

# Georgia Bar Journal

April 2007 ■ Volume 12 ■ Number 6



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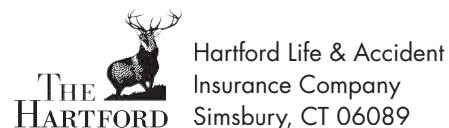
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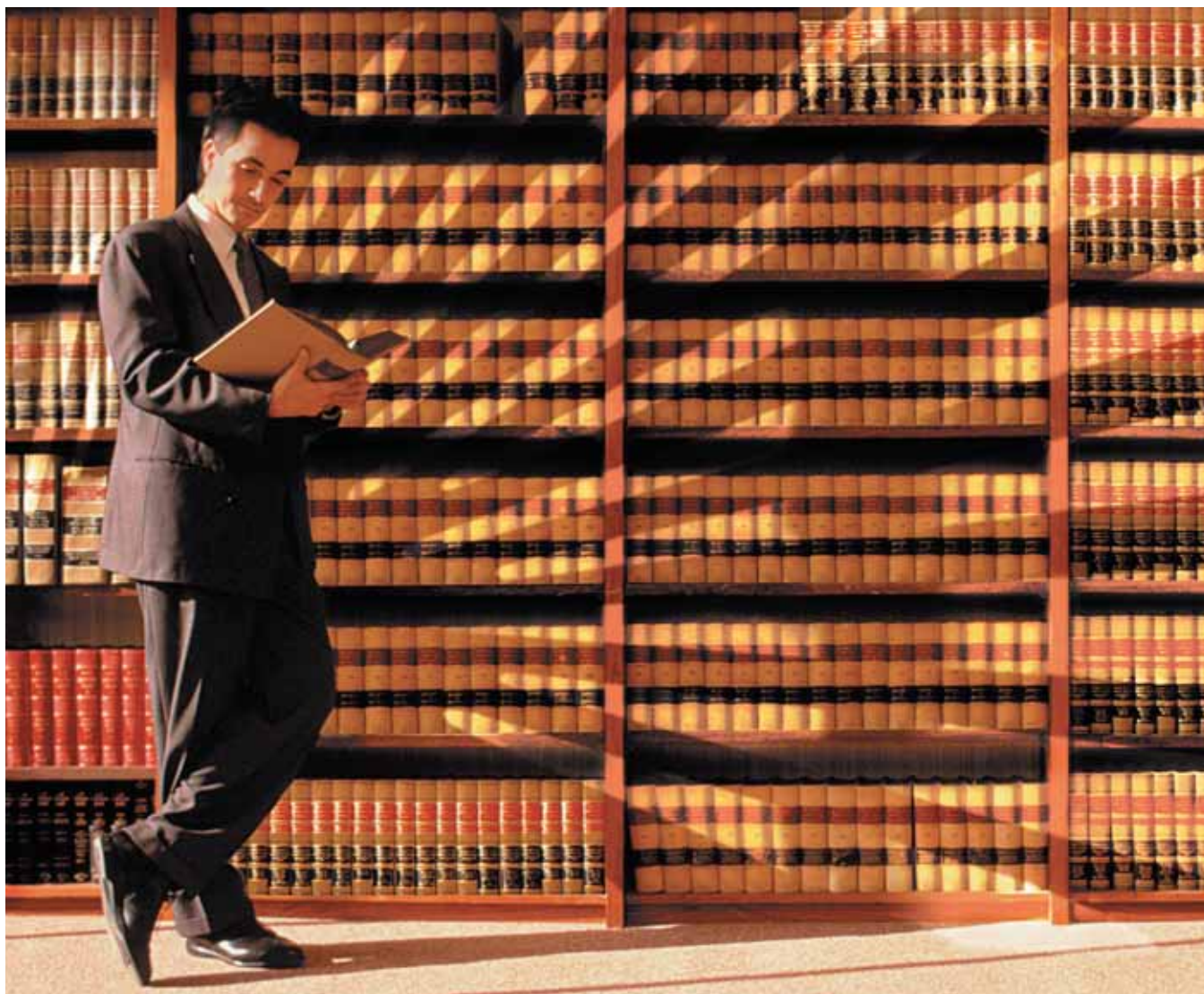
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Photo by Hollis Ellison

by Jay Cook

# Independent Law a Multi-Faceted Endeavor

**A**ristotle once observed, “At his best, man is the noblest of all animals; separated from law and justice he is the worst.”

To me, this is the essence of what makes the practice of law a truly noble calling. Lawyers are the glue that connect society to law and justice. But lawyers also are society’s peacemakers. We strive to resolve conflict and stamp out injustice. We advocate zealously for clients whose cause we believe in and as officers of the court we defend the Constitution, the Bill of Rights and the Rule of Law.

But, since most of us can’t leap tall buildings, our profession has rules of conduct, codes of ethics and independence. These tools come in handy when we’re faced with an ethical dilemma, like the dichotomy that sometimes arises between zealous client advocacy and upholding our founding principles.

Such conflicts are fairly common in the practice of law. Such conflicts make lawyer independence indispensable. Such conflicts make it imperative that we strive to remain “lord of myself, accountable to none,” as Benjamin Franklin once said.

Lawyer independence seems like a monolithic concept. But I see it as a precious gem with many facets. The

**“As lawyers, we cannot afford to sell our independence to the highest bidder. We must never compromise our principles. We must pursue our noble calling with irreproachable dignity, integrity and professionalism.”**

first of these facets is the independence to regulate our own practices without outside interference. The second is the independence to determine our working conditions: to decide which clients and causes to represent, what strategies and tactics to use to help our clients, and how to divide our time between paying and pro bono work. These facets protect the practice of independent judgment for the benefit of both clients and the legal system.

The third facet is the one most often talked about: our ability to tender the best possible legal advice by making an objective and disinterested assessment of the law and facts of a client’s situation. But this facet can be easily clouded when



clashes arise between the business of law and the practice of law.

Being human, lawyers need to make a living. But the lure of success should never tempt us to compromise our best legal judgment. Our need to win and retain paying clients should never make us shrink from candidly disclosing risks or discouraging those we represent from pursuing less than the wisest strategy. Our desire to build reputation and income should not compel us to be overly aggressive in negotiating a settlement, overly timid when probing a client we suspect of concealing pertinent information, or overly meticulous (and thus racking up excessive billable hours) to resolve a conflict. Likewise, pleasing an officer within an organization should not lead us to neglect our duty of serving the real client—the organization itself.


Dispensing the best possible legal advice will not always make us popular or rich. It will not always make our clients and employers happy with us. But good lawyers must be willing to risk losing money and favor to protect their objectivity in assessing the law and the facts.

To again quote Benjamin Franklin, "He that is of the opinion money will do everything may well be suspected of doing everything for money."

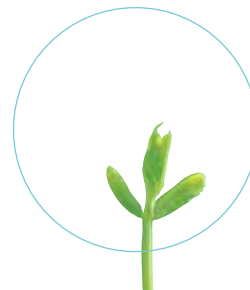
Fear over loss of independence is nothing new. Lawyers at the turn of the last century took bold steps to restore the independence they feared might be lost by representing large corporations: they removed judges who had been corrupted; passed legislation to discourage business interests from bribing legislators; raised the standards of entry to the legal profession; founded bar associations to regulate the profession and punish wrongdoing; and published the first national ethical codes of practice.

Business and trust are worth earning, but not at the expense of our independence and objectivity. We must retain the power to say no when faced with an ethical quandary. Sticking to our scruples in the long run will do more to bring us business and trust than saying yes to gain money and favor in the short run.

But maintaining lawyer independence isn't just about personal success. We owe it not only to ourselves, but to our profession and to our professional duty. Independent lawyers are essential to preserving and protecting the independent judiciary; the independent judiciary is essential to preserving and protecting the Rule of Law; and the Rule of Law is essential to preserving and protecting liberty and justice for all.

As lawyers, we cannot afford to sell our independence to the highest bidder. We must never compromise our principles. We must pursue our noble calling with irreproachable dignity, integrity and professionalism. We must ensure that society never separates from law and justice—that it can always function at its best. 

**Jay Cook** is the president of the State Bar of Georgia and can be reached at [jaycook@mindspring.com](mailto:jaycook@mindspring.com).



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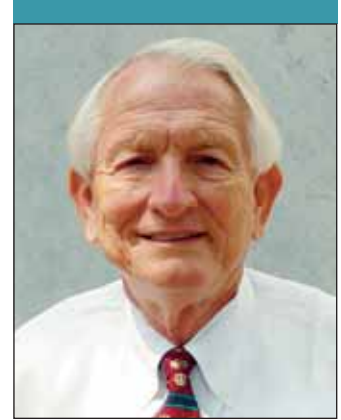
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by Cliff Brashier



# Advancement in Equality From a Different Approach

**F**ollowing the State Bar of Georgia's 2007 Midyear Meeting in Savannah, the Bar's Women & Minorities in the Profession

Committee presented its 2007 Commitment to Equality Awards to the Hon. Leah Ward Sears, chief justice, Supreme Court of Georgia, and to Ralph B. Levy, partner, King & Spalding, LLP, on Jan. 23 at a reception at the Bar Center. The

Commitment to Equality Award recognizes the efforts of lawyers and legal employers who are committed to providing opportunities that foster a more diverse legal profession for women and lawyers of color.

The award is presented to lawyers who not only personally excel in their own practice, but who have demonstrated a commitment to promoting diversity in the legal profession.

In his acceptance remarks, Ralph discussed the advancement in equality in our profession from external client pressure versus internalizing the business case for change in law firms' collegial form of governance. I found his approach to be thought provoking and perhaps other firms might have an interest in this approach. These are some of Ralph's remarks:

**"The Hon. Leah Ward Sears, Ralph B. Levy and the late Ben Johnson Jr. honor our profession by their personal commitments to equality. They are most deserving recipients of these prestigious awards."**

*Inadequate diversity in our profession is a problem that has bothered me for quite some time. I am honored that the State Bar would recognize my efforts to try to address it. Your annual commitment to equality award is important. It is a symbol that the leadership of our Bar agrees that the call for advancement in diversity is necessary and just. It encourages Bar members to demand more of themselves and their colleagues in finding solutions to what is truly a complex, national problem.*


*If answers were obvious and readily available, we would not regularly be reading articles bemoaning the glacial pace of change. Large corporate clients have been pushing the profession for many years now, yet progress is spotty at best. Women are leaving the profession in staggering numbers. Some articles suggest that black women in particular have just about given up all together. In reaction to a perceived lack of professional opportunity, black student enrollment in our law schools is not growing and, in some cases, decreasing, creating a cruel "catch 22" for those law firms seeking to seriously increase their diversity. Increased entry level hiring is key to progress, but depends on a growing pipeline of qualified minority law school graduates. Lateral hiring from one firm to another creates winners and losers among our firms in the competition to please clients, but it is merely a redistribution of existing diverse personnel. It does nothing to increase the net diversity of our profession.*

*While I welcome the pressure from clients and believe that it provides an important part of the business case for change, I have never felt that such external pressure is enough. Clients come and go and their pressure ebbs and flows even when they stay. When it is necessary to serve other interests, clients will provide engagements to non-diverse firms despite public statement that they will not do so. Moreover, client pressure alone can be substantially addressed by lateral hiring. Therefore, my personal efforts have been devoted first, to the idea of internalizing the business case for change, so that progress might be made even when the external pressures abate, and second, to try to do something about a general lack of diversity management skills and tools for law firm and law practice leaders in a typical law partnership.*

*Most of us do not have a CEO who can simply pronounce change and punish any subordinate officer who gets in his or her way through downward bonus or salary adjustment or employment termination. Most of us live in a world where partners have the right to vote, sometimes by secret ballot, and progress on any strategic scale requires broad consensus and cultural change rather than bold executive fiat. Stated differently, our corporate clients' world is vertical, whereas ours is horizontal. The road to progress in diversity is very different in our world as compared to theirs, and I think more challenging. We need new solutions that are suited for our collegial form of organization. That is the arena in where I have tried to be of some service.*

During the awards reception, the Women & Minorities in the Profession Committee also posthumously presented their Randolph Thrower Lifetime Achievement Award to the late Ben Johnson Jr., a former dean of the Colleges of Law at both Emory University and Georgia State University. The Lifetime Achievement Award recognizes an outstanding individual who has dedicated himself or herself to these causes throughout that individual's career.

The Hon. Leah Ward Sears, Ralph B. Levy and the late Ben Johnson Jr. honor our profession by their personal commitments to equality. They are most deserving recipients of these prestigious awards.

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](mailto:cliff@gabar.org).

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by Jonathan A. Pope

# YLD Works Diligently Throughout Bar Year

I am proud to report that your YLD is continuing to work diligently to provide service to the public and the Bar. The YLD held a meeting in Savannah, Jan. 18-20, in conjunction with the State Bar of Georgia's Midyear Meeting. The meeting culminated with a group dinner at Garibaldi's and pub crawl co-sponsored by the Savannah Bar Association YLD.

The event was one of the most well attended in recent YLD history, with more than 100 YLD members participating. For their help coordinating this wonderful event, I want to thank YLD Director Deidra Sanderson, Savannah YLD President Matt McCoy (McCorkle, Pedigo, and Johnson LLP) and Savannah YLD members Kristie Edenfield (Hunter Maclean Exley & Dunn); Robert Hughes (Brannen Searcy & Smith); Jon Pannell (Oliver

Maner & Gray); Jason Pedigo (Ellis Painter Ratteree & Adams); and Susannah Pedigo (Inglesby Falligant Horne Courington & Chisholm).

The next YLD meeting will take place in New Orleans, La., April 26-29. For those YLD members who are music lovers, this is the meeting you want to attend as the

meeting will be held during the first weekend of Jazzfest. Scheduled Jazzfest performers include Rod Stewart, Van Morrison, Norah Jones, Ludacris, Bonnie Raitt, Jerry Lee Lewis and Jill Scott. In conjunction with the Louisiana YLD, we will conduct a service project cleaning up debris that still remains from 2005's Hurricane Katrina. We will also host a group dinner, welcome cocktail reception, CLE and business meeting.

As discussed in previous articles, the YLD has spent the past year raising money for Tipitina's Foundation, a New Orleans non-profit organization that provides musical instruments to musicians and public schools affected by Hurricane Katrina. Our

fundraising efforts culminated with the YLD Mardi Gras Casino Night on Feb. 21 at Paris on Ponce in Atlanta. Through ticket sales, casino tables, a silent auction, a raffle and corporate sponsorships, we were able

**"The Georgia High School Mock Trial Competition educates high school students all over Georgia on our justice system and directly influences them in a positive way. Without a doubt, holding this competition is one of the best things the Bar does each year."**

to make this event a huge success, raising an incredible amount of money for this wonderful charity. The YLD will present the funds raised at the Tipitina's Foundation's Instruments a Comin' celebration on April 30. I would like to again thank YLD Director Deidra Sanderson for all her hard work in helping us make this event a success. I would also like to thank all the following casino table sponsors for the event:

- Josh Bell, YLD Treasurer
- Capstone Financial Partners (Blair Enfield)
- Hill Kertscher & Wharton, LLP
- Metro Atlanta Reporters, Inc.
- Optimum Investigative Services (Walter Reddick)
- Jon Pope, YLD President and the YLD Litigation Committee
- Rogers & Goldberg, LLC (Michael Goldberg)
- Sutherland Asbill & Brennan, LLP

The YLD conducts activities to promote ethics and professionalism among lawyers through its Ethics and Professionalism Committee. The purpose of the YLD Ethics and Professionalism Committee is to develop programs to assist lawyers in achieving the ethical and professional standards set forth for the legal profession and to make the public aware that lawyers are striving to meet and exceed these standards. This year's committee is comprised of 26 YLD members and is co-chaired by Chris Atkinson (Ekonomou Atkinson & Lambros LLP) and Curtis Romig (Powell, Goldstein, Frazer & Murphy, LLP).

The committee held meetings on Oct. 18, Nov. 15 and Feb. 21. The following are some highlights of the committees' past and future planned activities:

- Committee member Dustin T. Brown article titled "Treacherous Waters? Communicating with Clients When Switching Firms," pub-

lished in *The YLD Review*.

- "Cans and Cash" Happy Hour at Front Page News on Feb. 8, benefiting Atlanta Foodbank and Children's Healthcare of Atlanta. Attendees were required to bring canned food items or a cash donation for one or both charities as admission to the event.
- The committee published a second article providing guidance on specific ethical issues in the Spring issue of *The YLD Review*.
- Promoted Atlanta Bar Association Litigation Committee's "Take Your Adversary to Lunch Program"
- Partnered with YLD Business Law Committee to host CLE in March—the committee provided the ethics portion of the seminar.
- Present Third Annual Young Lawyer Ethics & Professionalism Award at State Bar's Annual Meeting in June 2007.

In addition to other activities, since 2005, the committee has recognized one young lawyer who has demonstrated outstanding professionalism with its Ethics and Professionalism Award. I encourage you to nominate a young lawyer who you feel meets the award criteria. If you would like more information on the award or would like to nominate someone for the award, please contact YLD Director Deidra Sanderson or me.


The YLD Community Service Committee has also seen its share of activity over the past few months. This year's committee is co-chaired by Terri Gordon (DeKalb County) and Shiriki Cavitt (Troutman Sanders). The committee held a Winter Happy Hour at The Globe Restaurant in Atlanta on Jan. 25, to help recruit new members to the committee and raise money for a local charity. On Feb. 15, the committee conducted a service project aimed at assisting the Fulton County DFCS office by helping baby-sit foster children. Through its continued good work, this committee is making a difference day in and

day out. I want to thank committee Co-Chairs Terri Gordon and Shiriki Cavitt for all their hard work.

I would like to thank all of you (both YLD and non-YLD members) who participated in the Georgia High School Mock Trial Competition this year. The competition was a great success. I would also like to thank Stacy Rieke, coordinator of the Georgia High School Mock Trial Competition, and this year's YLD High School Mock Trial Committee Co-Chairs Tania Trumble and Sally Evans, for the countless hours they devoted to working on this great program. I would also like to thank the YLD Litigation Committee and its Co-Chairs Scott Masterson of Hawkins & Parnell and Shane Mayes of Moore Ingram Johnson & Steele for providing volunteers for the competition.

The Georgia High School Mock Trial Competition educates high school students all over Georgia on our justice system and directly influences them in a positive way. Without a doubt, holding this competition is one of the best things the Bar does each year. Finally, I would be completely remiss if I did not recognize the most ardent supporter of the Georgia High School Mock Trial Competition, Justice George Carley. Justice Carley has been an advisor to the competition for many years and the YLD is thankful to have his continued support.

Finally, I would like to congratulate YLD Treasurer Josh Bell and his wife Deana on the birth of their son Finnley Martin Bell on Feb. 1, and YLD Secretary-Elect Michael Geoffroy and his wife Tara on the birth of their son Hudson Levi Geoffroy on Feb. 6.

As always, if you have questions regarding YLD activities, membership, or ideas for new programs, please give me a call at 770-479-0366 or send me an e-mail at [jpope@hpb-law.com](mailto:jpope@hpb-law.com). 

**Jonathan A. Pope** is the president of the Young Lawyers Division of the State Bar of Georgia.



## A Look at the Law





# 2006 Amendments to Georgia's Corporate Code and Alternative Entity Statutes

by Bruce D. Wanamaker

**O**n May 5, 2006, Gov. Sonny Perdue signed into law a bill<sup>1</sup> that amended various provisions of the Georgia Business Corporation Code<sup>2</sup> (the "Corporate Code"), the Georgia Revised Uniform Limited Partnership Act<sup>3</sup> (the "LP Act") and the Georgia Limited Liability Company Act<sup>4</sup> (the "LLC Act"), all effective July 1, 2006. This legislation (collectively, the "2006 Amendments"), which was based on proposals that were initiated by the State Bar's Business Law Section, enhances the flexibility, predictability and utility of Georgia's business organization statutes. The 2006 Amendments include significant changes to provisions of the Corporate Code governing mergers, indemnification, advancement of expenses and

actions of a Georgia corporation in bankruptcy, as well as numerous other changes to the Corporate Code and the LP and LLC Acts that facilitate entity conversions under Georgia law.<sup>5</sup> The following discussion highlights the most noteworthy aspects of these changes.

## Amendments Affecting Mergers

### Exceptions to the Board's Obligation to Recommend Approval

Since July 1, 1989, the Corporate Code has included a provision obligating a corporation's board of directors to recommend approval when submitting a plan of merger to shareholders for approval, unless the board elects to withhold a recommendation because of conflicts of interest or other special circumstances.<sup>6</sup> In such a case, the board must describe the conflict or circumstances and communicate the basis for its election when presenting the proposed plan to the shareholders.<sup>7</sup> The 2006 Amendments clarify that the board has the authority not only to refrain from recommending approval when submitting a plan of merger for shareholder approval because of conflicts of interest or other

special circumstances, but also to recommend that the shareholders reject or vote against it.<sup>8</sup>

### “Force the Vote” Provisions

Merger agreements governing acquisitions of publicly held Georgia corporations normally include a variety of provisions designed to discourage competing offers from third parties after the merger is publicly announced and to deter the target’s board from abandoning the merger in favor of an alternative transaction. For example, the acquiring entity will typically insist that the target agree to a “no shop” provision that prohibits the target and its representatives from soliciting or encouraging competing offers and negotiating an alternative transaction with other potential buyers.<sup>9</sup> Other deal protection devices customarily proposed by acquiring entities include provisions obligating the target to hold a shareholders’ meeting for purposes of voting on the merger,<sup>10</sup> requiring that the related proxy statement include the recommendation of the target’s board that the shareholders vote to approve the merger,<sup>11</sup> and prohibiting the target’s board from withdrawing or modifying its recommendation of the merger in a manner adverse to the acquirer.<sup>12</sup>

The target’s board will typically accede to the acquiring entity’s request to include these defensive measures if the merger agreement also contains limited exceptions (or “outs”) that permit the target’s board to respond to unsolicited offers and to withdraw its recommendation in favor of the merger when such actions are required in order for the board to comply with its fiduciary duties under applicable law.<sup>13</sup> The target’s board also will frequently bargain for the inclusion of a “fiduciary out” termination right that allows it to withdraw the merger agreement from shareholder consideration if warranted by certain changed circumstances such as receipt of an acquisition proposal containing terms

that the target’s board has determined in good faith to be more favorable to the target’s shareholders than the transactions contemplated by the merger agreement.<sup>14</sup>

Occasionally, the acquiring entity will insist that the merger agreement include a “force the vote” provision that prohibits the target’s board from exercising any right to accept a superior proposal until after the target’s shareholders have voted on the planned merger, even if the target’s board decides to withdraw its recommendation of the merger.<sup>15</sup> Such a provision gives the acquiring entity a timing advantage over other bidders that helps reduce the likelihood of competing bids. Section 14-2-305 of the Corporate Code was adopted in response to practitioners’ concerns regarding the validity of these “force the vote” provisions. This new section clarifies and confirms that the target’s board may authorize the target to agree with an acquiring entity to submit a merger agreement to the target’s shareholders for their approval, while reserving the ability to change the board recommendation that such merger agreement be approved.<sup>16</sup>

### Disparate Treatment in the Manner or Basis of Share Conversion

A Georgia corporation may structure a merger to provide certain of its shareholders with equity and other holders of the same class or series of shares with cash in furtherance of a variety of rational business objectives.<sup>17</sup> Although the comments to the section of the Corporate Code governing statutory mergers recognize the right to treat holders of the same class or series of shares in a merger differently,<sup>18</sup> some practitioners had expressed concern that such disparate treatment might be viewed as conflicting with the language in other sections of the Corporate Code providing that all shares of the same class or series must generally “have preferences, limitations, and relative rights identical

with those of other shares of the same [class or series].”<sup>19</sup> The 2006 Amendments addressed this concern and clarified existing law by expressly recognizing the possibility of different treatment of shareholders in a plan of merger.<sup>20</sup>

The 2006 Amendments require that when holders of the same class or series of shares are treated differently in a plan of merger, the plan must set forth the manner and basis for the conversion of shares of each such class, series or group of shareholders.<sup>21</sup> In addition, section 14-2-1302 of the Corporate Code was amended to provide additional protection to those shareholders who are treated differently by adding a new provision that excludes such shareholders from the “market exception” of this section, which eliminates dissenters’ rights for transactions involving the issuance of shares of a public corporation to shareholders of a publicly held Georgia corporation.<sup>22</sup> This new provision preserves dissenters’ rights for shareholders who were required under a merger to accept any shares listed on a national securities exchange or held of record by more than 2,000 shareholders that are different than the share consideration to be provided to other holders of any shares of the same class or series of shares held by that shareholder.<sup>23</sup>

### Merger Agreement Amendments

Merger agreements customarily include a clause expressly authorizing the parties to amend, modify or supplement the agreement subject to (or to the fullest extent permitted by) applicable law. Such clauses normally permit amendments at any time prior to the effective time of the merger, whether before or after shareholder approval. These clauses, however, also typically provide that once shareholder approval has been obtained, no amendment requiring further shareholder approval under applicable law shall be made without first obtaining shareholder approval.<sup>24</sup>

Although the Corporate Code included no provision for the amendment of an agreement or plan of merger, most practitioners held the view that under Georgia law a merger agreement could be amended in any respect prior to obtaining shareholder approval. The 2006 Amendments added a new clause to subsection (c) of section 14-2-1101 of the Corporate Code that confirms the authority of a corporation to include provisions in a plan of merger that permit it to amend the plan in any respect prior to shareholder approval.<sup>25</sup> This provision also permits the inclusion of clauses that authorize a corporation to enter into amendments *after* shareholders have approved the merger agreement.<sup>26</sup> After shareholder approval, however, changes to the following items are prohibited absent express prior authorization by the shareholders:<sup>27</sup> (i) the amount and kind of consideration to be received in the merger if such changes would adversely affect such shareholders,<sup>28</sup> (ii) the terms of the articles of incorporation (or comparable governing document) of the surviving corporation or other entity (except to the extent involving changes that a corporation would be permitted make without the necessity of obtaining shareholder approval under section 14-2-1002 of the Corporate Code or that would not adversely affect such shareholders)<sup>29</sup> or (iii) any other terms and conditions of the merger agreement if such changes would adversely affect such shareholders in any material respect.<sup>30</sup>

## Amendments Regarding Indemnification and Advancement of Expenses

### Entitlement to "Fees on Fees"

A Georgia corporation has authority under the Corporate Code to reimburse its directors, officers, employees and other agents for reasonable expenses incurred as a result of defending lawsuits or other proceedings arising out of their actions for the corporation.<sup>31</sup> Subject to certain caveats, the corporation also may reimburse these individuals for the amount of any judgments, fines, penalties and out-of-court settlements imposed on them as a result of such proceedings.<sup>32</sup> If a director or an officer is wholly successful in the defense of any proceeding to which he or she was a party by virtue of his or her service as a corporate officer or director, then the Corporate Code mandates that he or she be indemnified against reasonable expenses incurred in connection with the defense, regardless of whether the action was commenced by a third party or derivatively on behalf of the corporation.<sup>33</sup>

A corporation typically will pre-authorize the right of its directors and officers to be indemnified pursuant to provisions of its bylaws or other corporate documents.<sup>34</sup> Such provisions customarily obligate the corporation to advance funds to directors and officers for the payment or reimbursement of the reasonable



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expenses they incur in the defense of a particular proceeding, even before any determination is made regarding their ultimate liability.<sup>35</sup> This pre-authorization of mandatory indemnification and advancement is an important mechanism for encouraging experienced and competent individuals to serve as directors and members of senior management. In some cases, however, a corporation may refuse to honor its obligation to provide advancement of costs or indemnification, thus forcing a director or officer to bring suit. The relief sought by such claimants typically includes an award of litigation expenses (including attorneys' fees) incurred by a director or officer in the course of prosecuting claims for indemnification or the advancement of expenses.

Prior to the 2006 Amendments, courts had the discretion, but were not required, to award such "fees on fees" pursuant to subsection (b) of section 14-2-854 if they held that a director was entitled to indemnification or an advance for expenses under the Corporate Code. As a result, directors and officers were potentially exposed to significant personal liability for legal fees, even if they were ultimately exonerated from wrongdoing. As a result of the 2006 Amendments, subsection (b) of section 14-2-854 of the Corporate Code now provides for a mandatory award of litigation expenses incurred by a director or officer in successfully enforcing his or her rights to indemnification or advancement of expenses.<sup>36</sup> The other changes to subsection (b) included in the 2006 Amendments preserve the court's discretion to award litigation expenses when the court has awarded indemnification or advancement on a discretionary basis.<sup>37</sup>

### New Non-Jury Proceeding for Determining Advancement Obligations

The 2006 Amendments added a new subsection (c) to section 14-2-854, vesting a court with the authority to determine a corpora-

tion's obligation to advance expenses without the necessity of a jury trial.<sup>38</sup> Section 14-2-854 of the Corporate Code also was amended to clarify that a court may order an advancement of expenses before making a determination as to a director's ultimate entitlement to indemnification.<sup>39</sup>

### Rules of Construction Regarding Short-Form Indemnification Provisions

With shareholder approval, Georgia corporations have the ability to provide their directors with a level of indemnification that exceeds the standard protection available by default under the Georgia Code.<sup>40</sup> A corporation may, if authorized by provisions of its articles of incorporation or other appropriate corporate documents that have been approved or ratified by holders of shares representing at least a majority of the votes entitled to be cast on such a matter, indemnify or obligate itself to indemnify a director made a party to a proceeding, including derivative suits, without regard to the limitations on indemnification and advancement in the Corporate Code, provided that the director's conduct does not involve liability for which exculpation of directors is prohibited under the Corporate Code.<sup>41</sup> These extra measures of protection include the power to dispense with the requirement that an individual satisfy statutorily prescribed minimum standards of conduct,<sup>42</sup> and to indemnify a director for judgments in an action brought by the corporation or in a derivative action.

A corporation also has the authority to indemnify or obligate itself to indemnify an officer, employee or other agent without regard to the limitations on indemnification and advancement in the Corporate Code, but is not required to obtain prior shareholder approval if such individual is not serving as a director.<sup>43</sup> When drafting provisions that pre-authorize indemnification and

advancement, practitioners frequently use language that obligates the corporation to indemnify its directors and officers "to the fullest extent permitted by law." New subsection (f) of section 14-2-859 provides statutory rules of construction for these "short form" mandatory indemnification provisions that eliminate any doubt as to whether the "fullest extent permitted by law" language effectively triggers the extra measures of indemnification available under Corporate Code Sections 14-2-856(a) (for directors) and 14-2-857(a)(2) (for officers).<sup>44</sup>

### Amendments Regarding Actions of Georgia Corporations in Bankruptcy Proceedings

A Georgia corporation that has filed a petition or has been granted an order for relief under the Federal Bankruptcy Code may subsequently be required to undertake a variety of actions at the direction of the bankruptcy court. For example, the bankruptcy court may order such a debtor to amend its articles of incorporation for purposes of effecting a recapitalization, to sell all or substantially all of its assets or to re-incorporate in another jurisdiction. Board and shareholder approval would typically be required for actions of this nature outside the context of a bankruptcy case.<sup>45</sup> Although former section 14-2-1008 of the Corporate Code provided a simplified method of conforming amendments to articles of incorporation with federal statutes relating to corporate reorganization, the Corporate Code was silent with respect to other fundamental changes or actions taken by a corporate debtor pursuant to the order of a federal court.

The 2006 Amendments added new section 14-2-104 of the Corporate Code to confirm that a Georgia corporation in bankruptcy is authorized to effectuate orders of the bankruptcy court and to take

any corporate action directed by such orders without further action by its directors or shareholders.<sup>46</sup> Such action may be taken by any trustee appointed in the bankruptcy proceeding or by designated officers of the corporation or other representatives appointed by the court.<sup>47</sup> In circumstances in which the action requires the filing of articles or a certificate with the secretary of state, such documents may state that they were filed pursuant to the order of a bankruptcy court.<sup>48</sup>

## Amendments Regarding Entity Conversion

### Conversion of a Georgia Corporation to a Georgia Limited Liability Company or Limited Partnership

Since March 1, 1994, when Georgia's Limited Liability Company Act first became law, the LLC Act has authorized the conversion of a Georgia business corporation to a Georgia limited liability company ("LLC").<sup>49</sup> The approval requirements and procedures for the conversion of a Georgia corporation to a Georgia LLC are prescribed in section 14-2-1109.1 of the Corporate Code. Prior to the 2006 Amendments, section 14-2-1109.1 provided that such a change in form be made pursuant to a plan of election adopted by the corporation's board of directors and unanimously approved by its shareholders. After shareholder approval, the corporation then consummated its election to become a LLC by delivering to the secretary of state for filing a certificate containing the information required by section 14-11-212(b) of the LLC Act.

