

The background of the cover is a photograph of a museum exhibit. On the right, a large, golden statue of Lady Justice stands blindfolded, holding a scale of justice. In the center, a large white banner reads "A Mirror to History" and "FAMOUS GEORGIA & U.S. TRIAL". To the left, a sign on the wall says "MARCHING FOR JOBS AND DECENT HOUSING". Below that, another sign says "WE SHALL OVERCOME". In the foreground, there are three cylindrical display cases in brown, red, and blue. The title "Georgia Bar Journal" is overlaid in a large, gold, serif font at the top. Below the title, the date and volume information are displayed in a smaller font.

Georgia Bar Journal

December 2006 ■ Volume 12 ■ Number 4

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FOR JOBS AND
DECENT HOUSING

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Area	Percentage
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Area	Percentage

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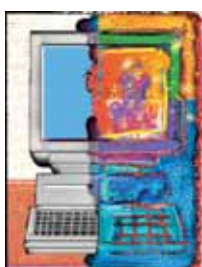


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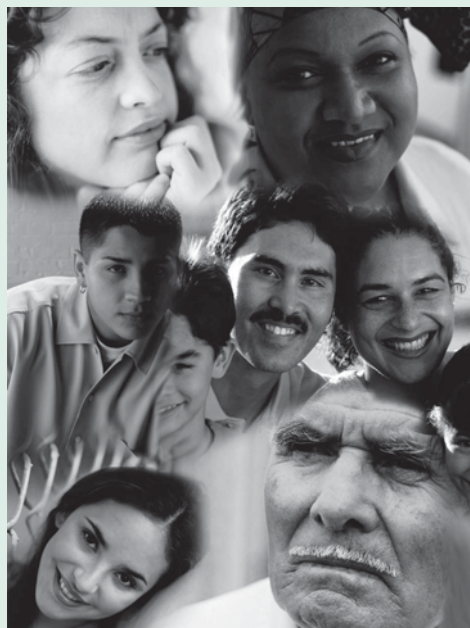
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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole,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

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by Jay Cook

Photo by Hollis Ellison

Not Yet Time to Rest Upon Our Laurels

This election season, we saw the first positive results of our communications campaign defending the independent judiciary. Threats

to judicial independence rippled through ballot boxes across America, but the voters spoke loud and clear: they told us they will listen if we talk to them about American values; they told us they do not want special-interest factions tam-

pering with our courts; and they told us they do not want biased judges interpreting our laws.

But it's not yet time to rest upon our laurels.

"In Washington and far beyond the Beltway, this new war on the courts is being waged through legislation and political intimidation, fueled by special-interest

campaigns of rage," asserted Bert Brandenburg, executive director of Justice at Stake, on Slate.com last year. Justice at Stake is a nonpartisan campaign working to keep our courts fair and impartial. Brandenburg gave a stirring talk to our Board of Governors this fall about the

organization's efforts and the importance of keeping up our values-based messaging.

The day before the election, Sandra Day O'Connor expressed her fears about growing political attacks on judges. "I'm increasingly concerned about the current climate of challenge to judicial independence," the former Supreme Court justice told state judges from around the country on Nov. 6 in California. "Unhappiness with judges today is at a very intense level. The executive

and legislative branches have become the attackers, so the main defenders are going to have to be the people of this country, with lawyers taking the lead."

Supreme Court of California Chief Justice Ronald George, who introduced O'Connor, warned that no state is immune from some of the trends undermining judicial independence.

We saw plenty of evidence of this on Nov. 7:

"The elections affirmed what we already knew: Georgians have traditional values. They believe in the sanctity of the Constitution and of independent and impartial courts."

- In Kentucky's Western district, voters defeated a judicial challenger who misled the public by claiming his opponent had released rapists from prison.
- In Nevada, voters unseated an incumbent justice after being swayed by the negative propaganda broadcast by a front group called Nevadans Against Judicial Activists.
- In Georgia, special-interest money produced "one of the most negative judicial campaigns in American history," according to a national news report.

"While court campaigns have been getting increasingly strident for the past several years, 2006 may set a new low for how these campaigns are being conducted," said James Sample, counsel at the Brennan Center for Justice at NYU. "Campaigns of this sort only further erode public trust in America's courts."

But the political threats to our courts don't stop there.

Now, special interests in Georgia are discussing a Constitutional Amendment for the 2008 ballot that would return us to partisan elections for judges! Why? Wasn't the nonpartisan election distasteful enough? The same special interests are talking to our elected officials about adding two more seats to the state Supreme Court. Why? Did they figure out it's easier to pick biased justices than to try to get them elected? Our representatives are too smart to let that happen.

The elections affirmed what we already knew: Georgians have traditional values. They believe in the sanctity of the Constitution and of independent and impartial courts. In a statewide opinion poll conducted last year by the State Bar of Georgia, nine out of 10 respondents *strongly agreed* with the following statements:

- Everyone should have access to equal justice under our court system.

- Judges should be impartial and free from political interference.
- No one should be above the law and the courts should make that possible.

These are bedrock values. They won't be shaken by profit-hungry special interests or politicians who can be bought. And they won't be taken from us without a fight!

In South Dakota, voters soundly defeated the "JAIL 4 Judges" initiative. Only 10 percent of voters backed the measure that would have stripped judicial immunity and established an unaccountable fourth branch of government to intimidate judges. The measure called for a citizens' grand jury that could authorize lawsuits and criminal prosecutions against judges based on their rulings.

But the proposal, which met opposition from every side of the political spectrum in South Dakota, may rear its ugly head again. Nevada was mentioned as the likely next target state on CNN. Proponents of JAIL are now demanding a criminal investigation in South Dakota, claiming the state attorney general used his office and influence to defeat the measure.

In Colorado, voters defeated Amendment 40, which sought to impose term limits on the state's judiciary. An amendment to the Colorado Constitution, the initiative sought to:


- Reduce the term of Supreme Court justices from 10 years to four years;
- Reduce the term of appellate judges from eight years to four;
- Require appellate court judges who have already served 10 years or more to leave their current position in January 2009;
- Require appellate court judges who are eligible to serve another term to appear on the November 2008 ballot for retention.

If the Amendment had passed, five of the state's seven high court justices would have been removed

from the bench within the next two years. The measure's defeat "is a huge credit to the broad coalition that supported the judiciary and opposed the term limits," said Rebecca Kourlis, former Colorado Supreme Court justice and now executive director of the Institute for the Advancement of the American Legal System.

Following the election, John Andrews, chairman of Limit the Judges and former Colorado Senate president, insisted this won't be his last effort to set term limits for judges: "We are not going away."

Neither are we. In fact, our values-based messages about fair and impartial courts, the Constitution, the founding fathers and the rule of law will be broadcast in newspapers, on radio and television, at civics groups, in the legislature, in the jury room, across the Internet and in the public schools. And we hope others committed to protecting the Constitution's promise of "justice for all" will join their voices with ours in the coming months and years.

We can lick 'em. But we have got to fight the fight we can win! And that means lawyers, judges and the public standing together on the bedrock of American values defending the sanctity of our courts and our Constitution. 

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

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by Cliff Brashier



Journey Through Justice

Instilling an Appreciation for the Rule of Law in our Youth

A national poll by the American Bar Association revealed that less than 60 percent of Americans could correctly identify the three branches of government and less than half understood

the concepts of separation of powers and checks and balances. Even more disconcerting was that 25 percent thought it was the role of the Judicial Branch to declare war.

U.S. Supreme Court Justice Anthony M. Kennedy, during his keynote address at the Bar Center dedication ceremony in 2005, said "One of the greatest duties of any generation, and particularly of its bar, is to transmit the idea of freedom and the rule of law to the next generation." He urged bar leaders to use the Bar Center to invite young people to learn about the law. The State Bar has been doing just that.

Since the late 1970s, the Bar has been involved in a variety of law-related activities including the Law-Related Education Consortium (LRE), the High School Mock Trial competitions and the Law Academy. Recognizing a need to instill an appreciation of these principles in students of all ages, we have recently added Journey Through Justice—a new school tour program based on law-related education principles.

What exactly is LRE? The term can be defined as education for non-lawyers about the law, legal processes and the legal system. Its intention is not to influence students to become lawyers, but to increase knowledge of our laws and legal system; expand awareness and appreciation of the principles basic to our democratic society; and improve students' understanding of government, the judicial system and their rights and responsibilities as citizens.

The State Bar's YLD has been instrumental in the LRE effort. It has actively supported LRE through several institutions of higher education including Georgia State University, the University of Georgia and Georgia Southern University. In 1979, a YLD Committee worked

"Journey Through Justice, and all of our LRE activities are richer experiences for the students when our Bar members participate (you'll be surprised by how much you get out of it as well)."

with the Carl Vinson Institute of Government at the University of Georgia on a textbook for high school students. YLD members served as subject matter experts to write and edit the chapters of *An Introduction to Law in Georgia*, and have made significant contributions to several revisions since the original printing. This textbook has been used in Georgia schools since 1985. The YLD also partners with the Law-Related Education Consortium in the Vinson Institute on the annual "Teaching About Law in Georgia" workshops targeting secondary and middle school teachers.

Since 1988, the YLD, in partnership with the Georgia Bar Foundation, the Council of State Court Judges and others, has supported the Georgia High School Mock Trial Competition. Geared toward high school students, the mock trial competitions provide participants with the opportunity to learn the ins and outs of the legal system by preparing and trying fictitious cases in a courtroom setting. During the competitions, the students play the roles of attorneys and witnesses based on the evidence and witness statements. Coached by volunteer attorneys and teachers, the students get the opportunity to expand their speaking, writing, reading and analytical skills, while learning about the judicial system. To date, more than 1,200 teams from Georgia's public and private schools have participated in the competitions.

Complementing the Mock Trial program, the Law Academy is a three-day program offering intensive instruction on trial procedure for mock trial team leaders. Held at the University of Georgia each fall, the Academy is intended to prepare team leaders for the upcoming mock trial competitions. This year 40 high school students from across Georgia benefited from the instruction of volunteer litigators who serve as the faculty. The Law Academy wraps up with the administration of the "Student Bar Examination," which tests the stu-

dents' knowledge of mock trial procedures and the rules of evidence.

While these programs have been tremendously successful, we will make a huge leap forward in enhancing the public's appreciation of the rule of law with this year's launch of Journey Through Justice at the Bar Center. With this program, lawyer docents lead groups of students through four law-focused exhibits and interactive exercises (see sidebar page 24). The field trips have been extremely well received by both teachers and students. I believe, of all of our educational efforts, this one has the greatest potential to reach the most students. More than 500 students have already taken the tour in the testing phase alone.

The success of the program can largely be attributed to the dedication of Marlene Melvin, the program coordinator. A retired social studies teacher, Marlene has been a staunch supporter of LRE since 1968, when she taught the first high school law course in Georgia. In 1995, Marlene coached Georgia's National Champion Mock Trial Team. With assistance from focus groups of civics teachers, she is responsible for the development of Journey Through Justice and its associated materials, including dozens of grade-appropriate lesson plans and mock trial scripts. We are fortunate to have such a knowledgeable educator leading us in this endeavor.

The launch of this program is particularly timely. It dovetails perfectly with the new curriculum for K-12 developed by the Georgia Department of Education that will go into effect this year. Called the Georgia Performance Standards, this curriculum emphasizes the following:


- Critical thinking skills
- Problem solving abilities
- Oratory skills
- Ability to connect across disciplines

This is what LRE already does. Because Journey Through Justice's

curriculum satisfies many of the mandated civics requirements, it is an attractive field trip option for teachers. It also provides teachers with the opportunity to bring their students into a dynamic environment to participate in a unique learning experience, while still satisfying their curriculum requirements. Each teacher who has brought a class here has wanted to immediately book another visit for other students.

Journey Through Justice, and all of our LRE activities are richer experiences for the students when our Bar members participate (you'll be surprised by how much you get out of it as well). Right now, we are in need of attorney coaches for the High School Mock Trial competitions and docents to lead the tours. We, and no doubt Justice Kennedy, appreciate your help in making the law come alive for our youth.

For more information about volunteering with the Mock Trial teams please contact Stacy Rieke at 404-527-8779 and to volunteer as a docent, please contact Marlene Melvin at 770-267-3309.

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

YLD Working Diligently

One of the primary duties of the president-elect of the Young Lawyers Division is to select the locations of and plan the meetings for the YLD for the following Bar year. It's not as easy as it sounds. A trip to the beach or maybe the mountains? The possibilities are endless.

I pondered these decisions at great length during the late summer months of 2005. Then Hurricane Katrina hit the Gulf Coast, spreading its destruction and devastation from the Bahamas all the way to Louisiana. After the dust began to settle and the full impact of the hurricane became more evident, it was an easy decision to hold the Spring 2007 YLD meeting in New Orleans, April 26-29.

We have all heard the stories and viewed the footage of the horrific devastation caused by the hurricane. Hurricane Katrina was the costliest and one of the deadliest hurricanes in the history of the United States. The hurricane was responsible for more than \$80 billion in damage and

lead to the deaths of 1,836 people, almost 1,600 of which were Louisiana residents. With 125 mph winds and eight-10 inches of rain, Hurricane Katrina caused a failure of New Orleans' levee system, resulting in the flooding of more than 80 percent of the city and its neighboring parishes. The economic devastation of Hurricane Katrina continues to impact the city.

As with Sept. 11 and other disasters, ordinary American citizens responded to help those impacted by Hurricane Katrina. Among those answering the call for help were lawyers from all across Georgia, including many members of the YLD. Efforts of YLD mem-

bers across the state included seeking out donations of necessary items to local shelters, hosting dinners to feed evacuees, providing legal services to evacuees and the numerous nonprofit organizations providing relief and providing continuing legal education to Georgia attorneys on how to best assist those in need.

Although more than a year has passed since Hurricane Katrina, the physical and economic effects still persist. The YLD is continuing its efforts to

assist in the rebuilding of New Orleans and its economy by working on several projects to be held in conjunction with our Spring Meeting. The YLD will celebrate Fat Tuesday with a Mari Gras Casino Night on


"In addition to our efforts assisting victims of Hurricane Katrina, I assure all members of the State Bar that many of the 27 YLD committees are working diligently on numerous projects aimed at providing service to the public and the Bar."

Feb. 20, at Paris on Ponce's Le Moulin Rouge in Atlanta. The event is open to all members of the Bar and will feature good food and drink, casino action and a silent auction. All proceeds from this fundraiser will be donated to Tipitina's Foundation, a nonprofit organization rebuilding public school music programs in the New Orleans area. In 2005, Tipitina's Foundation raised more than \$500,000 for the purchase of new instruments for music students. I certainly hope you will support the YLD in its efforts to help New Orleans by attending this wonderful event. If you are interested in sponsorship opportunities or contributing items for the silent auction, please contact Deidra Sanderson at deidra@gabar.org. To learn more about Tipitina's Foundation visit www.tipitinas-foundation.org.

In coordination with the State Bar of Louisiana's YLD, our YLD members will roll up their sleeves for a service project during the Spring Meeting. Our efforts will culminate with the presentation of funds raised by the YLD to Tipitina's Foundation at the annual "Instruments A' Comin'" event on April 30.

In addition to our efforts assisting victims of Hurricane Katrina, I assure all members of the State Bar that many of the 27 YLD committees are working diligently on numerous projects aimed at providing service to the public and the Bar. I wish I could mention each and every one of them individually but unfortunately I am limited by space. However, I would be remiss if I did not update you on the Georgia High School Mock Trial Competition, a program organized by one of the oldest and most successful YLD committees, the YLD High School Mock Trial Committee. The committee, lead by HSMT Coordinator Stacy Rieke and Committee Co-Chairs Tania Trumble and Sally Evans, has worked tirelessly to prepare for this year's competi-

tion. High school mock trial teams across Georgia have received the 2007 civil case materials that will form the basis of the 19th mock trial season in Georgia. Teams will work for more than 10 weeks preparing the case for trial and regional competitions will be held in 16 cities around the state at the end of February, culminating with the state finals competition in Lawrenceville, Ga., March 10-11. Some teams still need coaches and the committee always needs judging panel volunteers for both the regional and state levels of competition. I urge you to give just a few hours out of one day to volunteer for this wonderful event. To volunteer, please contact Stacy Rieke at mocktrial@gabar.org or contact the Mock Trial Office directly at 404-527-8779.

As always, if you have ideas for new programs, suggestions as to how we can improve YLD services, or if I can help you in any way, please do not hesitate to contact me. I hope to see all of you in Savannah at the Midyear Meeting, at the Mardi Gras Casino Night and at the YLD Spring Meeting in New Orleans! 

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Georgia's Child Support Guidelines

Effective January 1, 2007

by Randall M. Kessler and Lauren M. Kushkin

In the 2006 legislative session, the Georgia General Assembly passed Senate Bill 382, which dramatically revised the entire structure of how child support is determined in the State of Georgia. The new statute, codified at O.C.G.A. § 19-6-15, will go into effect on Jan. 1, 2007. Child support will now be based on an “income shares” model, which takes into account the gross incomes of both parents,¹ as opposed to the previous child support guidelines (in place for almost 20 years) where the amount of child support was determined based solely upon a percentage of the non-custodial parent’s gross income.

By using an income shares model, Georgia is now in line with 36 other states that use this model as a basis for their child support guidelines. With the implementation of the new law, practitioners, judges and liti-

gants alike are faced with a new system that requires complicated mathematical formulas to determine the exact amount of child support to be paid. Thus, either manual or electronic worksheets are now necessary to determine a child support obligation.²

The goal of the legislature in revamping the child support guidelines was not only to improve the guidelines that were originally in place, but also to achieve the public policy of providing children whose parents are no longer married with the same economic standard of living as children with married parents of similar financial means.³ Despite the various changes, it is important to recognize that the General Assembly intended the new guidelines to be “guidelines only.” In fact, the statute specifically states this while also emphasizing that any court applying the guidelines shall not abrogate its responsibility in making a child support determination based on the facts and evidence presented at hearing or trial.⁴ It remains to be seen whether the new system will effectively achieve the goal of improving the process for determining child support in Georgia. This article will explore the new calculation system and will highlight some of the significant changes under the new law.

Calculations

The new process for calculating child support involves nine separate steps. The first step is to deter-

mine the monthly Gross Income (terms capitalized in this article are defined in the statute) of *each* parent.⁵ Next, each parent's Gross Income should be adjusted to arrive at the Adjusted Income of such parent.⁶ Adjustments must be made for any of the following: one-half of self-employment taxes;⁷ pre-existing child support orders;⁸ and any theoretical child support orders for qualified children.⁹ Once the adjustments, if any, are made, the third step is to combine the Adjusted Incomes of each parent to compute the Combined Adjusted Income.¹⁰ The Combined Adjusted Income is the key amount that is used to determine the Basic Child Support Obligation, which is the fourth step. The Basic Child Support Obligation is the amount presumed under the statute to be the appropriate amount of child support provided by both parents prior to the consideration of any other factors.¹¹ A Child Support Obligation Table—codified in the new regulations at O.C.G.A. § 19-6-15(o)—is used as a reference for determining the Basic Child Support Obligation corresponding to the number of children in a family and the Combined Adjusted Income of the parents. The table outlines monthly child support for up to six children in monthly increments for Combined Adjusted Incomes between \$800 and \$30,000 per month.

