients achieve and maintain compliance with privacy and personal data protection laws in the United States and globally. While at General Electric, Jordan helped pioneer a privacy program responsible for 320,000 employees, of which 80,000 were in Europe. His group was among the first multinational companies to pursue binding corporate rules as a strategy for complying with the laws of the EU, an approach that has great advantages over other available solutions in many cases.
- > **Kilpatrick Stockton** announced that *The American Lawyer* ranked the firm **10th** among Am Law 100 firms, the highest ranking of any Atlanta-based law firm, and 23rd overall in its annual **Midlevel Associates Survey**. Associates in Atlanta and nationwide ranked their respective firm on aspects of workplace satisfaction on a scale of 1 to 5 representing a total of 12 categories. The survey categories summarized the firm's qualities, including benefits and compensation; quality and quantity of work; morale and collegiality; and associate and partner relations. Kilpatrick Stockton's Atlanta midlevel associates had an overwhelming 60 percent participation rate.
- In addition, Kilpatrick Stockton also received extremely high ranks among national firms in the survey categories.
- > Roswell attorney **Daniel R. "Trey" Tompkins III** of Admin America, Inc., was installed as the **president** of the **Atlanta Chapter** of the **National Association of Health Underwriters** in June. The organization and its local chapters are composed of agents, insurance company representatives and other indi-

viduals who sell and administer health and health-related insurance products and services. The Atlanta chapter has more than 500 active members.

- > The **Georgia Alliance of African American Attorneys** congratulates Atlanta attorneys **Robbin Shipp** and **Stacey Abrams** for winning seats in the **Georgia House of Representatives**. Shipp will serve as a representative in House District 58 and Abrams will serve in House District 84.



Phyllis J. Holmen is one of 11 honorees to receive the very prestigious **Distinguished Alumnus Award** from the University of Illinois College of Law. Holmen has served as the executive director of the Georgia Legal Services

Program for the past 16 years. Since 1966, the College of Law has had a tradition of annually honoring a select group of distinguished alumni. Holmen ('74) was chosen because her life and career exemplify the qualities that make her a powerful role model for law students and a living example of the ideals of the profession. She is a past recipient of the Tradition of Excellence Award from the General Practice and Trial Section of the State Bar of Georgia, and a past recipient of the Atlanta Bar Association's prestigious Leadership Award for her work in promoting access to civil justice for low-income Georgians and for her leadership of the Georgia Legal Services Program. In 2005, the American Bar Association appointed Holmen to its President's Task Force on Access to Civil Justice. She is a current member of the Executive Committee of the State Bar of Georgia Board of Governors, and is active in several State Bar committees, including the Advisory Committee on Legislation, the Indigent Defense Committee, and the Individual Rights Law Section of the State Bar. Holmen has served as a member of the Governor's Judicial Nominating Commission; the Supreme Court's Indigent Defense Commission; the Supreme Court's Blue Ribbon Commission on the Judiciary; and the Administrative Office of the Court's Committee on Pro Se Litigants.

On the Move

In Atlanta

- > **Fish & Richardson P.C.** announced that **Douglas Lee Bridges** has joined the firm's Atlanta office as an **associate** in its litigation group. The firm has been steadily expanding the litigation and patent prosecution practices in its Atlanta office. Bridges focuses his practice on patent litigation with an emphasis on a wide range of software issues. Prior to joining Fish

& Richardson, he was an associate at Alston & Bird in Atlanta. Before becoming an attorney, Bridges was a technical architect at American Management Systems, Inc. where he worked with telecommunication firms. The office is located at 1230 Peachtree St. NE, 19th Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; www.fr.com.

- > **Dardi & Associates, PLLC**, has formed as an intellectual property law firm with offices in Atlanta and Minneapolis. The firm has patent attorneys with chemistry and life science Ph.D. degrees with a successful track record of strategically guiding clients in IP creation at every stage, from start-up, through fundraising to a successful exit. The firm has extensive expertise in patent prosecution for technologies including advanced materials, batteries and fuel cells, nanotechnology, tissue engineering, biomaterials, biotechnology, and medical devices. The Atlanta office is located at 3490 Piedmont Road, Suite 400, Atlanta, GA 30305; 404-949-5730.
- > **Berman Fink Van Horn P.C.** announced that **Aaron B. Chausmer** and **William J. Piercy** have been named **principals** and **Kari M. Gibbs**, **Thomas E. Sowers**, **Marcy A. Millard** and **Neal F. Weinrich** have been named **associates** in the firm. Chausmer has been with the firm since 1999 and Piercy was recently with Chamberlain, Hrdlicka, White, Williams & Martin. Both Chausmer and Piercy will continue their practices in business litigation. Gibbs and Sowers joined the corporate department. Millard and Weinrich joined the litigation department. The office is located at 3423 Piedmont Road NE, Suite 200, Atlanta, GA 30305; 404-261-7711; Fax 404-233-1943; www.bfvlaw.com.
- > **John Marshall Law School** announced the arrival of its new **dean, Richardson R. Lynn**. A graduate of the Vanderbilt University School of Law and a former dean of Pepperdine University's law school in Malibu, Calif., Dean Lynn brings more than 30 years of experience in legal education to John Marshall, which gained provisional accreditation by the American Bar Association in February 2005. Dean Lynn's appointment followed a national search by a dean search committee composed of faculty, students, administrators, and members of the Board of Directors. His former involvement in the American Bar Association's process for accrediting law schools and work on its Membership Review Committee of the American Association of Law Schools uniquely qualifies him to lead John Marshall. After practicing law in Nashville, Tenn., and teaching law part-time at Vanderbilt, he joined Pepperdine's law school faculty in 1980, where

he later became the associate dean for Academics and served for six years as dean. In addition to raising the profile of the school in Georgia's legal and business community, John Marshall wants to become a resource for the community in areas where our students and faculty can provide pro bono legal assistance. The law school is located at 1422 W. Peachtree St. NW, Atlanta, GA 30309; 404-872-3593; Fax 404-873-3802; www.johnmarshall.edu.

- > **Sutherland Asbill & Brennan LLP** announced that it **combined** with **Griffin Cochrane & Marshall PC**, a 10-lawyer, Atlanta-based firm in June. Griffin Cochrane is one of the premier construction law firms in the country, as consistently ranked by Chambers and others. The firm represents clients in all aspects of the construction industry, including bid protests; negotiation and preparation of contracts; counsel during contract performance; dispute avoidance; claims preparation and various forms of dispute resolution. Five partners, **Jennifer W. Fletcher**, **Lee C. Davis**, **W. Henry Parkman**, **John D. (Dean) Marshall Jr.** and **F. Barry McCabe**; one counsel, **Michael C. Castellon**; and four associates, **Thomas M. Hall**, **Benjamin H. Sawyer**, **Eric L. Hurst**, and **Jesse W. Lincoln**, will join together with Sutherland partners **William R. Wildman**, **Lewis S. Wiener** and **Gail L. Westover** to form a **new** construction industry practice group at Sutherland. Griffin Cochrane founding partner **Harry L. (Buck) Griffin Jr.**, will move his independent mediation practice to Sutherland's offices. The move will also bolster the highly respected litigation group at Sutherland, where almost a third of the firm's more than 425 lawyers are litigators, and will complement Sutherland's real estate practice. The Atlanta office is located at 999 Peachtree St. NE, Atlanta, GA 30309; 404-853-8000; Fax 404-853-8806; www.sablaw.com.




- > **Kilpatrick Stockton** announced the addition of **Bill McMillan** to the firm's Atlanta office as a **partner** in the financial transactions, real estate and restructuring department. McMillan's extensive career has focused on the areas of real estate finance, asset securitization, bankruptcy, debt reorganization, and creditor's rights. His work on general commercial finance matters includes the representation of lenders and borrowers in all types of secured and unsecured transactions. The Atlanta office is located at Suite 2800, 1100 Peachtree St., Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatrickstockton.com.