Although section 14-9-206.2 of Georgia's Limited Partnership Act has authorized the conversion of a Georgia corporation to a Georgia limited partnership ("LP") since July 1, 1997, the Corporate Code was not concurrently updated to specify the related approval requirements and procedures. The

2006 Amendments correct this oversight by expanding the provisions set forth in section 14-2-1109.1 of the Corporate Code to cover the conversion of a Georgia corporation to a Georgia LP. Additional changes to section 14-2-1109.1 included substituting the phrase "plan of conversion" for "plan of election" and the phrase "certificate of conversion" for "certificate of election"; providing that the operating or limited partnership agreement governing the resulting entity must be in writing;<sup>50</sup> and updating the provisions specifying the manner in which shareholder approval of a plan of conversion is sought for purposes of conformity with other comparable provisions of the Corporate Code.<sup>51</sup>

Finally, the 2006 Amendments added new subsections to section 14-2-1109.1 that expressly authorize a corporation to: (i) include provisions in a plan of conversion that would permit the corporation to amend the plan in certain respects subsequent to shareholder approval;<sup>52</sup> (ii) define terms of a plan of conversion by reference to extrinsic facts, provided that the manner by the facts are to operate on the terms is clearly and expressly set forth in such plan;<sup>53</sup> and (iii) abandon a plan of conversion without further shareholder action after it has been approved by the shareholders, but prior to it having become effective.<sup>54</sup>

### Conversion of a Domestic Alternative Entity or a Foreign Corporation or Alternative Entity to a Georgia Corporation

Although Georgia law has authorized the statutory conversion of a Georgia corporation to a Georgia LLC or a Georgia LP for a number of years, prior to the 2006 Amendments it did not authorize the conversion of any entity, domestic or foreign, to a Georgia business corporation. A domestic or foreign LP or LLC that desired to become a Georgia corporation

could change its form by merging into a newly created Georgia corporation, but such a merger would necessarily involve two distinct entities and compliance with two sets of statutory enabling provisions.<sup>55</sup> New section 14-2-1109.2 of the Corporate Code now permits this change in form to be accomplished directly by authorizing a domestic or foreign LLC, LP or general partnership to convert to a Georgia corporation.<sup>56</sup> It also permits a corporation not incorporated under Georgia law to convert to a Georgia business corporation.<sup>57</sup> Any such election requires the approval of all of the electing entity's partners, members or shareholders, or such other approval or compliance as may be sufficient to authorize such election under applicable law or the governing documents of the electing entity.<sup>58</sup>

A conversion to a Georgia business corporation under this new section 14-2-1109.2 is effectuated by delivering to the secretary of state for filing a certificate of conversion



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that sets forth the following information: (i) the name and jurisdiction of organization of the entity making the election; (ii) a statement that the entity elects to become a corporation; (iii) the effective date, or the effective date and time, of such conversion if later than the date and time the certificate of conversion is filed; (iv) a statement that the election has been approved as required by section 14-2-1109.2(a); (v) articles of incorporation in the form required by section 14-2-202 of the Corporate Code; and (vi) if not provided for in the articles of incorporation, a statement setting forth the manner and basis for converting the ownership interests in the entity making the election into shares of the corporation formed pursuant to the election.<sup>59</sup>

The effects and consequences of such an election to convert are specified in subsection (c) of section 14-2-1109.2. Under the provisions of this subsection, the existence of the resulting corporation will be deemed to have commenced on the date that the entity making such election commenced its existence under the laws of the jurisdiction in which such entity was created, formed, incorporated, organized or otherwise came into being,<sup>60</sup> and the governing documents of the entity making the election shall be of no further force or effect.<sup>61</sup> A corporation formed by an election to convert under section 14-2-1109.2 possesses all the rights, privileges, immunities, franchises and powers of the entity making the election.<sup>62</sup> In addition, all property, contract rights, debts due and all other interests of, or assets belonging or due to, the electing entity are vested in the resulting corporation without the necessity of any further action, and the title to any real estate, or any interest therein, vested in the electing entity will not revert or be impaired in any way by reason of the election.<sup>63</sup> Furthermore, no conveyance, transfer, or assignment of any of these items will be deemed to have occurred by reason of the election

for any purpose.<sup>64</sup> Accordingly, if the corporation formed by the election owns real estate in Georgia and files for recording a certified copy of its certificate of conversion in the office of the clerk of the superior court of any county in which the real property is located, no Georgia real estate transfer tax will be due with respect to such filing.<sup>65</sup>

The corporation that results from such an election is responsible for all the liabilities and obligations of the entity making the election, and any existing or pending claim, action or proceeding by or against the corporation may be prosecuted just as if such election had not become effective.<sup>66</sup> In addition, neither the rights of creditors, nor any liens upon the property of the entity making the election will be deemed to be impaired by the election.<sup>67</sup> Finally, subsection (d) of section 14-2-1109.2 expressly provides that a conversion to a corporation shall not be deemed to constitute a dissolution of the entity making the election, and the resulting corporation shall for all purposes be deemed to be the same entity as the entity making the election.<sup>68</sup>

### Conversion of a Foreign Corporation or Alternative Entity to a Georgia LLC or LP

Section 14-11-212 of the LLC Act authorizes the conversion of Georgia corporations, LPs and general partnerships to Georgia LLCs. As a result of the 2006 Amendments, this provision now authorizes the conversion of foreign corporations, LLCs, LPs and general partnerships to Georgia LLCs.<sup>69</sup> Similarly, section 14-9-206.2 of the LP Act, which authorizes the conversion of Georgia corporations, LLCs and general partnerships to Georgia LPs, also has been amended to authorize the conversion of foreign corporations, LLCs, LPs and general partnerships to Georgia LPs. The approval requirements and procedures for such elections are similar to the provisions of the Corporate Code governing the conversion of a foreign

entity to a Georgia corporation. Accordingly, these elections require the approval of all of the electing entity's partners, members or shareholders, or such other approval or compliance as may be sufficient under applicable law or the governing documents of the electing entity to authorize such election.<sup>70</sup> The elections are effectuated by filing a certificate of conversion with the secretary of state.<sup>71</sup>

### Conversion of Georgia Business Entities to Foreign Business Entities

Prior to the 2006 Amendments, Georgia entities were not permitted to convert to foreign entities. New sections 14-2-1109.3, 14-9-206.8 and 14-11-906 now authorize the conversion of Georgia corporations, LPs and LLCs to foreign corporations, LPs and LLCs, respectively.<sup>72</sup> Although the approval requirements for these elections are the same as those applicable to conversions of a Georgia entity to a different form of entity formed under Georgia law,<sup>73</sup> the procedures for effectuating, as well as the effects and consequences of, such a conversion are governed by the law of the state or jurisdiction in which the resulting entity is formed.<sup>74</sup>

### Effect of Conversions to a Georgia Entity

The 2006 Amendments also update the Corporate Code and Georgia alternative entity statutes by conforming the language governing the effects and consequences of an entity conversion to existing Georgia language on the effect of a merger involving a Georgia corporation.<sup>75</sup> As a result, Georgia law now expressly provides that a conversion to a Georgia entity is not a conveyance, transfer or assignment,<sup>76</sup> and as a result, does not give rise to claims of reverter, or impairment of the Georgia entity's title to assets or rights of the electing entity based on a prohibited conveyance, transfer or assignment.<sup>77</sup> In addition, a conversion will not support claims



that a contract with the electing entity is no longer in effect on the grounds of assignability unless the contract specifically provides that it does not survive an entity conversion.<sup>78</sup> The 2006 Amendments also clarify that the conversion to a Georgia corporation, LP or LLC shall not be deemed to constitute a dissolution of the electing entity, and a Georgia corporation, LP or LLC resulting from an entity conversion shall for all purposes be deemed to be the same entity as the entity making the election.<sup>79</sup>

### Conversion of a Foreign Entity Authorized to Transact Business in Georgia

Although conversions of an entity from one form to another have been authorized for a number of years under the laws of numerous states, prior to the 2006 Amendments Georgia did not have any procedure addressing the effect of such a conversion on the authorization of an entity to transact business in Georgia. For example, a Delaware LLC authorized to transact business in Georgia that had converted to a Delaware corporation was required to withdraw as a foreign LLC and re-qualify as a foreign corporation. The 2006 Amendments to section 14-2-1504 of the Corporate Code, section 14-9-905 of the LP Act and section 14-11-706 of the LLC Act generally provide that if a foreign entity authorized to transact business in Georgia changes form and notifies the secretary of state that a conversion has occurred no later than 30 days after the conversion becomes effective, the authorization of the entity to transact business in Georgia will continue without interruption, and it will not be required to obtain a new certificate of authority.<sup>80</sup>


### Members' Right to Dissent

In contrast to the Corporate Code requirement that any change in the form of a Georgia corporation via statutory conversion be unani-

mously approved by its shareholders,<sup>81</sup> neither the LP Act nor the LLC Act specify any approval requirements or procedures for conversions to another form of entity formed under Georgia law. In the case of conversions to a foreign entity, the statutes merely specify a default rule of unanimous partner or member approval that may be changed by the terms of a written partnership or operating agreement.<sup>82</sup> The omission of any mandatory approval requirements from Georgia's LP and LLC Acts was deliberate and reflects legislative recognition of the contractual nature of the relationship among the owners and managers of LPs and LLCs. In fact, section 14-11-1107(b) of the LLC Act expressly provides that with respect to LLCs, it is the policy of Georgia to give "maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."<sup>83</sup>

As a result, the conversion of a Georgia LP or LLC can be effectuated over the objection of one or more of its partners or members if the limited partnership or operating agreement governing the entity provides that a conversion requires the approval of less than all of the entity's owners. In contrast to partners of a Georgia LP, which have no dissenters' rights except to the extent they have been granted pursuant to the terms of the limited partnership agreement,<sup>84</sup> members of a Georgia LLC, by default, are entitled to them in the event of certain fundamental changes, except to the extent otherwise provided in the articles of organization or operating agreement of the LLC.<sup>85</sup> The 2006 Amendments to section 14-11-1002 of the LLC Act clarify that, except to the extent otherwise provided in the operating agreement, in the event of the conversion of the LLC to another form of entity, the members of a Georgia LLC have the right to dissent from and obtain payment of the fair value of their membership interests.<sup>86</sup>

## Conclusion

The 2006 Amendments were based on legislative proposals that were initiated by the State Bar's Business Law Section, which has a long-standing practice of conducting systematic reviews of Georgia's business organization statutes and commercial laws for purposes of identifying areas for improvement, as well as drafting legislation to cure particular problems and to ensure that such laws are otherwise up to date. Although a number of the 2006 Amendments clarify existing law or are technical in nature, many represent substantive enhancements to these statutes and broaden the degree of flexibility as to how the business and affairs of Georgia business entities may be conducted. They are all generally designed to increase the predictability of the law governing Georgia business entities and will aid practitioners in rendering advice to such entities and their owners and managers. 



**Bruce D. Wanamaker** is a partner in the Atlanta office of Kilpatrick Stockton LLP where he is a member of the firm's Corporate

Department. A graduate of Colgate University, he received his J.D. from Emory University School of Law and is admitted to practice in Georgia, New York and Florida. He serves on the executive committee of the Business Law Section of the State Bar of Georgia and is chairman of the section's Corporate Code Committee.

## Endnotes

1. S.B. 469, 2005-2006 Gen. Assem., Reg. Sess. (Ga. 2006)
2. O.C.G.A. § 14-2-101 to -1703 (2006).
3. *Id.* § 14-9-100 to -1204.
4. *Id.* § 14-11-100 to -1109.
5. The 2006 Amendments also included technical changes to sec-

- tion 14-2-401(b)(2) (Corporate name) and section 14-2-1506(b)(2) (Corporate name of foreign corporation) for purposes of deleting the references therein to “or registered” and “or 14-2-403.” Section 14-2-403, which was repealed in 2002, provided a means by which a foreign corporation, not qualified to transact business in Georgia, could preserve the right to use its unique real name if it subsequently elected to qualify in Georgia.
6. O.C.G.A. § 14-2-1103(b)(1); *see also id.* §§ 14-2-1003(b)(1), -1202(b)(1), -1402(b)(1) (imposing a comparable obligation on directors when submitting amendments to articles of incorporation, certain dispositions of assets and a plan of dissolution to shareholders for their approval, respectively).
  7. *Id.* § 14-2-1103(b)(1).
  8. *Id.* § 14-2-1103(b)(1), cmt., note to 2006 Amendment; *see also id.* §§ 14-2-1003(b)(1), -1202(b)(1), -1402(b)(1).
  9. *See, e.g., Agreement and Plan of Merger by and Among Cisco Systems, Inc., Columbus Acquisition Corp. and Scientific-Atlanta, Inc.*, § 5.3(a), Ex. 2.1 (Nov. 18, 2005), available at <http://www.sec.gov/Archives/edgar/data/87777/000119312505229547/d8k.htm> [hereinafter *Scientific-Atlanta Merger Agreement*]; *Agreement and Plan of Merger by and Among John H. Harland Co., M&F Worldwide Corp. and H Acquisition Crop.*, § 6.5(a), Ex. 2.1 (Dec. 19, 2006), available at [http://www.sec.gov/Archives/edgar/data/45599/000110465906082664/a06-26069\\_18k.htm](http://www.sec.gov/Archives/edgar/data/45599/000110465906082664/a06-26069_18k.htm) [hereinafter *Harland Merger Agreement*].
  10. *See, e.g., Scientific-Atlanta Merger Agreement*, §5.2(a); *Harland Merger Agreement*, §6.2.
  11. *See, e.g., Scientific-Atlanta Merger Agreement*, §5.2(b); *Harland Merger Agreement*, §6.2.
  12. *See, e.g., Scientific-Atlanta Merger Agreement*, §5.2(b)-(c); *Harland Merger Agreement*, §6.2.
  13. *See, e.g., Scientific-Atlanta Merger Agreement*, §5.3(c)-(d); *Harland Merger Agreement*, §6.5(b)-(c).
  14. The ability of a target’s board to exercise such a “fiduciary out” is typically subject to a number of conditions, including compliance with provisions entitling the acquiring party to receipt of a substantial “break up” fee. *See, e.g., Scientific-Atlanta Merger Agreement*, § 7.1(h).
  15. *See, e.g., Harland Merger Agreement*, §6.2; *Agreement and Plan of Restructuring and Merger Among Flowers Industries, Inc., Kellogg Co. and Kansas Merger Subsidiary*, § 6.04(b), Ex. 2.2, (Oct. 26, 2000), available at <http://www.sec.gov/Archives/edgar/data/826227/000095014400012973/g65066e8-k.txt>.
  16. O.C.G.A. § 14-2-305, cmt., note to 2006 Amendment (2006). This section is based on DEL. CODE ANN. tit. 8, § 146 (2006).
  17. These objectives may include the ability to: (i) preserve the availability of exemptions from the registration requirements of applicable securities law; (ii) implement rollovers of management’s equity in “going private” and various other acquisition transactions; (iii) enable the corporation to elect pass-through tax treatment under Subchapter S of the Internal Revenue Code; or (iv) facilitate a publicly traded corporation’s ability to de-register its securities under the Securities Exchange Act of 1934.
  18. O.C.G.A. § 14-2-1101, cmt. (“[S]ome of the holders of a single class of shares or series of shares may be required to accept securities or properties while the remaining holders of such class or series may be compelled to accept different securities, property, or cash.”).
  19. *Id.* § 14-2-601(a)-(b).
  20. *Id.* §§ 14-2-1101(b)(3), -1104(b)(2), -1109(d)(1)(C). The same clarification was made with respect to statutory share exchanges. *See id.* § 14-2-1102(b)(3).
  21. *Id.* §§ 14-2-1101(b)(3), -1104(b)(2), -1109(d)(1)(C).
  22. *Id.* § 14-11-1302(c)(1)(B).
  23. *Id.*
  24. *See, e.g., Scientific-Atlanta Merger Agreement*, § 7.4; *Harland Merger Agreement* § 9.6.
  25. O.C.G.A. § 14-2-1101(c)(2). Comparable provisions with conforming changes are also included in amendments to O.C.G.A. § 14-2-1102 (share exchange) and § 14-2-1109 (merger with other entities).
  26. If a plan of merger is amended after the articles or a certificate of merger have been filed, but prior to the merger becoming effective, the parties must deliver a certificate of amendment to the secretary of state for filing prior to the effectiveness of the merger. *Id.* § 14-2-1101(c)(2); *see also id.* §§ 14-2-1102(c), -1109(d)(2).
  27. *Cf. DEL. CODE ANN. tit. 8, § 251(d)* (2006) (requiring the target’s board to re-solicit and re-obtain stockholder approval if, after adoption of the merger agreement by the stockholders, it desires to change the merger consideration or the surviving corporation’s certificate of incorporation in any way, even if such changes would not adversely affect the stockholders). *Accord MODEL BUS. CORP. ACT ANN.* § 11.02(e) (2005).
  28. O.C.G.A. § 14-2-1101(c)(2)(A); *see also id.* §§ 14-2-1102(c)(1), -1109(d)(2)(B)(i).
  29. *Id.* § 14-2-1101(c)(2)(B); *see also id.* § 14-2-1109(d)(2)(B)(ii).
  30. *Id.* § 14-2-1101(c)(2)(C); *see also id.* §§ 14-2-1102(c)(2), -1109(d)(2)(B)(iii).
  31. *Id.* §§ 14-2-851(a), -857(a), -857(d).
  32. *Id.* § 14-2-851(a); *see also id.* § 14-2-850(5)(defining “liability”). Absent shareholder approval, a Georgia corporation is prohibited from indemnifying a director for his or her monetary obligations under judgments, fines, or penalties imposed in connection with a proceeding by or in the right of the corporation (and amounts paid in settlement thereof). *Id.* § 14-11-851(d)(1).
  33. *Id.* §§ 14-2-852 (directors), -857(c) (officers).
  34. Georgia corporations may also incur these indemnification obligations through their articles of incorporation, board resolutions and indemnification agreements.

- See id.* § 14-2-859(a).
35. *Id.* §§ 14-2-853 (directors), 14-2-857(a) (officers).
  36. *See also id.* § 14-2-854, cmt., note to 2006 Amendment. These changes are based on provisions of MODEL BUS. CORP. ACT ANN. § 8.54(b) (2005).
  37. O.C.G.A. § 14-2-854(b).
  38. This provision is patterned after DEL. CODE ANN. tit. 8, § 145(k) (2006).
  39. O.C.G.A. § 14-2-854(a)(1).
  40. *Id.* § 14-2-856(a).
  41. The provisions often referred to as “public policy” limitations under O.C.G.A. §§ 14-2-856(b) and 14-2-857(a)(2) prohibit a corporation from indemnifying directors and officers for liability arising from: (i) any appropriation, in violation of their duties, of any business opportunity of the corporation; (ii) acts or omissions which involve intentional misconduct or a knowing violation of law; (iii) distributions rendering the corporation insolvent; and (iv) any transaction from which they receive an improper personal benefit.
  42. The standards vary depending on the nature of the proceeding. In all cases the director must have acted in good faith. If the proceeding relates to the director’s conduct in his or her official capacity for the corporation, he or she must have reasonably believed that such conduct was in the best interests of the corporation; if the proceeding relates to the director’s conduct in any other capacity (*e.g.*, as a director or officer of a wholly-owned subsidiary of the corporation), he or she must have reasonably believed that such conduct was at least not opposed to the best interests of the corporation. If, however, the proceeding is criminal in nature, he or she must have had no reasonable cause to believe such conduct was unlawful. *See* O.C.G.A. § 14-2-851(a).
  43. *Id.* § 14-2-857(a), (d). The “public policy” exceptions set forth in O.C.G.A. §§ 14-2-856(b) and 14-2-857(a)(2) otherwise apply.
  44. *Id.* § 14-2-859, cmt., note to 2006 Amendment (“Corporations who do not wish to extend those extra measures of indemnification can do so either by avoiding use of the ‘fullest extent’ language or expressly providing to the contrary.”).
  45. *See, e.g., id.* § 14-2-1003 (amendments to the articles of incorporation), -1202 (dispositions of all or substantially all assets), -1103 (mergers undertaken for purposes of re-incorporating in another jurisdiction).
  46. *Id.* § 14-2-104(a). This provision is based on DEL. CODE ANN. tit. 8, § 303 (2006).
  47. O.C.G.A. § 14-2-104.
  48. *Id.* § 14-2-104(c). Note that section 14-2-104 applies to any type of federal bankruptcy proceeding and the validity of an action taken under this section does not depend on the existence or pending nature of a confirmed plan of reorganization. In addition, the authority granted under this section terminates upon the completion of such a bankruptcy proceeding.
  49. *Id.* § 14-11-212.
  50. *Id.* § 14-2-1109.1(c)(5).
  51. *Id.* § 14-2-1109.1(d).
  52. *Id.* § 14-2-1109.1(e).
  53. *Id.* § 14-2-1109.1(f).
  54. *Id.* § 14-2-1109.1(g).
  55. *Id.* § 14-2-1109(b)-(c).
  56. *Id.* § 14-2-1109.2(a).
  57. *Id.*
  58. *Id.*
  59. *Id.* § 14-2-1109.2(b).
  60. *Id.* § 14-2-1109.2(c)(1).
  61. *Id.* § 14-2-1109.2(c)(4).
  62. *Id.* § 14-2-1109.2(c)(5).
  63. *Id.*
  64. *Id.*
  65. *Id.* § 14-2-1109.2(e).
  66. *Id.* § 14-2-1109.2(c)(6).
  67. *Id.*
  68. *Id.* § 14-2-1109.2(d).
  69. *Id.* § 14-11-212.
  70. *Id.* §§ 14-11-212(a), -9-206.2(a).
  71. *Id.* §§ 14-11-212(b), -9-206.2(b).
  72. *Id.* §§ 14-2-1109.3, -9-206.8, -11-906.
  73. *Id.* §§ 14-2-1109.3(c), 14-9-206.8(c), 14-11-906(c) (2006). Note, however, that the 2006 Amendments inadvertently omitted any filing or other procedural mechanism to alert the Georgia Secretary of State that a Georgia entity has converted to an entity governed by a foreign jurisdiction’s law. In Jan. 2007, the State Bar’s Board of Governors approved several amendments proposed by the Business Law Section that would correct that oversight by imposing the requirement to file a certificate conversion when a Georgia entity converts to a foreign entity. This proposed legislation also adds a conforming provision that permits the converting entity to file a copy of its certificate of conversion with the clerk of the superior court of any county in which the converting entity owns real property. Further, the proposal includes amendments to the Corporate Code, the LP Act and the LLC Act authorizing the Georgia Secretary of State to collect a \$95 fee for the filing and administration of the Certificate of Conversion. On Feb. 27, 2007, a bill to enact such proposed legislation was read in the Georgia State Senate and referred to the Senate Committee on Special Judiciary. *See* S.B. 234, 2007-2008 Gen. Assem., Reg. Sess. (Ga. 2007).
  74. O.C.G.A. §§ 14-2-1109.3(g), -9-206.8(e), -11-906(e).
  75. *Id.* § 14-2-1106(a).
  76. *Id.* §§ 14-2-1109.2(c)(5), -9-206.2(c)(5), -11-212(c)(5).
  77. *See id.* § 14-2-1106, cmt., note to 2003 Amendment. *Accord* MODEL BUS. CORP. ACT ANN. § 11.07, Official Commentary at 11-72 (2005).
  78. O.C.G.A. § 14-2-1106.
  79. *Id.* §§ 14-2-1109.2(d), -9-206.2(d), -11-212(d).
  80. *Id.* §§ 14-2-1504(c)(2), -2-1504(d)(2), -9-905(b)(2), -9-905(c)(2), -11-706(b)(2), -11-706(c)(2).
  81. *Id.* §§ 14-2-1109.1(d)(2), -1109.3(c)(2).
  82. *Id.* §§ 14-9-206.8(c), -11-906(c).
  83. *Id.* § 14-11-1107(b).
  84. *Id.* §§ 14-9-302(a)(2), -405(a)(2).
  85. *Id.* § 14-11-1002(a).
  86. *Id.* § 14-11-1002(a)(2).



# Special Masters: Mastering the Pretrial Discovery Process

by Cary Ichter and S. Paul Smith

**A**lthough discovery under the Georgia Civil Practice Act<sup>1</sup> is supposed to be a cooperative, largely self-executing process, as a general proposition, it is often anything but that, and the courts' supervision is frequently compelled by the inability of the parties to agree about much of anything. All too often the courts become drawn into discovery battles that are every bit as incomprehensible to the courts as they are wasteful of the time and resources of all involved.

In our experience, complex commercial cases are particularly prone to discovery disputes. Such cases frequently require the exchange of an enormous volume of data by the parties under the supervision of the courts. Complex commercial cases nearly always involve more data, more documents, more witnesses, and, because of the amounts in controversy, more lawyers. This, of course, means more issues and more disputes, which yield more motions and more work for the already overburdened courts. The only thing there

is less of is judicial time and resources with which to address the litigation landslide. The discovery process can grind to a halt, while the parties wait for the court to clear the way of the obstacles the parties have created. Sound familiar?

The purpose of this article is to propose a solution: the use of special masters to ride herd over unruly armies of lawyers in complex civil cases and to handle time-consuming issues in other cases.<sup>2</sup> Of course, not everyone will agree that special masters are the answer, but we believe that they can go a long way toward addressing problems that arise when complex cases overwhelm the courts with equally complex and burdensome discovery disputes. As one noted commentator put it: "Special masters can help redress the imbalance that demoralizes a court that is confronted by the squads of lawyers and masses of data that invariably accompany major cases."<sup>3</sup> Under the Civil Practice Act, special masters may be appointed by the court upon the request of the parties or when "the facts and circumstances of any such case require it."<sup>4</sup>

We submit that once a complex case reaches motion practice in the course of discovery, the appointment of a special master to resolve discovery disputes is appropriate because it would: (1) allow judges to concentrate on pressing matters that can be addressed more quickly in other cases without getting bogged down in the minutiae of complex-case discovery; (2) save time and money for the litigants in the long run; and (3) promote efficient and fair resolution of the case itself.

## The Legal Foundation for Special Masters for Discovery

The use of special masters has a long tradition dating back to the English courts in chancery and continuing in equity cases in the United States. As Justice Brandeis explained in *Ex parte Peterson*, courts have “inherent power to provide themselves with appropriate instruments required for the performance of their duties. This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progression of a cause.”<sup>5</sup>

In Georgia, special masters are governed by O.C.G.A. § 9-7-1 to § 9-7-6. O.C.G.A. § 9-7-2 provides that “[u]pon application of either party, after notice to the opposite party, the judge of the superior court, in equitable proceedings if the case shall require it, may refer any part of the facts to an auditor to investigate and report the result to the court. *Furthermore, the judge may, upon his own motion, when in his judgment the facts and circumstances of any such case require it, refer the same to an auditor.*”<sup>6</sup> In short, the decision of whether to refer a matter to a special master is one that is commended to the sound discretion of the trial court and will not be disturbed absent an abuse of discretion.<sup>7</sup>

The type of master that is contemplated by the statute appears to be primarily in the role of a fact-finder, evidentiary analyst or discovery referee.<sup>8</sup> Indeed, the use of special masters for discovery in complex cases in the federal system is common and has been extensively discussed, particularly with respect to the recently revised Rule 53 of the Federal Rules of Civil Procedure.<sup>9</sup> Judge Scheindlin, a member of the Advisory Committee on the Federal Rules of Civil Procedure that amended Rule 53, explained further:

With respect to “discovery” masters, district courts increasingly viewed resort to a Rule 53 master as necessary in light of increasing docket pressures and limited judicial resources. Masters have been appointed to oversee the discovery process, which can entail resolving disputes, establishing procedures and schedules, monitoring document production, and attending depositions and conferences. References of discovery and discovery disputes have been seen as particularly useful because of their time-consuming nature or need for immediate resolution. Factors considered in these appointments included the volume of material to be produced and exchanged, the scientific and technical nature of the information subject to discovery, and the complexity of the underlying dispute.<sup>10</sup>

While virtually all, if not all, referral orders appointing special

masters appear to be made pursuant to section 9-7-2, a persuasive argument can be made, and has been made in other jurisdictions, that the courts have the inherent power to appoint special masters. Indeed, courts have long been held to have the inherent power to prescribe the manner in which the business of the court is to be conducted.<sup>11</sup>

In addition, the courts have certain authority conferred upon them by statute that could empower them to appoint special masters. For example, O.C.G.A. § 15-1-3(4) empowers “every court” to “control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.” Moreover, it has long been recognized that the courts’ power to make a referral is not limited to suits for an accounting.<sup>12</sup> In passing upon the constitutionality of the



Magistrate's Act in the criminal context, the Supreme Court of Georgia declared, "The judges of superior court have been given authority to appoint other inferior judicial officials, *i.e.*, judges pro hac vice, special masters, ex-officio justices of the peace; and U.S. District Court judges have statutory authority to appoint federal magistrates. We have not found any cases, nor have we been cited to any, holding these delegations of authority to be unconstitutional."<sup>13</sup>

## The Mechanics of a Referral Order

The mechanics of such an appointment or referral are fairly simple. If the parties consent to the appointment or if the court finds that the matter would benefit from appointment of a master, the court may make a referral. The court need only enter an order making the appointment, describing the scope of the master's appointment and

powers, describing the manner in which the master is to report to the court, and directing as to how the master is to be compensated. A form order that includes the standard elements of a referral order is provided at the conclusion of the article.

Because a special master is not an Article III judge or a judge appointed under Article VI of the Georgia constitution, a special master may not issue dispositive rulings. The special master may, however, issue rulings upon non-dispositive matters, such as discovery disputes, and may conduct hearings on dispositive matters and issue a report and recommendation to the court.

The appointing court maintains the ability, and the obligation, to oversee the decisions of the special master, reviewing, when called upon by motion of a party, the decisions of the master. As one court has explained it, "In essence, then, the trial judge who appointed a special master in a non-jury civil

case has transformed his role into that of an appellate court, at least with regard to the resolution of factual issues."<sup>14</sup>

## The Need for Special Masters

Nationally, between 1993 and 2002, state court caseloads have increased at a steady pace. Over those 10 years, state court civil case filings increased 12 percent, criminal case filings 19 percent, domestic relations case filings 14 percent and juvenile case filings 16 percent.<sup>15</sup> Overall, state court civil case filings increased 12 percent from 1993 to 2002, and 96.2 million new cases were filed in state courts in 2002.<sup>16</sup> Those trends have continued unabated.

Appointments of new judges have not kept pace with growing caseloads. While all categories of new case filings have averaged more than 1 percent growth per year, the growth in the pool of



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judges to handle those matters has risen by less than 0.5 percent per year.<sup>17</sup> In other words, the rate of case filings is outstripping the growth of judicial resources by a factor of better than two to one. Meanwhile, budgets for courts, at all levels all across the country, are being cut.

Of particular concern is that increasingly complex, technical and resource-consuming matters are being introduced at the state court level. The difficulties are multiplied because state courts often lack the support found at the federal level, where judges enjoy the assistance of one or more clerks and larger support staffs. With larger dockets involving more complicated matters and more "managerial judging" to be done, state courts are often strained to the breaking point.

Within this deluge of disputes are more and more complex commercial matters—matters that can involve highly technical factual, legal and discovery issues and tens of thousands to millions of pages of documents. The documents in these cases are often a mixture of technical, confidential, proprietary and privileged materials that are maintained in a host of different environments, including electronic versions that exist on desktops, in hard drives, servers, archives and legacy back-up systems that may not be currently supported by any existing vendor. In short, it hardly requires the creative minds of high-powered legal talent to uncover genuine discovery issues that require significant technical competence.

Tens of thousands of pages of documents usually translate, minimally, into scores of witnesses, and, given the ability to work remotely that technology affords us, taking testimony from those witnesses is often a multi-jurisdictional operation. And then there are the experts, who construct technical complexities atop procedural complexities. In the final analysis, a single complex matter could

become a full time job for a court, and few, if any, state courts have the ability to dedicate all their time and attention to a single matter.