After the Basic Child Support Obligation is determined, calculating each parent's pro rata share of such obligation is the fifth step.¹² Next, the additional expenses for the cost of health insurance and work-related child care costs are calculated for each parent in accordance with his or her pro rata share of child support. The seventh step is to combine those amounts with each parent's pro rata share of the Basic Child Support Obligation, which creates the Adjusted Child Support Obligation.¹³ However, if either parent is already paying, or will be paying the health insurance and work-related child care costs,

then he or she will receive a credit for that expense. Step number eight is determining the Presumptive Child Support Amount by assigning or deducting such credit, as appropriate, to or from the non-custodial parent's Adjusted Child Support Obligation.¹⁴ The Presumptive Child Support Amount is the child support obligation owed, unless certain deviation factors apply. The final step is applying the deviation factors. The Final Child Support Order is the Presumptive Amount of Child Support as increased or decreased by the deviations.

eliminated the "special circumstances" provision and have replaced it with specific deviations, which are enumerated in a non-exhaustive list. The section of the statute titled "Grounds for Deviation" under the new guidelines provides a detailed guide to practitioners and judges as to how and when the deviations should be applied.¹⁶ Specifically, in making a determination for a deviation from the Presumptive Amount of Child Support, the statute provides that primary consideration is to be given to the best interest of the child for whom the support order is



Deviations and How Applied

The previous child support guidelines had a provision that allowed for a variation of the child support obligation if the trier of fact determined that certain "special circumstances" made the Presumptive Amount of Child Support either excessive or inadequate.¹⁵ The new guidelines, however, have

being determined.¹⁷ Furthermore, when ordering a deviation in a child support award, the judge, after considering all of the available income of both parents, must make written findings that the amount of child support awarded is reasonably necessary to provide for the needs of the child. However, under the new guidelines, a deviation will not be entered if the reduction in child support will "seriously

impair” the ability of the custodial parent to provide and maintain what is considered to be by the court or a jury minimally adequate housing, food, clothing and other basic necessities.¹⁸

Certain factors that the legislature determined to be relevant enough to codify as specific deviations include, but are not limited to, the following: either high- or low- income of the parents; additional health-related insurance; life insurance; child and dependent care tax credit; travel expenses; alimony; mortgage; permanency plan or foster care plan; extraordinary expenses; nonspecific deviations; and parenting time.¹⁹ The new statute considers parents to be high-income parents if they have a Combined Adjusted Income that exceeds \$30,000 per month. When setting child support for high-income parents, the court is required to set the Basic Child Support Obligation at the highest amount set forth on the child support obligation table. Then the trier of fact (whether a judge or jury) can consider an upward deviation in the monthly child support obligation to create an award that is not only appropriate, but also consistent with the best interests of the child.²⁰

The new guidelines also provide for deviations in the Presumptive Child Support Amount for low-income parents. A low-income parent is defined under the statute as a parent whose monthly gross income is at or below \$1,850.²¹ If the non-custodial parent is the low-income parent and he or she requests a devi-

ation, the court or jury is to determine if that person would be financially able to pay a child support order, while at the same time maintain a minimum standard of living. The minimum standard of living is determined by calculating a self-support reserve, which essentially deducts \$900 from the non-custodial parent’s adjusted income.²² If the resulting amount is lower than his or her pro rata share of the Presumptive Amount of Child Support, then the trier of fact can deviate to this amount. However, the minimum amount for a child support order is \$75 per month, or \$900 per year.²³ When deviating downwards for a low-income parent, the court or the jury must consider how it will financially impact the custodial parent’s household. The statute further states under this section that under no circumstances should the child support awarded impair a custodial parent’s ability to maintain adequate food, housing, clothing and basic necessities for the minor child.²⁴

Although the obligation table includes average child-rearing expenses for families, the statute allows for a deviation in child support for extraordinary expenses of the child. The extraordinary expenses can include extraordinary educational expenses associated with special needs education or private schooling, special expenses incurred for child rearing, and extraordinary medical expenses that are not covered by insurance.²⁵ The statute specifically notes that

special expenses for child rearing include summer camp, music or art lessons, travel, school sponsored extracurricular activities, and “other activities intended to enhance the athletic, social or cultural development of the child.”²⁶ As each family’s circumstances are unique, any deviation for extraordinary expenses is to be considered on a case-by-case basis. The reasoning is to ensure that this deviation is reserved for individual families who are actually incurring the additional expenses.²⁷

Additional Changes in the New Statute

Gross Income

In addition to completely restructuring how child support is calculated, the new guidelines also provide many significant changes that will affect practitioners and litigants alike. A major question that practitioners will need to address under the new law is what is to be considered “Gross Income” for child support purposes. The new statute provides that income from any source (before any tax or other deductions are applied) whether earned or unearned shall be included as Gross Income.²⁸ Unlike the old law, which stated that Gross Income included “100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other incomes, except need-based public assistance,”²⁹ the new statute is much more detailed and specifically lists 21 items that must be included as Gross Income for child support purposes. Included in the list are overtime, bonuses, commissions and tips, disability or retirement benefits and assets that are used for the support of a family.³⁰ In addition, fringe benefits are to be considered income if the benefits significantly reduce the parent’s personal living expenses.³¹ Although both the old guidelines and the new statute exclude needs-based income as Gross Income for

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child support, the new statute expands the exclusions so that now, any child support received for other children, as well as a non-parent custodian's income are not included in the definition of gross income.³²

Loss of Income

The new guidelines address and codify a variety of situations that often arise in child support cases. For example, the new guidelines have provisions that specifically address what happens when a parent suffers an involuntary loss of income. When a parent is unable to afford his or her child support obligation due to an involuntarily termination from employment that results in a loss of income of at least 25 percent, the guidelines afford that parent some protection.³³ In particular, once a parent files a petition for modification of his or her support obligation, the portion of unpaid child support attributable to the lost income shall not accrue

from the date of filing the petition for modification.³⁴ In other words, an arrearage which accrues from the date of filing for unpaid child support in this situation may be "forgiven" if the loss of income is found to be involuntary. However, it is important to note that the statute specifically provides that a termination of employment will not be considered involuntary if the parent has left his or her most recent employer of his or her own volition without good cause.³⁵

Unemployed or Underemployed

To the contrary, the new guidelines afford protection to a parent when the other parent becomes voluntarily unemployed or underemployed. In those situations the court is required to determine the reasons for the parent's occupational choices. In doing so, it must assess the reasonableness of the parent's decisions in light of the parent's responsibility to support

his or her child. Most importantly, the court must determine whether the parent's choices actually benefit the child. The provision in the statute addressing this issue is broad, however, and reaches far beyond a parent's occupational decision that may be motivated solely by an intent to avoid payment of child support. Rather, the law provides that a parent can be voluntarily underemployed or unemployed based on "any intentional choice or act that affects a Parent's income."³⁶ In making a determination of voluntary unemployment or underemployment the court is to examine whether a parent is capable of applying his or her education, skills or training with reasonable effort to produce an income. The statute then provides a non-exhaustive list of factors that the court is to consider. Some of the factors to be considered include the parent's employment history, education and training, health and ability to work out-

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side the home, and, the parent's role as a caretaker of the child. The statute further adds as factors for consideration whether the parent was a full-time caretaker immediately prior to the separation of parents, as well as the length of time that the parent was out of the workforce to care for the child.³⁷

Imputing Income to a Parent

Another major change created under the new guidelines relates to imputing income to a parent. Under the prior statute, imputing income to a party due to a suppression of income was listed as one of the special circumstances for modifying a child support order. However, the new statute provides the trier of fact, when determining a party's income for an initial child support order, with the authority to impute income to a parent if he or she fails to provide any reliable evidence of income, and the court or jury has

no other reliable evidence of that party's income.³⁸ If income is imputed under this provision, it will be based upon a 40 hour work week at minimum wage. In the event that the other party believes that the "imputed income" should be higher, the party contesting the amount has 90 days to file a motion for reconsideration wherein a hearing will be held on the matter.³⁹ Additionally, in a case for modification of an existing child support order, if a party refuses to produce reliable evidence of income and the court has no other reliable evidence of that parent's income or income potential, the court may enter an order to increase the child support obligation of the parent failing to produce the evidence. The increase may be by an increment of at least 10 percent per year of that parent's pro rata share of the Basic Child Support Obligation for each year since the order was last entered or modified.⁴⁰

Modifications

Much discussion was had in the legislature and in committee meetings about the required threshold for filing a modification action. In fact, early versions of the new legislation suggested that the mere enactment of the law would constitute a change of circumstances to allow a parent to file an action to modify child support. The final, passed version of Senate Bill 382, however, did not include such language, and the mere enactment of the law will not give a parent the right to modify his or her child support obligation. Similar to the old law, a first time modification under the new law requires that a parent show a "substantial change in either Parent's income and financial status or the needs of the Child."⁴¹ This showing must be made regardless of the length of time since the date of the establishment of the initial child support award. For a second or additional modification, under the new law a parent must wait for

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a period of two years from the date of the final order on a case he or she previously filed for modification before he or she may file another petition for modification of the same child support.⁴² This two year waiting period, however, can be waived under certain circumstances. Specifically, such a waiver is permitted if the non-custodial parent fails to exercise visitation, exercises a greater amount of visitation than was set forth in the order, or if the modification is based on an involuntary loss of income.⁴³ The new statute also provides for a phase-in of the new child support order if there is a difference of at least 15 percent between the new child support award and an award entered prior to Jan. 1, 2007. The phase-in is limited to a period of one year when the difference between the two orders is at least 15 percent but less than 30 percent. If the difference between the two orders yields a 30 percent or greater change, then the phase-in period may last for up to two years.⁴⁴

Credit for Other Children

Another difference under the new law is that a parent who has an existing child support order for another child will receive a credit or adjustment to his or her Gross Income for purposes of calculating his or her child support obligation for the child at issue. Under the previous guidelines it was considered to be a special circumstance,⁴⁵ which allowed for a discretionary reduction of child support. However, now it is considered to be a mandatory adjustment. The statute specifically provides that a parent's monthly Gross Income shall be adjusted for a current, pre-existing child support order, so long as the order has been in place for a minimum of 12 consecutive months immediately prior to the hearing.⁴⁶ The maximum credit that a parent is entitled to receive for a pre-existing order is an average of the total amount of current child support actually paid over the previous 12 months.⁴⁷

A completely new concept under the new law applies to situations where a parent does not have an actual pre-existing child support order, but still provides support for another child living in the parent's home. In this situation, the new guidelines allow for the parent to receive a credit in his or her child support obligation for the support of the other child. The statute refers to this type of support as a "theoretical child support order,"⁴⁸ and it only applies to a child who is considered to be a "Qualified Child." A Qualified Child is a child that lives with the parent and for whom the parent is legally responsible. A stepchild or another minor in the home that the parent does not have a legal obligation to provide for will not be considered a "Qualified Child" under the statute.⁴⁹ The theoretical child support order is a discretionary adjustment that may be considered when calculating a parent's child support obligation. In order to have a theoretical child support order considered, the parent must submit documentary evidence of the parent-child relationship to the court. Adjustments to a parent's income may be considered in situations where the failure to consider the support for the other child would cause substantial hardship to the parent. However, any adjustment to a parent's income must be based on the best interests of the child for whom the child support order is being awarded.⁵⁰ If the court determines that an adjustment is warranted, then the Basic Child Support Obligation for the other child living with the parent shall be determined based upon that parent's monthly Gross Income. Seventy-five percent of the Basic Child Support Obligation for the other child will be subtracted from such parent's monthly Gross Income for the child support order at issue.

Deductions for Child Care and Health Insurance

Another major point to highlight in the new child support guidelines is the fact that work-related child

care costs and costs of health insurance premiums are automatically deducted and accounted for in the child support calculations. The statute specifically defines work-related child care costs as costs that are necessary for a parent's employment, education or training and are appropriate to the parent's financial abilities and to the lifestyle of the child if the parents and child were living together.⁵¹ However, the value of services for a parent who stays at home to provide child care, as well as the value of child care to a parent who is provided such care free of charge, will not be considered as adjustments to the Basic Child Support Obligation.⁵² For health insurance premiums, only the portion of the premium actually attributable to the child shall be considered. Furthermore, any employer-paid costs will not be included.⁵³ Once the total amount of child care costs and health insurance premiums are calculated, they are added as adjustments to the Basic Child Support Obligation as additional expenses and then are divided between the parents in proportion to their respective child support obligation.⁵⁴

Miscellaneous Changes

Senate Bill 382 included some additional noteworthy changes that may significantly affect the practice of domestic relations law when dealing with child support issues. With respect to the interest rate on unpaid child support, the new law reduced the interest rate on unpaid child support from 12 percent to seven percent. Interest now starts accruing 30 days from the date that the payment is due.⁵⁵ Furthermore, courts now have the discretion to either assess or waive the past interest due. In making such determination, the court is required to consider whether good cause existed for the non-payment of support, whether the payment of interest would result in a substantial hardship for either parent, and whether paying interest would prevent the parent's current ability to pay child support.⁵⁶

Another change under the new guidelines is the role of a jury in making a child support determination. Under the old law, the jury could make all economic decisions pertaining to child support. With the implementation of Senate Bill 382, juries, when requested by either party, now only determine the Gross Incomes of each parent and whether a deviation factor applies.⁵⁷ The jury is required to return a special interrogatory determining each party's Gross Income. Then, from the jury's verdict, the court determines the Presumptive Child Support Amount, as well as the identity of which parent will be deemed the custodial versus non-custodial parent. At that point the jury will determine whether any deviations apply. For each deviation, if any are found, the jury is required to return a special interrogatory.⁵⁸

Foreseeable Problems/ Issues with the New Law

Although it is still too early to tell what problems will arise and how the new law will actually affect individuals with their child support awards, litigation can be anticipated as a result of a few loopholes in the drafting of the statute. For example, when dealing with a modification, the new law requires that a parent must show a substantial change in circumstances in order to have a modification of a child support order. However, the

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statute does not define what is to be considered a “substantial change.” Presumably, previous case law will provide guidance as this standard is very close to the previous standard. Additionally, the parenting time deviation allows people to use the amount of parenting time to reduce their child support obligation, but there is no automatic calculation or offset for a certain number of days spent by the non-custodial parent with the child. Some other areas of potential dispute involve the deviations for alimony and mortgage. The law provides that paying alimony can be a reason for a deviation in a child support obligation, thus requiring a determination of alimony prior to making a child support determination. Plus, a parent can also receive a deviation in child support if the non-custodial parent is paying the mortgage or has provided a home at no cost to the custodial parent where the child resides.⁵⁹ Yet this can result in complications if the custodial parent is awarded the equity in the marital residence in the property division. These are just a few of the potential problems under the new law.

Conclusion

From a practitioner’s standpoint, calculating child support is much more complicated and time consuming than it has been under the previous guidelines. The detailed law will force practitioners to study and learn the nuances to ensure that each client is receiving the best representation possible, as the new law involves much more than simply plugging numbers into a computer program. While the process of calculating child support under the new guidelines may sound complicated, the best advice is to go to the internet calculators and practice.⁶⁰ After we all become familiar with the new process, hopefully the new law will achieve its goal of improving how child support is determined in the State of Georgia and ensuring that the ultimate award of child support

will automatically consider many variables, which in the past were perhaps considered in a more discretionary manner. 



Randall M. Kessler is the founder of Kessler, Schwarz & Solomiany, P.C., a domestic relations law firm in Atlanta, Ga. Kessler is the National Chairperson for the Family Courts Committee of the Family Law Section of the American Bar Association, serves on the executive board of the Family Law Sections of the American Bar Association and the State Bar of Georgia and is the former chair of the Family Law Section of the Atlanta Bar Association. He also serves as editor of the Family Law Review for the Family Law Section of the State Bar of Georgia.



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Endnotes

1. Other factors are considered, which will be explored more in-depth below.
2. The Office of Child Support Services offers three different versions of the worksheets: (1) for pro-se litigants; (2) for practitioners; and (3) for courts/administrative agencies. The Office of Child Support Services makes each of these worksheets, as well as an excel spread sheet program, available for download from the Internet at <http://ocse.dhr.georgia.gov/portal/site/DHR-OCSE>

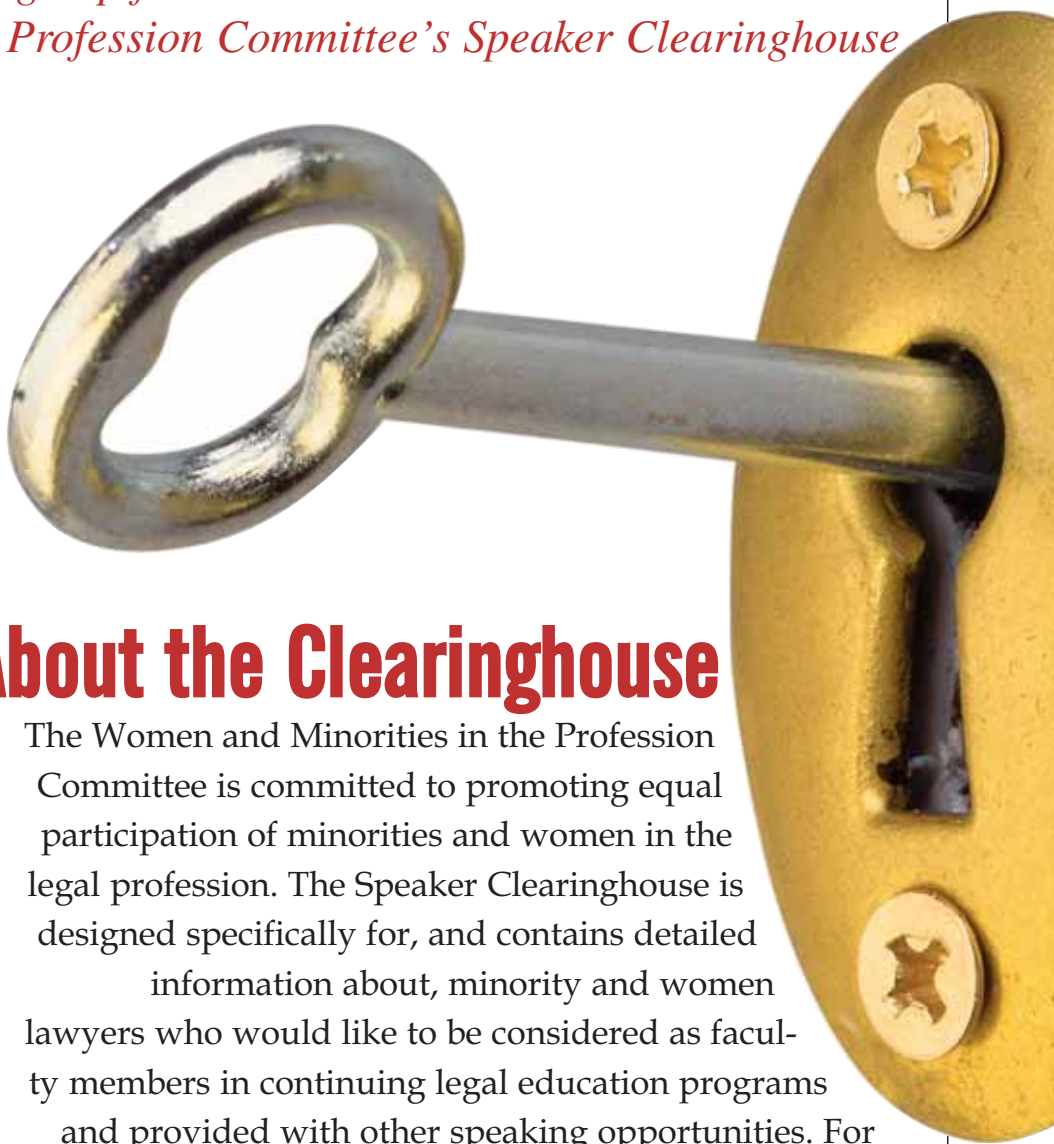
(the office of Child Support Services Constituent Portal) or <http://www.georgiacourts.org/childsupp.html> (Child Support Commission Website).

3. O.C.G.A. § 19-6-15(C)(1) (2007).
4. *Id.* § 19-6-15(d).
5. *Id.* § 19-6-15(b)(1).
6. A Theoretical Child Support Order is a hypothetical child support order for qualified children, which allows for the Court to determine an amount of child support as if a child support order existed. *Id.* § 19-6-15(a)(22). This aspect of the new law will be explored in greater detail under the Subsection of this Article entitled “Credit for Other Children.”
7. One-half of a parent’s self-employment and Medicare taxes is calculated by reducing the parent’s monthly gross income 6.2 percent for OASDI (federal old age, survivors, and disability insurance), and 1.45 percent for Medicare.
8. A Pre-Existing Order is defined as “[a]n order in another case that requires a Parent to make child support payments for another Child, which child support the Parent is actually paying.” O.C.G.A. § 19-6-15(a)(18)(A).
9. *Id.* § 19-6-15(b)(2).
10. *Id.* § 19-6-15(b)(3).
11. *Id.* § 19-6-15(a)(3).
12. The pro rata share is determined by dividing the Combined Adjusted Income into each parent’s adjusted income. The resulting numbers are each parent’s pro rate percentage of the basic child support obligation. *Id.* § 19-6-15(b)(5).
13. *Id.* § 19-6-15(b)(6).
14. *Id.* § 19-6-15(b)(7). Some commentators break this step into two steps—the eighth being the calculation of the credit and the ninth being the assignment or deduction of the credit—to create a 10-step process for determining the child support amount.
15. *Id.* § 19-6-15(c) (2006).
16. *Id.* § 19-6-15(i) (2007).
17. *Id.* § 19-6-15(i)(1)(A).
18. *Id.* § 19-6-15(i)(1)(C).

