

The background of the cover is a photograph of a resort on Amelia Island, Florida. It features a large, multi-story hotel building with many balconies, a large swimming pool with lounge chairs, and palm trees. The ocean and a distant mountain range are visible in the background under a clear sky.

Georgia
Bar

Journal

April 2003 ■ Volume 8 ■ Number 5

Annual Meeting
June 12 - 15
Amelia Island, Florida

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On the Cover

For the second year, Amelia Island offers State Bar Annual Meeting attendees a unique opportunity for education and entertainment. See pages 40-41 for more information.

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Publisher's Statement

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Helping Indigent Defense Proposals Fly

Dear Editor:

Those who propose to reform our indigent criminal defense generally start from the proposition that poor people are constitutionally entitled to a competent and effective defense. Unfortunately, the reformists leave it there. There is more to it than that.

Lest the public be mistaken for fools, let me explain that our cherished adversarial system runs counter to the well-known biblical idea that a house divided against itself cannot stand. Few taxpayers will knowingly agree to finance both sides of a dispute. In civil actions, taxpayers are sometimes put in the situation of having to finance both sides when one government sues another. Fortunately, these lawsuits form a small percentage of the civil docket. Not so for the criminal docket, where the percentage of poor defendants is large.

A second problem concerns the definition of poor. It is unrealistic to divide the world into two classes of people, namely the rich and the poor. There are lots of people in between, and it does not seem right to require people of limited means to impoverish themselves to provide for their own defense while others get offered a free ride at taxpayer expense. When there is no cost, what's the incentive not to mount a frivolous defense?


I have seen an estimate that 64 percent of our criminal defendants are poor. Any percentage figure is of suspect accuracy, since it all depends on the definition of what being poor is.

In any event, I view as unrealistic the idea that there can be a cut-off point where, on the one side, the defendant will be provided a criminal defense entirely at state expense, and on the other side the defendant will be entirely on his own.

If we are to have a state system of representing defendants in criminal cases, strong consideration should be given to making it available to everyone. The fees the system would require to support its activities could be reimbursed 100 percent by the state in the case of the truly poor who have no hope of being able to repay. For defendants of modest means, the state could pay a percentage

like 80 percent, or 60 percent or 40 percent. There should be a sliding scale where as the defendant's means increase the state's financial participation decreases. Moreover, future earning capacity, and ability to repay later, should be taken into account.

A universally available criminal defense system with a means-related fee scale would help citizens of modest means who get caught up in the criminal system and discourage frivolous defenses whenever the defendant has to participate in the cost. This is just like the co-pay feature of a health insurance plan. It supplies an incentive to keep costs reasonable.

As thoughtful citizens, we need to rethink our adversarial system in criminal matters. Yes, we need to think a bit outside the box we've assumed our indigent defense system had to work in. I have little doubt increased government involvement leads to what some would call socialism. But as our society evolves, the solutions to our problems grow more complex and require more imagination. Without public support, virtually nothing works. If we want public support for reforming indigent defense, we need to rethink some of the assumptions behind the reform proposals we have been offered. 

Sincerely,
Claude Y. Paquin (Attorney at Law)
Fayetteville, Georgia

LETTERS TO THE EDITOR

The *Georgia Bar Journal* encourages letters to the Editor from its readers on any substantive topic of general interest or concern to the members of the State Bar of Georgia, however, first consideration will be given to letters written in response to material appearing in the *Journal*.

The Board reserves the right to edit letters for content or clarity and to limit the number of letters on a given topic, as well as the number of letters from any individual correspondent. Letters also may not be published if space does not permit.

All letters should be e-mailed to joe@gabar.org or addressed to: Editor, *Georgia Bar Journal*, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303.



By James B. Durham

Law Practice Management Program: A Member Benefit Worth Your Time

I had the pleasure of serving on the State Disciplinary Review Panel for five years. During that time, I reviewed cases in which attorneys got into trouble because of bad business practices. Many situations involved good attorneys with poor business skills. While our law schools do a great job of teaching students how to be lawyers, very little is done to teach students how to operate a law practice. Lawyers who do not have the advantage of joining an established firm and learning how to operate a law practice often have difficulty operating a business. Unfortunately, these difficulties in operating a business sometimes escalate into much larger problems for lawyers, including mismanagement of client trust funds. The concerns over the lack of business skills among some lawyers led the Bar to the concept of a Law Practice Management Program to assist lawyers in their practice.

The Bar's Law Practice Management Program offers useful support to members who need practice management help or technological advice. The program debuted in 1995 after the Board of Governors created a task force to study the need for help in establishing and running a law practice. Since the mid-1990s, the program has mushroomed into one of the most valuable member benefits available today, offering more than 750 titles for loan to members as well as onsite consultations.

Much study and effort went into the creation of the program, which is modeled after the Florida Bar's program, which was the first program created. Georgia's program has grown to become highly respected across the nation. In fact, Arizona recently used the Georgia program as a model for its technology assistance program.

The concept of law practice management is simple. Lawyers are trained in the law, not necessarily in office management or the latest technology. These practice management components, however, are crucial to the success of any law practice. The practice management program is designed to assist lawyers with such day-to-day oper-

What is law practice management? The concept is simple. Lawyers are trained in the law, not necessarily in office management or the latest technology.

ations as — case management, time and billing, and file retention. In addition, the program assists with technology and software needs.

To access this service, members can reserve titles from the resource libraries and have them mailed directly to them or they can visit the Bar Center and view the titles in person. Much of the information available can also be viewed or ordered online. Finally, if you prefer one-on-one assistance, the program's director, Natalie Thornwell, can do an onsite consultation in your office for a very nominal charge.

An onsite visit includes a pre-consultation questionnaire completed by key firm employees. The site visit looks at all aspects of the firm's operations. Once the consultation is completed, the firm will receive a written report and recommendations for improvements. The program conducts about 80 onsite consultations per year, and is generally booked two weeks in advance.

I recommend researching what the program offers by visiting the


Bar's Web site at www.gabar.org and going to the Law Practice Management page (www.gabar.org/lpm.asp). There you will find many links to the resources available. First, you can download and read articles that cover the gamut, from automation to finances to general management to personnel and starting a practice. There are also a wealth of forms, covering case management, client agreements, file and work management, financial and employee agreements and management forms.

There is also a link for the resource library, which maintains more than 750 books, video tapes, audio tapes and CD-ROMS on a variety of topics related to law office management. These items can be checked out for a period of up to two weeks. Materials ship immediately on receipt of a request and members only pay for the postage.

Similarly, the legal software resources can help with technology planning and purchasing decisions. It can be very difficult to purchase legal software without seeing

in advance how the program operates. Housed at the Bar Center the library includes software for case management, finances, internet/online research, litigation support, specialty practice aids and others.

Within the Bar Center, the Law Practice Management Program operates a training room to provide hands-on training classes for case management, time billing and accounting, legal word processing and Internet research. The training center holds 10 to 12 people and is available to lawyers and their support staffs. A newer project is the development of a Solo/Small Firm Conference in conjunction with the Institute of Continuing Legal Education, which is expected to become one of the ICLE standard institutes eventually.

The Law Practice Management Program provides a service that can benefit all of us. I hope you will contact Natalie Thornwell, the program's director, with any questions or comments. She can be reached at (404) 527-8770 or by e-mail, natalie@gabar.org. 

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By Cliff Brashier

Electronic Communications Benefit Members

We all work to do more with less these days, and I believe the Bar's electronic communications with members is one way of providing information in a quick, easy and cost effective manner. The Bar is doing many functions today that just five years ago would have been out of the question.

Here is a quick list of some of the electronic services you should consider if you are not already taking advantage of them.

Elections

Each year, elections are held for the Bar's Board of Governors. For the past two years, members have been able to review candidate information and cast their votes online. This means the Bar has saved the money it would otherwise have spent on printing candidate materials and the cost of postage for those who vote online. We hope the trend to online voting will continue and the paper ballot will soon be a thing of the past. I voted online in less than one minute, and if I can do it, anyone can.

Check CLE Online

If you're not certain of your CLE status or just want to check your

information, you can always do so online at www.gabar.org. Anytime, day or night, you can get your compliance status without having to call the Bar. This is a great tool to help avoid deficiencies.

Online Directory

You can get the most current address and telephone information for any Georgia lawyer by using the online Directory. This information is updated nightly and is the most current information provided to the Bar. I'm certain the vast majority of us still use the printed version of the Directory, but the online version offers a faster and more accurate result at www.gabar.org/directory.asp.

Address Changes and E-mail

Similarly, you can use the Bar's Web site to update your membership information. All members must report contact information to the Bar and the online route makes the process smooth and easy. It also helps insure your timely receipt of important notices from the Bar, like your dues and CLE statements.

Handbook

Instead of searching through the printed Handbook of Bar rules, try searching for the topic you need online by the using the Bar's Web site search function. It will be much

faster and easier than rifling through pages, and you can even copy and paste the results for later reference.

Presidential E-mail

Very sparingly, the president of the State Bar of Georgia will use e-mail to communicate quickly and efficiently with members on issues of broad interest to the entire membership. This method really is reserved for special circumstances, and I hope you find it a valuable way of being connected to your organization.

Legislative Updates


During the legislative session, weekly updates on the Bar's leg-

islative agenda are posted to the Web. This weekly update is also e-mailed to the Bar's Board of Governors for their information. This saves time and money associated with printing and mailing, and keeps members informed on the legislation that interests and affects our profession.

What We Don't Do: No Spam!

We frequently hear from members that they do not provide their e-mail addresses for fear of being spammed — which is the term now for junk e-mail messages. Be assured, the Bar does not sell your e-mail or telephone information.

While this contact information is provided to the persons requesting it online or by calling the Bar's offices, it is not sold or given to any commercial entity. I cannot stress this point enough. The Bar values your privacy and is sensitive to your time. We do not want you to get spammed and do what we can to prevent it.

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). 



“Operation Enduring LAMP” is a nationwide project that has been launched by the ABA Standing Committee on Legal Assistance for Military Personnel.

By Derek J. White

“OPERATION ENDURING LAMP” WANTS YOU!

“It was the best of times; it was the worst of times.” These oft quoted words of Dickens must ring especially true for our country’s military personnel right now as these brave men and women leave their families for unknown places and for unspecified durations of time to protect our freedoms and rights.

While many citizens have already organized opportunities to support our soldiers while they are off fighting to defend our Constitution, a project has recently been created that offers training to those in the legal profession who wish to provide pro bono assistance for activated military personnel. It is called “Operation Enduring LAMP.”

“Operation Enduring LAMP” is a nationwide project that has been

launched by the ABA Standing Committee on Legal Assistance for Military Personnel (LAMP) in response to a request from the Armed Forces to help organize and educate civilian attorneys who wish to volunteer their services. Even though the military legal assistance network is currently able to handle the demand for legal assistance, should mobilization levels increase significantly, volunteer civilian attorneys will be called upon for help.

And just what sorts of help are needed? Basic legal assistance such as preparing simple wills and powers of attorney can help expedite the mobilization process. Other areas of assistance include correspondence to creditors and financial institutions, the Soldiers & Sailors Civil Relief Act, and the Uniformed Services Employment & Re-employment Act. Pro bono services will be limited to certain types of matters. However, legal counsel and advice is vital so our service men and women can perform their


military duties with minimal distraction from legal and financial difficulties beyond their control due to deployment on our behalf.

Resource materials and training are yours for the asking. The YLD and the Atlanta Bar Association have both initiated military assistance projects for the military personnel in Georgia. In fact, the Atlanta Bar Association has already conducted one training session for Georgia attorneys in January. For information from the YLD, please contact Elena Kaplan or Leah Singleton at Troutman Sanders' Atlanta office, (404) 885-3000. For the Atlanta Bar Association, please contact Atlanta

Bar President Bill deGolian at Johnson & Ward, (404) 524-5626. The key is to obtain training now so if the need surfaces, you will already be in a position to help.

I'm asking each of you for your support and participation. As attorneys for the state of Georgia, we, too, have taken an oath to protect and defend our country's Constitution. If you think of the sacrifices our men and women in the military are making to protect our freedoms and rights, we should feel honored that we have been asked to help with their legal affairs. While contributing time preparing legal documents or making phone calls pales in compari-

son to what could be a soldier's ultimate sacrifice, this is one tangible means by which we can truly serve our country in such uncertain times.

Rather than waiting to be asked, take the initiative and make the call. Accept the task before us. Accept the challenge to help. Accept and relish the experience that accompanies true American pride. 

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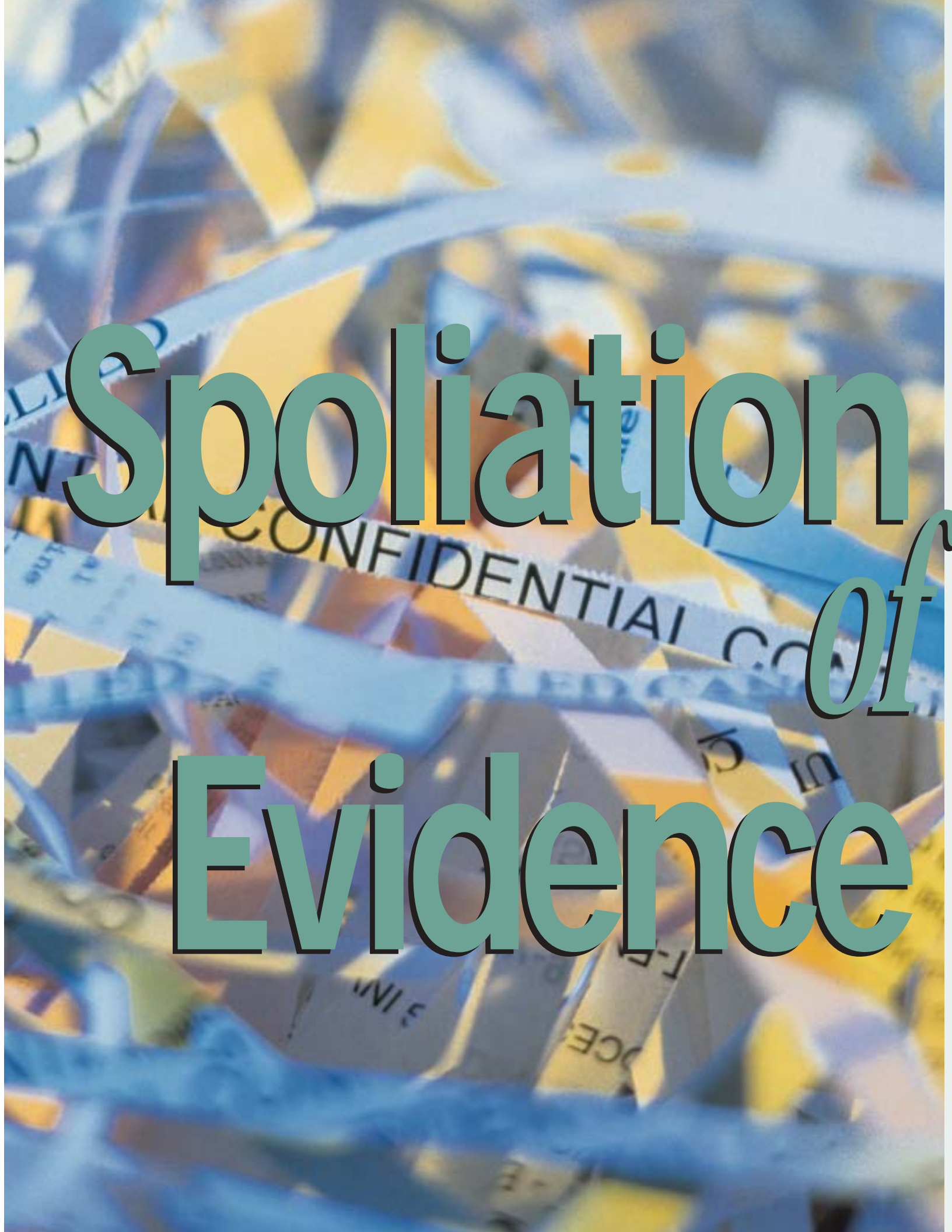


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Spoliation *of* Evidence

A Look at the Law

By Lee Tarte Wallace

Spoliation “is the destruction or the significant and meaningful alteration of evidence.”¹ The word comes from the Latin word *spoliare*, which means “to plunder.”² The word has “evil connotations, and the dictionaries make it synonymous with pillaging, plundering and robbing.”³ A party is responsible for spoliation “when the party has evidence within its control, . . . and fails to produce the evidence to negate constructive knowledge.”⁴ A party also may be responsible for spoliation even if a third party disposes of the evidence. For example, in *American Casualty Company of Reading, Pennsylvania v. Schafer*,⁵ a defendant claimed that he stored the key evidence in a building, but that a tenant in the building later destroyed those documents. The court found the defendant company could be responsible for spoliation if its owner “caused or contributed to the loss of the records,” and it reversed summary judgment for the defendant.⁶

Courts are sensitive to spoliation because it seems particularly unfair to let one party profit by destroying evidence. For example, in *Horton v. Eaton*,⁷ the doctor’s duty turned on the contents of a requisition form that had “mysteriously disappeared” from the defendant doctor’s files.⁸ The trial court admitted the doctor’s testimony about the form’s typical content, but the appellate court found the admission erroneous; admitting the testimony would let the doctor “benefit from his omission of record” by blocking the plaintiff’s efforts to discover the truth and by giving the doctor “the benefit of an unimpeachable version of the contents” of the document, a version which “happens to favor” the doctor’s position.⁹

This article will focus on recent judicial developments that expand the remedies for spoliation and the factors courts should consider in choosing a remedy. It also will discuss the problematic case in which the evidence is in the possession of a non-party and offer concrete steps that practitioners can take to protect their clients from spoliation of their key evidence.

THE REMEDIES FOR SPOLIATION

Courts have traditionally punished spoliation by applying a presumption that the destroyed evidence was adverse to the party that destroyed it. Recently, the Georgia Court of Appeals has expanded the available remedies. The trial court has great discretion in choosing which remedy to apply.

The law historically has provided, *omnia praesumuntur contra spoliatores*, or “all things are presumed against a despoiler or wrongdoer.”¹⁰ Georgia case law makes the same presumption: “[s]poliation of evidence raises a presumption against the spoliator.”¹¹ This presumption is closely related to the statutory presumption that, if a party fails to produce evidence “in his power and within his reach,” then “the charge or claim against him is well-founded.”¹² The presumption from withholding, suppression or spoliation of evidence is rebuttable, and the jury decides whether it has been rebutted.¹³ If no effort has been made to rebut a presumption that concerns an essential element of a claim, the court may find against the spoliator as a matter of law.¹⁴

Whether spoliation is prejudicial has been especially hotly contested in product liability cases.

In 1996, the court in *Chapman v. Auto Owners Insurance Co.*¹⁵ expanded the remedy beyond a jury instruction on the presumption¹⁶:

[W]e find that in certain circumstances, allowing the case to proceed or an expert to testify about destroyed evidence which the opposing party is unable to test may result in trial by ambush which cannot be cured by a jury instruction. Accordingly, we conclude that where a party has destroyed evidence which may be material to ensuing litigation, the trial judge may be authorized to dismiss the case or prevent that party's expert witnesses from testifying in any respect about the evidence.¹⁷

Thus, Georgia courts now have three remedies for spoliation: "a trial court may (1) charge the jury that spoliation of evidence creates the rebuttable presumption that the evidence would have been harmful to the spoliator; (2) dismiss the case; or (3) exclude testimony about the evidence."¹⁸

The appellate court has provided factors, discussed below, for trial courts to use in selecting the appropriate remedy. The court has recognized that the selection is within the trial court's discretion to ensure a fair trial and that appellate review is governed by the abuse of discretion standard.¹⁹ That review has been deferential. The Court of Appeals has upheld the exclusion of expert testimony about a prod-

uct even though all parties were able to inspect it before its destruction.²⁰ It also has deferred to a trial court that levied a lighter sanction even though the ultimate sanction of dismissal would have been authorized.²¹ Finally, it has deferred to a decision not to levy a sanction at all in a case in which an anesthesiologist failed to print out vital sign data that would prove or disprove central liability issues.²²

THE FIVE FACTORS FOR SELECTING A REMEDY

The Georgia Court of Appeals has provided five factors for a trial court to consider in deciding what action to take when evidence has been spoliated: "(1) whether the defendant was prejudiced as a result of the destruction of the evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the [spoliator] acted in good or bad faith; and (5) the potential for abuse if expert testimony about the evidence was not excluded."²³ Except for the fifth factor, these factors are fairly universal.²⁴ In fact, a good argument can be made that factors (3) and (5) are just ways of restating factors (1) and (2). The *Chapman* court suggested as much when it remanded that case with instructions to the trial court to consider factors (1), (2) and (4).²⁵ These five factors are analyzed below.

(1) Whether the non-spoliator was prejudiced. Spoliation only

becomes important when a party can show it was prejudiced by the spoliation; absent that showing, spoliation is irrelevant.²⁶

Whether spoliation is prejudicial has been especially hotly contested in product liability cases. Many courts have held that the loss of the product itself is irrelevant in a case that alleges a product-wide defect, since by definition the parties should be able to test any product to show the defect.²⁷ A Georgia case followed that line of reasoning:

Given the fact that plaintiffs' claim is based on the unfitness of thousands of turnbuckles for the purpose intended, as opposed to some idiosyncratic defect affecting only the lost turnbuckle, loss of the product does not impair either plaintiffs' ability to show the defect claimed or the defendant's ability to present a defense to the claim.²⁸

Another case allowed the plaintiff to maintain one claim for a product-wide defect, but not a second claim that was not for a product-wide defect.²⁹

(2) Whether the prejudice could be cured. If the prejudice from the loss of evidence can be cured, the party does not need a remedy. Courts decide whether the prejudice has been cured on a case-by-case basis. Spoliation may or may not be cured if a party had a chance to examine the lost evidence before it was destroyed, or if the party can view photographs and other indicia of the lost evidence.³⁰

(3) The practical importance of the evidence. When evidence is missing, courts naturally ask whether the evidence would have made any difference in the case. If the evidence was of no practical import, then the court does not need to remedy the spoliation.