A study conducted by the Federal Judicial Center found great satisfaction in all quarters, judges and litigants, with the performance and contributions of special masters in cases to which masters were appointed, concluding that special masters were "extremely to very effective."<sup>18</sup> The study reported, "The work of special masters is very helpful; in fact one judge in responding to the FJC Study 'wished he had appointed a discovery master earlier.' The FJC Study shows that generally, judges appointing special masters thought that the 'benefits of appointments outweighed any drawbacks.'"<sup>19</sup> The study concluded that special masters delivered "better, faster, and fairer resolution of litigation in the cases in which masters are used, as well as ... easing the burdens these cases place on the judiciary."<sup>20</sup>

## Answering Objections

Of course, not everyone agrees that special masters should be more regularly appointed. One argument that has been leveled against enlarging the use of special masters is that in doing so the courts abdicate their responsibility and their power. The same argument was employed to protest the use of arbitration, and that argument lost in favor of maximizing the functional efficiency of the process. Congress, through the Federal Arbitration Act, and the states decided that private adjudication of matters is not problematic because arbitration can be more cost-efficient and reduced the burden on the court system, in addition to promoting the freedom of parties to define their own relationships by contract. This is not to say that the arbitration system is perfect, or that everyone is satisfied with it, but the policy considerations that have prompted the more prevalent use of arbitration apply with equal weight to the use of special masters.

The use of special masters promotes the same ends as arbitration, but the special master is backed up by the trial court that makes the referral. Unlike the decisions of arbitrators, every decision of a special master is subject to review by the referring court. Hence, with special masters there is no abdication of power and no loss of authority in the judicial branch. The special master is a tool of the court; the special master in no way replaces the court.

Others object that the costs of a special master should not be thrust upon litigants simply because they are involved in complex litigation. We believe, to the contrary, that the introduction of a special master to a complex matter can actually reduce the costs of the matter. First, because of the undistracted attention a special master can lavish upon a complex matter, he or she can fashion matter-specific and issue-specific structure and discipline on the discovery process at an earlier stage than might other-

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wise be possible. "This sharpened focus will beget more timely and responsive production of requested discovery materials, will decrease the burden upon and the cost to the producing party and will shorten the pretrial discovery stage with commensurately foreshortened litigation."<sup>21</sup>

On the other hand, it is our experience that, when confronted with complex, resource-consuming matters, courts can tend to apply rigid and formulaic structures to the matters in the hope that fixed schedules and procedures will move the matter along without the intervention or attention of the court. Bitter experience has proven that such formulas simply do not work. "[T]oo much pressure applied in the wrong circumstances can wreck an entire pretrial process . . . . A special master devoting a substantial attention to one case may be more successful at finding the proper balance than a . . . judge with responsibility for many cases."<sup>22</sup>


Additionally, the introduction of a special master "into the discovery process may induce the parties to be more cooperative because they are compelled with an unbiased individual focused on the discovery process, rather than with a beleaguered judge to take note of the dilatory maneuvering."<sup>23</sup> As one commentator has noted, "The reality is that efficiencies brought about by special masters ultimately save money for the parties and save public resources."<sup>24</sup>

Finally, if the special master also introduces the deterrent effect of shifting the costs of unsuccessful discovery maneuvering to the non-prevailing party, the master might all but eliminate costly, time-consuming and meaningless discovery motions practice. In short, special masters, properly used, could represent an enormous cost savings for litigants in complex cases.

## Conclusion

Courts have the inherent power to control their dockets, and one

tool they can use to accomplish that end is the appointment of a special master in proper cases. While this power has been usually reserved for instances involving complex matters of accounting, there is no impediment to a court employing O.C.G.A. § 9-7-1 *et seq.* to efficiently move nightmarishly complex cases along. We believe there is good reason to do so: it would ease the burden on the courts, promote efficiency within the case itself; and in the end save money for the litigants.

Not everyone will agree that more frequent use of special masters is a good idea. But many of the arguments against the use of special masters were previously used against arbitration, and, ultimately, the use of arbitration has grown. If we, as lawyers, are serious in our complaints about discovery abuse, waste, and delay by the courts, we have an obligation to do something about it or stop complaining altogether. Using special masters for discovery matters in complex cases is one way we can help. 



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## Endnotes

1. O.C.G.A. § 9-11-1 *et seq.* (2006).
2. It is beyond the scope of this article to fully explore the many uses court can make of special masters, but here are a few that can be found in the cases and the literature: overseeing and monitoring discovery; conducting large *in camera* document reviews; supervising class notice process; conducting *Daubert* and similar statutory expert witness evaluations; managing electronic data discovery; presiding over evidentiary hearings; overseeing the winding up of the affairs of corporations and partnerships; calculating attorneys' fees and other damages; preserving marital estates and issuing reports and recommendations in domestic relations matters; disputes concerning the management and legal compliance of public institutions such as schools, jails and utilities systems; and making value determinations for damages purposes in complex damages cases.
3. WAYNE D. BRAZIL ET AL., *MANAGING COMPLEX LITIGATION: A PRACTICAL GUIDE TO THE USE OF SPECIAL MASTERS*, 5 (1983).
4. O.C.G.A. § 9-7-2.
5. *Ex parte Peterson*, 253 U.S. 300, 364-65 (1920); *see also* Irving R. Kaufman, *Masters in the Federal Courts: Rule 53*, 58 COLUM. L. REV. 452, 462 (1983) ("[T]here has always existed in the federal courts an inherent authority to appoint masters.").
6. O.C.G.A. § 9-7-2 (emphasis added).
7. *See Mobley v. Faulk*, 42 Ga. App. 314, 156 S.E. 40 (1930). Given the importance in this state of a trial by jury, it is not surprising that in those instances where it was error to appoint a special master, or not



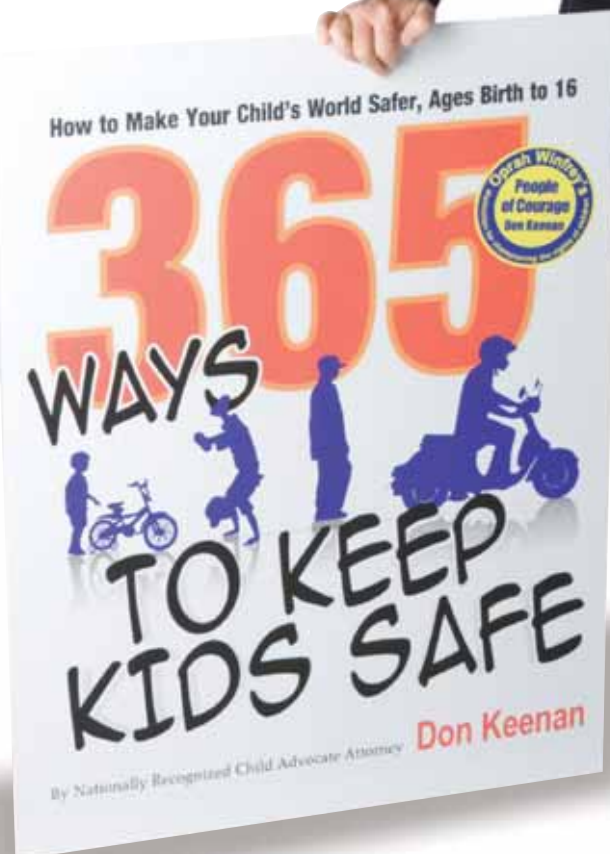
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error to *not* appoint a special master, the jury's role was a primary consideration. *See, e.g., Franklin v. Franklin*, 267 Ga. 82, 475 S.E.2d 890, 891 (1996) (reversing because "[a]lthough a trial court has the authority to refer an equitable proceeding to an auditor, it is apparent that no purpose is served in appointing an auditor in a domestic case where pursuant to a proper demand, all issues relating to alimony and property division must ultimately be submitted to the jury"); *Steenhuis v. Todd's Constr. Co.*, 227 Ga. 836, 183 S.E.2d 354, 355 (finding no abuse of discretion in not appointing an auditor where "it cannot be said that a jury is not better qualified to pass upon the same than an auditor"). For this reason, the U.S. Supreme Court's decision in *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957), severely restricted the power of federal courts to employ Rule 53, except in exceptional cases, because to do so would "displace the court."



## Save Valuable Research Time



8. *See* Mark A. Fellows & Roger S. Haydock, *Federal Court Special Masters: A Vital Resource in the Era of Complex Litigation*, 31 WM. MITCHELL L. REV. 1269, 1276 (2005) ("Even in the era of the restrictive *La Buy* exceptional condition standard for special master appointments, reference of the management and supervision of discovery in complex cases was relatively uncontroversial. The appointment of a special master whose authority was limited to managing discovery was perceived by the courts to be less of an abdication of the judicial function because it did not deprive the parties of the right to a trial before the court on the basic issues of the litigation.").
9. *See, e.g.,* Fellows & Haydock, *supra* note 8; Shira A. Scheindlin & Jonathan Redgrave, *Revisions in Federal Rule 53 Provide New Options for Using Special Masters in Litigation*, 76 N.Y. ST. BAR J. 18 (2004).
10. Scheindlin & Redgrave, *supra* note 9, at 21.
11. "That the courts possess certain inherent powers, is a proposition which, so far as we know, has never been questioned. This means, then when the constitution declares that the legislative, judicial, and executive powers shall forever remain separate and distinct (art. 1, sec. 1, par. 23), it hereby invests those officials charged with the duty of administering justice according to law with all necessary authority to efficiently and completely discharge those duties the performance for which is by the constitution committed to the judiciary, and to maintain the dignity and independence of the courts." *Lovett v. Sandersville R. Co.*, 199 Ga. 238, 33 S.E.2d 905 (1945) (citations omitted).
12. *See, e.g.,* Candler v. Bryan, 189 Ga. 851, 8 S.E.2d. 81, 85 (1940). The Candler case cited with approval the decision in *Lamar v. Allen*, 108 Ga. 158, 33 S.E. 958 (1899), in which the Supreme Court had noted, "As a matter of fact, there was but one question to be determined, that is, who was the brother of Richard Lamar," and yet held, "An examination of this record satisfies us that this was a case in which reference to an auditor was peculiarly appropriate. No jury could have dealt with the mass of conflicting testimony in as satisfactory a way as the same was dealt with by the intelligent and able auditor to whom the case was referred." Candler, 8 S.E.2d at 85-86.
13. *State v. Andrews*, 240 Ga. 541, 242 S.E.2d 153, 156 (1978).
15. *Collins v. Foreman*, 729 F.2d 108, 119 (2d Cir. 1984). Consequently, it makes good sense for parties to ensure that a record of proceedings before a special master is maintained so that the parties have a record to present to the trial court should it become necessary to do so.
15. NATIONAL CENTER FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, COURT STATISTICS PROJECT (2003).
16. *Id.*
17. FRANCES KAHN ZEMANS, COURT FUNDING, ABA STANDING COMMITTEE ON JUDICIAL INDEPENDENCE 1, 11 (Aug. 2003).
18. WILLGING ET AL., SPECIAL MASTERS' INCIDENCE AND ACTIVITY: REPORT TO THE JUDICIAL CONFERENCE'S ADVISORY COMMITTEE ON CIVIL RULES AND ITS SUBCOMMITTEE ON SPECIAL MASTERS (2000).
19. *Id.*; *see also* Lynn Jokela & David F. Herr, *Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool*, 31 WM. MITCHELL L. REV. 1299, 1313 (2005).
20. WILLGING ET AL., *supra* note 18.
21. Richard H. Agins, *An Argument for Expanding the Application of Rule 53(b) to Facilitate Reference of the Special Master in Electronic Data Discovery*, 23 PACE L. REV. 689, 720 (Spring 2003).
22. *Id.* (quoting ROBERT D. MCLEAN, PRETRIAL MANAGEMENT IN COMPLEX LITIGATION: THE USE OF SPECIAL MASTERS IN UNITED STATES V. AT&T, at 278 (1983)).
23. Agins, *supra* note 21, at 720.
24. WILLGING ET AL., *supra* note 18, at 59.

# SAMPLE ORDER

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

\_\_\_\_\_  
Plaintiff,

v.

CIVIL ACTION  
FILE NO. \_\_\_\_\_

\_\_\_\_\_  
Defendant.

## ORDER APPOINTING SPECIAL MASTER

This action is before the court on [the Court's own motion] [the application of the parties] to appoint \_\_\_\_\_ as a Special Master in the above-styled case, subject to the terms and conditions set forth herein.

### Duties

The Special Master is hereby directed to proceed with all reasonable diligence to perform the following functions:

- A. Case Management: The Special Master shall have the authority to conduct scheduling conferences, establish case management orders and discovery schedules, and otherwise perform such acts necessary to expeditiously and efficiently move the case through the discovery process, including issues related to electronic data discovery and privilege.
- B. Conflict Resolution: The Special Master shall have the power to entertain all motions for relief brought by the parties concerning discovery, with or without a hearing, and shall issue written rulings thereon with all reasonable diligence upon submission to the Special Master. Included within the power to conduct hearings on motions shall be the power to receive testimony under oath before a court reporter, and to preside over the reception of evidence into the record.
- C. Settlement: The Special Master may serve as a mediator, if requested by the parties, to facilitate settlement of the case.
- D. Sanctions: The Special Master may award costs of motions and impose sanctions upon any party for failure to comply with discovery requirements.
- E. Other Duties: The Special Master may perform such other and further tasks not specifically enumerated above if such additional undertaken in furtherance of the above scope of appointment. The Special Master may perform additional tasks and functions (including, but not limited to, ruling on motions for non-discovery related injunctive relief) if the parties consent thereto, or if the Court, upon application of one of the parties, specifically appoints the Special Master to so act.

### Conduct of Parties

The parties are instructed to cooperate with the Special Master in all respects, including, but not limited to, making available to the Special Master any facilities, files, databases, documents, or other materials the Special Master may request to fulfill the Special Master's duties hereunder. The parties are not permitted to engage in *ex parte* communication with the Special Master or the Special Master's administrative staff, except as would be permitted with the Court and the Court's staff, or except as such communications may relate to settlement of the case where the Special Master has been asked to serve as a mediator.

### Compensation of the Special Master

The Court has considered the fairness of imposing the likely cost of the Special Master on the parties and has taken steps to protect against unreasonable expense and delay. In light of the determined need for the appointment of the Special Master, the Court concludes that the parties shall bear the cost of the Special Master on the following terms and conditions: The Special Master shall charge an hourly rate of \$\_\_\_\_.00 and shall keep an account of all hours or quarter-hour fractions thereof, and any expenses incurred by the Special Master in the performance of the Special Master's duties hereunder. The Special Master will issue an invoice describing the work performed and the hours attributable to the work performed, plus the expenses incurred by item, to the parties on a monthly basis. The parties shall each pay their *pro rata* [i.e., if two parties, 50% each; if four parties, 25% each, etc.] share of the invoice promptly and in no event less than 30 days from the issuance thereof. Any dispute by any party over any aspect of the invoice shall first be raised informally with the Special Master for possible resolution, and if resolution is not agreed, then the party disputing any aspect of the invoice may address such dispute to the Court by motion, to which the Special Master may respond.

### Miscellaneous

The Special Master is instructed to maintain all pleadings and correspondence submitted by the parties in connection with the case and to forward the entirety of such documents and records to the Court at the conclusion of discovery. The parties need not file with the Court a duplicate of the documents submitted to the Special Master.

The Special Master, by accepting this appointment, represents to the Court that there are no matters within the scope of this appointment for which the Special Master could or should be disqualified, and that the Special Master accepts the terms and conditions of this appointment set forth herein.

This Order shall be effective upon the submission by the Special Master of the affidavit required immediately above.

SO ORDERED, this \_\_\_\_\_ of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Judge, \_\_\_\_\_ Court of  
\_\_\_\_\_ County

# Let's Not Make a Federal Case of It

## A Short Course on Federal Criminal Practice for the State Practitioner

by Paul S. Kish

**W**hile trying to stop a situation from getting overly complicated, most of us at one time or another have said something like, “let’s not make a federal case out of it.”

When it comes to criminal practice, “making a federal case of it” can have extremely significant consequences for both the client and the attorney. Some lawyers who rarely practice in federal court are shocked at the differences from state practice. The following is a short outline of some of those differences.

### Jurisdiction

As a general rule, state prosecutions are limited by geographic boundaries. At least a part of the state crime must happen within Georgia’s state lines in order to be prosecuted in a Georgia court.<sup>1</sup>

Besides geographic considerations, criminal defense attorneys also worry about how a crime is defined. Up

until 1968, some Georgia decisions held that, in addition to the crimes set out by statute, a prosecutor could bring a charge based on common law crimes. Now, however, no conduct can constitute a crime unless it is found in Title 16 of the Georgia Code, “or in another statute of this state.”<sup>2</sup> Very few crimes are found anywhere other than in Title 16.

Federal criminal jurisdiction is harder to define, both in terms of geographic reach as well as the basic definition of a crime. The geographic reach of federal crimes can be difficult to pin down. One easy way to remember the geographic breadth of federal jurisdiction is to think of federal people and federal places. Any crime committed against or by a federal actor can usually result in federal jurisdiction. Likewise, any crime committed on federally owned or leased real estate can result in a federal criminal prosecution. These areas also encompass “the special maritime and territorial jurisdiction of the United States,” which includes activities that happen on U.S. vessels, aircraft or U.S. property located throughout the world. Federal jurisdiction also extends to crimes on a spacecraft (no one can accuse Congress of not looking to the future), and the never-ending chance that a crime might occur on “any island, rock or key containing deposits of guano.”<sup>3</sup>

Not only is the geographic reach of a federal prosecutor hard to figure out, looking for the laws that set out federal crimes can be a nightmare. Federal crimes





Photo by dbking/wdc

are purely statutory, and there is no such thing as a federal common law crime.<sup>4</sup> Title 18 of the U.S. Code has the seemingly helpful description of “Crimes and Criminal Procedure.” The unwary practitioner might think, therefore, that Title 18 is the place to easily look up whatever crime the client might have committed. However, the practitioner would be very wrong. Unlike the concentration of state crimes found in Title 16 of the Georgia Code, federal crimes are scattered at numerous places throughout the massive U.S. Code. They hide amongst the breadth of the Code of Federal Regulations, and possibly can be discovered in some places never before seen by the light of day. Studies attempting to at least quantify the number of federal crimes have left their authors shaking their heads in wonderment, being unable to locate every place a federal crime is described in the vast landscape of federal statutes, regulations,

administrative proceedings and other locales.<sup>5</sup>

Above and beyond the problem that no one knows exactly how many federal crimes exist, there is the more practical issue of where the defense lawyer should start when trying to find a description of a federal crime. Some areas in which there are substantial numbers of federal criminal prosecutions are contained in portions of the Code far removed from Title 18. For example, all drug crimes are described in Title 21, the Food and Drug portion of the U.S. Code. Immigration crimes are described in Title 8, while the practitioner looking for many crimes related to banking must scour Title 31. Title 18 does not mention that the practitioner may need to look in these other areas.

To make it even more difficult, those who write federal laws seem to get some perverse joy in hiding important information, even when the state practitioner finally locates

the statute describing the crime. Take for example the seemingly simple crime of being a previously convicted felon in possession of a firearm.<sup>6</sup> Assume that a client has a number of priors, and asks the usual question “What am I facing?” Some research reveals a nearby statute, 18 U.S.C. § 924, which has the helpful title “Penalties.” Further reading in this statute reveals section 924(a)(2), a subsection which sets out that the maximum penalty for violating section 922(g) is 10 years. The lawyer announces to his client, “I can assure you that you cannot get more than 10 years.” However, that same client is mightily surprised later when he finds out that he is facing a 15 year mandatory minimum, with the possibility of life, if he has been convicted to three or more predicate crimes that are described in section 924(e)(2). There is no cross-reference which would inform the state practitioner that he needs to look further in section 924 to find some bizarre alternative

penalty for being a felon-in-possession. To make it even worse, the federal courts hold that the indictment does not need to include this information about the prior convictions that change a case from a 10 year maximum to a 15 year minimum.<sup>7</sup>

For those not accustomed to practicing in federal court, it can be hard to determine the exact breadth of federal jurisdiction, as well as the basic definition of the crime and its penalties. However, once the practitioner gets this basic information under his or her belt, more surprises are ahead.

## When is it a Federal Crime as Opposed to a State Law Violation?

Most lawyers are further confused when trying to figure out why some crimes are in U.S. District Court while other seemingly identical crimes remain in the state court system. More confusing still is how the feds justify taking cases to federal court. The basic answer is one of those little recalled aspects of first year Constitutional Law class: the Commerce Clause.

Federal drug cases are a perfect example of this confusion about when the authorities can “make a federal case out of it.” Reading the section above, the state practitioner might remember that cases work their way to U.S. District Court based on either a federal actor or a federal place. If this is so, why then do so many drug cases end up in federal court, even though there is no federal official involved and most drug dealers try and stay away from U.S. property when plying their trade? It turns out that in 1968 Congress decided that “a major portion of the traffic in controlled substances flows through interstate and foreign commerce.”<sup>8</sup> As a result, from that point forward the feds believed that they had authority under the Commerce Clause to bring any case they wanted to prosecute into U.S. District Court, from Manuel Noriega to simple possession of a marijuana cigarette.<sup>9</sup>

For the past decade, however, federal criminal defense lawyers have been attacking this practice of bringing cases into federal court simply because some aspect of the criminal activity might affect some form of commerce. Some refer to this as “the wrong courthouse defense,” and the tactic occasionally works.<sup>10</sup> However, the Supreme Court recently held that it is permissible for the feds to regulate the drug trade using the Commerce Clause.<sup>11</sup>

State court criminal defense attorneys are often surprised by the amount of constitutional litigation that takes place in a federal criminal prosecution. Although many federal crimes have been on the books for quite some time, creative attorneys continue to think up new challenges that are basically unheard of in state prosecutions. The “wrong courthouse” defense is just one recent variation on this theme. Another set of claims revolve around the First Amendment and the proscription against unduly vague statutes.<sup>12</sup>

## Bail

Another difference between state and federal criminal practice is whether a defendant can be released after posting bail. State court practice is more informal, and results in more defendants with resources to post bail being released. Federal practice is highly formalized and more tilted in favor of the prosecution, thus resulting in more defendants held pending trial.

Under state law, bail can be set for all offenses, except for a list of serious crimes described at O.C.G.A. § 17-6-1. However, even for these serious crimes, bail can be set by a superior court judge or any inferior judge to whom she delegates this authority.<sup>13</sup> If the defendant is not charged with one of these more serious crimes, bail is usually set by the arresting authority or at an initial appearance. For the more serious cases in which bail must be set by the superior court judge or his designee, a

statute sets out the bail criteria, the major factor being the probability that the accused will appear for trial.<sup>14</sup>

Defendants charged in federal court often run headlong into the maw of the Bail Reform Act of 1984,<sup>15</sup> a very strict law that gives prosecutors immense power, but which sometimes can yield a few gems for the creative defense attorney. A U.S. magistrate judge is allowed to “detain” without any bond or bail at all any person who is a danger to the community or who is at risk of flight, or any person charged with certain crimes. The Bail Reform Act creates a rebuttable presumption that people merely charged with some crimes should get no bail at all. For example, any “crime of violence” or any drug offense carrying a maximum penalty of more than 10 years creates such a presumption. An indictment by itself can form the basis for such a presumption.<sup>16</sup> Once the prosecution asks for detention in a case with a rebuttable presumption, the burden shifts to the defendant to show he is not a danger or a risk of flight.

What usually happens in federal court is that a prosecutor asks for “detention” via a written motion filed at the defendant’s initial appearance. The magistrate judge then has to schedule a “detention hearing.” However, the prosecutor can put that hearing off for three business days for no reason whatsoever, thus effectively holding a defendant for the better part of a week after his arrest, and even longer if there is an intervening weekend or federal holiday. If the defendant has been arrested on a criminal complaint instead of an indictment, most magistrates combine the detention hearing with a preliminary hearing, which is the proceeding needed to determine if there is probable cause. This is where a creative defense lawyer can make some headway. The rules of evidence do not apply at such hearings, and the law even permits the prosecutor to proceed by way

of proffer. As a result, there might not even be a witness for counsel to cross-examine. However, if the prosecutor does call a witness (usually the “case agent” who works for the FBI, DEA or the like), defense counsel has the right to ask for all reports and statements made by the witness.<sup>17</sup> This might not sound like much, but as set out below, getting witness statements prior to trial in a federal matter is like pulling teeth, so any opportunity to get some information early is always helpful.

One good thing about the federal bail laws is that they have a built-in appeal mechanism. Either the defendant or the prosecutor can appeal to the district judge from an adverse ruling on bail. Furthermore, the losing party also has the right to go straight to the U.S. Court of Appeals.<sup>18</sup>

Assuming that the lawyer convinces the court to set bail, many practitioners are shocked at the amount of bond in federal court. Bonds of \$500,000 to \$1 million are not unheard of. Furthermore, conditions of pre-trial release can be onerous. One such condition that often causes problems is a requirement that persons on pre-trial release must provide urine samples. A “dirty urine” while on bond can cause massive headaches for the defendant and his attorney during the highly refined and complicated federal sentencing process set out later.

## Discovery, What Discovery?

When it comes to discovery, the state practitioner is truly perplexed when he or she has a client charged in a federal case. While most state district attorneys’ offices have open-file policies, getting information out of the feds is very frustrating for the average defense attorney.

In a state felony case, a defendant who “opts in” to the reciprocal discovery mechanism is entitled to a list of witnesses, with information that helps identify the

state’s witness.<sup>19</sup> Furthermore, upon request the defendant has the right to get criminal history records on all witnesses from the Georgia Career Information Center.<sup>20</sup> Finally, a defendant in a state criminal prosecution gets the witness statements before trial.<sup>21</sup>

Lawyers not accustomed to defending federal cases often feel like they have fallen into an *Alice in Wonderland* experience. First, you do not even know who the government’s witnesses are. A federal prosecutor has no obligation to tell you her witnesses until they are called to the stand at trial. Next, even if you somehow find out who the witness is, you do not have any pre-trial right to get prior statements by the witness. This is the Jencks Act, which greatly surprises many lawyers. Under the Jencks Act, you will not get the witness’s prior statements until the prosecutor has completed direct examination.<sup>22</sup> This author has actually seen a pile of prior statements, depositions and the like handed to the defense attorney just as he walks up to the podium to start his cross-examination. Many federal judges urge prosecutors to hand over prior statements ahead of time, but this is not a universal practice.

Lawyers who normally practice in state court are also surprised about what constitutes a prior “statement” made by a witness. Federal prosecutors often take advantage of the fact that something is a prior “statement” of a witness only if the witness wrote it himself, or “adopted” the statement if written down by someone else.<sup>23</sup> In other words, the 15-page interview the FBI agent did with the main prosecution witness is not the witness’s “statement” because he or she never “adopted” it. Over the years, the FBI and other federal investigative agencies have gotten wise to this rule and thus take steps to avoid any semblance of having a witness “adopt” what actually is the witness’s statement.

Unlike state practice, the defense attorney has no absolute right to

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find out if a prosecution witness has a prior criminal record. However, such information is generally tendered to avoid constitutional questions. Nevertheless, many aggressive federal prosecutors contend that a mere arrest of a government witness is not germane, and they refuse to turn over such information.

Not knowing the witnesses or what they will say makes a federal criminal trial a somewhat nerve-racking experience for the defense attorney. It is not at all unusual to hear the prosecutor say, "The government calls Mr. X," the defense attorney turns and asks the client, "Who is Mr. X?" and when neither the lawyer nor defendant can identify this witness, you simply buckle up your seat belt and hang on. The phrase "trial by ambush" is sometimes used to describe defending a criminal case in federal court.

## Trial Practice

State courts are much busier places than most U.S. District Courts. Virtually all state courts set their cases on master calendars, with large "cattle calls" during which the judge and his or her staff process a multitude of defendants during a single proceeding. Once a case is set on a trial calendar, the lawyer needs to be on call, rarely knowing for sure when he or she needs to be at court to begin jury selection. In most state courts, the assistant district attorney has a large impact on calendars and determining which cases will proceed to trial, and in what order.

Federal courts rarely have calendar calls. Virtually every hearing is specially set. Federal judges handle relatively few criminal cases each year, in comparison to their brethren on the state bench. Trials are set weeks or months in advance, and your case is generally the only matter set for that day and time. While a clerk may sometimes have several cases set back to back, the lawyer generally knows well in advance when his or her case will actually

start. Unlike the state courts, federal prosecutors have little impact on the court's calendar. Plea bargaining is a much more slow-paced dance in federal court, and the prosecutor thus has less ability to influence the judge's calendar than the situation in the state courts.

Jury selection is another difference between the two court systems. State juries are drawn from a single county.<sup>24</sup> Attorneys accustomed to practicing in state court need to know the people, activities and attitudes in that single county from which the jury is selected. Federal juries, however, come from a much larger area, generally a multitude of counties. For example, there are 10 counties from which federal jurors are selected for trials in the U.S. District Court for the Northern District of Georgia. Those counties range from large urban centers, such as Fulton County, to counties that have more in common with the rural parts of the state, like Newton and Rockdale counties. Trial lawyers in federal court therefore need to be aware of current events that might affect potential jurors across a wider geographic area.

Another difference in defending a case in state court versus defending against a federal prosecution is attributable to television. Most jurors have respect for the police, but realize that even the best officer can make a mistake, and a few even have been known to tell a lie. However, when one of the stern-faced, rock-jawed drones from the FBI is introduced to the jury as the government's "case agent," the lawyer realizes he or she has little chance of convincing the average juror that the vaunted Federal Bureau of Investigation somehow got the wrong guy. It is usually not a good idea in a federal criminal trial to attack the credibility or performance of federal agents, unless they are of the particularly sleazy variety.

Perhaps the single biggest difference between criminal trial practice in state versus federal court is what

happens when the jury reaches a verdict. State court acquittals are not unusual, for a variety of reasons. State prosecutors are overloaded. State investigators often have heavy case loads themselves and have far less training and resources than federal agents. However, getting a defense win in a federal criminal trial is statistically unlikely, to say the least. Since the end of World War II, the trends heavily favor the government in a federal criminal trial. In the late 1940s, defendants were acquitted almost 40 percent of the time. There has been a steady decline in acquittals, with the conviction rates approaching 90 percent in more recent years.<sup>25</sup>

Winning a federal criminal trial is difficult for a number of reasons. Federal prosecutors and agents generally have more resources and lower caseloads than those found in state court systems. Federal prosecutors also use multiple charges to increase the chances of a jury compromise that includes a conviction on at least one count of a multi-count indictment. This can then lead to one of the biggest surprises for the state defense lawyer. You just beat the prosecution on 10 out of 11 charges, when you get the shock of your life. The client can be sentenced as if he had been found guilty on the whole indictment.<sup>26</sup>

## Sentencing

The defense attorney hears the words we have learned to hate: "We the jury find the defendant guilty." The process from this point forward is where the usual state practitioner will find the largest difference when venturing into federal court.

In state court, except for death penalty cases, the law is relatively spare and sparse. The judge must conduct a "pre-sentence" hearing. At this hearing both sides can present aggravating or mitigating evidence.<sup>27</sup> The prosecution is obligated to tell the defense about any additional evidence it intends to use at the pre-sentence hearing, at


the very least by the start of the trial.<sup>28</sup> After that, the judge basically controls the final outcome, constricted only by any maximum or minimum set out by the legislature.

Federal sentencing is a highly complicated and formalized process. There is an immense sentencing scheme based on the voluminous and difficult to comprehend Federal Sentencing Guidelines. There are also many crimes for which there are mandatory minimum sentences that in effect can "trump" the Guidelines. A vast body of case law has developed interpreting the Guidelines.

As described above, one extremely surprising aspect of federal sentencing is the rule that acquitted conduct can be used to ratchet up the score under the Guidelines. This rule is based on the theory that while the jury did not find guilt beyond a reasonable doubt, at sentencing the judge uses the lower "preponderance" evidentiary standard, and the acquitted conduct therefore can still be used for sentencing purposes.

