

Georgia
Bar

Journal

December 2005 ■ Volume 11 ■ Number 4

Lobbyist Registration Changes

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Georgia's New Ethics Laws:
A Summary of the Changes Relevant
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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: C. Tyler Jones, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; phone: (404) 527-8736; tyler@gabar.org.

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"You can also help us in the Bar's new grassroots effort to improve communications between the judicial and legislative branches of government by taking a personal interest in building relationships with your local legislators."

Bar's Legislative Program Needs Your Help

By Robert D. Ingram

Each year the State Bar of Georgia operates its Legislative Program through voluntary contributions from Georgia lawyers rather than from mandatory bar dues. With fewer lawyers serving in the Legislature than ever before, our Legislative Program is the primary way Georgia lawyers have input into the legislative process.

RECENT LEGISLATIVE PROGRAM HIGHLIGHTS

The funds for the State Bar Legislative Program are used to employ representatives to track legislation and offer input from Georgia lawyers regarding specific legislation. The program also provides expert advice to legislators on many important issues germane to the practice of law. Recent highlights of the Legislative Program include:

- Successfully opposing legislation to impose unlimited business/occupation tax on attorneys

- Creation and funding of a statewide public defender system
- Substantial revision of the Uniform Commercial Code to facilitate clarity in business transactions
- Modernization of the Probate Code, Corporate Code, Non-Profit Corporate Code, and Guardianship Code
- Creation of pilot Family and Business Law Courts
- Opposition to legislation eliminating educational requirements for lawyers (currently being considered again in 2006)

Negative Check-Offs

Last year Georgia lawyers donated \$273,600 to the Legislative Program through \$20 contributions made as the only negative check-off on the Annual Dues Statement with more than 40 percent of Georgia lawyers participating.

This year, for the first time, a proposal was made to include a \$150 negative check-off for the Georgia Legal Services Program (GLSP) along with a \$25 negative check-off for the Bar's Legislative Program. Despite concerns that including GLSP as a negative check-off would result in lower contributions for the Legislative Program, a majority of the Board voted to include GLSP as a negative check-off on the 2005 Annual Dues Statement. The result has been mixed.

The good news is that lawyer contributions for GLSP have jumped to \$755,000, an increase of more than \$500,000. We are all thankful for the increased contributions to this worthwhile program of providing civil legal assistance to those in our state who would otherwise be without legal representation.

The bad news is that participation in the Legislative Program has dropped from more than 40 percent to 17 percent resulting in a \$189,000 shortfall from the amount of money which would have been raised if Georgia lawyers had participated at the same percentage as last year. Without additional voluntary contributions, it will be impossible for the Bar to continue its Legislative Program as it has in years past. Accordingly, we are asking all Georgia lawyers to consider voluntary contributions between \$25 and \$100 to the Bar's Legislative Program. You can do so by sending a check payable to the State Bar of Georgia Legislative Fund to State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. You can also make a contribution by visiting the State Bar's website www.gabar.org.

Although I hope Georgia lawyers will continue to join those of us who voluntarily support GLSP, the Atlanta Legal Aid Society, the Cobb Justice Foundation, and many other civil legal assistance programs, I will again be asking the Board of Governors at the 2006 Spring Meeting not to endanger the Bar's Legislative Program by including these programs as negative check-offs on our Annual Dues Statement. I encourage Georgia lawyers to contact your elected representatives on the State Bar's Board of Governors to ask them to do likewise.

GRASSROOTS COMMUNICATION PROGRAM

You can also help us in the Bar's new grassroots effort to improve communications between the judicial and legislative branches of government by taking a personal interest in building relationships with your local legislators. As officers of the court, lawyers play a critical role in the judicial branch of government, and we should make it a priority to communicate with all legislators including non-lawyer legislators. Lawyers need to take their legislators to lunch in an effort to better understand their concerns and to convey ours. Bar leaders need to invite all local legislators to bar luncheons to exchange ideas and offer input on proposed legislation.

Home Addresses Needed

In an effort to keep you apprised of legislative developments involving your locally elected legislative leaders we need your home address, which will only be used for this limited purpose. To update your address, please access the State Bar website at www.gabar.org, click Member Essentials on the left side

of the home page, and select Address Change. You will need your Bar number and birth date to make the change. Your support of the Bar's Legislative Program and your communication with legislators will help ensure that our collective voices are heard.

2006 LEGISLATION: H.B. 150 – ELIMINATION OF EDUCATIONAL REQUIREMENTS FOR LAWYERS

In 2005 House Bill 150 was successfully opposed by the State Bar of Georgia, even though the legislation did pass the House by a vote of 94 to 59. Fortunately, the legislation did not pass the Senate, but it is back on the agenda for this year. Although the Georgia Constitution and the supporting case law vests the authority to regulate the practice of law in the judicial branch of government, which includes establishing the admission requirements for would-be lawyers, House Bill 150 seeks to change that. Currently, to be eligible to take the bar exam in Georgia, an applicant must have an undergraduate degree from an accredited institution and a J.D. degree from an ABA-approved law



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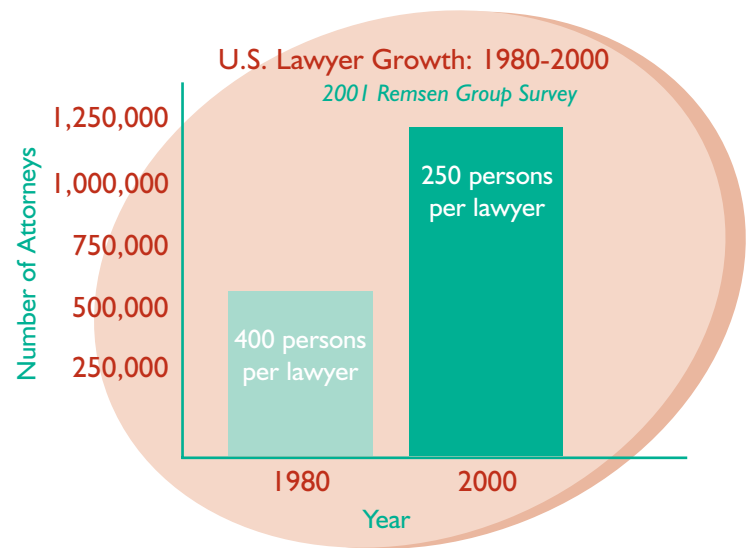
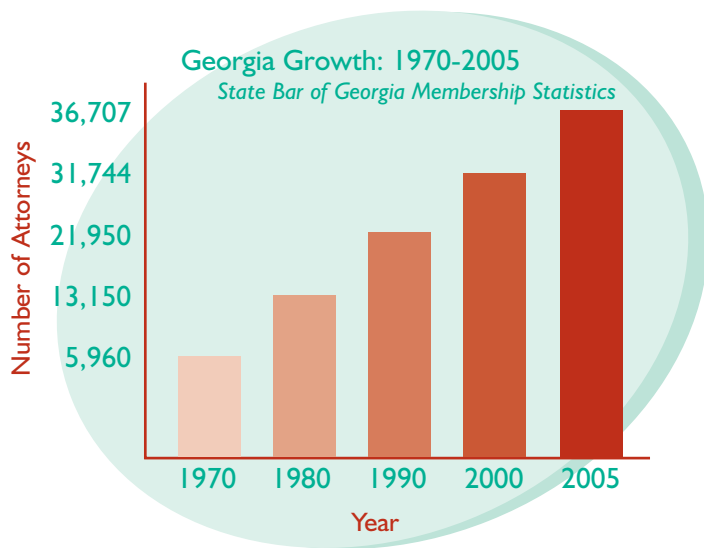
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school. The Supreme Court of Georgia has established those standards and rules, and the bar admissions and exam process is administered by the Board of Bar Examiners, an agency of the Supreme Court.

The Board of Bar Examiners and the State Bar believe that a legal education is critical to the development of skills, abilities and values of lawyers. While the bar exam does test for minimal competency, it does little to provide assurance to the public that a would-be lawyer has the training in the substantive law, ethics and practice skills to appropriately and competently handle the important transactions which the public turns to lawyers to provide.

Those of us who have been practicing law for many years see that the practice of law is becoming more complicated and demanding each year. The Supreme Court has recognized this fact and over the course of the last four decades has been increasing educational requirements for would-be lawyers in order to ensure that Georgia lawyers enter the practice better trained and prepared for the personal and professional demands which confront them.

Beginning in 1967, at which time an applicant for admission was only required to have a high school diploma and two years of law study (including "reading law"), the Supreme Court of Georgia has gradually increased the educational eligibility rules by requiring an LL.B (1967), a degree from an ABA-approved or Board of Bar Examiner-approved law school (1978), an undergraduate degree (1984), and ultimately a J.D. from an ABA-approved law school (1988). Now every applicant for admission in Georgia must meet these standards, which are similar to bar admissions' requirements in most other states, standards which are meant to assure the public that new lawyers are well-trained and competent.

Requiring an accredited undergraduate degree and an ABA-approved legal education certainly increases the likelihood that a newly admitted lawyer will be better prepared to represent clients competently and ethically than would be the case if the requirements were eliminated. The bar admission rules exist to protect the public, and there does not appear to be any empirical evidence suggesting that the standards should be lowered because

there are not enough lawyers to handle the demand for legal work from the public.

U.S. Lawyer Growth: 1980-2000

In fact, the Remsen Group, which is a public research company, conducted a survey in 2001, which determined that the number of persons per lawyer dropped from 400 persons per lawyer to 250 persons per lawyer in the 20-year period from 1980 to 2000. That translates into a drop of 7.5 persons per lawyer each year over the past 20 years. Lawyers licensed to practice in Georgia have also grown dramatically over the last several decades. (See figures above.)

These studies and many others like them suggest that there is no need to lower the standards for would-be lawyers in an effort to ensure that there are an adequate number of lawyers to meet the public's demand for legal work.

Georgia Bar Admissions Should Not Be Linked to Other States

The Supreme Court of Georgia has established rules that are specific to the needs and expectations

of Georgians. Making Georgia subject to the lowest standards of other states is not in the best interest of the citizens of this state.

House Bill 150 would eliminate educational requirements if the applicant is admitted to the bar of any other state. An examination of the admission requirements for two states demonstrates why this would be a concern.

California Bar Admission Requirements

- No undergraduate degree required
- Bar exam can be taken by applicants who have never attended a college class
- No requirement for ABA-approved law degree
- Applicants qualify for bar exam by completing correspondence law courses not approved by any authority or association

New York Bar Admission Requirements

- Allows foreign-trained lawyers to take bar exam without any U.S. educational requirements
- In 2003, 1,433 foreign-trained lawyers were admitted to the New York Bar (each year those lawyers would automatically be eligible to take the Georgia bar exam)

HB 150 – Many Reasons to Oppose


Georgia lawyers need to support the State Bar and the Board of Bar Examiners in their opposition to HB 150 on constitutional and practical grounds:

- HB 150 would be a violation of the constitutionally imposed separation of powers. See *Wallace v. Wallace*, 225 Ga. 102

(1969) and *Sams v. Olah*, 225 Ga. 497 (1969).

- Elimination of educational requirements proposed in HB 150 would more than double the number of eligible applicants for admission each year to the Georgia Bar. Currently there are approximately 1,800 eligible applicants for the bar exam each year. Elimination of the educational requirements would increase that number to approximately 4,050 per year with many being poorly prepared for the demands of the legal profession.
- Georgia would be the only state in the country to open its admissions policy to any successful bar exam taker from any other state regardless of the applicant's education or practical experience.
- HB 150 would make Georgia subject to the standards of every other state—when they change their standards, our standards would automatically change. Our applicants would only have to meet the lowest educational standard established by any other state.
- Most Georgia professionals have educational standards—applicants for medical degree must graduate from AMA-approved medical schools, architects must graduate from AIA-approved schools of architecture, etc. If HB 150 were approved, barbers in Georgia would be required to meet higher educational standards than lawyers.
- The vast majority of states require the same or similar standards as Georgia—undergraduate degree from accredited institution and an ABA-approved law school.

COMMUNICATE WITH YOUR LEGISLATORS

Over the last several months I have met with many of our state's elected legislative leaders and with representatives in the governor's office. The vast majority of these individuals are committed public servants who recognize the important role the legal profession and the judiciary serve in protecting the freedoms which make America the envy of the world. Many legislators have told me that they routinely hear from other interest groups throughout the year but rarely hear from lawyers. We need to change that. Lawyers need to do a better job of creating opportunities for our input and advice to be considered. With your help we will do so. 

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"One fifth-grader mentioned that visiting the Bar Center was better than gym class, which a teacher later told me is a huge compliment."

The Bar Center

Making the Dream a Reality

By Cliff Brashier

In the February 2005 issue of the *Georgia Bar Journal*, I discussed how Bar leaders' decade-long vision of a Bar Center came to fruition that January with the Bar Center dedication ceremony. Although it has been less than a year, I would like to update you on how "the professional gathering place for all Georgia attorneys" is serving the citizens and lawyers of Georgia.

Throughout the past 11 months the Bar Center has seen tremendous use. Instead of boring you with the details of the thousands of attorneys and Georgia citizens who have visited our first-class facilities, I want to provide you with a snapshot of a one-week period (Oct. 24 - 28, see photos on pages 12-13) of the numerous events that took place.

One of the highlights of the week was when approximately 25 third, fourth and fifth graders from Washington Park Elementary school in Monticello visited the Bar Center to see first-hand the authentic 19th Century Law Office of Woodrow Wilson exhibit in the first-floor lobby area; tour the Museum of Law, which houses exhibits from historic Georgia and national trials such as the *Brown v. Board of Education* case; and ask questions of Supreme Court of Georgia Justices George H. Carley and Harold D. Melton.

When I asked the students how they liked their visit, they excitedly informed me that it exceeded their expectations. One fifth-grader mentioned that visiting the Bar Center was better than gym class, which a teacher later told me is a huge compliment. While I'm thinking about it, I want to offer my own compliments to the students' teachers Shawn Holder and Amy Wade and also to Marlene Melvin, the curriculum and activities coordinator for the museum, and to Stacy Rieke, the Bar's Mock Trial coordinator, who all did a fantastic job answering the many questions the children asked.


Later that same day, students from Grady High School were on hand to practice their trial skills in the Bar's mock courtroom. Early next year it is our hope to give visiting school children an opportunity to participate in different mock trials during their visits here. Cases will be age appropriate, with students acting in a variety of roles to include that of lawyers, witnesses and jury members. We hope this experience will help teach them the fairness of trials, the role of public juries and the value of the rule of law.

In addition to numerous CLE offerings, fee arbitration hearings, committee meetings and section meetings, the Bar was fortunate enough to have distinguished guests visit the Bar Center. Guests included past Bar Presidents Bill Cannon and Hal Daniel, Supreme Court of Georgia Justice Robert Benham, and retired Supreme Court of Georgia Chief Justice Norman Fletcher, all of whom were on hand to participate

in a video project outlining the history of the Bar Center and its legacy for future generations.

Something else that took place during the week was Casemaker training sessions. These free sessions, in which MCLE credit is available, show members what content they have access to; teach navigation short cuts; and provide answers to general Casemaker questions. As a free resource to Bar members, I hope you've had a chance to use this member benefit. Casemaker is available 24 hours a day, seven days a week. And if that's not enough, Georgia members have a dedicated Casemaker coordinator to provide assistance. You can contact the Casemaker help line during normal working hours, Monday thru Friday, 8:30 a.m. to 5 p.m. at (877) CASE-509 or (877) 227-3509, or send an e-mail to casemaker@gabar.org.

No other bar building in the United States has the facilities to provide anything comparable when it comes to public law-related educational opportunities, and professional conferences. When you get an opportunity, I hope you will visit the Bar Center; parking is free for Bar members. If you are in Atlanta for the day be sure to schedule a time to tour the facilities, or just take a break and relax in the lawyer's lounge, which is stocked with refreshments for the exclusive use of Bar members and their guests during normal business hours. If you would like to reserve a room, please be sure to sign up early – we already have dates reserved for July 2007.

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



The first group of school children to visit the Bar Center were from Washington Park Elementary School in Monticello. (See pages 12-13 for more photos of the Bar Center.)



Justice George H. Carley and Justice Harold D. Melton of the Supreme Court of Georgia came to the Bar Center to welcome the elementary school children and to answer questions about the rule of law.

It's Your Bar Center

And it's here for your use. Do you have a meeting but you don't have the accommodations for it? Use the Bar Center at no extra charge! Call Faye First at (404) 419-0155 to reserve a room at the newly finished Conference Center.

Making the Most of the Bar Center

During the week of Oct. 24, the Bar Center saw a flurry of activity. The following pictures are a feeble attempt at capturing the numerous functions which took place.







"There are few things that make me prouder to be an American than the way we can come together and bond in the face of difficulty, challenge, disaster and strife."

Prepare and Give Thanks

By Damon E. Elmore

Each year as the holiday season rolls around and we prepare to flip the calendar on Jan. 1, we should all give thanks and reflect upon the previous 12 months and what the New Year will bring. It is a real-life, multi-tasking event that is a part of our very being that is becoming (each year as I get older), more perfunctory and less meaningful. The truth is that up until now, I have just been waiting to move on to the next day. Fortunately, this year, more than any other, has taught me the error of my ways. From this year forward, I refuse to just go through the motions.

Personally and professionally, 2005 has dealt me ace after ace. No ennui there. I don't have to mention that next month we will only be halfway through this Bar year. That means that things can still get off track (but I don't think they will), and you only have to tolerate three more of these columns.

On a whole, the year in general has seen many events that have now changed my perspective. You see, sometimes the "spirit of the season," and, "let's give thanks" messages get stale and, dare I say, commercialized. We may send the holiday greeting by BlackBerry, but turn around and prepare to deal with the next new pleading, or broker the new deal announced, or if the retail industry had their way, get ready for the next Christmas.

Not this time, not for me. I have a few things to do before Baby New Year pops in. As you are well aware, several months ago hundreds of thousands of people had their lives affected in a way no one could have ever imagined. In the Atlanta metro area, the Gulf Coast, Indonesia, and all points north, south and in between, we all realized some sort of effect brought about by one natural disaster or another. It has caused for me a serious gut check in the form of retrospect. On top of that, it has taught me to be more grateful for the things I have, and the importance of some old fashion planning and preparedness.

My Retrospect

There are few things that make me prouder to be an American than the way we can come together and bond in the face of difficulty, challenge, disaster and strife. We, and specifi-

cally Georgia lawyers, did and always do it better than anyone can. At times, I worry about our short memories, but it is amazing what we can do, particularly when we remember that family and friends remain that need our care and compassion each day in a ton of ways.

Thanks


Traditionally my predecessors have reserved the final YLD President's Message to reflect upon the year *en toto*. Good literature they would draft, recognizing all of the hard work done during the year gone by. Well, 2005 reminded me of the classic adage "there is no better time than the present." So, a proverbial "shout-out" to my wonderful wife and daughter for tolerating the trips—some back-to-back. Thanks also to my friends and colleagues who each bring a quality or trait to

be admired and imitated. Many of those are good lawyers who aren't afraid to boldly announce that they "love every minute of what they do."

Without naming names, well except for one or two, a special thanks to Cliff Brashier and the entire Bar staff for their help. This includes the tolerance from the Communications Department, the logistical support from the Meetings Department and candidly, the lack of contact from Bar Counsel—all making for a smooth 2005-06. Most importantly, I am grateful for the unselfish dedication of our YLD Director Deidra Sanderson. Her office is an army of one that keeps the division moving ahead. Now, I am sure everyone understands I have the right to retract any and all apparent praise in future editions, so let's make 2006 a good year.

Finally, My Planning and Preparedness

I'll have to turn my attention to the year ahead. The YLD has good work planned and better people to put that in place. We will work hard at our remaining meetings: during the Midyear Meeting of the State Bar, at our Spring meeting in April 2006 in Las Vegas, and in conjunction with the Annual Meeting. We will chart new courses with our Leadership Academy and elect a new group of officers who will be the next leaders of the service arm of the Bar.

In the meantime, let's genuinely wish our clients well, take some meaningful time to spend with our families and soak in the soul of the season so that we are indisputably full. 



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A Look at the Law

By Josh Belinfante

The Shield Remains

An Overview of the Georgia Peer Review Privilege

In the most recent round of changes to Georgia's procedural laws governing actions for medical malpractice, the General Assembly left intact Georgia's peer review privilege. The privilege, which is often utilized in medical malpractice and wrongful termination claims, provides immunity from liability against claims based upon peer review activity and protects from discovery documents and testimony used or heard at a meeting of a peer review organization.¹

The peer review privilege arose from Georgia legislators' recognition that health-care professionals often meet to review the successes or failures of a particular procedure or of an individual's practice. The legislators believed that effective review often requires confidentiality. In the words of the Court of Appeals, the peer review statute "accords privileged status to medical review committee communications and findings because of concern that the candor necessary for these committees would be destroyed if their proceedings and conclusions were subject to use in mal-



practice litigation.”² This article outlines the basics of the Georgia peer review privilege: what organizations are protected; what the privilege protects against; and what is excepted from the peer review privilege.

WHAT TYPES OF ORGANIZATIONS ARE PROTECTED BY THE PEER REVIEW PRIVILEGE?

In order to qualify for the peer review privilege, an entity must be either a “review organization” or a “medical review committee.” Review organizations include a broad range of medical and administrative personnel. By contrast, members of medical review committees (MRCs) must be traditional healthcare providers.

Review Organizations

Generally, review organizations must be a panel—consisting of healthcare professionals, administrators or insurers—that evaluates the quality and efficiency of medical services. Under the statute, a review organization can be either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), another national accreditation body, or a “panel committee or organization,” comprised primarily of “professional healthcare providers” or insurance carriers.³ “Professional healthcare providers” include, but are expressly not limited to healthcare practitioners, hospital and nursing home administrators, hospital and nursing home boards (including officers and directors),

rehabilitation suppliers registered with the State Board of Workers’ Compensation, and occupational therapists.⁴

A review organization “engages in or utilizes peer reviews.”⁵ Georgia law defines peer review as:

the procedure by which professional healthcare providers *evaluate the quality and efficiency of services ordered or performed by other professional healthcare providers*, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review, underwriting assistance, and the compliance of a hospital, nursing home, convalescent home, or other healthcare facility operated by a professional healthcare provider with the standards set by an association of healthcare providers with applicable laws, rules, and regulations.⁶

The peer review process must be conducted for the purpose of improving the quality of healthcare, reducing morbidity and mortality, or evaluating claims made against healthcare providers.⁷

Ideally, an entity asserting the peer review privilege should be able to provide bylaws or other corporate documents authorizing the review organization’s acts and purpose. Such documentation and procedural regularity is not, however, always mandatory: the Georgia Court of Appeals has said there is “no condition precedent attached requiring [review organizations] to operate according to written bylaws.”⁸ It would appear to follow, therefore, that alleged violations of a review organization’s bylaws would not waive the privilege either.

Medical Review Committees

Medical review committees are similar to review organizations, but the code narrowly defines their composition and scope.⁹ An MRC is “a committee of a state or local professional society or of a medical staff or a licensed hospital, nursing home, medical foundation, or peer review committee.”¹⁰ The Georgia Court of Appeals described an MRC as a “‘grass roots’ committee formed to make in-house examinations of the adequacy of the treatment afforded its patients.”¹¹ In *Poulcott v. Surgical Associates of Warner Robins*¹² the Georgia Court of Appeals examined a “surgical conference,” which was organized by a hospital’s acting chief of staff, and that acted pursuant to written hospital bylaws. Part of the committee’s purpose was “to evaluate and improve the quality of healthcare rendered by members of the vascular surgery staff and to otherwise critique the performance of individual doctors in cases involving that area of medicine.”¹³ The committee’s only official member was the chair, and the committee “functioned as an initial rather than determinative step in the hospital’s peer review process.”¹⁴ Nevertheless, the court concluded that the “purpose and function” of the committee met the requirements of an MRC.¹⁵

For the entire medical staff of a hospital or nursing home to qualify as a MRC, the staff must operate pursuant to written bylaws.¹⁶ If the MRC has a membership that is separate and distinct from the staff, however, bylaws are not mandatory.¹⁷ As with review organizations, a violation of MRC bylaws does not nullify the privilege.¹⁸

MRCs also review more limited matters than review organizations. A review organization may examine and evaluate “the quality and efficiency of healthcare,” ways to reduce morbidity and mortality, claims against healthcare providers, as well as compile and aggregate data.¹⁹ By contrast, a MRC may only:

- [1] evaluate and improve the quality of healthcare rendered by providers of health service or
- [2] determine that health services rendered were professionally indicated or [3] were performed in compliance with the applicable standard of care or [4] that the cost of healthcare rendered was considered reasonably by the providers of professional health services in the area.²⁰

Stressing that MRCs focus exclusively on medical issues, in *Davenport v. Kutner*,²¹ the Court of Appeals concluded that “the rationale for [the peer review] statute is apparently to afford *hospitals and similar institutions rendering medical care* to examine, in the first instance, the propriety of procedures used within their institutions.”²²

THE PEER REVIEW SHIELDS

Immunity from Liability

The peer review privilege protects review organizations, MRCs and their members from at least civil liability for matters arising out of peer review activity, and the privilege places an embargo on the discovery of materials submitted to and used by peer review organizations. The immunities are frequently raised in claims of wrongful discharge brought by healthcare

providers, and the types of immunity afforded to review organizations and MRCs differ.²³ An identical discovery rule applies to both types of peer review committees.