Congratulations to the Georgia YLD—Best Overall YLD


Congratulations to the State Bar of Georgia's Young Lawyers Division, which was awarded the highest honor given to young lawyer divisions across the country Aug. 5 in Honolulu, Hawaii, as the American Bar Association presented the YLD Awards of Achievement for the 2005-06 Bar year. The ABA Awards of Achievement Program is designed to encourage project development by recognizing the time, effort and skills expended by young lawyer organizations in implementing public service and bar service projects in their communities. The Georgia YLD was recognized as the best overall YLD in the country, placing first in the Comprehensive Category.

The YLD Review won second place in the Newsletter Category. Georgia's Minorities in the Profession Committee's project, "An Evening With the Justices," won first place for the Minority Project Category. The Committee hosted a panel discussion and cocktail reception for Georgia Supreme Court Justices Robert Benham and Harold Melton for over one hundred minority lawyers and law students. Georgia won second place in the "Service to the Public" Category for their "Stop Domestic Violence" program, an online video project with a goal to overcome language barriers experienced by recent immigrants by developing web-based videos about domestic violence and temporary protective orders, translating the scripts and webcasting the videos in multiple languages, and training Georgia courts staff, agencies, shelters and community organizations to navigate the LegalAid-GA.org website to locate these videos and use these foreign-language resources.

Georgia also won second place in the "Service to the Bar" Category for its Leadership Academy program, which was started in the 2005-06 Bar year as a comprehensive leadership development program serving as an intensive "next step" to the State Bar's recently instituted Transition into Law Practice Program, matching newly admitted lawyers with a mentor for one year, combined with organized workshops examining appropriate areas crucial to young lawyer development. Congratulations to Damon Elmore, YLD President for the 2005-06 Bar Year; Bryan Scott and Amy Howell, Newsletter Editors 2005-06; Mawuli Davis and Holly Geerdes, Minorities in the Profession Committee Co-Chairs 2005-06; Laurel Landon, Tonya Boga, and Leigh Martin May, Leadership Academy Chairs 2005-06; and Mike Monahan and Tracey Roberts for the Stop Domestic Violence Program.

- >  **Amy Alcock Quackenboss**, previously with Hunton & Williams, LLP, has joined **DLA Piper** in its Atlanta office as **counsel** in the finance practice group. Quackenboss focuses her practice on commercial litigation, creditor's rights and business bankruptcies. She handles a broad range of commercial litigation and represents creditors and financial institutions of all types in distressed debt solutions, workouts, foreclosures, receiverships, and bankruptcies throughout the country. The office is located at 1201 West Peachtree St., Suite 2800, Atlanta, GA 30309; 404-736-7804 Fax 404-682-7804; www.dlapiper.com.

In Albany

- >  **Brian J. Schneider** joined the law firm of **Watson, Spence, Lowe and Chambless, LLP**. After completing a clerkship in the U.S. District Court, he practiced with Hunton & Williams LLP in Richmond, Va. Schneider will continue his civil litigation and trial practice. The firm is located at 320 Residence Ave., Albany, GA 31701; 229-436-1545; Fax 229-436-6358.

In Columbus

- > The firm of **Hatcher, Stubbs, Land, Hollis & Rothschild, LLP**, announced that **Elizabeth Raines Cook** has become a **partner** in the business and corporate law section. Cook was formerly a partner in the Atlanta firm of Parker, Hudson, Rainer & Dobbs LLP where she was a member of the tax and employee benefits group. Her practice includes a wide range of tax-related matters with an emphasis on professional corporations, employee benefit plans, employment issues and ERISA. The office is located at 233 Twelfth St., Suite 500, The Corporate Center, Columbus, GA 31901; 706-324-0201; Fax 706-322-7747.

In Fayetteville

- >  **Mary Lynn Kirby, John Arthur Nix, Bridgette M. Palmer and Victoria J. Farrell** recently opened a new firm, **Kirby Palmer Farrell Nix, LLP**. All four lawyers practice in the area of estate planning and probate.

Kirby and Nix have both concentrated in the area of estate planning for most of their legal careers. Palmer comes from a background of real estate law and municipal civil litigation with Hancock & Palmer,

LLC. In addition to practicing in the area of estate planning, she also represents clients in the area of business succession planning and international adoptions. Farrell contributes to the firm with her expertise in guardianship/conservatorship and Medicaid planning. The firm also assists clients in the area of asset protection. The office is located at 1044 Highway 54 West, Fayetteville, GA 30214; 770-692-1054; Fax 770-692-1053; www.fayettelawgroup.com.

In Birmingham, Ala.

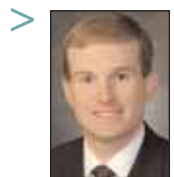
- > **Barry S. Marks** and Kenneth P. Weinberg announced the formation of their firm, **Marks & Weinberg, P.C.** The new firm will focus its practice on equipment leasing and other forms of business financing and will represent equipment leasing companies, lessees, vendors and other parties in structuring, documenting and enforcing equipment leases nationally and in Alabama. The firm is located at 2001 Park Place Tower, Suite 525, Birmingham, AL 35202; 205-251-8303; Fax 205-488-3733.

Attorney Introduces City Kids to Country Life



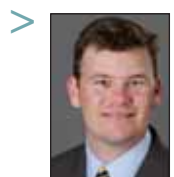
On Aug. 12, 150 city kids experienced life on a ranch for the first time. Four local churches chose the kids, ages five to 12, based on their grades. Fisher & Phillips attorney, Tex McIver, and his wife Diane hosted the kids on the McIver ranch outside Eatonton. During the day the city dwellers rode horses; fished in a pond; went for hayrides; fed baby horses, cows and goats; and tossed horseshoes. Swimming and face painting by a clown were also quite popular. McIver said, "Living out here you easily forget that some people have never experienced country life. Diane and I have been very fortunate and we thought we should share this with kids who have never been on a farm or ranch. These kids have worked hard at school and this is a small reward for their good efforts. Some will make good cowboys and cowgirls."

In Tuscaloosa, Ala.



Stuart D. Albea announced the opening of his solo practice. His areas of practice include creditor's rights law, probate law, family law, and criminal law. The office contact information is P.O. Box 2673, Tuscaloosa, AL 35403; 205-248-9556; Fax 205-248-9557.

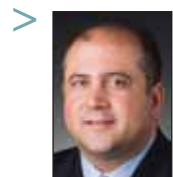
In Durham, N.C.



Womble Carlyle Sandridge & Rice PLLC announced that **Culley C. Carson IV** has joined the firm in the Research Triangle Park office as an **associate** in the intellectual property practice group. Carson's practice focuses on a wide

range of complex intellectual property licensing and technology based transactions. Prior to joining the firm, Carson served as legal counsel in the Atlanta office of Bovis Lend Lease Holdings, Inc., an international construction and development company. The Research Triangle Park Office is located at 2530 Meridian Parkway, Suite 400 Durham, NC 27713; 919-484-2331; Fax 919-484-2072; www.wcsr.com.

In Dallas, Texas



Behringer Harvard Holdings, LLC, a Dallas-based real estate investment company, announced that **Kamal Jafarnia** has joined Behringer Harvard as **assistant general counsel-broker dealer**. Jafarnia will head compliance

programs for Behringer Securities LP, the Behringer Harvard subsidiary that is a NASD member broker-dealer and serves as dealer manager for the securities offered by Behringer Harvard. In addition, he will oversee selling group due diligence and legal matters related to the firm's growing securities sales network of independent financial advisor firms. Jafarnia has been engaged in the financial services industry for more than eight years, most recently as vice president of CNL Capital Corp. and chief compliance officer of CNL Fund Advisors Inc., subsidiaries of CNL Financial Group in Orlando, Fla. Before transitioning into the financial services industry, he was an attorney in private practice in Houston, Texas. The office is located at 15601 Dallas Parkway, Suite 600, Addison, TX 75001; 214-655-1600; Fax 214-655-1610; www.behringerharvard.com.

