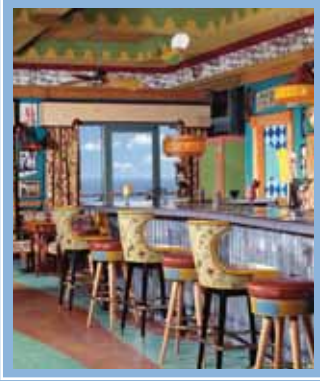
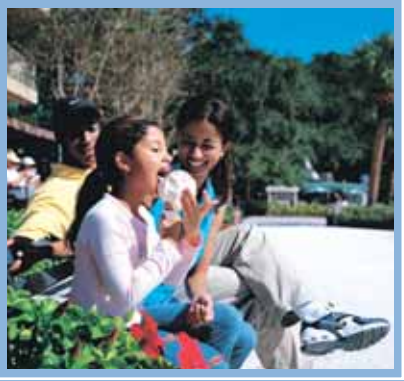
Georgia Bar Journal
April 2006 ■ Volume 11 ■ Number 6

2006 Annual Meeting





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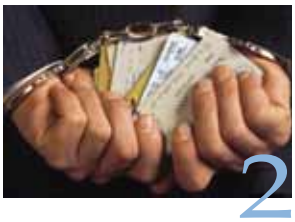

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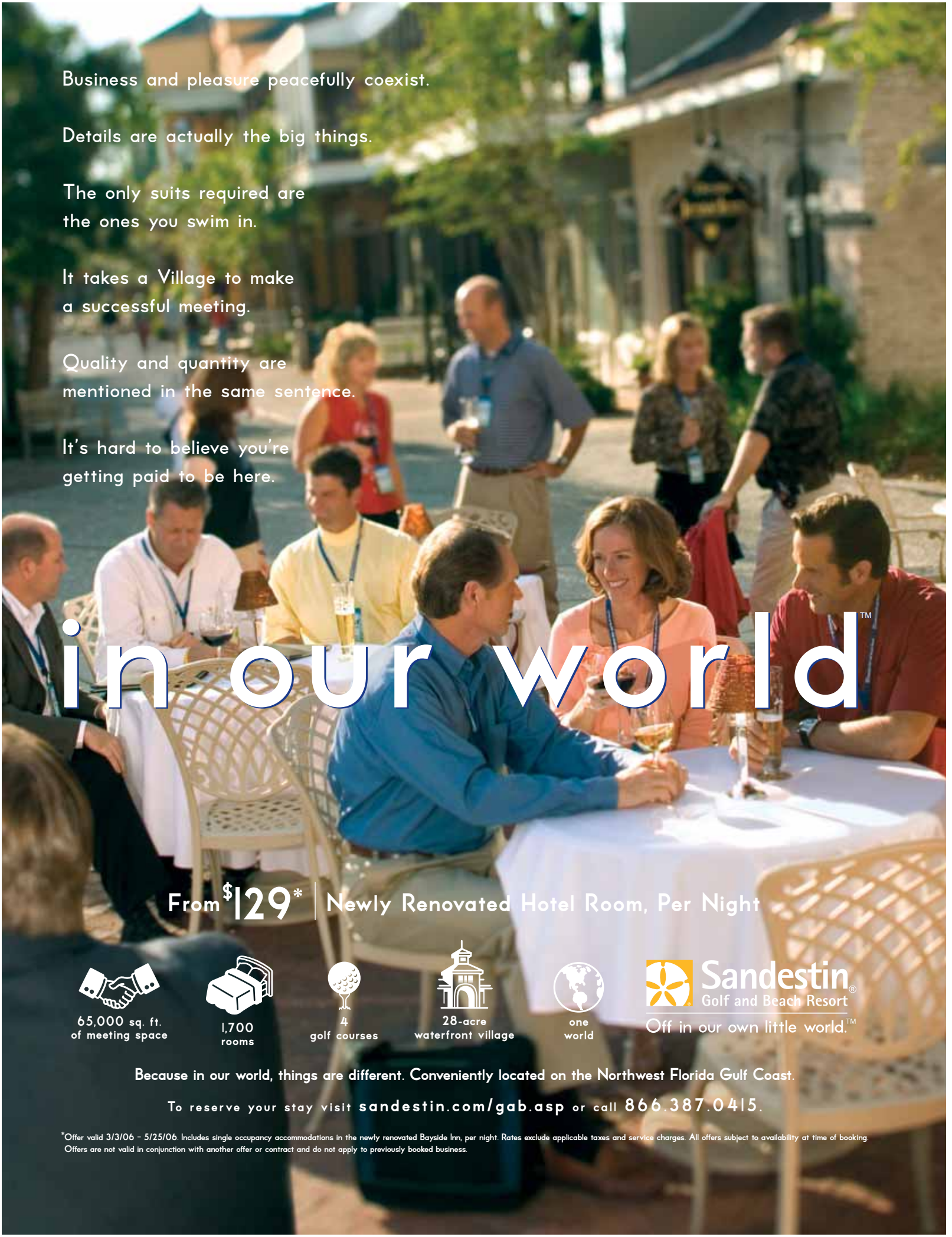
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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: C. Tyler Jones,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

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Recycling Georgia's Grand Old Courthouses

by Richard A. Katz

Judge Dorothy Beasley asked me at lunch recently what I was doing with my time in Blue Ridge, Ga. When I relayed the story of how the historic Fannin County Courthouse was saved from a life of neglect and misuse by its conversion into the new home of the Blue Ridge Mountains Arts Association (BRMAA), she suggested that this story be shared with the Bar so other brick and mortar grand dames of Georgia jurisprudence also might see new life.

The story started in the usual fashion when it became obvious that Fannin County's growth would require a new courthouse and jail. The old facility, built in 1937 and housing a single courtroom was simply overrun with the area's influx of retirees and transplants. Yet there was local opposition based on cost and opposition to change.

I was serving on BRMAA's board of directors and suggested that we could mobilize our membership to attend public hearings and provide support for the needed new courthouse. The support materialized and the project was approved.

Now the question became, "what to do with the old courthouse?" I reflected on how many times I have traveled to other counties and found an old, proud but tired-looking courthouse housing a local 4H or DFCS office and a Department of Agriculture outlet or some other facility. All of these might be good uses for the space but no one user could support a renovation of the building, nor could the county justify the expense of rehabilitating an old courthouse. An old courthouse is usually a drain on the county and more often than not sits sadly underutilized, slowly disintegrating.

In Blue Ridge, we suggested to the County Commission the following approach:

- Provide our local Arts Association a 50-year lease to the entire building;
- Require the Arts Association to pay a reasonable rental but provide for the rental to be paid in renovations to the courthouse with the Arts Association to have artistic authority over the rehab project; and
- Space out the required renovations over consecutive 4-year periods, which will allow the Arts Association to apply for grants and other funding to fulfill its financial obligations to the County.

As a result of this innovative approach, Fannin County's historic old courthouse remains in county ownership, will be renovated over a period of time, is being used for cultural, music and arts programs benefiting the entire community and, most significantly, as a Section 501©(3) corporation the Arts Association can receive funding from a variety of foundations to be used to renovate the building.

Using the lease as paid-in equity, an Arts Association or other qualified entity can show on its grant application solid underpinning for its programs. This encourages foundations to give serious consideration to committing funds to support the renovation process.

As an initial proving of the concept, the Arts Association applied for and received a grant from a large Foundation in a significant amount.

Are there are other courthouses in Georgia where this approach might apply? Wherever there is a fine old courthouse, a population that will support the Arts, a cooperative government and local volunteerism, there is the potential to transform old courthouses into cultural oases where music, art, dance, theatre and crafts can mingle in an exciting new way.

In Blue Ridge, BRMAA took occupancy of the old courthouse in 2005 when the new courthouse, located next door, opened for business. Come by, bring your local arts association director, take a look at what BRMAA is accomplishing and see if this approach can be used in your community.

Personally, I have found it gratifying to help shepherd a building which has borne witness to so much of humanity's problems to now be used to uplift spirits and foster imagination in young and old alike. GBJ

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

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by Robert D. Ingram

Georgia Lawyers Need Affordable Health Insurance

The Small Business Insurance Fairness Act is a Way to Make it Happen

Most Georgia lawyers, regardless of the size of their firm, already know the cost of providing health insurance for themselves and employees is staggering, especially for small firms and businesses that are not able to take advantage of the group policies offered to large corporations.

More than 60 percent of the 45 million Americans without health insurance are small businesses owners and their employees, including those of many small law firms. They are not unemployed, just uninsured. They are self-employed business people, sole proprietors or members of small partnerships that don't have the buying power needed for an affordable health care plan.

For these folks and their employees, the options are few and far between. Perhaps their spouse works for a large corporation or the government, and the family is well insured. Or they can take out a costly individual policy, as long as they're healthy enough to qualify. Otherwise, they're paying for health care out of their own pockets, with costs constantly and dramatically on the increase.

> "In 2001, he paid $5,924.84 in insurance premiums for the year. In 2005, the same policy cost him $23,480.04, with a $5,000 deductible per family member. "

A fellow Marietta lawyer recently told me that his biggest problem as a sole practitioner is health insurance. In 2001, he paid $5,924.84 in insurance premiums for the year. In 2005, the same policy cost him $23,480.04, with a $5,000 deductible per family member. His wife, who had been a homemaker

for 10 years, has now taken a job outside the home just so the family can have affordable health insurance.

The deck is stacked against my friend from Marietta and others like him in numerous ways. In addition to the lack of purchasing clout, small firms are restricted by a lack of competition among health insurance carriers in their individual states, as well as extra costs associated with complying with state insurance regulations.

Large corporations and labor unions that operate on a national scale don't have those problems. Competition for their insurance coverage is plentiful, and they can offer health plans covered by the Employee Retirement Income Security Act of 1974 (ERISA), which enables them to insure their employees and members without the costly and cumbersome process of complying with the different rules, regulations and mandates in each of the 50 states.

According to the International Franchise Association, because of the regulatory burden at the state level, "in small group and individual insurance plans, an estimated 25 to 33 percent of every premium dollar is spent on administrative costs. In comparison, large corporate/union group plans costs are as small as 5 to 10 percent of every premium dollar."

But there is good news. In recent months, Congress has recognized the plight of small business and begun doing something about it. Last July, the U.S. House of Representatives adopted HR 525, the Small Business Health Fairness Act of 2005, by a vote of 263-165. This legislation, co-sponsored by fellow Cobb Countian, Rep. Phil Gingrey (R-Ga.), would allow employers to band together through reputable associations to purchase health insurance. And in the U.S. Senate, a companion bill, S. 406, co-sponsored by Sen. Johnny Isakson (R-Ga.), is under consideration.

This legislative package would change ERISA in such a way that it would ultimately allow small businesses to pool together to create Small Business Health Plans, also referred to as Association Health Plans, enabling either a group purchase of health insurance from a provider, or a self-insured plan similar to those of some large corporations.

Allowing employers to join together to buy health coverage would allow small employers to acquire the greater bargaining power, risk distribution, economies of scale and administrative efficiencies they don't now enjoy.

Sen. Isakson recently stated this legislation would be of significant benefit to professional associations such as lawyers, realtors, physicians, etc., because it would allow them to pool professionals from a national scale to develop and provide group insurance to their members at an affordable price.

Meanwhile, Sen. Saxby Chambliss (R-Ga.) also said he is supportive of the Association Health Plan concept, although he is not a co-sponsor of this specific legislation. "The number of uninsured Americans is a real problem, and we in Congress need to address it by searching for effective, affordable and accessible

ways to expand access to adequate health insurance coverage, especially to those who have limited or no coverage," Chambliss said. "As a friend and strong supporter of the small business community, it is my hope that Congress will continue to propose new and innovative ways to solve the problems of the uninsured and help reduce the difficulties and hindrances that employers face when trying to offer these benefits to employees."

The Congressional Budget Office estimated in January 2000 that small businesses obtaining insurance through association health plans should experience premium reductions of 13 percent on the average and up to 25 percent. Such reductions could range from $1,000 to more than $1,900 for the average family health plan offered by a small business.

While some professional and trade associations already offer insurance programs to their members, they are still hampered by the administrative burdens and resulting costs of complying with the various regulations and benefit requirements in each state. Under the Small Business Health Plan legislation, uniform federal regulations would help small businesses lower those administrative costs.

To qualify as a Small Business Health Plan, a sponsoring association would have to have been in existence for at least three years for purposes other than providing health insurance. The plan would also have to be certified by the U.S. Department of Labor and operated by a board of trustees with complete fiscal control and responsibility for all operations.

Despite the obvious benefits of the Small Business Health Fairness Act, it is opposed by many major insurance carriers that operate as a near-monopoly in some states. And we can rest assured that those with vested interest in the current system will be lobbying hard to defeat this legislation.

That's why the legislation, which would benefit a large portion of our State Bar of Georgia membership, needs your help. Call or write Senator Isakson and let him know you support S. 406 and thank him for his efforts to give small businesses more options in the health insurance marketplace.

Also contact Senator Chambliss and urge him to support the bill, which is expected to come out of committee some time this year. Finally, urge your Congressman to support this legislation should it come back to the House for another vote.

By expressing your support for Small Business Insurance Fairness Act, you can help make heath care coverage affordable and available to the families of owners, partners and employees of millions of small businesses including lawyers operating as sole practitioners or as small law firms. GBJ

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by Cliff Brashier

Bar Seeks Attorneys' Help in Educating Students

"Next in importance to freedom and justice is popular education, without which neither freedom nor justice can be permanently maintained." This quote by the 20th President of the United States James A. Garfield, is as true today as it was in 1880, and likely means more to you as attorneys than it does to most lay people.

United States Supreme Court Justice Anthony M. Kennedy certainly knows the value of education. During his keynote address at the State Bar of Georgia's Jan. 15, 2005 Bar Center Dedication Ceremony, he said, "One of the greatest duties of any generation, and particularly of its bar, is to transmit the idea of freedom and the rule of law to the next generation." He urged bar leaders to use the Bar Center to "invite young people to come inside the law."

"One of the most highly regarded parts of the students' visit is when they participate in age appropriate cases, playing the role of lawyers, witnesses and jury members."

I'm happy to inform you that young people have started coming to the Bar Center and we expect the numbers to increase. Thanks to the help of the Georgia Consortium for Law Related Education in Athens many Georgia teachers know about the Bar Center and are eager to bring their students here. This is why we need help from you, our members, to act as docents. Lawyers understand the importance of the rule of law and can make a real difference by sharing their knowledge with our young people. Each docent will receive special training and a script to refer to during tours. Whether time permits you to volunteer four hours a year or four hours a month, we would love to have your participation.

In general, from the moment students enter the building they are greeted with historical information. The first thing they will notice is an authentic 19th Century replica of President Woodrow Wilson's law office, which was located in downtown Atlanta in 1882.

Many of the artifacts came from the original office. Since 60 percent of America's presidents and 45 percent of Georgia's governors have been lawyers, our profession's commitment to public service will be emphasized.

Next, students usually visit the Bar's Museum of Law, which offers educational and interactive displays regarding:

- The Bill of Rights
- Cruel & Unusual? Death Penalty Cases
- Checks & Balances: The Role of the American Judiciary
- Freedom's Call: The March for Civil Rights
- Famous Georgia and American Trials
- Lights, Camera, Action!— a 12 minute compilation of 70 past and present Hollywood films depicting a variety of law-related courtroom scenes and cases.

One of the most highly regarded parts of the students' visit is when they participate in age appropriate cases, playing the role of lawyers, witnesses and jury members. Following the role-playing exercises, students have the opportunity to ask Georgia judges and/or lawyers questions at our mini law school.

Some of the feedback we've heard from the test groups of students to date includes:

- "It was so interesting that I decided I wanted to be a lawyer more than anything else."
- "The State Bar museum is the coolest."
- "I loved it so much."
- "I had the best time of my life."
- "This is way better than gym class."
- "The museum was interesting because I learned a lot about lawyers, history, crimes and so much more."

Bar leaders are committed to educating students and the public about America's promise of justice for all, the importance of courts, the role of judges and lawyers, the role of public juries and the value of the rule of law. We hope you can find the time to participate, if interested, please call Sharon Bryant at (404) 527-8776.

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).

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by Damon E. Elmore

No Soapbox Here, Only the Soft Stuff

I had every intention of taking advantage of this next-to-last piece and shaking it up a bit—to get controversial, if you will! Perhaps I am getting too old, or tired, or both—but you got me. So, this time, there will be no controversy or soapbox or preaching.

Too bad though, because I have this perfect opportunity with nothing to lose. But I can't do it. I had every intention of commenting on the void, dearth if you will, of women, minorities and those non-traditional advocates, from the important decision making, direct contact, deal closing and dotted-line signing positions. But I won't.

"If I may be even bolder, I am presenting this as a 'do as I say' nudge. I love people but I ain't no politician. I love the political process but I can't raise money to save my life."

I am sure an eyebrow or two is now raised, but I see it. I see it as an officer of the Bar and president of its Young Lawyers Division. I saw it as a law student. I see it as a client, having been charged with managing litigation and overseeing corporate matters across the country. I saw it in private practice. I see it.

What you may not understand is that I am not challenging the ability or leadership of those that, due to circumstance, history, relationship or whatever reason, I am involved with day in and day out that aren't the group or class I am talking about. Good people they are! Smart people they are! They do a good job for me and for us and will continue to do so. But I have learned through my varied experiences and in a position of observance or, simply by looking in the mirror, that I like those "other" people too. That those other people are smart and good at what they do too. So why can't they genuinely be my client contact or prepare a motion for me—I see them sitting right there! Why don't we try it? We just may like it. Funny thing is, if the census projections are correct, we just may have to one day.

So, you're lucky, I won't write about anything like that. Instead, I have some thoughts on an issue more important to us; an issue that State Sen. Kasim Reed highlighted in his speech during the YLD's annual Legislative Affairs Breakfast. An issue that was brought to mind as I realized that of the 236 members of the Georgia General Assembly, 31 consider or list themselves as an attorney or lawyer or specialty lawyer—31. Have a guess now…? It is another absence, a dearth, but this involves the lack of and extreme necessity for lawyers in the Legislature.

Let me make something else clear before I get an unexpected audit from the state or, for some reason, my license is suspended; I am not criticizing, second guessing or doubting the motives of the General Assembly or their collective or individual intentions. It takes a great deal of personal sacrifice to devote your time to a part-time job where, regardless of your hard work and effort, you will never be appreciated. Never! On top of that, *my* experience with any electorate only involves this stint with the State Bar and a couple student government positions here and there.

If I may be even bolder, I am presenting this as a "do as I say" nudge. I love people but I ain't no politician. I love the political process but I can't raise money to save my life. Bite my tongue…? Add that together, throw in a case of thin skin and, voilà; I am not the person you need running for office. More importantly, I can't convince your employer or spouse or partner or family to make the same personal sacrifice I can't or won't ask of mine.

But you have to! You have to think about it because we need you. I have thought about this for some time. It is not as a result of the tort reform debate, but in conjunction with it. It is not as a result of the asbestos proposal in Congress or recent decisions from the South Dakota Legislature or proposals of the Georgia General Assembly, but in conjunction with them. It happened, as it always does, after one of the thousands of lectures by my golf pro, my valet attendant, my horticulturalist; that this should be a law or that should be a law. I never realized people believe that the process is as simple as that. Hold on…now that I think about it, maybe it is a reflection upon recent legislative sessions where the whole "it outta be a law" mentality, particularly when it serves the purpose of a few and not many, comes into play.

One thing law school teaches is that you shouldn't create rules that will affect a man or a woman's life, liberty and happiness on a whim. It is often more complicated than that; the reason you should probably measure the impact and effect of history or precedent on your proposed legislation. You should probably look at the broad reaching effect of your legislation on the future. You should probably always keep in mind the effect of the law when applied. You should respect the process. You should not be bigger than the law.

Maybe lawyers don't have an advantage or make better legislators. I don't completely disagree with that for they are human and have their own agendas at times. But you ask me, who better to be in an environment where they are called upon to uncover and shape those very "outta be" flights of fancy and mold them into a system of justice and order? Who better to do this in an environment where thoughts and ideas are flying a mile a minute and positions have been taken by people with passion and selfish interests on opposite sides? Who better than those already charged with the duty of carrying it out, to protect the interests of children or men and women whose rights may be in jeopardy (or at least have the know how to research the law)? Who better to draft the very nuggets they eat, sleep and breath every day—at the office, the gym (well, some of us), in traffic or on the way to the bathroom? Who better to communicate with legislative counsel or the law department where most of the bills are drafted (by lawyers) anyway? I may not want them reviewing my P&L statement or driving my audit processes, but when it comes to creating laws…

I don't know, I've been wrong once before. At either rate, think about it. Please! You have always said you would be prepared to answer that call. Well, here it is. As I think about it, wouldn't it be magical if some of those *other* lawyers answered the call too?