Members of review organizations who act without malice are afforded immunity from any alleged criminal and civil liability arising out of an act taken in connection with peer review activities.²⁴ Nonmembers who provide information to a review organization are also protected so long as they did not knowingly provide false information to the committee.²⁵ MRC members have more limited immunity. First, members of an MRC are shielded only from civil, and not criminal, liability.²⁶ Moreover, the immunity applies only in actions brought by “providers of health services” for actions taken within the scope of their duties as members of an MRC.²⁷ Actions arising in tort or contract by patients against healthcare professionals are not affected by the immunity provisions.²⁸

Protection from Discovery

Beyond the immunity provisions, the peer review privilege also bars the discovery of information used by and created for review organizations and MRCs.²⁹ “[T]he proceedings and records of a review organization” are not discoverable, nor are the review organization’s “actions, activities, evidence, findings, recommendations, evaluations, opinions, data, or other information.”³⁰ Identical statutory language addresses the documents and testimony before MRCs.³¹

The Supreme Court of Georgia described the discovery restrictions as “an absolute embargo upon the

discovery and use of all proceedings, records, findings and recommendations of peer review groups and medical review committees in civil litigation.”³² Likewise, the Federal District Court for the Northern District of Georgia has described the peer review privilege as conferring “upon peer review organizations the qualities of a black hole; what goes in does not come out, and, unless the information exists in duplicate in the surrounding orbit, nothing that went in is discoverable.”³³ The privilege, therefore, presents a powerful discovery defense for physicians and other healthcare providers.

EXCEPTIONS AND WAIVERS

Legislators included several statutory exceptions to the immunity and discovery aspects of the peer review privilege. The “malice” rule is one such exception.³⁴ A member of a review organization or a person offering testimony to the review organization is not protected from liability if that person (1) “was motivated by malice toward any person affected by such activity,” or (2) knowingly supplied false information to a review organization.³⁵ Likewise, the immunity afforded to members of a MRC is waived if that member acts with “malice or fraud.”³⁶ Importantly, it appears that the malice of one member does not waive the protection for others. The statute addresses immunity in terms of an individual committee/organization member and not that of the entity as a whole.

An “underlying data” exception applies to the discovery embargo.³⁷ The exception provides that “information, documents, or other

records *otherwise available from original sources* are not to be construed as immune from discovery or use in any such civil action.”³⁸ Such information is often referred to as “underlying data.” Essentially, the exception permits the discovery of documents created independently of the duties of a review organization or MRC. For example, a court will likely consider medical charts, standing alone, to be underlying data, and thus subject to discovery. But, if those medical charts were analyzed for peer review purposes, the analysis would likely be protected as peer review material, despite the discoverability of the charts themselves.

The Court of Appeals distinguished between privileged information and underlying data in *Cobb County Kennestone Hospital Authority v. Martin*.³⁹ In *Martin*, the plaintiff sought “factual information regarding the infection rate at the hospital . . . from the infection rate nurse who is a member of the hospital’s peer review committee.”⁴⁰ The court explained that “medical records and information within the knowledge of the infection rate nurse” is original source material (underlying data) and discoverable.⁴¹ Underlying data did not include, however:

the “infection rate nurse’s” presentation and testimony before the review committee, or any findings, recommendations, evaluations, opinions, or actions of the committee or any member or the nurse herself; or records generated solely to provide peer review . . . or information obtained exclusively through or by the committee for investigation by peer review,

that is, discovery relative to medical or peer review.⁴²

In *Doe v. Unum Life Ins. of America*,⁴³ Federal District Court for the Northern District of Georgia offered another explanation of the distinctions between protected materials and underlying data:

In essence then, there are two kinds of privileged information protected by the statute: (1) material that relates directly to the peer review investigation, which is always nondiscoverable, despite its source; and (2) information that would have existed regardless of the institution’s investigation, but is sought *from the peer review body itself*.⁴⁴

Under the *Doe* decision, then, material may be protected if it is requested from a member of a review organization or MRC, but may not be immune from discovery if the request is sent to another party.⁴⁵

The witness rule is another exception to the discovery embargo.⁴⁶ It provides that members of review committees and MRCs may be called to testify regarding what they knew *before* the review organization met. The exception makes plain, however, that such a witness “cannot be asked about such wit-

ness’s testimony before [the review organization] or about opinions formed by such witness as a result of the organization hearings.”⁴⁷

There are several other exceptions to the immunity from discovery enjoyed by peer review data. healthcare entities may not successfully raise the privilege to prevent disclosure of peer review documents (1) to state agencies, JCAHO, or other national accreditation bodies; (2) in licensing actions where the effectiveness of the peer review system is challenged; or (3) in wrongful termination and exclusion actions against managed care entities when the documents provide the “specific reasons” for the termination or were part of the “proceedings related to such provider’s exclusion or termination.”⁴⁸ However, if matters are inadvertently disclosed, or disclosed pursuant to one of the statutory exceptions, the documents will likely remain privileged.

The peer review statutes have no explicit waiver provisions other than those discussed above, and none have as yet been created by the courts. Courts have made clear that certain acts, however, do not waive the peer review privilege. In *Emory Clinic v. Houston*,⁴⁹ the Supreme Court of Georgia held

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Attorneys whose work involves healthcare providers or insurers should remain aware of the Georgia peer review privilege. It applies at the discovery and trial phase of an action, protects participants in the peer review process from liability, and shields documents and testimony used in the peer review from discovery.


that prior newspaper reports of peer review information does not waive the discovery embargo.⁵⁰ The Court reasoned that “a person who has nothing to waive can waive nothing.”⁵¹ *Houston* relied in the Supreme Court of Georgia’s 1980 decision of *Eubanks v. Ferrier*.⁵² In *Eubanks*, members of an MRC had disclosed their findings to the plaintiff’s counsel.⁵³ The hospital intervened and sought to protect the medical review committee’s findings. The trial court granted the hospital’s request for protective order, and the Supreme Court affirmed the order.

The Court concluded that the plaintiff’s attorney could treat the members of the MRC as any other expert witness called to testify, but that attorney was not entitled to answers “concerning the proceedings and records of the committee.”⁵⁴ Similarly, in *Emory University Hospital v. Sweeney*,⁵⁵ the Georgia Court of Appeals held that mandatory submissions to the Georgia Department of Health and Human Resources do not waive the privilege for the submitted information.⁵⁶ The Court explained that “to permit a plaintiff to use privileged information simply because it is subsequently included in a

government agency report would frustrate the statute’s policy of encouraging candor among medical review committees.”⁵⁷ Thus, it is possible that an attorney can obtain protected information, but the information would nonetheless remain subject to the embargo upon its use provided by the statute.

In short, counsel should remain vigilant when reviewing, sending or obtaining documents from a healthcare provider.

CONCLUSION

Attorneys whose work involves healthcare providers or insurers should remain aware of the Georgia peer review privilege. It applies at the discovery and trial phase of an action, protects participants in the peer review process from liability, and shields documents and testimony used in the peer review from discovery. The privilege may be a pitfall or shield to a litigant, but it has a powerful role in healthcare litigation, and it will continue to play an important role in the evolution of the uneasy relationship between the justice system and the medical profession. 



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Belinfante graduated with honors from the University of Georgia School of Law in 2003. He received a B.A. with honors from the University of Pennsylvania in 1999. Prior to joining Balch & Bingham, Belinfante was an associate in the Products Liability Group of Alston & Bird LLP, and a law clerk for Chief Judge J.L. Edmondson of the United States Court of Appeals for the Eleventh Circuit.

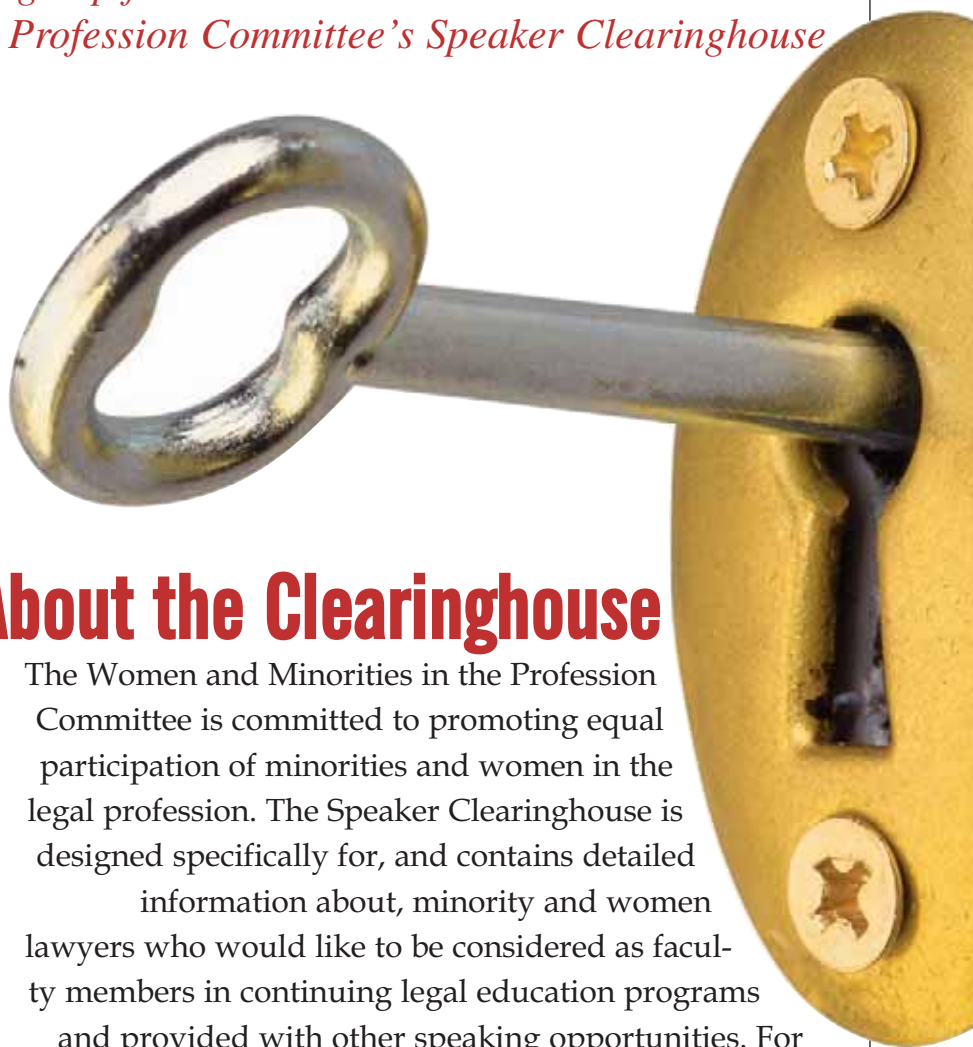
Endnotes

1. O.C.G.A. § 31-7-130 *et seq.* (2005). Importantly, the Georgia peer review privilege is distinct from the federal Health Care Quality Improvement Act, codified at 42 U.S.C. § 11101 *et seq.* (2005) (“HCQIA”). This article does not address the federal Act.
2. *Emory Univ. Hosp. v. Sweeney*, 220 Ga. App. 502, 504, 469 S.E.2d 772, 775 (1996).
3. O.C.G.A. § 31-7-131(3).
4. *Id.*
5. O.C.G.A. § 31-7-131(3)(B).
6. O.C.G.A. § 31-7-131(1) (emphasis added).
7. O.C.G.A. § 31-7-131(B).
8. *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 7, 539 S.E.2d 526, 529 (2001).
9. *See id.* at 7 (acknowledging MRCs’ more limited definition).
10. O.C.G.A. § 31-7-140.
11. *Davenport v. Kutner*, 182 Ga. App. 467, 469, 356 S.E.2d 67, 68-9 (1987), *rev’d on other grounds*, 257 Ga. 456, 360 S.E.2d 586 (1987).
12. 179 Ga. App. 138, 140, 345 S.E.2d 639, 641 (1986).
13. *Id.*
14. *Id.*
15. *Id.*
16. O.C.G.A. § 31-7-140. (2005).
17. *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 7, 539 S.E.2d 526, 529 (2001); *see also Poulcott*, 179 Ga. App. at 140 (focusing on “purpose and function” of MRC organization pursuant to bylaws).
18. *See Patton*, 246 Ga. App. at 7.

19. O.C.G.A. § 31-7-131
20. O.C.G.A. § 31-7-140.
21. 182 Ga. App. 467, 356 S.E.2d 67 (1987).
22. *Id.* at 469 (emphasis in original).
23. *See, e.g., Poulcott*, 179 Ga. App. at 138 (discussing MRCs).
24. O.C.G.A. § 31-7-132(a).
25. O.C.G.A. § 31-7-132(b).
26. O.C.G.A. § 31-7-141.
27. *Id.*
28. O.C.G.A. § 31-7-141.
29. O.C.G.A. §§ 31-7-133 (review organizations); 31-7-143 (MRCs).
30. O.C.G.A. § 31-7-133(a).
31. O.C.G.A. § 31-7-143
32. *Emory Clinic v. Houston*, 258 Ga. 434, 435, 369 S.E.2d 913 (1988).
33. *Doe v. Unum Life Ins. of America*, 891 F.Supp. 607, 610 (N.D. Ga. 1995).
34. Entities raising the Georgia peer review can also raise the HCQIA defense. The federal law has no malice exception, and it preempts the state law on this issue. *Patrick v. Floyd Med. Ctr.*, 255 Ga. App. 435, 444, 565 S.E.2d 491, 499-500 (2002). Accordingly, when the federal defense is raised, the dispositive inquiry is whether the review organization had a reasonable belief that the action was warranted by the facts known. *See* 42 U.S.C. § 11112(a)(4) (2005). Any purported evidence of malice is deemed irrelevant.
35. O.C.G.A. § 31-7-132.
36. O.C.G.A. § 31-7-141.
37. O.C.G.A. §§ 31-7-133(a) (review organizations), 31-7-143 (medical review committees).
38. O.C.G.A. §§ 31-7-133(a) (emphasis added).
39. 208 Ga. App. 326, 430 S.E.2d 604 (1993).
40. *Id.*
41. *Id.* at 327.
42. *Id.* at 327-28.
43. 891 F. Supp. 607 (N.D. Ga. 1995).
44. *Id.* at 611 (emphasis in original).
45. *Id.*
46. O.C.G.A. §§ 31-7-133(a), 31-7-143.
47. O.C.G.A. §§ 31-7-133(a).
48. O.C.G.A. § 31-7-133(b).
49. 258 Ga. 434, 369 S.E.2d. 913 (1988).
50. *Id.* at 435.
51. *Id.*
52. 245 Ga. 763, 267 S.E.2d 230 (1980).
53. *Id.* at 768.
54. *Id.* at 767.
55. 220 Ga. App. 502, 460 S.E.2d 772 (1996).
56. *Id.* at 504.
57. *Id.*

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Georgia's New Ethics Laws

A Summary of the Changes Relevant to Lobbyists and Legislators



A Look at the Law

By J. Randolph Evans
and Douglas Chalmers Jr.

Enacting comprehensive ethics reform is never an easy process, and ethics reform in Georgia was certainly no exception. Legislatures—putting it mildly—do not like to regulate themselves. They assume honest and hardworking elected officials will ordinarily do the right thing and legalistic rules only serve as opportunities for partisan political traps. The easiest solution has always been to change a few meaningless words, call it ethics reform, and then claim a huge win. Real ethics reform requires much more. On May 6, 2005, Gov. Sonny Perdue signed House Bill 48,¹ which substantially overhauled Georgia’s Ethics in Government Act (the Act).² The changes go into effect on Jan. 9, 2006, and will be seen and felt by everyone involved.

This article reviews the changes to Georgia’s ethics laws that will apply to lobbyists and legislators in the upcoming 2006 session of the General Assembly.



SUBSTANTIVE CHANGES TO GEORGIA'S ETHICS LAWS

Increased Disclosure Obligations

The disclosure obligations in the revised act will be strengthened in three key areas: lobbyist disclosures, personal financial disclosure statements, and campaign contribution disclosure reports.

Lobbyist Disclosures

First, significant changes were made to the law governing lobbyist registration and disclosure of lobbyist expenditures.

The most significant change in the lobbyist rules is the expansion of the definition of the word "lobbyist" to include individuals who attempt to influence the awarding of state contracts to vendors (vendor lobbyists), as well as individuals who attempt to influence the adoption of agency rules and regulations (regulatory lobbyists). At the state level, the Act currently regulates only the activities of lobbyists who attempt to influence the passage or defeat of legislation (legislative lobbyists).³ Until now, the law has not regulated the conduct of vendor lobbyists or regulatory lobbyists. This has left a significant gap in Georgia's regulatory and disclosure scheme.

On Oct. 1, 2003, in an attempt to address this issue, Gov. Perdue issued an executive order requiring certain agencies to adopt rules and regulations requiring registration of, and disclosures related to, vendor lobbyists.⁴ The governor's executive order was a worthwhile attempt to require such lobbyists to register and file disclosure reports.

The scope of the order was necessarily limited, however, by the powers granted to the governor's office. It was quickly recognized that legislation was also needed.

The new version of the Act essentially codifies the principles outlined in the governor's previous executive order. In short, the Act now provides that vendor lobbyists and regulatory lobbyists are "lobbyists" under the Act,⁵ and as such these individuals are now required to register with the State Ethics Commission (the Commission) and file disclosure reports in the same manner as are legislative lobbyists. These two additions are a significant improvement in Georgia's disclosure scheme for lobbying activities.

It should be noted that the revised Act defines the term "state agency" to exclude political subdivisions of the state and any instrumentalities thereof.⁶ Thus, the Act's regulation of vendor lobbyists is limited to lobbyists who attempt to facilitate the awarding of state contracts. The Act does not regulate the conduct of lobbyists who attempt to influence the issuance of contracts by counties, cities, municipalities or other political subdivisions of the state.

In addition, the law has been revised to require additional disclosures on lobbying registration and disclosure forms. Each lobbyist must disclose, on his or her registration application, the identity of each client that has agreed to pay the lobbyist an amount exceeding \$10,000 in a calendar year.⁷ Lobbyists must also now classify their spending by category, including such categories as gifts, meals, entertainment, etc.⁸

Legislative lobbyists have long been required to list the number of the pending bill, resolution, ordinance or regulation on which they

are working. The revisions to the Act track this requirement by requiring regulatory lobbyists to identify the rule or regulation which they have been retained to influence.⁹ These lobbyists are also required to disclose the name of the individual or entity on whose behalf they have undertaken to influence the rule or regulation.¹⁰

Similarly, vendor lobbyists must identify on their registration applications the name of the state agency before which they will be lobbying.¹¹ Vendor lobbyists must also provide (a) the name of the vendor(s) they are representing, (b) a description of the contract(s) being sought, and (c) the monetary amount of the contract(s).¹² The revisions to the Act also confirm that the reporting obligations imposed by the Act on vendor lobbyists are cumulative of the obligations already imposed on vendors by Section 45-1-6 of the Georgia Code.¹³ That statute currently provides that any vendor who makes a gift to public employees exceeding \$250 in a calendar year must file a report disclosing such gifts. Such reports must still be filed.

One reporting requirement for lobbyists was eliminated. Under the revised Act, a lobbyist need not disclose the names of any immediate family member (i.e., spouse and children) of any public officer who is employed by, or whose professional services are paid for by, the lobbyist. This provision, Section 21-5-73(d)(2), was removed from the Act.

Personal Financial Disclosure Statements

The revised Act has also significantly increases the obligations of candidates and public officials to disclose personal financial information.¹⁴ In addition, the revised

Act expands the scope of the reporting obligation to public officials who were not previously required to file such reports.

For the first time, a candidate or public official must disclose (a) real property owned by his or her spouse; (b) his or her own occupation and employer, as well as the principal business activity of the employer; (c) his or her spouse's occupation and employer, and the principal business activity of that employer; and (d) the names of his or her dependent children.¹⁵ In addition, certain of the existing disclosure requirements were tightened. For example, candidates and public officials must now disclose an ownership interest in any business that exceeds \$10,000 or 5 percent of the interests in the business; these thresholds were previously \$20,000 and 10 percent, respectively.¹⁶ Further, if the spouse or dependent children of a candidate or public

official has a direct ownership interest in any business that exceeds \$10,000 or 5 percent of the total interests in the business (exclusive of individual stocks or bonds in mutual funds) and the candidate or public official has "actual knowledge" of such ownership interest, he or she must report the name of any such business "or subsidiary thereof."¹⁷

In addition, candidates and public officials will now need to disclose their ownership in real property if the value of the property exceeds \$10,000; this threshold was previously \$20,000.¹⁸ Moreover, in calculating the value of the real property, a mortgage or other such debt is no longer to be considered. In other words, the relevant question for purposes of the \$10,000 threshold is the fair market value of the property, not the value of the candidate's equity in that property.

It is worth noting that the new Section 21-5-50(b)(8) seems duplicative

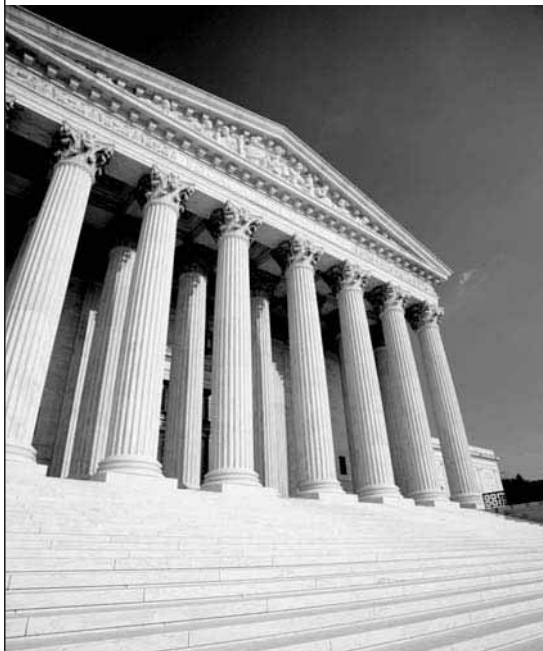
of the existing Section 21-5-50(b)(3). Each section requires disclosure of any business in which the candidate or public official owns a direct ownership interest which exceeds defined thresholds. The only difference is that the new Section 21-5-50(b)(8) appears to require disclosure of any "subsidiary" of any business in which the candidate or business entity owns the required interest. Although Section 21-5-50(b)(8) excludes from the reporting requirements disclosure of stocks or bonds held in mutual funds, as a rule candidates have not been required to disclose mutual fund ownership when filing reports under 21-5-50(b)(3). The Legislature may want to revisit this issue in the next session to reconcile these two provisions and eliminate any duplication arising therefrom.

In addition to the expansion of the personal disclosure obligations,



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the scope of the obligation to file personal financial disclosure statements has also been broadened to include members and executive directors of state “commissions.” This change occurred because the definition of “public officer” was expanded to include such individuals.¹⁹ Previously, this definition was limited in relevant part to the executive director and members of each “board” or “authority.”

Enhanced Penalties

In addition to these changes to the disclosure obligations, the revisions to the Act increases the penalties that may be imposed for violations of the Act.

Penalties Generally

Under the current law, with one significant exception discussed below, the maximum fine that may be imposed by the Commission for any single violation of the Act is \$1,000.²⁰ The revised Act significantly enhances the available penalties for repeat offenders. The Act will now provide that “a civil penalty not to exceed \$5,000 may be imposed for a second occurrence of a violation of the same provision and a civil penalty not to exceed \$10,000 may be imposed for each third or subsequent occurrence of a violation of the same provision.”²¹

In short, once the Commission has determined that a candidate or public official has violated a provision of the Act, that candidate or public official may be fined \$5,000 for a second violation of the same provision, and \$10,000 for a third such violation. This is a significant increase in the Commission’s enforcement authority. This is particularly true in light of the fact that penalties are generally paid out of the candidate’s personal funds.

Under the safety valve provision, the initial error that caused these problems, i.e., the failure to disclose a contribution or expenditure, will result in only one violation of the Act, rather than multiple violations.

In order to ameliorate the dangers that these significantly increased penalties might be imposed in unwarranted cases, the Legislature added two important safety valves. First, the Act will now provide that:

the same error, act, omission, or inaccurate entry shall be considered a single violation if the error, act, omission, or inaccurate entry appears multiple times on the same report or causes further errors, omissions, or inaccurate entries in that report or in any future reports or further violations in that report or in any future reports.²²

The principal purpose of this restriction is to ensure that, if an error appears on a disclosure report, and that same error either appears multiple times on the same report or causes further errors on other reports, the candidate or public official has committed at most one violation.