One nice thing about federal sentencing is that the defendant can appeal the sentence itself.<sup>29</sup> This is an important right, and prosecutors regularly try to get defendants to waive this right as part of a plea bargain. There are many experienced defense attorneys in federal court who refuse to let their clients waive this right to appeal the sentence, because it can be so helpful in getting a better outcome for the client.

## Conclusion

Somebody "made a federal case" out of your client's situation. If you usually practice in state court, there are some surprises in store for you. The best advice is to at least consult with another attorney who has some federal criminal defense experience. Despite the differences, good lawyering can always make a difference for a client. Once you learn these differences, you have a better chance to help your client. 



**Paul S. Kish** is a partner in the firm of Kish & Lietz, P.C. in Atlanta. He graduated from the University of Georgia School of Law in 1982,

after which he clerked for two federal judges. After a short stint as an associate at a large firm in Atlanta, he worked for 21 years at the Federal Defender Program, Inc. During most of that time, he was the first assistant attorney. As the federal defender, he represented criminal defendants at the trial level, in front of various federal appellate courts and before the U.S. Supreme Court.

## Endnotes

1. See O.C.G.A. § 17-2-1 (2006).
2. See *id.* § 16-1-4.
3. 18 U.S.C. § 7(4) (2005).
4. *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 490 (2001).
5. Paul Rosenzweig, *The Over-Criminalization of Social and Economic Conduct* (Apr. 17, 2003), <http://www.heritage.org/research/legalissues/lm7.cfm>.
6. 18 U.S.C. § 922(g).
7. See *United States v. Miles*, 290 F.3d 1341 (11th Cir. 2002).
8. 21 U.S.C. § 801(3) (2005).
9. See *id.* § 844 (simple possession).
10. See, e.g., *United States v. Lopez*, 514 U.S. 459 (1995) (possessing a gun in school zone does not affect interstate commerce); *Jones v. United States*, 120 S. Ct. 1904 (2000) (arson case cannot be brought in federal court unless the destruction of the building "substantially affects" commerce).
11. *Gonzalez v. Raich*, 545 U.S. 1 (2005) (holding that commerce was affected, and thus feds could prosecute, even when "home grown" marijuana used by seriously ill patients was covered by state's "medical marijuana" law).
12. See, e.g., *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002); *United States v. Williams*, No. 04-15128 (11th Cir. Apr. 6, 2006), available at <http://www.ca11.uscourts.gov/opinions/ops/200415128.pdf>.
13. See O.C.G.A. § 17-6-1(h) (2006).
14. See *Pullin v. Dorsey*, 271 Ga. 882, 525 S.E. 2d 87 (2000).
15. 18 U.S.C. § 3141, et seq. (2005).
16. See *United States v. Quartermaine*, 913 F.2d 910 (11th Cir. 1990).
17. FED. R. CRIM. P. 26.2.
18. See 18 U.S.C. § 3145.
19. O.C.G.A. § 17-16-3, -8 (2006).
20. *Id.* § 35-3-34.
21. *Id.* § 17-16-7.
22. 18 U.S.C. § 3500; FED. R. CRIM. P. 26.2.
23. 18 U.S.C. § 3500(e).
24. See O.C.G.A. § 15-12-40.
25. Table: Defendants Disposed of in U.S. District Courts by Type of Disposition, 1945-2005, <http://www.albany.edu/sourcebook/pdf/t5222005.pdf>.
26. See *United States v. Watts*, 519 U.S. 148 (1997).
27. See O.C.G.A. § 17-10-2.
28. See *id.* § 17-16-4(a)(5).
29. See 18 U.S.C. § 3742 (2005).

## IMMIGRATION LAW FOCUS ISSUE

Are you an immigration attorney or have experience with immigration issues? The *Georgia Bar Journal* is planning an immigration law focus issue and is seeking legal articles regarding immigration-related issues important to Georgia lawyers. Please send your submission for consideration by the Editorial Board to: Sarah I. Coole, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303-2743. The deadline for submissions is June 1, 2007.

# 2006 Annual Review of Case Law Developments

## Georgia Corporate and Business Organization Law

by Thomas S. Richey

**T**his article summarizes the decisions of state and federal courts handed down during 2006 regarding matters of Georgia corporate and business organization law.

Corporate and business organization issues arose in a variety of contexts—acquisitions, shareholder litigation, statutory schemes such as CERCLA and RICO, and professional liability litigation. The decisions concern business and nonprofit corporations, limited liability companies, partnerships and joint ventures. They address issues ranging from aiding and abetting breaches of fiduciary duty, claims for wrongful deprivation of an interest in a corporation, and common law liability for violations of the Georgia Securities Act of 1973 after the statute of limitations on statutory claims has expired, to LLC disassociation proceedings, third party beneficiary rights in the sale of a business, direct versus derivative actions, piercing the corporate veil, and associational standing of nonprofit corporations. Some decisions concern matters of first impression or resolve issues long in question, while others simply exemplify the application of settled principles of law. We consider it useful to survey all the cases that have come to our attention, because it provides a more complete picture of the state of the law and an opportunity to assess how the courts are viewing and handling matters of corporate and business organization law. Following is a brief summary of these developments.



### Business Corporations

In *Insight Technology, Inc. v. FreightCheck, LLC*, 280 Ga. App. 19, 633 S.E.2d 373 (2006), the Georgia Court of Appeals partially resolved the long-standing question of whether Georgia recognizes claims for aiding and abetting a breach of fiduciary duty by holding that secondary actors may be held liable when they “procure” the fiduciary’s wrongdoing. The Court of Appeals in *Haskins. v. Haskins*, 278 Ga. App. 514, 629 S.E.2d 504 (2006), reaffirmed the exclusivity of the dissenting shareholder provisions of the Georgia Business Corporation Code. In *Monterrey Mexican Restaurant of Wise, Inc. v.*



*Leon*, \_\_\_ S.E.2d \_\_\_, 2006 WL 3333769 (Ga. App., Nov. 17, 2006), the Court of Appeals recognized a new claim for wrongful deprivation of an interest in a corporation where the plaintiff could not recover for conversion because the corporation failed to issue a certificate for the plaintiff's shares. In *Kent v. A.O. White, Jr.*, 279 Ga. App. 563, 631 S.E.2d 782 (2006), the Georgia Court of Appeals held that a professional corporation does not cease to exist as a corporation upon conversion to a business corporation.

The Supreme Court of Georgia held in *Chattowah Open Land Trust, Inc. v. Jones*, 281 Ga. 97, 636 S.E.2d 523 (2006) that corporate powers do not include the power to serve as a fiduciary; only individuals and entities with authorization from the Georgia Department of Banking and Finance can serve as fiduciaries. In *Williams General Corp. v. Stone*, 280 Ga. 631, 632 S.E.2d 376 (2006), the Supreme Court of Georgia held a corporation is a "person" under Georgia's Racketeer Influenced and Corrupt Organizations Act and that a corporation can be found to have conspired with its officers and be held liable under RICO for treble damages.

## Nonprofit Corporations

In *Bolden v. Barton*, 280 Ga. 702, 632 S.E.2d 148 (2006), the Supreme Court of Georgia held that a court has jurisdiction to determine church membership when ordering a vote by such members to settle a controversy regarding the church's property. *Atlanta Taxicab Co. Owners Ass'n, Inc. v. City of Atlanta*, \_\_\_ Ga. \_\_\_, 638 S.E.2d 307, (2006) and *Ouachita Watch League v. Jacobs*, 463 F.3d 1163 (11th Cir. 2006), review the rules for associational standing through which a nonprofit corporation or association can sue on behalf of its members.

## Limited Liability Companies

In *Sayers v. Artistic Kitchen Design LLC*, 280 Ga. App. 223, 633

S.E.2d 619 (2006), the Georgia Court of Appeals, in a matter of first impression, treating the statutory procedures for judicial "disassociation" as a form of termination, held that under O.C.G.A. § 14-11-601.1(b)(4)(D) of the Georgia Limited Liability Company Act, an LLC member would not be disassociated from the LLC merely by filing a petition for the disassociation of another member. In *Patel v. Patel*, 280 Ga. 292, 627 S.E.2d 21 (2006), the Supreme Court of Georgia confirmed its reluctance to place business organizations into receivership absent extraordinary circumstances by applying that rule in the limited liability company context. Limited liability company issues were also addressed in several of the other specific areas of business organization litigation discussed below.

## Partnerships

In *Nationwide Mortgage Services, Inc. v. Troy Langley Construction, Inc.*, 280 Ga. App. 539, 634 S.E. 2d 502 (2006), the Court of Appeals held that a partnership agreement did not become invalid merely because one of its partners was a yet unformed LLC; instead, the individuals signing a partnership agreement on behalf of the unformed LLC become partners in their individual capacities. In *Yun v. Um*, 277 Ga. App. 477, 627 S.E.2d 49 (2006), the Court of Appeals overturned a trial court's finding that a partnership existed between two persons operating a business where the record indicated that only the plaintiff had an ownership interest in the business, he assumed all its liabilities, there was no written partnership agreement, and no evidence that the business was operated as a partnership. The Court of Appeals in *Kellett v. Kumar*, 281 Ga. App. 120, 635 S.E.2d 310 (2006) upheld a jury verdict awarding a minority limited partner \$1.6 million in damages for the wrongful withdrawal and substitution of a corporate general partner and merging the partnership into a

publicly-held corporation without the minority's consent.

## Joint Ventures

In two decisions regarding joint ventures, *Kitchens v. Brusman*, 280 Ga. App. 163, 633 S.E.2d 585 (2006), the Georgia Court of Appeals reaffirmed that a joint venture is only created where two or more parties combine their property, labor, or both, in a for-profit, joint enterprise, where all parties have mutual control and *Hillis v. Equifax Consumer Services, Inc.*, 237 F.R.D. 491 (N.D. Ga. 2006), the federal district court held that "the essential elements of a joint venture are (1) a pooling of action; (2) a joint undertaking for profit; and (3) rights of mutual control," found a joint venture on the facts, and confirmed that the acts of one "joint adventurer" are binding on the other.

## Derivative and Individual Shareholder Actions

The Court in *Southwest Health and Wellness LLC v. Work*, \_\_\_ S.E. 2d \_\_\_, 2006 WL 3422970, (Ga. App., Nov. 29, 2006), held that the claims of minority members of an LLC for breach of the LLC's operating agreement, fraud, misuse of corporate assets, unjust enrichment and "violations of the Patriot Act" were all derivative claims. Litigation fees and expenses were awarded under O.C.G.A. § 14-2-746 in *Hantz v. Belyew*, 2006 WL 3266508 (N.D. Ga., Nov. 8, 2006) against plaintiffs who sought to assert direct or derivative claims after their equity interests were extinguished in a bankruptcy reorganization. *Argentum International, LLC v. Woods*, 280 Ga. App. 440, 634 S.E.2d 195 (2006) sustained as direct claims for common law fraud brought by equity investors and debenture holders who alleged that they were misled both to purchase and then to retain securities in a limited liability company, rejecting arguments that investors failed to perform due diligence. In

*Douglas v. Bigley*, 278 Ga. App. 117, 628 S.E.2d 199 (2006), the Court of Appeals considered common law claims of breach of fiduciary duty, fraud and illegality of contracts based on alleged securities laws violations, holding that the failure to register securities under the Georgia Securities Act of 1973 could support claims of breach of fiduciary duty and fraud, but did not render the contracts illegal and unenforceable. In *Davis v. Johnson*, 280 Ga. App. 318, 634 S.E.2d 108 (2006), the Court of Appeals upheld a jury verdict finding no securities fraud under the Georgia Securities Act of 1973, but reversed the jury's award of attorney fees based on a finding that the plaintiffs should not have discovered alleged securities fraud during the limitations period.

### Alter Ego Liability; Piercing the Corporate Veil

In *Milk v. Total Pay and HR Solutions, Inc.*, 280 Ga. App. 449, 634 S.E.2d 208 (2006), the Georgia Court of Appeals outlined the difficulty of holding an individual LLC member responsible for the debts of an LLC. *Accord DaimlerChrysler Financial Services Americas LLC v. Nathan Mobley Chrysler, Dodge, Jeep, Inc.*, 2006 WL 3762087 (S.D. Ga., Dec. 20, 2006) (corporation held not alter ego of owner where misappropriated inventory proceeds were used to pay corporate, not personal liabilities). The Supreme Court of Georgia in *Solomon v. Barnett*, 281 Ga. 130, 636 S.E.2d 541 (2006) held that reinstatement of administratively dissolved corporations, though usually retroactive in effect, may not protect from alter ego liability if subject to equitable estoppel. In *Atlanta Gas Light Co. v. UGI Utilities, Inc.*, 463 F.3d 1201 (11th Cir. 2006), the Eleventh Circuit Court of Appeals held that the corporate veil can be pierced to hold a parent corporation liable for a subsidiary's liability in contribu-

tion under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and addressed the circumstances under which the parent can be held liable under CERCLA as an operator of the subsidiary's facility. By contrast, in *Dearth v. Collins*, 441 F.3d 931 (11th Cir. 2006), *cert. denied*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 153 (2006), the Eleventh Circuit held the alter ego doctrine inapplicable in Title VII of the Civil Rights Act of 1964. Finally, in *Pate v. Pate*, 280 Ga. 796, 631 S.E.2d 103 (2006), the Supreme Court affirmed a ruling that income assigned by a divorced husband to his wholly-owned professional corporation could be reached to enforce child support payments, but rejected the husband's argument that the ruling represented impermissible reverse piercing of the corporate veil.

### Transactional Cases

The Georgia Court of Appeals in *Kaesemeyer v. Angiogenix, Inc.*, 278 Ga. App. 434, 629 S.E.2d 22 (2006), held that a non-party to an asset purchase agreement lacked standing as a third party beneficiary to assert a breach of contract claim against parties to the agreement, citing the "clear, unambiguous language" of the agreement. Similarly, in *Hilliard v. SunTrust Bank, et al.*, 277 Ga. App. 544, 627 S.E.2d 77 (2006), the Georgia Court of Appeals held that a potential, but not intended, beneficiary of a limited partnership agreement lacks standing to enforce the agreement. In *Lovell v. Thomas*, 279 Ga. App. 696, 632 S.E.2d 456 (2006), the Georgia Court of Appeals upheld a secured lender's rights to collect attorney's fees incurred in redeeming and selling re-pledged securities. *Goobich v. Waters*, 2006 WL 3095394 (Ga. App., Nov. 1, 2006) held that a binding letter of intent was enforceable notwithstanding the fact that it was subject to execution of final documents. In another sale of business dispute, *Park v. Fortune*

*Partner, Inc.*, 279 Ga. App. 268, 630 S.E.2d 871 (2006), promissory notes given by the purchasers were enforced on finding that objections to title were waived by a resale of the business.


### Professional Liability in the Sale of Businesses and Corporate Transactions

In 2006, the Georgia Court of Appeals decided three cases involving claims against attorneys in sale of business and corporate transactions. First, in *Cleveland Campers, Inc. v. R. Thad McCormack, P.C.*, 280 Ga. App. 900, 635 S.E. 2d 274 (2006), the Court affirmed the trial court's ruling that no attorney-client relationship existed between sellers of a business and the attorney for the buyers, holding that legal advice or assistance must be sought from an attorney in order for an attorney-client relationship to exist. Second, in *All Business Corporation v. Choi*, 280 Ga. App. 618, 634 S.E.2d 400 (2006), the Court held that an attorney acting as an escrow agent in the sale of a business does not owe a third party secured creditor any duty with regard to the proceeds of sale when the attorney has no actual or constructive notice of the creditor's lien on a debtor's property. Third, *Graivier v. Dreger & McClelland*, 280 Ga. App. 74, 633 S.E.2d 406 (2006) upheld claims for attorney malpractice against a lawyer serving as counsel for two LLC members in drafting the LLC agreement.

### Representation of Business Entities by Counsel in Litigation

In *Winzer v. EHCA Dunwoody, LLC*, 277 Ga. App. 710, 627 S.E.2d 426 (2006), the Georgia Court of Appeals extended the Supreme Court's holding in *Eckles v. Atlanta Technology Group*, 267 Ga. 801, 485 S.E.2d 22 (1997), and held

that limited liability companies, like corporations, cannot appear *pro se* before a court of record, but must be represented by a licensed attorney. Five months later, the Court of Appeals in *Sterling, Winchester & Long, LLC v. Loyd*, 280 Ga. App. 416, 634 S.E.2d 188 (2006) reaffirmed its holding in *Winzer*. In *Largo Villas Home-owners' Association v. Bunce*, 279 Ga. App. 524, 631 S.E.2d 731 (2006), the Court of Appeals ruled that the failure by a *pro se* corporate litigant to hire counsel within the time ordered by the court must be willful to entitle the other party to sanctions.

For an extended discussion of these cases, download the document in the following link: [http://www.pogolaw.com/attach/696/06+GA+Bus.Org.Case+Law\\_01.07.pdf](http://www.pogolaw.com/attach/696/06+GA+Bus.Org.Case+Law_01.07.pdf). This paper is not intended as legal advice for any specific person or circumstance, but rather as a general treatment of the topics discussed. The views and opinions expressed in this paper are those of the author only and not Powell Goldstein LLP. The author would like to acknowledge and thank Michael P. Carey, Stacey Godfrey Evans, Vjollca Prroni, Jason R. Curles and Ashley Moore Palmer for their assistance with this paper. 



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# 2007 Midyear Meeting Moves to Savannah

by Sarah I. Coole

**F**or the first time in more than a decade, the State Bar of Georgia's Midyear Meeting took place outside the bustle of Metro Atlanta. From Jan. 18-20 the Hyatt Regency Savannah was home to the 2007 Midyear Meeting. The three-day meeting was filled with CLE seminars, receptions, section events, law school alumni gatherings, committee meetings and more.

On Jan. 19, the historic Telfair Museum of Art's Jepson Center of the Arts hosted the Board of Governors' reception where attendees mingled among works of art, living statues and a string quartet. Following the reception, attendees moved from the open-air atrium of the Jepson Center into the Museum for dinner.

## Board Meeting Highlights

President Jay Cook presided over the 211th meeting of the Board of Governors of the State Bar of Georgia. Following is an overview of the meeting.



Bar President Jay Cook, YLD President Jonathan Pope and Supreme Court of Georgia Justice Harold Melton attend the Executive Committee/Supreme Court Dinner during the Midyear Meeting.

Photos by Sarah I. Coole and Jennifer R. Mason

## Special Recognition

The Board held a moment of silence for State Bar Past President Jule W. Felton Jr., who passed away on Jan. 17. Thereafter, Jay Cook recognized the past presidents of the State Bar, members of the judiciary and other special guests in attendance.

## Reserves and Investment Policies

Following a report by Chris Phelps, the Board, by unanimous voice vote, approved the proposed Reserves Policy, shown below, and the proposed Investment Policy:

- Reserves (Operating and Bar Center): The State Bar of Georgia should maintain a cash reserve (that is Board restricted) of 25 percent of total annual budgeted expenses of the State Bar of Georgia and an additional cash reserve (which may be unrestricted and undesignated) of 25 percent of total annual budgeted expenses of the State Bar of Georgia. These expenses are exclusive of the expenses associated with the Bar Center.
- This reserve policy will be reviewed by the Finance Committee on an annual basis in conjunction with the Bar's annual budgetary process.

### Georgia Legal Services Program Funding Task Force

Lamar Sizemore Jr. provided a report on the charge, composition and work plan of the Georgia Legal Services Program Funding Task Force.

### Fulton County Superior Court Business Case Division (Pilot Program)

Following a report by Past President Bill Barwick on proposed amendments to Rule 1004(5) regarding judicial discretion to initiate the assignment of cases to the Business Case Division, the Board, by unanimous voice vote, tabled action on the proposed amendments to allow time for them to be disseminated to the sections for review and comment.

### Commission on Continuing Lawyer Competency (CCLC)

The Board, by unanimous voice vote, approved the appointments of John T. Marshall and Robert D. Ingram, for two-year terms, to the CCLC.

### Agriculture Law Section Bylaws Amendment

The Board, by unanimous voice vote, approved proposed amendments to the Agriculture Law Section Bylaws.

### IP Law Section Bylaw Amendment

The Board, by unanimous voice vote, approved a proposed amendment to the Intellectual Property Law Section Bylaws, as follows:

- **Article VII. Section 3.** The annual section dues shall be \$35, to be fixed by the executive committee and approved by the State Bar Board of Governors.

### Nomination of State Bar Officers

The Board received the following nominations, and there being no others, declared the nominations closed:

- **President-Elect:** Jeffrey O. Bramlett, nominated by Patrick T. O'Conner, seconded by Tina Shadix Roddenberry
- **Treasurer:** S. Lester Tate III, nominated by Phyllis Miller, seconded by Jonathan A. Pope
- **Secretary:** Bryan M. Cavan, nominated by John J. Tarleton, seconded by Huey W. Spearman



President-Elect Gerald Edenfield and Justice George Carley



Board Member Patti Gorham and Courtney Beasley.



Board Member Judge Johnny Mason, Board Member Judge Viola Sellers Drew, Avarita L. Hanson, William Alexander, M.D., Gwendolyn Fortson Waring and Roy M. Sobelson.



Joe Dent and Treasurer Bryan Cavan mingle at the welcome reception.



President Jay Cook, Judge Lamar Sizemore and Past President Rudy Patterson



Board Member Michael Elsberry, Helen Weitz and Executive Committee Member Harvey Weitz pause for a photo in front of the living Adam & Eve statues at the Board of Governors reception.



President Jay Cook welcomes attendees to the 2007 Midyear Meeting.

## Nomination of ABA Delegates

The Board, by unanimous voice vote, nominated the following attorneys, for a two-year term, to the Georgia ABA Delegate positions indicated: Paula Frederick, post 2; Donna G. Barwick, post 4; and Robert D. Ingram, post 6.

## Legislation

Following a report by Tom Stubbs on proposed legislation, the Board:

- Approved the Business Law Section's proposed recommendation of technical changes in corporation code, LLC.
- Approved the proposed recommendation from CASA of codifying CASA and budget request
- Approved the Consumer Law Section's proposed recommendation of disclosures in arbitration agreements
- Approved the Georgia Public

Defender Standards Council's proposed recommendation of: (1) additional public defenders for new judgeships; (2) statutory juvenile assistant public defender; and (3) budget requests

- Approved the Real Property Law Section's filing fee proposal
- Approved proposed endorsement for increased funding for the Georgia Appellate Practice and Educational Resource Center, Inc.

Rusty Sewell then provided a preview on the 2007 General Assembly.

## Women & Minorities in the Profession Committee's Commitment to Equality Awards

Chairperson Allegra Lawrence and committee members Jennifer Ide and Amanda Koenigsnecht recognized the Hon. Leah Ward Sears and Ralph B. Levy as the 2007 Commitment to Equality Awards

recipients, and the late Ben Johnson Jr. as the Randolph Thrower Lifetime Achievement Award recipient. The Commitment to Equality Award recognizes the efforts of lawyers and legal employers who are committed to providing opportunities that foster a more diverse legal profession for women and lawyers of color, and who not only personally excel in their own practice, but who have demonstrated a commitment to promoting diversity in the legal profession. The Randolph Thrower Lifetime Achievement Award recognizes an outstanding individual who has dedicated himself or herself to these causes throughout that individual's career. The award recipients were honored at a reception on Jan. 23 at the Bar Center.


## YLD Report

Jonathan Pope provided a report on the YLD's activities, including its continuing efforts to provide assistance to those affected by





Merry Croft and Board Member Terrence Croft

Hurricane Katrina. In conjunction with its Spring Meeting in New Orleans, April 26-29, the YLD is partnering with the Louisiana YLD to perform a community service project and is raising funds to purchase musical instruments, through Tipitina's Foundation, for public schools affected by the disaster. On Feb. 20, a Mardi Gras Casino Night was held in Atlanta to raise funds for these projects. The High School Mock Trial competition is in its 19th season and gearing up for the regional competitions around the state, the Legislative Affairs Committee planned a legislative luncheon on Feb. 1 with judges and legislators, in lieu of the annual breakfast, and the Juvenile Law Committee is working on its Celebration of Excellence project, an annual statewide graduation event and scholarship program that recognizes the academic achievements of youth who have grown up in Georgia's foster care system and have graduated from high school, a GED program, vocational school or college. 



**Sarah I. Coole** is the director of communications for the State Bar of Georgia and can be reached at [sarah@gabar.org](mailto:sarah@gabar.org).



Past Presidents Frank Love Jr. and Bob Reinhardt take a moment to relax at the LFG Reception.

## LFG Fellows Reception hosted by Bouhan, Williams & Levy

by Lauren Larmer Barrett

Many thanks are due to the Savannah law firm of Bouhan, Williams & Levy for hosting the Lawyers Foundation of Georgia Fellows reception in their incredible offices. The firm is housed in the Armstrong House, a Savannah landmark. The four-story Italian Renaissance mansion is the former home of the Armstrong family of Savannah, as well as Armstrong Junior College. Constructed of granite and glazed brick, it was designed by Henrik Wallin (AIA) and built from 1916-19 under the general contractorship of Olaf Otto. It was the home of George Ferguson and Lucy Camp Armstrong, and their daughter, Lucy. Bouhan, Williams & Levy acquired the mansion from Jim Williams, a well-known Savannah antiques dealer and preservationist, in 1970.

About 150 Fellows and their guests attended the function scheduled during the 2007 Midyear Meeting. They mingled in an enormous entrance hall graced by a beautiful winding staircase while enjoying the good food from Creative Catering and the great company provided by the hosts, sponsors, and the Fellows of the Lawyers Foundation.

The proceeds of the reception will benefit the Challenge Grant program of the Lawyers Foundation. Now in its seventh year, the Challenge Grants have been awarded to dozens of worthwhile programs, projects and organizations around Georgia. Over the life of the program, the grants have totaled more than \$200,000, and have been matched by the recipients.

Founded in 1886 by William Osborne, Bouhan Williams & Levy now has 20 attorneys, including Fellows Sonny Seiler, Walter Hartridge and Peter Muller. Their support of and dedication to the profession and the Lawyers Foundation is most appreciated.

LFG would like to thank its sponsors for their help making the 2007 LFG Reception a success. Sponsors include—*Platinum*: The Georgia Fund, SunTrust Legal Specialty Group; *Gold*: IKON, LexisNexis; *Silver*: Bellsouth, The Coca-Cola Company, Insurance Specialists Inc., Minnesota Mutual Ins.; *Bronze*: Brown Reporting Inc., Cushman & Wakefield, Mauldin & Jenkins.

LFG's grants and programs are listed at [www.gabar.org](http://www.gabar.org). If you have any questions, please don't hesitate to contact us at [lfg\\_lauren@bellsouth.net](mailto:lfg_lauren@bellsouth.net) or 404-659-6867.

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

# East Meets West at the Bar Center

by Jennifer R. Mason

For nearly five hours on Jan. 22, the President's Boardroom in the Bar Center served as a classroom for a visiting delegation of senior central government officials, law professionals and educators from China. The group, hosted by the Center for International Training and Service at Kennesaw State University (KSU) Continuing Education, represented the China National Legal Exam, Ministry of Justice, Ministry of Public Security, and nine law schools.

While in Georgia, the group visited Emory University School of Law and Georgia State University College of Law to observe the education of law in action. They came to the State Bar of Georgia to learn about the Bar's role as an organization and the bar admissions process. The Bar's General Counsel Bill Smith and the Office of Bar Admissions' Director Sally Lockwood were on hand to share with this distinguished group of visitors.

With the assistance of Ken Jin, director of International Programs at KSU and translator for the group, Smith began with an overview of the Bar, reviewing its mission, purpose and responsibilities. Having provided each delegate with a copy of the Bar's *Directory & Handbook*, he referenced the handbook, explaining that it contained the rules that govern the



Photos by Jennifer R. Mason

The delegates enjoyed a brief tour of the third floor, stopping in the Law Museum to become acquainted with some of Georgia's most famous cases.

operation of the Bar. Smith spent the remainder of his time covering the Bar's disciplinary system, his role in that system and the different programs the Bar offers, such as Fee Arbitration, Law Practice Management and Unlicensed Practice of Law. He also fielded questions regarding:

- the types of legal professionals in Georgia (in Georgia and the U.S., you go to school to be a lawyer, then can decide to be a judge, prosecutor, or defense attorney; in China, you go to law school to become a particular legal professional);
- how the fee structure is set and how fee arbitration works; in China, there is a set fee structure;
- the foreign practice of law — how can a Chinese attorney litigate in Georgia?; and
- how would Chinese attorneys be disciplined in Georgia?

After lunch the Bar's Executive Director Cliff Brashier stopped by to welcome the group before the afternoon session on the Bar exam began.

Sally Lockwood, director of the Office of Bar Admissions, began by emphasizing that bar admissions in the United States are handled state-by-state and jurisdiction-by-jurisdiction. Lockwood said, "Unlike China, there is no national bar admissions process and no national bar exam."

She then went on to explain the role of the Supreme Court of Georgia in regulating the practice of law utilizing the two Court-appointed Boards: the Board of Bar Examiners and the Board to Determine Fitness of Bar Applicants. Lockwood spent a great deal of time reviewing the Bar admissions process, covering not only the education requirements for taking the Georgia Bar Exam, but also the fitness application—including fees, coverage and verification; and the fitness process—highlighting problem areas that are encountered and how the applicant can address those problems.

After answering questions relative to the aforementioned subjects, Lockwood got to the heart of the matter – the Bar exam itself. With copies provided for each delegate, she reviewed the exam structure: essays, MPT and MBE, citing examples from the test and discussing the differences and similarities between the Georgia and Chinese exam in-depth. She ended the day explaining the scoring process, followed by what happens after you pass the bar. She spoke briefly about the swearing-in ceremony, the process of enrolling with the Bar, the Mentoring Program and CLE requirements.


The group was asked two questions: "What has surprised you most about the process of law in Georgia relative to the bar exam and the State Bar?" and "Did you find any similarities in the way China and Georgia handle the bar exam and govern the attorneys involved?" The group answered:



(Left to right) First row: Mr. Zheng, Pengcheng, Associate Dean, College of Law, Hunan University; Mr. Yan, Xiaoming, Associate Professor, East China University of Politics & Law; Mr. Huang, Changgen, Associate Dean, East China University of Politics & Law; Mr. Yang, Zhongxiao, Associate Dean, East China University of Politics & Law; Mr. Jin, Fuhai, Associate Dean, College of Law, Yantai University; Mr. Chen, Yu, Instructor, East China University of Politics & Law. Second row: Mr. Huang, Huasheng, Associate Dean, College of Law, Jiangxi Finance & Economics University; Ms. Ding, Wenying, Dean, College of Law, Inner Mongolia; Mr. Runing Lin, Driver; Mr. Gao, Jinkang, Dean, College of Law, Southwest Finance & Economics University; Mr. Chen, Yanchao, Director, Bureau of Personnel & Training, the Ministry of Public Security; Ms. Sally Lockwood, Executive Director, Office of Bar Admissions; Mr. Jiang, Jing, Director, Dept. of National Legal Exam, the Ministry of Justice; Bill Smith, General Counsel, State Bar of Georgia; Mr. Ken Jin, Kennesaw State University; Mr. Wang, Jian, Dean, Northwest University of Politics & Law; Mr. Geng, Yong, Associate Dean, College of Law, Henan University; Mr. Ren, Wei, Director, Northeast Finance & Economics University

"There were no surprises—but we are very impressed with the high standards of law professors and the high passing rate the state reports. The similarities are few, but what is the same is the importance of legal education in the legal profession."

Jin stated, "One of the most important objectives for the delegates is to learn about the Master of Law programs offered in the United States, and the trend in legal education as a whole. They are here to learn about our best practices so they can take the knowledge back to China and integrate a portion of it in their system."

If that was the case, they have an excellent foundation on which to build. 



**Jennifer R. Mason** is the assistant director of communications for the State Bar of Georgia and can be reached at [jennifer@gabar.org](mailto:jennifer@gabar.org).

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# 16th Annual Georgia Bar Media & Judiciary Conference

by Stephanie J. Wilson

**O**n Jan. 27, Georgia's legal and media professionals gathered at the JW Marriott Hotel in Atlanta for the 16th Annual Georgia Bar Media & Judiciary Conference. Each year, this ICLE event focuses on emerging First Amendment issues and their influence on the law. Everyone from judges and lawyers to journalists are invited for a full day of panel discussions and small group sessions dealing with the latest topics impacting the First Amendment.