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Reasonable Fees

by Paula Frederick

“I can’t believe this!” you exclaim to your partner as you hang up the phone. “Tim McDowell just hired me this morning—paid me \$5,000 to handle his divorce case. I went to the temporary hearing with him. Now he says he’s reconciled with his wife and the whole thing’s off. He wants his money back.”

“That’s got to be a record,” your partner replies. “It’s not even lunchtime yet!”

“What should I do about the money?” you ask. “Naturally Tim wants to come by this afternoon and get it all back. I reminded him that he just signed a retainer agreement that says fees are due in advance and are not refundable.”

“Well, you’ve definitely earned *something*,” your partner agrees. “You dropped everything to go to that hearing with Tim at the last minute. But are you really going to try to keep *all* of it?”

“Why not?” you respond. “I went over the contract with Tim before he signed it, and he understood that he was paying a flat fee. It was a gamble for both of us—I could have spent 1,000 hours on that case and not gotten a penny more. Just my luck that I only worked a couple of hours.”

“Here’s why not,” your partner replies, handing you a copy of the *Bar Directory and Handbook*. “Right here in Rule 1.5 of the Rules of Professional Conduct. Your fee has to be reasonable. I’m not sure this kind of non-refundable fee really complies with the rules.”


A call to the Bar’s Ethics Hotline clarifies things. Bar Rule 1.16(d) requires a lawyer who is fired to “refund any advance payment of fee that has not been earned.” But is it possible to “earn” a fee just by saying that it is “earned when paid?”

Formal Advisory Opinion 03-1 provides that a Georgia lawyer may contract for a non-refundable special retainer under certain circumstances. The opinion defines a special retainer as one paid in advance for *specified services*. If the lawyer does not provide all of the specified services, Rule 1.16(d) requires a refund of some portion of the fee.

Your contract specified that you would handle Tim’s divorce case for \$5,000. Pursuant to the advisory opinion, if you withdraw or if Tim chooses to fire you before his divorce case is final, he has not received the specified services and is entitled to a partial refund.

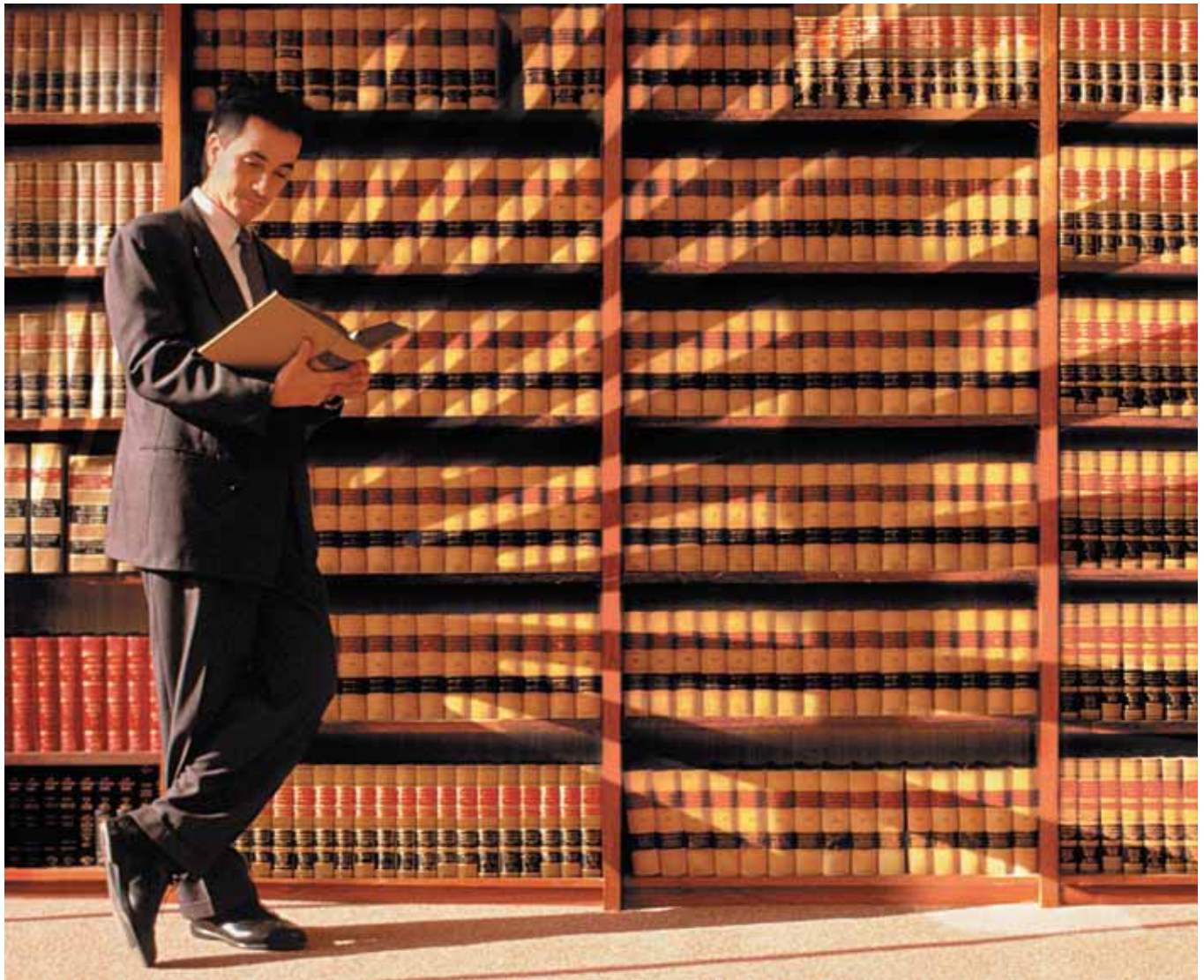
For the same reason, a criminal defense lawyer who accepts a non-refundable fee to handle a case may earn the entire fee even when he is able to have the charges dropped with one telephone call. That lawyer has provided the “specified services,” i.e., representation through conclusion of the case.

Although Opinion 03-1 does not require it, a lawyer who charges a non-refundable special retainer would be prudent to provide the client with written information about how the fee will be calculated if the representation ends early. Don’t forget that the Bar’s Fee Arbitration Division may be able to resolve any disputes about the amount of a fee.

You may contact the Fee Arbitration Department at 404-527-8752 or email Director Rita Payne at rita@gabar.org. Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Lawyer Helpline at 404-527-8720 or 800-334-6865. The helpline is staffed Monday-Friday from 8:30 a.m. to 5 p.m. 



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



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Discipline Summaries

(June 17, 2006 through August 18, 2006)

by Connie P. Henry

Suspension

William Henry Mitchell III
Arlington, Texas

William Henry Mitchell III (State Bar No. 513809) has been suspended from the practice of law in Georgia for two years with a condition for reinstatement by Supreme Court order dated July 13, 2006. This reciprocal discipline arose out of an Agreed Judgment of Partially Probated Suspension entered into by Mitchell before the Texas Commission for Lawyer Discipline based on his violations of the Texas Disciplinary Rules of Professional Conduct. The agreement addressed four disciplinary complaints in which Mitchell failed to obtain an executed written contingency fee contract and failed to designate a medical expert in a case against a medical doctor and hospital resulting in the dismissal of the case and then failed to timely file a motion for new trial or a timely notice of appeal; failed to pursue a client's medical injury lawsuit resulting in dismissal of the case for want of prosecution and failed to inform the client of the dismissal; failed to respond to certain discovery in a divorce action resulting in sanctions against Mitchell; and failed to pursue actions on a client's behalf in the probate of the client's son's estate.