19. *Id.* § 19-6-15(b)(8)(A)-(K);
see also *id.* § 19-6-15(i)(2)(A)-(K).
20. *Id.* § 19-6-15(i)(2)(A).
21. *Id.* § 19-6-15(i)(2)(B).
22. *Id.* § 19-6-15(i)(2)(B)(i).
23. *Id.* § 19-6-15(i)(2)(B)(ii).
24. *Id.* § 19-6-15(i)(2)(B)(i).
25. *Id.* § 19-6-15(i)(2)(J)(i), (ii), (iii).
26. *Id.* § 19-6-15(i)(2)(J)(ii).
27. *Id.* § 19-6-15(i)(2)(J).
28. *Id.* § 19-6-15(f)(1)(A).
29. *Id.* § 19-6-15(b)(2) (2006).
30. *Id.* § 19-6-15(f)(1)(A)(i)-(xxi) (2007).
31. *Id.* § 19-6-15(f)(1)(C).
32. *Id.* §§ 19-6-15(f)(2)(A), (C)
33. The new guidelines protect parents who not only suffer an involuntary termination of employment, but also experience an extended involuntary loss of average weekly hours, are involved in an organized strike, incur a loss of health, or have other, similar, involuntary adversity that results in a loss of income of at least 25 percent. See *id.* § 19-6-15(j)(1).
34. *Id.*
35. *Id.*
36. *Id.* § 19-6-15(f)(4)(D).
37. *Id.* § 19-6-15(f)(4)(D)(i)-(vi).
38. *Id.* § 19-6-15(f)(4)(A).
39. *Id.* § 19-6-15(f)(4)(C).
40. *Id.* § 19-6-15(f)(4)(B).
41. *Id.* § 19-6-15(k)(1).
42. *Id.* § 19-6-15(k)(2).
43. *Id.* § 19-6-15(k)(2)(A)-(C).
44. *Id.* § 19-6-15(k)(3)(A)-(B).
45. Special circumstances under the old child support statute are discussed above under the Section entitled "Deviations and How Applied."
46. O.C.G.A. § 19-6-15(f)(5)(B).
47. *Id.* § 19-6-15(f)(5)(B)(iii).
48. *Id.* § 19-6-15(a)(22); see also *supra* note 6.
49. O.C.G.A. § 19-6-15(a)(20).
50. *Id.* § 19-6-15(f)(5)(C).
51. *Id.* §§ 19-6-15(h)(1)(A), (h)(2)(A)(i).
52. *Id.* § 19-6-15(h)(1)(C)-(D).
53. *Id.* § 19-6-15(h)(2)(A)(i).
54. *Id.* §§ 19-6-15(h)(1)(E)-(F), (h)(2)(A)(ii)-(iii).
55. *Id.* § 7-4-12.
56. *Id.* § 7-4-12.1.
57. *Id.* § 19-6-15(C)(4).
58. *Id.*
59. *Id.* § 19-6-15(i)(2)(H).
60. See *supra* note 2.

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About the Clearinghouse

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

To search the Speaker Clearinghouse, which provides contact information and information on the legal experience of minority and women lawyers participating in the program, visit www.gabar.org.



Membership Has Its Advantages

Bar Center Facilities At Your Service

by Jennifer R. Mason

Atlanta attorney Lake Rumsey has found his perfect use for the Bar Center. He comes down to the centrally located facility at least twice a month to take depositions. From the adjacent parking deck (a free service provided to all Bar members), to the professional meeting room he reserves in advance, and all points in between, he is treated to an experience that he highly recommends to his fellow members.

Rumsey, a solo practitioner, appreciates the Bar Center because not only is it a seven-minute walk from his office, but it is more than that. "As a solo practitioner, my

office does not lend itself to the conveniences and facilities of a larger firm," he said. "The Bar Center makes available the additional resources I need to provide my clients with a positive experience, and the facility is top notch."

Judge Bonnie Oliver, a member of the Commission on Judicial Services and frequent user of the facility, echoed Rumsey's sentiments. She stated, "This is the nicest facility in the city. The staff is wonderful and you can't get a room of this caliber anywhere in Atlanta."

Since its dedication on Jan. 15, 2005, the Bar Center has been busy hosting events ranging from large ICLE seminars to committee meetings from other legal organizations to depositions and mediations for small firm and solo practitioners. ICLE alone hosted 101 events in 2005-06 and has 130 planned for 2006-07. Steve Harper, director of programs for ICLE, said, "The available technology is state of the art, and it has been designed to maximize the experience," referring in part to the four drop-down

screens in the auditorium and the wireless access that is available throughout the floor.

The Bar Center was created to serve as a professional gathering place for all members of the Bar, and everyone is invited to take advantage of its diverse offerings. Members in good standing may reserve any of the rooms free of charge (food, soft drinks and coffee are extra) on a first-come, first-served basis during business hours for law-related meetings. They can be used for client meetings, depositions, mediations and other professional uses. Members may park free of charge in the parking deck adjacent to the building for Bar functions, meetings downtown and after hours for special events when the deck is open.

The space, technological capabilities and amenities of the Bar Center were created with the needs of Bar members in mind. The two large auditoriums can accommodate up to 421 people, depending on the configuration. Each room has ceiling-mount LCD projectors, screens and state-

Journey Through Justice Takes Off

Play a part in educating students about your profession

by Caren Henderson

On Oct. 31, 30 lawyers gathered at the Bar Center to attend a docent training session for the Bar's new School Tour Program, Journey Through Justice. Designed to teach school children of all ages about the importance of the court system, the role of judges and lawyers, the role of public juries and the value of the rule of law, Journey Through Justice has been in a testing phase since the spring. Using lawyer docents to guide students through the tour marks the official start of this new initiative.

Journey Through Justice begins with a historical perspective as students are led through an authentic 19th Century replica of President Woodrow Wilson's law office, which was located in downtown Atlanta in 1882. Next, students visit the Museum of Law, which houses a variety of interactive exhibits including: The Bill of Rights; Cruel & Unusual? A Guide to Death Penalty Cases; Checks & Balances: The Role of the American Judiciary; Freedom's Call: The March for Civil Rights; and Famous Trials of Georgia and America.

After touring the museum, they move into a small theater to view *Reel Justice*, a 12-minute compilation of 70 Hollywood films, new and old, depicting a variety of law-related courtroom scenes and cases. Following the museum, the students move onto the Woodrow Wilson School of Law where they take part in a law lesson—homicide and torts are just some of the topics covered. As with any law school, the students are required to take a "bar exam." The tour ends with a visit to the Bar's Mock Courtroom where students participate in age-appropriate cases, playing the role of lawyers, witnesses and jury members.

"Having lawyers interacting and sharing their experiences with the students is a critical component of Journey Through Justice," said Marlene Melvin, the programs' curriculum and activities coordinator. "It brings a personal element and provides context for the information the students are learning during the tour." Melvin, a retired social studies educator, also developed dozens of lesson plans and mock trial scripts specifically calibrated for elementary, middle and high school students.

To date, the Bar has welcomed more than 500 students during the testing phase. Participation from lawyer docents is critical for Journey Through Justice to be successful. Tours take approximately four hours and lawyer docents are asked to guide two tours per year. For more information about becoming a lawyer docent, or about the program in general, please contact Marlene Melvin at 770-267-3309.



Bar Center facilities are available for a variety of functions including meetings, conferences and other law-related events.

of-the-art technology options, including video and phone conferencing and Internet broadcasts in addition to standard presentation capabilities.

Lawyers are invited to reserve the Mock Courtroom for witness and trial preparation. It provides seating for 42 spectators, 12 jurors, three judges and one court reporter in addition to the plaintiff and defendant tables complete with video and audio connections for laptops.

The six meeting rooms can seat six to 40 and have slightly different technological options depending on the function and meeting needs. Two conference rooms are also available. Each is outfitted with a projector and screens, video/audio connections for computers, and a conference table with integrated phone systems for conference calls.

In addition to the meeting space, there is a Lawyer's Lounge that provides a retreat from a busy day of CLE seminars, depositions or committee meetings. Check your e-




A Lawyer's Lounge provides a retreat from a busy day of CLE seminars, depositions or committee meetings. Check your e-mail or just sit back and relax.

mail or just sit back and relax. Six desks are furnished with laptop connectivity for those who have to work remotely. A computer is also available in the lounge for those who do not have a laptop, but must check e-mail (or the latest scores).

The possibilities for usage are numerous and are available to members by request. If you need to be in Atlanta and require meeting space, consider the Bar Center. Reserving a room (or two) couldn't be easier, and the benefits are priceless. Additionally, the Bar's South Georgia Office in Tifton is designed to give South Georgia lawyers greater access to Bar facilities. That office can be used for CLE seminars, ADR training, local bar meetings and depositions. Any lawyer or law-related group may use the facility for Bar-related purposes.

Bar Center operating policies and reservation forms for the Bar Center are available at www.gabar.org/conference_center/conference_center_reservations_and_policies/. You may

also call the Bar Center at 404-419-0155 for more information and to reserve a room. To reserve a room at the South Georgia facility in Tifton call 800-330-0446, ext. 775, or 229-387-0446. 



Jennifer R. Mason is the assistant director of communications for the State Bar of Georgia and is a contributing writer to the *Georgia Bar Journal*. She can be reached at jennifer@gabar.org.

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Dream Grant Decisions Meeting

Georgia Bar Foundation Awards Almost \$4.5 Million

by Len Horton and Rudolph Patterson

Since the beginning of the Georgia Bar Foundation, we have dreamed about the perfect meeting. Imagine what our annual grant decisions meeting would be like if we had the funds to support fully all worthy applicants. At our grant decisions meeting of Sept. 22, that dream came true.

In prior years the funds available typically limited grant awards to less than half of what was requested. Consequently, the meetings were challenging. Few trustees left those meetings happy because so many compromises had to be made. This year smiling faces leaving the meeting were everywhere.

A total of \$4,491,100 was awarded to 44 different applicants. Both the funds awarded and the number of applicants were records. This achievement was made possible because the IOLTA partnership of Georgia lawyers and Georgia bankers produced the best year in the history of the Georgia Bar Foundation.

According to the Georgia Bar Foundation's recently revised charter, one of the purposes of the Foundation is to support efforts to provide civil legal assistance to those who cannot afford legal representation.

Georgia Legal Services Program (GLSP) and the Atlanta Legal Aid Society (ALAS) together received \$2.4 million, which is the largest amount ever received from IOLTA funds in Georgia. These two awards are vitally important to both organizations because they are used to pay part of operating costs, namely salaries. Many other foundations deny grantees the right to use grant awards for operating costs.

GLSP and the State Bar of Georgia's Pro Bono Project received \$100,000, its largest grant ever. Under the leadership of Mike Monahan, this organization coordi-

nates statewide pro bono efforts to represent people who cannot receive assistance from GLSP or ALAS and who also lack resources to purchase legal representation in civil legal matters. Monahan also supports several committees of the State Bar including the Access To Justice Committee.

This grants meeting was the first time the board felt it could provide full funding for the Detention Project of Catholic Social Services. Under the management of Susan Colussy, this program assists immigrants in confinement in Georgia. Its award of \$84,600 will also support mentoring lawyers who are new to immigration law.

The Georgia Law Center for the Homeless endured a year of major change, losing both its executive director and its legal director. During this transition period



for the center, the Georgia Bar Foundation was impressed by the way the Law Center worked to reorganize itself. Consequently, the Georgia Bar Foundation was able to supply a record \$64,800 to help meet basic operating needs.

The Georgia Center for Law in the Public Interest (GCLPI) received \$50,000 to continue its efforts to assist low-income residents resist the illegal locating of landfills in their communities. Without GCLPI, environmental justice would be much closer to being mere words. Justine Thompson has been and continues to be a formidable advocate for these disadvantaged people.

The Law and Public Service Program of Mercer University received \$45,000 to assist its pro bono and public service program, which encourages Mercer law students to volunteer with GLSP and pro bono programs. Its efforts will be concentrated in Bibb and Houston counties.

Made famous by the extraordinary efforts and impressive results of Steve Bright, and now led by Lisa Kung, the Southern Center for Human Rights received \$40,000 for general operating expenses, the most ever awarded to them by the Georgia Bar Foundation. The Bar Foundation has been supporting this grantee annually since 1997.

A total of \$133,000 was awarded to seven different organizations that work to reduce domestic violence by obtaining temporary protective orders and offering other, mostly legal, assistance. From Halcyon Home in Thomasville north to the Columbus House for Battered Women and then to the Exchange Club Family Resource Center in Rome to Statesboro's Safe Haven and Albany's Liberty House and to McDonough's Flint Circuit Council on Family Violence to the Northeast Council on Family Violence near Toccoa and finally to Savannah's Safe House, the Georgia Bar Foundation did a lot to support efforts to protect mothers and their children. With sadness,

President of the Georgia Bar Foundation

Macon lawyer Rudolph Patterson was unanimously re-elected president of the Georgia Bar Foundation at the annual grant decisions meeting Sept. 22 in Atlanta. Past president of the State Bar of Georgia, Patterson presided over the single most successful year in the history of the Foundation.

"I am pleased to be thought worthy of serving as president of this distinguished organization for an additional year," Patterson said.

"I will redouble our efforts to increase our revenues in support of legal organizations helping people with limited resources. I will also try to expand our support to many law-related organizations in Georgia which may not know about the Georgia Bar Foundation and the assistance we can provide."

Funding for Georgia Legal Services Program and the Atlanta Legal Aid Society jumped from \$1.7 million in fiscal year 2005-06 to \$2.4 million for fiscal year 2006-07. That is an increase of \$700,000, which represents a 41 percent growth in one year. "I am pleased we could expand our support for legal services to those who cannot afford legal representation," said Patterson. "This is our primary purpose, and I thank the lawyers and bankers of this state for helping to increase our contribution to Steve Gottlieb and Phyllis Holmen so significantly." (Gottlieb is the executive director for ALAS, and Holmen is the executive director for GLSP.)

The Georgia Bar Foundation also expanded its ability to support other law-related organizations throughout the state. At the latest grant decisions meeting, 44 different organizations received a total of \$4,491,100. This included a grant of \$100,000 for the Truancy Intervention Project, \$64,800 for the Georgia Law Center for the Homeless and \$60,000 for Disability Law and Policy Center of Georgia. Rudolph Patterson is a partner in the law firm of Westmoreland, Patterson, Moseley & Hinson, which has offices in Macon and Albany. He was the president of the State Bar of Georgia in fiscal year 1999-2000.

The Georgia Bar Foundation is the charity named by the Supreme Court of Georgia to receive Interest On Lawyer Trust Accounts (IOLTA). By the end of this fiscal year, total cumulative IOLTA revenues since the program began in 1983 will surpass \$75 million in Georgia. These funds are used primarily to assist in the provision of legal services to people who cannot afford to pay for representation in legal matters both civil and criminal. In addition to GLSP and ALAS, other notable organizations supported include Safe House in Savannah, the Young Lawyers Division's High School Mock Trial Program, the State YMCA's Youth Judicial Program, the Georgia Innocence Project, the Athens Justice Project and many more.



the Georgia Bar Foundation notes the passing of Safe House leader Gail Reece-Wheeler. Under her leadership Safe House has become a major force to help abused women in the Savannah area.

Programs to help children in various ways received significant support during this meeting. The Georgia Bar Foundation awarded a total of \$450,100 to an impressive group of organizations focused on children.

Keeping a child in school typically is keeping that child out of trouble. Enter Terry Walsh's Truancy Intervention Project (TIP). Begun in Fulton County,

agony of the courts. We will never forget reaching then Superior Court Judge Beth Glazebrook on Bar Foundation business in her chambers at 7 a.m. on the telephone and hearing her in tears. She explained that within two hours she had to decide who got custody of a little boy, and she knew this would devastate one of the parents. She said this was the toughest decision of her life. Apart from wanting the world to know how much a judge really cares, we are pleased to report that guardian ad litem programs have received significant support from the Georgia Bar Foundation.

Foundation decided to recognize and support the coordinated effort.

Another court dealing with a related problem is the recipient of a \$20,400 grant award. The Hall County Family Treatment Court deals with drug-addicted parents facing the loss of custody of a child. The award is to be used to provide legal representation and counseling to parents eligible for the Family Treatment Court.

The Golden Isles Children Center in Brunswick received \$15,000 to fund a part-time child forensic interviewer to interact with child abuse victims. The Children's Tree House in

On behalf of Georgians reaching for help, we thank the Supreme Court of Georgia, Georgia's lawyers participating in IOLTA, Georgia's bankers who provide IOLTA accounts and our grantee organizations.

TIP, at the suggestion of the Georgia Bar Foundation, is focusing on taking its proven program to keep children in school to communities throughout the state. It received \$100,000 from the Georgia Bar Foundation and one of those programs, begun with the assistance of TIP, the Columbus Truancy Intervention Project, received \$48,000.

Macon's Adopt-A-Role-Model program and Savannah's Ash Tree Organization both reach out to children at risk and find unique ways to encourage them to choose a better path. In the case of Ash Tree, Executive Director Morris Brown combines his expertise in golf with a program of activities for problem children referred by juvenile court. The result is children less likely to stay in trouble or get in trouble. Adopt-A-Role Model pairs mentor volunteers with at-risk children to accomplish the same thing. Both organizations received full funding.

What happens when divorcing parents cannot agree on who gets custody of the children? The agony of the parents becomes the

This year Atlanta Volunteer Lawyers Foundation's guardian ad litem project received the full \$40,000 requested. It recruits and educates volunteers to represent the interests of children in disputed custody cases and to provide information of value to judges like Beth Glazebrook who make the "toughest decisions" of their lives every day.

Does a judge have alternatives to deal with a juvenile who is addicted to drugs and who may be able to be salvaged? Non-violent juveniles with drug addiction problems are the focus of the Muscogee County Juvenile Drug Court. To assist these children more than punish them, a \$35,600 grant award is helping bring together the best efforts of Judge Warner Kennon and a host of local agencies in Columbus including the District Attorney's office through Assistant District Attorney Stacey Jackson, Public Defender Andrew Dodgen, the Department of Juvenile Justice, the Muscogee County School District and local substance abuse treatment providers. They have touched all the bases, and the Board of Trustees of the Georgia Bar

Columbus received \$30,000 to assist with its operating expenses in dealing with child abuse. First time applicant Boys and Girls Club of Dodge County in Eastman received \$28,600 to support activities of youth ages six to 18 to teach responsibility, health, fitness and self-esteem.

Three other child-related grant awards include some of the most popular, well-known grantees in the Georgia Bar Foundation's history. The YLD High School Mock Trial program is probably the most popular program ever funded by the Bar Foundation. It received \$70,000, part of which is to begin preparation for the National Mock Trial Competition to be held in Atlanta in May 2009.

The State YMCA received \$15,000 to continue support of the Youth Judicial Program. By letting children take over the legislature for one day and learn about making laws, this program educates students about the work of appellate courts and how our judicial system works. They write briefs, give oral arguments and oftentimes decide to become lawyers.



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2006-2007 Grant Awards Georgia Bar Foundation

Adopt-A-Role Model Program	\$75,000
Ash Tree Organization, Inc.	\$35,000
Athens Justice Project	\$58,000
Atlanta Legal Aid Society	\$672,000
Atlanta Volunteer Lawyers Foundation	\$40,000
BASICS Program of State Bar of Ga.	\$150,000
Boys & Girls Club of Dodge County	\$28,600
Caminar Latino	\$20,000
Catholic Social Services, Detention Project	\$84,600
Cherokee County Sheriff's Foundation	\$11,700
Children's Tree House	\$30,000
Citizens Against Violence, Inc./Safe Haven	\$10,000
Civil Pro Bono Family Law Project	\$55,000
Columbus Alliance for Battered Women	\$20,000
Columbus Truancy Intervention Project	\$48,000
Disability Law and Policy Center of Ga.	\$60,000
Exchange Club Family Resource Ctr. of Rome ..	\$22,500
Flint Circuit Council on Family Violence	\$20,700
Ga. App. Practice & Ed. Resource Center	\$300,400
Ga. Center for Law in the Public Interest	\$50,000
Ga. Commission on Interpreters	\$20,000
Ga. First Amendment Foundation, Inc.	\$21,000
Ga. Innocence Project	\$29,800
Ga. Justice Project	\$25,000
Ga. Law Center for the Homeless	\$64,800
Ga. Legal Services Program	\$1,728,000
Ga. LRE Consortium, Inst. of Govt., U. Ga.	\$95,000
Golden Isles Children's Center	\$15,000
Halcyon Home for Battered Women, Inc.	\$10,000
Hall County Family Treatment Court	\$20,400
Law & Public Service Program, Mercer Univ. ..	\$45,000
Liberty House of Albany	\$12,000
Muscogee County Juvenile Drug Court	\$35,600
NE Ga. Council on Domestic Violence	\$31,000
Pro Bono Project of SBG and GLSP	\$100,000
Recording for the Blind & Dyslexic Ga. Unit	\$15,000
Savannah Family Emer. Shelter (S.A.F.E.)	\$30,000
Southern Center for Human Rights	\$40,000
State Bar of Ga. Communications Dept.	\$125,000
State YMCA of Ga., Inc.	\$15,000
The Extension, Inc.	\$30,000
Truancy Intervention Project Georgia	\$100,000
YLD High School Mock Trial	\$70,000
YLD Juvenile Law Committee	\$22,000

total \$4,491,100

Remember when civics was taught in our public schools? As a result, students used to know a good deal about how our government works. For the last several years the LRE Consortium of the Carl Vinson Institute at the University of Georgia has been the major force to educate students about our government. The consortium has expanded its efforts to reach the growing Latino community by developing the Latino Law Education Project. The Georgia Bar Foundation provided \$95,000 to support this important effort based on the belief that an informed citizenry is required for our democracy to survive and thrive.