There you have it. No soapbox, only the soft stuff.

Maybe next time. Maybe.



Georgia's New Ethics Laws

A Summary of the Changes Relevant to Candidates, Campaigns and Contributors

by J. Randolph Evans and Douglas Chalmers Jr.

In the 2005 legislative session, the General Assembly passed, and Gov. Sonny Perdue signed, a comprehensive ethics reform package that resulted in significant changes to Georgia's ethics laws, including the Ethics in Government Act (the "Act").[1] The changes to the Act, which went into effect on Jan. 9, 2006, will be seen and felt by everyone involved.

In its December 2005 edition, the *Georgia Bar Journal* published an article that summarized changes to the Act that are relevant to lobbyists and legislators.[2] This article reviews the changes to Georgia's ethics laws that will affect candidates, campaigns and contributors during the 2006 campaigns and elections.

Limits on Campaign Contributions

The new law adds some important regulations and restrictions concerning campaign contributions.

Affiliated Business Entities

The Legislature has reinserted into the law a provision that was eliminated in 2000. Before the 2000 amendments went into effect on Jan. 1, 2001, the Act required that contributions from all "affiliated corporations" be aggregated when calculating whether a given corporation had exceeded the contribution limits. Corporations were deemed to be affiliated if they were: (a) under common ownership and control, (b) in a parent-subsidiary relationship, (c) sister corporations, or (d) in a relationship where one corporation exercised control over another.[3] The contributions of affiliated corporations were aggregated for purposes of the contribution limits. The provision of the Act which accomplished this stated in part as follows:

> No corporation shall during the course of any election year . . . make contributions to any candidate . . .

> which in the aggregate for that calendar year, *together with any contributions to the same candidate in the same year by any affiliated corporations*, exceed [the contribution limits].[4]

The highlighted language was removed when the Act was amended in 2000.

Confusion has nonetheless continued to exist in this area because, while the Legislature removed this operative provision, it retained the definition of an "affiliated corporation" in the Act.[5] In other words, although the Act continued to define the phrase "affiliated corporation," the term itself was not actually used anywhere in the Act.

Recognizing the incongruity posed by this fact, in July 2001 the State Ethics Commission (the Commission) adopted a rule which attempted to put back into the law the language that the Legislature had removed.[6] The language in the rule is virtually identical to the language that was repealed from the Act in 2000. The Commission's stated position on this issue

"This provision was designed to level the playing field and to make it more difficult for wealthy candidates to loan their campaigns large amounts of money with the expectation that the funds will be repaid with campaign contributions received after the (presumably successful) election."

has been that, because of the adoption of the rule, the law has always required aggregation of contributions by affiliated corporations. In light of the fact that the Legislature removed this requirement when it amended the Act in 2000, however, the Commission's rule has been vulnerable to challenge on the ground that it exceeds the scope of the Commission's authority.[7]

The rule was, nonetheless, good policy. In recognition of this fact, the 2005 revisions to the Act state that "[n]o business entity shall make any election contributions to any candidate which when aggregated with contributions to the same candidate for the same election from any affiliated corporations exceed the per election maximum allowable contribution limits for such candidate as specified in subsection (a) of this Code section."[8]

Importantly, this new provision is broader than the previous version of the statute. Like the previous statute, the new statute requires the aggregation of contributions from "affiliated corporations." Unlike the old statute, however, the new law defines the term "affiliated corporations" to include affiliated "business entities."[9] Because the term "business entity" has always been defined to include businesses other than just corporations, this change expands the scope of the definition of "affiliated corporations." In addition, the definition of the term "business entity" itself has been expanded to include additional types of businesses.[10]

The net effect of these changes is that the aggregation requirements are significantly broader. Going forward, all affiliated businesses, regardless of the legal form of the business (i.e., partnership, corporation, etc.), are subject to one aggregated contribution limit. This change will limit the ability of any one contributor to give multiple large contributions through various different businesses.

Affiliated Committees

The recent amendments to the Act did not, however, make comparable changes with respect to contributions from "affiliated committees." The Act continues to define the term "affiliated committees" to mean "any two more political committees (including a separate segregated fund) established, financed, maintained, or controlled by the same business entity, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department or local unit thereof."[11] As was the case with affiliated corporations, however, although the Act defines the term, it does not actually use it. As such, the Act does not expressly require that the contributions of affiliated committees be aggregated for purposes of the contribution limits.

As it did with affiliated corporations, the Commission previously adopted a rule that attempts to address this issue by requiring the aggregation of contributions from affiliated committees.[12] Unlike the case with "affiliated corporations," however, the Legislature did not revise the Act during the 2005 session to address this issue. Accordingly, absent legislative action, the Commission's rule may be subject to challenge for the reasons set forth above.

Contributions from Family Members

The new law also restricts the scope of an exception that had allowed unlimited contributions to be made to a candidate from members of the candidate's family. The Act has provided that the contribution limits under the Act do not apply to contributions made to the candidate's campaign from the candidate or members of his or her "immediate family." In a 1995 advisory opinion, the Attorney General interpreted the phrase "immediate family" to mean "spouse and children."[13] In the new version of the Act, the phrase "immediate family" has been replaced with a new term, "member of the family," which has been defined to mean a spouse and "dependent" children.[14] As a practical matter, this means that the exception to the contribution limits no longer applies to a candidate's adult, non-dependent children. Under the new law, children of the candidate who are not dependents of the candidate are subject to the same contribution limits that apply to others.

Permissible Use of Campaign Contributions

The law has also been revised to clarify certain permissible and prohibited uses of campaign funds.

Contributions to Nonprofit Organizations

The Act has been revised to confirm that candidates may use campaign funds for the purpose of

making "contributions to nonprofit organizations."[15] Prior to Jan. 9, 2006, a candidate could only make contributions to these organizations if he or she had "excess" funds.[16] Because the law did not clearly define what constituted "excess" funds, however, this resulted in ambiguity. The Act now clearly provides that such contributions are considered "ordinary and necessary" expenditures.

Millionaire's Amendment

Another change, commonly referred to as the "Millionaire's Amendment," provides that a candidate who loans money to his or her campaign will not be able to use campaign funds to repay that loan after an election to the extent that the loan exceeds $250,000.[17] This provision was designed to level the playing field and to make it more difficult for wealthy candidates to loan their campaigns large amounts of money with the expectation that the funds will be repaid with campaign contributions received after the (presumably successful) election.

Campaign Contribution Disclosure Reports–Information Disclosed

The new law also revises in a number of respects the information that must be disclosed by candidates and public officials on campaign contribution disclosure reports (CCDRs).

Occupation/ Employer Information

First, the new law clarifies the reporting of occupation and employer information. The law now clearly states that this information is only required to be disclosed for contributors, or recipients of expenditures, who are individual, natural persons (as opposed to business contributors or payees).[18] In addition, the law now requires that candidates disclose both occupation and employer information for individuals who receive payments of campaign funds, whereas prior to this change the Act required campaigns to report only either occupation or employer information for payees.[19]

Last-Minute Reporting

Second, two changes have been made to the so-called "48-hour" reporting obligation. The Act previously provided that, "[d]uring the period of time between the last report due prior to the date of any state-wide primary or state-wide election for which the candidate is qualified and the date of such primary or election, all contributions of $1,000 or more must be reported within 48 hours of receipt."[20] The purpose of this provision has been to ensure that large contributions made in the period shortly before an election, and that otherwise would not be reported until after the election, are disclosed quickly.

It has not been clear from the existing language in the Act whether a candidate who has qualified to run for an office that is not elected statewide must file 48-hour reports if there are other elections on the same ballot which will be conducted on a statewide basis. In an attempt to resolve this issue, the Commission issued an advisory opinion that held that any candidate on the ballot in an election being conducted statewide must file the 48-hour reports, regardless of whether that candidate is running for an office that is elected on a statewide basis.[21] The Commission based its conclusion in part on "the massive loss of disclosure which would be occasioned by a more restrictive application of the 48-hour report requirements."[22]

In order to review any ambiguity on the issue, the new law removes the phrase "state-wide primary or state-wide" from the text.[23] The effect of this change is to broaden this disclosure obligation even beyond that suggested by the Commission's advisory opinion. These reports must now be filed by all candidates who qualify for any election, whether or not the election is being conducted on a statewide basis.

The second change made to the law in this area is that the 48-hour reporting requirement has been changed to a "two business days" reporting requirement. In other words, large contributions received shortly before an election must be reported within two business days, as opposed to within 48 hours.[24]

Required Filings by Contributors

The third significant change the new law makes to CCDR disclosures is that it eases the largely duplicative reporting requirements on businesses and individuals who make campaign contributions in Georgia. Under the prior law, businesses that contributed more than $5,000 in a calendar year and that made contributions to more than one candidate were required to register with the secretary of state

and also file disclosure reports.[25] The same requirement has applied to individuals who contributed more than $25,000 to more than one candidate in a calendar year. Disclosure reports filed by contributors have also been required to be filed at the same time and in the same locations as the reports filed by the candidates who received the contributions.

As a practical matter, many of the contributions from individual and corporate contributors are given to candidates for the General Assembly. Those candidates have been required to file their disclosure reports both with the secretary of state and also with the election superintendents in their home counties. Because contributors who give to these candidates in excess of the relevant thresholds must file disclosure reports at the same times and in the same locations as the candidates, these contributors have also been required to file reports with county election superintendents. In the past two years, the Commission has imposed significant fines on a number of corporate contributors that have not filed the required reports.

The new law reduces the reporting obligations of these contributors. First, businesses that make contributions are now required to register and file disclosure reports only if they contribute more than $25,000 to candidates in a calendar year.[26] The increase from $5,000 to $25,000 in the reporting threshold will eliminate the separate reporting requirements for many businesses. Second, corporate and other contributors are no longer required to file disclosure reports with county or municipal election superintendents when making contributions to candidates for the General Assembly.[27]

There are those who may argue that these changes reduce the level of disclosure of campaign contributions. Because of the advent of electronic filing of disclosure reports, however, any such statement would be incorrect. All contributions made to candidates, parties or political action committees by corporate or other contributors will still appear on the disclosure reports filed by those entities. As such, these changes to the law will not reduce the level of disclosure of corporate and other business contributions to candidates in Georgia.

Election Designations

The Act has long provided that "[c]andidates and campaign committees shall designate on their disclosure reports the election for which a contribution has been accepted."[28] This language appears to confirm that it is up to the candidate, rather than the contributor, to designate the election for which a given campaign contribution has been accepted. In other words, the candidate has the right to choose whether to designate the contribution to the contributor's limits for the primary or the general election.

The issue is important because candidates have an interest in designating contributions in a manner that will allow them to accept the maximum legal contributions from any one contributor.

In spite of the fact that the law has appeared to give candidates and their campaigns the right to designate the election for which contributions are accepted, the Commission has at times suggested that the controlling factor on such issues is the intent of the contributor. The revised version of the Act now states that:

"A candidate who accepts contributions for more than one election at a time may allocate contributions received from a single contributor to any election in the election cycle, provided that the contributions shall not violate maximum allowable contribution limits for any election; provided, however, that in order to allocate contributions to a past election, the candidate shall have outstanding campaign debt from the previous election."[29]

The revised statute confirms that the election designation decision is one made by the candidate.

Filing of Disclosure Reports–Procedural Changes

In addition, the new law makes a number of significant changes in (a) the procedures used to file disclosure reports and other campaign filings; (b) the handling of complaints by the Commission; and (c) the maintenance of campaign financial records.

Filings

The new law changes the manner in which most disclosure reports and campaign registration materials are filed, as well as the location where such reports are filed.[30]

Campaign Registration Materials. Before accepting campaign contributions, candidates must file (i) a notice of intent to accept campaign contributions and (ii) a campaign committee registration form. Previously, those forms were filed with the secretary of state. Under the new law, those forms will be filed with the Commission.[31]

Campaign Contribution Disclosure Reports and Personal Financial Disclosure Statement. Under the previous law, candidates for statewide office and the General Assembly filed their CCDRs and personal financial disclosure statements with the secretary of state. Going forward, those reports will be filed with the Commission.[32]

In addition, the manner in which these forms will be filed has been revised. Under the previous law, candidates filed both electronic and hard copies of their CCDRs with the secretary of state. Beginning with the March 31, 2006, report, candidates will file with the Commission (a) an electronic report, and (b) a notarized affidavit confirming that the electronic filing

is correct.[33] No hard copy of the report will be filed.[34] The electronic report must be filed by midnight on the day of the deadline; the notarized affidavit must be mailed and postmarked by the date of the deadline. For members of the General Assembly, a copy of the report must still be filed with the county election superintendent in the county of residence.

Similarly, going forward candidates will not file a hard copy of their personal financial disclosure statements. Such reports will be filed electronically with the Commission.[35] In addition, the candidate or public official will be required to file a notarized affidavit confirming that the electronic filing is correct.[36] No hard copy of the report will be filed.

Under the new law, the Commission is required to maintain copies of CCDRs, make them available for public inspection and copying; and prepare regular reports listing candidates who have not filed reports in a timely manner.[37] The Commission is also now required to ensure that personal financial disclosure reports are in compliance with the law.[38] It is also required to prepare a report, within 10 days after the date financial disclosure statements are due, listing all candidates and public officers who have not filed the required financial disclosure statements.[39] These functions were previously performed by the secretary of state.

Option to Choose Separate Accounting. The Act permits candidates to account separately for contributions for different elections or, in other words, to accept contributions before a primary election for both the upcoming primary and general elections. The method by which one chooses to implement separate accounting is to file a "Choosing Option of Separate Accounting" form with the secretary of state.[40] It has long been unclear whether a separate such form must be filed for each election cycle. In order to address this ambiguity, the Act has been revised to clarify that "a candidate shall only be required to file one such form which shall be utilized for all subsequent elections to the same elective office."[41]

Processing and Resolution of Complaints

The revised law also contains a number of important provisions concerning the processing and resolution of complaints that are filed with the Commission. Such complaints may be filed against candidates or public officials by any private citizen or by the Commission itself.

Statute of Limitations. First, the Legislature has added an express statute of limitations to the Act.[42] Candidates may be held accountable for violations that occurred in their most recent previous election, but candidates cannot now be forced to account for errors that occurred outside the limitations period. This provision inserts a significant element of fairness into the Act, because it will prevent candidates and public officials from being forced to defend untimely and stale allegations related to reports filed many years earlier.

Technical Defects. The new law also has a revised provision that addresses complaints alleging that a disclosure report contains "technical defects," or, in other words, relatively minor infractions.[43] This new provision makes a number of changes to the law.

First, the definition of "technical defects" has been expanded to include "accounting errors."[44] It remains to be seen how the Commission will interpret this phrase, which is not defined in the Act. For example, it is not clear whether a failure to report the proper amount for a contribution or expenditure will be deemed an "accounting error." Similarly, it is not clear if an error on the summary pages is an "accounting error."

Second, the time period in which candidates may amend disclosure reports to correct technical defects without facing a penalty or fine has been expanded from 10 days to 30 days.[45]

Third, the new law provides that "[w]hen the commission determines in its discretion that best efforts have been made to complete a required filing, said filing shall be considered in compliance with this Code section and any complaint relative to said filing shall be dismissed."[46] The phrase "best efforts" is not defined in the Act. It remains to be seen how the Commission will interpret this phrase. The phrase has a defined meaning under federal law,[47] and it may be that the Commission will turn to federal law for guidance in interpreting the phrase in the Act.

Fourth, as was the case with the provision imposing new, higher penalties for violations of the Act, the new technical defects provision states that the "same error or inaccurate entry" shall be considered a single violation if it appears multiple times on one report or causes further errors on subsequent reports. This provision does not say that the same "type" of error is one violation. As such, an uncorrected failure to disclose address information for two separate contributors should be two separate violations, each subject to a maximum $50 fine.[48]

Availability of Information

The new law also imposes requirements on the Commission to disclose information concerning Commission rulings and advisory opinions.

Advisory Opinions

The new statute requires the Commission to issue a written advisory opinion within 60 days of its receipt of a request for the opinion.[49] The imposition of the 60-day deadline will help candidates obtain timely guidance to issues arising under the Act. In addition, the requirement that the advisory opinion be in writing will help ensure consistency in interpretation and application of the Act.

The same statute also now requires that all advisory opinions be posted on the Commission's website.[50] The posting of all previous and future advisory opinions should help ensure that candidates and public officials receive consistent information concerning the law's requirements, which will help enable them to comply with their obligations under the Act. In addition, the same law also now contains a safe harbor provision which confirms that no liability may be imposed for a violation if a respondent has acted in conformity with a written advisory opinion from the Commission.[51]

Commission Orders

As was the case with advisory opinions, the new law mandates that the Commission post all future orders from contested cases on its website.[52] With respect to orders issued prior to Jan. 9, 2006, the new statute requires that only "advisory orders" be posted on the Commission's website. The phrase "advisory orders" is not defined, and is not immediately clear how the Commission will distinguish between an "order" and an "advisory order." Presumably, the addition of the "advisory" qualifier was intended to limit the number of previously-entered orders that must be posted by the Commission. A reasonable interpretation of this phrase is that the Commission need not post all previous orders on its website, but only those that provide guidance concerning the Commission's positions on an issue. The statute appears to leave to the Commission the discretion to determine what is and is not an "advisory" opinion. It remains to be seen what orders will and will not be posted.

Commission Reports

The new Act also imposes a number of additional reporting obligations on the Commission. On a quarterly basis, the Commission must prepare, update, publish and post on its website a report listing the name of each filer who has not filed the most recent CCDR or financial disclosure statement.[53] The commission must also now publish overall lobbyist spending by category, including gifts, meals, entertainment, office supplies, lodging, equipment, advertising, travel, and postage.[54]

Conclusion

These changes represent the most comprehensive strengthening of Georgia's ethics laws since the Ethics in Government Act was first adopted. The rules governing contributions from affiliated business entities have been tightened. A "Millionaire's Amendment" has been adopted to level the playing field for candidates for office. The mechanics of filing disclosure reports have been streamlined for the Internet age, thereby easing unnecessary administrative burdens on candidates, public officials and contributors. A statute of limitations has been adopted, thereby inserting an important measure of fairness in the Act's enforcement scheme.

Significant new requirements have been imposed on the Ethics Commission to disclose information concerning advisory opinions and orders related to the Act. Finally, the Commission is also now required to prepare and post regular reports concerning compliance with the Act, which should enhance compliance with and enforcement of the Act.

