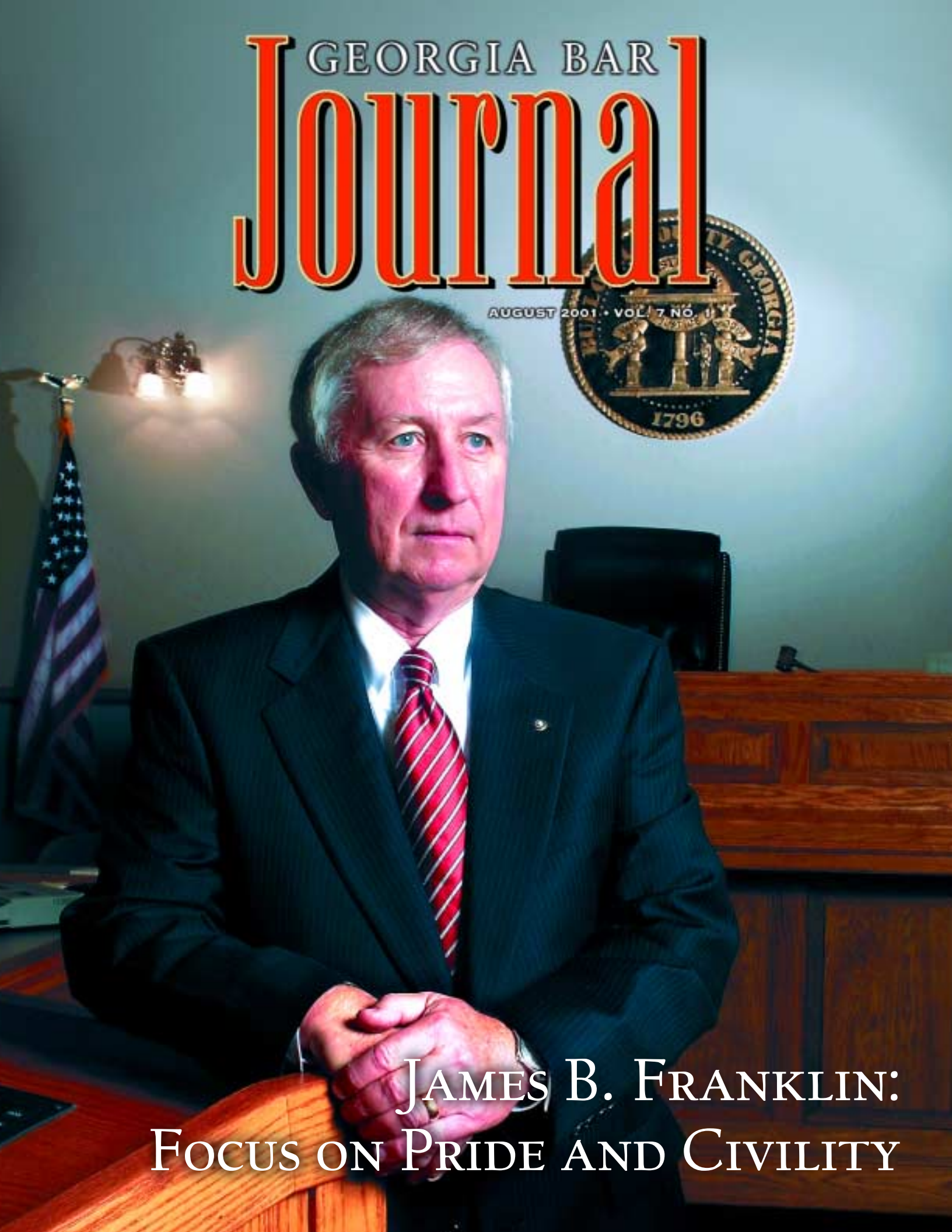
GEORGIA BAR
Journal
AUGUST 2001 • VOL. 7 NO. 1



James B. Franklin: Focus on Pride and Civility

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On the Cover: *Newly installed State Bar President James B. Franklin is pictured in the courtroom of the historic Bulloch County Courthouse in Statesboro. Franklin outlines his plans for the year beginning on page 34.*

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Layout and Design by Lenz Design & Communications, Inc. 119 E. Court Sq. #201, Decatur, Georgia

Publisher's Statement

The *Georgia Bar Journal* (ISSN-1085-1437) is published six times per year (bi-monthly) by the State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303-2934.

One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: $36 to non-members. Single copies: $6. Periodicals postage paid in Atlanta, Georgia. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. **POSTMASTER:** Send address changes to same address.

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Merchant and Gould p/u 6/01 page 4 full page 4c

GEORGIA BAR
Journal
AUGUST 2001 VOL. 7 NO. 1

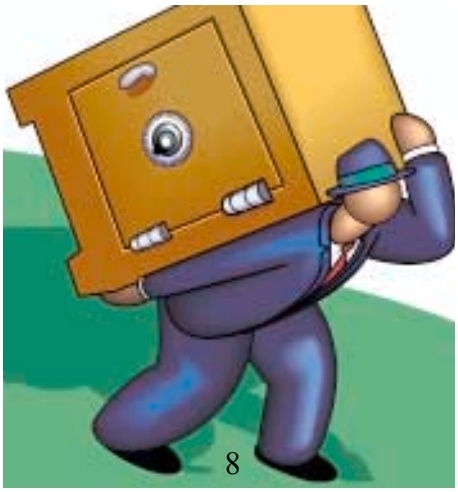
TABLE OF CONTENTS

ANNUAL MEETING

LEGAL ARTICLES

FEATURES

DEPARTMENTS



PRIDE AND CIVILITY IN OUR PROFESSION

By James B. Franklin

In this, my first column for the *Bar Journal*, I would like to share some reflections on my life as a lawyer, why we should constantly exhibit and reinforce our pride in the profession and the need and value of restoring a higher level of civility in dealing with our fellow lawyers.

I do not come from a family of lawyers. In fact, I am the first lawyer in my family. My forbearers have been business people, farmers, engineers and teachers. My undergraduate studies were in the field of engineering as a co-op student at Georgia Tech. During my senior year at Tech, I finally realized that the law was the professional discipline that best fit my interests, personality and talents. I made the decision to go to law school once I received my engineering degree.

If there was one determining factor in that decision, it was respect for comradeship and civility demonstrated by lawyers toward one another. I developed a deep respect for legal gladiators who gave every ounce of effort and talent as adversaries in representing their clients, while during litigation they exhibited civility and respect for each other and at the end of the day were social friends. That decision was one of, if not the best, I have ever made. Not one time in 40 years of law school and the practice have I ever second-guessed or regretted that decision.

I am sure that members of other professions enjoy what they do, but I cannot imagine a level of professional satisfaction that exceeds that of a lawyer who has represented his client in a professional manner and done his or her best. I can truly say that I wake each morning looking forward with excitement and enthusiasm to what the day will hold, what new challenge will arise, what problem will present itself that will be solved through an imaginative application of the law.

What greater gratification can a professional realize than seeing the happiness on the face of two people when they have just adopted a child, the sense of fulfillment of a young couple closing the purchase of their first home or the happiness of the victim of an act of negligence or a defective product when a verdict or settlement assures future medical treatment or financial security? What other professional enjoys the rush of adrenaline generated during the successful cross-examination of an adverse witness, or from making a closing argument to a jury that holds the fate of your client in its hands? What can be more exciting than hearing the bailiff announce to the judge at the end of a long, hard trial the "the jury has reached a verdict" and then having to wait for what seems an eternity as the verdict is delivered to the judge for approval and then handed to the clerk to be read? What could result in a higher "high" then being on the receiving end of a victorious jury verdict or a lower "low" when the jury finds against your client? A deep feeling of satisfaction wells up in my heart when a new acquaintance asks what work I do. I am so proud to answer, "I am a lawyer."

No lawyer will argue that every moment in the practice of law is absolute ecstasy. We all know those moments of frustration, sense of inadequacy, heartbreak and disappointment. Teddy Roosevelt may not have had lawyers in mind when he penned the following words, but they certainly spell out what motivates many of us to toil at the law:

> "Far better it is to dare mighty things, to win glorious triumphs even though checkered by failure, than to rank with those poor spirits who neither enjoy nor suffer much because they live in the gray twilight that knows neither victory nor defeat."

Sky-high stress levels are accepted as an occupational hazard. Hard work and long hours are the norm for successful lawyers. While we lawyers must constantly demonstrate pride in our profession if we expect respect and appreciation from the public, there is one area where we must place special emphasis.

Over the period of time that I have been practicing law, there has been a significant loss in civility between members of the profession. The impact upon the non-lawyer public's perception of lawyers has not been positive. We have provided the cynics and detractors ammunition and created receptive ears for negative media, lawyer jokes and political demagoguery. Lawyers do so much good in their communities. We serve as leaders of Rotary, Kiwanis, Lions and other clubs, members of school boards, presidents of Chambers of Commerce, Development Authority members, chairmen of charity drives, leaders in our churches and synagogues, coaches of Little League teams and the lists goes on. So why are we, as a profession, the butt of so much cynicism and ridicule? Could it be because we have lost so much of our sense of civility in dealing with our brothers and sisters of the Bar? Former Chief Justice Robert Benham best summed up the importance of civility in his decision in a recent case when he said:

> "While serving as advocates for their clients, lawyers are not required to abandon notions of civility. Quite the contrary, civility, which incorporates respect, courtesy, politeness, graciousness and basic good manners, is an essential part of effective advocacy. Professionalism's main building block is civility and it sets the truly accomplished lawyer apart from the ordinary lawyer."

It is my hope that during my year as president and well beyond, we can again collectively embrace civility as a standard

CONTINUED ON PAGE 7

WHAT DO I GET FOR MY DUES?

By Cliff Brashier

The State Bar offers a wide variety of services designed to assist both lawyers and the public. You are invited to take full advantage of these opportunities.

Trained counselors help lawyers overcome personal problems before they adversely affect their clients and families. Speakers help educate the public about the importance of the judicial system in our free society and the role of lawyers in that process. Malpractice insurance and other services used by lawyers are reviewed and recommended by committees of practicing lawyers.

Continued from page 6

within our profession. While not a cure for all negativity directed toward lawyers, I am convinced that it can be an effective weapon in our efforts to increase the respect the public has for us and what we do. Let us always remember, that ours is a profession, not a business. Again to quote Justice Benham, "Do not live just to make a living, rather, live to make a life."

I consider myself blessed to have had the opportunity to be a lawyer and serve the public as a player in the greatest justice system yet devised by man. Please join me in working every day, as hard as we can, to continue to improve the system, the profession and the public's image of the role we play in society.

Thirty-four sections provide valuable education and networking to members who practice in those areas of law. Young lawyers enjoy the fellowship and satisfaction of helping others through a wide variety of public service activities. Peer influence helps lawyers practice with respect and civility. Lawyers assist the law schools in teaching professionalism beginning in the orientation at the start of the first year.

A tremendous amount of information is provided each year through continuing legal education, the *Georgia Bar Journal*, the *Directory*, the Web site (www.gabar.org) and the Annual Meeting. The public is protected from untrained individuals who are unauthorized to practice law. Legislation is proposed and adopted every year to improve the administration of justice in Georgia.

Thanks to the efforts of thousands of volunteer lawyers serving on countless committees, the list of available services goes on and on. Because they donate their valuable time, the State Bar is able to provide this to you while striving daily to keep your dues and other costs of practice at the lowest level possible.

I have often heard the question, "What do I get from my dues?" The answer is more than almost anyone can list and remember. If every volunteer attorney would list and explain the services that they help to offer to lawyers and the public, it would more than fill the pages of this entire *Georgia Bar Journal*. The following letter demonstrates the value of their commitment to our profession far better than I could ever explain it.

Dear Mr. Brashier,

Not too long ago, I experienced what I will simply call as nothing less than an "earth shattering experience." I was already familiar with Natalie Thornwell and her expertise with the billing program, Timeslips. I have been using Timeslips since 1987, a very long time. I purchased a new computer last month. I have never purged any of my billing slips and, therefore, all 14 years worth of slips were, and remain, on my program. During the installation process, however, it soon became apparent that I was forever barred from restoring any of my data into the new program. I just could not imagine a more catastrophic event in the life of a business. Simply put, I was unable to recapture my accounts receivable, unable to bill those clients who owed me money and unable to send out any new bills. I was out of business. The State Bar of Georgia sent me a "savior" and her name is Natalie Thornwell! She helped me with Timeslips by figuring out how to open my doors again. The thought of this problem occurring after 25 years was overwhelming. Natalie to the rescue. I have been absolutely fine since her intervention. That would not have been the case without her! She spent long periods of time on the phone with me to get me through my very real crises.

It is important for me to make certain that you are aware of her unselfish assistance, without which I might be digging ditches and contacting my liability carrier. I am truly grateful for the State Bar providing Natalie Thornwell to me, and to all of our membership and fellow lawyers around the State of Georgia. I know where I would be without her! Please make sure that the State Bar continues to provide this kind of "needed" help to its members.

Joseph Weinberg

Your comments regarding my column are welcome. If you have suggestions or information to share, please call me. Also, the State Bar of Georgia serves you and the public. Your ideas about how we can enhance that service are always appreciated. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 (fax) and (770) 988-8080 (home).

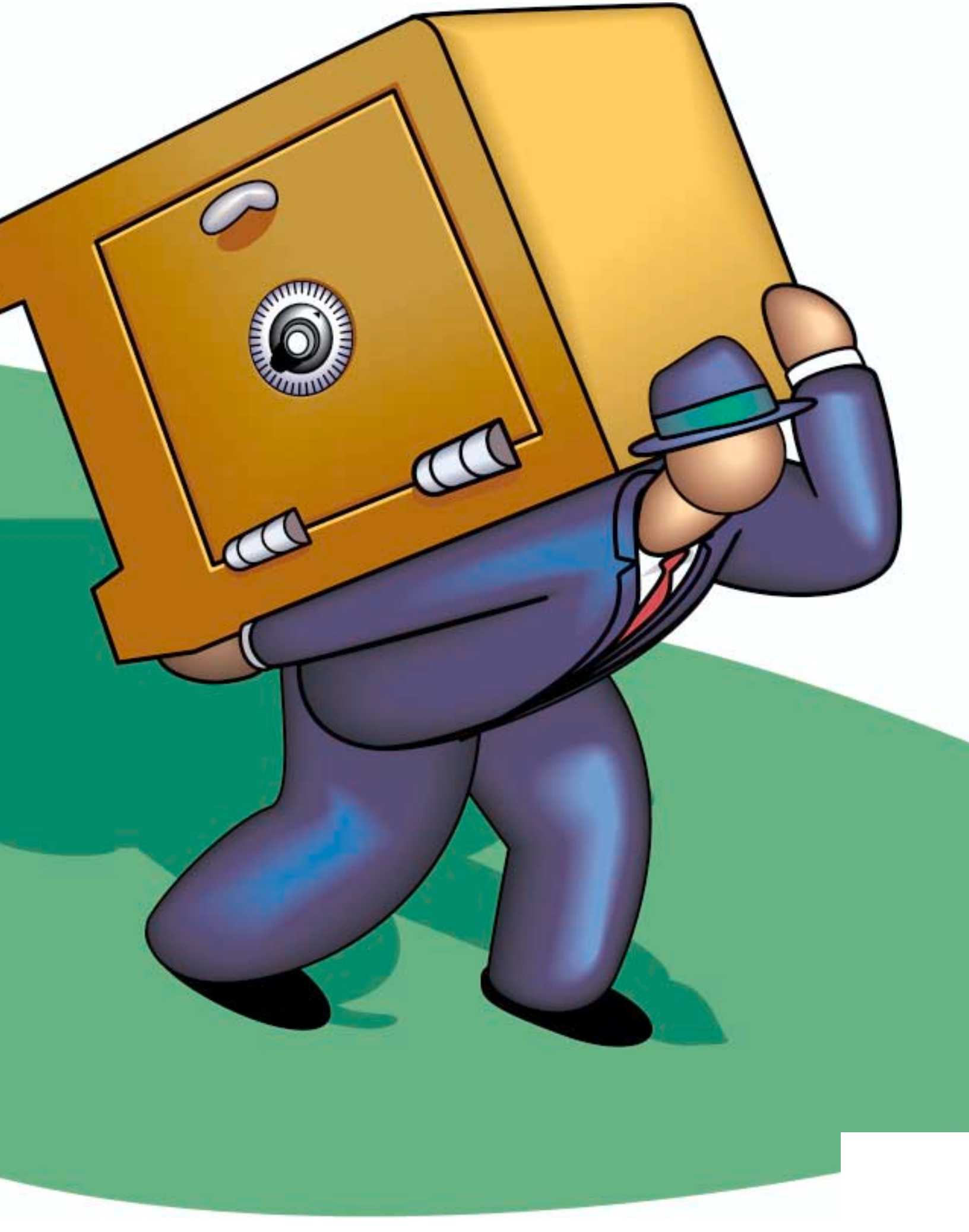
UNDER LOCK AND KEY (AND COVENANT):

Practical Aspects to Protecting Your Clients with Restrictive Employment Covenants

By Bryan L. Tyson

Imagine the scene: after years of toiling away behind a desk and in the library, you finally ditch your stuffy law office and start your own business in one of those neat loft office spaces (complete with pinball machines). You've put together a good business plan, secured initial financing and possess some can't-miss ideas for improving the way that e-commerce is conducted. Of course, you need some help running the whole enterprise (since you're new to the business), so you hire a CEO who will help mold your company's direction and shepherd it into profitability.

Things are looking pretty good for the first four months, although you're struggling with the usual new business problems of managing cash flow, finding customers and maneuvering toward an initial public offering. But, overall, things are going well, until your CEO walks in one morning and announces that he's quitting and going to work for one of your competitors. While this is a substantial set-back, that's the rough-and-tumble world of business. Besides, three more weeks and you'll begin marketing your revolutionary e-commerce solution to your customers. Then, two weeks later, right before the big



day, you wake up and grab your copy of the morning paper. Turning to the business section, you gasp when you see your former CEO's picture on the front page next to an announcement of his recent launch of ***your*** revolutionary e-commerce idea!

You storm into the office, kick your pinball machine and throw the paper on your desk. Noticing that few people seem to be at work, you grab the first person you can find to inquire why everyone is late. "Oh, they've all left to join your former CEO. He and his new company have been calling here over the past several weeks trying to recruit personnel. They were offering $5,000 more than what they knew everybody here was making." "So, is everyone gone?" you ask, bewildered. "Oh no, just the people that were the lead performers. I saw the former CEO looking at the performance reviews in the HR department a few days before he left, so I guess that's how he knew whom to call."

The first question an employer should ask when considering the use of restrictive covenants is "what information or relationships do I want to protect?"

Then the phone rings; it's your largest customer: "Former CEO has just offered us 10 percent off the price you're charging us, and they have the same technology and capabilities you've been touting, so we're going with his company now." You put down the phone, pick it up again, and call your lawyer.

Sounds like something out of a legal mystery novel, right? Not exactly. In fact, Cambridge Technology Partners Inc., a computer services company, recently sued its former CEO and founder, claiming that he competed against the company and recruited employees for a new company, all in violation of a contractual agreement.[1] iXL Inc., a consulting unit of Atlanta-based iXL Enterprises, sued a former in-house recruiter, alleging that he had improperly solicited iXL employees for a new company.[2] More recently, Monster.com, the online job site, sued its former president alleging, among other things, that he raided Monster's employees in an attempt to obtain confidential and proprietary information.[3]

Such matters are not, however, confined to high-tech or Internet employers. Other recent cases have involved allegations that a fireworks salesman[4] and a pizza box salesman[5] improperly competed against their former employers. Because all employers generally have employees, customers and important business information, all employers are subject to having these valuable assets misappropriated. This article discusses the practical aspects of preventing such misappropriation by drafting and enforcing restrictive employment covenants, which are generally defined as contractual arrangements with employees that prohibit certain types of post-employment activity.[6] This article will discuss how employers should decide what information should be protected with restrictive employment covenants, which employees should be asked to sign restrictive covenants and what types of restrictive covenants may be appropriate in various situations. The article then examines some particular aspects of Georgia restrictive covenant law of which employers should be aware. Finally, the article offers some practical advice on drafting, updating and enforcing restrictive employment covenants.

One Size Does Not Fit All

The first question an employer should ask when considering the use of restrictive covenants is "what information or relationships do I want to protect?" Obviously, what's important to an individual business — and thereby what's worth protecting with restrictive employment covenants — will vary depending on the type of business. There are, however, several general categories of information that all employers should consider protecting: customer relationships; financial data; employee relationships; proprietary or confidential business information; and intellectual property. By entering into restrictive employment covenants with the personnel that have significant access to this information, an employer can ensure that such information is protected.

But what types of restrictive covenants will be most effective in protecting this information? Consider the following general overview of the main types of restrictive covenants. A "non-competition" covenant generally restricts an employee from working for a competitor of the employer, while a "non-solicitation" covenant generally prohibits an employee from soliciting customers of the employer. A "non-piracy" covenant prohibits an employee from soliciting employees of the employer.[7] A "non-disclosure" covenant prohibits a former employee from disclosing confidential, proprietary or trade secret information or materials of the former employer.[8] Finally, a "return of property" covenant provides that an employee will return

Gilsbar full page 4c p/u june issue page 73

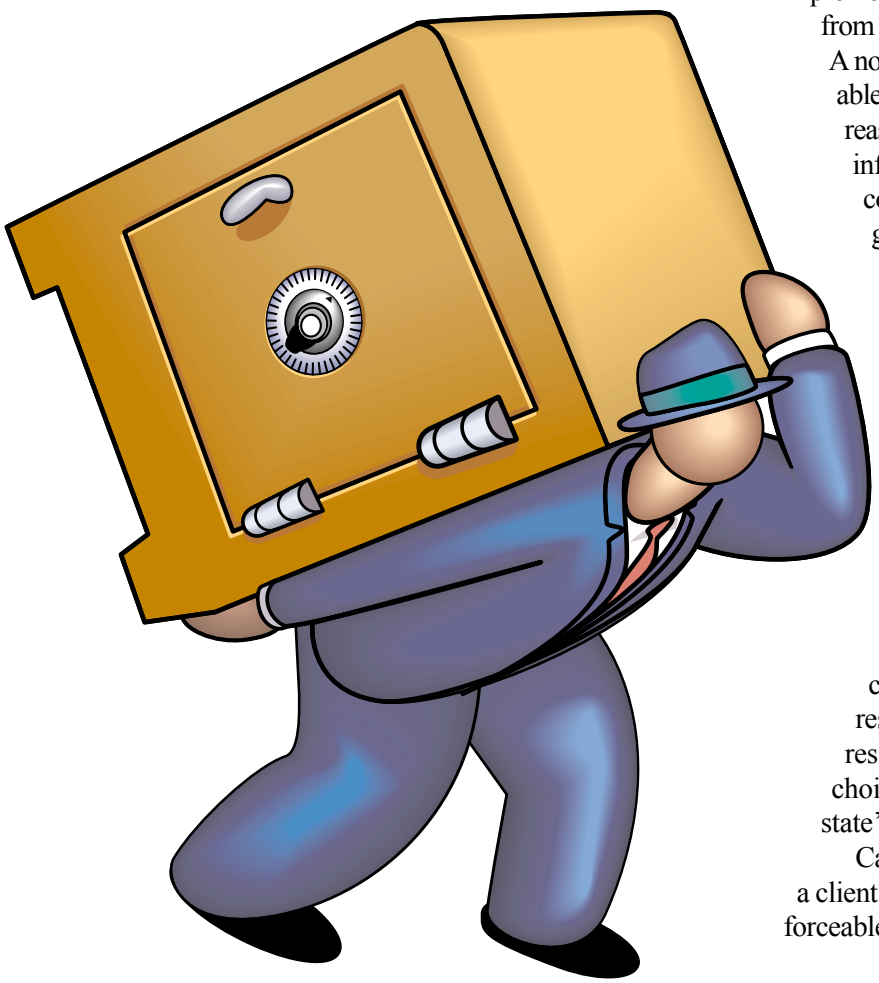
all tangible forms of the employer's property upon termination of the employment relationship.