The first session of the day began with a panel discussion lead by interlocutor Dale Cohen, Cox Enterprises, Inc., titled "Citizen Journalism: New Media, New Voices". The main focus of this dialogue was on the who, what and why of Web logging (or blogging). The number of websites that support blogs has exploded. Now anyone with Internet access can publish their thoughts on any subject imaginable. The panel included Carolyn Y. Forrest, vice president, Legal Affairs, Fox Television Stations, Inc.; Theresa Walsh Giarrusso, MOMmania, *The Atlanta Journal-Constitution*; Gregory C. Lisby, professor, Georgia State University; Nick Nunziata, CHUD.com; Steven Stein, editorials editor, *The Emory Wheel*; and Leonard Witt, professor, Kennesaw State University.



Photos by Stephanie J. Wilson

Panelists Dick Pettys (*Insider Advantage*), David Ratley (Administrative Office of the Courts) and Rep. Wendell Willard (R-Sandy Springs).

After a short break, the second session, "Dollars and the Dome: Funding Justice" was underway. Interlocutor Richard Belcher, WSB-TV, navigated the panel through a variety of topics including judicial election media coverage, language interpreters in courtrooms and judicial appropriations. Panelists included State Bar of Georgia legislative lobbyist, Tom Boller, Capitol Partners Public Affairs Group, Inc.; the Hon. William T. Boyett, superior court judge, Conasauga Circuit; Mark Cohen, Troutman Sanders, LLP; the Hon. Daniel M. Coursey Jr., superior court judge, DeKalb County Superior Court; Mike Mears, director, Georgia Public Defenders Standards Council; Jeffrey L. Milsteen, chief deputy attorney general, Georgia Law Department; Dick Pettys, edi-

tor, *Insider Advantage*; David Ratley, Administrative Office of the Courts; and Representative Wendell Willard (R-Sandy Springs), chairman, House Civil Judiciary Committee.

In the third session of the day, moderator Richard Griffiths, editorial director, CNN, lead the audience and panelists through the imaginary investigation, and subsequent trial, of fictional state Senator Boyd McTier (D-South Georgia), who is allegedly involved in a financial scandal. The detailed scenario put forward by Griffiths was analyzed from the point of view of journalists, Robin McDonald, *Fulton County Daily Report*, and Marylynn Ryan, bureau chief of the Southeast region, CNN; attorneys David E. Nahmias, U.S. district attorney, Northern District of Georgia, and Pete Theodocion, attorney at law; and the Hon. Doris Downs, Fulton Superior Court judge. The audience served as the jury.

Hank Klibanoff, co-author of *The Race Beat: The Press, The Civil Rights Struggle and the Awakening of a Nation*, was the luncheon speaker. Klibanoff, a native of Florence, Ala., spoke openly about his experiences as a journalist covering the civil rights movement in the South. In an editorial review, *Publishers Weekly* described the work as a “gripping account of how America and the world found out about the Civil Rights movement ... written by two veteran journalists of the ‘race beat’ from 1954 to 1965. Building on an exhaustive base of interviews, oral histories and memoirs, news stories and editorials, [Klibanoff and co-author Roberts] reveal how prescient Gunnar Myrdal was in asserting that ‘to get publicity is of the highest strategic importance to the Negro people.’”

Following lunch, attendees could select from four small group sessions offered on a variety of subjects: “Atlanta & Guantanamo:




WSB-TV's Richard Belcher served as an interlocutor.

Rights in the Aftermath of 9/11,” moderated by Ed Bean, editor in chief, *Fulton County Daily Report*, with panelists John A. Chandler, Sutherland Asbill & Brennan LLP, and Charlie Shanor, professor, Emory University School of Law; “Diversity & the Media” with panelists Royal Marshall, WSB Radio, and Angela Tuck, public editor, *The Atlanta-Journal Constitution*; “Open Government: An Advocacy Workshop” in which a discussion of the Open Meetings Act was lead by Stefan Ritter, senior assistant attorney general; and “Preparing for the High Profile Case: A Workshop for Judges” with moderator Hon. Cynthia J. Becker, DeKalb County Superior Court. Serving on the panel were the Hon. James G. Bodiford, Cobb County Superior Court judge; Judith A. Cramer, court administrator, Fulton County Superior Court; the Hon. Philip F. Etheridge, Fulton County Superior Court judge; the Hon. Jack Goger, Fulton County Superior Court judge; Mark Winne, investigative reporter, WSB-TV; and Katie K. Wood, attorney at law. The judges and other courtroom personnel

offered advice on making decisions and opinions clear and accessible, satisfying public interest through the media and the importance of having one—and only one—media contact during a trial.

The final session of the day was “Judicial Elections: Lessons from 2006.” Cathy Cox, former secretary of state and current Carl E. Sanders political leadership scholar at the University of Georgia School of Law, served as moderator. The panel included Jay Cook, president, State Bar of Georgia (Cook, Noell, Tolley, Bates & Michael LLP); Justice Carol Hunstein, Supreme Court of Georgia; Rep. Edward Lindsey (R-Atlanta), vice chairman, House Civil Judiciary Committee; and Stefan Passantino, McKenna, Long & Aldridge.

Discussion centered around the importance of the independence of the judiciary, educating the public about what it means to be a judge, and whether judicial posts should remain nonpartisan. Lindsey expressed his belief that partisanship should be reserved for policymakers, attorneys general and solicitors—judges should be nonpartisan.

The sixth annual Weltner Freedom of Information Banquet took place following the conference. The Hon. Marvin H. Shoob, U.S. District Court for the Northern District of Georgia, received the Weltner Award, named for Charles L. Weltner, a former chief justice of the Supreme Court of Georgia and a champion of freedom of information and ethics in state government. 



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

# 2006 "And Justice for All"

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### Kudos



**Hon. Anne Elizabeth Barnes** was sworn in as the **Chief Judge** of the **Court of Appeals of Georgia** in January. Her investiture marks the first time in Georgia history that women will lead both of the state's appellate courts.

Barnes was unanimously elected in November 2006, to serve as the 23rd chief judge since the court's inception. She is only the second woman to hold the post. Judge M. Yvette Miller is next in line to succeed Barnes as chief judge of the Court of Appeals and currently is judge-in-charge of the clerk's office. Chief Justice Leah Ward Sears is the first woman to hold the post on Georgia's Supreme Court, and will be followed by Presiding Justice Carol Hunstein. During her two-year term as chief judge, Barnes will be responsible for the administration of the court and will act as the head of the court for ceremonial and communication purposes. Before being sworn in as a judge of the Court of Appeals in January 1999, Barnes practiced law in Savannah and Atlanta.

- > **Alston & Bird LLP** announced that it has been ranked **19th** among *Fortune* magazine's "100 Best Companies to Work For" in 2007, making it the highest ranked law firm on the list and the only law firm ever to make the list for eight consecutive years, including placement in the top 25 for seven years in a row.



**Elarbee Thompson** managing partner **Stanford G. Wilson** was named to the BTI Consulting Group's "**Client Service All-Star Team for Law Firms**" based on a client singling him out for delivering exceptional client service.

Wilson is only one of 113 lawyers in the country to be named to the list, which was compiled by interviewing more than 250 individual corporate counsels at Fortune 1000 companies.



**E. Jewelle Johnson** was elected **president** of the **Georgia Association of Black Women Attorneys**. Johnson is a partner at Fisher & Phillips LLP where she specializes in employment litigation defense.

- > **State Court Judge Kent Lawrence** received a **judicial fellowship** to participate in a joint program between the National Highway Traffic Safety Administration and sitting judges whose jurisdiction involved adjudicating motor vehicle and pedestrian-related offenses. As one of only two judges in the nation to be awarded this fellowship, Lawrence will serve as an active liai-

son between the American Bar Association's Judicial Division, the National Highway Traffic Safety Administration, the National Judicial College and judges and their representative organizations.



Pictured are (left to right) William Brewster, a partner at Kilpatrick Stockton; Jack Shipkoski, chief executive officer of the American Cancer Society's South Atlantic Division; and David Zacks, a partner at Kilpatrick Stockton.

The **American Cancer Society** recently honored **Kilpatrick Stockton** and firm partner **David Zacks** for their leadership in funding and advancing the Society's **Patient Resource Navigation System**. The Patient Resource Navigation System is part of the Society's extensive Cancer Resource Network and provides cancer patients with comprehensive cancer resources at hospitals where they are diagnosed and treated.



The **Mobile Bar Association** honored attorney **Gilbert B. Laden** as the **Volunteer Lawyer of the Year**. Laden also became board certified as a Social Security Disability Advocate by the National Board of Social Security Disability Advocacy.




Twelve **Kilpatrick Stockton** attorneys were recognized as **Georgia Trend's Legal Elite** in December 2006: **Miles Alexander, Bill Brewster, Jim Ewing, Lynn Fowler, Richard Horder, Alfred Lurey, Suzanne Mason, Todd Meyers, Mindy Planer, Debbie Segal, Michael Tyler** and **David Zacks**.




**Jason T. Burnette** was recently selected to serve as a law clerk for **Supreme Court Chief Justice John G. Roberts Jr.** during the October 2007 term.



Gov. Sonny Perdue appointed **Paul H. Threlkeld** as **solicitor general** for Toombs County. Threlkeld was a partner in the Vidalia firm Andrew & Threlkeld since October 2006, and earlier worked with Oliver Maner & Gray in Savannah.

>  **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Edmund J. Novotny**, a shareholder in the firm's Atlanta office, was named to *Georgia Super Lawyers*. *Georgia Super Lawyers* identifies the top five percent of attorneys in each state, as chosen by their peers and through the independent research of *Law & Politics*.

>  **Kilpatrick Stockton LLP** received the **2006 Pro Bono Law Firm of the Year award** from The Pro Bono Project, a pro bono program in New Orleans dedicated to providing free, quality civil legal services to low-income people. Pro Bono partner, **Debbie Segal**, led the firm's efforts by establishing an infrastructure to manage the influx of out-of-state volunteers contacting The Pro Bono Project to offer their legal skills in the wake of Hurricane Katrina. In total, the firm's attorneys and paralegals have donated more than \$76,000 of time to the organization and its clients.

>  **Powell Goldstein LLP** announced that partner **Scott Sorrels** has been named **Marketing Partner of the Year** at the 2007 Hubbard One Excellence in Legal Marketing Awards ceremony held in January in San Diego.

> The **marketing department** of **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, has been ranked among the top in the country by *Marketing the Law Firm*, a national newsletter published by Law Journal Newsletters. In "The Second Annual *Marketing the Law Firm* 50: The Top Law Firms in Marketing and Communications," Baker Donelson was ranked 11th on the list of 50 law firm marketing departments, receiving recognition for the creation and implementation of two attorney training programs.

> The **Sandy Springs Bar Association** has elected new officers and board members. **D. Richard Jones III**, president; **Scott Smith**, vice president; **Joe Nagel**, secretary; **David Crawford**, treasurer. Also serving on the board are **Gayle Friedman**, **Ashley Jenkins**, **Stan Lefco**, **John Rezac** and **Brain Smiley**. The bar can be reached at 1117 Perimeter Center West, Suite N114, Atlanta, GA 30338; 770-671-1730; Fax 770-671-8137; [www.sandyspringsbar.org](http://www.sandyspringsbar.org).

> The **Supreme Court of Georgia** now has **wireless connectivity** in the Clerk's Office, Lawyers' Lounge and Judicial Conference Room. The network is called Jban (Judicial Branch Appellate Network).

The public access portion of the network is called JbanPublic. There is no security protocol to attach to the public access network, nor does it currently have any packet security for Internet or e-mail traffic.

## On the Move

### In Atlanta



L. Warshauer M. Warshauer Poe Thornton

Warshauer Thornton & Easom, P.C., began the new year as **Warshauer Poe & Thornton, P.C.**, welcoming well-known former defense attorney **James M. Poe** as a new **partner**. Poe is a former partner at Drew, Eckl & Farnham, LLP. His practice focuses on catastrophic injury and wrongful death cases, head and spinal injuries, medical safety cases arising from physician and hospital malpractice, auto and trucking accidents, product liability, insurance bad faith and nursing home litigation. The firm's new location is 3350 Riverwood Parkway, Suite 2000, Atlanta, GA 30339; 404-892-4900; Fax 404-892-1020; [www.warpoe.com](http://www.warpoe.com).

> Ragsdale, Beals, Hooper & Seigler, LLP, announced that it changed its name to **Ragsdale, Beals, Seigler, Patterson & Gray, LLP**. **Brian J. Morrissey** and **Edgar S. Mangiafico Jr.** have joined the firm as **partners**, and **Lisa Boardman Burnette** has joined the firm as **counsel**. The firm is located at 2400 International Tower, Peachtree Center, 229 Peachtree St. NE, Atlanta, GA 30303; 404-588-0500; Fax 404-523-6714.



Globerman Gomes Hempel Kodish Wolfersberger

**Nelson Mullins Riley & Scarborough** elected five new **partners** in its Atlanta office. **Kyle M. Globerman** practices intellectual property law and technology transactions. **Matthew Gomes** practices labor and employment law, litigation and workers' compensation/occupational disease. **Holly Hempel** practices general litigation, product and premises liability, automotive law, pharmaceutical, and toxic tort litigation. **Elisa Kodish** practices in

the areas of product liability, pharmaceutical and medical devices, toxic tort, business, and franchise litigation. **Jay Wolfersberger** practices in the areas of corporate law, securities, and mergers and acquisitions, with a focus on financial institutions. The Atlanta office is located at 999 Peachtree St. NE, Suite 1400, Atlanta, GA 30309; 404-817-6000; Fax 404-817-6050; [www.nmrs.com](http://www.nmrs.com).



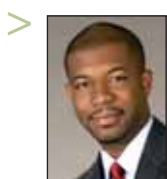
Boulee

Calloway

Lee

**Jones Day** has named former associates **Jean-Paul Boulee**, **Dean A. Calloway** and **A. Michael Lee** as

**partners** in the Atlanta office. Boulee's primary area of expertise is commercial litigation. Prior to joining Jones Day, Boulee served for four years as an officer in the U.S. Army Judge Advocate General's Corps. Calloway has wide ranging experience in general litigation matters, including product liability actions, insurance coverage disputes, consumer credit disputes, and health care industry investigations. Lee practices general commercial real estate law, with particular emphasis on corporate real estate services, real estate lending, and real estate development. The Atlanta office is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; [www.jonesday.com](http://www.jonesday.com).



**James K. Valbrun** has joined **Nelson Mullins Riley & Scarborough LLP** as an **associate** in litigation and will practice in Atlanta. Valbrun is engaged in multiple areas of civil litigation, including product liability, toxic torts, and pharmaceutical and medical device litigation. The firm's Atlanta office is located at 999 Peachtree St. NE, Suite 1400, Atlanta, GA 30309; 404-817-6000; Fax 404-817-6050; [www.nmrs.com](http://www.nmrs.com).



Dunaway

Connors

**Powell Goldstein LLP** will significantly expand its timberland law practice with two new Atlanta-based **partners**, **C. Glenn Dunaway** and **Charles C. Connors**. With this addition,

the firm has one of the nation's largest practice areas focused on the forest products and timberland industries. Both attorneys join Powell Goldstein from Mazursky & Dunaway LLP, which Dunaway co-founded in 1994 after serving as a partner at Jones Day Reavis & Pogue. Their backgrounds include

substantial corporate and business law experience in the areas of timberland and private equity investments, ERISA, employee benefits, executive compensation and federal income tax. At Powell Goldstein, they will be part of the business and finance practice and will work closely with the firm's real estate, capital markets, environmental, benefits and tax practice groups, among others. The Atlanta office is located at One Atlantic Center, 14th Floor, 1201 W. Peachtree St. NW, Atlanta, GA 30309; 404-572-6600; Fax 404-572-6999; [www.pogolaw.com](http://www.pogolaw.com).

> Attorneys **Barry L. Zimmerman** and **Adam W. D'Anella** announce the relocation of **Zimmerman and Associates**. Zimmerman has been practicing in the metropolitan Atlanta area for nearly 32 years and has been a part-time judge for almost 25 years. The firm's primary practice areas include criminal, domestic, personal injury and corporate law. The office is now located at 6376 Spalding Drive, Norcross, GA 30092; 770-350-0100; Fax 770-350-0106.



Smith

Proser

**David L. Smith** was promoted to **managing partner** at the firm of **Constangy, Brooks & Smith, LLC**. Smith focuses his practice on providing compliance advice to employers on federal and state occupational safety and health requirements as well as assists employers with the development and implementation of safety and health programs and policies. **Eric S. Proser** was promoted to **partner**. Proser is head of the workers' compensation practice. The firm's Atlanta location is 230 Peachtree St. NW, Suite 2400, Atlanta, GA 30303; 404-525-8622; Fax 404-525-6955; [www.constangy.com](http://www.constangy.com).

> **Robert W. Capobianco** was named a **partner** in the firm of **Elarbee Thompson**. His practice areas include trade secret protection and litigation, restrictive covenant litigation, employer counseling, training and litigation prevention, and employment litigation. The firm is located 800 International Tower, 229 Peachtree St. NE, Atlanta, GA 30303; 404-659-6700; Fax 404-222-9718; [www.etsw.com](http://www.etsw.com).

> **Needle & Rosenberg, P.C.**, announced that **Bruce H. Becker**, **Jeffrey H. Brickman** and **Brian C. Meadows** have been promoted to **officers**. **David E. Huizenga** was named a **shareholder**. The firm's Atlanta office is located at 999 Peachtree St., Suite 1000, Atlanta, GA 30309; 678-420-9300; Fax 678-420-9301; [www.needlepatent.com](http://www.needlepatent.com).





Bryan



Mazziotti



Schulman

**Greenberg Traurig, LLP**, announced that **Jay B. Bryan**, **Thomas J. Mazziotti**, and **David I. Schul-**

**man** have been appointed **shareholders**. The firm's Atlanta office is located at 3290 Northside Parkway, Suite 400, Atlanta, GA 30327; 678-553-2100; Fax 678-553-2212; [www.gtlaw.com](http://www.gtlaw.com).

- > **The Law Offices of Ilene H. Ferenczy, LLC**, announced that **Barbara Scully Murphy** has joined the firm as an **associate** and **Ruth L. Flemister** has joined as **of counsel**. Murphy previously served as staff attorney to Hon. Dorothy A. Robinson, Cobb County Superior Court. Flemister comes to the firm from the Atlanta office of Smith, Gambrell & Russell, LLP. She has extensive experience in the areas of executive compensation and health and welfare plans and more than 20 years working in benefits. The firm is located at 2200 Century Parkway, Suite 735, Atlanta, GA 30345; 404-320-1100; Fax 404-320-1105; [www.ihflaw.com](http://www.ihflaw.com).



> **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Edmund J. Novotny** has been named a new **shareholder** in its Atlanta office. Novotny concentrates his practice in business litigation. The firm's Atlanta office is located at Six Concourse Parkway, Suite 3100, Atlanta, GA 30328; 678-406-8700; Fax 678-406-8701; [www.bakerdonelson.com](http://www.bakerdonelson.com).



> **Troutman Sanders Public Affairs Group LLC** is pleased to announce the addition of **Stacy G. Freeman** as **principal**. TSPAG is a wholly owned subsidiary of Troutman Sanders LLP, where Freeman is also of counsel. He will focus his practice on insurance regulation, legislative action and governmental relations. Freeman comes to Troutman Sanders from McKenna, Long & Aldridge where he was of counsel from 2003-06 for the firm's public law practice. The firm is located at 600 Peachtree St. NE, Suite 5200, Atlanta, GA 30308; 404-885-3000; Fax 404-885-3900; [www.troutmansanders.com](http://www.troutmansanders.com).

- > **Balch & Bingham LLP** announced four new **partners** in their Atlanta office. **Thomas C. Buckley** practices in the corporate and securities, healthcare and real estate sections. **Audra Esrey** practices in the real

estate and the finance, lending and leasing practices sections. **Scott E. Hitch** practices in the environmental and natural resources section. **James L. Hollis** is a member of the firm's litigation section. The firm's Atlanta office is located at 30 Ivan Allen Jr. Blvd. NW, 30 Allen Plaza, Suite 700, Atlanta, GA 30308; 404-261-6020; Fax 404-261-3656; [www.balch.com](http://www.balch.com).



> **Parker Hudson Rainer & Dobbs LLP** announced that **G. Wayne Hillis Jr.** has been named **assistant managing partner** of the firm. Hillis is a partner on the firm's litigation team. The Atlanta office is located at 285 Peachtree Center Ave., 1500 Marquis Two Tower, Atlanta, GA 30303; 404-523-5300; Fax 404-522-8409; [www.phrd.com](http://www.phrd.com).



> **Fish & Richardson P.C.** announced that **J. Perry Herndon** has joined the firm's Atlanta office as an **associate** in its patents group. Herndon focuses his practice on the areas of electronic engineering, computers, and telecommunications. Prior to joining Fish & Richardson, he was an associate at both Alston & Bird LLP and Parks Knowlton LLC. The firm's Atlanta office is located at 1180 Peachtree St., 21st Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; [www.fr.com](http://www.fr.com).



McMichael



Clark



Davis




Maddison

**Morris Hardwick Schneider** announced the recent promotions of **Valerie McMichael** to **managing attorney**, **Amy Bradley Clark** to **director of human resources**, **Kathryn Davis** to **assistant managing attorney** and **Robin Kreider** to **managing attorney**. Also, **Kareem Maddison** will now be responsible for all closings and marketing for one of the firm's Jonesboro offices. The firm's support services office is located at 7000 Central Parkway, Suite 1220, Atlanta, GA 30328; 678-298-2100; Fax 770-804-9643; [www.closingsource.net](http://www.closingsource.net).

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced the addition of attorneys **David E. Gevertz** and **Erica V. Garey** to its labor & employment department. Gevertz joined the firm as shareholder. He represents companies in complex employment litigation and has substantive experience in litigation involving accom-

modations claims brought against restaurants, theme parks, testing entities and other places of public accommodation. Garey joined the firm as an associate. She focuses her practice in labor and employment matters involving employment discrimination, restrictive covenants, public accommodations and class and collective action claims related to federal and state wage and hour laws. The firm's Atlanta office is located at 6 Concourse Parkway, Suite 3100, Atlanta, GA 30328; 678-406-8700; Fax 678-406-8701; [www.bakerdonelson.com](http://www.bakerdonelson.com).


- > **Sherry V. Neal** and **Daniel S. Wright** announced the opening of **Neal & Wright LLC**. Neal, formerly of the Law Firm of Sherry V. Neal LLC will continue to focus her practice on representation of adoptive parents in adoption matters, serving as guardian ad litem in civil custody disputes, and basic real estate planning. Wright will provide legal advice and representation for individuals and businesses on real estate transactions, probate, estate planning, corporate and LLC formation, and other transactional matters. The office can be reached at P.O. Box 5207, Atlanta, GA 31107; 678-596-3207 or 678-613-7850; [www.nealandwright.com](http://www.nealandwright.com).

- >  **Adorno & Yoss, LLP**, announced the promotion **Kurt R. Hilbert** to **partner**. Hilbert is a member of the litigation practice group. His practice focuses on commercial real estate and related litigation, with specialties in toxic mold, water intrusion claims, construction, predatory lending, brokerage commission disputes, contractor disputes, business-related tort and contract disputes, and quiet title actions. The firm's Atlanta office is located at Two Midtown Plaza, 1349 W. Peachtree St., Suite 1500, Atlanta, GA 30309; 404-347-8300; Fax 404-347-8395; [www.adorno.com](http://www.adorno.com).

- > **Hall Booth Smith & Slover, P.C.**, announced that **William Bradley Carver**, formerly with Alston & Bird LLP, has rejoined his legal practice and will lead the firm's regulatory & utilities and governmental affairs practice groups. His practice will encompass administrative, corporate, economic development, electric, environmental, municipal, natural gas, international, state and federal grants, tax, telecommunications, utilities, wastewater and water issues. The firm's Atlanta office is located at 1180 W. Peachtree St. NW, Atlantic Center Plaza, Suite 900, Atlanta, GA 30309; 404-954-5000; Fax 404-954-5020; [www.hbss.net](http://www.hbss.net).

- >   **Cohen Pollock Merlin & Small, P.C.**, announced that **David S. Givelber** joined the firm as a **partner**. Givelber, formerly a partner with Alston & Bird, practices with the firm's divorce litigation and civil litigation groups. He will focus his practice on the resolution of commercial litigation and complex, high-asset divorce cases. **Catherine Diffley** also joined the firm as an **associate**. Diffley has joined the firm's family wealth planning group. She previously practiced with Smith, Gambrell and Russell. She will continue her practice focusing on estate planning, probate and trust law. The firm is located at 3350 Riverwood Parkway, Suite 1600, Atlanta, GA 30339; 770-858-1288; Fax 770-858-1277; [www.cpmas.com](http://www.cpmas.com).

- >  **Keith A. Jernigan** has joined **Coleman, Talley, Newbern, Kurrie, Preston & Holland, LLP**. Jernigan is a member of the firm's transaction practice group. His practice is concentrated in legal matters relating to the development and financing of residential, resort, mixed-use, retail and office properties and other commercial real estate, community association and business law matters. The firm's Atlanta office is located at 7000 Central Parkway NE, Suite 1150, Atlanta, GA 30328; 770-698-9556; Fax 770-698-9729; [www.colemantalley.com](http://www.colemantalley.com).


- >  **Jerre Boss**, a veteran patent counselor, has joined **Jones Day** as a **partner**. Formerly senior patent partner at Troutman Sanders LLP, Boss' practice is focused on counseling clients on issues of patentability, validity, and the right to use new products and processes. The firm's Atlanta office is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; [www.jonesday.com](http://www.jonesday.com).

## In Albany

- >  **Langley & Lee, LLC**, announced that **David W. Orłowski** was named a **partner** in the firm. Orłowski joined Langley & Lee as an associate in 2004. Prior to joining Langley & Lee, he was a partner with Hodges, Erwin, Hedrick & Coleman, LLP, and subsequently served as vice president of the legal department and in-house counsel for HeritageBank of the South. The firm's offices are located at 1604 West Third Ave., Albany, GA 31707; 229-431-3036; Fax 229-431-2249; [www.langleyandlee.com](http://www.langleyandlee.com).

- >  **Hall Booth Smith & Slover, P.C.**, announced that **Robert J. Middleton Jr.**, formerly with Alston & Bird LLP, will lead the firm's regulatory & utilities and governmental affairs practice groups. His law practice will encompass administrative, corporate, economic development, electric, environmental, municipal, natural gas, international, state and federal grants, tax, telecommunications, utilities, wastewater and water issues. The firm's Albany office is located at 2417 Westgate Drive, Albany, GA 31708; 229-436-4665; Fax 229-888-2156; [www.hbss.net](http://www.hbss.net).

### In Alpharetta

- >  **Chatham Holdings Corporation** announced **Deborah Anthony** as **vice president** and **general counsel**. Anthony has worked with the firm as outside counsel since 1998. Her responsibilities include counseling on real estate matters and corporate due diligence, assisting the officers of the company in reviewing legal implications and implementing the actions of the company, and the oversight of outside counsel. Previously, she was a member in the Atlanta office of Epstein Becker & Green, P.C. The firm is located at 5780 Windward Parkway, Alpharetta, GA 30005; 678-624-2900; Fax 678-624-2910; [www.chathamlegacy.com](http://www.chathamlegacy.com).

### In Buford

- > **Chandler, Britt, Jay & Beck, LLC**, announced that **David J. Sergio** joined the firm as a **partner**. Sergio specializes in real estate matters, including residential and commercial closings and foreclosures. Previously, he operated **Sergio & Associates, P.C.**, for 11 years in Suwanee. The firm is located at 4350 S. Lee St., Buford, GA 30518; 770-271-2991; Fax 770-271-9641; [www.cbjblawfirm.com](http://www.cbjblawfirm.com).

### In Decatur

- > **Tiffany S. Rowe** announced the opening of the **Law Office of Tiffany S. Rowe, LLC**. The firm's key practice areas include family law, wills and probate, contracts and general civil litigation. The office is located at 2964 Ember Drive, Suite 136, Decatur, GA 30034; 404-212-3818; Fax 404-212-3819; [www.tiffanyrowellc.com](http://www.tiffanyrowellc.com).

### In Greensboro

- > **Dupont Kirk Cheney Jr.** and **Dawn Marie Baskin** announced the opening of **Cheney and Baskin, LLC**. The firm will focus primarily on matters concerning family law, civil and domestic mediation,

personal injury, and criminal law. Cheney and Baskin are former assistant district attorneys with the Ocmulgee Judicial Circuit. The firm is located at 6340 Lake Oconee Parkway, Suite 200, Greensboro, GA 30642; 706-453-2212; Fax 706-453-2226.



### In Lawrenceville

- > **Andersen, Tate & Carr, P.C.**, announced the addition of two new **partners**, **Amy Heffernan Bray** and **Render C. Freeman**. Bray joined the commercial real estate department, with a widely recognized expertise in community association law and experience in complex real estate closings. Freeman has twelve years of experience litigating a broad range of disputes, including complex commercial disputes, claims arising out of securities fraud, antitrust violations, shareholder derivative claims, ERISA, professional malpractice, environmental torts, wrongful death, personal injury, and products liability. The firm is located at 1505 Lakes Parkway, Suite 100, Lawrenceville, GA 30043; 770-822-0900; Fax 770-822-9680; [www.atmlawfirm.com](http://www.atmlawfirm.com).

### In Macon

- > **William "Bill" M. Clifton** was promoted to **managing partner** of **Constangy, Brooks & Smith, LLC**. Clifton practices in the area of labor and employment law, assisting employers in problem prevention and legal analysis of complex employment issues. He also represents employers in matters involving confidentiality and covenants not to compete. Prior to joining Constangy, Clifton was an associate with Haynsworth, Baldwin, Johnson & Greaves. The firm is located at 577 Mulberry St., Suite 710, Macon, GA 31201; 478-750-8600; Fax 478-750-8686; [www.constangy.com](http://www.constangy.com).
- > **Julia Magda** was named **partner** at **Sell & Melton, LLP**. Magda's practice is focused on civil litigation, including premises liability, medical malpractice, employment law, and corporate litigation. The firm is located at 577 Mulberry St., Suite 1400, Macon, GA 31201; 478-746-8521; Fax 478-745-6426; [www.sell-melton.com](http://www.sell-melton.com).

### In Rincon

- >   **Edward L. Newberry Jr.** joined **Theodore "Ted" T. Carellas** as a **partner** in the newly formed **Carellas & Newberry P.C.**, formerly Carellas Law Firm. The firm is located at 440 Silverwood Centre Drive, Rincon, GA 31326; 912-826-7100; Fax 912-826-9740; [www.carellaslaw.com](http://www.carellaslaw.com).





### In Savannah


> **William G. Glass** was made **partner** with **Weiner, Shearouse, Weitz, Greenberg & Shawe**. Formerly senior counsel for International Paper Company's Forest Product Division in Savannah, Glass has been of counsel with the firm since 2005. He focuses his practice in the areas of real estate finance, acquisitions, development and leasing, corporate transactions and administration, and civil litigation. The office is located at 14 E. State St., Savannah, GA 31401; 912-233-2251; Fax 912-235-5464; [www.wswgs.com](http://www.wswgs.com).

>  **Hunter Maclean** hired **Elizabeth F. Thompson** as **special counsel** for the firm's residential real estate practice. In her new position, Thompson leads the busy practice, which handles a wide range of real estate transactions. The firm's Savannah office is located at 200 E. Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; [www.huntermaclean.com](http://www.huntermaclean.com).


### In Valdosta

>   **Coleman, Talley, Newbern, Kurrie, Preston & Holland, LLP**, announced that **Justin S. Scott** and **Timothy M. Tanner** have been admitted as **partners**. Scott is a member of the firm's transaction practice group and his practice is concentrated in construction law and other areas of business law. Tanner is a member of the firm's litigation practice group and his practice is concentrated in local government litigation and commercial liability defense. The firm's Valdosta office is located at 910 North Patterson St., Valdosta, GA 31601-4531; 229-242-7562; Fax 229-333-0885; [www.colemantalley.com](http://www.colemantalley.com).

### In Birmingham, Ala.

>  Attorney **David R. Mellon** was recently elected a **shareholder** in the law firm of **Sirote & Permutt P.C.**, where he is a member of the litigation section. The firm is located at 2311 Highland Ave. S., Birmingham, AL 35205; 205-930-5100; Fax 205-930-5101; [www.sirote.com](http://www.sirote.com).