A few grantees do things so distinctive that they are difficult to categorize. The Disability Law and Policy Center of Georgia received \$60,000 to expand the Access Project by which public facilities are made accessible for the disabled as required by Federal law.

The Georgia First Amendment Foundation was awarded \$21,000 to advance the cause of open meetings. Executive Director Hollie Manheimer is constantly in demand as an expert on the First Amendment. Since its inception, this organization has received \$94,000 from the Georgia Bar Foundation.

The Athens-based Recording for the Blind and Dyslexic (RBD) received \$15,000 to record 10 law books for the visually disabled. Under the able guidance of Lenora Martin, this grantee is providing a service unique in Georgia. Thanks to RBD, some students will receive the assistance they need to become lawyers.

A total of \$22,000 was awarded to the YLD Juvenile Law Committee to provide additional support to its effort to rewrite the Georgia juvenile code. The Bar Foundation has provided \$62,000 in total for this effort since its inception.

State Bar President Jay Cook is leading the Foundations of Freedom program to educate the public regarding common misconceptions

about the legal system and the role of judges and lawyers in that system. The program was awarded \$125,000 to develop and disseminate two 30-second TV spots and three 30-second radio spots.

Assisting Georgia's Latino community has already been discussed regarding the provision of civil legal services. A \$20,000 grant award was made to the Georgia Commission on Interpreters to educate the judiciary on the proper use of court interpreters and to offer low-cost training to help interpreters improve their skills within the legal system. Many of the people who will benefit from this are Latinos in Georgia.

Caminar Latino received \$20,000 to support a domestic violence prevention program for Latino families. This organization has been fighting domestic violence in Georgia's Latino families for 17 years.

The Cherokee County Sheriff's Foundation in Canton was awarded \$11,700 to educate Latino Adult Detention Center residents about U.S. law and civil rights. It also pays for books and CDs and for several visits by a Latino advocate.

Is there any mistake worse than finding someone guilty of a crime he or she did not commit? Particularly a serious crime. Where DNA evidence is available, the Georgia Innocence Project has become a safety net for those wrongly convicted and confined within our criminal justice system. By virtue of its \$29,800 grant award to this program, the Georgia Bar Foundation has become both part of that safety net for those wrongly accused and part of the system of justice, decreasing the likelihood of a permanent, dreadful mistake that can shatter a life. The grant will be used to pay part of the program's operating expenses.

Georgia does not provide counsel in state post-conviction proceedings. What was stated above about mistaken criminal conviction applies even more so where the penalty is death. In 1988 the State

Bar, with encouragement from state and federal courts established the Georgia Appellate Practice and Educational Resource Center to ensure that every death-sentenced inmate in Georgia is adequately represented in state and federal post-conviction proceedings. In addition to the financial support this 501(c)(3) grantee receives from the Georgia Judicial Council, it requested and received \$300,400 from the Georgia Bar Foundation. Through this grant, the Georgia Bar Foundation proudly accepts a significant role in supporting our judicial system in cases where justice is a life and death matter.

One of the most innovative programs to assist people mired in criminal behavior is the Georgia Justice Project (GJP). The brainchild of the creative genius of John Pickens and expanded upon in many impressive ways by Doug Ammar, the GJP takes pride in rewriting lives written off by society. Criminal legal assistance, friendship, education, job instruction, moral focus, punishment, even love—all these items, as needed, are used to salvage people without hope. Whatever it takes, Doug Ammar and his staff and board are up to the task. A long-term contributor to this program, the Georgia Bar Foundation awarded it \$25,000 to accelerate its volunteer recruiting program. Since 1992 the Bar Foundation has provided \$266,000 in grant awards to this organization.

When the Georgia Bar Foundation asked Doug Ammar to consider exporting GJP to other places in Georgia, he visited Athens. Relying on the considerable expertise from the University of Georgia and the entire Athens community, the Athens Justice Project was created. Led by Amy Gellins for several years and more recently by Debbie Gowen, the Athens Justice Project received \$58,000 to support its operations.

The Extension, based in Cobb County, received \$30,000 for its program to rescue adults whose


lives are being adversely affected by addiction problems.

The Civil Pro Bono Family Law Project, which is managed by Beverly Iseghohi, represents incarcerated mothers regarding child custody, visitation and parental rights. It received \$55,000 to create a website, hire one attorney and one paralegal.

One of the best known programs supported by the Georgia Bar Foundation is BASICS, which is effectively and affectionately managed by Ed Menifee. It teaches about-to-be-released inmates what they need to know to survive outside prison without returning to crime. Developed using Menifee's expertise, which he developed by teaching children how to be successful in the free enterprise system, BASICS has become a proven way to rehabilitate ex-cons. Boasting a recidivism rate of 16 percent versus rates greater than 30 percent for those released from prison without BASICS training, this proven program has become a favorite of the State Bar leadership and informed leaders inside the Department of Corrections. The grant award was \$150,000.

IOLTA is a testament to the power of four groups. It begins with the attorneys and the fact that the work they do generates interest. It thrives based on the work bankers do to process the accounts and pay interest on the balances. That joint power of bankers and

lawyers is effective because it supports the work of some fine organizations devoted to solving some of our state's most pressing law-related problems. It is a concept created by the Supreme Court of Georgia in recognition of the roles of attorneys, bankers and grantees in assisting those Georgians who need a helping hand to deal with law-related problems.

On behalf of Georgians reaching for help, we thank the Supreme Court of Georgia, Georgia's lawyers participating in IOLTA, Georgia's bankers who provide IOLTA accounts and our grantee organizations. Working as a team under the coordination and encouragement of the officers and Board of Trustees of the Georgia Bar Foundation, these four groups are attacking the law-related problems of Georgia with growing success. 



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



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Public Health and the Law

How the Agency's Office of the General Counsel Supports the Science of CDC

by Caren Henderson and Johanna B. Merrill



SARS. Monkeypox. Avian Flu. HIV/AIDS. Bioterrorism. These threats may bring to mind the scientists and public health professionals at the Centers for Disease Control and Prevention (CDC) who are tasked with the responsibility of protecting the American public from these potentially deadly threats. What is not so commonly known is that CDC has a team of attorneys from the U.S. Department of Health and Human Services (HHS) assigned to advise CDC on the legal aspects related to responding to such diseases and disasters.

Within the 19-attorney Office of the General Counsel that is assigned to the CDC's numerous Centers are four attorneys—Joe Foster, Heather Horton, Jim Misrahi and Leslie Page-Taylor—who comprise the Infectious Diseases, Terrorism Preparedness, and Emergency Response Team. “Because we structure our offices so that we provide advice on a Center-by-Center basis, as opposed to specialty, we each have the opportunity to experience a diverse range of legal issues,” said Foster, senior attorney and team leader.

Among their many duties, the team reviews proposed legislation that may impact CDC's activities; assists in drafting regulations; reviews patent licenses and other technology transfer agreements; analyzes the legal implications of particular studies CDC is considering; applies federal statutes to proposed CDC activi-

ties; and provides legal advice concerning litigation in which the agency may be involved. “I think people would be surprised by the myriad legal issues that arise at CDC,” Foster continued.

Since 2001, CDC has faced a new “disease or disaster of the year,” each of which has presented its own unique legal challenges. “In 2001, it was anthrax and the legal issues associated with cleanup and re-occupancy of affected buildings and the use of investigational drugs in an emergency. The next year, our attention turned to smallpox preparedness, and, among multitudes of other legal matters, we analyzed the legal and practical implications of legislation designed to provide liability protections for vaccine manufacturers and other individuals involved in the administration of the vaccine,” said Foster. “In 2003, a widespread outbreak of monkeypox occurred in the United States for the first time as a result of infected Gambian rats and other rodents imported from Africa for the commercial pet trade. We assisted CDC's efforts to ban the importation of the rodents, as well as the interstate sale and distribution of prairie dogs, a species particularly adept at contracting the disease and potentially transmitting it to humans. As flu season drew near in 2004, it became apparent that the United States would experience an influenza vaccine shortage so we began looking at creative solutions for the purchase and distribution of available vaccine to minimize the impact of the shortage. Finally, because of the numerous pressing legal questions that arose during the Department's responses to Hurricanes Katrina and Rita, most of the office's 19 lawyers staffed the CDC Director's Emergency Operations Center on a rotational basis from 7 a.m. to 11 p.m., seven days a week.” Foster added, “Dealing with the annual barrage of public health challenges has made us much more prepared than we could have even considered in 2001.”

“This isn't a good place to work if you're a hypochondriac,” joked Senior Attorney Jim Misrahi.

Misrahi, who advises the Division of Global Migration and Quarantine, was heavily involved with CDC's response efforts to the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak. To prevent the introduction, transmission, or spread of communicable diseases into the United States or from one state into another, CDC implements federal quarantine regulations that authorize seizing and destroying infectious articles or isolating infected people. "In 2003, published scientific research showed that civets (a cousin to the raccoon) could potentially infect humans with SARS, so we assisted CDC in banning its importation into the country." Misrahi also worked to obtain an executive order from President George W. Bush, which is necessary to add a new communicable disease, such as SARS, to a federal list of diseases for which an individual may be quarantined. He added that CDC and the U.S. Department of Agriculture often issue complementary orders, as they did in the case of birds and bird products from countries where highly-pathogenic avian influenza has been found in poultry. These days, Misrahi's attention is focused on pandemic influenza planning, reviewing quarantine guidelines, pandemic flu manuals and checklists to identify potential legal issues. CDC uses these materials to help the public and business sectors prepare in the event of an outbreak.

In addition to assisting with reactive crisis situations, the team also helps CDC with initiatives that are preventative in nature. Recently CDC advised health care providers to include HIV screening as a routine part of a patient's annual care. CDC's research showed that a high percentage of Americans are unaware of their HIV status and that widespread HIV testing would ensure that more people learned their status, allowing them to benefit from earlier access to treatment and reducing the risk of infecting their partners. According to Senior

Attorney Leslie Page-Taylor, who advises CDC's National Center for HIV, STD and TB Prevention (NCH-STP), this was a particularly complex issue because of potential state law implications. "It was important that the CDC recommendations not appear to be requiring that states change their laws in order to abide by the CDC recommendations," Page-Taylor said. She added that CDC often only makes recommendations, not rules, as it is traditionally a non-regulatory agency.

Page-Taylor is currently working on a very unusual matter involving a group of 16 wallabies, eight of which that were brought to CDC for a monkeypox study (the other eight

on," Page-Taylor said. "We had hoped that a kangaroo preserve CDC had identified would be able to take them, but because federal property can't be given or sold to for-profit companies, the wallabies are still being housed by CDC. It's a case of 'What do you do?' You find the answer for your client."

"We make sure that for anything CDC employees work on, they have the legal authority to move forward," said Senior Attorney Heather Horton, who in addition to her law degree has a master's in health administration from Tulane University in New Orleans. Horton co-lead an interdepartmental team of lawyers that addressed the legal



Within the 19-attorney Office of the General Counsel that is assigned to the CDC's numerous Centers are four attorneys—Jim Misrahi, Heather Horton, Leslie Page-Taylor and Joe Foster—who comprise the Infectious Diseases, Terrorism Preparedness, and Emergency Response Team.

are the offspring of the original eight, which reproduced while at CDC). Though the wallabies are healthy, as they were never infected with monkeypox and were used solely for observational purposes, CDC is having difficulty placing them in an appropriate home environment now that the study has ended. "It's something you never imagined that you'd be working

issues—including liability and informed consent—surrounding the Home Medkit Evaluation Study. The study, which is currently ongoing in St. Louis, Mo., will evaluate the feasibility of placing a short-term supply of FDA-approved antibiotics—called Medkits—in U.S. households to be reserved for emergency use in the specific public health emergency conditions result-

A Conversation with CDC Senior Attorney Jim Misrahi

James J. Misrahi is an attorney with the U.S. Department of Health & Human Services, Office of the General Counsel, CDC/ATSDR Branch. He is primarily responsible for advising CDC's Coordinating Office for Terrorism Preparedness and Emergency Response and its Division of Global Migration and Quarantine in the Coordinating Center for Infectious Diseases. Before joining CDC, he worked as a staff attorney with the 2nd and 11th Circuits of the U.S. Court of Appeals and as an assistant corporation counsel for the New York City Law Department.

Photo by James Gathany



Q: I understand you participate in something called tabletop exercises. How would you generally describe a tabletop exercise?

A: A tabletop exercise is really a scripted paper exercise based on a public health scenario—say an act of bioterrorism or a natural disaster. Basically it is scripted to a certain degree where they give you limited facts and then as you make decisions they give you more facts. Generally it is designed to test the limits of your capacities and preparation.

Q: What is the role of a lawyer in these exercises?

A: It depends on the exercise. Throughout the exercise we are periodically asked, “What is our legal authority to do this particular action?” Our task is to come up with creative solutions to problems. If there isn't a solution then we know where we need more preparation.

Q: What is one of the more interesting tabletop exercises you have participated in?

A: The most recent one was the tabletop that occurred at the Public Health Law Conference. It was called “Incident at Airport X” and involved the quarantine of a large number of travelers arriving from a foreign country. It was more of a legal exercise. Typically with the exercises we participate in, the focus is more programmatic—determining how quickly equipment can be deployed or how quickly people can be sent into the field. These take precedence. This conference was really more of a scripted legal exercise where they had people serving in different legal roles. For example they had a state judge play the role of a judge that would have to decide on a quarantine hearing and what the result of that would be. A real lawyer from the private bar represented someone who was placed under quarantine. He was asked about how he would represent his client. They also had a U.S. attorney at the table that was serving in the role of the U.S. attorney and sharing what some of his concerns would be. I was there to represent CDC. I was asked what legal authority CDC would

have in certain instances; how CDC would coordinate with some of the other attorneys; how CDC would interact with the U.S. attorney and so forth.

Q: What exactly do you mean by the term quarantine?

A: Quarantine generally refers to the separation of people who have been exposed to a communicable disease but are not yet known to be infected. In contrast, isolation is used to refer to the separation of people who are known to be infected and generally occurs in a hospital setting. Quarantines can occur in a variety of different settings. In the case of a pandemic situation, one strategy may be to ask persons to voluntarily quarantine themselves in their homes for a few days and treat it as a snow day. From a legal point of view we refer to quarantine as any instance where legal authority is used to compel the detention of an individual for public health purposes and may include quarantine, isolation or some other form of restricted movement.

Q: Should one of these scenarios become a reality, the advice you provide to the group has the potential to impact many lives. Do you feel a lot of pressure to get it right?

A: There is always pressure to give the right answer and to give it in a timely manner. I think tabletop exercises are different from some other situations where we don't have the luxury of saying “let's go research this and we'll get back to you in a few days.” These exercises are intended to help us anticipate roadblocks before we encounter them in reality.

Q: What is something that people might not know about you?


A: I am the office trivia guru. I supply the daily trivia question for our office, which is posted on a board outside our offices. Oh, and I always pack the same lunch every day. Always a turkey sandwich, reduced fat potato chips, and reduced fat Oreos of course.

ing from a bioterrorist threat. Although these lawyers advise CDC scientists, policy makers and staff, they report to HHS's General Counsel in Washington, D.C. Horton added that this reporting structure ensures that their advice is consistent with advice given by other HHS attorneys, such as those assigned to the Food and Drug Administration. "We can speak with one voice."

Because each attorney works with just a few Centers within CDC they get to know their clients (CDC staff) and the important public health work they perform while assisting them with a variety of issues. "We develop sustained and trusting relationships with our clients that lead to our ability to anticipate their needs and encourage them to proactively seek legal advice," said Horton. Page-Taylor added, "One of the great things about working at CDC is how passionate our clients are about what they are doing. However, that can sometimes be problematic for us as attorneys, because CDC's work still has to be accomplished within the confines of the law."

Horton and Page-Taylor both work on publishing and copyright issues. They each assist clients with publishing medical and scientific articles in a variety of publications such as the *New England Journal of Medicine*, the CDC's *Morbidity and Mortality Weekly Report* and the *Journal of the American Medical Association*. One of Page-Taylor's clients, NCHSTP, writes many manuscripts and books, and she reviews all contracts and liability indemnification clauses related to publication. "I often look at reports that get published to review legal questions," she said. "Sometimes the client is overly cautious and sends me things that don't have any legal implications, but I would rather review too much than too little."

Although each attorney comes to CDC with different backgrounds and experiences—Page-Taylor was a prosecutor in Macon and Misrahi worked for the federal court system and as a civil attorney for the city of New York—they all agree that they derive a sense of personal satisfaction from working for an agency dedicated to public service. "I am able to sleep at night knowing my work makes a difference," Foster said. Horton added, "I really believe in the mission of the agency, and being associated with the CDC is a source of contentment and pride."

The OGC lawyers of CDC are many things. They are jacks- and jills-of-all-trades, advising on a plethora of public health topics, ranging from the mundane to the most serious of health threats. Most of all, they are attorneys, leaning on the law in order to assist CDC with its mission of protecting the health and safety of Americans. 

Caren Henderson is a contributing writer to the *Georgia Bar Journal*.

Johanna B. Merrill is the section liaison for the State Bar of Georgia and is a contributing writer to the *Georgia Bar Journal*. She can be reached at johanna@gabar.org.



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The Campbell County Courthouses at Campbellton and Fairburn

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Campbellton, Campbell County's original county seat, was laid out on a hill high above the Chattahoochee River in 1828 when Campbell County was cut from DeKalb, Coweta, Carroll and Fayette counties. A wooden courthouse was completed in 1829 and was replaced by a fine brick structure in 1835. Similar to the early brick vernacular courthouses at Forsyth, 1825; LaGrange, 1830; Dahlonega, 1836; and Rome, 1835, it was a sturdy example of the skill of local builders to employ simple Classical details. With its crossing gabled roofs, the old building featured fine arched entranceways, and a high cornice supporting low pediments.

By mid-1851 the Atlanta and West Point Railroad road was completed through Campbell County as far as the town of Palmetto, on its way to Newnan and on



Campbellton, built in 1835

to West Point, Ga., where it would soon link with new west-bound rails in Alabama. Along the line the town of Fairburn sprang up near a small post office that had first been called Cartersville and later Berryville. By 1860, the place was home to 300 persons. Ten years later, the power of the steel rails had energized Fairburn to such an extent that the citizens of Campbellton were moving to Fairburn in droves. One local account relates that in 1870 Campbellton residents were dismantling their homes and moving them as well. In that same year, Fairburn became the Campbell County seat. By then, Campbellton was in

decay. Today all that remains is a church, the old Masonic lodge and a stone monument on the top of a pleasant hill to mark the site of the 1835 courthouse.

If a railroad ever built a courthouse, it was at Fairburn in Old Campbell County. In many ways, the 1871 structure was a re-creation of the old 1835 courthouse of Campbellton. If one ignores the Greek Revival portico and the lacy, paired brackets, the courthouse at Fairburn is a near replica of its predecessor which fell into disrepair after Campbellton was abandoned and was pulled down early in this century. It is not remarkable that the builder-designers of the 1871 Campbell County Courthouse were anxious to re-create the old Campbellton court building beside the shiny new rails of The Atlanta and West Point at Fairburn. What is remarkable is the eclectic approach that they took in bringing the old building up to date. It is as if the citizens of Fairburn were of a divided mind. They sought first the older American tradition by copying the county's original vernacular courthouse; then the reactionary myth of the Old South by adding the Greek Revival portico; and last, a touch of the New South by decorating the cornice with paired brackets to gracefully bring the




Fairburn, built in 1871

building out of the past and into the world of the 1870s.

This was not the stylish Victorian Picturesque Eclectic so popular in the American North. This was a voice from within the American vernacular. From the very beginning, American architects and builders had exercised a free hand redefining European ideas and fashioning an architecture that spoke both practically and symbolically to simple American resources and values. Certainly the Federal Style was a simplified departure from Georgian forms. Likewise, the Greek Revival in America had paid little heed to strict classical orders.

It is true that this kind of freedom in the hands of untrained designers often led to questionable results. Aesthetically the urge to wander can create confusion, and symbolically the risk is utter

ambiguity. Occasionally however, freedom's language is startlingly clear, as is the case here in Fairburn. This building is deeply rooted in multiple traditions of the past. What little the new Campbell County Courthouse had to say about 1871 or about the future, is carefully subordinated to dominant nostalgic motifs. This courthouse echoes both the Greek Revival and the vernacular style of the earlier period, but it carries the

imagery of the new age as well. Here is a symbol of two eras: a past lost forever and a seemingly unattainable future. It would serve the county until it merged and became part of Fulton County in 1932. 

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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Kudos

- > **Elarbee, Thompson, Sapp & Wilson LLP** announced that **Amy Auffant, Rob Capobianco, Rich Escoffery, Elliott Friedman, Suzanne Lehman** and **Connie Walters** were named **Georgia Rising Stars** by *Law & Politics* magazine.