Determining exactly which covenants should be used in a given situation will depend on both the kind of information the employer seeks to protect, as well as the job responsibilities of the employee. By analyzing what is important to a business, and then determining who in the company has access to or interacts with that interest, you can determine which employees should be asked to sign restrictive covenants, as well as which types of covenants would be best to use with various employees.

Georgia On Your Mind

One challenging aspect of drafting restrictive employment covenants is that they are purely creatures of state law, which means there are great differences in what employers can restrict and how they can go about doing so from state to state. For example, California law strictly prohibits an employer from requiring or even suggesting that an employee sign a non-competition covenant.[9] Indeed, in a recent California case, a jury ordered Aetna Inc. to pay a former employee $1.2 million after the employee was allegedly fired for refusing to sign a non-competition covenant.[10] Tennessee courts, on the other hand, will rewrite employment covenants to make them "reasonable" and thereby enforceable, even if the employer makes a mistake in originally drafting the covenant(s).[11]

Georgia's attitude toward restrictive covenants is somewhere in the middle. While such covenants are considered to be in partial restraint of trade, they are generally enforceable if found to be "reasonable."[12] In general, Georgia courts will determine the reasonableness of covenants by using a three-part test that examines the covenant's time duration, geographic restrictions and scope of activity prohibited.[13] A non-competition covenant is generally enforceable where it prohibits a former employee, for a reasonable time, from working in his same position in a territory in which he previously worked.[14] A non-solicitation covenant is generally enforceable when it prohibits a former employee, for a reasonable time, from actively soliciting either customers with whom he had contact while employed by the former employer,[15] or the employer's customers in the area where the former employee performed substantial work.[16] A non-piracy covenant is generally enforceable if it prohibits a former employee, for a reasonable time, from soliciting the employer's present employees.[17] A non-disclosure covenant is generally enforceable where it prohibits a former employee, for a reasonable time, from disclosing confidential information, as that term is defined in the covenant.[18] Return of property clauses are generally enforceable irrespective of any limits on time duration, geographic restrictions or scope of activity prohibited.[19]



Two additional aspects of drafting restrictive employment covenants in Georgia are important to remember. First, Georgia will not "blue-pencil" or modify any attempted covenant.[20] That is, if the covenant is overbroad (and therefore "unreasonable") the court will refuse to enforce it, and perhaps even invalidate other covenants in an agreement as well.[21] Second, Georgia courts will generally apply Georgia law to restrictive covenants involving Georgia residents, even if the agreement contains a choice-of-law provision that selects another state's law as the law governing the covenant.[22] Care should be taken, therefore, to ensure that a client's restrictive covenants are valid and enforceable in the various states where the client

operates, including Georgia. Different covenants may be necessary in different states. While it is possible to draft covenants that will be enforceable in several jurisdictions, such "least common denominator" covenants often fail to provide clients with all of the protections to which they are entitled under many state laws. While "one agreement for everyone" can seem like a tempting, simple solution — especially for multi-state employers — it can unnecessarily expose a client's business to damage by former employees.

One frequent mistake that employers make once they have had an employee sign a restrictive covenant is that they let it collect dust.

Immediately, If Not Sooner

As a practical matter, most of the conduct that employers want to prohibit — solicitation of valuable customers, revelation of trade secrets or other confidential business information to competitors, and competition by key former officers — is conduct that can cause great harm in a short amount of time. Therefore, it is imperative that the conduct be stopped immediately. This requires the employer to request a temporary restraining order followed by a preliminary injunction under Ga. Code Ann. § 9-11-65 while the action is pending. There are two reasons for employers to seek preliminary injunctive relief: (1) it immediately stops the conduct that could cause great harm to, and even possibly destroy, a business; and (2) it provides an incentive for the opposing party to settle the action on terms generally favorable to the employer because the opposing party will be unable to continue any of its activity until the end of the trial, at the earliest.[23]

K.I.S.S.

So, now that you know the value and necessity of the injunction, what's the best way to position your client to get one? Most of us have heard the phrase K.I.S.S. —"keep it simple, stupid" — but it applies with particular force in drafting effective restrictive employment covenants. First, covenants should obviously be drafted in "plain English" and all unnecessary legal jargon should be avoided. Second, employers should limit the types of restrictive covenants used to those deemed necessary to protect the employer's business. For example, an employer seeking to protect its customer relationships from misappropriation by a salesperson could protect those relationships solely with a non-solicitation covenant. A non-competition covenant would likely be unnecessary, because the salesperson's most valuable method of competing against the former employer — soliciting former customers — is foreclosed by the non-solicitation covenant.

On the other hand, several covenants may be required when considering a CEO, the chief architect of the employer's overall business strategy. For example, a non-competition covenant may be the best option to ensure that the CEO doesn't end up using his or her status in the industry or some of the employer's business strategies to help a competitor after he or she leaves your client's employment. A non-disclosure covenant may also be necessary, however, if the CEO has confidential business information that the employer does not want disclosed to competitors. Limiting the types of restrictive employment covenants used in an employment contract not only simplifies the agreement between the employer and employee, but also helps eliminate the risk that misdrafting or overdrafting of one covenant could lead to the unenforceability of other covenants in the contract.[24]

Finally, a simplistic approach in drafting restrictive covenants will have a deterrent effect. When an employer or other entity threatens to enforce a restrictive covenant, the employee is likely to seek legal counsel regarding the matter. Put yourself in the position of the former employee's attorney: if you are presented with a clear, easily understandable covenant that appears enforceable, you will likely advise your client that while he may attempt to overturn the covenant, it appears enforceable. Faced with an enforceable covenant, the employee will likely abide by the covenant or settle on terms favorable to the employer. Alternatively, long-winded, cumbersome, confusing covenants invite challenge and are more likely to result in protracted litigation.

And Now For This Brief Update

One frequent mistake that employers make once they have had an employee sign a restrictive covenant is that they let it collect dust. Covenants should be reviewed periodically to ensure that they continue to meet the

CONTINUED ON PAGE 76

Acquisition of Trademark Rights Under United States and Georgia Law

By Virginia S. Taylor and Theodore H. Davis Jr.

The United States, like virtually all industrialized countries, is increasingly becoming a branded society. Although Georgia and federal unfair competition law originally protected trademarks and service marks against passing off, brand names and symbols no longer merely indicate the origin of their associated goods and services, but instead have themselves become commodities.[1] For example, because of their drawing power, brand names are often at the heart of corporate acquisition strategies.[2] They are routinely offered as collateral to secure loans, qualify for capital gains treatment,[3] and are property of the estate under the U.S. bankruptcy code.[4] Indeed, the importance of distinctive brand names and logos is such that a strong brand portfolio can be among a company's most valuable assets.[5]

The owners of powerful trademarks such as the BUDWEISER®, COCA-COLA®, and MARLBORO® marks did not, however, come to enjoy their assets as accidental windfalls. Rather, the strength of such marks reflects careful selection and maintenance by their owners. Undertaken properly, such strategies can often yield returns far exceeding those attributable to other forms of capital investment.

This article briefly summarizes the most important aspects of the law of trademarks, service marks, collective

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marks and certification marks in the United States.[6] This article first provides a brief introduction to U.S. and Georgia unfair competition law. Next, the article examines the acquisition of rights to marks in the federal system of state and national government. The article then sets forth steps that may be taken by U.S. mark owners to protect the goodwill represented by their marks. Finally, the article suggests precautions properly adopted by companies considering the selection of marks to ensure that their marks do not conflict with the rights of other mark owners and that those marks will be entitled to a significant degree of protection.

U.S. Trademark Rights - An Introduction

Trademarks can take many forms, including words, numbers, letters, symbols, slogans, colors, characters, graphic designs, smells, configurations, trade dress, sounds, and any combinations of these items.[7] State and federal law protect not only trademarks, but also service marks, collective marks and certification marks. A service mark is the counterpart of a trademark, but identifies services rather than goods.[8] A collective mark is owned by a cooperative, association, or other collective group and distinguishes the goods or services of the members from those others.[9] A collective mark also can indicate membership in the collective group or organization.[10] A certification mark represents a certification by the owner of the mark that the goods or services of others meet its standards.[11] Those standards can be quality, method of manufacture, regional origin or some other characteristic. The owner of a certification mark (*e.g.,* an entity formed to certify goods as made of HARRIS TWEED or ICELANDIC WOOL) cannot itself be the source of goods or services under the mark or rights to the mark will be lost.[12]

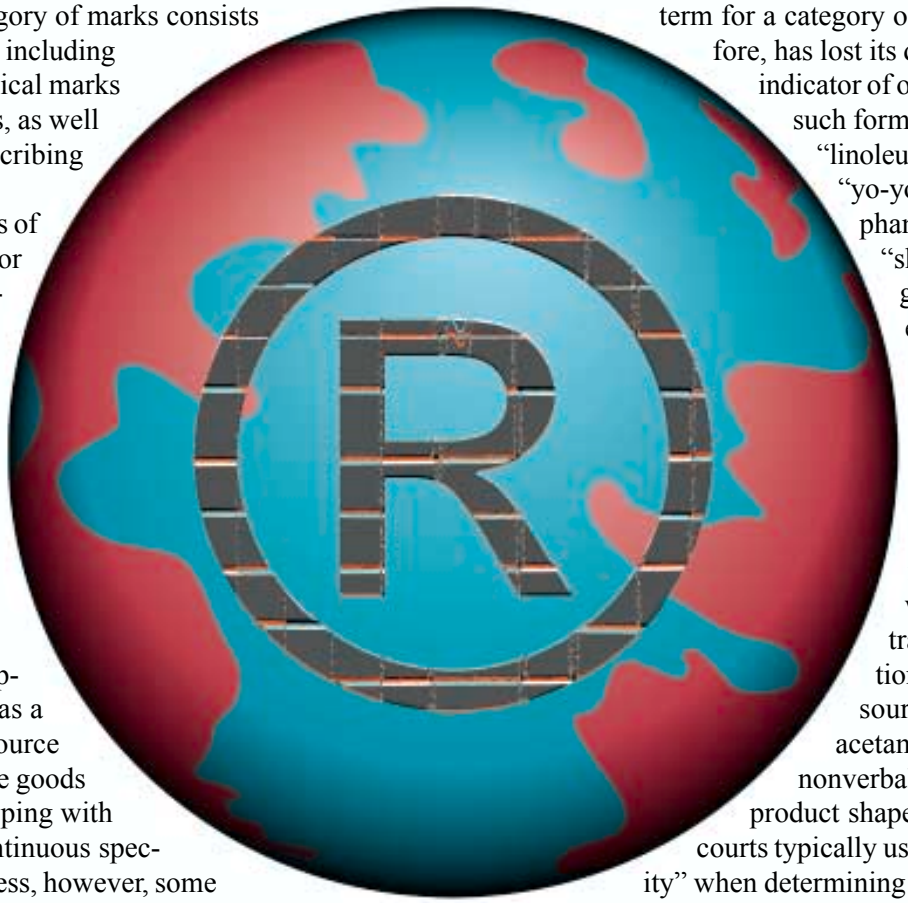
A principal requirement for trademark protection is that the mark must be "distinctive," or capable of distinguishing the products of the owner.

A principal requirement for trademark protection is that the mark must be "distinctive," or capable of distinguishing the products of the owner.[13] Trademarks vary in distinctiveness, and a mark may be either inherently distinctive or, alternatively, may acquire distinctiveness as a result of recognition by the relevant public.[14] The degree of inherent or acquired distinctiveness of a mark is relevant to the scope of protection to which it is entitled. A highly distinctive and famous mark is considered "strong" and will be protectable against use even on unrelated goods (*e.g.*, KODAK cigars or candy).[15] On the other hand, a non-distinctive and "weak" mark may be entitled to only limited protection against use of the same or similar marks on identical or closely related goods (*e.g.*, GOLD MEDAL for food, athletic equipment and a variety of other products).[16]

In determining the strength of particular marks, U.S. courts frequently refer to a "spectrum" of distinctiveness, according to which marks are classified as coined, arbitrary, suggestive, descriptive and generic.[17] The most distinctive and protectable marks are unique, coined terms having no inherent linguistic meaning. Examples of coined marks include the invented words EXXON®, KODAK®, and XEROX®.[18] Such terms receive a wide scope of protection because prohibiting their use by others does not deprive competitors or the public of any freedom of speech.[19]

Arbitrary marks, which are next in order of distinctiveness, are words having a common meaning but no connotation in association with the user's goods. Consequently, even if it is in common use, a mark may nevertheless be considered arbitrary if it is "applied to a product or service unrelated to its meaning, so that the word neither describes nor suggests the product or service."[20] Examples of arbitrary marks include CAMEL® cigarettes, ARROW® shirts, and APPLE® computers. Like coined terms, these marks typically are entitled to a broad scope of protection because they do not deprive competitors of the ability to describe their own products freely.

The third category of distinctiveness includes suggestive marks, which, as the name indicates, suggest some of the qualities of the user's product or service but do not directly describe them: "A term is suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature of [the] goods."[21] Examples of suggestive marks are WORD® and WORDPERFECT® for word processing software. Suggestive marks are considered inherently distinctive and capable of protection against use of similar marks upon their adoption.[22] They typically do not, however, receive as broad protection as coined or arbitrary marks. In general, suggestive marks that have not acquired a high degree of fame are likely to be protected only against use of similar marks for related goods and services.[23]



The fourth category of marks consists of descriptive terms, including surnames, geographical marks and laudatory marks, as well as those directly describing the characteristics, functions or qualities of the user's products or services.[24] Descriptive marks are protectable only after they have acquired "secondary meaning" or, in other words, public recognition of the term as not simply referring to the nature of the user's products in a descriptive sense, but also as a designation of the source or sponsorship of the goods or services.[25] In keeping with the concept of a continuous spectrum of distinctiveness, however, some terms are only slightly descriptive, and need only a minimum level of usage to acquire secondary meaning, while others may be highly descriptive and need substantial evidence of public recognition to establish secondary meaning.[26] Significantly, the U.S. Supreme Court has held that product shapes may be considered descriptive marks at best, and therefore always require a showing of secondary meaning for protection.[27]

It is possible for a descriptive mark to acquire a high degree of secondary meaning and even become extremely famous. When that happens, the mark is entitled to a broad scope of protection. For example, COCA-COLA® and INTERNATIONAL BUSINESS MACHINES® are marks that were originally descriptive, but have become well known as designations of origin and are therefore entitled to substantial trademark protection.[28] In the absence of such a high degree of fame, descriptive marks, even if they have acquired sufficient secondary meaning to be protectable as trademarks, generally are entitled to protection only against use of identical marks for closely related goods.

The final category is composed of generic terms, which in fact are not marks at all. A generic term is the common descriptive name for a product or service, such as "software" for computer programs, "car" for automobiles or "shoe" for footwear.[29] A generic term also may be a mark that has fallen into common usage as a general term for a category of products and, therefore, has lost its distinctiveness as an indicator of origin. Examples of such former marks include "linoleum," "kerosene," "yo-yo," "escalator," "cellophane," "aspirin" and "shredded wheat." A generic term cannot be exclusively appropriated and may not be protected as a mark.[30] For this reason, producers of new products often provide generic terms to identify their products while preserving their trademarks as designations of the products' source (*e.g.,* TYLENOL® acetaminophen). Where nonverbal designations such as product shapes are concerned, courts typically use the term "functionality" when determining whether the designation is necessary to competition in an industry and therefore unprotectable.[31]

Establishing Trademark Rights in a Federal System

Unlike the situation found in most civil law jurisdictions, where rights are created by registration, common law trademark rights in the United States historically have been established through *use* of the mark in commerce:

> Rights can be acquired in a designation only when the designation has been actually used as a trademark . . . or when an applicable statutory provision recognizes a protectable interest in the designation prior to actual use. A designation is "used" as a trademark . . . when the designation is displayed or otherwise made known to prospective purchasers in the ordinary course of business in a manner that associates the designation with the goods, services, or business of the user . . . .[32]

As a consequence, trademark rights can be abandoned through an absence of use of the mark. Thus, for example, the Supreme Court of Georgia has affirmed the dismissal of an action to protect a mark that had not been used by the plaintiff for 15 years.[33]

In the absence of a federal registration, which is discussed below, the geographic scope of trademark rights in the United States is concurrent with the scope of the user's reputation. Thus, for example, it is possible under the common law for two or more good-faith users to adopt the same mark for the same goods and for each establish areas of exclusive ownership rights if:

(1) The junior user offers its products or services in a geographic area so remote from that of the prior user that it is unlikely the public will be confused or deceived; and

(2) The junior user's adoption is in good faith (without knowledge of the senior user's use) and outside of the senior user's area of market penetration and "zone of protection" (the area to which the senior user's reputation extends).[34]

In such circumstances:

(1) Each user is entitled to prevent the other from entering its "zone of protection;" and

(2) Both parties have the right to expand into unoccupied territory so long as no customer confusion is likely to result (*i.e.,* if the respective territories remain remote).[35]

A. The Federal Registration System

Because the common law sometimes allowed junior users to misappropriate the goodwill associated with senior users' marks and then escape liability by arguing that they were unaware of the prior use,[36] federal trademark laws were established in part to create nationwide protection for registered marks, and Congress repeatedly has expanded the protection available to mark owners. In 1946, congressional passage of the Lanham Act[37] recognized service marks and expanded the remedies available to the owners of federal trademark registrations. In 1988, the landmark Trademark Law Revision Act (TLRA)[38] created the "intent-to-use" application, which, contingent upon the ultimate issuance of a registration, confers nationwide priority of rights as of the application's filing date.[39] In contrast to the common law system of trademark protection, therefore, applicants in the United States can now procure nationwide priority for marks at a date predating the mark's actual use. Thus, to a certain extent, U.S. trademark law has become harmonized with the laws of most other countries by allowing registration applications without prior use. Some of the more significant features of the framework erected by the Lanham Act include the following:

1. The Federal Registration Process in General

The process of applying for a federal trademark registration is subject to various technical requirements. A proper application must indentify and be signed by the applicant and must include a filing fee, a depiction of the mark and a list of goods and services covered by the application. Upon receipt of a application, the United States Patent and Trademark Office (PTO) grants a filing date and assigns a serial number.[40] The application then is reviewed by an examining attorney, who determines the mark's registrability, including an evaluation of its inherent or acquired distinctiveness and the acceptability of the specification of goods and services recited in the application. In most cases, the examining attorney issues an office action setting forth specific grounds for initially refusing the application. The applicant is provided an opportunity to respond in writing within six months of the rejection.[41] If the objection is overcome, the application is passed on for publication in the PTO's *Official Gazette*.[42] If the objection is not overcome and a final refusal is issued, the applicant has an opportunity for administrative and judicial appeal.[43]

Any party who believes it may be damaged may file a notice of opposition to the registration of a mark published in the *Official Gazette*.[44] If no objection is made, or if any opposition is overcome, then (1) in the case of a use-based application, the registration will issue, or (2) in the case of an "intent to use" application, a Notice of Allowance will issue. The applicant for an intent to use registration then must file a Declaration of Use supported by acceptable specimens within six months after issuance of a Notice of Allowance or obtain extensions of time until this evidence of use can be filed.[45] An initial application for a six-month extension will be automatically granted. Subsequent extensions, however, require a showing of good cause. Payment of extension fees is also required and the maximum extension period allowed is a total of three years from the date of the Notice of Allowance.[46]

The primary requirement for maintaining a federal registration is the filing of an Affidavit of Use between the fifth and sixth anniversary of the registration, between the ninth and tenth anniversary of the registration, and then every 10 years thereafter.[47] The registrant also must file an application for renewal every 10 years.[48] As discussed in greater detail below, an Affidavit of Incontestability also may be filed after five years of continuous use.[49]

2. Statutory Bars to Registration

Significantly, not all marks are eligible for registration under U.S. law. Rather, the Lanham Act contains both absolute and conditional prohibitions against the registration of certain marks, which may come into play in two circumstances: (1) an administrative refusal by the PTO in the application process to register a particular mark; and (2) a challenge to the registrability of the mark by an

interested party in either administrative or court litigation.

a) Absolute Prohibitions

Under section 2 of the Lanham Act, a trademark *cannot* be registered if it:

(1) consists of or comprises immoral, deceptive or scandalous matter; or matter that may disparage or falsely suggest a connection with individuals, institutions, beliefs or national symbols;

(2) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation of those items;

(3) consists of or comprises a name, portrait or signature identifying a particular living individual except with his or her written consent;

(4) is primarily geographically desriptive, misdesriptive; or

(5) consists of functional material.[50]

These provisions are, for the most part, straightforward and self-explanatory. The test for deceptiveness under section 2(a), however, evolved over time and deserves some attention. Formerly, the issue of deceptiveness was decided by evaluating the intent of the trademark owner. Today, instead of evaluating intent, a mark will be found deceptive if it implies a falsehood that would "materially affect" the purchaser's decision to buy the goods or services sold under the mark.[51] Thus, the test is one of impact on the purchaser, rather than intent of the mark owner.[52] For example, the mark ITALIAN MAID for a detergent that is not made in Italy might be registrable because a purchaser probably would not purchase the cleanser because it was thought to be Italian made. If the

product were pasta, however, a different result is probable.

b) Conditional Prohibitions

Consistent with the general hostility under U.S. law to claims of exclusive rights to descriptive terms generally, section 2(e) of the Lanham Act prohibits the registration of any mark that (1) is merely descriptive or deceptively misdescriptive, or (2) is primarily geographically descriptive or (3) is primarily merely a surname, unless the mark has acquired secondary meaning.[53] In addition to the methods of demonstrating secondary meaning discussed previously, an applicant in the registration context may rely on a presumption of distinctiveness arising from five years of continuous and exclusive use.[54] This provision contrasts with the absolute bars to registration contained in section 2(a)-(c), under which marks are not registrable even if they have acquired secondary meaning.[55]

c) Previously Registered and Used Marks

Section 2(d) of the Lanham Act also precludes registration of a mark "which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely . . . to cause confusion, or to cause mistake, or to deceive . . . ."[56] Moreover, although the PTO will not on its own initiative reject an application on this basis, any interested party has the opportunity to challenge the registration of a mark that it believes "dilutes" the distinctiveness of its own marks.[57] The tests for "likelihood of confusion" and "dilution" are outlined below.

