

The background of the cover is a photograph of a tall, modern building with a grid-like facade of windows, partially obscured by the branches and leaves of large trees in the foreground. The sun is visible in the upper left corner, creating a lens flare effect.

Georgia
Bar

Journal

October 2002 ■ Volume 8 ■ Number 2

*Bar Center
Project Moves Forward*

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

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On the Cover

The Bar Center Project is back on track now that the tree litigation has come to an end. For more information, see "From the President" on page 4.

Cover Photo by Len Horton

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Publisher's Statement

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By James B. Durham

Bar Center Project Moves Forward

After one year of delay, the litigation over the trees has ended and the Bar Center project is back on course. The Georgia Court of Appeals denied the appellant's application for discretionary appeal, and there was no further appeal. The trees that had been the subject of the litigation were removed, an action that was not taken lightly and was made with empathy and appreciation for the position of those who opposed their removal.

Although the majority of our members were supportive with regard to the tree removal, some of our members opposed the actions taken by the Bar. We appreciate the concern any member of our Bar or any member of the public had over the loss of the trees. In fact, we attempted to save every tree possible in our plans and will be planting far more trees than were actually removed. As the city arborist said on many occasions, the Bar exceeded the requirements of the ordinance in regard to its site replacement plan. In addition, the Bar has agreed to maintain the median of Marietta Street in front of our building for a two-block area. Despite these efforts, we understand that the immediate loss of mature trees was the concern expressed by many people. However, in a number of years, we believe the plans we have presented will lead to a green space area in downtown Atlanta that everyone will be pleased to see. Now, we need to move beyond our differences and focus on the project and its enormous potential to benefit members of the Bar and the public.

The mission of the Bar Center is to serve as the home and professional gathering place for the lawyers and judges of Georgia. As such, it will provide multiple professional uses to our members and serve to educate the public about our profession.

PROFESSIONAL USES

The building is 335,000 square feet located on 1.74 acres at 104 Marietta St. in the central business district of downtown Atlanta. It is one block from Centennial Olympic Park, CNN Center, the World Congress Center, Philips Arena and the future multi-modal rail station. It is also very close to the future home of the Georgia Aquarium and the future Coca-Cola Museum. The State Capitol, the Supreme Court of Georgia, the Georgia Court of Appeals, the Fulton County Courthouse, the 11th Circuit Court of Appeals, the Richard B. Russell Federal Building, the Georgia Dome, the Five Points and CNN MARTA stations, and Georgia State University are also nearby.

The mission of the Bar Center is to serve as the home and professional gathering place for the lawyers and judges of Georgia.

Once completed, the Bar Center will offer conference and continuing legal education capabilities for attorneys. One full floor consisting of more than 40,000 square feet will be devoted to professional meetings, legal/judicial conferences, and continuing legal education for lawyers, judges and legal staff. This facility will also serve as a venue for statewide, regional, national and international conferences of lawyer and judicial associations.

A computer and technology training center is also being planned. Operated by the Law Practice Management program, this center will offer computer instruction for lawyers, judges and their office staffs. With electronic court filings, online legal research and increasing choices of software for law practices, classes will be offered to enhance technology proficiency. Because of the rapid changes in software, hardware, and technology, this training is expected to be even more necessary in the future.

When in Atlanta, lawyers and judges from throughout the state will now have office space available for depositions, client meetings, ADR, study and other professional uses. In addition, there are plans for the construction of a mock courtroom. The courtroom will offer an opportunity for lawyers throughout Georgia to prepare for appellate arguments or trial.

The Bar Center will also offer a home for many of Georgia's legal and judicial entities with approximately 200,000 square feet of office space. Organizations already planning to move into the building include the Prosecuting Attorneys' Council of Georgia, the Georgia Legal Services Program and the Indigent Defense Council. The law-related groups that previously

shared space with the Bar are already in the building and include the Lawyers Foundation of Georgia, the Georgia Bar Foundation and the Chief Justice's Commission on Professionalism. The new building will truly serve as a center for legally related organizations in Georgia and will provide the lawyers of Georgia with a wealth of information on the profession.

PUBLIC USES


The Bar Center will also provide exceptional facilities for the public, especially in serving as an educational facility for students. When completed, the Bar Center will serve to further awareness and appreciation of the judicial system. Several projects are being considered, including use of the mock courtroom to enhance law-related education in Georgia. The building is in the heart of Atlanta's school field trip venues, which include Centennial Park, CNN Center, the State Capitol, the Martin Luther King Center, the Jimmy Carter Library, SciTrek and the High Museum. Approximately 50,000 school students per year could participate in age-appropriate scripted trials in the mock courtroom. Since lawyers and judges will be attending meetings and seminars in the State Bar building on most days, they will be invited to observe the students and participate by offering supportive comments or answering questions. We believe this experience will enhance the education of children concerning our judicial system and lead to a better understanding of the importance of the rule of law in society and the important role lawyers play in that process.

The State Bar plans to work with the Georgia Legal History

Foundation and other interested parties to host a museum of law, which will be open to school tours and other public uses. Famous Georgia trials and significant United States Supreme Court decisions will be featured. This will be a museum dedicated to the education of our citizens about the history and importance of the judicial branch of government.

We also plan to reopen Woodrow Wilson's Law Office for public viewing. It will be a historic law office exhibit in the main entrance lobby of the building. The law office furniture President Woodrow Wilson used when he practiced law in Augusta, Ga., is currently in storage at Georgia State University.

CONCLUSION

The Bar Center offers great opportunities for the lawyers of Georgia. Not only will the center provide for more service to our profession, but it will also offer educational activities to the public. We regret the loss of the nine old willow oaks, but look forward to the new green space we will plant to complement the 12 mature willow oaks that remain. We understand that some lawyers felt it was a mistake to purchase the Federal Reserve building. We understand that some people also felt it was a mistake to remove the nine trees. Although in the short term some disappointment may remain with the Bar's decisions, we hope that in the long term all the lawyers of Georgia will grow to appreciate and be proud of the Bar Center. After the project is complete, we hope the public will also come to appreciate how the Bar worked to preserve a notable downtown building and worked to beautify the downtown area of Atlanta. 



By Cliff Brashier

Membership: It's To Your Advantage

The State Bar of Georgia consistently strives to protect and advance the legal profession and our system of justice. The Bar also works hard to ensure that as members you get the biggest bang for your dues buck. The benefits of Bar membership go way beyond a membership certificate or a Bar identification card. The following are some of the ways the Bar serves you:

Legislative Program — Each legislative session, the Advisory Committee on Legislation, currently chaired by Jeffrey Bramlett, of Atlanta, works to improve the administration of justice in Georgia. This past legislative session, the State Bar was successful in passing eight major bills. Highlights from the session include a new loan forgiveness program for public interest attorneys, a new law prohibiting notaries from practicing law, the revision of Article Five of the Uniform Commercial Code and a bill that clarifies the Limited Liability Company Act. In addition, the Bar was successful in ensuring that no funding was eliminated for Bar-supported objectives. In fact, the Council for Indigent Defense received an increase of \$900,000 in the supplemental and FY 2003 budgets.

Law Practice Management Program — The Law Practice Management Program is a member

service to help all Georgia lawyers and their employees pull together the pieces of the office management puzzle. Whether you need advice on new computers or copiers, personnel issues, compensation, workflow, file organization, library materials or software, the Bar has the resources and training to assist you. We also offer on-site management consultations and training sessions.

Sections — Thirty-five sections provide service to the legal profession. A conduit for information in specific areas of law, sections provide newsletters, programs and the chance to exchange ideas with other practitioners. Many State Bar sections also provide their own dynamic Web sites for their members.

Member Services — Under the direction of the Members Benefits Committee, chaired by Kenneth Shigley, of Atlanta, the State Bar recommends products and services

The benefits of Bar membership go way beyond a membership certificate or a Bar identification card.

that offer special value not otherwise available in the open market. As such, the Bar endorses professional liability insurance through the American National Lawyers Insurance Reciprocal and retirement planning through the ABA Members Retirement Program. Bar members are also eligible for substantial discounts on car rentals, long distance phone services and parking.

Lawyer Assistance Program — This free program provides confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems and mental or emotional impairment. If you or someone you know is in need of assistance, please call (800) 327-9631.

State Bar Publications — The *Georgia Bar Journal*, which is distributed to the membership six times a year, contains valuable information regarding pertinent issues facing Georgia lawyers. Bar members also receive a copy of the *Directory & Handbook*, which provides quick access to phone numbers and addresses of not only Bar members, but related legal organizations.

www.gabar.org — The Bar's Web site has just been redesigned and refocused to provide quick and easy access to everything members and the public need to know about the State Bar. Members can check their CLE online, make changes to their membership information, order publications, search the online membership directory and obtain up-to-the-minute updates on Bar events and meetings. A new and exciting addition to the site is the new Legal Career Center,

which allows job seekers to search the nation's top legal opportunities, post a resume or research potential employers, and employers to post a company profile or post job openings.

Young Lawyers Division (YLD) — The YLD is in place to aid and promote the advancement of the younger members of the State Bar. With this in mind, the YLD offers quarterly meetings, a quarterly newsletter and professional development opportunities. In addition, the YLD is actively involved in community service projects, including the Great Day of Service, which is a one-day, statewide project that benefits a variety of community organizations. The YLD also hosts an annual Legislative Breakfast, which gives young lawyers the opportunity to meet with their state legislators.

Professional Networking — The Bar's Midyear and Annual meetings offer extended networking and continuing legal education opportunities. Participation on various Bar committees also opens up new avenues for lawyer interaction and volunteerism.


The Bar Center — The new Bar Center and its possibilities are truly endless. Members are encouraged to take full advantage of the center's facilities for meetings and special events. I urge you to read President Durham's article on page 4 for a complete update on the Bar Center.

Consumer Assistance Program (CAP) — CAP assists attorneys as much as possible with referrals, educational materials, suggestions, solutions, advice and preventive information to help with a consumer matter. CAP pledges its best efforts to assist attorneys in making the practice of law more efficient,

ethical and professional in nature.

State Disciplinary Board — State Bar staff and the practicing lawyers that serve on the Board assist members, the public and the Supreme Court by investigating complaints of lawyer misconduct and inappropriate behavior. Since the profession is regulated by the Judicial Branch, members are afforded the objective evaluation of their experienced peers when questions regarding conduct arise. Members who have questions regarding conduct or ethics are encouraged to call the Bar's Ethics Hotline, which is staffed by the lawyers in the Bar's Office of the General Counsel, at (404) 527-8720.

The Bar offers a wide variety of member services designed to assist its members. I encourage you to take full advantage of these opportunities. Additional information regarding member benefits can be found on the Bar's new and improved Web site at www.gabar.org.

As always, I am available if you have ideas or information to share; please call me. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 (fax) and (770) 988-8080 (home). 



While you are
serving your
profession and
the public, we
will make sure
you do it
with a smile.

By Derek J. White

Kick Off

The two words in the title of this article take on a life of their own around this time each year. Although they are commonly used to identify one of the most exhilarating parts of a national pastime (especially for those of us who love GEORGIA football¹), they took their annual meaning for the Young Lawyers Division (YLD) on Aug. 23, 2002. On that day, the YLD traveled to Sea Pines on Hilton Head Island to kick the year off with its Summer Meeting.

On Friday, the executive officers and directors met to discuss the yearly goals and directions of the various YLD committees. The Friday reception was enjoyed by all. To top the evening off, many attendees enjoyed the \$700 worth of prizes awarded at the Friday night Bingo game.

On Saturday, the YLD Executive Council met to discuss the business of the YLD. The highlight of the meeting was the announcement of the YLD's accomplishments of last year, as recognized by the American Bar Association's YLD (ABA/YLD). Annually, the ABA/YLD recognizes the work and accomplishments of the many state YLD organizations by announcing the best programs in various categories submitted by the various state YLD organizations.

State Bar YLDs are placed in categories based on total membership. We are in the category for organizations with the highest numbers of members.² Despite competing for the ABA's annual "Award of Achievement" against some organizations with half-a-million-dollar budgets, our YLD did quite well under the leadership of Pete Daughtery.

We were awarded first (1st) for our newsletter, second (2nd) for our service to the Bar, second (2nd) for overall program, special recognition (3rd) for our service to the public and special recognition (4th) for our Minority Project. Truly, it was a championship year. And it was a championship year because of the dedication of our committee chairs.

This year our committees will be chaired by the following dedicated


volunteers: **Advocates for Special Needs Children Committee**, Marc D'Antonio and Ali Mitchell, co-chairs; **Appellate Admissions**, Nathan Wheat, chair; **Aspiring Youth Program Committee**, Malcolm Wells, Vicki Wiley and Zahra Karinshak, co-chairs; **Bridge the Gap**, J. Ben Finley and Timothy J. Buckley, co-chairs; **Business Law Committee**, Charles E. Hodges II, chair; **Career Issues Committee**, Lynn A. Howell, chair; **Community Service Projects Committee**, Amy Alcock and Shelley Senterfitt, co-chairs; **Criminal Law Committee**, Scott Semrau and Sara Yeager, co-chairs; **Disability Issues Committee**, Tom Mazziotti, chair; **Disaster Legal Assistance Committee**, Tonya Boga, chair; **Elder Law Committee**, Richard Bryson and Kristin A. Ruzicka, co-chairs; **Employers' Duties and Problems Committee**, Shanda Galloway, chair; **Ethics & Professionalism Committee**, Dean Bucci, chair; **High School Mock Trial Committee**, Candace Byrd and Robert McDonald, co-chairs; **Indigent Criminal Defense Committee**, Ali Mitchell, chair; **Intrastate Moot Court Competition Committee**, Chris Kellner, chair; **Judicial Liaison Committee**, Richard Braun Jr., chair; **Juvenile Law Committee**, Andre Johnson and Beth Reimels, co-chairs; **Kids and Justice Program Committee**, Malcolm Wells and Mike McCleary, co-chairs; **Law-Related Education Committee**, Beth Ellen Dotson and Melissa Anderson, co-chairs; **Legislative Affairs Committee**, Stephen Glenn Lowry and Michael Keith Watson, co-chairs; **Litigation Committee**, Brad Strawn and Christopher Weems, co-chairs; **MCLE/Trial Credit Assistance**

Committee, Beth T. Kertscher, chair; **Membership & Affiliate Outreach**, Elena Kaplan and Chandra Tutt, co-chairs; **Minorities in the Profession Committee**, Brad Gardner and Elvin Sutton Jr., co-chairs; **National Moot Court Competition Committee**, Jason Saliba, chair; **Pro Bono Committee**, Ryan Schneider and Tonya Boga, co-chairs; **Publications Committee**, Laurel Landon, chair; **Solo and Small Firm Practice Committee**, Charles Morris Jr. and Render Heard Jr., co-chairs; **The Great Day of Service Committee**, Leigh Martin and Daniel Snipes, co-chairs; **Truancy Intervention Committee**, Kevin Snyder, chair; **William W. Daniel National Invitational Mock Trial Committee**, Jeremy E. Citron, chair; **Women in the Profession Committee**, Sherry Neal and Janet Bozeman, co-chairs; and the **Youth Judicial Program Committee**, Brad Folsom, chair.

Each chair's address and telephone number may be obtained by contacting YLD Director Jackie Indek at (800) 334-6865 or jackie@gabar.org. Additionally, I am pleased to inform you that Amy Loggins, trial attorney for the U.S. Equal Employment Opportunity Commission, will be

the director for the **Employer's Duties & Problems and Law Related Education Committees**.

Committees are expected to have their first meetings by Oct. 1, 2002. Please contact the chairperson of the committee that interests you. Get involved. Develop your network as you provide a service to our noble profession and the public.

While you are serving your profession and the public, we will make sure you do it with a smile. For instance, after we conduct our business and provide our services at our Fall Meeting on Nov. 2, 2002, in St. Augustine, Fla., we will take a charter bus to the "World's Greatest Outdoor Cocktail Party." If you dare to hang with the big Dawgs, then come on down to St. Augustine and we will show you a good time. You will not forget it. 

ENDNOTES

1. Although it may appear that I particularly endorse the "GEORGIA — BULLDOG" kick-off chant, the capital letters above naturally represent all football teams in our great state.
2. For example, if we were a college or university, our sports programs would compete in Division 1A sports.

A Look at the Law

The Law of Check Clearing:

A Primer on the Midnight Deadline Rule in Georgia

By Jerome L. Kaplan
and Blake E. Lisenby

Two weeks ago, after a lengthy and successful trial, you received and deposited a \$75,000 fee check from your client. Your bank called to say the check was returned for insufficient funds. In the interim, you paid salaries and other obligations assuming the check was good. Unfortunately, you

now learn that your client is out of business, and there is no chance he will pay the money. Normally, you would be out \$75,000, and it might be difficult (if not impossible) to cover the overdraft. What can you do? At about the same time, the client's bank realizes that it waited four days after receiving the check to return it for insufficient funds. Could that bank have a problem?

Consider a completely different scenario. Suppose you represent a bank and it calls to say that it suspects a customer of kiting checks. The bank waited three days to return the checks and is now concerned that it waited too long. Does your client have a problem? What do you advise?

These scenarios are, unfortunately, not uncommon and illustrate how crucial it is to have a basic knowledge of banking law. A bank's response time can determine who will bear the loss. For instance, the bank (Payor Bank) on which the \$75,000 check was drawn may be liable for the amount of the check because it waited too long to return it for insufficient funds. When a check is deposited, the Payor Bank has a limited amount of time to process that check and determine whether to



pay it. The Midnight Deadline Rule (Rule) found in the Uniform Commercial Code (UCC) establishes both the time permitted for processing the check, as well as the penalty for exceeding the time permitted. The midnight deadline (Deadline) is midnight of the next banking day following the banking day on which the Payor Bank received the check.¹

Banks sometimes violate the Rule; however, they do so at their peril. The Rule provides that, by its Deadline, a Payor Bank must return the check or send notice of dishonor, failing which, it is liable for the amount of the check.² Generally, exceeding the Deadline to pay or return a check makes a Payor Bank liable³ for the face amount of a check, which can be thousands or millions of dollars. However, few attorneys or business people are aware of the Rule and its potentially expensive consequences.

With millions of checks computer-processed daily by banks, it seems harsh, upon initial consideration, for a bank to be held almost strictly liable for the amount of a check not processed in what is usually less than 48 hours. After all, it is not the bank's fault that the account has insufficient funds or was closed. However, the public policy behind imposing this near strict Deadline is to provide certainty to the public that a check will be paid within a specific time. Prior to the enactment of the Rule, banks and bank customers could not be sure when they could rely upon deposited checks, and depository banks could not be sure when the provisional settlement they had given to their customers (the credit to the customer's bank account) became

final. Accordingly, the Rule was enacted because the benefit of this certainty to the public and to the banking system was deemed greater than the potential cost to Payor Banks. Pursuant to the Rule, Payor Banks bear the burden of being certain the Deadline is not missed.

Therefore, all the parties in the check-collection process, and their lawyers, should be very sensitive to the Rule, as well as the defenses and extensions thereto. The Rule, if violated, may create a substantial loss for the Payor Bank that fails to meet its requirements, as well as a corresponding benefit for the depositor of the check. However, careful attention to the statutes and regulations governing the return of checks, as well as to relevant internal procedures, may allow banks to avoid the Rule's near-strict penalty.

AN OVERVIEW OF THE CHECK- COLLECTION PROCESS

The check-collection process begins with the drawer of a check who issues the check to the payee-depositor shown on the check. The check is drawn on an account at a bank known as the Payor Bank.

The payee usually deposits the check with its bank (Depository Bank), typically a different bank⁴ from the Payor Bank.

After the payee deposits the check at its Depository Bank, the Depository Bank then delivers the check to the Payor Bank for payment. Often, when the delivery is not direct, there is an intermediary bank, sometimes known as a collecting bank (Intermediary Bank), that receives the check during the payment process between the Depository and Payor banks. The Federal Reserve Banks are commonly used Intermediary Banks.⁵

The result of this series of transfers is intended to be the receipt of funds by the payee from the drawer of the check. In the millions of such transfers that occur daily in this country alone, the overwhelming majority result in the timely receipt of funds by the payee. Occasionally, however, the system does not operate as intended and, sometimes, large dollar amounts are involved. When this occurs, the wary payee (or the Depository Bank, if it is unable to recover for the check from the payee) would be wise to be conscious of the Rule, its defenses and exceptions, so as not to be the party left holding the proverbial bag.

THE MIDNIGHT DEADLINE RULE AND LIABILITY FOR ITS VIOLATION

The Rule is directed at the Payor Bank.⁶ It regulates what a Payor Bank must do with a check presented for payment in the ordinary course of business. In general, the Rule is this: by midnight of the next banking day after receipt, the Payor Bank must: (1) pay the check; or (2) return the check, if it has the check and does not intend to pay it; or (3) send⁷ notice⁸ of its intent not to pay the check, if the check is unavailable. If it fails to return the check or send notice of intent not to pay by this Deadline, the Payor Bank is obligated for the face amount of the check. Neither the negligence of, nor the amount of harm to, the parties is relevant. The Rule imposes near strict liability regardless of the amount of the check.⁹

Just as it behooves all the other parties to be alert to the Rule, so does it behoove the Payor Bank. First, it must be alert to its potential liability, and second, it must be alert to the defenses and extensions to the Rule's deadline that would allow it to avoid liability.

DEFENSES TO THE MIDNIGHT DEADLINE RULE

Excusable delay may be a defense to the Rule when circumstances beyond the Payor Bank's control occur, and the bank "exercises such diligence as the circumstances require."¹⁰ Statutory examples of excusable delay include the interruption of communication or computer facilities, the suspension

of payments by another bank, war, emergency conditions or equipment failure.¹¹ Obviously, all defenses pursuant to this statute are highly fact intensive. The Payor Bank has the burden to show it exercised sufficient diligence under the circumstances to avoid delay.¹² For example, a computer breakdown was found to be beyond the bank's control.¹³ However, in another case, the Deadline fell on Christmas Eve, and the Payor Bank's volume of business precluded it from meeting its Deadline. The Court did not excuse the bank's failure to meet the Deadline, holding that the bank should have anticipated such an occurrence.¹⁴

Another defense may be a general provision in Article 4 that permits parties to vary the provisions by agreement.¹⁵ However, this defense appears to have limited applicability. In reported cases, the only agreement so far held to alter the Rule is a "hold-for-collection" agreement.¹⁶ Those cases hold that a check held for collection by agreement between the payee-depositor and the Payor Bank is, by definition, no longer a "demand item" (as are checks processed in the ordinary course of business) to which the Rule does not apply.