Arguably, this factor restates the first one: after all, if evidence is not important to the case, going without it will cause no prejudice. Hence, remedies for spoliation need not be addressed if they would not change the ultimate result or if they are of relative unimportance to the issues in the present case,³¹ but should be addressed where the party can articulate an important reason for needing the evidence.³²

(4) Whether the spoliator acted in good or bad faith. Although “malice may not always be required before a trial court determines that dismissal is appropriate,”³³ in practical terms, courts look to this factor more than any other when deciding what sanction to apply. The spoliator’s intent is critical because the objective of the law is to penalize *wrongful* acts that frustrate the court’s truth-seeking function.³⁴ The *Chapman* court quoted a case holding that “dismissal should be reserved for cases

where a party has maliciously destroyed relevant evidence with the sole purpose of precluding an adversary from examining that relevant evidence.”³⁵ If the spoliation occurs in good faith, however, courts are reluctant to sanction it or to award a “premium” to the offended party. For example, in a case in which a dentist protested suspension of her license, the court refused to dismiss the dental board’s claims even though the subsequent treating dentist (who was the board’s expert) had allegedly “spoliated” the evidence by correcting the patient’s dental work.³⁶

In assessing blame, courts hold parties seasoned in litigation to a higher standard than other citizens. Noting that an insurer was experienced in litigation and claims handling procedures and that it had a duty to preserve a damaged motor vehicle, the Court of Appeals held that the insurer should have had procedures to prevent the inadvertent sale of the vehicle and found spoliation remedies appropriate.³⁷

(5) The potential for abuse if expert testimony about the evidence is not excluded. Like factor (3), factor (5) is largely addressed by the other factors. For example, the Court of Appeals has upheld a finding of potential for abuse where permitting expert testimony would have “prejudiced plaintiffs’ ability to rebut that expert opinion.”³⁸

A SPECIAL PROBLEM: DESTRUCTION OF EVIDENCE BY NON-PARTIES

The remedies available in Georgia work well when a party



has spoliated evidence, but those remedies apply only in the context of a lawsuit. When someone who is not party to a lawsuit destroys evidence, Georgia law does not provide a clear remedy.

Several states have addressed this problem by creating a tort action for intentional spoliation.³⁹ In 1998, the Court of Appeals hinted that it might consider adopting a spoliation tort because existing remedies for the spoliation or concealment of evidence may be inadequate.⁴⁰ In 2000, however, the Court explicitly rejected a separate tort for spoliation because a vigilant litigant already has some means to secure evidence,⁴¹ as elaborated below. It has also reasoned that suits for spoliation would "undermine the principle that judgments are final and litigation must be brought to an end,

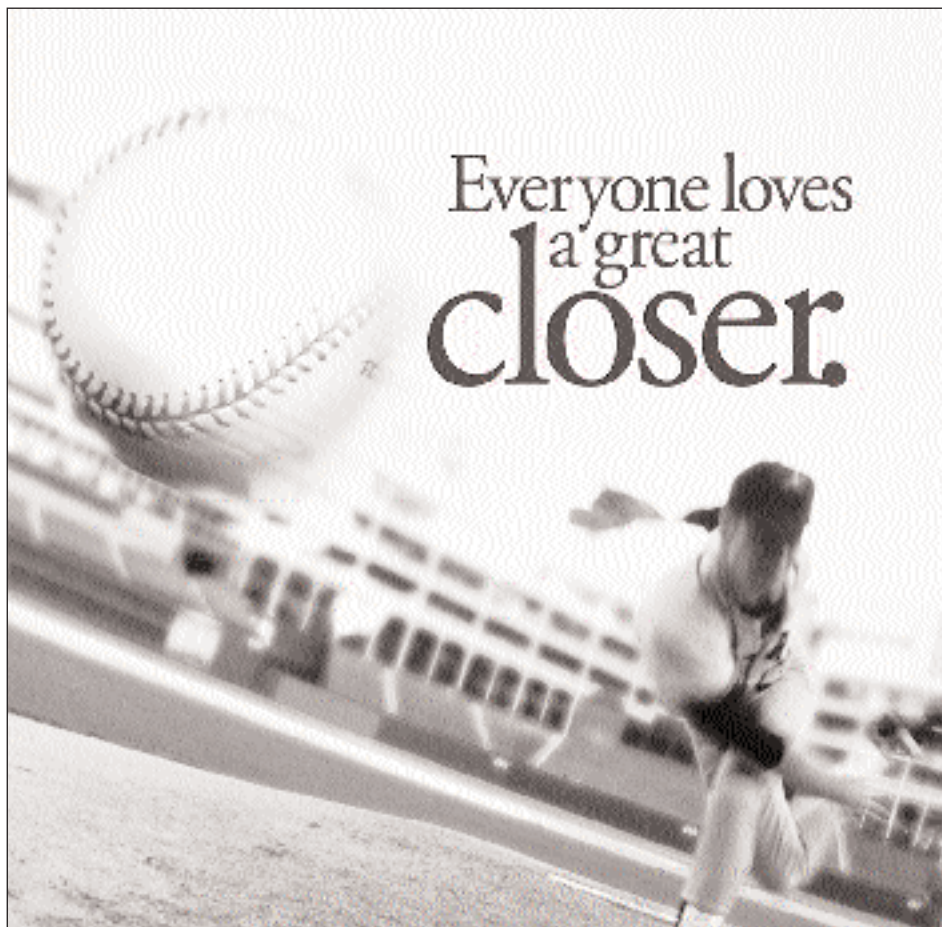
and [could be] abused to harass or intimidate litigants with the threat of a subsequent collateral attack."⁴²

What may a party do to preserve evidence in the possession of non-parties, or before suit is filed? Two recent cases shed light on this question.

In *Owens v. American Refuse Systems, Inc.*,⁴³ the plaintiff was injured on the job when a cap blew off a tank and hit him in the eye. After the accident, the employer ("ARS") threw the tank out, but Owens' workers' compensation lawyer wrote a letter asking that ARS get the tank back and give possession of the tank to the plaintiff.⁴⁴ ARS retrieved the tank and wrote a letter saying that it would make the tank available for Owens to inspect, which Owens did.⁴⁵ Owens then settled his workers' compensation claim, and filed a

product liability suit.⁴⁶ Meanwhile, ARS sold the tank for scrap metal.⁴⁷ Upon learning that the product had been destroyed, Owens dismissed the product liability suit and then sued ARS for spoliation under several theories.⁴⁸ The court refused to recognize a spoliation tort in Georgia.⁴⁹ The court denied Owens's claim for promissory estoppel because Owens could not have justifiably relied on ARS to keep the tank, since "Owens failed to obtain either a discovery order or a written agreement incorporated into a consent order that the tank be indefinitely preserved."⁵⁰

Furthermore, ARS had never promised to keep the tank indefinitely, or even agreed to the terms set out by Owens' lawyer.⁵¹ Owens also maintained a claim for breach



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of contract against an ARS employee who, Owens said, had promised, “nothing will happen to the tank,” but the court rejected that claim as well, because Owens and the ARS employee had reached no specific terms.⁵² The *Owens* case implies, then, that a party can use traditional principles of contract and estoppel to protect itself against spoliation.

In *Smith v. Brooks*,⁵³ three boys pried open the back of a gun safe owned by one of the boys’ parents, and soon one of them was accidentally shot.⁵⁴ Plaintiff contended that the parents had spoliated evidence because they disposed of the safe.⁵⁵ After disposing of the contention on other grounds, the court added “that the record does not reflect that Smith ever sought through her attorney or by court order to have the cabinet preserved as evidence,” despite a lengthy period between the shooting and the filing of suit.⁵⁶ This dictum suggests the court might go so far as to place a duty on a party to seek a court order, even before suit is filed, to ensure that key evidence is preserved. If at all possible, a party who needs to preserve evidence should take these steps:

1. write a letter asking that the evidence be preserved, then,
2. if a party has the evidence, seek a court order requiring the party to preserve the evidence;
3. if a non-party has the evidence, seek a clear agreement that the non-party will preserve the evidence, or seek an order requiring that the evidence be preserved; and
4. if evidence gets destroyed by a non-party, and no clear agreement or order was in place, do not dismiss the case and sue the entity that destroyed the evi-

dence; instead, seek remedies in the presently filed suit.

CONCLUSION

Courts punish spoliation because it frustrates the truth-seeking function of the court and allows a party to profit from his own wrongdoing. A party is only responsible for preserving the evidence that is in his custody or control. When a party has altered or destroyed evidence in his custody or control, the courts are charged with ensuring he does not profit from his wrongdoing. The trial court has several options in such cases. It can instruct the jury to presume that the evidence was harmful to the party that destroyed it unless the presumption is rebutted, and the jury then will decide whether the presumption has been rebutted. It can prevent the party from offering testimony on the subject of the destroyed evidence. Ultimately, it can dismiss a case or enter a default for the most serious violations. Courts have fewer options when a non-party spoliates evidence, but the practitioner can take practical steps to minimize the risk of spoliation and to increase the chance that a remedy will be available if spoliation occurs. 



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also clerked on the Eleventh Circuit for Judge James Hill.

ENDNOTES

1. *Sharpnack v. Hoffinger Industries Inc.*, 231 Ga. App. 829, 830, 499 S.E.2d 363, 364 (1998).
2. *Webster's Ninth New Collegiate Dictionary* 1139 (1991).
3. *Wichita Royalty Co. v. City Nat. Bank of Wichita Falls*, 109 F.2d 299, 302 (5th Cir. 1940).
4. *Jones v. Krystal Co.*, 231 Ga. App. 102, 107, 498 S.E.2d 565, 569-70 (1998).
5. *American Casualty Co. of Reading, Pa. v. Schafer*, 204 Ga. App. 906, 420 S.E.2d 820 (1992).
6. *Id.* at 909, 822.
7. *Horton v. Eaton*, 215 Ga. App. 803, 452 S.E.2d 541 (1994).
8. *Id.* at 805, 544.
9. *Id.* at 806, 544.
10. *Black's Law Dictionary* 980 (5th ed. 1979).
11. *Bennett v. Associated Food Stores*, 118 Ga. App. 711, 716, 165 S.E.2d 581, 586 (1968); *Martin v. Reed*, 200 Ga. App. 775, 775, 409 S.E.2d 874, 875-76 (1991).
12. O.C.G.A. § 24-4-22 (1995).
13. *Glynn Plymouth v. Davis Chrysler Motors*, 120 Ga. App. 475, 482, 170 S.E.2d 848, 853 (1969), *aff'd*, 226 Ga. 221, 173 S.E.2d 691 (1970) (citation omitted). *See also Jones v. Krystal Company*, 231 Ga. App. 102, 107, 498 S.E.2d 565, 569 (1998), *Lane v. Montgomery Elevator Company*, 225 Ga. App. 523, 525, 484 S.E.2d 249, 251 (1997).
14. *See, e.g., Bennett*, 118 Ga. App. at 716-18, 165 S.E.2d at 585-86 (plaintiff who destroyed pertinent records had no way to prove his damages, and a directed verdict was proper).
15. *Chapman v. Auto Owners Insurance Co.*, 220 Ga. App. 539, 469 S.E.2d 783 (1996).
16. Arguably a Georgia court had exercised one of these “new” remedies years earlier, when it dismissed the claims of a product liability plaintiff who destroyed the product and then found herself unable to counter the evidence that no defect existed. *See Glynn Plymouth*, 120 Ga. App. at 478-79, 170 S.E.2d at 851.
17. *Chapman*, 220 Ga. App. at 542-43, 469 S.E.2d at 786.
18. *R.A. Siegel Co. v. Bowen*, 246 Ga.

- App. 177, 180, 539 S.E.2d 873, 877 (2000). In *Langlois v. Wolford*, 246 Ga. App. 209, 539 S.E.2d 565 (2000), the court suggested that a trial court also could choose to “admit doubtful and inferior evidence where the defendant intentionally prevented direct evidence.”
19. *R. A. Siegel Co.*, 246 Ga. App. at 179, 539 S.E.2d at 876.
 20. *Id.* at 181, 877 (citations omitted).
 21. *See* *Bridgestone/Firestone North American v. Campbell*, No. A02A1932, 2002 WL 31730438, at *3-4 (Ga. App. Dec. 6, 2002). (The dismissal was “authorized,” but not “required”; this affirms the remedy of “exclusion of inspection notes or other examination materials and testimony by consulting experts or any witness based on the inspection of the vehicle or tires.”)
 22. *Johnson v. Riverdale Anesthesia Associates*, 249 Ga. App. 152, 155, 547 S.E.2d 347, 350 (2001), *aff’d* 275 Ga. 240, 563 S.E.2d 431 (2002).
 23. *Chapman*, 220 Ga. App. at 542, 469 S.E.2d at 785.
 24. *See* Richard E. Kaye, Annotation, *Effect of Spoliation of Evidence in Product Liability Action*, 102 A.L.R.5th 99, § 2 (2002) (factor five is “deterrent effectiveness of the court’s action compared to a lesser sanction”).
 25. *Chapman*, 220 Ga. App. at 543, 469 S.E.2d at 786.
 26. *R.A. Siegel Co.*, 246 Ga. App. at 181, 539 S.E.2d at 877 (spoliation prejudicial where plaintiffs “could not show the car to the jury to support their contentions or to rebut defendants’ contentions about the cause of the accident . . . [or] the tangible evidence of the nature of the impact, for example tire marks left on the trunk and roof of the car.”).
 27. *See* Kaye, *supra* note 24, at § 3(c) (listing cases imposing no sanction for spoliation in a product liability case involving claims of design defect).
 28. *Chicago Hardware and Fixture Co. v. Letterman*, 236 Ga. App. 21, 24, 510 S.E.2d 875, 878 (1999) (summary judgment to non-spoliator not warranted even as to punitive damages).
 29. *Glynn Plymouth v. Davis Chrysler Motors*, 120 Ga. App. 475, 478-79, 170 S.E.2d 848, 851 (1969) (dismissing defect claim that was contradicted by direct evidence and supported only by recall letter that said some but not all vehicles could have such defect; allowing defect claim where witness testified that all similar vehicles had a particular defect). *But see* *Bridgestone/Firestone North American v. Campbell*, No. A02A1932, 2002 WL 31730438, at *2 (Ga. App. Dec. 6, 2002) (loss of truck “arguably” less material since all 1992 Pathfinders have the same design, but manufacturer still prejudiced by inability to show alterations to the truck which modified its design).
 30. *See, e.g., Chapman*, 220 Ga. App. at 544, 469 S.E.2d at 785 (prejudice not cured by photographs; only one party’s expert got to inspect and test the destroyed evidence, and the opinion of that one party’s expert was “based almost entirely upon his examination and testing of the destroyed evidence”); *R.A. Siegel Co.*, 246 Ga. App. at 181, 539 S.E.2d at 877 (prejudice not cured by fact both parties had inspected and photographed evidence before it was destroyed, due to loss of “tangible evidence for the jury’s viewing”); *Bridgestone/Firestone*, at *2 (prejudice not cured by photographs taken by Plaintiff and his father, particularly because they had no expertise in taking such pictures). *Accord Hardeman v. Spires*, 228 Ga. App. 723, 725, 492 S.E.2d 532, 534 (1997) (photographs and other evidence cured any prejudice caused by destruction of porch on which plaintiff slipped), *vacated on other grounds*, 496 S.E.2d 895 (1998).
 31. *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 884, 311 S.E.2d 193, 205 (1983) (terms of truck lease unimportant in wrongful death claim). *Accord Hardeman*, 228 Ga. App. at 725, 492 S.E.2d at 534 (1997) (destruction of porch of little practical importance given that the primary allegations of the complaint were established by the available evidence).
 32. *R.A. Siegel Co.*, 246 Ga. App. at 181, 539 S.E.2d at 877 (missing vehicle was of practical importance because Plaintiff wanted vehicle at trial as tangible proof of condition of car after collision).
 33. *Bridgestone/Firestone*, at *3.
 34. *Johnson v. Riverdale Anesthesia Associates*, 249 Ga. App. 152, 155, 547 S.E.2d 347, 350 (2001), *aff’d* 275 Ga. 240, 563 S.E.2d 431 (2002). *See, e.g., Chicago Hardware and Fixture Co. v. Letterman*, 236 Ga. App. 21, 25, 510 S.E.2d 875, 878 (1999) (trial court authorized to find plaintiff not at fault when critical evidence was lost in transit between plaintiff’s first attorney and his new attorney).
 35. *Northern Assurance Co. v. Ware*, 145 F.R.D. 281, 282, n.2 (D. Me. 1993).
 36. *Georgia Board of Dentistry v. Pence*, 223 Ga. App. 603, 608, 478 S.E.2d 437, 443 (1996).
 37. *R.A. Siegel Co.*, 246 Ga. App. at 181, 539 S.E.2d at 878.
 38. *Id.*, 246 at 182, 539 S.E.2d at 878.
 39. *Sharpnack v. Hoffinger Industries Inc.*, 231 Ga. App. 829, 830, 499 S.E.2d 363, 364 (1998) (citing cases from California, Florida, and Alaska).
 40. *Id.*, at 831, 364.
 41. *Owens v. American Refuse Systems, Inc.*, 244 Ga. App. 780, 781, 536 S.E.2d 782, 784 (2000).
 42. *Richardson v. Simmons*, 245 Ga. App. 749, 750, 538 S.E.2d 830, 832 (2000) (citations omitted).
 43. *Owens*.
 44. *Id.* at 781-82, 784.
 45. *Id.* 782, 784-85.
 46. *Id.* at 780, 783-84.
 47. *Id.* at 782, 785.
 48. *Id.* at 780, 783.
 49. *Id.* at 781, 784.
 50. *Id.* at 782, 785.
 51. *Id.* at 782-83, 785.
 52. *Id.* at 783, 785.
 53. *Smith v. Brooks*, 247 Ga. App. 831, 545 S.E.2d 135 (2001).
 54. *Id.* at 831-32, 136.
 55. *Id.* at 843 n.3, 139.
 56. *Id.*

Voluntary Compliance

Good News for Real Tax Cheats; Potential Uncertainty for Innocent Victims

By Vivian D. Hoard

The Internal Revenue Service estimates that millions of Americans are evading payment of income taxes through the use of offshore financial arrangements. The IRS investigation suggests that participants include doctors, lawyers, investment managers and middle class business owners,¹ confirming that “the little people” may have joined Leona Helmsley in attempting to avoid Uncle Sam, at least temporarily.

These tax evaders do not shop at Brooks Brothers or stay at the Ritz. Profiles of their credit card purchases show that they shop at the Gap, buy Mary Kay Cosmetics, stay at the Hyatt and fly Southwest Airlines.² The IRS announced Jan. 14, 2003, that it is offering the opportunity for these individuals

hiding income offshore to avoid the payment of taxes.³ The Offshore Voluntary Compliance Initiative is offered in conjunction with the IRS’s revised Voluntary Disclosure Program⁴ and will potentially provide misguided tax cheats with protection from criminal prosecution, the 75 percent civil fraud penalty⁵ and certain failure to file⁶ and information return penalties.⁷ The bad news is that voluntary disclosure does not guarantee immunity from criminal prosecution. Furthermore, even absent the civil fraud penalties, taxpayers still must pay the taxes originally owed plus interest, and the IRS may also impose delinquency⁸ and 20 percent accuracy related penalties.⁹ Finally, taxpayers must decide whether to participate by April 15, 2003.

The Initiative is consistent with the IRS’s overall revamped audit strategy since its reorganization several years ago. The underlying theory of the strategy asserts that taxpayer confidence in the tax system is undermined when honest taxpayers get the impression that others, including the wealthy, are

getting away with not paying taxes. Therefore, rather than spending its limited resources on the unproductive random audits of the past, the IRS is now profiling “high-risk” areas of non-compliance, such as unreported offshore financial transactions, individuals participating in promoted tax shelter deals and other abusive promoted activities. After identifying these areas, the IRS is offering disclosure initiatives to further identify promoters and participants, shut down the activity and collect the tax. With assistance from individuals participating in the Initiative, the IRS intends to continue to target individuals who promote these offshore schemes for criminal prosecution and civil injunction. The IRS has already sent the first 1,000 cases to the field and will have trained 1,400 revenue agents to work on these cases by April 2003.¹⁰

Examples of tax evasion schemes the IRS already has shut down include those involving Tower Executive Resources and Anderson’s Ark & Associates. On Nov. 5, 2002, the Justice

Department announced the indictment of three operators of Tower Executive Resources for setting up shell corporations for small business owners to conceal secret accounts in the Turks and Caicos Islands. The indictment alleges that the three defendants used debit cards and loans to spend the offshore funds.¹¹ In December 2002, 10 individuals from Anderson's Ark & Associates were indicted by a Seattle federal grand jury for promoting illegal offshore tax shelters. The indictment also included charges that the promoters defrauded investors in the scheme.¹²

How the Offshore Schemes Work

While some individuals would never consider approaching a tax attorney or certified public accountant to pay \$200 an hour for legitimate tax advice, they will congregate in conference rooms rented at local hotel chains, the homes of their church friends and sometimes even exotic tropical locales to hear "experts" pitch "tax savings techniques." They will then purchase these "tax savings packages," including the offshore schemes for



thousands of dollars, when for less than \$200 a legitimate tax attorney or CPA would have given them the following expert advice: "You can send your money offshore, but you still must pay tax on your worldwide income."

Abusive domestic and foreign trust schemes are a common way promoters encourage their participants to funnel their income to an offshore financial institution in a tax haven country. With the promoters' guidance and assistance, participants in these schemes are generally advised to open a foreign bank account and led to believe that if the income is offshore it is not subject to taxation in the United States. The participant then accesses the funds through a debit or

credit card issued by the foreign bank in the tax haven country. The taxpayer uses the cards for everyday living expenses, such as groceries, personal goods and medical expenses, and the dollars used for those expenses escape taxation.

Another alternative promoters use for accessing offshore cash is through the use of an International Business Corporation. The participant forms a business entity in a foreign tax haven country. The IBC loans money to the taxpayer, which is wired back to the United States. The taxpayer claims the loan proceeds are not taxable. Because these IBCs are in tax haven countries, it is difficult for the IRS to prove the fraudulent loans are actually the taxpayer's income.

Central to the government's national strategy, coordinated among the IRS Criminal Investigation Division, the IRS Chief Counsel's Office and the Department of Justice, has been the use of John Doe summonses. A John Doe summons¹³ is a summons issued to a third party, such as a bank, requesting information regarding an unidentified taxpayer. The IRS must get permission from the U.S. District Court in the district where the summoned party resides in order to issue the summons. The summons will be granted only upon the IRS showing in an *ex parte* proceeding to the satisfaction of the Court that:

1. the summons relates to the investigation of a particular person or group;

For more information regarding the Offshore Voluntary Compliance Initiative, call (215) 516-3537 (not toll-free). In addition, a special e-mail address has been set up for taxpayers. All e-mail queries should be sent to VCI@irs.gov.

2. there is a reasonable basis for believing that the person or group has failed to comply with the internal revenue laws; and
3. the information sought is not readily available from other sources.

Court approval of these John Doe summonses has been the breakthrough in cracking offshore fraud. Although the IRS has been aware that offshore schemes exist, it has not known the identity of the offshore credit/debit card users. Therefore, the IRS decided to issue John Doe summonses to credit card associates, seeking access to records for cards issued from banks in the tax haven countries and hoping to learn the identity of the cardholders.