Mitchell received a five-year suspension in Texas beginning March 15, 2004, with the first two years being active suspension and the last three years a probated suspension with a number of conditions. As Georgia does not have a probated suspension, the Supreme Court of Georgia ordered a two-year suspension, following which Mitchell must prove that he has been reinstated to the practice of law in Texas prior to being reinstated in Georgia.

Review Panel Reprimand


Michael J. Davis
Atlanta, Georgia

On July 13, 2006, the Supreme Court of Georgia ordered that Michael J. Davis (State Bar No. 212040) be

administered a Review Panel reprimand. In his Petition for Voluntary Discipline Davis admitted that he was hired to represent a client to investigate a *habeas corpus* petition and was paid \$1,500. He investigated the matter but did not file a petition and did not respond to his client's requests to visit her at prison, nor did he adequately communicate with her that he was not retained to file a habeas petition without further payment. In another case Davis was hired to investigate and file a habeas petition and was paid \$2,500. He filed the petition but it was dismissed because it was not verified. Davis did not file a response or corrected petition and failed to communicate with his client to obtain the verification.

In addition to the Review Panel Reprimand, Davis must attend a session of Ethics School at the State Bar, he must submit to and comply with an evaluation by the Law Practice Management department, and he must pay restitution to his clients.

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 June 17, 2006, four lawyers have been suspended for violating this Rule, and four lawyers have been reinstated. 



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



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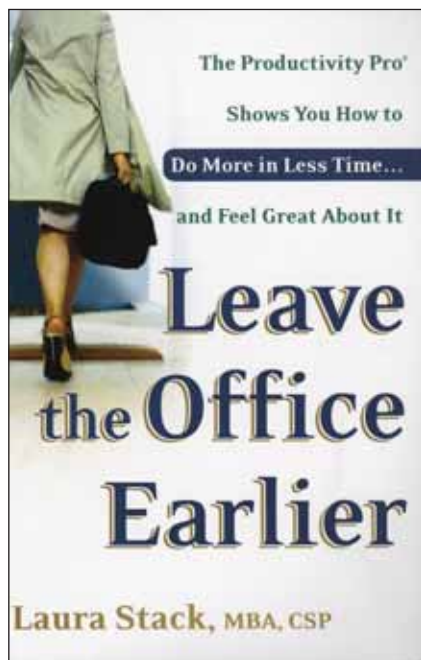
Looking Outside the Box to Improve your Practice...and Life

by Pamela Myers

While we all know how important it is to keep up with trends and best practices in our profession: it's also a good idea to look beyond the law bookshelf for other resources that can help improve your productivity, management skills and bottom line. Most of us are familiar with the works of Stephen Covey and Dale Carnegie, who for years have taught principles that apply to both work and home life. Here at the State Bar's Law Practice Management Library, we have added some new titles that, although not specific to the practice of law, are steeped in principles that may enhance both your work and home life.

These new materials can be classified as motivational, self-improvement or just plain "how to." We hope you will stop by and check out some of these new materials, which include the following:

- **"The CEO of You"** by Marsha Petrie Sue: Full of practical information, this book will help you focus on what is working well and what you might want to change in order to become more productive and profitable.
 - **"Leave the Office Earlier"** by Laura Stack: Juggling family and work in today's world has left professionals (including lawyers) more stressed than ever. You can tailor this information-rich book to your own needs by identifying problem areas and by following Stack's easy-to-implement solutions.
 - **"Motivational Leaders"** compiled by Vilis Ozols: From a young athlete paralyzed in high school who goes on to win Olympic gold, to the perpetual "loser" who overcomes his nemesis with the help of his remarkable father, this book is the collected wisdom of 15 of America's top professional motivators.
 - **"Are You Listening?"** by Marsha Petrie Sue: Maximize your listening skills and get people to hear you. This CD will enable you to manage any situation with tact and poise. Your stress will be reduced, confidence improved and you will even be able to hear the message in conflict situations. The best part is you can listen to it on your way to work.
- Other new additions to our more traditional categories include:
- **"Collecting Your Fee: Getting Paid from Intake to Invoice"** by Edward Poll: The time has come to free your firm from the quagmire of hourly billing and transition to billing based on client value. Following the author's advice, you can ensure that your collection process is controllable and more efficient, resulting in satisfied clients and a healthier bottom line.
 - **"Complete Guide to Divorce Practice, The 3rd Edition: Forms and Procedures for the Lawyer"** by Larry Rice: This guide has the whole divorce kit-and-caboodle, plus forms and letters on a CD. It is arranged in the natural order of the divorce experi-



ence. If helping people with divorce is how you make your living, this is a must read.

- **"The Cybersleuth's Guide to the Internet: Conducting Effective Investigative and Legal Research on the Web"** by Carol A. Levitt and Mark E. Rosch: The information that was once only available to professional researchers from expensive, fee-based sources is now available for free on the Internet, if you know how to find it. Whether you just started to use the Internet for serious research or you are an online research veteran, this book can help you find what you are looking for fast and for free.
- **"The Discovery Revolution: a Guide to E-discovery Amend-**


ments to the Federal Rules of Civil Procedure" by George L. Paul: This book focuses on the e-discovery amendments to the Federal Rules of Civil Procedure, which were approved by the Standing Committee on Rules of Practice and Procedure and were approved by the Judicial Conference in September 2005.

If you haven't had a chance to use the Law Practice Management Library, we hope you will take advantage of this valuable benefit of your Bar membership. All members in good standing of the State Bar and their employees can check-out any of our library materials for a period of up to two weeks. Renewals of borrowed items are available if the item is less than 30 days overdue. Reservations can be made if the item you want is currently checked out.

There are three ways to borrow the materials. First, you can visit the Bar Center in person Monday through Friday, between 8:30 a.m. and 4:30 p.m. No appointment is necessary. Second, you may call or email our staff directly with questions or checkout requests. And finally, you can browse through our collection on-line at our website.

Whichever way you choose to borrow, materials of any medium will be promptly mailed to you, along with an invoice for the outgoing postage. Materials may be returned in person (parking is free for attorneys) at the Bar Center or

mailed back at your expense. It's that simple. Please note that some of our more valuable items may not be checked out, but can be used on-site at the library. These items are indicated by an asterisk in our list.

In addition, no one wants to "reinvent the wheel," so a compilation of frequently used general forms is available through our library. While substantive forms can be found through legal publishing vendors, it's often difficult to find the simple but necessary administrative forms and checklists that make a firm run smoothly. Attorneys are encouraged to adapt these forms as needed for their own practices. 



Pamela Myers is the resource advisor in the Law Practice Management Department. She can be reached at pam@gabar.org.

Law Practice Management Library Contacts

Pamela Myers, 404-526-8621
or Kim Henry, 404-527-8772

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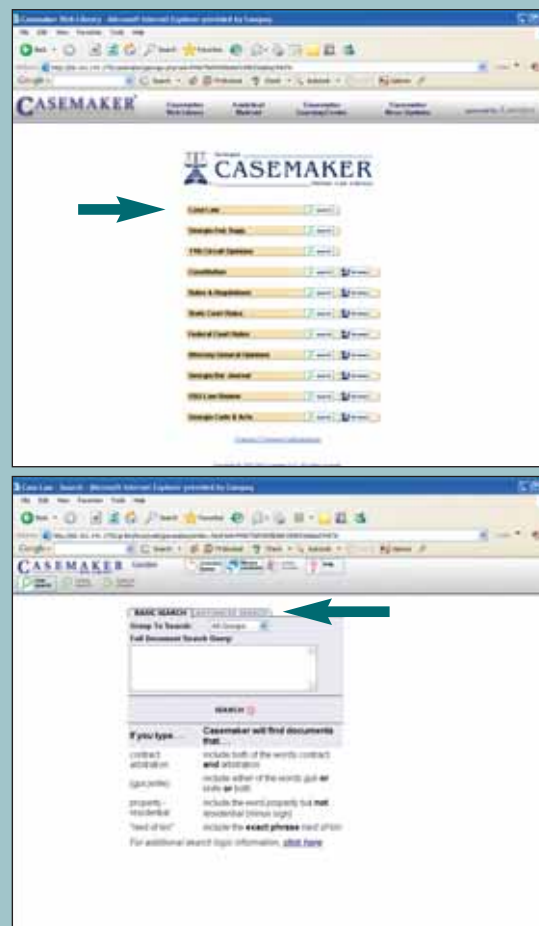
Getting the Most Out of Casemaker: Advanced Search— Search by Case Name