- >  **Kilpatrick Stockton, LLP**, was recognized by the city of Atlanta Department of Law for contributions to the **Hartsfield-Jackson International Airport Expansion program**. The honor came as a result of the successful partnership between Kilpatrick Stockton and Johnson & Freeman, also recognized. Atlanta City Attorney Linda DiSantis and Aviation Deputy City Attorney Jennifer Tetrick presented the plaque of recognition. **Joe Henner**, partner, accepted on behalf of Kilpatrick Stockton, and Ron Freeman, managing partner, accepted on behalf of Johnson & Freeman. Kilpatrick Stockton partners **Keith Richardson** and **Burleigh Singleton** and Stasia Broadwater of Johnson & Freeman were also extolled for their excellent work on the project.

Kilpatrick Stockton, LLP, also announced that it received the **IMPACT Award** from the **Metro Atlanta Corporate Volunteer Council** for exemplary employee volunteer programs. By offering flex time during work hours, incorporating volunteerism into their incentive compensation program and requiring professionals to meet annual goals for pro bono work, the firm proves they are leading the way for volunteerism in the workplace.

Additionally, the firm recognizes **Rick Horder**, partner, on being selected as a **2006 Angels in Adoption™** award recipient. Congressman John Lewis nominated Horder as a **2006 Angels in Adoption™** for his outstanding advocacy of adoption and foster care. The Congressional Coalition on Adoption Institute, which oversees the **2006 Angels in Adoption™** program, held a ceremony and gala event in Washington, D.C., to honor Horder and his fellow Angels.


- >  **Presiding Justice Carol W. Hunstein** was inducted into the **Stetson University College of Law Hall of Fame** in September. The college noted that Hunstein is a compelling role model for those attempting to overcome adversity. She was also praised as a tireless champion of racial, ethnic and gender equality in the courts. Hunstein currently chairs the Supreme

Court of Georgia Commission on Access and Fairness, which is charged with implementing the recommendation of the Commission on Gender Bias and the Commission on Racial and Ethnic Bias.

- >  **John Marshall Law School's** chapter of the National Black Law Students Association was renamed the **Avarita L. Hanson Chapter** in honor of the school's former faculty member and Associate Dean for Academic Affairs. The chapter's new name was announced during an appreciation luncheon held for Hanson in Buckhead. Hanson was also honored as the first recipient of the **Georgia Association of Black Women Attorneys' Barbara A. Harris Award for Service to the Community**. Hanson, a past president of GABWA, received the award during the organization's Scholarship Foundation Silent Auction.

- > **Fish & Richardson P.C.** was recently ranked **No. 1** in two different surveys of IP law practices. Fish & Richardson ranked first in IP Law360's annual survey of the most frequently hired patent litigation law firms in the United States. It also topped the list of the world's largest IP practices according to figures compiled by *Managing Intellectual Property*. Fish & Richardson was named the largest IP Practice in the world with 343 attorneys in the United States.

- > **Weissman, Nowack, Curry & Wilco** announced that **Jane Kotake, Darryl Moss, John Nelson, Ashoo Sharma** and **Kyle Williams** were named **2006 Georgia Rising Stars** in *Atlanta Magazine* and *Georgia Super Lawyers*. Kotake is a partner in the firm's commercial real estate practice. Moss is an associate in the commercial real estate practice. Nelson and Sharma are general litigation attorneys. William practices general civil litigation with an emphasis on matters affecting real estate builders, developers, contractors and agents.

- >  Entertainment attorney **Darryl Cohen**, a founding partner in the Atlanta law firm of Cohen, Cooper, Estep & Whiteman, was featured in the cover story **"Front and Center: Marketing Tips to Put Your Firm in the Spotlight"** in the August/September issue of *Small Firm Business*, which offers ideas and innovations for law firm management.

- > Atlanta attorney **Paul K. Tamaroff** was awarded the **Bert Rosenthal Memorial Award** at the annual

convention of the California Association of Photocopiers & Process Servers. This prestigious award is presented to an individual who, through the years, has given the utmost of service and dedication in promoting the process serving profession. The award is presented only when a nominee receives at least two-thirds vote of the nominating committee. Tamaroff is past president of the National Association of Professional Process Servers, as well as a founding member and past president of the Georgia Association of Professional Process Servers. He has been very active in promoting legislation to improve the procedures for service of process of lawsuits, as well as establishing professional criteria for the appointment of process servers in Georgia.

>



Moore



Oliver-Staley



Palmer

Pro Bono Partnership of Atlanta presented its **2006 Volunteer of the Year Awards** to **Joshua Moore**,

Southern Company; **Aisha Oliver-Staley**, McKenna, Long & Aldridge; and **William A. Palmer III**, AGL Resources, Inc., for their contribution of time and dedication to clients. In adherence to Pro Bono Partnership's mission, these volunteer attorneys used their practice area expertise to provide grassroots nonprofit agencies with invaluable legal help. Moore volunteered through Pro Bono Partnership to assist Camp Kudzu, a nonprofit organization that runs a summer camp for Georgia children with juvenile diabetes. He also provided legal advice to the Jerusalem House Family Program, and has recently volunteered to revise a participant agreement for an organization that provides a comprehensive housing and mentoring program to pregnant, unwed and homeless women. Oliver-Staley has volunteered for three different matters with Pro Bono Partnership of Atlanta over the last six months. She assisted the nonprofit organization STAND, Inc., with a review of its bylaws. She also worked to get the Masterful Men Foundation incorporated as a Georgia nonprofit, and is one of five Pro Bono Partnership volunteers who has agreed to present legal workshops through the Goodwill North Georgia BusinessNOW program. Palmer worked with Family Community Housing, an organization that provides affordable housing through down payment assistance and homebuyer education.

2007 Edition of *Best Lawyers in America*

The 2007 edition of *Best Lawyers in America* is based on 1.8 million confidential evaluations by the top attorneys in the country, as well as thousands of extensive telephone interviews with leading attorneys throughout its balloting process. Because *Best Lawyers* is based on an exhaustive peer-review survey by the country's leading attorneys and because lawyers are not required or allowed to pay a fee to be listed, inclusion in *Best Lawyers* is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice."*

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

Court of Appeals of Georgia High School Oratorical Contest Winner



Molly Holmes, Caleb Smith, Jill Pryor, Marie Agnello, Patrick Berg

Caleb Smith, winner of the Court of Appeals of Georgia's Centennial High School Oratorical Contest, delivered the winning speech at the Centennial Dinner of the Court of Appeals of Georgia at the Georgia Aquarium in October. Smith, a student at Cartersville High School titled his oration "The Judicial Branch: Guardian of the Constitution."

The judges of the final round of the contest were: Justice George H. Carley, Supreme Court of Georgia; Chief Judge John H. Ruffin Jr., Judge Anne Elizabeth Barnes and Judge M. Yvette Miller of the Court of Appeals of Georgia; and Judge Sidney L. Nation, Judge of the Superior Court of the Rockdale Judicial Circuit. Jill Pryor, a partner with the law firm of Bondurant, Mixson & Elmore, LLP, was the chair for the contest and was assisted by Roberta Earnhardt, assistant district attorney, Rockdale Judicial Circuit.

Patrick Berg, from Deerfield-Windsor School in Albany, placed second. Molly Holmes of Savannah Country Day School, and Marie Agnello of Brookwood High School, Snellville, placed third and fourth, respectively. Quarterfinalists were Eric Alston, Brookstone School, Columbus; Yulianna Lopez, Northwest Whitfield High School, Tunnel Hill; Mia-Talia Lowe, Davidson Fine Arts Magnet School, Augusta; and Heather Williams, Bradwell Institute, Hinesville. Each public and private high school in Georgia was permitted to certify one school winner to the contest. The first through fourth place winners will receive scholarship awards from Justice Served, Inc. Justice Served, Inc., a charitable foundation, seeks to enhance the knowledge of Georgia citizens about the history of the Georgia courts and their vital role in providing equal justice to all. Thirty-five students from around the state were certified to participate in the contest held at the State Bar of Georgia in September.

On the Move

In Atlanta



Michael V. Coleman, a partner with **Lord, Bissell & Brook LLP**, has been named **partner-in-charge** of the firm's Atlanta office. Coleman joined Lord, Bissell & Brook as a partner in 2004. His practice focuses on general corporate, mergers and acquisitions, and corporate finance transactions. Coleman served as the city attorney for the city of Atlanta from 1990-93. After leaving that position, he went into private practice. Coleman has served on several boards, and is involved with numerous other civic, community and professional organizations. The firm is located at 1900 The Proscenium, 1170 Peachtree St. NE, Atlanta, GA 30309; 404-870-4600; Fax 404-872-5547; www.lordbissell.com.



Fish & Richardson P.C. announced that **William R. Silverio** has joined the firm's Atlanta office as a **principal**. Silverio focuses his practice in the electronics, software and business methods areas. Prior to joining Fish & Richardson, he was at Sutherland Asbill & Brennan LLP. The office is located at 1230 Peachtree St. NE, 19th Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; www.fr.com.



Smith, Gambrell & Russell LLP announced that **Patrick M. Connolly** has joined the law firm's health care practice; **Timothy A. Bumann** joined as a **partner** in the litigation department; and **William A. Herbert** joined as **counsel** in the international department. Connolly has extensive experience negotiating large transactions and resolving complex regulatory issues for hospitals and other health care providers. He previously served as senior legal counsel to a national hospital chain and as general counsel to two physician practice management companies. Bumann focuses his practice on product liability defense. Herbert has extensive experience representing leading Japanese companies in the pharmaceutical, medical devices, biotechnology, electronics, automobile, aerospace, telecommunications, software and financial services industries. The firm also announced that **Edward C. Konieczny** has joined the firm and will expand the antitrust practice. He has 18 years of complex litigation and law firm management experience in both plaintiffs' and defense firms. Before joining Smith, Gambrell & Russell, he served as managing partner of a large, national mass tort and class action

plaintiffs' firm. The firm is located at Promenade II, Suite 3100, 1230 Peachtree St. NE, Atlanta, GA 30309; 404-815-3500; Fax 404-815-3509; www.sgrlaw.com.


> **Rutherford & Christie, LLP**, announced that **Amy K. Buchanan, Melissa A. Sutton, Heather R. Ryfa** and **Andrea E. Dobur** have become **associates** in its Atlanta office. The office is located at Harris Tower, Suite 812, 233 Peachtree St., Atlanta, GA 30303; 404-522-6888; Fax 404-522-0108; www.rutherford-christie.com.

> Atlanta attorney **Richard Kopelman** announced the opening of **Kopelman Law Group, P.C.** Kopelman has been practicing law in the Atlanta area for nearly 20 years. The firm's primary practice areas include tractor trailer, automobile and motorcycle collisions, premises liability, medical malpractice, pharmaceutical liability and wrongful death. The office is located at 1801 Peachtree St. NE, Suite 200, Atlanta, GA 30309; 404-351-5900; Fax 404-355-3777.

In Alpharetta

> **Jampol Schleicher Jacobs & Papadakis LLP** announced that **Alec Papadakis** and **Brian F. Hansen** joined the firm as **partners**; **Fred A. Slone** joined as **of counsel**; and **Anthony O. Lakes** and **Julie Dominiack** joined as **associates**. Papadakis specializes in immigration, franchising and international corporate transactions. Hansen practices in litigation and construction law. Sloane concentrates in corporate transactions. Lake and Dominiack will work in commercial litigation and real estate transactions, respectively. The office is located at 11625 Rainwater Drive, Suite 350, Alpharetta, GA 30004; 770-667-1290; Fax 770-667-1690; www.jsjplaw.com.

In Athens

>  **Hall Booth Smith & Slover, P.C.**, announced that **Michael C. Pruett** has joined the firm as a **shareholder** in the Athens office. He will serve as the chair of the trusts & estates practice and will also be a member of the government liability and education practices. Prior to joining HBSS, Pruett served as county attorney of Madison County, Ga. The firm is located at 290 North Milledge Ave., Athens, GA 30601; 706-316-0231; Fax 706-316-0111; www.hbss.net.

In Marietta

> **Moore, Ingram, Johnson & Steele LLP** announced that **Stayce Burkhart, Angela D. Cheatham** and **G.**

Lamar Smith have joined the firm. Burkhart will focus in corporate tax and estate planning. Prior to joining the firm, she was an intern for the Hon. John T. Nixon, U.S. District Court for the Middle District of Nashville, Tenn. Cheatham joins the worker compensation group. Prior to joining the firm, she practiced for two years with a general civil litigation firm. Smith also joins the workers compensation group. He was previously a staff attorney to the Hon. John E. Girandean, Gainesville, Ga., and an extern for Justice Robert Benham. The office is located at 192 Anderson St., Marietta, GA 30060; 770-429-1499; Fax 770-429-8631; www.mijis.com.

In McDonough

> **Kathy E. Harrington** announced the formation of **Harrington & Harrington**, with offices in McDonough and Long Beach, Calif. The law firm specializes in patent, trademark, copyright and trade secret matters, and intellectual property taxation. The east coast office is located at 355 S. Mt. Carmel Road, McDonough, GA 30253; Phone/Fax 770-914-1413.

In Roswell

>   **Sheetal Desai** and **John Land** joined the offices of **Morris, Lober & Dobson, LLC**. Desai practiced in a firm near Chicago before joining the firm's Roswell office. Her practice is focused in the areas of corporate transactions and commercial litigation. Land spent the last five years as a trial attorney at the Newton County Public Defenders office. He now joins the firm's Madison office where he is practicing both domestic and general civil litigation as well as criminal defense. The Roswell office is located at 500 Sun Valley Drive, Building D, Suite 4, Roswell, GA 30076; 678-461-9800; Fax 678-461-9944. The Madison office is located at 1511 Eatonton Road, Suite 204, Madison, GA 30650; 706-342-8014; Fax 706-342-8160; www.mldlaw.net.

In Birmingham, Ala.

> **James M. Roth** announced the formation of **The Roth Firm, LLC**. The new firm will focus primarily on civil litigation and trial practice, concentrating in personal injury litigation. The office is located at 3500 Independence Drive, Birmingham, AL 35209; 205-879-9595; Fax 205-871-4512.

> **Thomas, Means, Gillis & Seay, P.C.**, announced that **Denise Wiginton** is now an **associate** in the Birmingham office. Wiginton joined the firm in March 2005. Her practice areas include constitutional and civil rights law, as well as civil litigation and government law. The Birmingham office is located at 505 20th St. N., Suite 400, Birmingham, AL 35202; 205-328-7915; Fax 205-214-6160; www.tmgslaw.com.

In San Francisco, Calif.

> **Schiff Hardin LLP** announced the opening of a San Francisco office, its first on the West Coast, opening January 2007. The firm will be joining forces with **Morgenstein & Jubelirer LLP**. The combined law firms will be named Schiff Hardin LLP and will provide a coast-to-coast presence with other offices in Chicago, Lake Forest, Ill.; New York, N.Y.; Washington, D.C.; and Atlanta. The addition of Morgenstein & Jubelirer's 35 attorneys gives Schiff Hardin nearly 400 total attorneys. Information about the opening can be found at www.schiffhardin.com.

In Charleston, S.C.

> **Howell Linkous & Nettles, LLC**, announced its **relocation** to the historic Doctor John Lining House (c. 1715) in Charleston, S.C. The law firm concentrates its practice in municipal bonds, local government law, economic development incentives, and affordable housing development. The firm's bond law practice includes bond counsel services for many local governments and agencies across the South and Native American tribes across the continent, and underwriter's counsel services for many investment banks in transactions across the South. The firm also represents for-profit and not-for-profit owners and developers, housing authorities, and financial institutions in all aspects of the development and financing of multifamily housing properties. The new address is The Lining House, 106 Broad St., Charleston, SC 29401; 843-266-3800; Fax 843-266-3805.

In Charleston, W.Va.

> **Marilyn Hamilton** announced that she is now an **attorney-advisor** with the **Social Security Administration, Office of Disability Adjudication and Review** (formerly Office of Hearings and Appeals), in Charleston, W.Va. She previously worked as a law clerk/staff attorney in DeKalb county. The office is located at 500 Quarrier St., Suite 100, Charleston, WV 25526; 304-347-5217; www.ssa.gov.

AVLF 15th Annual Winetasting



Hon. Edward Lindsey, Georgia House of Representatives and Fulton State Court Judge Susan Forsling

On Thursday, Nov. 2, the Atlanta Volunteer Lawyers Foundation held its 15th Annual Winetasting. The foundation's major fundraiser, hosted this year by the law firm of King & Spalding, attracted more than 550 guests. Those who attended included federal and state judges, private attorneys, lawyers from the legal departments of many of Atlanta's businesses and banks, Atlanta and Fulton County officials, accountants, court reporters and others interested in supporting AVLF's efforts to promote equal access to justice. The event was catered by Trois on the eve of its opening in Midtown Atlanta, and the wine was provided by Chameleon Cellars of St. Helena, Calif., and Murphy's Restaurant.



Fulton Superior Court Chief Judge Doris Downs, Taylor Tapley Daly, Stephen Andrews and Fulton Superior Court Judge Cythia Wright.



"So much for my vacation," grumbled Stan.
"I should have called Lawyers Direct."



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Love Interest, Former Clients

by Paula Frederick

Are you sure these are for me?" you ask your assistant as she deposits a huge bouquet on your desk.

"Yep," your assistant replies cheerfully. "Everyone wants to know who sent you flowers—you've been holding out on us!"

Muttering about the lack of privacy in your small law firm, you open the accompanying envelope.

"Barry Murphy?" you shriek in disbelief. "He's asking me out?"

"Mr. Murphy, the SuperCo VP? I *knew* he had a crush on you! He always insists on dealing with you personally, and he was so complimentary about how you handled that hearing."

"Well, I can't go out with him," you say reluctantly. "He's a client."

"Former client" your assistant corrects. "That case is over; the appeal time ran last week. Barry is fair game."

"Are you sure? It's been a long time since I've had a date, but it's not worth risking disbarment."

You're a little embarrassed, but you decide to call the Bar's Ethics Hotline for advice. You find that although Georgia does not have a rule specifically prohibiting a lawyer from dating a client, the situation is fraught with potential conflicts. If the romance ends during the representation, the lawyer/client relationship inevitably sours and the client may come to feel that the lawyer has compromised the case out of pique.

In evaluating a grievance filed by a client who has had a romantic relationship with a lawyer, the Bar looks for signs that the lawyer's professional judgment was adversely affected. Sometimes the fact of the representation is in itself evidence of compromised judgment, as when a lawyer in a divorce case begins an affair with her client. In other types of cases the adverse effect may be less obvious—a lawyer presses the client to accept a lowball PI settlement from fear of having his

adulterous affair with the client revealed should the case go to trial, or a client continues a relationship with her lawyer against her will, from fear of losing counsel at a vital stage of her case.


The conflict of interest inherent in these situations prompted the American Bar Association recently to modify its rules to prohibit a lawyer from beginning a sexual relationship with someone the lawyer is currently representing.¹

OK...so only the most optimistic or foolhardy love-struck lawyer begins a relationship with an existing client. But what about a *former* client?

Far be it from the State Bar of Georgia to obstruct the path of true love. Generally, once representation ends the Bar takes no further interest in the love lives of its members.

So if you are tempted to begin a sexual relationship with a current client, *withdraw from the representation and find your paramour a new lawyer!* Of course, even then the usual rules regarding former clients apply. The lawyer must keep the

client's confidences and secrets forever, and must avoid former client conflicts prohibited by Rule 1.9.

Don't forget to call the Ethics Hotline at 404-527-8720 with all your ethics questions (no advice to the lovelorn, please!). 



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

Endnote

1. Rule 1.8(j) of the ABA Model Rules of Professional Conduct prohibits sexual relationships between lawyer and client "unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced."



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AL9176

Discipline Summaries

(Aug. 19, 2006 through Oct. 19, 2006)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Matthew Wayne Wallace

Farmington, Conn.

On Sept. 18, 2006, the Supreme Court accepted the Petition for Voluntary Surrender of License of Matthew Wayne Wallace (State Bar No. 734180). Wallace improperly disbursed trust account funds and failed to properly account for those funds. He also failed to respond to the State Bar. Wallace was previously suspended for two years based on his abandonment of a client.

Patrick C. Kaufman

Woodbine, Ga.

On Oct. 2, 2006, the Supreme Court accepted the Petition for Voluntary Surrender of License of Patrick C. Kaufman (State Bar No. 409202). Kaufman had several disciplinary actions pending against him. He admitted that in two separate matters he accepted a client's retainer, failed to take action on the case, failed to respond to the client's inquiries, and abandoned the case to the client's detriment. At the time of the conduct, Kaufman was clinically depressed and suffering from alcoholism.

Phillip Andrew Strickland

Alpharetta, Ga.