A federal judge in Miami issued the first order authorizing the IRS to serve John Doe summonses on American Express and MasterCard in October 2000. The John Doe summonses were for records of transactions on credit/debit cards issued in Antigua, Barbuda, the Bahamas and the Cayman Islands. This summons produced records containing over 1.7 million transactions involving more than 230,000 different accounts. The IRS claims to have developed hundreds of cases for civil audit or potential criminal investigation from this initial John Doe request.¹⁴

Based upon the information the IRS obtained from that summons, the IRS originally estimated that there could be up to 2 million U.S. citizens with credit/debit cards issued by offshore banks, as compared with only 170,000 Reports of Foreign Bank and Financial Accounts being filed in 2000 and only 117,000 individual 1040 filers indicating they had offshore bank accounts.¹⁵ After weeding out

duplicate cards, inactive accounts, accounts for people using the cards because of bad credit and cards issued for legitimate reasons, such as travel abroad, the IRS has reduced its original estimate somewhat, although the figure remains high.¹⁶

After the success of the Miami summons, the IRS petitioned a San Francisco District Court in March 2002 to serve a John Doe summons on Visa International seeking credit card transaction records on cards issued by banks in over 20 tax haven countries, including many Caribbean countries as well as European countries such as Switzerland and Liechtenstein. Then, in August 2002, the IRS petitioned the U.S. District Court for the Southern District of Florida for approval to serve a John Doe summons on MasterCard for records on transactions using credit cards issued by banks in over 30 tax haven countries for 1999-2001.¹⁷

In some cases, the bank records received from the initial John Doe summonses did not identify the individual cardholders by name; therefore, the IRS is now using the information from these credit card summonses to issue more John Doe summonses to retailers to determine the identities of those shopping with their offshore accounts. In early September 2002, U.S. District Judge Charles Pannel granted the IRS's request to serve John Doe summonses on prominent Georgia companies. Some of the Georgia companies who received these summonses were BellSouth, BellSouth Mobility, ChoicePoint, Delta Air Lines and Earthlink. The IRS made clear in issuing the summonses that these companies had done nothing wrong. The summonses were

issued to glean more identifying data regarding offshore credit card holders.¹⁸

Again, in October 2002, the IRS petitioned 11 U.S. District Courts across the country for approval to serve additional John Doe summonses on more than 70 businesses, which included automobile dealerships, hotels, airlines and retail sales businesses.¹⁹

How the Initiative Works

The IRS has always had some sort of voluntary disclosure policy that generally protected a taxpayer from criminal prosecution if the taxpayer discloses and corrects the tax improprieties prior to being contacted by the IRS.²⁰ Given the high profile of the IRS's enforcement program, many practitioners were fearful that the window for making a voluntary disclosure had closed. In general, a voluntary disclosure must be made before the IRS becomes aware of the taxpayer's illegal activities. Practitioners requested an articulated policy at a November 2002 meeting of the D.C. Bar Tax Section's Tax Audits and Litigation Committee.²¹ By Dec. 11, 2002, the IRS had issued the revised policy.²² The policy revision clarified that highly publicized general enforcement and compliance efforts do not bar a taxpayer from making a voluntary disclosure.²³

The requirements for participation in the initiative are outlined in Rev. Proc. 2003-11. The following is a synopsis of that revenue procedure. For a voluntary disclosure to be acceptable, it must be truthful, timely and complete. The taxpayer must cooperate with the IRS in determining his correct tax liability and then must make good faith

arrangements to pay the tax in full, including interest and penalties. A request to participate in the initiative will be treated as a request to make a voluntary disclosure under the voluntary disclosure practice announced in December 2002.²⁴

The IRS makes clear in its revised voluntary disclosure release that a voluntary disclosure does not automatically guarantee immunity from prosecution, but it may result in prosecution not being recommended.²⁵ A taxpayer will be able to participate in the initiative if an initial written request is received prior to April 15, 2003, and before:

1. the IRS has initiated a civil or criminal exam of the taxpayer (or sent notice of its intent to do so);
2. the IRS has received information from a third party, such as an informant or the media, alerting it to the noncompliance;
3. the IRS has initiated a civil or criminal investigation that is directly related to the specific liability of the taxpayer (for instance, the taxpayer's related partnership or corporation is under examination.);²⁶ and
4. the IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action, such as a search warrant or grand jury subpoena.

In addition, for the taxpayer to be eligible for participation:

1. the taxpayer cannot be a promoter of the arrangement or any other arrangements that are based upon frivolous arguments;
2. the taxpayer cannot have derived income from illegal sources; and
3. the taxpayer cannot have used the offshore financial arrange-

ment to support or in any way facilitate illegal activities not related to taxes.

In the initial request, the taxpayer must provide all identifying data including name, address, contact telephone numbers, account numbers, identifying entity information and the source of the funds the taxpayer caused to be transferred to the foreign jurisdiction. The initial request also must include complete information regarding the names and contact information of any parties who enlisted the taxpayer's participation in the offshore transactions and the names and contact information for any individuals who assisted the promoter. Further, copies of all promotional materials and related documentation must be supplied with the initial submission.

The IRS will notify the taxpayer of acceptance into the initiative within 30 days. Within 150 days following the date of the initial letter requesting participation, the taxpayer also must provide to the IRS additional information including, but not limited to, the following:

1. copies of the original and amended federal income tax returns for periods ending after Dec. 31, 1998 (whether or not related to the offshore financial arrangements);
2. copies of all powers of attorney granted by the taxpayer for tax years in which the taxpayer requests to participate in the initiative;
3. the names and addresses of the banks or financial institutions where the taxpayer's funds were kept, including account numbers and dates of the account;
4. descriptions of foreign assets of which the taxpayer has or had

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any ownership or beneficial interest that were controlled by the taxpayer directly or indirectly any time after Dec. 31, 1998;

5. descriptions of any entities or nominees through which the taxpayer exercised control over foreign funds, assets, investments any time after Dec. 31, 1998;
6. complete and accurate information returns required by sections 6035, 6038, 6038A, 6038B, 6038C, 6039F, 6046, 6046A and 6048 for which the taxpayer requests relief; and
7. complete and accurate FBARs for tax years ending after Dec. 31, 1998.

In addition, the taxpayer must be ready and willing to supply the IRS with any further requested information. The taxpayer also must execute consents to extend the statute of limitations for assessment of the tax and must pay all

penalties and interest due, or make other arrangements acceptable to the IRS. Finally, qualification requires that the taxpayer execute a closing agreement waiving all defenses and agreeing that failure to fully and accurately provide the information requested by the IRS constitutes a misrepresentation of material fact under 7121.

Key to acceptance into the initiative is the requirement that the taxpayer make good faith arrangements to pay the tax, penalties and interest. Unanswered by the IRS announcement is what constitutes good faith arrangements. In normal tax controversy practice, taxpayers can arrange to pay the tax in installments or compromise the liability under the IRS Offer-In-Compromise Program. Furthermore, taxpayers generally are entitled to request an abatement or waiver of penalties based on a reliance defense if in the course of their conduct they reasonably

relied upon the advice of a competent tax professional.

For instance, two of the individuals convicted in the Anderson Ark tax shelter were accountants who prepared fraudulent returns for their clients.²⁷ Would participants lured by these types of unscrupulous accountants be entitled to penalty abatement of the accuracy-related penalty under the initiative? The Revenue Procedure outlining the initiative states that the IRS will “in appropriate circumstances” impose the delinquency and or the accuracy-related penalties. Hopefully, that means that the IRS will not “in inappropriate circumstances” impose those penalties. Supreme Court and Tax Court authority suggests that unwitting investors should still be entitled to those defenses.²⁸ The reality, however, is that the Tax Court is reluctant to grant the reliance defense in promoted tax avoidance schemes.²⁹




2003 Mock Trial Regional Champions

Region

Region	School
1. Central Georgia (Macon)	Central High School, Macon
2. Cherokee County (Canton)	South Forsyth High School, Cumming
3. Coastal Georgia (Brunswick)	Ware County High School, Waycross
4. Cobb County (Marietta)	Walton High School, Marietta
5. Dekalb County (Decatur)	Decatur High School, Decatur
6. Fulton County (Atlanta)	Henry W. Grady High School, Atlanta
7. Gwinnett County (Lawrenceville)	The Wesleyan School, Norcross
8. Metro Atlanta (Atlanta)	D.M. Therrell High School, Atlanta
9. North Georgia (Dalton)	Northwest Whitfield High School, Tunnel Hill
10. Northeast Georgia (Athens)	Clarke Central High School, Athens
11. Northwest Georgia (Rome)	Model High School, Rome
12. Southeast Georgia (Savannah)	H.V. Jenkins High School, Savannah
13. Southern Crescent (Jonesboro)	Jonesboro High School, Jonesboro
14. Southwest Georgia (Columbus)	Lee County High School, Leesburg
15. West Georgia (Douglasville)	Chapel Hill High School, Douglasville

For taxpayers failing to qualify for abatement of the accuracy-related penalties, payment of the tax, interest and penalties could be difficult, particularly if the taxpayer has spent all his tax savings at the Gap. This means that the hard part for many taxpayers will be negotiating with the IRS an acceptable payment arrangement that the taxpayer can afford. Presumably, other acceptable arrangements authorized under the initiative would include installment agreements and compromises. Unfortunately, a compromise may be as difficult to obtain from the IRS as abatement of the accuracy-related penalties. While the Internal Revenue Code³⁰ and the final offer-in-compromise regulations issued in July 2002³¹ confirm that the IRS may compromise a "criminal tax liability," offer specialists and some appeals officers are reluctant to engage in negotiations to compromise such liabilities for certain taxpayers.³²

Conclusion

While navigating payment options will be difficult for those entering the Offshore Voluntary Compliance Initiative, requesting participation is the only prudent choice for individuals who qualify. Those who knew their conduct violated federal tax laws when they participated in offshore schemes will benefit greatly from participation in the initiative. Those who unwittingly became involved also will benefit but likely will have to fight for waiver of the delinquency and accuracy penalties. Either scenario, however, is preferable to defending against a criminal tax prosecution. 

Vivian D. Hoard graduated from the University of Georgia Law School in 1985 and obtained her LL.M. in taxation from Emory University in 1990. Hoard practices in the area of civil and criminal tax controversy and has tried numerous cases in Georgia Superior Courts and in the United States Tax Court. She is a member of the American Bar Association, the State Bar of Georgia and the Atlanta Bar Association, where she serves on the Board of Directors of the Section on Taxation.

Endnotes

1. News Story 2002 TNT 169-1 (August 29, 2002).
2. *Id.*
3. Rev. Proc. 2003-11 (Jan. 14, 2003); 2003 TNT 10-7; IR News Release 2003-5 01/14/2003.
4. IRS 2002-135 (Dec. 11, 2002); 2002 TNT 239-14.
5. I.R.C. § 6663.
6. I.R.C. § 6651(f).
7. I.R.C. §§ 6035, 6038, 6038A, 6038B, 6038C, 6039F, 6046, 6046A and 6048.
8. I.R.C. § 6651.
9. I.R.C. § 6662.
10. News Story, 2002 TNT 217-3 (Nov. 7, 2002).
11. Justice Department Document cited in 2002 TNT 216-32 (Nov. 5, 2002).
12. Justice Department Document cited in 2002 TNT 239-17 (Dec. 11, 2002).
13. I.R.C. § 7609.
14. IRS News Release, 2002 TNT 59-23 (March 26, 2002).
15. News Story, 2002 TNT 217-3 (November 7, 2002); IRS News Release, 2002 TNT 59-23, March 26, 2002.
16. IRS News Release, IR-2003-5 (Jan. 14, 2003); 2003 TNT 10-11.
17. Justice Department Document cited in 2002 TNT 62-56 (March 28, 2002).
18. *In the Matter of Tax Liabilities of John Does*, No. 1:02-MI-0254 (N.D. Ga. August 30, 2002).
19. IRS News Release, 2003 TNT 10-12 (Jan. 14, 2003). See also *In the Matter of the Tax Liabilities of John Does*, No. 6:02-MC-100-ORL-

- 22JGG(17 Oct. 2002); 2002 TNT 218-12; and *In the Matter of the Tax Liabilities of John Does*: No. M-18-304 (S.D.N.Y. 16 Oct. 2002); 2002 TNT 212-14.
20. See Madison, "An Analysis of the IRS's Voluntary Disclosure Policy," 54 Tax Lawyer 729 (No. 4, Summer 2001).
21. News Story, 2002 TNT 217-3 (Nov. 7, 2002).
22. IRS News Release 2002-135; 2002 TNT 239-14.
23. *Id.* This example presupposes that the other requirements for voluntary disclosure have been met.
24. IRS News Release 2002-135, 2002 TNT 239-14 (Dec. 11, 2002).
25. *Id.*
26. *Id.*
27. Justice Department Document; 2002 TNT 71-23 (April 11, 2002).
28. *United States v. Boyle*, 469 U.S. 241(1985); *Kurzet v. Commissioner*, T.C. Memo 1997-54; *Theophilus v. Commissioner*, T.C. Memo 1994-45 and *Mandelbaum v. Commissioner*, T. C. Memo 1995-255.
29. The Tax Court refused to abate penalties based on the reliance defense in the plastics recycling partnerships where the advisors upon which the taxpayers relied were either associated with the tax shelter or had no experience in the plastic recycling industry. See *Leon Atkind*, T.C. Memo 1995-582; *Paul Triemstra*, T.C. Memo 1995-581; *Anthony Pace*, T.C. Memo 1995-580.
30. I.R.C. § 722.
31. Treas. Reg. §301.7122-1.
32. See *United States v. Tenzer* 127 F.3d 222 (2nd Cir. 1997). The taxpayer, an attorney, had voluntarily disclosed his tax improprieties and then sought to pay the outstanding amount by submitting an offer-in-compromise of the tax debt to the collection division of the Internal Revenue Service. Displeased with the taxpayer's conduct during the offer-in-compromise, the IRS sought to prosecute the taxpayer for the underlying tax improprieties he voluntarily disclosed. The Second Circuit agreed with the IRS and held that the taxpayer did not meet the voluntary disclosure requirements because he failed to make bona fide arrangements to pay his tax liability under the offer in compromise program.

State Bar Elects Leadership

By Robin E. Dahlen

The State Bar of Georgia recently held elections for Bar leadership positions for 2003-2004. The elections were conducted electronically on the Bar's Web site, as well as via paper ballot. These posts become effective at the Bar's annual meeting in June. The election results were final on Jan. 24, 2003, and are as follows:

State Bar Officers



William D. Barwick, Atlanta, President — Barwick has been a member of the Bar's Board of Governors since 1983 and a member of its Executive Committee since 1999. His committee service to the Bar has included the Public Relations Committee, the Lawyer Referral Committee, the Bar Facilities Committee, the Midyear Meeting Committee and the Publications Committee. He is also a past president of the Young Lawyers

Division, as well as the Atlanta Bar Association. Barwick has also been active on the national level with the American Bar Association. He is a member of the Georgia Bar Foundation and is a fellow of the Lawyers Foundation of Georgia.

Barwick is a partner in the firm Sutherland, Asbill & Brennan, LLP. He received his B.A. degree in political science from Amherst College and his J.D. from the University of Georgia Law School. A native of Atlanta, Barwick and his wife, Donna Gude Barwick, have two children, Libby, 15, and Jack 9.



George Robert (Rob) Reinhardt Jr., Tifton, President-Elect —

Reinhardt has been a member of the Bar's Board of Governors since 1992 and a member of its Executive committee since 1997. His committee service to the Bar has included the State Disciplinary Review Panel, the Bar Center Committee, the Programs Committee and the Professional Liability Insurance Committee. He is currently serving as chairman of the Finance Committee. Reinhardt has been active in numerous state and local bar activities, including the Tifton Circuit Bar Association and the Institute of Continuing

Legal Education Board of Trustees. He is also a fellow of the Lawyers Foundation of Georgia.

The Reinhardts have a long history of service to the Bar, with Reinhardt's father, Bob Reinhardt Sr., serving as president from 1980-1981. In the history of the State Bar of Georgia, the Reinhardts will have the distinction of being the first family to have father and son preside over the Bar's activities.

Reinhardt is a partner in the firm Reinhardt, Whitley, Wilmot & Summerlin, P.C. He received his B.B.A. with honors from the University of Georgia and his J.D. from the University of Virginia Law School. A native of Tifton, Reinhardt and his wife, Susan Langstaff Reinhardt, have three children, George, 20, Elizabeth, 18, and Sam, 13.



Robert D. Ingram, Marietta, Secretary —

Ingram has been a member of the Bar's Board of Governors since 1993 and a member of its Executive Committee since 1999. He is a past chair of the Lawyers Assistance Committee and is currently serving his fifth term as chair of the Bench and Bar Committee. Ingram is also a past president of the

Cobb County Bar Association and is a member of the Cobb Bar Board of Trustees. He has been selected by the Georgia Supreme Court as a special master for disciplinary proceedings, as well as the State Board of Workers' Compensation as a member of its Advisory Council.

Ingram is a partner in the firm Moore, Ingram, Johnson & Steele. He received his B.S. from Kennesaw College and his J.D. from Emory University School of Law. A native of Cobb County, Ingram and his wife, Kelly, have two children, Ryan, 18, and Morgan, 14.



J. Vincent (Jay) Cook, Athens, Treasurer —

Cook's election culminates many years of service to the profession and community. Cook has served with numerous legal organizations and has been actively involved with the State Bar of Georgia for many years. He serves on the Bar's Bench and Bar, Communications and Legislation committees. Cook is also a member and past president of the Georgia Trial Lawyers, president of the Georgia Civil Justice Foundation and a member of the American Board of Trial Advocates, Georgia Chapter. Cook is also active in the American Bar Association and is a member of the ABA Litigation Section. He is also active in the Athens-Western Bar Circuit and served as its president in 1973.

Cook is senior partner and manager of the firm Cook, Noell, Tolley, Bates & Michael, LLP. He received his B.A. from the University of Georgia and his J.D. from the University of Georgia Law School. Cook and his wife, Frankie Anne Cook, have two children, Lea Anne Wallace and Jay Wright Cook, and two grandchildren.

YLD Officers



Andrew Jones, President — Jones is a partner in the Marietta firm of Cooper & Jones, LLP. He received his JD from

Cumberland School of Law and a B.A. from the University of Georgia. Jones is a member of the Cobb County Bar Association and served as treasurer from 1997-1999, as a member of the board of trustees from 1995 - present, and is a recipient of the President's Award. He was also active in the Cobb County Younger Lawyers Section, serving as vice-president from 1994-1995 and president from 1995-1997.

Jones was secretary for the State Bar of Georgia Young Lawyers Division from 2000-2001, treasurer from 2001 - 2002, and a member of the executive council from 1996 - present. He has been on the Bar's Board of Governors since 2001 and currently chairs the Bar's Sponsorship Committee. Jones is also a member of the Georgia Trial Lawyers Association; the Cobb County Trial Lawyers Association; the Association of Trial Lawyers of America; and the American Bar Association. Jones is a member of the First Presbyterian Church of Marietta and Leadership Cobb Alumni Association.



Lauren Payne Landon, President-Elect —

Payne graduated from the University of Georgia in 1990 with a B.S.Ed. in Educational Psychology and in 1993 from the University of Georgia School of Law. She has clerked for the Hon. W. Leon Barfield, United States Magistrate Judge for the Southern District of Georgia and the Hon. John F. Nangle, United States District Judge for the Southern District of Georgia from 1993-1994. Since then, she has worked for Kilpatrick Stockton LLP in Augusta, practicing civil litigation with an emphasis on commercial litigation and employment discrimination defense. Payne has been a district representative, director and member of the YLD executive committee, also serving as newsletter editor. She is a member of the Bar's Formal Advisory Opinion Board and is president of the Young Lawyers of Augusta.

Payne is a member of the Young Lawyers' Alumni Committee for the University of Georgia School of Law and a board member for Kids Restart, Inc. She is the director of the second grade Sunday School department at First Baptist Church of Augusta.



David S. Gruskin, Treasurer — Gruskin received his JD from the University of Georgia School of Law in 1996. He was the president of his class and received the William K. Meadow Award. He is vice president and managing partner of the The Partners Group in Atlanta since 1999. Gruskin has served as secretary of the YLD from 2002-03 and as newsletter editor from 2000-01. He has also served on the YLD executive council, as a director as a district post representative and on numerous YLD committees. He also chaired the American Bar


Association Award of Achievement on behalf of State Bar YLD in 1999 and 2000.

Gruskin served as general counsel for the Savannah Junior Chamber of Commerce from 1996-97 and is a member of the Lawyers Club.



John Pope, Secretary — Pope received a B.A., from The Citadel in 1992 and J.D. from Georgia State College of Law in 1995. He is a Partner with the Canton firm of Hasty, Pope & Ball. Pope is a past member of the Bar's Corporate Sponsorship Committee and has served as YLD

director and executive committee member. He is currently co-chair of the sponsorship committee and chair of the Membership and Affiliate Outreach Committee.

Pope is active in the Blue Ridge Circuit Bar Association, having served as president. He is a recipient of the State Bar's Liberty Bell Award and Award of Achievement. Pope is a member of the Georgia Trial Lawyer's Association; the American Trial Lawyer's Association; the American Bar Association; the Southern Trial Lawyer's Association; the Lawyer's Club of Atlanta; and the Old Warhorse Lawyer's Club. 