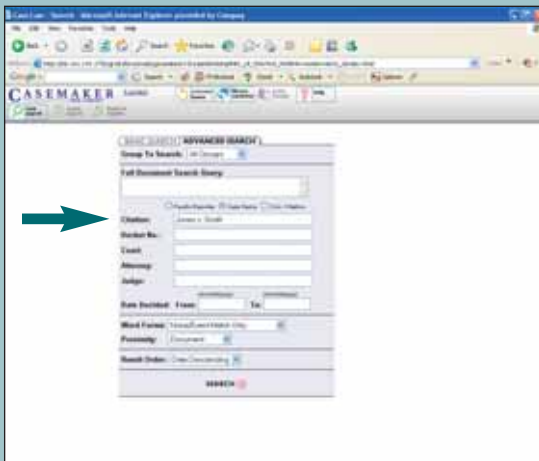
by Jodi McKenzie

In the last Casemaker article, we looked at how to use the Advanced Search to find a case by citation number. This time, we will see how the Advanced Search can help find a case by the case name or an individual party's name. Let's take a look at how it works.

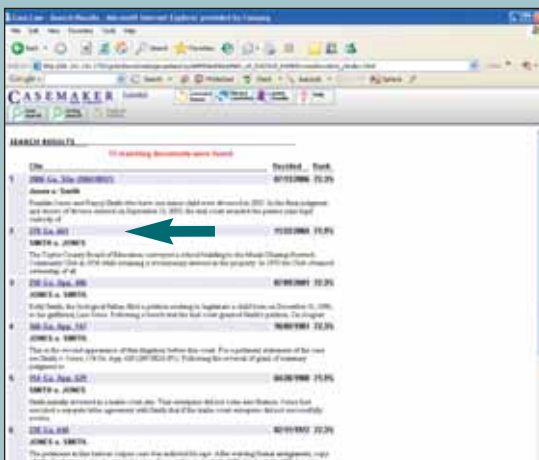
In this example, we will search the Georgia Case Law Database. In order to enter this database, you would enter the Georgia Casemaker Library. From here, you would choose to search in **Case Law**.

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 case name or party name, you would choose the Advanced Search option by selecting the Advanced Search tab located next to the Basic Search tab.

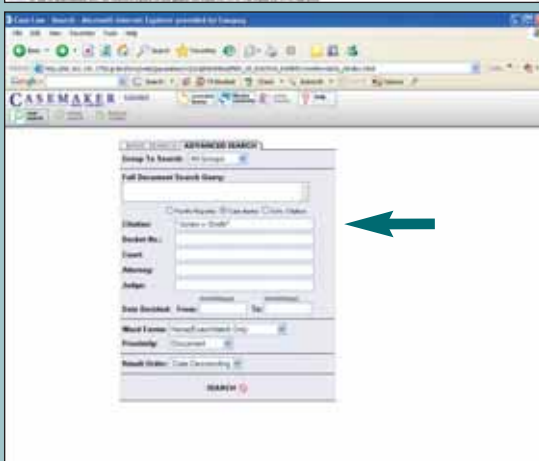




An Advanced Search gives you several options for narrowing down your search. In this example, we want to find the case *Jones v. Smith*. In order to find it by the case name, we want to choose the case name option by clicking on the bubble next to it. We will then enter the phrase *Jones v. Smith* in the Cite field.



After entering your case name, 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 in which Jones and Smith have been parties regardless if they have been plaintiffs or defendants.

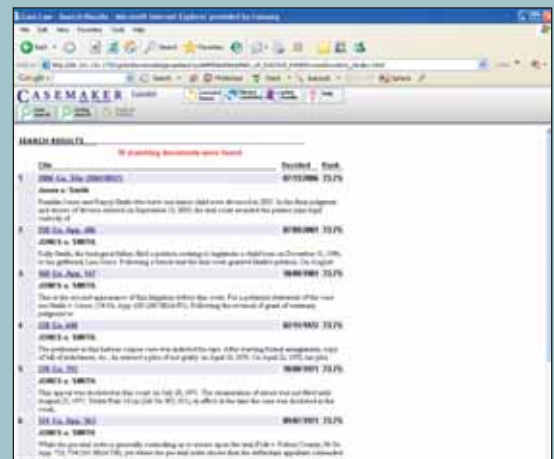


To limit your search results to cases in which Jones is the plaintiff and Smith is the defendant, put your citation name in quotation marks before you run your search.

Now your search results will be limited to cases in which Jones is the plaintiff and Smith is the defendant.

You may also enter one name in order to pull up all cases in which a party has been involved. In this example, if we enter just Jones, we will pull up every case in which Jones has been either a plaintiff or defendant.

Since Jones is such a common name, we have over 1,000 results in which Jones has been either a plaintiff or a defendant. The results are displayed chronologically and Casemaker will allow you access to the first 100.



Casemaker training is available at the State Bar of Georgia. The next training day can be found on the State Bar of Georgia homepage or in your most recent copy of the Bar's E-news. Please contact Jodi McKenzie, Casemaker coordinator at 404-526-8618 or jodi@gabar.org if you need further assistance with Casemaker.



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Section Activity Fills Fall Calendars

by Johanna B. Merrill

On Aug. 22 the **Appellate Practice Section** hosted their annual meeting luncheon at the Bar Conference Center. Justice Carol Hunstein of the Supreme Court of Georgia and Chief Judge John H. Ruffin Jr., Judge Debra Bernes, Judge Anne Barnes and Judge Herbert E. Phipps, all of the Georgia Court of Appeals, addressed the group. Judge Harris Adams was also in attendance. During the meeting, the Section elected officers for the 2006-07 Bar year: Jill Pryor, chair; Adam Hames, vice chair; and Jay Bogan, secretary/treasurer.

The **Government Attorneys Section**, chaired by Ann Pickett, hosted a one-day Institute titled "Planning for the Future in Government," on Sept. 12 at the Amicalola Falls State Park and Lodge in Dawsonville.

Also on Sept. 12, the **Technology Law Section** hosted a quarterly CLE luncheon held at the offices of Powell Goldstein in Midtown Atlanta. Panelists James D. Decker, Paul K. Ferdinands and Robert M.D. Mercer spoke on "What Every Lawyer Should Know About the Sale of a Distressed Technology Company."

On Sept. 28 the **Intellectual Property Law Section** hosted a Section Open House at King & Spalding's new offices in Midtown. The open house was designed to give section members an overview of the section's various committees and how members can get more involved. King & Spalding co-sponsored the event.


The IP Law Section also held a full day Patent, Copyright and Trademark Bootcamp at the Bar



Photo by Johanna B. Merrill

Judge Herbert E. Phipps, Justice Carol Hunstein and Judge Debra Bernes speak to members and guests of the Appellate Practice Section on Aug. 22 at the section's annual meeting.

Conference Center on Sept. 29 aimed at first-year associates or other attorneys just beginning their legal careers practicing intellectual property law. Speakers included: Mitchell A. Katz, Needle and Rosenberg; Michael J. Baldauff Jr., Hope Baldauff Hartman; Arthur A. Gardner, Gardner Groff Santos & Greenwald; Christine James, Kilpatrick Stockton LLP; Larry Nodine, Needle & Rosenberg; Cheighton Frommer, Hill Kertcher & Wharton.

Reminder: As most sections move toward electronic delivery only of meeting announcements, section business and newsletters, it's important to keep the Bar up-to-date on your email address. You may update your profile online at www.gabar.org. 



