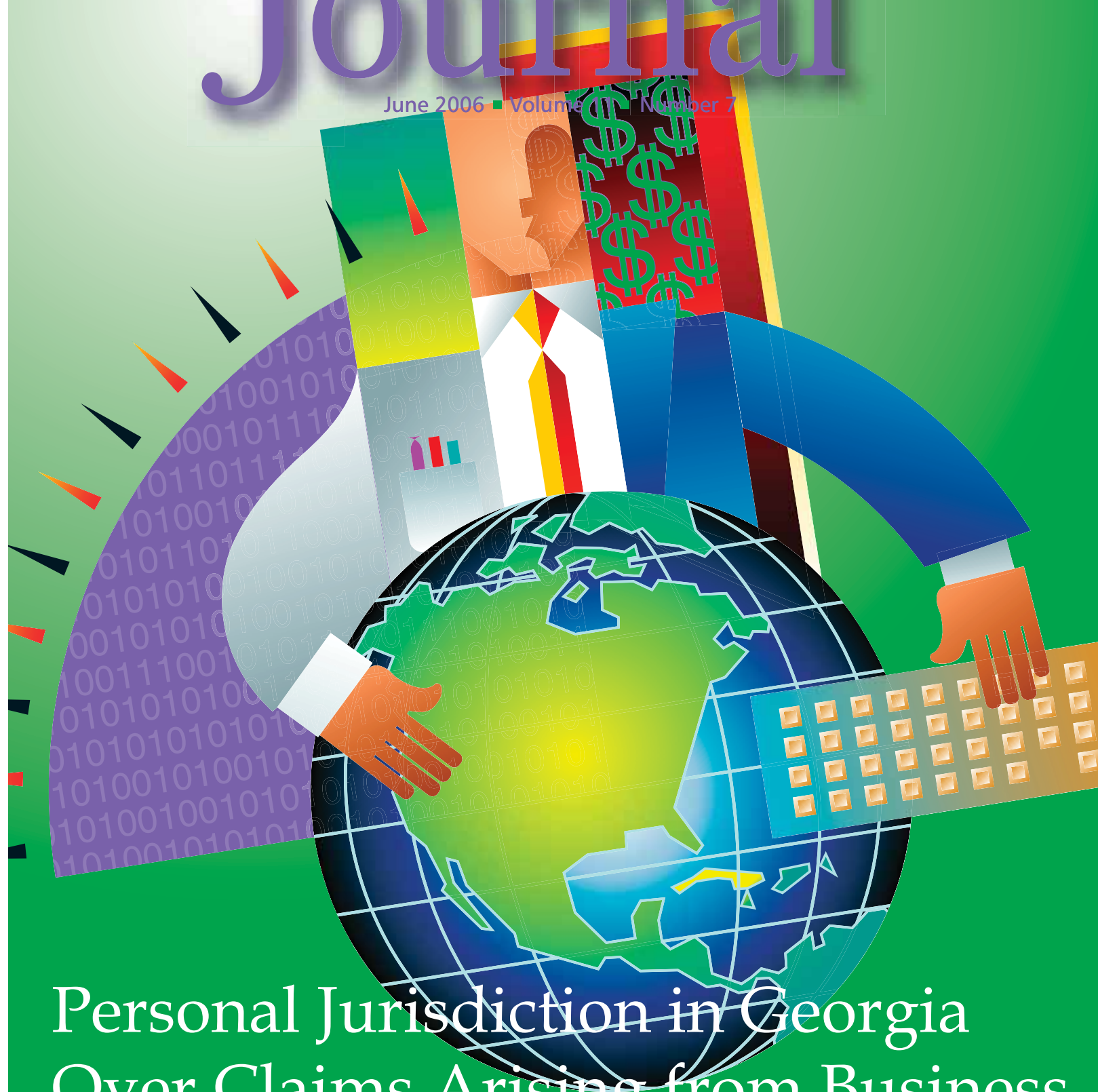




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by Robert D. Ingram

Year in Review

They say that time flies when you're having fun.

As my 2005-06 term nears its conclusion, I can

tell you that the past year has also flown by,

even though on some days the fun was slow to kick-in.

Seriously, it has been a busy year and while presiding over this great organization might not always be fun and games, it has certainly been a pleasure and a privilege. Thank you for giving me the honor of serving in this position. I am proud of the progress we made in addressing a number of important issues for our profession and I am thankful for the support you have extended to make this year a success.

I would like to take this opportunity to review some of our accomplishments during the past 12 months, as well as some of the challenges that lie ahead.

Foundations of Freedom Commission

At last year's Annual Meeting, I outlined the need for us to develop a long-term strategy, with future Bar leader buy-in, that addresses the attacks that have become commonplace against our profession and the

justice system. A year later, I am happy to report that a plan is firmly in place with the enthusiastic support of Bar Officers, the Executive Committee, and the Board of Governors.

Through the Foundations of Freedom Commission, Bar leaders will continually seek to identify and create ongoing opportunities for lawyers and judges to help spread the truth about the importance of the rule of law and a fair and impartial judiciary in America's constitutional democracy.

Immediate Past President Rob Reinhardt, President-elect Jay Cook, Secretary Gerald Edenfield, and Treasurer Bryan Cavan spent many hours helping to develop the Commission's message. Commission members made up by a group of respected judges, lawyers, educators, legislators and business leaders helped to develop a long-term plan to utilize the resources of the State Bar for public legal education. The plan sought to mobilize Bar committees, Bar sections, local and specialty bars, and Bar staff in:

- Educating the general public about the importance of an independent judiciary where no one is above the law and everyone has equal access to justice;
- Educating the general public about the critical role of lawyers and judges in America's constitutional

"This year marked a welcome return to the traditional role of the State Bar in providing the resources and expertise to the General Assembly to deal with complicated and complex legal issues."

democracy including their role in peacefully resolving disputes and providing accountability for conduct;

- Reminding the public about the system of checks and balances our founding fathers created with three separate but equal branches of government and the role intended for lawyers and judges in the judicial branch; and
- Equipping lawyers and judges to participate in public legal education.

The goal of the Foundations of Freedom Commission is not to develop a slick PR campaign, nor to improve the image of lawyers, but instead to spread the truth about how the justice system operates and the important role of lawyers in making America's constitutional democracy work. The commission utilized the services of communication experts to help develop the message and is continuing to develop and implement methods of delivering it. Members of the commission are serving on a number of subcommittees charged with carrying out various elements of the program.

The **Editorial Boards Committee**, co-chaired by Judge Adele Grubbs and Otis Brumby, has been successful in garnering favorable editorial positions and opinion columns; reversing or neutralizing of previous or future editorial positions and opinion columns opposed or harmful to our message; and securing publication of guest editorials, opinion columns and letters to the editor. This is an ongoing initiative.

The **Judges/Jurors Committee**, co-chaired by Foy Devine and Judge Lamar Sizemore, is working to develop and implement ways in which judges can properly and ethically educate the public of the importance of the judicial system, the need for its independence from the other branches of government and the role that lawyers, judges and jurors play in maintaining that independence. Emphasis is placed

on the concepts of access to equal justice, accountability before the law, and the existence of a fair and impartial judiciary, all of which are derived from a founding principle of our nation: "Justice for all."

The **Lawyers with a Message Committee**, co-chaired by Judge Steve Jones and Linda Klein, is working with interested law-related organizations to assure that our community knows the value of our fair and impartial system of justice and the importance of the lawyer's role in it. This committee is creating a bank of PowerPoint presentations and speeches on different issues of the law. A roster of attorneys, clubs and organizations willing to participate in public legal education, is being created to serve as a Speakers' Bureau.

The mission of the **Legislative Communication Committee**, co-chaired by John Marshall and Judge Phyllis Miller, is to develop an ongoing, working relationship with state legislators. The committee will encourage and offer support to lawyers to seek political office, including the state House and Senate; develop an annual training program for new and veteran legislators on constitutional and legal issues; work to match lawyers with their legislators for ongoing communications; and invite legislators to local court-houses to observe proceedings and gain a better understanding of the justice system.

The **Long-Range Planning Committee**, co-chaired by Jimmy Franklin and Wycliffe Orr, is working to establish necessary programs, alliances and groups within and outside the State Bar to perpetuate and carry forward our goals and objectives. They plan to create a commission to continue the goals and objectives in order to ensure the perpetuation of our committee's important work, and to ensure that maximum enthusiasm and commitment are maintained. They will reach out to all existing lawyer groups of any kind, without regard to type or political affiliation, in an

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effort to build on our common interests. They will also arrange periodic gatherings of lawyers, which will provide opportunities for media publication, to emphasize the theme of lawyers united to protect our judicial system.

The **Law-Related Education Committee**, chaired by Frank Jones and David Shipley, is charged with improving public trust and confidence in the judicial branch of government through a multidimensional public education program on topics developed by the Foundation of Freedom Commission. The Committee works to support the statewide activities of the Georgia Consortium on LRE, the Georgia Mock Trial Program, and the State Bar's LRE programs. This also includes programs in the school classrooms, school tours at local courthouses, support for high school mock trial teams, and utilization of the Legal History Museum and the courtroom at the State Bar Center to educate students about the important role of lawyers in our third branch of government.

Finally, the **Public Information Committee**, co-chaired by Lester Tate and Paul Painter, seeks to communicate to the public that our legal system protects and preserves our way of life; and to develop guidelines for Bar members to use when speaking to the media. The committee utilized funding received from a foundation grant to create radio and television spots, through the Georgia Association of Broadcasters program, aimed at educating the public about the justice system, and it plans to create and distribute the American Juror video.

I would like to thank the many talented lawyers, judges, educators and business leaders who have donated their time to the Foundations of Freedom Project over the past year. Although much was accomplished, much remains to be done. Fortunately, your Bar leaders recognize the need for the State Bar of Georgia on a perpetual

and institutional basis to be involved in educating the public about the important role of lawyers and judges. The State Bar, through the Foundations of Freedom Program, will continue to encourage lawyers and judges to participate in this educational process and to make it easy for them to do so by identifying opportunities for them to speak to schools, civic groups and local bars and by equipping them with speeches, talking points, PowerPoint presentations and other educational tools.

Lawyer Advertising Task Force

The Task Force was created to advise the State Bar on ways to encourage professionalism in lawyer advertising and discourage misleading lawyer advertising, which is undermining the public trust and confidence in lawyers and the justice system. Mike Bagley served as chair and George Fryhofer as vice-chair. We owe them both for their hard work on this project.

During the first term of its existence, the Task Force made great strides in isolating issues and exploring potential options. Ever mindful of the Constitutional rights of members of the Bar and the public, it is incorrect to conclude that lawyer advertising is absolutely protected and immune from any restriction or regulation.

Georgia's Rules of Professional Conduct already regulate advertisements which are "false or misleading," but the Task Force has been considering ways that regulations could be more precisely defined and possibly expanded to include helpful additions such as illustrations of clearly "false or misleading" advertisement concepts. Florida's system of regulation has been studied and offers some potential methods for proper regulation of lawyer advertising, but the adoption of any Florida rules or procedures should be selective.

It is generally agreed that a screening program could offer sig-

nificant benefits; therefore, it is recommended that the concept be studied more. The concept of some sort of annual award dispensed by the Bar would encourage specific advertising characteristics that are universally viewed as beneficial as well as positive, and it is believed that this can be done without endorsing wholesale the concept of lawyer advertising if the criteria is narrowly defined to capture specific positive concepts, such as the advertising which most effectively reinforces respect for our legal system or advertising which effectively enhances the public's perception of the legal profession.

The Task Force recommends at least an additional year of study in hopes that the appropriate option will become more apparent.

Evaluation of State Bar Programs

The State Bar of Georgia has some excellent programs which benefit lawyers and the public. This year, the Programs Committee (Chris Phelps, chair, and Judge David Darden, vice-chair) was charged with taking a fresh look at several State Bar programs to determine the following with regard to each program:

- Annual amount of Bar dues used to support the program;
- Cost benefit analysis of the program; and
- Determine whether Georgia lawyers were receiving an adequate bang for their buck with the programs.

Chris Phelps reported the findings of its Committee regarding the following programs at the Spring Board of Governors Meeting at the Marietta Conference Center. Below is a summary of the programs evaluated:

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- \$2,500 to \$4,000 average fee dispute amount

Consumer Assistance Program

- Handles approximately 12,000 new cases per year
- About 25 percent of cases are referred to OGC
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- Since inception in 1995, CAP has handled more than 200,000 requests for assistance

Pro Bono Project

- Annually more than \$1.5M hours are donated
- Administers four statewide list-servers for pro bono, ABC and other efforts
- Host Statewide Volunteer Lawyer support website

Lawyer Assistance Program

- Participation is completely voluntary and strictly confidential
- Bar members receive up to three clinical assessment and support sessions, per issue, by certified and licensed mental health providers, and up to two years of continued monitoring
- Operates a 24 hour, 7 days a week Crisis Hotline: (800) 327-9631
- Total cases for the 2005-2006 Bar year: 122

Law Practice Management

- Averages 60 consultations per year
- Approximately 100 office visits per year
- Averages more than 1,000 phone consultations
- Casemaker—unlimited computerized legal research service. Law Practice Management provides helpline and training. Casemaker is the second most often visited section of the State Bar website

Unauthorized Practice of Law

- Handles more than 200 UPL complaints a year
- Website lists 19 injunctions and consent orders and 90 cease and desist affidavits

After taking a fresh look at each of these Bar programs, the Committee determined that Georgia lawyers were receiving a good return for their investment of Bar dues dollars being spent to fund them.

Judicial District Professionalism Program

This year the State Bar Bench and Bar Committee co-chaired by Judge Melvin Westmoreland and Hu Lovein, completed the task of raising money from the Georgia Bar Foundation, the Institute of Continuing Legal Education (ICLE), the Lawyers Foundation of Georgia, the Georgia Civil Justice Project, the Council of Superior Court Judges, and the Chief Justices Commission on Professionalism to produce a first class video utilizing professional actors to portray judges and lawyers for use as a training tool to promote the JDPP. The video/DVD is already being utilized by ICLE in professionalism seminars across the state and will, hopefully, become an effective tool to discourage inappropriate behavior by lawyers and judges in addition to heightening the awareness of the JDPP itself.

Prior to the creation of the Judicial District Professionalism Program (JDPP), lawyers and judges had few options when encountering unprofessional or uncivil conduct. Rude or unprofessional conduct by lawyers and judges rarely violated rules even if a complaint was filed.

The JDPP uses Board of Governors members in each of the 10 Judicial Districts as local committee members charged with task of investigating and acting upon complaints of unprofessional and uncivil conduct when a pattern

exists. The intake arm of the program is the State Bar's Consumer Assistance Program (1-800-334-6865). Complaints can be made anonymously and will be kept confidential if requested.

The Judicial District Professionalism Committees (local lawyers and judges serving on the Board of Governors) determine whether conduct warrants intervention and, if so, develops a plan to meet with the offending lawyer or judge in an effort to persuade them to alter their conduct.

Expert Research and Legislation Drafting for Lawmakers

Over the past year, the State Bar worked with executive and legislative branches to provide free legal research and legislative drafting services to lawmakers. The newly formed Legal Research Committee (Ben Easterlin, chair, and William Jenkins, vice-chair) offered assistance to Governor Perdue and lawmakers by utilizing lawyers with expertise in the area of inquiry to research topics to help ensure lawmakers were better informed when considering legislation.

This Committee provided free legal research and legislative drafting services to Governor Perdue and his legal staff regarding ways to compensate wrongfully convicted individuals later exonerated through DNA testing. The Legislative Research Committee also provided free legal research and drafting services to legislators seeking to clarify confusing language within the Offer of Judgment Statute passed last year as part of the Tort Reform package, and to a special legislative study committee revising Georgia's juvenile code.

By providing free legal research to lawmakers and developing relationships with the executive and legislative branches, State Bar leaders hope to create opportunities for legislative input in a constructive way. These free services will only

be provided going forward if the Bar's Executive Committee approves the request from the Governor's Office or from a legislator after making a determination that the legislation is not adverse to the interests of the State Bar.

Commission on Judicial Services

This high horse-powered crowd agreed to work together with legislative leaders in order to develop and present a legislative package to the General Assembly, which will help to insure that the best and brightest among us continue to offer for judicial service. The Commission is chaired by former House Majority Leader Larry Walker from Perry, and members of the Commission include several influential state legislators including Sen. Preston Smith and Sen. Seth Harp, Chairman and Vice Chairman, respectively, of the Senate Judiciary Committee, and Rep. Wendell Willard, Chairman of the House Judiciary Committee. The Commission also includes judges from the appellate courts, the Presidents of the Council of Superior Court Judges and the Council of State Court Judges. Also included is the Chair of Governor Perdue's Judicial Nominating Commission Mike Bowers and a cross section of business leaders.

The Commission investigated Georgia judicial salaries, county/circuit salary supplements,

made judicial salary comparisons with the federal bench, with attorney salaries in various sized law firms and geographic locations and with other like professionals. The Commission's Reporter, Mercer Law School Professor Pat Longan, is preparing a report regarding the Commission's findings.

The Commission members unanimously endorsed a proposal at its last meeting to recommend a 20 percent pay increase for superior and appellate court judges along with a travel expense allocation for appellate court judges (like the legislative travel allocation). The Commission is continuing to investigate the need for additional law clerks and other issues related to judicial service. These and perhaps other proposals will be incorporated in a comprehensive judicial legislative package for the 2007 legislative session.

Bar's Legislative Agenda

This year marked a welcome return to the traditional role of the State Bar in providing the resources and expertise to the General Assembly to deal with complicated and complex legal issues.

In discussions regarding key legislation, there was a keener awareness of and sensitivity to the separation of powers between the various branches of government. This recognition of the checks and balances created an improved environment for the legal profes-

sion and the judicial branch of government.

The State Bar of Georgia had a very successful legislative session in 2006. We had great interaction with legislators and offered input on a number of legislative issues.

Legislation passed with Bar support: Twelve of the State Bar endorsed bills passed the General Assembly including bills which would:

- Revise Corporate Code
- Revise Guardianship Code
- Make lawyer legislators better able to serve in the General Assembly
- Ratify minimum standards of the Public Defender Council, and
- Codify common law relating to trusts and those having an insurable interest

Legislation that failed with Bar opposition: The Bar opposed several measures which did not pass including:

- HB 150 which would dramatically lower educational requirements for lawyers taking the bar exam
- HB 763 a bill which would have capped contingent legal fees in tort cases
- HR 855 a resolution which sought to amend the Georgia Constitution to make all judicial offices subject to partisan elections



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Budgetary matters: early in the legislative session, budgetary cuts were proposed for several programs important to the State Bar. In the end, the General Assembly funded several of those key programs including:

- Legal services for victims of domestic violence (\$2,000,000)
- Business Court Pilot Project in Fulton County (\$100,000)
- Georgia Resource Center for Post-Conviction Death Penalty Cases (\$800,000)

Unfortunately, one important program supported by the State Bar, the B.A.S.I.C.S. Program to help train inmates to re-enter the workforce with marketable job skills was eliminated. Hopefully, the funding will be restored next year.

The State Bar would especially like to thank the following legislators who were beneficial in assisting the State Bar with its legislative issues: House Speaker Glenn Richardson, Rep. Barry Fleming, House Judiciary Chairman Wendell Willard, House Judiciary Non-Civil Chairman David Ralston, Rep. Steve Tumlin, Rep. Mack Crawford, Rep. Mary Margaret Oliver, Senate Judiciary Chairman Preston Smith, Senate Special Judiciary Chairman Michael Meyer von Bremen, Senator Bill Hamrick, Senator Seth Harp and many others. I would also like to thank Judge Adele Grubbs who chaired the Bar's Advisory Committee on Legislation and the Bar would like to thank Tom Boller, Mark Middleton, Rusty Sewell and Charlie Tanksley, who helped the Bar in communicating our positions to legislators.

Thanks to My Family

When I started my term as president at the 2005 Annual Meeting in Savannah, I warned you about my many shortcomings but I also told you about my proudest accomplishment—persuading a girl I met in high school to marry

me. On June 19, 2006, Kelly and I will celebrate our 24th wedding anniversary.

For 14 of those 24 years, Kelly has been traveling with me all over the state attending Bar Committee meetings, Board of Governor meetings, lawyer and judicial receptions, etc.—most of the time with our children, Ryan and Morgan, in tow. This year, she took it to a new level by joining me—and often driving so that I could work—in traveling to meetings all across the state so that I could speak to local and specialty bar associations, civic clubs, students, business leaders and judges about the issues confronting our profession. Our trips have had us lost on dirt roads in remote areas of the state, and have presented us with a steady diet of “rubber chicken.” My speeches were so inspiring that after sitting through a half dozen or so Kelly began the practice of dropping me off at the meeting site and traveling to the nearest Wal-Mart to hang out in lieu of enduring another speech.


Kelly, thanks for your unconditional love. You have been a true source of strength and an inspiration to me because of your willingness to serve others and to sacrifice whatever is necessary to support our family. I love you and will be forever indebted to you, Ryan and Morgan for your patience and support.


Our lives have been truly enriched over the last several years while serving on the Board of Governors and as President of the State Bar of Georgia. We are confident the friendships we have made will last a lifetime and our experiences have only confirmed the quote which I shared at last year's Annual Meeting from lawyer Harrison Tweed, “I have a high opinion of lawyers. Even with all their faults, they stack up well against those in every other occupation and profession. They are better to work with, play with, fight with, or drink with than most other varieties of any kind.”

Turning Over the Gavel

Again, let me state what an honor and privilege it has been to represent Georgia lawyers from all over this great state of ours, as your State Bar President. For those of you who have stepped forward to serve on bar-related committees over the past year, and to local bar leaders who have heeded our call to build relationships with their local legislators so that our input can be considered, you deserve the thanks and appreciation of all who are members of our noble profession. For those of you who have joined us in our effort to educate the public about the important role lawyers and judges play in America's constitutional democracy, I offer my heartfelt thanks.

I would also like to thank the members of the Executive Committee, the Board of Governors and especially our Executive Director Cliff Brashier, General Counsel Bill Smith, Chief Operating Officer Sharon Bryant, Communications Director Tyler Jones, Meetings Director Michelle Garner, and the tremendous Bar staff which they have put together to make the State Bar of Georgia the most efficient and well-operated bar in our country. Many years ago King Solomon wrote: *Where there is no guidance, the people fall, but in abundance of counselors there is victory.* His words of wisdom are still true today. Certainly, any victories experienced this year by the State Bar are directly attributable to the “abundance of counselors” who stepped forward and generously offered their time and talent in service to their colleagues. To those of you who did, I will be forever grateful.

As we look forward to 2006-2007, and I turn over the gavel to President-elect Jay Cook and the new team of Officers who will follow, I am confident that the legal profession in Georgia will be in capable hands for many years to come. 

A man in a dark suit, white shirt, and patterned tie is smiling. He is holding the handlebars of a bicycle with red grips. The background is a solid dark blue.

Mike is a Counsel On Call attorney.

He's also an Ironman.

After graduating Phi Beta Kappa from The University of Virginia, Mike earned his law degree from Vanderbilt University where he was a member of the Law Review.

For eight years, Mike practiced at one of Atlanta's largest firms, representing developers and lenders throughout the United States in complex real estate transactions. A fast-paced career and the partnership track left Mike little time to pursue activities outside the firm. Mike decided to reclaim his career and his life. He turned to Counsel On Call for flexibility and challenging work.

Mike now works with the real estate group of a Fortune 500 company. He continues to handle matters similar in scope and complexity to those that he worked on while in private practice. But Mike no longer spends all of his time at the office. Counsel On Call provides Mike a flexible work schedule that allows him to pursue many outside activities. Most recently, Mike participated in the Ford Ironman USA Coeur d'Alene Triathlon.

More time for his life. A challenging career. That's the way Mike likes it.

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by Cliff Brashier



Courts, Foundations of Freedom and TV Spots

As members of the State Bar, I feel confident that each of you would agree with 2004-05 ABA President Robert J. Grey Jr.'s comment that "A fundamental value in the American sys-

tem of justice is that the stability of our society depends upon the ability of the people to readily obtain access to the courts, because the court system is the

mechanism recognized and accepted by all to peacefully resolve disputes."

Despite the fact that America's justice system is the envy of the world, over the last several years there has been a lot of negative chatter and, in some instances, outright attacks on lawyers, judges and the justice system itself. These attacks have left the public confused and misinformed.

"The overall theme for two of the spots is that the interaction of judges, prosecutors and defense attorneys is what gives the judicial system the balance and integrity that safeguards the rights of all citizens"

In an attempt to set the record straight, the Bar, through the Foundations of Freedom Commission, among other initiatives, decided earlier this year to create a series of television spots to be aired throughout the state to dispel some common misconceptions and start re-educating the citizens of Georgia about the vital role lawyers and judges play as defenders of the rule of law. School students receive the same message in greater detail when they participate in mock trials and visit the legal history museum at the Bar Center.

These three television spots will begin being aired later this month. The overall theme for two of the spots is that the interaction of judges, prosecutors and defense attorneys is what gives the judicial system the balance and integrity that safeguards the rights of all citizens. Although similar to the first two spots, the third spot focuses on a civil trial and the interaction between a judge, plaintiff's attorney and defense attorney. Like in criminal cases, the message is that the rule of law, free from political or other pressures, ensures justice for all and protects the freedoms we all cherish in our great country.


I want to make it clear that this initiative has nothing to do with public relations or the image of lawyers. Instead it seeks to restore, through education, the public's trust and confidence in the American system of justice.

Ultimately, it is the Commission's goal to continually seek ways and look for opportunities to educate the public about the importance of the legal profession and justice system. In addition to the radio and television spots, the Foundations of Freedom Commission has also been working on other public-education initiatives. These include: the Editorial Board Committee placing numerous op-eds in newspapers throughout the state; the Judges/Jurors Committee creating a video to disseminate to judges and court clerks; the Lawyers with a Message Committee creating a Speakers Bureau where judges and lawyers seek opportunities to speak to civic groups and schools; the



Legislative Communications Committee arranging meetings with legislators from throughout the state to start building long-term relationships; the Long Range Planning Committee creating long-term public education plans and strategies; and the LRE Committee creating a curriculum for school children to learn about the judicial system when

visiting the Bar Center. The LRE Committee is also soliciting lawyers and judges to act as docents for the next school year.

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

YLD Accomplishes Goals Set for Year

The dreaded final column—you know the one you see each year at this time, thanking so and so for this and so and so for that. “It’s been a great ride....” (*Start reading in your Andy Rooney voice here.*) I’ve always read those columns and wondered if everyone used the same template, but just

changed the names and dates.

Apparently, it is my turn to pull out that MCCALL’S pattern and reflect on the good work the YLD team has accomplished this year. ~~I have to~~. I want to. At the Annual Meeting in Savannah, we kicked off the year looking forward to a number of lofty and ambitious goals. The outcome: we tackled each one, head on, perfectly.