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Endnotes

1. O.C.G.A. § 21-5-1 *et seq.* (2005).
2. *Georgia's New Ethics Laws: A Summary of the Changes Relevant to Lobbyists and Legislators*, GA. BAR J. (Dec. 2005).
3. O.C.G.A. § 21-5-40(2).
4. *Id.* § 21-5-42(a) (emphasis added) (repealed in 2000).
5. *Id.* § 21-5-40(2).
6. Ga. State Ethics Comm'n Rule 189-6-.03.
7. *See, e.g.*, Trans. Ins. Co. v. El Chico Restaurants, Inc., 524 S.E.2d 486, 488 (Ga. 1999) ("The rules of statutory interpretation demand that we attach significance to the Legislature's action in removing the emphasized, limiting language. . . . We must presume that the Legislature's failure to include the limiting language was a matter of considered choice.") (citations omitted); North Fulton Med. Ctr. v. Stephenson, 501 S.E.2d 798, 801 (Ga. 1998) ("It is well established that administrative agencies . . . are not authorized to enlarge the scope of, or supply omissions in, a properly-enacted statute."); Dept. of Human Resources v. Siggers, 463 S.E.2d 544, 546 (Ga. App. 1995) ("[A]n administrative rule which exceeds the scope of or is inconsistent with the authority of the statute upon which it is predicated is invalid.").
8. O.C.G.A. § 21-5-41(c)
9. *Id.* § 21-5-40(2).
10. *Id.* § 21-5-3(1).
11. *Id.* § 21-5-40(1).
12. Ga. State Ethics Comm'n Rule 189-6-.04.
13. Op. Att'y Gen. 95-42 (Oct. 26, 1995).
14. O.C.G.A. § 21-5-3(17).
15. *Id.* § 21-5-3(18).
16. *Id.* § 21-5-33(b)(1)(A) (stating that candidates may make such contributions only from funds that are "in excess of those necessary to defray [ordinary and necessary] expenses").
17. O.C.G.A. § 21-5-41(h).
18. *Id.* § 21-5-34(b)(1)(A), -34(b)(1)(B).
19. *Id.* § 21-5-34(b)(1)(B).
20. *Id.* § 21-5-34(c)(2)(C).
21. Ga. State Ethics Comm'n Advisory Opinion 02-33 (June 14, 2002), available at http://ethics.georgia.gov/00/article/0,2086,26886019_50896963_27360920,00.html.
22. *Id.*
23. The statute now requires the filing of these reports "[d]uring the period of time between the last report due prior to the date of any election for which the candidate is qualified and the date of such election." O.C.G.A. § 21-5-34(c)(2).
24. *Id.* § 21-5-34(c)(2).
25. *Id.* § 21-5-34(e).
26. Importantly, the Commission has taken the position that contributions to political parties and to political action committees are ultimately contributions designed to benefit "candidates," so such contributions must be included when calculating the relevant threshold (*i.e.*, $5,000 until Jan. 9, 2006, and $25,000 thereafter).
27. O.C.G.A. § 21-5-34(e).
28. *Id.* § 21-5-41(d).
29. *Id.* § 21-5-43(a)(3).
30. This article focuses on the filing requirements applicable to statewide candidates and candidates for the General Assembly, and the discussion of the filing requirements herein is directed at the requirements applicable to those candidates. Candidates for county and municipal offices file their disclosure reports in different locations. Such candidates should closely consult the revised Act with respect to these issues.
31. O.C.G.A. § 21-5-30(b), -30(g).
32. *Id.* § 21-5-34(a)(1)(A) (campaign contribution disclosure reports); *Id.* § 21-5-50(a)(1) (personal financial disclosure statements).
33. *Id.* § 21-5-34.1(e).
34. *Id.* § 21-5-34.1(f).
35. *Id.* § 21-5-50(d).
36. *Id.* § 21-5-50(e).
37. *Id.* § 21-5-36.
38. *Id.* § 21-5-50(a)(4).
39. *Id.* § 21-5-53.
40. Ga. State Ethics Comm'n Rule 189-5-.02.
41. O.C.G.A. § 21-5-43(a)(2).
42. *Id.* § 21-5-13.
43. *Id.* § 21-5-7.1.
44. *Id.* § 21-5-7.1(1).
45. *Id.* § 21-5-7.1(2).
46. *Id.* § 21-5-7.1(4).
47. *See* 11 C.F.R. § 104.7 (2005).
48. O.C.G.A. § 21-5-7.1(2).
49. *Id.* § 21-5-6(b)(13).
50. *Id.*
51. *Id.*
52. O.C.G.A. § 21-5-6(b)(14).
53. *Id.* § 21-5-6(b)(19).
54. *Id.* § 21-5-6(b)(20).

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the growing threat of IDENTITY THEFT and its implications for employers

by Russell A. Jones

Identity theft occurs when thieves gain access to and use another person's personal information such as his or her name, Social Security number, credit card or bank account number, or other identifying information to commit fraud or other crimes.[1] Identity thieves gain access to personal information through a variety of sources such as lost or stolen credit cards, stolen paper mail, dumpster-diving, computer spyware or hacking, e-mail scams, or by accessing customer or employee records maintained by businesses.[2]

Across the United States, instances of identity theft have increased dramatically over the last several years. According to the United States Federal Trade Commission (FTC), in 2005 identity theft was the nation's top consumer complaint for the sixth year in a row.[3] In 2005 alone, approximately 8.9 million Americans were victims of identity theft, at a cost to the economy of approximately $56.6 billion.[4] Because many cases of identity theft go unreported, the numbers are likely even higher.

As identity theft continues to escalate, and legislators and litigators seek ways to address it, employers in Georgia and throughout the country face ever-increasing pressures to protect the personal information they collect and maintain concerning their employees and customers. Given the current legal climate, it is imperative that employers implement and update their data protection strategies not only to comply with state and federal laws, but also to minimize the risk that their employees and customers will become victims of identity theft and to reduce company exposure to liability.

Identity Theft in the Workplace

According to a September 2002 report by TransUnion, one of the three major U.S. credit bureaus, employer records are the largest single source of identity theft.[5] Several high-profile examples of missing or stolen data, such as the theft of personal information concerning 145,000 consumers from Georgia-based information broker, ChoicePoint, and Iron Mountain's loss of 40 backup tapes containing data on 600,000 current and former Time Warner employees, demonstrate the vulnerability of the personal information that businesses maintain about their employees and customers.

Controlling the growing threat of identity theft presents significant challenges for employers. The vast amounts of sensitive personal information maintained by employers about their employees and customers, including demographic information, personnel files, background reports, credit histories, Social Security numbers, benefits data, direct deposit information, and payroll and tax records, can be a virtual treasure trove for identity thieves. Moreover, the trend toward electronic storage of such records can result in quick access to massive amounts of sensitive information with only a few keystrokes.[6] The results of identity theft can be devastating to employees and customers alike, given that victims spend on average 40 hours—and often thousands of dollars—cleaning up the mess thieves have made of their identity and their credit records.[7] In addition to draining productivity and morale at work and straining relationships with customers, identity theft can rob victims of job or educational opportunities, loans, housing, automobiles, or even subject them to arrest for crimes they did not commit.

When employees or customers become victims of identity theft, the employers ultimately may pay the price, especially if the employers' treatment of employee or customer information contributed to the problem. In 2002, for example, an employee of a California company came across a box in a storage closet at work containing personnel records of 38 former employees of the company's predecessor. Using the information from those files, the employee and her acquaintances fraudulently rented three apartments, opened 20 cellular telephone accounts and set up more than 25 credit card accounts which they used to purchase upwards of $100,000 in goods. Fourteen of the 38 victims sued the employer for negligence, claiming that the crime would never have taken place if the company had taken better care of the personnel records.[8] The litigation settled out of court, and media reports claim that the employer paid out a "significant six-figure amount" to resolve the claims.[9]

In February 2005, in a case demonstrating the courts' willingness to hold organizations liable for failing to protect personal information, the Michigan Court of Appeals upheld a $275,000 jury award against a union whose members were victimized by identity theft.[10] In that case, the union's treasurer took home documents containing the name, job classification, social security number, and pension information of union members, a group of 9-1-1 operators. The jury found that the treasurer's daughter had stolen the information and had used it to perpetrate identity theft against the thirteen plaintiffs. The court upheld the jury determination that the union was negligent in adequately failing to safeguard the personal information from theft by the treasurer's daughter. In support of its holding, the court noted that the union had required no protections for the documents even though the possibility of identity theft was "far too commonplace."[11]

Employers face similar legal risks when their customers' records are compromised by employees or third parties. For example, in July 2004, The United States District Court for the Eastern District of Pennsylvania held that an employer could be held liable for identity theft committed by one of its employees using a customer's personal information.[12] In *Lukens*, the defendant, a car dealer, hired a salesperson with a prior criminal record involving numerous forgeries and thefts by deception. The employee informed the defendant about his criminal history but, nevertheless, he was hired without further question. The day after his employment began, the employee, acting within the scope of his employment, obtained the plaintiff's credit report and used the personal information to open numerous fraudulent credit accounts in the plaintiff's name. The court denied summary judgment to the defendant employer finding that it could be found vicariously liable under the Fair Credit Reporting Act (FCRA)[13] for the employee's impermissible use of the report. The court held that liability may attach to the employer under an agency theory because it was within the scope of the employee's job to access and to evaluate customer credit information and because the defendant disregarded the employee's relevant criminal history.[14]

These cases demonstrate that employers should exercise particular caution in selecting, training, and supervising employees who may have access to personal information concerning customers or co-workers, especially in states such as Georgia where negligent hiring, supervision, and/or retention claims are recognized. Under Georgia law, for example, an employer "is bound to exercise ordinary care in the selection of employees and not to retain them after knowledge of incompetency."[15] Therefore, an employer who fails to conduct thorough employment-related background checks or to supervise employees adequately, or who retains employees it knows or should have known have the propensity to engage in fraud or theft, could be held liable for identity theft committed by those employees through access to company records.

Identity Theft in Georgia

According to the Georgia General Assembly, "[i]dentity theft is one of the fastest growing crimes committed in this state."[16] In a study conducted by the FTC, Georgia in 2005 ranked ninth among all states in numbers of reported identity theft victims per 100,000 people.[17] The personal information of these victims was misused in a variety of ways including credit card fraud, bank fraud, phone or utilities fraud, government documents or benefits fraud, employment-related fraud, and loan fraud.[18]

Victims of identity theft in Georgia currently have several legal options at their disposal. Identity theft, referred to as "identity fraud" in Georgia's criminal statutes, was codified as a crime in 1998.[19] The crime carries a punishment of up to 10 years in prison and a fine of up to $100,000.[20] Additionally, courts may order guilty parties to make restitution to their victims.[21] Conviction for a second violation can result in up to 15 years in prison and a fine of up to $250,000.[22] A consumer victim of identity fraud also can pursue a civil action under the statute to obtain injunctive relief, general and punitive damages, and attorneys' fees and costs against the perpetrator.[23] A business victim of identity fraud can bring a civil action against the perpetrator for actual damages sustained, punitive damages, and attorneys' fees and costs.[24] In its current form, Georgia's identity fraud statute does not provide a private right of action against employers for identity theft resulting from compromised company records. But, as discussed above, employees or customers can still pursue traditional negligence or vicarious liability claims against employers if the identity theft resulted from the compromise of company records.

Effective May 5, 2005, Georgia also enacted legislation requiring any "information broker"[25] that maintains computerized data that includes "personal information"[26] of individuals to give notice of any "breach of the security of the system"[27] to an individual whose unencrypted personal information was acquired by an unauthorized person.[28] This notice must be made as expediently as possible and without unreasonable delay.[29] In the event the information broker is required to notify more than 10,000 Georgia residents at one time, it also must notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis regarding the timing, distribution, and content of the notices.[30] Although several bills have been introduced in the Georgia legislature seeking to expand this notification requirement to businesses other than information brokers, none has yet been passed.[31]

Federal and State Laws Impacting Collection and Maintenance of Personal Information

Federal and state legislatures nationwide, including here in Georgia, continue to tighten requirements on businesses that collect or maintain personal information concerning employees and/or customers. For example, at least 20 states have broader-reaching versions of Georgia's security breach notification law that require most types of businesses (not just information brokers) to disclose security breaches of personal information to affected individuals.[32] Additionally, a number of states have passed laws regulating the use and safekeeping of Social Security numbers.[33] Specific federal laws, such as the Health Insurance Portability and Accountability Act (HIPAA)[34] (governing health information) and the Gramm-Leach-Bliley Act (GLBA)[35] (governing financial institutions' protections of non-

public personal information), also regulate the ways in which businesses use and protect certain types of personal information.[36]

Federal and state laws also impact the ways in which businesses dispose of certain personal information. For example, effective June 1, 2005, the FTC's rule-implementing provisions of the Fair and Accurate Credit Transactions Act's (FACTA) amendments to the FCRA require businesses in possession of consumer information, including employee background reports or other consumer reports, to take reasonable measures such as document shredding and data erasure to protect against unauthorized access to or use of the information in connection with its disposal.[37] Similarly, Georgia's Fair Business Practices Act (FBPA) provides that a business may not discard a record containing personal customer information unless it first: (1) shreds the customer's record; (2) erases the personal information contained in the customer's record; (3) modifies the customer's record to make the personal information unreadable; or (4) takes actions that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the customer's record for the period between the record's disposal and the record's destruction.[38] Violations of the FBPA's disposal provisions may result in fines up to $10,000.[39]

Employer Strategies for Minimizing the Risk of Identity Theft

As identity theft continues to increase and as current and pending legislation impose more burdens on businesses to secure sensitive employee and customer information, it would be wise for employers to consider the following strategies:

- Develop a comprehensive information security policy that includes responsible information-handling practices for employee, customer, and other sensitive business records;
- Keep hard-copy personnel and customer files under lock and key;
- Restrict access to sensitive information to only those employees with a "need to know";
- Train employees with access to sensitive information on how to keep it secure;
- Require employees with access to sensitive information to sign an acknowledgement that such information will be kept confidential and will be used only for business purposes;
- Ensure that access to computer files is password-protected and that information is encrypted;
- Disable employee access to company records and computers immediately upon termination;
- Shred any discarded documents containing sensitive customer or employee information;
- Delete and permanently erase any discarded sensitive information that was stored electronically;
- Do not use Social Security numbers as employee or customer identifiers;
- Require background screening and criminal record checks of new and existing employees who will have access to sensitive information;
- Carefully screen third-party vendors and temporary agencies and restrict their access to sensitive information;
- Prepare a contingency plan outlining potential steps to take in the event the security of sensitive information is compromised; and
- Consult with experienced employment counsel to discuss federal and state requirements concerning the handling of employee or customer information and for assistance in implementing comprehensive information security policies and procedures and contingency plans.

Although no business can keep its records entirely secure from identity theft, adopting these strategies can help to protect employees and customers and to minimize a company's exposure from this growing threat. GBJ

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Endnotes

1. *See* Federal Trade Commission, Take Charge: Fighting Back Against Identity Theft (2005), *available at* http://www.ftc.gov/bcp/online/pubs/credit/idtheft.htm.
2. *See* Javelin Strategy & Research, 2006 Identity Fraud Survey Report: Consumer Version 7 (2006), *available at* http://www.javelinstrategy.com/research.
3. *See* Federal Trade Commission, FTC Releases Top 10 Consumer Fraud Complaint Categories, (2006), *available at*

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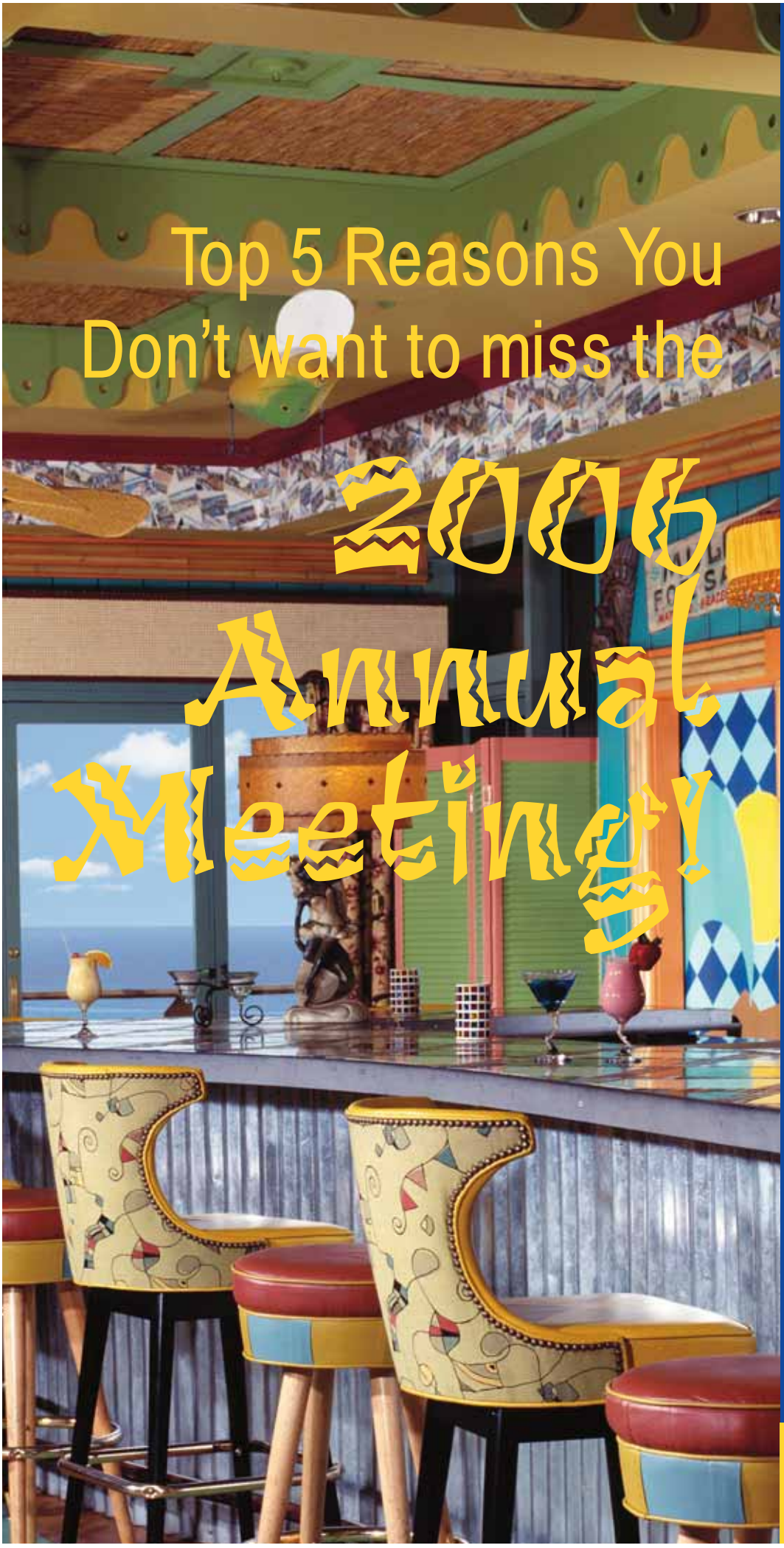
http://www.ftc.gov/opa/2006/01/topten.htm; *see also* FEDERAL TRADE COMMISSION, FTC RELEASES TOP 10 CONSUMER COMPLAINT CATEGORIES FOR 2004, (2005), *available at* http://www.ftc.gov/opa/2005/02/top102005.htm.

4. *See* JAVELIN STRATEGY & RESEARCH, *supra* note 2.
5. TRANSUNION, TRANSUNION FRAUD VICTIM ASSISTANCE DEPARTMENT'S FRAUD AWARENESS INFORMATION KIT (2002), http://www.transunion.com/docs/public/FVAD/Top%2010%20tips.pdf.
6. For example, according to The Atlanta Journal-Constitution, on Oct. 21, 2005, the Georgia Technology Authority (GTA), the agency responsible for operating and maintaining most of the state government's computer and telephone systems, began notifying 465,000 Georgians that they might be at risk of identity theft after discovering that a former GTA employee had downloaded their personal information to his home computers. *See* Nancy Berdertscher, *465,000 Georgians at risk for ID theft*, ATLANTA JOURNAL-CONSTITUTION, Oct. 22, 2005, at A1.
7. *See* JAVELIN STRATEGY & RESEARCH, *supra* note 2.
8. *See* Beckwith v. Ligand Pharmaceuticals, Inc., No. GIC755101, Cal. Sup. Ct. (filed Sept. 21, 2000).
9. Susan J. Wells, *Stolen Identity*, HR MAGAZINE, Dec. 2002, at 30.
10. *See* Bell v. Mich. Council 25 of the Am. Fed'n of State, County and Municipal Employees, No. 246684, 2005 Mich. App. LEXIS 353 (Feb. 15, 2005).
11. *Id.* at *15.
12. *See* Lukens v. Dunphy Nissan Inc., No. 03-767, 2004 U.S. Dist. LEXIS 14528 (E.D. Pa. Jul. 23, 2004).
13. 15 U.S.C. § 1681 *et seq.* (2005). "The FCRA was passed in 1970 as part of the Consumer Credit Protection Act and aims to 'promote efficiency in the Nation's banking system and to protect consumer privacy.'" *Lukens,* 2004 U.S. Dist. LEXIS 14528 at *6 (quoting TRW, Inc. v. Andrews, 534 U.S. 19 (2001)).
14. *See Lukens*, 2004 U.S. Dist. LEXIS 14528 at *12-14.
15. O.C.G.A. § 34-7-20 (2005); *see also* Munroe v. Universal Health Servs., Inc., 277 Ga. 861, 863 (2004) (holding that "a defendant employer has a duty to exercise ordinary care not to hire or retain an employee the employer knew or should have known posed a risk of harm to others where it is reasonably foreseeable from the employee's 'tendencies' or propensities that the employee could cause the type of harm sustained by the plaintiff").
16. O.C.G.A. § 10-1-910(3) (2005).
17. FEDERAL TRADE COMMISSION, CONSUMER FRAUD AND IDENTITY THEFT COMPLAINT DATA JANUARY–DECEMBER 2005 18 (2006), *available at* http://www.consumer.gov/sentinel/pubs/Top10Fraud2005.pdf (stating that Georgia had 87.3 identity theft victims per 100,000 population, with a total of 7,918 victims). Note that pursuant to O.C.G.A. § 35-1-13, any Georgia law enforcement agency that receives a report from a resident of this state that such person has been the victim of identity fraud shall prepare an incident report and transmit it to the Governor's Office of Consumer Affairs identity fraud repository.
18. *See id.* at 30.
19. *See* O.C.G.A. § 16-9-121 (2005) ("A person commits the offense of identity fraud when without the authorization or permission of a person with the intent unlawfully to appropriate resources of or cause physical harm to that person, or of any other person, to his or her own use or to the use of a third party he or she: (1) Obtains or records identifying information of a person which would assist in accessing the resources of that person or any other person; or (2) Accesses or attempts to access the resources of a person through the use of identifying information."); *see also* Federal Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. § 1028 (2005) (making it a federal crime when anyone "knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law").
20. *See* O.C.G.A. § 16-9-126(a). Note that on Nov. 21, 2005, the Supreme Court of Georgia reversed the Clayton County Superior Court decision in *State v. Mayze* and held that the venue provision of Georgia's identity fraud statute, O.C.G.A. § 16-9-125, "complies with the constitutional mandate that the venue of a criminal case be set in the county where the crime was committed." State v. Mayze, 622 S.E.2d 836 (Ga. 2005) (holding that venue for a criminal identity fraud case is proper in the county where the victim resides regardless of where the victim's records were accessed because the use of the information obtained therefrom is consummated in the county where the victim lives).
21. *See* O.C.G.A. § 16-9-126(b).
22. *See id.* § 16-9-126(a).
23. *See id*. § 16-9-130.
24. *See id*. § 16-9-129.
25. "'Information broker' means any person or entity who, for monetary fees or dues, engages in whole or in part in the business of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning individuals for the primary purpose of furnishing personal information to nonaffiliated third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes." *Id.* § 10-1-911(2) (2005).
26. "'Personal information' means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted: (A) Social security number; (B) Driver's license number or state identifica-

tion card number; (C) Account number, credit card number, or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes, or passwords; (D) Account passwords or personal identification numbers or other access codes; or (E) Any of the items contained in subparagraphs (A) through (D) of this paragraph when not in connection with the individual's first initial and last name, if the information compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised." *Id.* § 10-1-911(5).