On Oct. 2, 2006, the Supreme Court disbarred Attorney Phillip Andrew Strickland (State Bar No. 687829). Strickland acknowledged service of five Formal Complaints, but failed to file an answer to any of them. The cases involved Strickland accepting monetary payments from clients; agreeing to perform certain work on behalf of those clients; failing or refusing to perform the work; failing to advise the clients of the status of their cases; failing to respond to the clients' efforts to contact him; and failing to refund unearned fees. In most cases, Strickland also failed to return complete files to the clients upon termination and failed to respond to the State Bar's Notices of Investigation.

Jonathan Goldberg

Atlanta, Ga.

On Oct. 2, 2006, the Supreme Court disbarred Attorney Jonathan Goldberg (State Bar No. 003630). Goldberg did not respond to the Formal Complaint and was found in default. On two occasions he wrote checks on his attorney trust account for which there were insufficient funds and which were not honored. On another occasion he wrote a check from his trust account for his personal use, not for earned attorney fees, for which there was insufficient funds and which were not honored. On three other occasions he wrote checks from his trust account for his personal use, not for earned attorneys fees, after depositing funds into the trust account from his personal account to cover the checks. Goldberg received an Investigative Panel Reprimand in 2004 for similar conduct.

Robert Culpepper III

Tallahassee, Fla.

On Oct. 2, 2006, the Supreme Court disbarred Attorney Robert Culpepper III (State Bar No. 201150). In one matter Culpepper was hired to probate a will. He filed a petition to have his client discharged as executor of the estate and submitted a Final Distribution showing a total distribution to heirs and expenses of the estate in the amount of \$10,236.51. Shortly thereafter, Culpepper was discharged and his client hired new counsel. Culpepper nevertheless requested, obtained and deposited into his trust account a check from his client in the amount of the final distribution, but Culpepper never disbursed the funds nor provided an accounting. Culpepper did not respond to letters from the client's new counsel.

In another matter a client paid Culpepper \$1,000 to represent him in a child support matter. After filing one pleading, Culpepper did no further work in the matter; failed to communicate with the client despite the client's efforts to contact him; and failed to return the unearned fee. Culpepper was personally served

with the Formal Complaint in this matter, but offered no explanation.

Suspensions

Jeffrey Ivan Garfinkel

Atlanta, Ga.

On Oct. 16, 2006, the Supreme Court of Georgia suspended Jeffrey Ivan Garfinkel (State Bar No. 284654) from the practice of law indefinitely with reinstatement upon conditions. Garfinkel was served with a Notice of Discipline by publication but did not file a rejection within 30 days. Garfinkel's default showed that he accepted \$1,500 to represent a client in a modification of child support case, filed the petition, and requested a transfer to another county when he discovered the ex-wife lived in that county. Garfinkel took no further action in the case, which remains pending, and though he had not responded to any of the client's attempts to contact him, subsequently notified the client that he was no longer able to work due to health problems. The client's child

support obligations continued to accrue and the ex-wife filed a contempt action against the client, to which he responded pro se, as he cannot afford to hire another attorney. The Investigative Panel member spoke to Garfinkel, who said he was suffering from severe depression, that he no longer desired to practice law, and that he had moved to South Carolina.

The Court noted in aggravation of discipline that Garfinkel abandoned his practice and moved to South Carolina without notifying his clients or the State Bar. Before reinstatement, Garfinkel must meet the following conditions: (1) file a sworn response to the client's grievance; (2) refund \$1,500 to the client; (3) obtain a statement from a psychologist licensed to practice in Georgia describing the nature and extent of Garfinkel's impairment(s), the treatment he has undergone to overcome the impairment(s), any continued treatment necessary to maintain fitness, and certifying that he is fit to resume the practice of

law; and (4) serve the statement and a Petition for Reinstatement with the Office of the General Counsel and with the Review Panel.

Review Panel Reprimand

Derek M. Wright

Atlanta, Ga.

On Oct. 16, 2006, the Supreme Court accepted the petition for voluntary discipline of Derek M. Wright (State Bar No. 777740) and imposed a Review Panel Reprimand and a requirement to attend the next scheduled session of the State Bar's ethics school at his own expense. Wright filed a tort action on behalf of a client, but failed to respond to the defendant's discovery requests and motions, failed to comply with a court order, failed to appear at a scheduled hearing, failed to inform his client that her action had been dismissed and then lied to the Investigative Panel in an attempt to excuse his failure to attend the court hearing. Wright had no prior disci-

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pline, was remorseful and accepted responsibility for his misconduct.

Public Reprimand

Ralph S. Goldberg

Decatur, Ga.

On Oct. 2, 2006, the Supreme Court accepted the petition for voluntary discipline of Ralph S. Goldberg (State Bar No. 299475) and imposed a public reprimand. Goldberg represented clients in a civil action and obtained a judgment against the defendant for \$63,400. Pursuant to a contingency fee agreement, Goldberg was entitled to one-third of any recovery. Goldberg's wife, Lauren Cuvillier, was a paralegal in his office and worked on the case. In an effort to collect the judgment against defendant, Goldberg arranged for the execution sale of real property owned by the defendant. Cuvillier attended the sale with one of the clients and acquired the property as her own separate property. When the client complained, Goldberg ratified Cuvillier's conduct by failing to take legal or remedial action against her. Subsequent to the filing of the grievance and subsequent to Cuvillier's sale of the property, Goldberg shared \$40,270.28 with the clients, and that amount represented two-thirds of the net proceeds of the sale of the property plus interest, with deductions for documented costs of repairs and improvements to the property and Goldberg's fee of \$20,868.73.

In mitigation of discipline, Goldberg had no prior disciplinary history, he cooperated with disciplinary authorities, he did not act with a selfish or dishonest motive, and he was remorseful.

Formal Letter of Admonition

George Michael C. Ranalli


Henderson, Nev.

On Sept. 18, 2006, the Supreme Court of Georgia ordered that George Michael C. Ranalli (State Bar No. 593715) receive a Formal Letter of Admonition. Ranalli received a

90-day suspension to be stayed subject to a one-year probation, with conditions, from the Supreme Court of Nevada for improperly transferring funds from the firm's trust account to its operating account. There is no discipline in Georgia equivalent to the discipline imposed in Nevada. Accordingly, the court ordered Ranalli to receive a letter of formal admonition with a requirement for compliance with the conditions imposed in Nevada. Ranalli must complete 10 hours of CLE (in addition to the hours required by Nevada) with five hours devoted to trust account management and five hours devoted to office management and Nevada Bar counsel must approve the selected courses; enter into a mentorship agreement for the one-year probation period with a mentor approved by Bar counsel, meet at least monthly with the mentor, and have the mentor provide quarterly reports to Bar counsel; pay \$7,500 to the Client Security Fund by the end of the one-year probation; pay one-half of the State Bar's costs; and refrain from further misconduct during the one-year probation period.

In mitigation of discipline the court noted that Ranalli had no prior discipline; he was remorseful; he cooperated with disciplinary authorities; and that he self-reported this matter to the Nevada Bar.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Aug. 19, 2006, six lawyers have been suspended for violating this rule, and five 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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A Gift to You from Law Practice Management

by Natalie Thornwell Kelly

The holidays are here and in the spirit of the season, we want to give you a gift. Taken from our involvement in local and national speaking events, here is our gift to you—some of the websites, tools, tips and gadgets that we have found interesting and useful, too!

Search Tools

Copernic—www.copernic.com—is a desktop index and search tool that makes finding things on your computer a snap. **X1**—www.x1.com—is probably the strongest search engine mentioned here, and it will also search across computer networks on the fly. Warning: If you choose to use Google, www.google.com, make sure you understand that if you choose to activate the Search Across Computers feature, your indexed data files will be stored on Google's servers and not on your own system.

Everyone loves to search using Google, but I like to point out other engines that provide some unique alternatives. One engine that I have used for a long time that has recently undergone a name change is www.clusty.com, formerly called www.vivisimo.com.

This engine clusters searches and gives a different perspective on the results. Another engine that I discovered at last year's TECHSHOW is www.rollyo.com. This Web 2.0 formatted engine allows users to "roll" their searches. This means you can create searches that only search across the trusted websites you decide to use. Google's new counter application is the Custom Search Engine.



Pods in Practice

Using iPods for catching the latest tunes is just step one with this Mac wonder toy. Lawyers are using their iPods for additional storage of photos, and even getting CLE credit for applicable podcast programs. You can now find a full range of legal podcasts and blawgcasts online. Don't know where to start searching for blawgs (legal blogs) or podcasts? Try the "Google of the blogosphere"—www.technorati.com.

If you need to expand the use of your iPod, say by adding a voice recorder feature, you can check out

www.ilounge.com to learn about hundreds of nifty accessories and to see reviews of add-ons. Like other technology, you will need to make sure any data you have on these devices is protected. "Podslurping" is the stealing of data through the use of iPods or thumb drives. Make sure you always keep security in mind when using any type of technology, especially mobile tech tools.

Edit/Paste Special

This tip is one of our favorites. When copying data from websites and other documents that have a myriad of formats or styles applied to them, you can end up with a nightmare if using the plain old copy/paste technique. Use edit/paste special to get options to paste text in a particular format or as unformatted text. Extra gift: Sometimes even the paste special steps will result in an ugly, difficult document. You can get rid of crazy characters by first pasting the document into Notepad to clear out some of the hard to get around formatting and styles.

Salary.com

This website provides great worksheets for determining pay ranges, as well as specific things like how much your take home paycheck will be when you are paid a certain salary. Also, if you want to know how your salary

stacks up against Oprah or Bill Gates, or even how much you could be paid in Big Macs every week, this site provides these entertaining calculators, too.

Pchell.com

Speaking of Bill Gates, if you are experiencing problems with your PC, you can consult this site for help. Many of the common, and even uncommon, errors are explained and resolved on this site. If you are in a larger firm, please consult your IT staff before trying any of the fixes!

Crosseyes

If you want to maximize the use of Word, but have been a WordPerfect user for years, try the tool that puts Reveal Codes in Word—Crosseyes. Offered at www.levitjames.com this is an incredible tool for WordPerfect users. Note: We advocate the use of both Word and WordPerfect in

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Anagram for Outlook

If you are reliant upon your Outlook contacts, you will definitely need to invest in Anagram for Outlook. This program captures contact information in various formats and automatically fills fields in Outlook. Well worth the \$29.95 you'll pay for a full license. You can try it for free for 45 days at www.getanagram.com. There is also a version for Palm devices. Note: We would prefer to see you link the Outlook contacts into your legal practice management software once you have them stored in Outlook.

Entrepreneur.com

Under the technology area of this site, you can find an annual guide to Business software. While this is not a legal-specific listing, it does give a great overview of technology tools for you to consider.

GetHuman.com

Even though this has already been listed on the *Website of the Week* for the department, you might find this helpful the next time you are looking to navigate out of an automated phone system and get to a real live person faster.

Gasbuddy.com

With higher gas prices these days, who doesn't need a buddy. You can type your zip code in at this site and find gas stations with the lowest prices in your area. You can even use this to help with estimates for holiday trip planning.

Windows New Operating System

Get ready for the next Windows upgrade. Check out Microsoft's new operating system, Vista, at www.microsoft.com. Current Windows users and PC shoppers are getting a gift from Microsoft this holiday season, too. Until March 15, 2007, anyone purchasing a PC

with Windows XP and Office 2003 can get discounted upgrades to Windows Vista and Microsoft Office 2007 when they are released. If you need to see if your machine can handle Vista, try the Vista PC Advisor tool also on the Microsoft website.

Esrb.org

The Entertainment Software Review Board site will help you navigate through the ratings of software programs. This can be helpful in deciding if certain computer software and gaming gifts are both content- and age-appropriate.

Mac vs. PC


If you are wondering if you can effectively use Macs in your law firm, you will be surprised that our answer has changed from a "well, you might have trouble with legal-specific software, so you might want to think long and hard about it"—and this is generally still the case—to "you can definitely do most of the necessary legal drafting and word processing on a Mac that you have been doing on a PC." The new MacBook Pro laptop, that I received in a Mac Legal Trial program, is performing wonderfully without my having worked with a Virtual PC or Boot Camp setup. I am trying out the MacBook Pro with Microsoft Office for Macs, and a 60GB iPod to see how it performs in everyday use and with general legal work situations. To learn more about Macs and software for using them in law firms, check out www.apple.com and www.mactortorney.com.

Adobe Acrobat

Dig deep into Adobe Acrobat. If at all possible, purchase the Professional version of Adobe. Even though this is a pricey option, the new version 8 sports some expanded features for the legal market. If you are just getting started, then checkout and read "The Lawyer's Guide to Adobe Acrobat" from our Resource Library.

Charitynavigator.com

Looking for a perfect benefactor for your donations? Use this site to learn which charities would work best for you and your firm. The site features searching for charities by categories, too.

We hope you enjoy this gift of valuable tips, and don't forget to contact us if you have something you would like to share or have us share with you. Happy Holidays from the State Bar of Georgia's Law Practice Management Program! 



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



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New Look and Expanded Search Abilities for Casemaker

by Jodi McKenzie

By the end of 2006, the Casemaker website will contain legal libraries for all 50 states. Casemaker is enlarging its current selection of state libraries to include all appellate case law, state constitutions, rules of court and current statutes, as well as other selected items.

Casemaker's state appellate decisional case law content will equal the content found in either Westlaw or LexisNexis back to 1950. And it will far exceed the state appellate case law content of any of the other legal publishers, worldwide. These developments make Casemaker the fastest growing online legal-research service in the country.

Casemaker will also enhance its federal library to include federal appellate decisional law that will have all decisions from the U.S. Supreme Court. The U.S. Circuit Court libraries will include all decisions post-1949.

Casemaker will also soon be sporting a brand-new look. The process of revamping the site has been designed to present a "cleaner" appearance. However, there are more important changes to the site.

By the end of November 2006, Casemaker users will find expanded and simpler search capabilities that will be even more user-friendly. Users will continue to search using Boolean operators, as well as natural language. Searching in Casemaker will continue to be as easy as typing a question.


Casemaker will also maintain its unique *Thesaurus* function, which allows users to search for words that are similar or otherwise related to the object word. Users will continue to be able to search using prefix and suffix expansions, another feature unique to Casemaker.

The newest search enhancement will allow users to be able to search in multiple state and federal libraries *simultaneously*. This feature produces expanded results in an economical amount of time.



Last year, Technolawyer.com conducted a poll among its members to determine the popularity of online legal research libraries. Casemaker received more votes in its 20 member states than did any other service. In the final nationwide vote tally, Casemaker finished second to LexisNexis even though the lawyers in the remaining 30 states did not have access to Casemaker. And since the time of this poll, an additional five state bar associations have joined the Casemaker Consortium to provide the services to each of their members.

Casemaker remains committed to members of the State Bar of Georgia by continuing to move forward with improvements. These enhancements are just another example of Casemaker's commitment to you.

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Jodi McKenzie is the member benefits coordinator for the State Bar of Georgia. She can be reached at 404-526-8618 or jodi@gabar.org.

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Tifton Hosts Bar Events

by Bonne Cella

Thomas Herman, co-chair of the Local Bar Activities Committee and Tom Boller with Capitol Partners Public Affairs Group, Inc., the State Bar of Georgia's legislative consulting group, have been meeting with representatives of local bar associations throughout the state in an effort to "energize the troops."

Representatives from the Alapaha, Dougherty, Douglas, Southwestern, Pataula, Tifton and Thomas County Bar Associations met at the State Bar's South Georgia office in Tifton on Oct. 23 to garner essential information to take back to their local bar membership.

Herman offered assistance from his committee and the many available resources from the State Bar of Georgia to help energize local bar associations. To that end, two CDs have been produced for use at bar meetings and for civic clubs. Contact Herman at thomas@wpmlegal.com or Sarah Coole at sarah@gabar.org if you want a copy for your group.

State Bar of Georgia Past President Rob Reinhardt of Tifton reviewed the Foundations of Freedom initiative that is designed to inform the public on the role of lawyers and judges in preserving our constitutional democracy. Reinhardt urged the bar leaders to help inform the public that a strong and independent judiciary is vital to our democracy and our way of life.

Tom Boller agreed that there is a public information deficit, noting that in a recent study many Americans could not even name the three branches of government. He also stated that non-lawyers are dominating the Georgia legislature. Bar leaders were encouraged to engage their legislators, invite them to bar events and to get the judges involved in improving the relationship with the non-lawyer legislators.

Also in a law-related education effort, a high school teacher's workshop was held at the South Georgia Office. Joining the Bar Center through satellite TV, 10 South Georgia teachers were introduced to such topics as the law of torts, the court system, jury selection and stereotyping. Each teacher was given the book *An Introduction to Law in Georgia* which was compiled by members of the



Photo by Bonne Cella

Board Member Greg Fullerton (right) of Albany listens as Tom Boller encourages bar leaders to engage their legislators.

Young Lawyers Division of the State Bar of Georgia. While the Atlanta counterparts enjoyed a tour of the Bar's educational museum, the participants in Tifton took a tour of the Bar Center via a PowerPoint presentation. This workshop for teachers was organized by Christine Ledvinka, law-related education coordinator of the Carl Vinson Institute of Government.

Ed Lightsey, a senior correspondent for *Georgia Trend* magazine, regaled members of the Tifton Circuit Bar Association at their meeting when he recounted his career in journalism covering high profile criminal cases in Georgia. His recently published book, *Flashback: The First Fifty Years of WALB-TV*, is both a brief history of the early days of television in South Georgia and a remembrance of his 10 years as a television reporter and anchor. For three seasons during the 1970s, Ed hosted the Peabody Award-winning series "The Lawmakers" on Georgia Public Television. Following 10 years as WALB's capital correspondent, Ed became the administrative assistant to Georgia's Speaker of the House at the time, Tom Murphy. GB



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

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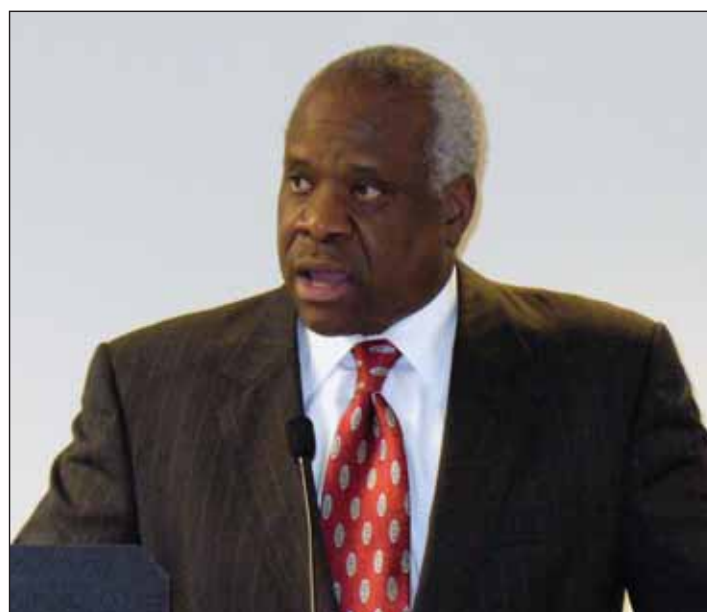
Justice Thomas Visits Bar Center

by Johanna B. Merrill

The **Intellectual Property Law Section** held several luncheon lectures this fall, including a Trademark Committee sponsored CLE luncheon on Oct. 3 with special guest speaker from the U.S. Patent and Trademark Office, Lynne G. Beresford, commissioner for trademarks. Commissioner Beresford discussed current happenings at the Trademark Office with approximately 50 attendees. The section is grateful to Rep. Tom Price for his assistance securing Beresford's presence at the luncheon.

On Oct. 25 the IP Law Section's Litigation Committee, chaired by Tina McKeon, held a discussion luncheon for new patent litigators on the patent rules in the Northern District. Chief Judge Jack Camp of the Northern District of Georgia, Steven Moore of Kilpatrick Stockton and Claus Melarti of Duane Morris were the panel speakers. The IP Law Section Trademark Committee, chaired by Brad Groff, hosted another luncheon lecture on Nov. 14 regarding the Newly-Enacted Trademark Dilution Revision Act of 2006. Panelists included Scott Creasman of Powell Goldstein LLP, Jerre Swann of Kilpatrick Stockton, LLP and Mike Hobbs of Troutman Sanders LLP. Ted Davis of Kilpatrick Stockton, LLP, moderated the panel.

The **Agriculture Law Section** participated in the American Agricultural Law Association (AALA) Conference in Savannah, Ga., Oct. 13-14. Section Chair Allen Olson introduced the conference's keynote speaker, Sen. Saxby Chambliss. Olson also moderated the section-sponsored panel on "Current Legal Issues



Photos by Johanna B. Merrill

U.S. Supreme Court Associate Justice Clarence Thomas addresses attendees at the first 11th Circuit Appellate Practice Institute held at the Bar Center on Oct. 26-27.

for Southeast Agriculture" with the agriculture commissioners of Georgia and South Carolina and their general counsel serving as panelists. The section donated \$1,500 to AALA to defer the travel expenses of Georgia and South Carolina law students attending the conference. In his introductory remarks that preceded Sen. Chambliss' speech, AALA President Donald Uchtmann thanked the section for its efforts.