3. Advantages to Federal Registration of Marks

Federal registration of a mark carries with it a number of competitive advantages. Two of the most important are:

a) Constructive Notice

The 1946 Lanham Act expanded the geographic scope of trademark rights by establishing that registration constitutes "constructive notice" of the mark throughout the United States.[58] Because a junior user could obtain rights in a mark only by using it in good faith in a geographic area remote from an earlier user of a mark, constructive knowledge based upon a federal registration eliminated the ability to allege good faith adoption after the registration issued.[59] For the first time, federal law provided a U.S. registrant with the ability to protect its trademark rights against subsequent good faith users, where the registrant was not making use of the mark in all parts of the country.[60] Consequently, the Lanham Act encourages mark owners to register their marks quickly by providing that one who adopts and uses a mark confusingly similar to a federally registered mark after the filing date for an application cannot ordinarily acquire any rights superior to those of the federal registrant.[61]

b) Incontestability

Under U.S. law, the fifth anniversary of a registration's issuance is significant for two reasons. First, prior to that date, a registration may be canceled for any reason that would have prevented its issuance in the first place.[62] Thus, for example, any party enjoying prior use of a confusingly similar mark may petition to cancel the registration in litigation before either the Trademark Trial and Appeal Board or a federal court.[63] Once a registration is five years old, however, section 14(3) of the Lanham Act dramatically limits the grounds upon which cancellation may be sought, eliminating in particular allegations that a mark is merely descriptive without secondary meaning or that the petitioner was using the mark prior to the registrant.[64]

Second, the Lanham Act also contains a provision allowing a federally registered mark to become "incontestable" after five years of continuous and exclusive use following registration, and provided that the registrant files a so-called "section 15 affidavit" averring that the mark has been in continuous use during this period and that there had been no judicial decisions adverse to the owner's claims of rights to it.[65] Prior to the filing of a section 15 affidavit, a registration constitutes "prima facie" evidence that the registered mark is a valid one (*e.g.*, that it is not merely descriptive).[66] Although this presumption shifts the burden to the defendant in an infringement action to prove that the plaintiff does not own a valid mark,[67] the defendant nevertheless may rebut the presumption.[68]

Incontestability, however, eliminates the ability of defendants charged with infringement to challenge the validity of the mark on a variety of grounds, including prior use, descriptiveness, use as a surname, and use as a geographic name.[69] Thus, one notable U.S. Supreme Court case upheld a registrant's ability to foreclose competitors from using marks similar to the PARK 'N FLY® mark for airport parking, notwithstanding the fact that the mark in question might have been challenged as descriptive during the five years after its registration.[70] Incontestability, however, does not foreclose challenges on certain grounds, including fraud, functionality abandonment, genericness, "fair use" (*i.e.*, use in a non-trademark sense), and certain equitable principles (including laches, estoppel and acquiescence).[71]

B. State Trademark Law

Although federal law constitutes the largest body of trademark law, the importance of state statutes is often underestimated. In addition to state common law protection, most states have enacted statutes prohibiting unfair competition, including trademark infringement. For example, it is possible to register trademarks in every state, in addition to registering them in the PTO.[72] The trademark statutes in most states are based on the Model

State Trademark Act, which recognizes service marks, collective marks and certification marks, as well as trademarks. The Georgia version of the Model Act, as well as other ancillary statutes dealing with trademark protection at the state level, may be found at O.C.G.A. §§ 10-1-440 through 10-1-472.

Although state registrations are of limited value once a federal registration has issued,[73] they usually may be obtained quickly with minimal examination and, in many states, may afford certain additional remedies against infringement.[74] Under Georgia law, for example, a plaintiff owning a state registration may elect to receive liquidated damages in the amount of $10,000 if infringement has occurred with knowledge of the mark's registered status; additional state law remedies also are available in cases of trademark counterfeiting.[75] Otherwise, the primary value of a Georgia registration is prima facie evidence that the mark is registered at the state level.[76] Significantly, registrations of fictitious names under O.C.G.A. §§ 10-1-490 through 10-1-492 and corporate name reservations under O.C.GA. §§ 10-1-401 through 10-1-403 do not in and themselves create protectable rights.[77]

When litigating, it is often helpful to hold the state registration for the mark in the forum where suit is brought, lest the defendant obtain the registration and confuse the court. Most states do not search federal registrations or deny a registration merely because another party owns a federal registration of a similar mark.

Protection of Trademark Rights

A. Infringement Actions

"Likelihood of confusion" is the basic test of infringement under the federal Lanham Act,[78] as well as under the Georgia common law[79] and the Model State Trademark Act,[80] the Uniform Deceptive Trade Practices Act[81] and the state fraudulent encroachment statute.[82] Section 32 of the Lanham Act, for example, prohibits the use of "any reproduction, counterfeit, copy, or colorable imitation of a registered mark . . . which . . . is likely to cause confusion, or to cause mistake, or to deceive."[83] Similarly, section 43(a) of the Lanham Act, which protects both registered and unregistered marks, provides for liability for

> any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which . . . is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person . . . .[84]

A finding of likelihood of confusion may rest on a variety of factors, including (1) the strength or weakness of the plaintiff's mark, (2) the similarity of the marks, including a comparison of sound, appearance, and meaning, (3) the similarity of the products or services, (4) the similarity of the purchasers and channels of trade, (5) the similarity of advertising media, (6) the degree of care purchasers are likely to exercise, (7) the intent of the subsequent user and (8) evidence of actual confusion.[85] Although not essential, showings of bad faith intent or actual confusion are generally the strongest evidence of likelihood of confusion.[86]

Foreign nationals considering the use of foreign words as trademarks in the United States should note that under the "doctrine of foreign equivalents," words in other languages are translated into English and then tested for likelihood of confusion. Thus, a foreign word is regarded in the same way as its English equivalent in determining whether its use is likely to cause confusion with another's mark.[87] For example, the PTO has refused registration to the mark CHAT NOIR based on an existing registration of its English translation, BLACK CAT.[88]

Once a plaintiff has established infringement, such a finding gives rise to a variety of equitable and monetary remedies. These may include (1) recovery of all or a portion of defendant's profits, (2) compensation for any damages sustained by the plaintiff and (3) recovery of the costs of legal proceedings.[89] In addition, the court may award up to treble damages and, in exceptional cases, recovery of attorneys' fees to the prevailing party.[90] These remedies are available not only for trademark infringement, but also for federal unfair competition or false

advertising.[91]

B. Antidilution Actions

Independent of the relief available in an infringement action, the owners of certain marks also may be eligible for protection against the use of the same or similar marks that threaten the distinctiveness of the senior mark. Relief against this type of injury is authorized by so-called "antidilution" statutes, which are generally available only to the owners of truly famous marks. Consequently, if a mark has not acquired a high degree of fame and distinctiveness, its owner for the most part will be limited to causes of action based on the likelihood of confusion standard.[92]

Where a mark *is* sufficiently famous and distinctive to qualify for protection under an antidilution theory, relief may be available under both state and federal law. The federal antidilution statute, which became effective in January 1996, provides that:

> The owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark becomes famous and causes dilution of the distinctive quality of the mark . . . .[93]

Over half the states have enacted similar antidilution statutes, with others adopting the doctrine by judicial decree. Most state antidilution statutes are comparable to the relevant provisions of the O.C.G.A., which provides:

> Every person, association or union of working men adopting and using a trademark, trade name, label or form of advertisement may proceed by action; and all courts having jurisdiction thereof shall grant injunctions to enjoin subsequent use by another of the same or any similar trademark, trade name, label or form of advertisement if there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of the trademark, trade name, label or form of advertisement of the prior user, notwithstanding the absence of competition between the parties or of confusion as to the source of the goods or services . . . .[94]

Antidilution statutes reflect the growing trend in the United States toward recognition of trademarks as a property right rather than merely as a means to aid consumers to identify goods they wish to purchase and to avoid confusion and deception. Historically, these statutes have provided broader protection than infringement or unfair competition causes of action on two independent theories: (1) tarnishment of business reputation; and (2) "whittling away" of the distinctiveness of the mark.[95] In more recent years, they also have provided a basis for challenging "cybersquatting," or the practice of incorporating famous trademarks into Internet domain names.[96]

Antidilution statutes do *not* require proof of likelihood of confusion on the part of the purchaser for the trademark owner to prevail.[97] In contrast to the remedies available against infringement of a mark, however, and absent unusual circumstances, only injunctive relief is available in dilution cases.[98] That is to say, a successful plaintiff on this theory is typically entitled only to a court order prohibiting further use of the defendant's mark or domain name.

Although antidilution statutes originally were intended to protect truly famous marks, they have been interpreted in some jurisdictions to extend to marks that are famous or well-known only in a limited geographic area,[99] or that are notorious in niche markets.[100] Thus, for instance, a local restaurant or real estate developer may be able to stop unrelated uses that "dilute" their names or marks, just as Rolls-Royce Motors Ltd. or the Coca-Cola Company could enjoin sellers of cigars or candy bearing the ROLLS ROYCE® or COCA-COLA® marks. By the same token, Mead Data Central, the owner of the LEXIS® mark, was initially successful in blocking Toyota's efforts to market automobiles under the LEXUS® mark on a showing that the LEXIS® mark was famous among a particular segment of the population.[101]

Although Toyota ultimately prevailed on appeal, the problems this litigation created for its marketing efforts were enormous, even though Mead Data Central spelled its mark differently and used it in an entirely different field.

There are other issues that make application of antidilution statutes problematic. Although most state statutes, including Georgia's, allow for relief on a showing by the plaintiff that the defendant's use is merely "likely" to dilute the distinctiveness of the plaintiff's mark, the federal statute does not contain similar language. This omission has led some courts to conclude that only a showing of actual dilution will suffice for liability.[102] In contrast, however, others have concluded that a showing that dilution is merely likely will support relief.[103] The eligibility of particular marks for protection under antidilution statutes, therefore, is an issue that therefore requires careful consideration by competent counsel.

C. Anticybersquatting Actions

1. The Anticybersquatting Consumer Protection Act

When cybersquatting first emerged in the mid-1990s, Congress perceived that the existing infringement and dilution remedies were inadequate to combat this new practice. This perception led to the passage and enactment of the Anticybersquatting Consumer Protection Act of 1999 (ACPA),[104] which, although technically not a piece of the federal Lanham Act, is nevertheless codified as section 43(d) of the older statute.[105]

The ACPA provides two avenues of relief to trademark owners who believe that their marks have been misappropriated as part of another party's Internet domain name. First, the ACPA provides for a cause of action against a defendant who in bad faith registers or uses a domain name that (1) is identical or confusingly similar to a distinctive mark or (2) is identical to or confusingly similar to or dilutes a famous mark.[106] Whether bad faith exists turns on the application of a series of nonexclusive statutory factors that attempt to separate those domain name holders with legitimate explanations for having registered their electronic addresses from those who do not.[107] In addition to the same remedies available against infringement, defendants found liable for a violation of this prong of the statute face potential "statutory damages" between $1,000 and $100,000 per domain name at issue if they registered the names after the Nov. 29, 1999 effective date of the ACPA.[108]

Second, if the domain name registrant cannot be located through due diligence of the plaintiff, or if the registrant is not subject to an exercise of jurisdiction by U.S. courts, the ACPA authorizes an *in rem* action against the domain name itself.[109] The proper jurisdiction for such an action is the judicial district where either "the domain name registrar, registry or other domain name authority that registered or assigned the domain name is located; or documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court."[110] In a successful *in rem* action, damages are not recoverable; the only available remedy is the forfeiture or transfer of the challenges domain name.[111]

2. The Uniform Domain Name Dispute Resolution Policy

If a mark owner faced with a perceived cybersquatter does not wish to undertake a potentially time-consuming and expensive action under the ACPA, it may choose instead avail itself of arbitration procedures established by the Internet Corporation for Assigned Names and Numbers (ICANN). These procedures can be invoked in challenges to all registrants of generic top-level domain names (gTLDs) through the registrants' individual contracts with the registrars from whom they received the registrations. They also may be invoked in challenges to certain country-code top-level domain names (ccTLDs).[112]

ICANN currently authorizes several private arbitration providers to hear actions under its Uniform Domain Dispute Resolution Policy (UDRP), including the World Intellectual Property Organization, the National Arbitration Forum, eResolution and the CPR Institute for Dispute Resolution. Each is obligated to transfer a challenged domain name to the complainant if: (1) the domain name is identical or confusingly similar to a mark in which the complainant has rights; (2) if the registrant cannot articulate a legitimate interest in the domain name; and (3) the domain name has been registered and used in bad faith.[113] The determination whether the required bad faith exists is governed by an application of a number of nonexclusive factors.[114]

Selecting a Mark for Use in the United States

Trademark litigation in the United States can be extremely costly. The pursuit of an infringement action through trial generally costs several hundred thousand dollars, with survey and survey experts, if needed, alone frequently costing more than $75,000. The inordinate expense of unnecessary litigation often can be avoided by a careful search and quality legal advice before choosing a new mark for introduction.

The process for screening new marks generally involves conducting a free online search through the

records of the PTO to locate directly conflicting federal registrations.[115] In the absence of such a direct conflict, online searches may be expanded to cover state registrations and certain directory and trade name sources through, for example, Dun & Bradstreet searches (which include a database with millions of trade names). Most sophisticated trademark lawyers, however, rely on commercial searching services such as Thomson & Thomson or CCH CorSearch, which maintain substantial databases, and which employ search strategies that may be difficult or too costly to replicate using on-line services. Therefore, if online screening for federal registrations does not disqualify a mark, the next step usually is a commercial search covering federal and state registrations, as well as common law and trade name sources.

In most cases, the evaluation of a search report requires a significant exercise of judgment based on experience and knowledge of case law. A typical trademark search report includes the following sections: (1) a federal report, containing existing, expired, canceled, abandoned and pending claims of rights in the PTO; (2) a state trademark registration section; (3) a common law report, containing information from a variety of published sources, including trade directories, new product publications and advertising journals; and (4) a trade name listing that includes trade names from the Dun & Bradstreet database, which now contains over nine million names, and various industry sources. The reviewing attorney may further investigate companies found by the comprehensive search through online searches or by accessing their Web sites to gather additional information about potential conflicts. By comparing the marks disclosed in these sections of the reports to the proposed mark, a trademark attorney often can provide a seasoned opinion as to the availability of particular marks. Through such advice, companies can greatly reduce the odds of their being targeted as defendants in infringement or dilution actions.

Conclusion

With the growing importance of trademarks, service marks, collective marks and certification marks to the financial markets and the accurate valuation of intangible corporate assets, careful investment in the selection and maintenance of such marks can lead to significant returns. As this article has demonstrated, however, the adoption of such an overall strategy should not be taken lightly and without regard to the highly complex nature of state and federal law in the area. Accordingly, mark owners are well advised to seek the services of skilled counsel to protect their investment in their hard-earned goodwill.

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Endnotes

1. *See* William M. Landes & Richard A. Posner, *The Economics of Trademark Law*, 78 TRADEMARK REP. 267, 277 (1988).
2. *See generally* Andrew Cainey, *The Year of the Brand*, ECONOMIST, Dec. 24, 1988, at 95.
3. *See generally* Daniel A. Izzo, *Contingent Payment Transfers of Trademarks*: A Sale in License Clothing, 12 VA. TAX REV. 263, 264-65 (1992).
4. *See generally* Richard Lieb, *The Interface of Trademark and Bankruptcy Law*, 78 TRADEMARK REP. 307, 316 (1988).
5. Even prior to the company's dramatic expansion in the 1980s and 1990s, the trademark attorney for the Coca-Cola Co. noted of the relationship between his company's physical assets and trademarks that:
   The production plants and inventories of The Coca-Cola Company could go up in flames overnight.. . . Yet, on the following morning there is not a bank in Atlanta, New York, or anywhere else, that would not lend [the] Company the funds necessary for rebuilding, accepting as security only the inherent good will in its trademarks "Coca-Cola" and "Coke."
   Julius R. Lunsford, Jr., *Good Will in Trademarks: Coca-Cola and Coke*, COCA-COLA BOTTLER, at 27 (1955), *quoted in* Thomas D. Drescher, *The Transformation and Evolution of Trademarks—From Signals to Symbols to Myth*, 82 TRADEMARK REP. 301, 301-02 (1992).
6. For purposes of this article, the term "mark" includes service marks, collective marks, and certification marks, unless otherwise indicated. *See* 15 U.S.C. § 1127 (1994).
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *See id.* § 1064(5).

13. *See, e.g.*, American Television and Communications Corp. v. American Communications and Television, Inc., 810 F.2d 1546, 1548-50 (11th Cir. 1987).
14. *See generally* Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763, 768-69 (1992).
15. *See, e.g.*, Exxon Corp. v. Texas Motor Exch., 628 F.2d 500, 504 (5th Cir. 1980) ("In short, the more distinctive a [mark], the greater its 'strength.'").
16. *See, e.g.*, Freedom Sav. & Loan Ass'n v. Way, 757 F.2d 1176, 1182 (11th Cir. 1985) ("The primary indicator of [mark] strength measures the logical correlation between a name and a product. If a seller of a product or service would naturally use a particular name, it is weakly protected.").
17. *Two Pesos*, 505 U.S. at 768.
18. *See generally* Soweco, Inc. v. Shell Oil Co., 617 F.2d 1178, 1184 (5th Cir. 1980); Amstar Corp. v. Domino's Pizza, Inc., 615 F.2d 252, 260 (5th Cir. 1980); Exxon Corp. v. Xoil Energy Resources, Inc., 552 F. Supp. 1008, 1014 (S.D.N.Y. 1981).
19. *See* RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 13 cmt. c, at 40 (1995) ("Recognition of trademark rights in [a] fanciful term[] protects the significance of the designation as a symbol of identification without diminishing the vocabulary by which competitors can convey information about similar products.").
20. Tisch Hotels, Inc. v. Americana Inn, Inc., 350 F.2d 609, 611 n.2 (7th Cir. 1965).
21. Stix Prods., Inc. v. United Merchants & Mfrs., 295 F. Supp. 479, 488 (S.D.N.Y. 1968).
22. *See, e.g.*, Thompson Med. Co. v. Pfizer Inc., 753 F.2d 208, 216 (2d. Cir. 1985); Hindu Incense v. Meadows, 692 F.2d 1048, 1050 (6th Cir. 1982).
23. *See, e.g.*, Freedom Sav. & Loan Ass'n v. Way, 757 F.2d 1176, 1182-83 (11th Cir. 1985) (holding suggestive mark "weak," and entitled only to narrow protection).
24. *See* 20th Century Wear, Inc. v. Sanmark-Stardust Inc., 747 F.2d 81, 88 (2d Cir. 1984) (descriptive marks identify the "qualities, ingredients, effects or other features" of the product or service, the "problem or condition" remedied by the product or service, or "the use to which the product or service is put"); *see also* Canal Co. v. Clark, 80 U.S. (13 Wall.) 311, 324 (1871) (geographic origin).
25. *See, e.g.*, Inwood Labs. v. Ives Labs., 456 U.S. 844, 851 n.11 (1982); *see also* Charcoal Steak House of Charlotte, Inc. v. Staley, 139 S.E.2d 185, 187 (N.C. 1964) ("When a particular business has used words *publici juris* for so long or so exclusively or when it has promoted its product to such an extent that the words do not register their literal meaning on the public mind but are instantly associated with one enterprise, such words have attained a secondary meaning.").
26. *See, e.g.*, American Television & Communications Corp. v. American Communications & Television, Inc., 810 F.2d 1546, 1549 ("A high degree of proof is necessary to establish secondary meaning for a descriptive term which suggests the basic nature of the product or service.").
27. *See* Wal-Mart Stores, Inc. v. Samara Bros., 529 U.S. 205 (2000).
28. *See, e.g.*, Coca-Cola Co. v. Koke Co. of Am., 254 U.S. 143 (1920).
29. Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194 (1985).
30. *See* Soweco, Inc. v. Shell Oil Co., 617 F.2d 1178, 1183 (5th Cir. 1980) ("A generic term can *never* become a trademark [and] if a registered mark *at any time* becomes generic with respect to a particular article, the Lanham Act[] provides for the cancellation of that mark's registration."); *see also* Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 9 (2d Cir. 1976).
31. *See, e.g.*, Wilhelm Pudenz, GmbH v. Littelfuse, Inc., 177 F.3d 1204 (11th Cir. 1999).
32. RESTATEMENT, *supra* note 19, § 18, at 184.
33. *See* Johnson v. Savannah Tribune, Inc., 237 Ga. 476, 228 S.E.2d 863 (1976).
34. *See* United Drug Co. v. Theodore Rectanus Co., 248 U.S. 90 (1918); Hanover Star Milling Co. v. Metcalf, 240 U.S. 403 (1916); *see also* Spartan Food Sys., Inc. v. HFS Corp., 813 F.2d 1279, 1282 (4th Cir. 1987).
35. *See* Tally-Ho, Inc. v. Coast Community College Dist., 889 F.2d 1018, 1023 (11th Cir. 1989); Value House v. Phillips Mercantile Co., 523 F.2d 424, 431 (10th Cir. 1975).
36. *See, e.g.*, Allen Homes, Inc. v. Weersing, 510 F.2d 360 (8th Cir. 1975).
37. Pub. L. No. 79-489, 60 Stat. 427 (1946).
38. Pub. L. No. 100-667, 102 Stat. 3935 (1988).
39. *See* 15 U.S.C. §§ 1051(b), 1057(c) (1994).
40. *See* 37 C.F.R. § 1.10 (1997).
41. *Id.* 15 U.S.C. § 1062(b).
42. *Id.* § 1062(a).
43. *See generally id.* §§ 1070-71.
44. *See id.* § 1063.
45. *Id.* § 1051(d).
46. *See generally id.* § 1052(d)(1)-(4).
47. *See id.* § 1058.
48. *See id.* § 1059.
49. *See id.* § 1065.
50. *See* 15 U.S.C. § 1052(a)-(e) (1994 & Supp. V 1999).
51. *See generally In re* Budge Mfg. Co., 857 F.2d 773, 775 (Fed. Cir. 1988).
52. *See, e.g.*, Evans Prods. Co. v. Boise Cascade Corp., 218 U.S.P.Q. 160 (T.T.A.B. 1983) (holding CEDAR RIDGE mark deceptive for embossed hardwood siding not made of cedar); Tanners' Council of Am., Inc. v. Samsonite Corp., 204 U.S.P.Q. 150 (T.T.A.B. 1979) (holding SOFTHIDE mark deceptive for imitation leather material); *In re* United States Plywood Corp., 138 U.S.P.Q. 403 (T.T.A.B. 1963) (holding IVORYWOOD mark deceptive on ground that goods not made of ivorywood).
53. 15 U.S.C. § 1052(e) (1994 & Supp. V 1999).
54. *Id*.
55. *See, e.g.*, Am. Speech-Language Hearing Ass'n v. Nat'l Hearing Aid Soc'y, 224 U.S.P.Q. 798, 808 (T.T.A.B. 1984); *In re* Charles S. Loeb Pipes, Inc., 190 U.S.P.Q. 238, 241 (T.T.A.B. 1975).
56. 15 U.S.C. § 1052(d) (1994).
57. *See* 15 U.S.C. §§ 1052, 1063(a), 1064, 1092 (1994 & Supp. V 1999).
58. *Id.* § 1072.
59. *See* Mesa Springs Enters. v. Cutco Indus., 736 P.2d 1251, 1253 (Colo. Ct. App. 1986).
60. *See, e.g.*, Scientific Applications, Inc. v. Energy Conservation Corp. of Am., 436 F. Supp. 354, 359 (N.D. Ga. 1977).
61. *See, e.g.*, Howard Stores Corp. v. Howard Clothing Inc., 308 F. Supp. 70 (N.D. Ga. 1969).
62. *See, e.g.,* Int'l Order of Job's Daughters v. Lindeburg & Co., 727 F.2d 1087, 1091 (Fed. Cir. 1984).
63. Not surprisingly, petitions for cancellation are frequent counterclaims in litigation involving federally registered marks. *See, e.g.*, Keebler Co. v. Rovira Biscuit Corp., 624 F.2d 366 (1st Cir.