27. "'Breach of the security of the system' means unauthorized acquisition of an individual's computerized data that compromises the security, confidentiality, or integrity of personal information of such individual maintained by an information broker. Good faith acquisition of personal information by an employee or agent of an information broker for the purposes of such information broker is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure." *Id.* § 10-1-911(1).
28. *Id.* § 10-1-912(a).
29. *Id*. Note that notification under this section may be delayed if a law enforcement agency determines that the notification will compromise a criminal investigation. *Id.* § 10-1-912(c).
30. *Id*. § 10-1-912(d).
31. *See* S.B. 251, 2005 Gen. Assem., Reg. Sess., (Ga. 2005); S.B. 245, 2005 Gen. Assem., Reg. Sess., (Ga. 2005); H.B. 648, 2005 Gen. Assem., Reg. Sess., (Ga. 2005).
32. The following states have enacted legislation requiring businesses to notify individuals of security breaches of personal information: Arkansas, California, Connecticut, Delaware, Florida, Illinois, Louisiana, Minnesota, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, and Washington. *See* Ark. Code Ann. §§ 4-110-103 to -108, 4-88-113 (West 2005); Cal. Civ. Code §§ 1798.29, 1798.80-.82, 1798.84 (West 2006); 2005 Conn. Legis. Serv. P.A. 05-148 (West); Del. Code Ann. tit. 6 §§ 12B-101 to 12B-104 (2005); Fla. Stat. § 817.5681 (2005); 815 Ill. Comp. Stat. 530/1 to 530/20, 505/2Z (2006); La. Rev. Stat. Ann. §§ 51:3071 to 51:3077 (2005); Minn. Stat. Ann. § 325E.61 (West 2005); Mont. Code Ann. § 30-14-1704 (2005); 2005 Nev. Laws Ch. 485 (S.B. 347); N.J. Stat. Ann. §§ 56:8-161 to -163 (West 2005); N.Y. Gen. Bus. Law § 899-aa (McKinney 2005); N.C. Gen. Stat. §§ 75-61, 75-64 to -65 (2005); N.D. Cent. Code §§ 51-30-01 to -07 (2005); Ohio Rev. Code Ann. §§ 1349.19, 1349.192 (West 2005); 2005 Pa. Legis. Serv. 2005-94 (to be codified at 73 Pa. Stat. Ann. §§ 2301-2308); 2005 R.I. Pub. Laws 225 (to be codified as R.I. Gen. Laws §§ 11-49.2-1 to -7); Tenn. Code Ann. § 47-18-2107 (West 2005); Tex. Bus. & Com. Code Ann. §§ 48.001-.203 (Vernon 2005); and Wash. Rev. Code Ann. § 19.255.010 (2005).
33. For example, Arizona, Arkansas, California, Colorado, Connecticut, Illinois, Indiana, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, North Carolina, Rhode Island, Texas, and Virginia have statutes that impose restrictions on the use, disclosure, transmittal, and/or display of Social Security numbers. *See* Ariz. Rev. Stat. Ann. §§ 44-1373 to -1373.01, 44-1373.03 (2005); Ark. Code Ann. § 4-86-107 (2005) (effective Jan. 1, 2007); Cal. Civ. Code §§ 1798.85-.86 (West 2005); Colo. Rev. Stat. Ann. §§ 24-72.3-101 to -102 (West 2005); Conn. Gen. Stat. Ann. § 42-470 (West 2005); 815 Ill. Comp. Stat. Ann. 505/1, 505/2QQ (West 2005); Ind. Code Ann. §§ 4-1-10-1 to -13 (West 2005); Kan. Stat. Ann. §§ 40-2425 to -2426 (2004) (effective Jul. 1, 2007); Me. Rev. Stat. Ann. tit 10 §§ 1271-1273 (2005); Md. Code Ann. Com. Law §§ 14-3401 to -3403 (West 2005); Mich. Comp. Laws. Ann. §§ 445.81-.87 (West 2005); Minn. Stat. Ann. § 325E.59 (West 2005); Miss. Code Ann. § 12-1-111 (West 2005); Mo. Ann. Stat. § 407.1355 (West 2005); N.J. Stat. Ann. § 56:8-164 (West 2005); N.M. Stat. Ann. §57-12B-1 to -4 (West 2005); N.C. Gen. Stat. Ann. § 75-61 to -62 (West 2005); R.I. Gen. Laws § 6-13-17 (2006); Tex. Bus. & Com. Code Ann. §§ 35.58 to 35.585 (Vernon 2005); and Va. Code Ann. §§ 59.1-196 to -207, 59.1-443.2 to -444 (West 2005).
34. 42 U.S.C. § 1320d *et seq.* (2005).
35. 15 U.S.C. §§ 6801-09 (2005).
36. While violations of HIPAA or GLBA may subject businesses to enforcement actions, neither law creates a private cause of action for aggrieved individuals. *See* Logan v. Dep't of Veteran Affairs, 357 F. Supp. 2d 149, 155 (D.C. 2004) (HIPAA); Briggs v. Emporia State Bank and Trust Co., Case No. 05-2125-JWL, 2005 U.S. Dist. LEXIS 17883, *6-10 (D. Kan. Aug. 23, 2005) (GLBA).
37. 16 CFR § 682.1-.5 (2005). Note that because FACTA amends the FCRA, violations of the FACTA disposal regulations may result in civil liability under the FCRA, which for negligent violations includes actual damages and an award of attorneys' fees and costs, and for willful violations includes statutory damages of up to $1,000 per violation or actual damages, whichever is greater, punitive damages, and attorneys' fees and costs. *See* 15 U.S.C. §§ 1681n-o (2005).
38. O.C.G.A. § 10-15-2 (2005).
39. *See id*. § 10-15-6(a). Hearings and administrative reviews in connection with alleged violations of O.C.G.A. § 10-15-2 are conducted in accordance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.*, and any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final administrative order or action has the right of judicial review. *See* O.C.G.A. § 10-15-6(c).



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5 You will have an opportunity to test your surfing skills on the Robo Surfer at the Opening Night Beach Party!

4 Make it a vacation and stay a few extra days and enjoy all Hilton Head Island has to offer!

3 Take advantage of this opportunity to earn some of your required CLE hours for the year!

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Programs designed specifically to entertain children will be available.

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15th Annual Georgia Bar Media & Judiciary Conference

by Jennifer R. Mason

The 15th Annual Georgia Bar Media & Judiciary Conference was held Jan. 28 at the JW Marriott Hotel Buckhead Atlanta. This ICLE event brought together judges, journalists and lawyers in a relaxed setting that focused on legal and first amendment issues brought to light by each panel through a variety of plausible scenarios.

The morning began with a session steeping in technology, appropriately titled "What's New(s)?: Media and Culture in the 21st Century." The discussion centered on how news and its sources are changing, from blogs to podcasting and beyond. The panelists were Lee Clontz, multimedia developer, Information Technology Division, Journalism Program, Emory University; Mike Luckovich, editorial cartoonist, *The Atlanta Journal-Constitution*; and Harry W. MacDougal, aka 'Buckhead, the Dan Rather blogger,' Womble Carlyle Sandridge & Rice. PLLC. Greg Lisby, professor, Georgia State University, served as moderator.

The second session was one that took a potential threat and followed its effects from start to finish. "Disaster Zone 2006: ATL" treated the audience to the ins and outs of dealing with a hypothetical "bird flu" crisis in Georgia. The question presented was, "How will the medical, media and legal communities handle quarantines, drug allocations, and potential panic?" This panel was lead by interlocutor Richard Griffiths, editorial director, CNN, Atlanta, and included Dr. Ruth Berkelman, professor, Emory University; Dr. Stuart Brown, director, Georgia Division of Public Health; Charlie Dawson, director of operations, Georgia Emergency Management Agency, L. Tom Gunnels, Tenth District Court Administrator, Tenth Judicial Administrative District; M.A.J. McKenna, science and medical journalist, *The Atlanta Journal-Constitution*; Jeff Milsteen, chief deputy attorney general, State of Georgia, and Dr. Stephan S. Monroe, acting director, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases Centers for Disease Control and Prevention.

Photos by Jennifer R. Mason

Hollie Manheimer, Greg Lisby, Lee Clontz and Harry W. MacDougal listen as Mike Luckovich explains how blogs and blogging have changed the news.

"Violent Teens: How Minors Become Adults in the Media and Under the Law" was the subject of the luncheon program. The audience was treated to a discussion by the panelists revolving around Senate Bill 440 and whether or not it had struck the right balance or gone overboard in the punishment of teens. SB440 codified in O.C.G.A. Sec. 15-11-28 (b) (2) (A), gives the superior court exclusive jurisdiction over children ages 13-17 who are alleged to have committed one of the following offenses (often referred to as the "Seven Deadly

Sins"): Murder, Voluntary Manslaughter, Rape, Aggravated Sodomy, Aggravated Child Molestation, Aggravated Sexual Battery and Armed Robbery if committed with a firearm.

Not only were the merits of the bill hotly debated, but the question of whether or not the media has done a good job of covering issues related to minors and violent crime also commanded a lot of discussion. This panel was lead by moderator Jane Hansen, staff writer, *The Atlanta Journal Constitution*, and included the Honorable Sanford J. Jones, chief judge, Fulton County Juvenile Court; the Honorable Steven C. Teske, judge, Clayton County Juvenile Court; Brenda Goodman, national writer, *The New York Times*, Emory University Journalism Program, and Terry Walsh, Alston & Bird LLP.

The first session after lunch "Judges and the Culture Wars: Lawyers, The Media and Judicial Independence" spoke to a topic that has been in the forefront of local and national news over the last year. The panel began by stating that judicial independence means different things to different people, further complicating the issue. They then discussed a variety of topics, including recent violence against judges, the lack of adequate resources, and the funding of the judiciary. Also covered was the removal of judges by either impeachment or a personal decision to step down. The panel consisted of the Honorable Stanley F. Birch Jr., United States Court of Appeals for the Eleventh Circuit; retired chief justice Norman S. Fletcher, Brinson, Askew Berry Seigler Richardson & Davis, Rome; Honorable Bill Hembree, representative, Georgia House of Representatives; Ed Bean, editor, *Fulton County Daily Report*; R. William Ide III, McKenna Long & Aldridge, LLP; and Eric J. Segall, Georgia State University College of Law. The group was lead by moderator Neil J. Kinkopf, professor, Georgia State University School of Law.

Conference participants were then offered a choice between three small group sessions, each concentrating on a different aspect of the media and legal issues. The sessions were "Dealing With the Media: A Workshop for Judges," "Bring a Toothbrush?: Reporters and Subpoenas" and "Open Government: Here and Abroad, Is America Falling Behind?" The three separate panels presented scenarios, reviewed past trends, discussed current examples and fielded questions from their respective audiences.

The last session was entitled "Economic Development and Eminent Domain: Public/Private, Open/Closed?" The panelists provided the audience with an overview of concerns and expectations of advocates and opponents regarding eminent domain, followed by discussion about when or if information should be shared with the media. The panel was lead by moderator Michael J. Bowers, Balch & Bingham LLP and included the Honorable Roy E. Barnes, former governor of Georgia, The Barnes Law Group, LLC; Emmet J. Bondurant, Bondurant, Mixon & Elmore, LLP; Mike King, editorial board, *The Atlanta Journal-Constitution*; the Honorable Sam S. Olens, chair, Cobb County Commission, Ezor & Olens, P.C., and Paul Radford, deputy director, Division of External Affairs, Georgia Municipal Association.

The fifth annual Weltner Freedom of Information Banquet took place following the conference. United States Sen. Johnny Isakson received the Weltner Award, named for Charles L. Weltner, a former chief justice of the Supreme Court of Georgia and a champion of open government. GBJ

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The Hon. Stanley F. Birch Jr. speaks to the issue of "culture wars" with the Hon. Norman S. Fletcher, and the Hon. Bill Hembree looking on.

Mike King and the Hon. Sam Olens (left) share a light moment as former Gov. Roy E. Barnes and Emmet J. Bondurant discuss the issue of economic development and eminent domain.

The Bartow County Courthouse at Cartersville

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Cass County, as Bartow County was originally called, was created from Cherokee County in 1832, and the county town of Cassville was laid out the next year. In his *The History of Old Cassville, 1833-1866*, Joseph Mahan describes the first Cass County Courthouse built in 1836 as "a rectangular, two-story, brick structure with large double doors opening on each of the four sides." In 1837, Adiel Sherwood describes this courthouse at Cassville as "one of the most elegant in the state." By 1850, according to George White, the town had three churches, a male and female academy, two hotels, seven stores, and a population of 800 to 900.

Legend and lore surround the disappearance of Cassville, but it is no legend that Sherman burned the place to the ground in 1864. A local story blames this arson on the Federal reaction to the changing of the

Photo by Wilber W. Caldwell

Built in 1903, James W. Golucke, architect

county's name to Bartow. This change had occurred in 1861 not so much in celebration of the heroics of martyred Confederate General, Francis S. Bartow, but in reaction to the fact that in that year Lewis Cass, for whom the county had originally been named, changed his mind about slavery, deciding it was wrong.

The truth of the matter is that Cassville and Canton were singled out for destruction by Sherman's orders. The continued presence of Confederate scouts in and around Cassville had finally led to the death of 10 federal stragglers in Cassville on Oct. 11. On Oct. 30, 1864, Sherman ordered Cassville burned in reaction to this incident and to other Confederate guerrilla activity in the area.

This was not the first bit of bad luck to befall Bartow County's original county town. More than 20 years earlier, the survey of The Western and Atlantic Railroad from Atlanta to Chattanooga had bypassed Cassville.

After the war, a movement arose to locate the new county seat by the old stone depot at Cass Station. Before the idea was brought to a vote, Cartersville, which had prospered on the railroad from its beginning, offered to build a courthouse in exchange for the county seat. By all accounts, the 1867 election was a hot one, and the results of the record turnout were Cass Station–919, Cartersville–1085. Fay and Corput's 1869 courthouse at Cartersville is the fulfillment of Cartersville's pledge. The years have not been kind to this building, but one can still be thankful for the structure's survival. It remains a fine example of a postbellum Italianate courthouse.

Local histories inform readers that the reason for the construction of James W. Goluke's fine 1903 Bartow County Courthouse was that the old 1869 court building was too close to the railroad, and that the noise of the trains became so disruptive that trials were interrupted. Here is another colorful, local story, and perhaps one with a grain of truth, but there was surely more motivation for Golucke's Bartow County architectural commission than just a noisy courtroom. By 1900, Cartersville was a railroad junction town of over three thousand residents. There can be little doubt that the myth of The New South had taken root here.

The year 1903 was one of unprecedented achievement for James Wingfield Golucke. Having begun designing courthouses in the Romanesque style in 1894, his experiment with Neoclassical ornament in the 1898 Clayton County Courthouse at Jonesboro had led to three designs in the new Beaux Arts mode: Chambers County, Alabama, 1899, Calhoun County, Alabama, 1900, and Tattnall County Georgia, 1902. His early work employing the idioms of a distinctly Southern interpretation of the Neoclassical Revival began about the same time with the DeKalb County Courthouse at Decatur, 1900, and the Hart County Courthouse at Hartwell, 1902. The 1903 Bartow County Courthouse in Cartersville represents the emergence of Golucke's mature neoclassical courthouse style. In all, James Golucke designed 27 courthouses in Georgia and four in Alabama. Six of these were based on this familiar plan.

Here we find Golucke's favored four-sided Greek cross floor plan with porticos and entrances at all four points of the compass. Corinthian columns support simple entablatures with brick friezes. True to Corinthian order, the pediments are trimmed with both modillions and dentals beneath the eaves. The enormous clock tower displays Renaissance ornament like the broken based pediments that frame the openings and decorate the tower base. The fenestration is straight, linteled and simple, almost severe, like Golucke's Eatonton courthouse, but without the star patterned panes and the elaborate keystoning. Despite its Roman and Renaissance trim, the building relies on the Greek post and lentil form to articulate its fundamental organizing system. The facade is segmented by basic, brick pilasters with austere capitals, and there is little decoration beyond the portico, the tower and the masonry keystones above the second floor windows. This is truly a building for both the Old South and the New. Neoclassical elements and the enormous tower are true to the style of the day and seem to point to a modern future, but not far beneath the surface, strict Georgian simplicity, horizontal massing and red brick recall the work of Thomas Jefferson.