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



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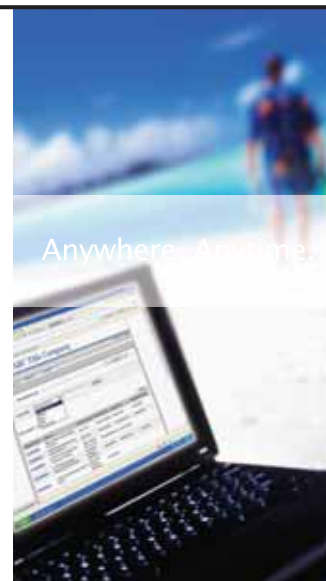


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Law School Professionalism Orientations

Continuing Georgia's Tradition

by Avarita L. Hanson

For the 14th year, the State Bar Committee on Professionalism and the Chief Justice's Commission on Professionalism partnered with five Georgia law schools in presenting a unique program where law students explore issues of professionalism at the start of their legal education. This year, nearly 1,000 first-year, transfer and visiting students participated in these orientations, starting their law school experience on a positive note with a dialogue about their professional and ethical responsibilities.

Although law schools address professionalism in a variety of ways during their orientations, all contain common elements and themes. Typically led by law school deans, the orientations include an overview of the concept of professionalism given by a member of the State Bar Committee on Professionalism, and personal reflections on the ideals of professionalism by a noted jurist or member of the Bar. The programs conclude with interactive discussion groups, led by a duo consisting of a judge, practitioner or faculty member, where students explore issues of professionalism and ethics in the context of selected and well-designed hypothetical situations.

The 2006 Law School Professionalism Orientation season took place in August with sessions at the University of Georgia School of Law; Mercer University Walter F. George School of Law; Georgia State University College of Law; John Marshall Law School; and Emory University School of Law. A review of the



Photo courtesy of the Chief Justice's Commission on Professionalism

Attorney co-leaders lead first-year law students at UGA through hypothetical professionalism situations during their orientation.

orientation programs shows they serve as a valuable and effective means to convey the core values of the law school community and legal profession, and also to introduce the concept of professionalism. The following attempts to capture the unique perspectives on professionalism as discussed by the keynote speakers.

University of Georgia School of Law

The newest member of the Supreme Court of Georgia, Justice Harold Melton, an alumnus, gave the keynote address. Sharing his thoughts about professionalism, Justice Melton distinguished ethics as the "minimum standards to stay out of trouble" to professionalism, which he defined "as the concern for how

you look and represent the legal profession as a whole." He said the legal profession should "look like a body of people who are problem-solvers, not people who merely argue." He encouraged the new students to be idealistic, not naive, about the law by being "committed to a core set of values." His professional goal is "to die with my ideals intact." Justice Melton also challenged the students to write down what their motivation was to attend law school to not only help them complete the first year, but to keep them "grounded and focused" as they move forward.

In summary, Justice Melton said that "professionalism starts with your inner core beliefs before you come to law school" and students should "focus on developing your inner person, being nice to one another," that is still the "greatest calling card you offer your clients, law firm and community." In all, you should "do justice, love mercy and walk humbly with your God and your professionalism will take care of itself."

Mercer University Walter F. George School of Law

Mercer's keynote speaker was alumnus Hon. W. Louis Sands of the U. S. District Court in Albany, Ga. Judge Sands was introduced by Dean Daisy Hurst Floyd, who noted that Georgia was the first state to start the professionalism movement and provide these programs to law schools.

Judge Sands provided several personal accounts of interactions with attorneys where civility, mutual respect and integrity intersected to improve their ability to represent clients and enhance their performance before the courts. Professionalism, in his opinion, provides a basis of trust in the legal community that improves the practice of law for those involved—attorneys, judges, clients, jurors, court personnel, and the general public.

Judge Sands also administered the Law Student's Creed and Oath. Students who engaged in the group discussions found the hypotheticals dealing with drug use and plagiarism most effective in helping them to identify appropriate professional and ethical behavior.

Georgia State University College of Law

The Georgia State College of Law orientation program started with greetings by Dean Steven J. Kaminshine, who pointed out that the professionalism program is a model program, the result of many years of hard work and continuous attention. He introduced Mary Cash McCall, Georgia State alumna and member of the State Bar Committee on Professionalism, who along with Professor Roy Sobelson, helped develop the program that is the same at every Georgia law school.

The keynote speaker, Judge Debra H. Bernes, was introduced by McCall as an Atlanta native, and "a Court of Appeals judge who came with loads of appellate experience" to the bench. A Grady High School, University of Florida college and law school graduate, she is "amazingly experienced" for her position having served as a Cobb County district attorney.

In addressing the students, Judge Bernes posed the questions: Do you want to be a "bottom feeder," a person who chooses to adhere to minimum ethical standards in the practice of law? Or, would you rather be known as a person whose integrity is beyond reproach, whose relationship is excellent with clients, fellow lawyers, and the court who thereby gets referrals based on credibility and trust? Perhaps, presenting a "loaded question," Judge Bernes encouraged the students, at the outset of their legal education, to choose to be a lawyer who provides service and who truly serves people. More than 200 students took part in the group discussions.

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For the first year, Georgia State law professors served as discussion group leaders, along with partners from the Bar.

John Marshall Law School

Cobb County Superior Court Judge Robert E. Flournoy III, as the keynote speaker, reflected on lawyering as “the highest professional calling one can have.” To him, professionalism has three elements: 1. Be courteous 2. Be respectful of others, and 3. Be dignified. He also added that professionalism could be captured in the “Golden Rule” — “Do unto others as you would have done unto you.” He commented that as a judge, he takes to heart the oath to which he is sworn: “to administer justice to all by providing equal rights to the rich and the poor.” He likes to say, “The Constitution protects both sinners and saints.”

Judge Flournoy admitted that after many years of practice he realized that it is not necessary to be mean and tough to be a good lawyer, and it is not necessarily true that “nice guys finish last.” He pointed out that jurors notice attorneys who are rude to judges and are more likely to rule in favor of clients whose attorneys treat people with courtesy. Judge Flournoy said there are three types of lawyers: 1. Advisors and counselors who represent cities and corporations, and who do wills, trusts and estate work; 2. Transactional attorneys, like those who represent banks and who do real estate closings; and 3. Courtroom lawyers who now characterize themselves as litigators. He encouraged students to try all three types of legal arenas before selecting an area of practice.

Emory University School of Law

The law school orientation season closed with Emory’s program. This program had some added elements, starting with the screening of the


American Bar Association’s video “The Renaissance of Idealism,” produced during the administration of Michael Greco, the ABA’s 2006 president. Featuring U.S. Supreme Court Justice Ruth Bader Ginsberg, former Special Counsel to President John F. Kennedy Theodore Sorensen, and other prominent attorneys, the video shaped the professionalism program by emphasizing the lawyer’s duties to serve the community through pro bono legal work and public service.

Keynoter speaker Fulton County Superior Court Judge T. Jackson Bedford Jr., is one attorney whose career demonstrates public service as he wears several hats including president of the Emory Law School Alumni Association and former president of the Atlanta Bar Association. He spoke to the first-year class in clear terms about professionalism and posed the questions to them: “Why are you here?” and “What are you going to do to be useful and to make a difference in the lives of others?” In his words, professionalism is “conducting yourself professionally with integrity, courtesy and civility to all.” Professionalism is important because when it is lacking, the administration of justice is interrupted, there is a loss of self-esteem by the participants and “we are robbed of what should come from members of a learned profession.” He admonished the students that “the mantle of leadership for this profession will fall on you; I know you will not let us down and will say I am proud to be a lawyer.”