ABA Delegates

George E. Mundy Cedartown, ABA Delegate Post 2
Donna G. Barwick Atlanta, ABA Delegate, Post 4

Board of Governors Posts

Steven A. Hathorn Covington, Alcovy Circuit, Post 1
Edwin Marger Jasper, Appalachian Circuit
Dow N. Kirkpatrick II Atlanta, Atlanta Circuit, Post 1
H. Fielder Martin Atlanta, Atlanta Circuit, Post 3
Thomas G. Sampson Atlanta, Atlanta Circuit, Post 5
Aasia Mustakeem Atlanta, Atlanta Circuit, Post 7
James W. Hawkins Atlanta, Atlanta Circuit Post 9
Roger Eugene Murray Atlanta, Atlanta Circuit, Post 11
Patrick F. McMahon Atlanta, Atlanta Circuit, Post 13
Letitia A. McDonald Atlanta, Atlanta Circuit, Post 15
Kenneth L. Shigley Atlanta, Atlanta Circuit, Post 17
Robert L. Shannon Atlanta, Atlanta Circuit, Post 19
John Aubrey Chandler Atlanta, Atlanta Circuit, Post 21
Donna G. Barwick Atlanta, Atlanta Circuit, Post 23
Phyllis J. Holmen Atlanta, Atlanta Circuit, Post 25
Nancy Jean Whaley Atlanta, Atlanta Circuit, Post 27
Tina Shaddix Roddenberry Atlanta, Atlanta Circuit, Post 29
Karlise Yvette Grier Atlanta, Atlanta Circuit, Post 30
Seth David Krischenbaum Atlanta, Atlanta Circuit, Post 32
Allegra J. Lawrence Atlanta, Atlanta Circuit, Post 34
Robin Frazer Clark Roswell, Atlanta Circuit, Post 36
Joseph D. McGovern Glennville, Atlantic Circuit, Post 2
J. Benjamin Kay III Augusta, Augusta Circuit, Post 2
Thomas R. Burnside Jr. Augusta, Augusta Circuit, Post 3
Gregory A. Hicks Woodstock, Blue Ridge Circuit, Post 2
J. Alvin Leaphart Jesup, Brunswick Circuit, Post 1
William C. Rumer Columbus, Chattahoochee Circuit, Post 2
Earle F. Lasseter Columbus, Chattahoochee Circuit, Post 4
J. Lane Bearden Calhoun, Cherokee Circuit, Post 2
H. Emily George Forest Park, Clayton Circuit, Post 1
Charles J. Driebe Jonesboro, Clayton Circuit, Post 3
Adele L. Grubbs Marietta, Cobb Circuit, Post 2
Patrick H. Head Marietta, Cobb Circuit, Post 4

John Kevin Moore Marietta, Cobb Circuit, Post 6
Henry C. Tharpe Jr. Dalton, Conasauga Circuit, Post 2
John N. Davis Vienna, Cordele Circuit
Delia T. Crouch Newnan, Coweta Circuit, Post 2
Gordon Robert Zeese Albany, Dougherty Circuit, Post 2
Daniel M. King Jr. Dublin, Dublin Circuit
William K. Broker Savannah, Eastern Circuit, Post 2
N. Harvey Weitz Savannah, Eastern Circuit, Post 4
Gregory A. Futch McDonough, Flint Circuit, Post 1
Roy B. Huff Jr. Peachtree City, Griffin Circuit, Post 2
David S. Lipscomb Duluth, Gwinnett Circuit, Post 1
Robert V. Rodatus Lawrenceville, Gwinnett Circuit, Post 3
Christopher A. Townley Rossville, Lookout Mountain Circuit, Post 2
Lamar W. Sizemore Jr. Macon, Macon Circuit, Post 1
Robert R. Gunn III Macon, Macon Circuit, Post 3
William Steven Askew Swainsboro, Middle Circuit, Post 2
James T. Irvin, Toccoa Mountain Circuit
Robert W. Chambers III Gainesville, Northeastern Circuit, Post 2
C. Patrick Milford Carnesville, Northern Circuit, Post 1
Wilson B. Mitcham Jr. Greensboro, Ocmulgee Circuit, Post 2
John P. Harrington Eastman, Oconee Circuit, Post 2
Gerald M. Edenfield Statesboro, Ogeechee Circuit, Post 2
C. Truitt Martin Jr. Dawson, Pataula Circuit
John Elwin Stell Jr. Winder, Piedmont Circuit
Paul T. Carroll III Rome, Rome Circuit, Post 1
Gary Olen Allen Pelham, South Georgia Circuit, Post 2
Robert Daniel Jewell Moultrie, Southern Circuit, Post 2
R. Rucker Smith Americus, Southwestern Circuit
Johnny W. Mason Jr. Atlanta, Stone Mountain Circuit, Post 2
M.T. Simmons Jr. Decatur, Stone Mountain Circuit, Post 4
Alexander T. Stubbs Decatur, Stone Mountain Circuit, Post 6
Robert P. Mallis Decatur, Stone Mountain Circuit, Post 8
Michael Douglas Rowe Cedartown, Tallapoosa Circuit, Post 1
Dennis C. Sanders Thomson, Toombs Circuit
W. Ashley Hawkins Forsyth, Towaliga Circuit
Huey W. Spearman Waycross, Waycross Circuit, Post 2
Lawton E. Stephens Athens, Western Circuit, Post 1
Michael V. Elsberry Orlando, Fla., Out-of-State Circuit, Post 1

Atlanta Hosts Another Successful Midyear Meeting

By Joe Conte

State Bar of Georgia 2003 Midyear Meeting attendees shunned near-record temperatures and sunshine for the opportunity to attend the Jan. 9-11 meeting at the Swissôtel in Atlanta. Members participated in numerous CLE presentations, section meetings and receptions, and an evening at the Atlanta History Center. In all, more than 2,000 Georgia lawyers participated in this year's event and 22 of the Bar's 35 sections held activities.

Board Highlights

State Bar President James B. Durham presided over the 189th meeting of the Board of Governors of the State Bar of Georgia on Saturday, Jan. 11.

Following a report by Board of Governors members Carson Dane



State Bar President Jim Durham and his wife, Kathleen, enjoy a brief moment of down time before the Friday dinner begins.

Perkins and Thomas C. Chambers of the Alapaha Circuit, the Board unanimously approved a resolution recognizing Elsie Griner, who died on Nov. 30, 2002, at the age of 106. Ms. Griner was admitted to the practice of law in 1921 and was the oldest living member of the Bar.

President James B. Durham provided an update on the State Bar building and the Board approved the following:

- that construction of the parking deck commence in the spring of 2003;
- that a \$2 increase in reporting fees be requested of the CCLC which would be restricted for the Bar Center budget; and
- that renovation of the 3rd floor be put out for bid in early 2004 so the Board, at its Spring Meeting, can decide whether to go forward with the conference/education function or to wait for additional space to be leased.

The Board approved the reappointments of Charles R. Adams III, Hugh Brown McNatt, Judge Walter McMillan, Senior Judge Hugh Sosebee and Bettianne C. Hart to the Code Revision Commission.

President Durham reported on reciprocity in Georgia and the Board approved proposed amendments to Rule 2-101 regarding admission to the Bar, Rules 1-506 and 1-507 regarding the Clients' Security Fund and Bar Facility assessments, and proposed new Rule 1-508 concerning application fees.

State Bar of Georgia General Counsel William P. Smith III reported on the publication of Disbarment and Suspension Notices (Rule 4-219(b)). The Board approved a motion which requires that when the Supreme Court orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish on the official State Bar Web site, and in a local newspaper or newspapers, notice of the discipline, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

Jeffrey O. Bramlett, chair of the Advisory Committee on Legislation, reported on the following legislative proposals, which were determined to be germane to purposes of the Bar and supported on their merits:

- Fiduciary Law Section: Guardianship Revision
- Georgia Indigent Defense Council:
 - Juvenile Discovery Bill
 - Addition of Probate Courts to OGCA 17-12-38.1



Pictured left to right: Carol Chambers, Sally Lockwood and Susan Reinhardt enjoy the evening at the Atlanta History Center.



Pictured left to right: Past President George Mundy, President Jim Durham and President-elect Bill Barwick.



Pictured left to right: Michael Neuren, Past President Linda Klein, and BOG members Bettina Yip and Karlise Grier visit during the Midyear Meeting.

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www.GeorgiaJuris.com
 &
www.GeorgiaLawLinks.com

If it's not here, it's not legal!
 (Firms: Send us your professional announcements & press releases)



Pictured left to right: Former Congressman Bob Barr talks with State Bar Pro Bono Director Mike Monahan and BOG Member Ed Marger.



Pictured left to right: Past President Rudolph Patterson, Tripp Layfield and Rachel Iverson visit while exploring the exhibit area at the Midyear Meeting.



Pictured left to right: Board members Tom Chambers and Robin Frazer Clark talk with Jay Cook at the Friday reception.



Pictured left to right: YLD Past President Pete Daughtery and YLD Board Member Thurston Lopes take a moment at the Midyear Meeting to discuss YLD activities.

- Change to Georgia Indigent Defense Council Funding Formula
- Funding for Victims of Domestic Violence
- Funding for The Resource Center
- Real Property Law Section:
 - Recordation of Notices of Foreclosure of Rights to Redeem
 - Additional Exemptions from Transfer Tax
 - Cancellation of Brokers' Liens
- Business Law Section: Corporate Code Amendments
- Appellate Practice Section: Appellate Practice Act Amendments
- Chief Justice's Commission on Indigent Defense

For a complete synopsis of these legislative items, please visit the Bar's Web site at www.gabar.org.


Steve Kaczowski, director of the Bar's Unauthorized Practice of Law Department, provided an update on the UPL program. Following that, President Durham reported that the Board will be asked, at its Spring Meeting, to approve taking the UPL program from its pilot status to a fully funded statewide program beginning in the 2003-04 Bar budget, at an additional annual cost of approximately \$275,000. President Durham also reported that the Standards of the Profession Committee will provide a report on its proposed mandatory mentoring program at the Spring Board Meeting, and the Board will be asked to vote on the program's concept at the Annual Meeting.

State Bar Treasurer George R. "Rob" Reinhardt Jr. provided the Bar's income and reported that the Finance Committee is expected to ask the Board to consider the following options to support the

expansion of the UPL program and continuation of the Bar's operating budget: 1) a \$10 dues increase; 2) implementation of a dues indexing program at six percent annually to keep up with general inflation and member growth, which the Board would monitor and reserve the right to opt out of each year, and 3) a one-time \$10 dues increase and an in depth discussion on the concept of dues indexing.

Young Lawyers Division President Derek White reported on the various activities of the YLD including its annual legislative, the YLD Spring Meeting April 25-27, 2003, on Daufuski Island, expansion of the Truancy Intervention project, and the business suit and cell phone drive held in conjunction with the Midyear Meeting.

State Bar Secretary Robert D. Ingram announced a call for nominations for the second annual professionalism awards which honor one lawyer and one judge who have demonstrated the highest professional conduct and paramount reputation for professionalism. The awards will be presented at the Annual Meeting.

Lawyers Foundation of Georgia Director Lauren Barrett provided a report on the Foundation's activities. Following that, she presented a \$5,000 Challenge Grant to the Prosecuting Attorneys Council and Georgia Indigent Defense on behalf of the Public Interest Lawyers Fund. The program provides educational loan forgiveness for qualified lawyers entering public service either as prosecuting attorneys, public defenders or attorneys working for the Georgia Department of Law. 

Joe Conte is the director of communications for the State Bar of Georgia.

Lawyers Foundation Update

By Lauren Larmer Barrett

Many thanks to Debbie & Tommy Malone for opening their home to the Lawyers Foundation for the Midyear Meeting reception. The Malones graciously hosted Winter's Night in Wildercliff, a benefit reception for the Lawyers Foundation, and it was a fabulous night. The event was catered by Affairs to Remember, and the spread was incredible and delicious. Everyone present was astonished and delighted by Magic Charlie, the world's best magician. He managed to



Pictured left to right: Tommy and Debbie Malone, Barbara and Adam Malone, and baby Madeleine.

fool us all. Not only were the guests entertained by Charlie, the Malone's grand piano was played by Neil Phillips, a very talented pianist. The rain which arrived midway through the evening did nothing to dampen the participant's spirits, as they strolled through the Malone's beautiful home. The Malones and their staff, particularly Tony Ivory and Rachel Orlandini, were incredibly helpful. They are real pros at throwing a successful party, and the Foundation is very grateful to all of them for their assistance and support.




Bill Bass & Dr. Nina Bass at the Foundation reception.

The reception was a resounding success, raising over \$13,000 for the Challenge Grants Program, thanks to the generosity of the Malones and those who

attended. The sponsors included Insurance Specialists Inc. and Lexis Publishing at the gold level, and Counsel on Call and Esquire Depositions at the bronze level.

Foundation Seeking Silent Auction Donations

The Foundation is seeking items for its annual "Silent Auction" being held June 12 - 15, 2003, in conjunction with the Annual Meeting of the State Bar of Georgia. The charity of choice for Georgia Lawyers, the Foundation serves a vital and unique role in the legal community of Georgia. Auction items vary widely and range from fine dining and vacation getaways, to technological tools and sports memorabilia and events. The deadline for donations is May 24, 2003. For more information, please contact Lauren Larmer Barrett, 104 Marietta St. NW, Suite 630, Atlanta, GA 30303; (404) 659-6867; Fax (404) 225-5041; lfg_lauren@bellsouth.net. 

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

Cobb County Bar Association Turns 50!

By Robert H. Beer

The Cobb County Bar Association will soon be celebrating the big 5-0! In honor of the 50th anniversary of the Cobb Bar, to wax nostalgic and to underscore its 50 years of service to the community, a gala dinner is being held at the Marietta Conference Center on Friday, May 2, 2003, at 7 p.m.

To use a phrase from a cigarette commercial, the Cobb Bar has "come a long way, baby" since its inception on Jan. 6, 1953. From that initial meeting held at the former Cobb County Courthouse located on the historic square in Marietta, the Cobb Bar has blossomed into the second largest bar association in the state of Georgia. From an initial membership of 52 persons, it has grown dramatically to a current membership of 735.

Members of the Cobb Bar have continued to play a significant role in the community, local, state and federal governments and within the State Bar as a whole: working at food banks and homeless shelters;

being involved in local houses of worship; youth athletics; civic and charitable organizations; school PTAs, athletic and band boosters; historical and art societies; community music and drama; mock trial programs; Boys and Girls club; literary programs and many more. Just

this year, Andrew Jones is president-elect of the Young Lawyers Division of the State Bar and Robert Ingram is secretary of the State Bar.

Justice Harris Hines, a Cobb Bar member, currently serves on the Supreme Court of Georgia. Judge George T. Smith and Judge G. Conley Ingram also have served on Georgia's highest court. Former Congressmen George "Buddy" Darden and Bob Barr have been members of the Cobb Bar Association. Former Gov. Roy Barnes is an active member in the Cobb Bar. Judge Harris Adams and Judge Alan Blackburn, other Cobb Bar members, now sit on the

Georgia Court of Appeals. Judges Adele Grubbs, David Darden, Toby Producers, J. Stephen Schuster,

James Bullard and Irma Glover have

all previously served as

presidents of

the Cobb

Bar, as

did the recently

retired State

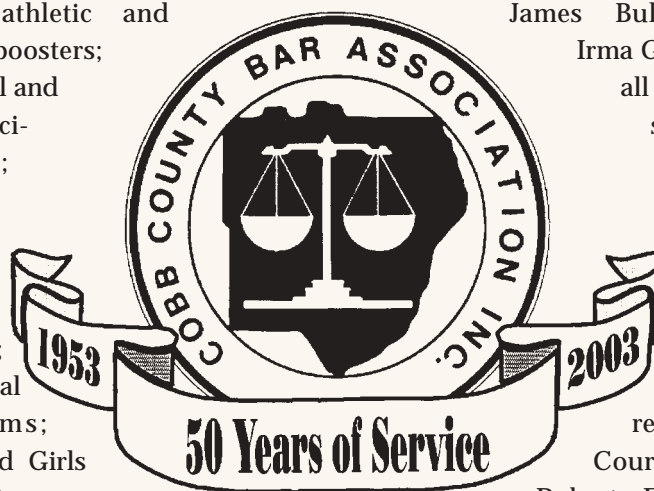
Court Judge

Robert E. McDuff

and Senior Superior Court Judge Robert E. Flournoy Jr.

How many State Bar awards has the Cobb Bar won over the years? Arguably, too many to count. These include the William B. Spann Jr. Pro Bono Award for the Cobb County Justice Foundation, through which legal aid has been supported in time and money for over 10 years, as well as, the Award of Merit several times. Last year, the Cobb Bar received the coveted President's Cup, a traveling award that goes to the most outstanding local or circuit bar association each year.

The Cobb County Bar lawyer referral service, a service provided at a minimal cost to the communi-




ty, has referred 9,388 cases to attorneys since April 2001. Under the leadership of the Cobb Bar's very able administrator, Wendy Portwood, the lawyer referral service matches persons in the community looking for competent counsel in specific areas of the law. Previously, Simone Estroff did an outstanding job when she held this position. It speaks well for the bar that there have been only two administrators in its existence.

The Cobb Bar's Web site, www.cobbbar.org, started by Rob Schnatmeier one year ago, and its monthly newsletter, The Cobb Bar News, created by Jeff Kuester and now led by Editor Cindy Yeager, demonstrates how this bar association has used technology to its advantage. In addition, the Cobb Bar has been a leader in establish-

ing comprehensive continuing legal education for its members within and outside the state of Georgia and the United States. This summer, the Cobb Bar will be sponsoring a one week CLE cruise to Cozumel, Mexico. Come join us. If you are interested, please call Wendy Portwood at (770) 424-7149 or e-mail her at wendycobbbar@yahoo.com.

Indeed, it is hard to believe that once there was no Cobb County Bar Association. However, when the growth of Cobb County resulted in the establishment of the Cobb Judicial Circuit by the State legislature in 1951, the Cobb County Bar Association soon followed. Prior to its establishment in 1951, the Cobb County Circuit was part of the Cherokee Judicial Circuit from Dec. 3, 1832, until Dec. 16, 1833,

and then the Coweta Judicial Circuit until Nov. 24, 1851. Then, for over a century, Cobb County was part of the Blue Ridge Judicial Circuit which consisted of 11 counties: Campbell, Carroll, Cherokee, Cobb, Forsyth, Gilmer, Lumpkin, Milton, Paulding, Polk and Union. For more information on the history of the Cobb County Bar Association, I would suggest looking at www.cobbbar.org/origins.htm.

Yes, "we've come a long way, baby." I guess we need to start planning our 75th anniversary party. I hope I can attend. 

Robert Beer practices in Marietta and is a member of the International Law and Criminal Law sections of the State Bar of Georgia.

Conference Examines Hot Button Issues

By Robin E. Dahlen

Legal professionals and journalists gathered in Atlanta for the 2003 Georgia Bar Media and Judiciary Conference. The event, titled “Searching for the First Amendment in New and Old Issues: Terror, Technology and Judicial Elections,” was held on Feb. 1 at the Swissôtel and was sponsored by the Institute of Continuing Legal Education in Georgia. A diverse group of panelists, including several distinguished judges and attorneys, as well as established media representatives, were on hand to dissect emerging issues and how these issues relate to the law.

The first presentation of the day, “Reporting and the War on Terror,” gave attendees exposure to a beyond-the-buzzwords discussion of the war on terror and its effect on news gathering. Richard Gard, editor and publisher of the *Fulton County Daily Report*, moderated the discussion. Panel members included: Richard

Griffiths, senior executive producer for CNN; Vernan Keenan, director of the Georgia Bureau of Investigation; Robin McDonald, staff reporter for the *Fulton County Daily Report*; John Malcolm, deputy assistant attorney general in the Criminal Division of the Department of Justice; and Steve Wermiel, associate professor at American University’s Washington



Betsey Weltner presents the Freedom of Information Award to Attorney General Thurbert Baker at the 2003 Weltner Freedom of Information Banquet. The banquet was held in conjunction with the Bar Media Seminar.

College of Law. The panel responded to the government’s reassessment of how information is disseminated to the media in light of the terror attacks on Sept. 11.

At the second session of the morning, “Judging the High Profile Case,” moderator Catherine Manegold, the James M. Cox Chair in Journalism at Emory University, led a discussion of the issues and


challenges that typically accompany judging a high-profile case. Panel members included: Hon. James Bodiford, Cobb Circuit; Hon. Hilton Fuller, Stone Mountain Circuit; and Hon. Stephanie Manis, Atlanta Circuit. Each judge shared his or her view on the media being allowed access to the courtroom during cases of a sensitive nature. Judge Bodiford, who was the trial judge for the highly publicized two-month death penalty trial of ex-lawyer Fred Tokars, noted that with regards to the Tokars case, “the media and justice joined together” to provide the public with an accurate account of the trial proceedings.

As a continuation of the high-profile case theme, attendees were treated to another panel discussion held during the day’s luncheon. The discussion, “The Way We Were: *State v. Wayne Williams*,” uncovered the media’s treatment of the case of the Atlanta child murders in an age when the media was allowed courtroom access via closed-circuit TV broadcasts, and the public was only allowed to view courtroom sketches on the nightly news and in the

newspapers. Individuals involved with the case, including Jack Mallard, Cobb County District Attorney’s Office, Dale Russell, I-Team, WAGA-TV Fox 5, and Lynn Whatley, Whatley & Associates, PC, served as members of the panel. Hyde Post, editorial director of ajc.com and AccessAtlanta.com, moderated the discussion.

The afternoon kicked off with “Homeland Hysteria: Security Crisis at the Airport,” a Fred Friendly discussion examining issues arising from a hypothetical security breach at Atlanta’s Hartsfield International Airport, a detained suspect and the ensuing criminal investigation that spilled on to a college campus. Interlocutor Bill Nigut, reporter for WSB-TV, facilitated the discussion and led the panel, which included student journalists, as well as leading professionals from such entities as the ACLU of Georgia, Emory University and the City of Atlanta Department of Aviation. Following the analysis of the fictional situation, attendees then broke into small groups to further discuss the ethical and legal limits that the

media, police and courts must confront in a situation such as that proposed in the hypothetical.

The conference came to a close with the session titled “Judicial Elections and the First Amendment.” Steve Wermiel moderated the discussion, while panel members shared their views on the media’s coverage of judicial campaigns, as well as the public’s interest in these types of campaigns. Panel members included: Hon. Alan Blackburn, Georgia Court of Appeals; Hon. Hilton Fuller; Cheryl Custer, Judicial Qualifications Commission; Beth Schapiro, Schapiro Research Group Inc.; George Weaver, Holberg & Weaver, LLP; and Jim Wooten, *The Atlanta Journal-Constitution* 

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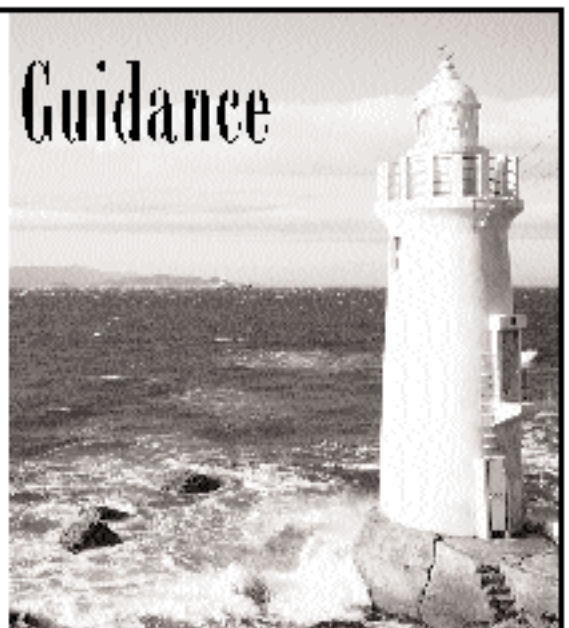
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The Floyd County Courthouse

The Grand Old Courthouses of Georgia

By Wilber W. Caldwell

The enormous Cherokee County was chartered in 1832 and almost immediately Floyd County was split off. A log courthouse was built at Livingston, Floyd County's original county seat, but when Rome was founded in 1834, where the Coosa River begins at the confluence of the Etowah and the Oostanaula Rivers, it became clear that this place would be the region's hub. A brick courthouse was built in 1835 and remained in use until 1892.

By 1860, Rome had a population of over 4,000, with several large steam-powered flour mills and the enormous Noble Foundry. Steamboats plied the Coosa River 200 miles below Rome and as far up the Oostanaula system as 100 miles. The city knew how to grab the golden ring, and by 1890, four railroads would meet at Rome. In the shadow of what can only be termed railroad-inspired civic euphoria, Rome commissioned a new courthouse, and it is perhaps

fitting that it would become arguably the finest Romanesque Revival courthouse in Georgia.

When well-known Atlanta architect, Alexander Bruce, returned to Rome in 1891-92, a great deal had transpired in the 15 years since he had designed the grand, Gothic facade of Rome's

Masonic "Cherokee Lodge." Bruce, who had apprenticed in Nashville with H. M. Akeroyd in the office of William Strickland, an American master of the Greek Revival, had begun his own practice in Knoxville in 1869. In 1879, he joined William Parkins in Atlanta, forming the partnership of Parkins and Bruce. In that same year,



Built in 1892 by Alexander C. Bruce and Thomas Henry Morgan, architects.