The Rule is subject to the specified¹⁷ defenses of breach of presentment warranty¹⁸ and fraud upon the Payor Bank. Other defenses to the Rule are problematic.¹⁹

EXTENDING THE MIDNIGHT DEADLINE FOR THE BENEFIT OF PAYOR BANKS

In addition to the defenses discussed above, there are also two

possible ways by which a Payor Bank may extend the Deadline, and thereby avoid liability.

First, a Payor Bank may "fix an afternoon hour of 2:00 p.m. or later as a cutoff hour for the handling of [checks]," and any check received after the cutoff hour "may be treated as being received at the opening of the next banking day."²⁰ Thus, if a bank selects a cutoff hour of 2:00 p.m., and a check is received on a Monday at 3:00 p.m., the check is treated as if received on Tuesday morning. Consequently, the Deadline for that check will be midnight on Wednesday, instead of midnight on Tuesday.

Second, a Payor Bank may use the extension allowed²¹ by Federal Reserve Board Regulation CC.²² Regulation CC implements²³ the Expedited Funds Availability Act,²⁴ which requires banks to make deposited funds quickly available for withdrawal. As a consequence, Regulation CC necessarily provides for the prompt collection and return of checks. To the extent Regulation CC permits an extension of the Deadline, it preempts the UCC.²⁵ Because Regulation CC deals with the return of checks from the Payor Bank to the Depository Bank, it is necessarily applicable only when the Payor and Depository banks are two separate banks.

Regulation CC extends the Deadline to the time that the Payor Bank actually dispatches²⁶ the check to the Intermediary or Depository Bank, provided that the Payor Bank uses a means of delivery that would ordinarily result in the check's receipt on the next banking day²⁷ after the Deadline. Suppose Payor Bank receives the check by its cutoff time on Monday

and returns it by courier that leaves at 4:00 a.m., Wednesday (after the Deadline of Tuesday, midnight). If the check arrives at the Intermediary or Depository Bank during banking hours Wednesday, and this method of delivery normally results in such receipt, then the Deadline is considered extended so that the dispatch of the check is considered timely, and there is no violation of the Rule. This method effectively provides Payor Banks several additional hours to process checks.

The extension allowed by Regulation CC is extended even further if a Payor Bank uses a "highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day..."²⁸

Unlike the extension discussed in the prior paragraph, this "extended further" language does not require that the check arrive at the receiving bank by any specified time. The Regulation's time limit for the additional extension is difficult to determine because of the vagueness with which this additional extension provision is written.²⁹

REGULATION CC'S EXPEDITIOUS RETURN REQUIREMENT

A Payor Bank may succeed in extending the Deadline for a check by using Regulation CC. Nevertheless, the Bank still has a separate duty under Regulation CC to return a check expeditiously.³⁰

The tests for an expeditious return are found in the "Two-Day/Four-Day Test" and the "Forward Collection Test."³¹ Rather than the near strict liability imposed by the Rule for the full amount of the check, the measure of damages for failing to meet either of the expeditious return tests is the amount of the check reduced by the amount of loss incurred if the bank had exercised ordinary care.³²

CHECK KITING³³

Check kiting is a particularly troublesome and potentially expensive issue for Payor Banks, and the Rule must be evaluated if a bank is to escape loss. In *First National Bank in Harvey v. Colonial Bank*,³⁴ Judge Grady described check kiting succinctly:

Check kiting is “a form of bank fraud ... [that] is [made] possible because of a combination of two rules found in Article 4 of the [UCC]. Under § 4-208(a)(1), a depository bank may allow a customer to draw on uncollected funds, that is, checks that have been deposited but not yet paid. Second, under §§ 4-301 and 4-302, a payor bank must either pay or dishonor a check drawn on it by midnight of the second [sic] banking day following presentment.”³⁵

Generally speaking, check-kiting fraud occurs when the “kiter opens accounts at two (or more) banks, writes checks on insufficient funds on one account, then covers the overdraft by depositing a check drawn on insufficient funds from the other account.”³⁶ A simple example involves a circular arrangement by which a depositor of Bank X issues a check (larger than the account balance) drawn on that account, payable to that depositor (or an affiliate) which has an account at Bank Y. The Bank Y depositor contemporaneously issues a check (larger than the account balance) in an amount greater than the check received, payable to the Bank X depositor. The checks are simultaneously deposited into each Bank account, thus apparently providing funds to cover each check issued. This activity continues, generally, until one bank or the other becomes suspicious, and returns any check drawn on any unpaid check.

The typical problem for Banks X and Y is that one bank or the other may be liable for the amount of the kited check because of the Rule. The timing requirements imposed under the UCC and Regulation CC may require a Payor Bank to pay a check drawn on an account prior to the

time that deposits needed to cover that check clear the check-collection process. Making the prudent decision in the time allowed is sometimes difficult for the Payor Bank, often because of historical business relations with the customer.

For example, in one case,³⁷ a Depository Bank attempted to avoid a \$3.7 million liability for kited checks by claiming that the Payor Bank failed to return the checks in a timely manner and thus failed to extend the Midnight Deadline under Regulation CC. The Court held that when the Payor Bank’s executives drove the checks to the Depository Bank’s processing center at 3:58 p.m. on the day after the Deadline, they extended the Deadline for the checks because they used a means of delivery that would ordinarily result in the return of the checks by the next banking day following the Deadline.³⁸

This case demonstrates how close attention to the requirements of the Midnight Deadline Rule and Regulation CC avoided an expensive error for the Payor Bank. Because claims filed under the Rule are a primary way for Depository Banks to recoup their losses from a potential check-kiting loss, Payor Banks should be diligent in complying with the UCC and Regulation CC, and Depository Banks should be alert to the Payor Bank’s failure to comply with them.

DOES BANKRUPTCY OF THE ACCOUNT HOLDER IMPACT THE MIDNIGHT DEADLINE RULE?

In addition to check kiting, bankruptcy is another situation where

inattention to the Rule and its extensions can be expensive for Payor Banks. For example, assume the following: The issuer of a check files bankruptcy. The Payor Bank returns the check after the Deadline (which is after the bankruptcy filing) and the Payor Bank does not meet any of the permitted extensions. Unfortunately for the Payor Bank, it is stuck with covering the check amount.

This is true despite the Payor Bank’s arguments that paying the check is unfair and in violation of the stay imposed by the bankruptcy.³⁹ In support of this position, the Payor Bank asserts that the payee of the check is being unjustly enriched because there were no funds in the account and, except for the Rule’s penalty, the check would not have been paid. However, claims of unfairness and unjust enrichment have been held insufficient as a defense to a Payor Bank’s liability under the Rule.⁴⁰ Accordingly, if the Payor Bank does not comply with the Rule, the creditor-payee can recover from the bank even though the creditor, if seeking to collect from the debtor account holder after bankruptcy, would be stayed from all collection activities.


CONCLUSION

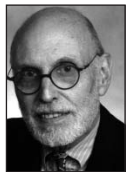
By remaining alert to the Rule and its exceptions and extensions, Payor Banks, Depository Banks and the payee-depositors of checks can avoid loss of the amount of a deposited check. If faced with the introductory scenarios, what should you advise?

You had a \$75,000 check returned for insufficient funds, and the drawer of the check is out of business. Are you out the \$75,000? If your client’s bank exceeded the

Deadline, as extended, your client may recover \$75,000. However, the bank may have defenses to this claim. Your client's bank says that it returned the \$75,000 check four days after the check was received. Nevertheless, its method of returning the check may have met Regulation CC's provisions extending the Deadline to the time of dispatch. If so, the bank may successfully avoid liability on the check.

In the alternative scenario, your client's bank claims that it may be the target of a check-kiting scheme. Accordingly, you should advise the bank to return the checks of the suspected customer, until sufficient deposits into its account are paid.

Please be aware that what is stated in this article is merely an overview of the case law, statutes and regulations pertaining to the Rule and Regulation CC. Litigation involving these issues is extremely fact intensive, and a careful analysis of the statutes, regulations, advisory comments and cases is demanded. 



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ENDNOTES

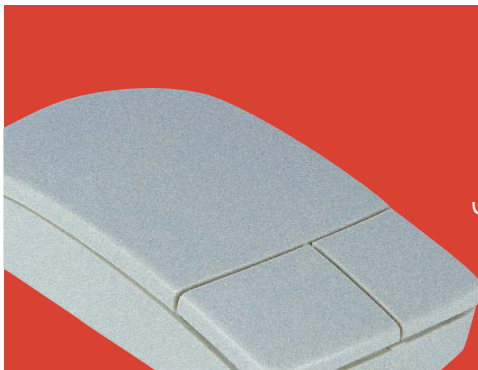
1. O.C.G.A. § 11-4-104(10) (2002).
2. O.C.G.A. §§ 11-4-301 & 11-4-302 (2002).
3. The Official Comments to the version of § 4-302 of the UCC adopted by Georgia provides: "Subsection (b) drops the ambiguous 'or the like' language and provides that the payor bank may also raise the defense of fraud. Decisions that hold an accountable bank's liability to be 'absolute' are rejected." UCC § 4-302, cmt. 3 (1990). While Georgia has not officially adopted these comments, they certainly provide persuasive authority. Thus, although the liability of the Payor Banks is no longer *strict*, it is *near-strict*.
4. Sometimes, however, they are the same. When the Payor Bank and Depository Bank are the same, the check is known as an "on us" check, and the check is generally deemed "received" when it is deposited. Cf. O.C.G.A. § 11-4-215(e)(2) (2002) and Trading Ass'n, Inc. v. Trust Co. Bank, 142 Ga. App. 229, 235 S.E.2d 661 (1977) (explaining when credit for "on us" checks becomes available for withdrawal as a matter of right).
5. O.C.G.A. § 11-4-105(4) (2002) (defines an Intermediary Bank as "a bank to which an item is transferred in course of collection except the depository or payor bank"). See also 12 C.F.R. § 229.2(e)(7) (2002) ("the term *bank* also includes ... a Federal Reserve Bank"). See, e.g., Oak Brook Bank v. Northern Trust Co., 2000 WL 294081 (N.D. Ill. Mar. 17, 2000) (a Federal Reserve Bank was held to be an Intermediary Bank).
6. O.C.G.A. §§ 11-4-301 & 11-4-302 (2002).
7. O.C.G.A. § 11-1-201(38) (2002) ("Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending").
8. 12 C.F.R. § 229.30(f) (2002) ("If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in § 229.33(b)").
9. O.C.G.A. § 11-4-302 (2002); Georgia R.R. Bank & Trust Co. v. First Nat'l Bank & Trust Co., 139 Ga. App. 683, 229 S.E.2d 482 (1976); National City Bank v. Motor Contract Co., 119 Ga. App. 208, 166 S.E.2d 742 (1969); Samples v. Trust Co. of Georgia, 118 Ga. App. 307, 163 S.E.2d 325 (1968).
10. O.C.G.A. § 11-4-109(b)(ii) (2002).
11. *Id.* at §109(a).
12. UCC § 4-109, cmt. 3 (1990).
13. Port City State Bank v. American Nat'l Bank, 486 F.2d 196, 200 (10th Cir. 1973).
14. See, e.g., Blake v. Woodford Bank & Trust Co., 555 S.W.2d 589, 597 (Ky. Ct. App. 1977).
15. O.C.G.A. § 11-4-103(a) (2002).
16. See, e.g., Iverson v. First Bank of Billings, 712 P.2d 1285, 1290 (Mont. 1988); Wolverton Farmers Elevator v. First American Bank, 851 F.2d 223, 225 (8th Cir. 1988); Bank of Miami v. Banco Industrial y Ganadero Del Beni, S.A., 515 So. 2d 1038, 1041 (Fla. 3rd DCA. 1987); Western Air & Refrigeration, Inc. v. Metro Bank of Dallas, 599 F.2d 83, 90 (5th Cir. 1979); Sun River Cattle Co., Inc. v. Miners Bank N.A., 521 P.2d 679, 688 (Mont. 1974).
17. O.C.G.A. § 11-4-302(b) (2002).
18. O.C.G.A. § 11-4-208(a) (2002). A presentment warranty is, as to checks, the warranty from the person receiving payment from the Payor Bank that (1) such person is entitled to enforce payment of the check; (2) the check has not been altered; and (3) such person has no knowledge that the signature on the check is unauthorized. *Id.*
19. The prior version of Section 4-302 provided: "In the absence of a valid defense such as breach of a

presentment warranty ... settlement effected *or the like*" O.C.G.A. § 11-4-302 (1995) (emphasis added). Those provisions of O.C.G.A. § 11-4-302 were amended in 1996 by adopting the 1990 revision to the Uniform Commercial Code. As amended, Section 302(b) provides: "The liability of a payor bank to pay an item pursuant to subsection (a) of this Code section is subject to defenses based on breach of a presentment warranty (Code Section 11-4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank." O.C.G.A. § 11-4-302(b) (2002). Further, the Code has always provided: "Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions." O.C.G.A. § 11-1-103(2002). The question presented is, thus, whether the provisions of former O.C.G.A. § 11-4-302 permitted these additional defenses (of O.C.G.A. § 11-1-103) to be asserted to a claim under the Rule, and, if so, whether its 1996 amendment displaced the provisions of O.C.G.A. § 11-1-103. There are no Georgia cases. Prior to the 1990 revision to the Uniform Commercial Code being adopted by the various states, cases from other jurisdictions held both ways. *See, e.g.,* National Savings & Trust Co. v. Park Corp., 722 F.2d 1303, 1306 (6th Cir. 1983), *cert. denied*, 466 U.S. 439 (1984); First Nat'l Bank of Boston v. Fidelity Bank,

N.A., 724 F. Supp. 1168, 1172 (E.D. Pa. 1989); *In re Spring Grove Livestock Exch., Inc.*, 205 B.R. 149, 159 (Bankr. D. Minn. 1997) (allowing defenses under § 1-103). *But see* Hanna v. First Nat'l Bank of Rochester, 661 N.E.2d 683, 690 (N.Y. 1995) (not allowing § 1-103 defenses). Of note is that the 1990 revision to the Uniform Commercial Code, creating § 4-302(b) and adding fraud as a specific defense, would have seemed unnecessary if the drafters intended the Section 1-103 defenses (which included fraud) to be applicable. Accordingly, the effect of O.C.G.A. § 11-4-302(b), enacted in 1996, and adopting the 1990 revision to the Uniform Commercial Code, may have been to displace O.C.G.A. § 11-1-103. Thus, the defenses specified in O.C.G.A. § 11-1-103 (other than fraud) may not be permitted as defenses to claims brought under the Rule.

20. O.C.G.A. §§ 11-4-104(a)(3) & 11-4-108(a) & (b) (2002).
21. 12 C.F.R. § 229.30(c) (2002).
22. 12 C.F.R. Ch. II, Part 229 (2002).
23. 12 C.F.R. § 229.1(a) (2002).
24. 12 U.S.C. 4001 – 4010 (2001).
25. 12 C.F.R. § 229.41 (2002).
26. 12 C.F.R. § 229.30(c)(1) & cmt. (C)(1)(a) (2002). For an explanation of the purpose behind Regulation CC's extension, see *First National Bank of Chicago v. Standard Bank & Trust*, stating that "While the [Federal Reserve] Board favored the UCC's emphasis on expeditiously dealing with dishonored checks, it was concerned that the midnight deadline might unintentionally retard the return of checks. It was noted '[b]ecause the return process must begin by midnight, many paying banks return checks by mail when a courier leaving after midnight would be faster.'" 172 F.3d 472, 475 (7th Cir. 1999) (quoting 52 Fed. Reg. 47119, 47123 (Dec. 11, 1987)).

27. O.C.G.A. § 11-4-104(a)(3) (2002). "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions. Special provision is made if the Deadline falls on a Saturday that is a banking day. 12 C.F.R. § 229.30(c)(2) (2002).
28. 12 C.F.R. § 229.30(c)(1) and cmt. 229(c)(1)(a) (2002).
29. 2 JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE § 20-5 (4th ed. 1995).
30. Because a Payor Bank's responsibility to meet this expeditious return requirement is in addition to its Midnight Deadline requirement, the Payor Bank may meet the Deadline and still be liable for failing to return a check expeditiously. *See* 12 C.F.R. § 229.30(a) (2002) and 12 C.F.R., Part 229, Appendix E, § 229.30(a)(9) (2002).
31. 12 C.F.R. § 229.30(a) (2002).
32. 12 C.F.R. § 229.38(a) (2002).
33. For an excellent discussion of the relationship between check kiting and the Rule, see *Shifting the Loss: Claims In Defenses In Check Kite Litigation*, 117 Banking L. J. 487 (Nov./Dec. 2000).
34. 898 F. Supp. 1220, 1222-23 (N.D. Ill. 1995).
35. *Id.*
36. *Id.* at 1222.
37. *First National Bank of Chicago v. Standard Bank & Trust*, 172 F.3d 472 (7th Cir. 1999).
38. *Id.* at 474-75 & 480.
39. *See* 11 U.S.C. § 362 (1993).
40. *American National Bank & Trust Co., N.A. v. Central Bank of Denver, N.A.*, 132 B.R. 171 (D. Colo. 1991).



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A Look at the Law

By Laura W. Speed-Dalton
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Litigating Nursing Home Cases in Georgia

Caring for the elderly person who needs assistance is rapidly becoming an issue that all families must face. Without a doubt, some long-term care facilities, or nursing homes as they are generally called, do a fine job in caring for the elderly, but as discussed in a recent article in the *Atlanta Journal Constitution*, dozens of Georgia nursing homes are understaffed, leaving thousands of their residents without enough nurses and nurses' aides to care for them.¹ A lack

of adequate staffing often leads to a lack of supervision or care. Such circumstances, coupled with the fragile nature of nursing home residents, in turn, has lead to injuries and even death, thus making some nursing homes a dangerous place for those who cannot adequately watch after themselves.

The issues surrounding the care of our elderly have lead to a recent increase of litigation against nursing homes for inadequate care. Such litigation is brought against not only the nursing homes themselves, but also against treating physicians, attending nurses and staff. Although Georgia law does not make a nursing home an insurer of the safety of its residents, nursing homes do have statutory and contractual duties of care, and when these duties are breached, society demands that those who have agreed to care for the elderly do it properly or be subject to legal remedies like any other wrongdoer.

This article briefly sets forth an overview of nursing home litigation in Georgia, including a roadmap to the



statutory and regulatory framework that often comes into play in prosecuting such lawsuits or defending against them.

Even though the general populace typically refers to all long-term facilities as “nursing homes,” there are different types of facilities that are governed by different regulations.

In analyzing litigation involving nursing homes, it is critical that counsel correctly identify the type of facility that is involved in order to make a correct determination as to which rules and regulations apply. Thus, this article begins by describing the three types of long-term care facilities defined under present Georgia law. Next, this article sets forth a general overview of the regulatory system that governs long-term care facilities in Georgia. This regulatory background is important in understanding the potential causes of action that may arise in litigating a nursing home case. The article then goes on to present in greater detail the specific statutory and regulatory framework that applies to nursing home cases. Finally, the article concludes with a discussion of the various potential causes of actions in nursing home cases.

TYPES OF LONG-TERM CARE HOMES

Even though the general populace typically refers to all long-term facilities as “nursing homes,” there are different types of facilities that are governed by different regulations. The State of Georgia recognizes and regulates the following

types of long-term care homes: personal care homes; intermediate care homes; and skilled nursing homes. A general description of

each of these types of facilities is set forth below, and the Georgia Department of Human Resources’ (DHR) Web site and representatives can provide counsel with additional guidance in determining what type of facility is involved in a particular case.²

Personal Care Homes — Personal care homes are what most people generally think of as assisted living facilities. These homes range in size from two to approximately 200 residents. The DHR defines a “personal care home” as any dwelling that provides or arranges for the “provision of housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage.”³ These homes are licensed by the state⁴ and admit residents who require a home, food service and one or more personal services, such as assistance in the taking of medications, eating, dressing, bathing or toileting.⁵ In addition, personal care home residents do not generally require nursing services or medical supervision.

Personal care homes in Georgia must follow the state’s rules and regulations for personal care homes,⁶ and personal care home surveyors from the DHR’s Office of Regulatory Services (ORS) usually

inspect personal care homes once a year.⁷ In addition, OSR personnel may visit some facilities more often, depending upon the frequency and nature of any complaints that they may receive regarding the facility

Intermediate Care Homes — Intermediate care homes are defined by the DHR as facilities that admit residents on medical referral, maintain services and facilities for institutional care and have a “satisfactory agreement with a physician and dentist to provide continuing supervision, including emergencies.”⁸ Intermediate care means the “provision of food including special diets when required, shelter, laundry and personal care services, such as help with dressing, getting in and out of bed, bathing, feeding, [taking] medications and similar assistance.”⁹ These services are provided under the supervision of a nurse.¹⁰

Residents of intermediate care homes are individuals who, because of their physical and/or mental condition, “require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities and who do not have an illness, disease, injury or other condition as to require the degree of care and treatment which a hospital or nursing home is designed to provide.”¹¹ Intermediate care normally does not include providing care for bed-ridden patients (except on an emergency or temporary basis), inserting or changing catheters, hand feeding or caring for patients who cannot go to a central area for the administration of medication without assistance.¹²

Intermediate care homes are governed by the Georgia’s rules and regulations for intermediate

care homes,¹³ and an intermediate care facility must obtain a permit that signifies satisfactory compliance with these rules and regulations.¹⁴ In addition, as discussed in greater detail in the next section of this article, a facility choosing to participate in federal Medicare and Medicaid programs as a nursing facility must be certified.¹⁵

Skilled Nursing Homes — A “nursing home” or “skilled nursing home” is defined as any facility that admits patients on medical referral only for continuous medical supervision and for skilled nursing care and rehabilitative care.¹⁶ Most skilled nursing homes are Medicare-certified¹⁷ and range in bed-size from approximately 30 beds to 375 beds. A skilled nursing home maintains services and facilities for care that include skilled nursing and rehabilitative care,

and it has an agreement with a physician and dentist per which they will be responsible for the general medical and dental supervision of the home, as well as be available for any medical and/or dental emergency.¹⁸

ORS long-term care surveyors inspect these homes at least once every 15 months.¹⁹ Some facilities may be visited more often than once every 15 months depending upon the complaints about care, if any, that the ORS receives. These nursing homes are governed by Georgia regulatory and statutory provisions, including the statutory provision known as the Bill of Rights for Residents of Long Term Care Facilities.²⁰ Such a facility must obtain a permit,²¹ and an institution choosing to participate in federal Medicare and Medicaid programs must be certified.