The Emory program also included a presentation by Judge Bedford, as president of the Atlanta Bar Foundation, of scholarship funds to Emory in memory of slain Fulton County Superior Judge Rowland Barnes. Judge Bedford pointed out that Judge Barnes was killed on March 11, 2005 by an assassin’s bullet, demonstrating that “service in the profession of the law does require some risks,” including public service and representing disenfranchised groups. The scholarship in Judge Barnes’ memory was estab-

lished for students who have shown by their lives and activities before and during law school that they have the potential for public service.

The 2006 law school orientations continued Georgia’s tradition of helping students focus on their activities and behaviors as they navigate the waters of their education and face the practice of law. Some students said the orientation “helped dispel the perception that lawyers are unscrupulous and conniving,” while others said “this program is an excellent reminder that our conduct is monitored more meticulously than in previous educational situations,” and that it “reaffirms that integrity is the most important trait that a lawyer has.”

Special thanks go to Dick Donovan, chair of the Committee on Professionalism, and the many judges, lawyers, law school administrators and faculty who volunteered to serve as group leaders or otherwise contributed to the success of the 2006 Law School Professionalism Orientation Programs. The Honor Roll of Group Leaders who volunteered for the 2006 orientation programs included a cast of dozens of attorneys. They all went to the top of their class for being part of the professionalism teaching team. Additional thanks to the staff of the Chief Justice’s Commission on Professionalism for contributing to the program’s success: Mary McAfee, Terie Latala, Nneka Daniel and Felicha Hanley. Those wishing to serve next year should watch for the 2007 sign-up sheets in Bar communications or contact the Chief Justice’s Commission on Professionalism, 104 Marietta Street, NW, Suite 620, Atlanta, GA 30303. 



Avarita L. Hanson is the executive director of the Chief Justice’s Commission on Professionalism. She can be reached at ahanson@cjcpga.org.

Volunteers of the 2006 Law School Orientations on Professionalism

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Died July 2006

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Weston, Fla.
Admitted 1932
Died June 2006

Paul Connell

Atlanta, Ga.
Admitted 1980
Died November 2005

J. Robert Elliot

Columbus, Ga.
Admitted 1934
Died June 2006

Larkin M. Fowler Jr.

Moultrie, Ga.
Admitted 1970
Died July 2006

Frances R.F. Jameson

Santa Fe, NM
Admitted 1974
Died May 2006

Benjamin F. Johnson Jr.

Atlanta, Ga.
Admitted 1933
Died June 2006

Loeb C. Ketzky

Atlanta, Ga.
Admitted 1939
Died May 2006

Calvin Lamar Jr.

College Park, Ga.
Admitted 1996
Died August 2006

Victor A. McLemore

Atlanta, Ga.
Admitted 1984
Died July 2006

Robert D. Peckham

Athens, Ga.
Admitted 1968
Died July 2006

Bernard A. Pfeiffer

Fort Benning, Ga.
Admitted 1979
Died August 2006

David M. Pierce

Perry, Ga.
Admitted 1970
Died July 2006

Roy B. Roberts

Marietta, Ga.
Admitted 1994
Died April 2006

William Lawrence Woods


Jonesboro, Ga.
Admitted 1991
Died July 2006

Ira S. Zuckerman

Atlanta, Ga.
Admitted 1971
Died July 2006



Benjamin Franklin Johnson Jr., 90, of Atlanta, died in June. The law professor and former dean is remembered for pushing to integrate Emory's law school before founding the law school at Georgia State University. Three generations of Johnson's descendants were on hand as his grandson, Hunton & Williams counsel Benjamin F. Johnson IV, recounted anecdotes from his ancestor's years as legal scholar, social reformer, state senator and civic progressive. While much of Johnson's legacy is the well-known stuff of Atlanta lore, his

grandson pointed out sides of his nature that were less public: His dedicated practice of spending every Saturday night carefully crafting the lesson for the next day's Sunday School class at Druid Hills Baptist Church; his outrage at the practice of requiring black Sunday School attendees to meet in the basement and the resulting organization of "a dissenting group of white members" who also insisted on meeting there to press for equal access; and the wrenching decision in 1973, after 12 years as dean of Emory's law school, to step aside. Realizing that a new dean would be required to meet the challenges of the growing school, he returned to a faculty position. In 1982, the former dean addressed the needs of Atlantans unable to afford the time and tuition to attend traditional law school by becoming the founding dean of Georgia State University College of Law. Former Emory President James T. Laney, who concluded the speakers' program, somberly recalled his own arrival at Emory and the help Johnson's measured words and thoughtful advice provided. Laney credited his former colleague with pushing Emory to integrate and, in the process, moving the school "from a provincial to a national institution." Johnson is survived by two sons, Ben F. Johnson III, Alston & Bird's managing partner, and Sherman D. Johnson, a lawyer with the U.S. Department of Health and Human Services; five grandsons; and one great-grandson. 

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Trial by Jury:

The Seventh Amendment and Anglo-American Special Juries
by James Oldham, New York University Press, 355 pages

reviewed by Donald P. Boyle Jr.

Trial by Jury is an historical study of the jury system, with particular attention to the use of the jury in England before 1791. The author, James Oldham, is St. Thomas More Professor of Law and Legal History at Georgetown University Law Center. His previous books include *English Common Law in the Age of Mansfield*.

Oldham considers several aspects of jury selection and decision-making. He shows that the jury as it existed at common law at the time of the adoption of the Bill of Rights was subject to a variety of differing approaches and uses. Oldham suggests that because the U.S. Supreme Court applies an historical test to the interpretation of the Seventh Amendment, arguably there is room for some flexibility in the use of juries today, which would still be consistent with the Seventh Amendment.

Oldham's book covers many issues regarding juries—he starts with the sharing of decision-making on law and fact between judge and jury, noting that jurors at common law had more power in this area than they now enjoy in federal or state court. Oldham then discusses the related issue of jury nullification, i.e., a jury's disregard of the court's instruction on the law, and the 1670 seminal decision in *Bushell's Case*, which established the principle

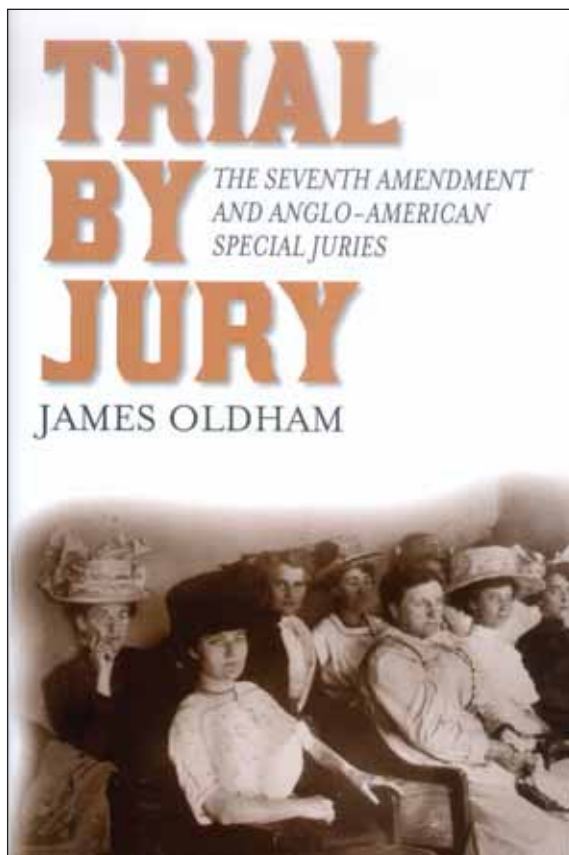
that juries could not be fined for perjury for issuing a verdict against the evidence.

Oldham also demonstrates the increased importance of jurors at common law with his description of the 1735 trial of John Peter Zenger for seditious libel based on his publication of articles regarding Gov. William Cosby of New York. In winning an acquittal for his client, Zenger's lawyer successfully argued that the jury should determine not only whether Zenger had published the alleged libel, but whether the words themselves were libelous.