We looked forward to offering an assortment of quality, substantive, well-rounded and enjoyable business meetings. We did. From Charleston to Athens, to Atlanta and then Las Vegas, we accomplished the business of the YLD while furthering the goal of becoming “the best lawyers we can be” by including a CLE component at each meeting. On top of this we did it with an increasing number of

diverse young lawyers. We’re talking about attorneys from small firms, outside-Atlanta locations, government employers, large firms, racial and ethnic minorities and golfers. We did it that way. We provided more than seven scholarships for many of the men and women who fit into these categories to attend. We are proud of that. To do what we did at these meeting we had to rely on the generous support of a large group of sponsors and friends of the YLD. They came through in an unprecedented fashion and we are grateful to them and should, in turn, support them. Fun? We had a little of that too.

Our committees continue to grow in size and that is important. You’ve heard me say it time and time again; the committees are the backbone of the YLD and its work. 2005-2006 saw the first full year of the Intellectual Property and Family Law Committees—our newest vertebrae and discs. Of course, the old guard committees like the Community Service Committee with its suit sorting, toiletries drive, Project Open Hand, Hawks’ Night, and happy hours to

raise awareness for programs like the Georgia Innocence Project, and the Litigation Committee with its “Lunch and Learns” and publication of the Referral Directory, worked into our vision of constant opportunity to involve ourselves in our community and improve our profession, one step at a time.

“Our committees continue to grow in size and that is important. You’ve heard me say it time and time again; the committees are the backbone of the YLD and its work.”



**State Bar of Georgia
Committee on Professionalism**



**Chief Justice's Commission
on Professionalism**

SIGN UP NOW FOR THE 2006 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM

Two (2.0) hours of CLE credit, including 1.0 hour of Ethics and 1.0 hour of Professionalism

Demonstrating that professionalism is the hallmark of the practice of law, the Law School Orientations have become a central feature of the orientation process for entering students at each of the state's law schools over the past 14 years. The Professionalism Committee is now seeking lawyers and judges to volunteer to return to your alma maters or to any of the schools to help give back part of what the profession has given you by dedicating a half day of your time this August. You will be paired with a co-leader and will lead students in a discussion of hypothetical professionalism and ethics issues. Minimal preparation is necessary for the leaders. Review the provided hypos, which include annotations and suggested questions, and arrive at the school 15 minutes prior to the program. Pair up with a friend or classmate to co-lead a group (Please note, if you are both recent graduates we will pair you with a more experienced co-leader).

Please consider participation in this project and encourage your colleagues to volunteer. You may respond by completing the form below or calling the Chief Justice's Commission on Professionalism at (404) 225-5040; fax: (404) 225-5041. Thank you.

**ATTORNEY VOLUNTEER FORM
2006 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM**

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Address: _____

Telephone: _____ Fax: _____
Email Address: _____
Area(s) of Practice: _____
Year Admitted to the Georgia Bar: _____
Bar#: _____

(Please circle your choice)

<u>LAW SCHOOL</u>	<u>DATE</u>	<u>TIME</u>	<u>RECEPTION/LUNCH</u>	<u>SPEAKER</u>
Emory	No volunteers needed at this time for Emory session			
Georgia State	August 15, 2006 (Tues.)	3:30 p.m. - 5:30 p.m.	5:30 - 6:30 p.m.	Judge Debra Bernes
John Marshall	August 19, 2006 (Sat.)	9:00 a.m. - 11:30 a.m.	11:30 - 12:30 p.m.	TBA
Mercer	August 11, 2006 (Fri.)	1:30 p.m. - 3:30 p.m.	3:30 - 4:30 p.m.	TBA
UGA	August 11, 2006 (Fri.)	2:30 p.m. - 4:30 p.m.	4:30 - 5:00 p.m.	Justice Harold Melton

Please return to: State Bar Committee on Professionalism; Attn: Mary McAfee • Suite 620 • 104 Marietta Street, N.W. • Atlanta, Georgia 30303 • ph: (404) 225-5040 • fax (404) 225-5041 • email: mary@cjcpga.org. **Thank You!**

The Aspiring Youth Committee and Minorities in the Profession Committees, both personal favorites, had a renaissance with successful programs. Aspiring Youth pulled together a solid fall program and we awarded a scholarship to one of the program's first graduates. The MIPC brought the year in on a high note and closed with a first-of-its-kind panel discussion and reception with Justices Benham and Melton.

We commissioned a committee to examine the YLD's Bylaws and make recommendations for their revision and amendment, taking into account changes in trends, technology, demographics and purpose. We launched our inaugural Leadership Academy. It has been a comprehensive leadership development program designed as an intensive "next step" to follow the Transition into Law Practice Program. Through the hard work of Laurel Landon, Tonya Boga and Leigh May, we combined a mentor relationship with organized workshops examining appropriate areas such as professionalism, lawyers as elected officials, and service on non-profit boards.

Shortly after the year got into full swing, the YLD was called upon to assist with the results and aftermath of Hurricane Katrina. Your young lawyers heeded the call and worked tirelessly in Atlanta, Macon, Columbus and Savannah, to name a few places. Groups like the Pro Bono Partnership, the ARLSG, Gate City Bar Association and our very own Community Service and Disaster Legal Assistance Committees, were steered by young lawyers from the moment they were called, until their work had been done. We should all be grateful and proud of them.

We looked forward to raising awareness of, and *pro bono* support

for, critical legal services for children and youth. We wanted to make sure children and young adults had a clear understanding of the role of lawyers in society. We did it with our LAWYERS CHALLENGE FOR CHILDREN, an initiative of our Juvenile Law Committee. They continue with their labor of love as they focus on the Juvenile Code rewrite. We did it and do it with our Celebration of Excellence. We do it with our High School Mock Trial Committee who, by the hard work

some *Lessons Learned* from the high court and trial court, and on career advice. We charged young lawyers to consider serving as elected officials. We offered you and the young lawyer alike, tips to get organized and explained why you should never hit a 16 when the dealer's up card is a three. Important stuff we provided.

In what can only be described as the most fertile YLD administration of all time, we saw no less than 10 officers and directors become fathers, mothers or expectant parents this past year. This falls under the "take time to smell the roses" category. We are proud of them, happy for each and wish them all the best.

We looked forward to moving the YLD forward. I can't tell you how much I like what I see.

Now, I look forward to watching the momentum continue. I look forward to attending meetings with no responsibility. I look forward to the good work Jon and his new team—Josh, Elena and Amy—will undoubtedly do. I look forward to spending a little more time with my wife and daughters. I love them dearly and am genuinely grateful that they have grown to understand and allow time for the development of my passion and vision.

The outline says I have to offer thanks. It is the easiest, yet most difficult part. Hundreds of young lawyers are responsible for the Division remaining strong.

Some are nameless and faceless lawyers who attended meetings and events in Atlanta, Augusta, Bainbridge, Carrollton, Covington, Macon, Marietta, and Savannah. They are our committee chairs and directors. They are the folk worthy of any "good job" or "nice work" which may be used to describe the 2005-2006 year, believe that. In the words of the poet Kayne West, "I wanna scream so loud for you, cause I'm so proud of you!" And, you should be too.




of Director Stacy Rieke, was successful in its bid to host the 2009 National Tournament in Georgia. We are proud of them.

We looked forward to making sure our newsletter delivered all you needed to know about the work of the YLD. Edition after edition, we highlighted all that occurred during the last quarter. We got help from some of the state's brightest minds to teach young lawyers tips on running a successful business, to provide

My good friend David Gruskin is to be thanked as well. Without his unselfish gesture that allowed me to cap off a nine-year track that was so slightly derailed, I would not have had the opportunity to serve the Bar in this fashion. He is the essence of class.

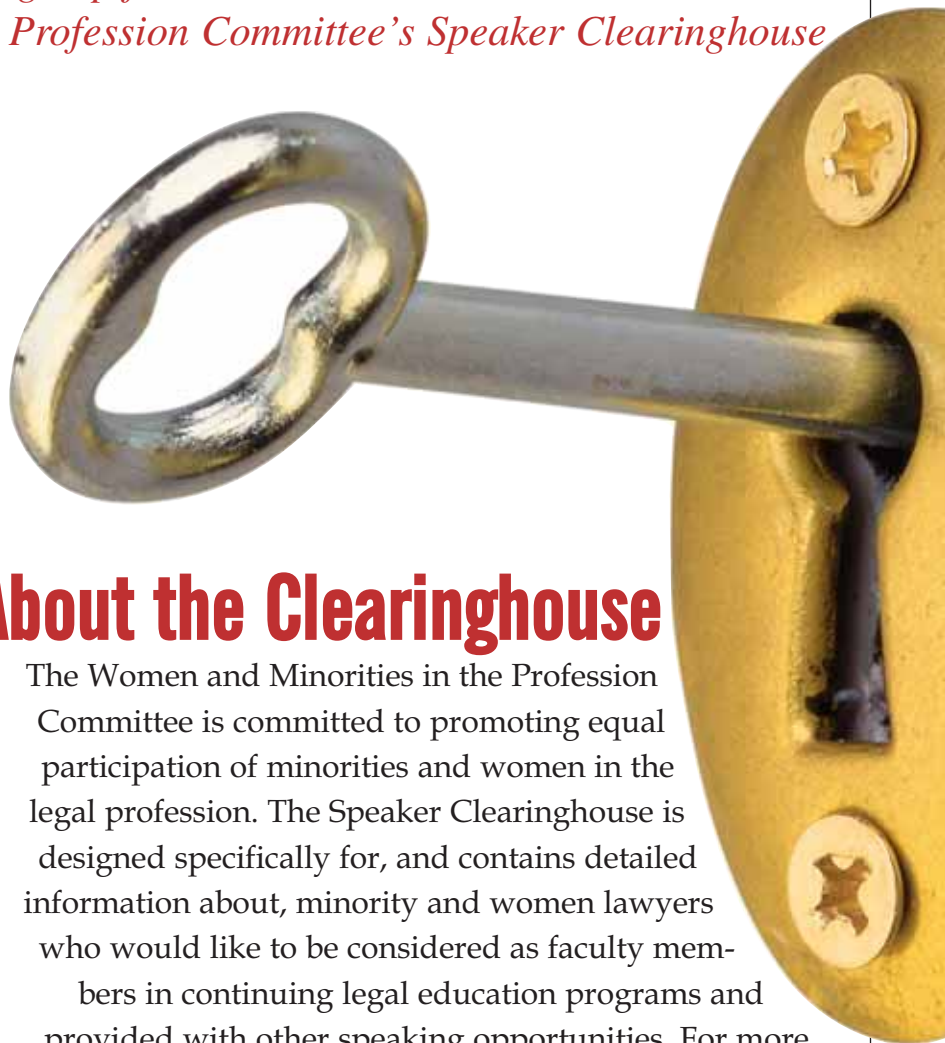
In a similar fashion, it has been easy to work under the umbrella leadership of Robert Ingram. The passion the Bar has taken with respect to the Foundations of Freedom and other projects, serve as an "annuitized" lottery ticket for the young lawyer that will pay off 50-fold and we are grateful for that and the directed focus to have many a young lawyer work on the Bar's projects this year. We are grateful to the Bar's staff and their assistance provided throughout the entire year. The assistance provided by Cliff, Sharon and our friends in the Communications Department, the Finance team, the Conference Center team, and friends in the Meetings and Sections Departments. They have worked so hard to allow the YLD to do the work it can. As a lawyer, you should feel comfortable with the work they do, help they provide, and organizational pride they are full of.

Of course, the greater YLD and I are personally thankful, and eternally indebted to our director, Deidra Sanderson. She has displayed a Porsche-like drive and enthusiasm for her work this year, that has allowed our committees to operate flawlessly, our meetings to move smoothly, and our work to shine brightly. We can't say enough for her role in the day-to-day operation of this Division, as well as the personal touch she has provided to ensure its growth and positive direction. Thanks.

(Academy award music begins playing here!) Most importantly, I have been flattered by the opportunity to serve the Bar. It was not a position to take lightly. In the near future, it won't serve any professional gain. However, I have enjoyed every minute of it and thank you for allowing me to serve. Easy! 

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About the Clearinghouse


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



Personal Jurisdiction in Georgia Over Claims Arising from Business Conducted Over the Internet

by Steven W. Hardy

A long-time client makes a frantic phone call to you. He paid \$10,000 to an online seller of furniture, but the seller never delivered the furniture. The seller is located in North Carolina and has no offices or employees in Georgia. Your client's only contact with the seller was through the seller's website. After your client complained, the seller posted some false statements about your client on the site. After some investigation, you conclude that you may be able to plead claims for breach of contract and for fraud, as well as a claim of defamation. Can you establish personal jurisdiction over the seller in Georgia?



As with all questions regarding personal jurisdiction, the answer to this question involves a two-part inquiry. First, is there a statute that authorizes the exercise of jurisdiction over the seller and, second, does the exercise of jurisdiction comport with the requirements of due process under the United States Constitution? This article will discuss the answer to each of these questions.

The Statutory Basis For Exercising Personal Jurisdiction in Georgia Over Nonresidents

The Georgia Long Arm Statute¹ is the source of statutory authority for the exercise of personal jurisdiction over nonresidents in most cases. The following provisions of the Long Arm Statute apply to tort and contract claims:

A court of this state may exercise personal jurisdiction over any nonresident or his executor or administrator, as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he were a resident of the state, if in person or through an agent, he:

- (1) Transacts any business within this state;
- (2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act; [or]
- (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state[.]²

Contract Claims

Subsection 9-10-91(1) of the Long Arm Statute provides for the exercise of personal jurisdiction over a party who “[t]ransacts any business within this state.” This is the only subsection of the statute that applies to contract claims. The Georgia courts have held that the statute applies if a contract is negotiated face-to-face in Georgia, is signed in Georgia, or is performed in substantial part in Georgia.³

Only one case in the Georgia courts has discussed the application of the Long Arm Statute to a company doing business over the Internet. In *Object Technologies, Inc. v. Marlabs, Inc.*, the Court held that a nonresident was not subject to the exercise of personal jurisdiction in a suit for breach of a contract for computer services advertised on the Internet and negotiated on the phone, through the Internet, and by mail and fax.⁴

Until recently, the holding of *Object Technologies* was consistent with the Georgia cases involving telephone and mail contacts. However, the Supreme Court opinion in *Innovative Clinical and Consulting Services, LLC v. First National Bank of Ames* significantly changed the law in this area.⁵ Before *Innovative Clinical*, the Georgia courts had generally held that “[m]ere telephone or mail contact with an out-of-state defendant, or even the defendant’s visits to this state, is insufficient to establish the purposeful activity with Georgia required by the ‘Long Arm’ statute.”⁶ The Supreme Court in *Innovative Clinical* overruled the cases that required physical presence or that “minimize[d] the import of a nonresident’s intangible contacts with the State.”⁷ The Court held that the Long Arm Statute must be given a “literal construction” and that the statute “grants Georgia courts the unlimited authority [subject to constitutional due process constraints] to exercise personal jurisdiction over any nonresident who transacts any business in this State.”⁸

The opinion in *Innovative Clinical* appears to have overruled *Object Technologies*. So long as a nonresident’s contacts with Georgia satisfy the requirements of due process, the transaction of business in Georgia by any means should support the exercise of personal jurisdiction here. Therefore, the Long Arm Statute should not be an impediment to bringing a breach of contract claim against an out-of-state defendant based upon business transacted over the Internet with a person in Georgia.

Tort Claims (Other Than Defamation)

The holding in *Innovative Clinical* also changed the application of the Long Arm Statute to claims arising in tort. Before *Innovative Clinical*, the Georgia courts had held that subsection (1) of O.C.G.A. § 9-10-91 applied only to contract claims.⁹ The Court in *Innovative Clinical* overruled these cases for the same reason that it overruled the cases requiring more than telephone or mail contact in order to exercise personal jurisdiction—the limitation is not found in the statute.¹⁰ Therefore, if a tort arises from the transaction of business in Georgia, then the courts may exercise personal jurisdiction over the defendant under subsection (1) of the Long Arm Statute.

Of course, not all torts arise from the transaction of business, so a plaintiff seeking to bring a tort claim against a nonresident defendant may have to proceed under one of the two subsections of the Long Arm Statute that expressly apply to tort claims.¹¹ In many cases, however, neither of these subsections would authorize the exercise of jurisdiction over a nonresident who committed a tort through communications over the Internet. Subsection 9-10-91(2) applies only to claims arising from tortious acts committed within the state. It would not apply, for example, to a fraud claim based upon representations made by a person located outside the state of Georgia.¹²

Subsection 9-10-91(3) applies to tortious acts committed outside the state that cause injury within the state. However, this subsection applies only if the defendant “regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state.” This language has been a substantial limitation on Georgia residents seeking to bring tort claims against nonresident defendants. In fact, the Supreme Court in *Innovative Clinical* recognized that the Court of Appeals had properly held that the trial court did not have personal jurisdiction under subsection (3) because the nonresident defendant did not regularly conduct business in Georgia or otherwise engage in conduct that satisfied the requirements of that subsection.¹³

Although the limitations in subsections (2) and (3) of O.C.G.A. § 9-10-91 restrict the circumstances under which an injured party may bring a tort claim against a nonresident, they will have no practical limiting effect so long as the claim arises from the transaction of business now that subsection (1) has been interpreted to apply to tort claims. However, unless the General Assembly amends the statute, a plaintiff must still satisfy the requirements of subsections (2) or (3) to bring tort claims against a nonresident not arising from the transaction of business within the state.

Defamation Claims

The treatment of defamation claims under the Long Arm Statute is even more restrictive than the treatment of other torts. Subsection (2) of O.C.G.A. § 9-10-91 excludes actions for defamation. Although this subsection applies only to torts committed within the state, in *Worthy v. Eller*, the Court of Appeals interpreted it to exclude defamation claims even if the nonresident’s actions satisfy the requirements of subsection (3).¹⁴ The Court of Appeals in *Worthy*

cited to that Court's opinion in *Cassells v. Bradlee Management Services*, which held that the exclusion for defamation claims contained in subsection (2) is the "pre-eminent factor" in the statute so that courts in Georgia cannot exercise personal jurisdiction under subsection (3) in defamation cases against nonresidents.¹⁵

The Court of Appeals' citation to *Cassells* is odd because that case was appealed to the Supreme Court of Georgia and, although the Supreme Court affirmed the judgment of the Court of Appeals, the Supreme Court specifically refused to adopt the lower court's reasoning.¹⁶ Instead, the Supreme Court held that the nonresident's contacts were not sufficient to satisfy subsection (3) of the statute.¹⁷

In any event, the holding of *Innovative Clinical* makes it clear that each subsection of the Long Arm Statute must be given its plain meaning, and that a court may exercise personal jurisdiction

if any part of the statute is satisfied. Thus, although subsection (2) excludes defamation claims, a plaintiff may bring those claims against a nonresident so long as the plaintiff can show that the nonresident is subject to personal jurisdiction under one of the other subsections of the statute.

Claims in Federal Court

In overruling the prior case law interpreting O.C.G.A. § 9-10-91(1), the Supreme Court of Georgia in *Innovative Clinical* reaffirmed its holding in *Gust v. Flint* that "[t]he rule that controls is our statute, which requires that an out-of-state defendant must do certain acts within the State of Georgia before he can be subjected to personal jurisdiction."¹⁸ While holding that the Long Arm Statute controls the exercise of personal jurisdiction in Georgia, the Supreme Court in *Gust* did not overrule prior case law providing that the Long Arm Statute is to be interpreted to

allow the exercise of jurisdiction to the maximum extent allowed by due process.¹⁹

Since the Supreme Court issued its opinion in *Gust*, state courts in Georgia have first determined whether jurisdiction exists under the Long Arm Statute before moving to the question of whether the exercise of jurisdiction satisfies the requirement of due process under the Constitution. In cases based upon diversity jurisdiction, federal courts should do the same.²⁰

In fact, however, since at least 1992, the federal courts in this state have routinely ignored the Long Arm Statute and gone directly to a due process analysis when addressing whether personal jurisdiction exists over nonresident defendants.²¹ Citing the pre-*Gust* case law, the federal courts have held that the Long Arm Statute could be ignored because it had been interpreted to confer jurisdiction to the maximum extent allowable by due process.²²

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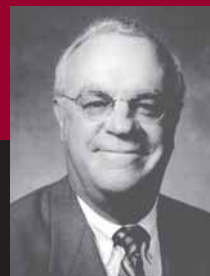
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The Internet raises difficult questions with respect to the application of the minimum contacts test because Internet websites are simultaneously accessible in every jurisdiction in the country.

The Supreme Court of Georgia in *Innovative Clinical* criticized these “erroneous Federal interpretations” of the Long Arm Statute.²³ The Court explained that the cases interpreting the statute to apply “to the maximum extent permitted by procedural due process” apply only when the statute, by its own terms, does not impose additional limits on the exercise of personal jurisdiction.²⁴ The statutory exclusion of defamation claims in subsection (2) and the requirement that a nonresident engage in a persistent course of conduct in subsection (3) are two such statutory limitations.

Due Process Requirements for the Exercise of Personal Jurisdiction

Minimum Contacts Analysis

A court exercising personal jurisdiction over a nonresident defendant must satisfy the familiar “minimum contacts” requirement first announced by the United States Supreme Court in *International Shoe v. Washington*.²⁵ Requiring the plaintiff to show minimum contacts between the defendant and the forum ensures that “the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”²⁶

The Supreme Court of Georgia has articulated three rules to determine whether the minimum contacts standard has been satisfied:

(1) The nonresident must purposefully avail himself of the privilege of doing some act or

consummating some transaction with or in the forum;

(2) The plaintiff must have a legal cause of action against the nonresident, which arises out of, or results from, the activity or activities of the defendant within the forum; and

(3) The exercise of jurisdiction must be consistent with the due process notions of ‘fair play’ and ‘substantial justice.’²⁷

Although not stated as part of the three-part test, the Supreme Court of Georgia has also recognized that the defendant must “‘reasonably anticipate being haled into court’ in Georgia.”²⁸ These rules are derived from the United States Supreme Court cases interpreting *International Shoe*. They are substantially the same as the rules followed in the Eleventh Circuit (and in the other federal circuits), although the Eleventh Circuit has articulated the test slightly differently.²⁹

The Zippo Sliding Scale Test

The Internet raises difficult questions with respect to the application of the minimum contacts test because Internet websites are simultaneously accessible in every jurisdiction in the country. The leading case addressing the constitutional limits to the exercise of personal jurisdiction based upon contacts over the Internet is *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*³⁰ *Zippo* was a trademark infringement case brought in Pennsylvania by the maker of the well-known cigarette lighter against a California-based Internet news service that used the domain name “zippo.com” and several sim-

ilar domain names. Subscribers to the defendant’s news service would fill out an online application and could pay by credit card over the Internet, after which the subscriber was assigned a password enabling him or her to view and download newsgroup messages. The defendant had approximately 3,000 subscribers in Pennsylvania, as well as agreements with seven internet access providers in Pennsylvania to allow their subscribers to access the defendant’s news service.³¹

The court in *Zippo* limited its discussion to the exercise of specific jurisdiction and focused on whether a company’s conduct of business over the Internet amounts to reaching beyond the boundaries of its state to conduct business with foreign residents. The court held that the defendant purposefully availed itself of the privilege of conducting business in Pennsylvania by conducting electronic commerce with Pennsylvania residents.³² The court articulated a sliding scale approach to determine whether the exercise of jurisdiction was proper:

[T]he likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well-developed personal jurisdiction principles. At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to

those who are interested in it is not grounds for the exercise of personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.³³

While the sliding scale test articulated in *Zippo* focuses on the level of interactivity and the commercial nature of the exchange of information on the website, the holding of the case turned upon evidence of transactions with residents of Pennsylvania. Consistent with this holding, cases citing *Zippo* have made clear that the level of interactivity of a website is simply a means to determine whether the defendant has purposefully availed himself of doing business within the forum state. Thus, in *Toys "R" Us, Inc. v. Step Two, S.A.*, the court considered whether a fully-interactive website created by a Spanish corporation to sell products to customers in Spain created a basis for exercising jurisdiction over the corporation in New Jersey.³⁴ The court held that the mere fact that a website allows for

the transaction of business over the Internet is not a sufficient basis for exercising personal jurisdiction; rather, the plaintiff must introduce evidence that "the defendant 'purposefully availed' itself of conducting activity in the forum state, by directly targeting its web site to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts."³⁵

The *Zippo* sliding scale approach to analyzing Internet contacts has been followed by courts of appeal in most of the federal circuits as well as by district courts in the Eleventh Circuit.³⁶ Moreover, its application has not been limited to cases involving commercial transactions. For example, in *Zidon v. Pickrell*, the court applied the *Zippo* test to a claim for defamation based upon materials posted on a website created by the plaintiff's former girlfriend to criticize the plaintiff.³⁷

Exercising General Jurisdiction Based Upon Internet Contacts

The United States Supreme Court has recognized the concept of "general jurisdiction," which is the exercise of jurisdiction over claims unrelated to a non-resident defendant's contacts with the forum state based upon the fact that the defendant has a substantial level of con-

tact with the state.³⁸ Several courts have used the *Zippo* approach to analyze whether a nonresident's contacts with a forum were so "substantial" or so "continuous and systematic" as to authorize the exercise of general jurisdiction with respect to claims unrelated to the nonresident defendant's contacts with the forum state.³⁹

However, while the exercise of general jurisdiction based upon Internet contacts may in some instances satisfy federal due process standards, there is apparently no statutory authority for exercising general jurisdiction in Georgia over nonresidents based upon their level of activity in the state. In *Pratt & Whitney Canada, Inc. v. Sanders*, the Georgia Court of Appeals held that the exercise of personal jurisdiction over foreign corporations not registered to do business in Georgia is limited by the Long Arm Statute to claims arising from the corporation's activities within the state.⁴⁰ Thus, Internet contacts alone apparently are insufficient to support the exercise of general jurisdiction in Georgia over a nonresident.

Conclusion

Under the holding in *Innovative Clinical*, a nonresident who engages in business transactions over the Internet with a person in Georgia is

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subject to the exercise of personal jurisdiction for both contract and tort claims arising from those transactions. Nonresident tortfeasors who have not transacted business in Georgia likely will not be subject to jurisdiction here unless they have engaged in a persistent course of conduct in Georgia.

Most courts follow the *Zippo* sliding scale approach to determine if it is constitutionally permissible to exercise personal jurisdiction over nonresident defendants based upon commercial activity conducted over the Internet. The *Zippo* test focuses on the level of interactivity of a nonresident's website and the level of commercial activity conducted on the website. However, even a highly interactive commercial website will not meet the constitutional requirements for exercising personal jurisdiction in a forum unless there is evidence that the defendant directed its activities at the forum. In addition, courts have applied the *Zippo* test to non-commercial activities. The focus of the inquiry must always be to determine whether the defendant purposefully availed itself of the privilege of conducting some activity within the forum. 