OVERVIEW OF REGULATORY SYSTEM

In Georgia, long-term care homes are regulated by the DHR. Intermediate care homes, skilled nursing homes and personal care homes are required to be licensed by or registered with the DHR through its ORS. The ORS is responsible for inspecting, monitoring, licensing, registering and certifying these long-term care facilities in Georgia.

Many nursing homes are also certified for participation in federal Medicare and Medicaid programs that authorize the payment of federal funds to reimburse nursing facilities for certain services provided to their residents.²² To qualify for reimbursement, a facility

must be certified to participate in the programs.²³ To be certified under the Medicare or Medicaid programs, a facility must comply with federal statutory and regulatory requirements.²⁴ The state OSR is responsible for conducting inspections of the facilities to ensure their compliance with the Medicare and Medicaid participation requirements.²⁵

The DHR maintains investigation reports, records and other reports,²⁶ which are available upon request pursuant to Georgia's Open Records Act.²⁷ For purposes of this article, discovery issues regarding these reports and investigations will not be discussed, but it is important for counsel to be aware of them and to pursue them.

STATUTORY AND REGULATORY FRAMEWORK

The Georgia statutory framework for the regulation of skilled nursing homes is known as the Bill of Rights for Residents of Long Term Care Facilities (Statutory LTC Bill of Rights),²⁸ and it imposes enforceable duties upon operators of these long-term care facilities.²⁹ Under the Statutory LTC Bill of Rights, a resident is entitled to receive, among other things, "care, treatment and services which are adequate and appropriate."³⁰ Moreover, Georgia law³¹ creates a cause of action for damages for a violation of any provision of the Statutory LTC Bill of Rights by a nursing home.

In addition to the foregoing Statutory LTC Bill of Rights, the DHR has adopted a regulatory "Residents' Bill of Rights"³² governing intermediate care homes, skilled nursing homes and inter-

mingled homes, as well as regulations specific to each particular type of long-term care home in Georgia.³³ These regulations are accessible through the DHR/ORS Web site.³⁴

As for federal causes of action, the Medicaid and Medicare Acts³⁵ do not create a private cause of action that would allow nursing homes residents to sue nursing homes to enforce Medicare and Medicaid participation standards.³⁶ Such Acts, however, do set forth clear standards for participants in the Medicare and Medicaid programs³⁷ and standards such as these may be used as evidence of negligence if they are violated.³⁸ On the other hand, compliance with these regulatory standards can be used by a nursing home to show that it did not violate the applicable standard of care.³⁹ Of course, compliance with the federal or state regulations may not provide an absolute defense. As demonstrated in other areas of tort law, applicable regulations generally establish minimum standards only and compliance with said regulations does not bar recovery.⁴⁰

COMMON CAUSES OF ACTION

Although the following list is not exhaustive, it briefly sets forth various causes of action that may be available for pursuit in the litigation of a nursing home case.

Professional Malpractice — Many cases concerning nursing homes are filed as professional negligence actions that allege a breach of the standard of care by the nursing homes or by their nurses, physicians or other professional staff. In these types of cases, an affi-

davit from an expert competent to testify, stating that there was at least one negligent act or omission, along with factual support for this claim, must be filed along with the complaint.⁴¹

Generally, in a professional malpractice action, a plaintiff will have to prove that the nursing home breached a duty of care to the resident by failing to exercise the proper degree of skill and care and that the breach proximately caused injury to the resident.⁴² In other words, the cause of action for professional malpractice is predicated on allegations that the defendant "failed to exercise a reasonable degree of care, diligence and skill ordinarily employed by nursing homes under similar situations and like surrounding circumstances [which] caused and contributed to [plaintiff's] injuries."⁴³ The nursing home itself can be held liable for a nurse's or other medical professionals' negligence under a theory of respondeat superior.⁴⁴

Examples of such suits involving professional malpractice allegations include *Brown v. Dekalb Medical Center*, a case that involved injuries stemming from patient's bed sores and pressure sores,⁴⁵ and *Thurman v. Pruitt Corp*, a case in which the nursing home's failure to care for a resident's leg and feet after sustaining a broken hip, resulting in gangrene and eventually death.⁴⁶

Not every suit that calls into question the conduct of a nursing home and its staff, or of one of the nursing home's medical professionals is a *professional* malpractice action.⁴⁷ Rather, a professional malpractice action is a negligence action directed against a professional that calls into question the conduct of the professional in his

or her area of expertise.⁴⁸ Therefore, counsel must look to the substance of an action against a medical professional, hospital or health care facility in determining whether the action is one for professional negligence or for simple or ordinary negligence.

Ordinary Negligence — As pointed out above, not all injuries that occur in a hospital, nursing home or other health care facility are the result of professional negligence. Rather, they may be solely attributable to ordinary or simple negligence.⁴⁹ In determining whether the claim sounds in simple, as opposed to professional negligence, counsel must determine if the plaintiff's care required the exercise of professional or medical judgment or expertise.⁵⁰ If the action is one of ordinary negligence alone, neither an expert affidavit nor expert testimony is required in order to file a complaint initiating the action.⁵¹

In Georgia, a party trying to establish a cause of action for negligence must show four essential elements: duty; a breach of that duty; legal causation; and damages.⁵² In making out an ordinary negligence claim, the plaintiff must show that the nursing home or its agents committed a breach of a duty of ordinary care. Such a duty can be derived from several sources, including a nursing home's duty as a landowner or from the home's assumption of a duty. For example, claims for simple negligence have been upheld in situations in which a nursing home resident was injured while being moved or transported,⁵³ or in which a nursing home resident was killed in fire at nursing home.⁵⁴

Statutory Cause of Action and Negligence per se — In addition to

a claim for simple negligence, injured nursing home residents may also have a statutory cause of action. Georgia law⁵⁵ provides the vehicle by which a plaintiff may make out a cause of action against a long-term care facility for a violation of the rights set forth in the Statutory LTC Bill of Rights. A statutory cause of action for damages against a long-term care facility for failing to provide rights guaranteed by Statutory LTC Bill of Rights is distinct from a claim that a nursing home committed professional malpractice by delivering below-standard nursing care.⁵⁶

A plaintiff may also allege that a long-term facility violated the rules and regulations that govern the facility, and that by doing so committed negligence per se. For example, under Georgia regulations, a personal care home is vested with 24-hour responsibility for the well being of its residents.⁵⁷ In addition, a personal care home is required to provide its residents with protective care and watchful oversight, including but not limited to, a daily awareness by the management of its residents' functioning and whereabouts.⁵⁸ Furthermore, a personal care home is obligated not to admit or retain any resident who needs care beyond that which the facility

can provide.⁵⁹ Evidence of the violation of these, or other similar, regulations may be used in asserting a negligence per se claim.⁶⁰

Claim Based on an Injury to a Resident Caused by Another Resident — Generally, a person does not have a duty to control the conduct of another person, so as to prevent that person from harming a third person.⁶¹ However, a resident of a nursing home who is injured by another resident might have a claim against the nursing home for his or her injuries if a "special relationship" is shown between the nursing home and the injured party, or between the nursing home and the tortfeasor patient.⁶² In the context of a mental health facility, courts have found that the statutory obligation for it to exercise "reasonable care and skill" creates a special relationship whereby the facility owes a duty of supervision over any known resident whose propensity to cause harm to others is known or should have been known to the management.⁶³

This theory has been extended to the context of nursing homes so that a nursing home will be held to owe its residents a duty of ordinary care to protect them from danger or injury that can be reasonably anticipated from the acts of other residents.⁶⁴ Under this theory of liability

ty, a plaintiff would argue that there is a known hazard or danger that requires the nursing home to have a corresponding increase in its obligation of care and supervision to prevent injury to residents. This theory could also be used in conjunction with the duty of a facility owner to keep its premises safe⁶⁵ in order to support a claim of liability.⁶⁶

Claim Based on Assumption of a Duty — Injured nursing home residents also may argue that the facility undertook a duty as it relates to their safety and well being. Under Georgia law, one who voluntarily assumes a duty toward another is bound to exercise ordinary care in the discharge of that duty.⁶⁷ Following the Restatement (Second) of Torts, §324A, Georgia courts have held that:


One who undertakes, gratuitously or for consideration to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking if (a) his failure to exercise reasonable care increases the risk of such harm, or . . . (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.⁶⁸

There are various situations under which a viable claim may exist under this theory of liability. For example, if a nursing home resident is allowed to wander off the premises and becomes injured, a claim may be made that the facility, though its written contract or verbal representations, undertook a duty to provide protective care and watchful oversight over the resi-

dent, including but not limited to a daily awareness by the management of her functioning and her whereabouts. Following this analysis, it also may be alleged that the facility understood that the resident was relying upon this undertaking and/or that the facility's failure to exercise reasonable care would necessarily increase the risk of harm to the resident.

Breach of Contract — Finally, depending on the language of any written contract and other agreements entered into between the facility and the resident (and/or his or her representatives), a breach of contract claim also may be alleged. Often times, residents and/or their representatives enter into a written agreement under which the long-term care facility agrees to provide certain services to the resident.⁶⁹ Counsel must therefore look to the relevant contract documents to determine what contractual duties of care and services were agreed to between the parties.⁷⁰

CONCLUSION

Cases against nursing homes can follow along the lines of traditional personal injury or medical malpractice actions, but given the expansive statutory and regulatory backdrop for these facilities, additional theories of liability can be pursued. Accordingly, in making a determination as to how best to frame a case or defend against a claim of liability, it is important for counsel to understand exactly what type of long-term care facility is involved, as well as what rules and regulations apply to that facility, and such an understanding is crucial in determining or anticipating the various theories of liability that a case may present. 



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ENDNOTES

1. Carrie Teegardin, *Elderly Often Lack Care, Nursing Homes Short-staffed*, ATLANTA JOURNAL CONSTITUTION, Dec. 19, 2001, at A1. See also Carrie Teegardin, *The Bottom Line of Caring/A Series*, ATLANTA JOURNAL CONSTITUTION, Jul. 28 – 30, 2002 & Aug. 4, 2002.
2. See <http://www.state.ga.us/departments/dhr/ors/>.
3. See GA. COMP.R. & REGS. R. 290-5-35.04(o) (1994).
4. See *id.* r. 290-5-35-.26 (1993).
5. See *id.* r. 290-5-35.04(p).
6. *Id.* r. 290-5-35-.01 to -.32 (1994).
7. See *id.* r. 290-5-35-.28 (1993), see also "Facility Descriptions" at <http://www.state.ga.us/departments/dhr/ors/>.
8. *Id.* r. 290-5-9-.01(a) (1976).
9. *Id.* r. 290-5-9-.01(b).
10. *Id.* r. 290-5-9-.01(f).
11. See *id.*
12. See *id.* r. 290-5-9-.01(b)1.
13. *Id.* r. 290-5-9-.01 to -.24 (1976).
14. See *id.* r. 290-5-9-.01(s), -.20.

15. See discussion *infra*. p. 19
16. See GA. COMP. R. & REGS. r. 290-5-8-.01(a) (1976).
17. See discussion *infra*. p. 20
18. See GA. COMP. R. & REGS. r. 290-5-8-.01(a).
19. See *id.* r. 290-5-8-.22 (1976); see also "Facility Descriptions" at <http://www.state.ga.us/departments/dhr/ors/>.
20. GA. COMP. R. & REGS. r. 290-5-8-.01 to -.24 (1976), 290-5-39-.01 to -.16 (1982); O.C.G.A. §§ 31-8-100 to -127 (2001).
21. See GA. COMP. R. & REGS. r. 290-5-8-.20.
22. See *Brogdon v. Nat'l Healthcare Corp.*, 103 F.Supp.2d 1322, 1327 (N.D. Ga. 2000).
23. *Id.*; see generally 42 U.S.C. §§ 1395cc, 1395i-3 (2000).
24. See 42 U.S.C. §§ 1395i-3(b)-(d), 1396r(b)-(d) (2000) (Medicare and Medicaid programs, respectively); 42 C.F.R. §§ 483.1 - .480 (2001).
25. See 42 U.S.C. §§ 1395i-3(g)(1)(A), 1396r(g)(1)(A) (2000).
26. See O.C.G.A. § 31-7-2.1(2001); see also 42 U.S.C. § 1396r (2000).
27. O.C.G.A. §§ 50-18-70 to -77 (1998 & 2001 Supp.).
28. O.C.G.A. §§ 31-8-100 to -127 (2001).
29. See *Thurman v. Pruitt*, 212 Ga. App. 766, 768-69, 442 S.E.2d 849, 851 (1994).
30. O.C.G.A. § 31-8-108(a) (2001).
31. O.C.G.A. § 31-8-126(a) (2001).
32. GA. COMP. R. & REGS. r. 290-5-39-.01 to -.16 (1982).
33. *Id.* r. 290-5-8-.01 to .24 (skilled nursing homes), 290-5-9-.01 to -.24 (intermediate care homes), 290-5-35-.01 to -.32 (personal care homes).
34. See <http://www.state.ga.us/departments/dhr/ors/>.
35. 42 U.S.C. §§ 1395 - 1395ggg, 1396 - 1396v (2000) (Medicare and Medicaid Acts, respectively).
36. See *Brogdon*, 103 F.Supp. at 1330-31.
37. 42 U.S.C. §§ 1395i-3, 1396r (2000).
38. Cf. *Carlo v. Americana Healthcare Corp.*, 179 Ga. App. 678, 680-81, 347 S.E.2d 282, 285 (1986) (court held that violation of a DHR standard can be used to support a simple negligence claim, and implied that it also could be used to support a negligence per se claim).
39. See *Brogdon*, 103 F. Supp. at 1341.
40. See *Doyle v. Volkswagenwerk Aktiengesellschaft*, 267 Ga. 574, 481 S.E.2d 518, 519 (1997), *cert. denied*, 523 U.S. 1020 (1998) (compliance with federal automobile safety standards does not preclude products liability claim).
41. See O.C.G.A. § 9-11-9.1 (2001 Supp.)
42. See generally *Hawkins v. Greenberg*, 166 Ga.App. 574, 575, 304 S.E.2d 922, 923 (1983).
43. *Thurman*, 212 Ga. App. at 768, 442 S.E.2d at 850.
44. See generally *Dozier v. Clayton County Hosp. Auth.*, 206 Ga.App. 62, 65, 424 S.E.2d 632, 635 (1992)(discussion of liability of a hospital based on doctrine of respondeat superior).
45. 225 Ga. App. 4, 482 S.E.2d 511 (1997).
46. 212 Ga. App. at 768, 442 S.E.2d at 850.
47. See *Moore v. Louis Smith Mem'l Hosp., Inc.*, 216 Ga. App. 299, 299-300, 454 S.E.2d 190, 191-92 (1995).
48. See *Candler Gen. Hosp., Inc. v. McNorrill*, 182 Ga.App. 107, 109-110, 354 S.E.2d 872, 875-76 (1987).
49. See *Self v. Exec. Comm. of Ga. Baptist Convention, Inc.*, 245 Ga. 548, 549, 266 S.E.2d 168, 169 (1980).
50. See *Moore*, 216 Ga. App. at 300, 454 S.E.2d at 191-92 (citing *Candler Gen'l Hosp.*, 182 Ga.App. at 110, 354 S.E.2d 876).
51. See, e.g., *Lamb v. Candler Gen. Hosp., Inc.* 262 Ga. 70, 71, 413 S.E.2d 720, 722 (1992).
52. See *Traina Enters. v. Racetrac Petroleum*, 241 Ga.App. 18, 525 S.E.2d 712, 713 (1999); *Bradley Ctr., Inc. v. Wessner*, 250 Ga. 199, 200, 296 S.E.2d 693, 695 (1982).
53. *Moore*, 216 Ga. App. at 300, 454 S.E.2d at 192..
54. *Donson Nursing Home Facilities v. Dixon*, 176 Ga.App. 700, 701, 337 S.E.2d 351, 352 (1985); see also *Smith v. North Fulton Med. Ctr.*, 200 Ga. App. 464, 465-66, 408 S.E.2d 468, 470 (1991) (court held that there was an issue of material fact concerning plaintiff's claim that hospital's employees, professional or nonprofessional, were negligent in failing to use side rail on bed).
55. O.C.G.A. § 31-8-126(a) (2001).
56. See O.C.G.A. § 31-8-126(f) (2001); *Thurman*, 212 Ga. App. at 768-69, 442 S.E.2d at 851.
57. See GA. COMP. R. & REGS. r. 290-5-35.12(1).
58. See *id.*
59. See *id.* r. 290-5-35.15(2).
60. See *Carlo*, 179 Ga. App. at 680-81, 347 S.E. 2d at 285; cf. *Ford v. St. Francis Hosp., Inc.*, 227 Ga. App. 823, 827, 490 S.E. 2d 415, 420 (1997) (court upheld denial of plaintiff's motion for directed verdict on negligence per se for defendant hospital's violation of DHR regulations because most recent DHR inspection report found defendant to be in compliance with the regulations).
61. *Bradley Ctr. v. Wessner*, 250 Ga. 199, 201, 296 S.E.2d 693 (1982).
62. See *id.* at 201-02, 287 S.E.2d at 696; see also RESTATEMENT (SECOND) TORTS § 315(a) - (b) (1993).
63. See *Bradley*, 250 Ga. at 201-02, 287 S.E. 2d at 696.
64. See *Associated Health Sys., Inc. v. Jones*, 185 Ga. App. 798, 800-01, 366 S.E.2d 147, 150-51 (1988) (citing *Bezark v. Kostner Manor*, 29 Ill. App. 106, 172 N.E.2d 424 (1961)).
65. O.C.G.A. § 51-3-1 (2001).
66. See *Pye v. Taylor & Bird, Inc.*, 216 Ga. App. 814, 815, 456 S.E.2d 63, 65 (1995).
67. See *Huggins v. Aetna Cas. & Sur. Co.*, 245 Ga. 248, 249, 264 S.E.2d 191, 192 (1980) (court adopted rule set forth in RESTATEMENT (SECOND) TORTS § 324 in case involving employee's negligence claim against employer's insurance company for company's failure to conduct a proper inspection of machinery).
68. *Id.*
69. See GA. COMP. R. & REGS. r. 290-5-35-.16 (1993), 290-5-39-.02 (1982).
70. See *Associated Health Sys., Inc.*, 185 Ga. App. at 801, 366 S.E.2d at 151.

Georgia Judge Survives “Survivor”

By Sarah I. Bartleson

Not many Superior Court judges in the state of Georgia can say they have been a contestant on one of today’s hottest reality TV shows, unless, of course, your name happens to be Judge Pascal English. Judge English, better known to American viewing audiences as “Pappy,” was chosen from thousands of entrants to appear on the fourth season of the intensely popular and rugged show, “Survivor.”

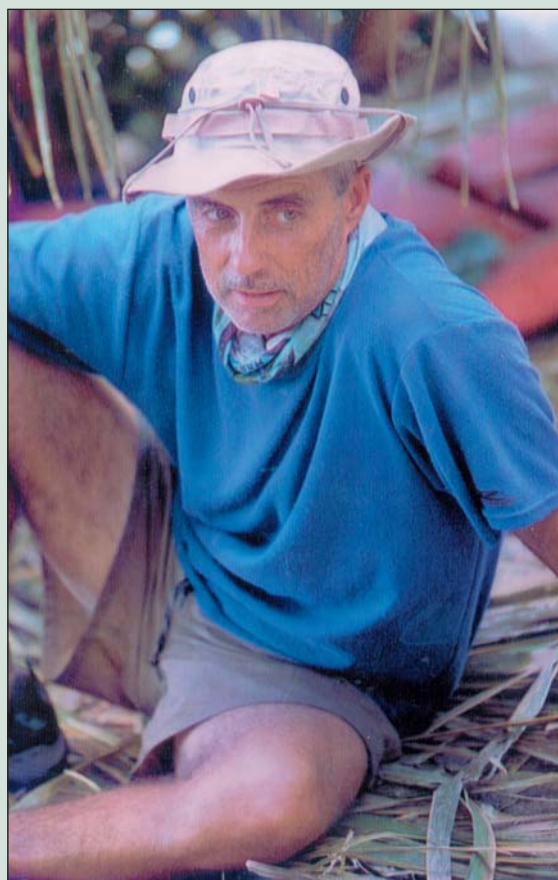
The show, which has consistently swept the ratings for the past two years, places 16 unique contestants from across the United States in a remote location somewhere around the globe for a maximum of 39 days. Previous locales for the show have included: Pulau

Tiga, an island off the coast of Malaysia; the Australian Outback; and Kenya’s Shaba Reserve in Africa. For Judge English, the remote island of Nuku Hiva, part of the Marquesas Islands and a distant neighbor of Tahiti in the South Pacific, was home for over a month.

During this grueling and oftentimes dangerous stretch, contestants are expected to live off the land, work together and leave behind the creature comforts of home — not to mention ward off insects, starvation, illness and exhaustion.

The Adventure of a Lifetime

Judge English, a resident of Thomaston, Ga., received both a bachelor of science degree in business administration in 1966 and a doctor of jurisprudence in 1969 from the University of Georgia, in Athens,



Judge Pascal English, affectionately nicknamed “Pappy” by his castmates, survived over a month on the hit reality TV show, “Survivor.”

and currently serves as a Superior Court Judge in the Griffin Judicial Circuit. He was a member of the United States Air Force from 1969-

73, serving in Southeast Asia from 1971-72. After leaving the Air Force with the rank of captain, he joined the Georgia Air National Guard, where he retired in 1998 as a colonel. Prior to his appointment in 1987 as a Superior Court judge, Judge English served as chief assistant district attorney for 12 years in the Griffin Judicial Circuit.

When asked why he wished to be a part of the “*Survivor*” phenomenon, Judge English said, “Initially, the motivational factor was the adventure. I tell everybody that I had a midlife crisis a little late in life.”