1980).
64. 15 U.S.C. § 1114(3) (1994 & Supp. V 1999); *see also* McDonnell Douglas Corp. v. National Data Corp., 228 U.S.P.Q. 45 (T.T.A.B. 1985).
65. *See* 15 U.S.C. § 1065 (1994); *see also* 37 C.F.R. §§ 1.167-.168 (1994).
66. 15 U.S.C. §§ 1057(b), 1115(a) (1994).
67. *See generally* Abercrombie & Fitch v. Hunting World, Inc., 537 F.2d 4, 14 (2d Cir. 1976); American Heritage Life Ins. Co. v. Heritage Life Ins. Co., 494 F.2d 3, 10 (5th Cir. 1974).
68. *See, e.g.*, Vision Ctr. v. Opticks, Inc. 596 F.2d 111, 119-20 (5th Cir. 1979).
69. *See* Tonka Corp. v. Tonka Phone Inc., 229 U.S.P.Q. 747, 753 (D. Minn. 1985), *aff'd*, 805 F.2d 793 (8th Cir. 1986).
70. Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189 (1985).
71. *See* 15 U.S.C. § 1115(b)(1)-(9) (1994 & Supp. V 1999).
72. *See generally* INT'L TRADEMARK ASS'N, STATE TRADEMARK AND UNFAIR COMPETITION LAW (2000 ed.).
73. *See, e.g.*, Womble v. Parker, 208 Ga. 378, 67 S.E.2d 133, 135 (1951).
74. *See, e.g.* O.C.GA. § 10-1-451 (1994).
75. *See id.* § 10-1-450.
76. *See id.* § 10-1-444.
77. *See, e.g.*, Multiple Listing Serv., Inc. v. Metropolitan Multi-List, Inc., 225 Ga. 129, 166 S.E.2d 356 (1969) (upholding finding that the plaintiff had failed to demonstrate protectable rights to claimed mark, notwithstanding existence of prior fictitious name registration); *see also* Southern Oxygen Co. v. Southern Oxygen Supply Co., 214 Ga. 801, 107 S.E.2d 647 (1959) ("certificate to engage in business" in Georgia insufficient to defeat injunction); Nat'l Brands Stores, Inc. v. Muse & Assocs., 183 Ga. 88, 187 S.E.2d 84 (1936) (grant of corporate charter, without more, insufficient to create protectable rights to name).
78. As framed by Justice Stevens of the U.S. Supreme Court: [T]he test for liability [for trademark infringement] is likelihood of confusion: "[U]nder the Lanham Act . . . the ultimate test is whether the public is likely to be deceived or confused by the similarity of the marks. . . . Whether we call the violation infringement, unfair competition or false designation of origin, the test is identical—is there a 'likelihood of confusion?'" Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763, 780 (Stevens, J. concurring) (citations omitted).
79. *See, e.g.*, Ackerman Security Sys., Inc. v. Design Security Sys., Inc., 201 Ga. App. 805, 806, 412 S.E.2d 588, 589 (1991).
80. O.C.GA. § 10-1-450(1).
81. *Id.* § 10-1-372(a).
82. *Id.* § 23-2-55.
83. 15 U.S.C. § 1114(a) (1994).
84. *Id.* § 1125(a).
85. *See, e.g.*, University of Ga. Athletic Ass'n v. Laite, 756 F.2d 1535, 1539 (11th Cir. 1985); Helene Curtis Indus. v. Church & Dwight, 560 F.2d 1325, 1330 (7th Cir. 1977); Polaroid Corp. v. Polarad Elec. Corp. , 287 F.2d 492 (2d Cir. 1961).
86. *See, e.g.*, World Carpets, Inc. v. Dick Littrell's New World Carpets, 438 F.2d 482, 489 (5th Cir. 1971) (actual confusion); Aetna Casualty & Surety Co. v. Aetna Auto Finance, Inc., 123 F.2d 582, 584 (5th Cir. 1941) (predatory intent).
87. *See generally* French Transit Ltd. v. Modern Coupon Sys., Inc., 818 F. Supp. 635 (S.D.N.Y. 1993); *In re* Ness & Co., 18 U.S.P.Q.2d 1815 (T.T.A.B. 1991).
88. *See Ex parte* Odol-Werke Wein GMBH, 111 U.S.P.Q. 286 (Comm'r 1956).
89. 15 U.S.C. § 1127 (1994).
90. *Id.*
91. *See, e.g.*, Aetna Health Care Sys., Inc. v. Health Care Choice, Inc., 231 U.S.P.Q. 614, 626 (N.D. Okla. 1986).
92. *See, e.g.*, Star Markets, Ltd. v. Texaco, Inc., 1996 WL 769210, at *4 (D. Haw. 1996).
93. 15 U.S.C § 1125(c)(2) (Supp. V1999).
94. O.C.GA. § 10-1-451.
95. Original Appalachian Artworks, Inc. v. Topps Chewing Gum, Inc., 642 F. Supp. 1031, 1039-40 (N.D. Ga. 1986).
96. *See, e.g.*, Intermatic v. Toeppen, 947 F. Supp. 1227, 1230 (N.D. Ill. 1996); Panavision v. Toeppen, 945 F. Supp. 1296, 1300 (C.D. Cal. 1996), *aff'd*, 141 F.3d 1316 (9th Cir. 1998).
97. *See, e.g.*, Community Fed. Sav. & Loan Ass'n v. Orondorff, 678 F.2d 1034, 1037 (11th Cir. 1982); American Express Co. v. Vibra Approved Labs. Corp., 10 U.S.P.Q.2d 2006 (S.D.N.Y. 1989).
98. Monetary recovery under the federal statute is limited to cases presenting intentional dilution. 15 U.S.C. § 1125(c) (Supp. IV 1998). Similarly, and with rare exceptions, *see, e.g.*, Wash. Rev. Code §§ 19.77.160, 19.77.010(4) (1994), most state statutes do not permit monetary recovery at all.
99. *See, e.g.*, Wedgewood Homes, Inc. v. Lund, 659 P.2d 377 (Or. 1983).
100. *See, e.g.*, Advantage Rent-A-Car, Inc. v. Enterprise Rent-A-Car Co., 238 F.3d 378 (5th Cir. 2000).
101. *See* Mead Data Cent., Inc. v. Toyota Motor Sales, U.S.A., Inc., 875 F.2d 1026 (2d Cir. 1989).
102. *See, e.g.*, Westchester Media v. PRL USA Holdings, Inc., 214 F.3d 658 (5th Cir. 2000).
103. Eli Lilly & Co. v. Natural Answers Inc., 233 F.3d 456 (7th Cir. 2000).
104. The ACPA was enacted as a portion of the considerably larger Omnibus Consolidation Appropriation Act, Pub. L. No. 106-113 (1999), but does not actually appear in the larger piece of legislation, which merely incorporates by reference S. 1948, 106th Cong. § 3001 *et seq.* (1999).
105. *See* 15 U.S.C.A. § 1125(d) (2000 Supp.)
106. *See id.* § 1125(d)(1).
107. For a list of the statutory factors, see *id.* § 1125(d)(1)(B)(i).
108. *See id.* § 1117(d).
109. *See id.* § 1125(d)(2)(D)(ii).
110. *Id.* § 1125(d)(2)(C).
111. *See id.* § 1125(d)(2)(D)(i).
112. The ICANN policy may be accessed at <www.icann.org/udrp/udrp.htm>.
113. *See id.*
114. *See id.*
115. The Patent and Trademark Office's website may be accessed at <www.uspto.gov>.

Island Paradise Plays Host to Annual Meeting

The 37th Annual Meeting of the State Bar of Georgia was truly an event to behold, as a record number of Georgia attorneys gathered at Kiawah Island Resort in South Carolina, June 13-17, 2001, for a week of networking, educational opportunities, social events and recreational activities.

An Affair to Remember

The Annual Meeting officially opened Wednesday evening with a festival, co-sponsored by the annual meeting sponsors and 19 Bar sections. The event featured a summer barbecue and interactive activities for adults and children alike, which included face painting and remote-controlled boat races. The evening culminated in a spectacular fireworks show, which proved to be the perfect end to a perfect opening night event. Earlier in the day, the legal exposition opened to offer attendees a look at the hottest products and services available to enhance their practices.

Justice George H. Carley and Lawyers Foundation Director Lauren Barrett enjoy the opening night festivities.

Incoming State Bar President James B. Franklin is joined by incoming YLD President Peter Daughtery and outgoing State Bar President George E. Mundy at the opening night festivities.

Business and Pleasure

Thursday began with the traditional section breakfast meetings, while other attendees embarked on a colonial Charleston tour and the kids ventured off for a day of wet 'n wild adventures. Also that morning, a crowd gathered for a day-long Pro Bono Conference. In addition, attendees were exposed to CLE courses on topics ranging from legal technology to medical law. During breaks between courses, attendees were given the opportunity to explore the legal exposition and network with colleagues.

Lunch began after the morning CLEs with various sections hosting luncheon meetings. Thursday afternoon rounded out with additional CLE offerings and the traditional Young Lawyers Division's pool party.

Lawyers Foundation of Georgia

At a well-attended meeting on Thursday afternoon, the Lawyers Foundation of Georgia Inc. elected the following to its Board of Trustees: Judge Alice Dorrier Bonner; Robert W. Chasteen Jr.; Harold T.

Daniel Jr.; Ben F. Easterlin IV; and Frank Love Jr. The ex-officio members of the Board are: Cliff Brashier, State Bar executive director; James B. Franklin, State Bar of Georgia president; David Gambrell, past president representative; Jim Durham, State Bar president-elect; and Pete Daughtery, Young Lawyers Division president. The officers of the foundation are: Harold T. Daniel Jr., chair; Ben F. Easterlin IV, vice-chair; William E. Cannon Jr., treasurer; and Linda A. Klein, secretary.

In addition, the Fellows heard a recap of what the Foundation had accomplished over the last year, and what plans are in place for the coming year. Among the highlights of the past year were the Challenge Grants Program and Service Juris Day. The Challenge Grants Program has been a big success and will continue to support the charitable activities of state, local and voluntary bars of Georgia, including bar sections and other law related organizations.

The Fellows low country boil and silent auction Thursday evening were thoroughly enjoyed by all in attendance. The food was incredible and the ambience couldn't be beat. The silent auction was a success, with every item purchased. For the second year in a row, the autographed portrait of UGA VI drew the most bids (more than 20). And while attendees enjoyed the silent auction, a pirate treasure night was underway for the kids. In addition to the silent auction, the Foundation also sponsored the Saturday morning YLD 5K Fun Run.

Friday morning started early with alumni breakfasts for Emory, Georgia State, Mercer and University of Georgia graduates. Meanwhile, spouses and guests were treated to another day in Charleston at Middleton Place, and children participated in a day of field games and pool activities.

State of the Law Department

Following breakfast meetings, State Bar members attended the plenary session, which included the annual members' meeting, as well as the presentation of various awards (see page 44).

Members heard reports from several state offices, including the State of the Law Department address given by Attorney General Thurbert Baker. Baker reported that the state of the department is sound, with 11,000 open matters in the Law Department at any one time. Baker further said the department continued its work in prosecuting Medicaid fraud through the Medicaid Fraud Unit. Since its inception in 1995, the unit has obtained over 130 fraud convictions and has obtained judgements exceeding $75 million.

Executive Committee

The Executive Committee is composed of officers and six members of the Board of Governors elected by the Board.

President:
James B. Franklin, Statesboro

President-elect:
James B. Durham, Brunswick

Secretary:
William D. Barwick, Atlanta

Treasurer:
George Robert Reinhardt Jr., Tifton

Immediate Past President:
George E. Mundy, Cedartown

President Young Lawyers Division:
Peter J. Daughtery, Columbus

President-elect Young Lawyers Division:
Derek Jerome White, Savannah

Immediate Past President Young Lawyers Division:
S. Kendall Butterworth, Atlanta

Executive Committee at Large Members

Bryan Michael Cavan, Atlanta

Gerald M. Edenfield, Statesboro

Phyllis J. Holmen, Atlanta

Robert D. Ingram, Marietta

David S. Lipscomb, Duluth

N. Harvey Weitz, Savannah

Baker relayed information regarding the department's commitment to a "full-scale push" to prosecute financial identity fraud cases. He said a substantial reduction of this type of crime can "save Georgia businesses and consumers millions of dollars per year," and encouraged all Georgia attorneys to aid him in the identification of this crime.

Chief Justice Robert Benham visits with KIDS' Chance Executive Director Cheryl Oelhafen.

Baker also noted that he has been hard at work toward a measure that would abolish parole for violent criminals in the state of Georgia, as well further civil litigation in the fight against domestic violence. His office has also been actively engaged in the "Water Wars." Baker and his office have been instrumental in spearheading negotiations for Georgia in the ongoing dispute with Florida and Alabama over the rights to water in two major water basins. Lastly, Baker noted his office's commitment to representing the state's interests in litigation involving the Clean Air Act.

The Federal Judiciary

Chief Judge R. Lanier Anderson III began his State of the Federal Judiciary by saying, "The approach at the State Bar is progressive, prospective and grounded in common sense, and has played a major role in the emergence of the state of Georgia and each state in this region."

Chief Judge Anderson went on to say that the health of the 11th Circuit is solid and strong. He did, however, mention that more creative solutions are needed to handle the increasing caseloads being experienced by the 11th Circuit. He explained that the population explosion has caused caseloads to rise even faster. He noted that there has been a 77 percent increase in caseloads for the trial courts, a 509 percent increase for the bankruptcy courts and a 177 percent increase for the Court of Appeals.

In order to combat the flood of cases, Chief Judge Anderson said that they are working to build more courthouses and supply additional judges. In fact, the 11th Circuit has seen a 57 percent increase in trial judges, a 37 percent increase in bankruptcy judges and a 162 percent increase in magistrate judges.

"We are now more focused on efficiency," noted Anderson. "We have devoted a greater effort to ensuring our processes have minimum risk. Now, we screen cases more carefully and we only hear about 22 percent of cases in oral argument, with 78 percent

Annual Meeting Exhibitors

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Legal Eagle Inc.
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LEXIS Publishing
Loislaw, A Division of Aspen Publishers Inc.
Merrill Lynch
Mobilidex Inc.
MyLink Inc.
Pinkerton Consulting & Investigations
Pro Bono Project, State Bar of Georgia
Sections, State Bar of Georgia
Stetson University College of Law
Wachovia Exchange Services
WestGroup

of the cases on the nonargument calendar."

In the spirit of efficiency, Chief Judge Anderson also mentioned that they are now giving more consideration as to whether or not to publish an opinion after oral argument. "Our goal is to not publish an opinion unless the opinion adds to the body of the law," he said. "If it elaborates on the law we will publish it. However, we will not allow efficiency to sacrifice quality."

The State Judiciary

In his final State of the Judiciary address, Chief Justice Robert Benham said, "It has been a pleasure over the last six years to work with some of the best lawyers and judges in the country."

Chief Justice Benham went on to say that the current state of the judiciary is fine, and made reference to several court system accomplishments, including: the expansion of the Court of Appeals from nine to 12 judges; the creation of a Protective Order Registry for state law enforcement personnel; an increase of state Judicial Branch appropriations from $65 million in 1995 to $130 million in 2001; and increased numbers of judgeships in the superior courts.

Chief Justice Benham also made note of the fact that "Georgia now has one of the most technologically advanced appellate courtrooms in the county." According to Benham, Court proceedings are now being broadcast over the Internet. "The capacity to broadcast these proceedings will not only save lawyers time, but it will save clients money," he said. "It's not that we want to be on the cutting edge of technology, it's that the marketplace demands that we become that way. We are striving for a justice system that is both user friendly and accessible."

Georgia Gov. Roy Barnes addresses attendees at the inaugural dinner. Barnes discussed the importance of indigent defense.

Chief Justice Benham closed his remarks by expressing his pride in all Georgia lawyers for their phenomenal support that is "in the Southern tradition, the Georgia tradition." He continued by asking that this support continue for incoming Chief Justice Norman Fletcher, Presiding Justice Leah Sears and the 1,600 judges across the state.

Farewell Remarks

The plenary session concluded with the final address of 2000-2001 President George Mundy, who

Bobby Chasteen, Nora Clarke, former Chief Justice Harold Clarke, and Claire and R. Alex Crumbley pose for the camera during the Lawyers Foundation low county boil.

State Bar Board members Aasia Mustakeem and Tom Chambers, along with Carol Chambers, enjoy the Lawyers Foundation low country boil.

reviewed the highlights of his year (see page 38). Mundy noted several important steps taken during his tenure, including further enhancement of the disciplinary procedure, modification of the Bar's representation scheme and acquisition of the new Bar Center.

After the plenary session, attendees were free to enjoy the resort's many amenities, including golf and tennis tournaments. On the tennis court, Henry Walker took home the prize for best male performance, and Nancy Gary was recognized for best female performance. Golf tournament results included: First Place (Joey Hennesy, Carl Veline, Eric Veline and Mike Holiman); Second Place (Tripp Layfield, Jan Hawk, Bryan Cavan and Chris Townley); Third Place (Jon McPhail, Charles Cobb, Myles Eastwood and Jim Smith); President's Cup (Joe Dent, John Salter, Bob Revell and Chuck Wainwright); longest drive (Gary Allen); and closest to the pin (Tom Chambers).

The Gavel is Passed

The Georgia Supreme Court Reception was held on Friday evening preceding the Presidential Inaugural Dinner. Georgia Gov. Roy Barnes, an attorney and member of the State Bar of Georgia, addressed the group and encouraged all Georgia attorneys to actively provide representation for indigent persons who are charged in the criminal courts. Following dinner, outgoing President Mundy was presented with a fireplace screen in honor of his many years of service and dedication to the Bar.

The gavel was then passed on by retiring President Mundy to incoming President James B. Franklin of Statesboro. Chief Justice Robert Benham administered the oath of office.

Following the official duties, the crowd was treated to guest speaker Dan Clark, primary contributing author of the *Chicken Soup for the Soul* series. Clark entertained and inspired the audience, and challenged all in attendance to prevail through life's many challenges and difficulties.

The New Guard

On Saturday morning, the first Board of Governors meeting of the 2001-2002 term marked the

Annual Meeting Sponsors

Five Gavel:	LEXIS Publishing Insurance Specialists Inc. WestGroup
Four Gavel:	ANLIR
Two Gavel:	CapTran eAttorney Merrill Lynch
One Gavel:	The Partners Group

Attorney General Thurbert Baker and Chief Judge R. Lanier Anderson III talk following their remarks at the plenary session.

State Bar sponsor LEXIS, represented by Jim Shroyer, is one of numerous exhibitors available to attendees at the Annual Meeting.

Incoming Lawyers Foundation Chair Hal T. Daniel Jr. and Foundation Fellow Joel Wooten meet during the Annual Fellows Meeting.

beginning of a new Bar year. President James B. Franklin reported on his goals for the coming year (see his address on page 34). Franklin will serve with the officers and Executive Committee, including Gerald M. Edenfield of Statesboro, who was elected to a one-year term as an at-large member.