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Endnotes

1. O.C.G.A. § 9-10-90, *et seq.* (2005).
2. *Id.* § 9-10-91(1)-(3).
3. *Lightsey v. Nalley Equip. Leasing*, 209 Ga. App. 73, 74, 432 S.E.2d 673, 675 (1993) (execution in Georgia constitutes transacting business); *Genesis Research Inst. v. Roxbury Press*, 247 Ga. App. 744, 745, 542 S.E.2d 637, 639 (2000) (negotiations in Georgia constitute transacting business).
4. 246 Ga. App. 202, 540 S.E.2d 216 (2000).
5. 279 Ga. 672, 620 S.E.2d 352 (2005).
6. *Wise v. State Bd. for Examination, Qualification & Registration of Architects*, 247 Ga. 206, 209, 274 S.E.2d 544, 547 (1981).
7. *Innovative Clinical*, 279 Ga. at 675, 620 S.E.2d at 355.
8. *Id.*
9. *See, e.g., Whitaker v. Krestmark of Ala., Inc.*, 157 Ga. App. 536, 537-38, 278 S.E.2d 116, 118 (1981).
10. *See Innovative Clinical*, 279 Ga. at 675, 620 S.E.2d at 355.
11. *See O.C.G.A. § 9-10-91(2)-(3)* (2005).
12. *See White v. Roberts*, 216 Ga. App. 273, 454 S.E.2d 584 (1995).
13. *See Innovative Clinical*, 279 Ga. at 676, 620 S.E.2d at 355.
14. 265 Ga. App. 487, 488, 594 S.E.2d 699, 700 (2004).
15. 161 Ga. App. 325, 327, 291 S.E.2d 48, 50 (1982).
16. *See Bradlee Mgmt. Svcs., Inc. v. Cassells*, 249 Ga. 614, 617, 292 S.E.2d 717, 720 (1982).
17. *Id.* at 618, 292 S.E.2d at 720.
18. *Innovative Clinical*, 279 Ga. at 673, 620 S.E.2d at 353 (*quoting Gust v. Flint*, 257 Ga. 129, 130, 356 S.E.2d 513, 514 (1987)).
19. *See, e.g., First United Bank of Miss. v. First Nat'l. Bank of Atlanta*, 255 Ga. 505, 506, 340 S.E.2d 597, 599 (1986).
20. *Nippon Credit Bank, Ltd. v. Matthews*, 291 F.3d 738, 746 (11th Cir. 2002).
21. *See, e.g., Vermeulen v. Renault, U.S.A., Inc.*, 965 F.2d 1014, 1022 n. 14 (11th Cir. 1992), *modified and superseded on other grounds by* 985 F.2d 1534 (11th Cir.), *cert. denied*, 508 U.S. 907 (1993).
22. *Id.*; *see also Francosteel Corp. v. M/V Charm*, 19 F.3d 624 (11th Cir. 1994).
23. *Innovative Clinical*, 279 Ga. at 674 n. 2, 620 S.E.2d at 354 n.2.
24. *Id.* at 675, 620 S.E.2d at 355.
25. 326 U.S. 310, 316 (1945).
26. *Id.*
27. *Chung-A-On v. Drury*, 276 Ga. 558, 558, 580 S.E.2d 229, 230 (2003).
28. *Smith v. Smith*, 254 Ga. 450, 454, 330 S.E.2d 706, 710 (1985) (*quoting World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).
29. *See Francosteel Corp. v. M/V Charm*, 19 F.3d 624, 627 (11th Cir. 1994).
30. 952 F.Supp. 1119 (W.D. Pa. 1997).
31. *Id.* at 1121.
32. *Id.* at 1125-26.
33. *Id.* at 1124 (citations omitted).
34. 318 F.3d 446 (3d Cir. 2003).
35. *Id.* at 454.
36. *See, e.g., Lakin v. Prudential Securities, Inc.*, 348 F.3d 704, 710-11 (8th Cir. 2003); *Barton Southern Co. v. Manhole Barrier Sys., Inc.*, 318 F.Supp.2d 1174, 1177 (N.D. Ga. 2004).
37. 344 F.Supp.2d 624 (D.N.D. 2004).
38. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 n.9 (1984).
39. *See Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1078 (9th Cir. 2003) (holding that catalogue seller L.L. Bean was subject to general jurisdiction in California); *Lakin v. Prudential Securities, Inc.*, 348 F.3d 704 (8th Cir. 2003) (ordering jurisdictional discovery to determine if exercise of general jurisdiction was proper based upon the number of forum residents who used interactive features of website).
40. 218 Ga. App. 1, 2-3, 460 S.E.2d 94, 95-96 (1995). Note that federal courts in Georgia routinely apply the concept of general jurisdiction in cases involving non-residents. *See, e.g. Exeter Shipping Ltd. v. Kilakos*, 310 F.Supp.2d 1301, 1312 (N.D. Ga. 2004).

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Treasure of Walker County

by Thomas E. Jordan

15th Annual Fiction Writing Competition

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The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year's entries reflected a wide range of topics and literary styles. In accordance with the competition's rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author's identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Jordan and all of the other entrants for their participation and excellent writing.

Petticoat Cave was officially on the "closed cave list." A closed cave meant that the landowner on whose land the entrance to a cave laid no longer allowed cavers to go onto his property to get access to the cave's entrance. Unofficially the landowner of the entrance to Petticoat Cave, Chad Cooper, allowed a couple of cavers whom he personally knew to lead small groups of experienced cavers into Petticoat Cave two or three times a year. The customary practice was for the trip leader to call ahead and get permission for a specific day. These were private trips and were never published in the trip calendar for any caving club.

On this day in late May, Samuel Taylor gave his standard safety briefing to five other cavers before they started the walk up the wooded slope to the cave's entrance. He never liked to be addressed as "Sam," and he really disliked "Sammy." Everyone who knew him always called him "Samuel."

In addition to Samuel, the trip included Dan Owen, Jimmy Riker, Frank and Cathy Richards, Mark Anderson and Suzy Packer. Frank and Cathy were a married couple. They met in Georgia Cavers and it was the second marriage for both of them. Mark Anderson and Suzy Packer had also met in Georgia Cavers and were dating.

Even though Cooper generally allowed up to three caving trips a year, it had actually been more than a year since the last trip into this cave. There is no shortage of caves in north Georgia. The official "closed cave" list barely put a dent in the number of caves available to cavers. Accordingly, there was really no need to pester Cooper about going into Petticoat Cave.

The entrance to this particular cave was fairly easy to maneuver through and it led into a wide chamber. About a hundred yards into the cave, Samuel stopped in his tracks. This didn't look like the same cave that he remembered. Two of the other people on this trip also knew this cave and they had the same reaction as Samuel. However, they had been in enough caves that they had seen this phenomenon before. Part of the cave had collapsed. The collapse was probably due to an earthquake. The cave was still accessible. It just had a big pile of boulders blocking part of the cave. They could easily go around the blockage, but none of them were going to pass up the chance to see if something new lay on the other side. Sure enough, on the other side of this big pile of big rocks, there was a hole in the side of the cave wall.

There aren't very many things that are higher on a caver's list of things to do than surveying a new cave. After about two hours of stooping, bending, crawling, and climbing, the six of them came to what seemed to be the end. It was a large cavernous room that sloped gently up to the ceiling. They each picked their own particular spot for a well-deserved rest. A couple of the cavers explored the limits of this final area, but they mostly rested and discussed the details of this new cave. Frank was sitting on a rock and absent-mindedly shuffling his feet across the floor. As Frank was getting up to prepare for the return trip, he looked down at his feet to make sure that he hadn't dropped anything. This was one of those moments when the brain cannot comprehend the image that the eye is receiving. A wooden floor lay underneath the thin layer of mud that Frank had absent-mindedly scrapped away with his boots.

"What is this?" Frank exclaimed rhetorically with an incredulous and disbelieving tone as he called the other cavers' attention to what he had discovered.

Over the following thirty minutes or so, they had scrapped away enough mud and rock to reveal about a four-foot by eight-foot boarded area. Samuel and Dan always carried a small pickax with them and they began to pull away the boards. Pretty soon they were able to use their hands to open up the floor. Underneath this wooden floor, in what was a natural depression in the floor of the cave, their collective headlamps revealed four wooden crates about the size of footlockers. The crates were too heavy to lift, either because of the weight of the contents or because they had become stuck in the mud. Again using their pickaxes, Samuel and Dan broke away the top of the nearest one. Samuel got down onto his stomach and reached into the crate to discover its contents.

There is a moment in most everyone's life when they taste brass. It is usually triggered by fear, but it can sometimes result from some other extreme emotional reaction. Samuel tasted the brass the instant when he realized what he had in his hand. Even though it seemed much longer, it took about ten seconds for him to know. He knew because of his deep southern roots. He knew because he was a Civil War buff. In the light of his headlamp was a cache of Confederate gold.

"I'm calling Butch Sarvis first thing tomorrow morning," Samuel said authoritatively and decisively. "Everything stays here until after I talk with Butch. This cannot be mentioned to anyone else, even Cooper."

None of the other five cavers were going to argue with Samuel. He commanded too much respect in the caving community and they had enough self-discipline to not argue with the trip leader deep inside a cave.

Butch Sarvis was a lawyer in LaFayette with a small family style law practice. He used to be in a partnership with his father until his father retired. His name was actually Horace. It was a family name, which his mother bestowed upon him, but his father was wise enough to give him the nickname of "Butch." Butch was also a member of the Georgia Cavers club and he often fielded routine and sundry legal questions from his fellow cavers. He was usually in his office before his secretary and he would spend that time at his desk sorting through e-mail and phone messages. His secretary, Kat, would come in a bit later and make coffee. Then Butch would walk down the hall to the coffee pot beside Kat's desk and tell the same joke every day.

"Last night I dreamt I ate a five pound marshmallow. When I woke up, my pillow was gone."

In the first few weeks that Kat worked for Butch, she would regard the joke as some form of Chinese water torture. She almost quit because of it, but she eventually learned to block the joke out of her sensory perception. Now Kat doesn't even hear it anymore.

Butch was on his way back to his desk when Kat answered the first phone call of the day.

"Butch, Samuel Taylor is calling," Kat said. Butch took the call at his desk.

"Butch, I need to meet with you this morning." From the deliberate and steady tone of Samuel's voice, Butch knew this was not a social call. Butch also knew that Samuel would not impose on his time for anything that was frivolous.

"Come on in," Butch replied, "I'm here all day."

"How do you know it's Confederate gold?" Butch asked after Samuel had laid out the story.

"Because of the 'CSA' stamp on the ingots it can't be anything else," Samuel replied.

"Who all knows about this?" Butch continued. Samuel named everyone on the trip.

"Chad Cooper doesn't even know," Samuel continued.

That reminded Butch of something. "I thought Petticoat Cave was closed?"

There was a treasure trove of Confederate gold in Petticoat Cave. However, because the gold was in the form of historically stamped ingots it was of unknown, and perhaps limited, commercial value. Both known entrances to the cave were on separate private properties and were being guarded by men with shotguns who didn't know that the gold was there.

"Officially it is," Samuel explained, "but Cooper will let me take in a private trip."

Butch thought silently for a bit and then stated, "It's going to be hard to keep it under wraps for very long." Samuel's demeanor and expression didn't change.

"So what do we do next?" Samuel asked.

"See if we can get back into the cave," Butch replied.

"Try to get Dan Owen and Jimmy Riker to go with us as soon as possible."

"Cooper might suspect something, he might want to know why we want to go back in again so soon," Samuel said.

Butch answered, "Tell him we found a new vein and it needs to be surveyed. That's the truth."

Samuel opened his cell phone and called Cooper. Just as Samuel expected, Cooper wanted to know why they wanted another trip into Petticoat cave so soon. Samuel managed to satisfy Cooper's questioning and the arrangement was made for the following morning. Samuel then called Dan and Jimmy. Neither one of them needed to have their arms twisted.

Butch picked up his phone and buzzed Kat. "Clear out my calendar for tomorrow."

Samuel, Butch, Dan, and Jimmy were at the cave's entrance at dawn. They retraced the path back to the crates and opened all four. Being careful not to damage the contents, they photographed and inventoried as much as the four of them could. Two of the crates contained gold ingots, bundles of Confederate cash, and what appeared to be bundled documents. The other two crates had bundles of Confederate cash and documents. Each crate contained two standard Confederate issue pistols.

Of course everyone in that cave had two questions. How did this cache get here, and why was it put here? It took about twenty minutes of exploration to answer the first question. By methodically searching every foot of the walls and ceiling, they had the answer. On the slope leading up to the ceiling was another entrance. It had been covered from the outside by logs. After about thirty minutes of hacking, cutting, and pulling, they were able to see a little bit of daylight. Standing as close to the covered entrance as he could, Samuel used his GPS device to record the spot.

They reconvened that evening at Butch's home and tried to sort through the situation. Actually, the story

that they collectively assembled was pretty close to what really happened. In the summer of 1863, General Longstreet's corps was temporarily moved from The Army of Northern Virginia and assigned to General Braxton Bragg's Army of Tennessee. At the direction of the Confederate Government, they brought this gold and money with them. It was transferred to Bragg's headquarters before Longstreet's corps returned to Virginia following the Battle of Chickamauga in September 1863.

The following spring, as General Sherman was moving his Union army into Georgia and the Confederates were pulling south, the headquarters staff hid the gold in this cave and then covered the entrance with logs and dirt. There were only a dozen men who knew the location of this cache, and they were all killed in one fell swoop on July 20, 1864, during the Battle of Peachtree Creek. In the intervening 140 years, the covered entrance to the cave had become completely overgrown.

With the help of some modern technology (Samuel's GPS reading and the Internet), it was determined that the cache was actually located underneath land owned by an adjacent landowner named Ray Skelton.

"So what happens next?" Dan wanted to know, "What do we do with it?"

"This is like some law school exam problem," Butch replied. "Let me do a little legal legwork and we'll have a conference call tomorrow."

Butch had actually had some prior experience with the legal status of a cave. About two weeks into first year property class in law school, there was some case that had a legal issue relating to caves and mines. While he was able to make a factual distinction between the two, Butch was unable to adequately articulate a legal distinction between a cave and a mine. However, any difference between mines and caves was irrelevant to the present situation.

They had found a "treasure trove." There was no Confederate Government to reclaim it. It had been accessed through Cooper's property but it was actually found on, or more accurately underneath, Skelton's property. More importantly, neither Cooper nor Skelton was the original owner and neither knew it was there. Generally, a treasure trove belongs to the finder.

Butch reviewed all of this with Samuel, Dan and Jimmy during their conference call on Wednesday afternoon.

"So if it's ours, can't we just go get it?" Jimmy asked for all of them.

Butch already knew this question was coming and he had prepared a pragmatic answer. "There is a market for Civil War artifacts, and any dealer is going to want to know where you got it. And you can't just walk into a bank, hand the teller gold ingots with 'CSA' stamped on them, and expect the teller to hand you a stack of money. Furthermore, you know this stuff really belongs in a museum and should be turned over to a historical society. I'm going to contact the Southeastern Historical Society. We'll get someone to go with us back into the cave and we'll show it to them. And then we'll make the proper arrangements. We should be able to get them to make a good donation to the Georgia Cavers."

Samuel backed up Butch on this one. Dan and Jimmy both felt their stomachs drop. For a brief fleeting moment, they had been counting their money. But they knew that it was useless to argue.

Butch made some phone calls and got one of the directors of the Southeastern Historical Society to meet him on Friday. Butch only told Melvin Long that they had found a few Civil War artifacts. The Southeastern Historical Society gets calls like this all the time, and it's usually just someone who found some piece of junk metal. So Butch had to pester Mr. Long until he agreed to make the trip to crawl around in a cave. Butch called Samuel and Samuel called Cooper. This would be the third trip into Petticoat Cave within a week, but Samuel didn't think that he would have any problem getting permission from Cooper.

"I've closed that cave," Cooper said curtly. "Six people showed up yesterday with a bunch of gear and they wanted to go back in. Something is going on and I don't like it. I've closed that cave and nobody is going back in." To make sure that no one misunderstood, Cooper

had made a barbed wire screen to block the cave's entrance and posted his nephew, complete with a shotgun, to stand guard.

Word had already leaked out. There was buried treasure in Petticoat Cave. But Samuel and Butch were quickly able to develop a backup plan. They knew of a second entrance. They would have to go through Skelton's land. It would take some work to clear the other entrance, but it would have to be done to avoid a modern day gold rush. They arrived at the Skelton farmhouse about an hour later. Samuel was going to explain to Mr. Skelton that they had been exploring Petticoat Cave through Cooper's property and had found an unexplored vein with another entrance through the Skelton property. They would then ask permission to open and explore the second entrance.

Samuel never got the chance. As Butch's SUV approached the Skelton farmhouse, Ray Skelton came out the front door and down the front steps with his shotgun in hand and two dogs by his side. Within one minute, Skelton instructed Butch that he was going to turn his SUV around and get off the property. No explanation of why they were on the property was necessary. It didn't matter. No one was allowed on the property. Butch had never told Melvin Long of the purpose of the trip, beyond a vague description of "some artifacts." Butch still held off. Long returned home empty-handed and with no idea of what actually lay underneath the ground.

Here was the situation. There was a treasure trove of Confederate gold in Petticoat Cave. However, because the gold was in the form of historically stamped ingots it was of unknown, and perhaps limited, commercial value. Both known entrances to the cave were on separate private properties and were being guarded by men with shotguns who didn't know that the gold was there. The legal finders of the gold couldn't get to it,

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and news was starting to spread that there was something valuable hidden somewhere in Petticoat Cave.

Samuel and Butch were of the same mind set. The cache needed to be secured and removed and they had to find some way to get the legal authority to do it. They quickly drove to the same conclusion. Claim the cache in the name of Georgia Cavers as found treasure trove.

They immediately realized that it wasn't going to be that easy. Even though all of the original six cavers were members of Georgia Cavers, it was actually a private trip. It was Friday afternoon and they were going to have to have a workable plan by Monday morning. Samuel was on the Georgia Cavers executive committee and he called all of the others for an "emergency" committee meeting at his home for Saturday afternoon. Butch also attended the meeting along with Dan Owen, who was also a member of the executive committee. Samuel explained the entire situation and then Butch explained what needed to be done. The executive committee officially sanctioned both of the trips into Petticoat Cave as official Georgia Cavers functions and then authorized Butch to pursue all necessary legal action to claim the cache as property of the Georgia Cavers organization.

Butch was at the courthouse when it opened on Monday morning. In an action filed in Walker County Superior Court, Butch, as the attorney for the plaintiff Georgia Cavers, petitioned the court to order the defendant Ray Skelton to deliver "certain abandoned personal property" that had been "legally and rightfully found by Georgia Cavers" at an "unknown depth" at the "location of latitude 34.65773 and longitude 85.41232." By calling in a few favors from the courthouse personnel, Butch was able to get Skelton served that afternoon and get a hearing scheduled for the following Monday.

In the intervening week, Cooper had to contend with three other groups who showed up unannounced and wanted into Petticoat Cave. One fellow offered Cooper \$2500 to let him and his group have exclusive use of the cave for one day while Cooper "looked the other way." By the end of the week, Cooper had an armed guard near the entrance and had retained a lawyer. He still didn't know what he needed a lawyer for, but there was obviously something of considerable value in Petticoat Cave.

Butch and Samuel were in court the next Monday. It had now been two weeks since the cache had been discovered. Butch presented a carefully constructed case. Samuel testified how he had led a group of Georgia Cavers into Petticoat Cave and how they had found the cache. He explained how they returned and he presented the photographs and inventory. Samuel then verified the location from the notes he had taken from his GPS device. Butch gave their theory on how the cache got there and then gave his legal argument that the cache was a "treasure trove" and belonged to the legal finder.

This was the first time that Skelton knew any of this and he could hardly contain himself. His lawyer astutely raised several defenses and wanted a continuance for

another hearing. Judge Marshall Fay, age 55 but with a full head of snow-white hair, knew what was coming. He was going to have to reset this for a final trial date and, whatever the outcome, there would be an appeal.

In the meantime, he couldn't very well let a cache of gold and Confederate artifacts stay in the cave. Every treasure hunter within 500 miles would be in Walker County the next day. Every treasure hunter outside of 500 miles would arrive on Wednesday.

Judge Fay explained his position and asked the lawyers for suggestions. Skelton's attorney, of course, argued that the property should remain in Skelton's possession until a final order. Butch was prepared for the possibility of Judge Fay's position and recommended that the cache be removed, under proper supervision, and placed under the control of the Walker County Superior Court until a final order. This was the direction that Judge Fay was going anyway. The order was written and signed by Judge Fay. The cache would be inventoried and removed from the cave by the Sheriff's department and be kept in the Sheriff's custody. Both parties and their attorneys would be present. Also, Melvin Long from the Southeastern Historical Society would be permitted to observe the inventory and removal. The order was to be executed *instantly*. Butch called Long from the courthouse and explained what, to this date, Long had never been told. Long would be there that afternoon. The Sheriff also made this project a top priority and removal of the cache would begin at 4 p.m.

Samuel was still the only person to know the location of the second entrance on the Skelton land, and he only knew the GPS coordinates. Starting from the Skelton farmhouse, it took about an hour to find it. They had to walk in about 100 yards from their vehicles, and after some prodding around, they located the covered entrance. Skelton had never known it was there. Using brush-clearing tools, including a couple of chainsaws, the county workers cleared away the entrance. From there it was actually an easy and short walk down the slope inside the cave to where the cache had been buried. Everyone was there including Butch and Samuel for Georgia Cavers, Skelton and his lawyer, Melvin Long from the Southeastern Historical Society, and the Walker County Sheriff. Even Judge Fay thought that he should personally observe the execution of his order. Then, very methodically, each crate was inventoried and the contents were carried to a Sheriff's department van.

Judge Fay set a final trial date for November 1st. In the intervening months, Chad Cooper hired a lawyer and intervened claiming that the cache had actually been found underneath his land. Also, Frank and Cathy Richards as a couple, and Mark Anderson and Suzy Packer individually, all hired their own lawyers and filed their own claims alleging they had separate claims to a share of the cache. Not one to let this amount of money out of his sight, the Walker County attorney also intervened claiming that the cache was county property.

Butch had already taken a lot of time from his own practice to handle this project, and now he was dealing with a total of six opposing lawyers. Butch adjusted by expanding his workday to twelve hours. He successfully got all of the subsequent claims dismissed so that he was back down to just Ray Skelton by the trial date. The trial lasted all day before a packed courtroom. Every news organization in Georgia was covering this story, along with several of the national news services. Butch and Samuel were both well prepared.

"So, Mr. Taylor, what do you plan to do with all this money? Buy everyone in your club a Cadillac?" Skelton's attorney asked Samuel.

Samuel effectively deflected this by answering, "No sir. We plan to offer this to the Southeastern Historical Society or other museums who can put it to good use."

At the end of the day, Judge Fay ruled in favor of the plaintiff, Georgia Cavers, on all issues. Georgia Cavers, as an organization, had legitimately found an abandoned treasure trove. They had established legal ownership of the cache over all other parties.

The ruling was, of course, appealed. When all appeals had been exhausted, Judge Fay's ruling was upheld. The cache, now belonging to Georgia Cavers, was still being held in a cell in the county jail. By now, Georgia Cavers had been contacted by several museums and other historical societies in anticipation of this outcome. Through a series of transactions, the cache was divided. Most of it went to the Southeastern Historical Society. Smaller portions were distributed to other museums and historical societies. Georgia Cavers didn't open up a bidding war, but they did accept a reasonable payment in exchange for the items.

About six months after all of the cache had been distributed Samuel paid an unexpected, but always welcome, visit to Butch's office. "Thanks for your help on this Butch. I know that it put a lot of stress on your life. But, it's an extraordinary generous addition to the Georgia Caver's treasury and it has put Georgia Cavers in a position where we are financially secure for a long time to come. We'll be able to use this money to preserve and protect natural caves in Georgia."

Butch nodded. It had put a lot of stress on Butch's life. While he was glad for the outcome, Butch didn't want to have to go through anything like that again.

"Here," Samuel said, "I brought you a paperweight for your desk."

Samuel reached into his pocket and, on the middle of Butch's desk, placed an ingot of Confederate gold. 



Thomas E. Jordan is a sole practitioner in Cobb County. His practice is focused on elder law including wills, estates, adult guardianships, probate, and estate administration. He is a 1991 graduate of Mercer Law School.



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Justice Clarence Thomas Praises Foundations of Freedom Effort

by Linton Johnson

Members of the State Bar of Georgia Executive Committee and Justices of the Supreme Court of Georgia, during their Annual Retreat held April 27-30 in Washington, D.C., had a rare opportunity to meet with U.S. Supreme Court Justice Clarence Thomas, who is the high court's new representative for the 11th Circuit, which includes Georgia, Alabama and Florida.

As a native of Savannah, Justice Thomas told the Georgia delegation he made a special request for this assignment when Justice Anthony Kennedy was appointed to replace retiring Justice Sandra Day O'Connor as liaison for the 9th Circuit, opening up the 11th Circuit position.

State Bar President Robert Ingram said the group was honored to have been able to schedule a meeting with Justice Thomas.

"When the session extended to more than an hour and a half, we knew we were indeed enjoying a rare treat," Ingram said. "Justice Thomas was extremely engaging as he talked with us about his service on the Supreme Court these past 15 years."

Justice Thomas proudly noted that he had just hired his "first Bulldog law clerk," a graduate of the University of Georgia's School of Law. He candidly related that he does not believe that all Supreme Court



Photos by Michelle Garner

Members of the State Bar's Executive Committee and Justices of the the Supreme Court of Georgia pose on the steps of the U.S. Supreme Court during a recent retreat to Washington, D.C.

law clerks must come from Ivy League law schools. He indicated his support for America's public universities and noted that a fresh perspective from other parts of the country is good for the justice system.

"He had high praise for UGA Law School Dean Rebecca White," Ingram reported. "He also said he's a big college football fan and expressed an interest in attending some games in Athens."

On current news events, Justice Thomas said he is very concerned about the prevailing negativism



Sen. Saxby Chambliss speaks during the Executive Committee, Supreme Court of Georgia retreat to Washington, D.C.

toward the judiciary. He expressed concern about the growing number of public attacks on judges, violent and otherwise, and the low compensation scale at a national and local level for judges when compared to successful lawyers in private practice.

"He recognized that when people criticize judges because they disagree with a single decision, it can weaken the justice system's ability to serve its function as a check and balance on the other branches of government as our nation's founders intended," Ingram said. "He strongly believes judges should not be making decisions based on popularity, but rather on the rule of law."