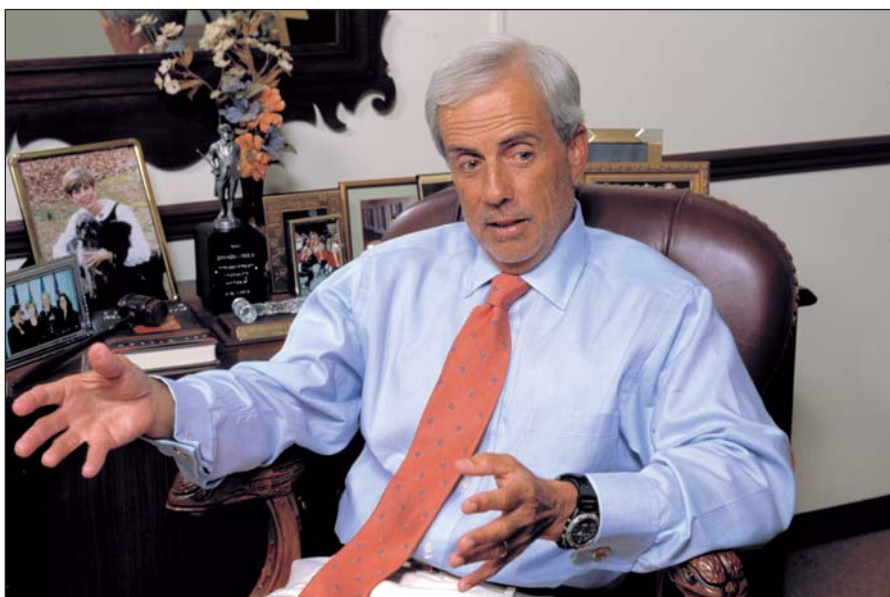
The biggest reason, however, was because of his wife of 35 years, Beverly. She decided they needed to make a list of things to accomplish before they die. On his list were things like flying a fighter jet again and seeing their first grandchild.

“I was making my list up and my wife turned to me and said, ‘Since we are “*Survivor*” fans anyway, I want you to put “*Survivor*” on the list.’ I said, ‘Are you kidding me?’ She said no, and that’s how it all started.” He gives credit to his wife and daughters, Ashley and Rachel, for pulling it all together and getting his application in on time. It arrived to the show just two hours prior to the cut off.

“The selection process for the show was awesome!” Judge English said. “It started somewhere in the neighborhood of 100,000 people. It went to 450, then to 45 and finally to 16. When Mark Burnett, the creator of the show, told me that I had made the show, I simply said, ‘I knew that I would.’”

A Crash Course in Survival

After clearing it with the Griffin Judicial Circuit’s Chief Judge Ben



Judge English, who presides as a Superior Court Judge in the Griffin Judicial Circuit, believes his 15 years on the bench aided in his success on the show.

Miller, and keeping his selection a secret for over a month, Judge English was flown to Marquesas for a two-day crash course in survival. The identity of the 16 finalists had to be kept completely secret and only a few of his closest family members and friends even knew he was there.

During the time he was gone, Beverly was constantly covering up for him. She said the hard part was telling “untruths” when asked where he was.

“People would ask me point blank where he was, and I had to tell them untruths,” she said. “A lot of people believed he was in Afghanistan because of his military background. When I was asked, depending on who it was, I told them he was on a mission trip, at a judicial college teaching a class or just out of town. He’s never away from home, so people really noticed.”

The rules of the competition are not that difficult to understand, and the “*Survivor*” mantra is to “outwit, outplay and outlast.” The 16 contestants are split into two

“tribes” of eight. The tribes have their own camp and compete in two challenges every three days. After each challenge, the contestants vote each other off one-by-one during tribal council meetings, which are also every three days.

The 16 contestants spent a very important 48 hours learning the survival techniques that would help them adjust and survive on the desolate island. Up to this point, the members of the group were not allowed to speak to one another or even look at each other. Communications amongst one another was allowed to begin only once they departed the ship that took them to the their new home away from home.

“They called it a beach, but compared to the other side where the other tribe was, we were in a horrible location,” said Judge English about his tribe’s location on the island. “The beach itself was volcanic rock, which meant it was very treacherous, very uneven, and there was just nothing to it, nothing out there. But, relief was the first thing that I thought of because I was glad,

like everyone else, to just be somewhere out of the water, on land and ready to begin our society."

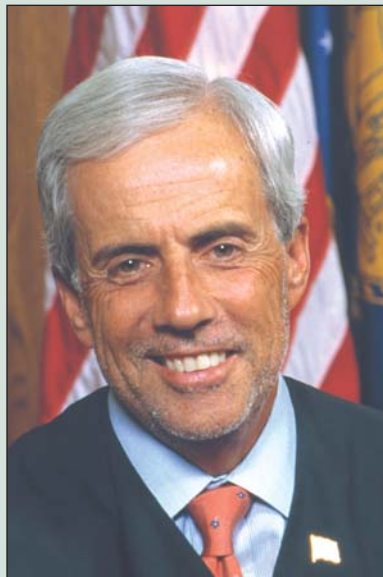
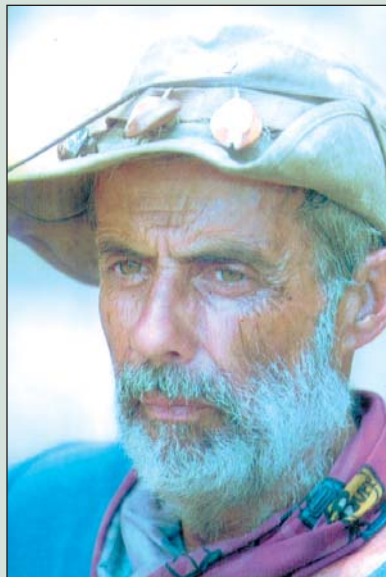
To make the time away from home a tad more bearable, each contestant, during the application process, was given the opportunity to list five "luxury items" they would like to have with them on the island. The show's producers then made the final decision

as to which item each contestant would be allowed to have. For Judge English, his top choice was the American flag. The producers agreed and Judge English was able to display the stars and stripes throughout his time on the island.

"I am extremely patriotic," said Judge English. "I have over 30 years devoted to the military and I love the country, so I felt what better thing to take than something I can identify with that makes me feel good."

Up for the Challenge

The first type of challenge facing the contestants was the "award challenge." And, as the name implies, contestants who win these challenges are given an award. The tribe who wins the award challenge receives something of value, such as food, clothing, blankets or something else that would be desperately wanted. Most of the time, the award challenges decide who has a more comfortable experience on the island. Some rewards, like



Judge English traded in his usual courtroom attire for a "chance of a lifetime" on "Survivor." He says the experience strengthened his appreciation for his family, friends and faith.

matches for fire building and snorkels/masks to catch fish, are key to succeeding in the game.

The second type of award granted is that of immunity. The tribe that wins immunity does not have to vote off one of its members. An award of immunity is also vital to the success of the contestants.

Each time Judge English won an award challenge, individually or within his tribe, the end result had something to do with food.

"The worst thing about being on the island, aside from missing my family, was the starvation," said Judge English. "However, there was a full-time medical doctor behind the scenes to make sure that none of us, well, died. He kept track of how many calories we had each day." According to the doctor, the contestants never consumed more than 200 calories per day.

"During one challenge, popcorn was placed in oil in woks," Judge English recalls. "After the popcorn started popping, you could move to the next part of the challenge.

hands and knees where we had burned ourselves where the popcorn had popped over. It was incrustated in dirt, and we were just eating it."

Almost the Last Man Standing

Unfortunately, Judge English was not the last remaining survivor, thus he did not win the ultimate prize of \$1 million. At his last tribal council, four contestants remained and a tie was in place. The final four contestants had two minutes to reach a majority consensus as to which of the two other tribe members should be voted out of the tribe.

After the two-minute deliberation process, no consensus was reached, thus the group would have to pick colored rocks out of a bag. In accordance with the rules of the competition, the contestant to pick the only purple rock out of the bag would have to leave the tribe. Even though he knew that he would now be at risk, Judge

After the challenge was over, Jeff Probst, the show's moderator, told us that all the woks had popcorn in them and asked if we wanted to eat it. It was so pitiful to watch us go up there. I mean, here we were, shells of our former selves, filthy, stinking, putting our hands in these woks, burning ourselves and not even caring. All of us had blisters on our

"You are just the recipient of luck or the victim of bad luck, depending on where you are in the game. For many days, I was the recipient of good luck, which allowed me to get to the final four. For that one instance, I was the victim of bad luck. Luck got me there and luck took me out."

English conceded with the others that the only resolution would be to pick the rocks out of the bag.

Judge English picked the purple rock, leaving three women to finish out the game. By the luck of the draw, Judge English was out of the game. He was the only contestant on *"Survivor"* to leave without having a vote cast against him.

"There are so many bizarre things going on when you get down to the final four, and there is no way to control it and no way to prepare for who might win," said Judge English. "You are just the recipient of luck or the victim of bad luck, depending on where you are in the game. For many days, I was the recipient of good luck, which allowed me to get to the final four. For that one instance, I was the victim of bad luck. Luck got me there and luck took me out."

Popularity polls conducted throughout the season on the CBS Web site showed Judge English to be one of the most popular contestants on the show. Not only was Judge English popular with the hoards of television fans, he was also greatly respected and popular among his fellow contestants. From the very beginning, he formed great bonds with the people there. He became the father figure and

was given the affectionate nickname "Pappy" by a fellow contestant within just a few days of being on the island.

Surviving *"Survivor"*


Judge English believes that his time spent on *"Survivor"* was the "opportunity of a lifetime" and "a life-altering experience."

When asked what the best part of being on the island was, he replied, "By far the best part about being there was the people that you associated with. I don't care what was said, what was done, what it was made to appear like, you really cared dearly for these people. They were family — they still are family."

Judge English firmly believes that his experience as a Superior Court Judge helped him while being a contestant. As a judge, he has learned the skill of being a good listener. "The people who got in trouble were the people who didn't listen," notes Judge English. "So, over the years, I have developed the sense of listening and being able to listen to people, and I think this skill enabled me to play the game very well."

Judge English also believes that the relationship between the bench and bar and the general public has

improved because of his appearance on the program. "I've received so many letters and telephone calls from the Appellate Court, the Supreme Court of Georgia, the Georgia Court of Appeals, on down through practicing attorneys and other judges who just think this is the single best thing that has ever happened to the bench."

Superior Court Judge Chris Edwards, of the Griffin Judicial Circuit, and longtime colleague and friend of Judge English, said, "I don't know of anyone more loved and respected by more people. If you were to pick one judge for the world to see, you couldn't have picked a better one." 

Sarah I. Bartleson is the communications coordinator for the State Bar of Georgia.

The Georgia Legal Services Program: Providing Critical Legal Aid in Rural Communities

By Jeanette Burroughs

“**E**viction notices, unpaid wages, and consumer fraud are only a few of the critical legal problems our clients face today as did our clients of 31 years ago,” says Georgia Legal Services Program (GLSP) Executive Director Phyllis J. Holmen. The GLSP remains today what it was intended to be when founded by the Young Lawyers Division (formerly Section) of the State Bar in 1971 — one place where low-income clients find critical legal aid with family problems, housing issues, public benefits and health care to name a few. The GLSP’s commitment to fairness and justice is still compelling. The GLSP’s accomplishments demonstrate progress. The GLSP still attracts talented and gifted lawyers to its cause. A total of 165 employees carry on the mission to provide access to justice and opportunities out of poverty for low-income Georgians.

“We are very proud of the achievements of the staff throughout these years, and recognize that our accomplishments are built on the dedicated, hard, stress-laden every day work of those individuals,” says Holmen.

“We’re also very gratified by the contributions of our many volunteers who have helped share the work, and of our many donors who have helped us to grow and endure.”

The GLSP is rural Georgia’s only not-for-profit law firm serving 154 counties surrounding metro Atlanta. One million Georgians with incomes at or below 125 percent of poverty are eligible for serv-



David and Patricia Bryant. “I feel most assuredly that I would have lost my home and everything else. There are a lot of people out there that cannot get help because of not enough money. But, with the GLSP, they might get the help that they need.” — Patricia Bryant

ices — 81 percent of our clients are women and children and 11 percent are elderly. About 30 percent of the service region lack major industrial or commercial centers, have high unemployment rates and offer minimal economic opportunity.

The GLSP lawyers and paralegals ride across 58,000 square miles to client accessible locations, such



The Victims of Crime Act funding from the State of Georgia Criminal Justice Coordinating Council supports the elder abuse prevention work of the GLSP.

as welfare offices and courthouses. Clients are provided free legal representation, advice and counsel on matters of family law, housing, employment, consumer issues and health care. Since 1971, the GLSP has served approximately 350,000 individuals and families. Last year, the GLSP closed 15,614 cases.

An \$11 million operating budget not only supports direct legal services for clients, but also supports special projects. The Statewide Domestic Violence Project provides legal services to victims of family violence. Elder rights projects assist senior citizens with legal problems involving Social Security, Medicaid/Medicare, consumer finance and nursing home care. HIV/AIDS projects provide legal aid to clients on housing, employment and health care problems. Elder abuse intervention/prevention projects in Savannah and Columbus address legal issues of physically abused or financially exploited seniors. Community economic development projects develop affordable housing, micro-enterprises, job creation and training, after school programs and daycare services in impoverished, rural neighborhoods. A farmwork-

er division in Tifton serves the legal needs of migrant farmworkers. A housing helpline assists callers with landlord/tenant problems.

Deeper Involvement

In spite of this year's static funding in federal and state appropria-

tions, the GLSP lawyers and paralegals work hard to avoid dramatic reductions in the numbers of people served. These lawyers and paralegals get deeply involved in people's lives, providing the help that reflects our community's values of fairness, equality and responsibility to assist others in need.

Funding levels are not adequate to meet the needs of every eligible family with a legal problem. The GLSP staff establish priorities among legal needs to ensure that the most critical needs are served. New issues occasionally arise that require special attention. In recent years, these have included revitalizing impoverished neighborhoods through affordable housing and micro-enterprise opportunities, assisting Temporary Assistance to Needy Families (TANF) recipients transition off the welfare rolls successfully, and helping disaster victims rebuild their lives.

Case stories illustrate the commitment of the GLSP lawyers and paralegals to keep families together, pre-

serve shelter, protect income or create viable opportunities for improved quality of life in rural, low-income neighborhoods.

Preserving the Home is a Priority

GLSP clients often face housing problems, which could result in homelessness through no fault of their own. The GLSP's priorities provide in part: "The loss of housing through unsafe or unhealthy conditions, eviction, or foreclosure can precipitate exposure to physical and medical risks in crowded shelters or the streets, disruption of the schooling of young children, loss of employment, and the splintering of families whose members may be dispersed in seeking alternate shelter."

Almost Homeless — Patricia Bryant is like a lot of other grandmothers who are taking care of their grandchildren these days. Yet, Bryant's situation presents extraordinary challenges. Her grandson, David, is 12 years old, developmentally disabled and con-



Domestic violence affects families of every income level and every age.



Brenda Crawford and her family enjoy the first home built in Athens-Clarke County under the Community Land Trust Model.

Photo courtesy of GLSP lawyer Skipper Stipe Maas.

fined to a wheel chair. He is dependent on a breathing machine at night while sleeping. Bryant is unable to work outside the home because of her responsibilities to her grandson. Her husband recently died leaving no will, minimal insurance to cover burial expenses and very little income. Bryant tried to lower her mortgage payments so that she could keep her home. The mortgage company told her that she had to get a quitclaim deed from her stepchildren since her husband had no will. Two of her stepchildren contested her petition in probate court. If a GLSP lawyer had not represented her, Bryant might have lost her home.

Supporting the Safety of Families is a Priority

Advocacy for victims of family violence has taken on increasing importance for the GLSP in response to the need and the availability of funding from the Judicial Council of Georgia and under the federal Victims of Crime Act and Violence Against Women Act. Last year, the GLSP lawyers and parale-

gals assisted 1,754 family violence clients. The legal services provided to these victims also benefited an additional 3,177 family members who are primarily the children of victims. In addition, the GLSP lawyers and paralegals work collaboratively with shelters, victim

assistance offices, law enforcement trainers and officers, local bar associations, private attorneys and the bench to create local family violence taskforces that address the social and psychological forces at work for victims in their local communities.

Recently, the GLSP has implemented a Web-based program that enables family violence victims and their advocates to create temporary protective orders (TPOs) via the Internet. The GLSP's TPO Web site enables victims to meet their immediate needs for court protection. A victim goes to the Web site and answers questions that appear on the computer screen. Without an attorney present, the victim is able to produce a court petition, ex parte court order, and a TPO directly from the Internet. These forms are court approved and appreciated by judges for their accuracy and completeness. Judges can act faster and more comprehensively on the victim's behalf, thereby providing the victim with the relief he or she needs.

The TPO Web site was piloted in 1998 in three counties with assistance from the Fund for the City of New York. Today, the Web site is accessible from 29 shelters, 13 victim witness assistance programs and the GLSP's 12 field offices, and is being replicated across the nation.

Finally Breaking Away — Marietta Hair was working with her husband laying concrete. Her nine-year-old son, Israel, was with her. Her husband accused her of inadequately performing her job. He demanded his wife to walk over to him. He grabbed an iron rack and swung it into her left thigh, leaving her entire leg black and blue and dented with puncture wounds. Then, he ordered her to get back to work. Hair had to kneel on her right leg to finish the concrete job. Later that night, her leg was so swollen she literally had to cut her jeans from her body. A GLSP lawyer obtained a TPO for Hair and, later, the divorce Hair requested. Hair and Israel now live in Kentucky with her family.

Protecting the Exploited is a Priority

Senior citizens become particularly vulnerable as their capacity to make independent and informed judgments declines. The GLSP's elder abuse prevention projects in Columbus and Savannah are effective in training the elderly to take measures to prevent exploitation from occurring in their lives.

The Seniors and Law Enforcement Together (SALT) Council in Columbus is chaired by a GLSP paralegal. The council provides leadership in educating, assisting and involving the elderly in conferences and workshops that

empower them to become less vulnerable to victimization. Seniors learn common sense methods many of us take for granted such as refraining from filling out solicitation forms or sharing personal information with strange companies, not throwing credit card offers in the trash until after they have been destroyed, and not talking to phone solicitors.

A GLSP lawyer is secretary for the Chatham County SALT Council, which was organized in 2000. The council provides a forum for collaboration among older adults, law enforcement and other agencies serving seniors to prevent and respond to safety and crime issues.

Dignity and Self-Respect Restored — Albert Young suffers from the early stages of Alzheimer's disease. With no one to properly care for him, he was placed in a personal care home. The owner of the home and her son swindled him of his home, car, boat, truck and savings totaling \$22,500 — leaving him with nothing. The owner even attempted to isolate Young from his outside friends and contacts. A GLSP lawyer represented Young in a lawsuit against the personal care operator. The jury found that the defendants had committed fraud and awarded Young \$10,000 in damages and an additional \$7,500 in punitive damages. The sales contracts for Young's home, car, truck and boat were rescinded.

Revitalizing Low-Income Communities is a Priority

The GLSP lawyers collaborate with the A Business Commitment (ABC) Pro Bono Project of the State

Bar of Georgia to assist community based organizations to build their capacities to provide low-income neighborhoods with home ownership and micro enterprise opportunities.

The GLSP lawyers and private lawyers work together to provide low-income community groups with technical assistance to: (1) achieve 501(c)(3) tax exempt status; (2) develop the capacity of directors to handle the legal issues involved in managing their organizations; (3) write and draft organizational policies and procedures; (4) train and develop business plans and strategic plans; and (5) negotiate Memorandums of

Understanding with local banks and governments to leverage long-term financial support. These steps prepare community groups to mobilize low-income families and individuals out of poverty.

Accomplishing the American Dream — Brenda Crawford and her three youngest children recently moved into the first home built in Athens-Clarke County under the Community Land Trust




Albert Young was represented by a GLSP lawyer in a lawsuit against a personal care operator.

model. The ownership of the land will stay with the Athens Land Trust while the house is sold to the resident.

A GLSP lawyer provided the legal assistance to complete this first-time project of the Athens Land Trust — a client of the GLSP that for the past eight years has been working to build affordable houses for low-to-moderate income families in the Northeast Georgia region. A GLSP lawyer provided legal assistance to clear title to the property, draft the ground lease and recruit volunteer lawyer assistance from Sutherland, Asbill and Brennan, LLP.

Conclusion

Other work of the GLSP lawyers and paralegals does not involve representation of individual clients. Like their colleagues in the private practice of law, the GLSP lawyers and paralegals are called upon to serve on boards, committees and taskforces, to make presentations to judges, lawyers and other members of their communities, and to participate in developing creative and collaborative solutions to persistent problems. Widely praised for their expertise in the special legal problems of low-income Georgians, the GLSP lawyers and paralegals understand the value and effectiveness of working together to make Georgia's communities better places for all residents. To learn more about the GLSP, visit the Web site at www.glsp.org. 

Jeanette Burroughs has served as the director of development for the GLSP since April 2000. She is a graduate of the University of Illinois and holds a master's degree in Social Work Policy, Planning and Administration.

2002 "And Justice for All" State Bar Campaign for GLSP

Assuring access to justice and emphasizing the responsibility to help others describe the 2002 "And Justice for All" State Bar Campaign for GLSP. The campaign was launched on April 22, 2002, with a goal to raise \$325,000 from individual lawyers and law firms.

"If every bar member who has never given to this campaign would each contribute a minimum gift of \$50 and every bar member who has contributed in the past would contribute again at the same gift level or higher, we could raise over \$1 million," said Frank Strickland, GLSP's fundraising chairperson.

"Individual contributions usually range from \$25 to \$2,500 and law firm gifts range from \$150 to \$6,000," said Jeanette Burroughs, GLSP's director of development. Law firms have the option to make special project gifts, too. Two large law firms have already pledged \$40,000 in support of GLSP's community economic development work to revitalize low-income and rural communities.

Bar members are solicited through the Bar dues "check-off" and special appeals by mail. A total of 2,888 lawyers and law firms contributed last year. "We are hopeful to increase our nine percent response rate to 12 percent given our exciting publicity activities and the launching of a public education campaign this fall," said Burroughs.

Campaign contributions support legal aid in civil matters for victims of domestic violence, veterans, the elderly, children and others who have critical legal problems and no place else to turn for help. "We help low-income individuals and families protect their basic rights to be treated fairly, and this campaign serves to remind bar members of their promises to assure access to justice for all," said Phyllis J. Holmen, GLSP's executive director.

Campaign contributions can be sent to: State Bar of Georgia Campaign for GLSP, P.O. Box 78855, Atlanta, GA, 30357-2855. Visit the Web site at: www.glsp.org.