Other Highlights Included:

- After a presentation by Charles L. Ruffin, the Board approved the formation of a new Eminent Domain Law Section.
- Gerald M. Edenfield, Thomas R. Burnside Jr. and C. Wilson DuBose provided a report on a proposed Indigent Defense Committee Resolution, which will be an action item at a future Board meeting.
- Executive Director Cliff Brashier was re-elected for a one-year term.
- Kathy Ashe was appointed to a three-year term to the Chief Justice's Commission on Professionalism.
- The Board approved the reappointments of Delia T. Crouch, Janet Hill, Andrew M. Scherffius III and Frank B. Strickland for two-year terms to the Georgia Legal Services Board.

1: A spectacular fireworks display concluded the opening night festivities at Night Heron Park on Kiawah Island. 2: Huey and Brenda Spearman watch the entertainment at the opening night festivities. 3: Molly Gary, daughter of member Ray Burke Gary, enjoys the face painting activities during the opening night festivities. 4: Dean J. Ralph Beaird and incoming Chief Justice Norman Fletcher talk with State Bar Past President Jule Felton Jr.

Embracing Opportunities for All Georgia Lawyers

The following is the speech delivered by incoming President James B. Franklin to the Board of Governors on June 16. In it, he outlines some of his plans for the coming year.

Thank you and all Georgia lawyers for the opportunity to serve as the 39th President of the State Bar of Georgia. To serve as your president is truly the greatest honor I have ever received. Along with the honor, I also understand and accept the responsibility to provide the leadership that furthers the purpose of the unified Bar, which is:

1. to foster among members of the Bar of this state the principles of duty and service to the public;
2. to improve the administration of justice; and
3. to advance the science of law.

It is humbling to stand here where the giants of Bar leadership have stood before. Both the long-past and recent leaders of our Bar have truly created a tradition of excellence. Theirs are records of not only leadership in the Bar, but in every aspect of life. My predecessors have set a high standard for me and those who follow in this position.

Sharing Responsibility

Like the old story of the turtle on a fence post, I, like that turtle, did not get here by myself. I had a hand up and stood on many shoulders to reach this place, including support from my family, my partners, my staff and many of you. As my year as president gets underway, I will continue to need a hand up. I simply ask for the continued guidance and support of each of you. I need your prayers, advice and counsel.

At a time when our profession faces so many challenges and at the same time many great opportunities to serve the public, it is imperative that the lawyers of Georgia are provided with bold, firm and imaginative leadership. As your president, I must do my part, but each of you, as the leaders of the bar elected by your local fellow lawyers, likewise share in the responsibility to the profession and the public.

If we are to fulfill our mission, I am convinced our focus as a unified, mandatory bar must on what we have in common, rather than on our differences. Lawyers, the legal profession and the justice system will always have detractors and enemies, many of whom are cynics, political demagogues or those simply uninformed about the law, the profession and the role we play in a civilized society.

A Unified Bar

Throughout my year, you will hear me emphasize again and again that we must, as a mandatory bar, stand united in defense of our profession and the greatest justice system yet devised by man. We must be ever diligent and forceful in responding to the ongoing assault on our justice system. We must clearly articulate that ours is a system that is the envy of the world. It is the system that the countries of Eastern Europe are attempting to emulate. It is the system that all freedom loving people hunger for. It is a system that without which Russia cannot seem to gain economic traction because it has no property right law and no sense of due process

We must constantly and repeatedly remind the detractors and those who be tempted to listen to their siren call that the first objective of every totalitarian government, including Nazi Germany, has been to eliminate lawyers. Only without lawyers can an evil government seeking excess power rape the individual freedoms of its citizens.

When we as members of a mandatory bar separate or segment ourselves into sub-groups defined by

gender, race, ethnicity, type of practice, geography or any other category, we surrender some of our effectiveness and strength of community.

We cannot maximize our effectiveness in carrying out our mission as county lawyers, Atlanta lawyers, male lawyers, women lawyers, black lawyers, white lawyers, Hispanic lawyers, Asian lawyers, city lawyers or rural lawyers. Even those serving on the bench as judges must be included. In order to fulfill our purpose, we must look upon ourselves not as some part of some subgroup of lawyers or judges, but as Georgia lawyers.

Chief Justice Robert Benham administers the Oath of Office to incoming State Bar President James B. Franklin of Statesboro. Franklin's wife, Fay Foy Franklin, joins him during the ceremony.

Active Participation

Please do not misunderstand me. The various voluntary bar groups should be commended for their hard work and efforts. Indeed, they should be encouraged and supported, and it is fitting for us to recognize their contributions. However, voluntary bars are not supported by mandatory membership dues as the State Bar is and, consequently, their purposes and goals are often and rightfully different from the role assigned to the unified bar.

As mentioned yesterday, the State Bar should encourage participation by all Georgia lawyers in bar governance. We should and must thrive to assure the opportunity for involvement by all Georgia lawyers. Regardless of the many attributes, including geographic location, gender, race, ethnicity and political views that make each of us unique as individuals, we must all come together as lawyers in the fight to preserve and protect our system of justice. In doing so, full opportunity for participation must be a priority so that no individual or segment of the bar is denied the chance to participate. However, the focus must be on opportunity and not preference for some over others. There is a huge difference between the two.

Along with our duty to the public and profession, we have a duty and responsibility to our membership — a responsibility to help members, and an opportunity to make lawyers appreciate and respect the role of the State Bar. I intend to focus this year on areas that will improve the everyday lives of Georgia lawyers.

Ongoing Initiatives

The availability of affordable health insurance is the single most pressing day-to-day issue facing lawyers in the state. The question we are being asked on a daily basis is how we the Bar can help make health insurance available to lawyers, their staff and families at affordable cost. The Medical Insurance Task Force, chaired last year by the late Ross Adams, has laid the groundwork addressing this problem. I have asked Jim Winkler to assume the chair and we have put together a group of outstanding lawyers from throughout the state to complete the job. This is not a simple task and the solution will not be easy. However, our goal is to be able to bring a recommendation to you by mid-year.

In the area of the Unauthorized Practice of Law, which is an increasing problem, we, with great support and direction from the Supreme Court, are putting in place pilot programs in two areas of the state — one urban and one rural. Hopefully, in the near future we will go statewide with an affordable, effective program that is built upon a premise that local lawyers and lay-persons can best pinpoint and address situations where untrained and unlicensed persons prey on the public with their illegal activities.

Our fee arbitration system, which was implemented with the noble goal of assisting members of the public and lawyers resolve their fee disputes, has, over the years, come to be less effective and efficient. This

year, we will be looking at out-sourcing these services through programs that will be both lawyer and client friendly and less time consuming and more effective.

Multijurisdictional practice (MJP) is another area which will be on the front burner, both at the state level and by the American Bar Association. Some of the issues and proposals being raised as a part of the MJP movement could have a Draconian impact on the practice of law as we know it.

Opportunities Abound for Bar Leadership

The coming year will also present some exciting opportunities for Board members and the general membership. The Board's upcoming August Boston trip promises to be a first-rate experience, and I encourage all of you to attend. Aside from the many, many historic sites and great restaurants Boston has to offer, we are being extended a fantastic opportunity to tour Harvard Law School and attend a lecture by Arthur Miller, Bruce Bromly Professor of Law at Harvard. This is truly the easy way to go to Harvard! And, by the way, we have arranged for those attending to receive CLE credit.

Next year's annual meeting also promises to be outstanding, and will once again be in a beautiful beach setting — Amelia Island. In addition to all of the amenities the resort has to offer, Justice Clarence Thomas will be our guest and the featured speaker of our installation dinner.

The much anticipated move into the Bar's new home is scheduled for next April. I am honored to have this monumental undertaking come to fruition in my term. Cliff Brashier and the staff are hard at work to assure a successful and efficient move into a Bar headquarters that will be second to none in the nation and in which every Georgia lawyer should take great pride.

Conclusion

In conclusion, I would just like to say that, as always, we as a profession are faced with many challenges, but also many opportunities. If we can pull together, as brothers and sisters in the profession, including our judges at every level, the potential for meeting these challenges and seizing the opportunities is greatly increased.

Don't ever forget, we are all Georgia lawyers, whatever our background, wherever we live, whatever type of law we practice. Whether we are Bob Benham, Norman Fletcher, Roy Barnes or the newest member of the Bar, let's never miss a chance to demonstrate pride in our profession and the role we play in preserving freedom. There is no other profession with the intellect, the talent, the training and the understanding of how precious and fragile liberty and freedom can be. We are unique in the role we play and the responsibilities we shoulder. We must never, ever lose focus on our responsibility to the profession we love, the pubic we serve and the justice system we protect.

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Generations of Service, A Year to Cherish

The bylaws of the State Bar of Georgia specify the duties of the President. One of the responsibilities is to "deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia." Following is the report from President George E. Mundy on his year, 2000-2001, delivered on Friday, June 16, 2001, at the State Bar's Annual Meeting.

As many of you know, I am the fourth generation of my family to practice law on Main Street in Cedartown. My first recollections of traveling as a child were with my parents to Savannah and St. Simons where my father was attending Bar meetings. The experiences of my father, grandfather and great-great uncle have provided me a wealth of stories, and their accomplishments covering over 100 years in the practice of Georgia law range from private practice to service on the bench and in the legislature. However, I don't believe any experience compares to the enjoyment I have known as your Bar president.

I've had the unique opportunity to consult with lawyers all over our great state and throughout our great country representing you and the profession to which we are committed. Mostly, I will remember the incredible talent, professionalism and resourcefulness of Georgia lawyer volunteers.

While there are those who apparently take pride in criticizing our profession, I have been able to observe and witness the finest and best of our membership. My experience with the State Bar of Georgia and especially this year, has renewed my confidence we all participate in a high-minded profession striving for ideals rather than a mere vocation. I have never been prouder of being a Georgia lawyer than I am at this very minute.

When I began my year, I said we would set some goals, make some progress and hopefully have a little fun along the way. I can honestly state it has been a good year primarily because of the support rendered to me by the incredible hard work of our officers, Executive Committee, Board of Governors and our many committee and section volunteers. No profession enjoys this level or pool of talent and no organization has better staff than Cliff Brashier, Bill Smith, Sharon Bryant, Paula Frederick, Sue Harvey and so many others. When I embarked on this journey, I thought being Bar President would be difficult. I found the task to be incredibly smooth because of the hard work of so many committed individuals, and want to provide you a very brief overview of this past year.

Discipline

I began my year hoping to continue certain directions I felt were essential to the strength of our unified Bar. One certain direction was the maintenance of the finest disciplinary system of any profession. The Investigative Panel (IP), Review Panel (RP), Formal Advisory Opinion Board (FAOB) and Office of the General Counsel (OGC) have continued to enhance the disciplinary function of the Bar, and for the past year report the following:

- 4,117 grievance forms were mailed (3,405 in the previous year);
- 2,316 grievance forms were filed (2,076 in the previous year);
- 1,829 grievances were dismissed for lack of jurisdiction;
- 452 grievances were referred to the IP members for investigation (479 in the previous year);
- Each IP member averaged 21 cases;
- 274 grievances were dismissed after IP investigation (100 of those included a letter of instruction);
- 22 cases were placed on inactive status because of disbarrment in a different case;
- 156 cases met probable cause (177 in the previous year);
- 211 cases are pending before the IP (200 in the previous year);
- 50 interim suspensions were issued for failure to respond;
- The Lawyer Helpline averaged 20 informal ethics opinions per day; and
- OGC lawyers made 60 CLE ethics presentations.

In addition, confidential discipline was ordered for 34 lawyers in the form of 24 reprimands and 10 letters of formal instruction. Public discipline was ordered for 84 lawyers as follows: 30 disbarments; 38 suspensions; five public reprimands; 10 panel reprimands; and one IP reprimand.

The Formal Advisory Opinion Board's activity included three new requests for formal advisory opinions. There are two proposed opinions pending before the Supreme Court, and one opinion was issue by the Supreme Court.

The Trust Account Overdraft Notification Program received 248 notices from financial institutions approved as depositories for attorney trust accounts. Of these, 180 files were dismissed, 15 were referred to Law Practice Management, and eight were forwarded to the Investigative Panel of the State Disciplinary Board. (Several attorney files contained more than one overdraft notice.)

Fee Arbitration

This year marked the Fee Arbitration Program's 21st year. Requests for information came from 1,556 parties, with referrals by the consumer assistance program accounting for 49 percent, inquiries from the public accounting for 49 percent and referrals from the Office of General Counsel accounting for two percent of the inquiries. There are 350 cases in process today. Approximately 130 new disputes over attorney fees are reported to the program each month. The Fee Arbitration Committee, its staff and the parties involved are able to resolve a majority of these; however, hearings and awards to conclude the disputes are required in about 15 cases per month.

Consumer Assistance

The Consumer Assistance Program (CAP) has dealt with over 100,000 inquiries (calls, letters, walk-ins) since it began in 1995. In the past year, the program has received inquiries totaling nearly 20,500. CAP is resourceful in identifying problems and resolving them before they become serious disciplinary problems. Through CAP, an average of two out of three cases is resolved quickly and informally.

Representation

This year, I chose to continue to address concerns over equitable representation of our membership and efforts to promote diversity so that all aspects of our membership would have the opportunity for involvement. It is essential to the long-term future of our unified Bar that all members feel welcome and included in a professional association relevant to their law practices.

I am proud to say that through the extraordinary talents of Lamar Sizemore, Jeff Bramlett and the Board of Governors Representation Committee, as well as the civil and thoughtful deliberations of our Board of Governors, we were able to modify our representation scheme offering additional opportunities to underrepresented Atlanta lawyers, as well as women and minority lawyers. In addition, we have created a Board of Governor's handbook that offers members a practical and concise look at their responsibilities on the Board.

Diversity

This year we sponsored and Karlise Grier coordinated a women and minorities luncheon in conjunction with the Mid-Year Meeting to encourage and educate more lawyers in becoming involved at the State Bar level. During the year I met with the managing partners of Atlanta's 10 largest law firms to encourage more participation. These efforts are paying off in that Jimmy Franklin, incoming president, has a more diverse pool of committee volunteers than ever before.

Unauthorized Practice of Law

The service to our membership has been consistent and effective anticipating the challenges of the future. With the tremendous help of our Supreme Court and especially Justice Carol Hunstein, we were able to see the adoption of the new unauthorized practice of law rules. We are initiating a pilot program in Districts 2 and 4 that eventually will be statewide and effectively address and hopefully eliminate unauthorized practice.

Multidisciplinary Practice

Through the extraordinary work and scholarship of Linda Klein and her committee, we have received the "Multidisciplinary Practice Report," which will soon be considered by our Board of Governors. In addition, we have appointed a Multijurisdictional Practice Committee to eventually report to our Board and membership regarding concerns in this developing area. Both of these areas will have a greater impact on the future practice of law than perhaps any of us truly appreciate. The State Bar will keep our membership educated and informed regarding these serious issues.

Legislative Activity

Under the able leadership of Gerald Edenfield and the hardworking Advisory Committee on Legislation, we continued our strong and successful legislative program and initiated our legislative grassroots program, which should prepare our profession to react timely and appropriately to any legislative concern.

Bar Center

We approach the time when we'll take possession of our new Bar Center. The Bar Center initiative is on a solid, firm foundation due to the hard work of Frank Jones, Hal Daniel and the Bar Center Committee, as well as the financial fly specking of Jim Durham and Rob Reinhardt. I cannot express the level of excitement I feel for this venture and the potential it offers for all Georgia lawyers. I might add we anticipate a Bar Center with the most beautiful landscaping possible along Marietta Street in Atlanta, which would make any environmentalist proud.

Supreme Court Retreat

The State Bar appreciates the continuing support and cooperation of our excellent Supreme Court. The officers and Executive Committee enjoyed another productive retreat with the Court this year, demonstrating an open and cooperative interaction in multiple areas to improve our profession. We congratulate Chief Justice Benham for his inspiring leadership of the Court and we look forward to the committed leadership of Justice Norman Fletcher when he assumes the role of chief.

Southern Conference

This year I had the privilege of serving as president of the Southern Conference of Bar Presidents. This organization comprises the Bar leaders of 20 bar associations in 17 southeastern states and now includes the Virgin Islands. The Southern Conference meets several times a year, usually in conjunction with American Bar Association (ABA) meetings to compare issues and projects of mutual concern. This experience has repeatedly indicated that the State Bar of Georgia is regarded by other state bar associations as a leader and an innovator. A number of our successful programs have been copied and adopted by other bar associations in the Southern Conference.

Member Services

Ken Shigley and the Membership Services Committee have labored long and hard this year to come up with a specific list of State Bar sponsored services and products for the benefit of our member-

ship. The Medical Insurance Task Force continues to make progress and we hope to hear from them in the coming year. Wilson DeBose and the Indigent Defense Committee has expended considerable effort to formulate a resolution to the Chief Justice's Indigent Defense Commission to improve indigent defense representation in Georgia.

Other programs continue to progress, including the Standards of the Profession under the fine leadership of John Marshall and the Judicial Districts Professionalism Program through the hard work of Robert Ingram. Bill Cannon's Foundations of Freedom program continues to expand, reaching a larger percentage of the public with a positive message regarding lawyers and our profession. This is by no means a complete listing of the progress and programs of the Bar for this past year. That list would be too voluminous to recount here.

Conclusion

I am extremely proud of this organization and this profession, as well as all of you. We participate in a great profession headed in the right direction, reaching more of our membership and the public than ever before. We have an association confident in the fact that the talent and outreach of lawyers is at the very fabric of what makes our state and nation great. I congratulate Rudolph Patterson for the progress we made in his year and I look forward to the leadership of Jimmy Franklin in the coming year.

I specifically want to acknowledge my wife, Martiti, for all of her support and efforts this year. Many of you do not know she suffers from an arthritic condition that causes significant pain, especially upon traveling. But you will all note that she was at every meeting and participated especially in every social event to insure your enjoyment. Not only do I love her, but she is one of the strongest people I know.

Today, I can tell you the State Bar leadership is in good hands. One of the finest experiences of my life has been the opportunity to work with an Executive Committee comprised of the most hardworking and dedicated individuals I have ever had the good fortune to know. The State Bar of Georgia will continue to set the standards by which the best of our profession are judged.

I thank everyone who helped in so many ways this year. The work of the Bar cannot be accomplished without the commitment of so many volunteers. I will be forever grateful for the opportunity to have served as president of the State Bar of Georgia. Thank you.

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pick up House ad www.gabar.org from page 72 of June 01 issue.

Harold T. Daniel Jr. Receives Bar's Highest Honor

Following are remarks delivered by Linda A. Klein at the State Bar of Georgia's Annual Meeting. Klein presented this year's Distinguished Service Award to Hal Daniel.

The Distinguished Service Award is the highest accolade bestowed on an individual lawyer by the State Bar of Georgia. The recipient is honored for "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

The award this year goes to a most deserving recipient; someone who has been a leader in our Bar for over two decades. This person has made an indelible mark on our Bar and made it so much the better.

In reflecting on what I would say tonight, I found this poem written by an anonymous author that I believe symbolizes leadership as practiced by our recipient.

If a tree could symbolize leadership, its leaves would bring in life and purpose, its limbs would reach for the unknown, its trunk would strengthen its resolve, its roots would sustain all that rely upon it, its gardener would nurture its growth, so that others may look upon its beauty as ONE.

Harold T. Daniel Jr., recipient of the Bar's Distinguished Service Award, accepts his award from former State Bar President Linda A. Klein during the inaugural dinner.

Our recipient tonight is that type of leader. We know that a good leader sees problems before they are there — the jargon for that today is "thinking outside the box." He also holds his resolve to be sure that the right thing is done. How did our recipient do this? Time only allows for one example: as Bar president he appointed a Strategic Planning Task Force to study the long-term needs of our Bar. With his guidance and support, the group recommended that our rapidly growing Bar own a Bar Center — a place that would symbolize our professionalism interests. We now own it — free and clear!

A good coach will make his players see what they can be rather than what they are. Our recipient knew this when he conceived of the idea that became our Law Practice Management Program to help lawyers manage their firms so that their clients would be better served. Or when he reached out to all the lawyers in the state by suggesting a branch office of the Bar.Our recipient's

Bar service includes being president of the State Bar of Georgia, president of the Lawyers Club of Atlanta, president of the Georgia Legal Services Program, the next chair of the Lawyers Foundation of Georgia and our Circuit's representative to the Standing Committee on Federal Judiciary of the American Bar Association; his selection as a fellow in the American College of Trial Lawyers, a fellow of the American Bar Association and a master barrister of the Joseph Henry Lumpkin American Inn of Court. His community service is marked by his selection to Leadership Atlanta, service on the Campaign Cabinet of United Way of Atlanta and the Atlanta Area Council of the Boy Scouts of America and many other organizations. A graduate of Emory University School Of Law, he is chair of Holland & Knight's Antitrust, Trade Regulation and Competition National Practice Group. He is also the only person, other than Rob Reinhardt, to wear his family tartan in the form of a kilt at the Georgia Sports Hall of Fame.

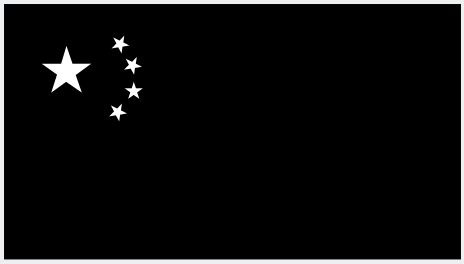
But in addition to all of his accomplishments, a personal trait stands out in my mind. President Eisenhower once said, "I'd rather have one person working with me than 100 working for me." Our recipient is that kind of leader. He made me and countless others part of the team, valuing our input and encouraging our participation and personal growth. For that I owe him my personal thanks, for he had much to do with the opportunities I had. On behalf of all the lawyers in Georgia, Harold T. Daniel, we thank you for the legacy of leadership and professionalism that makes you so deserving of the Distinguished Service Award.

State Bar of Georgia Delegation to China

Invitation to all Georgia Lawyers and Judges
People to People Ambassador Program

Become a part of the State Bar of Georgia delegation to China coordinated by the People to People Ambassador Program. The trip is scheduled for April 11-23, 2002.

The program is designed to promote international good will through professional, educational, and technical exchange. It provides an opportunity to meet and discuss common issues with legal professionals in China, and offers rare and uniqie social and cultural opportunities, including a trip to the Great Wall and Tienaman Square. The delegation will be led by State Bar Immediate Past President George E. Mundy.



This program offers an entire year of CLE credit, including professionalism and ethics. In addition, expenses for the trip may qualify for an income tax deduction. The cost is estimated at $4,500, including first class transportation, accommodations and meals.

The State Bar of Georgia legal delegation is open to all members in good standing. It is anticipated the delegation will consist of 25 to 40 members.