One example of how this might occur is a candidate’s failure to disclose a contribution or expenditure in excess of \$101, which would be a violation of the Act. Any such omission would, however, also necessarily affect the summary pages on the report for that reporting period. The resulting failure to properly report the total amount of all contributions or expenditures on the summary pages would potentially be another, separate violation of the Act. An error on the summary pages on a given report

also necessarily carries over to the summary pages on subsequent reports, which would result in potentially additional, separate violations of the Act. Under the safety valve provision, the initial error that caused these problems, i.e., the failure to disclose a contribution or expenditure, will result in only one violation of the Act, rather than multiple violations.

This safety valve provision may also come into play if a given contributor is improperly or inadequately identified on more than one occasion. The Commission’s rules require that the corporate, labor union, or other affiliation of a political action committee (PAC) be disclosed whenever the PAC makes a campaign contribution.²³ If a PAC were to make multiple contributions, and the campaign omitted each time to include the PAC’s affiliation information, this would be the “same error.” As such, multiple incomplete entries as to the same contributor would result in a maximum of one violation of the Act.

The second important safety valve that the Legislature inserted into this provision is a reference to the revised “technical defects” provisions (discussed below).²⁴ For minor, technical violations of the Act, the maximum fine that may be imposed is \$50. This provision thus minimizes the risk that a candidate may face a fine of thousands of dollars for failing to properly disclose,

for example, proper addresses for campaign contributors whose contributions are otherwise properly disclosed on the reports.²⁵

Penalties Related to Public Utility Contributions

In addition to increasing the fines that may be imposed by the Commission generally for violations of the Act, the revisions also increase the penalties that may be imposed in connection with contributions by regulated public utilities to candidates for the Public Service Commission. The current law prohibits any person “acting on behalf of a public utility corporation regulated by the Public Service Commission” from making a contribution to any political campaign.²⁶ The same statutory section also provides:

Any person who knowingly violates this subsection with respect to a member of the Public Service Commission, a candidate for the Public Service Commission, or the campaign committee of a candidate for the Public Service Commission shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years or by a fine not to exceed \$5,000 or both.²⁷

Under the Act as revised, the fine that may be imposed for such an intentional violation has been doubled to \$10,000.²⁸

Conflicts of Interest

Contrary to some reports, the Commission has never had the authority to investigate and decide matters involving the official conduct of legislators. Instead, the jurisdiction of the Commission was limited to enforcing the Act, which is aimed at the political or cam-

paign-related activities of candidates for office. This paralleled the federal level where the Federal Election Commission enforces laws regarding campaign related activities, with House and Senate ethics committees enforcing House and Senate rules governing the conduct of their members. The problem in Georgia has been that there were no effective rules or mechanisms for governing the conduct of members of the Legislature in their official capacity.

The revised Act creates a Joint Legislative Ethics Committee (JLEC), a new body that will address conflicts of interest complaints against members of the General Assembly and legislative employees.²⁹ In so doing, the Legislature rejected suggestions that the Commission be granted the authority to investigate conflicts of interest, and instead opted for a self-policing mechanism. A joint, ten-member bipartisan committee, consisting of minority and majority members of both chambers and the house speaker and senate President pro tempore, JLEC will “advise and assist the General Assembly in establishing rules and regulations relating to conflicts between the private interests of a member of the legislative branch of state government and the duties as such.”³⁰ Although certain rules related to conflicts of interest already exist in the Code of Ethics for Government Service,³¹ those rules are relatively limited, and they relate almost exclusively to business transactions between public officials and state agencies. Presumably, the rules recommended to the General Assembly by JLEC will supplement these existing rules.

Under the revised Act, JLEC will “receive and investigate all complaints alleging a violation of the rules and regulations established by the committee.”³² JLEC is authorized to issue sanctions against legislative employees who violate the conflict of interest rules.³³ With respect to members of the General Assembly, the committee’s authority is limited to making recommendations to the respective house of the type of punishment to be imposed.³⁴ The statute does not provide JLEC itself with the authority to impose punishments on members of the General Assembly. Because JLEC itself is made up of members of both the House and Senate, any such provision might be unconstitutional in light of Article 3, Section 4, Paragraph 7 of the state Constitution, which provides:

Each house shall be the judge of the election, returns, and qualifications of its members and shall have power to punish them for disorderly behavior or misconduct by censure, fine, imprisonment, or expulsion; but no member shall be expelled except by a vote of two-thirds of the members of the house to which such member belongs.³⁵

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Regulation of Acceptance, Solicitation and Use of Campaign Contributions

In addition, the revisions to the Act add some important regulations and restrictions concerning the acceptance, solicitation, and uses of campaign contributions.

Acceptance and Solicitation of Contributions during Legislative Session

The Act has long prohibited members of the General Assembly or public officials elected statewide from accepting campaign contributions during a legislative session. In a 1995 opinion, however, the Attorney General indicated that candidates also should not solicit contributions or pledges of contributions during the session.³⁶ The Attorney General stated that, “while the [Act] does not expressly prohibit an incumbent member of the General Assembly from soliciting a pledge or setting goals for contributions during a legislative session, such actions would clearly be contrary to the policies and purposes of the Act and should be avoided.”³⁷ The opinion based this conclusion on the fact that “a strong argument can be made that, while the statute does not expressly prohibit the solicitation of ‘pledges’ or ‘goals,’ they could still very well be considered ‘contributions,’” the acceptance of which during a legislative session would violate the Act.³⁸

The new version of the Act acknowledges and codifies the principles in the Attorney General’s opinion. Specifically, public officials are now barred from seeking or accepting either contributions or pledges of contributions during the legislative session.³⁹ An exception in

the law continues to allow candidates to accept contributions during the session if they are proceeds from a fundraising event held before the session began.⁴⁰ The revisions to the Act also clear up a potential ambiguity by confirming that contributions may still be made to political parties during the session, and that public officials may attend political party fundraisers during the session.⁴¹

“Ordinary and Necessary” Expenses

The Act has long provided that campaign contributions may be utilized “only to defray ordinary and necessary expenses . . . incurred in connection with such candidate’s campaign for elective office or such public officer’s fulfillment or retention of such office.”⁴² The Act has not, however, defined the phrase “ordinary and necessary expenses.”

For the first time, the law now defines the phrase “ordinary and necessary expenses.” Specifically, the Act provides that this term shall include, but shall not be limited to:

expenditures made during the reporting period for office costs and rent, lodging, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, special events, volunteers, reimbursements to volunteers, contributions to non-profit organizations, and flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, and all other expenditures contemplated in Code Section 21-5-33.⁴³

Most of the items on the list are non-controversial. There is one issue, however, that may be significant to legislators.

The significant change is the addition of the word “lodging.” In a case involving former House Majority

Leader Jimmy Skipper, which was decided in November 2004, shortly before the 2005 legislative session, the Commission ruled that Skipper violated the Act by using campaign funds to pay for the costs of an apartment in Atlanta. Skipper had spent \$18,768 in campaign donations to keep the apartment year-round in Atlanta in 2001 and 2002. In a hotly contested 3-2 vote, the Commission fined Skipper \$2,000 and ordered him to personally repay all of the “legislative housing costs” that had been paid for by the campaign.

This ruling had potentially far-reaching implications for the many legislatures who live outside Atlanta but who nonetheless need to maintain a residence in the city during the annual legislative session. In the Skipper case, the Commission ruled that legislators who keep apartments in Atlanta should first pay the costs of rent or a mortgage with the \$128/day per diem that lawmakers are paid for each day they are on official state business. The Commission determined that campaign funds may be used for this purpose only after the per diem has been exhausted. The Commission rejected arguments that, by imposing requirements on the use of the per diem, which is not covered by the Act, the Commission was exceeding the scope of its authority, which by law is limited to enforcement of the Act.

The addition of the word “lodging” in the Act may have been a response to the Skipper case. The Legislature apparently intended to clarify that, subject to the longstanding restrictions on personal use of campaign funds, a member of the General Assembly may use campaign funds to pay for the costs of lodging in Atlanta when on official or campaign business.

The Legislature's attempt to address this issue may not, however, finally resolve the issue. In the Skipper case, the Commission did not take the position that campaign funds may not be used for lodging during the session. The Commission instead focused on the relationship between the per diem and the use of campaign funds. A narrow majority of the Commission held that a member must first exhaust the per diem before he or she may use campaign funds to pay for any lodging costs. A change in the Act that confirms that legislators may use campaign funds for lodging does not necessarily affect this ruling, because the change does not directly address the relationship between the per diem and the use of campaign funds.

Another major factor may also bear on this issue. Specifically, the membership of the Commission has changed since the ruling in the Skipper case. In addition, in a recent hearing, current Commission Chairman Steve Farrow indicated that the Commission may revisit this issue in another pending case.

Level Playing Field

The Act as amended also includes a number of provisions designed to level the playing field in a number of areas related to campaigns and public service.

Nepotism Rules

The revisions to the Act prohibit senior state officials from promoting family members for state government positions that pay annual salaries of \$10,000 or more.⁴⁴ The prohibition applies to every constitutional officer; every elected state official including members of the General Assembly; the executive head of every department or agency; and the executive director

and member of every board, commission or authority.

Judicial Appointments and Campaign Contributions

The ethics package also included a new prohibition on the granting of judicial appointments to any individual who has made a contribution to the governor's campaign either (a) in the 30-day period preceding the vacancy, unless the contribution is refunded, or (b) on the date of the vacancy or anytime after the vacancy occurs.⁴⁵ The obvious intent of such a provision is to avoid creating an appearance that judicial appointments are in any way related to campaign contributions.

Tighter Rules Governing Lobbyists

The revised Act also imposes a number of important, additional restrictions on the activities of lobbyists.

Elimination of Revolving Door

First, the revisions to the Act prohibits all constitutional officers; elected state officials, including members of the General Assembly; the executive head of every state department or agency, whether elected or appointed; and the executive director of each state board, commission or authority from lobbying until one year after the termination of their employment.⁴⁶ An exception exists for officials who would otherwise qualify for this prohibition but who remain in state government. The introduction of this provision will prevent senior state officials who have recently left government service from cashing in on their connections with other government officials by lobbying for private interests. This prohibition does not apply to all

former state employees, but instead applies only to those who served as head of, or executive director of, a state department, agency, board, commission or authority.

Lobbyist Not Eligible for Appointment to Board that Regulates Clients

In addition, a lobbyist who has recently represented a client is now ineligible for appointment to any state entity which regulates the activities of that client. The lobbyist's ineligibility extends for one year after the termination of his or her representation of the client.⁴⁷

Prohibition on Contingent Compensation for Lobbyists

In addition, the Act now includes a prohibition on the payment of contingent compensation to lobbyists.⁴⁸ The new provision in the Act closely approximates an existing statute, Section 28-7-3 of the Georgia Code. That statute provides that:

No person, firm, corporation, or association shall retain or employ an attorney at law or an agent to aid or oppose legislation for compensation contingent, in whole or in part, upon the passage or defeat of any legislative measure. No attorney at law or agent shall be employed to aid or oppose legislation for compensation contingent, in whole or in part, upon the passage or defeat of any legislation.⁴⁹

This prohibits legislative lobbyists from accepting compensation that is contingent on the passage or defeat of any legislation.

In drafting the new provision in the Act, the Legislature apparently intended not only to maintain the existing prohibition, but also to expand it to include a prohibition on contingent compensation for


vendor lobbyists. To accomplish this, the Legislature copied verbatim the language of Section 28-7-3, and it added the phrase “or upon the receipt or award of any state contract” at the end of each sentence in the new statute in the Act.⁵⁰

Unfortunately, as drafted the statute is ambiguous. The statute only prohibits retaining a lobbyist “to aid or oppose legislation” if payment for that retention is contingent upon either the defeat or passage of the legislation or the awarding of any contract. Presumably, the Legislature also intended to prohibit persons from retaining lobbyists to influence any state agency in the selection of a vendor in circumstances where the vendor lobbyist’s compensation is contingent on the awarding of a contract. As currently drafted, the language does not appear to accomplish this. The Legislature may wish to revisit this issue in its next legislative session.

CONCLUSION

These changes represent the most comprehensive strengthening of Georgia’s ethics laws since the Ethics in Government Act was adopted more than 20 years ago. Penalties for violations of the Act have been increased. The obligations of candidates and public officials to disclose personal financial information have been significantly strengthened. The regulatory and disclosure scheme for legislative lobbyists has been extended to those who lobby for state contracts and for changes to state agency rules and regulations. The scope of lobbyist disclosures has itself been expanded. The scope of a candidate’s authority to spend campaign funds has been clarified. A ban has been imposed on solicitation of contributions or pledges of contributions during legislative sessions. Anti-

nepotism provisions have been adopted. New rules have been adopted prohibiting a lobbyist from serving on state boards that regulate the conduct of the lobbyist’s clients. Finally, a revolving door, in which former senior state officials have been permitted to lobby for clients, has been closed.

To be sure, there are always things that could have made Georgia’s ethics laws tougher—but not many. Certainly, a ban or limitation on lobbyist gifts to legislators should be addressed in the rules to be considered by the Joint Legislative Ethics Committee. It is clear, however, that the new statute amounts to the toughest ethics overhaul in the history of Georgia. 



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Endnotes

1. H.B. 48, 2005 Sess. of Gen. Assem. (Ga. 2005).
2. O.C.G.A. § 21-5-1 *et seq.* (2005). Except as otherwise provided herein, all citations are to the Act as revised by House Bill 48.
3. See O.C.G.A. § 21-5-70(6) (defining the term “Lobbyist”) (citation to current statute).
4. The order is available on the governor’s website at www.gov.state.ga.us/ExOrders/10_01_03_01.pdf.
5. See O.C.G.A. §§ 21-5-70(5)(G) (legislative lobbyists) and 21-5-70(5)(H) (regulatory lobbyists).
6. O.C.G.A. § 21-5-70(7).
7. O.C.G.A. § 21-5-71(b)(7).
8. O.C.G.A. § 21-5-73(e)(1)(B).

9. O.C.G.A. § 21-5-73(e)(1)(E).
10. O.C.G.A. § 21-5-73(e)(3).
11. O.C.G.A. § 21-5-71(b)(6).
12. O.C.G.A. § 21-5-73(e)(2).
13. Compare O.C.G.A. § 21-5-73(f) with O.C.G.A. § 45-1-6 (citation to current statute).
14. See O.C.G.A. § 21-5-50(b).
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. O.C.G.A. § 21-5-3(22).
20. O.C.G.A. § 21-5-6(b)(14)(C)(i) (citation to current statute).
21. *Id.*
22. *Id.*
23. Ga. State Ethics Rule § 189-3-.01(1)(b).
24. O.C.G.A. § 21-5-7.1.
25. Section 21-5-7.1 as revised requires the Commission to adopt rules to effectuate these “technical defect” provisions. However, the current technical defects statute, Section 21-5-7(b), already required the Commission to adopt such rules. Although this latter statute has been in effect since early 2001, the Commission has not yet adopted these rules. It remains to be seen whether the Commission will adopt the rules required by the revised Act.
26. O.C.G.A. § 21-5-30(f).
27. *Id.*
28. *Id.*
29. O.C.G.A. § 45-10-91(a).
30. O.C.G.A. § 45-10-93(b)(1).
31. O.C.G.A. § 45-10-1 *et seq.* (citation to current statute).
32. O.C.G.A. § 45-10-93(b)(2).
33. O.C.G.A. § 45-10-93(b)(10).
34. *Id.*
35. GA. CONST. art. 3, § 4, ¶ 7.
36. Unofficial Advisory Opinion U95-27 (1995), available at www.state.ga.us/ago/read.cgi?searchval=U95-27&openval=U95-27.
37. *Id.*
38. *Id.*
39. O.C.G.A. § 21-5-35(a).
40. O.C.G.A. § 21-5-35(b)(2).
41. O.C.G.A. § 21-5-35(b)(3).
42. O.C.G.A. § 21-5-33(a) (citation to current statute).
43. O.C.G.A. § 21-5-3(18).
44. O.C.G.A. § 45-10-80.
45. O.C.G.A. § 45-12-61.
46. O.C.G.A. § 21-5-75.
47. O.C.G.A. § 21-5-74.
48. O.C.G.A. § 21-5-76(a).
49. O.C.G.A. § 28-7-3 (citation to current statute).
50. O.C.G.A. § 21-5-76(a).

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Animals and The Law

Emerging Trends

By Kelly L. Stone

When Officer Joey Brooks came across a dead dog in a gutter several years ago, who'd had all four legs sawed off, he didn't know he was looking at a probable case of felony animal cruelty. But he does now.

Brooks, Gwinnett County's Animal Cruelty Investigator, attended a seminar given by Georgia Legal Professionals for Animals, Inc., an Atlanta organization started by former paralegal James West. West founded the nonprofit to help step up enforcement of Georgia's Animal Protection Act of 2000, a law that made some forms of animal cruelty a felony. The training seminars were the brainchild of attorney Claudine Wilkins, who'd realized that some of her colleagues either didn't know about the new felony law, or, more disturbing, didn't care to know.

"I had a judge tell me one time, 'If I can't sit on it or eat it, an animal is of no use to me,'" Wilkins recalls.

The Link Between Animal-Human Violence

"There is a documented link between cruelty to animals and future violence to humans," Wilkins says. She saw this first-hand when she was prosecuting domestic violence cases. About 80 percent of the time, the woman involved reported that the abuser had also beaten the family pet, usually as a control and fear tactic. A national survey conducted by the Humane Society of the United States revealed that over 75 percent of women entering domestic violence shelters reported that the abuser had also beaten, and frequently killed, their pet.

And it doesn't stop there. According to the U.S. Bureau of Statistics, 48 percent of convicted rapists and 30 percent of convicted child abusers admitted perpetrating acts of animal cruelty in their



Dr. Melinda Merck has become a leading national expert on domestic animal forensics. She is pictured as a speaker at the 2004 ICLE conference, "How to Prosecute Animal Cruelty from Start to Finish."

childhood or adolescence. A history of animal abuse was found in 25 percent of aggressive male criminals, 30 percent of convicted child molesters, 36 percent of those who assaulted women and 46 percent of those convicted of sexual homicide. A 1997 study by the MSPCA and Northeastern University found that 70 percent of animal abusers had committed at least one other criminal offense, and almost 40 percent had committed violent crimes against people.

Wilkins cites Ted Bundy as an example. "Bundy witnessed his

father's violence toward animals, and he subsequently tortured animals. Almost 100 percent of all serial killers interviewed have admitted to abusing animals when they were young."

Organized dog-fighting has also been linked to other crimes. In Georgia, dog-fighting rings broken up by law enforcement have netted thousands of dollars in illegal gambling money, firearms and drugs. The subsequent arrests have sent children into protective state custody. Wilkins believes that the involvement of children cinches the deal on why cruelty to animals should be viewed seriously by the legal system.

A Model Procedure

Fulton County District Attorney Paul Howard had seen the link between violence to animals and violence to humans so often that when the Legislature passed the Animal Protection Act of 2000, he was pleased. "What happens in these types of cases is they fall through the cracks, because nobody is on top of what's really going on," he says. Upon learning of the new law, Howard immediately implemented a procedure for handling animal cruelty cases in Fulton County. First and foremost, he says, is establishment of the right attitude. "The first thing that has to happen is the prosecutor has to develop a serious attitude about animal cruelty. The second thing is to designate a dedicated prosecutor. I think that's critical."

The dedicated prosecutor in Howard's office is Sr. Assistant District Attorney Laura Janssen. Janssen is assigned the task of going to the scene of the crime, conducting an investigation along with animal control and police,

ensuring that correct charges are drawn, presenting the case in court and conducting a trial.

Much of what governs how Janssen performs her investigation she learned through the educational seminars given by GLPA, Howard says.

Janssen gets most of her cases through the complaint room in the DA's office which operates 24 hours a day. When an arrest that involves an animal is reported, complaint room staffers notify her. Howard is also working to establish a clearly defined protocol that includes "best practices" concerning the prosecution of animal cruelty as well as looking at creating an animal cruelty task force.

That methodical approach is precisely what Wilkins says is needed for successful prosecution. "Communication among the members of the prosecution chain is key," she says. The "chain" includes police, animal control, veterinarians, prosecutors, witnesses, and depending on the type of incident, animal behaviorists, dog mauling experts, psychologists to discuss the impact of emotional distress, and domestic violence counselors. Wilkins stresses that without a good flow of information-sharing between the legal professionals, "you are setting yourself up for prosecution failure."

Howard cites the involvement of a dedicated prosecutor as the reason for success in the office's handling of its first case of felony animal cruelty. A dog had been set on fire by a juvenile, and because of Janssen's involvement, correct charges were brought against the perpetrator and mistakes initially made by police during the investigation corrected, something that Howard says would

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The Board Members for Georgia Legal Professionals for Animals, Inc. (back row, left to right), James West, Allison Brooksher. (Front row, left to right) Laura Janssen, Claudine Wilkins, Sperry Wilder, Cheryl McAuliffe, Michelle Farmer, Beth Barnhart. Not pictured: Dr. Melinda Merck.

not have happened without Janssen's in-depth training. Janssen says thorough investigation and prosecution of an animal cruelty case requires everything be done "to the letter of the law."

Proving Intent

Roswell veterinarian Dr. Melinda Merck has seen her share of cruelty cases. So many in fact that she's become a leading national expert on domestic animal forensics. Merck says that in her experience, the number one type of animal abuse that attorneys will confront is starvation, but proving willful neglect, which is the intentional withholding of food and water, is the sticking point in most of these cases. Merck says that a common misconception with this statute is that death is required before intent can be demonstrated. Not so, says Merck. "For a felony in a starvation case, you do not have to have death. The key is this: what is obvious to me as a vet is not obvious to law

enforcement, because they don't interpret the events through the animal's eyes." Merck, whose testimony has cinched a number of successful cruelty prosecutions in Georgia, says that when she's been called in to interpret events and explained to the prosecutor what has happened through the eyes of the animal, "then they say 'yes, the perpetrator had knowledge and yes, it was malicious.'"

Howard says that he hopes that the ambivalence regarding intent in the current statutes will be altered in order to better clarify the issue. "The statutes seem to be written to cover intentional behavior that exemplifies somebody physically doing something to an animal. It seems to ignore people who might hoard animals or neglect animals which can cause the same kind of harm. We're looking now to see if there should be an amendment to cover that type of conduct."

Another example of ambivalence regarding intent is cases

The Animal Cruelty Statute 16-12-4

...

- (b) A person commits the offense of cruelty to animals when he or she causes death or unjustifiable physical pain or suffering to any animal by an act, an omission, or willful neglect
- (c) A person commits the offense of aggravated cruelty to animals when he or she knowingly and maliciously causes death or physical harm to an animal by rendering a part of such animal's body useless or by seriously disfiguring such animal. A person convicted of the offense of aggravated cruelty to animals shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed \$15,000, or both, provided that any person who is convicted of a second or subsequent violation of this subsection shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed the amount provided by Code Section 17-10-8, or both.


where dogs are kept for the purposes of fighting. "The police will say, 'Unless I catch them in the act [of fighting the dogs], I can't facilitate an arrest.' Maybe that ought to be tweaked," Howard says. He points out that statutes governing children previously required the proving of maliciousness but were recently changed, and he believes that the animal statutes should be changed to that effect also.

Legal Recognition of the Human-Animal Bond

Cruelty is not the only way animals can appear in relationship to the law. Cases involving the custody of pets in a divorce and wrongful death lawsuits are on the rise. The human-animal bond is receiving more recognition from the courts, and some cities are changing the term "owner" to "guardian" when referring to a domestic animal's caretaker. This reflection of an animal's status as a living, feeling creature rather than an object that is owned is becoming more commonplace. As a result, animal law classes are sprouting up around the country. According to Lisa Franzetta with Animal Legal Defense Fund, there are currently 61 animal law classes in the United States, which represents a tripling of offerings in the last five years. McGill law school in Montreal, Canada, is now offering an animal law class to its students as well. Lewis and Clark Law School in Portland offers an advanced animal law class. "It's the first and only school to have more than one," says Franzetta. "Pam Fransch, the director of ALDF's Anti-Cruelty Division, teaches both classes there."

Why Prosecute Animal Cruelty?

"If I look out and see animals in bad condition, the first thing I do is ask, 'Do you have kids?'" says Officer Brooks. "If there's neglect or abuse of pets, it's a pretty safe bet that there's neglect or abuse of the children, spouse or elders in the home." Wilkins concurs. "Animal abuse is a red flag that there are other problems in a home. Early prosecution of animal abusers can lead to help for that family."

For Howard, prosecuting animal cruelty is not only a legal issue but an ethical one as well. "I believe that society is measured by the way it treats people and animals who cannot speak for themselves," he says. "As with children and elderly people, society has some obligation to provide for those animal victims of crime." 



Kelly L. Stone earned a master's degree in counseling psychology from Florida State University. She is a writer and licensed counselor in Georgia. Visit her online at www.kellylstone.com.