Georgia's Rivers Will Be "Alive" This October

By Bill Sapp and Harold Harbert

This October, approximately 25,000 Georgians will don working gloves and boots and head for their favorite river, lake or stream to participate in Rivers Alive, Georgia's annual river cleanup event. Rivers Alive has grown to be the second largest cleanup of its kind in the nation. Close to 200,000 thousand pounds of trash will be hauled out of Georgia waters this year at sites all across the state, from Augusta to Bainbridge, Lumber City to Rome. There will be over 120 cleanups all told.

And this year, Rivers Alive will have a special importance, as this October is the 30th anniversary of the Clean Water Act. Since the act's passage in 1972, this country has taken great strides to improve water quality, but unfortunately there's still much work to be done. The purpose of this article is to discuss the history of the Clean Water

Act and to discuss the role Rivers Alive is playing in Georgia to clean up our waters and to raise awareness of the plight of our rivers.

Specifically, this article is designed to entice members of the State Bar of Georgia to join the ranks of the Rivers Alive volunteers. As you will see below, some of your clients are way ahead of you. In short, Rivers Alive is a terrific pro bono opportunity that can build client relations, raise firm morale, help the environment or all of the above. As Mark Twain once said, "Water, taken in moderation, cannot hurt anybody."

Still Going Strong

As is true with many of the environmental laws, the Clean Water Act was a product of crisis. In the late 1960s and early 1970s, it was extremely difficult to ignore the plight of our waters any longer. The Cuyahoga River in Ohio, thick with industrial pollutants, burst into flames. Lake Erie was emitting a putrid stench as it slowly died. The Androscoggin River in Maine was considered "too thick to paddle and too thin to plow." Coastal wetlands were being filled in at an alarming rate. Raw sewage in the Potomac River caused extremely high bacteria counts and abundant

algae blooms. These waterways were allowed to reach this embarrassing state because there was no method in place to prevent industry, agriculture, developers and municipalities from using the nation's waters as open sewers.

By the time Congress realized that the nation's waters were not simply a sponge that could absorb the toxic mess, it was almost too late. But in October 1972, with overwhelming majorities, both houses of Congress passed the Clean Water Act.¹ President Nixon signed the bill into law soon thereafter. Although long overdue, the nation finally had a law in place to restore and protect the nation's water resources.

The mission of the Clean Water Act is to "restore and maintain the chemical, physical and biological integrity of the nation's waters." This mission has been translated into two national objectives: to stop discharges of pollutants into the nation's waters; and to achieve water quality levels that are "fishable and swimmable."

To accomplish these objectives, the Clean Water Act:

- required virtually every city in the country to build and operate a wastewater treatment plant with the fledgling Environmen-

tal Protection Agency (EPA) providing much of the funding and technical assistance;

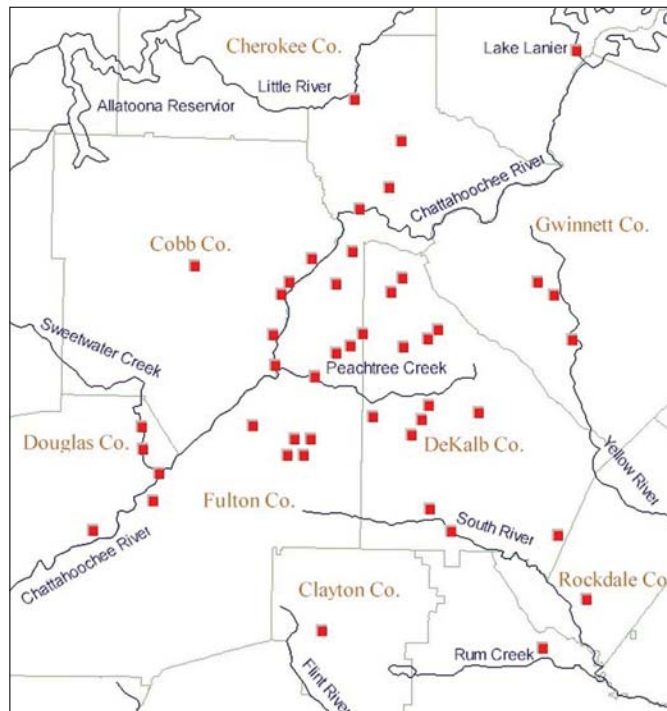
- required each state to develop water quality standards; and
- required each state to design plans for limiting industrial and municipal discharges and included provisions to protect wetlands.

As a result of the partnership that developed between the federal government, states and municipalities, and as a result of the expenditure of billions of dollars on treatment plants, the nation's

polluted waterways began to rebound. For instance, EPA statistics² show the following:

- When the act was passed, only 30 to 40 percent of the waters in this country that had been assessed by the states were suitable for swimming or fishing, while 60 to 70 percent of assessed waters are fishable or swimmable today.
- In 1972, wetlands losses were estimated at 460,000 acres each year. Currently, these losses, although still too high, are about 100,000 acres a year.
- Over the last 30 years, sewage treatment plants have gone from serving 85 million people to in excess of 173 million people.
- And, the imposition of the national discharge standards has kept billions of pounds of pollutants from entering our waters from industrial sources.

Despite these accomplishments, there is still much work to be done. Nonpoint source pollution, such as



Atlanta area rivers and counties.

agricultural runoff and runoff from city streets, is still a major problem — one that can only be solved by the joint efforts of the federal, state and local governments. As is explained below, Rivers Alive is attempting to bring these governments together to address forms of nonpoint pollution through trash cleanups and stream-bank stabilization projects, while at the same time educating the constituents of these governments on the importance of protecting our water resources.

Rivers Alive: What Is It?

Rivers Alive is a statewide event that targets cleanups across all waterways in the state of Georgia, including streams, rivers, lakes and wetlands. The mission of Rivers Alive is to teach Georgians how to become better stewards of the state's water resources. Rivers Alive was started in 1999 by the Georgia Department of Natural

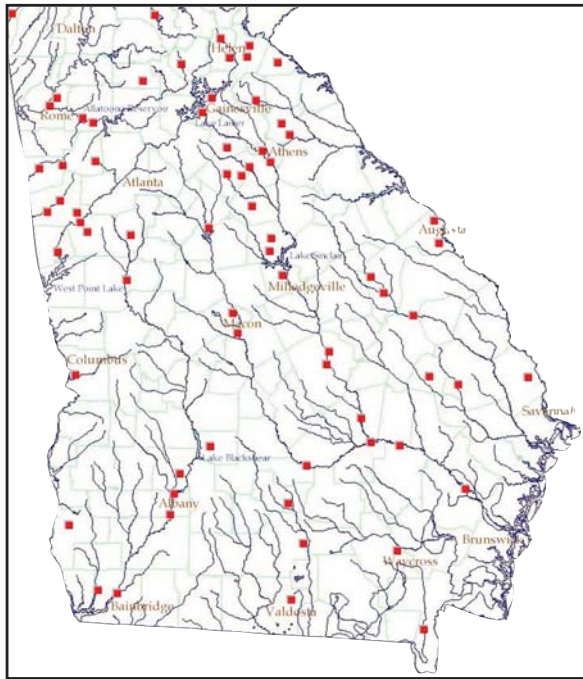
Resources (Georgia Adopt-A-Stream Program). The idea was to bring as many of the state's river cleanup events as possible under one umbrella. A Georgia Adopt-A-Stream employee serves as the executive director of Rivers Alive. In addition, the Georgia Department of Community Affairs (Keep Georgia Beautiful Program) has played a significant role in the success of Rivers Alive by providing Rivers Alive nonprofit status through the Keep Georgia Beautiful Foundation. In addition, a Keep Georgia Beautiful employee is the treasurer

of Rivers Alive.

To assist the executive director, Rivers Alive created a board of directors. This board is made up by an even ratio of corporate sponsors, community organizers and federal, state and local government employees. The key functions of the board this year have been to raise money, design and distribute T-shirts, conduct outreach, develop education programs and conduct a public relations campaign. The individual cleanup organizers find a location for a cleanup, attract the volunteers and stage the cleanup.

Rivers Alive by the Numbers

The Rivers Alive formula has worked remarkably well. In 1999, the first year that Rivers Alive conducted cleanups in earnest, it had approximately 7,000 volunteers. This year, approximately 25,000 volunteers are anticipated. With only 18,763 volunteers in 2001, 117,999 pounds of trash was



Statewide rivers and cleanup locations.

removed from 662 miles of rivers, lakes and streams. This year we are set to dramatically improve on those numbers.

By far the most successful cleanup is the Help the Hooch cleanup in Columbus. Its organizers anticipate over 12,000 participants this year. In fact, Help the Hooch has provided much of the impetus for Rivers Alive and it has made us realize that if Columbus can mobilize over 12,000 volunteers, a statewide goal of 50,000-75,000 volunteers could be attainable.

Another large cleanup is the Lake Lanier Shoresweep, which attracts about 2,500 participants each year. The rest of the cleanups are distributed fairly evenly across the state. The maps on this page and page 35 show the cleanup locations.

The cleanups range dramatically in size. Last year, the program even had a one-person cleanup. So, if you want to cleanup the creek in your back yard, register your cleanup and be a part of Rivers Alive.

Or if you would prefer to help your local watershed by planting

trees, stabilizing streambanks, participating in water quality testing or removing exotic plants, please contact Rivers Alive. There will be an appropriate event for you.

The Role of Corporate Sponsors

Perhaps the key to Rivers Alive's success has been attracting corporate sponsors, which allowed us to pay for and distribute T-shirts to our volunteers. As one volunteer quipped,

"I'll do almost anything for a T-shirt." The corporate sponsors pay for the T-shirts, banners, posters and the Rivers Alive Web site. In other words, 100 percent of the money collected by Rivers Alive is spent in support of the cleanups.

The sponsors for the Rivers Alive 2002 are as follows: AT&T; BASF; Beers/ Skanska; BellSouth; CVS Pharmacy; Canon USA Inc.; The Coca-Cola Company; Direct Access International; Georgia Pacific; The Home Depot; International Paper; MeadWestvaco; Miller Brewing Company; Mohawk Industries Inc.; Oglethorpe Power; Plum Creek; Six Continents Hotels; UPS; and Waste Management. And, from a public relations standpoint, we are being sponsored by the Clean Water Campaign and *Georgia Magazine*.

What is remarkable about the Rivers Alive cadre of sponsors is that many of the major corporations listed have taken the lead in organizing cleanups. Several of the sponsors have cleanups that attract over a hundred volunteers, and

five of the sponsors have employees who are very active on the Rivers Alive Board of Directors.

Linking Government Resources

Rivers Alive encompasses representatives from several government agencies. The primary support for Rivers Alive comes from the state through the Georgia Adopt-a-Stream Program, which provides the executive director to the organization. Keep Georgia Beautiful affiliates support the cleanups and, in many cases, provide representatives to serve on the Board of Directors. At the federal level, the chair of the Rivers Alive Board of Directors is a volunteer from the EPA, which is planning a 120- to 200-person cleanup this year. A representative of the Natural Resources Conservation Service, another federal agency, is a board member. Finally, on the local level, many country and city governments have organized cleanups in their areas. By working cooperatively through Rivers Alive, we hope that these government agencies will be able to work more closely on the thorny issues of non-point source pollution.

Appreciating Georgia's Water Resources

But perhaps more important than any other goal of Rivers Alive, the organization aims to teach Rivers Alive volunteers how to become better stewards of our water resources. Many times this begins in the classroom, where primary and secondary school students learn about watersheds and how we can protect them. The students then participate in a Rivers Alive cleanup. This approach has

Water is the most critical resource issue of our lifetime and our children's lifetime. The health of our waters is the principal measure of how we live on the land.

— **Dr. Luna Leopold,**

Professor Emeritus, Department of Earth and Planetary
Science, University of California, Berkeley

worked particularly well in the Columbus area.


Some cleanups also offer education in the form of stream geomorphology analysis, riverboat tours, wastewater treatment facility tours and environmental education workshops. For instance, Rivers Alive is affiliated with the River Rendezvous, which is run each year by Oglethorpe University. During the one-day event, volunteers take water samples throughout a single watershed. This approach gives an unparalleled "snapshot" of water quality throughout the watershed.

At most cleanups, however, a brief education component is provided at the beginning of the cleanup. Typically, such cleanups will start off with a discussion of the watershed in which the cleanup is located to give the volunteers some idea of the problems that are facing the water body that they will be cleaning. It is our goal that the Rivers Alive volunteer will leave the cleanup with a deeper appreciation of his or her watershed and how beautiful even an urban stream can be once you get right down beside it or even in it. And, hopefully, the experience will inspire those volunteers to go for a paddle on a nearby river, wade into a mountain stream, take a picture of a waterfall or find a quiet beach. With its 70,150 miles of rivers, lakes and streams, Georgia

offers us plenty of opportunities to enjoy the state's water resources. We own these waters collectively; we should all have a hand in their preservation.

What's a Lawyer Got to Do with IUt?

Rivers Alive provides a perfect opportunity for law firms to partner with clients to conduct cleanups and build stronger relationships. Alston & Bird has organized cleanups for a number of years as part of Rivers Alive, and is currently providing pro bono legal services to the organization. Hunton & Williams is planning to test the waters this year by sending a few associates to a cleanup. And, in-house counsel from a number of corporations have participated in cleanups.

What could be a more meaningful way to develop a better relationship with one of your clients than to invite him or her to cleanup and spend a couple of hours doing something good for the environment? And, it is a lot less expensive than a round of golf and you will earn the coveted Rivers Alive T-shirt! For more information, please contact www.riversalive.org. 

Bill Sapp is an associate regional counsel for Region 4 of the Environmental Protection Agency. He is the chair of the Rivers Alive Board of Directors. Sapp graduated from Harvard Law School in 1990.

Harold Harbert is the environmental outreach coordinator for the State of Georgia Department of Natural Resources. His primary responsibility as the outreach coordinator is to coordinate the State Volunteer Water Quality Monitoring Program. He also serves as the executive director of Rivers Alive. He graduated from Earlham College in Richmond, Ind., in 1991 with a degree in biology.

Endnotes

1. 133 U.S.C. §§ 1251-1387. The Act amended the Federal Water Pollution Control Act of 1948, which, among other things, had lacked the grant program and enforcement teeth that the current Act contains.
2. Environmental Protection Agency, Clean Water Action Plan: Restoring and Protecting America's Waters, 1-2 (February 14, 1998).

KUDOS

Fred F. Manget, deputy general counsel of the **Central Intelligence Agency**, received the 2002 Attorney General's Distinguished Service Award for support of the recent successful prosecution in New York of the terrorists who bombed the United States Embassies in Kenya and Tanzania in 1998.



Aasia Mustakeem, partner with **Powell, Goldstein, Frazer & Murphy LLP**, has been elected to the Executive Committee of the State Bar of Georgia by the Bar's Board of Governors. Six members of the Board are elected to serve on the

Executive Committee with Bar officers. Mustakeem is a partner in the Atlanta office with the Financial Products and Real Estate Practice Group.

Nezida S. Davis was appointed **chief** of the **Atlanta Field Office of the U.S. Department of Justice's Antitrust Division**. Prior to her appointment, Davis served as the office's assistant chief for seven years. **Glenn D. Baker** has been appointed **assistant chief** of the **Atlanta Field Office**.

Needle & Rosenberg has been granted a third, five-year contract from the National Institutes of Health (NIH). Needle & Rosenberg is one of only four firms in the country the NIH has selected to perform patent services for each of the last three contract periods.

Alex Jeffrey Dolhancyk, a 13-year member of both the Tennessee Bar and the State Bar of Georgia, announced his recent graduation from Emory Law School with a Master of Law degree in international business law. Dolhancyk received his undergraduate degree from the University of Tennessee and his law degree from the University of Memphis. Dolhancyk's practice specializes in bankruptcy, real estate and business law.

The **Atlanta Legal Aid Society Inc.** announced that it is the recipient of the Goizueta Foundation's Hispanic Outreach Law Project, a three-year grant totaling \$325,375, to expand services offered to metro Atlanta's growing Hispanic population.



ABC News' "Nightline" profiled Atlanta trial consultant **Dr. Andy Sheldon** in May. Sheldon's work in all four of the 1960s civil rights murder trials was highlighted, including this summer's conviction of Birmingham church bomber Bobby Frank Cherry.

Chicago Title Insurance Company has awarded **Jackson and Hardwick**, a residential real estate closing law firm, its prestigious **2001 Partners' Circle Award** and named the firm as the top rev-

enue producer in Georgia. While this is the fourth time the firm has received the award, it is the first time that a primarily residential real estate law firm has been named top producer for both residential and commercial business combined.

Atlanta attorney **Sam Olens**, of **Ezor & Olens, P.C.**, won election as **chairman** of the **Cobb County Board of Commissioners**.

Savannah attorney **Albert Mazo** was given national recognition for his pro bono service at the local office of **Georgia Legal Services**. Mazo was awarded the **ABA Senior Lawyers Division Pro Bono Award** during the American Bar Association's meeting in August. Mazo is part of the Volunteer Attorney Project of Savannah's Legal Services Office.

The **Atlanta Bar Association** received the **American Bar Association's 2002 Harrison Tweed Award** for achievement in preserving and increasing access to legal services for the poor. The award, presented by the ABA's Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defenders Association, was presented at the ABA Annual Meeting in August. The Atlanta Bar was recognized for its Truency Intervention Project, which was created in 1991 in response to the overwhelming number of children appearing in juvenile court with truancy violations. For more than 10 years, the project has served more than 1,600 children in Atlanta public and Fulton County schools.

Perry attorney **W. Steven Harrell** recently published his first novel, "*The Unionist*," based on the true story of the Civil War service record of David R. Snelling, a Jones County native. Harrell's novel is published by Publish America and is available online at www.publishamerica.com and in bookstores.

The **Multi-County Public Defender Office** has completed **10 years of service** as of July. The office has assisted in resolving more than 225 death penalty cases and has acted as trial and appellate counsel in more than 60 other death penalty cases since 1992. The office was created through legislation as part of the Georgia Indigent Defense Council and serves all Georgia counties on death penalty cases.

For the second year in a row, **American Banker** has named **Powell, Goldstein, Frazer & Murphy LLP** one of the nation's leading legal advisers in domestic bank and thrift merger deals. During the first half of 2002, Powell Goldstein concluded four major merger deals in this sector valued at over \$437 million.

Jay Patton, an associate with **Powell, Goldstein, Frazer & Murphy, LLP**, has been elected **secretary** to the board of the **Institute for Violence Prevention**. The institute is a non-profit organization dedicated to reducing violence in homes, neighborhoods, schools and the workplace. The organization's northern Georgia programs include

workshops and custom-developed curriculum in conflict resolution and leadership for at-risk youth and adults, parents, educators, social workers and managers.



J. Douglas Stewart, of Gainesville, has been elected to a three-year term on the **American Bar Association Board of Governors**. Stewart, who is a past-president of the State Bar of Georgia, will serve as the ABA's Sixth District Governor, representing Louisiana, Tennessee and Georgia. Stuart has been active in the ABA since becoming a member in 1962 and has been involved in numerous law-related organization in Georgia, including the Georgia Bar Foundation and the Institute of Continuing Legal Education.



Paula J. Frederick, of Atlanta, has been elected to a three-year term on the **American Bar Association Board of Governors**. Frederick will hold the woman member-at-large seat on the Board. She has been a member of the ABA House of Delegates since 1984 and she is a former chair of the ABA Standing Committee on Professional Discipline and the Joint Committee on Lawyer Regulation.

ON THE MOVE

In Atlanta



Nora M. Tocups, formerly of Kilpatrick Stockton LLP, has started a solo patent practice. The **Law Office of Nora M. Tocups** is located at P.O. Box 698, Decatur, GA 30030-0698; (404) 372-1430; ntocups@bellsouth.net; www.noratocups.com.



The Cleveland-based law firm of **Buckley King** has opened an Atlanta office and has named **R. Patrick White** managing partner. White had been vice president for claims legal management for the Fireman's Fund Insurance Company in San Francisco.



Banich



Patel



Stay

The law firm of **Stites & Harbison** announced the addition of four attorneys to its Atlanta practice. **Richard D. Flexner** has become counsel; **Catherine Banich** will concentrate on business lit-

igation and labor and employment; and **Kirtan Patel** will practice corporate, commercial real estate and international transactions. All three are formerly of Schander, Harrison, Segal & Lewis LLP. In addition, **Ronald J. Stay** joins the firm as an associate. He is also a certified public accountant and was with the firm of Griffin, Cochrane & Marshall, PC.

The law firm of **Peck, Shaffer & Williams LLP** announced that **Susan Pease Langford** has joined the firm as a partner. The office is located at the Atlanta Financial Center, 3353 Peachtree Road NE, Suite M-20, Atlanta, GA 30326; (404) 995-3850; Fax (404) 995-3851.



Charles E. Roberts, a partner in the Atlanta office of **McGuireWoods LLP**, has been appointed co-chair of the International Taxation Committee in the ABA Section of International Law and Practice. A member of the taxation and employee benefits department at McGuireWoods, Roberts concentrates his practice in the area of business taxation, including the federal income taxation of both domestic and international transactions.



C. Murray Saylor Jr., partner in **The Saylor Law Firm LLP**, was named president of the **American Association of Attorney-Certified Public Accountants** in July. Saylor practices law with his wife, **Jackie Saylor**, who serves as chair of the **Women in Profession Committee** of the **Atlanta Bar Association**. Their practice concentrates on tax planning, business planning and estate planning.

The Atlanta office of **Duane Morris** has announced several additions. **Louis Norwood "Woody" Jameson** and **John C. Herman**, both formerly of King & Spalding, have joined the intellectual property litigation practice as partners. **Paul M. Spizzirri**, formerly of Arthur Andersen, joined the firm as a partner in the tax law group. **Matthew C. Gaudet** and **Ryan K. Walsh**, both formerly of King & Spalding, join the firm as associates in the intellectual property practice, and **Deborah J. Barrow**, formerly of Hendrick, Phillips, Schemm & Salzman, joins as an associate in construction law and litigation.

The **Davis Law Group, P.C.**, has recently become affiliated with the Washington, D.C., and San Francisco firm, Belli, Weil, & Grozbean, P.C. The Atlanta firm will be known as **Belli, Weil, Grozbean, & Davis, LLP**. The firm will continue to represent clients in the areas of catastrophic injury and wrongful death litigation, family law, criminal defense, civil litigation and real estate transactions. The Atlanta office is located at 98010 Roswell Road, Suite 200, Atlanta, GA 30350-7024; (770) 993-3300; Fax (770) 552-0100.