Thomas Henry Morgan, a former associate of Bruce's in Knoxville, joined Parkins and Bruce as the firm's draftsman and apprentice. In 1882, Bruce and Morgan left Parkins to form what was to become the deep South's most distinguished architectural partnership of the era. The firm of Bruce and Morgan designed 16 court-

houses in Georgia; monumental buildings at Auburn University, Clemson University, Georgia Tech and Agnes Scott College; the Union Depot at Columbus, Georgia; several of the South's first tall buildings, including Atlanta's Prudential and Empire Buildings; and numerous churches and grand residences. Of Bruce and Morgan's 16 Georgia courthouses, 13 were in the Romanesque Revival Style and, like this one at Rome, many flaunted exquisite Queen Anne details.

To discuss the Romanesque Revival in America without discussing the work of Henry Hobson Richardson is almost pointless. A man of great talent and vision, Richardson seized the masculine possibilities inherent in the Romanesque Style. Almost single-handedly he molded his own personal Romanesque Revival into the powerful and uniquely American architectural force we today call Richardsonian Romanesque. In doing so, he took what was perhaps the first step in the unthinkable long journey from revivalism to American modernism.


Sadly, Richardson died in 1886 while still a young man. His defining courthouse, the Allegheny County Courthouse at Pittsburgh, was not completed until 1888. Down in lowly Atlanta, Bruce and Morgan had no doubt been carefully studying Richardson's work in early issues of *The American Architect*. They built a fine Romanesque courthouse in Sumter County at Americus in 1887, and by the time the Floyd County Courthouse was begun, Bruce and Morgan designs for Romanesque court buildings were under construction in Carroll County at Carrollton, Talbot County at Talbotton, Paulding County at

Dallas and Haralson County at Buchanan.

In Rome, Bruce and Morgan's Floyd County Courthouse employs some of the master's vocabulary using ordinary brick syntax. The hipped roof and the broad cornice with its modillion or dental course are Romanesque Revival to the core. At the base, the three round arched openings on the facade, with their broad architraves composed of massive voussoirs, are typical of Richardson's designs. The light stone banding achieves Richardson's trademark polychromy, and the pyramidal roof of the tower is also distinctly Richardsonian, while the duel arches of the belfry recall Richardson's Allegheny County Courthouse. Both the curved bay and the hexagonal bay, as well as the fenestration on the west side, are typical of buildings of the Romanesque Revival, and the entire courthouse is expertly decorated with various terra-cotta plaques and bands and other devices common to both the Romanesque Revival and the American Queen Anne Styles.

Here at Rome, Bruce and Morgan achieved a degree of monumentality not found in their previous court buildings. This is due, in part, to the height of the tower. Certainly a sense of verticality expressed in grand towers had been an integral part of the Romanesque Revival from the beginning, and tall, slender towers were important elements in Richardson's own design for his powerful courthouse at Pittsburgh. By 1890, all across America, towers had been carried to almost impossible extremes.

The preservation of this courthouse is a credit to the citizens of

Rome, for today as the city stirs again after more than a half century of sleep, she awakens to find her glorious courthouse looking not much different than it did the day it was built. 

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

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Keynote Address by U.S. Senator Saxby Chambliss

U.S. Senator Saxby Chambliss will speak to attendees at the Presidential Inaugural Dinner on Saturday, June 14.



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 The Honorable James E. Yates, III
 Edward R. Zacker

HONORARY GIFTS

In Honor of Eileen Crowley
 Roxann G. Daniel

In Honor of Mayor Shirley Franklin
 Stonewall Bar Association
 of Georgia, Inc.
In Honor of Albert Mazo
 Ida S. Wilensky

MEMORIAL GIFTS

In Memory of the Honorable H. Sol Clark
 Chatham County Democratic
 Committee
 Diane A. & Spencer Connerat, Jr.
 Susan & L. Sanders Corbit
 Dubberly & McGovern
 The Honorable David R.
 & Kaye B. Elmore
 Felser Law Firm, PC
 Audrey R. Finkelstein
 Georgia Court of Appeals
 John G. & Linda Gibson Jensen
 Charles M. Jones
 Stanely M. Karsman
 Kaye & Don Kole
 Law Office of Jeffrey W. Rubnitz, PC
 Frances R. Maclean
 Margaret R. & Joseph C. Muller
 William N. Searcy
 John E. Simpson
 Helen L. Spiers
 L.M. & Dorothy K. Steinheimer
 Emily C. Winburn

In Memory of Mildred Bell Ennis
 Martin S. Jackel

In Memory of Susan Keohane
 Mark, Peter & Tim Keohane

In Memory of Albert Mazo
 Pamela S. Lipsitz

SPECIAL PROJECT GIFTS

John P. Batson & Lisa J. Krisher
 King & Spalding
 Jack Morton & Mary E. White
 Superior Court of the Augusta
 Judicial Circuit
 Sutherland, Asbill & Brennan, LLP
 Sutherland, Asbill & Brennan Summer
 Associates Initiative

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We are grateful to all who contributed and made this campaign such a tremendous success. GLSP is a non-profit law firm recognized as a 501 (c)(3) organization by the IRS. To support the 2003 "And Justice for All" State Bar Campaign for GLSP, mail your check to:
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FIRM SURVEY:

1. Number of Attorneys in the Firm: _____
2. Number of Support Staff: _____
3. Number of Claims/Incidents filed against the Firm during the past 5 years:
 Filed: _____ Pending: _____ Total Paid: _____ Total Reserved: _____
4. Firm knowledge of any circumstance(s) or act(s) which may give rise to a claim? ☐ Yes ☐ No
5. Number of CLE hours averaged by each Attorney during the past 12 months: _____
6. Number of Docket Control Systems: _____ Are they Computerized? ☐ Yes ☐ No
7. Has any Attorney with the Firm ever been disciplined or denied the right to practice? ☐ Yes ☐ No

CURRENT COVERAGE:

Current Carrier: _____ Policy Expiration Date: _____
 Retroactive or Prior Acts Date: _____ Annual Premium: _____
 Current Limits: _____ Current Deductible: _____
 Desired Limits: _____ Desired Deductible: _____

ATTORNEY SURVEY:

Relation to Firm Codes: (OC) Of Counsel (P) Partner (S) Solo (E) Employed Attorney (IC) Independent Contractor

List Attorneys By Name (Attach Separate Sheet if Necessary)	Year Admitted To Bar	Year Joined This Firm	Relation To Firm (Use codes above)	% Time Working For Firm (OC Only)

Please attach a Copy of Firm Letterhead and a Copy of Policy Declarations
 Page (if available). Coverage May Be Bound Only Upon Submission And Acceptance of a Full Westport Application.

KUDOS



William Rowland, a partner in the international law firm of **Jones Day**, has been elected president of the Georgia Council for International Visitors Board of Trustees for 2003. The non-profit organization promotes personal and professional connections between Georgians and citizens of other nations.

Alston & Bird LLP placed No. 3 in *Fortune's* ranking of the country's "100 Best Companies to Work For." Alston & Bird LLP was the only law firm in the top 10, and one of only three law firms to be included in the list.

Attorney **Ruth Austin Knox** has been elected as the 24th president of **Wesleyan College**. She is the first Wesleyan alumna and the second woman to serve as president of the 167-year-old college.

McGuireWoods LLP received a **Gold IMA award** in an independent survey that reviewed and rated the Web sites of the 250 largest law firms in the United States. InternetMarketingAttorney.com conducted the survey, which gave awards to the 30 law firms receiving the highest scores. Also, for the second year in a row, **McGuireWoods LLP** was listed as one of the top 30 law firms in the U.S. for overall client service in a national survey by BTI Consulting Group, a Boston-based market research and management consulting firm.

McGuireWoods Consulting, a subsidiary of **McGuireWoods LLP**, announced that **Stephen A. Katsurinis**, vice president of federal public affairs, was appointed to be special assistant to the Office of National Drug Control Policy. He will assist with drug policy formation and will be in charge of intergovernmental relations.

ON THE MOVE

In Atlanta

David P. Darden, formerly with Talley & Darden, P.C., has been elected to the **State Court of Cobb County**. Darden replaces Robert McDuff and began his four-year term on Jan. 1, 2003. The office is located at Suite 4A, 12 East Park Square, Marietta, GA 30090-9637; (770) 528-1721; Fax (770) 528-1726.

Bo Moore joined **McKenna Long & Aldridge** as a senior advisor in the firm's government affairs practice. Moore will focus on governmental and regulatory affairs at the federal, state and local levels, working out of the firm's Atlanta and Washington, DC offices. The office is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; (404) 527-4000; Fax (404) 527-4198.



The law firm of **Weinberg, Wheeler, Hudgins Gunn & Dial, LLC**, announced that **Y. Kevin Williams** joined the firm. Williams brings significant experience from his trial practice as a senior partner at Downey and Cleveland, LLP, in

Marietta. The office is located at 999 Peachtree St. NE, Suite 2700, Atlanta, GA 30309; (404) 876-2700; Fax (404) 875-9433.

Merchant & Gould recently elected **Allan Altera** as an equity partner and assistant vice president. The Atlanta office is located at Georgia-Pacific Center, 133 Peachtree St. NE, Suite 4900, Atlanta, GA 30303; (404) 954-5100; Fax (404) 954-5099.

Smith Moore LLP announced the addition of **Eleanor A. Joseph** to its Atlanta office. The office is located at 1355 Peachtree St. NE, Suite 750, Atlanta, GA 30309; (404) 962-1000; Fax (404) 962-1200.



State Bar of Georgia General Counsel William P. Smith III was presented with the **National Organization of Bar Counsel's 2003 President's Award** by **Barbara Margolis**, president of the NOBC.

The award is a "lifetime achievement" award and goes to a person who has given years of work to NOBC. Smith was president of NOBC in 1996-97. Through NOBC and the ABA Center for Professional Responsibility, he has worked on revisions to the Rules of Professional Conduct and other issues which affect all lawyers. Smith received the award at the ABA midyear meeting in Seattle in February.



Baker



Mura

Stites & Harbison announced that **Stephanie E. Baker** and **J. David Mura Jr.** have joined the firm's Atlanta office. The office is located at 3350 Riverwood Parkway, Suite 1700, Atlanta, GA 30339; (770) 850-7000; Fax (770) 850-7070.

Seyfarth Shaw announced that four attorneys have joined the firm's Atlanta office and the national employee benefits practice group. The new team includes two partners, **Susan E. Stoffer** and **Kathryn B. Solley**, as well as two associates, **Samuel S. Choy** and **Eugene M. Holmes**. Stoffer has also been named Seyfarth Shaw's Practice Group Leader for Employee Benefits in Atlanta. The office is located at One Peachtree Pointe, 1545 Peachtree St. NE, Suite 700, Atlanta, GA 30309-2401; (404) 892-6412; Fax (404) 892-7056.

Burr & Forman announced that two attorneys have been elevated to partner status. **John O'Shea Sullivan** practices in the Atlanta office in the firm's litigation section. **Cameron T. Earnhardt** works in the Birmingham office in the firm's business section. The firm's Atlanta office is located at One Georgia Center, 600 West Peachtree St., Suite 1200, Atlanta, GA 30308; (404) 815-3000; Fax (404) 817-3244. The Birmingham office is located Southtrust Tower, 420 North Twentieth St., Suite 3100, Birmingham, AL 35203; (205) 251-3000; Fax (205) 458-5100.



Jon M. Jurgovan has joined **Alston & Bird** as counsel in the firm's expanding intellectual property-electronics and computer technology group. **Alston & Bird LLP** also named new partners **S. Gardner Culpepper III**, **Scott P. Hilsen**, **Robin L. McGrath**,

Andrew T. Meunier, **William Scott Ortwein**, **Douglas G. Scribner**, **Jay E. Sloman**, **Daniel R. Weede**, **David S. Teske** and **Bryan A. Vroon**. The office is located at One Atlantic Center, 1201 West Peachtree St., Atlanta, GA 30309-3424; (404) 881-7000; Fax (404) 881-7777.

Fisher & Phillips LLP announced that **Joseph P. Shelton** has been elected partner in the firm's Atlanta headquarters. His practice focuses on the defense of employment discrimination complaints, restrictive covenants and trade secrets. The office is located at 1500 Resurgens Plaza, 945 East Paces Ferry Road, Atlanta, GA 30326; (404) 231-1400; Fax (404) 240-4249.

Andrew B. Cash, **David N. Krugler** and **Alwyn R. Fredericks** announced the formation of **Cash, Fredericks & Fredericks, LLC**. The firm opened in February 2003, and will focus on plaintiff's personal injury litigation. The firm is located at The Candler Building, 127 Peachtree St. NE, Suite

1330, Atlanta, GA 30303; (404) 659-1710; Fax (404) 659-1720; info@ckandf.com.



Kunin



Binder



Scott

at law firm **Morris, Manning & Martin, LLP**. They are **Larry H. Kunin**, **Brooks W. Binder** and **Tacita A. Mikel Scott**. Kunin practices in the litigation group, concentrating on technology, computer and intellectual property litigation. Binder, a former commercial banker, is in the firm's corporate group and specializes in financial law. Scott is in the firm's employment, business litigation and franchising practice groups. She also chairs the firm's Diversity Committee. The office is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; (404) 233-7000; Fax (404) 365-9532.



Sean J. Coleman has joined **Hartman, Simons, Spielman & Wood, LLP's**, Atlanta office as a partner heading up the corporate, tax and commercial law practice group. Coleman will focus his practice on general business law, corporate transactions, contracts and agreements, mergers and acquisitions, joint ventures and strategic business arrangements, sports and entertainment law, and employment and labor law. The firm is located at 6400 Powers Ferry Road NW, Suite 400, Atlanta, GA 30339; (770) 955-3555; Fax (770) 303-8466; www.hssw.com.

Arnall Golden Gregory LLP announced that **Douglas Chalmers Jr.** has joined the firm, adding expertise to two of its most rapidly growing practice areas, litigation and public affairs. The office is located at 2800 One Atlantic Center, 1201 West Peachtree St., Atlanta, GA 30309-3450; (404) 873-8500; Fax (404) 873-8501; www.agg.com.

Ellzey & Brooks announced two new members of the firm in the Atlanta office, **E. Scott Smith** and **Stuart O. Baesel Jr.** The office is located at 2100 RiverEdge Parkway, Suite 220, Atlanta, GA 30328; (770) 850-0707; Fax (770) 850-1116.

Smith, Gambrell & Russell, LLP, announced the election of six new partners. New partners **Jason Bell**, **Elizabeth Branch**, **Matthew Clarke**, **Barbara Ellis-Monro**, **Jacob Frenkel** and **Jane Haverty** specialize in such diverse areas as commercial litigation, SEC enforcement, real estate, bankruptcy/creditors' rights and employment law. The office is located at Suite 3100, Promenade II, 1230 Peachtree St. NE, Atlanta, GA 30309-3592; (404) 815-3500; Fax (404) 815-3509; www.sgrlaw.com.

The law firm of **Troutman Sanders LLP** has elected the following attorneys to partnership — **David H. Armistead, T. Jerry Jackson, Michael E. Johnson, Thomas C. Kleine, John C. Lynch, Jill M. Misage, Stephen D. Otero, Cal Smith, R. Michael Sweeney Jr., Ashley L. Taylor Jr. and E. Fitzgerald Veira.** The office is located at 600 Peachtree St. NE, Suite 5200, Atlanta, GA 30308-2216; (404) 885-3000; Fax (404) 885-3900.

Webb, Zschunke, Miller & Dikeman LLP announced the firm's name has been changed to **Webb, Zschunke, Neary & Dikeman LLP.** In addition, **Melissa C. Duffey** has become a partner in the firm and **James A. Collura Jr.** has become an associate. The office is located at Fifteen Piedmont Center, Suite 1020, 3575 Piedmont Road, Atlanta, GA 30305-1527; (404) 264-1080; Fax (404) 264-4520.

In Augusta

Mark B. Williamson has joined the Augusta law firm of **Burnside, Wall, Daniel, Ellison & Revell** as an associate. The firm specializes in civil litigation and governmental law. The office is located at 454 Greene St., Augusta, GA 30903; (706) 722-0768; Fax (706) 722-5984.

In Brunswick



Becker



Shirley

Hunter Maclean recently announced expansions that include the opening of a new Brunswick office and the additions of **Judith M. Becker and Janet A. Shirley** to the firm's tax and estate planning practice. Both Shirley and Becker practice in the area of fiduciary law. They join a team of seasoned attorneys in the firm's tax and estate planning practice in Savannah, Augusta and Brunswick. The new Brunswick office is located at the Bank of America Plaza, 777 Gloucester St., Suite 305, Brunswick, GA 31520; (912) 262-5996; Fax (912) 279-0586.

In Columbus

The firm of **Hatcher, Stubbs, Land, Hollis & Rothschild, LLP**, announced that **Carter Page Schondelmayer** has become a partner of the firm. The office is located at 233 12th St., Suite 500 Corporate Center, Columbus, GA 31901; (706) 324-0201.

Posey, Moye & Cartledge, LLP, announced that **Brandi E. Bell** has become associated with the firm. The office is located at 1 Bradley Park Court, Suite D, Columbus, GA 31904; (706) 324-2910.

In Savannah



Lori Elizabeth Tepper Loncon has become associated with the law firm of **Ellis Painter Ratterree & Bart LLP** practicing in the areas of creditor's rights, bankruptcy and foreclosures. Before joining the firm, Loncon was an assistant district attorney in the Eastern Judicial Circuit in Chatham County. The office is located at Tenth Floor, 2 East Bryan St., Savannah, GA 31401; (912) 233-9700; Fax (912) 233-2281.



Weiner, Shearouse, Weitz, Greenberg & Shawe, LLP, announced that **Michael L. Edwards** joined the firm of counsel. Edwards will continue his practice in criminal and civil litigation. The office is located at 14 East State St., Savannah, GA 31401; (912) 233-2251; Fax (912) 235-5464; medwards@wswgs.com.

In Valdosta

Young, Thagard, Hoffman, Smith & Lawrence, LLP, announced that **Truman L. Tinsley IV** has become associated with the firm. The office is located at 801 Northwood Park Drive, Valdosta, GA 31602; (229) 242-2520; Fax (229) 242-5040; ythsl@youngthagard.com.

In Chattanooga, Tenn.

Horton, Maddox & Anderson, PLLC, announced that **Morgan W. Jones** has joined the firm as an associate. Jones will engage in a general practice with an emphasis on litigation and corporate law. The office is located at 835 Georgia Ave., 6th Floor, Chattanooga, TN 37402; (423) 265-2560; Fax (423) 265-3039; www.chattanooga-law.com.

In Dallas, Texas

Hawkins & Parnell LLP announced the opening of its new office in Dallas, Texas. The new office, which will operate as **Hawkins, Parnell & Thackston LLP**, is located at Highland Park Place, 4514 Cole Ave., Dallas, TX 75205; (204) 780-5100.

In Hilton Head Island & Bluffton, SC

Novit & Scarminach, P.A., announced the change of its name to **Novit, Scarminach & Akins, P.A.** The firm will continue to practice at its offices at Suite 400, Jade Building, 52 New Orleans Road, Hilton Head Island, SC 29938; (843) 785-5850; and 10 Plantation Park Dr., Suite 104, Bluffton, SC 29910; (843) 706-5850.

Beware the Overzealous New Associate

You knew there would be some changes when you agreed to take on your neighbor's son, Brad, as an associate in the office. The ink isn't dry on his law license, but he's full of ideas for "improving" your operations.

His latest has you a little worried. "I've got some great plans for minimizing our potential liability to clients for malpractice," Brad announced in an office meeting yesterday.

You stifle your concern that Brad is already concerned about malpractice, and inquire about his plans. "You've had me sending letters to update our clients on the status of their cases," he says. "I think we should add this language to every client letter we send:"

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

"I've also been looking at the retainer agreement," Brad continues. "We could add language there, too, so that if anybody wants to fire us before we've collected our fee, they agree to waive any claims against us. That way, they can't file a grievance with the Bar or a malpractice claim."

You are uneasy about Brad's ideas. "I know there's something in the Rules of Professional Conduct about this," you tell him. "Seems like what you're proposing would pose a conflict of interest between us and our clients."


Deciding that Brad might benefit from an opportunity to peruse the ethics rules in more detail, you send him off to do some research on whether his proposals are ethical.

Two days later, a much-chastened Brad reveals the results of his research. "Turns out the ethics rules have a lot to say about my ideas," he confesses. "You were right about the whole thing being a conflict of interest."

Rule 1.8 of the Georgia Rules of Professional Conduct specifies several transactions that pose a conflict of interest between lawyer and client. Included in 1.8(h) is a prohibition on a lawyer's attempt to prospectively limit the lawyer's liability to a client for malpractice.¹

Formal Advisory Opinions 96-1 and 96-2 stress that arrangements like Brad has proposed are at odds with the lawyer's duty to represent a client competently, without regard for the lawyer's own interest. The opinions conclude that attempts by a lawyer to exonerate himself or herself from claims for malpractice, or to limit liability for malpractice, are improper.

"After I had reviewed the rules and the formal advisory opinions, I confirmed my conclusion with the Bar by calling the Ethics Hotline," Brad reports. "So I guess that plan wasn't so good. But I had another great idea last night...."

Please remember to call the Ethics Helpline at 404-527-8720 or 800-334-6865 with all your ethics questions. 

Endnotes

1. Rule 1.8(h) states: "A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith."

Discipline Notices

(Dec. 12, 2002 — Feb. 9, 2003)

By Connie P. Henry

DISBARMENTS AND VOLUNTARY SURRENDER OF LICENSE

Audley Anthony Burrell **Oakhill, Va.**

Audley Anthony Burrell (State Bar No. 097531) has been disbarred from the practice of law in Georgia by Supreme Court order dated Jan. 13, 2003. Burrell failed to respond to a Notice of Discipline after being served by publication. In September 1997 Burrell represented the seller of real property. Burrell agreed to act as escrow agent and took \$10,000 which he was to disburse in accordance with the parties' contract after the closing. Although Burrell deposited the money into his trust account, he failed to account for the \$10,000 or to disburse the money and instead withdrew the money for his personal use.

Michelle Dawn Strickland **Alpharetta, Ga.**

Michelle Dawn Strickland (State Bar No. 687815) has been disbarred from the practice of law in Georgia by Supreme Court order dated Jan. 13, 2003. Strickland failed to acknowledge service of a Notice of Discipline and was served by publication. In September 2001 Strickland agreed to represent a client in a bankruptcy proceeding. The client gave Strickland \$500 for attorney's fees and another \$200 in December 2001 to use as filing fees for the bankruptcy petition. In January 2002, the client called Strickland to determine the status of her case. Strickland told the client that she would call her back, but she never did so. The client called the Clerk of the U.S. Bankruptcy Court and learned that the petition had never been filed. She then called

Strickland and left a voice message terminating her services and demanding that the funds be returned. Strickland did not return the money and instead told the client that the petition had not been filed in December because the filing fee check inadvertently had been omitted. Strickland then filed the petition in January 2002, but the check was returned for insufficient funds. Strickland was directed by the Clerk to submit a money order, but she never did so. In March 2002 Strickland failed to appear in court and her client was forced to appear without representation. Despite numerous attempts since then, Strickland's client has been unable to locate her.