### In Mobile, Ala.


>  **Louis C. Norvell** has become a **member** of **Hand Arendall, LLC**. Norvell practices in the areas of civil litigation, bankruptcy and creditor's rights. The firm is located at 107 St. Francis St., AmSouth Bank Building, Suite 3000,

Mobile, AL 36602; 251-432-5511; Fax 251-694-6375; [www.handarendall.com](http://www.handarendall.com).


### In Detroit, Mich.

>  **Dickinson Wright PLLC** announced the appointment of **James Y. Rayis**, who has joined the firm's international, corporate, corporate government and information technology/security law practices in Detroit and Washington, D.C. Rayis is a Detroit native who joins Dickinson Wright from Atlanta. The Detroit office is located at 500 Woodward Ave., Suite 4000, Detroit, MI 48226-3425; 313-223-3500; Fax 313-223-3598; [www.dickinsonwright.com](http://www.dickinsonwright.com).

### In Kansas City, Mo.

>  **Amy Greenstein** has joined **Lathrop & Gage L.C.** as **of counsel** in its business litigation practice area. Prior to joining the firm, Greenstein worked in private practice at a large Atlanta law firm where she was national defense counsel for Equifax's FCRA litigation. Greenstein also has experience in insurance defense with an emphasis on products liability, premises liability, and personal injury cases. The firm is located at 2345 Grand Blvd., Suite 2800, Kansas City, MO 64108; 816-292-2000; Fax 816-292-2001; [www.lathropgage.com](http://www.lathropgage.com).

### In Washington, D.C.

>  **Michelle Appelrouth Seltzer** was named **special counsel** at **Cadwalader, Wickersham & Taft LLP** in the business fraud and complex litigation practice group. The firm is located at 1201 F St. NW, Washington, D.C. 20004; 202-862-2200; Fax 202-862-2400; [www.cadwalader.com](http://www.cadwalader.com).

## Have an Announcement?

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# Fee Splitting Okay Under Certain Circumstances

by Paula Frederick

“Lunch is on me!” you announce as you enter your partner’s office. “Billy Hogan finally settled the *Johnson* case, and he sent me a nice little check.”

“I’m confused,” your partner confesses. “You didn’t handle the *Johnson* case—you just referred the work to Billy. I thought Georgia’s ethics rules prohibited *him* from fee splitting with you, and *you* from taking a referral fee.”

“If all I’d done is refer the case, you’d be right,” you report. “But I did a whole lot more.”

“Right,” your partner snorts, “and you forgot to bill for any of it?”

“I assumed joint responsibility for the representation,” you explain with dignity. “That means, among other things, that if Billy had screwed the *Johnson* case up I would have been on the hook for his malpractice. I’ve checked with him periodically to be sure that things were going well, and I was ready to help with the case if necessary.”


“Are you sure that’s ethical?”

A look at the Bar Rules and a confirming call to the Bar’s Ethics Hotline clarify things. Rule 1.5(e) allows lawyers who are not in the same firm to share fees under certain circumstances—either as a proportionate share of the services performed by each lawyer, or by written agreement with the client when each lawyer assumes joint responsibility for the representation. In either case the client must agree to the fee arrangement, and the total fee must be reasonable.

How does that square with Rule 7.3(c), which prohibits a lawyer from compensating or giving anything of value to a person as a reward for having made a recommendation resulting in the lawyer’s employment by a client?



Simple. The arrangement outlined at Rule 1.5 is not just a referral fee. The fact that there is ongoing responsibility for the legal work makes it unlikely that a lawyer will make a careless referral out of self-interest. The client has the additional protection of two potential sources of recovery in the event of malpractice.

So—you are not entitled to collect if you have only referred a potential client to another lawyer. If you have “assumed joint responsibility” for the representation with all its potential ups and downs, and otherwise complied with Rule 1.5, you’ve earned the right to split the fee. 



**Paula Frederick** is the deputy general counsel for the State Bar of Georgia and can be reached at [paula@gabar.org](mailto:paula@gabar.org).





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# Discipline Summaries

(Dec. 14, 2006 through Feb. 14, 2007)

by Connie P. Henry

## Disbarments/Voluntary Surrenders

### **J. Christopher Halcomb**

Cumming, Ga.

Admitted to Bar in 1994

On Jan. 8, 2007, the Supreme Court of Georgia accepted the Voluntary Surrender of License of J. Christopher Halcomb (State Bar No. 317455). Halcomb pled guilty in federal court to felony charges in connection with real estate closing fraud.

### **Daniel G. Calugar**

Las Vegas, Nev.

Admitted to Bar in 1979

On Jan. 8, 2007, the Supreme Court of Georgia accepted the Voluntary Surrender of License of Daniel G. Calugar (State Bar No. 105325). Calugar pled guilty to a violation of the laws of the State of New York in connection with a securities transaction. His resulting conviction constitutes a violation of the Georgia Rules of Professional Conduct.

### **Mark Robert Pronk**

Acworth, Ga.

Admitted to Bar in 2000

On Jan. 8, 2007, the Supreme Court of Georgia accepted the Voluntary Surrender of License of Mark Robert Pronk (State Bar No. 588456). Pronk pled guilty in the Cobb County Superior Courts to one count of aggravated assault, which is a felony violation.

### **Michael Macaskill Hipe**

Lawrenceville, Ga.

Admitted to Bar in 1997

On Jan. 22, 2007, the Supreme Court of Georgia accepted the Voluntary Surrender of License of Michael Macaskill Hipe (State Bar No. 100573). On Sept. 26, 2006, Hipe pled guilty to violating 18 USC § 1341. The resulting conviction is a violation of the Georgia Rules of Professional Conduct.

### **James S. Quay**

Atlanta, Ga.

Admitted to Bar in 2000

On Jan. 22, 2007, the Supreme Court of Georgia disbarred Attorney James S. Quay (State Bar No. 590715). Quay pled guilty to and was sentenced in 2005 in the United States District Court for the Southern District of Texas for one count of filing a false income tax return, which is a felony.

### **Paul C. Williams**

Roswell, Ga.

Admitted to Bar in 1998

On Jan. 22, 2007, the Supreme Court of Georgia disbarred Attorney Paul C. Williams (State Bar No. 763520). Williams's partner agreed to represent a client and received approximately \$45,000 in fiduciary funds on behalf of the client. These funds were placed into the firm's trust account, giving Williams a fiduciary responsibility to the client. Williams failed to deliver to the client the funds to which she was entitled; failed to provide an accounting to the client; and converted the funds to his own use. Although Williams answered the Formal Complaint in this matter, he consciously and intentionally failed to respond to discovery requests. His answer was stricken and the facts alleged were deemed admitted.

## Suspensions

### **Hunter J. Hamilton**

Marietta, Ga.

Admitted to Bar in 1984

On Jan. 22, 2007, the Supreme Court of Georgia ordered that Hunter J. Hamilton (State Bar No. 321040) be suspended from the practice of law for one year. Hamilton failed to adequately and properly maintain his trust account and was not cooperative with the State Bar's investigation by failing to submit an audit as directed. Reinstatement shall be permitted only by Order of the Supreme Court, and only after petition to and certification by the Review Panel of the reinstate-

ment request, attendance of Ethics School, and submission of an audit of the trust account for the four-year period to February 2004. Justice Hunstein dissented from the order.

**Murl E. Geary**  
Richmond Hill, Ga.  
Admitted to Bar in 1979

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Murl E. Geary (State Bar No. 288525) on Jan. 22, 2007, and ordered that he be suspended from the practice of law for one year. The suspension will continue until Geary pays the \$5,000 fee arbitration award. Justice Hunstein and Justice Thompson dissented.

In July 2003 a disbarred lawyer asked Geary if he was interested in representing an individual in a legal malpractice case. Geary agreed to accept the representation if the disbarred lawyer could get the client to sign a contract and pay a \$5,000 fee, which the disbarred lawyer did. Geary filed a lawsuit and directed the disbarred lawyer to deliver interrogatories to the client. Geary's only contact with the client was by telephone. In August 2005 the Fee Arbitration Division of the State Bar of Georgia awarded the client a \$5,000 refund of the fee. Although Geary withdrew from representation, he did not pay the arbitration award.

In a separate matter Geary agreed to represent a client in February 2004 and filed a complaint for modification on the client's behalf. The case was scheduled for a hearing in March 2004 but the client did not appear. Geary's file did not contain a copy of any letter or other notice to the client. Geary asked that the hearing be continued but his request was denied. The trial court did hear the client's ex-wife's counterclaim in which she sought sole custody and increased child support. The trial court granted the ex-wife sole custody and increased child support payments. Geary was mistaken about the client's income and erroneously believed that the increased amount came within the

legislative guidelines. Although the court agreed to rehear the case in May 2004, his client's ex-wife requested and was granted a stay of the case as she was serving abroad in the military. Geary's client continued to be charged a higher amount of child support than that suggested by the guidelines.

In aggravation of discipline, the Court found that Geary had three prior disciplinary offenses. In mitigation of discipline, the Court noted that he cooperated with disciplinary authorities; that he expressed remorse; and that two of the prior disciplinary offenses occurred over ten years ago.

**Renate Downs Moody**  
Macon, Ga.  
Admitted in Bar in 1995


On Feb. 5, 2007, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline filed by Renate Downs Moody (State Bar No. 228470) and ordered that she be suspended from the practice of law for six months, with conditions for reinstatement. Moody was appointed to represent two clients post-conviction but in both matters she failed to pursue properly the clients' cases. She appeared in court intoxicated and unable to represent a client. In mitigation of her behavior, the Court found that Moody has diabetes and a bi-polar condition. Prior to reinstatement Moody must provide a written certification from a psychiatrist or psychologist that she has

no mental condition or impairment that would affect her ability to practice law.

**H. Owen Maddux**  
Chattanooga, Tenn.  
Admitted in Bar in 1983

On Feb. 5, 2007, the Supreme Court of Georgia ordered that H. Owen Maddux (State Bar No. 465516) be suspended from the practice of law for 30 days. Maddux was disciplined in Tennessee for converting over \$92,000 in funds from his law partnership over a three-year period. Maddux's partners obtained a civil judgment against him. The Tennessee Board of Professional Responsibility imposed a 30-day suspension and a one-year probationary period. Georgia rules do not include probation.

## Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Dec. 13, 2006, three lawyers been suspended for violating this Rule, and two lawyers have been reinstated. 



Connie P. Henry is the clerk of the State Disciplinary Board and can be reached at [connie@gabar.org](mailto:connie@gabar.org).

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# Whippin' Up A "Paperless" Office

by Natalie Thornwell Kelly

**G**iven the popularity of food-focused television programs and our daily fascination with culinary delights, who doesn't love to cook nowadays? So, let's imagine you are in the law practice management kitchen, and you are thinking about what you could whip up to make your practice run more smoothly. With diets and "low" this and that, a reduction in paper may be just the thing. Here's a short cooking lesson that will leave your office with less paper, and hopefully, with more room to operate efficiently.

## The Ingredients

- 1-2 word processor(s)
- 1 PDF generator
- 1 scanner
- 1 OCR application (optional, especially if you have a scanner with built-in OCR capability)
- 1 case or practice manager
- 1 document management system
- 1 industrial (or appropriate) strength office shredder
- 1 practical file retention and destruction policy

## Getting Started

Begin your trek to less paper by analyzing your current filing systems. What do your computer and paper files look like? How long are you keeping closed client files? Examine how paper is generated in your firm. How much of your paper is in digital format? Also, look at the way your office sends documents to others.



A prime objective will be the elimination of as much paper as possible with digitization. Another key item will be storage and retrieval that enhances your current filing systems. You can achieve less paper in your office by working on efficient systems for handling incoming, outgoing and stored paper.

## Incoming Paper

The post office sends you paper everyday! Make sure you are doing the following to best handle incoming paper:

1. Have one person (or as few people as possible) sort mail
2. Scan all incoming mail items (scan to PDF when possible, also perform OCR on documents requiring edits by your office)
3. Store saved documents in scheme within the practice management documents for client/file related items

4. Calendar/tickle important dates and reminders in the case/practice management program
5. Create a profile for retrieval of the document in the document management system or directly in the practice manager's document file area
6. Shred all documents that have been scanned. Exceptions should be rare and absolutely necessary.

At the end of the day, all incoming paper has either been scanned and sorted across various "keeper" administrative type files or placed appropriately in the "practice management" and/or document management system on a client basis.

## Outgoing Paper

1. Begin all documents on the computer—generate word processing documents or e-mails as necessary. Even fax items can be managed from the computer desktop.
2. Create a digital signature stamp to make your electronic documents "official." You can even scan a copy of your signature on a blank piece of paper for importing into your new digital paper system.
3. For documents that you have both received and scanned, you are able to mark up and make comments on the document digitally via various mark up tools found in both word processing and PDF generation systems like the full versions (non-Reader versions) of Adobe Acrobat. You can attach notes and make comments that can be forwarded or redirected as necessary.

The goal with outgoing paper is to put it in a format that will be accept-


able for the recipient. You can even print it out, but it should not remain in the office. Mail it out, instead.

## Stored Paper

Using a practice management and document management system, you are able to better organize any documents you have archived or saved on your computers. The storing of paper with these systems allows for quick and efficient retrieval. Your brief can be found under your "briefs bank" and can also be found in the cross-referenced "file/matter" for the client for whom you wrote the brief.

1. Follow appropriate rules for saving documents so that you have no problem with retrieval. This includes rules for cross-referencing items.
2. Have a "system" for archiving or moving inactive items. Be consistent, so that older items are easily located, too.

3. Consider digital or other formats for saving archived or old items. This process should also be "paperless" where possible. Hard drives and DVDs are viable options.
4. Follow the written procedures from your file retention and destruction policy. (Samples can be obtained from our office.)

This recipe provides general ideas for achieving less paper in your office. For help with detailed "paperless office" procedures and policies, please contact the Bar'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](mailto:natalie@gabar.org).

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# Getting the Most Out of Casemaker: Access to all State Libraries

by Jodi McKenzie

**C**asemaker is the fastest growing online legal research tool in the state of Georgia. As such, Casemaker is continuously adding information to its database, which allows more and more attorneys to rely on Casemaker as their sole method for doing legal research. Best of all, access to Casemaker's vast libraries is free!

Most recently, Casemaker has added the ability to search the libraries of every state in the country. Now, when you open to Casemaker's main content page, you will see links to the Federal Library and Nationwide Collections, as well as every state in the country (see fig. 1).

Using the scroll bar on the right-hand side of the screen will allow you to scroll down on the page and see all the state's libraries. In order to access a library, simply place your cursor over the name of the library and click on it. We will use the Florida Library for our example (see fig. 2).

At the minimum, every state will have their State Case Law available since 1950, their current State Statutes and their State Constitution. The CaseCheck feature will be available on all State Caselaw books to indicate if the case you are looking at has been cited by any later cases within that same State Caselaw book starting from 1950 forward. At the bottom of every library, you will find a "Current Contents Information" link (see fig. 3).


Clicking on this link will let you know how current the information is for all the books in that particular library (see fig. 4).

Each state that is a member of the Casemaker Consortium has the option to add additional books or databases beyond Caselaw, Current Statutes and the State Constitution to their libraries. Georgia has added a host of other relevant books to their library. Georgia's Caselaw book extends beyond the basic 1950 date to include all cases since 1939 (see fig. 5).

The Georgia Library also includes the Administrative Code, which you may access by choosing the browse option of Rules and Regulations (see fig. 6). State Court Rules (see fig. 7) as well as Federal Court Rules (see fig. 8) are also available.

Casemaker has also just recently added the Magistrate and Probate Court Rules to the Georgia Library. Casemaker is in the process of adding content to its Federal Caselaw Libraries. The U.S. Supreme Court will soon have a complete library dating back to 1754. All circuit courts are being updated to go back to 1950 and will also have the CaseCheck feature.

Casemaker's consistency in adding more information and search options to its database has made it a powerful and reliable research tool for Georgia attorneys. Free Casemaker training is available every month at the Bar Center. The dates for the next training sessions can be found at [www.gabar.org](http://www.gabar.org).

Do you want to read more about Casemaker and learn more tips? Visit [www.gabar.org/casemaker](http://www.gabar.org/casemaker) for an archive of past articles published here. 



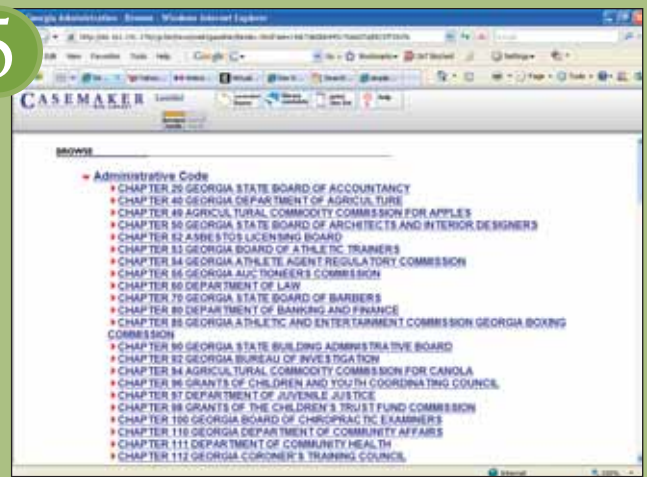
Jodi McKenzie is the casemaker coordinator for the State Bar of Georgia. She can be reached at 404-526-8618 or [jodi@gabar.org](mailto:jodi@gabar.org).



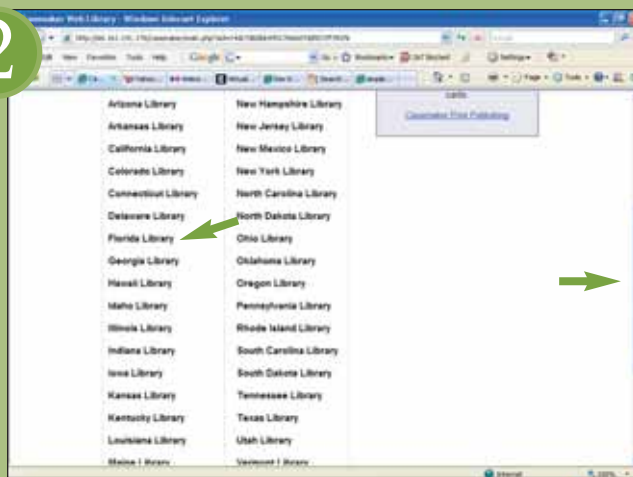
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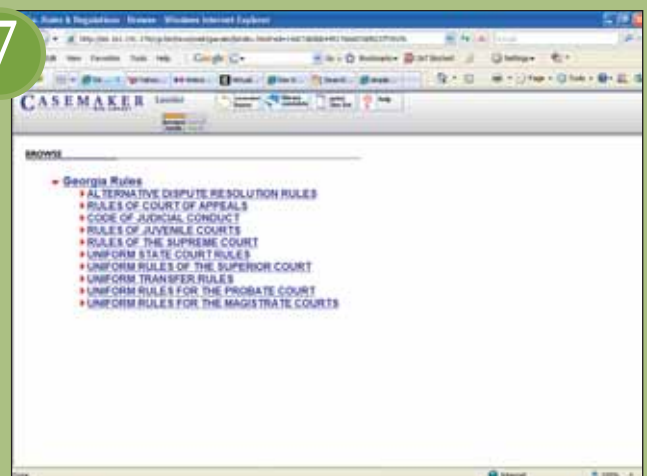
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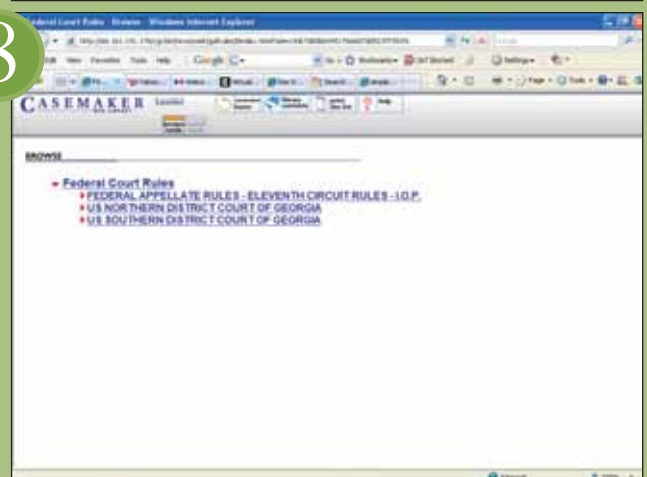
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# Less is More

by Karen J. Sneddon and David Hricik

**E**nglish's rich ancestry provides many redundant phrases (*i.e.*, phrases in which two words of very similar meaning are used rather than one word). Some redundant phrases are engrained in the legal landscape: cease and desist; free and clear; null and void; true and correct; and will and testament. This entry of Writing Matters shows that often one word is better than two (or more), and how to spot some of the most space-wasting and idea-cluttering words that legal writing tends to encourage.

First, avoid literal redundancy. Where one word will do, don't use two. Some common redundant phrases to avoid:

- Advance planning
- Close proximity
- Each and every
- Free gift
- Full and complete
- True fact
- Past history
- Personal opinion
- Rather unique (very unique, really unique, and so on)
- Repeat again

Besides using two words when one will do, sometimes we replace that one good word with not just two, but with a whole seemingly eloquent-sounding phrase. But a multi-word phrase can obscure meaning. Consider this list of common multi-word phrases and their single word counterparts:



- At such time = When
- At that point in time = Then
- At the present time = Now
- Because of the fact that = Because
- By mean of = By
- Due to the fact that = Because
- For the period of = For
- In favor of = For
- In order to = To
- In order for = For
- In the absence of = Without
- In the case of = In
- In the event that/provided that = If
- Owing to the fact that = Because
- Prior to = Before
- Subsequent to = After
- Whether or not = Whether
- The first point to be considered/determined = First
- With reference to = About
- With the exception of = Except

Finally, sometimes we use words when we don't need even one: the words we include add no meaning at all to the rest of the sentence. While these phrases

might look or sound pleasant, they are “throat-clearing phrases” that take up space but add no meaning, and could distract the reader from the concept being communicated. The most common throat-clearing phrases are:


- As a matter of fact
- Certainly
- Frankly,
- Honestly,
- It is apparent
- It is clear that
- It is obvious that
- It is important that
- It is interesting that
- To tell the truth

Below are some sentences on which you can put this lesson from Writing Matters to use (*answers at end of article*):

1. It is unclear as to whether or not the expert witnesses would be permitted for the purposes of testifying.

2. It is important to note that the defendants certainly had constructive notice by virtue of the recorded liens.
3. Owing to the fact that the defendant’s car ran the red light, the pedestrian crossing the street was injured.

So, as you revise your writing, consider your choice of words. Edit those redundant phrases, streamline the eloquent multi-word phrases, and strike out the throat-clearing phrases. After all, the focus of your writing is the message, not the choice words.

For more information on legal writing style (and more lists of words to avoid), see the following books: *Guide to Legal Writing Style* by Terri LeClerc; *The Little Book on Legal Writing* by Alan L. Dworsky; *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* by Anne Enquist and Laurel Currie Oates; and *Plain English for Lawyers* by Richard C. Wydick. 



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



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

Mercer’s Legal Writing Program is consistently rated as one of the top two legal writing programs in the country by *U.S. News & World Report*.

## Answers

1. The court may not permit expert witness to testify.
2. The recorded liens gave the defendants constructive notice.
3. The defendant’s car ran the red light, causing injury to the pedestrian who was crossing the street.



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# South Georgia Office Hosts Education Program

by Bonne Cella


**G**eorgia Project Citizen, supported by the Carl Vinson Institute of Government at the University of Georgia, held a two-day workshop at the State Bar of Georgia's Tifton Office to train primary education teachers.

Project Citizen is a civic education program for students in grades 5-12 that promotes responsible participation in state and local government while actively engaging young people in learning how to monitor and influence public policy. Students learn how to research a problem, evaluate alternative solutions, develop their own solution as a public policy proposal, and create an action plan to enlist the support of local and/or state authorities.

Presented by Mary Stakes and Gwen Hutcheson of the Carl Vinson Institute of Government, teachers from Savannah, Cuthbert, College Park, Forest Park, Bloomingdale and Tifton completed the workshop

and were given 30 middle or high school student books with a teacher's manual to take with them to their schools.

If you want to empower young people in your area as citizens who know how to make a difference, this performance-based curricular activity is a valuable resource. Please contact Mary Stakes at [stakes@cviog.uga.edu](mailto:stakes@cviog.uga.edu) or 706-542-6246 for more information.

In other South Georgia news, Judge Bill Reinhardt of Tifton became the 10th Superior Court judge in the Tifton Judicial Circuit when he was sworn into office on Jan. 2. Friends and family hosted a reception following the ceremony at the Tifton Museum of Art and Heritage. Judge Reinhardt was a partner with the firm of Reinhardt Whitley Wilmot Summerlin & Pittman before being elected judge. 



**Bonne Cella** is the office administrator for the State Bar of Georgia's South Georgia office in Tifton and can be reached at [bonne@gabar.org](mailto:bonne@gabar.org).



(Left to right) Tim Morrow, Bernice Rembert, Fred Cichon, Fan Johnson, Susan Tucker and Gwen Hutcheson look at a diagram they created to help students understand the concept of Project Citizen.



Friends and family gather for a reception after the swearing in of Tifton Circuit Superior Court Judge Bill Reinhardt.

Photos by Bonne Cella

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*We wish to express our sincerest appreciation to those who volunteered to serve as attorney coaches, regional coordinators, presiding judges and scoring evaluators during this mock trial season.*

## **The 2007 State Champion Team is from Jonesboro High School**

### **The 2006 Regional Champion Teams are:**

Central High School (Macon); South Forsyth High School (Cumming); Savannah Country Day School (Savannah); Walton High School (Kennesaw); Decatur High School (Decatur); Paideia School (Atlanta); Wesleyan School (Norcross); Grady High School (Atlanta); Fannin County High School (Blue Ridge); Athens Academy (Athens); Cartersville High School (Cartersville); Lee County High School (Leesburg); Eagle's Landing High School (McDonough); Jonesboro High School (Jonesboro); Ware Magnet School (Manor) and Bremen High School (Bremen)

**Thank you for a great 19th mock trial season in Georgia!**

The Mock Trial Office is currently accepting donations to support the Jonesboro Team's attendance at the National Tournament in Dallas, TX in May.

For sponsorship or donation information, please contact the mock trial office: 404-527-8779 or toll free 800-334-6865 ext. 779, or e-mail: [mocktrial@gabar.org](mailto:mocktrial@gabar.org)



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# Sections Spring Into Activity in 2007

by Johanna B. Merrill

Several sections met during the State Bar of Georgia's Midyear Meeting in Savannah, Jan. 18-20. The **Appellate Practice Section** hosted a luncheon with guest speaker Chief Judge Anne Elizabeth Barnes of the Georgia Court of Appeals. The **Military Law/Veterans Affairs Section** hosted a three-hour CLE program on Jan. 18. Three sections—**Fiduciary Law**, **Real Property Law** and **Taxation Law**—hosted a joint luncheon on the topic of "What Every Lawyer Needs to Know About Historic Preservation Law." The **General Practice & Trial Section** held a luncheon with guest speaker Presiding Justice Carol W. Hunstein of the Supreme Court of Georgia. That evening the **Family Law Section** hosted a reception for section members and other attendees of the Midyear Meeting.

On Jan. 22, the **Intellectual Property Law Section's** Trademark Committee held a luncheon lecture at the Bar Center titled "*Medinol* and its Progeny." Panelists Scott Creasman, Joan Dillon, Chris Bussert and moderator Jay Myers spoke on the *Medinol* decision and cases in its wake.

The IP Law Section's Patent Committee held an Advanced Patent Cooperation Treaty Seminar at the Bar Center on Feb. 22. The all-day event covered everything from navigating PCT documents and forms to advanced prosecution practice. The speaker, Carol Bidwell, is one



Photo by Johanna B. Merrill

Family Law Section Chair Shiel Edlin, Secretary/Treasurer Ed Coleman and Vice Chair Kurt Kegel attend the Family Law Section's reception at the 2007 Midyear Meeting held at the Hyatt Regency Savannah.

of two consultants for the World Intellectual Property Organization (WIPO) in the U.S. Bidwell is an expert on PCT practice, having worked with WIPO since January 2006. Prior to her work with WIPO, Bidwell was with the U.S. Patent and Trademark Office, serving first as a patent examiner, before becoming programs examiner of the PCT Special Programs Office, and supervisor of the Office of PCT Legal Administration. The topics of discussion began with an introduction and overview to the PCT. This was followed with an in-depth discussion of filing international applications by both U.S. and foreign applicants. Bidwell then turned to the mechanics and advantages of electronic filing, including the use of the PCT-SAFE software that is available at the WIPO website. After lunch, the discussion turned to amending applications and national phase entry. The day ended with a discussion of priority claims, procedural safeguards, and search and examination.

On Jan. 26, the **Entertainment & Sports Law Section** hosted a quarterly CLE luncheon at The Globe Restaurant in Midtown. The topic "Do You Know Your Union: A lunch conversation with SAG and AFTRA" was presented by speakers Mike Pniewski, president, Georgia chapter of the Screen Actors Guild and Melissa Goodman, executive director of the Georgia chapter of SAG/the American Federation of Television and Radio



Artists. Approximately 35 attendees earned one CLE credit hour.

The **Environmental Law Section** kicked off 2007 with a luncheon at the offices of Troutman Sanders LLP in Atlanta on Feb. 23. Chair Andrea Rimer and the other newly installed officers (Martin Shelton, chair-elect, Bill Sapp, secretary, Adam Sowatzka, treasurer and James Griffin, member at large) led the meeting.

## News from the Sections

### IP Law Section Patent Committee Update Report

by Philip H. Burrus IV

The Patent Committee started 2007 off with a bang, holding a panel discussion luncheon titled "Counseling Clients on Third Party Patents—Designing Around and Infringement Avoidance," on Feb. 8 with more than 100 attendees. Panelists offered advice and insight from both in-house and private practice perspectives. The topics of discussion included patent due diligence associated with product development and launch, attorney-client relationships and communication, intellectual property searching and opinions.

To set the tone of discussion, a hypothetical "new product" was developed by a business team. The business team was then seeking intellectual property advice from their in-house counsel. The panel, moderated by Bob Neufeld of King & Spalding, included Steve Wigmore of King & Spalding, Keats Quinalty of Womble Carlyle Sandridge & Rice, and Robert Dulaney, in-house counsel with Home Depot.

The discussion began with issues focusing on the relationship between corporate clients and in-house counsel. The first issue discussed included factors that an in-house attorney should consider when presented with a new product launch. Dulaney discussed his experiences in dealing with new product lines, including conducting

patent and trademark searches, as well as interviewing the business and development teams responsible for developing products. He continued by explaining that an important factor to be aware of when dealing with a new product line is its timeline, *i.e.*, the amount of time remaining before the product is to be released to the public. The timeline can govern what measures should be taken prior to release.

The next issue discussed focused on conducting patent, trademark, and copyright searches for clients in light of a new product launch. Dulaney began the discussion by explaining both cases where a search is desirable and cases where searches were discouraged. The topic then moved to relations between in-house counsel and private practice counsel. Moderator Bob Neufeld asked the panel when in-house counsel might look to outside counsel for help in conducting new product prior art searches. Dulaney again alluded to the timeline, in that a shorter timeline may mean that outside counsel should be brought in more quickly. Wigmore and Quinalty shared their experiences regarding counseling clients around third party intellectual property, indicating that a one to two day timeline was simply inefficient for proper due diligence. Both indicated that bringing in outside counsel as early as possible was preferred.

The discussion then turned to in-house/private practice communication, including just what information should be shared between in-house counsel and their private practice attorneys. Each panelist expressed an individual preference regarding what materials and how much conversation should occur to perform a proper analysis. All agreed on the need to speak to inventors to learn about the product. However, the panel mused that clients must pay attention to their overall strategy when deciding what information to share with outside counsel. Similarly, private practice attorneys should consider how much information to provide

in return to the client. The panel warned the audience to be cognizant of litigation and discovery, as materials put in writing often found their way into infringement litigation. "Write your notes in highlighter," one panelist joked.