For further information regarding this unique opportunity, contact the State Bar of Georgia Membership Department, 404-527-8777.

Legal Professionals Shine at Annual Meeting

Judges, lawyers, voluntary bars and sections were among those recognized for their outstanding service and accomplishments in the legal field at the 2001 State Bar of Georgia Annual Meeting. All but one of the awards were presented during the Plenary Session on Friday, June 15. The Distinguished Service Award was given at the Inaugural Dinner on Friday evening.

Distinguished Service

This, the State Bar's highest honor, was presented to **Harold T. Daniel Jr.**, Atlanta, in recognition of the combination of a professional career with outstanding service and dedication to the community through voluntary participation in community organizations, government-sponsored activities or humanitarian work. (See article on page 42).

Voluntary Bars

This year's **Excellence in Bar Leadership Award** recipient was **Albert Bailey Wallace**, Jonesboro, of the Clayton County Bar Association. This award honors an individual for a lifetime of commitment to the legal profession and the justice system in Georgia through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section.

The **Award of Merit** is presented to voluntary bar associations for their dedication to improving relations among local lawyers and devoting endless hours to serving their communities. This year's winners were:

51—100 members: **North Fulton Bar Association**
101—250 members: **Dougherty Circuit Bar Association**
251—500 members: **Gwinnett County Bar Association**
Over 500 members: **Atlanta Bar Association**

The **Law Day Award of Achievement** recognizes Law Day activities of voluntary bar associations in their respective communities. This year's winners were:

51—100 members: **Blue Ridge Bar Association**
101—250 members: **Dougherty Circuit Bar Association**
251—500 members: **Gwinnett County Bar Association**

The **Best Newsletter Award** is presented to voluntary bars that provide the best informational source to their membership. This year's winners were:

101—250 members: **Dougherty Circuit Bar Association**
251—500 members: **Gwinnett County Bar Association**
Over 500 members: **Cobb County Bar Association**

The **Best New Entry Award**, which recognizes the excellent efforts of those voluntary bar associations that have entered the Law Day or Award of Merit competition for the first time in four years, was presented to the **Western Circuit Bar Association**.

The travelling **President's Cup** is presented annually to the voluntary bar with the best overall program. This year's winner was the **Gwinnett County Bar Association**.

Chief Justice Community Service

The **Chief Justice Robert Benham Community Service Awards** celebrate lawyers and judges who have combined a professional career with outstanding service and dedication to their communities through voluntary participation in community

1: (l to r): Rudolph Patterson, Todd Carrol, Knox Dobbins, Mark D'Antonio, Sue Colussy, of the Immigration Law Program of Catholic Social Services, and Scott Wright pose in the exhibit hall following the presentation of the Pro Bono Awards. 2: Sarah Brown (Sally) Akins accepts the Section of the Year Award on behalf of the General Practice and Trial Section. 3: (l to r): The Honorable T. Jackson Bedford, Chief Justice Robert Benham, F. Sheffield Hale, Wendy J. Glasbrenner and Albert J. Bolet III pose following the presentation of the Chief Justice Robert Benham Community Service Awards. 4: Albert Wallace receives the Excellence in Bar Leadership Award from State Bar President George E. Mundy. 5: Margaret Washburn accepts an award on behalf of the Gwinnett County Bar Association. Gwinnett County received several awards this year, including the State Bar's President's Cup. 6: (l-r) The 2001 "Tradition of Excellence" recipients are: Robert M. Brinson, Rome; Judge Robert E. Flournoy Jr., Marietta; Hon. Thomas B. Murphy, Bremen; J. Vincent Cook, Athens; and Sally Akins, Savannah.

organizations, government-sponsored activities or humanitarian work. This year, the following were honored:

Leadership: **Chief Justice Robert Benham,** Atlanta
Lifetime Achievement: **The Honorable Arthur M. Kaplan,** Atlanta
Judicial District 1: **Elise R. (Dolly) Chisholm,** Savannah
Judicial District 2: **Suzanne P. Mathis,** Alapaha
Judicial District 4: **Gwendolyn R. Keyes,** Decatur
Judicial District 5: **The Honorable T. Jackson Bedford Jr., Albert J. Bolet, F. Sheffield Hale, The Honorable Thelma Wyatt-Cummings Moore, John A. Pickens,** all of Atlanta
Judicial District 6: **J. Byrd Garland,** Jackson
Judicial District 9: **Wendy J. Glasbrenner,** Gainesville

Section Awards

The **Section Awards**, which are presented to outstanding sections for their dedication and service to their areas of practice, were:

Section of the Year: **General Practice and Trial Section,** Sarah Brown (Sally) Akins, chair

Section Awards of Achievement: **Tort and Insurance Practice Section,** Jon McPhail, chair; **Appellate Practice Law Section,** Laurie Webb Daniel, chair; and **Creditor's Rights Section,** Jan L. Rosser, chair

General Practice and Trial Section Tradition of Excellence Awards:
Judicial Category: **Judge Robert E. Flournoy Jr.,** Marietta
Defense Category: **Robert M. Brinson,** Rome
Plaintiff Category: **J. Vincent Cook,** Athens
General Practice Category: **The Honorable Thomas B. Murphy,** Bremen

For more Section news, check out the Bar's Web site at www.gabar.org/smenu.htm.

Pro Bono Awards

The **H. Sol Clark Award** is presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to a lawyer who demonstrates a commitment to the provision of legal services to the poor either through significant pro bono activity or involvement in the development of service programs.

B. Knox Dobbins of Sutherland, Asbill & Brennan, LLP, Atlanta, received the 2001 award for his commitment to the provision of legal services to the poor through the development of the "A Business Commitment" business law pro bono program for the rural nonprofit economic development community and for the direct delivery of volunteer legal services on business law matters to nonprofit clients. The other recipient of the 2001 award was Sandra J. Popson of Katz, Flatau, Popson and Boyer, LLP, Macon. Popson has also demonstrated professionalism and a long-term commitment to the delivery of legal services to the poor.

The **William B. Spann Jr.** Award recognizes a program that addresses previously unmet legal needs of the poor through innovative means and which demonstrates collaboration among lawyers, law firms, the community and associations. The recipient of the 2001 award was the **Immigration Law Program** of Catholic Social Services Inc. The program was recognized for its commitment to legal services for the poor through its immigration program and for innovation in responding to the legal needs of the immigrant community.

The **Dan Bradley Award** honors the commitment to the delivery of quality legal services of a lawyer of the Georgia Legal Services Program or the Atlanta Legal Aid Society. The recipient of the 2001 award was **Marc D'Antonio** of the Columbus Regional Office of Georgia Legal Services.

The **ABC Pro Bono Award** is presented by the "A Business Commitment" Committee of the State Bar to a lawyer, law firm or corporate counsel program that demonstrates a commitment to the development and delivery of legal services to the poor in a business context through pro bono business law service to emerging or existing nonprofits or microenterprise efforts in the low-income community. The recipient of the 2001 award was **William Scott Wright** of Sutherland, Asbill & Brennan, LLP, Atlanta.

Congratulations to all 2001 award recipients!

Legal Groups Present Awards

Georgia Indigent Defense Council Presents Five Awards

Harold G. Clarke Equal Justice Award: The award is named after Harold G. Clarke, former chief Justice of the Supreme Court of Georgia. It is presented to an individual in recognition of their long-term commitment and dedication to the cause of insuring equal justice for all of Georgia's citizens. The 2001 award recipient is **Emmet Bondurant**, Atlanta.

President's Award: The award is presented to a member of the community in recognition of his or her untiring commitment to indigent defense in Georgia. The award recognizes that efforts to improve indigent defense require dedication, determination and persistence. The first recipient of the 2001 award is **Georgia Rep. Larry Walker** (D-Perry), House Majority Leader.

Gideon's Trumpet Award: The award is given to one or more individuals, program or groups who have worked to improve indigent defense in Georgia, and whose work has made a significant difference in bringing to life the dream of *Gideon v. Wainwright* — that every citizen be assured the representation of counsel no matter what their economic circumstances. The 2001 award recipient is **Georgia Sen. George Hooks** (D-Americus).

Commitment to Excellence Award: The award is given to an indigent defense program and/or individual that demonstrates outstanding excellence in providing indigent defense services. The award recognizes innovative approaches in ensuring that Georgia's poorest citizens are provided with effective representation in criminal and juvenile cases. The recipient of the 2001 award is the late **Stephen O. Kinnard**, Atlanta.

Spotlight on Indigent Defense: The award is given to a member of the media that has demonstrated an outstanding commitment in spotlighting the need for quality indigent defense services in Georgia. The award recognizes the efforts to publicize the plight of, and to advance the cause of, indigent defendants through accurate and informative media participation and coverage. The 2001 award recipient is **Martha Ezzard** of the *Atlanta Journal-Constitution*.

Georgia Association of Criminal Defense Lawyers Tips Hat

Rees Smith Lifetime Achievement Award: The award is named for one of the founders of the GACDL and given to a long-time member who is a mentor to young lawyers and who demonstrates a substantial commitment to GACDL and other bar or civic associations. **Brooks Franklin**, Atlanta, was the 2001 recipient of the award for his work as a lawyer, his leadership and his service within GACDL and other professional organizations, his contributions as a mentor and advisor to other lawyers and his community service to West End, Emmaus House and St. Luke's Episcopal Church.

2001 Indigent Defense Award: The award recognizes an individual who has made an outstanding contribution in the area of indigent defense. **Michael C. Garrett**, Augusta, is the 2001 award recipient. Garrett has represented indigent defendants in criminal cases for over 20 years. He has an outstanding record in representing his clients, including only two death verdicts in over 26 death penalty cases. His expertise and dedication in capital litigation are recognized not only in the Augusta Circuit, but also across the state of Georgia.

State Steps Forward to Aid Georgia's Children

By Justice P. Harris Hines

Georgia's child protection system is moving in the right direction. It is important that this momentum continue, for children are among our state's most vulnerable citizens. As chair of the Georgia Supreme Court's Child Placement Project, I have come to realize that while much work has yet to be done, many positive steps have recently been taken.

For too long, judges, attorneys, social workers and foster parents (the core workers of our child protection system) were provided with inadequate resources to respond properly to the difficult problems that they encounter daily.

As Georgia's population rapidly increased, social workers struggled with unrealistically high caseloads. Foster parents were asked to feed and clothe the children in their care on per diems less than the cost of an order-out pizza. Assistant attorneys general representing abused and neglected children were paid at hourly rates less than half those paid to attorneys representing certain state agencies.

The governor and general assembly were asked to help with what had become a real child protection crisis. They have responded admirably.

In 2000, legislation was passed which provided state funding for juvenile court judges in all of Georgia's 159 counties. Prior to this, the financial responsibility for juvenile courts rested with the individual counties. The result was substantial disparities in salaries and responsibilities. Because of state funding, today 21 new juvenile court judgeships have been created, and this number is expected to grow.

The 2000 legislative session also created the Office of the Child Advocate, making Georgia one of only 12 states to have an independent office whose sole responsibility is to protect children.

In 2001, Gov. Barnes made child protection a priority budget request. The general assembly joined him and passed a significant child welfare package.

This package included: 100 new social service caseworker positions, moving Georgia toward compliance with the caseload standards adopted by the Child Welfare League of America; salary increases and performance-based raises for caseworkers; funding to expand and improve training resources for caseworkers; and hourly rate increases for the special assistant attorneys general who represent the children of our state (the first rate enhancements these individuals had received in over 10 years); and increased support for Georgia's foster parents.

Foster parents were asked to feed and clothe the children in their care on per diems less than the cost of an order-out pizza.

This solid foundation now needs to be built upon.

The progress we've made to protect Georgia's children must continue. We need to strengthen juvenile courts, add social workers and lessen the caseloads, and create more and better placements for our state's abused and neglected children.

I want to thank Gov. Barnes and the general assembly for their leadership in improving the lives of many of Georgia's children. Real progress has been made. However, we are not where we should be. We are not even where we could be. But, thankfully, we are certainly not where we used to be.

Justice P. Harris Hines was appointed to the Georgia Supreme Court in 1995. Immediately prior to his appointment, Justice Hines served as judge of the Superior Court of the Cobb Judicial Circuit for over 12 years.

BOG Decides Reapportionment at Special Meeting

The issue of fair representation on the State Bar's Board of Governors has been discussed for many years, with numerous proposals having been offered that attempted to balance representation of members in Atlanta and other areas of the state, as well as members practicing in other states. In addition, there has been recognition that members of minority groups underrepresent the Bar's Board of Governors.

(l to r): Jeff Bramlett and Hon. Lamar Sizemore, co-chairs of the BOG Representation Committee, listen as out-of-state delegate Michael V. Elsberry presents his amendment.

At a specially called meeting in May, the Board of Governors Representation Committee, co-chaired by the Honorable Lamar W. Sizemore Jr. and Jeffrey O. Bramlett, completed its lengthy work and presented recommendations at a special meeting of the Bar's governing body. The Representation Committee and the Bar's Executive Committee believe the proposals focus on fair representation while also being conscious of the Board's size.

The following three proposed changes to Bar Rule 1-302 were approved by the full Board of Governors by majority vote.

Atlanta Representation

The first proposal intended to add seven seats for the Atlanta Judicial Circuit to allow for the growth the area has experienced. In addition, the proposal sought to cap composition of the Board to 150 members. As is currently the rule, one additional seat would be added for every new 500 members in a judicial circuit. After consideration, and with some minor amendments, the proposal passed.

Out-of-State Members

The second proposal addressed out-of-state membership, seeking to add one alternate, non-voting representative for out-of-state members to better reflect the number of members practicing outside of Georgia. The addition was accounted for in the cap of 150 members approved in the first proposal. A motion to amend the proposal was made by out-of-state delegate Michael V. Elsberry to add three new regular representatives. After discussion, and by consent, the amendment was changed and approved to add one new regular representative for a total of two out-of-state members.

Diversity

The third proposal addressed diversity on the Bar's Board of Governors by allowing the president-elect to appoint three members, each to two-year terms, in order to promote under-represented groups within the Board. These seats also fall within the 150-member cap.

Conclusion

This lengthy process of consideration and deliberation culminated into what the Board sees as representation that more accurately reflects lawyer population and promotes diversity.

These Rule changes are being published as required by Rule 5-101 on page 70 of this *Bar Journal* prior to submission to the Supreme Court of Georgia in September 2001.

Painless Way to Give Still Is– If You Know A Few Tricks

By Len Horton

In 1983, the Georgia Interest On Lawyer Trust Accounts (IOLTA) Project began in this state. It was touted as the "painless way to give." While that might have been a slight exaggeration, a number of ideas really can make having an IOLTA account so convenient that you may forget you have one.

IOLTA: A Quick Overview

The Supreme Court of Georgia has ordered lawyers who hold client money in trust to put that money at interest either for the benefit of the client or for the benefit of IOLTA. If the expected amount of interest generated is trivial or less than the cost of investing it, then the lawyer will decide to put that client's money in an IOLTA account. Since Bar rules prohibit the lawyer from receiving that money and the client cannot receive it without the lawyer spending more money than the interest generated, the Supreme Court of Georgia has named The Georgia Bar Foundation, a charitable [501(c)(3)] organization, to receive the interest. In order not to interfere with the way you practice law, the Court has also said that no charge of ethical impropriety may be brought against any Georgia lawyer for making the decision to invest it for the benefit of the client or IOLTA.

Opening an IOLTA Account

To open an IOLTA account, you need a "Notice to Financial Institution" form. This form can be downloaded from the State Bar of Georgia's Web site at www.gabar.org under "Related Organizations" and then under the "Georgia Bar Foundation." It can also be obtained from the Foundation office at (404) 527-8765.

Sign the form, copy it, give the original to your banker and send a copy to the Foundation office. This form gives the bank the legal right to send the generated IOLTA interest to the Foundation. It also explains to the bank that the tax identification number should be that of the Georgia Bar Foundation (58-0552594) and not of your law firm. Because no one with the Foundation has signed the signature card for the account, only you or your designated agent in your law firm is empowered to write checks on the account. A 1099 form should be sent to the law firm, since the interest is income to the Foundation.

If you are closing one IOLTA account and opening a new account at another bank, then it is a good idea to inform the Foundation that the old account is being closed.

Special Charge Arrangements for Your New IOLTA Account

State Bar of Georgia General Counsel William Smith suggests an idea that can make your life easier wherever you bank. Ask your banker to make any charges associated with your IOLTA account against your operating account at the same bank. He went on to say that, if you do not have an operating account at that bank, you might want to consider opening one. Otherwise, for the rest of your legal career you may find yourself having to make monthly deposits to your IOLTA account to replace client monies taken by bank charges.

Many banks offer a free account if you agree to keep a minimum balance of, for example, $1,000 or more per month. Ask your banker for assistance in getting a free IOLTA account by keeping that minimum balance in your operating account, not your IOLTA account.

Exemption from Participating in IOLTA

You may have one or more trust accounts eligible to be exempt from being in IOLTA in Georgia. If the average balance in your trust account is $5,000 or less, then you can obtain the "Interest Too Small" exemption. To

obtain this exemption, you must write a letter to the Foundation requesting the exemption, and then supply the last three months of your bank statements. If the account is being opened, you need to state in your letter that you do not anticipate that the average monthly balance in the account will exceed $5,000. As director of the Foundation, I will evaluate your request and then submit it with my recommendation to a committee of the Board of Trustees of the Foundation for evaluation and approval.

If you believe that you should be exempt because participating in IOLTA constitutes a significant cost to your firm, explain your reasoning in a letter to the Foundation. I shall review your request, discuss it further with you if needed, and then provide your request, along with my recommendation, to a committee of the Board of Trustees of the Foundation. That committee will make the final decision.

Why would you want your trust account to be exempt? Because banks occasionally provide free trust accounts if they do not have to pay interest on the balances.

What Does the Georgia Bar Foundation Do With the Money?

By order of the Supreme Court of Georgia, it funds the Georgia Indigent Defense Council (40 percent of net IOLTA revenues), which helps provide legal assistance to people accused of crimes, and the Georgia Civil Justice Foundation (10 percent of net IOLTA revenues), which is the charitable arm of the Georgia Trial Lawyers. With the remaining half of revenues, the Foundation funds a number of law-related projects including civil legal assistance to people who cannot afford attorneys, efforts to help children affected by the judicial system, child abuse prevention programs, Mock Trial, etc. For a list of grant awards since 1986, please contact the Foundation office.

Thanks to Georgia lawyers and bankers working together under the guidance of the Supreme Court of Georgia, IOLTA in Georgia is still a painless way to give to organizations working to solve our major law-related issues.

Len Horton is the executive director of the Georgia Bar Foundation and has been running IOLTA for the Supreme Court of Georgia since 1986.

HAPPY NEW YEAR!

By Pete Daughtery

It is time to chill the champagne and break out the noisemakers and party hats to celebrate the New Year! I have not gone crazy from the August heat, but I do know it is time to celebrate a new Bar year.

As with every New Year, it is time to make your resolutions, and the Young Lawyers Division (YLD) is here to help.

One resolution every young lawyer should make for the new year is to travel more in the upcoming year. The YLD has wonderful trips planned to New Orleans on Aug. 17, 2001, and to Athens for the annual Georgia/Auburn football game on Nov. 9, 2001. After you ring in that other new year, make plans to join the YLD for the Midyear Meeting in Atlanta on Jan. 10, 2002, and in Savannah for the Spring Meeting on April 5, 2002. Your last chance to fulfill your resolution to travel will be on June 13, 2002, when the YLD travels to Amelia Island Plantation for the Annual Meeting. These meetings will all provide great opportunities to network with other young lawyers and to hear about the exciting work the YLD is doing through its committees.

A second resolution worthy of every young lawyer is to get involved in YLD committee work. The YLD has a strong reputation as the service arm of the Bar because of its committee work, but these committees cannot function without your work and involvement. Whether you have served in the past or have never been involved, it is important to remember to sign up at the start of the new Bar year. If you have not yet received your committee brochure, contact Jackie Indek, YLD director, at (404) 527-8778, or visit the YLD Web site at www.gabar.org/yld.htm.

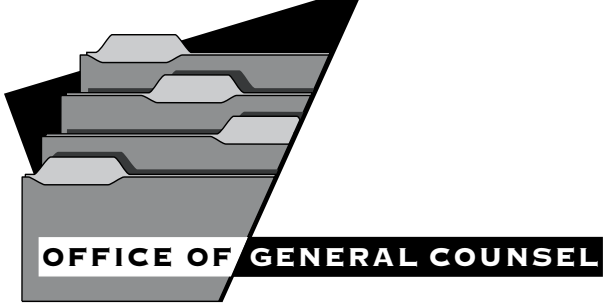
A third resolution to which we young lawyers should aspire is fulfillment of the goal of 50 hours of pro bono legal services per year as set forth in Rule 6.1 of the Georgia Rules of Professional Conduct. The Pro Bono Committee of the YLD will assist you in finding a pro bono case through its Pro Bono Initiative - a statewide program to encourage lawyers to handle a pro bono case. Possibilities for pro bono service also can be found in three new committees of the YLD — the Truancy Intervention Committee, the Disability Issues Committee and the Indigent Defense Committee.

Rule 6.1 also encourages young lawyers to meet the 50 hours by participating "in activities for improving the law, the legal system or the legal profession." Again, the YLD is ready to help with its Litigation

Committee and Criminal Law Committee, which will once again conduct seminars for young lawyers. With numerous opportunities for service to the public, the profession and fellow members of the Bar, there is truly something for anyone looking to work on committees and experience a happy new Bar year.

Finally, a New Year's ritual is the promise to do something for ourselves, usually in the form of exercise and diet. The YLD does not offer exercise and diet programs, but we have several unique services for our members. The Membership and Affiliate Outreach Committee is expanding the Scholarship Program for our members to offer several $200.00 scholarships at each meeting to assist young lawyers in attending the meetings of the YLD. The Membership and Affiliate Outreach Committee is working with the Minorities in the Profession Committee by committing at least three of these scholarships at each meeting to encourage diversity within the YLD. If you have just graduated from law school, the YLD Appellate Admissions Committee will arrange the ceremonies at which you will be admitted to the Georgia Supreme Court, the Georgia Court of Appeals and the U.S. District Courts. And, the YLD will plan and conduct the "Bridge the Gap" seminar you must attend to satisfy your continuing legal education requirements. Who needs "exercise and diet" with services like these?