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Unleash the Power of Casemaker

By Natalie R. Kelly

If you have not taken time to check it out, you are missing out on what is being called “the best thing the Bar has done for its members.” Casemaker is full of legal resources that are accessible anywhere in the world with a computer that has Internet access. It is also a free resource to all Bar members.

There are 22 states that make up the Casemaker Consortium, so as a member of the State Bar of Georgia,

you also have access to the legal research resources of 21 other states. How can you unleash the power of Casemaker? Log on to www.gabar.org. In the member login area, type in your Bar number and password (for first-time users, use your last name). Click “go.” Then you are on your way to getting the most out of your membership.

Whether you are looking for cases in case law, Eleventh Circuit Opinions or reading the Georgia State Law Reviews, Casemaker is available 24 hours a day, 7 days a week. And if that is not enough, Georgia members have a dedicated Casemaker coordinator to assist you. You can contact the Casemaker help line during nor-

mal working hours, Monday thru Friday, 8:30 a.m. – 5 p.m. at (877) CASE-509 or (877) 227-3509. Send e-mail to casemaker@gabar.org or natalie@gabar.org.

Free Training Sessions

Training sessions are available to show members the available content in the library, how to navigate and use the Casemaker database. The best part of the training is that it is free. You also have the opportunity to obtain CLE credit for this training.

We suggest that each member take a look at the content contained in the Georgia Casemaker library. Casemaker has unique tools and features that make online legal research easier, and has managed to firmly stand as an alternative for members to use.

Casemaker can give you bargaining room should you need a more comprehensive database.

New Features

The Georgia Casemaker database continues to be enhanced with new features like Casecheck™—which automatically locates all cases that cite the case you are viewing and allows you to link directly to those cases.

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- **Need a training session with a Casemaker specialist?**
Call (404) 526-8608 or (877) CASE-509
- **Not only is the State Bar providing you with online legal research, we are available to answer any questions you have about Casemaker.**


This feature is currently available in the case law section of the library. When you conduct a search, pull up results, and then click on the full-text of a case. Casecheck™ cases will appear in a separate frame to the right of the case. To access cases that appear in Casecheck™, simply click on the official cite.

Casemaker is in the process of installing SuperCODE, which automatically shows the old section and listing of all session laws that have amended it in a split screen like the Casecheck™ feature. SuperCODE will show the related session law in both browse and search mode. This is one of the best code features of any publisher.

The browse mode in Casemaker allows users to click down to the desired library resource without developing search strings. Locate the individual statute, then click on it to access the full text of the statute. Once in the statute, if other statutes are cited, you can use the hypertext link to go directly to that statute. The search mode allows you to formulate a search using natural language or Boolean search logic.

Casemaker is also installing SuperCODE on all statutory material. Since the amendments, repeals and new statutory laws are not codified weekly or monthly, this system allows you to see the statute as they were last codified in a large screen on the left of the page. Enacted session laws that effect the last codification will be shown in a smaller screen on the right. The listed session law enactments can be viewed to determine whether the later enactments alter your research results.

Get Started Now

So, what are you waiting for? Unleash the power of Casemaker today. Log on to www.gabar.org then enter your bar number and your last name as your password (for first-time users). Try it out, and see what it has to offer. Do not miss out on this great offering from the State Bar of Georgia to you. 

Natalie R. Kelly is the director of the State Bar of Georgia's Law Practice Management Program.

Casemaker Quick Start Guide

1.

Log on to the Bar's website at www.gabar.org using your Bar number and your last name as your password (for first-time users).



2.



Click on "Access Casemaker." There you will find the library contents, where Georgia is listed. Click on what you would like to search, Case Law, Eleventh Circuit opinions, etc.

3.

Type in your keywords or phrase.

Click search.



if you type...	Casemaker will find documents that...
contract arbitration	include both of the words contract and arbitration
(gun,knife)	include either of the words gun or knife or both
property - residential	include the word property but not residential (minus sign)
"next of kin"	include the exact phrase next of kin

4.



Your search results will be listed in a descending date order.

Need Help With Casemaker?

Call Natalie R. Kelly at (877) CASE-509 or natalie@gabar.org.

Notice of Expiring BOG Terms

Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2006. These incumbents and those interested in running for a specific post, should refer to the election schedule (posted below) for important dates.

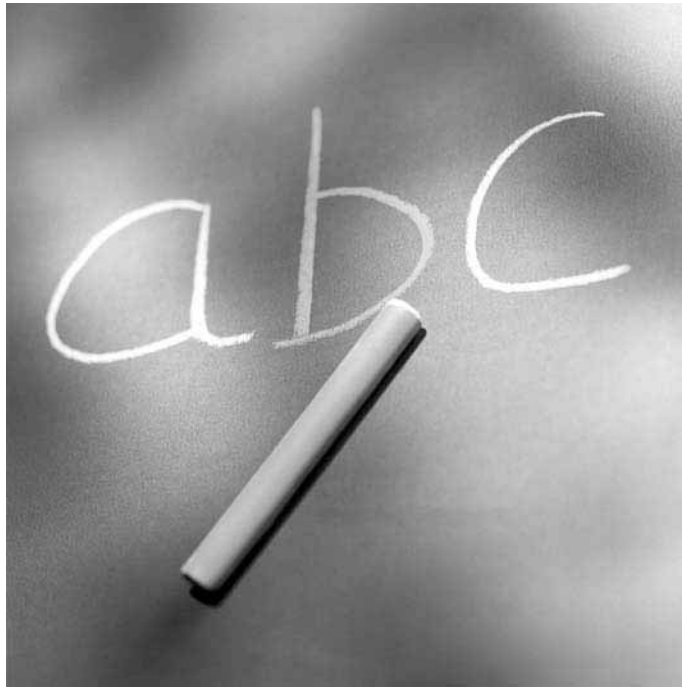
Alapaha, Post 2.....Thomas C. Chambers, III, Homerville
 Alcovy, Post 2.....Michael R. Jones, Sr., Loganville
 Atlanta, Post 02Matthew H., Patton, Atlanta
 Atlanta, Post 04Patrise M. Perkins-Hooker, Atlanta
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 Atlanta, Post 08J. Robert Persons, Atlanta
 Atlanta, Post 10Myles E. Eastwood, Sandy Springs
 Atlanta, Post 12C. Wilson DuBose, Atlanta
 Atlanta, Post 14*Jeffrey O. Bramlett, Atlanta
 Atlanta, Post 16William N. Withrow, Atlanta
 Atlanta, Post 18Foy R. Devine, Atlanta
 Atlanta, Post 20William V. Custer, IV, Atlanta
 Atlanta, Post 22Frank B. Strickland, Atlanta
 Atlanta, Post 24Joseph Anthony Roseborough, Atlanta
 Atlanta, Post 26Anthony B. Askew, Atlanta
 Atlanta, Post 28J. Henry Walker, IV, Atlanta
 Atlanta, Post 31Hon. Viola Sellers Drew, Atlanta
 Atlanta, Post 33S. Kendall Butterworth, Atlanta
 Atlanta, Post 35Terrence Lee Croft, Atlanta
 Atlanta, Post 37Samuel M. Matchett, Atlanta
 Atlantic, Post 1Thomas J. Ratcliffe, Jr., Hinesville
 Augusta, Post 1J. Benjamin Kay, III, Augusta
 Augusta, Post 2William James Keogh, III, Augusta
 Augusta, Post 4William R. McCracken, Augusta
 Bell Forsyth.....Hon. Philip C. Smith, Cumming
 Blue Ridge, Post 1David Lee Cannon, Jr., Canton
 Brunswick, Post 2J. Alexander Johnson, Baxley
 Chattahoochee, Post 1.....Joseph L. Waldrep, Columbus
 Chattahoochee, Post 3Peter John Daughtery, Columbus
 Cherokee, Post 1*S. Lester Tate, III, Cartersville
 Clayton, Post 2Harold B. (Scott) Watts, Jonesboro
 Cobb, Post 1Dennis C. O'Brien, Marietta
 Cobb, Post 3Hon. David P. Darden, Marietta
 Cobb, Post 5Hon. J. Stephen Schuster, Marietta
 Conasauga, Post 1James H. Bisson, III, Dalton
 Coweta, Post 1Gerald P. Word, Carrollton
 Dougherty, Post 1Gregory L. Fullerton, Albany

DouglasRobert J. Kauffman, Douglasville
 Eastern, Post 1Walter C. Hartridge, Savannah
 Eastern, Post 3Patrick T. O'Connor, Savannah
 EnotahJeffrey Lloyd Wolff, Dahlonega
 Flint, Post 2John Philip Webb, Stockbridge
 Griffin, Post 1James Richard Westbury, Jr., Griffin
 Gwinnett, Post 2Judy C. King, Lawrenceville
 Gwinnett, Post 4Hon. Phyllis Miller, Lawrenceville
 Houston.....Carl A. Veline, Jr., Warner Robins
 Lookout Mountain, Post 1Larry Bush Hill, Lafayette
 Lookout Mountain, Post 3Lawrence Alan Stagg, Ringgold
 Macon, Post 2Thomas W. Herman, Macon
 Middle, Post 1Matthew Lanier Waters, Wrightsville
 Northeastern, Post 1Thomas S. Bishop, Gainesville
 Northern, Post 2R. Chris Phelps, Elberton
 Ocmulgee, Post 1Wayne B. Bradley, Milledgeville
 Ocmulgee, Post 3Donald W. Huskins, Eatonton
 Oconee, Post 1James L. Wiggins, Eastman
 Ogeechee, Post 1Daniel B. Snipes, Statesboro
 PauldingMartin Enrique Valbuena, Dallas
 RockdaleRobert F. Mumford, Conyers
 Rome, Post 2S. David Smith, Jr., Rome
 South Georgia, Post 1George C. Floyd, Bainbridge
 Southern, Post 1James E. Hardy, Thomasville
 Southern, Post 3W. Pope Langdale, III, Valdosta
 Stone Mountain, Post 1John J. Tarleton, Tucker
 Stone Mountain, Post 3Lynne Y. Borsuk, Decatur
 Stone Mountain, Post 5William Lee Skinner, Tucker
 Stone Mountain, Post 7Hon. Anne Workman, Decatur
 Stone Mountain, Post 9Hon. Edward E. Carriere, Jr., Decatur
 Tallapoosa, Post 2Brad Joseph McFall, Cedartown
 TiftonHon. Ralph F. Simpson, Tifton
 Waycross, Post 1Joseph J. Hennesy, Jr., Douglas
 Western, Post 2Edward Donald Tolley, Athens
 Out-of-State, Post 2C. Randall Nuckolls, Washington DC
 Member-at-Large, Post 3 (appointed)Derek Jerome White, Savannah
**Post to be appointed by president-elect.*

State Bar of Georgia 2006 Proposed Election Schedule

December Official Election Notice, December Issue Georgia Bar Journal
Dec.15 Mail Nominating Petition Package to incumbent Board of Governor Members and other members who request a package
Jan. 5-7 Nomination of Officers at Midyear Board Meeting, Renaissance Waverly Hotel, Marietta
Jan. 17 Deadline for receipt of nominating petitions for incumbent Board Members (Article VII, Section 2.)

Feb. 17 Deadline for receipt of nominating petitions by new candidates
March 3 Deadline for write-in candidates for Officer to file a written statement (not less than 10 days prior to mailing of ballots (Article VII, Section 1 (c))
March 17 Ballots mailed
April 18 12 P.M. Deadline for ballots to be cast in order to be valid
April 20 Election Results Available



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Georgia Bar Foundation Awards \$2.8 Million at Annual Grants Meeting

By Len Horton



Fiscal year 2004-05 brought several significant changes to the Georgia Bar Foundation. A new charter, an expanded Board of Trustees, rising interest rates and increased average balances in IOLTA accounts defined the year as one of the most significant in history. Financially, the year was the second best ever. IOLTA revenues reached about \$5.6 million, which is a jump of more than 47 percent versus the previous year.

"The turnaround in IOLTA revenues eased some of the pressure on this Board in deciding grant awards for so many impressive applicants," said Rudolph Patterson, newly-elected president of the Georgia Bar Foundation. The Georgia Bar Foundation's annual grant decisions meeting occurred on Sept. 23.

"Even with more money to award, major challenges had to be faced, and I was pleased with the way the Board responded. All Georgia lawyers and bankers should be proud," Patterson asserted. "These awards will assist these law-related organizations in helping thousands of people throughout our state."

A total of \$2.8 million was awarded to 35 grant applicants including the major providers of legal assis-

tance in Georgia and other organizations doing law-related work for hundreds of needy Georgians.

The meeting, like the Bar Foundation's year, was not business as usual. For the first time the Board focused not just on individual requests for funding, but took a close look at groupings of applicants. For example, civil legal services provider applicants were all considered at the same time and compared as a whole with total funds available and with that same category in previous years. As awards for legal services provider applicants were decided, the percentage of total funds awarded to that category was displayed on screen along with the same percentages in the prior five years. Similar groupings of applicants were made in post conviction legal services, criminal legal services, children programming, improving the justice system, law-related education and other law-related programs.

tice system, law-related education and other law-related programs.

Georgia Legal Services and Atlanta Legal Aid together received \$1.6 million of the approximately \$1.9 million awarded to the civil legal services category. The Pro Bono Project of Georgia Legal Services and the State Bar of Georgia received \$65,000. The Detention Project of Catholic Social Services, which seeks to provide legal assistance to incarcerated immigrants, received \$35,000, and the Georgia Law Center for the Homeless received \$35,000. The remainder of the \$1,921,500 in this category went to the Georgia Center for Law in the Public Interest, the Southern Center for Human Rights, and to several shelters including those in Thomasville, Statesboro, Albany, Savannah and Hartwell. All together, these recipients received 68.6 percent of all funds awarded at the meeting.

The Improve the Justice System Category received \$237,000, or about 8.5 percent of the total funds awarded. Recipients included the BASICS Program (\$114,500), which is run by Ed Menifee, a dynamic leader who has devoted his life to educating prisoners about how to avoid returning to a life of crime once released. BASICS is recognized as the most effective program in Georgia's prison system at reducing recidivism.

Also included in this category were awards to the State Bar of Georgia's Communications Department to improve the judicial system by expanding awareness of how our government works and the role of lawyers play in that system. Additionally, the Committee on the Judiciary, which is concerned with the problem of how to select and to retain judges, and Caminar Latino, which has developed a domestic

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Macon Lawyer Rudolph Patterson Elected President of the Georgia Bar Foundation



Macon lawyer Rudolph Patterson was unanimously elected president of the Georgia Bar Foundation on Friday, Sept. 23, 2005, at the annual grant decisions

meeting. Former president of the State Bar of Georgia, Patterson took over leadership from Hon. Louisa Abbot, a Superior Court judge in Chatham County.

"I am honored to be entrusted with the leadership of this distinguished organization," President Patterson said. "I promise to do everything I can to continue its great tradition of assisting many law-related organizations in Georgia." Rudolph Patterson is a partner in the law firm of Westmoreland, Patterson, Moseley & Hinson, which has offices in Macon and Albany. He was the president of the State Bar of Georgia in fiscal year 1999-2000.

The Georgia Bar Foundation is the charity named by the Supreme Court of Georgia to receive interest on lawyer trust accounts (IOLTA). By the end of this fiscal year, total cumulative IOLTA revenues since the program began in 1983 are expected to approach \$70 million in Georgia. These funds are used primarily to assist in the provision of legal services to people who cannot afford to pay for representation in legal matters both civil and criminal. In addition to Georgia Legal Services and Atlanta Legal Aid, other notable organizations supported include Adopt-A-Role Model, the High School Mock Trial Program, the State YMCA's Youth Judicial Program, the Georgia Innocence Project, the Truancy Intervention Project, the Liberty House of Albany and many more.

violence intervention program for Latino families in the Atlanta area, received awards.

Post conviction legal services received \$212,500, which included a \$200,000 grant award to the Georgia Appellate Practice and Educational Resource Center. This organization assists death row inmates in post-conviction proceedings. As the grantee pointed out in its application, Georgia is the only death penalty state that does not provide counsel in such proceedings. The Board also awarded a grant to the Georgia Innocence Project, which uses DNA evidence, if available, to correct wrongful convictions.

Grant awards in the amount of \$205,000, representing 7.3 percent of total grant dollars awarded during the meeting, were made to assist children in various ways. The Truancy Intervention Project of Kids In Need of Dreams is based on the idea that keeping kids in school keeps them out of trouble. The brainchild of Terry Walsh, TIP responded to a call from the Georgia Bar Foundation to take TIP statewide, and interest in this program throughout Georgia has never been higher. TIP received \$75,000.

Atlanta Volunteer Lawyers Foundation's Guardian ad Litem program provides lawyer volunteers to assist with contested child custody cases. Another organization asked by the Georgia Bar Foundation to export its program to other communities throughout the state, AVLf several years ago began a major effort to interest and assist other Georgia communities in developing similar pro-

grams. Their export efforts have been remarkably successful and their work continues. AVLf received \$30,000.

Adopt-A-Role Model in Macon and Ash Tree Organization in Savannah have approached the problem of children at risk in similar ways. Each has created a program of activities incompatible with delinquent behavior and then marketed their programs to local officials. Each is a recognized force in its community, helping to keep kids on the path to success and away from drugs and other bad influences. Tina Dennard and Alex Habersham in Macon and Morris Brown in Savannah lead these programs, both of which are successful in keeping children out of trouble. ARM and Ash Tree together received \$45,000.

With the support of the Lowndes County Bar Association under the leadership then of Steve Gupton, Lowndes County Drug Action Council (LODAC) developed a program to help disadvantaged children in two Valdosta housing projects during the 1990s. This year LODAC returned to the Georgia Bar Foundation to fund its "Creating A Responsible Thinker Program." Developed as an alternative to detention by LODAC in cooperation with Judge Wayne Ellerbee of the juvenile court, this responsible thinker program was exciting enough and offered enough promise to earn it a \$20,000 grant award.

Rome's Exchange Club Family Resource Center received \$15,000 for this program, which arranges super-

vised exchange services for families in conflict during divorce and custody disputes. Violence is avoided, and affected children are less hurt than they might be.

The Children's Tree House in Columbus and the Golden Isles Children's Center in Brunswick provide child advocacy services when dealing with child abuse cases. Together they received \$20,000.

The law-related education category includes some of the most popular programs supported by the Georgia Bar Foundation. The Georgia L.R.E. Consortium of the Carl Vinson Institute at the University of Georgia, under the capable leadership of Anna Boling, has been encouraging the teaching of what used to be called civics in public schools, juvenile justice facilities and in adult education centers throughout the state. It received \$80,000.

The Young Lawyers Division High School Mock Trial program is one of the best known, most respected grantees receiving significant funding by the Georgia Bar Foundation. Since 1993, the Bar Foundation has supplied core funding, which this year amounted to \$59,500.

The Youth Judicial Program of the State Y.M.C.A. introduces 11th and 12th graders to our judicial system by having them debate both sides of an issue before a panel of lawyers and judges. The recipient of \$12,000 this year, it is a highly praised program supported by the Foundation annually since 1986.

The Georgia First Amendment Foundation received \$10,000 to fund several different publications dealing with open government and the Open Records Act. This organization has become well known and respected under the impressive leadership

of Hon. Hollie Manheimer, who has become a much-sought-after expert on First Amendment issues.

The Board supported an innovative idea to produce videos. The Young Lawyers Division of the State Bar of Georgia, under the able leadership of Damon Elmore, and Tracy Roberts, who managed the creation of the Legal-Aid-GA.org website, are joining forces to create web-based videos about domestic violence and temporary protective orders. These educational videos will be made available on Legal-Aid-GA.org.

The Board also decided to support the Jefferson County Community SHIPS for Youth program by funding two students in the Jefferson County High School apprenticeship program. They will serve an apprenticeship in local law firms. The program requires students to work 15 hours per week for 22 weeks.


The Board also supports the Recording for the Blind and Dyslexic's program to record several law books for the visually impaired. The organization is based in Athens.

Even though the Georgia Bar Foundation by order of the Supreme Court of Georgia provides significant funding to the Georgia Public Defender Standards Council, which is responsible for setting up and managing Georgia's new criminal indigent defense system, it also supports organizations providing innovative services to people charged with crimes.

The Athens Justice Project (AJP) is one of those organizations. Born in response to a request from the Georgia Bar Foundation to Doug Ammar, executive director of the Georgia Justice Project (GJP), to try to interest other communities in creating organizations like GJP, the AJP is enthusiastically supported

by a Board including Bill Harvard of Evert & Weathersby and Alex Scherr of the University of Georgia School of Law. AJP applies a multifaceted approach including legal assistance to rescue people in trouble in the criminal justice system. AJP received \$20,000.

In a category by itself, The Disability Law and Policy Center of Georgia received general operational support of its efforts. The brainchild of Pat Puckett and ably managed by Uche Egemonye, DLPC has become a major force not only in literally opening difficult to reach doors but also in educating communities about how to comply with disability law when constructing public buildings.

These grant awards were possible only because of the coming together of several important groups. Georgia lawyers participate in the IOLTA program in this state and generate significant revenues from interest on their trust accounts. The Supreme Court of Georgia issued the orders that made IOLTA possible. Working with Georgia's lawyers under the direction of the Supreme Court of Georgia, Georgia's bankers behind the scenes are making IOLTA a daily reality. Because of this IOLTA partnership of lawyers and bankers under the direction of the Supreme Court of Georgia, the Georgia Bar Foundation has become Georgia's major charitable organization devoted to helping solve many of the most challenging law-related problems of the state. On behalf of the Board of Trustees of the Georgia Bar Foundation, we thank you all. 

Len Horton is the executive director for the Georgia Bar Foundation.

Mentor Program Gets Off to a Great Start

Ten years of work culminated on Nov. 9, when Chief Justice Leah Ward Sears administered the oath to the inaugural group of mentors gathered at the Bar Center and at the South Georgia Office in Tifton (via simulcast) for the new Transition Into Law Practice Program. The formal swearing-in ceremony capped the first Mentor Orientation Training Program aimed at equipping the newly appointed mentors for their duties: to teach their respective beginning Georgia lawyers the practical skills, seasoned judgment, and sensitivity to ethical and professionalism values necessary to practice law in a highly competent manner.

Chief Justice Sears pointed out that the Supreme Court of Georgia



(Left to right) University of Georgia Law School Professor C. Ronald Ellington, Supreme Court of Georgia Justice George H. Carley, Chief Justice's Commission on Professionalism Executive Director Sally Lockwood, Supreme Court of Georgia Chief Justice Leah Ward Sears, Standards of the Profession Committee Chair John T. Marshall, Transition into Law Practice Program Director Douglas Ashworth and Bar Admissions Director Bucky Askew were all present for the first Mentor Orientation Training Program.

has been supportive of the Bar's efforts to improve transitional education for newly admitted lawyers. Remarking on the strong attendance at the orientation, she expressed appreciation on behalf of the Supreme Court to the mentors for their service to the profession and to the State Bar for its commitment to the program. Justice George Carley accompanied Chief

Justice Sears to the ceremony and commended mentors for their willingness to pass on the values of professionalism to another generation of lawyers. He also thanked the leadership of the State Bar and the Chief Justice's Commission on Professionalism for their trail blazing efforts in creating the program.

The roster of mentor volunteers includes current State Bar



STATE BAR OF GEORGIA
COMMISSION ON CONTINUING LAWYER COMPETENCY



TRANSITION INTO LAW PRACTICE PROGRAM

Douglas Ashworth, Director

John T. Marshall, Chair
Standards of the Profession Committee

MENTOR VOLUNTEER FORM

SECTION I—CONTACT INFORMATION (Please complete)

NOTE: Please list current information below. If you need to report name/address changes, you must contact the State Bar Membership Department (404.527.8777 or www.gabar.org) in compliance with State Bar Rule 1-207.

Name & Bar Number: _____

Address: _____

City/State/Zip: _____

PHONE NUMBER: _____

(List Best Contact Number: Designate whether Home, Work or Cell)

E-MAIL ADDRESS: _____

(Confirmation of receipt of your form will be sent to the e-mail address you provide)

SECTION II—MENTOR TYPE (Please check applicable blank)

_____ I am willing to serve in the Transition Into Law Practice Program as mentor to a beginning lawyer who will join me or my office (pending Bar Examination results). ("Inside Mentor")

_____ I am willing to serve in the Transition Into Law Practice Program as mentor to a beginning lawyer who is not employed by me or my office. ("Outside Mentor")

_____ I am unable to participate in the Transition Into Law Practice Program. (NOTE: If you check this option, you may fax this form to 404.225.5041 and ignore Sections III and IV below.)

SECTION III—MENTOR MINIMUM QUALIFICATIONS (Please read)

To be eligible for appointment by the Georgia Supreme Court as a Mentor, you must:

- Be an active member of the State Bar of Georgia, in good standing;
- Been admitted to practice for not less than five (5) years;
- Have a reputation in your local legal community for competence, ethical and professional conduct;
- Never have been sanctioned, suspended or disbarred in any state from the practice of law; and
- Certify coverage of professional liability insurance (minimum limits \$250,000.00/\$500,000.00) or its equivalent.