The discussion then turned to search strategy. Both Quinalty and Wigmore indicated that for a product of sufficient importance, and given sufficient funds, they would generally prefer to begin by outsourcing the search out to a specialized search firm. They then use the results of the external search to conduct their own search, which often provides additional and more on-point references. (On a side note, one panelist said that he uses Google's patent search engine, [www.google.com/patents](http://www.google.com/patents), finding it useful in his search process.)

The discussion ended with a talk of situations where non-infringement opinions could not be obtained. "Consider how litigious the industry is," one speaker noted. "Always order the file history," recommended another. "You might find estoppel that makes the whole matter go away." Other options for such situations include obtaining an invalidity opinion, initiating a re-examination procedure, and cross licensing.

The Patent Committee would like to thank everyone who attended this event, as well as Johanna Merrill and the staff of the Bar for their assistance. For information concerning upcoming events, please visit the section's web page at [www.gabar.org](http://www.gabar.org). If you have questions or comments about the Patent Committee, please e-mail [pburrus@burrusiplaw.com](mailto:pburrus@burrusiplaw.com). Also, many IP events are available as podcasts at [www.georgiaip.org](http://www.georgiaip.org). Special thanks to Pete Mehravari for contributing to this report. 



Johanna B. Merrill is the section liaison for the State Bar of Georgia and can be reached at [johanna@gabar.org](mailto:johanna@gabar.org).

# Annual Benham Awards

## Lawyers Honored for Fulfilling Their Professional Responsibility to Serve in Their Communities

by Avarita L. Hanson

**M**ore than 150 Georgia citizens were in attendance for the presentation of the Eighth Annual Justice Robert Benham Awards for Community Service, held at the State Bar of Georgia on Jan. 30. The Chief Justice's Commission on Professionalism and the State Bar of Georgia sponsor the awards. With Judge G. Alan Blackburn of the Court of Appeals of Georgia presiding, Justice Robert Benham presented the awards to 12 deserving Bar members.

For the first time, two Lifetime Achievement Awards were presented to outstanding community servants who have each practiced more than 50 years: Miles J. Alexander, senior partner with Kilpatrick Stockton, LLP, in Atlanta and Willis A. DuVall, a solo practitioner in Edison. The Lifetime Achievement Award is the highest recognition given and is reserved for a lawyer or judge who, in addition to meeting the criteria for receiving the Justice Robert Benham Award for Community Service, has demonstrated an extraordinarily long and distinguished commitment to volunteer participation in the community throughout his or her legal career. Alexander was honored for his work in numerous legal, civic, political and social arenas to make Atlanta's community, government and legal institutions more ethical, diverse, representative and inclusive. DuVall, a pillar of the Edison community, was cited for his service as its mayor, member of the Calhoun County Board of Education, director of the Housing Authority, leader of the Lions Club and in his church.



Photos by Jennifer R. Mason



For the first time, two Lifetime Achievement Awards were presented to outstanding community servants who have each practiced more than 50 years: Miles J. Alexander (pictured far above), a senior partner with Kilpatrick Stockton, LLP, in Atlanta and Willis A. DuVall (pictured directly above), a solo practitioner in Edison. Presenting the awards are Avarita Hanson, executive director of the Chief Justice's Commission on Professionalism, and Supreme Court Justice Robert Benham.

## Justice Robert Benham Awards for Community Service



### Judicial District 1: Michael L. Edwards, Circuit Public Defender, Eastern Judicial Circuit, Savannah

Asbury United Methodist Church, Georgia High School Mock Trial Competition Judge, Picking Up the Pieces Corps, Inc., (Founder and Executive Director, Hurricane Katrina Relief)

*Nominated by Harvey Weitz, Weiner, Shearouse, Weitz, Greenberg & Shawe, LLP*



### Judicial District 2: Michael S. Bennett Sr., Bennett Law Firm LLP, Valdosta

Best Buddies Club, Inc., (supports local National Guardsmen and other soldiers serving at Moody Air Force Base), Lowndes County Sheriff's Boys Ranch, North Valdosta Rotary Club, Park Avenue United Methodist Church, South Georgia Classic Car Club, Valdosta Bar Association (President)

*Nominated by James T. Bennett, Bennett Law Firm, LLP*



### Judicial District 3: William Lee Robinson, Circuit Public Defender, Macon Judicial District, Macon

Alzheimer's Association – Georgia Chapter, Georgia State Senate, Greater Macon Chamber of Commerce, Ingleside Baptist Church (key leader on international mission trips), Macon Cherry Blossom Festival, Macon Rotary Club, Mayor of Macon

*Nominated by Michael L. Edwards, Eastern Judicial Circuit Public Defender*



### Judicial District 4: Nisha K. Karnani, Cohen & Associates, Dunwoody

IndusBar of Georgia, Raksha (serving Georgians of South Asian descent)

*Nominated by IndusBar of Georgia, submitted by Sonjui L. Kumar, Director and Immediate Past President*



### Judicial District 5: Luis A. Aguilar, McKenna Long & Aldridge LLP, Atlanta

Georgia Hispanic Bar, Georgia Hispanic Chamber of Commerce, Georgia Hispanic Network, Girl Scouts of Northwest Georgia, Hispanic National Bar Association, Hispanic National Bar Association Foundation, Leadership Atlanta, Mexican Legal Defense & Education Fund, UNICEF Southeast Region Chapter, Development Committee for CIFAL

*Nominated by Georgia Hispanic Bar, submitted by Dax E. Lopez, President*



### Judicial District 5: Douglas M. Towns, Jones Day, Atlanta

Angel Flight of Georgia, Inc. (serving Hurricane Katrina victims & medically needy), Hands on Atlanta, Leadership Atlanta, Special Education Advocacy Program (with Atlanta Legal Aid & Atlanta Volunteer Lawyers Foundation, providing advocates for special needs children in Atlanta public schools), PDK Park Restoration Project, TEAM Georgia

*Nominated by E. Kendrick Smith, Jones Day*



### Judicial District 6: Judge Christopher C. Edwards, Superior Court, Griffin Judicial District, Fayetteville

Fayette County Bar Association, Griffin First United Methodist Church, Flint River Baptist Association, Griffin Technical College, Pomona Baptist Church, Speaker to over 45,000 students in his community

*Nominated by Christy A. Dunkelberger, Pierce & Dunkelberger*



### Judicial District 7: Cindi L. Yeager, Marietta

President of the Cobb County Bar Association (spearheads its community service activities – Partners in Education Committee, Fundraisers for Riverside Elementary School, Sleigh bells on the Square 5K Fun Run, MUST Ministries), Mock Trial Judge, Riverstone Wesleyan Fellowship Church, Mt. Paran Christian School

*Nominated by Elizabeth L. Guerra, Attorney at Law*



### Judicial District 9: Therese G. Franzén, Franzén & Salzano, P.C., Norcross

American Cancer Society (Gwinnett County Relay for Life Team Captain), American Diabetes Foundation, American Heart Association, Christ Church Episcopal (Mission Trips to Mexico), City of Duluth Planning Commission, Gwinnett County Swim League Judge, Impact! Group, Leadership Gwinnett, March of Dimes, Rainbow Village, Inc.

*Nominated by Mary B. Galardi, Mary B. Galardi, P.C.*



### Judicial District 10: David B. Bell, Bell & Bell Associates, Augusta

American Heart Association, Augusta Ballet, Augusta Bar Association (President), Augusta Richmond County Coliseum Authority, The Citadel's School of Humanities and Social Services (Board of Visitors), First Baptist Church Augusta, General Aviation Commission, Historic Augusta Kiwanis Club, Metro Augusta Chamber of Commerce, Richmond County Library Authority, Summerville Neighborhood Association, University of Georgia Law School Association Council

*Nominated by Albert H. Dallas, Dallas Law Firm*





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

9<sup>th</sup> Annual Justice Robert Benham Awards for Community Service



The State Bar of Georgia and the Chief Justice's Commission on Professionalism invite nominations for the Ninth Annual Justice Robert Benham Awards for Community Service. Awards will be presented at a special ceremony in Atlanta in January 2008.

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

**Eligibility:** Nominees must: **1)** be a member in good standing of the State Bar of Georgia; **2)** have a record of outstanding community service and continuous service over a period of time to one or more cause, organization or activity; **3)** not be a member of the Selection Committee, staff of the State Bar of Georgia or Chief Justice's Commission on Professionalism; and **4)** not be in a contested judicial or political election in calendar year 2007.

---

9<sup>th</sup> Annual Justice Robert Benham Awards for Community Service  
Nomination Form

**Nominee:**

Name: \_\_\_\_\_

Address:\* \_\_\_\_\_

\_\_\_\_\_

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**Nominator:**

Name:\*\* \_\_\_\_\_

(\*\* For organizations, identify a contact person in addition to the name of the organization.)

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**In addition to this form, nominations must also be accompanied by:**

- ☐ **A Nomination Narrative:** Explain how the nominee meets the award criteria described above. Specify the nature of the contributions and identify those who have benefitted from the nominee's involvement. Specify when and how long the nominee participated in each identified activity.
- ☐ **Biographical Information:** Attach a copy of the nominee's resume or curriculum vitae.
- ☐ **Letters of Support:** Include 2 letters of support from individuals and/or organizations in the community that describe the nominee's work and the contributions made.

**Submission of Materials:** Send nominations to Mary McAfee, Chief Justice's Commission on Professionalism, Suite 620, 104 Marietta Street, N.W., Atlanta, GA 30303 • Phone: (404) 225-5040 • Fax: (404) 225-5041 • Email: [mary@cjcpga.org](mailto:mary@cjcpga.org)

**All Nominations must be postmarked by October 5, 2007**




*Left: Awardees of the Eighth Annual Justice Robert Benham Awards for Community Service.*

*Below: Following the presentations, a reception was held in their honor, hosted by the CJCP.*

The Justice Robert Benham Awards for Community Service were created in 1998 by the State Bar in honor of Justice Robert Benham who, during his term as Chief Justice of the Supreme Court of Georgia (1995-2001), made community service a primary focus of the professionalism movement in the state. These statewide awards honor lawyers and judges who have combined professional careers with outstanding service and dedication to their communities. The objectives of the awards are: to recognize that volunteerism remains strong among Georgia's lawyers and judges; to encourage lawyers and judges to become involved in serving their communities; to improve the quality of life of lawyers and judges through the satisfaction they receive from helping others; and to raise the public image of lawyers.

This year, Community Service Awards were given to one judge and nine practicing attorneys from the Georgia judicial districts from which nominations were received. These honorees were feted with a special slide presentation showing them in action throughout the community and with family and friends. Following the presentations, a reception was held in their honor, hosted by the CJCP. The selection committee members served as honorary hosts. These members include: Judge G. Alan

Blackburn (Court of Appeals of Georgia); Lisa E. Chang (Beard & Chang, Atlanta); W. Seaborn Jones (Owen, Gleaton, Egan, Jones & Sweeney, Atlanta); William J. Liss (WXIA Television News, Atlanta); Patrise M. Perkins-Hooker (Hollowell Foster & Gepp, PC, Atlanta); Ruby J. Thomas (Attorney, Decatur), J. Henry Walker IV (BellSouth Corporation, Atlanta); and Brenda Carol Youmas (Edwards & Youmas, Macon). A partial list of the honorees' community contributions appear in the sidebar on page 75.

The Chief Justice's Commission on Professionalism requests nominations for the Ninth Annual Justice Robert Benham Awards for Community Service, to be presented in January 2008. Judges, attorneys and citizens are asked to please consider making a nomination to assure that all worthy candidates are nominated for these prestigious awards. The Call for Nominations appearing with this article outlines the awards criteria and procedures. 



**Avarita L. Hanson** is the executive director of the Chief Justice's Commission on Professionalism. She can be reached at [AHanson@cjcpga.org](mailto:AHanson@cjcpga.org).



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**T**he Lawyers Foundation of Georgia Inc. sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 104 Marietta St. NW, Suite 630, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible.

**John Hollis Allen**

College Park, Ga.  
Admitted 1948  
Died November 2006

**Malcolm Clinton Ball**

Atlanta, Ga.  
Admitted 1965  
Died April 2006

**Charles W. Berry**

Alexandria, La.  
Admitted 1970  
Died January 2007

**Justice Jesse G. Bowles Jr.**

Cuthbert, Ga.  
Admitted 1946  
Died January 2007

**Tom Watson Brown**

Atlanta, Ga.  
Admitted 1959  
Died January 2007

**Joe Browne**

Atlanta, Ga.  
Admitted 1951  
Died January 2006

**Thomas R. Burnside Jr.**

Augusta, Ga.  
Admitted 1961  
Died February 2007

**Joseph Carlisi**

Atlanta, Ga.  
Admitted 1978  
Died June 2006

**Julian S. Carr Sr.**

Atlanta, Ga.  
Admitted 1941  
Died May 2006

**J. Robert Coleman**

Atlanta, Ga.  
Admitted 1964  
Died January 2007

**L. Branch Connelly**

Cloudland, Ga.  
Admitted 1977  
Died February 2007

**Joseph B. Cramer**

Salem, S.C.  
Admitted 1950  
Died December 2006

**Earnest W. Dean Jr.**

Spring Hill, Fla.  
Admitted 1957  
Died January 2007

**Charles A. Devaney**

Augusta, Ga.  
Admitted 1977  
Died January 2007

**George A. Edmund**

Atlanta, Ga.  
Admitted 1949  
Died January 2007

**Arthur L. Falkenstrom**

Columbus, Ga.  
Admitted 1950  
Died August 2006

**Jule W. Felton Jr.**

Atlanta, Ga.  
Admitted 1954  
Died January 2007

**Sanford W. Fitzsimmons**

Atlanta, Ga.  
Admitted 1951  
Died August 2006

**Edwin B. Fortson**

Athens, Ga.  
Admitted 1937  
Died January 2007

**George A. Haas**

Atlanta, Ga.  
Admitted 1947  
Died January 2007

**William R. Harp**

Atlanta, Ga.  
Admitted 1953  
Died November 2006

**Charles W. Hill**

Albany, Ga.  
Admitted 1955  
Died October 2006

**George M. Hopkins**

Atlanta, Ga.  
Admitted 1954  
Died July 2006

**Leyton B. Hunter**

Dunwoody, Ga.  
Admitted 1981  
Died February 2006

**D. M. Johnson**

McDonough, Ga.  
Admitted 1947  
Died September 2006

**William L. Martin**

Gainesville, Ga.  
Admitted 1971  
Died April 2006

**Stanley H. McCalla Sr.**

Roswell, Ga.  
Admitted 1948  
Died November 2006



**Col. Elbert L. McClung**

Warner Robins, Ga.  
Admitted 1968  
Died February 2007

**Laura Ruth McNeil**

Atlanta, Ga.  
Admitted 1953  
Died October 2006

**Judge Robin Spencer Nash**

Decatur, Ga.  
Admitted 1978  
Died January 2007

**Joseph C. Nelson III**

Athens, Ga.  
Admitted 1978  
Died February 2007

**Walter E. Nichter**

Potomac, Md.  
Admitted 1951  
Died January 2006

**Judge J. Edwin Peavy**

Waycross, Ga.  
Admitted 1949  
Died March 2006

**Robert N. Saveland Jr.**

Albert Bay, British Columbia  
Admitted 1985  
Died September 2006

**Edward L. Savell**

Atlanta, Ga.  
Admitted 1948  
Died June 2006

**Theodore R. Smith**

Decatur, Ga.  
Admitted 1940  
Died February 2007

**Charles L. Sparkman**

Savannah, Ga.  
Admitted 1949  
Died September 2006

**Virgil C. Spence**

Kennesaw, Ga.  
Admitted 1970  
Died March 2006

**Henry C. Stockell Jr.**

Brunswick, Maine  
Admitted 1962  
Died June 2006

**John T. Strauss**

Covington, Ga.  
Admitted 1967  
Died September 2006

**Rajeeni L. Thomas**

Decatur, Ga.  
Admitted 2006  
Died February 2007

**Clyde Threet**

Marietta, Ga.  
Admitted 2005  
Died December 2006

**Herbert M. Vickery**

Hartwell, Ga.  
Admitted 1976  
Died December 2006

**Jimmy W. Watson**

Sylvester, Ga.  
Admitted 1979  
Died January 2007

**Willard W. Young**

Athens, Ga.  
Admitted 1948  
Died August 2006

**Robert L. Zink**

Tulsa, Okla.  
Admitted 1967  
Died March 2006



Former state Justice **Jesse Groover Bowles Jr.** died in January. Bowles was born in August 1921 in Baconton, to Jesse Groover and Bart Swann Bowles. He graduated from Camilla High School in 1938. After attending the Georgia Military College he attended the University of Georgia where he received his B.A. degree and his LLB degree, *cum laude*, in 1946. He established his law practice in Cuthbert in March 1946.

In the early 1950s, Bowles served a short time as House Counsel for Callaway Mills in LaGrange. He

returned to private practice in Cuthbert where he remained until being appointed as a Justice on the Supreme Court of Georgia in 1977. After serving four years on the court, he rejoined his son in the Bowles & Bowles law firm in Cuthbert. He retired in 2002 after 56 years of practice.

At the University of Georgia he served as the president of the Chi Phi fraternity and the Interfraternity Council. Bowles played football for Wally Butts at UGA and was an avid Bulldog fan. He was a member of the Sphinx and Gridiron Societies. He was awarded the Georgia Law School Distinguished Service Scroll in 2000.

Bowles was actively involved in Cuthbert First Baptist Church. He was chairman of the Randolph County School Board; president of the Randolph County Savings and Loan Association; a member of the Randolph County Hospital Board; a founding member of the Randolph County Arts Council; and Trustee Emeritus of Andrew College. In 2004, he was inducted into the Mitchell County Sports Hall of Fame. Bowles was a trustee of the Mt. Enon Cemetery Association that was established to preserve the historic church and cemetery where four generations of his family are buried.

Bowles is survived by his wife, Jane; son, Jesse G. Bowles III (Judy) of Cuthbert; daughter, Elizabeth Chastain (Ricky) of Athens; six grandchildren; three great-grandchildren; a sister, Sarah Frances Wicker; and other family members.



**Jule Wimberly Felton Jr.** died in January. He was born in Macon in July 1932, the only child of Justice Jule Felton and Mary Julia Sasnett Felton. Felton attended public schools in Atlanta and received his undergraduate and law degrees from the University of Georgia. He served as First Lieutenant in the JAG Corps of the United States Army.

Felton began his legal career in Atlanta in 1956, specializing in trial and appellate advocacy. Felton was for many years a partner of the firm of Hansell & Post. He was also of counsel with the firm of Jones, Day, Reavis & Pogue and subsequently affiliated with Ford & Felton, with Proctor, Felton & Chambers, and with Peterson & Harris.

Felton was a member of the Georgia House of Representatives from 1969 to 1973 and was a member and past chair of the Board of the Georgia Department of Community Affairs. He served as president of the State Bar of Georgia in 1985. He was a member and past chair of the University of Georgia Law School Board of Visitors and served a term as President of the University of Georgia Law School Association. He was a recipient of the University of Georgia Law School Distinguished Service Award.

Felton was a member of the Northside United Methodist Church, the Buckhead Lions Club, the Gridiron Club, the Georgia Bulldog Club, the University of

Georgia National Alumni Society, the American Bar Association, the American College of Trial Lawyers, Fellow of the American Bar Foundation, the Eleventh Circuit Historical Society, the National Conference of Bar Presidents, the Old War Horse Lawyers Club, the Lawyers Club of Atlanta, the Atlanta Breakfast Club, the Phi Delta Theta fraternity, the Capital City Club, the Commerce Club, and the Piedmont Driving Club.

Felton is remembered for his love of his family; service to his community; the legal profession and the University of Georgia; dedication to his many friends; and his love of life, especially history, golf, music and travel. He is survived by wife, Kate Gillis Felton; son, Jule W. Felton III; his daughters, Mary Felton Shaffran and Laura Felton Trimble; and three grandchildren.



**Corliss Eugene Gilbert Sr.** passed away in October 2006. He was born in February 1922 in Dexter to E. E. Gilbert and Eloise

Kemp Gilbert. Known as Gene Gilbert, he served in the U.S. Army for a six-year period during World War II. He graduated from Mercer University after the war and went on to law school where he was admitted to the State Bar of Georgia in 1949.

He married Sallie Lee Dyal in 1947 and they had four children. Gilbert practiced law in the Atlanta area for 57 years with the last 20 years in Roswell. He was still working and at his office on his 84th birthday this year. Gilbert considered himself a "dirt road country lawyer." He never lost the country upbringing that he loved so much. Over his career he never once charged a client by the hour saying that the large firms did that and he didn't know how to keep up with it.

Gilbert was a devout Christian and devoted father. He was known and admired for his wonderful personality and hard work ethic. Retirement was not for him as his

Roswell office was just a couple of miles from his residence. He worked five days a week for 57 years.

One of 10 children, he was preceded in death by four sisters and three brothers. He is survived by brothers, Jack Gilbert and Phil Gilbert; his daughters, Cynthia Phillips and Deborah White; his sons, Gene Gilbert Jr. and Mike Gilbert; and his six beloved grandchildren.



**Judge Robin Nash** died in January. A native of Decatur, he was born at Emory Hospital in March 1953. Nash joined the faculty of

Emory University School of Law in April 2006 as director of the Barton Child Law & Policy Clinic. He coordinated the expanded scope of the Barton Clinic by directing the work of the clinic in two main areas, child welfare policy and defense of juveniles charged with delinquent and unruly offenses. Nash came to Emory Law School after retiring as Chief Presiding Judge of DeKalb County Juvenile Court, where he served as the statewide president of the Juvenile Court Judges from 2004-05. Before becoming a judge, Nash was in private practice for 15 years concentrating on rights of the mentally ill and the developmentally disabled, particularly in the area of deinstitutionalization.

Nash graduated from Briarcliff High School in 1971. He received his B.A. in Economics from Emory College in 1975 and his J.D. from Emory University School of Law in 1978.

Nash served on numerous boards and advisory committees during his career, including the DeKalb Bar Association, the Atlanta Foundation for Psychoanalysis, the DeKalb Developmental Disabilities Council, the Georgia Senate Study Committee on State Foster Care and Adoption, the Georgia Independent Living Council, and the Georgia School Age Care Association.

He was a 1995 alumnus of Leadership DeKalb and received



## Memorial Gifts

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

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

many awards in recognition of his tireless community service, including the 1995 Bobby Dodd Award from Atlanta Association of Developmental Disabilities, the 2001 Advocate of the Year Award from the Atlanta Association of Developmental Disabilities, and the 2002 Juvenile Judge of the Year for the state of Georgia from the Child Placement Conference.


In addition to his work in children's law and disability law, Nash was active in the international community, both in Georgia and throughout the world. He volunteered with a number of immigrant and refugee groups in Atlanta and engaged in public service in the Middle East and Southeast Asia.

Nash is survived by his brother and sister-in-law, Bill and Cindi Nash; nephew, Andrew Nash; niece, Melissa Hunt; godson, Sam Barclay; his adopted brother, Vince Thompson; and many loving friends.



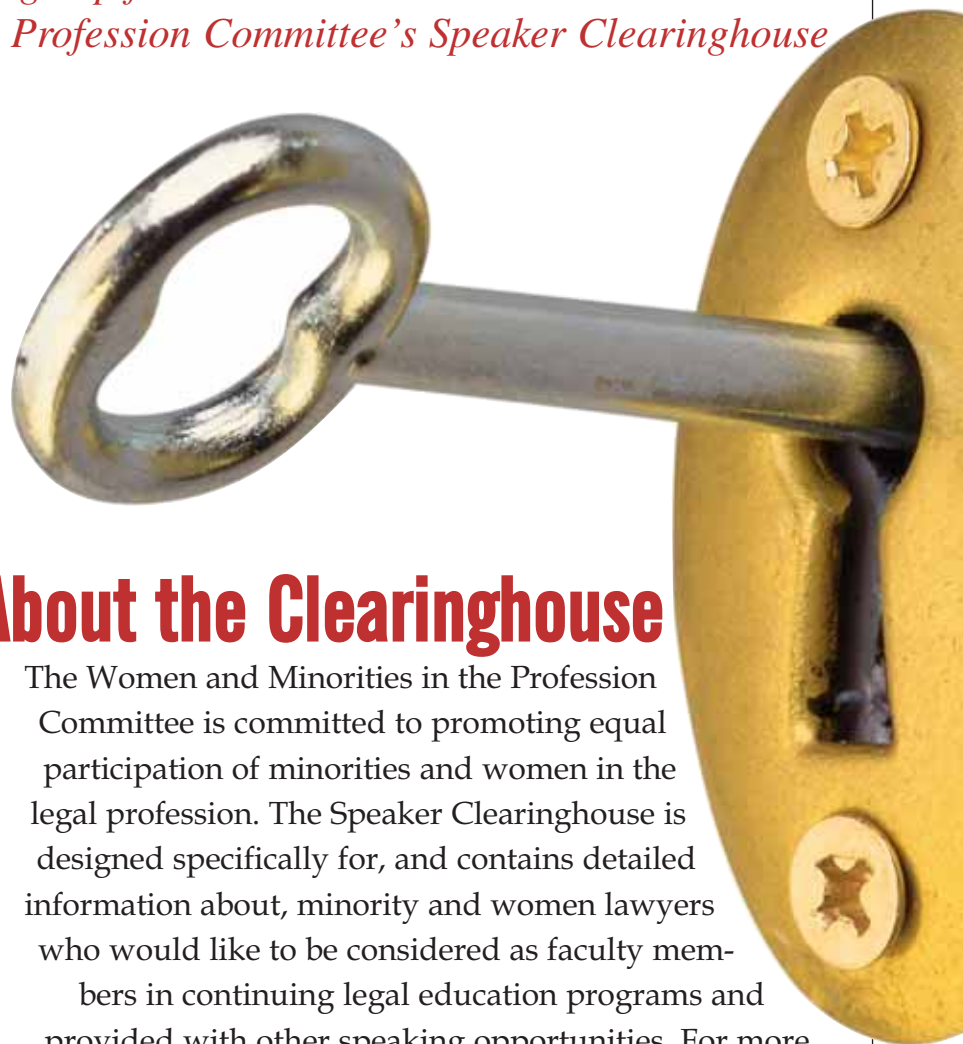
**Rajeen LeShel Shauntae Thomas**, 26, passed away in February. Thomas graduated from Oakwood College in 2003 with a B.S. degree

in Biochemistry, and from University of Alabama School of Law in Tuscaloosa, Ala., in 2006 with a J.D. She relocated to Atlanta where she passed the bar and was admitted as an attorney with the State Bar of Georgia in 2006. She was crowned Miss Oakwood College in 2002; president of Chemistry Club; participated in Moot Court Law School competition team and honored as "best oralist"; and was a coach for the Morrow High School mock trial team. Thomas was passionate about children and animals.

She is survived by her mother, Maureen Thomas; stepmother, Janice Thomas; father, Dennis Thomas; two sisters, Dennisa and Jazzmin; two grandmothers, aunts, uncles; her boyfriend, attorney Dale Richardson; and other relatives and friends. 

# Unlock *your* Potential

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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](http://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](http://www.gabar.org).



# April-May

|                  |  |                  |   |
|------------------|--|------------------|---|
| <b>APR 5</b>     | ICLE<br><i>Beginning Lawyers Video Replay</i><br>Statewide, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for locations<br>6 CLE Hours | <b>APR 13</b>    | ICLE<br><i>Annual Criminal Practice Satellite Broadcast</i><br>Statewide, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for locations<br>6 CLE Hours                      |
| <b>APR 6</b>     | ICLE<br><i>Federal Appellate Practice</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours        | <b>APR 13</b>    | ICLE<br><i>Getting Ahead: The Art of Marketing &amp; Self-Promotion for Lawyers</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours |
| <b>APR 6</b>     | ICLE<br><i>Real Property Foreclosure</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours         | <b>APR 13</b>    | ICLE<br><i>LLCs and LLPs</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>3 CLE Hours  |
| <b>APR 12</b>    | ICLE<br><i>Georgia Non-Profit Law</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours            | <b>APR 13-14</b> | ICLE<br><i>International Law &amp; Antitrust Law</i><br>Cozumel, Mexico<br>See <a href="http://www.iclega.org">www.iclega.org</a> for locations<br>8 CLE Hours                            |
| <b>APR 12</b>    | ICLE<br><i>Civil Litigation</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours                  | <b>APR 18</b>    | ICLE<br><i>GSGL Calculator Training</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>3 CLE Hours   |
| <b>APR 12</b>    | ICLE<br><i>Special Needs Trusts</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours              | <b>APR 19</b>    | ICLE<br><i>Annual Criminal Practice Satellite Rebroadcast</i><br>Statewide, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for locations<br>6 CLE Hours                    |
| <b>APR 12-14</b> | Southeastern Bankruptcy Law Institute<br><i>33rd Annual Seminar on Bankruptcy Law and Rules</i><br>Atlanta, Ga.<br>19.4 CLE Hours                      | <b>APR 19</b>    | ICLE<br><i>Advanced Debt Collection</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours   |

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



- |               |   |                  |  |
|---------------|---|------------------|--|
| <b>APR 19</b> | ICLE<br><i>Hot Topics &amp; Trends in Sports</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>3 CLE Hours                        | <b>APR 25</b>    | Mealey Publications, Inc.<br><i>14th Annual Insurance Insolvency &amp; Reinsurance Roundtable</i><br>Scottsdale, Ariz.<br>11.5 CLE Hours   |
| <b>APR 19</b> | ICLE<br><i>School &amp; College Law</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours                                 | <b>APR 26-27</b> | Georgetown University School of Law/D.C. Bar<br><i>Representing &amp; Managing Tax-Exempt Organizations</i><br>Washington, D.C.<br>14 CLE Hours                                  |
| <b>APR 20</b> | ICLE<br><i>Nuts &amp; Bolts of Business Law Satellite Broadcast</i><br>Statewide, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours   | <b>APR 26-28</b> | ICLE<br><i>Solo &amp; Small Firm Institute &amp; Technology Showcase</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for locations<br>12 CLE Hours |
| <b>APR 20</b> | ICLE<br><i>Making the Mind-Body Connection</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours                          | <b>APR 26</b>    | NBI, Inc.<br><i>Employee Discharge &amp; Documentation – How Not To Become A Defendant</i><br>Atlanta, Ga.<br>6.7 CLE Hours  |
| <b>APR 20</b> | ICLE<br><i>PowerPoint in the Courtroom</i><br>Athens, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours                               | <b>APR 27</b>    | ICLE<br><i>Metro City and County Attorneys</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours                             |
| <b>APR 25</b> | ICLE<br><i>Guardian Ad Litem Training</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours                               | <b>MAY 3</b>     | ICLE<br><i>Advanced Slip and Fall</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours                                      |
| <b>APR 25</b> | ICLE<br><i>Nuts &amp; Bolts of Business Law Satellite Rebroadcast</i><br>Statewide, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours | <b>MAY 3</b>     | ICLE<br><i>Winning at Mediation</i><br>Atlanta, Ga.<br>See <a href="http://www.iclega.org">www.iclega.org</a> for location<br>6 CLE Hours  |

# April-May

**MAY 3-5**

ICLE  
*Real Property Law Institute*  
Destin, Fla.  
See [www.iclega.org](http://www.iclega.org) for locations  
12 CLE Hours

**MAY 4**

ICLE  
*Entertainment Law Institute*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 4**

ICLE  
*Defense of Drinking Drivers*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 7**

Atlanta Tax Forum, Inc.  
*Current Trends in Estate Planning  
Now & Tomorrow*  
Atlanta, Ga.  
1 CLE Hours

**MAY 10**

ICLE  
*Business Law Immigration*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 10**

ICLE  
*Hot Tax Topics for Tax Attorneys  
& CPAs*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 11**

ICLE  
*Jury Trial*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 11**

ICLE  
*Federal Criminal Practice*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 17**

ICLE  
*Georgia Appellate Practice*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 17**

ICLE  
*Animals and the Law*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 18**

ICLE  
*Employers' Duties & Problems*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 18**

ICLE  
*Construction, Materialmen's  
& Mechanics Liens*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE Hours

**MAY 18**

NBI, Inc.  
*Bankruptcy Law & Procedure From  
Start to Finish*  
Self-Study  
6 CLE Hours

**MAY 18**

NBI, Inc.  
*Bankruptcy Law & Procedure From  
Start to Finish*  
Atlanta, Ga.  
6 CLE Hours

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





**MAY 24-26** ICLE  
*Family Law Institute*  
 Amelia Island, Fla.  
 See [www.iclega.org](http://www.iclega.org) for location  
 12 CLE Hours

**JUN 21-23** ICLE  
*Southeastern Admiralty Law Institute*  
 Amelia Island, Fla.  
 See [www.iclega.org/seali](http://www.iclega.org/seali) for location  
 9 CLE Hours

**JUN 21-24** ICLE  
*Gary Christy Memorial Trial Skills Clinic*  
 Athens, Ga.  
 UGA Law School  
 24 CLE Hours

**JUN 22** ICLE  
*Defense of Drinking Drivers*  
 Tifton, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 6 CLE Hours

## 2007 State Bar Annual Meeting CLE Schedule

Join other Bar members at the 2007 State Bar of Georgia Annual Meeting at the Sawgrass Marriott Resort & Spa, Ponte Vedra Beach, Fla., and earn CLE credits while enjoying your time with colleagues, friends and family. Visit [www.gabar.org](http://www.gabar.org) for more information and to register.