Michael Andrew Jones **Roswell, Ga.**

Michael Andrew Jones (State Bar No. 402533) has been disbarred from the practice of law in Georgia by Supreme Court order dated Jan. 13, 2003. Jones failed to acknowledge service of 11 Notices of Discipline and was served by publication. In 10 of the cases Jones was hired to represent a client for injuries arising out of an automobile accident. In each case, Jones settled the case without the client's knowledge, forged the client's signature on the settlement check, and converted the funds to his own use without the client's knowledge or authorization. In the remaining case, Jones was hired to represent a client for matters arising out of an automobile accident. When the client received payment from two insurance companies to cover the cost of repairs to the car, Jones instructed the client to forward one check to him for return to the insurance company. Jones, however, converted the check for his own use. The total amount converted in the 11 cases was \$45,286.38.


William N. Robbins
Atlanta, Ga.

William N. Robbins (State Bar No. 608037) has been disbarred from the practice of law in Georgia by Supreme Court order dated Jan. 13, 2003. The State Bar filed a Formal Complaint and an evidentiary hearing was conducted, after which the special master issued a recommendation of disbarment. The special master found that Robbins employed "John," who testified at the hearing but requested anonymity, to recruit "runners" who would refer personal injury clients to Robbins. Robbins paid John cash, which John delivered to the runners, and John then received 25 percent of any fee Robbins realized. In aggravation of discipline, the Court took into consideration that Robbins had in the past received two review panel reprimands, a public reprimand, and an investigative panel reprimand. Robbins engaged in similar misconduct, was guilty of multiple unethical offenses prior to this one, made false statements during the disciplinary process, refused to acknowledge the wrongful nature of his conduct, and had 23 years' experience in the practice of law.

James Franklin Shehane
Savannah, Ga.

James Franklin Shehane (State Bar No. 639817) has been disbarred from the practice of law in Georgia by Supreme Court order dated Jan. 13, 2003. Shehane represented a client in the U.S. District Court for the Southern District of Georgia when the district court dismissed with prejudice the client's claim under the Americans with Disabilities Act and dismissed without prejudice the client's state law tort claim. Shehane later informed the client he had re-filed the claim in state court, however, the tort claim was never re-filed in any court. When the client learned of Shehane's failure to re-file the suit and his misrepresentations to the client, the client filed a grievance with the State Bar. Shehane falsely told the Investigative Panel that he had sent two letters to the client advising the client that he would not re-file the tort claim. Subsequently, Shehane presented the two letters and postal receipts for those letters, but the letters and the postal receipts were fabricated by Shehane.

John Wayne Broom
College Park, Ga.

John Wayne Broom (State Bar No. 086150) has been disbarred from the practice of law in Georgia by Supreme Court order dated Jan. 13, 2003. Broom failed to acknowledge service of seven Notices of Discipline and was served by publication. Broom sent written responses but failed to do so under oath and failed to address specifically all of the issues set forth in the Notices. In each case although the clients made numerous calls to Broom requesting information on their cases, he failed to return their calls; failed to inform them of the status of their cases; failed to pursue their legal matters; and failed to return files after his service was terminated. In aggravation of discipline, the court took into consideration that Broom had practiced law since 1977 and that these cases considered together suggested a pattern of professional deception and client abandonment. 

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



Lawyer Assistance Program

Alcohol/Drug Abuse and

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800-327-9631

Help is available and all calls are confidential.

Internet Uses You Never Thought Of — Or Maybe Never Even Heard Of!

By Natalie R. Thornwell

Most lawyers have found that they can not effectively operate their law practices without making use of the Internet. From legal research to e-mail, the number of lawyering tools that have cropped up online over the past 10 or so years is absolutely incredible. Here are some uses for the Internet that you might have already mastered, or might want to learn how to use in your practice in the future.

Legal Search Engines — You've heard of these, right? www.findlaw.com, www.lawguru.com, www.hierosgamos.com, www.lawrunner.com and www.law-crawler.com are examples of legal search engines powered by other more general engines but with a serious legal focus.

Ego Surfing — Along the same lines of using the Internet for doing legal research, comes the concept of "ego surfing." You "ego surf" by entering your own name in Internet search engines to determine exactly how much information the Internet has about you personally. You might be surprised by how many times your name comes up.



Blogs — Weblogs is the more formal term for these journal type sites on the Internet that chronicle events for a particular "logger." From political rants to daily updates on particular topics of interest, these sites have become quite popular. If you are looking for an interesting starting blog for lawyers try www.bespacific.com or check out what's out there with www.weblogs.com.

Case Management and Time Tracking — The ASP movement is not totally over. Online

Looking for a
new position?

Looking for
a qualified
professional?

Look no further
than the State Bar
of Georgia's
Online Career
Center
www.gabar.org

Post jobs
Post resumes
Search jobs
Search resumes

Powered by the Legal
Career Center Network



access to legal case information and even time tracking is still provided by vendors like www.reallegal.com and www.jdusa.net. Litigators even make use of these programs online "e-transcripts" and transcript repositories.

Online Meetings — Web conferencing services provided by vendors like www.webex.com is a very popular way to have parties with Internet access collaborate on projects via online meetings.

Training — Distance learning is making its mark in the legal industry as firms look to find more efficient means of providing training in a more flexible and easily accessible format.

Group Calendaring — Yahoo calendars and other general online calendars can be used to keep everyone up on what everyone else is doing.

Remote E-mail Access — Using the Internet to connect to your e-mail server and access messages while you are away from the office is a nice way to stay on top of your work.

Data Backup/Storage — By purchasing space online and developing a backup routine that keeps your data locked away on remote servers may be a good way to handle firm data backup and information storage.

Firm Web Sites — Having a very good Web site presence brings even more business to the firm. Choose to work with professional Web site builders that work with law firms and keep your site up to date, easy to navigate, and informative for your intended audience.

Intranets — Internal firm information can be shared by securely accessing information stored online.

Extranets — You, outside contacts and other specified parties

can access file information stored in password protected areas over the Internet.

Self-Help Tech Support — Many vendors post searchable knowledge bases and customer support information via the Internet. Go to their Web sites and get help.

Remote Tech Support — Right out of the pages of a science fiction thriller comes the ability for support teams to take over your machine via the Internet to perform system checks, updates and other maintenance — all with your permission of course!

Banking — Your firm's operating and trust account information can be accessed online and you can also send information to your accountant via the Internet.

Bill Payment and Invoicing — Online bill payment capabilities are nice to have and you can even bill your own clients that way!

Checking CLE — See how much CLE credit you have attained for any given year using the Bar's Web site, www.gabar.org.

Updating Bar Membership Information — You can also update name, address, telephone, fax and e-mail information with the State Bar of Georgia online. See www.gabar.org.

Shopping — Check out office supplies and equipment and even personal items for purchase online. Price watch sites like www.mysimon.com can get you the best deals for many products and services over the Internet.

Electronic Case Filing — As courts continue to move forward with automation, lawyers now have the ability to file matters electronically over the Internet.

Listserv Participation — Many e-mail listservs exist to have users

participate in discussions on particular topics or to receive via e-mails information on posted topics.

Faxing — You can use www.efax.com or www.j2.com (formerly www.jfax.com) to fax via the Internet. This is a cool solution for faxing, and you won't have to get up and go to the fax and monitor your transmissions!

Demo Products — Learn about products and services on your own or via guided tours online by visiting vendors' Web sites.

Directions — MapQuest and Yahoo Maps are good sources for getting detailed directions and information about surrounding points of interest for the places you need or want to go.

Travel Reservations — www.travelocity.com, www.orbitz.com, and www.expedia.com are popular travel sites that provide online airline ticket purchasing and other related travel items like car rental and hotel reservations.

People Tracing/Tracking — www.ussearch.com is a very good example of a company that provides information on people you might be looking for. Reverse telephone number look up and public records information is available over the Internet, plus a whole lot more, if you too sleuth!

News, Weather and Stock Market Information — You can keep up with the latest online. Try any of the major news, weather and stock market information providers.

Music/Movie Downloads — The practice of downloading movies and videos via "share clubs" running software like Morpheus may seem to be a controversial use of the Internet. But if you've just got to have "Louie

Louie" playing in the background before going to trial, then don't discount this benefit of the Internet.

Camera Monitoring — Whether it's to watch the kids in daycare or to watch other parties while you talk to them "StarTrek communicator-style", camera monitoring can be done via the Internet.


Games — Users can play games directly with players from all over the world over the Internet. When you get caught up or need a break from lawyering try out these types of games. One that I have seen is "Links" for golf!

Alarm Clock — Alarm and alert services are available to wake you up and remind you of important dates over the Internet.

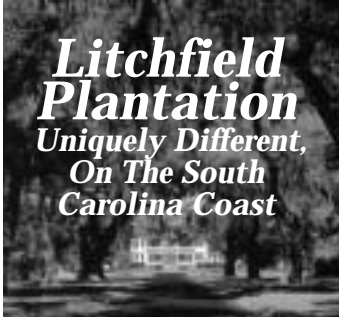
Dictation — Digital submission of dictation allows you to create and forward files to be transcribed over the Internet.

Instant Messaging — Using AOL Instant Messenger or ICQ users can "chat" real-time. Some attorneys have used this to communicate with clients or others as they negotiate or work on particular matters.



Sentimental E-Cards — You can send a card over the Internet instead of via regular "snail" mail to your "connected" clients!

There are probably several other uses for the Internet that I haven't listed here. So, give me a call at (404) 527-8770, or better yet, e-mail me over the Internet at natalie@gabar.org with some uses you have found! 

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



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The Alapaha Judicial Circuit Bar Association

A Brief History

By F. Shea Browning

Currently in its 84th year of existence, the Alapaha Judicial Circuit was officially created on Aug. 9, 1919, by Act of the General Assembly of the state of Georgia. The circuit was originally composed of Clinch, Atkinson, Cook and Berrien Counties, but now also includes Lanier County. It is located in the southernmost part of the state, covering the area west of, and including one-half of, the Okefenokee Swamp region. The Suwanee River flows out of the Okefenokee Swamp at Fargo, Ga., which is located in the southern end of Clinch County, not far from the Florida state line.

There are currently two sitting Superior Court judges in the Alapaha Circuit: Chief Judge Brooks E. Blitch III, Homerville, and Judge C. Dane Perkins, Nashville. These two judges are assisted by Senior Judges H.W. Lott of Lenox and W.D. "Jack" Knight also of Nashville. According to the January 2002 *Research Review* published by the Administrative Office of the Courts of Georgia, the Alapaha Judicial Circuit has the highest caseload per judge of any circuit in the state. (See *AOC Research Review*, p.17, Jan. 2002.)

Other than these four judges, the circuit has only had five other judges throughout the eight decades it has existed. The first judge of the circuit was Bob Dickerson, Homerville. Judge Dickerson served from the circuit's inception in 1919 until his death in 1924. Judge Dickerson was also a member of the Georgia Senate and Georgia House of Representatives. In 1924, Judge Jonathan Perry Knight took the bench in the Alapaha Circuit and served until 1928. A Nashville native, Judge Knight served in the Georgia House and Senate, and he also served as mayor of the city of Nashville. The third judge of the circuit, William R. ("W.R.") Smith, Nashville, served almost 20 years on the bench, until 1948, and then he served in emeritus status until 1966. Judge W.R. Smith was also appointed to Georgia's Constitutional Revision Committee to redraft the State Constitution in 1944. The two judges that followed were E.R. Smith Jr., Nashville, who served from 1949 until 1956, and Judge Folks Huxford, Homerville, who served one term from 1956 to 1960. Judge H.W. Lott and Judge Jack Knight, mentioned above, began their tenure on the Superior Court bench in 1961 and 1977, respectively.

Bar officers for 2003:

Robert B. Sumner: President

F. Shea Browning: Secretary/Treasurer

The Alapaha Bar Association is a voluntary association of approximately 55 lawyers with practices located in these five counties, as well as neighboring counties, who meet the criteria of being a member in good standing with the State Bar of Georgia and paying their annual dues. The local bar meets officially twice a year. The first meeting is held in the spring at a social gathering to celebrate Law Day and present the Liberty Bell Award to a non-lawyer in the circuit who has distinguished himself or herself in the cause of the law. The second meeting is an annual Christmas dinner party and business meeting. Both events include spouses and frequently also feature special guests such as officers from the State Bar, general counsel for the State Bar, sheriffs, court clerks, other judges, and citizens from the circuit. More recently, the Chief Justice of the Supreme Court of Georgia, as well as a former Governor, have addressed the local bar. Each of the meetings is held locally in one of the five counties covered by the Alapaha Judicial Circuit.

The Alapaha Judicial Circuit recently lost its oldest member, Elsie Higgs Griner, who died on Nov. 30, 2002, at the age of 106 years. Not surprisingly, she was also the oldest member of the State Bar. "Miss Elsie," as she was commonly known to her colleagues, was a pupil of the Jeffersonian Era. She never attended college or law school but "read" law under the tutelage of attorney Jeff S. Story, Nashville. A widow with two small children, at age 25, Miss Elsie passed the Georgia bar and was admitted to practice law in 1921. Miss Elsie practiced in the Alapaha Judicial Circuit for almost 70 years until, at the age of 95, she was



Miss Elsie Griner

"forced" to retire by her family. During her memorable and lengthy legal career, Miss Elsie also served

as president of the Alapaha Bar Association, as well as in other positions with the Alapaha Bar.

As one would imagine, Miss Elsie was truly a unique individual and a "lady before her time."

Having lived in the 19th, 20th and 21st centuries, Miss Elsie's short stature and fire-engine red hair were among her many memorable characteristics. At the State Bar Midyear Meeting held in January, many memories were shared about Miss Elsie from those who knew her and "knew of her" legal career. The members of the local bar wanted to share a few stories about Miss Elsie with the bar at large in Miss Elsie's memory and in honor of her dedication to the legal profession during her lifetime.

Years ago, Miss Elsie was driving to the courthouse in Nashville with her daughter in the car when



Atkinson County Courthouse



Berrien County Courthouse



Clinch County Courthouse



Cook County Courthouse



Lanier County Courthouse

someone shot out the back window of her vehicle. Miss Elsie, never missing a beat, drove on to the courthouse and tended to her legal business. She commented to her daughter, “If they were trying to kill me, they could have just killed me instead of shooting the back window of the car out.”

During a deposition with Terry Barnick, an Adel attorney, Barnick asked a few questions of Miss Elsie’s client that the client did not appreciate. When the client jumped from his chair and attempted to crawl across the table to get to Barnick, Miss Elsie — in her late 80s or early 90s — grabbed her client by the nape of the neck, pulled him back in his chair, and told him to, “sit down, shut up and answer the question.”

As told firsthand by Judge Dane Perkins, he remembers a special court appearance of Miss Elsie’s prior to Judge Perkins’ taking the bench. Judge Perkins was traveling to Lakeland from Nashville one morning for court on the curvy back roads between the two counties. Judge Perkins remembers being almost late and in quite a hurry himself, and he recalls seeing a car far in the distance behind him. Intent on getting to court as quickly as he could, Judge Perkins paid no mind to the car behind him until it was right on his bumper and attempting to pass in just a few minutes. When the car pulled alongside Judge Perkins to pass on the curvy back road (and Judge Perkins moved slightly off the right side of the narrow road so the vehicle could pass), Judge Perkins recognized the driver — Miss Elsie. Staring between the top of the dashboard and the top of the steering wheel, Miss Elsie was headed to court in Lakeland, as well. Judge

Perkins remembers driving straight on to court and getting in the courtroom as Miss Elsie was already arguing her case to the judge.

Miss Elsie once told of a true courtroom “battle” between two lawyers (Ike Corbitt and Jon Knight) in front of Judge W.R. Smith in the late 1920s. During a heated argument, Corbitt pulled out his knife and stabbed Knight in the collarbone area. Some remember that Knight’s neck tie was actually cut during the fracas. Judge Smith became infuriated, suspended court, and ordered both lawyers to *be back at 5 p.m. the same day to explain why he shouldn’t hold both lawyers in contempt!*

The timing of the *Journal’s* focus on the Alapaha Bar serves a dual purpose in spotlighting the activities of the local bar association and honoring its eldest member’s memory and dedication to the legal profession. At its January Midyear Meeting, the State Bar also honored Miss Elsie’s memory with a resolution presented by the circuit’s board of governors delegates, Judge Dane Perkins and Homerville attorney Tom Chambers. The resolution will be framed and hung in the Berrien County Courthouse in Nashville.

Miss Elsie, however, was not the first woman from this circuit honored by the State Bar of Georgia. In 1978, attorneys Jack Helms and Dane Perkins, the Alapaha Judicial Circuit’s delegates to the State Bar at that time, nominated Madge Whitehurst, Adel, Ga., who was the president of Cook County Federal Savings & Loan Association, for the State Bar’s first Liberty Bell award. In her capacity with Cook County Federal, Whitehurst was in charge of the

Although small in size, the Alapaha Bar Association continues to thrive and strengthen its numbers in the southernmost part of our great state in a worthy effort to further the goals and direction of our State Bar and the legal profession as a whole.

association's several branch offices in the South Georgia area. The State Bar selected Whitehurst as the state's first recipient of the prestigious Liberty Bell Award. Whitehurst and her family traveled to Atlanta to receive the honor.


More recently, the Alapaha Bar Association has had three prominent and influential guest speakers at its past three spring meetings. On March 23, 2002, the association's spring meeting was held in conjunction with the NAACP's 5th Annual Freedom Fund Banquet in Homerville, Ga. The guest speaker for the worthy event was Justice Robert Benham of the Supreme Court of Georgia. The annual banquet served as a unique opportunity for the local bar's spring meeting and annual presentation of the Liberty Bell Award. One year earlier at the spring meeting held in Fargo, Ga., former Gov. Roy Barnes and his wife, Marie, were special guests of the Alapaha Bar Association. Gov. Barnes addressed the large crowd of bar members, spouses and special guests from the surrounding communities in a festive atmosphere of food and fellowship in southern Clinch County. In the spring of 2000, then president-elect of the State Bar of Georgia, Jimmy Franklin, was the guest speaker at

the local bar's spring function held at the historic Guest Mill Pond clubhouse near the Atkinson and Clinch County border.

Members of the local bar association also play an important role in participating in the State Bar's High School Mock Trial Competition. Homerville attorneys Jeff and Cathy Helms have coached the Clinch County High School mock trial team to frequent regional championships, and other attorneys in the local bar association volunteer their time and skill as jurors, judges and evaluators to assist in the very worthwhile project.

The Alapaha Judicial Circuit also plays an important part in the local Alternative Dispute Resolution program. The circuit proudly maintains in Clinch County a local

non-profit organization, "In the Best Interest of the Children, Inc." This program facilitates parenting seminars for divorcing parents and other parties to civil suits involving children. The program, which has been an overwhelming success since its origin, is administered from Homerville and extends to several counties and circuits in South Georgia beyond the Alapaha Judicial Circuit.

Throughout its history, the Alapaha Bar Association has had members who have been leaders in the community, working in their profession to promote justice, and in their personal time to contribute countless hours to community service and religious organizations within, and beyond, the circuit. Although small in size, the Alapaha Bar Association continues to thrive and strengthen its numbers in the southernmost part of our great state in a worthy effort to further the goals and direction of our State Bar and the legal profession as a whole. 

F. Shea Browning practices in Pearson, Ga., and is the secretary/treasurer of the Alapaha Judicial Circuit Bar Association.

State Bar Sections Gather for the Midyear Meeting

By Lesley Smith

It may seem early, but our sections are now planning for the State Bar's Annual Meeting, June 12-15, 2003, in Amelia Island, Fla. For the fourth year, our sections will sponsor the opening event of the Annual Meeting. This event kicks off the meeting with a celebration for the entire family. All Annual Meeting registrants will be invited to attend. A sections booth will again be featured with prizes and fun giveaways for adults and kids. If you're able to attend, be sure and come by to register for these prizes.

MIDYEAR MEETING HIGHLIGHTS

The **Family Law Section** met and elected new officers during the Midyear Meeting. After the meeting, they sent members a valentine and invited them to attend a reception at the new State Bar headquarters. If you're a member of the section and didn't come, you missed a great time. While visiting, members toured the new Bar facilities, including the former Federal Reserve's vault, but unfortunately, no money had been left behind. The Section is chaired by Emily "Sandy" Bair, Atlanta.

The **Aviation Law Section** hosted a luncheon on Jan. 10, 2003, during the Midyear Meeting. Bob Powell, a WWII pilot, spoke to

the section members about his experiences flying with the 352nd fighter group. Mark Stuckey received an award for his work as the section's newsletter editor.



Pictured left to right: Bob Powell, WWII pilot, speaker; Alan Armstrong, section chair; Lisa McCrimmon, vice chair; and Mark Stuckey, section editor.

The **Criminal Law Section** met during the State Bar's Midyear Meeting. Tom Jones was honored for his service to the section as editor. Jones has single-handedly produced a quarterly newsletter for the section since 1988 and the section leaders felt it was high time to honor him.



Pictured left to right: Sherell Lewis, newly elected section secretary; Michael Cranford, section chair; Andrew Thomas Jones, editor; and Patrick McMahon, vice chair.

The **Entertainment & Sports Law Section** hosted a luncheon during the State Bar's Midyear Meeting. Judge Paschal "Pappy" English, known from the CBS series "Survivor", was the section's featured speaker. Judge English is from the Griffin Judicial Circuit Superior Court.



Pictured left to right: Alan S. Clarke, section chair, and Judge English, speaker.

The **International Law Section**, chaired by James Rayis, Atlanta, held a successful luncheon during the Midyear Meeting. The luncheon included a panel discussion titled "International Compliance Issues - Inhouse Counsel's View." Speakers included Alfred Evans, GE Power Systems; Trish Marcucci, BellSouth; Tory Hatch, BellSouth; and Jonathan Ware, Delta Airlines.



Pictured left to right: James Rayis presents past chair, Stefan Tiessen, with a plaque for his service to the section.

The **Fiduciary Law Section** Chair John Spears, Decatur, announced a statewide wills project for policemen and firefighters during its meeting.

The **Technology Law Section**, chaired by L. Kent Webb, Atlanta, held a meeting during the Midyear. Wayne Hodges, associate vice president for economic development and technology, was the speaker at the luncheon.



Pictured left to right: Wayne Hodges, speaker and Kent Webb, section chair.

OTHER NEWS & PROJECTS

Now and in future articles, we'll tell you about on-going section projects.

Appellate Practice Section

By Christopher J. McFadden,
Immediate Past Chair

On Nov. 26, 2002, a divided Supreme Court substantially changed the law as to preservation of error, at least in summary judgment cases.