PLEASE NOTE—CERTIFICATION/RELEASE ON NEXT PAGE

SECTION IV—CERTIFICATION, AUTHORIZATION AND RELEASE (Must be signed and notarized)

STATE OF GEORGIA

COUNTY OF _____

I, the undersigned, nominee for appointment as Mentor by the Georgia Supreme Court in the Transition Into Law Practice Program ("Program"), being cognizant of the responsibility to the public, the Bench and the Bar of this State, vested with the State Bar of Georgia in the selection of persons submitted to the Georgia Supreme Court for such appointment:

A. (Professional Liability Insurance or Equivalent Certification) I DO HEREBY CERTIFY that I am currently, and while serving as a Mentor will remain, covered as an insured under a professional liability insurance policy with policy limits as outlined in Section III above, or, if applicable, the equivalent to such coverage through the legal status of my current employer. I am aware that neither the State Bar of Georgia nor the Commission on Continuing Lawyer Competency provides professional liability insurance to Mentors in the Program. I assume sole responsibility for disclosing my participation in the Program to my professional liability insurance carrier (or, if applicable, to my employer whose legal status provides the equivalent to such coverage);

B. (Authorization, Confidentiality, and Release Regarding Relevant Information) I DO HEREBY AUTHORIZE the State Bar of Georgia Office of General Counsel and any person providing information to the Program to: answer any inquiries, questions or interrogatories concerning me submitted to them by the Program or its authorized representatives; disclose complete information in any of their files; and permit the Program's authorized representatives to inspect and make copies of any complaints (including but not limited to complaints dismissed or expunged) made against me at any time whatsoever and any other records and information about or related to me. I UNDERSTAND AND AGREE that all information obtained or received in connection with my selection for and participation in the Program will be kept confidential from all other persons, firms, or corporations, including myself. I HEREBY RELEASE and exonerate the State Bar of Georgia Transition Into Law Practice Program, the State Bar of Georgia Office of General Counsel and every other person, firm, officer, corporation, association, organization or institution who provided, received, or used any information as part of my selection for and participation in the Program from any and all liability, claims, or damages of every nature and kind growing out of or in any way pertaining to providing, receiving, or using information about me in connection with my selection for and participation in the Program.

C. (Certification of Date of Birth, Bar Number, Name) I DO HEREBY CERTIFY that my Date of Birth is

_____ and my State Bar Number is _____. I understand this information is required in order to verify State Bar membership records. If appointed I wish for my name to appear on the MENTOR APPOINTMENT CERTIFICATE as follows **(PLEASE TYPE OR PRINT):**

IN WITNESS WHEREOF I have set my hand and seal this _____ day of _____, _____.

SIGNED: _____

Subscribed before me this _____ day of _____, _____.

Notary Public
(SEAL)

RETURN TO:
State Bar of Georgia
Transition Into Law Practice Program
104 Marietta St. NW, Suite 100
Atlanta, Georgia 30303

**NOTE: Because your original signature is required,
this information cannot be submitted electronically or via facsimile transmission.**

President Robert D. Ingram, who also participated in the Pilot Project conducted during 2000-2001, and Immediate Past President Rob Reinhardt.

“The State Bar of Georgia as an arm of the Supreme Court and individual members of the Bar have an obligation to the new members of the profession, to the courts, and to the public to assist beginning lawyers as they move from student to practitioner,” Bar President Ingram said. “I believe that members of the State Bar of Georgia are up to this challenge. I have volunteered to serve as a mentor and urge other members of the Bar to consider serving to assure the future strength of our profession.” *(Please see the mentor volunteer form on pages 45-46.)*

The mentors attending the 3-hour orientation received 3 hours of CLE with all registration and reporting fees paid by the Transition Into Law Practice Program. The new mandatory Transition Into Law Practice Program (which replaces the Bridge the Gap Program as of Jan. 1, 2006) is operated under the auspices of the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency and places a beginning lawyer with a mentor for the first 12 months of their practice.

The Program Director Douglas Ashworth was also sworn in as a mentor. “Georgia is the first to require mandatory mentoring tied to CLE, and our Bar is being closely watched by other states. In addition to implementing and administering this new program for our mentors and beginning lawyers, I routinely field questions from bar officials in other states—and other



Chief Justice Leah Ward Sears presents the Mentor Appointment Certificate to Board Member Robin Frazer Clark.



Chief Justice Leah Ward Sears administers the oath of appointment as mentor to the volunteers during the first Mentor Orientation Training Program.



Chief Justice Leah Ward Sears and Justice George H. Carley welcome the group to the first Mentor Orientation Training Program.

countries—about Georgia's Transition Into Law Practice Program," Ashworth said.


Ashworth also noted that he was particularly pleased with the enthusiastic response the new program was receiving from judges, judicial assistants and secretaries. "Our mentor volunteers include both federal and state judges, some of whom are already planning group mentoring experiences for newly admitted Georgia attorneys in their respective areas," he said.

Perhaps the three keenest observers of the proceedings were John Marshall, who has chaired the Standards of the Profession Committee since its inception in 1996, University of Georgia Law Professor Ron Ellington, who developed the new curriculum for the updated Bridge the Gap Program, and Sally Lockwood, executive director of the Chief Justice's Commission on Professionalism.

John Marshall, chair of the Standards of the Profession Committee said, "This program aims to give every newly admitted lawyer in Georgia a firm foothold in the crucial first year of practice. Such an ambitious undertaking took the steady support of the bench and bar leadership over the past nine years and the concerted efforts of a core of tireless workers—the members of the Standards of the Profession Committee, ably co-chaired by Bill Scrantom of Columbus. Key to the program have been the contributions of Larry Jones, executive director of ICLE, Bucky Askew, director of Bar Admissions, and Doug Ashworth, the program's first director. Without them, the program would not have happened."

Lockwood added, "This program seeks to improve in a fundamental way the transition from law student to competent practitioner. It has the potential to make a significant difference over time in the level of profes-

sionalism among members of the State Bar of Georgia."

For more information about the Transition Into Law Practice Program, contact Douglas Ashworth at (404) 527-8704 or e-mail tilpp@gabar.org. 

10 Years in the Making

1996

State Bar of Georgia creates Standards of the Profession Committee with charge to investigate and report to Board of Governors as to whether the Bar should require beginning lawyers to complete a period of internship or other supervised work prior to admission.

1997

Standards of the Profession Committee recommends pilot project to test the feasibility of a transition into practice program combining mentoring with continuing legal education.

1998-1999

Pilot project logistics are planned and funding secured.

2000-2001

Bar conducts two-year pilot project with 100 mentors and 100 beginning lawyers.

2002

Pilot project is evaluated as successful in conveying to beginning lawyers the practical skills and professional values necessary to practice law in a highly competent manner.

2003

Standards of the Profession Committee formally recommends a mandatory Transition Into Law Practice Program that combines mandatory mentoring with continuing legal education for newly admitted lawyers in Georgia.

Board of Governors of State Bar of Georgia approves the concept of a mandatory Transition Into Law Practice Program and authorizes the Standards of the Profession Committee to propose an Implementation Plan.

2004

Supreme Court of Georgia approves the concept of a mandatory Transition Into Law Practice Program and authorizes the Standards of the Profession Committee to propose an implementation plan.

Standards of the Profession Committee prepares implementation plan.

Board of Governors approves implementation plan.

2005

Supreme Court of Georgia approves implementation plan calling for mandatory Transition Into Law Practice Program to commence Jan. 1, 2006.

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The Colquitt County Courthouse at Moultrie

The Grand Old Courthouses of Georgia

By Wilber W. Caldwell

Atlanta architect Andrew J. Bryan's stunning 1903

Colquitt County Courthouse at Moultrie stands on the town's spacious square as a monument to the exploitation of one of the last great stands of virgin pine in Georgia. In 1886, when W.W. Ashburn arrived in South Georgia to purchase vast tracts of untouched woodlands northeast of Moultrie, the town was a dusty hamlet of about 50 residents. Ashburn was fresh from a notable success in the timber business in Dodge County, and he quickly began a rich harvest in and around Colquitt County.

Charles Pidcock also arrived in Colquitt County the late 1880s, and



Photo by Wilber W. Caldwell

Built in 1902-03, Andrew J. Bryan, architect.

with the support of his farther, James Nelson Pidcock, a New Jersey railroad promoter and builder, he began logging operations south of Moultrie in Thomas and Brooks Counties. Lumbermen Ashburn and Pidcock, along with Colquitt County's pioneer timber baron, J.B. Norman, would all play roles in the creation of Moultrie's railroads.

Colquitt County had been created from Thomas County in 1856, and the town of Moultrie was established beside the tiny post office, which had originally been called Ocklockney. Little is known about the first Colquitt County Courthouse except that it was quite modest. One account describes a one-story log structure built in 1859.

This simple building burned in 1888, and a two-story frame courthouse was erected in that year. With the arrival of The Georgia Northern Railroad in 1893, things began to stir in Moultrie. In 1895, a promotional piece declared, "Three years ago Moultrie had a population of 50 inhabitants, now she is a thriving little town of 1,200 busy, stirring souls." Various accounts place Moultrie's 1893 population between 50 and 300. County records relate that there were no brick buildings in Moultrie in 1895, but by 1901, brick buildings lined the square, the town had three railroads, three banks, a cotton mill and a population which exceeded 2,200.

As the new century dawned and the vast stands of pine disappeared from Colquitt County, the railroads were still hauling carloads of New South promises into Moultrie. The time was ripe for a new courthouse to rise.

In 1901, when Andrew J. Bryan presented the plan for his stunning Colquitt County Courthouse to county leaders in Moultrie, James W. Golucke's 1900 DeKalb County Courthouse at Decatur was the toast of Georgia. Golucke's courthouse at Decatur was the third in the state to reflect the up-to-date styling of the Neoclassical Revival which had swept the American North after the success of the "Florentine Renaissance" buildings of the 1893 Columbia Exposition at Chicago. Oddly, the first two neoclassical court buildings in Georgia had been designed by Andrew Bryan himself. The first was the 1895 Stewart County Courthouse at Lumpkin. This was followed by Bryan's 1896 Muscogee County Courthouse at Columbus.


Bryan's 1895 courthouse at Lumpkin mirrored older Georgian

motifs, while his strictly Neoclassical creation at Columbus with its trendy Beaux-Arts ornament copied lavish Northern models, which symbolized the nation's lusty materialism. At the turn of the century, such symbolism was not completely welcome in the American South. Thus, despite the fact that Andrew Bryan had pioneered the introduction of the new Classicism into the Deep South, it would be Golucke's courthouse at Decatur, completed in 1900 that became the model for a new kind of public building in Georgia.

In DeKalb County, James Golucke successfully captured the Southern imagination with his marriage of the flowery new American neoclassicism to the simple classical forms associated with the architecture of the Old South. Golucke understood that the South's quest for modern progress was impossibly encumbered by the brooding burden of her past. At Decatur, he fashioned a perfect duel symbol for the Southern dilemma, a building that represented the region's modern material aspirations and, at the same time, nostalgically recalled a romantic image of a long past not forgotten. By 1903, six new court buildings based on Golucke's Decatur plan rose in Georgia.

One of these was Andrew J. Bryan's Colquitt County Courthouse. Like Golucke, Bryan began with the dome of a central clock tower, squared it and attached grand porticos to each of the four sides. Thus, all four sides of Moultrie's large square were afforded more or less equal entrances, and each reflected Old South imagery in a grand Classical portico centered on a rectangular mass. Following Golucke's lead,

Andrew Bryan then decorated his creation in the ornament of the day, flowery capitals, scrolling brackets supporting ornate stone window headers, two high balustrades, and an octagonal clock tower with broken based pediments supported by paired columnettes to frame the four faces of an enormous clock.

Despite such modern imagery, Andrew J. Bryan was still drawn to the Picturesque in 1901. Multi-paned windows and an eight-sided flared roof with a pointed lantern adorn the great tower. These elements represent a retreat to the architectural styles of the earlier Romantic era, and suggest that Bryan's building is transitional. The subsequent removal of the original balustrades and the addition of modillions supporting the broad eaves add to the picturesque affect. These elements, along with the simplification of the fenestration after a 1959 remodeling that turned the two-story building into a three-story affair, draw attention to the ornate tower. Simplification like this press the entire building farther back in time and away from the strict "return to order" of the new American Classicism of the turn of the century. 

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

KUDOS

The Atlanta Chapter of American ORT presented U.S. Senator Johnny Isakson with the **Community Achievement Award** at their tribute dinner in December. This award is presented annually to individuals who have made a unique contribution to the greater community and established new directions for society. Founded as a non-profit organization in 1922, American ORT supports a global network of schools and training programs that boasts more than 3 million graduates to date, and educates 300,000 students in 60 countries annually.



Parker Poe Adams & Bernstein LLP announced that Atlanta attorney **Donald P. Ubell** was named to Woodward/White's *The Best Lawyers in America 2006* in **public finance law**. The firm had 19 attorneys selected overall. *The Best Lawyers in America* are selected as a result of a peer-review survey, in which thousands of the top lawyers in the United States confidentially evaluate their professional peers. *The Best Lawyers in America* list represents 57 law specialties in every state.

South Carolina attorney **Dale E. Akins** of **Novit, Scarminach & Akins, P.A.**, has been named a **permanent member** of the **U. S. Fourth Circuit Court of Appeals Judicial Conference**.

The **American Inns of Court** announced that **C.B. Rogers**, a founding partner of the Atlanta firm of **Rogers & Hardin, LLP**, was the 2005 recipient of the **American Inns of Court's A. Sherman Christensen Award**. The award was presented at the annual American Inns of Court Celebration of Excellence, held at the Ronald Regan Building and International Trade Center in Washington, D.C., in October. This award is bestowed upon a member of an American Inn of Court who, at the local, state, or national level has provided distinguished, exceptional and significant leadership to the American Inns of Court movement. The recipient exemplifies the qualities of leadership and commitment displayed by Judge A. Sherman Christensen. Rogers was an indispensable leader in the founding of the Lumpkin American Inn of Court at the University of Georgia School of Law; the Bleckley American Inn of Court at Georgia State University School of Law; and the Lamar American Inn of Court at Emory University School of Law. He has continued to contribute his time and leadership to these Inns of Court and was recently honored by them for his devoted support, work and activities.



Former Chief Justice **Norman Fletcher** received the **Second Annual Excellence in Public Service Award** from Gov. Sonny Perdue at a September ceremony in Atlanta. The award is co-sponsored by the University of Georgia's Carl Vinson's Institute of Government and *Georgia Trend* magazine and recognized public service contributions of officials in five categories.

Mark O. Shriver IV, local attorney and longtime community volunteer in Woodstock, was elected to the **Board of Directors of Optimist International**, one of the largest service club organizations in the world. Shriver began his three-year term on Oct. 1, 2005. Shriver has been an Optimist Club member for more than 20 years, and currently is a member of the Midday Optimist Club of Woodstock and the Towne Lake-Woodstock Optimist Club. He has served as president of the Optimist Club of Canton, the midtown Evening Optimist Club of Atlanta and the Midday Optimist Club of Woodstock. Shriver is a part governor of the Georgia District and a past vice president of Optimist International.

Womble Carlyle Sandridge & Rice, PLLC, announced that **Michael Sullivan**, a partner in the firm's product liability practice group in Atlanta, has ranked highly in *The Best Lawyers in America 2006* rankings. Sullivan has 20 years experience as a litigator. He handles a broad range of multi-jurisdictional litigation including commercial litigation, product liability defense, anti-trust/trade secret litigation, and business disputes. The total number of Womble Carlyle attorneys appearing on the list has increased again for the fifth consecutive year, from 53 attorneys in the 2005-06 rankings to 60 in the 2006 rankings. *Best Lawyers* is based on a peer-review survey in which 18,000 leading attorneys throughout the country cast more than a half million votes on the legal abilities of other lawyers in their specialties.

Seventy-one Kilpatrick Stockton attorneys were honored by their peers in *The Best Lawyers in America 2006*. Kilpatrick Stockton is ranked in the

nation's top 25 for the overall number of attorneys listed, with five practice areas ranked in the top 10 nationally for the number of attorneys listed in intellectual property, alternative dispute resolution, construction, corporate and commercial litigation. Additionally, in Georgia, the firm garnered **No. 1** rankings for the total number of attorneys listed in IP, alternative dispute resolution, and construction. Kilpatrick Stockton also announced it was named to the list of **top US firms** by *American Lawyer* magazine, earning honors as the **top-ranked firm** in the Southeast. The same issue of *American Lawyer* also reports a "pro bono scorecard." This year Kilpatrick Stockton moved into the top 25 nationally. The AmLaw rankings are based on a formula that uses two factors: average pro bono hours and the percentage of lawyers with over 20 hours. In the latter category, the firm's percentage put them in the top five in the nation.

McGuireWoods LLP was recognized in *Corporate Counsel* magazine's "**Who Represents America's Biggest Companies,**" as one of the **top 10 in most overall mentions** among the 421 law firms named in the annual survey. Eleven of the general counsel named McGuireWoods in one or more of the practice areas covered, for a total of 21 mentions overall. Additionally, McGuireWoods was listed nine times by general counsel in reference to the firm's litigation practice. The magazine asked general counsel at Fortune 250 companies to list the primary outside counsel they turn to for litigation, corporate transactions, labor and employment, intellectual property and corporate governance assistance.

The Best Lawyers in America 2006 recognized **William B. Marianes**, a partner in the Atlanta office of **McGuireWoods LLP** in its 2006 edition. Marianes was recognized for his practice in gaming law. The firm had 96 lawyers listed overall, which is a 26 percent increase from last year's listing. At McGuireWoods, Marianes practices in the areas of corporate law; organization and capitalization of business entities; mergers and acquisitions; intellectual property identification, protection and commercialization; outsourcing and privatization transactions; franchising; entertainment, publishing, art, sponsorship and ancillary rights transactions; closely held and family businesses and business succession planning; and state-run lotteries. He advises and represents entrepreneurial and middle market companies in all aspects of business transactions.

Carlton Fields announced that Atlanta attorneys **Lance D. Reich** and **Joseph F. Hession** were selected for the inclusion in *Atlanta Magazine's 2005 Georgia Rising Stars*. Reich is a patent attorney

representing clients ranging from Fortune 100 companies to small start-up ventures. He utilizes his technical expertise in the electrical and computer arts to create and maintain valuable intellectual property portfolios. Hession's practice focuses on construction and complex commercial litigation. He represents project owners, developers, contractors, architects and engineers throughout the southeast in construction litigation and arbitration proceedings, in addition to corporations and individuals in business dispute litigation and arbitration proceedings arising from general contract disputes, business torts and non-compete agreements.

Hunton & Williams LLP announced that partner **Elizabeth Ann "Betty" Morgan** received a **2005 Outstanding Committee award** at the Intellectual Property Owners Association's annual meeting. Morgan, who vice chairs the association's Trademark Law U.S. committee, was recognized alongside Kathryn Barrett Park, committee chair, of General Electric Co. for their committee's outstanding service in promoting reliable, effective and up-to-date intellectual property systems. The Intellectual Property Owners Association is the only trade association in the United States that serves all owners of patents, trademarks, copyrights and trade secrets in all industries and all fields of technology. Additionally, Morgan was named the **2005-2006 vice chair** of the **trademark legislation committee** of the **American Intellectual Property Law Association**. Morgan concentrates her trial practice on the prosecution, enforcement and defense of trademark rights, trade secrets, copyrights, covenants-not-to-compete and patents in litigation. She also advises clients about their respective IP rights in situations involving traditional, as well as e-commerce. She assists clients with branding issues, including trademark selection, protection and licensing. Recognized for her work by fellow Georgia lawyers, Morgan was named one of the 2005 top 50 women lawyers in Atlanta by Atlanta and Georgia Super Lawyers magazines and as a Georgia Super Lawyers for intellectual property litigation in 2004 and 2005.



Nancy Van Sant, a director of **Sacher, Zelman, Van Sant, Paul, Beiley, Hartman, Rolnick and & Grief, P.A.**, has been chosen to be a **member of the Emory Law Council**, a prestigious advisory group of Emory Law School alumni. U.S. News & World Report most recently ranked the Atlanta based school 32nd of all law schools in the country. Her appointment is for three years. Before entering private practice, Van Sant served as regional trial counsel and branch chief in enforcement for the

U.S. Securities Exchange Commission office in Atlanta. Her practice today concentrates in the securities arena and the prosecution and defense of Federal and State securities litigation and arbitrations, defense of SEC, NASD and other regulatory matters. Van Sant serves on the Judicial Nominating Commission for the Third District Court of Appeal in Florida, testifies as an expert witness and has taught classes and seminars on the securities laws and attorney liability.



Cozen O'Connor member **Karen D. Fultz** has been selected for inclusion in the eighth edition of *"Who's Who In Black Atlanta?"*, the historic networking guide featuring a compilation of biographical data on black leaders and role models from diverse career paths and vocations in Atlanta. Fultz practices in the firm's Atlanta office, concentrating in subrogation and recovery matters. She is president of the Gate City Bar Association and a board member of the Atlanta Legal Diversity Consortium, the Atlanta Bar Association and the Atlanta Volunteer Lawyers Foundation.



Clint Crosby of the Atlanta office of **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, was named as a **2005 Rising Star** in intellectual property litigation by the publishers of *Law & Politics and Atlanta Magazine*. Rising Stars are selected from Georgia lawyers who are under 40 years of age or who have been practicing less than 10 years. They are nominated by attorneys previously selected as Georgia Super Lawyers who select attorneys that they have personally observed in action whom they believe to be the up and coming stars of the profession. The nominees are then researched and evaluated by the publisher through interviews with Georgia attorneys and a verification of credentials, after which the final selection is made. Less than 2.5 percent of Georgia attorneys are selected as Rising Stars.

Smith, Gambrell & Russell, LLP, and **Kilpatrick Stockton LLP**, two premier Atlanta-based law firms, announced that they have agreed to jointly sponsor a new childcare facility for children of their employees. The new facility, scheduled to open in the first quarter of 2006, will be located at 1316 West Peachtree St. within a few blocks of each firm's office in midtown Atlanta. Recognizing the challenges faced by all working parents, Smith, Gambrell & Russell, LLP, and Kilpatrick Stockton engaged Bright Horizons Family Solutions—the world's leading provider of employer-sponsored quality childcare—to develop and operate the new childcare center. Both firms will make the new childcare center

available to their employees at a significant discount from prevailing market rates for comparable care. When completed, the new facility will have capacity for 120 children with age ranges from infants to pre-kindergarten. The plans include additional space to accommodate approximately 24 school-age children during summer breaks and school holidays.



Kilpatrick Stockton has made an extraordinary impact in the Atlanta community and beyond during the third quarter of 2005, exceeding **1,150** volunteer hours. Highlights include:

- 72 pints of blood collected at August blood drives
- 117 hours devoted to cleaning up their adopted section of Oakland Cemetery
- Over \$4,300 collected for the Associates Campaign for Legal Services
- 21 volunteers organized carnivals at three Atlanta area children's hospitals in conjunction with the Starlight Starbright Children's Foundation
- 387 backpacks full of school supplies were donated to the youth of Peopletown
- 960 sandwiches made for the homeless at Crossroads Community Ministries
- 42 volunteers signed up to be reading partners with Everybody Wins! for the 2005-06 school year at John Hope Elementary School
- More than \$60,000 donated to the American Red Cross to support Hurricane Katrina relief efforts
- Assisted 5 employees with families impacted by Hurricane Katrina by donating clothing, household supplies, gift cards, etc.
- More than \$3,600 collected for the Susan G. Komen Foundation in conjunction with Lee Denim Day.
- 156 meals delivered through Meals on Wheels

Managing partner **Roger K. Quillen** and partners **Claud "Tex" McIver**, **Ann Margaret Pointer**, and **John E. Thompson**, attorneys at the Atlanta office of **Fisher & Phillips LLP**, were named in *The Best Lawyers in America 2006*. **Quillen** is the managing partner and chairman of the management committee. His practice involves litigation covering a wide range of employment discrimination issues, employ-

ee welfare benefit plans, the Railway Labor Act and issues arising before the National Labor Relations Board and the Equal Employment Opportunity Commission. His special emphasis is in federal appellate litigation. In his 30-year career, **McIver** has assisted clients nationally and internationally in their compliance efforts involving all federal and state employment laws. Much of his time is involved advising employers concerning mergers and acquisitions, and consolidation and streamlining of organizations. **Pointer** has represented management in labor and employment matters for more than 29 years. As counsel to many U.S. companies and U.S. subsidiaries of global companies in a variety of businesses, her areas of practice include defending employers against class, collective and individual discrimination, retaliation and harassment complaints and lawsuits under many federal and state employment and discrimination laws as well as under the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, and the Migrant and Seasonal Agricultural Worker Protection Act. **Thompson's** practice focuses on wage and hour law, emphasizing issues relating to minimum wage, overtime, timekeeping and wage-payment requirements. He assists employers in preventive efforts designed to ensure compliance, and he handles both investigations conducted by government agencies and litigation in the wage and hour area.