Citing the need to increase public education on the system of checks and balances among the branches of government, as established by the Founding Fathers, Justice Thomas was pleased to hear about the State Bar of Georgia's Foundations of Freedom Commission initiative and expressed support for the concept.

"I was delighted to hear that Justice Thomas shared the same concerns we are addressing here in Georgia," Ingram said. "He told us



Members of the State Bar's Executive Committee and Justices of the Supreme Court of Georgia pose with U.S. Supreme Court Justice Clarence Thomas.


that Justice O'Connor is establishing a national commission with similar objectives, and we certainly hope our Foundations of Freedom Commission will become a part of that effort."

Ingram said that in closing Justice Thomas told the group he intends to expand his schedule of meeting with local lawyers and judges who are practicing and trying cases on the front lines.

"Also, fellow Marietta lawyer Fred Bentley Jr., who will be chairman of the Cobb County Chamber of Commerce in 2007, has invited Justice Thomas to participate in a joint meeting of the Chamber and the Cobb Bar Association next spring," Ingram said. "If he is able to attend, we would hope to arrange a State Bar meeting during which Justice Thomas could visit the Bar Center, which Justice Kennedy helped dedicate last year, as well as the Legal History Museum and our Mock Trial Courtroom, which are now being used to support our Foundations of Freedom Commission's goal of educating students about the important role of judges and lawyers in our third branch of government."

In addition to the session with Justice Thomas, the Executive Committee members and State Supreme Court Justices were able to meet with several members of Georgia's Congressional delegation and their staff members.

U.S. Sen. Saxby Chambliss and U.S. Rep. John Barrow, both lawyers, made time to meet with the group, as did Heath Garrett, chief of staff for Sen. Johnny Isakson, Jay Apperson, chief legal counsel to Sen. Chambliss, and Chip Lake, chief of staff for Rep. Lynn Westmoreland. Ingram noted the session with the members of Congress took place during an important debate in the House of Representatives and not all members were able to attend.

"I want to express my thanks to the members and aides who were in attendance. The objective of the retreat was to improve communications and understanding between members of the legislative and judicial branches of government," Ingram said. "It was a most successful visit to our nation's capital." 

Linton Johnson is a media consultant with the State Bar of Georgia.

A History of the Young Lawyers Division

by Damon E. Elmore

Some 22 years ago, in the pages of this very body of work, Bill Barwick worked to recapture the history of what was, then, the Young Lawyers Section. (*Georgia State Bar Journal*—Vol. 20, No. 3). We learned in a style and fashion that only he could pen, the true genesis of the section, having been birthed shortly after World War II—May 31, 1947, to be exact. It was the second time that our history had been captured and recorded. In August 1966, Tom Watson Brown and his Committee on History and Bylaws gave a complete record of the Georgia Young Lawyers from 1947 to 1966. With its 60th Anniversary year approaching soon and, as there has been a gap in between that update (one in which most of our newest lawyers were born in), we thought it would be fitting to review, remind, refresh and reflect on the work of this Division since 1984.

The YLS was created for the purpose of giving young lawyers an “opportunity to have an impact on the profession and provide a training ground for future leaders of the Bar.” Since then, its mission and purpose have essentially remained the same:

- To foster among the members of the Bar of this state the principles of duty and service to the public;
- Improve the administration of justice;
- Advance the science of law;
- Further the aims, purposes and ideals of the State Bar of Georgia;
- Foster discussion and interchange of ideas relating to the duties, responsibilities and problems of the younger members of the State Bar of Georgia;
- To aid and promote the advancement of the younger members of the State Bar of Georgia in the activities of the bar;
- To encourage the interest and participation of the younger members of the State Bar of Georgia in the activities of the bar; and,
- Provide a full and complete program of activities and projects in those areas of the bar in which the younger member is particularly suited.

Here, we’ll remind you of our structure, stripping it down amongst our leadership to our committees and to our membership base. We’ll highlight some of the Division’s milestones and projects of the YLD that have made it the “service arm of the bar.” Finally, we’ll give you a sneak peek into what the next 60 years may bring.

Structure and Leadership

Little has changed by way of the make-up of the Division. Membership is automatic to those lawyers who have not reached their 36th birthday. In addition, attorneys, regardless of age, who have been admitted to their first bar less than five years, are also considered members of the YLD. Fortunately for the aforementioned Barwick and countless others, an *Honorary Membership* exists. The YLD is governed by an executive council, board of directors and officers. The five officers are elected statewide to serve the YLD, and include its president, president-elect, treasurer, secretary and immediate past president. Our editor of *The Young Lawyers Division Newsletter* rounds out the officer's ranks, but in a non-elected, non-voting capacity. In June 2006, the 60th president of the YLD, Jon Pope, will be sworn in.

Past presidents of the YLD have gone on to become presidents of the State Bar, members and partners at large and small firms alike. They are mothers, captains of industry and in the field of academia. They are business people, non-profit champions and fathers. They have been judges at all levels, including the U.S. Court of Appeals and Attorney Generals of the United States—some serving as both. Of equal and, perhaps, greater importance, the YLD's role in diversity hasn't stopped with the varying professional backgrounds of its leaders. Viewing it from the proverbial "half-full" perspective, it has been a Bar leader where over 25 years ago, women were running for its top spot and then run-

ning the show in 1988. Likewise, as many of its committees and study groups have been created to foster participation in the Bar and bring an emphasis to the role of minorities and women as attorneys (take for example the Legal Status of Women Attorneys and Minorities in the Profession Committees in the early '80s), its leaders have also been Jewish and, in 2002 the, State Bar saw its first African-American officer.



Recent past presidents of the YLD: Andrew W. Jones, 2003-04; Damon E. Elmore, 2005-06; Joseph W. Dent, 1999-2000; Peter J. Daugherty, 2001-02; Derek J. White, 2002-03; Kendall Butterworth, 2000-01; and Laurel Payne Landon, 2004-05.

Committees

While taking a chance to brag on the leadership is good, it is the work of the YLD committees that we are most proud of. The number and purpose of the committees has ebbed and flowed over the last 60 years from 12 in 1957 to 41 in 1984 to 27 today. Likewise, their purpose and mission has changed too. Some, like the Social Committee, has gone the way of the Sadie Hawkins Dance. Others merely evolved into programs themselves or are parts of larger Bar committees. One thing has remained the same; they are the backbone of the

YLD, offering new and younger lawyers an opportunity to work within the community and for the profession. Some, like our Aspiring Youth, Community Service and Truancy Intervention Committees, do all they can to provide essential service to the public. Similarly, the Ethics and Professionalism, Litigation, Minorities in the Profession and Women in the Profession Committees help keep our focus on our responsibility to the profession. Year in and year out these committees and their work have received national recognition by the American Bar Association and other national groups, but more importantly, gratitude from regional high school mock trial teams, elementary and middle school children, displaced attorneys and victims from Louisiana, Mississippi and Alabama, recipients of our Senior Citizens Handbook or Litigation Referral Directory.

Program Milestones

Sixty years of history cannot come without significant milestones and memories of the Division.

It is difficult to identify the most significant. Personally, I would vote for the 2006 Spring Meeting in Las Vegas, but it may pale in comparison to some of the others. Obviously, it is important to recognize the name changes and the significance behind them. That's right, new lawyers are no longer members of the "Junior Bar Association." Nearly 10 years ago under the direction of James D. Hyder Jr., the section rightfully became a Division. This was a change that was more than a lesson in linguistics.

But what else? How about the fact that the Young Lawyers Division is recognized as the mov-



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ing force behind the Georgia Legal Services Program. In 1968 the Division, working as a section then, initiated a study to address the needs of the poor. The study concluded that "there was a distressing disproportion between the actual need for legal services by those who could not afford them and the present supply of legal services available to them." As a result of reports like these and various studies initiated, the YLS created the Georgia Legal Services Program in 1971.

Or, how about the Georgia High School Mock Trial Committee? Founded in 1987 by the YLD, it is one of the most active of all of the YLD's current committees and has grown into a nationally recognized educational program. It is one of two exceptional causes, nurtured by the YLD that has blossomed into self-sustaining "program-hood."

The Future

I am not sure what the future holds for the YLD. It could be another groundbreaking program designed with the aim of assisting an underrepresented group of citizens or helping our children understand and appreciate our system of justice. It could be instituting a program or providing assistance in areas such as literacy, homelessness, drug abuse prevention, at-risk youth, the elderly or victims of natural disaster. It could be the creation of a committee charged with addressing shortcomings within our profession or designed to highlight issues and special areas of interest to the young lawyer. It could be the process of growing and grooming good attorneys and leaders. Whatever it is, if you haven't been involved, you should be. 



Damon E. Elmore is the president of the Young Lawyers Division.

Past Presidents of the YLD

- 47-48: Harry S. Baxter, Atlanta
- 48-49: B.C. Gardner Jr., Albany
- 49-50: Griffin B. Bell, Atlanta
- 50-51: James D. Maddox, Rome
- 51-52: Trammell F. Shi, Macon
- 52-53: Marcus B. Calhoun, Thomasville
- 53-54: Kirk M. McAlpin, Savannah
- 54-55: Robert R. Richardson, Atlanta
- 55-56: Kenneth M. Henson, Columbus
- 56-57: Frank C. Jones, Atlanta
- 57-58: Gould B. Hagler, Augusta
- 58-59: Robert T. Thompson, Atlanta
- 59-60: Willis J. Richardson Jr., Savannah
- 60-61: J.T. Pope Jr., Dalton
- 61-62: Harry C. Howard, Atlanta
- 62-63: Erwin A. Friedman, Savannah
- 63-64: Charles J. Driebe, Jonesboro
- 64-65: W.G. Elliott, Valdosta
- 65-66: Theodore G. Frankel, Atlanta
- 66-67: B. Carl Buice, Gainesville
- 67-68: Robert L. Steed, Atlanta
- 68-69: Lloyd T. Whitaker, Atlanta
- 69-70: L. Martelle Layfield, Columbus
- 70-71: Matthew H. Patton, Atlanta
- 71-72: Thomas E. Dennard Jr., Brunswick
- 72-73: A. Felton Jenkins Jr., Atlanta
- 73-74: Robert M. Brinson, Rome
- 74-75: R. William Ide III, Atlanta
- 75-76: James A. Bishop, Brunswick
- 76-77: A. James Elliott, Atlanta
- 77-78: Charles T. Lester Jr., Atlanta
- 78-79: Theodore M. Hester, Washington, D.C.
- 79-80: James L. Pannell, Savannah
- 80-81: W. Terence Walsh, Atlanta
- 81-82: Richard A. Childs, Columbus
- 82-83: Richard T. de Mayo, Atlanta
- 83-84: Walter H. Bush Jr., Macon
- 84-85: William D. Barwick, Atlanta
- 85-86: S. David Smith Jr., Rome
- 86-87: James H. Cox, Atlanta
- 87-88: John C. Sammon, Decatur
- 88-89: Donna G. Barwick, Atlanta
- 89-90: Dana B. Miles, Decatur
- 90-91: Stanley G. Brading Jr., Atlanta
- 91-92: Leland M. Malchow, Augusta
- 92-93: Elizabeth B. Hodges, Atlanta
- 93-94: Rachel K. Iverson, Cumming
- 94-95: Tina Shadix Roddenbery, Atlanta
- 95-96: Nolie J. Motes, Gainesville
- 96-97: J. Henry Walker, Atlanta
- 97-98: James D. Hyder Jr., Augusta
- 98-99: Ross J. Adams, Atlanta
- 99-00: Joseph W. Dent, Albany
- 00-01: S. Kendall Butterworth, Atlanta
- 01-02: Peter J. Daugherty, Columbus
- 02-03: Derek J. White, Savannah
- 03-04: Andrew W. Jones, Marietta
- 04-05: Laurel Payne Landon, Augusta

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24th Annual ALI Meeting

Highlights Lack of Global Solutions to IP Law

by Pamela L. Tremayne

Professor Jane Ginsburg, the Morton L. Janklow Professor of Literary and Artistic Property Law at Columbia University Law School and co-reporter of the American Law Institute Project on Intellectual Property Principles Governing Jurisdiction, Choice of Law and Judgments in Transnational Disputes, discussed the radical alteration of the nature of intellectual property litigation brought on by technological developments during ALI's annual breakfast Feb. 17 at Mary Mac's Restaurant in Atlanta. Ginsburg suggested that not only is the current international network of intellectual property making easier simultaneous global communication of written works, trade symbols and other intellectual property, but it is also facilitating the piracy of such works.

Attendees enjoyed hot biscuits and other Southern comfort breakfast food while Ginsburg discussed the Project of Principles on jurisdiction, the recognition of judgments and applicable law in intellectual property cases. Titled "Intellectual Property: Principles Governing Jurisdiction, Choice of Law and Judgments in Transnational Disputes," the project is aimed at consolidating global claims and providing a means of recognizing



Photo by Michelle Garner

Professor Jane Ginsburg, Committee Chair Pamela L. Tremayne, Judge Dorothy Toth Beasley and Anton Mertens, chair of the International Law Section.

ing foreign judgments as well as enforcing them. Without such a consolidation, the cost of pursuing such claims is all but prohibitive except for the wealthiest litigants.

Ginsburg gave the following example of the problems encountered due to the current lack of global solutions to intellectual property law:

E-pod is an online music delivery service located in Freedonia. Any computer-equipped member of the public with Internet access anywhere may purchase copies of sound recordings of musical compositions from the E-pod website. E-pod has not, however, obtained permissions from the authors, performers or producers of the works it makes available. Moreover, the one-click checkout system E-pod's website employs may infringe patents registered in various countries. Finally, E-pod has received a cease-and-desist letter from Apple Corp., which

hold worldwide trademark rights in I-Pod for online music delivery services.

Professor Ginsburg explained how the example demonstrates the ways in which technological developments have changed the nature of intellectual property litigation:

First, digital media may produce ubiquitous infringements of intellectual property rights, and thereby create transnational cases that require courts to interpret foreign law or to adjudicate the effect of foreign activities. Second, the rights at issue may encompass the range of intellectual property regimes. While transnational copyright and trademark claims are by now well-known, this example shows that patent infringements are no longer as territorially discrete as was once assumed. Third, the potential impact of the alleged infringements in every State in the world may make effective enforcement (or defense) elusive since there may be no single court with full adjudicatory authority over worldwide copyright, patent, and trademark claims. Even if there were, the choice of law issues may prove excessively complex. (Or, paradoxically, misleadingly simple, if a court entertaining all or part of a worldwide dispute yielded to the temptation to apply its own law to the entire case.) In contrast, State-by-State


adjudication may make the choice of court and of law issues appear easier to resolve, but multiple adjudication could produce uncertainty, inconsistency, delay, and expense. Moreover, multiple suits involving the same claims and incidents strain judicial dockets.

The principles would remedy these problems by enhancing procedural and substantive fairness. Since the principles endorse a territorial approach to the choice of law, the applicable laws can be predicted by those needing to know the boundaries of law of intellectual property where litigation questions of rights arise which cannot be resolved otherwise. Further, there would be some assurance that judgments would be recognized and enforced since the use of *lis pendens* would be allowed. The principles propose approaches to coordinating litigation, either by facilitating cooperation among courts where related actions are pending or by aggregating worldwide claims into a single court.

The principles organization and application of global solutions to problems of international property is in concert with other conventions seeking to address difficulties of patent, trademark and copyright law. For example, the Berne Convention addresses copyrights in 159 member states, while the 1994 TRIPS agreement, adopted by the World Trade Organization, addresses a reduction of differ-

ences in substantive patent, trademark and copyright laws. The Madrid Protocol and the Patent Cooperation Treaty foster the central prosecution of applications for trademarks and patents.

Finally, this convergence of the laws of intellectual property is reflected also in other areas of international development of the law abroad. The American Law Institute is working on international coordination in bankruptcy, civil procedure and in the recognition and enforcement of foreign judgments. Other organizations around the world also are addressing the organization of litigation and the recognition and enforcement of judgments.

This annual event was co-sponsored by the Georgia members of ALI, which is chaired by the Hon. Dorothy Toth Beasley and the State Bar of Georgia's Judicial Procedures and Administration Committee, chaired by Pamela L. Tremayne, Esq. Co-hosts of the event included the State Bar's Intellectual Property section, chaired by Douglas M. Issenberg, Esq. and the State Bar's International Law section, chaired by Anton F. Mertens, Esq. 



Pamela L. Tremayne, J.D., Ph.D., is the chair of the State Bar of Georgia's Judicial Procedure and Administration Committee.

The Following Sites Give More Information

- The Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters is available on the Hague Conference site, http://hcch.e-vision.nl/upload/wop/jdgm_draft_e.pdf and commentary by Peter Nygh & Fausto Pocar
- Report of the Special Commission on Jurisdiction and

Foreign Judgments in Civil and Commercial Matters at <http://hcch.e-vision.nl/upload/wop/jdgm11.pdf>

- See also the Hague Convention on Choice of Court Agreements, www.hcch.net/index_en.php?act=conventions.text&cid=98%20
- The International Association for the Protection of Intellectual Property Resolution proposes solutions which are generally consistent with the Ginsburg-Dreyfuss principles: see

Resolution, Question Q174, Jurisdiction and applicable law in the case of cross-border infringement of intellectual property rights (Oct. 27, 2003), available at www.aiippi.org/. For more on the background of the project, see Rochelle Dreyfuss and Jane Ginsburg, Draft Convention on Jurisdiction and Recognition of Judgments in Intellectual Property Matters, 77 Chi-Kent L. Rev. 1065 (2002).

Patterson Addresses Georgia Bankers Association Board

by Len Horton

On April 4, Georgia Bar Foundation President Rudolph Patterson became the first Bar Foundation president to address a meeting of major bankers in Georgia about Interest On Lawyer Trust Accounts (IOLTA) and about the need for close cooperation between bankers and the Bar Foundation to assist the thousands of poor Georgians who receive vital legal and other assistance because of IOLTA and the support of the banking community.

At the invitation of Joseph Brannen, president of the Georgia Bankers Association and vice president of the Georgia Bar Foundation, at the 24-member Board of Trustees meeting of the Georgia Bankers Association in the Capital City Club in Atlanta, Patterson thanked Georgia's bankers for supporting IOLTA.

"I wanted them to hear it directly from me how much we appreciate their support," he said. "As we approach \$70 million in cumulative IOLTA revenues since IOLTA began in 1983 in Georgia, I was determined that they should know that the legal community appreciates that this milestone could not have been reached without their hard work."



Photos by Len Horton


Georgia Bar Foundation President Rudolph Patterson addresses the Board of Trustees of the Georgia Bankers Association.

Virtually every bank in Georgia offers IOLTA accounts, and many banks offer IOLTA accounts with low or no fees. While most bankers know that IOLTA money supports Atlanta Legal Aid and Georgia Legal Services, not so many bankers are aware of the other programs supported by IOLTA and the Georgia Bar Foundation.

"I wanted them to know that their support for IOLTA is helping abused children and battered women," said Patterson. "Throughout Georgia IOLTA money is making possible local programs that are protecting our children,

saving women from being battered, educating adults to manage their anger and frustration without resorting to violence and helping children in the middle of custody disputes during dissolving marriages."

J. Thomas Wiley, chairman of the Georgia Bankers Association, expressed appreciation for the work made possible by IOLTA and announced a new IOLTA product from Flag Bank.

The Georgia Bar Foundation is the charitable arm of the Supreme Court of Georgia. A total of 126 law-related organizations in Georgia have received grant awards from the Georgia Bar Foundation thanks to the support of virtually every lawyer and banker in the state. 



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



Joe Brannen (left), president of the Georgia Bankers Association and Vice President of the Georgia Bar Foundation, and Rudolph Patterson, president of the Georgia Bar Foundation, celebrate the first time any Bar Foundation president has ever addressed the Georgia Bankers Association.

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State Bar Enjoys Legislative Support in 2006 General Assembly

by Mark Middleton

The State Bar achieved legislative success in the 2006 General Assembly through the efforts of numerous legislators working to make sound public policy for our state. Many of these individuals are lawyers, including House Speaker Glenn Richardson (R-Hiram) who took a very public position supporting the independence of the judiciary. Wendell Willard (R-Dunwoody) and David Ralston (R-Blue Ridge), chairs for the two House Judiciary Committees, provided leadership on issues important to the State Bar.

Rep. Steve Tumlin (R-Marietta) authored and handled many important bills for the State Bar this year. Rep. Mack Crawford (R-Zebulon) worked tirelessly as the appropriations sub-committee chair for judicial funding. House Judiciary Committee members Mary Margaret Oliver (D-Decatur) and Rob Teilhet (D-Smyrna) provided solid support for matters of importance to the State Bar.

In the Senate, Sen. Preston Smith (R-Rome) provided outstanding leadership as Chairman of the Senate Judiciary Committee, and authored a bill initiated by the State Bar's Real Property Committee. Sen. Michael Meyer Von Bremen (D-Albany) served as the Chairman of the Senate Special Judiciary Committee, and handled the State Bar's corporation revision bill. Sen. Bill Hamrick (R-Carrollton) worked closely with the State Bar as he served as the appropriations sub-committee chair for judicial appropriations.

Many non-attorneys also supported positions of the State Bar, including Senate President Pro Tem Eric



Johnson (R-Savannah), Appropriations chairs Sen. Jack Hill (R-Reidsville) and Rep. Ben Harbin (R-Evans), Majority Leaders Rep. Jerry Keen (R-Saint Simons Island) and Sen. Tommie Williams (R-Lyons) and Rules Chairmen Sen. Don Balfour (R-Snellville) and Rep. Earl Ehrhart (R-Powder Springs).

2006 also marked a return to the traditional role of the State Bar in providing resources and expertise to the General Assembly. Various committees and individuals provided sound legal expertise and analysis on a variety of issues such as child support, sexual predators, and

offer of settlement. These efforts, which were often made without advocating a particular position, create goodwill and increase the credibility of the State Bar. The State Bar is grateful to the dozens of lawyers who participated in this year's effort.

Of course, each year, the State Bar also has an ambitious agenda, which includes passing legislation, opposing certain legislation, and the appropriation of state funds for key judicial programs. 2006 was a very good year as the agenda moved forward with the help of our friends in the legislature.

2006 State Bar Agenda

The State Bar Initiated the Passage of the Following Bills

Senate Bill 534: In 2004, the State Bar worked to pass a major revision of the Guardianship Code. This bill sponsored by the Fiduciary Law Section provides corrective amendments to the Guardianship Code. The bill 1) changes language in Title 10 relating to health care powers of attorney to reflect the new terminology of the Guardianship Code of 2005; 2) reinstates previous provisions relating to the jurisdiction for temporary guardianships; 3) reinstates provisions relating to allocation of expenses of hearings on guardianship and conservator petitions; and 4) raises to \$15,000 the amount that a probate judge can hold as custodian.

Senate Bill 469: The Business Law Section works diligently to update the corporate code in order to make Georgia competitive with other states such as Delaware. Consequently, the Georgia corporate code is considered among the strongest in the nation. SB 469 contained additional improvements relating to business opportunity, merger and share exchange, certain shareholder approvals, indemnification, bankruptcy status, and technical and conforming corrections.

Senate Bill 253: This is the Property Section's effort to assist the

Georgia Manufactured Housing Association's effort to clarify the law relating to certain manufactured homes. This bill provides for the immediate conversion of a mobile home that is permanently attached to the ground from a personal property interest to a real property interest. This bill amends O.C.G.A. 8-2-181, et seq. This will benefit closing attorneys by clarifying that underlying assets are real property.

House Bill 1484: This Fiduciary Section proposal clarifies the insurable interest statute by codifying existing common law. The bill was made necessary by a judicial decision that brought the validity of insurable trusts into question.

SB 503: This is the Public Defender Standards Council organization bill which provides for staggered board terms and imposes a \$50 fee for legal services. The bill also included the definition of indigency at 150 percent of poverty.

SR 793, 954, & 955: These resolutions ratify minimum standards of the Public Defender Standards Council.

The State Bar Opposed the Following Measures That Did Not Pass

HB 150: This bill by Rep. Bobby Franklin (R-Cobb) would have amended the statute to require the Board of Bar Examiners to seat students from unaccredited law schools to take the bar exam if

they had been admitted to practice in any other state. This bill passed the House last year, but did not receive action in the Senate.

HB 763: This bill would have capped contingent legal fees in tort cases at 30% of the first \$500,000 recovered, 20% of the next \$500,000, and 10% over \$1 million.

HR 855: This resolution sought to change the Georgia Constitution to make all judicial offices subject to partisan elections.

The State Bar also had success in budgetary matters. Early in the legislative session, there were some proposed budgetary cuts in programs important to the State Bar. In the end, the General Assembly funded several key programs supported by the State Bar including:

- Legal services for victims of domestic violence (\$2,000,000)
- Business Court Pilot in Fulton County (\$100,000)
- Georgia Resource Center for post-conviction death penalty cases (\$800,000)

The State Bar was also pleased that the General Assembly also authorized the creation of six new Superior Court judgeships supported by the State Bar and the judiciary to help insure all Georgians have efficient access to the courts. Also, the legislature approved an Amendment to HB 912 and SB 503 to give lawyer legislators a continuance privilege in all civil and criminal proceed-

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ings. This legislation should make it easier for lawyer legislators to serve in the General Assembly.

The 2006 General Assembly was a successful session for the State Bar. Great strides were made in improving the State Bar's grass roots program. The State Bar used residential information voluntarily provided by thousands of State Bar members to create a system for identifying each member's local Representative and Senator. This program called the Legislative Action Network (LAN) includes a database of over 12,000 State Bar members. The LAN serves as the foundation for the grass roots program, and provides quick, easy, and direct means for State Bar members to correspond with their local legislator. We expect this system to dramatically strengthen the State Bar's legislative program over the next several years. Let's all get involved to make 2007 an even better year.

Final 2006 State Bar Legislative Tracking Document

The following bills passed the 2006 General Assembly

SB 203: This bill by Sen. John Wiles (R-Marietta) would require individuals that have wrongfully received indigent defense services to reimburse the system for those costs. The bill also included technical revisions to the indigent defense council act

SB 238: This bill by Sen. Judson Hill (R-Marietta) would grant immunity for volunteers in non-profit organizations provided the entity had minimal insurance and the behavior was not willful and wanton.

SB 253: This is the Property Section's effort to support the Georgia Manufactured Housing Association. The purpose of the proposal is to provide for the immediate conversion of a mobile home that is permanently attached

to the ground from a personal property interest to a real property interest. This bill amends O.C.G.A. 8-2-181, et seq. The bill will benefit closing attorneys by clarifying that underlying assets are 'real property'. The bill passed the Senate on March 10 and was favorably reported by House Judiciary again this year on Jan. 24, 2006. The bill passed the House on March 23, 2006, and awaits signature by the Governor.

SB 382: This heavily amended bill by Sen. Seth Harp (R-Midland) further revises the law relating to child support.