City of Gainesville v. Dodd, 275 Ga. 834, S01G1717, 2002 FCDR 3532, 2002 Ga. LEXIS 1074 (Nov. 26, 2002). The Supreme Court held that, where summary judgment has been granted on the basis of an erroneous legal theory, the appel-

late courts have discretion to refuse to address alternative theories advanced by the movant but not addressed by the trial court.

Dissenting for himself and Justices Benham and Hunstein, Justice Carley argued that it is the summary-judgment grant itself that is to be reviewed, not the analysis employed.

Pfeiffer v. Georgia DOT, 275 Ga. 827, 2002 FCDR 3536, 2002 Ga. LEXIS 1072 (Nov. 26, 2002). Concerned that parties opposing summary judgment "may withhold meritorious legal arguments until appeal" a divided Supreme Court held that, "absent special circumstances, an appellate court need not consider arguments raised for the first time on appeal." Special circumstances "could include a jurisdictional challenge, a claim of sovereign immunity, a serious issue of public policy, a change in the law or an error that works manifest injustice." In a well-reasoned and strongly-worded dissent for himself and Justice Hunstein, Justice Carley again argued that it is the grant of summary judgment that is to be reviewed, not the particular arguments the parties may have advanced.

It should be noted that arguments not considered under *City of Gainesville v. Dodd* can be asserted or re-asserted in the trial court after remand. Arguments not considered under *Pfeiffer v. Georgia DOT* are lost for good, along with the cause of action.

Creditor's Rights Law Section

By Harriet Isenberg, Co-chair

Section Co-Chair, Harriet Isenberg, spoke at the State Court Judge's conference in Jekyll Island

in November 2002. She spoke about attorney's fees in debt collection cases and personal property foreclosure. The presentation was well received by the judges and Isenberg enjoyed the experience. Co-Chair Frank Wilensky's firm helped with the paper on personal property foreclosure.

General Practice and Trial Section

By Betty Simms,
Executive Director

The General Practice and Trial Section takes pride in educating not only lawyers but law staff members also. The law staff programs have just started to play around the state with the first one being in Tifton on Nov. 21, (2002? 2003?). The section arranges speakers and lawyers to answer questions at senior fairs, church groups and any organizations that request a lawyer from the section.

Intellectual Property Law Section

By Jeffrey R. Kuester, Chair


For the first time in the history of the Intellectual Property Law Section, we are providing support in time and money to two different non-profit organizations. On Sept. 30, 2002, the IPL Section co-sponsored a Copyright Town Meeting

with the National Initiative for a Networked Cultural Heritage (NINCH), www.ninch.org, which is a diverse coalition of organizations created to assure leadership from the cultural community in the evolution of the digital environment. In addition to the IPL Section contributing \$500 for co-sponsoring the Copyright Town Meeting, Jeff Kuester, section chair, provided welcoming remarks at the event. The Copyright Town Meeting informed participants of recent developments in copyright law and provided a forum for Atlanta's cultural community to share ideas about preserving cultural information online while complying with existing copyright laws.

The IPL Section also continued its support of the Georgia Lawyers for the Arts by contributing \$1,000 and participating in the 2002 Fundraising Gala on Oct. 18, 2002. The Gala was hosted at The Lowe Gallery, and the honorary chair was Atlanta Mayor Shirley Franklin. The IPL Section was a gold level sponsor and was represented at the gala by Mike Hobbs, section vice-chair; Judy Dray, copyright committee chair, GLA board member; and Julie Sinor, chair of the communications/Web site committee.

Real Property Law Section

By Douglas D. Selph, Treasurer

A public meeting was held March 21, 2003 at State Bar Headquarters by the State Bar's Standing Committee on the Unauthorized Practice of Law. The executive committee for the Real Property Law Section is hiring a consultant to assist in presenting its position in support of real estate closing attorneys and the integral role they play in the closing and real estate conveyancing process. The issue to be considered by the UPL Committee is stated as follows: "Is the preparation and execution of a deed of conveyance (including, but not limited to, a Warranty Deed, Limited Warranty Deed, Quitclaim Deed, Security Deed, and Deed to Secure Debt) considered the unlicensed practice of law if someone other than a duly licensed Georgia attorney prepares or facilitates the execution of said Deed(s) for the benefit of the Seller, Borrower and Lender?" Written comments may also be sent to UPL Advisory Opinions, State Bar of Georgia, Suite 100, 104 Marietta St. NW, Atlanta, GA 30303. 

Lesley Smith is the section liaison for the State Bar of Georgia



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Practice in the Grand Style

By Paul W. Bonapfel¹

“A lawyer is a representative of clients, an officer of the legal system and a citizen having special responsibility for the quality of justice.”

– *Preamble to Georgia Rules of Professional Conduct*

“An attorney does not hold an office or public trust, in the constitutional or statutory sense of that term, but is an officer of the court. He is, however, in a sense an officer of the state, with an obligation to the courts and to the public no less significant than his obligation to his clients. The office of attorney is indispensable to the administration of justice and is intimate and peculiar in its relation to, and vital to the well-being of, the court.”

– *Sams v. Olah*, 225 Ga. 497, 504, 169 S.E.2d 790 (1969)

Editor’s note: *This is the first in a three part series.*

A LOOK BACK

The New Year 2002 ushered in a lot of changes in Atlanta. The city has a new mayor. The Atlanta Falcons have a new owner, and Georgia Tech has a new football coach. There was a new session of the Georgia legislature, a scary thought because, as has been said, no one’s life, liberty or property is secure when the Georgia legislature is in session.

As the year began, I hoped that, if things went well, I would have a new job as a bankruptcy judge after almost 27 years as a lawyer, some 25 of them spent in the private practice of law in Atlanta and 22 of them with the same three partners.

So, when I was asked to make a presentation on professionalism at the beginning of a new year and at the beginning of a job change for me, it prompted me to think about the changes in our profession over the past 25 years.

25 years!

When I was just starting to practice in Atlanta in 1977 and heard lawyers like Morris Macey refer to their “25 years of practice,” I thought they were ancient. (For Morris, it was actually 32 years in 1977.) Now

I realize that lawyers that age are just getting started and are actually quite young.

There have been a lot of changes in 25 years.

My first legal job in Atlanta was as a summer law clerk for Lipshutz, Macey, Zusmann & Sikes, now Macey, Wilensky, Cohen, Wittner & Kessler. My classmates and I were “summer law clerks” as opposed to what are now “summer associates.” I think the difference is we didn’t get paid a lot and didn’t have any parties.

If memory serves, which is always questionable at my age, I think I got the princely sum of \$175 a week, as compared to the \$200 a week that some of my friends were getting at the big firms. We thought that was a lot of money at the time, even if they didn’t take us to any ballgames.

My office, or should I say table, was in the basement library that the firm had in its offices at 64 Pryor St., now called Park Place. I believe the exact location of my desk is now marked by the water fountain in Woodruff Park.

When I came back to Atlanta with my wife after law school and clerking for Judge Owens in Macon, we bought a house that was pretty far out for someone with an office on the eighth floor of the Candler Building. Our home was near Chastain Park, right outside the city limits. I guess a house ten to thir-

You can always spot an old Bankruptcy Act lawyer like me because we say we're going to the first meeting of creditors rather than the Section 341(a) meeting.

ty minutes from Lenox Square and Buckhead, depending on traffic, now qualifies as being close-in.

The district court and the bankruptcy court were in the "Old Post Office Building" on Forsyth St., now renovated as the home of the Eleventh Circuit. The Eleventh Circuit wasn't there, of course, because it didn't exist; Georgia was in the Fifth Circuit, headquartered, as it still is, in New Orleans.

Bankruptcy court was held in rooms that weren't much bigger, if at all, than the 341 meeting rooms we now use on the third floor of the Russell Building.

We had a Bankruptcy Act that used Roman numerals and didn't have a Chapter "7" as such. It had section numbers that were different from those in the U.S. Code Annotated. Thus, when a bankruptcy lawyer or court referred to, say, preferences under section 60, non-bankruptcy lawyers would go nuts trying to find that section, which was disguised as 11 U.S.C.A. § 96.

The debtor was called a "bankrupt." Under the old Bankruptcy Act, there were "first meetings of creditors" and "final meetings of creditors," and I guess there could have been second and third meetings as well, but I don't think there ever were. You can always spot an old Bankruptcy Act lawyer like me because we say we're going to the first meeting of creditors rather than the Section 341(a) meeting.

The Bankruptcy Rules for "straight" bankruptcies—what we

now call Chapter sevens—and Chapter Roman numeral thirteens were barely four years old when I started in 1977, and the rules for Roman tens, elevens, and twelves were younger than that.

Roman Chapter twelves weren't for farmers, but for real estate partnerships. They became real popular during the real estate bust of the mid to late 70s.

The new Bankruptcy Rules were being promulgated by the Supreme Court under its rule-making authority to replace the "general orders" that the Supreme Court had adopted for practice in the bankruptcy courts before a person called the "referee in bankruptcy." These rules instituted the automatic stay upon the filing of a petition – the Bankruptcy Act provided only for a discretionary stay in most instances – and designated the referee as the "bankruptcy judge."

We now have a Bankruptcy Code that uses Arabic numbers but doesn't contain the word "bankrupt," codifies the automatic stay, and has section numbers that are the same as those in the U.S.C.A.

There were four bankruptcy judges when I started in 1977, none of whom are still on the bench. In 1979, Judge Ezra Cohen was replaced by Judge Drake, who had earlier been a bankruptcy judge from 1964 to 1976 and was chief bankruptcy judge from 1968 to 1976. Judge Cotton replaced Judge Norton in 1985, Judge Mullins replaced Judge Robinson in 2000,

and Judge Kahn, of course, retired on January 2.² In the meantime, Judges Bihary and Murphy were appointed to two new positions created in 1987, and Judges Massey and Brizendine took two newly created judgeships in 1993.

I got a job with a small firm rather than a large firm for two major reasons. One, I thought I would rather practice with a small firm and, two, none of the big firms would hire me.

The big firms at the time included King & Spalding, which had about 80 lawyers; and Troutman, Sanders, Lockerman & Ashmore, which had about 70; others were Hansell, Post; Kilpatrick, Cody; Sutherland, Asbill & Brennan; Powell, Goldstein, Frazier & Murphy; Alston, Miller & Gaines; Jones, Bird & Howell; and Smith, Cohen, Ringel, Kohler, Martin & Lowe. I don't think any of them had an office outside of Atlanta or a practicing lawyer who wasn't admitted in Georgia or about to be. None of them had "insolvency" or "workout" or "creditors' rights" departments. The starting salary was \$18,000.

But I was worried that they were too big and too specialized and, anyway, no one wanted to hire me. It later dawned on me that at least one reason they didn't want to hire me was that I told them I was worried that they were too big and too specialized.

Actually, I didn't know what I wanted to do. I had gone to law school because I didn't know what I wanted to do after graduation from college and figured that law school would let me keep my options open and give me a good background for a variety of careers.

Law school education didn't focus me any further on what I

wanted to do in real life, so I again postponed a decision by seeking a judicial clerkship. I was fortunate to find one with District Judge Owens in Macon and spent two years there with him and Senior Judge Bootle.

I still didn't know what I wanted to do. Throughout law school, I had thought I wanted to be a general practitioner representing small businessmen like my dad. It really didn't occur to me that my dad rarely had problems he needed to call a lawyer about.

A small firm seemed to offer the best prospect of a more varied, general practice that I thought I wanted to do. And from my office at Nicholson & Meals on the eighth floor of the Candler Building, I gradually fell into a bankruptcy practice. Along the way, I watched the Loew's Grand Theater burn down and felt the vibrations from the dynamiting of the Marta tunnel that was being constructed. While I was there, I only lost one uncontested divorce and that became a non-issue when the parties reconciled anyway. I'd rather be lucky than good.

As a new associate, I drafted and filed about 30 lawsuits for the recovery of voidable preferences under Section 60 of the Bankruptcy Act in a case with no assets and maybe three or four boxes of

records. That may not seem like a big deal now, but it was pretty unusual in 1977 because it was necessary to prove, as an element of recovery, that the defendant either knew or had reasonable cause to believe that the bankrupt was insolvent. This was a potentially difficult fact to prove, especially before a jury in the district court. You had to pursue your preference claim in the district court, which had plenary jurisdiction, if the defendant had not filed a proof of claim in the bankruptcy court, which only had summary jurisdiction. (See one of my favorite Act cases, *Katchen v. Landy*, if you care about this particular issue and its potential relevance to core and non-core issues even today.)

I remember getting the cancelled checks and bank statements, putting the information from the checks relative to the payments on 3 by five note cards, and then doing research on some of our more novel theories in the West Decennial Digests and state court reporters in the library of the Supreme Court of the State of Georgia. Small firms didn't have "legal assistants," nobody had "spread sheets," and only the big firms had libraries with nationwide books.

That case introduced me to the bankruptcy bar at the time, particularly Stacey Cotton and Tim White,

who represented a couple of the defendants. Three years later, in 1980, I found myself at a bankruptcy firm then known as Cotton, Katz, White & Palmer, where Michael Lamberth had just become a partner and Bill Willson, Jim Cifelli and Gary Stokes were associates. And in our midtown offices on Fifth Street, I again felt the vibrations from the Marta tunneling and became a bankruptcy practitioner.

After Stacey Cotton was appointed a bankruptcy judge in 1985, Palmer, Lamberth, Bonapfel, Cifelli, Willson and Stokes set up shop, practicing at 1430 West Peachtree Street in the Pershing Point area for a couple of years before moving to the Atlanta Financial Center near Lenox Square. We got there just in time to experience the dynamiting under our building for the Buckhead station of the Dunwoody Marta line.

The practice of law has changed dramatically in the past 25 years. Many of us practice in buildings that didn't exist 25 years ago. Indeed, a number of practicing lawyers didn't exist 25 years ago.

The magnitude and complexity of the law has increased by leaps and bounds. Many in my class of 1972 smirked at the people taking "environmental law" or "employment discrimination law" instead of the traditional courses like securities regulation or all the UCC courses or corporate finance.

There's a lot more law today. We only had to deal with corporations, two types of partnerships, general or limited, and maybe professional corporations or associations that were just coming into vogue. Now, we've added limited liability companies and limited liability limited partnerships and who knows what

The practice of law has changed dramatically in the past 25 years. Many of us practice in buildings that didn't exist 25 years ago. Indeed, a number of practicing lawyers didn't exist 25 years ago.

As I was preparing this paper, my college sophomore daughter asked how lawyers exchanged drafts of documents before attachments to e-mail were invented. One way we did it when I started was that the junior associate carted it across the street. Or we used snail mail and, eventually, in rush circumstances, we could send it by “Federal Express,” a relatively new innovation in the 70s.

else. When I first heard that friends were practicing “health care” law I thought they were specializing in defending professional liability matters.

Technological advances have been stunning. A young secretary in my office was recently using an old IBM Selectric typewriter to fill out a form. She was pressing the “one” key and getting a “bracket” character.

I must pause here to explain to our younger friends that an IBM Selectric typewriter was a state of the art innovation in the late 60s and early 70s because it was an electric typewriter that used a type-face ball that moved across the page to make imprints on it rather than the usual method at the time where striking a key caused it to make an imprint in the same place and the paper moved on a carriage.

I explained that she needed to use the lower-case “L” key to make the number “one” and then remarked that typewriters used to not have “one” keys. She said I was pulling her leg and did not believe me. I showed my age further, I guess, when I told her that we used to have typewriters that did not require electricity. She wanted to know how they worked.

Like Lewis Grizzard, I learned to type on a manual Royal typewriter.

If you ask me who Lewis Grizzard was or what a Royal manual typewriter is, I will definitely feel old.

If we wanted copies, we used carbon paper and, of course, an error meant that all the copies had to be fixed as well. Lawyers were still using carbon paper and onion skin for file copies when I started practicing, even though we had photocopy machines. The reason was that photocopies were expensive and not to be used for routine correspondence.

“Cutting and pasting” was literal. If you wanted to move a block of text from page 4 to page 2, you cut up pages 2 and 4, pasted the text where you wanted it, and sent it back to be retyped. If you were lucky, and that was the only change, you might not have to redo page 1 and everything after page 4. The Xerox 800 and other magnetic card machines dramatically improved capacities for revisions and development of forms but you had to have a degree in cryptology to understand the codes and to keep up with the magnetic cards.

As I was preparing this paper, my college sophomore daughter asked how lawyers exchanged drafts of documents before attachments to e-mail were invented. One way we did it when I started was that the junior associate carted

it across the street. Or we used snail mail and, eventually, in rush circumstances, we could send it by “Federal Express,” a relatively new innovation in the 70s.

Why didn’t we just fax it? Because lawyers generally didn’t have fax machines until the late 80s. And, again, that was reserved for special circumstances because of the expense. There were some benefits to these procedures. For example, if lawyers reached an agreement after a hearing we retired to someone’s office and actually got the consent order done while everyone was together.

Technology has not only dramatically changed the mechanics of producing and reviewing documents; it has also accelerated the access to and availability of information. As I said earlier, when I started practice, the research of a novel question for any lawyer required poring over the digests or annotated codes and manually checking cites in “Shepard’s Citations.” For many lawyers in smaller firms, doing research in books other than the Georgia ones required a trip to someone else’s library or to an institutional library like the Supreme Court of Georgia or a law school library.

A check of the court’s docket or the review of a pleading or proof of

claim that had been filed required a trip to the courthouse and the physical retrieval of a file. And, of course, the filing of a complaint or other pleading likewise required some sort of physical transportation of it to the clerk's office. Often, it was the junior associate.

Think of how relatively rapidly these changes have taken place. It took human beings millions of years to progress from the spoken word to the written word, and then several thousand more to develop the printed word. In our lifetimes, we have seen the introduction of the digital word.

Information is at our fingertips over the Internet. Why go to the Supreme Court library to use a Decennial Digest (and perhaps some wonder what a Decennial Digest is) or read a case from some obscure jurisdiction when you can find the case and access it without getting out of your chair?

Many suggest that these technological innovations have leveled the playing field and made it possible for solo practitioners and smaller firms to compete with the large firms, and I suppose that may be true.

At the same time, however, we have seen tremendous increases in the size of law firms and the development of "national" and even "global" practices, perhaps as a function of the ever-increasing complexity of various areas of the law, the increasing need to specialize, and the desire to have a "full service" firm that can handle all client needs in one place. Perhaps the smaller firms who can and do compete with large ones focus on narrow specialties.

Large firms have come to Atlanta to acquire existing firms or set up branches to expand practices

What does all of this mean to us as lawyers, as individuals, and to us as a profession?


from Los Angeles, Cleveland, Minnesota, Chattanooga, South Carolina, Virginia, Florida, to name a few. Many have hundreds if not thousands of lawyers across the country. Law firms that are "native" Atlanta firms, likewise, are expanding their practices, acquiring practices or setting up shops in New York, Washington, Virginia, North Carolina, Texas, London, Brussels, Tokyo, and elsewhere.

Law firms now compete for work not only with each other but also with other professional and non-professional businesses. Banks and their trust departments promote estate planning and draft wills. Title insurance companies check and insure titles and do closings. Consumers can find "do it yourself" divorce, will, or bankruptcy kits. "Petition preparers" make money by "typing" bankruptcy forms for debtors.

In the business area, accountants seek to increase their practices by adding lawyers and setting up "one stop" professional practices designed to offer all professional services a business could want in one place. In response, many lawyers seek changes to existing ethical rules to permit lawyers to form partnerships with non-lawyers to provide multi-disciplinary services, including law, accounting, finance, consulting, and other types of services.

What does all of this mean to us as lawyers, as individuals, and to us as a profession?

I must confess I don't know, but fortunately I don't think I have to

in order to address professionalism concerns. The Chief Justice's Commission on Professionalism has stated that "the general goal of the Professionalism CLE requirement is to create a forum where lawyers, judges, and legal educators can explore and reflect upon the meaning of professionalism in contemporary legal practice."³ And so, even though I don't have answers, I do have some thoughts to share that we can all "explore and reflect upon" as we consider what we do and what we should do as professionals. 

Endnotes

1. This paper is adapted from a presentation made on Professionalism on Jan. 17, 2002, at the 2002 Annual Bankruptcy Year in Review Seminar presented by the Atlanta Bar Bankruptcy Section. At the time of the presentation, the author was a member of the law firm of Lamberth, Bonapfel, Cifelli & Stokes, P.A., and was expecting appointment as a United States Bankruptcy Judge for the Northern District of Georgia. He was sworn in on April 10, 2002 and has withdrawn from the firm, which continues in practice under the name Lamberth, Cifelli, Stokes & Stout, P.A.
2. Sadly, Judge Kahn passed away in March 2002.
3. Chief Justice's Commission on Professionalism, Professionalism CLE guidelines (2002) at p 2.

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.

H. Grady Almand Jr.
Lithonia, Ga.
Admitted 1946
Died December 2002

Raymond Read Callaway
Atlanta, Ga.
Admitted 1939
Died February 2003

Rachel B. Champagne
Atlanta, Ga.
Admitted 1983
Died December 2002

H. Sol Clark
Savannah, Ga.
Admitted 1929
Died January 2003

Harvey L. Cospers Sr.
Atlanta, Ga.
Admitted 1947
Died August 2002

Philip Henry Dohn Jr.
Atlanta, Ga.
Admitted 1955
Died December 2002

Carol Anne Fowler
Atlanta, Ga.
Admitted 1988
Died February 2003

Neal G. Gale
Brunswick, Ga.
Admitted 1950
Died January 2003

William Barclay Herndon
Marietta, Ga.
Admitted 1950
Died January 2003

William Thomas Jones
Albany, Ga.
Admitted 1951
Died July 2002

Harvey John Kennedy Jr.
Barnesville, Ga.
Admitted 1948
Died January 2003

Allen Richard Kenyon
Gainesville, Ga.
Admitted 1941
Died February 2003

Eugene Ray Kiser
Atlanta, Ga.
Admitted 1968
Died January 2003

Karl M. Kothe
Rome, Ga.
Admitted 1967
Died December 2002

David Wallace Krasner
Atlanta, Ga./Los Angeles, Ca.
Admitted 1935
Died February 2003

Ferrin Y. Mathews
Atlanta, Ga.
Admitted 1951
Died November 2002

Pierce Moore
Decatur, Ga.
Admitted 1950
Died January 2003

Lewis Render Morgan
Newnan, Ga.
Admitted 1935
Died November 2001

Steve Lee Perkins
Tucker, Ga.
Admitted 1996
Died January 2003

Robert Barnes Rountree Sr.
Tucker, Ga.
Admitted 1955
Died December 2002

Martha Z. Schoenfeld
Dacula, Ga.
Admitted 1977
Died December 2002

Earl Thomas Shaffer Jr.
Macon, Ga.
Admitted 1974
Died February 2003

Carl Theodore Stovall
Roswell, Ga.
Admitted 1948
Died June 2002

Ingrid Elizabeth Ann-Marie Whittaker
Atlanta, Ga.
Admitted 1988
Died May 2002

William E. Zachary Sr.
Decatur, Ga.
Admitted 1946
Died January 2003

Correction: The February 2003 issue of the *Georgia Bar Journal* mistakenly listed Nathan Gene Knight Jr. as being deceased. Judge Nathan Gene Knight Sr. was admitted to practice in Georgia in 1960 and passed away on Nov. 4, 2002. The *Journal* regrets the error.