This imagery was clear in the speeches of the prominent men of Bartow on Jan. 12, 1903, when the courthouse was dedicated. Judge A. M. Foute's remarks were to this point: "...massive columns of the Corinthian order ... lending a grace and beauty to the superstructure as enduring as the solid stone in which they are chiseled. These happily remind us of the old south, the dear old south, with her splendid homes and luxurious appointments of antebellum times." Thus for Southerners in 1903, what may have appeared *au currant* to the rest of the country, spoke emotionally of the precious Lost Cause and other sad and cumbersome regional myths. GBJ

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

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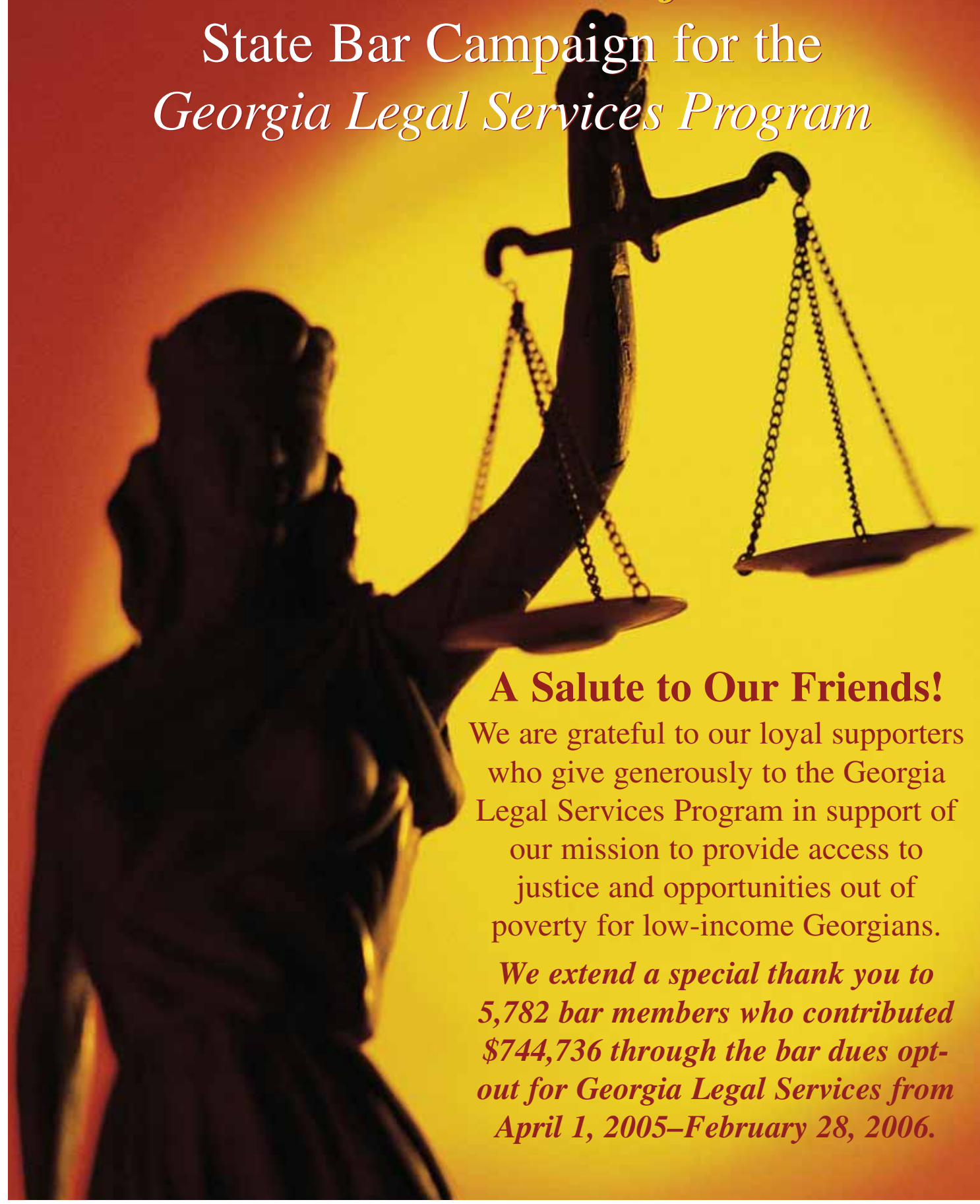

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Shawn Lanier, a partner with **Morris, Manning & Martin, LLP**, joined the **advisory board** of the Atlanta Volunteer Lawyers Foundation, a non-profit organization that coordinates free civil legal services for low-income Fulton County residents. It offers a variety of services, which include representing children in custody and juvenile justice cases, drafting wills, securing protective orders for victims of domestic violence, and representing people facing eviction. They also run the Saturday Lawyer Program, in which volunteer lawyers staff the downtown Atlanta Legal Aid office and represent clients in a variety of consumer matters. Lanier is in the real estate development and finance group. He specializes in large mixed-use developments and represents clients including Atlantic Station®. In addition to his real estate work, he chairs the firm's pro bono and community service committee.

Atlanta attorney **Roy David Petersen** received his **Doctor of Ministry Degree in Conflict Management** with high distinction from Trinity Theological Seminary. This is his fourth advanced degree. He is author of numerous textbooks and is currently completing a Ph.D. dissertation.

Hon. James R. Osborn, Paulding County Superior Court Judge, **swore in** his daughter, **Elizabeth Osborne Williams,** as the newest member of the Paulding County Bar. She was presented to the court as a candidate for admission by her mother, Carol S. Osborne, a practicing attorney in Dallas. Williams, a fourth generation attorney, may be the first lawyer in Georgia to be sworn in by her father and presented for admission by her mother.

W. Marvin Hardy III, a veteran Orlando attorney with the firm of Shuffield, Lowman & Wilson, P.A., recently received the **R. Carl Chandler Award** from his alma mater, Oxford College of Emory University, for a lifetime of outstanding leadership and service to the college. Hardy, a practicing attorney for 40 years, has been instrumental in alumni leadership of this Emory University affiliated college, serving on the Oxford College Board of Counselors since 1976. Hardy practices in the areas of commercial litigation, civil trial practice, personal injury and wrongful death.

Fisher & Phillips LLP senior associate **E. Jewelle Johnson** has been named one of the **"Top 25 Power Women to Watch in 2006"** by ***Atlanta Woman*** magazine. These "power" women are defined as those who stand out as inarguably influential within their spheres. Johnson is a senior associate specializing in employment litigation defense. In addition to her litigation practice, Johnson advises clients on preventative measures aimed at reducing employment-related claims and provides management and employee training on such topics as diversity, discrimination and harassment, wage and hour laws, and discipline and discharge. Johnson was selected as one of Georgia's Rising Star Super Lawyers by *Atlanta* and *Law & Politics* magazines.

Shumacker Witt Gaither and Whitaker, P.C., announced that associate **Christopher David** was selected as **law clerk** to U.S. District Judge Harry S. Mattice. At Shumaker Witt Gaither and Whitaker, David's practice focused primarily on intellectual property counseling and litigation, as well as general litigation in state and federal courts.

Fish & Richardson P.C. was ranked **No. 1** in **IP Law360s** first annual survey of the most frequently hired patent litigation law firms in the United States. According to the survey, Fish & Richardson was by far the most in-demand patent litigation firm last year. IP Law360, which is a newswire for IP professionals that covers developing stories in litigation, law and policy, researched federal court dockets to assess the number of new cases each law firm took on in 2005. Fish & Richardson was named as lead counsel in 82 cases.

Kenan Loomis, managing partner for the Atlanta office of **Smith Moore LLP,** was recognized by his peers as a **2006 Georgia Super Lawyer** in litigation. Loomis has 20 years of experience litigating a wide variety of commercial matters, as well as issues pertaining to the health insurance, casualty insurance and reinsurance industries. He has also represented defendant corporations in various consumer-related class actions.

On the Move

In Atlanta

The national law firm of **Fish & Richardson P.C.** announced the opening of a new office in Atlanta. Patent litigation attorneys **Nagendra "Nick" Setty**

and **Daniel A. Kent**, formerly with the Atlanta office of Jones Day, will join the firm as **principals**. **Christopher O. Green** and **Troy Van Aacken** from Jones Day will join the firm as **associates**. Setty, who will lead the Atlanta office, specializes in complex patent litigation with a particular emphasis on high technology and software companies; he has been lead counsel in more than 40 patent, trademark and trade secret cases. The firm also announced that **Noah C. Graubart** has joined as an **associate** in its litigation group. Graubart was previously an associate at Jones Day. The Atlanta office is located at 1230 Peachtree St. NE, 19th Floor, Atlanta, GA 30309; (404) 892-5005; Fax (404) 892-5002; www.fr.com.

> **Powell Goldstein LLP** announced that litigator **L. Lin Wood** has joined its litigation practice group as a **partner** in the Atlanta office. Wood has 28 years of experience as a trial lawyer focusing on civil litigation, representing individuals and corporations as both plaintiffs and defendants in tort and business cases involving claims of significant damage. He also has extensive experience in First Amendment litigation and management of the media in high-profile cases. Wood comes to Powell Goldstein from his own private practice firm, L. Lin Wood, P.C., in Atlanta. Powell Goldstein is located at One Atlantic Center, Fourteenth Floor, 201 West Peachtree St. NW, Atlanta, GA 30309; (404) 572-6600; Fax (404) 572-6999; www.pogolaw.com.

>


Wilson


Fears


Goldberg

The Atlanta office of **Nelson Mullins Riley & Scarborough LLP** announced that **Rhys Wilson** joined the firm as **partner,** and **Erin Fears** and **David Goldberg** joined as **of counsel**. The trio joins the firm's growing corporate law practice. **Wilson** practices in the areas of corporate law, health care, mergers and acquisitions, securities, taxation and technology law. He was selected by his peers as a Georgia Super Lawyer in mergers and acquisitions law and is known for his work in industry consolidations. **Fears** practices in the areas of corporate law, estate planning, mergers and acquisitions and taxation. She is experienced in structuring, negotiating and closing business transactions. **Goldberg** practices in the areas of corporate law, mergers and acquisitions, and taxation and executive compensation. The firm's Atlanta office is located at 999 Peachtree St. NE, Suite 1400, Atlanta, GA 30309; (404) 817-6000; Fax (404) 817-6050; www.nelsonmullins.com.

> Northeastern judicial circuit district attorney **Lee Darragh** announced the addition of **Matthew Dalrymple**, **Teresa Lazard, Michael Morrison** and **John Wilbanks** to his staff of assistant district attorneys. Dalrymple and Morrison will be based in the Dawson County office. Lazard will focus on prosecution of Juvenile Court matters and be based in the Hall County office. Wilbanks has worked as chief assistant district attorney in the Piedmont judicial circuit, served as the chief prosecuting attorney for the inter-jurisdictional drug prosecution unit, and most recently served as an assistant district attorney in the Appalachian judicial circuit. He will be based in the Hall County office. The Dawson office contact information is P.O. Box 1327, Dawsonville, GA 30534; (706) 344-3620; Fax (706) 344-3622. The Hall County office contact information is P.O. Box 1690, Gainesville, GA 30503; (770) 531-6965; Fax (770) 531-6970.

> **Warner, Mayoue, Bates & Nolen, P.C.,** announced that **Jonathan J. Tuggle** has become a **partner** and **Kathleen A. Burt** has become an **associate**. The firm is located at Riverwood 100 Building, 3350 Riverwood Parkway, Suite 2300, Atlanta, GA 30339; (770) 951-2700; Fax (770) 951-2200; www.wmbnclaw.com.

> **Hunton & Williams LLP** has expanded its global technology and sourcing practice with the addition of **James A. Harvey**, **James E. Meadows** and **Karen Sanzaro** as **partners** in the firm's Atlanta office. **Harvey** will co-chair the global technology and sourcing practice group. He joins Hunton & Williams from Alston & Bird, where he founded and led the firm's privacy and data management task force and its open source task force. He maintains an active practice, advising customers in sophisticated outsourcing transactions, focusing on board level, enterprise-wide initiatives. **Meadows** formerly practiced with Harvey at Alston & Bird and joins Hunton & Williams from Duane Morris. He has had 20 years of experience in the technology and sourcing field. His practice focuses on technology transactions and related legal matters. **Sanzaro** comes to Hunton & Williams from Alston & Bird, where she was a partner and a member of its technology group and privacy and data management task force. She concentrates her practice on a wide range of technology transactions, including complex IT and business process multi-shore sourcing transactions, including offshore initiatives and joint ventures, and advice regarding the acquisition,

licensing and distribution of intellectual property. The office 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.

Stites & Harbison PLLC announced that Atlanta attorney **Bradley J. Denson** was elected to **membership** in the law firm. Denson is a member of the real estate service group where his practice includes real estate development and conduit lending. Denson came to Stites & Harbison in September 2004 from the legal department of J.P. Morgan Mortgage Capital, where he had been since 2001. Prior to that, he worked in the real estate group of Kilpatrick Stockton. The firm office is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; (404) 739-8800; Fax (404) 739-8870; www.stites.com.

Hoffman & Associates, Attorneys-at-Law, L.L.C., announced that **Bridget W. Christian** has become a **partner** with the firm. Her practice will concentrate on estate planning and probate matters. The firm is engaged in the general practice of law, with emphasis in estate and tax planning and general business. The office is located at 6100 Lake Forrest Drive, Suite 300, Atlanta, GA 30328; (404) 255-7400; Fax (404) 255-7480; www.hoffmanandassoc.net.

The **Law Offices of Stanley M. Lefco, P.C.,** announced that **Amber E. Stewart** has joined the firm as an **associate.** The office is located at 4651 Roswell Road, Suite G-602, Atlanta, GA 30342; (404) 843-9666; Fax (404) 843-9667; www.lefcolaw.com.

Elarbee, Thompson, Sapp & Wilson LLP welcomed **Justin B. Connell** to the firm as an **associate**. The office is located at 800 International Tower, 229 Peachtree St. NE, Atlanta, GA 30303; (404) 659-6700; Fax (404) 222-9718; www.elarbeethompson.com.

Peter M. Crofton joined the construction law firm of **Toler & Hanrahan LLC** as a **member**. His practice will continue to focus on the legal aspects of construction, government contracting, construction surety bonds and construction contract law. The firm is located at 127 Peachtree St. NE, Suite 1301, Atlanta, GA 30303; (678) 799-3007; Fax (678) 799-3011; www.tolerlaw.com.

Holly Geerdes announced the opening of her law firm, the **Law Group of Geerdes & Kim, LLC,** after leaving her position as supervisor of appeals at the Georgia Capital Defender Office. Geerdes & Kim is a full service general litigation firm providing a wide range of criminal and civil litigation and appellate services to individuals and smaller businesses, including corporate, real estate, family law, immigration, and employment matters. The firm is located at 4151 Ashford Dunwoody Road NE, Suite 165, Atlanta, GA 30319; (404) 257-1777; Fax (404) 257-1050.

Ceasar C. Mitchell, a leading figure in Atlanta's civic community and citywide member of the Atlanta City Council, joined the law firm of **Epstein Becker & Green, P.C.,** as an **associate**. Mitchell has long been active in community affairs, development and real estate issues in the city of Atlanta, and is considered a leader of the city's expanding development efforts. He was named one of Georgia's "40 under 40" leaders by *Georgia Trend* magazine in October. Mitchell comes to EBG from Thomas, Kennedy, Sampson & Patterson, where he was of counsel. The office is located at Resurgens Plaza, 945 East Paces Ferry Road, Suite 2700, Atlanta, GA 30326; (404) 923-9000; (404) 923-9099; www.ebglaw.com.

The Atlanta office of **Miller & Martin** announced that **James Woodward** has become a **member**. Woodward concentrates his area of practice in public finance, involving taxable and tax-exempt financings for healthcare, multi-family and single-family housing, manufacturing, water and other public projects on behalf of governmental, 501(c)(3) entities and private business organizations. The office is located at 1170 Peachtree St. NE, Suite 800, Atlanta, GA 30309; (404) 962-6100; Fax (404) 962-6300; www.millermartin.com.

Rankin

Ansari

Parker Hudson Rainer & Dobbs LLP announced that Atlanta attorneys **James S. Rankin Jr.** and **David P. Ansari** were elected to the **partnership**. Rankin's practice involves the representation of secured and unsecured creditors in Chapter 11 bankruptcy cases in the Southeast, Delaware and New York, workouts, forbearance arrangements, foreclosures and state and federal receiverships. He has also served as counsel for Chapter 11 debtors, examiners and trustees in business reorganization and liquidation cases. Rankin is a member of the firm's bankruptcy section. Ansari's practice focuses

on commercial development and office and retail leasing. He also represents landlords, owners, developers, pension funds and users in a wide range of commercial real estate matters. Ansari is a member of the firm's commercial real estate section. The Atlanta office is located at 285 Peachtree Center Ave., 1500 Marquis Two Tower, Atlanta, GA 30303; (404) 523-5300; Fax (404) 522-8409; www.phrd.com.


Decarlo


Kodish

Needle & Rosenberg P.C. announced that it has promoted two associates, **Kean J. DeCarlo** and **Thad C. Kodish**, to **officers** of the firm. DeCarlo is in the firm's mechanical patent practice group. Before joining N&R, he worked as a domestic and international commercial pilot for Delta Air Lines and as a fighter pilot with the United States Air Force. Kodish practices in both the litigation and chemical patent prosecution groups at the firm. He has had significant involvement in large patent, trademark and copyright actions around the country. He previously worked as a chemical process engineer at Pratt & Whitney Aircraft in Hartford, Conn. The Atlanta office is located at Suite 1000, 999 Peachtree St., Atlanta, GA 30309; (678) 420-9300; Fax (678) 420-9301; www.needlerosenbergcom.

In Columbus

The firm of **Hatcher, Stubbs, Land, Hollis & Rothschild, LLP,** announced that **Jorge Vega** and **Bobby L. Scott** are now practicing with the firm in the litigation and dispute resolution practice groups. Vega was formerly first assistant attorney general for the state of Texas. Scott formerly practiced with the Atlanta law firm of Hawkins and Parnell. The office is located at 233 Twelfth St., Suite 500, The Corporate Center, Columbus, GA 31901; (706) 243-6230; Fax (706) 243-5238; www.hatcherstubbs.com.

In Decatur

The law firm of **Richard S. Alembik, PC,** announced that **Craig M. Halperin** joined the firm as an **associate**. His concentration will be in commercial and sports law. The firm will continue to focus its practice on commercial and real estate related litigation. The office is located at 315 West Ponce de Leon Ave., Suite 250, Decatur, GA 30030; (404) 373-0205; Fax (404) 795-8999; www.alembik.com.

James D. Bryce and **William T. Hudson Jr.** announced the relocation of the offices of **Hudson and Bryce**. The office is now located at 315 West Ponce de Leon Ave., Suite 661, Decatur, GA 30030; (404) 378-4549; Fax (404) 378-7093.

In Macon

Groover & Childs announced **William H. Noland** was elected to the **partnership**. Noland's practice areas include insurance law, local government law, personal injury, civil litigation and criminal defense. The firm is located at 165 First St., Macon, GA 31201; (478) 745-4712; Fax (478) 745-7373; www.grooverchilds.com.

In McDonough


Hunt


Mayfield


Walker

Smith, Welch & Brittain LLP announced that **Pandora E. Hunt, L. Scott Mayfield** and **Mark C. Walker** have become **partners**. Hunt joined Smith, Welch & Brittain in 2004, first serving as a litigation associate. Her specialties include civil litigation, personal injury, criminal defense, and family law, including juvenile cases. Hunt practices at the firm's McDonough office. Mayfield joined Smith, Welch & Brittain in 2001 as an associate and, in 2003, became manager at the firm's Barnesville office. His areas of practices include business formation and litigation; civil litigation; estate planning and probate; residential and commercial real estate; and zoning matters and litigation. Walker recently joined Smith, Welch & Brittain's Stockbridge office. His areas of practice include bankruptcy, lender liability, civil litigation and commercial litigation. The McDonough office is located at The Commerce Building II, 2200 Keys Ferry Court, McDonough, GA 30253; (770) 957-3937; www.swblawfirm.com.

In Pooler

The **Derek White Law Firm** has **relocated** its office to 138 Canal St., Suite 401, Pooler, GA 31322; (912) 330-9733; Fax (912) 330-9755; www.dwhitelaw-firm.com.

In Savannah

The law firm of **Hunter Maclean** announced that **Erin Brownfield Raley** was named **partner** in the firm's Savannah office. Raley concentrates her practice in the areas of business litigation, pharmaceutical and medical device litigation and insurance coverage and defense. Since joining Hunter Maclean in 2002, she

has handled disputes between Fortune 500 companies, served as counsel in multidistrict proceedings and has significant experience representing companies and individuals in court and before arbitral forums. Prior to joining Hunter Maclean, Raley practiced law for six years in Chattanooga, Tenn. The Savannah office is located at 200 E. Saint Julian St., Savannah, GA 31412; (912) 236-0261; Fax (912) 236-4936; www.huntermaclean.com.

In Valdosta

> The firm of **Young, Thagard, Hoffman, Smith & Lawrence, LLP,** announced that **M. Drew DeMott** has become **partner** and **Leslie Kennerly Budd** has become an **associate**. The firm continues its practice in the areas of civil litigation, worker's compensation defense and insurance defense. Its office is located at 801 Northwood Park Drive, Valdosta, GA 31602; (229) 242-2520; Fax (229) 242-5040.

In Chattanooga, Tenn.

> 

Shumacker Witt Gaither & Whitaker, P.C., announced the addition of **Grace S. Yang** to the firm. Yang's practice focuses primarily on real estate law and business organizations and transactions. The office is located at Suite 210, CBL Center, 2030 Hamilton Place Blvd., Chattanooga, TN 37421; (423) 425-7000; Fax (423) 899-1278; www.swgwlaw.com.

> 
Allison


Hill


Stark

The Chattanooga office of **Miller & Martin** announced that **Evan Allison**, **Lynda Motes Hill** and **Stephen Stark** have become **members**. Allison concentrates his area of practice in commercial real estate. Hill concentrates her practice in the area of civil litigation and with emphases on Uniform Commercial Code, workers' compensation, contract, insurance coverage and equine law disputes. Stark concentrates his area of practice on patents, trademarks, copyrights and litigation matters. The Chattanooga office is located at Suite 1000 Volunteer Building, 832 Georgia Ave., Chattanooga, TN 37402; (423) 756-6600; Fax (423) 785-8480; www.millermartin.com.