Georgia Lawyers Insurance Company gave \$5,000 for the Red Cross Hurricane Katrina relief effort. Board Chairman and Past State Bar President **Littleton Glover** is shown presenting the check to Insurance Commissioner **John W. Oxendine**. After accepting the check, Oxendine said, "There's a lot of work to be done to repair the damage from the natural disasters that hit our nation. The Red Cross is a major part of that effort, and I urge other insurance companies to match the generous donation given to me today by Litt."

The International Society of Primerus Law Firms welcomed **Morris Law Firm** of Atlanta to its membership. Founded in 1966, Morris Law Firm assists businesses and organizations meet strategic and

tactical challenges to mitigate risk and create long-term inherent value. The firm maintains an international practice, as well as local non-profit and business clients. The firm also works with high net worth individuals, helping clients to develop strategic individualized plans for wealth management, estate planning and transfer of accumulated wealth. Morris Law Firm joins more than 80 member law firms nationwide that carry the Primerus seal. Headquartered in Grand Rapids, Mich., Primerus is an international network of top-quality, independent law firms that adhere to rigorous standards based on the following principles: integrity, excellence of work product, reasonable fee structure, professional education, civility to bench and bar, and community service.



David McDade, district attorney for the Douglas Judicial Circuit, has been named the **2005 District Attorney of the Year** by the District Attorneys' Association of Georgia. McDade was elected district attorney in 1990 after serving eight years as a felony trial prosecutor, five as chief assistant district attorney. The prestigious award was presented to McDade by his peers during the annual Summer Conference Training hosted by the Prosecuting Attorneys' Council of Georgia. The District Attorney of the Year is awarded annually to one of Georgia's 49 District Attorneys in recognition of outstanding service to victims of crime and to the association. McDade, a steadfast advocate for victims of crime, has personally prosecuted more than 250 felony trials, including more than 50 homicides.



Charles A. "Chuck" Spahos, solicitor-general for Henry County, has been named the **2005 Solicitor-General of the Year** by the Georgia Association of Solicitors-General. The Solicitor-General of the Year is awarded annually to one of Georgia's Solicitors-General in recognition of outstanding service to victims of crime and to the association. Spahos is a member of the Association's 2005-06 executive board and serves as the association's treasurer. Spahos received the prestigious award during the annual Summer Conference Training hosted by the Prosecuting Attorneys' Council of Georgia. Spahos was appointed Henry County solicitor-general in January 2002 after serving as Solicitor of the Municipal Court of McDonough, Ga., for three years. He was also a felony trial prosecutor for two years in the Office of the District Attorney for the Flint Judicial Circuit. Spahos has served as chief investigator for the district attorney and has previous law enforcement experience, including four years with the Henry County Police Department.

ON THE MOVE

In Atlanta

The Atlanta office of **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that health care attorneys **Phyllis Granade**, **Gary McClanahan** and **Andrew Lemons** have joined the practice, and **Ed Novotny** has joined the business transaction and relations litigation practice as an **of counsel** member. Granade was a partner in the Atlanta office of Epstein, Becker & Green, P.C., while both McClanahan and Lemons come to the firm from Alston & Bird LLP. **Granade** has extensive experience in the field of health information and technology and is author of a chapter on telemedicine and medical malpractice published by the American Health Lawyers Association. Currently, she provides privacy and security compliance advice regarding state and federal laws to a wide range of health care providers, including for-profit and not-for-profit hospital systems representing more than 300 hospitals in the United States. **McClanahan** is a recognized authority on health care fraud and abuse issues and advises clients on the Medicare Anti-Kickback Statute, the Stark Law, the Civil Monetary Penalties Statute, the False Claims Act, and similar federal and state laws. He is a frequent speaker on a variety of health care issues, including fraud and abuse, e-health, managed care, and HIPAA issues. **Lemons** has spent a large portion of his time over the past two years practicing extensively in the area of clinical research trial issues. In the past, Lemons has served as in-house counsel for the physician practice plan of a major academic medical center. **Novotny** has extensive experience handling complex civil litigation in state and federal courts. He also has substantial experience with litigation involving religious non-profits, including clerical malpractices and First Amendment issues. The Atlanta office is located at 5 Concourse Parkway, Suite 900, Atlanta, GA 30328; (678) 406-8700; Fax (678) 406-8701; www.bakerdonelson.com.

Donald A. Weissman, P.C., announced that **Tuyen Thanh Huu (Jacey) Nguyen** has become associated with the firm. Nguyen will be focusing her practice on Family Law. The office is located at 6425 Powers Ferry Road NW, Suite 295, Atlanta, GA 30339; (770) 956-1444; Fax (770) 956-1334.



Partners at **Hall, Booth, Smith and Slover** announced the addition of **W. Scott Henwood** to the firm's roster of attorneys. Henwood recently retired from his position as the 16th

Reporter of Decisions for the Supreme Court and Court of Appeals of Georgia, where he was responsible for the review of both legal and editorial content of opinions set down from each court. During his 21-year tenure as reporter, the caseload of the Supreme Court and Court of Appeals grew to the highest of any appellate court in the country. Henwood was also instrumental in the introduction of computer processing in the reporting of judicial decisions, essentially introducing digitization to the reporting process. He will serve as the head of the firm's newly formed appellate practice group, and will be active in other administrative and management roles within the firm, including community involvement and public relations. Henwood has also been active in the local legal community, serving as president of the Lawyers Club of Atlanta, Inc., from 2003-04, and currently serving as president of The Advocates, Ltd. The firm is located at 1180 West Peachtree NW, Atlantic Center Plaza, Suite 900, Atlanta, GA 30309; (404) 954-5000; Fax (404) 954-5020; www.hbss.net.



Karyl A. Davis joined the Atlanta office of **Hunton & Williams** as **Pro Bono Fellow**, a two-year position dedicated to providing legal services to those who otherwise may not have access to the justice system. Hunton & Williams established the Atlanta Pro Bono Fellowship in 2001 for an attorney whose time is entirely committed to pro bono work. The fellowship is a valuable opportunity for young lawyers pursuing a career in public service. Davis, the Atlanta office's third fellow, will spend four months of her first year working at Atlanta Legal Aid Society. She will also serve as guardian ad litem for alleged status offenders in the firm's guardian ad litem project with the Fulton County Juvenile Court and will handle potential cases referred by the Atlanta Legal Aid Society and the Atlanta Volunteer Lawyers Foundation, among others. Prior to joining Hunton & Williams, Davis clerked for the Alabama Disabilities Advocacy Program, working on community integration cases for clients in nursing homes and on education accommodation cases for children with disabilities. The Atlanta office of the firm is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; (404) 888-4000; Fax (404) 888-4190; www.hunton.com.

Michael A. Dunn has joined the Atlanta office of **Carlton Fields** as an **associate** in the litigation and dispute resolution practice group. Prior to joining Carlton Fields, Dunn practiced with Hunton & Williams LLP in Atlanta as a construction and

complex litigation associate. His experience includes class action defense, commercial litigation and dispute resolution. The firm's Atlanta office is located at One Atlantic Center, 1201 W. Peachtree St., Suite 3000, Atlanta, GA 30309; (404) 815-3400; Fax (404) 815-3415; www.carltonfields.com.



Morel



Reams

Brooks Morel has joined the Atlanta office of **Stites & Harbison PLLC** as an **associate** in the real estate and banking service group and **Stephen Reams** has

joined its Atlanta office as **counsel**. Morel comes to Stites & Harbison from Alston & Bird LLP in Atlanta where she was an associate. Prior to that, she worked as an associate with Kutak Rock LLP also in Atlanta. Reams is a member of the firm's construction service group, where his practice concentrates on construction litigation and construction contract drafting and negotiation. Before Stites & Harbison, he was an associate at the Atlanta law firm of Alston & Bird, LLP, from 1995-2005. The office is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; (404) 739-8800; Fax (404) 739-8870; www.stites.com.



Ciupitu



Davis

Theo A. Ciupitu and **Chandra C. Davis** have joined the Atlanta office of **McGuireWoods LLP** as **associates** in the firm's corporate services department and

labor and employment department, respectively. Ciupitu will focus his practice on business and corporate law, particularly on business organization, debt and equity finance, corporate governance, mergers and acquisitions, and general commercial transactions. Prior to joining McGuireWoods, he was an associate with Chamberlain, Hrdlicka, White, Williams & Martin in Atlanta. Davis will focus her practice on employment discrimination and labor management relations. Prior to joining McGuireWoods, Davis was a law clerk for the Hon. Roger L. Gregory of the Federal Court of Appeals for the 4th Circuit in Richmond, Va. Previously, she was a law clerk for the Hon. Vanessa D. Gilmore of the Federal District Court for the Southern District of Texas in Houston, Texas. The law firm is located at The Proscenium, 1170 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; (404) 443-5500; Fax (404) 443-5599; www.mcguirewoods.com.

Heather C. Wright, recently of the law firm of Swift, Currie, McGhee & Hiers, LLP, has opened

The Wright Firm, LLC. Her practice will focus on personal injury, property damage, construction and insurance coverage matters. The office is located at The Candler Building, 127 Peachtree St. NE, Suite 636, Atlanta, GA 30303; (404) 832-0791; Fax (404) 688-0888.

Edward M. Manigault, a tax attorney in the Atlanta office of **Jones Day** became **chair** of the **estate & gift tax committee** of the real property, probate & trust law section of the American Bar Association, after having served as vice-chair of that committee since 2003. The Atlanta office of Jones Day is located at 1420 Peachtree Street NE, Suite 800, Atlanta, GA 30309; (404) 521-3939; Fax (404) 581-8330; www.jonesday.com.



Attorney **Thomas B. Bosch** joined the Atlanta office of **Counsel On Call** to help manage the company's fast growing recruiting efforts. Bosch brings over six years of legal experience to the company. He practiced

with the law firm of McKenna Long & Aldridge LLP concentrating in the area of commercial litigation. Bosch will specialize in high caliber candidates. Counsel On Call provides options to attorneys who want to continue in the practice in an alternative manner and to law firms and corporations that desire to hire in a non-traditional manner. The company places attorneys with excellent academics and significant substantive experience with its clients to work on an as-needed basis. Counsel On Call is owned and operated by attorneys with the academic and substantive experience of those placed, who understand first-hand the needs of both clients and candidates. Counsel On Call's Atlanta office is located at 1230 Peachtree St. NE, Promenade II, Suite 1800, Atlanta, GA 30309; (404) 942-3525; Fax (404) 942-3780; www.counseloncall.com.

Davis, Matthews & Quigley, P.C., an Atlanta-based law firm, announced that **Rebecca Lin Crumrine** has joined the firm's domestic and family law practice as an **associate**. During law school, she interned for the Federal Public Defender's Office, Georgia Indigent Defense Council and Legal Aid and Defender Clinic. Additionally, Crumrine held a judicial internship for Chief Judge Dudley Bowen, U.S. District Court for the Southern District of Georgia. In Atlanta, she has been a litigation associate for Warner, Mayoue, Bates & Nolen, P.C., Carter & Ansley, LLP and Finley & Buckley, P.C. The office is located at 3400 Peachtree Road NE, 14th Floor, Atlanta, GA 30326; (404) 261-3900; Fax (404) 261-0159; www.dmqqlaw.com.

In Americus



The law firm of **Barnes, Farr and NeSmith, P.C.**, announced that **Justin Richard Arnold** joined the firm. Arnold has worked in the Macon Circuit Office of the Public Defender as the Dan Bradley Intern for the Macon regional office; a legal intern for the Superior Court Judges in the Southwestern Judicial Circuit; and a constituent services and communications intern for the office of the Governor of Mississippi. The office is located at 107 Taylor St., Americus, GA 31709; (229) 924-1900; Fax (229) 928-1250.

In Savannah



Mathew M. McCoy, associate attorney at **McCorkle, Pedigo & Johnson, LLP**, was admitted to practice in South Carolina in September. McCoy is now licensed to practice in Georgia, South Carolina, and Wisconsin and will continue to concentrate his practice in the areas of construction and real estate litigation. The firm is located at 319 Tattnall St., Savannah, GA 31401; (912) 232-6000; Fax (912) 232-7060.

In Woodstock

The law office of **Shriver & Gordon, P.C.**, announced that **Eileen J. Shuman** has become an **associate** of the firm. The office is located at 301 Creekstone Ridge, Woodstock, GA 30188; (770) 926-7326; Fax (770) 926-9661; www.shriverandgordon.com.

In Birmingham, Ala.



Ford & Harrison announced that **Marion F. Walker** has joined the firm as **senior counsel**. Walker formerly practiced with Baker, Donelson, Bearman, Caldwell & Berkowitz, PC. Walker brings years of experience in both general and complex litigation and arbitration to Ford & Harrison. In addition to 29 years experience dealing with private and public employment issues and litigation, she has experience with class actions, fraud, securities, intellectual property, financial instruments and construction. This includes representing clients before state and federal administrative agencies, as well as arbitrations. Walker was selected by the Judges of the Northern District of Alabama to serve both on the Rules Committee and the Liaison Committee for the U.S. District Court, Northern District of Alabama. She is the founder and former president of the Birmingham Inns of Court and a member of the American Trial Lawyers Association. The

Birmingham office is located at 2100 Third Avenue North, Suite 400, Birmingham, AL 35203; (205) 244-5900; Fax (205) 244-5901; www.fordharrison.com.

In Chattanooga, Tenn.

Shumacker Witt Gaither & Whitaker, P.C., announced that **Alan W. Betus Jr.** joined the firm. Previously, he worked as a consultant for real estate developers and investors in Atlanta in the areas of legal and financial due diligence, and risk assessment and valuation with respect to office developments. Betus has represented both landlord and tenant in a variety of real estate activities, including negotiating leases and other agreements with national and regional tenants. His practice focuses on commercial real estate with a focus on retail leasing. His office is located at the CBL Center, 2030 Hamilton Place Blvd., Chattanooga, TN 37421; (423) 425-7000; Fax (423) 266-1842; www.swgwlaw.com.



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Client Conflict Rule

By Paula Frederick

“I just met the new associate,” your assistant announces as she enters your office. “Did you know Josh used to be an assistant district attorney? He was part of the team prosecuting Judi Rene. Don’t we have a conflict? We’re her defense counsel and now one of the prosecutors is working for us.”

“Oh no! Surely Ed and Lisa checked on this before they made the offer. Those conflicts rules are tough! Last time I called the Ethics Hotline about a former client conflict, the whole firm had to withdraw from a case.”

“If that’s the case, we’ll probably have to stop doing criminal defense work altogether,” your assistant predicts. “And you can kiss Ms. Rene’s hefty retainer goodbye—we haven’t had a chance to earn most of it.”

“Hold your horses!” your partner admonishes as he strolls into the office. “Give me a little credit for researching our obligations under the ethics rules before we hired Josh.”

A check of the Georgia Rules of Professional Conduct reveals that your partner is right. Former client conflicts are different when the ‘former client’ is the government. It’s true that Rule 1.11, Successive Government and Private Employment, prohibits a lawyer from representing a private client in a matter if the lawyer had ‘personal and substantial’ involvement in the same matter while working as a public employee. The



rule does allow the representation if the governmental entity consents after consultation.


You’ve dealt with the district attorney in your county long enough to know that she won’t consent to let Josh join the defense team after working with the prosecution. But does his disqualification mean that the whole firm needs to withdraw from Judi Rene’s case?

You are pleased to find that Georgia’s Rule 1.10 on imputed disqualification does not apply to successive government and private employment. In fact, rule 1.11 specifically allows a firm to erect a screen around a former government lawyer so that other lawyers in the firm may continue to handle

matters that would otherwise pose a conflict.

If you screen Josh from any participation in the case and don't share the fee with him, you should have no problems. Pursuant to Rule 1.11(a)(2), you've also got to provide written notice to both Ms. Rene and to the district attorney so that they can satisfy themselves that adequate screening measures are in place.

But what are "adequate screening measures?" Georgia's rules are silent on the topic, but the American Bar Association's latest revisions to the Model Rules include a definition for "screening." After reviewing the definition and getting some guidance from the Ethics Hotline, you determine that Josh should have no involvement in handling the case and should be screened from even receiving any information about it. Staff should be educated about the need to refrain from communicating with Josh about the case. If possible, access to files and documents from the case should be restricted.

With these measures in place, the firm may continue its criminal defense practice despite the arrival of a former prosecutor. Contact the Ethics Helpline at (404) 527-8720 to discuss your situation with a lawyer in the Office of the General Counsel. 



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

**Contact the Ethics
Helpline to discuss
your situation.
(404) 527-8720**

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Discipline Notices

(Aug. 11, 2005 through Oct. 14, 2005)

By Connie P. Henry

DISBARMENTS/ VOLUNTARY SURRENDERS

Douglas Clark Rogers

Moultrie, Ga.

On Sept. 19, 2005, the Supreme Court of Georgia accepted the Voluntary Surrender of License of Douglas Clark Rogers (State Bar No. 612290). Rogers was convicted in the United States District Court for the Middle District of Georgia on four counts of mail fraud.

Marcelo Antonio Estrada

Atlanta, Ga.

Marcelo Antonio Estrada (State Bar No. 250685) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 19, 2005. Estrada failed to file documents with the Immigration and Naturalization Service for one client, and he failed to appear for an asylum hearing on behalf of another. He acknowledged service of the Notices of Investigation, but was interim suspended for failing to respond. He also failed to reject the Notice of Discipline. Estrada had two more formal complaints pending.

Christopher George Lazarou

Atlanta, Ga.

Christopher Georgia Lazarou (State Bar No. 441629) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 19, 2005. Lazarou did not respond to two formal complaints.

Lazarou signed closing documents knowing they contained false statements and then used the money for his own personal benefit. In addition he prepared a title insurance commitment that falsely reflected a commitment for insurance and he signed a title

insurance endorsement as a designated "Authorized Signatory" although he was not authorized to do so.

In a second disciplinary matter, a mortgage lender requested Lazarou to act as closing attorney for a transaction. Lazarou told the lender that he would obtain a title insurance policy. Lazarou prepared, signed, and transmitted a Statement of Settlement Service Responsibility reflecting that he was an authorized issuing agent for the insurance company when he was not.

The Court found no mitigating circumstances and noted in aggravation that this action involved multiple offenses and that Lazarou engaged in bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules of the State Bar.

Milton D. Rowan

Atlanta, Ga.

Milton D. Rowan (State Bar No. 616577) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 19, 2005. Rowan did not respond to seven Notices of Discipline.

Rowan received \$5,000 to file a civil action, which was set for arbitration in June 2001. The day before arbitration, Rowan's assistant told the client that the proceeding had been postponed. In April 2003 the client discovered that Rowan dismissed the case on June 4, 2001. The client terminated representation in February 2004. In March Rowan gave the client a copy of a complaint with no filing stamp. Rowan said that he thought his assistant had filed the complaint and when he realized it had not been filed, he filed it in May.

In another case, Rowan advised a client that he had filed documents on the client's behalf and that he would file a case for the client. In 2002 and 2003 Rowan discussed discovery matters with the client and said that he

would seek summary judgment. From January 2004 to June 2004, the client was told there was no change in the status of the case. After the client filed a grievance, Rowan admitted he had not filed the case.

Another client hired Rowan in a civil matter in November 2001. In January 2004, Rowan told the client that he had not heard anything about the case. In June 2004, the client learned that Rowan had moved and that his phone number had been disconnected. The client then went to the courthouse and found out that summary judgment had been entered for the defendant in June 2003 and that he had been ordered to pay \$11,280.72.

Rowan represented another client in the U.S. District Court for the Northern District of Alabama and entered into an agreement with a third party. The third party would advance funds for the litigation and would be entitled to a percentage of the proceeds or other recovery. The third party paid Rowan \$35,000 and Rowan repeatedly told him that the case had been delayed. The case was dismissed in August 2002 because the parties settled. Rowan told the third party that the settlement meant the case would have to be re-filed and was still active. He then stopped communicating with the third party.

A client hired Rowan to represent him in recovering disability benefits. After the client refused to accept a settlement, Rowan filed a civil action in July 2002. In October 2003 summary judgment was granted in favor of the defendants and the client was ordered to pay costs. The client found out from the court that the case closed in November 2003.

A client paid Rowan a \$150 filing fee. Rowan told the client the case

had been filed and that he would send an affidavit for the client to review. The affidavit never arrived and the case was never filed.

Rowan was retained to represent a client in an insurance case and, although he began negotiating a settlement, Rowan would not communicate with the client. Subsequently the client learned that Rowan had settled the case for \$70,000 and forged the client's signature on the agreement and check. Rowan did not forward any of the funds to the client.

The Court noted in aggravation that Rowan had multiple disciplinary actions pending against him. In addition, he had received an Investigative Panel reprimand and he was suspended for failing to comply with the Continuing Legal Education requirements.

Kenneth T. Israel

Marietta, Ga.

Kenneth T. Israel (State Bar No. 385030) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 3, 2005.

In one case Israel failed to take any action on his client's behalf, failed to communicate with the client, failed to return the client's file and unearned fees, and failed to respond to disciplinary authorities. Eleven more matters were before the Court on Notices of Discipline for disbarment for similar violations arising out of Israel's abandonment of clients to the detriment of their legal matters and financial interest, and his abandonment of his client files and banking records, over which the State Bar has been appointed receiver. Israel's whereabouts are unknown. He failed to respond to any of the disciplinary matters.

James R. Vogel

Acworth, Ga.

James R. Vogel (State Bar No. 728729) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 3, 2005.

Four matters were before the Court on Notices of Discipline. In each case Vogel did little or no work for the client and failed to return phone calls and files. Vogel did not respond to inquiries from his former law firm regarding the status of the cases nor did he answer the Notices of Investigation.

In aggravation of discipline the Court found that Vogel has multiple violations in each case and that multiple disciplinary matters were being pursued simultaneously, thereby evidencing a pattern and practice of wrongful behavior.

Robert T. Guggenheim

Rome, Ga.

Robert T. Guggenheim (State Bar No. 315085) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 11, 2005. Although personally served, he failed to timely reject the Notices of Discipline.

Guggenheim represented a client in the United States District Court for the Eastern District of Texas, but failed to appear for a plea hearing. After learning he could not appear by telephone, he put his client on a plane to Houston without instructing him how to proceed and without funds to travel from Houston to the hearing location. The client thus failed to appear and surrendered to the U.S. Marshal in Houston.

Another client paid Guggenheim \$600 to handle her divorce case. He told her he filed the complaint but

thereafter would not return her calls. Subsequently the client discovered that the divorce action had never been filed. He did not refund the client's money.

In another case Guggenheim advised his client to dismiss the original suit and re-file it. Guggenheim dismissed the action but waited until the last day to re-file it and did not serve the defendant until after the statute of limitations had expired. The trial court dismissed the action with prejudice. When the client went to Guggenheim's office to discuss the matter, Guggenheim was intoxicated. The client wrote Guggenheim asking him to appeal the dismissal, but no further action was taken.

SUSPENSIONS

Steven H. Ballard

McDonough, Ga.

On Sept. 19, 2005, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Steven H. Ballard (State Bar No. 035575), for a two-year suspension. Ballard must attend Ethics School within six months of reinstatement and submit to an evaluation by the Law Practice Management Program.

Ballard was retained to represent a client in plea negotiations. The client paid Ballard \$20,000, understanding that Ballard would return the money if plea negotiations failed and the client needed to retain other counsel for trial. Ballard immediately paid himself \$5,750, although he had not earned it, and deposited the rest in his escrow account. Ballard repeatedly withdrew unearned fees from the escrow account for his personal use. When asked to return the \$20,000, Ballard wrote a check on his escrow account, but it was

returned for insufficient funds. Later Ballard returned the money using funds from his general operating account. The client was subsequently indicted on felony charges. Ballard successfully negotiated a plea agreement.

In mitigation of discipline, the special master found that Ballard had no prior discipline; that he was remorseful; that he was dealing with personal problems; and that the client did not suffer any legal or financial injury.

Rodney B. Glass

Mableton, Ga.

On Sept. 19, 2005, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Rodney B. Glass (State Bar No. 296528), with the imposition of a 12-month suspension. Reinstatement is conditioned upon reports from his personal physician and mental health specialist that he is fit to return to the practice of law.

Glass misappropriated \$47,000 of his former law firm's money for his own use. Since leaving the firm in October 2003, he has made full restitution.

The Court found in mitigation that Glass had no prior discipline; that he was cooperative with the State Bar; that his misconduct was in part the result of mental or emotional difficulties; that he has taken responsibility for his actions; that no clients were harmed; and that he is remorseful.

PUBLIC REPRIMAND

Wallace Anthony Kitchen


Columbus, Ga.

On Sept. 19, 2005, the Supreme Court of Georgia ordered that Wallace Anthony Kitchen, (State

Bar No. 424350) be administered a public reprimand. Kitchen failed to reject the Notice of Discipline. Kitchen was hired to represent a client in a civil and criminal case following an incident during which the client was arrested. After the client was unable to reach Kitchen, she terminated his services and asked him to return her documents. Kitchen failed to return the documents after numerous requests.