The start of a new year is always filled with the excitement and a resolve to make things better in the coming year. With your help, the YLD can accomplish great things in the upcoming Bar year. I look forward to working with the young lawyers in Georgia and the fulfillment of all our New Year's resolutions together.



Lawyers and Confidentiality

"You're not going to tell anybody what I'm about to tell you, are you?," the client asks nervously.

"No," you respond. "In fact, I'd be in trouble with the bar association if I did. The ethics rules for lawyers prevent me from ever revealing anything you tell me in confidence." A voice inside your head adds, "at least I *think* they do."

You're *partially* right — the confidentiality rule requires a lawyer to keep secret essentially all information related to representation of a client, whatever its source.[1] Both Georgia Rule of Professional Conduct 1.6 and the old rule, Standard 28, include exceptions to the confidentiality requirements. The confidentiality rules only mandate disclosure of otherwise confidential or secret information "as the applicable law requires."[2] However, there are circumstances outlined in two other rules that sometimes require a lawyer to reveal information about a client even over the client's objection and to the client's detriment.

The confidentiality rules only mandate disclosure of otherwise confidential or secret information "as the applicable law requires." However, there are circumstances outlined in two other rules that sometimes require a lawyer to reveal information about a client even over the client's objection and to the client's detriment.

Full Disclosure

Rule 3.3, *Candor Toward the Tribunal*, generally requires a lawyer to be truthful and to fully disclose information to a tribunal. It prohibits a lawyer from offering evidence to a court when the lawyer knows the evidence is false. If a client commits perjury, the rule may require the lawyer to reveal the perjury to the court and the opposing party.

Comments 5 through 10 describe the options a lawyer has when confronted with a client who is intent on committing perjury. The lawyer should first seek to persuade the client not to offer false testimony. If that effort is not successful, the lawyer may attempt to withdraw from the case. If the client has testified falsely and will not recant, the lawyer is faced with a choice of keeping the client's secrets or condoning the client's fraud on the tribunal. Comment 6 to Rule 3.3 provides that "except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party."

Concerns about right to counsel and due process qualify the application of Rule 3.3 in criminal cases. Comments 7 through 10 address special issues when the would—be perjurer is a client who is accused of a crime. As with a civil case, the comments suggest that the lawyer try first to persuade the client not to testify falsely. If that effort fails, and if the court will permit it, Comment 7 suggests that the lawyer simply withdraw. In cases where the court will not allow withdrawal, the comment suggests a couple of other possible resolutions — to permit the client to testify by a narrative without the lawyer's participation, or to allow the lawyer to reveal the client's perjury if necessary to rectify the situation. Comment 12 states that while a criminal defense lawyer is under the same duty as any other lawyer to disclose the existence of perjury with respect to a material fact, that duty may be subordinate to constitutional provisions for due process and the right to counsel in criminal cases.

There is one final rule that might require a lawyer to reveal confidential or secret information about a

client. Rule 4.1, *Truthfulness in Statements to Others*, requires a lawyer to disclose a material fact to a third person "when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client." Comment 2 explicitly excludes the sort of "puffing" that lawyers engage in during negotiations as not being statements of "material fact" within the meaning of the rule.

Conclusion

In these head-to-head conflicts between the obligation to keep the secrets of a client and the obligation of candor to a tribunal, the new rules find squarely in favor of the duty of candor. Public policy concerns are at the root of these rules – the lawyer's first duty is to the administration of justice and "there is no ethical violation more damaging to 'the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by a lawyer of false testimony in the judicial process.'"[3]

Don't forget that lawyers in the Office of the General Counsel are available to offer guidance on the propriety of prospective conduct. Call the Ethics Helpline at (404) 527-8720 or (800) 334-6865. For more information about this and other ethics topics, see the Georgia Rules of Professional Conduct and the ABA Annotated Model Rules of Professional Conduct.

Endnotes

1. See Comment 5 to Rule 1.6. Rule 1.6 does not prohibit disclosures impliedly authorized to carry out the representation—for example, a lawyer would be expected to disclose information about the client's medical condition in attempting to settle a case seeking damages for personal injury.
2. See Rule 1.6(d). Rule 1.6 also contains exceptions which allow a lawyer to reveal information at the lawyer's discretion in certain circumstances—when required by law or court order, when necessary to prevent substantial financial loss to another as the result of client criminal conduct, to prevent serious injury to another, or to collect a fee.
3. ABA ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.3 Legal Background: Introduction, quoting *Florida Bar v. Rightmyer*, 616 So.2d 953, 955 (Fla. 1993).

THE INTERNATIONAL WASTE Management Association named **Joan B. Sasine** of **Powell, Goldstein, Frazer & Murphy LLP** to the board of directors. Sasine has a bachelor's degree from the University of Miami, a master's degree from Georgia Institute of Technology and a law degree from John Marshall Law School. Sasine is also an environmental engineer, and a member of the Atlanta Geological Society, the Georgia Society of Professional Engineers and the Atlanta Bar Association.

Fred F. Manget has been named **deputy general counsel of the Central Intelligence Agency (CIA)**. Previously, he was acting director of Congressional Affairs at the CIA. He is a former associate of Hicks, Maloof & Campbell and Alston, Miller & Gaines.

The Immigration Pro Bono Development and Bar Activation Project of the **American Bar Association** has awarded a grant to the **Georgia Asian Bar Association Inc.** of Atlanta. More than $100,000 in grants has been awarded to projects that provide legal services to newcomers to the United States, including detained immigrant and refugee children. The awardees work with community-based, non-profit immigration service providers to enhance the delivery of pro bono legal services.

The board of directors of **NASD Dispute Resolution Inc.** has appointed **J. Pat Sadler,** of the Atlanta firm **Sadler & Hovdesven P.C.**, to a three-year term on its **National Arbitration and Mediation Committee** (NAMC). The NAMC advises the NASD on the development and maintenance of an equitable and efficient system of dispute resolution in the securities industry.

The **Recording Academy**, the organization known for the Grammy Awards, named **Joel Katz** to the **Executive Entertainment Counsel**. In 1971, Katz founded **Katz, Smith & Cohen**, which later merged with **Greenberg Traurig LLP**. He is currently the chairman of the American Bar Association's Sports & Entertainment Law Forum, former chairman and chairman emeritus of the Board of Trustees for the National Academy of Arts and Recording Sciences Inc., and a member of the Board of Directors for Farm Aid Inc., the T.J. Martell Foundation for Leukemia Research and the Georgia State Music Hall of Fame Authority. Katz is the only attorney ever inducted into the Georgia Music Hall of Fame.

Cofer, Beauchamp, Stradley & Hicks LLP has agreed to a merger with **Epstein, Becker & Green PC**. The merger adds real estate and international law to Epstein, Becker & Green's key practice areas of health care, labor and employment, corporate transactions and commercial litigation. The firm will continue to maintain its office in Buckhead following the merger.

William Ragland Jr., a technology lawyer with **Powell, Goldstein, Frazer & Murphy LLP**, has been elected **secretary** of the **Atlanta Bar Association**. Joining Powell Goldstein in 1986, Ragland currently heads the firm's Technology and Intellectual Property Litigation Group. Ragland has served as a member of the Atlanta Bar's Board of Directors, chair and vice-chair of the Continuing Legal Education Board of Trustees, chair of the Litigation Section, co-chair of the Member Benefits Committee and co-chair of the Pro Bono Committee. Ragland received his law degree from the University of Virginia and his bachelor's degree from the University of North Carolina at Chapel Hill.

The **Clayton County State Court** and **Cherokee County Courts** have recently become part of an electronic pilot project headed by the **Georgia Courts Automation Authority**. Clayton and Cherokee County will be working with **E-Filing.com** to enable attorneys to file civil cases without having to go to the courthouse. **Roy Reagin**, with **Frederick J. Hanna & Associates,** was the first electronic filer in Clayton County. **Peter Gleichman**, a senior partner with **Robertson and Gleichman**, was the first electronic filer in Cherokee County.

The **Buckhead Coalition**, a non-profit civic organization with the mission to "nurture the quality of life" in the northern section of Atlanta, has named **John G. Morris** a member. **Morris** is a senior partner with **Morris, Manning & Martin LLP**.

Neal Baston, a partner with **Alston and Bird**, has been installed as **chair** of the **American College of Bankruptcy**. Baston formerly served as president of the college. Baston's

CONTINUED ON PAGE 59

Service Juris Day

The second annual Service Juris Day was a wonderful day of service for Atlanta lawyers when Atlanta's legal community teamed up with Hands On Atlanta. On Saturday, June 2, 2001, teams from Atlanta law firms, law schools, courts and bar associations joined honorary chair Chief Justice Robert Benham of the Supreme Court of Georgia and co-chair Sally Quillian Yates from the U.S. Attorney's Office to help revitalize a neighborhood in need (Adair Parks I & II and North Avenue Academy, all located in southwest Atlanta).

The Lawyers Foundation of Georgia was proud to participate for the second time in the event, both as a sponsor and participant. Service Juris was not only created in response to the desire of many practicing or associated with the law to participate in a hands-on volunteer experience, but also to highlight the many contributions already being made by Atlanta's legal community. Sutherland Asbill & Brennan was the presenting sponsor of Service Juris, providing both substantial time and money to the day.

Twenty-one teams participated for a total of about 400 volunteers. This year's teams were: **Association of Legal Administrators; BellSouth/Legal; CambridgeStaff Team; Cohen & Coproni LLC; Council of Superior Court Judges; *Fulton Daily Report*; eAttorney Inc.; GABWA; Georgia Legal Services; King & Spalding; Law Offices of Kenneth S. Nugent P.C.; Lawyers Foundation of Georgia; Morris, Manning & Martin; Powell, Goldstein, Frazer & Murphy; Red Hot Law Group; Smith, Gambrell & Russell; Sutherland Asbill & Brennan LLP; Womble Carlyle Sandridge & Rice; and Young Lawyers of Atlanta.**

1: Volunteers from Sutherland Asbill & Brennan and King & Spalding work together to dig a drainage canal for the softball field at Adair Park II. (l to r): Brett Coburn, Robert Joseph, Pam Roper, Alex Chang and Karla Bloodwort. 2: Volunteers from the Association of Legal Administrators paint a bench in the dugout of a softball field at Adair Park II. (front to back): Sandra Moss of Smith, Gambrell & Russell; Cathy McCollister of Kilpatrick Stockton; and Paul Minor of Smith, Gambrell & Russell.

In Atlanta

King & Spalding announced the addition of **Glenn M. Fortin**, **Kathryn M. Furman**, **Karen S. Guarino**, **Holmes J. Hawkins III**, **Mark M. Maloney**, **Scott L. Marrah**, **Michael M. Raeber**, and **Todd Wozniak** as partners in the Atlanta office. King & Spalding is located at 191 Peachtree Street,Atlanta, GA 30303; (404) 572-4600; www.kslaw.com.

Cynthia Groskiewicz, a former senior actuary with Altman, Kritzer & Levick, PC, has joined **Greenberg Traurig LLP**, in the Atlanta office as director of employee benefits and administrative services. Greenberg Traurig is located at The Forum, 3290 Northside Parkway, Suite 400, Atlanta, GA 30327; (678) 553-2160; www.gtlaw.com.

Loewenthal & Fleming LLP announced that **J. Marcus Howard**, formerly a partner at Mozley, Finlayson & Loggins, has joined the firm. The firm will now be known as **Loewenthal, Fleming & Howard PC**. The firm's new offices are located at 2970 Peachtree Road NW, Suite 805, Atlanta, GA 30305; (404) 995-8808; Fax (404) 995-8899; www.lfhpc.com.

Miller, Snider & Odom LLC announced that **H. Gary Pannell** has joined the firm. He will manage the firm's newly established Atlanta office. Pannell recently retired from over 30 years of service with the Office of Controller of the Currency. The firm is located at 400 Colony Square, Suite 200, Atlanta, GA 30361; (404) 870-9042; Fax (404) 870-9005.

Gordon Griffin, United States ambassador to Canada, announced his return to the Atlanta and Washington, D.C.-based firm of **Long, Aldridge & Norman** as vice-chairman and managing partner of the firm's D.C. office. Griffin will also head the firm's International Trade practice. Long, Aldridge & Norman is located at Harris Tower, Suite 1400, 233 Peachtree Street NE, Atlanta, GA 30303; (404) 739-0149; Fax (404) 659-4452; www.lanlaw.com.

Jeffrey P. Jones, former supervisory attorney, estate tax, for the **Internal Revenue Service** (IRS) in Phoenix, Ariz., has been promoted to supervisory attorney, estate tax territory manager. He will direct the Estate, Gift, and Generation Skipping Tax Program for 13 southern and central states, including Georgia. The IRS is located at 401 W. Peachtree St. NW, Atlanta, GA 30365; (404) 338-7975; Fax (404) 338-7928.

Ford and Harrison LLP announced that **Reneé A. Canody**, **Lisa C. Hiltz**, **Donald R. Lee**, **Julie Simmermon and C. Matthew Smith** have become associated with the firm's Atlanta office. **Patrick F. Clark** has also become a partner with the firm. Ford and Harrison is located at 1275 Peachtree Street NE, Suite 600, Atlanta, GA 30309; (404) 888-3897; (404) 888-3863; www.fordharrison.com.

Mark S. Kashdan has joined the **Office of General Counsel** of the **Centers for Disease Control and Prevention (CDC)**. His practice includes appropriations, financial management, procurement and grants, environmental health and administrative law. The CDC is headquartered at 1600 Clifton Road, Atlanta, GA 30333; (404) 639-7220; Fax (404) 639-7489; www.cdc.gov.

Charles A. Mobley, a former administrative law judge with the State Board of Workers' Compensation, has joined the Atlanta office of **Allen, Kopet & Boyd, PLLC** as head of the Workers' Compensation Section. Allen, Kopet & Boyd is located at One Paces West, Suite 1730, 2727 Paces Ferry Rd., Atlanta, GA 30339; 770-435-7260.

In Brunswick

James B. Durham, William M. McHugh, and Beth M. Duncan, formerly of the law firm of Fendig, McLemore, Taylor, Whitworth & Durham, P.C., announced the formation of the law firm of **Durham, McHugh & Duncan, P.C.** The firm concentrates in the areas of personal injury, medical malpractice, product liability, and commercial law. Durham, McHugh & Duncan, P.C. is located at 12 St. Andrews Court, Brunswick, Georgia 31520; (912) 264-1800; Fax (912) 264-4480; www.durhamfirm.com.

In Milledgeville

Ryan Frier, formerly of William Ryan Frier PC, and **Donald R. Oulsnam**, formerly of Waddell & Associates LLC, announced the formation of **Frier & Oulsnam PC**. The firm's practice is limited to real

estate, estate planning and business law. Frier and Oulsnam PC is located at 150 Roberson Mill Road, Suite 100, Milledgeville, GA 31061; (478) 454-5444; Fax (478) 454-9138.

In Savannah

Savage, Turner & Pinson announced **Stanley M. Karsman**, a former senior partner of Karsman, Brooks & Calloway, has joined the firm as a partner. The firm will now be known as **Savage, Turner Pinson & Karsman**. The firm is located at 304 East Bay Street, Savannah, GA 31401; (912) 231-1140; Fax (912) 232-4212.

In Nashville, Tenn.

Stites & Harbison PLLC announced that **Cathy Speers**, formerly of Blackburn &McCune, has joined the firm. Speers will concentrate exclusively on domestic relations. The firm is located at Suntrust Center, Suite1800, 424 Church Street, Nashville, TN 37219; (615) 782-2200; Fax (615) 782-2371.

In Pensacola, Fla.

Young & Associates PA, announced that **David A. Fugett** is now a partner with the firm. The new name of the firm is **Young, Bill & Fugett PA**. The firm specializes in insurance defense matters, including medical malpractice, nursing home and automobile defense practices. The firm is located at Seville Tower, Floor Seven, 226 South Palafox Place, Pensacola, FL 32501; (850) 432-2222; Fax (850) 432-1444.

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continued from page 56

practice is primarily concentrated in bankruptcy and litigation. He is a member of the National Bankruptcy Conference, a former director of the Association of Insolvency Accounts and he has served on the Advisory Committee of the Rules of Bankruptcy Procedure of the Judicial Conference of the United States from 1993-1999. He is a former president of the Atlanta Bar Association.

August marks the retirement of **Air Force Colonel Lake B. Holt III,** a 1973 graduate of the University of Georgia School of Law and current member of the Georgia State Bar. Colonel Holt's distinguished Air Force military career spans 28 years and has included receipt of the highest Air Force legal honors and awards.

Among many notable accomplishments, Lieutenant Colonel Holt is specifically credited as the pioneer who developed and instituted the Air Force Civilian Drug Testing Program. Colonel Holt has received several of the Air Force's highest legal honors, including the prestigious Albert M. Kuhfeld Award (Outstanding Young Judge Advocate) in 1979. He was selected as the United States Air Force Academy Outstanding Educator in Law in 1984 and for the Air Force Systems Command Stuart R. Reichart Award (Outstanding Senior Judge Advocate) in 1992.

Colonel Holt is married to the former Barbara McGinnis of Savannah. They have a daughter, Ellen, and a son, Russell. Colonel Holt has accepted a position with USAA Insurance and Financial Services Company in San Antonio, Texas, as Executive Assistant to the General Counsel.

Colonel Lake B. Holt III

VOLUNTARY BARS

Western Circuit Bar Association Promotes Service, Fellowship

By M. Kim Michael

THE QUESTION:

Who wants to be a lawyer in the Western Circuit Bar Association?

A. University of Georgia law school graduates who are not ready for their "student life" to completely end.

B. Young graduates who have spent their childhood days in the Clarke or Oconee county area.

C. Attorneys who yearn for small town charm with the cultural/sports/educational benefits offered by a large university.

D. Attorneys who want to live on a farm and work in the city without an intolerable commute.

THE ANSWER:

All of the above.

The Western Circuit Bar Association encompasses Clarke and Oconee counties. The Clarke County Courthouse is located in Athens, and the Oconee County Courthouse is located in Watkinsville. There are approximately 192 members of the Western Circuit Bar Association. The Western Circuit is an interesting and wonderful place to practice law.

Many University of Georgia law school students yearn to remain in Athens a few more years after graduation, not wanting to immediately give up every aspect of their "student" lifestyle. They want to continue to be a Georgia Bulldog fan and go to a few more Georgia/Florida football games, have a few more carefree spring break trips to the beach and continue to frequent the downtown restaurants and clubs. Many find themselves not wanting their Athens student life to end. Athens makes you feel young - even after you're old.

Most of the attorneys who grew up in Clarke or Oconee County have returned to the area to practice law. Although the University of Georgia brings about 29,000 students per year to the area, Athens and Watkinsville have managed to maintain their small-town charm. The legal community reaps the benefit of having a small-town atmosphere in which to practice law with all of the cultural/sports/educational opportunities offered next door by a large university.

In the Western Judicial Circuit, one can practice law in the city and go home at night to a real cattle or horse farm with the commute being less than 20 minutes. You can comfortably and affordably live in the country and have your law practice in the city. You can still walk over to the courthouse and talk to each of the judges, the district attorney or the solicitor without an appointment. The clerk of the court will stay late if you need to file something after 5:00

CONTINUED ON PAGE 62

2000-2001 Western Circuit Bar Association Officers

President:	Mark M. Wiggins
President-Elect:	M. Kim Michael
Secretary:	David S. Thomson
Treasurer:	William C. Berryman
Past President:	Robert N. Elkins

There are 192 members of the Western Circuit Bar Association. The association year begins in July and dues are $75.00 per year. Monthly membership luncheons occur on the second Tuesday of every other month at Trumps, 247 Washington Street, Athens.

On a spring or summer day in the Western Circuit, the following "lawyer scenes" are common:

1: Jim Hudson, a member of the Bar for 44 years, getting ready to take off in his bright yellow Stearman WWII bi-plane with a fellow Bar member. 2: Edward D. Tolley, Board of Governor's representative for the Western Circuit, at Gaines Elementary School promoting a reading project sponsored by the local bar. 3: (l to r) Western Circuit Bar members Patrick Serris, Kenny Kalivoda, Paige Otwell and Jeff Gilley walk from their Athens office to kick back and have lunch outside on College Square. 4: State Court Judge N. Kent Lawrence, former UGA and pro football player, outside the courthouse making a throw to Superior Court Judge Lawton E. Stephens. 5: Mark Wiggins, president of the local bar association, outside his office in Oconee County at lunch time with his 13-year-old daughter, Laura Slade, and her dog, Captain.

LAWYER ASSISTANCE PROGRAM

Alcohol/Drug Abuse and Mental Health Hotline

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

Area	Committee Contact	Phone
Albany	H. Stewart Brown	(912) 432-1131
Athens	Ross McConnell	(706) 359-7760
Atlanta	Melissa McMorries	(404) 522-4700
Florida	Patrick Reily	(850) 267-1192
Atlanta	Henry Troutman	(770) 980-0690
Atlanta	Brad Marsh	(404) 876-2700
Atlanta/Decatur	Ed Furr	(404) 231-5991
Atlanta/Jonesboro	Charles Driebe	(404) 355-5488
Cornelia	Steven C. Adams	(706) 778-8600
Fayetteville	Glen Howell	(770) 460-5250
Hazelhurst	Luman Earle	(912) 375-5620
Macon	Bob Daniel	(912) 741-0072
Macon	Bob Berlin	(912) 745-7931
Norcross	Phil McCurdy	(770) 662-0760
Rome	Bob Henry	(706) 234-9442
Savannah	Tom Edenfield	(912) 234-1568
Valdosta	John Bennett	(912) 242-0314
Waycross	Judge Ben Smith	(912) 285-8040
Waynesboro	Jerry Daniel	(706) 554-5522

Continued from page 60

p.m., and the attorneys all know of the court reporters, bailiffs and most of their family members by name.

The Western Circuit Bar Association meets every other month and has an attendance record in excess of 100 lawyers at each luncheon meeting. A goal of the association is to keep dues as low as possible in order to encourage attendance.

In January 2000, the Western Circuit Bar Literacy Project was launched in conjunction with Gaines Elementary School. The two-phase program provides each student with an age-appropriate book on his/her birthday. Additionally, a reading coalition schedules members a time to read with students twice per week. Members select and sign up for a specific time to read with the students.

Participation among the members of the association was overwhelming, and many expressed the satisfaction of doing a "non-legal type" community service project. The purpose of the project is to improve the educational experience of the children by encouraging reading, thereby increasing literacy levels. The project was also designed to encourage community involvement within the legal profession. Edward D. Tolley, project chairman, received the 2000 Chief Justice Robert Benham Community Service Award for his efforts in implementing the program. Plans exist to further expand the project to other schools.