In Washington, DC

> **Benjamin H. Pruett** has joined the **Bessemer Trust**, a leading wealth management and multi-family office firm, as **senior vice president** and **associate fiduciary counsel**, serving Bessemer's wealth management clients in Atlanta and Washington, DC. Pruett practices in the fields of taxation and trust and estate law, most recently with King & Spalding LLP in Atlanta. He was recently elected a fellow of the American College of Trust and Estate Counsel, a nationwide organization honoring significant leadership and contributions to the field of trust and estate law. The Washington office is located at 1050 Connecticut Ave. NW, Suite 1060, Washington, DC 20036; (202) 659-3330; www.bessemer.com.

In North Quincy, Mass.

> The **American Bar Retirement Association** and the affiliated **ABA Members Retirement Program**, both established more than 40 years ago by the American Bar Association to help the legal community with retirement planning and solutions, have become **ABA Retirement Funds.** ABA Retirement Funds offers tax-qualified retirement plan services to qualified law professionals, along with educational information related to retirement planning and funding. The program's low cost advantage makes it an attractive option for employers, administrators, and proprietors of law firms—big and small–seeking fiduciary oversight and low expenses. Program eligibility is open to any law firm or practitioner that has at least one partner or shareholder who is a member of the ABA, or a state or local bar association represented in the ABA's House of Delegates. The program is administered by State Street Bank & Trust, a global leader in serving institutional investors, and is serviced by State Street in partnership with its affiliate, CitiStreet LLC. The program is also an ABA Member Advantage company. The contact information for ABA Retirement Funds is P.O. Box 5143, Boston, MA 02206; (877) 955-2272; www.abaretirement.com.

If you have an announcement that you would like to see appear in the *Georgia Bar Journal*, please e-mail it to jenniferr@gabar.org or by mail, Jennifer R. Mason, Georgia Bar Journal, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303

Attention!

The Deadline is Friday, April 21 to submit your entry for the State Bar's Local Bar Activity Awards

Administered by the Local Bar Activities Committee, awards recognize excellence in local and circuit bar associations, and are presented to winners at the State Bar's Annual Meeting. Awards are presented for the Bar year that begins July 1, 2005 and ends June 30, 2006, with an exception for the Law Day Award, which may be submitted for events in either 2005 or 2006.

Eligibility and competition categories

Each local or circuit bar association is eligible to submit an entry. The following categories relating to membership size will be used in judging the Award of Merit, Newsletter and Law Day Awards:

- Over 500 members
- 251 to 500 members
- 101 to 250 members
- 51 to 100 members
- Under 50 members

Form of entry

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

Entries should be typewritten (double-spaced) on letter paper (8.5 x 11). Photographs, news articles, programs, etc. are welcome and encouraged. Please include: name; address; president; number of members; amount of dues; and person(s) responsible for entry preparation.

Award categories

AWARD OF MERIT
THE PRESIDENT'S CUP
NEWSLETTER AWARD
LAW DAY AWARD
BEST NEW ENTRY AWARD
EXCELLENCE IN BAR LEADERSHIP

For more information

Visit the State Bar's website, www.gabar.org or contact Jennifer R. Mason at (404) 527-8761 or jenniferr@gabar.org

Be Sure to Keep Up With the Changes

by Paula Frederick

"I should never have agreed to file that bankruptcy case for my brother-in-law," you sigh, throwing your briefcase onto your desk.

"Why not?" your secretary asks. "I processed plenty of bankruptcies at Big Old Firm, and as my old boss Jack Black told you, it's just a matter of filling out forms."

"Yeah, but you have to know *which* forms to fill out," you point out. "I thought I was prepared for the Meeting of Creditors this morning. One of the lawyers for MegaMortgage filed a Motion under Section 362 of the Bankruptcy Code. I don't even know what that is! He claims the stay doesn't apply to their foreclosure sale—he says this is a second filing. He plans to foreclose next month!"

"As if that's not bad enough, the trustee started asking about all sorts of documents that I was supposed to file. It was clear she thought I'd screwed up—she says the case will be dismissed under Section 521, whatever that is. She also wants tax returns and the tax refund. I couldn't even respond to her questions—it was like she was speaking a foreign language!"

"Well, remember Mr. Black offered to help," your secretary reminds you. "You can always call; he'd be happy to walk you through it."

"Maybe it's time to actually pull out the Bankruptcy Code," you sigh.

"Dabbling" in unfamiliar practice areas is one of the common causes of malpractice. What's more, attempting to handle a matter without proper education and training can even be unethical.

Georgia Rule of Professional Conduct 1.1 requires a lawyer to provide competent representation to a client. How does a first-timer in bankruptcy court guarantee compliance with the rule?

The comments to the Rule provide some reassurance. Comment 2 clarifies that competence does not necessarily require special training or prior experience,

but may be gained through study and through association with a capable lawyer who practices in the field in question.

Associating with other counsel is a favorite of lawyers and can be helpful, but sometimes there's no substitute for the old-fashioned solution of reading the applicable law.

In truth, any lawyer with a decent education has learned to research and study the law.

The Bar rarely sees a lawyer who is truly incompetent unless that incompetence relates to an addiction or a mental disorder of some sort.

Even lawyers who routinely handle a particular type of case may find themselves behind the learning curve because of changes in the law—picture the new Bankruptcy Reform Act that went into effect last fall.

The law is a rewarding profession in part because it is always changing. Be sure to keep up with the changes. GBJ

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

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Discipline Summaries

(December 1, 2005 through February 8, 2006)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Mark Sherman Fraser
Atlanta, Ga.

On May 12, 2005, the Superior Court of Cobb County disbarred Mark Sherman Fraser (State Bar No. 274225), convicted of drug trafficking, from the practice of law in Georgia. The Superior Courts are empowered under rules promulgated by the Supreme Court of Georgia to disbar an attorney convicted of a felony. The Supreme Court of Georgia confirmed the disbarment judgment on Jan. 17, 2006.

Suspensions

Travers White Paine
Augusta, Ga.

The Supreme Court of Georgia suspended Travers White Paine (State Bar No. 559350) from the practice of law until termination of federal probation, but not for a period shorter than 20 months from Jan. 17, 2006. Paine was indicted as a co-conspirator for health care fraud arising out of the operation of a health care company.

The special master listed the following factors in mitigation of discipline: (1) absence of a prior disciplinary record in more than 32 years of practice; (2) lack of a dishonest or selfish motive; (3) timely and good faith effort to make restitution or rectify the consequences of misconduct as evidenced by the fact that Paine paid the $250,100 fine assessed and completed 300 hours of community service; (4) cooperation with disciplinary authorities; (5) the imposition of other penalties and sanctions; (6) remorse; and (7) outstanding character and reputation.

Indefinite Suspension Lifted

William H. Norton
Marietta, Ga.

William H. Norton (State Bar No. 546850) filed a Request for Reinstatement following an indefinite suspension in one matter and a subsequent 120-day suspension in a second matter. On Jan. 17, 2006, the Supreme Court of Georgia granted the request as Norton has satisfied the requirements for lifting the indefinite suspension and completed the additional 120-day suspension.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Dec. 1, 2005, five lawyers have been suspended for violating this Rule and none have been reinstated.

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

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LPM Can Help You Hang Out Your Shingle

by Natalie Thornwell Kelly

If you have ever contemplated hanging out a shingle, the Law Practice Management Program can help. Whether starting out solo or developing a partnership anew, our resources for getting a new practice going are often invaluable, and according to some of our positive feedback, "the only way to go." Here's how we help:

The Office Start-up Kit

The Law Practice Management Program offers a free office start-up kit called, "Starting Your Georgia Law Practice." This kit has been reviewed by the Bar's Office of General Counsel and includes resources from the Georgia Bar Foundation. The kit is available from the department via an in-person visit to the Bar or via mail shipped to a location of your choosing. The kit covers every aspect of getting a practice started and details all of the applicable Rules of Professional Conduct. Even the full text of our trust accounting booklet is a part of the kit. You will also get the Notice to Financial Institution form needed to set up your trust account, and a sheet for help with selecting a malpractice insurance carrier. The kit is very comprehensive and is provided to Bar members at no cost.

Practice Startup Office Visit

An appointment to meet with the Law Practice Management Program director or resource advisor allows members the opportunity to review the startup kit and deal with any initial practice management concerns or questions. Whether the questions deal with partnership setup or more technical topics like software, confidential help is available via this visit in our offices.

Telephone Helpline and E-mail/Fax Services

Call or send us your questions about starting a law practice in Georgia. We respond promptly with advice about the acceptable ways of setting up your practice. We point out resources that will make your journey easier. Your requests or inquiries can be handled confidentially over the telephone or via e-mail and fax. Ethics questions are routed to the Office of General Counsel's ethics hotline—(800) 682-9806 or (404) 527-8741.

Resource Library Offerings

Books and other materials are available from the Resource Library via a two-week checkout period to help you with your new practice. The two most popular office startup titles are Jay Foonberg's *How to Start and Build a Law Practice* and the multi-authored *Flying Solo*. Other resources focusing on marketing, and starting and building in specific practice areas are also available. Check out what's available from the Law Practice Management Program's Resource Library online at www.gabar.org/programs/law_practice_management/resource_library/.

Software Selection and Technical Consultations

A necessary part of the modern practice is technology. Knowing what to use and how to use it in your office is one of your most important start-up decisions. The Law Practice Management Program helps by demonstrating the practical use of current legal practice management, time billing and accounting applications. Members visit with the Director and look at "best

of breed" programs and learn how to implement the systems in their new practices. The department can even set up a technical consultation that will provide an onsite visit to your office to implement and initially train you and your staff how to use the new system. The consultation rates are $37.50 per hour for sole practitioners; $62.50 per hour for two to four attorney firms; $87.50 per hour for five to nine attorneys; and $187.50 per hour for firms of more than 10 attorneys.

Continuing Education

Many general, professionalism and Law Practice Management programs are sponsored, developed and delivered by the Law Practice Management Program for CLE credit. You can learn how to enhance your new practice at events like our Annual Solo and Small Firm Institute and other CLE programs in which we participate.

Call us at (404) 527-8772 to get help with your shingle!

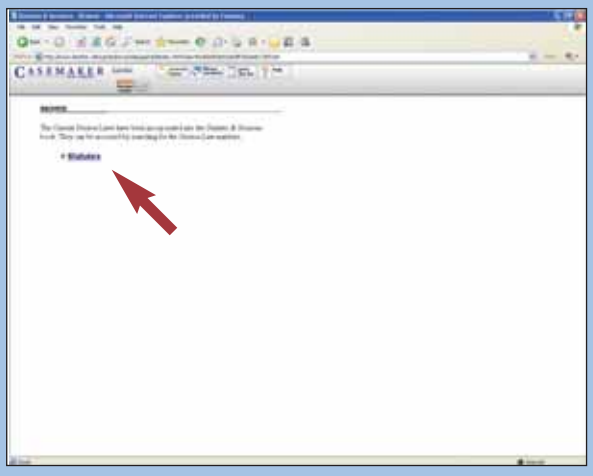
Natalie Thornwell Kelly is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at natalie@gabar.org.

Getting the Most Out of Casemaker: SuperCODE

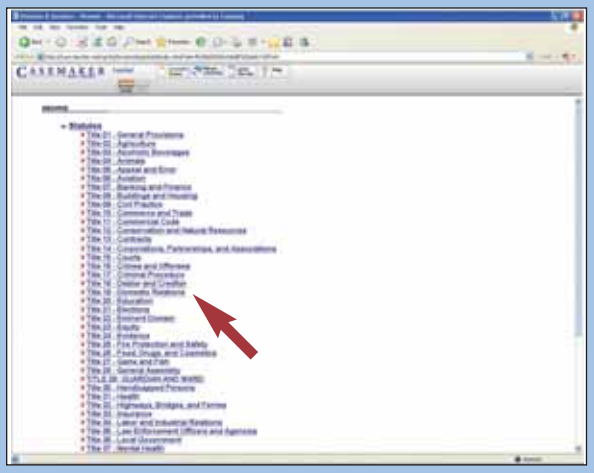
by Jodi McKenzie

Casemaker is constantly being updated and improved to better serve Bar members. One of the newest features is SuperCODE, which notates any changes that have been made to Georgia statues since the Casemaker database was last updated in 2004.

The way it works is a user accesses the Georgia Casemaker Library and chooses **Georgia Codes and Acts** and clicks where it says, "Browse."

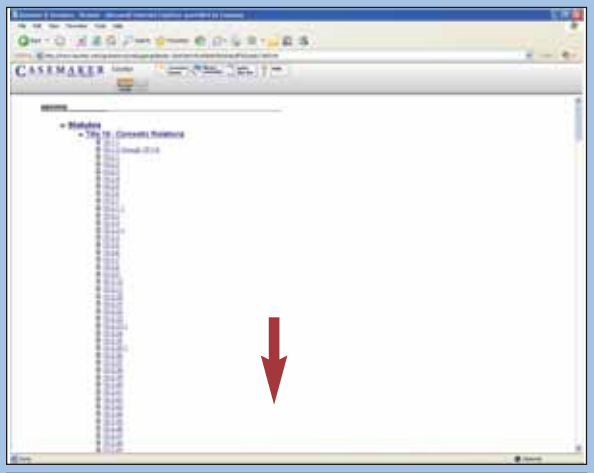


Users are then taken to a page where they can access statutes by clicking on the word "Statutes," which is highlighted in blue and underlined.

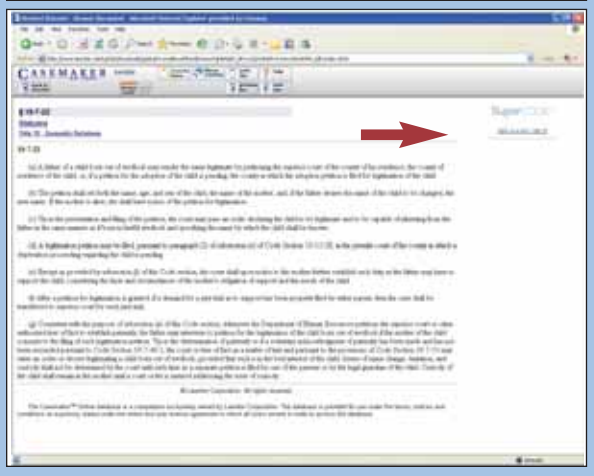


At this point, users can choose which title they would like to view. *For demonstration purposes, let's say someone is researching changes to statute 19-7-22.*

In this instance, the user would select Title 19.



From there, simply scroll down the page until 19-7-22 is visible.



The content of the statute is now displayed with the SuperCODE panel displayed on the right-hand side of the screen. In this case, SuperCODE indicates that there has been a legislative act that effects 19-7-22.

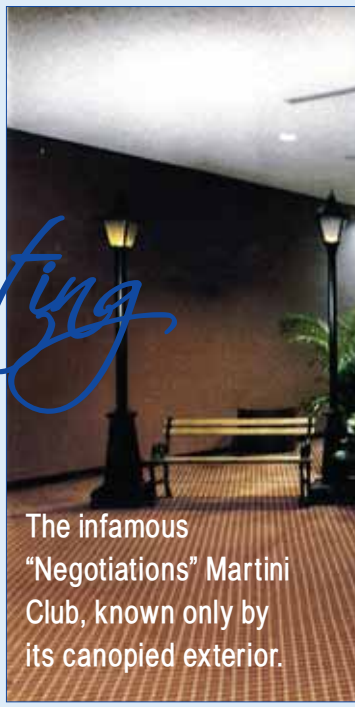
If no changes had been made to the statute or session laws, the words, "No references found" would have appeared in the SuperCODE panel.

Users can choose to view the SuperCODE item by clicking on it to display the changes, which have been made to the code section.

SuperCODE helps members stay informed of changes along the codification process. It is important to note that SuperCODE will track changes in the code until the next full database update.

Contact Casemaker Coordinator Jodi McKenzie at jodi@gabar.org if you have any questions about this or any other Casemaker feature.

Join us at the 2006 Annual Meeting



The infamous "Negotiations" Martini Club, known only by its canopied exterior.

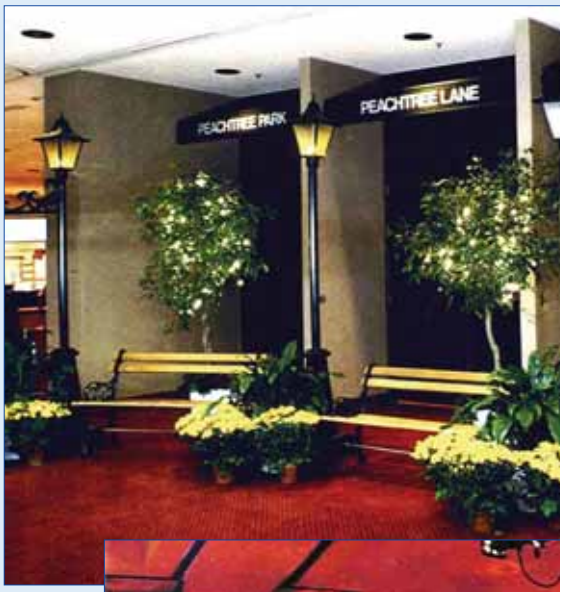
Presidential Inaugural Gala: Installation of J. Vincent Cook

Saturday, June 3, 6:30 p.m. – 11 p.m.

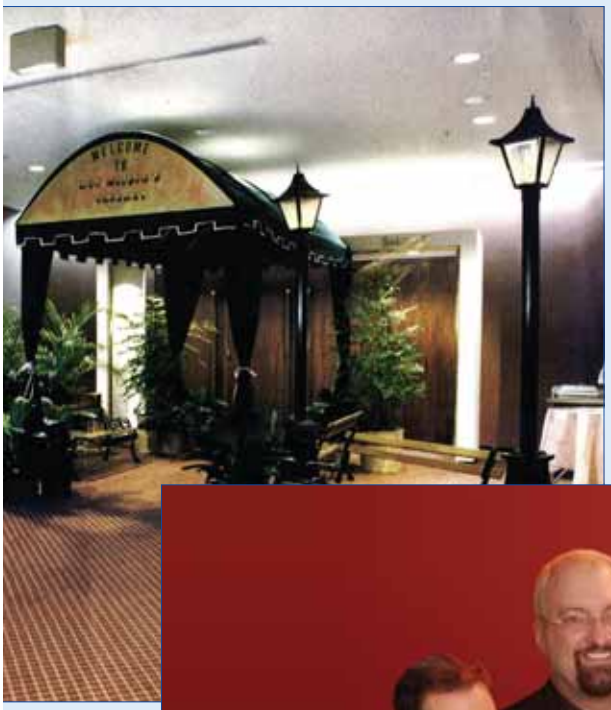
The evening will begin with an elegant wine and cheese reception honoring the Supreme Court of Georgia Justices, followed by the Awards Ceremony where J. Vincent Cook will be sworn in as the 2006-07 State Bar president.

Following the inauguration and the awarding of the Distinguished Service and Employee of the Year awards, discover an evening of delight in one (or all!) of four themed rooms of dinner, libations and entertainment!

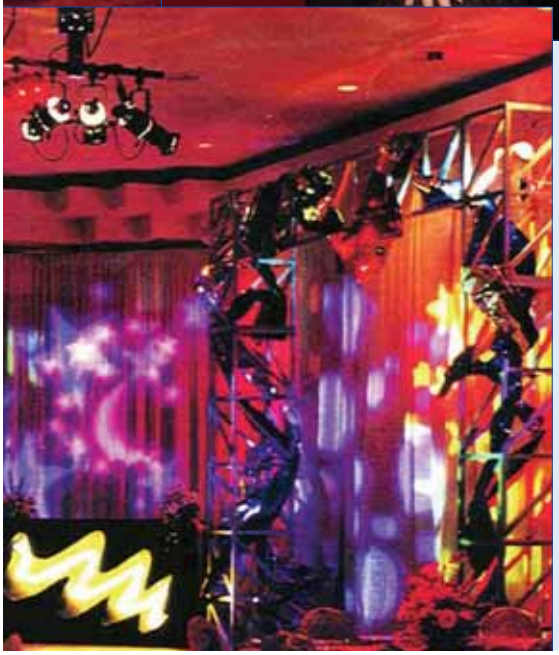
- Go south to the Copa Cabana, truly "the hottest spot north of Havana." Hot Latin music welcomes you in true South Beach style as it invites you to sip on margaritas and mojitos and discover Cuban culinary delights.
- See if you can locate the infamous "Negotiations" Martini Club, a spectacular "members only" lounge that is known only by its canopied exterior. Once inside mingle with the rich and famous as you experience a wide range of martinis and other libations. This retro hotspot is the place to be to hear the tinkling of ivories.
- "Take the F train," and make your way north to the Big Apple and the "Deliberations Lounge," a scotch and cigar bar. Savor a hand-rolled cigar and listen as a well-versed scotch connoisseur speaks on the finest scotches around. (Since you're there, you may as well sample a few!) Challenge someone to a game of billiards or darts, or just relax on the supple leather chairs scattered about the room as you appreciate the aroma of fine cigars.
- Just when you thought the night was going to end, head to the "Legal Eagles" Night Club where desserts will be in abundance and the party will be rockin' to the sounds of Rupert's Orchestra.