**Judge H. Sol Clark**

Known to many within the State Bar of Georgia as the "Father of Legal Aid in Georgia," Judge H. Sol

Clark died Jan. 17, 2003, at the age of 96. Judge Clark founded the Legal Aid Society of Savannah and supported the formation of similar groups in Augusta, Macon and other Georgia cities. He served a quarter century as chair of the State Bar of Georgia's Legal Aid Committee and devoted a lifetime to helping those less fortunate.

Judge Clark has a lengthy record of service to the profession and the state of Georgia. He served as president of the Savannah Bar Association and was a charter member of the American Bar Foundation and a Fellow of the International Academy of Trial Lawyers. He was a member of the International Society of Barristers and received the American Bar Foundation's prestigious "Fellows Fifty Year Award." In 1999, the Supreme Court of Georgia designated Judge Clark "Amicus Curiae," for his distinguished service to the administration of justice. Judge Clark was honored three times by the State Bar of Georgia with its Distinguished Service Award and in 1988, Emory University honored him by creating summer legal aid internships whose recipients are designated as "Sol Clark Fellows."

The State Bar created the H. Sol Clark Award, which is given annually for outstanding service in Legal Aid. Judge Clark was the first recipient of the award. He also served on the National Legal

Aid and Defender Associations Board of Directors. He was the only person to receive the two highest NLADA awards. In 1971, the Harvard Law School Association of Georgia presented a plaque to him for his service naming him "The Father of State Legal Aid in Georgia."

The son of Russian immigrants who came to the United States to avoid religious persecution, Judge Clark was admitted to the Georgia Bar in 1929. Upon his death, he had the distinction of being the oldest active lawyer in Savannah. He had been an attorney for more than 73 years. Judge Clark was a partner in the firms of Hester, Lewis and Clark, and Brannen and Clark until Gov. Jimmy Carter appointed him to the Court of Appeals of Georgia in 1972. He was the first Jewish Court of Appeals Judge. He served on the Court until reaching the mandatory retirement age of 70 and then returned to Savannah to practice law with his son, Fred S. Clark.

Judge Clark also worked tirelessly for his community, leading campaigns for organizations, including the American Heart Association, the March of Dimes, and United Jewish Appeal Board. He was a member of Congregation Bnai Brith Jacob Synagogue. Judge Clark is survived by his son and daughter-in-law, Fred and Nancie Clark, and three grandchildren, Jonathan, Alison and Robert Clark.

John Edward "Buck" Griffin Jr., 78, of Athens, Ga., died on Aug. 31, 2002. Griffin was with the Athens firm of Fortson, Bentley and

Griffin, P.A. since 1955. He served as senior partner, practicing in the areas of corporate, taxation, banking, health care, estate planning and probate until his death. Griffin received his law degree from the University of Georgia and was admitted to practice in the U.S. Court of Appeals, the Supreme Court of Georgia, and the U.S. Supreme Court. He served as a member of the Georgia State Board of Bar Examiners and on the Fitness Board of the State Bar of Georgia. He was also a member of the Western Circuit Bar Association and served as president from 1968-69.

Griffin is survived by his wife of 52 years, Gwen West Griffin; his daughters, Marcia Talmadge (William), Lisa Lindsey and Mildred Grube (Paul); five grandchildren; and his sister. He is preceded in death by his son, John E. Griffin III.

Karl M. Kothe, 65, of Rome, Ga., died on Dec. 23, 2002. Kothe graduated from Emory Law School and was admitted to the Bar in 1967. He joined the Rome law firm of Rogers, Magruder and Hoyt and later became partner. He was a past president of the younger lawyers section and served as the secretary/treasurer of the Rome Bar Association. Kothe served in the Air Force and was active in numerous civic and charitable organizations.

Kothe is survived by his wife, Diann Hoth Kothe; his daughter Kathy David (Bill); his son Mark (Terri); four grandchildren; and his sister.



Memorial Gifts

The Lawyers Foundation of Georgia furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. 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.

**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.**

April 2003

1

NATIONAL BUSINESS INSTITUTE
Setting Up a Guardianship in Georgia
Atlanta, Ga.
5.5 CLE with 0.5 ethics

3

PRACTISING LAW INSTITUTE
Private Placements 2003
Various Locations
10.3 CLE with 0.5 ethics

NATIONAL BUSINESS INSTITUTE
Major Land Use Laws in Georgia
Atlanta, Ga.
5.5 CLE with 0.5 ethics

7

PRACTISING LAW INSTITUTE
*25th Annual Current Developments
in Bankruptcy & Reorganization*
Various Dates & Locations
11.8 CLE with 1 ethics

8

NATIONAL BUSINESS INSTITUTE
*Handling Legal Issues in Georgia
Landlord/Tenant Relations*
Atlanta, Ga.
6 CLE with 0.5 ethics

10-11

ICLE
Health Care Fraud
Callaway Gardens, Ga.
12 CLE

10

LORMAN BUSINESS CENTER, INC.
Workers Compensation in Georgia
Atlanta, Ga.
6 CLE

14

PRACTISING LAW INSTITUTE
Insurance Law 2003
Various Dates & Locations
12.3 CLE

16

LORMAN BUSINESS CENTER, INC.
Payroll Management
Albany, Ga.
6.7 CLE

LORMAN BUSINESS CENTER, INC.
Section 125 Cafeteria Plans
Atlanta, Ga.
6.7 CLE

17

ICLE
Federal Trial Practice
Atlanta, Ga.
6 CLE

ICLE
Nuts and Bolts of the ADA
Atlanta, Ga.
6 CLE

18

ICLE
Motions Practice
Atlanta, Ga.
6 CLE

ICLE
Family Law Convocation on Professionalism
Atlanta, Ga.
3 CLE

ICLE
Foreclosures
Atlanta, Ga.
6 CLE

ICLE
ODRO Boot Camp
Atlanta, Ga.
3 CLE

19

LORMAN BUSINESS CENTER, INC.
HIPAA Compliance
Atlanta, Ga.
6 CLE

21

PRACTISING LAW INSTITUTE
Asset Based Financing in 2003
Various Dates & Locations
11.5 CLE with 1 ethics

22

LORMAN BUSINESS CENTER, INC.
Jury Selection
Atlanta, Ga.
6 CLE

23

LORMAN BUSINESS CENTER, INC.
Financial Statement Analysis
Albany, Ga.
7.2 CLE

ICLE
Biotechnology Part 1
Atlanta, Ga.
3 CLE

24

ICLE
Biotechnology Part 2
Atlanta, Ga.
6 CLE

ICLE
Technology Show and Tell
Atlanta, Ga.
3 CLE

LORMAN BUSINESS CENTER, INC.
Covenant Not to Complete
Atlanta, Ga.
3.8 CLE

LORMAN BUSINESS CENTER, INC.
Judgement Enforcement
Macon, Ga.
6 CLE

25

ICLE
Special Needs Trusts
Atlanta, Ga.
6 CLE

25

ICLE
Civil Litigation for Younger Lawyers
Atlanta, Ga.
6 CLE

ICLE
International Law
Atlanta, Ga.
6 CLE

LORMAN BUSINESS CENTER, INC.
Handling Problem Loans
Atlanta, Ga.
6 CLE

28

PRACTISING LAW INSTITUTE
Understanding Electronic Contracting
Various Dates
9.8 CLE

30

LORMAN BUSINESS CENTER, INC.
Handling Accommodation and Termination
Athens, Ga.
6 CLE

May 2003

1

ICLE
PowerPoint in the Courtroom
Atlanta, Ga.
3 CLE

LORMAN BUSINESS CENTER, INC.
Finance: The Basics
Athens, Ga.
6.7 CLE

2

ICLE
Defense of Drinking Drivers
Atlanta, Ga.
6 CLE

ICLE
Mediation Advocacy
Atlanta, Ga.
6 CLE

NATIONAL BUSINESS INSTITUTE
Drafting LLC and LLP Agreements in Georgia
Atlanta, Ga.
6.7 CLE with 0.5 ethics

6

NATIONAL BUSINESS INSTITUTE
*Drafting and Negotiating Georgia
Commercial Real Estate Leases*
Atlanta, Ga.
6 CLE with 0.5 ethics

LORMAN BUSINESS CENTER, INC.
Discipline of Students with Special Needs
Savannah, Ga.
6 CLE

7

LORMAN BUSINESS CENTER, INC.
*Designing Retirement Plans to Provide
a Guaranteed Income in Georgia*
Atlanta, Ga.
6.7 CLE

LORMAN BUSINESS CENTER, INC.
Nursing Home Litigation in Georgia
Atlanta, Ga.
6 CLE with 1 ethics and 6 trial

8-10

ICLE
Real Property Law Institute
Amelia Island, Fla.
12 CLE

8

ICLE
Internet Legal Research
Atlanta, Ga.
6 CLE

NATIONAL BUSINESS INSTITUTE
*The Probate Process From Start to
Finish in Tennessee*
Various Dates
6.7 CLE with 1 ethics

LORMAN BUSINESS CENTER, INC.
Workers Compensation
Macon, Ga.
6 CLE

9

ICLE
Successful Trial Practice (Video Replay)
Atlanta, Ga.
6 CLE

LORMAN BUSINESS CENTER, INC.
Government Construction Contracting
Atlanta, Ga.
6 CLE

12

NATIONAL BUSINESS INSTITUTE
*Georgia Estate Planning and Drafting
Fundamentals*
Atlanta, Ga.
6 CLE with 0.5 ethics

14

ICLE
LLC's and LLP's
Atlanta, Ga.
3 CLE

NATIONAL BUSINESS INSTITUTE
Georgia Construction Law
Atlanta, Ga.
6 CLE with 0.5 ethics

15

ICLE
Fundamentals of Health Care Law
Atlanta, Ga.
6 CLE

PROFESSIONAL EDUCATION
SYSTEMS, INC.
Deposition Boot Camp
Atlanta, Ga.
14.3 CLE with 1 ethics and 6 trial

LORMAN BUSINESS CENTER, INC.
Handling Mold Disputes
Atlanta, Ga.
6 CLE

16

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

ICLE
12th Product Liability Institute
Atlanta, Ga.
6 CLE

ICLE
Nuts and Bolts of Immigration Law
Atlanta, Ga.
6 CLE

19

LORMAN BUSINESS CENTER
Advanced Workers Compensation in Georgia
Atlanta, Ga.
6 CLE with 0.5 ethics

20

BROOKLYN LAW SCHOOL
Expert Witnesses Tape 2 of 2
Savannah, Ga.
1.5 CLE with 1.5 trial

22

ICLE
*Construction, Materialmen's
and Mechanic's Liens*
Atlanta, Ga.
6 CLE

22-24

ICLE
Family Law Institute
Amelia Island, Fla.
12 CLE

23

ICLE
Jury Trial
Atlanta, Ga.
6 CLE

June 2003

5-8

ICLE
Georgia Trial Skills Clinic
Athens, Ga.
24 CLE

July 2003

2

ICLE
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Atlanta, Ga.
6 CLE

17-19

ICLE
Fiduciary Law Institute
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12 CLE

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

No earlier than 30 days after the publication of this Notice in the *Georgia Bar Journal*, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, *2002-2003 State Bar of Georgia Directory and Handbook*, p. H-6 and H-7 (hereinafter referred to as "*Handbook*").

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

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

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT STATE OF GEORGIA

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

MOTION TO AMEND 03-1

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in a regular meeting held on Jan. 11, 2003, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated Dec. 6, 1963 (219 Ga. 873), as amended by subsequent Orders, *2002-2003 State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I. Proposed Amendment to State Bar of Georgia Rule 1-506. Clients' Security Fund

It is proposed that Part I (Creation and Organization), Rule 1-506 (Clients' Security Fund) be amended as shown below by deleting the stricken portions of the rule and inserting the phrases in bold italicized typeface as follows:

Rule 1-506. Clients' Security Fund Assessment.

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$100.00. This \$100.00 fee may be paid in minimum annual installments of \$20.00 for a period of five (5) years. Each new member of the State Bar will also be assessed a similar amount ~~payable in a similar manner~~ upon admission to the State Bar. This fee shall be used only to fund the Clients' Security Fund and shall be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502.

(b) ***For a member who joins the State Bar after taking the Georgia Bar Examination, the Clients' Security Fund assessment shall be due and payable in \$20.00 installments on July 1 of each year until the balance of \$100.00 is paid. The failure of a member to pay the minimum annual installments shall subject the member to the same penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.***

For a member who is admitted as a Foreign Law Consultant or who joins without taking the Georgia Bar Examination, and who has not previously paid the Clients' Security Fund Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

Should the proposed amendment be adopted, State Bar Rule 1-304 would read as follows:

Rule 1-506. Clients' Security Fund Assessment.

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$100.00. This \$100.00 fee may be paid in minimum annual installments of \$20.00 for a period of five (5) years. Each new member of the State Bar will also be assessed a similar amount upon admission to the State Bar. This fee shall be used only to fund the Clients' Security Fund and shall be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502.

(b) For a member who joins the State Bar after taking the Georgia Bar Examination, the Clients' Security Fund assessment shall be due and payable in \$20.00 installments on July 1 of each year until the balance of \$100.00 is paid. The failure of a member to pay the minimum annual installments shall subject the member to the same penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.

For a member who is admitted as a Foreign Law Consultant or who joins without taking the Georgia Bar Examination, and who has not previously paid the Clients' Security Fund Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

**II.
Proposed Amendment to State Bar of Georgia
Rule 1-507. Bar Facility Assessment**

It is proposed that Part I (Creation and Organization), Rule 1-507 (Bar Facility Assessment) be amended as shown below by deleting the stricken portions of the rule and inserting the phrases in bold italicized typeface as follows:

Rule 1-507. Bar Facility Assessment.

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$200.00. This \$200.00 fee may be paid in minimum annual installments of \$50.00 for a period of four (4) years. This fee shall be used to purchase, maintain, and operate a facility for the State Bar offices and shall be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502 and the Clients' Security Fund Assessment as provided in Rule 1-506.

(b) *For a member who joins the State Bar after taking the Georgia Bar Examination,* ~~the~~ Bar Facility assessment shall be due and payable in \$50.00 installments on July 1 of each year until the balance of \$200.00 is paid. For members admitted to the Bar prior to July 1, 1997, such installments shall begin on July 1, 1997. For newly admitted members of the State Bar, such installments shall begin when a new member is admitted to the State Bar. The failure of a member to pay the minimum annual installments shall subject the member to the same

penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.

(c) For a member who is admitted as a Foreign Law Consultant or who joins the State Bar without taking the Georgia Bar Examination, and who has not previously paid the Bar Facility Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

Should the proposed amendment be adopted, State Bar Rule 1-304 would read as follows:

Rule 1-507. Bar Facility Assessment.

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$200.00. This \$200.00 fee may be paid in minimum annual installments of \$50.00 for a period of four (4) years. This fee shall be used to purchase, maintain, and operate a facility for the State Bar offices and shall be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502 and the Clients' Security Fund Assessment as provided in Rule 1-506.

(b) For a member who joins the State Bar after taking the Georgia Bar Examination, the Bar Facility assessment shall be due and payable in \$50.00 installments on July 1 of each year until the balance of \$200.00 is paid. For members admitted to

the Bar prior to July 1, 1997, such installments shall begin on July 1, 1997. For newly admitted members of the State Bar, such installments shall begin when a new member is admitted to the State Bar. The failure of a member to pay the minimum annual installments shall subject the member to the same penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.

(c) For a member who is admitted as a Foreign Law Consultant or who joins the State Bar without taking the Georgia Bar Examination, and who has not previously paid the Bar Facility Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

III. Proposed Amendment to Part I of the Rules of the State Bar of Georgia-Rule 1-508. Application

It is proposed that Part I (Creation and Organization), be amended by the addition of a new Rule 1-508 (Application Fee) which would read as follows:

Rule 1-508.
Application Fee
The State Bar may charge an application and registration fee of any member who joins the State Bar without taking the Georgia Bar Examination. Upon implementation of this Rule, such application and registration fee shall be in

the amount of \$500.00, and may thereafter be adjusted higher or lower in accordance with the Bylaws of the State Bar. This fee shall be in addition to any dues or other fees and assessments as provided in these Rules or Bylaws.

IV. Proposed Amendment to Part II of the Rules of the State Bar of Georgia Rule 2-101. Admission to the Bar

It is proposed that Part II (Admission to the Bar), Rule 2-101 be amended as shown below by deleting the current rule in its entirety and inserting a new rule as set out in bold italicized typeface as follows:

Rule 2-101. Admission to the Bar.

(a) ~~No person may be admitted to the bar as an active, emeritus or inactive member, or licensed as an attorney to practice law in this State without examination.~~

(b) ~~No person may be admitted to the bar as a foreign law consultant without complying with Part D of the Rules Governing Admission to the Practice of Law as adopted by the Supreme Court of Georgia, Ga. Ct. & Bar Rules, p. 12-1 et seq.~~

(c) ~~After January 1, 1998, only those persons who are enrolled and engaged in their third year at a law school accredited by the American Bar Association shall be allowed to take the examination for admission to the Bar of Georgia as an active, emeritus or inactive~~

~~member. Further, after such date, no person shall be admitted to the Bar of Georgia as an active, emeritus or inactive member unless such person is a graduate of a law school accredited by the American Bar Association.~~
(d) ~~There shall be no admission to the Bar of Georgia by comity.~~

Rule 2-101. Admission to the Bar.

No person may be admitted to the bar as an active, emeritus or inactive member, or licensed as an attorney to practice law in this State without complying with the Rules Governing Admission to the Practice of Law as adopted by the Supreme Court of Georgia.

SO MOVED, this _____
day of _____,
2003

Counsel for the
State Bar of Georgia
William P. Smith, III
General Counsel
State Bar No. 665000

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

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit. In addition, pursuant to 28 U.S.C. § 2071(e), notice and opportunity for comment is hereby given of amendments to 11th Cir. R. 33-1(c)(3) and 33_1(d) that were approved by general

administrative order of the court to take effect April 1, 2003.0

A copy of the proposed amendments, and of the amendments to 11th Cir. R. 33-1(c)(3) and 33_1(d), may be obtained on and after April 1, 2003, from the Eleventh Circuit's Internet Web site at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the

Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303 [phone: (404) 335-6100]. Comments on the proposed amendments, and on the amendments to 11th Cir. R. 33-1(c)(3) and 33_1(d), may be submitted in writing to the Clerk at the above street address by May 5, 2003.

State Bar Ends Relationship with ANLIR

The American National Lawyers Insurance Reciprocal (ANLIR), the State Bar of Georgia's recommended professional liability carrier, is no longer writing policies in Georgia and is **no longer a recommended vendor of the State Bar**. Members with ANLIR coverage were mailed a letter on Feb. 3, 2003 notifying them of the change in relationship. The text of that correspondence follows:

Dear Members:

You may have read in the February 2003, *State Bar Journal* that the Bar had given notice of its intention to discontinue recommending ANLIR for professional liability insurance. Under the terms of the recommendation agreement a six-month notice is required and this was given so that our contract was to terminate on May 1, 2003. That action was based on a change by AM Best in its rating of ANLIR from A- to B-. According to AM Best's rating scales, a B- rating means that in their opinion a company has an ability to meet its current obligations to policyholders, but is financially vulnerable to adverse changes in underwriting and economic conditions.

Since that action was taken additional information has been received concerning the condition of ANLIR. The Reciprocal of America (ROA) reinsures ANLIR's

first layer of insurance. As indicated by the enclosed letter ROA has agreed to a Virginia Order of Voluntary Rehabilitation and has been directed by the Virginia Bureau of Insurance not to accept any further business that was not already bound as of 1/22/03. In addition the State of Tennessee has issued an Agreed Order of Administrative Supervision which places restrictions on ANLIR's operations.

The Virginia Order of Voluntary Rehabilitation can be found at http://www.state.va.us/scc/caseinfo/boi/case/roa_rec.pdf and the Tennessee Agreed Order of Administrative Supervision can be found at <http://www.state.tn.us/commerce/pdf/ANLIR.pdf>. If you do not have web capabilities please call Bar Headquarters and we will send you copies.

Contact with Georgia's ANLIR representative, Ms. Keisha Robbins has confirmed that the company is no longer issuing professional liability insurance in Georgia. This being the case ANLIR has ceased to fulfill its obligations under our agreement and we now consider it to be terminated. We have notified ANLIR of our position and a copy of our notification is enclosed.

Based on the above we recommend that you immediately review your professional liability coverage.

Should you have questions about your present coverage or renewals with ANLIR, their Georgia representative is Ms. Keisha Robbins, at (770) 576-1948, (888) 889-4664, or Krobbins@reciprocalgroup.com.

While the information contained in this letter reflects the latest developments, as we understand them, in the past few days the situation has changed rapidly. For this reason you may want to check with the Georgia representative and the above sites for further developments.

If you need contact information about other professional liability insurers operating in Georgia the State Bar's Law Practice Management service will be glad to help. Please call (404) 527-8773 or (800) 334-6865 to request this information.

At present the State Bar's Legal Malpractice Committee is monitoring this situation but has no replacement recommendation for professional liability insurance. Due to market conditions not related to the State Bar's decision regarding ANLIR, the industry forecast is for premium increases by many or most professional liability insurance providers.

We hope this update is of assistance to you.

Sincerely yours,
James B. Durham
President, State Bar of Georgia

Errata Sheet for the 2002-2003 State Bar *Directory*

Listed below are corrections to your 2002-2003 State Bar *Directory*. Included are corrections of errors made from information submitted in a timely manner and which were inadvertently omitted or otherwise incorrectly listed in our original publication. Each complaint has been researched or reviewed by the Membership Department and a correction is due to those members listed below. Please mark your directory accordingly.

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name misspelled

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BRUSSELS, BELGIUM

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Fax 011-32-2-776-6328

Rule 1-207. All members of the State Bar of Georgia shall keep the Membership Department of the State Bar of Georgia informed of their current name, address and telephone number. It is incumbent upon those authorized to practice to keep the membership information current and accurate. The Court and the State Bar of Georgia may rely on the address carried by the Membership Department and failure on the part of a member to notify the Membership Department may have adverse consequences to a member. The choice of a member to use only a post office box address on the Bar membership records shall constitute an election to waive personal service in any proceedings between the Bar and the member.

Please submit address changes to:

Membership Department, State Bar of Georgia
104 Marietta Street, NW, Suite 100
Atlanta, GA 30303
404-527-8717 FAX

You may also submit an address change online at www.gabar.org

Correction

In the February 2003 issue of the *Georgia Bar Journal*, an incorrect biography was run for Letitia A. McDonald, co-author of the article titled "Making a Prima Facie Case for Solemn Form Probate after *Singelman v. Singelman*." Ms. McDonald's biography should read: Letitia A. McDonald is a partner in the Business Litigation practice group at King & Spalding. McDonald received her B.A. from Vanderbilt University and her J.D. from Vanderbilt University School of Law.

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