The intellectual property law firm **Merchant & Gould** announced that **Tim Tingkang Xia** has been joined as partner with the firm. The office is located at Georgia-Pacific Center, 133 Peachtree St. NE, Suite 4900, Atlanta, GA 30303; (404) 954-5100; Fax (404) 954-5099.

Kilpatrick Stockton LLP announced the addition of **Timothy Mann Jr.** as partner in its Atlanta office. Mann's addition supports the firm's strategy of enhancing its corporate and technology service offering with domestic and international clients.

In Lawrenceville

Jeffrey R. Mahaffey and **J. Michael McGarity** are now named members in the firm formerly known as Andersen, Davidson & Tate. The new firm of **Andersen, Tate, Mahaffey & McGarity** is a full-service civil law firm in Gwinnett County and is organized into four main practice areas: real estate and banking; corporate and business; civil litigation; and estate planning. Mahaffey joined the firm in 1989 and McGarity joined recently after having practiced more than 20 years in Gwinnett County.

In Thomasville

Allen H. Olson, formerly with The Vann Law Firm in Camilla, Ga., announced the opening of his law offices in Thomasville, Ga., with a practice concentrated on agricultural law, federal farm programs, Chapter 12 farm bankruptcies, business and estate planning, and conservation easements. The office is located at P.O. Box 2415, 126 North Broad St., Thomasville, GA 31799; (229) 226-1011.

In Asheville, N.C.

David K. Ray has become **lands program director** for the **Southern Appalachian Highlands Conservancy**, located at 34 Wall Street, Suite 802, Asheville, NC 28801; (828) 253-0095; www.appalachian.org.

In Columbia, S.C.



The law firm of **Nelson Mullins Riley & Scarborough, L.L.P.**, announced the addition of **Pamela J. Roberts** to its Columbia office. Roberts, a partner of the firm, will practice in the Columbia office in the areas of complex business litigation and commercial litigation.

Atlantic Title Insurance Company announced that **Clinton Y. Yarborough** has become vice president and underwriting and claims counsel. The company is located at 1301 Pickens St., Columbia, SC 29202; (803) 799-4747; Fax (803) 799-4443.

In New Orleans, LA

Captain Jeffrey Stieb, U.S. Coast Guard, formerly the executive officer of Marine Safety Office in

Providence, R.I., assumed the duties of **district legal officer** for the **Eighth Coast Guard District in New Orleans**. Captain Stieb will serve as the senior Coast Guard attorney for all Coast Guard operations in 26 states throughout the Gulf Coast and heartland of America. The District office is located at the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396; (504) 589-2166.

GAWL Installs New Board



From left to right: Stacy L. Edelstein, president; Beth T. Baer, immediate past president; and Rebecca Godbey, president-elect.

The Georgia Association for Women Lawyers (GAWL) recently installed new board members at its annual dinner and meeting at the Cator Woolford Gardens in Decatur, Ga. Stacy L. Edelstein, of Decker, Hallman, Barber & Briggs, was installed as the new president of the statewide organization. GAWL will celebrate its 75th year in 2003. Other members of the board include: Rebecca Godbey, president-elect; Lee Wallace, secretary; and Mary Galardi, representative-at-large. The following will serve as vice presidents: Joyce Gist Lewis (Programs); Christian Torggrimson (Community); Christine Morgan (Fundraising); and Stephanie Frieze (Membership). Beth Baer is the immediate past president.

What to Expect from the Ethics Hotline

“**W**hat do you think?” your partner asks for the umpteenth time. “Do I have to withdraw from the case or not?”

“I don’t know,” you reply. “You don’t really have any confidential information about your former client, but that doesn’t seem to matter under the rule.” Like a bolt of lightning, the solution suddenly hits you — “I know! Let’s call the Ethics Hotline!”

You probably know that the lawyers in the Office of the General Counsel (OGC) operate an Ethics Hotline each weekday.¹ You may not know much more about the service — who staffs the Hotline, how long it will take to get an opinion or whether your call will be treated as confidential.

Since its inception in 1988, the hotline has averaged 22 calls per day. Given the volume of calls, it is rare for the “duty lawyer” to be able to take a call when it comes in. Most

often the caller should expect to leave a message and have the call returned later that day. The lawyers in the OGC, who staff the hotline on a rotating basis, are committed to returning every call within 24 hours.

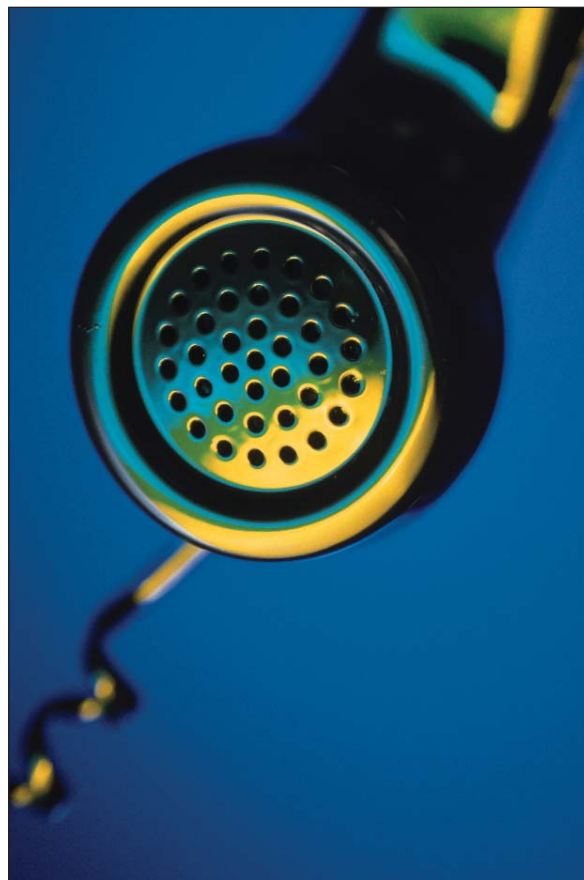
Hotline advice is not binding, even on the assistant general counsel who issues the opinion. Every lawyer understands the risks

of rendering an opinion based upon one side of the story.

The caller may inadvertently skew the facts to get the desired result, or may omit a fact that is important for an accurate assessment of the ethics issues. The OGC lawyer is offering his or her best guidance based upon a cursory discussion of what may be a very complex problem.

Bar Rule 4-403(g) requires the OGC to treat as confidential the name of a lawyer requesting an informal advisory opinion. We do not begin

a disciplinary investigation against any lawyer based upon a hotline call. In addition, we sometimes receive separate calls from lawyers on opposite sides of a dispute. We do not reveal to one that we have spoken to the other.



The OGC does keep a statistical record of the number and length of calls. We also keep tabs on which ethics rules generate the most questions. Conflicts of interest account for the biggest percentage of calls. Since conflicts issues are very fact specific, each situation warrants a new analysis.


The Ethics Hotline Can:

- Point the caller to the appropriate section of the Rules of Professional Conduct and any formal advisory opinions that might apply to a given situation.
- Discuss the pros and cons of various alternative courses of action, although the duty lawyer will not advise the caller what action to take.

The Ethics Hotline Cannot:

- Serve as a defense if the situation later results in a grievance being filed, although the fact that the lawyer consulted the hotline prior to acting certainly tends to show that the lawyer attempted to act in compliance with the rules.
- Answer questions about substantive areas of law other than ethics.
- "Bless" conduct that has already occurred.

Staffing the hotline is one of the more pleasant duties of the staff lawyers in the OGC. Be sure to call when you need us!

The Ethics Hotline operates from 9:00 a.m. - 5:00 p.m. weekdays. Call (404) 527-8720 or (800) 334-6865. 

Endnotes

1. Bar Rule 4-401 authorizes the Office of the General Counsel to render informal opinions applying the ethics rules to a lawyer's proposed conduct.



STATE BAR OF GEORGIA MIDYEAR MEETING

JANUARY 9-11, 2003
SWISSÔTEL, ATLANTA

Registration and hotel information will be mailed in October. Registration information will also be available online at www.gabar.org.

You won't want to miss:

CLE Opportunities

Alumni Breakfasts and Receptions

Board of Governors' Meeting

YLD Events

Law-Related Organizations Meetings

For more information or sponsorship opportunities, contact Michelle Priester, director of meetings, (404) 527-8790 or michelle@gabar.org.

Discipline Notices

(June 22, 2002 – Aug. 20, 2002)

By Connie P. Henry


SUSPENSION

William Lewis Vaughn
Macon, Ga.

The Supreme Court, by order dated June 24, 2002, suspended William Lewis Vaughn (State Bar No. 726450) from the practice of law in Georgia for a period of 12 months with conditions for reinstatement. Vaughn admitted he photocopied a file stamp from the Bibb County Clerk's office to make it appear that his client's deed to secure debt had been recorded when it had not and forwarded the falsely-stamped deed to his client. In addition to the 12-month suspension, the following conditions must be met prior to reinstatement: 1) attend Ethics School within 90 days of the Court's final order; (2) submit to and pass the Multi-State Professional Responsibility Exam; and (3) submit to the State Bar's Lawyer Assistance Program for

evaluation, treatment for and monitoring of stress, anxiety and/or any other latent condition the program may determine appropriate. Justice Benham dissented, adopting the recommendation of the special master that Vaughn be suspended for six months subject to conditions for reinstatement.

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 June 22, 2002, eight lawyers have been suspended for violating this Rule and three were reinstated. 

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

LAWYER ASSISTANCE PROGRAM

Alcohol/Drug Abuse and Mental Health Hotline

If you are a lawyer and have a personal problem that is causing you significant concern, the Lawyer Assistance Program (LAP) can help. Please feel free to call the LAP directly at (800) 327-9631 or one of the volunteer lawyers listed below. All calls are confidential — we simply want to assist you.

AREA	CONTACT	PHONE
Albany	H. Stewart Brown	(229) 420-4144
Athens	Ross McConnell	(706) 369-7760
Atlanta	Melissa McMorries	(404) 815-2192
Atlanta	Brad Marsh	(404) 874-8800
Atlanta/Decatur	Ed Furr	(404) 284-7110
Atlanta/Jonesboro	Charles Driebe	(770) 478-8894
Cornelia	Steven C. Adams	(706) 778-8600
Fayetteville	Glen Howell	(770) 460-5250
Florida	Patrick Reily	(850) 267-1192
Hilton Head	Henry Troutman	(843) 785-5464
Hazlehurst	Luman Earle	(478) 275-1518
Macon	Bob Daniel	(912) 741-0072
Macon	Bob Berlin	(478) 745-7931
Norcross	Phil McCurdy	(770) 662-0760
Savannah	Tom Edenfield	(912) 234-1568
Valdosta	John Bennett	(229) 242-0314
Waycross	Judge Ben Smith	(912) 285-8040
Waynesboro	Jerry Daniel	(706) 554-5522



Tips, Tips, Tips Galore!

By Natalie R. Thornwell

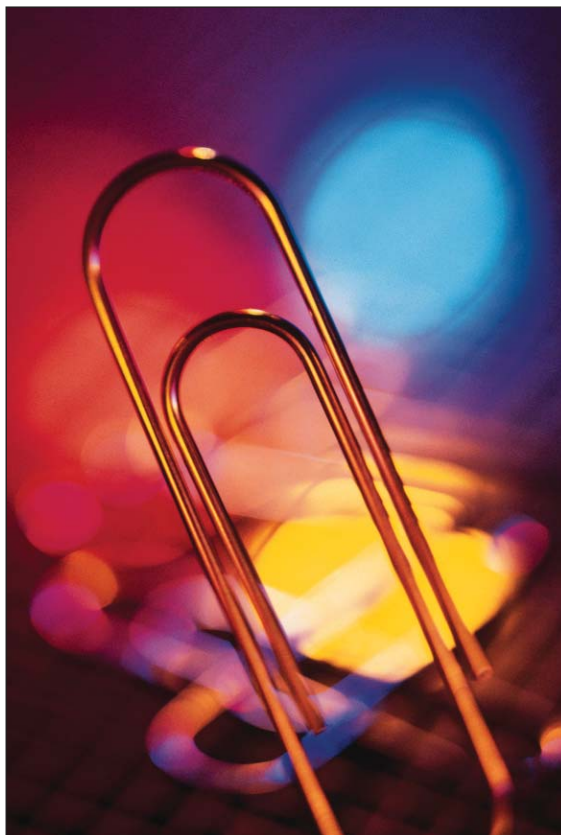
I love hearing great new tips that can help me save time and money. In fact, I love tips so much that I have been asked on numerous occasions in the past to participate on CLE panels that provide the audience with nothing but tips for one legal topic or another. If you haven't been to a CLE program lately that gives nothing but technology or practice management tips, then here is an example of the types of tips you might be missing.

Tip #1 (and probably my favorite)

Don't be afraid to right-mouse click! I am always amazed that people are afraid to do this. In most standard Windows programs, you will find several shortcuts to doing particular menu tasks just by right-mouse clicking. This can even be a shorthand way of learning more about the functionality of some programs you commonly use. So, regardless of what you may be doing on the computer, get into the habit of right-mouse clicking to see what's hidden in the right-mouse click's drop-down menu.

Tip #2

Use Tools/AutoCorrect in Word and Tools/QuickCorrect in WordPerfect to do more than have your word processor correct your typing mistakes. If you haven't already



noticed, in the latest versions of Word and WordPerfect, the programs seem to magically correct typing mistakes as you make them. For instance, if you type "H - T - E" and press the space bar, the program will automatically change your error to the correct word "THE." You can expand this function by adding short sets of characters, or abbreviations if you will, that change into larger sets of commonly used text. For instance, I type "lpm" to format to "law practice management," a phrase I use a lot. (Bonus tip: Ever notice the red underlines on words that don't occur in the dictionary of your word processor? Use Tip #1 [right-mouse click] on those

words to Add them to the dictionary of your word processor, or to see what AutoCorrect or QuickCorrect suggests you use instead. Add puts your correction in the dictionary and makes it a word you can choose if you again make a typing mistake that comes close to that word.)

Tip #3

This comes from a recent program done by fellow Practice Management advisor, Pat Yevics, of the Maryland State Bar Association. Write out your marketing plan. If you don't write down your plan, you lose the effectiveness of a plan that you can put

into action and not have to keep reinventing the wheel or making the same marketing mistakes. In fact, the plan should be looked upon as a work in progress. Every year look to see if you have met your specific marketing goals and if you haven't, explain in the plan why your efforts did not work. Be specific about what goals you have for yourself personally and for the firm. Be sure to quantify as much as you can. For instance, write down that the firm expects to increase its caseload in the real property practice area by 30 percent over the next 12 months. With a written marketing plan, you can quantify and track your results.

Tip #4

There may actually be two tips here, and the second one may actually be my "real" favorite! Train, train, train. Get training on all of the tools you use. One of my most popular tips for audiences is to "learn the features of the equipment you use." This is true for both software and equipment. In a busy law office you only have time to work with tools to the best of your ability to get the work out. If you take the time to train on the advanced features of the equipment and software you use, you will not only save time, but you will cut down on the firm's stress level when the next "get this done

now” task comes along. By the way, this tip is for everyone in your office, not just staff. You need to know how to set up conference calls and use the copier, too.

Tip #5

Use Internet search engines to find quick fixes to your computer woes. If you are constantly receiving an error message while using your computer, then copy the text of the error message into the search field of a common search engine like Google, AskJeeves or Yahoo. The search will often return a product technical support or knowledgebase page that addresses the solution to your error. You might also find threads from newsgroups that walk you through fixing your problem. Of course, make sure that you first record the error in your IT Problems Log (list of errors that all users keep) and check with your IT or computer personnel before performing the fix on your system.

Tip #6

Give your clients a sample bill at the beginning of their representation. This little tip might be the one that makes you some big bucks. I think lawyers should send regular bills to their clients and to make sure that the clients are inclined to pay, the firm should show the client what to expect with a sample bill. Circle or highlight the amount area and explain to the client that this is what they are to pay. Some bills are confusing to clients because they carry not only account receivable figures, but trust account figures, too. Make it all clear to your clients with an easy-to-read and understandable sample. Of course, you know not to use a “real-life” bill as your sample.

Tip #7

Use your case management system for knowledge management, too. Most case, or practice management systems, as I like to call them, have areas that you can customize to obtain information about a particular case or contact. From this framework, you can do conflict of interest searches across these databases, and even find out in some case managers how parties are related. Take advantage of the reminder features for building new business. Don’t leave a stone unturned. Use the program to remind you to stay in touch with particular people and keep track of what is happening with parties to particular cases. Knowledge management is going a step beyond just putting the information in the program — it deals with the “knowledge” of the overall firm as it relates to both cases and contacts. This information is now “shared knowledge” accessible by everyone in the firm.

Tip #8


Use Word’s AutoText (Insert/AutoText) and Word Perfect’s QuickWords (found under Tools/QuickWords) to insert frequently used blocks of text into documents. From signature and letter closings, you will find these steps to be handy while drafting documents. These features are similar to the ones described in Tip #2. You are creating a set of characters that when typed are expanded into larger blocks of text. Make sure that you don’t use common words as your abbreviation though, because when you type them they will expand to the larger set of text when you hit the space bar, or at least pester you with the suggested text the program wants to enter.

Tip #9

Web sites can be tips, too! When you want to be the smartest guy in town, check out www.howstuffworks.com. I love to know how various stuff works, and this site really fits the bill for figuring it all out. From 529 College Saving Plans to CD burners to knuckle cracking (yes, knuckle cracking), this site gives on-point, scientific explanations for almost everything. This is great for helping your children with their science projects, too!

Tip #10

Can’t get over that last tip or don’t know how to use the Internet, then learn all about the Net at www.learnthenet.com. You can even learn about using e-mail here, too.

For even more tips that can help you better manage your practice and use technology in your law practice, visit this department’s “Tip of the Week” page on the Bar’s Web site at www.gabar.org/lpmtips.htm. This portion of our site provides a weekly practice management or technology tip courtesy of ABA’s Law Practice Management Sections’ Practice Management Advisors Committee and Solosez listserv. Also, check for upcoming CLE Tips programs at www.iclega.org or by contacting ICLE at these numbers: Athens area (706) 369-5664; Atlanta area (770) 466-0886; or toll free (800) 422-0893. Finally, if you have some great practice management or technology tips, please feel free to contact me at (404) 527-8770 or (800) 334-6865, ext. 770, to share. 

Natalie R. Thornwell is the director of the Law Practice Management Program of the State Bar of Georgia.

The Waycross Bar Association: A Focus on Tradition and Service

By Huey W. Spearman

The Waycross Bar Association is located in the largest county and the largest state east of the Mississippi — and it is in the great city of Waycross, Ga. Waycross is in Ware County and is also the home of the legendary Okefenokee Swamp Park and Wildlife Refuge, which is visited by thousands of tourists annually. The Waycross Bar Association has been in existence for over 50 years and currently has 58 members serving the Waycross Judicial Circuit. The circuit consists of the counties of Bacon, Brantley, Charlton, Coffee, Pierce and Ware. New Bar officers are elected in June and begin serving a one-year term in July. The membership dues are \$60 annually.

Members attend monthly luncheon meetings, which are held on the second Wednesday of each month at the local Holiday Inn. This is an excellent opportunity for lawyers and judges to fellowship in a relaxed atmosphere while discussing everything from their skills on the golf course to current events, to recent developments in the law and community activities. It also provides an opportunity for lawyers who may have been playing “telephone tag” for some period of time to talk to each other. Periodically, guests are invited to attend, including the clerks of Superior Court, law enforcement officers, State Bar of Georgia officials, congressional- and state-elected officials, and local mock trial teams.



Community Involvement

The Waycross Bar Association won a memorable State Bar of Georgia Award in 1997 for the “Best New Entry” in Law Day activities competition. Law Day activities of the Bar included sponsoring a poster contest in local elementary schools on the importance of the right to vote, and an essay contest in junior and senior high schools on the topic, “Does a School Dress Code Violate a Student’s First Amendment Right to Freedom of Expression?” The response and participation from the students was tremendous. Monetary prizes were awarded to the student winners in each category, and they were invited to have lunch with the Bar. In addition, volunteer lawyers went to the high

Waycross Bar Association 2002-2003 Officers

President:	Kelly Brooks
Vice-President:	Teresa Bowen
Secretary/Treasurer:	Joseph Johnson

school to talk to the students regarding the role of law in our society. Then, the lawyers demonstrated how jurors are selected for trial, with students volunteering to serve as mock jurors on a panel of potential jurors. The students had fun making up answers to the questions posed, and they were ecstatic to find out whether they were “picked” or “struck” from serving on the mock jury.

Community involvement of the Waycross Bar Association does not end with the annual Law Day activities. In 1997, Justice Robert Benham, then Chief Justice of the Georgia Supreme Court, sent out a call to all members of the State Bar of Georgia to perform more service in their local communities. Rebecca Crowley had just graduated from law school in 1996 and was a new member of the Waycross Bar Association and wanted to do something in furtherance of Chief Justice Benham’s request. As such, in December 1997, the Waycross Bar Association undertook its First Annual Community Christmas Project.

Like similar projects in many communities, the Bar solicits donations from its members and uses the money to buy toys and clothes for the less fortunate members of the community. Donations are received from Waycross Bar Association members from Ware and the surrounding counties. In the five years that the Bar has undertaken the Christmas project, donations have increased from \$700 to \$1,900, and there is no limit to the generosity of the local Bar.

Initially, the clothes and toys were distributed at a party with Santa Claus in attendance. However, there was such a diverse range of ages that this was not an ideal arrangement. Therefore,



beginning in the fourth year, the Bar began delivering the gifts directly to the parents. Some of the parents let the children think that Santa brought them, and some of the parents tell the children where the gifts come from so that the children learn about the spirit of giving.

Varied Activities Keep Members Busy

Leadership on the state level from the Waycross Bar Association include Georgia House of Representatives member, Mike Boggs, who, during monthly luncheon meetings, presents first-hand information to the local Bar on bills pending or passed during the legislative sessions. Huey Spearman, a past president of the local Bar, serves as one of two Board of Governors representatives from the Waycross Judicial Circuit, Post No. 2.

In October of each year, Superior Court Judge Stephen L. Jackson hosts the Bar’s Annual Seminar and Cookout at his farm in Pierce County. The seminar is typically held on a Friday and offers at least six hours of continuing legal education credits. Guests for lunch from the entire circuit, including lawyers, judges, sheriffs and their deputies, clerks of Superior Court and their

staff, probation officers, local- and state-elected officials, and others. Lawyers do the cooking and provide the entertainment.