Register online at www.gabar.org



Rupert's Orchestra—The ultimate 12 piece party band!



Go south to the Copa Cabana and discover Cuban culinary delights!

South Georgia Office Embraces the New and Remembers the Past

by Bonne Cella

Embracing The New

The Tifton Judicial Circuit Bar learned the details of the new Transition into Law Practice Program from Director Doug Ashworth. Replacing Bridge the Gap, the program combines a mentoring component with continuing legal education and matches new lawyers with a mentor during their first year of practice.

This program will afford every beginning lawyer with meaningful access to an experienced lawyer who is equipped to teach the practical skills of law. With seasoned judgment and sensitivity to ethical and professionalism values, mentors are an invaluable resource for the new attorney.

With the new live satellite TV equipment, several South Georgia attorneys joined their colleagues in Atlanta for the three-hour orientation program for mentors. In addition to the orientation program mentors must meet the following minimum qualifications:

- Be an active member of the State Bar of Georgia, in good standing;
- Be admitted to practice for no less than five years;
- Have a reputation among judges and peers in the local legal community for competence and ethical and professional conduct;

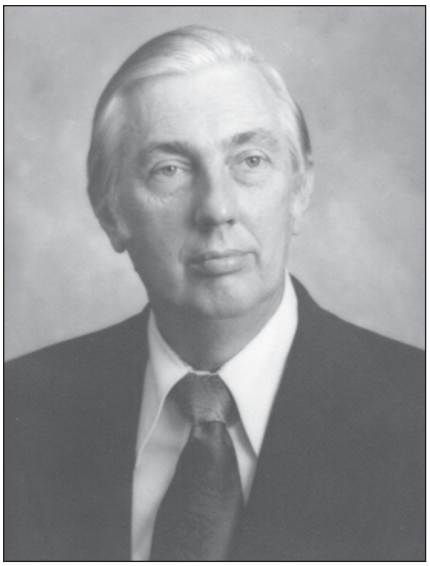
Photo by Bonne Cella

(Left to right) Joe Spurlin, president of the Tift Judicial Circuit, Doug Ashworth and Chief Judge Gary McCorvey after his presentation of the Transition into Law Practice Program to the Tifton Bar Association.

- Never have been sanctioned, suspended or disbarred in any state from the practice of law; and
- Certify that he or she has professional liability insurance with minimum limits of $250,000/$500,000, or its equivalent.

Remembering The Past

As part of community outreach, the Satellite Office provided sketches and photographs of two Tifton Circuit Bar members who were World War II veterans as part of a display at the Tifton Museum of Arts and Heritage. The exhibit, held for six weeks, featured world famous photographs from the archives of the Associated Press as well as the



Judge William J. Forehand retired from the judiciary in 1996 and died in 2002.

Judge Forehand is on the top right in this picture with his crew. He and one other soldier were the only survivors.

Area attorneys take an oath after participating in the orientation program for mentors.

Henry Bostick is front and center in this picture of his crew on the U.S. Tinosa.

stories and memorabilia of local WWII veterans.

The sketches read in part:

> "Lawyer Bostick" is the answer when the phone rings at this solo practitioner's office. Yes, he does just fine without a secretary, computer or fax machine. This Mercer graduate has 56 years worth of legal experience not to mention valuable qualities like self-reliance, fortitude and common sense. Some of those traits may have been leaned 64 years ago in the Pacific Ocean on the submarine U.S. Tinosa fighting Japanese War Ships.

And then there was Capt. William Forehand who survived a fiery plane crash over the oil fields of Poleste, Italy. Out of a crew of 10 he was one of only two men to make it out alive. Capt. Forehand later became Judge Forehand serving in the judicial branch of government some 42 years, first as district attorney and then as superior court judge for the Tift Judicial Circuit.

To all State Bar of Georgia War Veterans thank you for your efforts and sacrifice to ensure that our land remains free and our flag continues to fly to the top of the mast. GBJ

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

Sections Stay Busy

by Johanna B. Merrill

Sections began the new year with several meetings and events at the Bar's Midyear Meeting, Jan. 5-7, at the Renaissance Waverly Hotel at the Cobb Galleria in Atlanta. On Jan. 5 the following sections held lunch meetings: **Appellate Practice, Government Attorneys, Intellectual Property Law, Entertainment & Sports Law, Environmental Law** (where their 2006 officers were inducted).

The IP Law Section also co-sponsored two CLE programs on Jan. 5. The first, Basics of Intellectual Property Law, was presented along with the Intellectual Property Committee of the Young Lawyers Division. The second was titled "Recent Developments in IP Law."

On Jan. 6 the following sections hosted lunch meetings: **Criminal Law**, **Fiduciary Law**, **Taxation Law**, **General Practice and Trial**, **Health Law** and **School & College Law**.

On Feb. 8 the **Appellate Practice Section** held a lunch meeting with speakers Sherie Welch and Bill Martin who addressed the topic, "Insider Information: How to Be Successful in Practicing Before the Georgia Supreme Court and the Georgia Court of Appeals." The luncheon was held at the Bar's Conference Center.

Aside from their dual CLEs at the Midyear Meeting, the **IP Law Section** has had an event-filled calendar. On Jan. 26 the Litigation and Patent Committees presented a lecture on "Offers to License and Notice Letters in IP Matters," at the offices of Jones Day. The panelists were: Marcus Delgado, Allen W. Nelson, Geoff Sutcliffe and Samuel J. Najim. On March 7 the Trademark Committee presented a panel discussion on "Effective Use of Surveys in Trademark Proceedings," with Jerre Swan, Gerald Ford and moderator Charles Henn. The Licensing Committee hosted a one-hour CLE luncheon on March 22 called "IP Licensing Fundamentals" with speakers Robert Currie, Peter Quittmeyer and Michael Pavento. On March 29 the Patent Committee presented a one-hour CLE luncheon titled "Best Practices in Opinion Drafting," with panelists Griff Griffin, Bruce Bower, Scott Petty and Brad Groff. The panel was moderated by Christopher Arena.

Photo by Johanna B. Merrill

Peter Quittmeyer and Michael Pavento speak on a panel on IP Licensing Fundamentals, a one hour CLE luncheon sponsored by the IP Law Section's Licensing Committee on March 22 at the Bar Center.

On March 3 the newly revitalized **Agriculture Law Section** presented an Agriculture Law Seminar in South Georgia at the UGA Tifton Campus Conference Center. Section Chair Allen Olson presided over the seminar and attendees receive four CLE credit hours.

The **General Practice & Trial Law Section** held their Annual Institute the weekend of March 16-18 at the Amelia Island Plantation in Amelia Island, Fla. Past Section Chair Cathy Helms presided over the three-day institute where attendees received a full year's worth of CLE credit.

The **Technology Law Section** hosted their Quarterly CLE Luncheon at the offices of Alston & Bird on March 30. The topic was "Current Financing and Venture Capital in the Southeast," with speakers Ramsey Battin, Tom Carter, Sig Mosely and Paul Pishal.

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

Register Online at www.gabar.org

2006 Annual Meeting

State Bar of Georgia 2006 Annual Meeting

June 1-4, 2006, Hilton Head Island, S.C.
The Westin Resort Hilton Head Island

Bring Your Families and Join us in Hilton Head Island!

State Bar of Georgia

Early Bird Cut-off Date is April 28
Hotel Cut-off Date is May 5
Final Cut-off Date is May 12

2006 State of the Judiciary Address

by Hon. Leah Ward Sears

Following is the State of Judiciary Address delivered by Chief Justice Leah Ward Sears on Jan. 25, 2006.

Speaker Richardson, Lt. Gov. Taylor, President Pro Tem Johnson, Rep. Burkhalter, distinguished members of the General Assembly, other special guests including my mother, Onnye Jean Sears, who is here with me today, and my beloved husband, Haskell Ward of Griffin. My fellow Georgians.

I am honored to address this distinguished body for the first time. I appear before you as a representative of the judiciary, many of whom are present today.

I'd like to take a minute to thank my colleagues who have been so supportive during my first few months as chief justice. Thank you Presiding Justice Carol Hunstein, Former Chief Justice Robert Benham, and Justices Carley, Thompson, Hines and Melton, our newest justice.

This afternoon I stand before you as the Chief Justice of the state's court of last resort. But I started my judicial career in 1982 in a court of first resort, the Atlanta Traffic Court. In that court I worked with seven other municipal court judges to dispose of more than 300 cases a day in one of the busiest courts in the state. In 1988, I became a superior court judge. There I learned a great deal about the responsibility of a judge from some of the best trial judges in the country. In 1992 I moved to the Supreme Court of this great state where I have served for the last 14 years.

During the 24 years that I have been a judge, I have had the opportunity to learn about what you as legislators do. I understand and respect the essential role you play in our state government. You are the makers of our laws and the guardians of the people's purse. There is no more important mission in state government. As I look around the chamber of this General Assembly, I see many friends of long-standing both Republican and Democrat. Your assistance to the judiciary over the years has been invaluable. You have also helped to put me at ease every time my duties as Chief Justice have brought me to this building. I thank each and every one of you for your courtesy and your friendship.

No review of the past year can ignore the violent events that took place down the street during the final days of the legislative session last year. On March 11, 2005, the state, in fact the nation, was shocked by the horrific incident in the Fulton County Courthouse. On Mar. 11 Judge Rowland Barnes, court reporter Julie

Brandau and deputy Hoyt Teasley were killed. This attack shattered our complacency and shook us to the core. It has had a profound impact on the judicial branch of government in Georgia. In addition to testing our resolve, the incident underscored the need to improve safety and security for judges and judicial employees, both within and outside courthouses. Hard working, decent court officials, litigants and their families, should never face violent attack. We look forward to working with you to find solutions for the security problems we face. And we pledge never to forget the dedication and sacrifice of our fallen colleagues.

In spite of the tragic events of March 11, I am pleased to report that, today, the state of Georgia's judiciary is sound, strong and working well to meet the challenges that face us. This is due in large part to the efforts of the justices of the Supreme Court, the judges of the Court of Appeals, ably lead by Chief Judge Jack Ruffin, and hundreds of trial judges throughout the state. I also have to acknowledge the thousands of judicial employees who make it possible for us to do our jobs.

Appellate Courts

I want first to mention Georgia's appellate courts because the Supreme Court and the Court of Appeals are both very busy and highly productive. On average, the Supreme Court dockets 2000 cases each year, while the Court of Appeals dockets about 3200 cases. In addition to having very large caseloads, both Courts rank 10th in the nation in the number of written opinions they issue.

Judicial Council of Georgia

The Judicial Council has had an outstanding year. Representatives from every facet of the state judiciary are working in harmony on many projects designed to improve our judicial system.

Administrative Office of the Courts

The Administrative Office of the Courts, which continues to undergo needed reorganization and consolidation, is meeting its mandate of providing a variety of services to the judiciary. That agency is also assisting courts at all levels in managing their caseloads effectively and efficiently.

During the past year, the AOC staffed the Child Support Guidelines Commission, which was charged with the tremendous task of implementing the child support legislation passed by you last year. The AOC also embarked on a court e-filing initiative, collaborating with other agencies and the clerks of court in Washington, Bibb, and Walker counties, in addition to the Supreme Court. Finally, the AOC has taken great strides in meeting federal mandates for electronic submission of traffic citations. In 2003 only 25 percent of citations were submitted to the Department of Driver Services electronically. In 2005 that percentage had risen to 72 percent.

Accountability Courts

In recent years Georgia has experimented with Accountability courts. These courts have been called the most significant criminal justice initiatives in the last century.

Our drug courts have been a resounding success thanks in large part to the work of Judge George Kreeger of Cobb County. Judge Kreeger is chair of the Judicial Council's Standing Committee on Drug Courts. Alcohol and drug abuse figure prominently in the majority of our criminal cases in Georgia. We currently have 39 operational drug courts in Georgia; but our goal is to have drug courts in all 49 Judicial Circuits. These courts are holding offenders accountable, saving the state and local governments money, changing lives, and reuniting families.

Judge Kent Lawrence of Athens-Clarke County, with the assistance

of the Administrative Office of the Courts and the Governor's Office of Highway Safety, has pioneered the development of a DUI Court Demonstration Project. This court has become the National Model for DUI Courts. Judge Lawrence and the other judges who have embarked on this new effort are to be applauded for the success of the programs. There are now seven DUI Court programs operating and another several more will begin within the next few months.

Also, as counties seek ways to respond to the increasing numbers of people with mental illness entering the criminal justice system, mental health courts are emerging in Georgia. Georgia now has three such courts. One was begun by Judge Stephen Goss in Albany. The second mental health court was founded by Judge John Allen in Muscogee County. And Judge Kathleen Gosselin has spearheaded the implementation of a third mental health court in Gainesville. These courts treat adult criminal defendants with mental illness and divert them from jail into treatment programs while ensuring public safety.

The Fulton County Family Court has also proved to be very effective. Improving the delivery of services to families and children has long been a priority of the judicial council and mine. Since taking office as Chief Justice, I have become keenly aware of the toll the growing dysfunction of Georgia's families is having on our legal system. Indeed, civil cases involving domestic relations problems now outnumber all felony and misdemeanor cases combined. And two-thirds of the young people convicted of major felonies from 1970 to 1995 came from single or no parent homes. One of the ways that we have chosen to address this problem was to institute the Family Court pilot project. That project is designed to consolidate multiple domestic relations cases involving the same family under one judge so that the decision-making process is consistent.

But I think it is also important, in fact it is critical, for us to begin to deal with the legal crisis created by the disintegration of the family. We must restore the importance of marriage and family as the foundation of society. A large and growing body of social science research shows that the health and well being of our children are strongly linked to the health of marriage. So devising strategies for Georgians to get and stay married to the people with whom they have children must be an important aim of government and the courts.

Other goals for children in 2006 include improving legal representation in juvenile courts, seeking ways to expedite appeals for child deprivation cases, and increasing the education and dialogue about how important placement stability is for children in foster care.

Judicial Independence

I would be remiss if I did not talk for a minute about the role of judges, given the present climate in our nation regarding the judiciary and our courts. The judicial branch is in the business of providing justice, and justice is not, and has never been, a matter of politics. As our chief justice said last year, justice is a right guaranteed by the Constitutions of the United States and the State of Georgia. Although it may be appropriate for lawmakers like you to consider public opinion and the views of special interest groups when drafting laws, it is never appropriate for judges to do so when deciding cases. In this respect, the judiciary is very different from the other two branches of government.

Advancements in technology and communication have made the judiciary and its operations far more transparent and subject to much greater public scrutiny than in the past. Controversial issues garner more attention and provoke comment more quickly than when the founders envisioned our tripartite form of government. This is a good thing. Informed discourse and debate are the hallmarks of American democracy. But it is not the role of a judge to try cases in the court of public opinion. Rather, it is the job of a judge to be a fair and impartial arbiter of conflict. It is the job of a judge to interpret the laws that you make in light of sound legal reasoning and well established precedent, not based on personal feelings, politics or opinion polls. Finally, it is the job of a judge to protect the rights of all people, without regard to race, creed, or social and economic status. And the judges I have known in my 25 years on the bench are to be commended for working hard to do just that everyday.

The judicial, executive and legislative branches of government must work together to address the modern popular misconceptions of the courts. Our democracy will continue to thrive only as long as our courts do. We must protect our courts, ladies and gentlemen, or our courts will never be able to protect us.

Judicial Budget

With regard to our budget requests, I will be brief. As Alexander Hamilton observed 200 years ago, "the judiciary has the power neither of the sword nor of the purse, but merely judgment." As the body to whom the power of the purse has been given, I only ask that you consider the essential role you play in preserving and, indeed, improving our court system. In recent years, the judiciary has consistently been limited to an appropriation of less than 1 percent of the state's general fund budget. Yet we play a vital although not easily recognized role in the state's economy.

When an industry considers relocating to Georgia, our extensive transportation network, good schools, skilled work force and fair taxes are all points in our favor. But no less important is our strong, professional and efficient court system in which that industry can be assured of receiving fair and con-

sistent treatment in legal disputes both for itself and its employees.

Our goal is the same as yours and the Governor's: we want to provide excellent customer service to the citizens of Georgia. In order to meet that goal, we must have adequate resources. The most common interactions most people have with their state governments are in trying to get a driver's license and going to court for some reason or another. We must dedicate as many resources to improving customer service and efficiency within the courts as we do for other state services.

Superior Court Judgeships

I do want to mention another matter affecting the judicial branch and its budget. The Judicial Council has recommended the creation of 10 additional superior court judgeships in those counties that are experiencing a rapid increase in population and an ever-increasing caseload in both the criminal and civil dockets. I urge you to give this recommendation your favorable consideration as well. The Council recommends new judgeships only after careful study based on its annual workload assessment of Georgia's 49 superior court circuits. Delay in creating these judgeships means that the people of the Houston, Paulding and Southern judicial circuits, to name only a few, do not have an adequate number of judges today to hear a growing volume of cases. Georgia is fortunate to have dedicated and talented superior court judges, but we need more than talent and dedication if we are to address the demands of a growing state population. People generate litigation. More people generate more litigation. I ask that you strongly consider funding these 10 new judgeships.

Indigent Defense

Before I close, I want to take a moment and address the needs of the statewide public defender system in Georgia, which you created during the 2003 session and funded in the 2005 fiscal year budget. That system, I am pleased to report, is off to a great start. As you know, there are three essential parts of the criminal justice system, the courts (led by judges), the prosecutors and the defenders. As such, the criminal justice system is like a three-legged stool. Now, we all know that a two-legged stool won't stand up. And that's what we had in Georgia for a long time, a two-legged stool. But, thankfully, with the creation of a statewide indigent defense system, we now have all three components on a firm foundation. All I ask of you at this time is that you please continue your commitment to fund the system you created two years ago.

This morning I talked with you about the importance of the judiciary remaining fair, impartial and independent. I want to end by acknowledging our interdependence. Although each branch of government is separate, we are also connected in that we share a mutual quest for excellence in government.

My good friends, we are all partners in this great enterprise of representative government and are all traveling on the same path. Our roles and responsibilities are different, but our goal is the same—to serve the people of Georgia to the best of our abilities.

Thank you for your courtesy in inviting me in today, for your attention to my remarks, and for your unfailing devotion to the people of Georgia. God bless you, God bless Georgia, and God bless America. GBJ

Hon. Leah Ward Sears is the Chief Justice of the Supreme Court of Georgia.