SB 469: This is the State Bar agenda bill that provides for a corporate code revision that would amend statutory language relating to business opportunity, merger and share exchange, certain shareholder approvals, indemnification, bankruptcy status, and technical and conforming corrections. The bi-partisan bill passed the Senate on Feb. 14, and the House on March 23, 2006, and will go to the Governor for his signature.

SB 503: This is the Public Defender Standards Council organization bill which provides for staggered board terms and imposes a \$50 fee for legal services. The bill also included the definition of indigency at 150 percent of poverty.

SB 530: This bill would allow a mechanics lien to attach to property if the work if a portion of the work took place in the public right of way.

SB 533: This bill revises the Living Will statutory form.

SB 534: This is the State Bar's guardianship bill that amends the code section relating to trustee compensation, and other key guardianship provisions.

SR 793, 954, 955: These resolutions ratify the minimum standards of the Indigent Defense Council.

SR 1027: The Senate passed this resolution to study the issue of court surcharges and fines.

HR 1306: This is the Governor's proposal for a constitu-

tional amendment to strengthen eminent domain laws. The resolution would remove power from unelected officials, and limit taking for redevelopment purposes to "blighted property."

HB 239: This bill clarified the offer of settlement language that had been passed in last year's tort reform bill, but found to be unconstitutional by two trial courts.

HB 912: This bill by Majority Whip Barry Fleming (R-Harlem County) will amend O.C.G.A. 9-11-34 to require parties to share all documents from a non-party, and protect non-parties from liability when no objection has been filed regarding the request.

HB 989: This bill creates a new sunset date for the \$5 fee dedicated to the automated information system maintained by the Clerk's Authority. This bill is done regularly as part of the agreement between the State Bar and the Clerk's Authority to maintain the sunset provision instead of making the fee permanent.

HB 1059: This bill by Majority Leader Jerry Keen (R-St. Simons) strengthens the sexual predator laws.

HB 1195: This bill specifies that a civil filing is not deemed to be accepted unless a civil disposition form is filed by the party.

HB 1282: This bill would create a separate index for a 'Notice of Settlement' to be filed with the other documents transferring real property from one party to another.

HB 1313: This is the Governor's eminent domain bill, which amends Title 22 by tightening the definition of 'public use', allows for repurchase if the land has not been used in 5 years, removes attorney's fees provision for condemnor, and expands damages for condemnee. The bill also amends Title 8 and Title 36 by eliminating condemnation by non-elected officials, and strictly defining 'blighted' areas.

HB 1484: This bill by Rep. Steve Tumlin (R-Marietta) would

codify the common law relating to trusts and other persons of interest having an insurable interest.

The Following Measures Did Not Pass

HR 855: This resolution by Rep. Bill Hembree (R-Winston) would amend the Georgia constitution to require partisan election of all judges did not receive a hearing.

HR 1336: This Resolution would require the Supreme Court to be comprised of members running from newly created geographical districts in the state.

This did not receive a hearing from the House Judiciary Committee.

HR 1794: This resolution sets up a study committee on court surcharges and additional fines.

HB 150: This bill by Rep. Bobby Franklin (R-Marietta) and Republican House leadership would amend the statute to require the Board of Bar Examiners to seat

students from unaccredited law schools to take the bar exam if they had been admitted to practice in any other state. This bill passed the House on March 11, 2005 and remains in the Senate Special Judiciary Committee.

HB 535: This bill by Judiciary (Non-Civil) Chairman David Ralston (R-Blue Ridge) would remove the criminal penalties for failing to remit indigent defense funds to the council.


HB 763: This bill limiting contingency fees by Rep. Tom Rice (R-Norcross) was assigned to the Special Committee on Civil Justice Reform, and did not receive a hearing.

HB 986: This bill by Rep. John Lunsford (R-McDonough) relates to the taking of depositions to preserve testimony in a criminal proceeding. The bill passed the House on February 22, 2006, but did not receive action in the Senate.

SB 25: This bill by Sen. Mitch Seabaugh (R-Senoia) would extend

the time period for a divorce proceeding from 30 days to 6 months for matters involving minor children did not pass.

SB 101: This bill by Sen. John Wiles (R-Marietta) would allow a plaintiff to insist on having its matter heard by the elected judge rather than by a judge sitting by designation. The bill passed the Senate but did not pass the House.

SB 542: This bill would amend the signature requirement for Durable Powers of Attorney for Healthcare. This bill passed the Senate, and is in House Judiciary Committee. 

The State Bar legislative representatives are **Tom Boller, Rusty Sewell, Wanda Segars and Mark Middleton**. Contact them at (404) 872-2373 for further legislative information or visit the State Bar's website at www.gabar.org.



GEORGIA MOCK TRIAL COMPETITION

A special thanks to those who donated to the mock trial program during the 2006 season, including the

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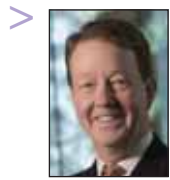
For more information about our fast-growing Atlanta Office, please contact Wayne Shortridge, Atlanta Office Managing Shareholder.

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Kudos



John F. Sandy Smith, a partner in the corporate and securities group at the Atlanta office of **Morris, Manning & Martin, LLP**, received the new **Stanford Medal** from Stanford University during the 2005-06 Alumni Volunteer Service

Awards ceremony in Palo Alto, Calif. The Stanford Medal is among the highest awards given by Stanford University. Among other things, recipients must have a distinguished legacy of leadership in excess of 20 years. Smith's Stanford leadership roles include chair of the Stanford associates board of governors, and member of the Stanford board of trustees. His work at Morris, Manning & Martin, LLP, includes managing, negotiating, and completing corporate and financial transactions for both private and public businesses. He has represented clients in a wide variety of industries including technology, telecommunications, investment management, healthcare, manufacturing/distribution, retail/service, hospitality/restaurant and venture/investment.

The firm also announced that partner **John Yates** was chosen to chair the **political action committee** of the **Metro Atlanta Chamber of Commerce** for a second term. The committee was formed in 2005 and under Yates' leadership it has raised funds for candidates for legislative office in Georgia.

> **George R. Hall** of **Hull, Towill, Norman, Barrett and Salley**, has been elected a member of the **American Board of Trial Advocates**.



Dunlevie

Hopkins

Long

Vincent

Womble Carlyle Sandridge & Rice, PLLC, announced that four attorneys from the firm's Atlanta office have been named **Georgia Super Lawyers** for 2006: **Steven S. Dunlevie**, banking; **John D. Hopkins**, mergers and acquisitions; **Bill Long**, business litigation; and **Dick Vincent**, health care. The Super Lawyers are featured in *Atlanta* and *Georgia Super Lawyers* magazines.

The firm also announced that their **"Stop the Clock" client service program** won one of the most coveted national legal marketing awards in the United States—the **"Marketing Initiative of the Year"** award given at the annual Marketing Partners Forum, a premier legal marketing conference. A panel of legal mar-

keting specialists voted unanimously to select the Stop the Clock Resource Center, an aspect of the innovative program that Womble Carlyle ran last fall, as the prizewinner. Susan Reagan, marketing manager of the firm who spearheaded the Resource Center, accepted the award on behalf of the firm.

> **Brooks S. Franklin**, already a recipient of its Lifetime Achievement Award, was elected **president** of the **Georgia Association of Criminal Defense Lawyers** for 2006.



Stites & Harbison announced that Atlanta attorney **J.D. Humphries III** was chosen as a **Super Lawyer** by *Law & Politics* for the second year in a row. Humphries is a member of the firm. He manages the Atlanta office and has more than 30 years experience handling sophisticated business transactions and difficult litigation. His practice focus is on business and personal problem solving through negotiation and litigation.

> Augusta attorney **Thomas R. Burnside Jr.** was one of 29 top trial attorneys that were inducted into the prestigious **International Academy of Trial Lawyers** at its annual meeting in Washington, D.C. During the meeting, the new inductees joined IATL fellows at the U.S. Supreme Court for a reception hosted by Associate Justice Antonin Scalia that featured Chief Justice John Roberts. The invitation to become a lifetime IATL fellow is one of the highest honors in the legal world. Membership within the academy is limited to 500 active fellows from the United States and 100 fellows from the rest of the world. Inductees must undergo a rigorous membership evaluation process that encompasses legal skills, character, integrity and trial record.



Alexander

Cohen

Kilpatrick Stockton LLP announced that partner and co-chairman **Miles Alexander** and associate **Seth Cohen** were both honored by the **Anti-Defamation League**.

Alexander received the **Lifetime Achievement Award**, the league's highest honor. It is given to individuals in the legal community who devote their lives to the pursuit of justice and the well being of their community. As well as being an internationally known intellectual property lawyer, Alexander actively supports the rights of minorities and women on behalf of the ADL. In 2006, he was the first recipi-

ent of the State Bar of Georgia IP Law Section's Outstanding Achievement Award. Cohen received the **Stuart Eisenstadt Young Lawyer Award**, which recognizes a practicing attorney in the metro Atlanta area who has gone above and beyond their legal practice in furtherance of ADL's mission to seek justice and fair treatment for all citizens alike. Among his many other community activities, Cohen initiated the 2005 challenge to Georgia's voter ID law where he led a team of lawyers across the state in the federal court challenge to that law. His practice in the corporate department of the firm includes representation of U.S. and international emerging growth and mature businesses in matters involving venture capital, mergers & acquisitions, securities regulation, corporate governance and technology license and transfer.

- > **Kilpatrick Stockton LLP, Sutherland Asbill & Brennan LLP, King & Spalding LLP and Southern Company** were honored as **founding funders** of the **Georgia Appleseed Center for Law and Justice**. The Spring for Justice cocktail reception was held at The Carter Center to recognize not only the four firms, but also to introduce the work of national Appleseed to the audience, particularly the three national collaborative projects now underway in Georgia: the No Child Left Behind-Parent Involvement Project; the Financial Access for Latino Immigrants Project; and the Justice for People with Mental Illness Project. Georgia Appleseed is a nonpartisan, nonprofit public interest law center that works with leading law firms and businesses, preeminent lawyers, executive and educators, and other leaders around the state to build a more just Georgia through education, legal advocacy, community activism and policy expertise. Georgia Appleseed board members from the honored firms are **A. Stephens Clay**, a partner and co-chair of Kilpatrick Stockton LLP; **Elizabeth V. Tanis**, a partner with Sutherland Asbill & Brennan LLP; **L. Joseph Loveland**, a partner at King & Spalding LLP; and **G. Edison Holland**, the general counsel for Southern Company.



> New York attorney **Laurence B. Beckler** was recently featured in an article in *Crain's New York Business* titled, "Holdouts Stream to the Web." The article featured Beckler's practice as an example of how an effective web presence can promote a small law firm's reputation and business growth. He also authored two articles for the New York State Bar Association's Corporate Counsel newsletter. "Be Adroit with UNIDROIT" examines the benefit of choosing the Unidroit

Principles as governing law in international business transactions, and "Dare to Compare" focuses on the issues involved in making certain comparative claims in advertisements. Beckler is in his fourth year as a solo practitioner, focusing on corporate, advertising and intellectual property law, primarily for the advertising industry.

- > **Jennifer Morgan DelMonico** was recently featured in *Connecticut Magazine* as a Connecticut **Super Lawyer** in the field of **civil litigation defense**. DelMonico is a litigation partner at Murtha Cullina LLP, a prominent New England law firm with offices in Boston and Woburn, Massachusetts and Hartford, New Haven, and Stamford, Conn.
- > Congratulations to the newly elected **2006 Sandy Springs Bar Association Officers and Board**: **President: Stanley M. Lefco**, **Secretary: W. Scott Smith** and **Treasurer: David Crawford; Richard Jones, Allie McCarthy, Patrick Longhi, Brian Smiley and Joe Nagel**. The Sandy Springs Bar Association, established in 1979, is an organization of legal professionals who work or live in Sandy Springs or have an interest in the Sandy Springs area. The association seeks to enhance the image of the legal profession by becoming active in the City of Sandy Springs. For more information on becoming a member of the Sandy Springs Bar Association please contact Stanley M. Lefco at 4651 Roswell Road, G-602, Atlanta, GA 30342; (404) 843-9666; losml@aol.com.
- > **NALS®, the Association for Legal Professionals**, presented retired Atlanta attorney **Melburne D. McLendon** with the **Scales of Justice Award** for his pro bono work with veterans. The award honors individuals who improve access to justice and the quality of legal services, promote the legal professions, and support the community where they live and work. McLendon volunteers at the V.A. Hospital in Decatur where he helps handle wills, powers of attorney, lease problems, divorces, child support matters and similar issues that confront veterans. His influence has prompted other attorneys to decide to help veterans with legal matters.

On the Move

In Atlanta

- > **King & Spalding** announced that **Catherine O'Neil**, who most recently served as an associate deputy attorney general for the U.S. Department of Justice, has joined the firm as a **partner** in its business litigation practice. O'Neil was the principal

staff person to Deputy Attorney General James Comey and Deputy Attorney General Larry Thompson on matters involving domestic and international drug enforcement, drug policy, anti-money laundering strategy and asset forfeiture. She will use this experience to counsel the firm's clients involved in complex civil litigation and government investigations. Before working in Washington, O'Neil served from 1995 to 2002 as an Assistant United States Attorney for the Northern District of Georgia. She also handled complex grand jury investigations, litigated hundreds of evidentiary hearings and successfully argued cases before the Eleventh Circuit Court of Appeals.


King & Spalding would also like to announce that they have relocated to 1180 Peachtree St. NE, Atlanta, GA 30309; (404) 572-4600; Fax (404) 572-5100; www.kslaw.com.


> The law firm of **Carlton Fields** announced that **M. Derek Harris** and **Catherine Salinas** have joined the Atlanta office as **associates** in the firm's business litigation and trade regulation practice group. Prior to joining Carlton Fields, Harris was an associate for the Atlanta office of Jones Day where he practiced in the areas of products liability, government regulation, antitrust, and general litigation. Prior to joining Carlton Fields, Salinas served as a law clerk for Willis B. Hunt Jr., the United States District Court, Northern District of Georgia in Atlanta. The firm is located at One Atlantic Center, 1201 W. Peachtree St., Suite 3000, Atlanta, GA 30309; (404) 815-3400; Fax (404) 815-3415; www.carltonfields.com.

> **Fish & Richardson P.C.** announced the addition of three attorneys to its recently established Atlanta office. **Tina Williams McKeon, Ph.D.**, joined as a **principal** and will lead the firm's life sciences practice. **Lawrence Aaronson** joined as a **principal** and will lead the firm's software and electrical patent prosecution and counseling practice. **Rasheed McWilliams** joined as an **associate** in the patent litigation practice. McKeon was previously a shareholder at Needle & Rosenberg, where she had a diversified intellectual property practice, including significant expertise in the life sciences area. She has prosecution and litigation experience in copyright, trademark, and patent matters and counsels a number of local universities, including Emory, Georgia Tech, and University of Alabama-Birmingham. Previously of counsel at Woodcock Washburn, Aaronson specializes in patent prosecution and counseling with a particular emphasis on electronics, software, semiconductors, computer games, and telecommunications. McWilliams was

previously an associate at Fitzpatrick Cella in New York City where he worked exclusively on patent litigation projects. 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.

> **Womble Carlyle Sandridge & Rice, PLLC**, announced that it has added three lawyers to its corporate and securities practice group in its Atlanta office. **Clint Richardson** and **Clark Fitzgerald** have joined as **members** and **Guanming Fang** has joined as an **associate**. All three lawyers come to Womble Carlyle from Arnall Golden Gregory LLP in Atlanta. Richardson brings more than 30 years of experience to Womble Carlyle in representing growing companies in the life science, information technology and service industries as well as venture capital investors and companies that provide financing to growing companies. Fitzgerald practices corporate and securities law with almost 30 years of experience focusing on public financings, SEC compliance, corporate governance, mergers and acquisitions, software licensing, and technology-oriented businesses. Fang concentrates her practice on mergers and acquisitions and strategic alliances for businesses. She has represented clients in the manufacturing, distribution, business service, pharmaceutical, software and other industries in their acquisitions, sales, joint ventures, private equity investment and strategic partnerships. The office is located at One Atlantic Center, Suite 3500, 1201 West Peachtree St., Atlanta, GA 30309; (404) 872-7000; Fax (404) 888-7490; www.wcsr.com.

>  **Eric N. Van De Water**, a litigator with **Pursley Lowery Meeks LLP**, was named a **partner** with the firm. His practice focuses on commercial and business litigation, with an emphasis on construction disputes and medical malpractice defense. The office is located at 260 Peachtree St. NE, Suite 2000, Atlanta, GA 30303; (404) 880-7180; Fax (404) 880-7199; www.plmllp.com.

>  The law firm of **Carlton Fields** announced that **Christopher T. Graham** has joined the Atlanta office as a **shareholder** in the corporate, tax, and asset-based financing practice group. His practice is focused on the design and implementation of creative family wealth planning strategies for \$20 million + net worth families and their closely held businesses, including estate tax planning, succession planning, asset protection, capital gains tax planning and charitable giving.

Prior to joining Carlton Fields, Graham was a partner with Cohen Pollock Merlin & Small in Atlanta from 2000 to 2006, where he was the partner in charge of advanced strategy group and co-partner in charge of family wealth planning group. Graham is a member of the Fiduciary Law Section of the State Bar of Georgia. The office is located at One Atlantic Center, 1201 W. Peachtree St., Suite 3000, Atlanta, GA 30309; (404) 815-3400; Fax (404) 815-3415; www.carltonfields.com.

- > The firm of **Pope, McGlamry, Kilpatrick, Morrison & Norwood, LLP**, announced that **N. Kirkland Pope** and **David C. Rayfield** have become **partners** of the firm. Pope will be located in the Atlanta office and Rayfield will be located in the Columbus office. The Atlanta office is located at 3455 Peachtree Road NE, The Pinnacle, Suite 925, Atlanta, GA 30326; (404) 523-7706; Fax (404) 524-1648; and the Columbus office is located at 1111 Bay Ave., Suite 450, Columbus, GA 31901; (706) 324-005; Fax (706) 327-1536.

In Buford

- > **Chandler, Britt, Jay & Beck, LLC**, announced that **J. Russell Little** has become **associated** with the firm. Little will continue his practice in the areas of general litigation and eminent domain. The firm's contact information is P.O. Box 1749, Buford, GA 30515; (770) 271-2991; Fax (770) 271-9641.


In Newnan

- > The law firm of **Rosenzweig, Jones & McNabb, P.C.**, announced that **Charles C. Witcher**, **Harold Matthew Horne** and **Melissa Darden Griffis** have joined the firm as **partners**. The office is located at 23 South Court Square, Newnan, GA 30263; (770) 253-3282; Fax (770) 251-7262.

In Rincon

- > **Ramona Murphy Bartos** recently opened her own practice, **Bartos Law Firm, LLC**. Her practice is concentrated in the areas of civil litigation and mediation, municipal law, probate law and historic preservation. The office contact information is P.O. Box 1629, Rincon, GA 31326; (912) 826-1850; Fax (912) 826-5339; www.bartoslawfirm.com.

In Savannah


- >  **Carrie Murray Nellis** joined the law firm of **Buchsbaum and Lowe LLP** as an **associate**. She practices in the areas of adoption law, environmental law, toxic torts, immigration law and construction law. The firm is located at 311

W. Broughton St., Savannah, GA 31401; (912) 234-2581; Fax (912) 234-4190.

In Birmingham, Ala.

- > **Ford & Harrison LLP** announced the addition of **Terry Price** to its Birmingham office as **partner**. Price previously served as a named shareholder at Lehr Middlebrooks Price & Vreeland, P.C., a boutique employment law firm for which he had worked since 1996. His practice consists of class action employment defense litigation, employee benefits, workplace safety and health and management training programs, representing employers across Alabama and Georgia. Prior to joining Lehr Middlebrooks, Price was a partner in the Atlanta office of Constangy, Brooks & Smith. Price spent the first six years of his practice as a trial attorney for the Office of the Solicitor of the United States Department of Labor. The office is located at 2100 Third Ave. North, Suite 400 Birmingham, AL 35203; (205) 244-5917; Fax (205) 244-5901; www.fordharrison.com.

In Tallahassee, Fla.

- >  **Richard A. Greenberg** has joined the Tallahassee office of **Rumberger, Kirk & Caldwell** as a **partner**. Greenberg practices in the areas of criminal defense, professional discipline defense and professional licensing. The Tallahassee office is located at 215 South Monroe St., Suite 130, Tallahassee, FL 32301; (850) 222-6550; Fax (850) 222-8783; www.rumberger.com.



Donna Musil, a 1985 graduate of the University of Georgia School of Law, has produced a new documentary film titled **"Brats: Our Journey Home."** Narrated by Kris Kristofferson, a brat, the film explores military life from the child's perspective, giving the viewer the opportunity to share in the experiences of growing up in the

American military. In addition to being a lawyer in Eatonton, Musil is an Army brat. She has lived and worked in Germany, Korea, Ireland, Copenhagen, San Francisco, Los Angeles, Washington, D.C., North Carolina, Virginia, Kentucky and Paris. Her father, Louis Fredrick Musil, was also a member of the State Bar of Georgia and a 1965 graduate of the University of Georgia School of Law, served as a JAG officer and military judge.

If It Looks Like a Duck...

by Paula Frederick

“**D**id you get that e-mail from www.ineedalawyer.com?” your partner asks as he enters your office. “They say they can guarantee us dozens of new case referrals for a small monthly fee.”

“Never heard of them,” you respond. “How does it work?”

“People go to www.ineedalawyer.com to find a lawyer. They type in their zip code and the kind of case they have. We would get every potential client from our zip code who wants a domestic relations lawyer.”

“Sounds like a lawyer referral service,” you say. “They have to register with the State Bar. Have you called to check them out?”

“That’s the beauty of it,” Stan answers. “These folks claim that they *aren’t* a lawyer referral service. They say they are a ‘marketing organization.’”

“What’s the difference?” You ask.

Exactly.


Bar Rule 7.3(c)(1) generally prohibits lawyers from paying for business referrals. One exception to the rule is for “fees or dues charged by a bona fide lawyer referral service operated by an organization authorized by law and qualified to do business in this state....” The Rule requires that a lawyer referral service report to the Bar annually and disclose its terms, subscription charges, agreements with counsel, and roster of member lawyers.

Many online services that attempt to match lawyers with potential clients operate on a national basis and do not want to be burdened by Georgia’s lawyer referral requirements. By claiming that they are “marketing organizations” rather than lawyer referral services, these groups hope to fall within the language of Rule 7.3(c)(3), which allows a lawyer to pay fees “charged by a lay public relations or marketing organization.”

The term “marketing organization” is not defined. Given that this rule was written long before the existence of modern Internet “matching” services, the term



probably refers to an advertising agency that a lawyer or firm would pay to create a marketing campaign or advertisement.

The Bar’s Formal Advisory Opinion Board has entered the fray. The question for the Board’s consideration is “what is the difference between a ‘lawyer referral service’ as referenced in Bar Rule 7.3(c)(2) and a ‘lay public relations or marketing organization’ as referenced in Bar Rule 7.3(c)(4)?” Until the Board issues an opinion, the Bar encourages any entity that pairs lawyers with potential clients to take the safe route and comply with the requirements for lawyer referral services. 



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

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Discipline Summaries

(February 9, 2006 through April 14, 2006)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Ann Porges-Dodson

Macon, Ga.

Ann Porges-Dodson (State Bar No. 584633) has been disbarred from the practice of law in Georgia by Supreme Court order dated Feb. 13, 2006. Porges-Dodson pled guilty to a misdemeanor count of unlawful conversion of government property, a Social Security check in the amount of \$425. Porges-Dodson was the payee for an individual who was receiving disability benefits and supplemental security income benefits from the Social Security Administration (SSA). She failed to notify the SSA of the individual's felony conviction and incarceration, and she continued to deposit the SSA checks. She was placed on probation by the United States District Court for the Middle District of Georgia for three years and was ordered to make restitution in the amount of \$7,897.

The Court found in aggravation of discipline that Porges-Dodson had prior disciplinary offenses, including a one-year suspension for mishandling her escrow account, a Review Panel reprimand, three Investigative Panel reprimands, and a letter of formal admonition for the mishandling of client funds.

Charles F. Peebles

Norcross, Ga.

Charles F. Peebles (State Bar No. 570125) has been disbarred from the practice of law in Georgia by Supreme Court order dated Feb. 13, 2006. Peebles failed to file a Notice of Rejection to six Notices of Discipline.

Peebles settled a lawsuit on behalf of two clients and received three settlement checks totaling \$350,000. Peebles forged the endorsements and converted the funds to his own use; failed to give an accounting to his clients; and told his clients that he had not received all of the funds even though he had.

In another case Peebles settled a lawsuit for a condominium association and received funds totaling \$700,000. Peebles held the funds without giving an

accounting to his client. The client, after demanding payment without success, retained an attorney to investigate. Peebles only paid the client \$458,000.

Another client paid Peebles a \$750 retainer fee plus \$3,000 for legal fees and expenses. Peebles failed to communicate with the client, did not advise him of the status of his case, and abandoned the legal matter entrusted to him.

In another case a client paid Peebles a \$750 retainer fee plus \$3,773.47 for legal fees and expenses. Peebles settled the case and received a settlement check for \$28,250. Although Peebles received the full settlement amount, he informed the client that he received partial payment and could not deliver the funds until he received the full amount. Peebles forged the client's name on the check, converted the funds to his own use, and failed to deliver the funds or an accounting to the client.

Another client paid Peebles a \$750 retainer plus \$3,512.50 for legal fees and expenses. Peebles failed to diligently pursue the matter and abandoned the legal matter entrusted to him.

A client paid Peebles a \$750 retainer and approximately \$6,000 in legal fees to represent her in claims involving the purchase of a home damaged by termites. The parties agreed to settle the case for \$20,000. Peebles received partial funds but failed to promptly deliver the settlement funds to the client. Peebles told the client that the defendants paid approximately \$10,000 but that he could not deliver the funds until he received the full amount. Thereafter, he repeatedly informed the client that he would deposit the funds into her bank account but failed to do so; failed to diligently pursue the matter for which he was retained; failed to communicate effectively with the client; failed to earn the legal fees paid to him; failed to expedite the resolution of the matter; abandoned the legal matter entrusted to him; refused to give the client an accounting regarding the settlement funds; and failed to respond the client request for her file.

In aggravation of discipline the Court noted that the allegations of misconduct contained in the six Notices of Discipline taken together suggested a pattern of theft and deceit.

Mary Willis Bast
Alpharetta, Ga.

On Feb. 13, 2006, the Supreme Court of Georgia accepted the Voluntary Surrender of License of Mary Willis Bast (State Bar No. 041761). In handling the closing of the sale of real property on behalf of a lender, Bast paid out over \$108,000 to two entities without receiving proper documentation authorizing the payment to the entities.