In March 2001, a rare event was jointly sponsored by the Waycross and Douglas Bar Associations. At this time, the Bars hosted a social gathering in downtown Waycross at the historic Bowen Building for the district, bankruptcy and magistrate judges of the Southern District of Georgia. All 11 federal judges of the Southern District were in attendance, as well as the District Court Clerk and other members of the judges’ and clerk’s staffs. The reception for the judges was top-notch and well attended. None of the lawyers who attended the reception and signed their names on the guest list complained of involuntary servitude on any appointed cases following this gala event.

In December 2001, the Bar enjoyed the fellowship of each other at a Christmas party held at Andrew’s, a popular restaurant in historic downtown Waycross. Live music, appetizers and door prizes added to the festive occasion.

In January 2002, the Bar experienced the loss of Superior Court Judge Joseph B. Newton after a long courageous battle with cancer. The Waycross Bar rallied around the Newton family during this time with moral support and financial gifts. The Bar also voted to present a proclamation honoring Judge Newton to his widow, Kikky Newton. A year earlier in January 2001, Senior Judge Francis Houston of Blackshear, Ga., was appointed to hear all matters previously assigned to Judge Newton until a Superior Court judge was appointed to fill the vacancy of Judge


Newton, who resigned and elected senior status. On May 31, 2001, Gov. Barnes appointed Hon. Dwayne Gillis of Douglas, Ga., as the new Superior Court Judge. Chief Judge Clarence D. Blount, along with Judge Stephen Jackson and Judge Dwayne Gillis, comprise the three Superior Court judges for the Waycross Judicial Circuit.

In April 2002, the Bar actively participated in training for the new electronic evidence system being installed in the Ware County Courthouse. This new system will make the presentation of evidence to the court and jury more efficient and timely.

In May 2002, the Bar participated in the Life Cancer Relay in Ware County, which was held by the

American Cancer Society in memory of Hon. Joseph B. Newton. In addition, as part of the American Bar Association's Law Day activities in May, the Bar presented the Liberty Bell Award to Cindy Coppage, a volunteer leader of Ware Magnet School's Mock Trial team. The Ware Magnet Mock Trial team won the regional competition and got more awards (a total of six) at the state competition than any other team. Ironically, Coppage's father, the late Bill Inman, received the Liberty Bell Award 20 years ago. Volunteer lawyers from the Waycross Bar Association participate each year in the Regional Mock Trial Competition, serving as coaches, judges and evaluators.

Looking Ahead

The Waycross Bar Association is a time-honored tradition and looks forward to the next 50 years with enthusiasm and a goal toward community service. In addition to promoting quality legal representation, the Bar serves the community by encouraging appreciation of the legal system through Law Day activities and participation in the Great Day of Service. 

Huey W. Spearman has a private law practice in Waycross, Ga., and serves as county attorney for Ware County. He also serves on the State Bar of Georgia's Board of Governors as a representative from the Waycross Judicial Circuit.

"ABC" Sponsors Training for Professional Advisors

By Guy Lescault

ABC, A Business Commitment Committee of the State Bar, and the Southeastern Council of Foundations (SECF) teamed up in May to present a two-hour CLE program entitled, "Planned Giving Tool-Kit Seminar." The CLE program was developed by the ABC Committee, the Community Foundation for Greater Atlanta and the SECF as a model for delivering planned giving advice to lawyers who do not traditionally consider planned giving in their practices, and to acquaint lawyers with philanthropic options around the state. ICLE in Georgia sponsored the program and assisted the ABC Committee and the SECF in presenting a low-cost seminar in recognition of the potential benefit to the community.

Nearly 25 attorneys gathered at the new State Bar headquarters on May 23, 2002, for the two-hour session led by Mark Williamson, partner at Alston & Bird, and Bryan Clontz, vice-president for advancement at the Community Foundation for Greater Atlanta. The session was video taped for use on the Georgia ICLE Online Library, which will allow attorneys throughout Georgia to view the presentation.

The *Southeastern Toolkit for Giving*, published recently by the SECF, was the featured handout at the CLE session. Although the

south has approximately one-third of the nation's population and two-fifths of its poverty, it has less than one-fifth of the nation's philanthropic assets. One of the most effective ways to encourage more individuals to create permanent charitable endowments (e.g., private foundations, funds at community foundations, supporting organizations) is to encourage professional advisors like attorneys to discuss philanthropic options with their clients.

"Creating the toolkit was the first step for the SECF Increasing Philanthropy Committee, and this presentation was an example of step two, which we hope will connect professional advisors in an intentional way," said Clontz.

The goal of the curriculum on philanthropic options is to stimulate the growth of philanthropy by providing lawyers who are not typically engaged in estate planning with information about a broad range of philanthropic options they can discuss with their clients. This curriculum has proven to be sufficiently flexible and can be used by local bar associations and community foundation representatives throughout the state.

A second session was held Sept. 27, 2002, at the South Georgia office of the State Bar in Tifton. W. Ralph Rodgers Jr., Moore, Clarke, DuVall & Rodgers, PC, and Wade Miller, CPA, and executive director of the Community Foundation of Southwest Georgia Inc., served as presenters. Another session is planned for Columbus.


Due to the positive response to the Georgia pilot project, SECF's Lawyers and Philanthropy Committee is now developing a training event to be held in Atlanta in October to train "working teams" of repre-

Although the south has approximately one-third of the nation's population and two-fifths of its poverty, it has less than one-fifth of the nation's philanthropic assets.

sentatives from state bar associations and community foundations throughout the southeastern region to have the CLE curriculum on philanthropy approved for their states and to launch their own programs. It is hoped that each state's working team will be able to secure approval of the curriculum and begin pilot programs in their state within approximately six months.

Once the pilot programs in the states are completed the SECF Lawyers and Philanthropy Committee and the working team members will convene training sessions in each state for all community foundations that wish to introduce the legal curriculum on philanthropic options for attorneys in the areas they serve. For more information about the *Southeastern*

Toolkit for Giving, or to order copies, contact SECF at (404) 524-0911.

ABC, A Business Commitment, links pro bono business lawyers with nonprofit community based organizations. If your local bar association would like to partner with A Business Commitment Committee to sponsor a seminar using the planned giving toolkit, contact Michael Monahan, staff contact for the ABC Committee, at (404) 527-8762 or mike@gabar.org. 

Guy Lescault is the ABC project manager and a member of the ABA Business Law Pro Bono Committee.

The Grandparent Adoption Program:

Kilpatrick Stockton and BellSouth in Partnership

By Kendall Butterworth
and Debbie Segal

The Grandparent Adoption Program began a few years ago as a joint endeavor between Atlanta Legal Aid and Kilpatrick Stockton. At that time, Legal Aid was seeing increasing numbers of grandparents and other adults caring for young relatives who were seeking to stabilize their relationships with the children. Most often the parents of the children were not available, often as a result of abandonment, addiction to drugs or death, and adoption was a good solution. Rick Horder, a partner in the Atlanta office of Kilpatrick Stockton, had expertise in adoption law and volunteered to create a project to address this need.

While it is not uncommon to see lawyers in large law firms representing pro bono clients, historical-



Kathleen O'Connell (left) and Meredith Mays with their clients following an adoption.

ly, there have been impediments to corporate counsel doing the same. Often, corporate counsel are not licensed in the state where they practice, and the transactional nature of their practices often appears less suited for traditional cases offered by legal aid and pro bono programs.

Flash forward to 2001. Lawyers at BellSouth were exploring ways that they could become more involved with pro bono work and, at the forefront of a growing trend, had created a pro bono committee to explore their options. The Grandparent Adoption Program (GAP) had become a signature project at Kilpatrick Stockton, and additional lawyers were expressing the desire to be trained to represent those clients. As lawyers at BellSouth and Kilpatrick Stockton try cases together, do deals together and occasionally even socialize together, it made sense for them to do pro bono work together.

A groundbreaking joint pro bono training followed, at which Kilpatrick Stockton and BellSouth lawyers, who did not necessarily know each other, were paired to work on a case file to assist low-income relatives to adopt children for whom they already served as the primary caregiver. This unique partnership was featured as a "best practice" on the www.corporatepropono.org Web site, a national organization that encourages corporate counsel to become involved in pro bono work.

Many of the cases have now been concluded. As new families



Judge Matthew Simmons (right) poses with Debbie Segal, Greg Artis and Legal Aid attorney Sherry Neal and their clients.

were formed, so were new friendships between the lawyers, many of whom have paired up again to help new families adopt children.

"Our family members were the greatest people. It was such a pleasure to help them and to pair with a client for such a good purpose," says Kilpatrick Stockton lawyer Kathleen O'Connell about her partnership with BellSouth lawyer Meredith Mays. Adds Greg Artis, BellSouth, "My participation in this program has been an incredibly touching experience. To have your neck hugged by a seven-year-old child who feels secure because the child knows that, because of what you have done, that child will never again have to face being ripped away from the only real home she or he has ever known...there is no feeling of satisfied accomplishment like it." CBJ

Kendall Butterworth is senior litigation counsel for BellSouth Corporation and the chair of its Pro Bono Committee.

Debbie Segal is pro bono counsel for Kilpatrick Stockton.

Planting the Seeds: Professionalism Orientations Celebrate 10 Years

Since 1992, the Law School Orientations on Professionalism, which are conducted by the State Bar Committee on Professionalism and the Chief Justice's Commission on Professionalism at each of the state of Georgia's law schools, have become a permanent part of the orientation process for entering law students. Each year the project, designed to introduce the concept of professionalism early in the careers of law students, reaches over 800 law students and attracts over 200 Georgia lawyers and judges as orientation speakers and facilitators.

A Permanent Feature

For incoming law students at Emory, Georgia State University, John Marshall, Mercer and the University of Georgia, the message behind the orientations is clear — while there exists an emphasis on the importance of adherence to the rules or codes of ethics governing law students and lawyers, beyond these minimal requirements lies the concept of professionalism. To Georgia lawyers, professionalism encompasses the values of competence, integrity, civility, service to the public and the community, and a strong awareness of the lawyer's role as officer of the court.



Georgia Supreme Court Chief Justice Norman Fletcher addresses students at the University of Georgia orientation.

Each two-hour program begins with a keynote address by a justice of the Supreme Court of Georgia or a State Bar of Georgia leader. Incoming law students at the Emory orientation, which was held in August, were treated to an address by Georgia Court of Appeals Judge Herbert E. Phipps. Phipps encouraged students to stay away from bad habits and shady practices during their law school experience, as well throughout their legal careers.

"There is no substitute for truth, honesty and integrity," said Phipps. "The legal profession is a public service and your credibility is an essential component of professionalism."

At the University of Georgia orientation session, Chief Justice Norman Fletcher of the Georgia Supreme Court spoke of the moral



Georgia Court of Appeals Judge John Ruffin Jr. takes a moment to speak with incoming law students at Georgia State University.

authority of the profession and noted that the particular purpose of the legal profession is the pursuit of justice.

Keynote speakers for the August orientations also included: Supreme Court of Georgia Justice Hugh P. Thompson, Mercer; Marietta, Ga., trial attorney Jimmy D. Berry, John Marshall Law School, with special guest speaker Judge G. Alan Blackburn of the Georgia Court of Appeals; and Georgia Court of Appeals Judge John Ruffin Jr., Georgia State University.

Following each keynote address, students are led into 90-minute breakout sessions where facilitators lead students in examining



First year students at John Marshall Law School share thoughts and ideas with Atlanta attorney Timothy J. Santelli and Judge James E. Drane of the Cherokee County Magistrates Office.

hypotheticals, which are designed to provoke discussion of professionalism and ethical issues that arise in the everyday practice of law. Facilitators are all members of the State Bar of Georgia — practicing lawyers, judges and legal academicians — who volunteer for the project. After the breakouts, the Committee and the Commission host a reception for students, facilitators and faculty to give them an opportunity to meet with each other and follow up group discussions in an informal setting. As such, the Chief Justice's Commission on Professionalism provides coordination, staffing and funding for the programs.

One Step Further

In 1998, Emory Law School and the State Bar Committee on Professionalism developed a three-

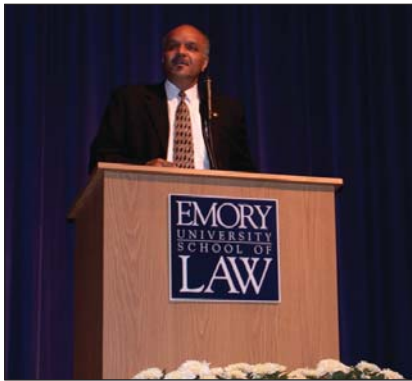
part program to expand the August orientation session. First-year students at Emory are now meeting in professionalism sessions in October and February, as well. These second and third sessions follow a similar format to the breakout sessions in August. When possible, the groups meet

with the same faculty co-leader and practitioner. Emory's intention is to expand the reach of the professionalism programs while at the same time providing continuity of the community formed in the breakout group among students, faculty and practitioner. For these innovations, Emory Law School was named by the American Bar Association as a recipient of the 1999 Gambrell Professionalism Award, which recognizes projects that enhance professionalism among lawyers.

Emory also added an additional feature to its August 1999 session by including a ceremony for the administration of the Student Professionalism Oath. Following administration of the oath, students signed their name in a book to signify their intent to honor the oath. To add more dignity to the ceremony, students were asked to dress in business attire. This procedure continues today and invokes jurisdiction for purposes of prosecution under the Honor Code at Emory. But, far more importantly, it expresses the determination of the Emory Law School community to promote the values that cement the profession within the law school and to reorient students from their past academic context toward their professional future.



Mercer University Professor Patrick E. Longan and Decatur, Ga., attorney Jonathan A. Weintraub lead a breakout session at Mercer University School of Law.



Georgia Court of Appeals Judge Herbert E. Phipps stresses the importance of professionalism during the Emory orientation.

A Resounding Success


Student evaluations, facilitator comments and follow-up reports

from law school faculty members have consistently shown that the sessions are successful in encouraging law students at the outset of their careers to gain a better understanding of professionalism and to take a professional perspective into their classes on substantive law. One student observed, "This program shows that the lawyers of Georgia take ethics and professionalism seriously." A group leader commented, "It is important and helpful to the students and group leaders to relate problems they will encounter in law school to the real world."

The Committee actively seeks lawyers and judges from across the



Incoming law students at Emory take the Student Professionalism Oath during the orientation session held in August at which more than 100 students participated.

state to volunteer for the program. For additional information or to sign up as a volunteer, contact the Chief Justice's Commission on Professionalism at (404) 225-5040. 

Sections Stay Busy in New Bar Year

The new 2002-2003 Bar year has begun and new section officers are hard at work planning activities for members. If you haven't already joined a section, information about joining can be found on the State Bar's Web site at www.gabar.org.

While there, visit the 35 section Web pages. Many sections post newsletters. In addition, member rosters can be found on these pages, which are updated nightly. Visitors to the site can check their CLE hours, change their address online, view section meeting dates and link to ICLE for a four-month overview of larger seminars.

Getting the Year Started Right

On Aug. 29, 2002, section leaders met at Bar headquarters for a "Brainstorm" meeting. This was an opportunity to share ideas from section to section. State Bar President James Durham met with leaders as did State Bar Executive Director Cliff Brashier.

Aviation Law Section members should mark their calendars for Feb. 7, 2003, as the section is developing a program that promises to be both interesting and entertaining. Speakers scheduled include: David Kennedy, a retired Navy captain and test pilot who was a technical advisor for the motion pictures "Pearl Harbor" and "Behind Enemy Lines;" John Goglia, a member of the National Transportation Safety Board (NTSB), who will give a presentation dealing with the work of the NTSB in aviation accident investigations; David Boone, a prominent Atlanta trial lawyer and a pilot, will give a presentation on professionalism; John McClune, of the firm Schaden, Katzman, Lampert & McClune, will give a presentation on Daubert motions and; Mark Stuckey, this section's newsletter editor and trial lawyer in Macon, will give a presentation on the 9/11 Victims' Fund and related legislation, as well as its



Environmental Law Section members recently enjoyed an evening out while attending the State Environmental Law Conference in Grayton Beach, Fla. Section members (pictured left to right): Susan Richardson, Julie Mayfield and Anne Hicks, section chair; Rebecca Lewandoski, of the Vermont Law School; and Judge Dorothy T. Beasley, pictured with the restaurant owners.

reform implications. This section never fails to come up with fascinating programs and you won't want to miss this one. The section chair is Alan Armstrong of Atlanta.

Fiduciary Law Section members will be receiving a printed directory this fall. It will contain some valuable resource information.

The **Individual Rights Law** Section, headed by Michael Monahan, State Bar Pro Bono director, has begun a series of "brown bag" luncheons. The first in this series began Sept. 26, 2002, at the new Bar headquarters in Atlanta. Members met to elect an Executive Committee and plan for the new year.

The **Intellectual Property Law** Section, headed by Jeffrey Kuester, of Thomas Kayden Horstemeyer & Risley, recently held a luncheon seminar at the new Bar headquarters titled, "Stick Licensing."



The new section leaders for the International Law Section are (pictured left to right): Anton Mertens, of Atlanta, vice chair; and Jim Rayis, of Atlanta, chair.

International Law Section members can look for a number of new programs this Bar year. This section's leadership met Aug. 13, 2002, to formulate plans. The section is headed by James Rayis, of Meadows, Ichter & Trigg, P.C.

Real Property Law Section members will soon be receiving the section's newsletter. The section is chaired by Eldon Basham of Marietta.

The **Technology Law** Section, headed by L. Kent Webb, of King & Spalding, met Aug. 27, 2002, in Atlanta for a luncheon seminar titled, "Expensing of Stock Options: The Impact on Technology Companies."

The presentation included a discussion about accounting and tax implications on employers and employees, whether the ability of



State Bar of Georgia Executive Director Cliff Brashier takes a moment to share thoughts and ideas with new section chairpersons during the "Brainstorm" meeting, which was held at the Bar's new headquarters in August.

companies to attract and retain employees will be affected and other forms of compensation as an alternative to stock options.

NEWS FROM THE SECTIONS

Appellate Practice Section

By Kenneth A. Hindman,
Section Member

Callaway v. State, S.E.2d, 2002
WL1517531 (Ga., July 15, 2002).

Callaway's plea in bar and demand for acquittal, based on his constitutional right to a speedy trial, was denied, and he filed a direct appeal to the Court of Appeals. The Court of Appeals dismissed the appeal as premature, holding that Callaway was not entitled to a direct appeal. *Callaway v. State*, 251 Ga. App. 11, 553 S.E.2d 314 (2001).

The Court of Appeals reasoned that, while the Supreme Court had held that a defendant was entitled to a direct appeal from denial of a plea based on a Georgia statute requiring trial within a limited time period, no direct appeal was necessarily allowed where the basis for the appeal was violation of the constitutional right to a speedy trial.

The Supreme Court reversed, holding that denial of a constitutional speedy trial motion was a collateral order subject to direct appeal. The Court pointed out that several earlier Supreme Court decisions had stated that such an order could be directly appealed; it rejected the distinction drawn by the Court of Appeals between statutory and constitutional speedy trial appeals, holding that the purposes of those were analogous.

General Practice and Trial Law Section

By Mark F. Dehler, Chairman

The General Practice and Trial Law Section is hard at work continuing the discussion regarding the core mission and goals of the section for the new Bar year. The questions the section are exploring are: How do we best serve our constituency?; How do we bring

together and help improve a group of lawyers who practice an array of domestic relations, criminal defense and tort law?; and How can we help solo practitioners and members of small firms deal with the issues they face by virtue of such practice settings? All members of the section are invited to participate in some collective soul searching with regards to the aforementioned issues. Please do not hesitate to contact me with your thoughts. I can be reached at (404) 371-1100 or via e-mail at mark@dehlerlaw.com.

Technology Law Section

By David Keating,
Section Member

This summer has seen renewed interest in legal circles in data privacy. Many commentators speculated that the tragic events of Sept. 11, 2001, would take the momentum out of data privacy initiatives in favor of anti-terrorism and law enforcement activities and information security programs. But a distinction missed by some was one between privacy in commercial dealings and privacy in the context of government surveillance and investigations. The public continues to express its distaste for the misuse of personal information by businesses, and government bodies continue to respond.

On Aug. 8, 2002, the Federal Trade Commission (FTC) announced a settlement with Microsoft Corporation, which calls for Microsoft to implement new privacy and information security practices enterprise-wide. The complaints giving rise to the settlement arose from the Microsoft "Passport Wallet" e-commerce service. Several privacy advocacy groups, including the Electronic Privacy Information Center (EPIC), contended that Microsoft misrepresented several facts relating to the privacy and information security features of the Passport service and the FTC apparently agreed.

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Career Center Network



The Microsoft Passport Wallet promised to provide consumers with an expedited method of shopping online by storing personal information, including billing information, and sharing that information with Web sites selected by customers of the service. Microsoft promised in the Passport privacy policies that it would keep information shared with the service secure and confidential and that Passport provided greater security than present in e-commerce transactions generally. EPIC and others, however, asserted that these claims were false and, further, that the privacy policies did not disclose to Passport users all the types of personal information that Microsoft collected through the service.

The FTC voted unanimously to accept a proposed consent order with Microsoft to resolve the complaints. The FTC announced that it would accept public comment on the proposed consent order through Sept. 9, 2002, after which date the Commission will decide whether to accept the consent order as final.

A recent Citibank customer e-mail initiative has also raised privacy concerns. Citibank sent e-mails earlier this summer to e-mail addresses it collected from a third-party marketing and data aggregation firm, which it apparently hoped corresponded to e-mail addresses of Citibank's actual customers, to offer its customers the ability to receive certain types of account information electronically. Privacy advocates have objected to the practice, claiming that the initiative potentially shared customer personal information with third parties and provided an opportunity for fraud. Citibank apparently has in fact acknowledged that, as it turned out, some number of the e-mail addresses did not belong to the intended customer-recipients.

Citibank presumably determined that it would cost the company less to purchase this list of e-mail addresses from a third party


than to collect them directly from its customers. The policy question raised is the extent to which the law allows this type of cost-savings in light of the privacy and security risks raised. The question remains open, although commentators such as EPIC believe that initiatives such as this may attract the attention of the FTC and State attorneys general. Further, a point for practitioners to note with clients considering similar initiatives is the more immediate financial risks resulting from adverse public relations in the form of potential lost sales and fluctuations in share prices.