### Preventing Legal Malpractice Claims and Ethics Complaints in Your Law Practice

*Ethics Seminar*

Thursday, June 14, 9 a.m.–12 p.m.

Credit: 3 CLE with 2 ethics and 1 professionalism

### Nuts and Bolts, Excel and Excedrin—A Primer for the New Child Support Guidelines

*Family Law Section Seminar*

Thursday, June 14, 9 a.m.–12 p.m.

Credit: 3 CLE

### Write Here, Write Now: A Drafting Skills Workshop

*Young Lawyers Division Seminar*

Thursday, June 14, 9 a.m.–12 p.m.

Credit: 3 CLE with 1 professionalism

### Casemaker Review in Two Hours for the Georgia Lawyer

*Casemaker Training Seminar*

(Choose one of the following two sessions.)

Thursday, June 14, 2 p.m.–4 p.m.

Friday, June 15, 2 p.m.–4 p.m.

Credit: 2 CLE

### War Stories VIII: The Judicial District Professionalism Program and War Stories

*Bench & Bar Seminar*

Thursday, June 14, 2 p.m.–5 p.m.

Credit: 3 CLE hours with 1 professionalism and 3 trial practice

### An Update on Federal Mandatory Sentencing Guidelines and the Effect on the African-American Community

*GAAAA and GABWA Seminar*

Thursday, June 14, 2 p.m.–5 p.m.

Credit: 3 CLE hours with 1 professionalism and 3 trial practice

### Making “Justice for All” A Reality

*Supreme Court of Georgia Equal Justice*

*Commission Committee on Civil Justice Seminar*

Friday, June 15, 2 p.m.–5 p.m.

Credit: 3 CLE hours, including 1 professionalism and 1 ethics hour; approved for MCJE credit

### Torts, Ethics and Professionalism

*Tort Law Seminar*

Friday, June 15, 2 p.m.–5 p.m.

Credit: 3 CLE hours with 1 ethics, 1 professionalism and 1 trial practice

# First Publication of Proposed Formal Advisory Opinion No. 05-R2

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 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 by May 15, 2007, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. After consideration of comments, 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-R2

### QUESTION PRESENTED:

May a lawyer ethically disclose information concerning the financial relationship between the lawyer and his client to a third party in an effort to collect a fee from the client?

### SUMMARY ANSWER:

A lawyer may ethically disclose information concerning the financial relationship between himself and his client in direct efforts to collect a fee, such as bringing suit or using a collection agency. Otherwise, a lawyer may not report the failure of a client to pay the lawyer's bill to third parties, including major credit reporting services, in an effort to collect a fee.

### OPINION:

This issue is governed primarily by Rule 1.6 of the Georgia Rules of Professional Conduct. Rule 1.6 provides, in pertinent part:

(a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these rules or other law, or by order of the Court.

Comment 5 to Rule 1.6 provides further guidance:

*Rule 1.6: Confidentiality of Information* applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

Former Standard 28 limited confidentiality to "confidences and secrets of a client." However, Rule 1.6 expands the obligations by requiring a lawyer to "maintain in confidence all information gained in the professional relationship" including the client's secrets and confidences.

An attorney's ethical duty to maintain confidentiality of client information is distinguishable from the attorney-client evidentiary privilege of O.C.G.A. §§24-9-21, 24-9-24 and 24-9-25. Tenet Healthcare Corp. v. Louisiana Forum Corp., 273 Ga. 206, 209-10 (2000). Thus, Rule 1.6 applies not only to matters governed by the attorney-client privilege, but also to non-privileged information arising from the course of representation. Information concerning the financial relationship between the lawyer and client, including the amount of fees that the lawyer contends the client owes, may not be disclosed, except as permitted by the Georgia Rules of Professional Conduct, other law, order of the court or if the client consents.

Rule 1.6 authorizes disclosure in the following circumstances:

(b)(1) A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:

...

(iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and

the client, to establish a defense to a criminal charge or civil action against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

The comments to Rule 1.6 clarify that such disclosures should be made only in limited circumstances. While Comment 17 to Rule 1.6 provides that a lawyer entitled to a fee is permitted to prove the services rendered in an action to collect that fee, it cautions that a lawyer must make every effort practicable to avoid unnecessary disclosure of information related to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure. Further caution is found in Comment 12, which provides that "[i]n any case, a disclosure adverse to the client's interest should be no greater than a lawyer reasonably believes necessary to the purpose."

In Georgia, it is ethically permissible for a lawyer to retain a collection agency as a measure of last resort in order to collect a fee that has been properly earned. Advisory Opinion No. 49 issued by the State Disciplinary Board. Advisory Opinion 49, however, only applies to a referral to a "reputable collection agency". Advisory Opinion 49 further states that a lawyer should exercise the option of revealing confidences and secrets necessary to establish or collect a fee with considerable caution. Thus, while use of a reputable collection agency to collect a fee is ethically proper, disclosures to other third parties may not be ethically permissible. Formal Advisory Opinion 95-1 provides that limitations exist on a lawyer's efforts to collect a fee from his client even through a fee collection program.

Other jurisdictions that have considered similar issues have distinguished between direct efforts to collect an unpaid fee, such as bringing suit or using a collection agency, from indirect methods in which information is disclosed to third parties in an effort to collect unpaid fees. In these cases, the direct methods have generally been found to be ethical, while more indirect methods, such as reporting non-paying clients to credit bureaus, have been found to be unethical. South Carolina Bar Advisory Opinion 94-11 concluded that a lawyer may ethically use a collection agency to collect past due accounts for legal services rendered but cannot report past due accounts to a credit bureau. The Opinion advises against reporting non-paying clients to credit bureaus because (1) it is not necessary for establishing the lawyer's claim for compensation, (2) it risks disclosure of confidential information, and (3) it smacks of punishment in trying to lower the client's credit rating. S.C. Ethics Op. 94-11 (1994). See also South Dakota Ethics Op. 95-3 (1995) and Mass. Ethics Op. 00-3 (2000)

The Alaska Bar Association reached a similar conclusion when it determined that "an attorney who lists a

client with a credit agency has revealed confidential information about the client for a purpose not permitted by ARPC 1.6 (b) (2) since such a referral is at most an indirect attempt to pressure the client to pay the fee." Alaska Ethics Op. No. 2000-3 (2000). The Alaska Bar Ethics Opinion is based on the notion that listing an unpaid fee with a credit bureau is likely to create pressure on the client to pay the unpaid fee more from an in terrorem effect of a bad credit rating than from any merit to the claim.

The State Bar of Montana Ethics Committee concluded that an attorney may not report and disclose unpaid fees to a credit bureau because such reporting "is not necessary to collect a fee because a delinquent fee can be collected without it." Mont. Ethics Op. 001027 (2000). The Montana Opinion further concluded, "The effect of a negative report is primarily punitive [and] it risks disclosure of confidential information about the former client which the lawyer is not permitted to reveal under Rule 1.6." See also New York State Ethics Opinion 684 (1996) (reporting client's delinquent account to credit bureau does not qualify as an action "to establish or collect the lawyer's fee" within the meaning of the exception to the prohibition on disclosure of client information). But see Florida Ethics Opinion 90-2 (1991) (it is ethically permissible for an attorney to report a delinquent former client to a credit reporting service, provided that confidential information unrelated to the collection of the debt was not disclosed and the debt was not in dispute).

While recognizing that in collecting a fee a lawyer may use collection agencies or retain counsel, the *Restatement (Third) of the Law Governing Lawyers* concludes that a lawyer may not disclose or threaten to disclose information to non-clients not involved in the suit in order to coerce the client into settling and may not use or threaten tactics, such as personal harassment or asserting frivolous claims, in an effort to collect fees. *Restatement (Third) of the Law Governing Lawyers* § 41, comment d (2000). The *Restatement* has determined that collection methods must preserve the client's right to contest the lawyer's position on the merits. *Id.* The direct methods that have been found to be ethical in other jurisdictions, such as bringing suit or using a collection agency, allow the client to contest the lawyer's position on the merits. Indirect efforts, such as reporting a client to a credit bureau or disclosing client financial information to other creditors of a client or to individuals or entities with whom the client may do business, are in the nature of personal harassment and are not ethically permissible. Accordingly, a lawyer may not disclose information concerning the financial relationship between himself and his client to third parties, other than through direct efforts to collect a fee, such as bringing suit or using a collection agency.



# First Publication of Amended Proposed Formal Advisory Opinion No. 05-1

Formal Advisory Opinion No. 87-6, issued by the Supreme Court of Georgia on July 12, 1989, 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. 86-7 has changed due to the Georgia Rules of Professional Conduct. Accordingly, the Formal Advisory Opinion Board has redrafted Formal Advisory Opinion No. 86-7. Proposed Formal Advisory Opinion No. 05-1 is a redrafted version of Formal Advisory Opinion No. 86-7. Proposed Formal Advisory Opinion No. 05-1 addresses the same question presented in Formal Advisory Opinion No. 86-7; however, it provides an interpretation of the Georgia Rules of Professional Conduct.

Proposed Formal Advisory Opinion No. 05-1 was treated like a new opinion and appeared in the April 2005 issue of the Georgia Bar Journal for 1st publication in compliance with Bar Rule 4-403(c). Four (4) comments regarding this opinion was received from members of the Bar. After reviewing the proposed opinion in light of the comments, the Formal Advisory Opinion Board amended Proposed Formal Advisory Opinion No. 05-1, 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 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 amended 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 May 15, 2007, 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.

## AMENDED PROPOSED FORMAL ADVISORY OPINION NO. 05-1

### QUESTION PRESENTED:

Ethical propriety of a lawyer interviewing the officers, employees, or other constituents of an organization without consent of the organization's counsel when that organization is the opposing party in litigation.

### SUMMARY ANSWER:

An attorney may not ethically interview an employee or other constituent of an organization which is an opposing party in planned or pending litigation without the consent of the organization's counsel where the employee or constituent is either:

- (1) a person having managerial responsibility on behalf of the organization; or
- (2) a person whose acts or omissions may be imputed to the organization in relation to the subject matter of the case for the purpose of civil or criminal liability; or
- (3) a person whose statement may constitute an admission on the part of the organization in the sense that the statement will bind the organization.

### OPINION:

Correspondent asks when it is ethically proper for a lawyer to interview the officers and employees of an organization, when that organization is the opposing party in litigation, without consent of the organization's counsel.

The question involves an interpretation of Rule 4.2 of the Georgia Rules of Professional Conduct that provides as follows:

A lawyer who is representing a client in a matter shall not communicate about the subject of the representa-

tion with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by constitutional law or statute. The maximum penalty for a violation of this Rule is disbarment.

The no-contact rule's restriction on a lawyer directly communicating with persons represented by other counsel about the matter that is the subject of the representation serves important public interests as set out in Comment [7] to Georgia Rule 4.2. These interests include:

- (a) protecting against misuse of the imbalance of legal skill between a lawyer and a layperson; (b) safeguarding the client-attorney relationship from interference by adverse counsel; (c) ensuring that all valid claims and defenses are raised in response to inquiry from adverse counsel; (d) reducing the likelihood that clients will disclose privileged or other information that might harm their interests; and (e) maintaining the lawyers [sic] ability to monitor the case and effectively represent the client.

At the same time, there are important competing considerations. These include permitting a lawyer to meet his or her obligation to conduct a reasonable inquiry before asserting a claim, defense, or position in litigation as mandated by O.C.G.A. § 9-15-14 or Federal Rule of Civil Procedure 11. These interests weigh against interpreting the no-contact rule so broadly that it blocks all access to information helpful to the litigation from employees or constituents of a represented organization except with the consent of the organization's counsel or through formal, costly discovery. See *Niesig v. Team 1*, 76 N.Y.2d 363, 372, 558 N.E. 2d 1030, 1034, 559 N.Y.S. 2d 493, 497 (1990) (Foreclosing all direct, informal interviews of employees of a corporate party "closes off avenues of informal discovery of information that may serve both the litigants and the entire justice system by uncovering relevant facts, thus promoting the expeditious resolution of disputes.").

Comment [4A] to Georgia Rule of Professional Conduct 4.2 seeks to balance these interests and sets the parameters for applying Rule 4.2 to a represented organization. It prohibits communications by a lawyer for another person or entity concerning the matter in representation with an employee or other constituent of the organization who is either:

- (1) A person having a managerial responsibility on behalf of the organization;
- (2) Any other person whose act or omission in connection with that matter may be imputed to the organization for the purposes of civil or criminal liability; or

- (3) A person whose statement may constitute an admission on the part of the organization.

As Comment [4A] sets out, persons "having a managerial responsibility on behalf of the organization" should not be contacted. This includes officers of the organization as well as those lower-ranking employees whose title or job description indicates that they hold a managerial position.

It is important to note that in this respect Georgia Comment [4A] differs from the current Comment [7] to the American Bar Association's Model Rule 4.2. The revised language of ABA Comment [7] places off limits a person "who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter." The American Law Institute's Restatement (Third) of the Law Governing Lawyers § 100 similarly limits contact with a current employee or other agent "if the employee or other agent supervises, directs, or regularly consults with the lawyer concerning the matter or if the agent has the power to compromise or settle the matter." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100 (2000). Thus, in recent years, both the ABA and ALI have narrowed the scope of the no-contact rule to only those managers who have close, regular, or supervisory contact with the organization's counsel. Because the language of Georgia Comment [4A] does not mirror that used in ABA Comment [7], it should not be read as narrowly as the ABA's Model Rule. Unlike ABA Model Rule 4.2, Georgia Rule of Professional Conduct 4.2 applies to a wider group of persons having "managerial responsibility on behalf of the organization" and is not limited just to those officers or managerial personnel who supervise, direct, and have close contact with the organization's lawyer.

Consistent with both Model Rule 4.2 and Restatement (Third) § 100, Comment [4A] also places off limits an employee or agent whose act or omission may be imputed to the organization for the purposes of liability, such as under a theory of *respondeat superior*.

The third type of constituent who should not be contacted according to Comment [4A] is any person "whose statement may constitute an admission on the part of the organization." Courts around the country have differed over whether the "admission" language should be construed broadly, by reference to Federal Rule of Evidence 801(d)(2)(D), or more narrowly, as is the modern trend, to include only those persons whose statements bind the organization in the matter in the sense that the admissions cannot be impeached, contradicted, or disavowed at trial. The so-called "managing-speaking agent test," adopted by the New York Court of Appeals in *Niesig supra*, has been endorsed by the

Restatement (Third) of the Law Governing Lawyers. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100, Reporter's Note, cmt. e (2000). It does not apply the no-contact rule to any employee of the organization whose statement may be admissible in evidence. Instead, it applies the no-contact rule to "those officials, but only those, who have the legal power to bind the corporation in the matter." 76 N.Y.2d at 374, 558 N.E.2d at 1035, 559 N.Y.S.2d at 498.

Broadly interpreting the phrase in Georgia Comment [4A] of "person whose statement may constitute an admission" to mean any employee whose statement may be admissible in evidence as an exception to the hearsay rule goes beyond the purpose of protecting the client-lawyer relationship of a represented person and prevents informal inquiries of potential fact witnesses who are employees of an organization. Hence, the admissions language should be understood to protect against uncounseled "admissions" from those who can obligate or bind the organization. This interpretation is consistent with the ALI's position in Restatement (Third) § 100(2)(c), which states that a "represented non-client includes...a current employee or other agent of an organization represented by a lawyer...if a statement of the employee or other agent, under applicable rules of evidence, would have the effect of binding the organization with respect to proof of the matter." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100 (2000).

According to the Reporter's Note to the Restatement (Third), binding statements are those to which "no evidence contrary to the admission may be offered" in court. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100, Reporter's Note, cmt. e (2000).

If the employee or constituent of an organization does not fall into any of the foregoing categories, a lawyer may contact and interview the employee without the prior consent of the organization's counsel.

Before a lawyer conducts any interview with a constituent of the opposing party presumably permitted under Georgia Rule of Professional Conduct 4.2, the

lawyer should heed the guidance of Comment [4B], which provides,

[I]t should be anticipated that in many instances, prior to the beginning of the interview, the interviewing lawyer will not possess sufficient information to determine whether or not the relationship of the interviewee to the entity is sufficiently close to place the person in the "represented" category. In those situations the good faith of the lawyer in undertaking the interview should be considered. Evidence of good faith includes an immediate and candid statement of the interest of the person on whose behalf the interview is being taken, a full explanation of why that person's position is adverse to the interests of the entity with which the interviewee is associated, the exploration of the relationship issue at the outset of the interview and the cessation of the interview immediately upon determination that the interview is improper.

Even after establishing that the person being interviewed may be contacted *ex parte*, there remain limitations on what the attorney may ask the constituent during the course of the interview. Although the constituent is not covered by Georgia's no-contact rule, the interviewing attorney should not inquire about any conversations the constituent may have had with the organization's attorneys regarding the matter. Confidential communications between the corporation's counsel and an employee who is not covered by the no-contact rule can nevertheless be protected by the organization's attorney-client privilege. See generally *Upjohn v. United States*, 449 U.S. 383, (1981); *Marriott Corp v. American Academy of Psychotherapists, Inc.*, 157 Ga. App. 497, 277 S.E. 2d 785 (1981). As a result, care and restraint must be exercised when questioning any constituent of a represented organization.

This opinion only addresses contacts with *current* employees of a represented organization. Formal Advisory Opinion No. 94-3 allows a lawyer to contact and interview *former* employees of an organization represented by counsel without the consent of the organization's lawyer.

## 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 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 amended 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 May 15, 2007, 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.

## AMENDED 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 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 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 and the insured. If the lawyer undertakes to represent the insured, the lawyer has duties to the insured, 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 representing the insured 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).

## Notice of Filing of Formal Advisory Opinions in Supreme Court

### Second Publication of Proposed Formal Advisory Opinion No. 05-13 Hereinafter known as "Formal Advisory Opinion No. 05-13"

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after April 15, 2007.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, **only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia.** The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the

Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403(d) must be simultaneously served upon the Board through the Office of the General Counsel of the State Bar or Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223(a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State

Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

**STATE BAR OF GEORGIA, ISSUED BY  
THE FORMAL ADVISORY OPINION  
BOARD, PURSUANT TO RULE 4-403  
ON JANUARY 19, 2007, FORMAL  
ADVISORY OPINION NO. 05-13  
(Redrafted Version of Formal  
Advisory Opinion No. 93-1)**

**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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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,<sup>4</sup> 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."

#### 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 informa-

tion 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.

## Supreme Court Issues Formal Advisory Opinion No. 05-5 Pursuant to Rule 4-403(d)

The second publication of this opinion appeared in the October 2005 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about October 5, 2005. The opinion was filed with the Supreme Court of Georgia on October 18, 2005. The State Bar of Georgia filed a request for discretionary review with the Supreme Court of Georgia on October 18, 2005, pursuant to Rule 4-403(d). On February 13, 2007, the Supreme Court of Georgia issued Formal Advisory Opinion No. 05-5 pursuant to Rule 4-403(d). Following is the full text of the opinion issued by the Supreme Court.

**FORMAL ADVISORY OPINION NO. 05-5 Approved And Issued On February 13, 2007, Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 92-1, Supreme Court Docket No. S06U0798**

### QUESTION PRESENTED:

1) Ethical propriety of a law firm obtaining a loan to cover advances to clients for litigation expenses;

2) Ethical considerations applicable to payment of interest charged on loan obtained by law firm to cover advances to clients for litigation expenses.

### OPINION:

Correspondent law firm asks if it is ethically permissible to employ the following system for payment of certain costs and expenses in contingent fee cases. The law firm would set up a draw account with a bank, with the account secured by a note from the firm's individual lawyers. When it becomes necessary to pay court costs, deposition expenses, expert witness fees, or other out-of-pocket litigation expenses, the law firm would obtain an advance under the note. The firm would pay the interest charged by the bank as it is incurred on a monthly or quarterly basis. When a

client makes a payment toward expenses incurred in his or her case, the amount of that payment would be paid to the bank to pay down the balance owed on his or her share of expenses advanced under the note. When a case is settled or verdict paid, the firm would pay off the client's share of the money advanced on the loan. If no verdict or settlement is obtained, the firm would pay the balance owed to the bank and bill the client. Some portion of the interest costs incurred in this arrangement would be charged to the client. The contingent fee contract would specify the client's obligations to pay reasonable expenses and interest fees incurred in this arrangement.

The first issue is whether it is ethically permissible for lawyers to borrow funds for the purpose of advancing reasonable expenses on their clients' behalf. If so, we must then determine the propriety of charging clients interest to defray part of the expense of the loan.

In addressing the first issue, lawyers are generally discouraged from providing financial assistance to their clients. Rule 1.8(e) states:

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; or
- (2) a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client.

Despite that general admonition, contingent fee arrangements are permitted by Rule 1.5(c), which states:

- (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.

The correspondent's proposed arrangement covers only those expenses which are permitted under Rule 1.8(e). Paragraph (e) of Rule 1.8 eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer and further limits permitted assistance to cover costs and expenses directly related to litigation. See Comment (4) to Rule 1.8.

The arrangement also provides that when any recovery is made on the client's behalf, the recovery would first be debited by the advances made under the note, with payment for those advances being made by the firm directly to the bank. The client thus receives only that recovery which remains after expenses have been paid. The client is informed of this in correspondent's contingent fee contract, which states that "all reasonable and necessary expenses incurred in the representation of said claims shall be deducted after division as herein provided to compensate attorney for his fee."

In the case where recovery is not obtained, however, the lawyers themselves are contractually obligated to pay the amount owed directly to the bank. Correspondent's proposed contract as outlined in the request for this opinion does not inform the client as to possible responsibility for such expenses where there is no recovery. It is the opinion of this Board that Rules 1.5(c) and 1.8(e), taken together, require that the contingent fee contract inform the client whether he is or is not responsible for these expenses, even if there is no recovery.

Although the client may remain "responsible for all or a portion of these expenses," decisions regarding the appropriate actions to be taken to deal with such liability are entirely within the discretion of the lawyers. Since this discretion has always existed, the fact that the lawyers have originally borrowed the money instead of advancing it out-of-pocket would seem to be irrelevant, and the arrangement is thus not impermissible.

The bank's involvement would be relevant, however, were it allowed to affect the attorney-client relationship, such as if the bank were made privy to clients' confidences or secrets (including client identity) or permitted to affect the lawyer's judgment in representing his or her client. See generally, Rule 1.6. Thus, the lawyer must be careful to make sure that the bank understands that its contractual arrangement can in no



way affect or compromise the lawyer's obligations to his or her individual clients.

The remaining issue is whether it is ethically permissible for lawyers to charge clients interest on the expenses and costs advanced via this arrangement with the bank. As in the first issue, the fact that the expenses originated with a bank instead of the law firm itself is irrelevant, unless the relationship between lawyer and bank interferes with the relationship between lawyer and client. Assuming it does not, the question is whether lawyers should be permitted to charge their clients interest on advances.

In Advisory Opinion No. 45 (March 15, 1985, as amended November 15, 1985), the State Disciplinary Board held that a lawyer may ethically charge interest on clients' overdue bills "without a prior specific agreement with a client if notice is given to the client in advance that interest will be charged on fee bills which become delinquent after a stated period of time, but not less than 30 days." Thus, the Board found no general impropriety in charging interest on overdue bills. There is no apparent reason why advanced expenses for which a client may be responsible under a contingent fee agreement (whether they are billed to the client or deducted from a recovery) should be treated any differently. Thus, we find no ethical impropriety in charging lawful interest on such amounts advanced on the client's behalf.<sup>1</sup>

In approving the practice of charging interest on overdue bills, the Board held that a lawyer must comply with "all applicable law<sup>1</sup> . . . and ethical considerations."

The obvious intent of Rule 1.5(c) is to ensure that clients are adequately informed of all relevant aspects of contingent fee arrangements, including all factors taken into account in determining the amount of their ultimate recovery. Since any interest charged on advances could affect the ultimate recovery as much as other factors mentioned in Rule 1.5(c), it would be inconsistent to permit lawyers to charge interest on these advances without revealing the intent to do so in the fee contract. Thus, we conclude that it is permissible to charge interest on such advances only if (i) the client is notified in the contingent fee contract of the maximum rate of interest the lawyer will or may charge on such advances; and (ii) the written statement given to the client upon conclusion of the matter reflects the interest charged on the expenses advanced in the matter.

1. The opinion makes specific mention of O.C.G.A. 7-4-16, the Federal Truth in Lending and Fair Credit Billing Acts in Title I of the Consumer Credit Protection Act as amended (15 USC 1601 et seq.). We state no opinion as to the applicability of these acts or others to the matter at hand.

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

### Notice of and Opportunity for Comment on Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit, and of proposed amendments to Addendum Five, Non-Criminal Justice Act Counsel Appointments.

A copy of the proposed amendments may be obtained on and after April 2, 2007, from the court's website at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by May 2, 2007.

## Proposed Amendments to Uniform Superior Court Rules 17 and 24

At its business meeting on Jan. 17, 2007, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 17 and 24. A copy of the proposed amendments may be found at the council's website at [www.cscj.org](http://www.cscj.org). Should you have

any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 108, Atlanta, GA 30334 or fax them to 404-651-8626. To be considered, comments must be received by Tuesday, May 15, 2007.

Attention all **Local** and **Voluntary** Bars in **Georgia**, it's time to submit your **entries** to be recognized for all your **hard work**!

# 2007 State Bar of Georgia *Local Bar Activities Awards*

## Guidelines

In order to encourage and support local and circuit bars and their service programs, to promote activities which relate to the improvement of the administration of justice, the objectives of the State Bar of Georgia, and the image of lawyers, the State Bar annually sponsors an awards program which recognizes excellence in local and circuit bar associations. Administered by the Local Bar Activities Committee, awards are presented to winners at the State Bar's Annual Meeting.

Awards are presented for the 2006-07 Bar year which began July 1, 2006, with an exception for the Law Day Award, which may be submitted for events in either 2006 or 2007.

## Eligibility and Competition Categories

Each local or circuit bar association recognized by the State Bar is eligible to submit an entry for local and circuit bar awards. The following categories relating to membership size will be used in judging the Award of Merit, Newsletter and Law Day Awards: Under 50 members, 51 to 100 members, 101 to 250 members, 251 to 500 members, and Over 500 members. Other categories not based on size include: Excellence in Bar Leadership, Best New Entry Award and the President's Cup Award.

## Deadline for Entry

The deadline for entry this year is May 9, 2007.

## Form of Entry

Send one copy of your entry to: Communications Department, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303.

Entries should be typewritten (double-spaced) on letter paper (8.5 x 11) and limited to 25 pages. Each entry should be accompanied by a letter or statement with the following information: name; address; president of the organization (name, address, telephone); number of members; amount of dues; and person(s) primarily responsible for entry preparation (name address, telephone).

## Preparation Tips

In describing the association's overall activities, the entry may describe bar meetings (programs, guests, social activities), legal aid participation, legal reference services, public information programs, grievance procedures, opposition to illegal activities in the community, involvement with law students, legal education programs, etc.

The judges will be more interested in knowing the beneficiaries of and participants in such programs and the ingenuity shown in projects rather than in the method of entry presentation.

## For More Information

For more information on each category and additional guidelines, please contact Stephanie Wilson at 404-527-8792 or [stephaniew@gabar.org](mailto:stephaniew@gabar.org).



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Keep your information up-to-date with the Bar's membership department.

Please check your information using the Bar's Online Membership Directory. Member information can be updated 24 hours a day by visiting [www.gabar.org](http://www.gabar.org).

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# 2007 Annual Meeting

June 14-17, Ponte Vedra Beach, Florida  
Sawgrass Marriott Resort & Spa



## Opening Night “A Night at the Street Fair”

Join fellow Bar members and their guests at the section-sponsored Opening Night Festival. There you will experience the sights, sounds and smells of an authentic street fair, complete with stilt-walking jugglers, games of skill, arts and crafts, and caricature artists. Throw on your favorite casual attire and head for the street fair!

## Presidential Inaugural Gala

The evening will begin with an elegant reception honoring the Supreme Court of Georgia Justices, followed by the Awards Ceremony where Gerald M. Edenfield will be sworn in as the 2007-08 State Bar president. Following the inauguration and awards, discover an evening of delight in one (or all!) of four themed rooms of dinner, libations and entertainment!

## CLE, Section & Alumni Events

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

## Social Events

Enjoy an exciting and entertaining welcoming reception, the Supreme Court Reception and Annual Presidential Inaugural Gala, along with plenty of recreational and sporting events to participate in with your colleagues and family.

## Family Activities

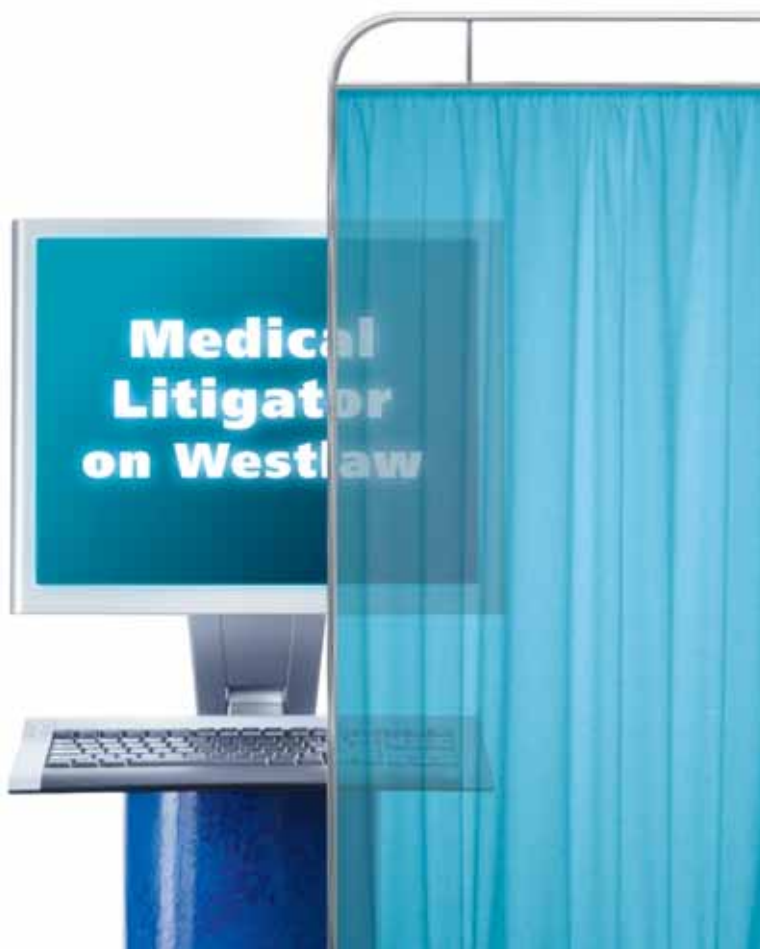
Golf, tennis, shopping, sight-seeing all available for your convenience.

## Kid's Programs

Programs designed specifically to entertain children will be available.

## Exhibits

Attendees please don't forget to visit the booths at the Annual Meeting. If you get your exhibitor card stamped with the appropriate number you will be entered into a drawing to win a 2-night stay at the Sawgrass Marriott Resort & Spa.



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