Mark Benveniste
Alpharetta, Ga.

On Feb. 27, 2006, the Supreme Court of Georgia accepted the Voluntary Surrender of License of Mark Benveniste (State Bar No. 053750). On September 12, 2003 Benveniste was sentenced in the United States District Court for the Northern District of Georgia pursuant to jury convictions on one count of Bank Fraud, 25 counts of False Statements or Reports; four counts of Mail Fraud, and two counts of Wire Fraud.

Suspensions

Ricky D. Jones
Jonesboro, Ga.

On Feb. 27, 2006, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Ricky D. Jones (State Bar No. 403066) and suspended him from the practice of law for 12 months, with 6 months of the suspension to apply retroactively to Jan. 12, 2004. Jones used money from his law firm's escrow account to pay on a promissory note for a courier and trucking services business owned by Jones and a friend. Jones said his friend, who managed the business, suffered various misfortunes unrelated to the business, fell into a deep depression, and could no longer operate the business. The payments on the note, which Jones

had guaranteed, fell into arrears in the amount of \$43,614.28, and Jones used money from the firm's escrow account to pay the note.

In mitigation of discipline, the Court noted that Jones made full and complete restitution to his former firm, fully cooperated with disciplinary authorities, that his actions caused no harm to any clients, that he had no prior disciplinary record, that he committed the disciplinary violation in an effort to help a friend in trouble, that he had used his practice for the good of the community for at least 17 years, and that he was deeply remorseful for his conduct.

E. Gilmore Maxwell
McDonough, Ga.

E. Gilmore Maxwell (State Bar No. 478740) has been suspended from the practice of law for six months by Supreme Court order dated Feb. 27, 2006.

Maxwell was hired to represent the defendant employer in a com-

plaint alleging sexual harassment in the workplace. Maxwell learned that the complainant and two of his client's other employees had legal counsel, but nevertheless met with his client's employees, without consent of their counsel. At the meeting, which was recorded, Maxwell spoke to the employees about employment discrimination. Opposing counsel subsequently requested a copy of the transcript. Maxwell provided counsel with an edited version without disclosing that it was edited. Opposing counsel filed a motion for sanctions in the federal district court in which the claims were pending, and the court entered a sanctions order and directed that Maxwell pay opposing counsel's fees and expenses incurred in prosecuting the sanctions motion.

The special master found that the plaintiffs were not harmed by Maxwell's actions; that Maxwell apologized in writing to opposing counsel; and that Maxwell sincere-

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ly regretted his conduct. In aggravation, the special master noted that Maxwell had previously received a Formal Letter of Admonition for deceiving a magistrate judge about the reason for a request for continuance.

Coatsey Ellison

Jonesboro, Ga.

On Feb. 27, 2006, the Supreme Court of Georgia suspended Coatsey Ellison (State Bar No. 246120) from the practice of law for 6 months. Ellison must complete six live ethics hours of Continuing Legal Education prior to reinstatement.

After a client hired Ellison to represent her regarding claims arising from an automobile accident, he did little work on her case; failed to return her phone calls, and failed to advise her on the status of her claims. Respondent caused the client to suffer needless worry and concern over her case. Once the client terminated Respondent's employment, he failed to provide

her with either a notice of withdrawal or a copy of her file.

In aggravation of discipline the Court found that Respondent had previously received a Formal Letter of Admonition and an Investigative Panel Reprimand. Moreover, the evidence suggested that he refused to acknowledge the wrongful nature of his conduct and that the victim was vulnerable. In mitigation of discipline, the Court noted that Respondent's actions were not motivated by a dishonest or selfish motive and that Respondent suffered a physically disabling illness during the period that he represented the client.

Lisa Paige Lenn

Orlando, Fla.


On March 27, 2006, the Supreme Court of Georgia suspended Lisa Paige Lenn (State Bar No. 446520) from the practice of law for 91 days. Lenn received the same sanction in Florida in October 2004 in resolution of five cases. In three of the cases, she was hired to represent clients in domestic relations matters but failed to diligently pursue the cases, including missing a trial date in one case, and failing to adequately communicate with the clients.

In another case, Lenn failed to fully comply with a subpoena for production of her trust account

records. The Bar's subsequent audit revealed that Lenn failed to maintain trust accounts records and failed to follow trust accounting procedures. However, there were no indications of theft or misappropriation of funds.

In another case Lenn was hired to represent a client on criminal charges. Although she prepared a motion to suppress for the client, she failed to ensure that it was filed with the court, failed to provide the client with a copy of the documents, failed to adequately communicate with the client, and failed to advise the client that she had closed her practice and moved to Georgia.

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 Feb. 9, 2006, three lawyers been suspended for violating this Rule and two have been reinstated. 



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

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HR Tips From TECHSHOW '06

by Natalie Thornwell Kelly

The ABA TECHSHOW 2006, the world's premiere legal technology conference, which took place April 20-22 in Chicago had a record number of attendees and exhibitors. With an exhibit hall that included many e-discovery, litigation support, practice management and financial technology vendors and educational sessions that focused heavily on the practical use of technology in everyday law practice, the show is one that you should definitely plan to attend in the future.

Below are some of the Human Resource tips that were presented at the show. Use these tips and web resources to help you make sure you are paying attention to your practice, your employees and their well-being while in your employ.

Policies and Procedures Manual

Small law offices are generally the biggest culprits when it comes to not having a guidebook for the operation of their offices. Regardless of firm size you need to have a written policies and procedures manual that covers everything from how technology is to be used to how much sick and vacation time is afforded employees. Law office specific manuals are available from the ABA LPM Section.

Job Descriptions

Have written job descriptions for every position in your firm, including attorney positions. Use sample descriptions and adapt to the specific positions in your practice; use legal-specific sample descriptions like

those in *The Essential Formbook: Comprehensive Management Tools for Lawyers, Volume II* and include staff in the development process. Have staff draft a listing of the jobs they are doing. Do not include specifics about exemption status or other information that could discriminate against protected classes of employees. Do include language that requires workers to perform miscellaneous duties as required. Have all descriptions reviewed by an Employment Law lawyer.

NOTE: The Law Practice Management Program's Resource Library has the volume referenced here available for checkout and several sample job descriptions.

Hiring Strategies

When interviewing candidates, do not ask illegal questions that could lead to discrimination claims. Look for a match in skills and cultural fit in candidates. Let the candidates talk and you listen. Keep job candidate information confidential. Do background and reference checks for all possible new hires. Attempt to gain information about demonstrated skills, work habits, and work attitude when checking a candidate's references. Have a policy for problems that might arise from information learned during the hiring process.

Diversity Planning and Implementation

A great resource for both devising and implementing a diversity plan can be found at the Minority Corporate Counsel Association's website at www.mcca.com/site/data/magazine/coverstory/1003/diversity-selfassessment1003.htm. This self-assessment tool allows firms to analyze their diversity efforts and tabulate a score for their diversity efforts.

Training

Training is one of the best ways for lawyers to enjoy a return on their investment in human resources. If skills are lacking, you can invest in training to help

your employees become more productive. Training is available from the very lowest level of skills needed for office computing to specialized training for legal-specific tools you may be using in your office.

Ethics Education

Do not think that ethics are only required by you. You should work to educate your staff about ethical behavior to help protect your law license. Check with your bar association or legal disciplinary body to review all of the requirements. You can also keep up with the status of ethics via the comprehensive website, www.legalethics.com.

Team Building Techniques

A myriad of programs exist to help firms build a team within their office. Sites like www.buildingyourteam.com and www.team-building-professionals.com provide tools to help co-workers work better together. You can promote good internal relations by managing in a fair and consistent manner and being as inclusive as you can with staff that work on particular matters.

Motivation Techniques

Ask employees what they want early on and focus on what you can reasonably deliver in terms of perks or benefits. Benefits and perks that speak to the needs of staff can help with staff retention. Money is not the only way to compensate employees and many would be very happy just to receive a sincere, "thank you." Be creative and monitor if what you decide to provide as benefits or perks is working for you and your employees.

Staff Utilization

Learn to trust your decisions about having hired the right professionals for your practice. Delegate non-lawyers tasks and monitor the progress of assigned work. When you have a good paralegal or legal assistant, make sure

you continue to provide regular feedback (good or bad) about their job performance. On a higher level, you should also make sure your associates are performing at desired levels. With additional support staff, you should make sure they have the skills required to perform their jobs, and that if not, you would provide appropriate training. Make sure you are also sensitive to authority and power balances in your office.

Understanding Your People

Don't ignore generational differences and adapt policies that fit all known classes in your firm. Understand what's important to all your employees from baby boomers to those who have grown up in a fast-paced technological age. Go to www.library.dal.ca/law/St-Johns/Pres/Tues17/Hartnett-Generational_Differences.pdf for a list generally defining various generations working in today's law offices.

Performance Reviews

Use performance reviews to address ongoing issues with work and attitude not remedied by continuing discipline/counseling sessions. Having interactive reviews with staff doing self-evaluations can sometimes reveal miscommunications or misunderstandings about job performance expectations. Use the review to achieve work performance and production goals.

Discipline Strategies

When dealing with employee problems or policy violations, act timely and legally. Document steps taken and include appropriate parties in discipline and consult those providing legal guidance. Fairness and consistency in discipline can help keep up employee morale. A good discipline system can even rehabilitate some problem employees who are performing but are having other issues.


Terminations and Former Employees

If you seem to be having a chronic problem with losing employees, analyze the cost of turnover in your office with a cost of turnover calculator available at www.workforce.com. Unlike some calculators, you are able to both enter and analyze information that includes the direct and indirect costs of turnover in your law office.

Employer Responsibilities – I

Do an internal HR compliance audit every quarter or every other quarter. Make sure your procedures are complying with requirements for interviewing, hiring, firing, records management and privacy. A good HR resource with a comprehensive self-audit questionnaire for small business is www.workforce.com.

Employer Responsibilities – II

Turn to the government for help with compliance. Look at the following federal publications for guidance: www.irs.gov/businesses/small/index.html – IRS Small Business Forms and Publications; www.business.gov – Federal Government site with specific resources from applicable federal regulatory agencies to help small businesses comply with all of the applicable federal laws and regulations. 

These tips were presented by Natalie in the 60 Firm and Practice Management Tips session at ABA TECHSHOW 2006.



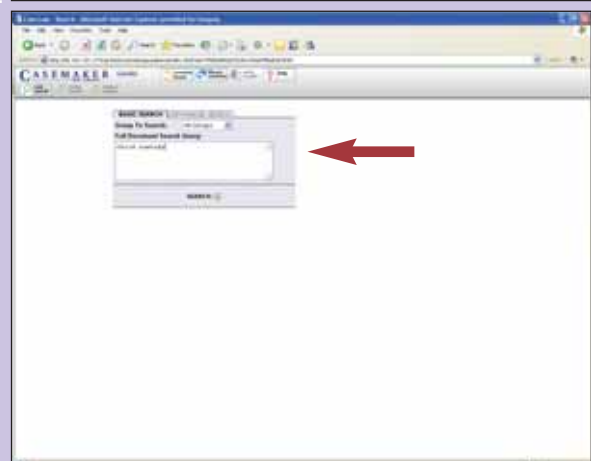
Natalie Thornwell
Kelly is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at natalie@gabar.org.

Getting the Most Out of Casemaker: **CaseCheck**

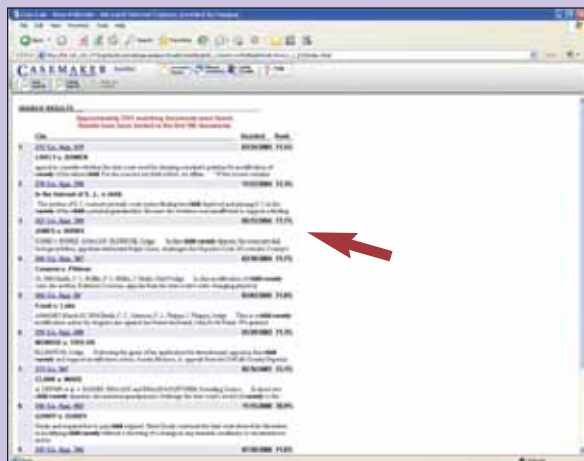
by Jodi McKenzie

Many State Bar members have begun turning to Casemaker for the majority of their legal research instead of commercial vendors. One of the most important features Casemaker offers is CaseCheck. CaseCheck alerts users if a specific Georgia case they are researching has been cited in other Georgia cases. Following are the steps you should take to utilize this exciting feature.

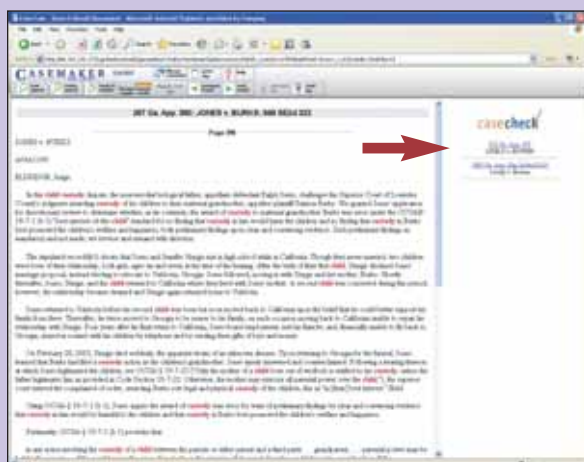
The following example shows how to conduct a search through the Georgia Case Law Database. In order to enter this database, users access the Georgia Casemaker Library, then choose **Case Law**.



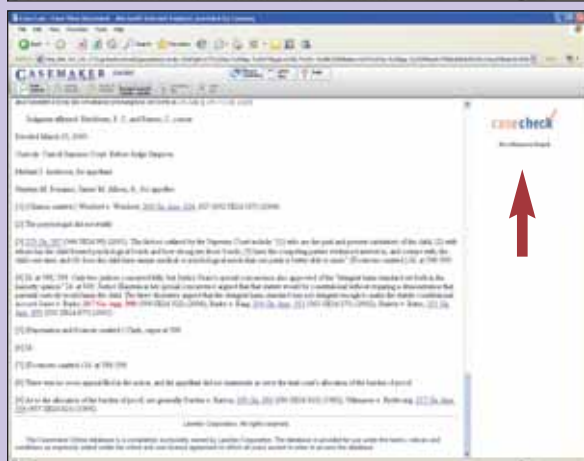
You will then be taken to a basic search screen. Here you can search the case law for words or phrases related to your search. In this example use "child custody." Once you have entered the phrase, click on the search button.



In this instance, Casemaker identified 3,311 cases that have the words child and custody in them. Casemaker allows users to access the first 100 cases – take a look at the third case in the list: *Jones v. Burks*. (Note: Narrow your search results by putting the phrase in quotation marks. A search for “child custody” would only find matches of cases that had the exact phrase child custody in them.)



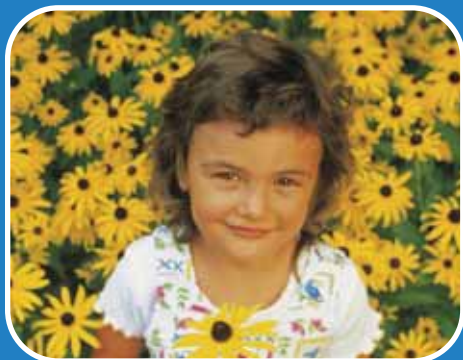
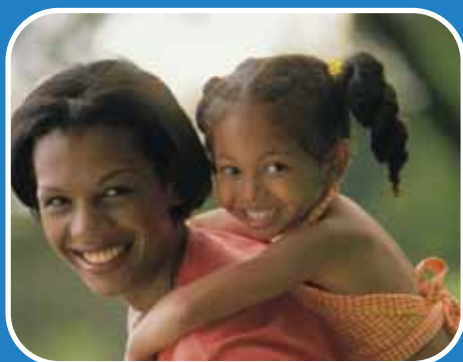
Open the *Jones v. Burks* case by clicking on the case cite number, which is highlighted in blue and underlined. You are now able to see the content of the case. The CaseCheck field on the right-hand side displays the subsequent cases that have referred to the *Jones v. Burks* case. In this instance, there are two matches.



Open the first case, *Lively v. Bowen*. Notice that CaseCheck opens the case to the exact place where the *Jones v. Burks* case is referenced in the *Lively v. Bowen* case. You will notice that the CaseCheck field now states “No References Found” indicating that the *Lively v. Bowen* case has not been referenced in any subsequent cases in the database.

Please contact Casemaker Coordinator Jodi McKenzie at jodi@gabar.org if you have questions or need further assistance with Casemaker.

The Pro Bono Project of the State Bar of Georgia salutes the following attorneys, who demonstrated their commitment to equal access to justice by volunteering their time to represent the indigent in civil pro bono programs during 2005.



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Spring is Filled With Section Events

by Johanna B. Merrill

The Patent Committee, chaired by Philip Burrus, of the **Intellectual Property Law Section** presented a lunchtime CLE program on April 13 at the Bar Center. More than 50 attorneys attended the luncheon where former Administrative Patent Judge William F. Smith, now of counsel at Dougherty Clements, spoke on the topic of “How to Successfully Navigate Patent Appeal Practice.”

On May 11 the **Intellectual Property Law Section** awarded its inaugural Outstanding Leadership Award to Miles J. Alexander, a partner at Kilpatrick Stockton, LLP, at their 2006 Spring Reception held at the Four Seasons in midtown Atlanta. Section Chair Doug Isenberg opened the program by thanking the members of the section’s executive committee before introducing Alexander’s longtime colleague and friend Emmet Bondurant who spoke about Alexander’s career and accomplishments during his 50-year law practice. Alexander was admitted to the State Bar of Georgia in 1955 after he received his law degree from Harvard in 1952. He currently serves as co-chairman of Kilpatrick Stockton, the firm he joined in 1958 after teaching at Harvard law and serving two years as a United States Air Force Judge Advocate. Following introductions Mike Hobbs, immediate past chair of the IP Law Section, interviewed the guest of honor in a brief question and answer program. Alexander spoke about memorable cases and work he’s done, as well as offering advice for new and older attorneys alike, such as surrounding yourself with



Photo by Johanna B. Merrill

The Intellectual Property Law Section Chair Doug Isenberg (right) presents Miles J. Alexander with the Outstanding Leadership Award.

“people who are smarter than you,” and learning from them. Alexander also cautioned the group to “make your life a whole life.” He said that when he looks back on his life, the things he will count as accomplishments are things like “choosing the right woman to marry” and raising his children in a manner he can be proud of.

On May 15 the **IP Law Section** hosted a luncheon meeting of past chairs at the Bar Center. Fifteen of the section’s chairs were in attendance.


On April 18 the **Entertainment & Sports Law Section** and the Atlanta Hawks presented a two-hour CLE program at Philips Arena titled “Hot Topics and Trends in Sports Law and Sports Business.” Attendees followed the program with NBA action as they watched the Hawks battle the Miami Heat.

The Section hosted their annual Entertainment Law Institute at The King Plow Art Center in Atlanta on May

19. Section Chair Lisa Moore also chaired the program and she put together a panel of speakers including Georgia Supreme Court Presiding Justice Carol W. Hunstein and the keynote speaker, Donald S. Passman with Gang, Tyre, Ramer & Brown, of Beverly Hills, Calif.

On May 10 the **Appellate Practice Section** hosted a luncheon at the Bar Center with guest speaker Georgia Supreme Court Justice Harold D. Melton. Justice Melton spoke about our "government of laws, not of men" and how this principle evolved from the time of the Founding Fathers through history, from *Marbury v. Madison*, to the Civil War, to the Civil Rights movement, to name a few highlights, to some modern examples, so that we take it for granted today.

The **Environmental Law Section** hosted a brown bag lunch meeting on May 16 at the offices of Alston & Bird. Jim Stokes and Julie Mayfield gave a legislative and Georgia Conservancy update.

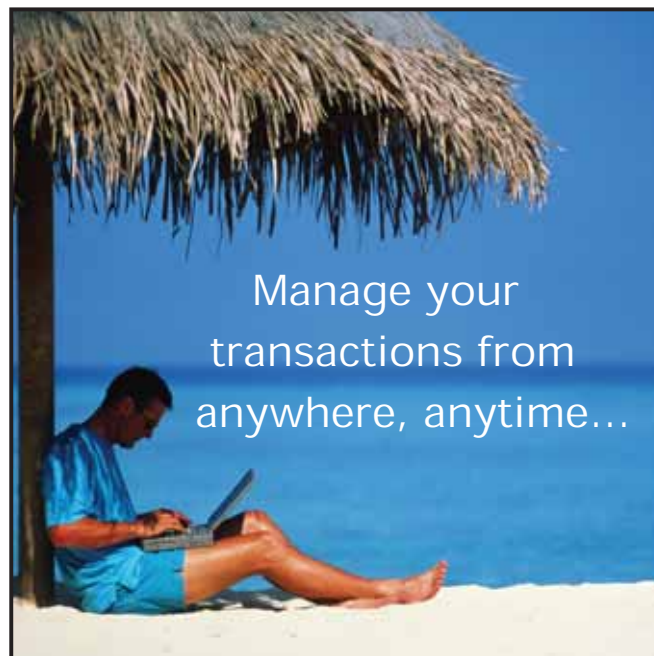
The **Technology Law Section** hosted their annual spring happy hour at Gordon Biersch on May 16. 



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

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Getting to Give

Strategies to Maximize Your Impact in the Community

by Sherry V. Neal

To work for the common good is the greatest creed.
— Woodrow Wilson

The practice of law can be as challenging and time-consuming as it is rewarding. With family commitments, continuing legal education requirements, partnership track obligations, billable hour minimums, networking and rainmaking responsibilities, and numerous other obligations, some attorneys have difficulty fitting pro bono and community service into their days and pass up opportunities for such service. As a bona fide “joiner,” I have always been a member of numerous organizations and continue to be despite the demands of my work because I firmly believe that pro bono practice and community service are life-enriching activities. I offer some reasons why a lawyer may find pro bono work and community service involvement important and some tips for how to make it work.

Pro Bono Involvement

Many lawyers are reluctant to make a pro bono commitment. Some question why they should undertake such representation or whether there is really a need. Even attorneys “called” to do pro bono work often

lament a lack of work that matches their skill sets or do not know where to find opportunities. Other attorneys feel that pro bono cases cannot fit into their practice. So why do pro bono work? There are four primary reasons:

Every attorney has a professional obligation to provide pro bono service

Rule 6.1 of the Georgia Rules of Professional Conduct provides that “[a] lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.” The comments continue: “Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.”

People need you

“We leave the poor unrepresented on the most crushing problems of life: divorce, child custody, domestic violence, housing and benefits disputes. What passes for civil justice among the have-nots is stunning.”¹ As a former public interest lawyer, I can vouch that there are more deserving clients than there are available attorneys. As one judge notes, “[t]here is a dire need for your services. Yours will be a more personal act of charity than any financial donation you may make. You will make a difference in the lives of others.”²

Pro bono is good PR and marketing

Doing pro bono work makes good business sense. “This is not a boom time for lawyers in terms of public image and general prestige. ... Disparaging lawyer jokes have replaced blonde and ethnic jokes as fodder for comedians and Internet humor. Most polls show us near the bottom rung of public esteem (although we may have been replaced by accountants and CEOs).”³

Pro bono attorneys, however, often get positive media attention, and handling pro bono cases is a way to create good will. Pro bono clients can even be a source of future revenue: they have friends and employers who can afford to pay for legal services and may refer these contacts to the attorney who handled their pro bono cases.

Pro bono work may also help you meet and impress “movers and shakers” in your practice area. For example, a young litigator may have little chance to meet judges until several years into her practice, but one handling a pro bono case has the opportunity not only to meet the judge but also to create a positive impression in the judge’s mind. While being “that nice young lawyer who does adoptions” may not win you a later case involving a business dispute, it may make a judge more kindly disposed to you, particularly if you have proven yourself conscientious and fair.

Pro bono attorneys get experience

Pro bono work can provide the opportunity to get in the trenches earlier than billable work, and many programs offer free training for volunteers. Moreover, attorneys considering a change in practice areas—for example, from litigation to trusts and estates—can hook into another part of the legal community and find out whether the prospective practice area is a good fit before making a switch.

Once you have decided generally to undertake pro bono work, there are four big questions to ask before taking any particular pro bono case:

What type of pro bono work fits my style?

Despite common (mis)perceptions, pro bono work is not solely litigation; opportunities abound for lawyers to handle transactional and administrative issues. Regardless of whether you want litigation or

transactional pro bono work, ask yourself whether you are interested in developing a new skill set or prefer to stick with what you know. Consider whether making contacts in your current practice area is a priority or if you want to expand your network. Also consider whether you have time to develop new skills necessary to handle cases outside your practice area. And, while programs usually work with volunteers’ schedules when referring pro bono cases, attorneys should have an idea before volunteering how much time they can commit. If you are a patent litigator who has to spend months at a time in court on complex cases, it may not be ideal for you to get involved in a program that requires a long-term commitment to a single case, such as guardian ad litem work. On the other hand, a program that allows you to provide one-time service on a case-by-case basis as your schedule permits—like drafting wills—may be ideal.

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Where do I find opportunities?

One of the easiest ways is to talk to others you know to find out about their pro bono work, ask about training, and get contacts. Many firms maintain directories of the firm's pro bono projects. Some have appointed a partner to oversee pro bono work. If you are not at such a firm, start with the Pro Bono Project of the State Bar of Georgia, which maintains a directory of legal services programs and can match attorneys with projects in the attorney's particular area of interest. Visit www.GeorgiaAdvocates.org to view a calendar of training events, download forms, and search for pro bono opportunities. Also check with local organizations like the Atlanta Volunteer Lawyers Foundation or the Dekalb Volunteer Lawyers Foundation and with private voluntary bar associations, which often have established pro bono projects or may be able to refer you to other organizations.

What about ethical issues and malpractice?

If you take nothing else away from this article, please take this with you: *You owe your pro bono clients the same ethical and professional obligations that you owe paying clients.* This means you have a duty to be competent and diligent in your representation of your pro bono clients under Rules 1.1, 1.2, 1.3, and 1.4 of the Georgia Rules of Professional Conduct. You cannot

"backburner" a pro bono case to handle other, billable matters simply because the other clients pay and the pro bono client does not. Pro bono clients deserve the same priority as similarly situated paying clients. This means that pro bono cases will sometimes have to take priority over paying clients and billable work. You also must avoid conflicts of interest pursuant to Rule 1.7 and must be aware of conflicts that potential pro bono clients may have with your current and former clients in billable matters.

Many legal service organizations that coordinate pro bono work provide professional liability insurance for volunteers. This is important for attorneys who do not engage in active practice and maintain professional liability insurance coverage. If you do have such coverage, check with your insurer to verify your policy covers pro bono work. If it does not, confirm with the sponsoring organization that their policy covers you as a volunteer.