Oldham discusses the jury's role in determining damages. He writes that the "writ of inquiry" was a jury proceeding in common law to determine damages after a default. Despite this mechanism, Oldham posits that English courts routinely dispensed with the writ of

inquiry and determined damages without a jury, but only when the damages were essentially liquidated or the plaintiff consented. Despite the common law practice of bypassing the jury in awarding damages, Oldham concludes a jury trial on damages is mandated under the historical test of the Seventh Amendment.

The most interesting chapter of the book focuses on the "jury of matrons," which began in the 13th century. Oldham explains that this tradition involved using juries composed of women who had given birth when the issue was whether a female defendant or a witness was pregnant. The "jury of matrons" was apparently the single exception to the all-male jury until the 20th century. "Matrons" were considered experts in the area of pregnancy and, thus, could examine the witness or criminal defen-



dant to determine whether she was "quick with child or a quick child." In criminal cases, a finding of pregnancy would save the defendant's life, at least temporarily, if she was convicted of a felony. It's not surprising that the plea of pregnancy was common when women faced felony conviction—Oldham uses examples of this defense from Defoe's *Moll Flanders* and Gay's *Beggar's Opera*. Juries of matrons were also used in civil cases when pregnancy was an issue, such as in cases of inheritance. This practice died out in the 19th century, as medical knowledge advanced and doctors took over as the experts in court on this and other medical issues.


Oldham focuses on other types of "special juries" in the latter half of the book. For instance, there is a chapter on the "self-informing jury" of the 14th to 15th centuries, when jurors were expected to come to court with some knowledge of the disputed events. Alternatively, proceedings were adjourned so that jurors could perform their investigations. Oldham concludes that the self-informing jury "can be thought of as a primitive version of the jury of experts."

In the eighteenth and nineteenth centuries, the special jury generally met one or all of the following conditions: (1) a jury of individuals of higher class than usual; (2) a jury of experts; and (3) a "struck jury," i.e., a jury formed after the parties had been given the opportunity to strike names from an unusually large panel of prospective jurors. The first type of jury was called when the issues were of great import, for example, involving treason or the right to large pieces of property. The second type ("the merchant jury") was used extensively in commercial cases to assist the judge in the formulation of commercial law principles. By the late 19th century, use of the special jury in England had largely died out as the result of a reform movement that sought to eliminate the practice of parties' packing special

juries with jurors thought to be partial to their side.

The special jury carried over to American legal practice. For example, in Georgia from 1796-1914, special jurors were to be taken from the grand jury list. Grand jurors were to be "the persons most able, discreet and qualified." The use of special jurors in condemnation and drainage cases appears to be the strongest surviving remnant of the special jury in the United States. In some states, condemnation jurors must even be landowners in the county where the land is located. Although Oldham wonders whether this aspect of condemnation trials is consistent with the requirement of a reasonable cross-section of the community, he quickly dismisses the question, reasoning that these trials are such a small proportion of the total number of cases that they are unlikely to be seriously challenged. This analysis seems weak, both as a

prediction of what suits might be brought and of what the outcome of such a suit might be.

Oldham has incorporated several of his law review articles into the text, but the transition between the different pieces is generally smooth. The book is clearly written, though the early chapters on current U.S. Supreme Court interpretation of the Seventh Amendment are highly technical and fact intensive. The historical treatment of English jury practice flows much more easily and would likely be of interest to the general reader, not just to lawyers. 



Donald P. Boyle Jr., a member of the *Georgia Bar Journal* Editorial Board, is a partner at the firm of Lawson, Davis, Pickren & Seydel LLP, where he practices in the litigation section.

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3 CLE Hours

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Atlanta, Ga.
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Supreme Court Issues Formal Advisory Opinion No. 05-12

The second publication of this opinion appeared in the April 2006 issue of the *Georgia Bar Journal*, which was mailed to the members of the State Bar of Georgia on or about April 7, 2006. The opinion was filed with the Supreme Court of Georgia on April 20, 2006. On May 8, 2006, the State Bar of Georgia filed State Bar of Georgia's Petition for Discretionary Review with the Supreme Court of Georgia, asking the Court to review Formal Advisory Opinion No. 05-12. On May 8, 2006, the State Bar of Georgia also filed Brief of Petitioner with the Supreme Court of Georgia asking the Court to retract Formal Advisory Opinion No. 00-1 and adopt Formal Advisory Opinion No. 05-12 as the replacement for Formal Advisory Opinion No. 00-1. On July 25, 2006, the Supreme Court of Georgia issued an Order both granting review of Formal Advisory Opinion No. 05-12 and approving Formal Advisory Opinion No. 05-12 as the replacement for Formal Advisory Opinion No. 00-1. Following, is the full text of the opinion issued by the Supreme Court. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

Formal Advisory Opinion No. 05-12 Approved And Issued On July 25, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 00-1 Supreme Court Docket No. S06U1489

QUESTION PRESENTED:

When the City Council controls the salary and benefits of the members of the Police Department, may a councilperson, who is an attorney, represent criminal defendants in matters where the police exercise discretion in determining the charges?

SUMMARY ANSWER:

Representation of a criminal defendant in municipal court by a member of the City Council where the City Council controls salary and benefits for the police implicates Rule 3.5(a), which prohibits attorneys from seeking to influence officials by means prohibited by law. In any circumstance where the representation may create an appearance of impropriety it should be avoided.

OPINION:

This opinion addresses itself to a situation where the City Council member votes on salary and benefits for the police. Particularly in small municipalities, this situation could give rise to a perception that a police officer's judgment might be affected. For example, a police officer might be reluctant to oppose a request that he recommend lesser charges or the dismissal of charges when the request comes from a council member representing the accused. Situations like the one at hand give rise to inherent influence which is present even if the attorney who is also a City Council member attempts to avoid using that position to influence the proceedings.

Rule 3.5 provides that "A lawyer shall not, without regard to whether the lawyer represents a client in the matter: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law...." As a general matter, a police officer is a public official. See *White v. Fireman's Fund Ins. Co.*, 233 Ga. 919 (1975); *Sauls v. State*, 220 Ga. App. 115 (1996). But see O.C.G.A. §45-5-6. Where a police officer exercises discretion as to the prosecution of criminal charges, the police officer is a public official within the meaning of Rule 3.5(a). By its express terms, Rule 3.5(a) applies only when an attorney seeks to influence, that is where an attorney has the intent to influence, an official by means prohibited by law. If an attorney were to indicate to an officer that as a result of the attorney's position as a member of the City Council a favorable recommendation as to one of the attorney's clients would result in benefits

flowing to the officer, or that an unfavorable recommendation would result in harm, the attorney would have committed the offense of bribery, OCGA §16-10-2 (a)(1), or extortion, OCGA §16-8-16(a)(4). The attorney would also have violated Rule 3.5(a).

The mere fact of representation of a criminal defendant by an attorney who is a member of the City Council, when the City Council controls the salary and benefits of the members of the Police Department, and when the police exercise discretion in determining the charges does not, by itself, establish a violation of Rule 3.5(a). To establish a violation, there must be a showing that the attorney sought to exercise influence in a manner prohibited by law. We note, however, that Comment 2 to Rule 3.5 provides that "The activity proscribed by this Rule should be observed by the advocate in such a careful manner that there be no appearance of impropriety." Pursuant to Rule 3.5, therefore, an attorney should not represent a criminal defendant where an inference of improper influence can reasonably be drawn.

Proposed Amendment to Uniform Superior Court Rule 24

At its business meeting on July 26, 2006, the Council of Superior Court Judges approved a proposed amendment to Uniform Superior Court Rule 24. A copy of the proposed amendments may be found at the Council's website at www.cscj.org. Should you have any comments on the proposed new rules, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 108, Atlanta, Georgia 30334 or fax them to (404) 651-8626. To be considered, comments must be received by Friday, Nov. 3, 2006.



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