In aggravation of discipline, Kitchen has prior discipline, including a May 26, 2000 order determining that Kitchen was suffering from an alcohol impairment and ordering him to receive treatment and report to the State Bar, and an Investigative Panel reprimand imposed Sept. 27, 2002.

INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Aug. 11, 2005 one lawyer has been suspended for violating this Rule and none have been reinstated. 

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

Recent Discipline

is also listed on the
Bar's website at
www.gabar.org/ethics

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Last Things First in Practice Management

By Natalie R. Kelly

Practice management is quite like preventive medical care. Perhaps, one would be prescribed exercise, vitamins, and taking care of oneself generally to prevent some illnesses. For lawyers running a small law office, a large office practice group, or corporate legal department, taking steps to prevent poor operations, malpractice or even business failure with practice management is preventive legal management care.

But what makes practice management a key component for a successfully run law firm, practice group or department? The short answer is that the standards of good practice management force the ailing lawyer to put last things first.

When looking for a solution, like thinking of what one would need to do to prevent an illness, a lawyer would focus on the bad things that could happen and then put in systems and procedures to prevent them from happening. So exactly how does one prevent the following common law practice or law department maladies?

- Staff Turnover
- Disorganized Files
- Poor Client Relations
- Financial Mismanagement
- Ineffective Associates and Partners



First, a lawyer could analyze the current state of practice management maladies and move toward solutions. For instance, staff turnover is common, but the solution or steps to prevent turnover starts with the hiring process. Likewise, client relations begin with the first-ever client meeting or contact. The cure begins when one develops a practice management system or utilizes practice management resources to help with the issue before it arises.

Here are examples of some unsound practice management practices. These ineffective and ill-suited procedures are the last things you want to happen in your firm or department. Sadly, this list is far from exhaustive.

Staff Turnover

- Hiring without analyzing need or budget.
- No thorough reference checks of job candidates.
- Not recognizing the need for a match in both skills sets and culture.
- Ignoring the law, and even mistreating—yes, mistreating—employees.
- Not rewarding and reasonably caring for the needs of employees who perform well.
- No useful benefits.
- Not understanding what is needed and expected from staff.
- Not having a clear two-way communication path or a system that allows review and improvement in performance.

Disorganized Files

- No file numbering system or means of quickly identifying files.
- No automated practice management system.
- No system for identifying file contents.
- No system for removing files from central filing area.
- No central filing area.
- No clear separation of active, inactive and closed files.
- No defined policy for file retention and destruction.

Poor Client Relations

- No understanding that the client comes first.
- No method of checking for conflicts of interest.
- No written fee agreement.
- No returning of telephone calls.
- No update on the status of a case.
- No clear billing statement.
- No timely notification of large bills.

- No “time” for the client.
- No method of getting feedback on client satisfaction.
- No thanking clients for their business.


Financial Mismanagement

- No monthly reconciliation of trust and operating accounts.
- No clear ledgers for deposits and withdrawals.
- No regular billing statements with details clients can understand.
- No habit of tracking time.
- No system for delivering receipts for payments in cash or other acceptable forms.
- No reports that allow analysis of time spent, time billed, amounts collected, and allocation of fees.
- No budget or budgeting process.
- No means of keeping trust accounting records for required length of time.

Ineffective Associates and Partners

- No written employment or partnership agreements.
- No formal (or even informal) training for associates.

- No partner review and feedback for associate work.
- No development or dissemination of a clear path to partnership.
- No punitive system for non-producing associates and partners.
- No delegation of workload.
- No guided marketing efforts or requirements.
- No special handling of the managing partner role in terms of compensation and expectations for contributions.
- No effective compensation plan at the partner and associate levels.

Practice management resources abound to help fix every one of the problems outlined here. Focusing on concerns with marketing, finance, technology or management, a lawyer can look at these last things that may be the result of poor management and use a policies and procedures manual, a checklist, a form, and advice and assistance from the staff of the Bar’s Law Practice Management Program to help cure the concerns. Putting the last things first and looking for solutions can lead to a very well run and successful practice! 

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

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Cordele Circuit Bar Association

State Bar President Robert Ingram was the special guest speaker at a recent **Cordele Circuit Bar Association** meeting. Rusty Wright, president of the bar, welcomed everyone to the Cordele Community Center. After the members enjoyed a fish fry dinner, former State Bar President and now Judge Robert (Bobby) Chasteen introduced President Ingram. Attorneys were told during an audiovisual presentation the goals of the Foundations of Freedom Commission. Ingram stated that one such goal was to spread the truth about how the justice system operates and the important role of lawyers in making America's constitutional democracy work.



Robert Ingram, Judge John Pridgen and Judge Bobby Chasteen visit after the program.



State Bar President Robert Ingram, Harry Hurt and Judge Bobby Chasteen partake of the fish fry at the Cordele Circuit Bar meeting.



State Bar President Ingram makes his presentation for the Cordele Circuit Bar Association.



Justice Melton swearing in Heather Lanier and James Crowe (Agis Bray not show) as members of the bar of the Supreme Court of Georgia.
(Left) Justice Harold Melton addresses the Dougherty Circuit Bar Association.

Dougherty Circuit Bar Association

The Dougherty Circuit Bar Association recently welcomed newly appointed Supreme Court Justice Harold Melton to their meeting at Merry Acres restaurant. Justice Melton offered his view that judges should respect and not intrude upon the responsibility of the General Assembly to legislate, and that he does not intend to be an “activist judge.” While visiting the Dougherty bar, Justice Melton swore in Heather Lanier, James Crowe and Agis Bray as members of the bar of the Supreme Court of Georgia.

Judges Seminar and Barbecue

More than 300 people gathered for the annual “Judges Seminar and Barbeque” held in the Belulah Land area at the forks of the Hurricane Creek located in Pierce County. Waycross Judicial Circuit Chief Judge Steve Jackson along with Judge Mike Boggs hosted the annual event. More than 50 attorneys from the circuit participated in a seminar on mediation. Afterward, law enforcement and other guests joined them to enjoy gospel signing and barbeque. This was Judge Jackson’s ninth year hosting the event and he said: “This was the biggest and best attended we’ve had. I am really pleased with the turnout this year. We wanted everyone to enjoy themselves when they were here and I believe they did.”



Judges Steve Jackson, Mike Boggs and Dewayne Gillis of the Waycross Judicial Circuit were the hosts of the seminar.



The Roddenberry Sisters of Folkston joined by Blackshear attorney John Thigpen entertained the crowd with good Gospel music.



Cooks prepare smoked pork, baked ham, barbecue chicken and smoked sausage for the seminar.

If your bar association in South Georgia is having an event that you would like to see included in the *Georgia Bar Journal*, contact the satellite office at (800) 330-0446 or e-mail bonne@gabar.org.

Sections Host Events

By Johanna B. Merrill

On Oct. 20 the **Technology Law Section** hosted a happy hour social at Gordon Biersch Brewery in Atlanta. The event gave attendees an opportunity to meet fellow technology law practitioners and to find out more about getting involved with the section.


The **Intellectual Property Law Section** held two lunch and learn events this fall at the Bar center. The Trademark Committee, chaired by Brad Groff, hosted a panel discussion titled "Update on Internet Domain Name Dispute Proceedings" on Oct. 25. Mark Seigel moderated the discussion, which was led by panelists Candice C. Decaire, Doug Isenberg and Steven Jampol. The following day the In-House Counsel Committee, chaired by Clifford S. Stanford, hosted a luncheon titled "IP Related Indemnities, Warranties and Representations." The panel, which consisted of Bob Currie, Sandra



Judge Alan Blackburn, Judge Yvette Miller, Judge J.D. Smith, Chief Judge John H. Ruffin Jr. and Judge Charles Mikell at the Appellate Practice Section's "Hail to the Chiefs" Reception on Nov. 3 at the Bar Center.

Cuttler, Robert Dulaney and Geoff Sutcliffe, discussed sample "buy side" and "sell side" contract provisions, and provided practical tips in a moderated open discussion format.

On Oct. 28 the **Creditors' Rights Section** (Harriet Isenberg and Jan Rosser, chairs), held a CLE luncheon at Maggiano's Little Italy Restaurant in Buckhead. The event was very well attended with more than 65 section members and guests in the audience. Chapter 7 Trustee Dale Goodman of Goodman & Goodman led a discussion about the new bankruptcy law and how it will affect creditors. Attendees received one CLE credit hour.

The **Appellate Practice Law Section** hosted a reception for Chief Justice Leah Ward Sears of the Supreme Court of Georgia and Chief Judge John H. Ruffin Jr. of the Georgia Court of Appeals on Nov. 3 at the Bar Center. More than 50 notable guests and section members attended the "Hail to the Chiefs" reception, including Supreme Court Justices Carol Hunstein and Harold Melton. 

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



Chief Justice Leah Ward Sears along with Justice Carol Hunstein and Justice Harold Melton.

Photos courtesy of Harleston Impressions

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Professionalism in the Trenches

Judicial District Professionalism Program

By Sally Evans Lockwood

A cornerstone of Robert Ingram's work as Bar leader and president is the promotion of professionalism among lawyers and judges. While the vast majority of lawyers and judges in Georgia conduct themselves with professionalism, there is a small but persistent number whose patterns of unprofessional behavior and incivility impede the effectiveness of the legal system and weaken the public's confidence in our justice system.

In the past, lawyers and judges observing unprofessional and uncivil conduct by other lawyers or judges had few options:

- They could file a complaint against a lawyer with the State Bar or a complaint against a judge with the Judicial Qualifications Commission; or
- They could complain to other lawyers and judges or to people in the community; or
- They could do nothing.

Complaints about offensive conduct filed against lawyers and judges may be dismissed as not amounting to a clear violation of the Rules of Professional Conduct or the Code of Judicial Conduct. Complaining to colleagues and the community does nothing to bring about change and many times simply causes

others to lose confidence in the justice system. Doing nothing leads to frustration and lowered expectations of the justice system.

The State Bar of Georgia now provides another option that offers a more effective means of addressing unprofessional or uncivil behavior. This new option is known as the Judicial District Professionalism Program or the JDPP. This program has been approved by the Bar's Board of Governors and by the Supreme Court of Georgia. It was developed by the Bench and Bar Committee, composed of lawyers and judges from throughout the state, under the leadership of co-chairs Robert Ingram, former Superior Court Judge Lyn Allgood of the Augusta Judicial Circuit, and Superior Court Judge Mel Westmoreland of the Atlanta Circuit. The goal of the program is to improve the legal profession and bolster public confidence in our judicial system.

To be ethical, lawyers must abide by the Georgia Rules of Professional Conduct and judges must adhere to the Code of Judicial Conduct. Violations subject the offender to sanctions by the Supreme Court of Georgia. The Rules of Professional Conduct and the Code of Judicial Conduct set forth minimum standards. Professionalism, on the other hand, is a higher standard encompassing the aspirations of the profession to competence, civility, character, fidelity to the rule of law and the roles of lawyers and judges as officers of the court, and service to the public.

With the privilege of being a member of a self-regulated profession comes the responsi-

bility for each lawyer and judge to exhibit and encourage in our colleagues conduct that preserves and strengthens the dignity, honor, and integrity of the legal profession. Now the JDPP provides a mechanism for doing just that.

What is the Judicial District Professionalism Program (JDPP)?

JDPP is an informal, private, and voluntary program developed by the Bench and Bar Committee of the State Bar to improve the profession and bolster public confidence in the judicial system. The goal of the JDPP is to promote professionalism through increased communication, education, and the informal use of local peer influence to open channels of communication on a voluntary basis. While no judge or lawyer is required to cooperate or counsel

with the JDPP, the Program is intended as a source of support for all Georgia judges and lawyers in maintaining and enhancing the professionalism of the legal system.

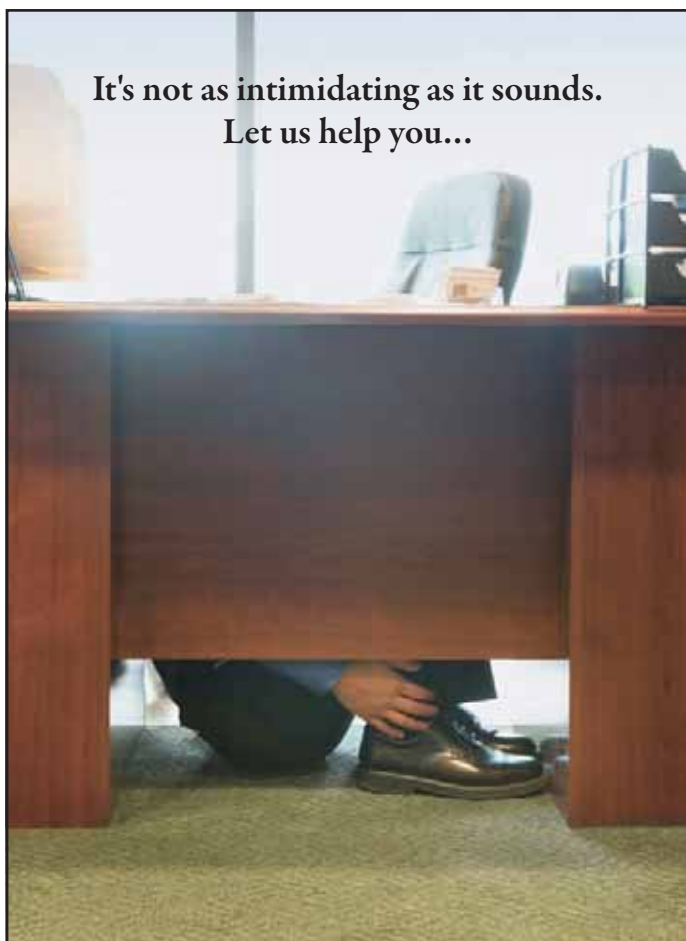
What is the structure of the JDPP?

The JDPP is the name of the overall program which is comprised of committees of Board of Governors members from each of Georgia's ten Judicial Districts. These committees are called Judicial District Professionalism Committees. Each Judicial District Professionalism Committee (JDPC) consists of the current members of the Board of Governors of the State Bar of Georgia from the particular Judicial District. The JDPC members for each of the Judicial Districts select one or more Judicial Advisors within each district. The

longest serving member on the Board of Governors serves as the Chair for that District.

How is JDPP authorized?

The Program was submitted to and approved by the Executive Committee and Board of Governors of the State Bar of Georgia and ultimately by the Georgia Supreme Court by Order dated Feb. 24, 2000. The Supreme Court adopted Rules governing the operation of the Program which are found at Part XIII of the Rules and Regulations for the Organization and Regulation of the State Bar of Georgia ("Bar Rules"). At the same time, the Supreme Court approved Internal Operating Procedures for the administration of the Program and granted the Bench and Bar Committee of the State Bar author-



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ity to adopt additional Operating Procedures not inconsistent with the Rules.

What do Judicial District Professionalism Committees do?

The JDPCs promote traditions of civility and professionalism through increased communication, education, and the informal use of local peer influence to alter unprofessional conduct on a voluntary basis. A JDPC may choose to serve the following functions:

- Mentoring—providing guidance in “best practices” for lawyers and judges
- Mechanism for privately receiving and attempting to resolve inquiries and requests for assistance from lawyers and judges on an informal basis. In this regard, JDPP addresses disputes between lawyers and lawyers and disputes between lawyers and judges.
- Initiator of other creative programs developed and implemented by each committee for the particular Judicial District.

How does JDPP relate to the Office of General Counsel or the Judicial Qualifications Commission?

The Program operates independently from the disciplinary systems presently in place with the Office of General Counsel and the Judicial Qualifications Commission. The JDPP is informal, private and voluntary rather than formal and mandatory, and it does not address violations of the Rules of Professional Conduct or violations of the Code of Judicial Conduct.

What kinds of Issues does JDPP handle?

Inquiries from only lawyers or judges are referred to JDPP. JDPP committees may address the following patterns of conduct:

Unprofessional Judicial Conduct:

- Incivility, bias or conduct unbecoming a judge
- Lack of appropriate respect or deference
- Failure to adhere to Uniform Superior Court Rules
- Excessive delay
- Consistent lack of preparation
- Other conduct deemed professionally inappropriate by each JDPP with the advice of the Judicial Advisors

Unprofessional Lawyer Conduct:

- Lack of appropriate respect or deference
- Abusive discovery practices
- Incivility, bias or conduct unbecoming a lawyer
- Consistent lack of preparation
- Communication problems
- Deficient practice skills
- Other conduct deemed professionally inappropriate by each Judicial District Professionalism Committee

Inquiries or requests for assistance relating to conduct in pending litigation or ongoing transactional matters are generally better left to the judicial process or the negotiations of the parties. Consequently, any JDPP response to such requests should generally be delayed to the conclusion of the matter.

What is considered an “inquiry” for purposes of the JDPP?

Inquiry means any inquiry or concern expressed about unprofes-

sional conduct as outlined in the Bar Rules or Internal Operating Procedures for the JDPP, but does not include any disciplinary charge, ethics violation, criminal conduct, or any other matter which falls under the provisions of Part IV (Discipline) of the Bar Rules or the Code of Judicial Conduct. For purposes of the JDPP, the party making the inquiry or expressing the concern is called the inquiring party. The party about whom the inquiry or concern is expressed is called the responding party.

What does JDPP not handle?

- Lawyer/client disputes. Inquiries by clients or other members of the public are handled by the Consumer Assistance Program or other appropriate State Bar programs.
- Fee disputes. These can be handled by the Fee Arbitration Program of the State Bar.
- Employment matters. Example: Allegation that managing attorney sexually harasses associates and support staff.
- Lawyer/vendor disputes. Example: Court reporter alleges that lawyer has not paid bill.
- Disciplinary matters. Example: Lawyer receives trust account check from opposing counsel; check bounces.

What is the procedure for a JDPC inquiry?

Step 1: Concern or inquiry is reported to:

- State Bar Executive Director Cliff Brashier, or any member of the Board of Governors or
- State Bar Consumer Assistance Program (CAP) intake staff lawyer; (404) 527-8759 or (800) 334-6865.

Step 2: Person receiving inquiry and information:

- Routes inquiry to CAP for preparation of JDPP Inquiry Data Form.
- May call the local JDPC Chair of the Judicial District where the responding judge/lawyer maintains his or her principal office.

Step 3: CAP intake staff will:

- Assign JDPP inquiry number.
- Gather Inquiry Data Form information. Note: In the interest of privacy, this form does not contain the name of any person about whom an inquiry or concern has been expressed (responding party).
- Place phone call to local JDPC Chair to provide name of responding party.
- Forward JDPP Inquiry Data Form to local JDPC Chair.

Step 4: Local JDPC Chair will:

- Refer inquiry to local sub-committee of JDPC for handling; or
- Call a meeting to discuss appropriate action based upon nature of inquiry.

Step 5: Local JDPC or sub-committee of JDPC will determine whether:

- Inquiry merits study or intervention.
- Judicial Advisor should be consulted, depending upon nature of the inquiry.
- Inquiry needs to be referred to Lawyer Assistance, Law Practice Management, or other State Bar program.

Step 6: If local JDPC determines further study or intervention is warranted, a meeting with the responding lawyer/judge will be scheduled, or sub-committee members and/or Judicial Advisors will be designated to handle.

Step 7: If local JDPC determines no further study or intervention is warranted, inquiry will not be pursued further.


Step 8: After resolution of inquiry, JDPP Inquiry Data Form will be completed showing how inquiry was handled and then returned to Consumer Assistance Program. This form does not contain the name of any person about whom an inquiry or concern has been expressed.

What about confidentiality and records?

All inquiries and proceedings of each JDPC are private. The JDPC and State Bar staff shall not disclose inquiries and proceedings in the absence of an agreement by the participating parties.

JDPP records are kept for statistical purposes only and do not con-

tain the names of any inquiring or responding party. Only file numbers and raw statistical data are maintained. Each local JDPC reports data about the types of matters and inquiries it receives and resolves to the staff of the Consumer Assistance Program of the State Bar, which will in turn provide statistical reports to the Executive Director of the State Bar, the President of the Council of Superior Court Judges, and the Bench and Bar Committee.

Questions? Contact the Judicial District Professionalism Program, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; (404) 527-8700 or (800) 334-6865; Fax (404) 527-8717; www.gabar.org. 

Sally Evans Lockwood is the executive director of the Chief Justice's Commission of Professionalism.

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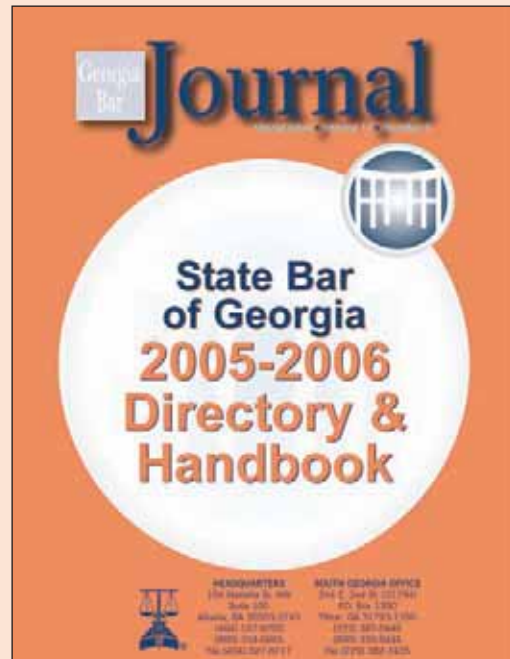
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Capital Consequences

Families of the Condemned Tell Their Stories

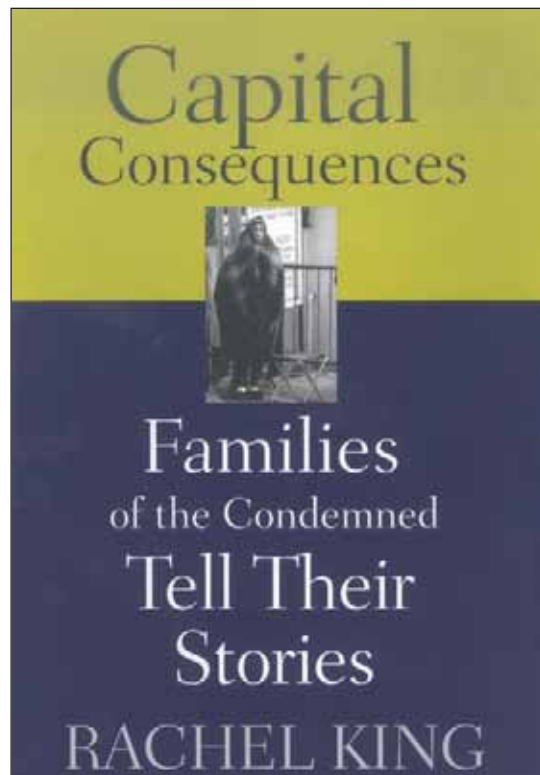
By Rachel King, Rutgers University Press (2005), 310 pages

Reviewed by Jennifer M. Corey

The photograph on the cover of *Capital Consequences: Families of the Condemned Tell Their Stories*, shows a tiny, old woman with a blanket wrapped around her body and covering her head, standing next to a folding campstool. The woman is Josephine Babbitt, and the photograph was taken on May 4, 1999—the day that the state of California executed her son, Vietnam veteran and war hero Manuel Babbitt. The photograph illustrates the predominant theme of isolation that the family members interviewed by King talks about.

Rachel King's first book, *Don't Kill in Our Names: Families of Murder Victims Speak Out Against the Death Penalty*, was about the families of murder victims. This, King's second book, presents the powerful stories of the families of the condemned in their own words.

The introduction to this book suggests the theme that permeates all the stories to follow: shame. For some of the families, this shame comes from within. For others, it comes from the opprobrium and disapproval communicated to them—in words, in silence, and in looks—from co-workers, neighbors, and even other family members.



King tells this story through the individual accounts of nine men sentenced to death. She describes the murders of which they were convicted, and then explains what followed through the eyes of a family member of each defendant. The stories are told by mothers, wives, daughters and brothers. They describe the trials, the years in prison, the roller coaster ride through the courts and the executions. Each story is unique.

For instance, there is Bill Babbitt, who turned in his brother, became his most ardent supporter, and then watched his execution at San Quentin State Prison. We also learn the story of Felicia Gilreath, who was 11 years old when her father murdered her mother.

As an adult, Felicia reconnected with her father, fought to save him, then acceded to her father's wishes that she not witness his execution in Georgia's execution chamber.


King also presents Lois Robinson, who watched her son sentenced to die for five murders committed during a psychotic break with reality. A diagnosed paranoid schizophrenic, Larry Robinson succumbed to the hallucinations and voices telling him to kill. Lois became an anti-death penalty activist and supporter of her son after perceiving that no one was interested in treating her son's mental illness; we follow with her through the years of appeals and her son's eventual execution.