Finally, how do I fit pro bono work into my busy schedule?

Noting the emphasis placed on pro bono work in law school, U. S. District Judge Marvin Aspen commented that "in today's real-world law firm, it is sometimes not that easy to put into practice those idealistic self-promises enthusiastically made in an academic setting. A

young lawyer must confront many disincentives to budget competing time demands and still be able to volunteer services to the indigent litigant."⁴ Time considerations are the most common justification (excuse?) for not engaging in pro bono representation, but there are a number of ways to fit pro bono work into your day.

- **Do what you enjoy.** Let's face it: our days really are too short to do things we do not find fulfilling or useful. If you take time to choose a pro bono practice that you enjoy, you will be more likely to make time to fit it into your schedule.
- **Treat pro bono work like a billable matter.** If making and returning calls in the morning, meeting with clients after lunch, and drafting in the late afternoon work in your billable practice, it will work in your pro bono practice as well.
- **Take advantage of available resources.** Work with another attorney or a paralegal who can make calls or meet with clients or draft documents when you cannot. Use any training manuals provided—these are usually packed with information that will make your pro bono representation much simpler. Even without a manual, do not recreate the wheel! Contact a colleague and ask for forms. Save templates or samples so you do not have to retype forms every time.
- **Communicate your needs.** Tell your pro bono client what your schedule is and give her tasks to assist you with the case. Talk with your colleagues and supervisors to make sure they know you are handling a case pro bono and when you will need to be at court or in meetings. Communicate with the organization through which you volunteer. Let them know about problems that arise or time constraints that may affect your ability to handle a case.

Community Service Groups

United Way	www.unitedwayatlanta.org
Hands On Atlanta	www.handsonatlanta.org
Habitat for Humanity	www.habitat.org
Kiwanis	www.kiwanisinternational.org
Rotary	www.rotary.org
Elks	www.elks.org
Jaycees	www.usjaycees.org
Junior League	www.ajli.org

Community Service Involvement

Unlike pro bono service, there is no ethical rule encouraging the participation of attorneys in non-legal community service. Many attorneys find, however, that such involvement can add a new dimension to both their legal and their personal lives. There are as many reasons to get involved with community service as there are clubs to join and organizations to assist, including:

- You can network with new contacts as well as solidify existing relationships with coworkers and clients. For example, you may find working on a Habitat for Humanity house to be a “bonding” experience for members of your firm and can even invite clients to participate in an effort to develop those relationships more fully.
- You can enhance your legal practice by becoming more aware of important cultural or societal issues or by building skills that carry over into your practice—like leadership. Community service organizations provide ample opportunity for people to take leadership roles by serving on the board of directors, being an officer, or leading a community service project.
- You can have fun! And, let’s face it, sometimes, it’s just nice to get away from the legal profession and enjoy the camaraderie of folks who do not have “J.D.” after their names.

Think about what type of community service fits your style. Some aspects of community service organizations to consider include:

- **Length/frequency of commitment.** Some forms of community service, like working on a particular Habitat for Humanity house, require a discrete commitment for a limited time, which allows you the flexibility

Community service opportunities are best found by talking with people you know and like. Ask friends and colleagues about their activities and what they like and dislike about the organizations and the work that they do.


to volunteer when you can. Other organizations like Kiwanis or Rotary meet weekly and have both ongoing and discrete projects. Board membership for a nonprofit organization will require a long-term, possibly high-intensity commitment.

- **Pure community service vs. mixed service and social.** Organizations like Hands on Atlanta do solely community service while some groups have social events and speakers as well as community service activities.
- **Fit with your schedule and personality.** Do you prefer volunteering on weekends or weekdays? Are you a morning person or night owl? A morning person who dislikes disruptions during the workday may like a club that meets early in the morning or on weekends, but a night owl with weekend family commitments may prefer a weeknight commitment.
- **Cost.** Many civic clubs have membership dues that may be tax deductible (usually as a business expense), but if you prefer no-cost community service, you will probably be happier getting involved with groups like Habitat for Humanity, Hands on Atlanta, or United Way.

As with pro bono opportunities, community service opportunities are best found by talking with people you know and like. Ask friends and colleagues about their activities and what they like and dislike about the organizations and the work that they do. The internet is also a great resource. (Listed on page 70 are just

a few websites of some prominent community service groups.)

Conclusion

Hopefully this article has provided you with some food for thought about getting involved in legal and non-legal service. Keep in mind that the key is to find what works for you, so if you find something you like, follow Nike’s advice and “just do it!” Trust me, you won’t regret it! 



Sherry V. Neal is a private attorney in Atlanta and the sole member of Sherry V. Neal LLC.

Through the Law Firm of Sherry V. Neal LLC,

Sherry provides legal services in the area of adoption. Sherry is also a professional time, space, and information management consultant with Momentum™ and adjunct professor of Business Law at Wesleyan College. She does pro bono work with the Atlanta Volunteer Lawyers Foundation and the Atlanta Legal Aid Society, is active in the Young Lawyers Division of the Bar, and is Secretary of the Peachtree-Atlanta Kiwanis Club.

Endnotes

1. Margaret Graham Tebo, *Lag in Legal Services: Conference Speakers Make the Case for More Pro Bono Efforts by Lawyers*, ABA JOURNAL, July 2002, at 67.
2. Marvin Aspen, *From the Bench: Why Pro Bono?*, LITIGATION, Summer 2003, Vol. 29, No. 4, at 3.
3. *Id.* at 73.
4. *Id.* at 3.

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

Robert R. Aldinger
Chesapeake, Va.
Admitted 1962
Died January 2005

Williams Aynes
Atlanta, Ga.
Admitted 1958
Died February 2006

Jerry B. Blackstock
Atlanta, Ga.
Admitted 1969
Died April 2006

Charles E. Cardin
St. Simons Island, Ga.
Admitted 1985
Died March 2006

Platon Contantinides
Atlanta, Ga.
Admitted 1960
Died August 2005

Bartow Cowden III
College Park, Ga.
Admitted 1948
Died March 2006

Travers E. Dowlings
Conley, Ga.
Admitted 1952
Died December 2005

James A. Dunlap
Gainesville, Ga.
Admitted 1942
Died August 2005

James R. Dunstan Sr.
Augusta, Ga.
Admitted 1973
Died December 2005

William D. Ferguson
Norcross, Ga.
Admitted 1968
Died March 2006

Joel Fryer
Atlanta, Ga.
Admitted 1951
Died February 2006

Thomas V. Haynes
Conyers, Ga.
Admitted 1954
Died January 2006

Dugald W. Hudson
Atlanta, Ga.
Admitted 1959
Died November 2005

Henry A. Huettner
Atlanta, Ga.
Admitted 1978
Died November 2005

Harold M. Hughes
Tyrone, Ga.
Admitted 1950
Died May 2005

Rene D. Kemp
Savannah, Ga.
Admitted 1961
Died February 2006

Jerome E. Leavell
Oxford, Miss.
Admitted 1965
Died February 2006

Earl E. Mallard Jr.
Monroe, Ga.
Admitted 1956
Died March 2006

Telesfor "T.J." Martin
Atlanta, Ga.
Admitted 1949
Died March 2006

L. Thomas McLane
West Point, Ga.
Admitted 1947
Died October 2005

James W. Paris
Winder, Ga.
Admitted 1951
Died October 2005

J. Corbett Peek
Monroe, Ga.
Admitted 1942
Died December 2005

John B. Randall
Hernando, Miss.
Admitted 1973
Died November 2005

Walter A. Reiser Jr.
Edgefield, S.C.
Admitted 1955
Died December 2005

George T. Roberts
Conyers, Ga.
Admitted 1975
Died December 2005

Harold L. Shortnacy Sr.
Columbus, Ga.
Admitted 1977
Died November 2005

Rees R. Smith
Atlanta, Ga.
Admitted 1962
Died February 2006

Roy M. Sullivan Jr.
Stone Mountain, Ga.
Admitted 1950
Died October 2005

Wilbur H. Underwood Jr.
Macon, Ga.
Admitted 1949
Died March 2006

Tiffany L. Upshaw
Columbus, Ga.
Admitted 1998
Died March 2005

Jack F. Varner
Leesburg, Ga.
Admitted 1975
Died March 2006

Gene Mac Wilburn
Athens, Ga.
Admitted 1962
Died March 2006



Jerry B. Blackstock, 61, of Atlanta, died in April. One of Atlanta's most respected lawyers, Blackstock graduated from Riverside Military

Academy, Gainesville, Ga. and Davidson College, Davidson, N.C., where he played football and joined Beta Theta Pi. His ROTC training might have culminated in military service had it not been for a lightning strike that damaged his eyesight. He subsequently attended the University of Georgia School of Law. A man who loved to go to work each day, Blackstock amassed more than 35 years of trial experience and litigated over 200 trials. He was senior partner and chair of the litigation practice at Powell, Goldstein, Frazer and Murphy until 2002, when he joined Hunton and Williams. His expertise in intellectual property was recognized internationally. Blackstock's list of awards and accomplishments is extensive and includes leadership positions with the American Bar Association, the State Bar of Georgia Board of Governors, the Georgia Defense Lawyers Association, the American Board of Trial Advocates, the

Judicial Qualifications Committee and the Judicial Qualifications Commission. He was a Fellow of the International Academy of Trial Lawyers and the American College of Trial Lawyers. Over the past several years he appeared in various listings of the states top 10 lawyers. The State Bar of Georgia named him defense attorney of the year for 2002; the Atlanta Bar Association presented him their Leadership Award this March. His love for Riverside culminated in his chairmanship of the Board of Trustees. At Peachtree Road United Methodist Church he served for many years in leadership capacities including the chair of the Pastoral Counseling service. Jerry and Margaret Owen Blackstock were married for 39 years. They have three sons: Towner Anson (daughter-in-law Holly, and granddaughter Mary Molloy), Michael Owen, and Kendrick Anthony (daughter-in-law Britt). Blackstock is also survived by sisters Patricia Ann Blackstock and Bonnie Glenn Blackstock of Dallas, Ga.

Bartow Cowden III, 80, of College Park, died in March. He was a founding partner in the Atlanta law firm of Bryant, Davis and Cowden. He was also retired from the Naval Air Force Reserves having served during WWII as a navigator in the Pacific. A native of Rockmart, Ga., Cowden received his law degree from the University of Georgia in 1949. He was a former scoutmaster of Boy Scout Troop 249 and a recipient of the Order of the Arrow. He was an avid outdoorsman and hiked the Appalachian Trail on many occasions. He is survived by his wife of 59 years, Jean Harrison Cowden, son Bartow Cowden IV and his wife, Joan, of Atlanta. Other survivors include his sister Sandra McNamera of Stockton, Calif., and nephews Dr. Georga F. Goldin of Rome and Harold W. Goldin Jr., an attorney, of Rockmart.

James R. Dunstan Sr., 58, of Augusta, died in December. Dunstan attended Mount Saint Joseph Academy and St. Mary on the Hill School and graduated from Aquinas High School where he excelled in academics and athletics. He received a Bachelor of Science in Mathematics from Augusta Junior College and earned his Juris Doctor from Mercer University, graduating summa cum laude. While attending law school, he clerked for United State District Judge Wilbur D. Owens Jr. Returning to Augusta in 1973, Dunstan practiced law for 28 years and was an accomplished trial lawyer. During that time, he served as chairman of the Richmond County Indigent Defense committee. After leaving his law practice, Dunstan spent the last eight years in partnership with his brother. Dunstan was a lifelong member of St. Mary on the Hill Catholic Church where he was a daily communicant and served as president of the Parish Council, chairman of the finance committee and as a Eucharistic Minister. He also served as president of the St. Mary on the Hill School PTO, president of Aquinas High School PTO, a member of the Aquinas High School Board and of the Boosters Club. Dunstan is survived by his wife, Margaret Durant Dunstan; sons James Richard Dunstan Jr., Appling, Charles Gordon Dunstan and Daniel Miles Dunstan, Augusta; and daughter Margaret Dutant (Maggie) Dunstan, Augusta; sisters, Dorothy Dunstan Mooney, Mary Constance (Connie) Dunstan Snead and Elizabeth (Lisa) Dunstan Murry, all of Augusta; and 14 nieces and nephews.

Rene Kemp, 70, of Hinesville, died in February. With his booming Southern baritone, a cigar stuck between his teeth and a broad smile beneath his shock of white hair, Rene Kemp was affectionately known around Liberty County as "Boss Hog." For 18 years voters

there elected him to represent them in Atlanta—first in the Georgia House in the 1970s, then a decade later in the state Senate. He grew up the son of a poor Swainsboro barber who died when Kemp was just 8. Kemp earned a football scholarship to the University of Georgia in 1953, but left after coach Wally Butts Jr. red-shirted him his freshman year. He entered the Army, playing football instead for the Southern Area Command in Germany. When he returned home, he enrolled in Georgia Military College, then University of Georgia School of Law. After graduating, Kemp moved to Hinesville to practice law. He immersed himself in the community. He was a fixture in the courts, and served as president of the Atlantic Judicial Circuit Bar Association. Kemp taught Sunday school at the First Baptist Church. Through the years he became a prominent leader in the Lions Club, Exchange Club, Jaycees, Kiwanis Club, and Hinesville-Liberty Chamber of Commerce. Kemp took his natural people skills to the campaign trail in 1976, winning a seat in the Georgia House of Representatives. He left to run for Congress in 1982, losing in a run-off by 51 votes. It wasn't until 1992 that he returned to politics, this time representing District 3 in the Georgia Senate. Kemp was known for his strong law-and-order stances, successfully authoring the state's racketeering law to combat organized crime and drug trafficking. He drafted the memorable "Son of Sam" bill, preventing convicted criminals from making a profit by selling their stories to television and film. He was a strong advocate for marshland protection and a leader on issues dealing with the mentally ill. "Boss Hog" was also adept at bringing home the bacon, securing money for the reconstruction of Old Fort King George in McIntosh County, several youth detention centers and the new Savannah Technical College campus in Liberty County. Kemp is survived by two sisters and a son.

Telesfor "Terry J." Martin, 85, of Atlanta, died in March. A native of Buffalo, Martin was the Chief Inspector of Bell Aircraft in Marietta during WWII. He served as LT. Colonel aide de camp for Governors Jimmy Carter and George Busbee's staff. While practicing real estate law, he obtained his general contractor's license and managed the building and leasing of the first successful office park in the south, Executive Park. Martin was recognized for his completion of 50 years of "service without incidence" by the State Bar of Georgia, North Georgia District. He was also a member of the Court of Appeals; Esquire of the Supreme Court Sigma Delta Kappa—Alpha Chi Chapter; Atlanta Board of Realtors; State of Georgia Realtors and the National Association of Realtors. He is survived by his son and future daughter-in-law Dale T. and Joanie Martin of Daytona, Fla.; son-in-law and daughter David and Dree Henninger of Acworth; sister Bea Haran of Flagstaff, Ariz.; grandchildren Dale Martin Jr., Tara Lammers, Hugh Rickenbaker, Katie and Joe Henninger as well as several nieces and nephews.



Gene Mac Winburn, 69, of Athens, died in March. Winburn was a successful trial lawyer who practiced in Athens for four decades. But he was also revered by his colleagues as a leader in his profession outside the courtroom. "He was without peer. He was certainly a leader," said colleague Tommy Malone. "He was president of about everything." Winburn, a native of Hartsville, S.C., was president of the State Bar of Georgia in 1990. He also served as president of the Georgia Trial Lawyers Association, the Western Circuit Bar Association and the International Society of Barristers, an exclusive honor society of trial lawyers. When he was not in his beloved Athens, Winburn "loved experiencing and living other cultures," said his younger

daughter, Paige Lambert, of Atlanta. His favorite destinations were Provence and Paris in France, as well as Munich and Sydney. His culinary preferences also had an international flair: favorite foods included osso bucco and crepes suzette. He was partial to Dom Perignon and single malt scotch. At home, Winburn played the piano, which he learned when he was growing up, and delighted family and friends with show tunes. Though he thrived in the courtroom, he was superstitious about his family seeing him in action, said his elder daughter, Whitney Goodstone. Winburn, a University of Georgia alumnus, enjoyed practicing law and was proud to be an attorney. "He had a love for the law, and he took great pride in the profession," said Goodstone. "And he loved passing that on to others." He taught business law at the University of Georgia from 1961 to 1971. Recently, he taught seminars for the National Institute for Trial Advocacy at several law schools, including Emory and Hofstra universities. To many law students, Winburn was also a mentor. Law students lined up to work in his practice for minimum wage, said law partner Lamar Lewis. Winburn was also an avid preservationist. His law firm, Winburn, Lewis & Stolz, was based in a house constructed in the 1830. Survivors include two daughters; his wife, Beverly "Winki" Winburn; siblings Patricia Winburn Dobbins of Mount Vernon and Lewis Winburn of Athens; and four grandchildren. CJB



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



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9.8 CLE Hours
- JUN 8** NBI, Inc.
Troubleshooting Real Estate Transaction Problems Involving Probate
Atlanta, Ga.
3 CLE Hours
- JUN 8** Chattanooga Bar Association
Advanced Estate Planning Practice Update – 2006
Chattanooga, Tenn.
3 CLE Hours
- JUN 8 - 10** Tulane Law School – CLE
24th Annual Multi-State Labor and Employment Law Seminar
Orlando, Fla.
14 CLE Hours
- JUN 9 - 10** Defense Research Institute
Managing Success in the Small Law Firm
Chicago, Ill.
8.5 CLE Hours
- JUN 13** NBI, Inc.
Compliance and Operation Strategies for Tax – Exempt Organizations in Georgia
Atlanta, Ga.
6.7 CLE Hours
- JUN 13** Lorman Education Services
Financial Statement Analysis – Understand and Interpret Financial Results For Better Management
Savannah, Ga.
6.7 CLE Hours

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



JUN 14	Lorman Education Services <i>Avoiding The FMLA's Landmines – Top 10 FMLA Traps and How To Avoid Them</i> Athens, Ga. 6 CLE Hours	JUN 16	Lorman Education Services <i>Documents Retention and Destruction</i> Atlanta, Ga. 6 CLE Hours
JUN 14	ICLE <i>Domestic Violence Specialty Seminar</i> Amicalola Falls, Ga. 10 CLE Hours	JUN 16	Lorman Education Services <i>Motion Law – From Basic To Advanced Procedures</i> Atlanta, Ga. 6 CLE Hours
JUN 14	Lorman Education Services <i>Establishing and Operating Homeowners' Association – Understanding The Legal Issues</i> Atlanta, Ga. 6 CLE Hours	JUN 21	Lorman Education Services <i>Advanced Like Kind Real Estate Exchanges</i> Atlanta, Ga. 6.7 CLE Hours
JUN 14	NBI, Inc. <i>Practical Guide to Zoning and Land Use Law</i> Atlanta, Ga. 6 CLE Hours	JUN 22	Lorman Education Services <i>Land Development</i> Athens, Ga. 6 CLE Hours
JUN 15	Mealey Publications, Inc. <i>Mealey's Corporate Conference Series-International Trade Law & Purchasing</i> Atlanta, Ga. 4.8 CLE Hours	JUN 22	Lorman Education Services <i>LLC's Advising Small Business Start-Ups and Larger Companies</i> Atlanta, Ga. 6.7 CLE Hours
JUN 15	Defense Research Institute <i>Young Lawyer Seminar</i> Miami, Fla. 11.8 CLE Hours	JUN 22 - 25	ICLE <i>Georgia Trial Skills Clinic</i> Athens, Ga. 24 CLE Hours
JUN 16 - 17	ICLE <i>Southeastern Admiralty Law Institute</i> Savannah, Ga. 10 CLE Hours	JUN 23	Lorman Education Services <i>Documentation Issues For Condominiums, Planned Communities</i> Macon, Ga. 6 CLE Hours
JUN 16	NBI, Inc. <i>Resolving Problem and Disputes on Construction Project</i> Atlanta, Ga. 6 CLE Hours	JUN 23	Lorman Education Services <i>Advanced HR Skill Building and Legal Update</i> Atlanta, Ga. 6.7 CLE Hours

June-July

JUN 25 National Institute of Trial Advocacy
Hanley Advanced Advocates Program
Atlanta, Ga.
36.8 CLE Hours

JUN 27 Lorman Education Services
Advanced Topics In The Family and Medical Leave Act
Macon, Ga.
6 CLE Hours

JUN 28 Tennessee Bar Association
ABA Model Rules – A Practical Update on Ethics
Multi-Sites, UK
1 CLE Hours

JUN 29 NBI, Inc.
Tennessee Nonprofits – Tax Business Answers
Nashville, Tenn.
6.7 CLE Hours

JUN 29 Lorman Education Services
Technical Standards for Subdivisions and Land Development
Albany, Ga.
6 CLE Hours

JUN 30 ICLE
Defending Drug Cases
Atlanta, Ga.
6 CLE Hours

JUN 30 Lorman Education Services
Sarbanes-Oxley Act
Albany, Ga.
6.7 CLE Hours

JUN 30 Lorman Education Services
What To Do When Construction Projects Go Bad
Atlanta, Ga.
6.7 CLE Hours

JUL 9 - 11 Prevent Child Abuse Georgia
22nd Annual Symposium: The Power of Prevention
Atlanta, Ga.
5.5 CLE Hours

JUL 12 Lorman Education Services
Recurring Questions In CGL Coverage
Multi-Sites, UK
1.5 CLE Hours

JUL 13 Lorman Education Services
Advanced Sales and Use Tax
Savannah, Ga.
6.7 CLE Hours

JUL 13 - 15 ICLE
Fiduciary Law Institute
St Simons Island, Ga.
12 CLE Hours

JUL 13 Chattanooga Bar Association
Protecting ERISA Fiduciaries, Employers and Administration
Chattanooga, Tenn.
4 CLE Hours

JUL 14 Lorman Education Services
AIA Contracts – Analysis and Interpretation of AIA Standard Contract Forms
Atlanta, Ga.
6.7 CLE Hours

JUL 14 Lorman Education Services
Managing Construction Projects
Macon, Ga.
6.7 CLE Hours

JUL 16 - 29 National Association of Criminal Defense Lawyers
Crossing Your Way To Not Guilty Keys To Winning Your Case on Cross
Miami, Fla.
11.5 CLE Hours

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



JUL 19	Lorman Education Services <i>Confidentiality of Medical Records</i> Atlanta, Ga. 6 CLE Hours	JUL 26	NBI, Inc. <i>Medicaid – From Qualifying Clients to Applying For Benefits</i> Atlanta, Ga. CLE Hours
JUL 20	Professional Education Systems, Inc. <i>Resolving Conflicts of Survey Evidence</i> Atlanta, Ga. 7 CLE Hours	JUL 27	NBI, Inc. <i>Small Office Management for the Legal Professional</i> Atlanta, Ga. 6 CLE Hours
JUL 20	Lorman Education Services <i>Foreclosure and Repossession</i> Atlanta, Ga. 6 CLE Hours	JUL 27	Lorman Education Services <i>Advanced Topics In The Family and Medical Leave Act</i> Albany, Ga. 6 CLE Hours
JUL 20	Lorman Education Services <i>Human Resource Audits</i> Athens, Ga. 6.7 CLE Hours	JUL 27	Lorman Education Services <i>Zoning and Land Use</i> Macon, Ga. 6 CLE Hours
JUL 21	Lorman Education Services <i>Tax-Exempt Organizations</i> Atlanta, Ga. 6.7 CLE Hours	JUL 28	ICLE <i>Environmental Law Institute</i> Hilton Head, S.C. 8.5 CLE Hours
JUL 21	Lorman Education Services <i>Employee Discharge and Document</i> Atlanta, Ga. 6.7 CLE Hours	JUL 28	Lorman Education Services <i>Medical Records Law</i> Albany, Ga. 6 CLE Hours
JUL 21	Lorman Education Services <i>What You Need To Know About Public Records and Open Meeting</i> Atlanta, Ga. 6 CLE Hours	JUL 28	Lorman Education Services <i>Current Issues In Store Water Regulations</i> Atlanta, Ga. 6 CLE Hours
JUL 21	Lorman Education Services <i>Discovery Skills for Legal Staff</i> Atlanta, Ga. 6 CLE Hours	July 31	NBI, Inc. <i>Collecting Debts – Tips and Strategies to Legally Get What You're Owed</i> Atlanta, Ga. 6 CLE Hours
JUL 25	NBI, Inc. <i>Developing and Operating Planned Communities and Condominiums</i> Atlanta, Ga. 6 CLE Hours		

Supreme Court Issues Formal Advisory Opinion No. 04-1

The second publication of this opinion appeared in the October 2004 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about October 4, 2004. The opinion was filed with the Supreme Court of Georgia on October 15, 2004. The State Bar of Georgia filed a request for discretionary review with the Supreme Court of Georgia on November 2, 2004, pursuant to Rule 4-403(d). The Supreme Court of Georgia issued an Order granting review of the Opinion on July 6, 2005. On February 13, 2006, the Supreme Court of Georgia approved and issued Formal Advisory Opinion No. 04-1 pursuant to Bar Rule 4-403(d), with comments. Following is the full text of the Supreme Court Order and Formal Advisory Opinion No. 04-1. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

FORMAL ADVISORY OPINION NO. 04-1 Approved And Issued On February 13, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia With Comments, Supreme Court Docket No. S05U1720

COMPLETE TEXT FROM THE ORDER OF THE SUPREME COURT OF GEORGIA

We grant a petition for discretionary review brought by the State Bar of Georgia to consider the proposed opinion of the Formal Advisory Board¹ (hereinafter "Board") that, if an attorney supervises the closing of a real estate transaction conducted by a non-lawyer entity, the attorney is a fiduciary with respect to the closing proceeds and the closing proceeds must be handled in accordance with the trust account and IOLTA provisions of Rule 1.15(II) of Bar Rule 4-102(d) of the Georgia Rules of Professional Conduct. Formal Advisory Opinion No. 04-1 (August 6, 2004). See State Bar Rule 4-403(d) (authorizing this Court to grant a petition for discretionary review).² For the reasons set forth below, we agree with the Board that a lawyer directing the closing of a real estate transaction holds money which belongs to another (either a client or a third-party) as an incident to that practice, and must keep that money

in an IOLTA account. We further add that if the proceeds are not subject to the rules of IOLTA subsection (c)(2), then the funds must be deposited in an interest-bearing account for the client's benefit. Rule 1.15(II)(c)(1). Under no circumstances may the closing proceeds be commingled with funds belonging to the lawyer, the law office, or any entity other than as explicitly provided in the Rule.

The matter came before the Board pursuant to a request for an advisory opinion on the following question:

May a lawyer participate in a non-lawyer entity created by the lawyer for the purpose of conducting residential real estate closings where the closing proceeds received by the entity are deposited in a non-IOLTA interest bearing bank trust account rather than an IOLTA account?