The **Technology Law Section** hosted the 21st Annual Technology Law Institute at the Bar Center on Oct. 17. The day-long program offered seven CLE credits, including one ethics and two trial practice credits, and featured nationally and internationally known speakers such as Ian Ballon, Nick Holland and Sean Carter. Following the Institute, the section sponsored a wine tasting and networking event at McCormick & Schmick's at CNN Center that was open to all members of the section and all Institute attendees.



Amy Weil, U.S. attorney and Appellate Practice Section member, welcomes attendees to the 11th Circuit Appellate Practice Institute on Oct. 26.



Chief Judge Jack Camp, Steven Moore and Claus Melarti lead a luncheon lecture on "basics" for new patent litigators sponsored by the Intellectual Property Law Section on Oct. 25.

The **Appellate Practice Section**, along with the Appellate Practice Sections of the Alabama and Florida Bar Associations and ICLE, sponsored the inaugural 11th Circuit Appellate Practice Institute at the Bar Center on Oct. 26-27.


U.S. Supreme Court Associate Justice Clarence Thomas, who is the Supreme Court justice assigned to the 11th Circuit, was the keynote speaker on Oct. 26. Eleventh Circuit Senior Judge Phyllis Kravitch, a fellow Savannahian and long-time friend, introduced Thomas, who told the approximately 200 appellate bar attendees that he was glad to be "home." Thomas was recently appointed to the 11th Circuit after Justice Anthony Kennedy moved to the 9th Circuit. Thomas fielded

questions from the audience on such topics as appellate advocacy, amicus briefs, judicial independence and the "human institution" of the U.S. Supreme Court.

Members of the **Creditors' Rights Section** gathered at Maggiano's Little Italy Restaurant in Buckhead on Oct. 27 for a CLE luncheon featuring guest speaker Mark Harper, clerk for the Fulton County State Court. Harper discussed the new e-filing option that the court is offering.

The **Bankruptcy Law Section** sponsored their annual dual-track Consumer and Business Bankruptcy Institute on Nov. 10 at the Bar Center. Section officer Shayna Steinfeld chaired the program. The section also hosted a speaker and judge's dinner at Ruth's Chris

Steak House the night prior to the seminar.

The **Entertainment & Sports Law Section** hosted a quarterly CLE luncheon at Taurus Restaurant in Buckhead on Nov. 15. The program titled "Protect the Mark! Anti-dilution, branding and other hIP topics" featured speaker Charlie Henn, a partner with Kilpatrick Stockton, LLP, who practices in the Intellectual Property Group. 



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

She can be reached at johanna@gabar.org.



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Professionalism— Even with Your Adversary

by Dick Donovan

Lawyers who are litigators often charge to the courthouse “to do battle.” Yet, even in a clearly adversarial situation, lawyers are expected to be professional in dealing with each other, as well as the judiciary, their clients and the public. Being professional may seem to come at a personal, but necessary, cost. Dick Donovan, chair of the State Bar’s Committee on Professionalism, shares his thoughts on defining professionalism in an adversarial context.

Since the Middle Ages, there were four professions, or Estates—Medicine, Law, Religion and, of course, the fourth estate, Journalism. These were the callings commonly referred to as “professions”—other vocations were simply referred to as just that: they were vocations or trades.

A man who worked “in trade” was considered a lesser class, even if he were an artisan, like Paul Revere. Silversmiths, sculptors, painters or furniture makers, were not “professionals,” not members of a recognized profession. The professionals—lawyers, doctors, clergymen and journalists—were held in higher esteem by all of society, and the term profession was limited to the four estates.

In the last 200 years, practitioners of other vocations have become known as professionals, and the term “professional” in today’s lexicon can refer to any person who specializes, or even one who has a license from a government agency or board. So the term “profession” and “professional” are applied to a variety of businesses and individuals. Georgia began some years ago to define a professional as anyone licensed by the state for a particular employment, including engineers, police officers, and the like. Anyone who must obtain and possess a license to follow a particular trade or line of work is, by our own state law, a “professional.”

But lawyers, the men and women who are members of the “Legal Profession” are, in a way, still unique. Regardless of the bad jokes and sometimes bad press from the fourth estate, lawyers, are a valued and indispensable part of our modern society, and for that reason, the need for all of us to be constantly aware of our duty to engage in professionalism is imperative, and must be a fundamental part of our everyday practice.

You have heard the term “character” defined as doing the right thing even when no one will ever know about it. Ethics and ethical behavior are sometimes similarly defined. In defining “professionalism” one must not confuse ethics and professionalism. Lawyers are bound to ethical behavior by our Rules of Professional Responsibility. But no one but you will ever require that a lawyer be professional or act in a professional manner; no one will *require* professionalism of the attorney—except that same attorney. As former Chief Justice Harold Clarke of the Supreme Court of Georgia has said, “Professionalism differs from legal ethics in the sense that ethics is a minimum standard required of lawyers while professionalism is a higher standard expected of all lawyers.”¹

What is this “professionalism”? In the Middle Ages and before, chivalry was a code of behavior that governed certain relations between people. It is recalled as the cape thrown across a mud puddle so a lady could cross a street without getting her feet dirty. But it was of course much more. It meant that a knight in combat who had knocked an opponent from his horse would then himself dismount so that they could fight on a level field, face to face. It meant that a combatant whose opponent dropped his lance would stop and wait until the weapon was restored to his adversary before continuing the fight. Chivalry transcended the adversarial relationship, and so must professionalism in the practice of law.

Professionalism is more easily demonstrated by example than by a definition in words. Professionalism is the lawyer calling opposing counsel to point out an upcoming deadline, or to agree to an extension of time

for some response. It is that act on the part of a lawyer in dealing with members of the public, with other lawyers or members of the judiciary, which is altogether and at the same time fair, considerate, straightforward and demonstrative of the proper attitude of one professional to another. It is what marks an attorney at law as a professional and sets the lawyer apart from others.


During the Civil War, the Atlanta Campaign consisted of a number of skirmishes, small engagements and five major battles. The Union and Confederate armies fought all over what is now the metro area, from Chattanooga down to Kennesaw, Marietta, Paulding, Cobb, and into Atlanta, and then of course, Gen. Sherman began his infamous March to the Sea at Savannah. Sherman's primary opponents in these battles in Tennessee, Georgia and the Carolinas were Confederate

Generals John Bell Hood and Joseph E. Johnston. They were Sherman's bitter enemies, and they engaged with Sherman in some of the hardest-fought, bloodiest battles of the War.

Gen. William Tecumseh Sherman went on to become an Indian fighter, and Gen. Johnston was repatriated, as was Gen. Hood. All three of these generals were graduates of West Point Military Academy, and they were all, by any standards, "professionals" in the truest sense of the word. They were professional soldiers, professionals at the art of war, but professionals nonetheless.

Just how did these generals demonstrate professionalism? In 1891 at the funeral for Gen. Sherman, outside the church in New York, as his flagged-draped coffin was carried out, Sherman's old adversary Joseph E. Johnston stood at attention, bareheaded, in a cold rain. A friend of Johnston's

expressed his astonishment at Johnston's act of respect and suggested he cover his head to protect himself from the weather. Johnston's reply is the embodiment of professionalism. He said, "If I were in his place, and he were standing here in mine, he would not put on *his* hat!" Johnston died 10 days later of pneumonia.

That's professionalism. 



Dick Donovan is a partner in the Douglasville firm of Donovan Chambers, P.C., and chair of the State Bar's Committee on Professionalism.

Endnote

1. Interview With Chief Justice Clarke, *Decatur-DeKalb Bar Quarterly*, May 24, 1990.

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Admitted 1979
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Hinesville, Ga.
Admitted 1971
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Steven C. Ellingson
Atlanta, Ga.
Admitted 1991
Died February 2006

J. Sidney Flowers
Hinesville, Ga.
Admitted 1961
Died August 2006

Fredric D. Friss
Bedford, Tex.
Admitted 1974
Died February 2006

Lewis M. Groover Jr.
Ludowici, Ga.
Admitted 1970
Died February 2006

Sylvia S. Huskins
Eatonton, Ga.
Admitted 1985
Died August 2006

Bobbin L. Lowery
Atlanta, Ga.
Admitted 1974
Died May 2006

Lawrence J. McEvoy Jr.
Atlanta, Ga.
Admitted 1965
Died July 2006

Betty Jane Moore
Atlanta, Ga.
Admitted 1975
Died June 2006

William E. Otwell
Austell, Ga.
Admitted 1958
Died September 2006

James M. Rea
Clarksville, Ga.
Admitted 1966
Died May 2006

Paul H. Roney
St. Petersburg, Fla.
Died September 2006

Bernard H. Rounds
Athens, Ga.
Admitted 1975
Died May 2006

Franklin L. Simpson Jr.
Fredericksburg, Va.
Admitted 1977
Died August 2006


Joseph E. Valloton
Valdosta, Ga.
Admitted 1970
Died May 2006

Herbert B. Zachry
Atlanta, Ga.
Admitted 1962
Died June 2006

Paul H. Roney, 85, of St. Petersburg, Fla., died in September. Judge Roney rose to prominence as chief judge of the 11th U.S. Circuit Court of Appeals and influenced scores of young lawyers during his more than three decades on the bench, "He was what you would call a lawyer's lawyer," said Pinellas Senior Circuit Judge Robert Beach, his former law partner. "But he was also an outstanding judge." His no-nonsense, direct legal style had a lasting influence on the way opinions are written in the 11th Circuit, which is based in Atlanta. Judge Roney was at one time considered a potential nominee for the U.S. Supreme Court. Although that appointment never came, his colleagues said he was admired well beyond the 11th Circuit. Judge Roney considered his law clerks his extended family, and many flourished under his tutelage. They now include some of the most influential legal minds in Florida and the country, including the former U.S. ambassador to the United Kingdom, Phillip Lader. He also inspired loyalty in his assistants. Estelle Sparks served as his secretary for 34 years before retiring in 1998. Judge Roney was a longtime pioneer for civil rights and helped racially integrate the Bar Association in St. Petersburg as a young lawyer. When he became a judge, he hired clerks of various ethnic backgrounds and then encouraged them to set aside their biases when considering cases. The judge urged them to

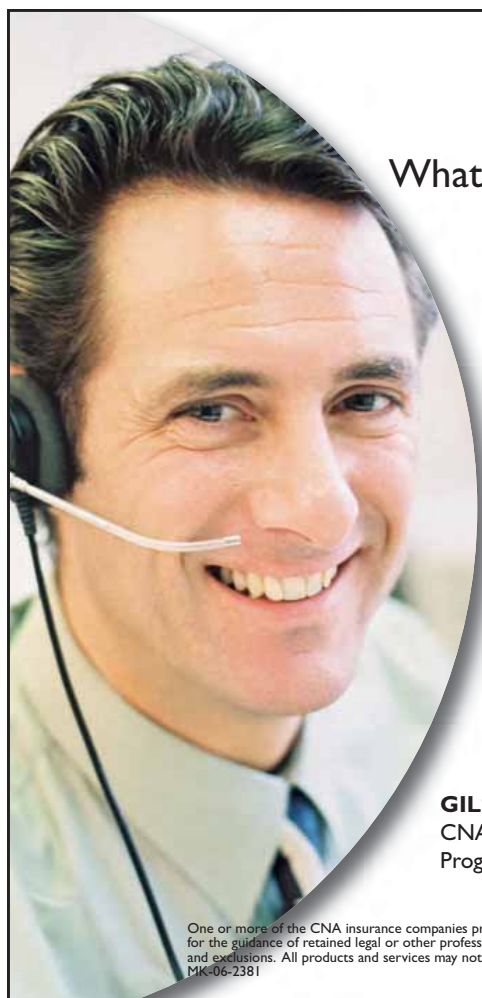
take seriously cases involving inmates complaining about bad prison conditions. Born in Illinois, Paul Hitch Roney lived in St. Petersburg from the age of 4. After attending St. Petersburg Junior College, he earned a bachelor's degree in economics from the University of Pennsylvania and a law degree from Harvard University. In New York, he practiced law in the 1940s, then returned to St. Petersburg where he worked in several firms until he opened his own office in 1957. He never had "a burning desire" to be a judge, he once said. "I would have been perfectly happy to practice law the rest of my life," he said. Yet before he was 50 he found himself appointed by President Richard M. Nixon to the 5th U.S. Circuit Court of Appeals, the New Orleans-based court with jurisdiction over cases from Florida, Georgia, Alabama, Texas, Louisiana and Mississippi. Eleven years later, the jurisdiction was

divided with the creation of the Atlanta-based 11th Circuit court hearing cases from Florida, Georgia and Alabama. Judge Roney became one of the 12 original judges. In September 1986, he was named chief judge, a post he held for three years. Judge Roney was known for his concise opinions, which always included an introductory paragraph that clearly explained the court's position. His pragmatic demeanor carried over to the courtroom, where Judge Roney developed a reputation for asking sharp questions. He was also exceptionally active in the community. He was past president of the St. Petersburg Junior Chamber of Commerce; the St. Petersburg Council of Human Relations; the Family and Children's Service Bureau and the Community Welfare Council. A former director and vice president of the South Pinellas Chapter of the American Red Cross, Judge Roney also belonged to the Suncoasters,

American Cancer Society, St. Petersburg Chamber of Commerce, Child Guidance Clinic and Science Center of St. Petersburg. He was also a trustee of the Museum of Fine Arts and an elder at First Presbyterian Church. In addition to his wife of 58 years, Judge Roney is survived by his three children, Susan M. Roney; Paul Hitch Roney Jr.; and Timothy Eustis Roney; seven grandchildren and two great-grandchildren. 



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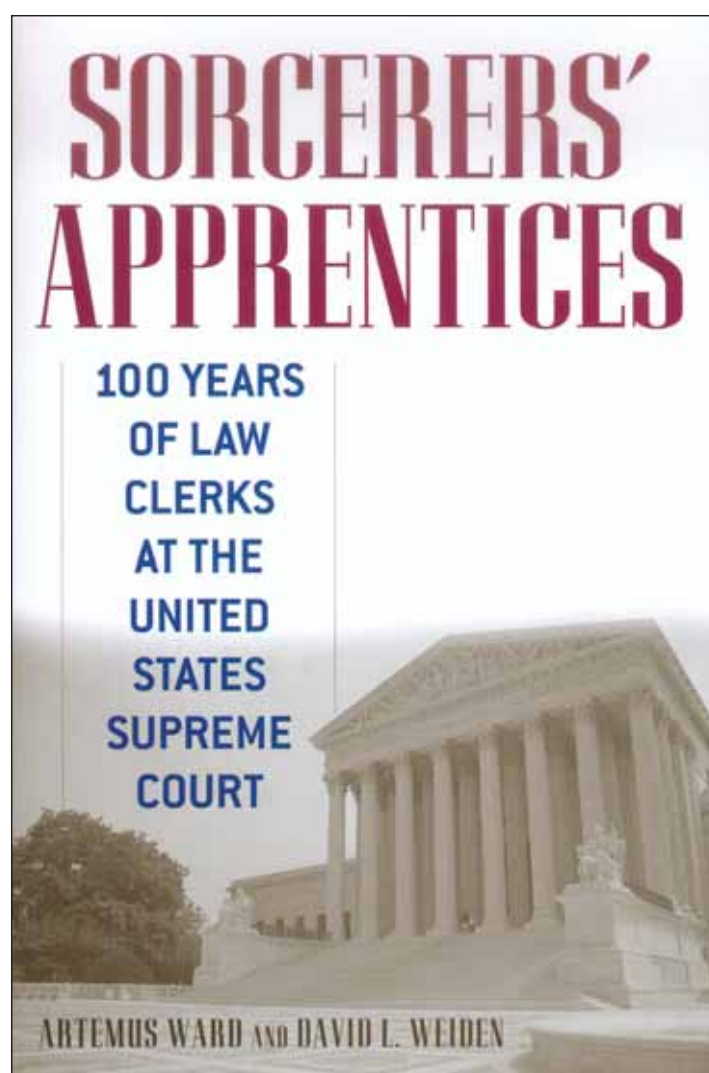
Sorcerers' Apprentices:

100 Years of Law Clerks at the United States Supreme Court
by Artemus Ward and David L. Weiden, New York University Press, 337 pages

reviewed by Marcus D. Liner

Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court, by Artemus Ward and David L. Weiden, is an exhaustive examination of the institution of law clerks at the nation's highest court. Although other books have explored various aspects of clerks' positions, lives or influence on the justices for whom they work, it is likely that none is as empirical in its research or its findings. What the book may lack in page-turning intrigue, however, it makes up in its insightful analysis of the evolution of clerks in the Supreme Court and some of the trends with respect to the role they have played in the business of the Court.

Ward and Weiden—professors at Northern Illinois University and Illinois State University, respectively—base their work on documents found in the Supreme Court archives and in hundreds of boxes of personal papers of Justices Powell, Blackmun, Marshall and others. From these materials, the authors extract and include in the book numerous excerpts from memos between the clerks and their justices, as well as among the clerks and justices themselves. These passages give fascinating insight into the close relationship between justice and clerk, the thought processes that take place in chambers, the backdoor politicking, and, perhaps most significantly, the level of influence that clerks have in the judicial



decision-making process at the Court. Of particular note is a pair of memoranda in the appendices from two of Justice Blackmun's clerks to him during the Court's consideration of *Planned Parenthood v. Casey*, the 1992 landmark abortion rights case.

Of all the painstaking research, however, the data that set *Sorcerers' Apprentices* apart from the rest are the comprehensive results of the authors' interviews with and written surveys collected from more than 150 for-

mer Supreme Court clerks. The surveys (a copy of which is included in the appendices) requested that clerks rate, on a five-point scale, their perceptions regarding a number of detailed facets of their role in their justice's chambers, their relationship with the justice, and their influence in affecting their justice's opinions. The depth of the questionnaire, as well as the numeric, close-ended nature of the responses, allowed the authors to analyze the answers statistically, plot them on a myriad of charts and graphs, and track trends across decades of clerks.

One of the primary findings presented in *Sorcerers' Apprentices* is that the influence that clerks perceive they have on their bosses has increased over the years as clerks have gradually assumed additional responsibilities within the justices' chambers. When the Supreme Court first began using law clerks in 1882, their role was strictly administrative in nature, and a clerk was essentially just a stenographer and secretary. During this time it was common for attorneys to learn the law not solely from formal studies in law school, but also (or instead) by "reading" the law as an apprentice to a practicing attorney. The authors suggest that this apprentice model served as the underpinning of the Court's utilization of clerks.

By the 1920s and 30s clerks were regularly performing legal research for their justice as a part of their apprenticeship. In the three decades that followed, the number of clerks increased to two per justice and clerks began writing memos detailing petitions for certiorari to the Court as well as "bench memos" — short summaries of cases to be tried before the Court. By the 1970s the caseload at the Supreme Court had skyrocketed, and the number of clerks allotted to each justice was increased to three and then to four. In 1972 the cert pool was created, meaning that each petition for certiorari was reviewed by a single clerk who

wrote a memo for all justices. This replaced the previous practice of having nine clerks (one from each chambers) review each petition and draft a memo solely for their own justice, thereby greatly mitigating an extremely time-consuming process for clerks and freeing them up to focus on the drafting of opinions. In addition to extensive research and writing cert and bench memos, today's clerks often write first drafts of opinions and then participate in the revision process.

The authors assert in *Sorcerers' Apprentices* that because of this increased responsibility, more recent Supreme Court clerks feel they have greater influence over the decision-making process than their predecessors. However, the results indicate that this increase has been slight, primarily because even modern day clerks perceive their ultimate influence over the justice to be quite weak, especially with respect to their ability to change the justice's mind on the

outcome of a case. But the authors find that clerks do wield a greater measure of influence with certiorari decisions and with the legal and stylistic content of opinions. Ultimately, the authors conclude that "the influence of the clerk is neither negligible nor total."

Sorcerers' Apprentices, while dense, packed with raw data and occasionally tedious to digest, is at the same time exceptionally informative in tracing the history of the institution of the Supreme Court clerks. The book offers a uniquely insightful analysis of the evolution of both the job and the influence that clerks have on the Court's decisions. GBJ



Marcus D. Liner is the editor-in-chief of the *Georgia Bar Journal* and Division General Counsel at Global Payments Inc. He can be reached at Marc.Liner@globalpay.com.