There is also Ray Krone, who was a mailman working in Phoenix, Ariz., when he was accused of rape and murder. His family believed in his innocence and that he would be vindicated—which happened after Ray spent years on death row.

Throughout these stories King explores the idea that when a violent killing takes place, it creates victims on both sides of the court-

room—the family of the decedent, who sit behind the prosecutor, and the family of the defendant, who sit behind their brother, son, husband. Both sides feel similar things—fear, anger and sorrow. But only the family of the defendant feels shame. King explains how difficult it was to convince these families to talk to her because they were reluctant to revive stories of the crimes that sent their loved ones to death and were loathe to relive the pain and horror they experienced when they found out that their loved ones were accused of murder.

King tells each family's story with compassion and dignity, without flinching from the horror of the crimes that sent these men to death row. The accounts impart the sadness, the helplessness and the anger that these family members felt when their loved ones were convicted and were told by society that their lives had no value. Some stories convey joy because the family was able to come together and support their condemned loved one throughout the years of imprisonment until his death. All of the stories convey shame: because their loved one com-

mitted horrible crimes, because they were unable to prevent such acts, and because they were unable to protect their loved one and stop his execution. The stories provide a needed perspective in the arguments over the death penalty; in amassing this collection King has illuminated another dark corner of the capital punishment debate. 

Jennifer M. Corey has been an Assistant Federal Defender in the Capital Habeas Unit of the Federal Defender's Office for the Eastern District of California since 2000. Before that, she practiced capital habeas defense in state and federal court in Florida for five years.



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 Atlanta, Ga.
 3.0 CLE including 3 Professionalism

10-11

ICLE
Estate Planning Institute
 Athens, Ga.
 9 CLE

10

ICLE
Plaintiff's Medical Malpractice
 Atlanta, Ga.
 6 CLE

ICLE
Georgia Auto Insurance
 Savannah, Ga.
 6 CLE

NOTICE OF FILING OF FORMAL ADVISORY OPINIONS IN SUPREME COURT

Second Publication of Proposed Formal Advisory Opinion No. 05-6 Hereinafter known as "Formal Advisory Opinion No. 05-6"

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 December 15, 2005.

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 of 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 JULY 15, 2005 FORMAL ADVISORY OPINION NO. 05-6 (Redrafted Version of Formal Advisory Opinion No. 92-2)

QUESTION PRESENTED:

Ethical propriety of a lawyer advertising for legal business with the intention of refer-

ring a majority of that business out to other lawyers without disclosing that intent in the advertisement.

SUMMARY ANSWER:

It is ethically improper for a lawyer to advertise for legal business with the intention of referring a majority of that business out to other lawyers without disclosing that intent in the advertisement and without complying with the disciplinary standards of conduct applicable to lawyer referral services.

OPINION:

Correspondent seeks ethical advice for a practicing attorney who advertises legal services but whose ads do not disclose that a majority of the responding callers will be referred to other lawyers. The issue is whether the failure to include information about the lawyers referral practices in the ad is misleading in violation of the Georgia Rules of Professional Conduct.

Rule 7.1 of the Georgia Rules of Professional Conduct governing the dissemination of legal services permits a lawyer to “advertise through all forms of public media...so long as the communication is not a false, fraudulent, deceptive, or misleading communication about the lawyer or the lawyer’s services.” A communication is false or misleading if it “[c]ontains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading,” Rule 7.1(a)(1).

The advertisement of legal services is protected commercial speech under the First Amendment. Bates v. State Bar of Arizona, 433 U.S. 350 (1977). Commercial speech serves to inform the public of the availability, nature and prices of products and services. In short, such speech serves individual and societal interests in assuring informed and reliable decision-making. Id. at 364. Thus, the Court has held that truthful ads including areas of practice which did not conform to the bar’s approved list were informative and not misleading and could not be restricted by the state bar. In re R.M.J., 455 U.S. 191 (1982).

Although actually or inherently misleading advertisements may be prohibited, potentially misleading ads cannot be prohibited if the information in the ad can be presented in a way that is not deceiving. Gary E. Peel v. Attorney Registration and Disciplinary Comm’n of Illinois, 496 U.S. 91, 110 S.Ct. 2281, 2287-2289 (1990). Requiring additional information so as to clarify a potentially misleading communication does not infringe on the attorney’s First Amendment. Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 651 (1985).

Georgia Rules of Professional Conduct balance the lawyer’s First Amendment rights with the consumer’s

interest in accurate information. In general, the intrusion on the First Amendment right of commercial speech resulting from rationally based affirmative disclosure requirements is minimal.

A true statement which omits relevant information is as misleading as a false statement. So, for example, when contingency fees are mentioned in the communication, the fees must be explained. Rule 7.1(a)(5). The Rules prohibit communications which are likely to create an unjustified explanation about results the lawyer can achieve or comparison of service unless the comparison can be substantiated. Rule 7.1(a)(2), (3).

The Rules evidence a policy of full disclosure enabling the client to investigate the attorney(s) and the services offered. Any advertisement must be clearly marked as an ad, unless it is otherwise apparent from the context that it is such a communication and at least one responsible attorney’s name must be included. Rule 7.1(a)(4), (6)(b). Law firms practicing under a trade name must include names of practicing attorneys. The firm’s trade name cannot imply connections to an organization with which it has no connection. Rule 7.5(a)(2). An attorney is prohibited from implying associations with other attorneys when an association does not exist and may state or imply practice in a partnership or other organizations only when that is the fact. Rule 7.5(d). These disclosure requirements assure that the public receives accurate information on which to base decisions.

Similarly, other jurisdictions have required disclosure of attorney names and professional associations in the advertisement of either legal services or referral services. A group of attorneys and law firms in the Washington, D.C. area planned to create a private lawyer referral service. The referral service’s advertising campaign was to be handled by a corporation entitled “The Litigation Group.” Ads would state that lawyers in the group were willing to represent clients in personal injury matters. The person answering the telephone calls generated by the ad would refer the caller to one of the member law firms or lawyers.

The Virginia State Bar Standing Committee on Legal Ethics found the name misleading because it implied the entity was a law firm rather than simply a referral service. The Committee required the ad include a disclaimer explaining that “The Litigation Group” was not a law firm. Virginia State Bar Standing Committee on legal Ethics, Opinion 1029, 2/1/88.

The Maryland State Bar Association Committee on Ethics was presented with facts identical to those presented in Virginia. The Maryland Committee also required additional information in the ad to indicate the group was not a law firm or single entity providing legal services. Maryland State Bar Association Committee on Ethics, Opinion 88-65, 2/24/88.

Similarly, an opinion by the New York Bar Association prohibited an attorney from using an advertising service which published ads for generic legal services. Ads for legal services were required to include the names and addresses of participating lawyers and disclose the relationship between the lawyers. New York Bar Association, Opinion 597, 1/23/89.

The situations presented to the Virginia, Maryland and New York committees are analogous to the facts presented here. The advertiser in all these cases refers a majority of the business generated by the ad, without disclosure. The ad here does not disclose any association with other attorneys.

The advertisement at issue conveys only the offer of legal services by the advertising attorney and no other service or attorney. The ad does not accurately reflect the attorney's business. The ad conveys incomplete information regarding referrals, and the omitted information is important to those clients selecting an attorney rather than an attorney referral service.

Furthermore, the attorney making the referrals may be circumventing the regulations governing lawyer

referral services. Attorneys may subscribe to and accept referrals from a "a bona fide lawyer referral service operated by an organization authorized and qualified to do business in this state; provided, however, such organization has filed with the State Disciplinary Board, at least annually a report showing its terms, its subscription charges, agreements with counsel, the number of lawyers participating, and the names and addresses of lawyers participating in the service." Rule 7.3(c)(1). These regulations help clients select competent counsel. If the attorney is not operating a bona fide lawyer referral in accordance with the Rules, the client is deprived of all of this information. The attorneys accepting the referrals also violate Rule 7.3(c) by participating in the illicit service and paying for the referrals.

Assuming that the advertisements at issue offers only the advertising attorneys services and that the attorney accepts cases from the callers, the ad is not false or inherently misleading. However, where a majority of the responding callers are referred out, this becomes a lawyer referral service. The Rules require disclosure of the referral as well as compliance with the Rules applicable to referral services.

NOTICE OF FILING OF FORMAL ADVISORY OPINIONS IN SUPREME COURT

Second Publication of Proposed Formal Advisory Opinion No. 05-8 Hereinafter known as "Formal Advisory Opinion No. 05-8"

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 December 15, 2005.

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 of 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 JULY 15, 2005 FORMAL ADVISORY OPINION NO. 05-8 (Redrafted Version of Formal Advisory Opinion No. 96-2)

QUESTION PRESENTED:

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

SUMMARY ANSWER:

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

OPINION:

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

Important Message

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

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

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

In summary, the use of a message or notice, such as described herein, is a violation of Rule 1.8(h), and subjects an attorney to discipline, including disbarment.

NOTICE OF FILING OF FORMAL ADVISORY OPINIONS IN SUPREME COURT

Second Publication of Proposed Formal Advisory Opinion No. 05-9 Hereinafter known as "Formal Advisory Opinion No. 05-9"

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 December 15, 2005.

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 of 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 JULY 15, 2005 FORMAL ADVISORY OPINION NO. 05-9 (Redrafted Version of Formal Advisory Opinion No. 97-1)

QUESTION PRESENTED:

Is it ethically proper to work on a temporary basis for other attorneys? Is it ethically proper for a lawyer, law firm, or corporate law department to hire other attorneys on a temporary basis?

SUMMARY ANSWER:

Yes. While a temporary lawyer and the employing firm or corporate law department must be sensitive to the unique problems of conflicts of interest, confidentiality, imputed disqualification, client participation, use of placement agencies and fee division produced by the use of temporary lawyers, there is nothing in the Georgia Rules of Professional Conduct that prohibits the use of temporary lawyers.

OPINION:

I. Conflicts of Interest

An attorney is ethically obligated to avoid conflicts of interest with respect to that attorney's client. A temporary lawyer represents the client of a firm when that lawyer works on a matter for a client. Thus, a temporary lawyer employed to represent clients or assist in representation of clients enters into an attorney/client relationship with those particular clients as an associate of the firm. Accordingly, the general rules pertaining to all attorneys regarding conflicts of interest are applicable to the temporary lawyer. Specifically, the temporary lawyer and the employing law firm or corporate law department must comply with Rules 1.7, 1.8, 1.9, and 1.10 governing personal interests, simultaneous representation, and subsequent representation conflicts of interest, and imputed disqualification. Generally, a temporary lawyer should not represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation without obtaining the consent of the affected clients in accordance with the consent requirement of Rule 1.7.

The opportunity for conflicts of interest is heightened in the context of the employment of temporary lawyers.

The very nature of a temporary lawyer invokes conflict of interest issues. Obviously, a temporary lawyer is likely to be employed by many different firms or legal departments during the course of his or her practice. Therefore, the potential for conflicts of interest is great. As a practical matter, this potential for conflict imposes upon temporary lawyers and employing law firms or corporate law departments an obligation of great care in both record keeping and screening for conflicts. In fact, the potential for conflict is so high that law firms or corporate law departments that employ temporary lawyers would be acting unethically if they did not carefully evaluate each proposed employment for actual conflicting interests and potentially conflicting interests. Additionally, the temporary lawyer should maintain a record of clients and matters worked on in order to evaluate possible conflicts of interest should they arise. All firms employing temporary lawyers should also maintain a complete and accurate record of all matters on which each temporary lawyer works.

One of the most difficult issues involving conflict of interest in the employment of temporary lawyers is imputed disqualification issues. In other words, when would the firm or legal department be vicariously disqualified due to conflict of interest with respect to the temporary lawyer? Since a temporary attorney is considered to be an associate of the particular firm or corporate law department for which he or she is temporarily working, the normal rules governing imputed disqualification apply. Specifically, Rule 1.10(a) provides that if any attorney is individually precluded from undertaking representation by Rules 1.7, 1.8(c), 1.9, or 2.2, then a firm with whom the attorney is associated is also precluded from undertaking that representation. Also, and most importantly in the temporary lawyer context, Rule 1.9(b) says that a lawyer “shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client: (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired [confidential] information . . . , unless the client consents after consultation.” The effect of these rules working in conjunction is that a firm employing a temporary lawyer would be disqualified by imputed disqualification from any unconsented to representation materially adverse to a former client of the former firms of the temporary lawyer in the same or a substantially related matter if the temporary lawyer had acquired confidential information about the former representation.

II. Confidentiality

In addition to avoiding conflicts of interest, an attorney also is obligated to protect the client’s confidences. As noted above, a temporary lawyer who is involved in the representation of clients or who provides assistance

in the representation of clients enters into an attorney/client relationship with those clients. Therefore, the temporary attorney is obligated not to disclose client confidences. A temporary attorney is required to keep all information gained in the professional relationship with a client confidential in accordance with Rule 1.6.

Furthermore, Rule 5.1 requires:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Georgia Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable effort to ensure that the other lawyer conforms to the Georgia Rules of Professional Conduct.

This Rule obligates the employing firm or corporate law department to impose upon temporary lawyers obligations of confidentiality identical to those requirements imposed on an associate or any other employee. This obligation of confidentiality includes all information regarding the representation of all clients of the firm or departments when the temporary lawyer acquires that information during his or her engagement.

To protect confidentiality and to avoid excessive risks of imputed disqualification it is a prudent practice for all law firms and corporate law departments, to the extent practicable, to screen each temporary lawyer from access to any information relating to clients that is not related to the temporary lawyer’s assignment. Moreover, a temporary lawyer working for several firms shall make every effort to avoid exposure within those firms to any information relating to clients on matters not assigned to the temporary attorney.

III. Use of Placement Agency for Temporary Attorneys

Placement agencies participate in a business that furnishes law firms and corporate departments with the services of lawyers desiring to obtain part-time or temporary employment. Firms and corporate legal departments look to these agencies to find temporary attorneys. In accordance with ABA Formal Opinion 88-356 (1988), a firm does not violate ethical regulations by utilizing a placement agency. However, there are certain guidelines that should be followed to ensure that no ethical violations occur. First of all, the firm or corporate legal department must prevent any third party from exerting any control as to the client representation. Such control would be a violation of Rule 5.4(c). For example, an agency may have an interest in an attorney’s taking additional time on a project so that it will result in higher fees. The solution is to prevent any control by the agency of the attorney’s time.

Furthermore, there is an increased risk of disclosure of confidential information even though there must be compliance with the Rules relating to confidential information and conflicts of interest. This risk of disclosure may be lessened by the screening of temporary attorneys by the firm that, as discussed above, insures the temporary lawyers do not obtain unnecessary information. Moreover, a client is entitled to be informed that a temporary attorney is being used. A client reasonably assumes that only attorneys within the firm are doing work on that client's case, and thus, a client should be informed that the firm is using a temporary attorney to do the firm's work. Because there is some risk of third party interference with the representation, the client should be advised of that risk. Compliance with Rule 5.4(c), which prohibits third party control of the client representation requires full disclosure to the client of the arrangement.

IV. Fee Arrangements

The last consideration that needs to be addressed is the appropriate manner in which to handle the fee arrangement. In accordance with the rationale contained in ABA Formal Opinion 88-356, a fee division with a temporary attorney is allowed. If a temporary attorney is directly supervised by an attorney in a law firm, that arrangement is analogous to fee splitting with an associate in a law firm, which is allowed by Rule 1.5(e). Thus, in that situation there is no requirement of consent by the client regarding the fee. Nevertheless, the ethically proper and prudent course is to seek consent of a client under all circumstances in which the temporary lawyer's assistance will be a material component of the representation. The fee division with a

temporary attorney is also allowed even if there is no direct supervision if three criteria are met: (1) the fee is in proportion to the services performed by each lawyer; (2) the client is advised of the fee splitting situation and consents; and (3) the total fee is reasonable. Rule 1.5(e).

In that the agency providing the temporary lawyer is not authorized to practice law, any sharing of fees with such an agency would be in violation of Rule 5.4(a). Therefore, while it is perfectly permissible to compensate an agency for providing a temporary lawyer, such compensation must not be based on a portion of client fees collected by the firm or the temporary lawyer.

In summary, employment as a temporary lawyer and use of temporary lawyers are proper when adequate measures, consistent with the guidance offered in this opinion, are employed by the temporary lawyer and the employing firm or corporate law department. These measures respond to the unique problems created by the use of temporary lawyers, including conflicts of interest, imputed disqualification, confidentiality, fee arrangements, use of placement agencies, and client participation. Generally, firms employing temporary lawyers should: (1) carefully evaluate each proposed employment for conflicting interests and potentially conflicting interests; (2) if conflicting or potentially conflicting interests exist, then determine if imputed disqualification rules will impute the conflict to the firm; (3) screen each temporary lawyer from all information relating to clients for which a temporary lawyer does not work, to the extent practicable; (4) make sure the client is fully informed as to all matters relating to the temporary lawyer's representation; and (5) maintain complete records on all matters upon which each temporary lawyer works.

NOTICE OF FILING OF FORMAL ADVISORY OPINIONS IN SUPREME COURT

Second Publication of Proposed Formal Advisory Opinion No. 05-10 Hereinafter known as "Formal Advisory Opinion No. 05-10"

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 December 15, 2005.

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 JULY 15, 2005 FORMAL ADVISORY OPINION NO. 05-10 (Redrafted Version of Formal Advisory Opinion No. 98-1)

QUESTION PRESENTED:

Can a Georgia attorney, who has agreed to serve as local counsel, be disciplined for discovery abuses committed by an in-house or other out-of-state counsel who is not a member of the State Bar of Georgia?

SUMMARY ANSWER:

A Georgia attorney, serving as local counsel, can be disciplined under Rule 5.1(c) for discovery abuses committed by an out-of-state in-house counsel or other out-of-state counsel when the local counsel knows of the

abuse and ratifies it by his or her conduct. Knowledge in this situation includes “willful blindness” by the local counsel. Local counsel can also be disciplined for discovery abuse committed by an out-of-state in-house counsel or other out-of-state counsel when the local counsel has supervisory authority over the out-of-state counsel also in accordance with Rule 5.1(c). Finally, the role of local counsel, as defined by the parties and understood by the court, may carry with it affirmative ethical obligations.

OPINION:

A client has asked in-house or other out-of-state counsel, who is not a member of the State Bar of Georgia, to represent him as lead counsel in a case venued in Georgia. Lead counsel associates local counsel, who is a member of the State Bar of Georgia, to assist in the handling of the case. Local counsel moves the admission of lead counsel *pro hac vice*, and the motion is granted. During discovery, lead counsel engages in some form of discovery abuse.

Discipline of local counsel for the discovery abuse of lead counsel would, in all cases, be limited to discovery abuse that is in violation of a particular Rule of Professional Conduct. If the discovery abuse is a violation of a Rule of Professional Conduct, for example, the destruction of documents subject to a motion to produce, Rules 5.1(c) and 3.4(a) defines local counsel’s responsibility for the abuse. Because Rule 5.1(c) is entitled “Responsibilities of a Partner or Supervisory Lawyer” it may not be obvious to all attorneys that the language of this statute applies to the questions regarding ethical responsibilities between lead and local counsel. Nevertheless, the language of the Rule clearly applies and is in accord with common principals of accessory culpability:

A lawyer shall be responsible for another lawyer’s violation of the Georgia Rules of Professional Conduct if: (1) The . . . supervisory lawyer orders, or with knowledge of the specific conduct, ratifies the conduct involved; . . .

Under this Rule the extent of local counsel’s accessory culpability for lead counsel’s discovery abuse is determined by the answers to two questions: (1) What constitutes knowledge of the abuse by local counsel? (2) What constitutes ratification of the violative conduct by local counsel?

Actual knowledge, of course, would always be sufficient to meet the knowledge requirement of this Rule. Consistent with the doctrine of “willful blindness” applied in other legal contexts, however, sufficient knowledge could be imputed to local counsel if he or she, suspicious that lead counsel was engaging in or

was about to engage in a violation of ethical requirements, sought to avoid acquiring actual knowledge of the conduct. The doctrine of “willful blindness” applies in these circumstances because local counsel’s conduct in avoiding actual knowledge displays the same level of culpability as actual knowledge.

Thus, if local counsel was suspicious that lead counsel was “engag[ing] in professional conduct involving dishonesty, fraud, deceit, or misrepresentation” in violation of Rule 8.4(a)(4), local counsel would meet the knowledge requirement of accessory culpability if he or she purposely avoided further inquiry. What would be sufficient suspicion, of course, is difficult to determine in the abstract. To avoid the risk of the effect of the doctrine of willful blindness, a prudent attorney should treat any reasonable suspicion as sufficient to prompt inquiry of the in-house or other out-of-state counsel.

What constitutes ratification is also difficult to determine in the abstract. Consistent with the definition of accessory culpability in other legal contexts, however, an attorney should avoid any conduct that does not actively oppose the violation. The specific conduct required may include withdrawal from the representation or, in some cases, disclosure of the violation to the court. Which measures are appropriate will depend upon the particular circumstances and consideration of other ethical requirements. In all circumstances, however, we would expect local counsel to remonstrate with lead counsel and to warn lead counsel of local counsel’s ethical obligations under Rule 5.1(c).

Other than accessory culpability, and depending upon how the parties and the court have defined it in the particular representation, the role of local counsel itself may include an affirmative duty to inquire into the conduct of lead counsel and other affirmative ethical obligations. This is true, for example, if the court understands the role of local counsel as carrying with it any direct supervisory authority over out-of-state in-house counsel or other out-of-state counsel. In such circumstances, Rule 5.1(c) provides:

A lawyer shall be responsible for another lawyer’s violation of Rules of Professional Conduct if: (2) the lawyer . . . has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Furthermore, at times lead and local counsel may have defined the relationship so that it is indistinguishable from that of co-counsel. In such cases the usual principles of ethical responsibility apply. Even short of this co-counsel role, however, typical acts required of local counsel such as moving of admission *pro hac vice* or the signing of pleadings, always carry with them affirmative ethical obligations. For example, in this, as in all circumstances, the signing of pleadings by an attorney constitutes a good faith representation regarding the pleadings and the conduct of the discovery procedure of which the pleadings are a part. There is nothing in the role of local counsel that changes this basic ethical responsibility. Local counsel, if he or she signs the pleadings, must be familiar with them and investigate them to the extent required by this good faith requirement.

Finally, there is nothing in the role of local counsel that excuses an attorney from the usual ethical requirements applicable to his or her own conduct in the representation, either individually or in conjunction with lead counsel. If local counsel engages in any unethical conduct, it is no defense to a violation that the conduct was suggested, initiated, or required by lead counsel.

Generally, Rules 1.2(a) and (d); 1.6; 3.3(a)(1) and (4); 3.3(c); 3.4(a), (b) and (f); 3.5(b); 4.1(a); 4.2(a); 4.3(a) and (b); 5.1(c); 5.3; 5.4(c); 8.4(a)(1) and (4) may apply to the conduct of local counsel depending upon the degree of local counsel’s involvement in the discovery process. While all these Rules might not be applicable in a given case, taken together they cover the range of conduct that may be involved.

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT NOTICE OF AND OPPORTUNITY FOR COMMENT

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after December 1, 2005, from the

court’s Web site at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the 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 January 3, 2006.

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Position Vacancy Announcement, Executive Director, Federal Defenders of the Middle District of Georgia, Inc. Federal Defenders of the Middle District of Georgia, Inc., a newly-created community defender organization, is accepting applications for the position of Executive Director. This organization will provide federal criminal defense services to individuals unable to afford counsel in the Middle District of Georgia. The Executive Director will be responsible for the initial organization and staffing of the office, will manage the program, and will carry a substantial caseload. The office is located in Macon, Georgia. The maximum salary will be \$140,300.00. Minimum qualifications are: (1) Is or will become a member in good standing of the Georgia State Bar and of the bar in every other state in which the applicant is admitted to practice; (2) Have at least five years criminal practice experience, preferably with significant federal criminal trial and appellate experience; (3) Have a demonstrated ability to provide effective administration of office and staff; and (4) Possess a reputation for integrity, a commitment to the vigorous representation of those unable to afford counsel, and an interest in the effective administration of the criminal justice system. Staff attorney positions will also be available. Request an application by visiting <http://fdpgan.home.mindspring.com> and downloading the application, or send a self addressed 9 X 12 envelope with the appropriate postage affixed to: Federal Defenders of the Middle District of Georgia, Inc., Attn: Franklin J. Hogue, P.O. Box 1097, Macon, Georgia 31202-1097. Completed application must be received by December 30, 2005, for full consideration. An equal opportunity employer.

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Annual Fiction Writing Competition

Deadline January 20, 2006

The editorial board of the *Georgia Bar Journal* is pleased to announce that it will sponsor its Annual Fiction Writing Contest in accordance with the rules set forth below. The purposes of this competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar, and to provide an innovative vehicle for the illustration of the life and work of lawyers. For further information, contact C. Tyler Jones, Director of Communications, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; (404) 527-8736.

Rules for Annual Fiction Writing Competition

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

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



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