The opinion first appeared in the June 2004 issue of the Georgia Bar Journal. In response, the Board received comments both in support of and in opposition to the opinion. The modified opinion appeared in the October 2004 Georgia Bar Journal, and the State Bar thereafter sought discretionary review.

The closing of a real estate transaction in this State constitutes the practice of law, and, if performed by someone other than a duly-licensed Georgia attorney, results in the prohibited unlicensed practice of law. In re UPL Advisory Opinion 2003-2, 277 Ga. 472 (588 SE2d 741) (2003). The attorney participating in the closing is a fiduciary with respect to the closing proceeds, which must be handled in accordance with the trust account and IOLTA provisions in Rule 1.15(II).³ Specifically, when a lawyer holds client funds in trust, the lawyer must make an initial determination whether the funds are eligible for the IOLTA program. Closing proceeds from a real estate transaction which are nominal in amount or are to be held for a short period of time (i.e., funds that cannot otherwise generate net earnings for the client) must be deposited into an Interest on Lawyer's Trust Account (IOLTA Account). Funds that are not nominal in amount or funds, no matter what amount, that are not to be held for a short period of time, are ineligible for placement in an IOLTA account and must be placed in an interest-bearing account, with the net interest generated paid to the client. Rule 1.15(II)(c). See also Brown v. Legal

Foundation of Washington, 538 U.S. 216 (155 LE2d 376, 123 SC 1406) (2003). Under either circumstance, Rule 1.15(II) instructs that a lawyer involved in a closing has a strict fiduciary duty to deposit a client's real estate closing proceeds in a separate IOLTA or non-IOLTA interest bearing trust account.

The Board's recognition that, under all circumstances, the interest generated on the client's closing funds is governed by Rule 1.15(II), ensures full compliance where real estate closings are involved. Accordingly, we adopt Formal Advisory Opinion 04-1 to the extent it is in accord with the rule that attorneys must place client closing proceeds that are nominal or held for a short period of time in an IOLTA account. We clarify that closing proceeds that are more than nominal in amount or that will be deposited for more than a short period of time must be placed in a non-IOLTA interest bearing account with interest payable to the client. Rule 1.15(II)(c)(1).

Formal Advisory Opinion approved, as modified. All the Justices concur.

1. State Bar Rule 4-403(a) authorizes the Formal Advisory Opinion Board to draft proposed Formal Advisory Opinions concerning the proper interpretation of the Rules of Professional Conduct.
2. Formal Advisory Opinion Board opinions, which are approved or modified by this Court, are "binding on all members of the State Bar." State Bar Rule 4-403(e).
3. The sole issue addressed in the proposed opinion is whether an attorney may participate in a non-lawyer entity which the attorney created for the purpose of conducting residential real estate closings without depositing the closing proceeds in an IOLTA account.

FORMAL ADVISORY OPINION NO. 04-1

Question Presented:

May a lawyer participate in a non-lawyer entity created by the lawyer for the purpose of conducting residential real estate closings where the closing proceeds received by the entity are deposited in a non-IOLTA interest bearing bank trust account rather than an IOLTA account?

Summary Answer:

The closing of a real estate transaction constitutes the practice of law. If an attorney supervises the closing conducted by the non-lawyer entity, then the attorney is a fiduciary with respect to the closing proceeds and closing proceeds must be handled in accordance with Rule 1.15 (II). If the attorney does not supervise the closings, then, under the facts set forth above, the lawyer is assisting a non-lawyer in the unauthorized practice of law.

Opinion:

The closing of a real estate transaction in the state of Georgia constitutes the practice of law. See, *In re UPL Advisory Opinion 2003-2*, 277 Ga. 472, 588 S.E. 2d 741 (Nov. 10, 2003), O.C.G.A. §15-19-50 and Formal Advisory Opinions Nos. 86-5 and 00-3. Thus, to the extent that a non-lawyer entity is conducting residential real estate closings not under the supervision of a lawyer, the non-lawyer entity is engaged in the practice of law. If an attorney supervises the residential closing¹, then that attorney is a fiduciary with respects to the closing proceeds. If the attorney participates in but does not supervise the closings, then the non-lawyer entity is engaged in the unauthorized practice of law. In such event, the attorney assisting the non-lawyer entity would be doing so in violation of Rule 5.5 of the Georgia Rules of Professional Conduct.²

When a lawyer is supervising a real estate closing, the lawyer is professionally responsible for such closings. Any closing funds received by the lawyer or by persons or entities supervised by the lawyer are held by the lawyer as a fiduciary. The lawyer's responsibility with regard to such funds is addressed by Rule 1.15 (II) of the Georgia Rules of Professional Conduct which states in relevant part:

SAFEKEEPING PROPERTY—GENERAL

- (a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by these Rules. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account.

* * * * *

- (c) All client's funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing (IOLTA) account with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

- (1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with notice to the clients, create and maintain an interest-bearing trust account in an approved institution as defined by Rule 1.15(III)(c)(1), with the interest to be paid to the client. No earnings from such an account shall be made available to a lawyer or law firm.

- (2) With respect to funds which are nominal in amount or are to be held for a short period of time, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) in compliance with the following provisions:

* * * * *

As set out in Subsection (c)(2) above, this Rule applies to all client funds which are nominal or are to be held for a short period of time. As closing proceeds are not nominal in amount, but are to be held for only a short period of time, they are subject to the IOLTA provisions. Therefore, the funds received in connection with the real estate closing conducted by the lawyer or the non-

lawyer entity in the circumstances described above must be deposited into an IOLTA compliant account.

1. Adequate supervision would require the lawyer to be present at the closing. See FAO . . . etc.
2. Rule 5.5 states in relevant part that:

UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not:

* * * * *

- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

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

Supreme Court Issues Formal Advisory Opinion No. 05-2

The second publication of this opinion appeared in the October 2005 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about October 5, 2005. The opinion was filed with the Supreme Court of Georgia on October 18, 2005. The State Bar of Georgia filed a request for discretionary review with the Supreme Court of Georgia on October 18, 2005, pursuant to Rule 4-403(d). On April 25, 2006, the Supreme Court of Georgia issued Formal Advisory Opinion No. 05-2 pursuant to Rule 4-403(d), as the replacement for Formal Advisory Opinion No. 90-1. Following is the full text of the opinion issued by the Supreme Court. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

FORMAL ADVISORY OPINION NO. 05-2 Approved And Issued On April 25, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 90-1, Supreme Court Docket No. S06U0791

QUESTION PRESENTED:

“Hold Harmless” Agreements Between Employers and Their In-House Counsel.

Whether an attorney employed in-house by a corporation may enter into an agreement by which his or her employer shall hold the attorney harmless for malpractice committed in the course of his employment.

SUMMARY ANSWER:

“Hold harmless” agreements between employers and attorneys employed in-house are ethical if the employer is exercising an informed business judgment in utilizing the “hold harmless” agreement in lieu of malpractice insurance on the advice of counsel and the agreement is permitted by law.

OPINION:

Georgia Rule of Professional Conduct 1.8(h) offers the following direction:

“A lawyer shall not make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement”

This rule seeks to prevent attorneys from taking advantage of clients and avoiding the removal of negative consequences for malpractice. *See*, Opinion 193 (D.C. 1989). Neither of these policies would be well served by prohibiting the use of “hold harmless” agreements between employers and attorneys employed in-house if the employer is exercising an informed business judgment in utilizing the “hold

harmless” agreement in lieu of malpractice insurance and doing so on the advice of any counsel other than the counsel being employed. Consultation with in-house counsel satisfies the requirement of the rule. First, the position of the client as employer, and the sophistication of those who employ in-house counsel, eliminates almost all overreaching concerns. Secondly, the lawyer as employee does not avoid the negative consequences of malpractice because he or she is subject to being discharged by the employer. Apparently, discharge is preferred by employers of in-house counsel to malpractice suits as a remedy for negligent performance. See, Opinion 193 (D.C. 1989).

Accordingly, we conclude that “hold harmless” agreements are ethical when an employer of in-house counsel makes an informed business judgment that such an agreement is preferable to employee malpractice insurance, is done on the advice of counsel, and is permitted by law. The determination of whether such agreements are permitted by law is not within the scope of this Opinion. Finally, we note that the proposed “hold harmless” agreement does not limit liability to third parties affected by in-house counsel representation. Instead, the agreement shifts the responsibility for employee conduct from an insurance carrier to the organization as a selfinsurer.

Supreme Court Issues Formal Advisory Opinion No. 05-3

The second publication of this opinion appeared in the October 2005 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about October 5, 2005. The opinion was filed with the Supreme Court of Georgia on October 18, 2005. The State Bar of Georgia filed a request for discretionary review with the Supreme Court of Georgia on October 18, 2005, pursuant to Rule 4-403(d). On April 25, 2006, the Supreme Court of Georgia issued Formal Advisory Opinion No. 05-3 pursuant to Rule 4-403(d), as the replacement for Formal Advisory Opinion No. 90-2. Following is the full text of the opinion issued by the Supreme Court. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

FORMAL ADVISORY OPINION NO. 05-3 Approved And Issued On April 26, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 90-2, Supreme Court Docket No. S06U0795

QUESTION PRESENTED:

Ethical propriety of a part-time law clerk appearing as an attorney before his or her present employer-judge.

SUMMARY ANSWER:

The representation of clients by a law clerk before a present employer-judge is a violation of Rule 1.7 of the Georgia Rules of Professional Conduct.

OPINION:

This question involves an application of Rule 1.7 governing personal interest conflicts. Rule 1.7 provides:

- (a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer’s own interests or the lawyer’s duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).
- (b) If client consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected or former client consents, preferably in writing, to the representation after: (1) consultation with the lawyer, (2) having received in writing reasonable and adequate information about the material risks of the representation, and (3) having been given the opportunity to consult with independent counsel.
- (c) Client consent is not permissible if the representation: (1) is prohibited by law or these rules; . . . (3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

There are two threats to professional judgment posed when a law clerk undertakes to represent a client before the judge by whom the law clerk is also currently employed. The first is that the lawyer will be unduly restrained in client representation before the employer-judge. Comment [6] to Rule 1.7 states that “the lawyer’s personal or economic interest should not be permitted to have an adverse effect on representation of a client.” And Comment [4] explains that:

“loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer’s other competing responsibilities or interest. The conflict in effect forecloses alternatives that would otherwise be available to the client.”

Because of this risk, the representation of clients by a law clerk before an employer-judge is a violation of Rule 1.7. Moreover, the Georgia Supreme Court has ruled that for a full-time law clerk concurrently to serve as appointed co-counsel for a criminal defendant before one of the judges by whom the law clerk is employed constitutes an actual conflict of interest depriving the defendant of his Sixth Amendment right of counsel.¹

Rule 1.7 permits client waiver of personal interest conflicts through client consultation with the lawyer, providing reasonable and adequate written information about the material risks of the representation to the client, and giving the client the opportunity to consult with independent counsel. This waiver provision must be read consistently with other guidance from the profession. Because of a second threat to professional judgment, client waiver is impermissible in this situation. Client waiver is inconsistent with the guidance of Rule 3.5(a) of the Georgia Rules of Professional Responsibility, which prohibits a lawyer from seeking to influence a judge, juror, prospective juror or other official by means prohibited by law. (There is an implication of improper influence in the very fact of the employment of the attorney for one of the parties as the judge’s current law clerk. It is also inconsistent with the guidance of Rule 3.5(a) Comment [2] which states,

“If we are to maintain integrity of the judicial process, it is imperative that an advocate’s function be limited to the presentation of evidence and argument, to allow a cause to be decided according to law. The exertion of improper influence is detrimental to that process. Regardless of an advocate’s innocent intention, actions which give the appearance of tampering with judicial impartiality are to be avoided. The activity proscribed by this Rule should be observed by the advocate in such a careful manner that there be no appearance of impropriety.

Accordingly, a part-time law clerk should not seek client waiver of the conflict of interest created by representation of clients before the employer-judge.²

A related rule is found in Rule 1.12(b), which states:

A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is par-

ticipating personally and substantially as a judge or other adjudicative officer or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator. In addition, the law clerk shall promptly provide written notice of acceptance of employment to all counsel of record in all such matters in which the prospective employer is involved.

Rule 1.12(b) allows a law clerk for a judge to accept employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially with the approval of the judge and prompt written notice to all counsel of record in matters in which the prospective employer of the law clerk is involved. Rule 1.12 (b) addresses future employment by a judge’s law clerk and should not be read to allow a law clerk to represent a party before the judge whom he is currently employed. Rule 3.5 (a) and Comment [2] to that Rule would prohibit the appearance of tampering with judicial impartiality that the close employment relationship between judge and current law clerk would inevitably raise.

This opinion addresses the propriety of the lawyer’s conduct under the Georgia Rules of Professional Responsibility. It does not address the ethical propriety of the same conduct in his or her capacity as part-time clerk. We do note, however, that many courts have prevented the conduct in question here as a matter of court rules in accord with this opinion.³ We also note that judicial clerks are often treated as “other judicial officers” for the purpose of determining disqualifications and other ethical concerns.⁴ Under that treatment, the conduct in question here would be analogous to a request by a part-time judge to practice before his or her own court in violation of the Code of Judicial Conduct and statutory provisions.⁵ See O.C.G.A. § 15-7-21.⁶

1. 269 Ga. 446, 499 S.E. 2d 897 (1998).

2. In accord, Advisory Opinion CI-951 (Michigan) (1983). (Part-time law clerk may not work in any capacity as private counsel on any case pending in employer-judge’s circuit and must give notice to clients of his inability to appear in the circuit.)

3. Sup. Ct. R. 7. (An employee of the Supreme Court shall not practice as an attorney in any court while employed by the Court.)

4. See, e.g., ABA/BNA Lawyers’ Manual on Professional Conduct 91:4503 and cases cited therein; see, also, ABA Model Rules of Professional Conduct Rule 1.12 (1984); and Opinion 38 (Georgia 1984) (“Lawyers and members of the public view a Law Clerk as an extension of the Judge for whom the Clerk works”).

5. Georgia Code of Judicial Conduct. (Part-time judges: (2) should not practice law in the court on which they serve, or in any court subject to the appellate jurisdiction of the court on which they serve, or act as lawyers in proceedings in which they have served as judges or in any other proceeding related thereto.)
6. O.C.G.A. § 15-7-21(b). A part-time judge of the state court may engage in the private practice of law in other courts but may not practice in his own court or appear in any matter as to which that judge has exercised any jurisdiction.

Supreme Court Issues Formal Advisory Opinion No. 05-8

The second publication of this opinion appeared in the December 2005 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about December 5, 2005. The opinion was filed with the Supreme Court of Georgia on December 19, 2005. The State Bar of Georgia filed a request for discretionary review with the Supreme Court of Georgia on December 30, 2005, pursuant to Rule 4-403(d). On April 4, 2006, the Supreme Court of Georgia issued Formal Advisory Opinion No. 05-8 pursuant to Rule 4-403(d), as the replacement for Formal Advisory Opinion No. 96-2. Following is the full text of the opinion issued by the Supreme Court. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

FORMAL ADVISORY OPINION BOARD NO. 05-8 Approved And Issued On April 4, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 96-2, Supreme Court Docket No. S06U0800

QUESTION PRESENTED:

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

SUMMARY ANSWER:

A lawyer shall not make an agreement prospective-ly limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is inde-

pendently represented in making the agreement. Therefore, in the absence of independent representation of the client, the lawyer should not condition the representation of a client upon the waiver of any claim for malpractice and should not attempt to cause the waiver of any claim for malpractice by the inclusion of language amounting to such a waiver in correspondence with a client.

OPINION:

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

Important Message

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

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

It is apparent from reviewing this "message" that the lawyer is attempting to exonerate himself or herself from any claim of malpractice or to cause a waiver of any claim for malpractice by the client against the lawyer. By attempting to limit his or her liability for malpractice or to cause a waiver of any claim for malpractice, the lawyer is putting himself or herself into

an adversarial relationship with the client. While providing advice to the client on the one hand, the lawyer is attempting to limit or excuse his or her liability for claims of malpractice resulting from the provision of such advice on the other hand. Such conduct places the lawyer's personal interests ahead of the interests of the client. This conduct is expressly forbidden by Rule 1.8(h), which provides that "A lawyer shall not make

an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement."

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

Supreme Court Issues Formal Advisory Opinion No. 05-9

The second publication of this opinion appeared in the December 2005 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about December 5, 2005. The opinion was filed with the Supreme Court of Georgia on December 19, 2005. The State Bar of Georgia filed a request for discretionary review with the Supreme Court of Georgia on December 30, 2005, pursuant to Rule 4-403(d). On April 13, 2006, the Supreme Court of Georgia issued Formal Advisory Opinion No. 05-9 pursuant to Rule 4-403(d), as the replacement for Formal Advisory Opinion No. 97-1. Following is the full text of the opinion issued by the Supreme Court. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

FORMAL ADVISORY OPINION NO. 05-9 Approved And Issued On April 13, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 97-1, Supreme Court Docket No. S06R0802

QUESTION PRESENTED:

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

SUMMARY ANSWER:

Yes. While a temporary lawyer and the employing firm or corporate law department must be sensitive to the unique problems of conflicts of interest, confidentiality, imputed disqualification, client participation, use of placement agencies and fee division produced

by the use of temporary lawyers, there is nothing in the Georgia Rules of Professional Conduct that prohibits the use of temporary lawyers.

OPINION:

I. Conflicts of Interest

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

The opportunity for conflicts of interest is heightened in the context of the employment of temporary lawyers. The very nature of a temporary lawyer invokes conflict of interest issues. Obviously, a temporary lawyer is likely to be employed by many different firms or legal departments during the course of his or her practice. Therefore, the potential for conflicts of interest is great. As a practical matter, this potential for conflict imposes upon temporary lawyers and employing law firms or corporate law departments an obligation of great care in both record keeping and screening for conflicts. In fact, the potential for conflict is so high

that law firms or corporate law departments that employ temporary lawyers would be acting unethically if they did not carefully evaluate each proposed employment for actual conflicting interests and potentially conflicting interests. Additionally, the temporary lawyer should maintain a record of clients and matters worked on in order to evaluate possible conflicts of interest should they arise. All firms employing temporary lawyers should also maintain a complete and accurate record of all matters on which each temporary lawyer works.

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

II. Confidentiality

In addition to avoiding conflicts of interest, an attorney also is obligated to protect the client’s confidences. As noted above, a temporary lawyer who is involved in the representation of clients or who provides assistance in the representation of clients enters into an attorney/client relationship with those clients. Therefore, the temporary attorney is obligated not to disclose client confidences. A temporary attorney is required to keep all information gained in the professional relationship with a client confidential in accordance with Rule 1.6.

Furthermore, Rule 5.1 requires:

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

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

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

III. Use of Placement Agency for Temporary Attorneys

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

Furthermore, there is an increased risk of disclosure of confidential information even though there must be compliance with the Rules relating to confidential information and conflicts of interest. This risk of disclosure may be lessened by the screening of temporary

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

IV. Fee Arrangements

The last consideration that needs to be addressed is the appropriate manner in which to handle the fee arrangement. In accordance with the rationale contained in ABA Formal Opinion 88-356, a fee division with a temporary attorney is allowed. If a temporary attorney is directly supervised by an attorney in a law firm, that arrangement is analogous to fee splitting with an associate in a law firm, which is allowed by Rule 1.5(e). Thus, in that situation there is no requirement of consent by the client regarding the fee. Nevertheless, the ethically proper and prudent course is to seek consent of a client under all circumstances in which the temporary lawyer's assistance will be a material component of the representation. The fee division with a temporary attorney is also allowed even if there is no direct supervision if three criteria are met: (1) the fee is in proportion to the services performed by each lawyer;

(2) the client is advised of the fee splitting situation and consents; and (3) the total fee is reasonable. Rule 1.5(e).

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

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

Supreme Court Issues Formal Advisory Opinion No. 05-10

The second publication of this opinion appeared in the December 2005 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about December 5, 2005. The opinion was filed with the Supreme Court of Georgia on December 19, 2005. The State Bar of Georgia filed a request for discretionary review with the Supreme Court of Georgia on December 30, 2005, pursuant to Rule 4-403(d). On April 25, 2006, the Supreme Court of Georgia issued Formal Advisory Opinion No. 05-10 pursuant to Rule 4-403(d), as the replacement for Formal Advisory Opinion No. 98-1. Following is the full text of the opinion issued by the Supreme Court. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

FORMAL ADVISORY OPINION NO. 05-10 Approved And Issued On April 25, 2006 Pursuant To Bar Rule 4-403 By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 98-1, Supreme Court Docket No. S06U0803

QUESTION PRESENTED:

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

SUMMARY ANSWER:

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

OPINION:

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

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

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

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

Actual knowledge, of course, would always be sufficient to meet the knowledge requirement of this Rule. Consistent with the doctrine of “willful blindness” applied in other legal contexts, however, sufficient knowledge could be imputed to local counsel if he or she, suspicious that lead counsel was engaging in or was about to engage in a violation of ethical requirements, sought to avoid acquiring actual knowledge of the conduct. The doctrine of “willful blindness” applies in these circumstances because local counsel’s conduct in avoiding actual knowledge displays the same level of culpability as actual knowledge.

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

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

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

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

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

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

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

Notice of Filing of Formal Advisory Opinions in Supreme Court

Second Publication of Proposed Formal Advisory Opinion No. 05-11 Hereinafter known as "Formal Advisory Opinion No. 05-11"

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 June 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 simultane-

ously served upon the Board through the Office of the General Counsel of the State Bar of Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

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

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

**STATE BAR OF GEORGIA, ISSUED BY
THE FORMAL ADVISORY OPINION
BOARD, PURSUANT TO RULE 4-403
ON JANUARY 5, 2006, FORMAL
ADVISORY OPINION NO. 05-11
(Redrafted Version of Formal
Advisory Opinion No. 99-1)**

QUESTION PRESENTED:

May an attorney ethically defend a client pursuant to an insurance contract when the attorney simultaneously represents, in an unrelated matter, the insurance company with a subrogation right in any recovery against the defendant client?

SUMMARY ANSWER:

In this hypothetical, the attorney's successful representation of the insured would reduce or eliminate the potential subrogation claim of the insurance company that is a client of the same attorney in an unrelated matter. Thus, essentially, advocacy on behalf of one client in these circumstances constitutes advocacy against a simultaneously represented client. "Ordinarily, a lawyer may not act as an advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated." *See*, Rule 1.7, Comment 8. This is true because adequate representation of any client includes a requirement of an appearance of trustworthiness that is inconsistent with advocacy against that client.

Thus, if the insurance company, *as opposed to an insured of that company*, is in fact the client of the attorney in the unrelated matter, then this representation would be an impermissible conflict of interest under Rule 1.7(a) and consent of both clients, as sometimes permitted under Rule 1.7 to cure an impermissible conflict, would not be available. *See*, Rule 1.7(c)(3).

If, however, as is far more typically the case, it is not the insurance company that is the client in the unrelated matter, but an insured of the insurance company, then there is no advocacy against a simultaneous representation client and the representation is not prohibited for that reason. Instead, in such circumstances, the attorney may have a conflict with the attorney's own interests under Rule 1.7 (a) in that the attorney has a financial interest in maintaining a good business relationship with the non-client insurance company. The likelihood that the representation will be harmed by this financial interest makes this a risky situation for the attorney. Nevertheless, under some circumstances the rules permit this personal interest conflict to be cured by consent of all affected clients after compliance with the require-

ments for consent found in Rule 1.7(b). Consent would not be available to cure the conflict, however, if the conflict "involves circumstances rendering it reasonably unlikely that the lawyer [would] be able to provide adequate representation to one or more of the affected clients." *See*, Rule 1.7(c). The question this asks is not the subjective one of whether or not the attorney thinks he or she will be able to provide adequate representation despite the conflict, but whether others would reasonably view the situation as such. The attorney makes this determination at his or her own peril.

OPINION:

Correspondent asks whether an attorney may ethically defend a client pursuant to an insurance contract when the attorney simultaneously represents, in an unrelated matter, the insurance company with a subrogation right in any recovery against the defendant client? In this hypothetical, the attorney's successful representation of the insured would reduce or eliminate the potential subrogation claim of the insurance company that is a client of the same attorney in an unrelated matter.

This situation is governed by Rule 1.7, which provides:

- (a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).
- (b) If client consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected or former client consents, preferably in writing, to the representation after:
 - (1) consultation with the lawyer;
 - (2) having received in writing reasonable and adequate information about the material risks of the representation; and
 - (3) having been given the opportunity to consult with independent counsel.
- (c) Client consent is not permissible if the representation:
 - (1) is prohibited by law or these rules;
 - (2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or
 - (3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

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If the representation of the insurance company in the unrelated matter is, in fact, representation of the insurance company, and not representation of an insured of the company, then we get additional assistance in interpreting Rule 1.7 from Comment 8 which states that: "Ordinarily, a lawyer may not act as an advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated." This is true because adequate representation of any client includes a requirement of an appearance of trustworthiness that is inconsistent with advocacy against that client. This prohibition is not because Georgia lawyers are not sufficiently trustworthy to act professionally in these circumstances by providing independent professional judgment for each client unfettered by the interests of the other client. It is, instead, a reflection of the reality that reasonable client concerns with the appearance created by such conflicts could, by themselves, adversely affect the quality of the representation.

Thus, in this situation there is an impermissible conflict of interest between simultaneously represented clients under Rule 1.7(a) and consent to cure this conflict is not available under Rule 1.7(c) because it necessarily "involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients." See, generally, ABA/BNA LAWYERS MANUAL ON PROFESSIONAL CONDUCT 51:104-105 and cases and advisory opinions cited therein. See, also, *ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1495*

(1982) (lawyer may not accept employment adverse to existing client even in unrelated matter; prohibition applies even when present client employs most lawyers in immediate geographical area, thereby making it difficult for adversary to retain equivalent counsel).

If, however, as is far more typically the case, it is not the insurance company that is the client in the unrelated matter, but an insured of the insurance company, then there is no advocacy against a simultaneous representation client and the representation is not prohibited for that reason. Instead, in such circumstances, the attorney may have a conflict with the attorney's own interests under Rule 1.7 (a) in that the attorney has a financial interest in maintaining a good business relationship with the non-client insurance company. The likelihood that the representation will be harmed by this financial interest makes this a risky situation for the attorney. Nevertheless, under some circumstances the rules permit this personal interest conflict to be cured by consent of all affected clients after compliance with the requirements for consent found in Rule 1.7(b). Consent would not be available to cure the conflict, however, if the conflict "involves circumstances rendering it reasonably unlikely that the lawyer [would] be able to provide adequate representation to one or more of the affect clients." See, Rule 1.7(c). The question this asks is not the subjective one of whether or not the attorney thinks he or she will be able to provide adequate representation despite the conflict, but whether others would reasonably view the situation as such. The attorney makes this determination at his or her own peril.

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