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- DEC 1** ICLE
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6 CLE Hours
- DEC 1** ICLE
Basic Fiduciary Practice
Atlanta, Ga.
6 CLE Hours
- DEC 1** ICLE
Georgia Law of Torts
Atlanta, Ga.
6 CLE Hours
- DEC 1** Lorman Education Services
Building Levees Across the Clean Water Act
Teleconference
1.5 CLE Hours
- DEC 1** Lorman Education Services
Federal Tax Credits for Increasing Research Activities
Teleconference
1.5 CLE Hours
- DEC 1** Lorman Education Services
Prevailing Wage Law – An Understanding of Davis Bacon
Teleconference
1.5 CLE Hours
- DEC 1** Lorman Education Services
Advanced Partnerships, LLC's and LLP's – Organization
Atlanta, Ga.
6.7 CLE Hours

- DEC 1** Lorman Education Services
Construction Law From Contract to Closeout
Atlanta, Ga.
6.7 CLE Hours
- DEC 1 - 2** South Carolina Trial Lawyers Association
SCTLA 2006 Auto Torts XXIX Seminar
Atlanta, Ga.
10 CLE Hours
- DEC 1 - 2** West Virginia CLE
Bankruptcy Law
Morgantown, Va.
9 CLE Hours
- DEC 4** Lorman Education Services
Workers' Compensation Settlements – Do's and Don't's Practical
Teleconference
1.5 CLE Hours
- DEC 5** ICLE
Beginning Lawyers Program Video Replay
Atlanta, Ga.
6 CLE Hours
- DEC 5** Lorman Education Services
End-of-Year Payroll Process
Teleconference
1.5 CLE Hours
- DEC 5** NBI, Inc.
Human Resource Policies That Prevent Lawsuits
Atlanta, Ga.
6 CLE Hours
- DEC 5** Defense Research Institute
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Teleconference
2 CLE Hours

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DEC 6	ICLE <i>Evolution of Crime in the 21st Century</i> Atlanta, Ga. 6 CLE Hours	DEC 7	Lorman Education Services <i>Increasing Real Estate Equity Capital Sources Bootcamp</i> Teleconference 1.5 CLE Hours
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DEC 6	Lorman Education Services <i>Internet and E-Mail – Monitoring Employee Conduct</i> Teleconference 1.5 CLE Hours	DEC 7	ICLE <i>Handling Administrative Licensing and Disciplinary Matters</i> Atlanta, Ga. 6 CLE Hours
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DEC 7	ICLE <i>Great Adverse Depositions</i> Atlanta, Ga. 6 CLE Hours	DEC 8	ICLE <i>Attacking the Expert's Opinion</i> Atlanta, Ga. 6 CLE Hours
		DEC 8	ICLE <i>Criminal Laws Satellite Live Broadcast</i> Statewide, Ga. 6 CLE Hours

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DEC 8	ICLE <i>Section 1983 Litigation</i> Atlanta, Ga. 6 CLE Hours	DEC 12	Practising Law Institute <i>Adoption Law Institute</i> Online 6 CLE Hours
DEC 8	Lorman Education Services <i>Judgment Enforcement</i> Atlanta, Ga. 6 CLE Hours	DEC 12	Lorman Education Services <i>Business Bankruptcy Update – One Year Under BAPCPA</i> Teleconference 1.5 CLE Hours
DEC 8	NBI, Inc. <i>Bankruptcy Reform Update – One Year Later</i> Atlanta, Ga. 6 CLE Hours	DEC 12	ALI-ABA <i>So Little Time So Much Paper Organization & Time Management for Lawyers</i> Atlanta, Ga. 6 CLE Hours
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DEC 14	ICLE <i>Criminal Laws Satellite Rebroadcast</i> Statewide, Ga. 6 CLE Hours	DEC 14	ICLE <i>Selected Video Replay</i> Atlanta, Ga. 6 CLE Hours
DEC 14	NBI, Inc. <i>Plaintiff's Personal Injury – Practice Tips and Application</i> Various Locations, Ga. 6 CLE Hours	DEC 14	ICLE <i>Hot Tax Topics for the Business Attorney</i> Atlanta, Ga. 6 CLE Hours
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		DEC 15	ICLE <i>Labor & Employment Law</i> Atlanta, Ga. 6 CLE Hours

December-January

DEC 15	Lorman Education Services <i>Taking and Defending Effective Depositions</i> Teleconference 1.5 CLE Hours	DEC 21	NBI, Inc. <i>E-Discovery – Get Ready to Apply the New FRCP Changes</i> Atlanta, Ga. 6 CLE Hours
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DEC 19	Lorman Education Services <i>The Most Common Mistakes Made By Qualified Plan Sponsors</i> Teleconference 1.5 CLE Hours	JAN 9	NBI, Inc. <i>Advanced LLC Issues</i> Atlanta, Ga. 6.7 CLE Hours
DEC 19	NBI, Inc. <i>Managing Ethical Issues in Your Day-to-Day Practice</i> Atlanta, Ga. 3 CLE Hours	JAN 10	Lorman Education Services <i>Real Estate Law From A to Z</i> Atlanta, Ga. 6.2 CLE Hours
DEC 21	The American Bar Association <i>The Effective Associates Training and Development</i> Teleconference 1.2 CLE Hours	JAN 11	Lorman Education Services <i>How Business Strategies Drive Trademark Management</i> Teleconference 1.5 CLE Hours

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JAN 12	ICLE <i>Winning Settlement Demand Packages</i> Atlanta, Ga. 6 CLE Hours	JAN 19	ICLE <i>Hot Topics for Tax Attorneys and CPA's</i> (Tentative) Atlanta, Ga. 6 CLE Hours
JAN 12	ICLE <i>So Little Time, So Much Paper</i> Atlanta, Ga. 3 CLE Hours	JAN 19	ICLE <i>Plaintiff's Personal Injury Live Satellite</i> Broadcast Statewide, Ga. 6 CLE Hours
JAN 12	ICLE <i>Employment Law</i> Atlanta, Ga. 6 CLE Hours	JAN 25	ICLE <i>Plaintiff's Personal Injury Satellite</i> Rebroadcast Statewide, Ga. 6 CLE Hours
JAN 12	ICLE <i>Trial Advocacy Satellite Rebroadcast</i> Statewide, Ga. 6 CLE Hours	JAN 25	ICLE <i>Family Law Convocation on</i> <i>Professionalism</i> Atlanta, Ga. 3 CLE Hours
JAN 12	Lorman Education Services <i>Current Issues in the Battle of the Forms</i> Teleconference 1.5 CLE Hours	JAN 25	ICLE <i>White Collar Crime</i> Atlanta, Ga. 6 CLE Hours
JAN 17	Lorman Education Services <i>Legal Aspects of Condominium, Planned</i> <i>Unit Developments</i> Albany, Ga. 6 CLE Hours	JAN 26	ICLE <i>Theory to Verdict</i> Atlanta, Ga. 6 CLE Hours
JAN 18	ICLE <i>Eminent Domain</i> Atlanta, Ga. 6 CLE Hours	JAN 26	ICLE <i>Writing to Persuade</i> Atlanta, Ga. 6 CLE Hours
JAN 18	ICLE <i>Winning Depositions</i> Atlanta, Ga. 6 CLE Hours	JAN 26	ICLE <i>Nuts & Bolts of Business Law Live</i> Satellite Broadcast Statewide, Ga. 6 CLE Hours

First Publication of Amended Proposed Formal Advisory Opinion No. 05-7

Formal Advisory Opinion No. 93-2, issued by the Supreme Court of Georgia on June 7, 1993, provides an interpretation of the Standards of Conduct and Directory Rules (DRs). On June 12, 2000, the Supreme Court of Georgia issued the Georgia Rules of Professional Conduct, which became effective on January 1, 2001, replacing the Standards of Conduct. The Canons of Ethics, including Ethical Considerations and Directory Rules, were deleted in their entirety.

It is the opinion of the Formal Advisory Opinion Board that the substance and/or conclusion reached under Formal Advisory Opinion No. 93-2 has changed due to the Georgia Rules of Professional Conduct. Accordingly, the Formal Advisory Opinion Board has redrafted Formal Advisory Opinion No. 93-2. Proposed Formal Advisory Opinion No. 05-7 is a redrafted version of Formal Advisory Opinion No. 93-2. Proposed Formal Advisory Opinion No. 05-7 addresses the same question presented in Formal Advisory Opinion No. 93-2; however, it provides an interpretation of the Georgia Rules of Professional Conduct.

Proposed Formal Advisory Opinion No. 05-7 was treated like a new opinion and appeared in the June 2005 issue of the *Georgia Bar Journal* for 1st publication in compliance with Bar Rule 4-403(c). One comment regarding this opinion was received from a member of the Bar. After reviewing the proposed opinion in light of the comment, the Formal Advisory Opinion Board amended Proposed Formal Advisory Opinion No. 05-7, and determined that the amended version should be placed in the *Georgia Bar Journal* for 1st publication.

As such, the Formal Advisory Opinion Board has made a determination that the following amended proposed opinion should be issued. **State Bar members only** are invited to file comments to this amended pro-

posed opinion with the Formal Advisory Opinion Board at the following address:

State Bar of Georgia
104 Marietta Street, N.W.
Suite 100
Atlanta, Georgia 30303
Attention: John J. Shiptenko

An original and twenty (20) copies of any comment to the proposed opinion must be filed with the Formal Advisory Opinion Board, through the Office of the General Counsel of the State Bar of Georgia, by *December 15, 2006*, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the number of the proposed opinion. After consideration of comments received from State Bar members, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia.

PROPOSED FORMAL ADVISORY OPINION NO. 05-7

QUESTION PRESENTED:

Ethical considerations of an attorney representing an insurance company on a subrogation claim and simultaneously representing the insured.

SUMMARY ANSWER:

A lawyer representing an insurance company on a subrogation claim should not undertake the simultane-

ous representation of the insured on related claims, unless it is reasonably likely that the lawyer will be able to provide adequate representation to both clients, and only if both the insurance company and the insured have consented to the representation after consultation with the lawyer, have received in writing reasonable and adequate information about the material risks of the representation, and have been given the opportunity to consult with the independent counsel. Rule 1.7, Conflict of Interest: General Rule.

OPINION:

This inquiry addresses several questions as to ethical propriety and possible conflicts between the representation of the client, the insurance company, and its insured.

Hypothetical Fact Situation

The insurance company makes a payment to its insured under a provision of an insurance policy which provides that such payment is contingent upon the transfer and assignment of subrogation of the insured's rights to a third party for recovery with respect to such payment.

Question 1: May the attorney institute suit against the tortfeasor in the insured's name without getting the insured's permission?

Pursuant to the provisions of Rule 1.2(a), a lawyer may not institute a legal proceeding without obtaining proper authorization from his client. The ordinary provision in an insurance policy giving the insurance company the right of subrogation does not give the lawyer the right to institute a lawsuit in the name of the insured without specific authority from the insured. The normal subrogation agreements, trust agreements or loan receipts which are executed at the time of the payment by the insurer usually give the insurance company the right to pursue the claim in the insured's name and depending upon the language may grant proper authorization from the insured to proceed in such fashion. Appropriate authorization to bring the suit in the insured's name should be obtained and the insured should be kept advised with respect to developments in the case.

Question 2: Does the attorney represent both the insured and the insurance company, and, if so, would he then have a duty to inform the insured of his potential causes of action such as for diminution of value and personal injury?

The insurance policy does not create an attorney/client relationship between the lawyer or the insurance company and the insured. There is, however,

a fiduciary relationship, which must be respected with respect to advising the insured as to other potential causes of action such as diminution of value and personal injury. Rule 1.7(b); see also, Comment 10 (assuring independence of counsel) and Comment 12 (common representations permissible even with some differences in interests).

Question 3: Is there a conflict of interest in representing the insured as to other potential causes of action?

In most instances no problem would be presented with representing the insured as to his deductible, diminution of value, etc. Generally an insurance company retains the right to compromise the claim, which would reasonably result in a pro-rata payment to the insurance carrier and the insured. The attorney and the insurance company must be cautious to avoid taking any action, which would preclude the insured from any recovery to which the insured might otherwise be entitled. Rule 1.7, Conflict of Interest: General Rule, (b); see also, Comment 10 (assuring independence of counsel) and Comment 12 (common representations permissible even with some differences in interest.) to Rule 1.7.

A much more difficult problem is presented in the event an attorney attempts to represent both an insurance company's subrogation interest in property damage and an insured's personal injury claim. In most cases the possibility of settlement must be considered. Any aggregate settlement would necessarily have to be allocated between the liquidated damages of the subrogated property loss and the unliquidated damages of the personal injury claim. Any aggregate settlement would require each client's consent after consultation, and this requirement cannot be met by blanket consent prior to settlement negotiations. Rule 1.8(g); see also Comment 6 to Rule 1.8. Only the most sophisticated of insureds could intelligently waive such a conflict, and therefore in almost all cases an attorney would be precluded from representing both the insurer and the insured in such cases.

In conclusion, a lawyer representing an insurance company on a subrogation claim should not undertake the simultaneous representation of the insured on related claims, unless it is reasonably likely that the lawyer will be able to provide adequate representation to both clients, and only if both the insurance company and the insured have consented to the representation after consultation with the lawyer, have received in writing reasonable and adequate information about the material risks of the representation, and have been given the opportunity to consult with independent counsel. Rule 1.7(a) and (b).

First Publication of Proposed Formal Advisory Opinion No. 05-13

Formal Advisory Opinion No. 93-1, issued by the Supreme Court of Georgia on February 18, 1993, provides an interpretation of Standards of Conduct. On June 12, 2000, the Supreme Court of Georgia issued the Georgia Rules of Professional Conduct, which became effective on January 1, 2001, replacing the Standards of Conduct. The Canons of Ethics, including Ethical Considerations and Directory Rules, were deleted in their entirety.

It is the opinion of the Formal Advisory Opinion Board that the substance and/or conclusion reached under Formal Advisory Opinion No. 93-1 has changed due to the Georgia Rules of Professional Conduct. Accordingly, the Formal Advisory Opinion Board has redrafted Formal Advisory Opinion No. 93-1. Proposed Formal Advisory Opinion No. 05-13 is a redrafted version of Formal Advisory Opinion No. 93-1. Proposed Formal Advisory Opinion No. 05-13 addresses the same question presented in Formal Advisory Opinion No. 93-1; however, it provides an interpretation of the Georgia Rules of Professional Conduct. This proposed opinion will be treated like a new opinion and will be processed and published in compliance with Bar Rule 4-403(c).

As such, pursuant to Rule 4-403(c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the following proposed opinion should be issued. **State Bar members only** are invited to file comments to this proposed opinion with the Formal Advisory Opinion Board at the following address:

State Bar of Georgia
104 Marietta Street, N.W.
Suite 100
Atlanta, Georgia 30303
Attention: John J. Shiptenko

An original and twenty (20) copies of any comment to the proposed opinion must be filed with the Formal Advisory Opinion Board, through the Office of the General Counsel of the State Bar of Georgia, by *December 15, 2006*, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the number of the proposed opinion. After consideration of comments received from State Bar members, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia.

PROPOSED FORMAL ADVISORY OPINION NO. 05-13

QUESTION PRESENTED:

(1) Whether the designation "Special Counsel" may be used to describe an attorney and/or law firm affiliated with another law firm for the specific purpose of providing consultation and advice to the other firm in specialized legal areas: (2) and whether the ethical rules governing conflict of interest apply as if the firm, the affiliated attorney and the affiliated firm constitute a single firm.

SUMMARY ANSWER:

It is not improper for a law firm to associate another lawyer or law firm for providing consultation and advice to the firm's clients on specialized matters and to identify that lawyer or law firm as "special counsel" for that specialized area of the law. The relationship between the law firm and special counsel must be a *bona fide* relationship. The vicarious disqualification rule requiring the additional disqualification of a partner or associate of a disqualified lawyer does apply to the outside associated lawyer or law firm.

OPINION:

This opinion deals with the following questions:

1. May a law firm which associates a lawyer for providing consultation and advice to the firm's clients on specialized matters identify that lawyer as being, for example, "Special Counsel for Trust and Estate and Industrial Tax Matters?"
2. May a law firm which associates another law firm for providing consultation and advice to the firm's clients on specialized matters identify that law firm as being, for example, "Special Counsel for Tax and ERISA Matters?"
3. Should Rule 1.10,¹ the vicarious disqualification rule requiring the additional disqualification of a partner or associate of a disqualified lawyer, apply to outside associated lawyers and law firms?

The problem should be viewed from the standpoint of clients. Can the law firm render better service to its clients if it establishes such relationships? If the answer is yes, there is no reason such relationships cannot be created and publicized.

There is no Rule which would prohibit a law firm from associating either an individual lawyer or law firm as special counsel and such association may be required by Rule 1.1.² While the American Bar Association has concluded that one firm may not serve as counsel for another (Formal Opinion No. 330, August 1972) this court declines to follow that precedent. Moreover, a subsequent ABA opinion recognized that one firm may be associated or affiliated with another without being designated “of counsel.” (Formal Opinion No. 84-351, October 20, 1984). In the view of this court, it is not improper to establish the type of relationship proposed. If established, it must be identified and identified correctly so that clients and potential clients are fully aware of the nature of the relationship.

Finally, the relationship between the law firm and special counsel (whether an individual lawyer or a law firm) must be a *bona fide* relationship that entails the use of special counsel’s expertise. The relationship cannot be established merely to serve as a referral source. Any fees charged between special counsel and the law firm, of course, must be divided in accordance with the requirements of Rule 1.5.³

The first two questions are answered in the affirmative.

The third question presents a more complex issue.

The Georgia vicarious disqualification rule is founded on the lawyer’s duty of loyalty to the client. This duty is expressed in the obligations to exercise independent professional judgment on behalf of the client, and to decline representation or withdraw if the ability to do so is adversely affected by the representation of another client. Recognizing that the client is the client of the firm and that the duty of loyalty extends to all firm members, it follows that the duty to decline or withdraw extends to all firm members. Rule 1.10.

Identifying an associated firm or lawyer is calculated to raise the expectation in the mind of the client that the relationship is something more than casual. Indeed it is calculated to convey to the client that the client’s matter is being handled by a unit made up of the associating and associated firm or lawyer, so that the expertise of all can be brought to bear on the problem. Accordingly, in the situation presupposed in the hypothetical, the clients of the associating firm become, for the purposes of Rule 1.10, the clients of the associated firm or lawyer and *vice versa*. The unit as a whole has a duty of loyalty to the client and must exercise independent professional judgment on behalf of the client as an entirety.

Reference should be made to Georgia Rules of Professional Conduct, Rule 1.10, imputed disqualification; General Rule. Rule 1.10 discusses when an imputed disqualification can bar all attorneys at a firm or office from representing a particular client.

Rule 1.10 and Comment 1 of the Rule make affiliations among lawyers or law firms less complex. Rule 1.10 applies to entities other than associated lawyers and law firms to include in addition to lawyers in a private firm, lawyers in the legal department of a corporation or other organization, or in legal services organizations.

As set forth in Comment 1,⁴ two practitioners who share office space and who occasionally assist each other in representation of clients, may not regard themselves as a law firm. However, if they present themselves to the public suggesting that they are indeed a firm, they may be regarded as a firm for purposes of these Rules. Factors such as formal agreements between associated lawyers, as well as maintenance of mutual access to information concerning clients, may be relevant in determining whether practitioners who are sharing space may be considered a firm under the Rule.

The third question is answered in the affirmative. In light of the adoption of Rule 1.1, ethical rules governing conflict of interest apply to entities and affiliations of lawyers in a broader sense than what has traditionally been considered a “law firm.”

Endnotes

1. Rule 1.10

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7: Conflict of Interest: General Rule, 1.8(c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6: Confidentiality of Information and 1.9(c): Conflict of Interest: Former Client that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7: Conflict of Interest: General Rule.

The maximum penalty for a violation of this Rule is disbarment.

2. Rule 1.1

A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer’s level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The maximum penalty for a violation of this Rule is disbarment.

3. Rule 1.5

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) (1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. (2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:

(i) the outcome of the matter; and,

(ii) if there is a recovery, showing the:

(A) remittance to the client;

(B) the method of its determination;

(C) the amount of the attorney fee; and

(D) if the attorney's fee is divided with another lawyer who is not a partner in or an associate of the

lawyer's firm or law office, the amount of fee received by each and the manner in which the division is determined.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

The maximum penalty for a violation of this Rule is a public reprimand.

4. Comment 1 of Rule 1.10

[1] For purposes of these Rules, the term "firm" includes lawyers in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.

Amendments to the Rules of the U.S. Court of Appeals

NOTICE OF AND OPPORTUNITY FOR COMMENT ON AMENDMENTS TO THE RULES OF THE U.S. COURT OF APPEALS FOR THE 11th CIRCUIT

Pursuant to 28 U.S.C. ' 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the 11th Circuit.

A copy of the proposed amendments may be obtained on and after December 1, 2006, from the court's Web site at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the 11th Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by January 2, 2007.



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Annual Fiction Writing Competition

Deadline January 19, 2007

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

Rules for Annual Fiction Writing Competition

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

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



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