In addition, the section held its quarterly meeting on Aug. 27, 2002, at Alston & Bird in Atlanta. The topic of the meeting was "Expensing Stock Options."

Approximately 60 members of the section attended and heard pre-

sentations over lunch from representatives of KPMG LLP and Buck Consultants, a Mellon Financial Company.

The following is a list of upcoming section events. For more information about these events, please visit the Technology Law Section's Web page at www.computerbar.org.

- Annual Technology Law Institute: Oct. 3-4, 2002
- Tech Corps Georgia Volunteer Day: Nov. 3, 2002
- Technology Law Boot Camp: To Be Announced 

The Lawyers Foundation Inc. of Georgia 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.

Richard C. Alderman
Marietta, Ga.
Admitted 1968
Died March 2002

Harold R. Banke Sr.
Jonesboro, Ga.
Admitted 1951
Died July 2002

Roger A. Baruch
Athens, Ga.
Admitted 1978
Died August 2002

Earl B. Benson Jr.
Atlanta, Ga.
Admitted 1972
Died August 2002

James C. Brim Jr.
Camilla, Ga.
Admitted 1964
Died August 2002

Carl A. Bryant
Albany, Ga.
Admitted 1975
Died July 2002

John F. Chapman
Dacula, Ga.
Admitted 1950
Died June 2002

Adalbert Freedman
Atlanta, Ga.
Admitted 1934
Died March 2002

Julian H. Gignilliat
Atlanta, Ga.
Admitted 1965
Died June 2002

Jack G. Handler
Atlanta, Ga.
Admitted 1968
Died February 2002

Earl D. Harris
Athens, Ga.
Admitted 1973
Died July 2002

Kerry Harike Joedecke
Dunwoody, Ga.
Admitted 1998
Died June 2002

Charles William Jordan
Austell, Ga.
Admitted 1973
Died August 2001

Joseph Bruce Kennedy
Charlotte, N.C.
Admitted 1988
Died July 2002

J. Oscar Mitchell
Decatur, Ga.
Admitted 1939
Died July 2002

Patricia T. Morgan
Atlanta, Ga.
Admitted 1979
Died July 2002

William M. Morrison
Atlanta, Ga.
Admitted 1942
Died November 2001

William E. Mumford
Decatur, Ga.
Admitted 1948
Died July 2002

George N. Pahno
Savannah, Ga.
Admitted 1948
Died July 2002

H. Holcombe Perry Jr.
Albany, Ga.
Admitted 1931
Died August 2002

Grover Harold Posey
Columbus, Ga.
Admitted 1961
Died July 2002

Billy Joe Powell
Adairsville, Ga.
Admitted 1968
Died June 2002

John E. Rice
Dunwoody, Ga.
Admitted 1968
Died July 2002

James Michael Sanders
Atlanta, Ga.
Admitted 1980
Died August 2002

Paul E. Schlam
Columbus, Ga.
Admitted 1974
Died May 2002

Robert S. Stubbs II
Canton, Ga.
Admitted 1968
Died August 2002

Michael Alan Wells
Marietta, Ga.
Admitted 2001
Died May 2002

Former State Bar President Dies at Age 89



H. Holcombe Perry Jr., 89, Albany, Ga., died on Aug. 23, 2002. Perry is widely known in Georgia as the father of the

organized Bar, having worked hard to unify the State Bar of Georgia in the early 1960s. He served as president of the Bar from 1962-63 and had a long and distinguished history of service to the Bar and the legal profession in Georgia.

Perry briefly attended the University of Georgia and Emory University. He "read the law" in the traditional fashion under the guidance of Albany attorneys, Sam Bennett and Menard Peacock. He passed the Bar in 1931, at the age of 18, and continued his legal education by serving as secretary to Judge John Guerry of the Georgia Court of Appeals and as clerk to Chief Justice Charlie Reed of the Georgia Supreme Court. After several years, he returned to Albany to practice law, becoming the senior partner of the law firm of Perry and Walters.

Perry served as the president of the Albany Judicial Circuit Bar Association, 1949-1950, and the Dougherty Circuit Bar Association, 1952-1952. He was active in the American Bar Association, serving on the House of Delegates, 1974-1990, the Board of Governors, 1985-1988, chairman and member of the Standing Committee on the Unauthorized Practice of Law, 1957-1965 and vice-chairman of the National Conference of Lawyers

and Life Insurance Companies.

Perry was appointed by the governor to be the first chairman of the Judicial Qualifications Commission, 1973-1984. He served as chairman of the Judicial Nominating Commission, 1974-1980, and on the Board of Bar Examiners, 1954-1962. He was a Fellow of the American Bar Foundation and a member of the American College of Trial Lawyers, the International College of Trial Lawyers and the American College of Probate Counsel. He served as a member of the Board of Education of Dougherty County, the state election board and the Governor's Commission of Constitutional Government. Perry was also a member of the Board of Directors of the First State Bank and Trust Company.

Perry was a recipient of the Harley Award from the American Judicature Society for distinguished service to the legal profession, the Harvard Law School Association of Georgia Award, the Amicus Curie Citation by the Supreme Court of Georgia in 1980 and 1984, and citation by the State Bar of Georgia for distinguished service to the Bar. He was honored in 1984 by Georgia Senate Resolution 351, which was adopted by the Senate and House of Representatives for his distinguished service to the legal profession and as father of the State Bar of Georgia.



Holcombe Perry, center, pictured with former Bar presidents Frank Love, left, and Richard Bradley, right.



Holcombe Perry, right, receives an award from former Bar President J. Littleton Glover.

Perry is survived by his wife, Chloe Milner Perry and his eldest daughter, Chloe Perry Heinzman. He is also survived by two daughters, Anne Grams and her husband, Bill, of Daytona Beach, Fla., and Cathy Revell and her husband, Bob, of Albany, eight grandchildren, Holly Palma and her husband, Gus, of Fort Worth, Texas, Ruth Fife and her husband, David, of Atlanta, Perry Revell and his wife, Christian, and Michael Revell, all of Albany, Billy, Beth, Ginny and Emily Grams, all of Daytona Beach, Fla., and a loved and special friend of the family, Marie Shackelford, of Albany.




David Marsh Rychlik, 44, Marietta, Ga., died unexpectedly of multiple brain tumors on May 2, 2002. A

native of New York, he received his undergraduate and law degrees from the State University of New York and was admitted to the State Bar of Georgia in 1988. Rychlik, a sole practitioner, formerly worked in the commercial real estate practice group at Powell, Goldstein, Frazer & Murphy, and then at Davis Law Group, then called Davis & Associates. After several years, he opened his own practice. Rychlik was described by his friends as a car buff, gourmet cook and tenacious courtroom advocate. He is survived by his mother, Wilma Marsh Raychlik, and his aunt, Athalene Steinke, both of Kenmore, N.Y. He is the son of the late Joseph F. Rychlik.



Robert S. Stubbs II, 79, Canton, Ga., died Aug. 5, 2002, from cardiac problems complicated by

chronic myelogenous leukemia. His long legal career began during 21 years of service in the Marine Corps. While a professor at Emory Law School, later Executive Assistant Attorney General of Georgia, and still later in private practice as McVay & Stubbs, he authored numerous legal articles and books, including the first Georgia treatise about laws pertaining to minors titled *Georgia Law of Children*. He also served on numerous Bar and governmental committees, including as advisor to the Code Revision Committee and the Constitutional Revision Committees. In 1985, he served as Chairman of the Law and Society Committee of the Canton

Methodist Church, from which he gave leadership to the establishment of the Cherokee Family Violence Center. He was most recently active in the Marine Corps Association of Georgia Lawyers, which he was responsible for establishing, and the Blue Ridge Bar Association. Stubbs is survived by his wife, Cherokee County Probate Court Judge Kipling Louise McVay, his son, attorney Robert S. "Beau" Stubbs III, his daughter, Anne S. Smith, four grandchildren and five great grandchildren. 



LAWYERS FOUNDATION OF GEORGIA

The Lawyers Foundation of Georgia furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. These memorials include information about the individual's career and accomplishments.

Memorial Gifts

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

Information

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.

Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is pleased to announce that it will again sponsor the Annual Fiction Writing Competition in accordance with the rules set forth below. The purposes of the competition are to enhance interest in the *Journal*, to encourage writing excellence by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. If you have any questions about the contest, please contact Joe Conte, Director of Communications, State Bar of Georgia, 104 Marietta Street, NW, Suite 100, Atlanta, GA 30303; (404) 527-8736; joe@gabar.org.

Rules for Annual Fiction Writing Competition

The following rules will govern the writing competition sponsored by the Editorial Board of the *Georgia Bar Journal*:

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgement of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.
3. All articles submitted to the competition become property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental and that the article has not been previously published.
4. Articles should not be more than 7,500 words in length and should be submitted in an electronic format as either a text document or a Microsoft Word document.
5. Articles will be judged without knowledge of the identity of the author's name and State Bar ID number should be placed only on a separate cover sheet with the name of the story.
6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on Jan. 24, 2003. Submissions received after that date and time will not be considered. Please direct all submissions to: Fiction Writing Competition, *Georgia Bar Journal*, Joe Conte, joe@gabar.org.
7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.
8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality.

Deadline — Jan. 24, 2003

CLE/Ethics/Professionalism/Trial Practice

Note: To verify a course that is not 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.

October 2002

	4 ICLE <i>International Law Section Seminar</i> Atlanta, Ga. 6 CLE
1 PRACTISING LAW INSTITUTE <i>SEC Accounting and Financial Reporting Course</i> Various dates and locations 13 CLE	4 NATIONAL BUSINESS INSTITUTE <i>Tax Aspect of Divorce in Georgia</i> Atlanta, Ga. 6.7 CLE with 0.5 Ethics
2 PRACTISING LAW INSTITUTE <i>Strategies for Litigating Copyright, Trademark and Unfair Competition</i> Various dates and locations 7.5 CLE	4 LORMAN BUSINESS CENTER INC. <i>Construction Issues</i> Athens, Ga. 6.7 CLE
2 LORMAN BUSINESS CENTER INC. <i>Workers Compensation Law in Georgia</i> Savannah, Ga. 6 CLE	8 NATIONAL BUSINESS INSTITUTE <i>How to Litigate Claims of Undisclosed Defects in Real Estate Transactions</i> Atlanta, Ga. 6 CLE with 0.5 Ethics
3 ICLE <i>Title Standards</i> Atlanta, Ga. 6 CLE with 1 Professionalism	9 PRACTISING LAW INSTITUTE <i>Coping with Broker/Dealer Regulation and Enforcement 2002</i> Various Locations 5.8 CLE
3 ICLE <i>Effective Legal Negotiation and Settlement</i> Atlanta, Ga. 6 CLE with 1 Ethics and 1 Professionalism	9-10 ICLE <i>Business Law Institute</i> Atlanta, Ga. 12 CLE
3 PRACTISING LAW INSTITUTE <i>Understanding the Securities Laws</i> Various dates and locations 11 CLE	10 ICLE <i>Construction Law for the GP</i> Atlanta, Ga. 6 CLE with 1 Professionalism and 2 Trial
3-5 ICLE <i>Workers' Compensation Law Institute</i> St. Simons Island, Ga. 12 CLE with 1 Ethics 1 Professionalism and 3 Trial	10 PRACTISING LAW INSTITUTE <i>Securities Filing 2002</i> Various dates and locations 11.3 CLE with 0.5 Ethics

10

LORMAN BUSINESS CENTER INC.
*State and Federal Personnel
 Laws in Georgia*
 Atlanta, Ga.
 6 CLE

16-17

ICLE
Fiduciary Law Institute
 Atlanta, Ga.
 12 CLE with 1 Ethics, 1 Professionalism
 and 3 Trial Practice

10

LORMAN BUSINESS CENTER INC.
*Solving Water Intrusion
 and Mold Problems*
 Atlanta, Ga.
 6 CLE

17

ICLE
*Office of State Administrative
 Hearings Seminar*
 Atlanta, Ga.
 6 CLE with 3.5 Trial

11

ICLE
James McElhaney on Discovery
 Atlanta, Ga.
 6 CLE with 1 Ethics and 6 Trial

17

ICLE
Expert Witness Forum (Video Replay)
 Atlanta, Ga.
 4 CLE with 4 Trial

11

ICLE
Criminal Law
 Atlanta, Ga.
 6 CLE

17

PRACTISING LAW INSTITUTE
Patent Litigation 2002
 Various dates and locations
 12.7 CLE

11

NATIONAL BUSINESS INSTITUTE
*A Practical Refresher on Litigating
 the Georgia Auto Injury Cases*
 Atlanta, Ga.
 6 CLE with 0.5 Ethics

13

LORMAN BUSINESS CENTER INC.
Construction Lien Law
 Savannah, Ga.
 6.7 CLE

15

NATIONAL BUSINESS INSTITUTE
*Fundamentals of Bankruptcy Law
 and Procedure in Georgia*
 Atlanta, Ga.
 6 CLE with 0.5 Ethics

15

LORMAN BUSINESS CENTER INC.
*Commercial Lending Requirements and
 Loan Documentation in Georgia*
 Atlanta, Ga.
 6.7 CLE

16

LORMAN BUSINESS CENTER INC.
Unclaimed Property Reporting
 Atlanta, Ga.
 6.7 CLE

18 ICLE <i>Electronic Discovery</i> Atlanta, Ga. 3 CLE	24 PRACTISING LAW INSTITUTE <i>Ethics after Enron</i> Various locations 5 CLE with 2.8 Ethics
18 ICLE <i>Georgia Auto Insurance</i> Atlanta, Ga. 6 CLE with 1 Ethics and 3 Trial Practice	24 MERCER UNIVERSITY SCHOOL OF LAW/MACON BAR <i>Survey of Federal Practice</i> Macon, Ga. 5 CLE with 1 Professionalism and 4 Trial
20 NATIONAL BUSINESS INSTITUTE <i>The Law of the Internet in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 Ethics	25 ICLE <i>Preparation for Trial</i> Atlanta, Ga. 6 CLE
21 PRACTISING LAW INSTITUTE <i>How to Prepare an Initial Public Offering 2002</i> Various dates and locations 9.5 CLE with 1.5 Ethics	25 ICLE <i>Punitive Damages</i> Atlanta, Ga. 6 CLE
21 PRACTISING LAW INSTITUTE <i>Understanding the Intellectual Property License 2002</i> Various dates and locations 9 CLE with 1 Ethics	25 ICLE <i>Class Actions</i> Atlanta, Ga. 6 CLE
22 NATIONAL BUSINESS INSTITUTE <i>Getting Your Employment Records in Order in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 Ethics	29 NATIONAL BUSINESS INSTITUTE <i>Fundamentals of Water Law in Georgia: Protecting Water Rights Use</i> Atlanta, Ga. 6 CLE with 0.5 Ethics
23 NATIONAL BUSINESS INSTITUTE <i>Advanced Wealth Planning in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 Ethics	29 NATIONAL LAW FOUNDATION <i>Retirement IRA Benefits Payable to Trust Multi-Sites</i> 2 CLE
23 LORMAN BUSINESS CENTER INC. <i>Zoning and Land Use in Georgia</i> Atlanta, Ga. 6 CLE with 0.8 Ethics	31 ICLE <i>Professional and Ethical Dilemmas</i> Atlanta, Ga. 3 CLE
24 PRACTISING LAW INSTITUTE <i>Cable Television Law Update 2002</i> Chicago, Ill. 11.3 CLE	

November 2002

8
ICLE
American Justice System
Atlanta, Ga.
3 CLE

1
ICLE
Adoption Law
Atlanta, Ga.
6 CLE

8
ICLE
Georgia Environmental Law Conference
Atlanta, Ga.
6 CLE

1
ICLE
Zoning
Atlanta, Ga.
6 CLE

8
NATIONAL INSTITUTE OF
TRIAL ADVOCACY
NITA Teacher Training Program
Various dates and locations
14 CLE with 1 Ethics

1
ICLE
Premises Liability
Atlanta, Ga.
6 CLE

14
ICLE
Economic Development in Georgia
Atlanta, Ga.
6 CLE

1
ICLE
RICO
Atlanta, Ga.
6 CLE

14
ICLE
Professionalism, Ethics and Malpractice
Atlanta, Ga. (Statewide Rebroadcast)
6 CLE

1
LORMAN BUSINESS CENTER INC.
Juvenile Related Records in Georgia
Atlanta, Ga.
6 CLE with 1 Ethics

14
ICLE
MBA Concepts for Lawyers
Atlanta, Ga.
6 CLE

3
NATIONAL COLLEGE OF
DISTRICT ATTORNEYS
Prosecuting Drug Cases Course
Savannah, Ga.
20 CLE with 1.3 Ethics

7
ICLE
Business Valuation
Atlanta, Ga.
6 CLE

7
ICLE
Commercial Real Estate
Atlanta, Ga.
6 CLE

15
ICLE
Corporate Litigation
Atlanta, Ga.
6 CLE

15
ICLE
Nuts and Bolts of Family Law
Atlanta, Ga. (Statewide Broadcast)
6 CLE with 1 Ethics, 1 Professionalism and
3 Trial Practice

15
ICLE
Discovery Abuse
Atlanta, Ga.
6 CLE

15
LORMAN BUSINESS CENTER INC.
The Basics of Estate Planning in Georgia
Atlanta, Ga.
6.7 CLE

15
LORMAN BUSINESS CENTER INC.
*Real Evidence for the Trial Practitioner
in Georgia*
Atlanta, Ga.
6 CLE with 0.5 Ethics

19
NATIONAL BUSINESS INSTITUTE
The Mold Challenge — Are You Ready?
Atlanta, Ga.
6 CLE

21
ICLE
Nuts and Bolts of Family Law
Atlanta, Ga. (Statewide Rebroadcast)
6 CLE with 1 Ethics, 1 Professionalism and
3 Trial Practice

21
ICLE
Post Judgment Collection
Atlanta, Ga.
6 CLE

21-23
ICLE
Medical Malpractice Institute
Sea Island, Ga.
12 CLE

21-23
ICLE
ADR Institute
Lake Lanier Island, Ga.
8 CLE

22
ICLE
*Sir Thomas More (with Graham Thatcher
as Sir Thomas More)*
Atlanta, Ga.
3 CLE with 1 Ethics and 1 Professionalism

22
ICLE
*Post Performance Workshop
with The Thatchers*
Atlanta, Ga.
3 CLE

22
ICLE
Secured Lending
Atlanta, Ga.
6 CLE

22
ICLE
Recent Developments
Atlanta, Ga. (Statewide Broadcast)
6 CLE with 1 Ethics, 1 Professionalism and
3 Trial Practice

December 2002

2
NATIONAL BUSINESS INSTITUTE
Nursing Home Malpractice in Georgia
Atlanta, Ga.
6 CLE with 0.5 Ethics

3
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UPL Advisory Opinion No. 2002-1

Issued by the Standing Committee on the Unlicensed Practice of Law on July 1, 2002. Note: This opinion is only an interpretation of the law and does not constitute final action by the Supreme Court of Georgia. Unless the Court grants review under Bar Rule 14-9.1(g), this opinion shall be binding only on the Standing Committee on the Unlicensed Practice of Law, the State Bar of Georgia and the petitioner, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

QUESTION PRESENTED:

Debtor incurs a debt with Dr. A, a sole proprietor. Dr. A transfers the account to Collector C by written "assignment." However, the purported assignment states that the transfer is "for the purpose of collection only." Collector C pays nothing for the account, but has an arrangement with Dr. A to receive a set fee or contingency fee upon collection. Collector C is not an attorney, but files suit on the account against Debtor as "Dr. A by his transferee/assignee Collector C vs. Debtor." In the event the case is contested, Collector C also attempts to present the case in court. Is collector C engaged in the unauthorized practice of law?

SUMMARY ANSWER:

Yes. Individuals normally have the right to represent themselves with regard to legal matters to which they are a party. In the scenario set out above, however, Collector C is not the true party in interest, but is instead taking legal action on behalf of another in exchange for a fee. The actions of Collector C violate O.C.G.A. §15-19-50 et seq., the Georgia statute pertaining to the unauthorized practice of law.

OPINION:

Individuals have the right to self-representation. Georgia corporations have certain limited rights of self-representation. *Eckles v. Atlanta Technology Group*, 267 Ga. 801

(1997); Uniform Magistrate Court Rule 31. Under the circumstances set out above, Dr. A is always free to take action on his own behalf within the limits of the law.

The holder of a chose in action may assign his interest to another. O.C.G.A. §44-12-22. A creditor can, for example, sell an account receivable in exchange for a sum that is fixed and certain, such as a percentage of the indebtedness. If a claim were validly assigned in such a manner, the assignor

Proposed Amendment to Uniform Superior Court Rules

Rule 15: Default Judgments

(First Reading 7/22/02)

Rule 15. Default Judgments

The party seeking entry of a default judgment in any action shall certify to the court the date and type of service effected and that no defensive pleading has been filed by the defendant as shown by court records and that there has been no defensive pleading from the party against whom the judgment is sought. This certificate shall be in writing and must be attached to the proposed default judgment when presented to the judge for signature.

Rule 5: Discovery in Civil Actions

(First Reading 7/22/02)

Rule 5.3. Depositions Upon Oral Examination — Duration.


Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

would relinquish all right, title and interest to the claim, and such title and interest would vest solely in the assignee.

O.C.G.A. §15-19-50 defines the practice of law, in part, as “[r]epresenting litigants in court and preparing pleadings and other papers,” “[t]he preparation of legal instruments of all kinds whereby a legal right is secured,” and “[a]ny action taken for others in any matter connected with the law.” O.C.G.A. §15-19-52 states that under certain circumstances non-

lawyers may draw legal instruments for others, “provided it is done without fee and solely at the solicitation and the request and under the direction of the person, firm, or corporation desiring to execute the instrument.”

In the situation set out above, there is not a true assignment of the debt, since there is no real transfer of title and interest to the claim. The putative assignment states that it exists “for the purpose of collection only.” The “assignment” under these circumstances is in actuality

nothing more than a means through which Collector C is attempting to represent Dr. A. Collector C is engaged in the unauthorized practice of law not only because he is representing a third party, but also because he is preparing pleadings and other papers (presumably the complaint and summons) on behalf of Dr. A in exchange for a fee. Private agreements between individuals — no matter what their phraseology — cannot serve to undo acts of the legislature and decisions of Georgia courts. 



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