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O. Jackson Cook
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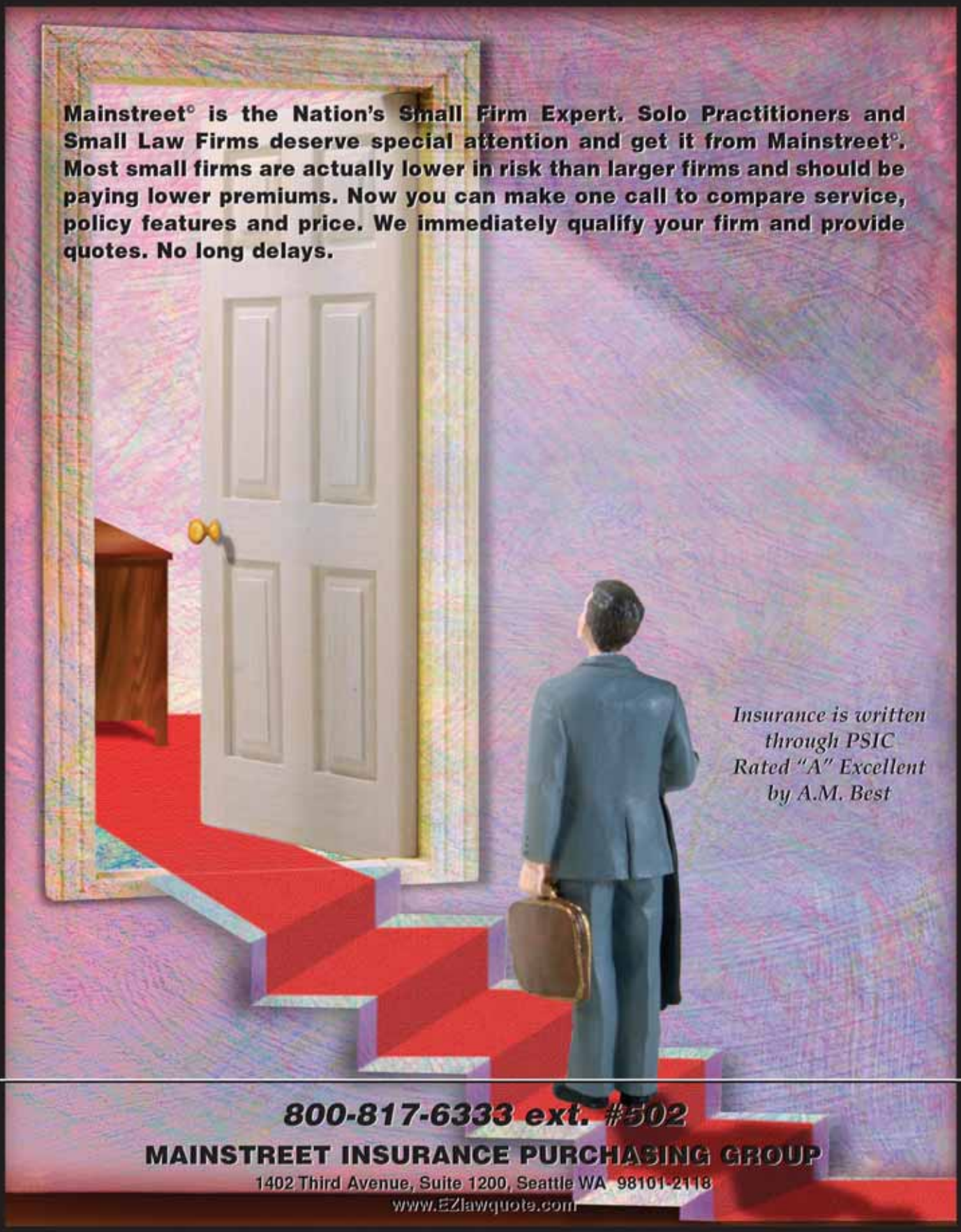

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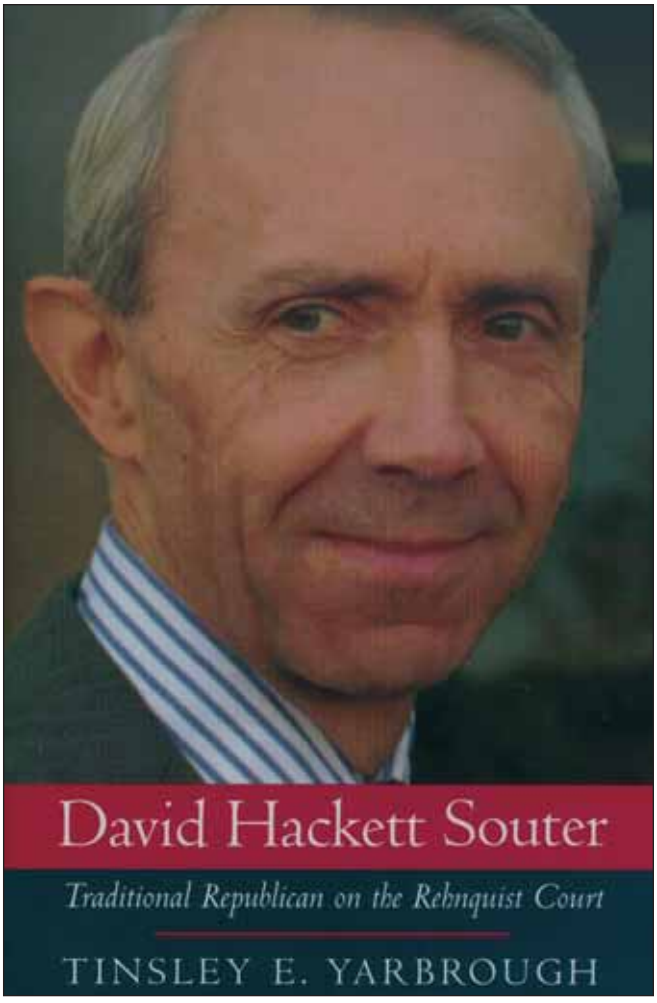
David Hackett Souter: Traditional Republican on the Rehnquist Court

By Tinsley E. Yarbrough, Oxford University Press (2005), 311 pages
Reviewed by Jennifer C. Kane

In the preface to *David Hackett Souter: Traditional Republican on the Rehnquist Court*, author Tinsley Yarbrough promises, "This book examines the life, career, and jurisprudence of one of the Rehnquist Court's most intriguing justices." The 256 pages that follow, however, fail to deliver anything that would justify a "most intriguing" label. *David Hackett Souter* contains little more than bland descriptions of major events in Justice Souter's life in which he appears to be a bystander, not the star. At the end of the book, Yarbrough states almost apologetically: "[a]s this book amply demonstrates, Justice Souter is a very private person."

David Hackett Souter is the only child of Joseph Alexander Souter, a banker and third-generation New Englander, and Helen Adams Hackett Souter, a housewife and descendant of several *Mayflower* passengers, including ancestors of Presidents Fillmore, Grant, Hoover, Coolidge, Franklin Roosevelt, Nixon, Ford, and Bush. Justice Souter was born on Sept. 17, 1939, in Melrose, Massachusetts, where he lived until he was eleven. At that time, he and his parents moved into the home in which he currently resides—the East Weare, New Hampshire farmhouse that has recently gained notoriety among eminent domain wonks as the result



of the Supreme Court's decision in *Kelo v. City of New London*.

Yarbrough explains that a distant relative, whom Souter referred to as "Aunt Harriet" exerted "perhaps the greatest influence on his life." As a grammar school student, Souter demonstrated unusual traits;

Yarbrough states:

> Unlike his classmates, however, David enjoyed talking about antiques with the proprietress of Yesterday's, an antique shop near his home. When he was old enough to drive, he drove her to area auctions. 'He always had his nose in a book,' more than one neighbor would later remark. Deeply religious, he was not only an altar boy, but also taught a Sunday School class. 'We all went to church because our parents made us,' a close male friend remembered; 'David went because he wanted to. . . . He was very proper. He never swore. We were all trying to be macho. He never seemed to feel that need.'

Although many readers will already be aware of the basic framework of Souter's professional life, Yarbrough competently outlines those facts. Souter attended Harvard and after graduating magna cum laude in 1961 was selected as a Rhodes Scholar. He returned to Harvard in 1963 for law school. After graduation in 1966, Souter practiced law at the Concord, New Hampshire firm of Orr and Reno for two years, at which time he left private practice to work in the New Hampshire Attorney General's office. He remained there for ten years, serving as New Hampshire's attorney general for two of those years.

In 1978, Souter was appointed to the New Hampshire Superior Court. Five years later, Souter was elevated to a seat on the New Hampshire Supreme Court, where he served for seven years. In early 1990, President Bush nominated Souter to the First Circuit Court of Appeals, and he was unanimously confirmed. Just a few months later, President Bush nominated Souter to the Supreme Court to replace Justice William J. Brennan.

David Hackett Souter provides some information that is not common knowledge, but most of it is humdrum, such as the corroborating accounts of Souter's "standard lunch of an apple and cottage cheese." Yarbrough interviewed several people who insist that Souter is a very funny person, "devilish," and even "the life of the party," but Yarbrough does not include any specific examples.

Instead of illuminating a lighthearted, comedic Souter, Yarbrough consistently portrays him as a dogged student, who never let much interfere with his intellectual pursuits. At Concord High School, Souter prepared unassigned research papers and spent his afternoons at the public library. At Harvard, he decided to pursue a career in law after reading (and then rereading) a series of lectures on the Bill of Rights by Judge Learned Hand. Soon after he began his Rhodes scholarship, he fretted that he had difficulty adjusting to Oxford because he had yet not found a British scholar to be his "one-on-one" tutor. He has never married, and has been compared by a former girlfriend as "someone from another century."

Yarbrough attempts to demonstrate that Justice Souter is, as his title promises, a "traditional Republican on the Rehnquist Court," by drawing conclusions from Souter's rulings as a judge or justice or from arguments he made as an attorney that are not necessarily accurate measures of ideology. As with other aspects of Souter's life, this analysis was not as illuminating as Yarbrough promised.

Although *David Hackett Souter* does not reveal much about the justice himself, the book is timely in light of the debates over recent Supreme Court nominees. Yarbrough recalls, for example, how Justice Souter's Supreme Court nomination and confirmation process began with the media's search for a paper trail and with rancor from pundits and special interest groups. At the time of his nomination, Souter had published only one law review article; the "paper trail" was virtually nonexistent. The entire scene sounds familiar until Yarbrough describes the Senate hearings:

> Senator Biden conceded that Souter was "not the sort of judge I would nominate if I were President," but thought he was "about the best we can expect in the divided Government situation we now face." . . . . After a perfunctory four-hour debate on October 2, the Senate confirmed Souter by a vote of 90-9.

In other words, much has changed in 16 years. On that score, *David Hackett Souter* offers something of interest.

Jennifer C. Kane is an associate at King & Spalding LLP. She received her J.D. from Georgia State University in 2002 and is a member of the *Georgia Bar Journal* Editorial Board.

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Notice of Filing of Formal Advisory Opinions in Supreme Court

Second Publication of Proposed Formal Advisory Opinion No. 05-12 Hereinafter known as "Formal Advisory Opinion No. 05-12"

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after April 15, 2006.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, **only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia**. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403(d) must be simultaneously served upon the Board through the Office of the General Counsel of the State Bar or Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

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

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

STATE BAR OF GEORGIA ISSUED BY THE FORMAL ADVISORY OPINION BOARD PURSUANT TO RULE 4-403 ON JANUARY 5, 2006 FORMAL ADVISORY OPINION NO. 05-12 (Redrafted Version of Formal Advisory Opinion No. 00-1)

QUESTION PRESENTED:

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

SUMMARY ANSWER:

Representation of a criminal defendant in municipal court by a member of the City Council where the City Council controls salary and benefits for the police implicates Rule 3.5(a), which prohibits attorneys from seek-

ing to influence officials by means prohibited by law. In any circumstance where the representation may create an appearance of impropriety it should be avoided.

OPINION:

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

Rule 3.5 provides that "A lawyer shall not, without regard to whether the lawyer represents a client in the matter: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law...." As a general matter, a police officer is a public official. *See White v. Fireman's Fund Ins. Co.,* 233 Ga. 919 (1975); *Sauls v. State*, 220 Ga. App. 115 (1996). *But see* O.C.G.A. §45-5-6. Where a police officer exercises discretion as to the prosecution of criminal charges, the police officer is a public official within the meaning of Rule 3.5(a). By its express terms, Rule 3.5(a) applies only when an attorney seeks to influence, that is where an attorney has the intent to influence, an official by means prohibited by law. If an attorney were to indicate to an officer that as a result of the attorney's position as a member of the City Council a favorable recommendation as to one of the attorney's clients would result in benefits flowing to the officer, or that an unfavorable recommendation would result in harm, the attorney would have committed the offense of bribery, OCGA §16-10-2 (a)(1), or extortion, OCGA §16-8-16(a)(4). The attorney would also have violated Rule 3.5(a).

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

Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, *2005-2006 State Bar of Georgia Directory and Handbook,* p. H-6 to H-7 (hereinafter referred to as "*Handbook*").

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-6.

This Statement, and the following verbatim text, are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-6.

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT
STATE OF GEORGIA

IN RE: STATE BAR OF GEORGIA
Rules and Regulations for its
Organization and Government

MOTION TO AMEND 2006-2

MOTION TO AMEND THE RULES AND REGULATIONS OF THE STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in a regular meeting held on November 18, 2005, and upon the concurrence of its Executive Committee, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, *2005-2006 State Bar of Georgia Directory*

and Handbook, pp. 1-H, *et seq.,* and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I.

It is proposed that Rule 8-107 of Part VIII of the Rules of the State Bar of Georgia regarding continuing legal education requirements be amended by deleting the current provisions of said rule in full and substituting the following in lieu thereof:

Rule 8-107 Grace Period and Noncompliance

A. Grace Period

(1) Members who are deficient in their CLE, fees, or other requirements at the end of a calendar year are entitled to an automatic grace period until March 31st of the succeeding year to make up their deficiency. This does not change the requirement that members file their annual report by January 31st.

(2) Members who remain deficient on April 1st of the succeeding year shall pay a late CLE fee in an amount to be set by the Commission.

B. Noncompliance

(1) Notice. Members who remain deficient in their CLE, annual report filing, fees, or other requirements on April 1st of the succeeding year are in noncompliance. The Commission shall so notify the members by first class mail to the member's current address contained in the membership records of the State Bar of Georgia. Service or actual receipt is not a prerequisite to actions authorized by these Rules.

(2) Hearing. Members may contest their noncompliance by requesting a hearing before the Commission. The request should be in writing, contain the reasons for their contest, and be made within 60 days of the date of the notice of noncompliance mailed by the Commission. The Commission shall hear the matter at its next meeting. No action will be taken while hearings are pending.

(3) Report. The Commission shall report to the Supreme Court those members who remain in noncompliance after the time to request hearings has expired or any requested hearings have been held.

(4) Supreme Court of Georgia Action. Upon receipt from the Commission of a report of noncompliance, the Supreme Court of Georgia shall enter an order it deems appropriate including an allowance of additional time for compliance or summary suspension from the practice of law until further order of the Court.

SO MOVED, this _____ day of _____, 2006

Counsel for the State Bar of Georgia

_____

William P. Smith, III
General Counsel
State Bar No. 665000

_____

Robert E. McCormack
Deputy General Counsel
State Bar No. 485375

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104 Marietta Street, NW—Suite 100
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(404) 527-8720

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

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

A copy of the proposed amendments may be obtained on and after April 3, 2006, from the court's website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by May 4, 2006.

LEGAL SERVICES CORPORATION: Notice of Availability of Competitive Grant Funds for Calendar Year 2007

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2007. A Request for Proposals (RFP) and other information pertaining to the LSC grants competition will be available from www.ain.lsc.gov beginning the week of April 17, 2006. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. The listing of service areas for each state and the estimated grant amounts for each service area will be included in Appendix-A of the RFP. Applicants must file a Notice of Intent to Compete (NIC) in order to participate in the competitive grants process. The NIC will be available from the RFP. Please refer to www.ain.lsc.gov for filing dates and submission requirements. Please e-mail inquiries pertaining to the LSC competitive grants process to Competition@lsc.gov.

Child Support Payment Address Change

Georgia attorneys who handle child support cases need to be aware of an address change for child support payments. In an effort to facilitate more timely and secure collection of this support, the Georgia Office of Child Support Enforcement, Family Support Registry (FSR) is changing post office boxes. While they will continue to pick up mail at the Atlanta post office boxes, they are asking attorneys and court officers to note these changes on future court documents relative to payment of support through the FSR and to notify clients of the eventual Atlanta post office box closure. The new address for processing income withholding orders is Post Office Box 1800, Carrollton, GA 30112-1800. Clients who do not have income withholding orders need to send payments to Post Office Box 1600, Carrollton GA 30112-1600.

Changes/Corrections to the 2005-06 State Bar Directory

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Update Your Member Information

Keep your information up-to-date with the Bar's membership department. Please check your information using the Bar's Online Membership Directory. Member information can be updated 24 hours a day by visiting **www.gabar.org/member_essentials/address_change.**

New York and New Jersey Actions. Georgia Bar member practicing in Manhattan, also with New Jersey office, can help you with your corporate transactions and litigation in both state and federal courts. Contact E. David Smith, 551 Fifth Avenue, Suite 1601, New York, New York 10176; (212) 661-7010; edsmith@edslaw.net.

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

The 2006 State Champion Team is from Jonesboro High School

The 2006 Regional Champion Teams are:
Central High School (Macon); **South Forsyth High School** (Cumming); **Jenkins High School** (Savannah); **Harrison High School** (Kennesaw); **Decatur High School** (Decatur); **Paideia School** (Atlanta); **Brookwood High School** (Snellville); **Grady High School** (Atlanta); **Fannin County High School** (Blue Ridge); **Athens Academy** (Athens); **Cartersville High School** (Cartersville); **Lee County High School** (Leesburg); **Brookstone School** (Columbus); **Jonesboro High School** (Jonesboro); and **Alexander High School** (Douglasville)

Thank you for a great 18th mock trial season in Georgia!

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

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

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Position wanted: Georgia Bar member/sole practitioner since 1998 with emphasis in criminal defense and some juvenile/family law/personal injury experience seeks associate position in the Atlanta or Savannah area. 1997 John Marshall Law School graduate. Call (770) 893-7273. Resume available upon request. Any practice area considered.

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Insurance Defense / Workers Comp Defense Firm in Valdosta looking for associates with 1-10 years experience. Send resume to: Managing Partner, P.O. Box 3007, Valdosta, GA 31604-3007.

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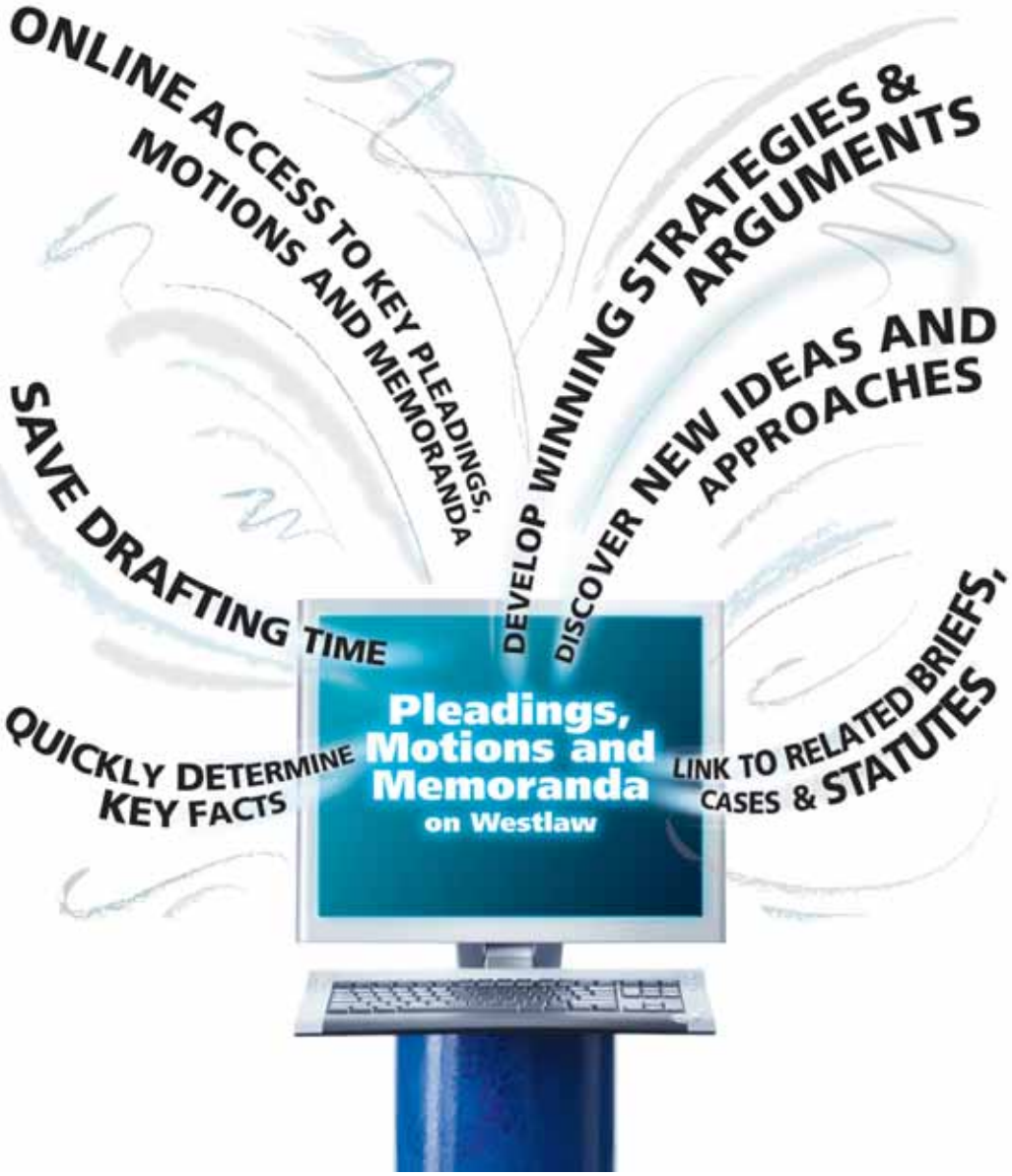

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