Many children had a jolly Christmas this past year, thanks to the many members generously participating in the Salvation Army Christmas Adoption Program. Members served as "Salvation Angels," and each filled a large shopping bag full of clothes and other needed items for a child of a certain age. The age and sizes needed for a specific child were noted on each shopping bag. This made the shopping easy and fun. All of the Christmas bags were stored in Superior Court Judge Steve Jones' library/conference room. The room was packed so full of Christmas bags that Judge Jones could not do any legal research for two full weeks. Judge Jones and his assistant, Tammy Mize, spearheaded the project. This community project made the Christmas spirit contagious throughout the Association.

The Western Circuit Bar Association has been in existence for over 40 years. Plans are in the works to have another strong and productive 40 years or more of fellowship and service.

M. Kim Michael is a partner in the law firm of Cook, Noell, Tolley, Bates & Michael, LLP, in Athens. Michael also serves as president-elect of the Western Circuit Bar Association.

South Georgia Lawyers Stay Active

1


2


3


4

1: Sheriff Freddie Thompkins of Sylvester receives the Liberty Bell Award from Chief Judge Gary McCorvey of the Tifton Judicial Circuit. 2: In May, the Lawyers Foundation of Georgia met at the Spring Hill Country Club in Tifton. Bobby Chasteen (standing) encourages those present at the luncheon to help increase the membership in the Foundation. 3: Chief Justice Robert Benham and Justice Harris Hines recently visited Tifton. (l to r): Judge William J. Forehand, Chief Judge Gary McCorvey, Justice Benham, Judge Harvey Davis, Senior Judge John D. Crosby and Justice Hines. 4: The Tifton Circuit Bar Association and guests enjoyed a golf outing and social at the Lake Blackshear home of Sandy Sims. The Tifton Bar wishes to thank ANLIR for furnishing the hospitality bar. The South Georgia office of the State Bar of Georgia can assist you with local bar activities. Please contact Bonne Cella at (800) 330-0446 for assistance.

IN MEMORIAM

The Lawyers Foundation of Georgia Inc. sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 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.

Charles F. Adams Macon, Ga.	Admitted 1949 Died November 2000
Kenneth Louis Baer Decatur, Ga.	Admitted 1982 Died June 2001
Claud F. Brackett Jr. Norcross, Ga.	Admitted 1949 Died May 2001
David-Eric Anderson Dayton Atlanta, Ga.	Admitted 1999 Died May 2001
Benjamin Gilmore Estes Roswell, Ga.	Admitted 1950 Died April 2001
Carmine Florentino Atlanta, Ga.	Admitted 1958 Died April 2001
Denmark Groover Jr. Macon, Ga.	Admitted 1947 Died April 2001
John H. Hayes Albany, Ga.	Admitted 1963 Died April 2001
Glenn Bertrand Hester St. Simons, Ga.	Admitted 1950 Died March 2001
Gary Lister Johnson Columbus, Ga.	Admitted 1987 Died April 2001
Edward W. Killorin Atlanta, Ga.	Admitted 1956 Died July 2000
Stephen Owen Kinnard Atlanta, Ga.	Admitted 1982 Died May 2001
Robert S. Lanier Jr. Statesboro, Ga.	Admitted 1979 Died January 2001
John Brooks McElveen Garden City, Ga.	Admitted 1973 Died November 2000
Wallace Miller Jr. Macon, Ga.	Admitted 1939 Died November 2000
Pauline H. Nicholls Monroe, Ga.	Admitted 1988 Died February 2001
Sidney Parks Atlanta, Ga.	Admitted 1935 Died September 2000
William M. Palmer Richland Hills, Texas	Admitted 1951 Died February 2001
George W. Sears Jr. Moultrie, Ga.	Admitted 1953 Died November 2000
Aurel Jean Tolman Atlanta, Ga.	Admitted 1987 Died May 2001
John K. Train III Atlanta, Ga.	Admitted 1963 Died June 2001
C. F. Vickers Chamblee, Ga.	Admitted 1954 Died May 2001
Richard G. Wilkins St. Simons, Ga.	Admitted 1950 Died May 2001
Amos R. Worth Ludowici, Ga.	Admitted 1950 Died January 2001

Correction: Charles R. Adams III was mistakenly listed as deceased in the June 2001 Georgia Bar Journal. Charles F. Adams, father of Judge William Adams, is deceased. The error is deeply regretted.

Denmark Groover Jr., 78, Macon, died April 18, 2001. Born in Macon, he attended the University of Georgia and served as a pilot in World War II in the famed Black Sheep Squadron. He served a total of 22 years in the Georgia House of Representatives. As a former segregationist, he was instrumental in the passage of the new Georgia flag. He served on numerous state boards, including the Georgia Ports Authority and as chairman of the Georgia Sports Hall of Fame.

Tilden L. Brooks, 87, Riverside, died Feb. 25, 2001. Born in Atlanta, he attended the University of Georgia and the Woodrow Wilson College of Law. He was admitted to the State Bar of Georgia in 1937 and the California Bar in 1946. He was a member of the Retired Officers Association and the Kiwanis Club. He served in the U.S. Navy for 20 years, retiring in 1960 as a commander. Following his retirement, he continued service with the Judge Advocates Office. In addition, he was deputy county counsel in Riverside. He is survived by his wife, Arlene, two sons,

Tilden Brooks Jr. and Douglas Brooks, and a daughter, Ann Brooks, as well as five grandchildren.

Stephen O. Kinnard, 54, Atlanta, died May 27, 2001. He attended the William Jewel College and Indian University Law School. He was admitted to the State Bar of Georgia, Michigan and D.C. Bar Associations. He was the chief circuit mediator for the United States Court of Appeals for the Eleventh Judicial Circuit. The program was established in 1992 and became a model for many other courts throughout the country. His outstanding service to the community and legal community was recognized by the American Bar Association (ABA) with its Pro Bono Publico in 1987 for the Georgia Appellate Practice and Educational Resource Center, as well as by the American Civil Liberties Union of Georgia with its Bill of Rights Award. He is the recipient of the ABA's Harrison Tweed Award for improving legal services for the poor and the Atlanta Bar Association's professionalism award. The Georgia Indigent Defense Council also recognized him as the 2001 recipient of the Commitment to Excellence Award. His wife, Joyce Kohlenberg Kinnard, and son and daughter, Jeremy and Rachel Kinnard, survive him.

Robert T. Thompson, 69, Greensville, S.C., died Jan. 20, 2000. Born in Pontiac, Ill., he attended Emory College and Emory University School of Law where he was the first editor-in-chief of the *Journal of Public Law*. He was admitted to the State Bar of Georgia in 1952 and formed Thompson, Mann & Hutson in 1964. The firm became Thompson & Hutson in 1991 and he practiced in the firm until 2000. He was a member of the American Bar Association, the American Bar Foundation, the South Carolina Bar Association, the DC Bar Association, the Greenville, South Carolina Bar Association and the Lawyers Club of Atlanta. He also served as president of the Younger Lawyers Section of the State Bar of Georgia in 1958-59. He is survived by his wife of 49 years, Elaine Cheshire Thompson, his sons, Robert, Thomas Jr., Dr. Randall C. Thompson and David L. Thompson, and his daughter, Francis Nichols, as well as six grandchildren.

Russell Godwin Turner Jr., 80, Decatur, died Feb. 7, 2001. Born in Atlanta, he attended Boy's High and graduated from the Georgia Institute of Technology and received his law degree from Atlanta Law School. He was admitted to the State Bar of Georgia in 1947 and practiced with Turner, Turner & Turner. He was a member of the American Bar Association, the Lawyers Club of Atlanta, Judge Advocate Association and the Atlanta Bar Association. He was in the naval reserves for 13 years, serving in active duty for three years during World War II where he was on duty on the USS Destroyer Clous, and was recalled to active duty during the Korean Conflict, serving on the USS Coates. He is survived by his wife of 58 years, Jean Snowden Turner, his daughter, Nancy Turner Manus, his sons, Russell G Turner III and Christopher Snowden Turner, his brother, Jack Porter Turner, and his parents, Russell Godwin Turner Sr. and Julia Green Turner, as well as five grandchildren.

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

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

For **information** about placing a memorial, please contact the Lawyers Foundation of Georgia at (404) 526-8617 or 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA 30303.

LAWYERS FOUNDATION OF GEORGIA

Shopping for Legal Research: Where's the Best Deal?

By Natalie R. Thornwell

I LOVE TO SHOP, DON'T YOU? I especially love sales. And who doesn't love to get something for free, right? Well, several lawyers have recently inquired about alternatives to their traditional legal research methods after having their monthly fees for legal research service increased. So, where can you find good deals on legal research? Who has what and how much will you have to pay to get it? Outlined below is some information that can help guide you through today's complex legal research shopping mall.

Legal research begins with you having to find case law and other substantive information to support your position on a legal matter. You probably do your research by referring to:

- Books
- CDs
- Online Services (both free and paid)
- Outside Support Services

Regardless of which method you use, you will find that there are some distinct benefits and disadvantages to each. So, what are they and who are the players involved with each method?

Books

Almost every traditional law firm has a law library. This library can contain hard copy volumes of state and federal cases, legal treatises and other books covering procedures, rules and forms specific to various areas of practice. If you are shopping to start or supplement your own library, here are some tips to help you locate the books your firm needs:

- Request catalogs from national legal publishers (The Law Practice Management Program keeps many of these catalogs and they can be viewed in our office, or visit http://www.colorado.edu/Law/lawlib/ts/legpub.htm#list for a comprehensive list of legal publishers).
- Investigate online book buying services. The powerhouse booksellers Amazon.com and BarnesandNoble.com are often used by minor law book sites that sometimes carry other interesting law-related titles. I thought http://www.hits.net/~fpp/greatlawbooks.html was an interesting site for law-related books.
- Look for used law books. Some sources to check are:
- The Lawbook Exchange Ltd., (800) 422-6686, see ad in Classifieds section of this publication, www.lawbookexchange.com
- National Law Resource Inc., (800) 886-1800, www.nationallaw.com
- William S. Hein & Co., (800) 828-7571, www.wshein.com
- Consider buying books from law firms that are closing or from lawyers who are retiring.

Books are not going to disappear from law practices despite the growing use of the Internet in law offices. After all, one of the advantages of books is their accessibility. You are not subject to a computer or Internet connection to use books. The trade off is that you will have a harder time working with cross-referencing and keeping track of your research trail.

CDs

CDs are now often used for legal research. The benefit of storing several volumes on one CD and having that information more readily available via various search options make CDs a very attractive and efficient solution for doing legal research. We can talk more about the role of CDs in file retention in another article, but if you are looking to do legal research via CD, then look first to the main legal publishing vendors for the best options.

Georgia law on CD is available from the leading legal publishers LexisNexis and West at a subscription cost of about $100 per month. These subscriptions usually include the Official Code of Georgia Annotated, Rules of Court Annotated, Supreme Court decisions, Court of Appeals decisions, selected federal

decisions and Attorney General Opinions. Shop for deals when you already subscribe to print publications or other services coming from these vendors. Also remember that your local sales representative holds the key to deals on legal research and the prices can vary greatly. You have to really shop for bargains when it comes to CDs (and books, too).

Overall, the storage capacity and the durability of CDs make them more attractive than books. However, updates can become tedious over time and you have to have computer access to use your CDs. Also having to switch CDs in the middle of a search is troublesome if you do not have a CD tower to house a complete CD set. If you do not want any CDs at all, you might try online services.

Online Services

The effect of the Internet on the legal industry has been phenomenal and in the area of legal research there is no exception. Case management programs have expanded their offerings to include access to research. LexisNexis has a partnership with TimeMatters, and Amicus Attorney has a new Libraries module that encompasses firm research. On the Internet, you can find several free and paid legal research sites and services.

For free, you can try out several legal search engines to start your research. Check out: www.findlaw.com; www.LLRX.com (Law Library Resource Xchange); www.virtualchase.com; www.lawguru.com; www.lawrunner.com; and www.romingerlegal.com. Some other engines or legal portals are www.catalaw.com, www.alllaw.com and www.ilrg.com (Internet Legal Resource Guide). The State Bar's Web site carries a link for legal research that includes some of these sites. Visit www.gabar.org and choose "Legal Research" to start your search.

You can also use the online services of the major legal publishers. LexisNexis has lexis.com, nexis.com and lexisone.com (site designed for solo and small firm practitioners). Shephard's Citator is the cite checker for LexisNexis. West offers westlaw.com, keycite.com (cite checker) and westdoc.com. The West Group also includes several e-books for +/- $12.50 in its bookstore, and has a service, Westlaw Wireless, that allows research to be conducted on and downloaded to Palm, CE and SmartPhone devices. You can also try Aspen Publisher's LoisLaw service, or try its AspenLawDirect service, which uses Oliver's Cases to deliver case law to your e-mail inbox. LoisLaw has Globalcite as its cite checker. For some additional options, you can access the following online research services for little or no charge: www.versuslaw.com; www.jurisline.com; and www.quicklawamerica.com.

As mentioned, prices for these services vary greatly, and the services come in many combinations and formats. When shopping for online services, remember that you are depending upon an Internet connection to get the service. You should also be wary of the way time is charged for performing searches, printing and periodic access. Determine whether or not multiple licenses are required for additional users on an account, too. Overall, using the Internet for legal research can be simpler, but you have to be careful so that you are not paying for meaningless searches and slow connect times. You have to really shop for up-to-date, accurate information.

Outside Support Services

When you do not want to or do not have time to do your own research, you can use the services of companies that hire qualified attorneys, paralegals, librarians and other legal experts to do research for you. These services can be helpful with large cases or those where you know you are ill equipped to handle the research and daily administration of the case. When using these services make sure you check any references that they can give you. Look at samples of their past work. If you do not want to waste money for poor quality service, then shop around.

Some vendors you can contact for research support are:

- National Legal Research Group, (800) 727-6574, www.nlrg.com
- Lexpert Research Services, (310) 589-5546, www.lexpertresearch.com
- Quo Jure, (888) 636-6911, www.quojure.com
- BriefHelp, (202) 728-1480, www.briefhelp.com
- Legal Research Center, (800) 776-9377, www.lrci.com

The area of legal research is as vast as a shopping mall, and so are the options for services. Remember that all good shoppers compare prices and the quality of the goods or services they receive and switch brands when they need to. You should do the same for selecting the appropriate means of legal research for your firm. Search for accurate, up-to-date, useful legal information using some the things you have learned here. Happy shopping!

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

Discipline Notices (April 14, 2001 - June 22, 2001)

DISBARMENTS AND VOLUNTARY SURRENDER OF LICENSE

Perry O. Lemmons
Atlanta, Ga.

Perry O. Lemmons (State Bar No. 446400) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated April 30, 2001. Lemmons was suspended for two years in 1999. He refused to certify that he ceased practicing law, maintained a sign in front of his office stating he was an attorney, and certified a petition to probate a will while he was suspended.

Harry L. Trauffer
Marietta, Ga.

Harry L. Trauffer (State Bar No. 715750) filed a petition for voluntary discipline requesting disbarment after the State Bar filed a Formal Complaint. The Supreme Court accepted the petition and disbarred Trauffer by order dated April 30, 2001. Respondent was hired to handle collection of overdue accounts owed by patients in the client's medical practice. Respondent did not promptly notify the client of funds received on his behalf, did not deliver the collected funds to the client, and did not make an appropriate accounting to the client regarding the collected funds.

Richard Phillip Arp
McCaysville, Ga.

Richard Phillip Arp (State Bar No. 023747) voluntarily surrendered his license to practice law in Georgia. The Supreme Court accepted the petition for voluntary surrender on April 30, 2001. Arp paid a paralegal, the paralegal's business, and a chiropractor to refer clients to him.

Alfred Obi Nibo
Riverdale, Ga.

Alfred Obi Nibo (State Bar No. 542645) voluntarily surrendered his license to practice law in Georgia after being convicted of federal crimes. The Supreme Court accepted the petition for voluntary surrender on April 30, 2001. On Nov. 16, 2000, Nibo was found guilty of one count of conspiracy to commit mail fraud and six counts of mail fraud.

Mark Andrew Gomez
Newnan, Ga.

Mark Andrew Gomez (State Bar No. 400511) voluntarily surrendered his license to practice law in Georgia after he was convicted of a felony. The Supreme Court accepted the petition for voluntary surrender on April 30, 2001. Gomez entered a plea of guilty to a single count of the criminal offense of theft by conversion.

Thomas Wayne Snow Jr.
Chickamauga, Ga.

Thomas Wayne Snow Jr. (State Bar No. 666200) voluntarily surrendered his license to practice law in Georgia. The Supreme Court accepted the petition for voluntary surrender on April 30, 2001. On Nov. 16, 2000, Snow entered a plea of guilty to a single count of a felony in violation of Standard 66.

Charles E. Bagley
Dalton, Ga.

Charles E. Bagley (State Bar No. 005440) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated June 4, 2001. Bagley was appointed to defend a client in an action to terminate her parental rights. Bagley represented the client through the trial of her case and in the appeal of the order terminating her parental rights. Though Bagley filed a Notice of Appeal, he failed to file either enumerations of error or a brief on behalf of the client. The Georgia Department of Human Resources (DHR) then moved to dismiss the appeal and Bagley did not respond to the motion. The Court of Appeals granted DHR's motion and dismissed the client's appeal. The client learned of the dismissal by calling the court clerk's office. Bagley then promised to file a motion to have the dismissal set aside but never did so.

Roger A. Hunsicker
Stockbridge, Ga.

Roger A. Hunsicker (State Bar No. 378475) voluntarily surrendered his license to practice law in Georgia. The Supreme Court accepted the petition for voluntary surrender on June 4, 2001. On April 9, 2001, Hunsicker entered a plea of guilty to a single count of child molestation before the Superior Court of Henry County.

Dan A. Aldridge Jr.
Atlanta, Ga.

Dan A. Aldridge Jr. (State Bar No. 008325) voluntarily surrendered his license to practice law in Georgia. The Supreme Court accepted the petition for voluntary surrender on June 4, 2001. Aldridge received $5,000 from a client who deposited this money with him with the expectation of receiving 20 percent interest over a 90-day investment period. Aldridge failed to properly account to the client for her investment and subsequently sent the client a check, which was returned for insufficient funds. Although he ultimately paid the client $6,750, he still owes her additional interest on her investment.

In another matter Aldridge received $85,000 from a client who deposited this money with him with the expectation of receiving annual interest of 20 percent. Aldridge failed to account for the interest earned and two interest checks he provided the client were returned for insufficient funds. Despite a demand to return the $85,000 with all earned interest, Aldridge has still not repaid the money.

Eric Karlton Powell
Parkersburg, W.Va.

Eric Karlton Powell (State Bar No. 585942) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated June 11, 2001. Respondent was licensed to practice law in Georgia and West Virginia. In 1998, respondent pled guilty to eight misdemeanor counts of prostitution in West Virginia. As part of the plea agreement, he was required to voluntarily surrender his license to practice law in West Virginia. Disbarment by another state is grounds for disbarment in the State of Georgia.

SUSPENSIONS

Eric B. Reuss
Mobile, Ala.

By order of the Supreme Court of Georgia dated May 7, 2001, Eric B. Reuss (State Bar No. 601300) was suspended from the practice of law in the State of Georgia for a period of two years. Respondent failed to segregate a bankruptcy client's funds from his own funds and failed to disclose his compensation to the bankruptcy court.

Jed Laurence Silver
Marietta, Ga.

By order of the Supreme Court of Georgia dated April 30, 2001, Jed Laurence Silver (State Bar No. 004030) was suspended from the practice of law in the State of Georgia for a period of two years. Silver must obtain a determination from the State Bar Committee on Lawyer Impairment that he is competent to resume the practice of law. Silver knew of and accepted financial benefits from cases referred by runners. He pled nolo contendere to one count of a violation of OCGA §23-24-53 related to paying runners for referrals.

Jerry Wayne Frazier
Riverdale, Ga.

By order of the Supreme Court of Georgia dated April 30, 2001, Jerry Wayne Frazier (State Bar No. 274687) was suspended from the practice of law in the State of Georgia for a period of one year with conditions prior to reinstatement. Frazier maintained an attorney trust account and had written several checks on that account which were returned for lack of sufficient funds. He also wrote a number of checks on the trust account for personal expenses, commingled funds withdrew unearned fees, and failed to account for his clients' money. Respondent's failed to file an answer, but did submit a report seeking the imposition of a lesser sanction.

REVIEW PANEL REPRIMANDS

William H. Moore Jr.
Savannah, Ga.

On April 30, 2001, the Supreme Court accepted the Petition for Voluntary Discipline of William H. Moore Jr. (State Bar No. 521200) and ordered him to receive a Review Panel Reprimand. Without Moore's knowledge, authority, or supervision, an employee negotiated and settled a personal injury claim for a grievant and disbursed the proceeds. Moore admits that as a result of his failure to properly supervise the employee's activities, the employee engaged in conduct that involved the unauthorized practice of law.

Patrick T. Beall
Athens, Ga.

On April 30, 2001, the Supreme Court accepted the Petition for Voluntary Discipline of Patrick T. Beall (State Bar No. 043950) and ordered him to receive a Review Panel Reprimand. Beall represented a client in a personal injury case and in a breach of contract case. In the injury case, Beall determined that his client would not recover any damages, but failed to inform the client that he would not pursue the case. The client was sued but Beall did not file a counterclaim. In the other case, Beall filed a proof of claim in bankruptcy court for the client's breach of contract claim. Beall failed to respond to a motion and the court disallowed the claim.

INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since April 14, 2001, three lawyers have been suspended for violating this Rule.

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

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, *2000-2001 State Bar of Georgia Directory and Handbook,* p. 8-H (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. 8-H.

This Statement, and the following verbatim text, are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. 8-H.

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 01-2

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in a special meeting held on May 3, 2001, and in a regular meeting held on June 16, 2001, and upon the concurrence of its Executive Committee, presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, *2000-2001 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 1-302

It is proposed that Part I (Creation and Organization), Rule 1-302 be amended by deleting those stricken portions of the rule and inserting the phrases in bold typeface as follows:

Rule 1-302. Composition.
(a) The Board of Governors shall be composed of the following:

~~(a)~~ **(1)** the President, the President-elect, the Immediate Past President, the Secretary, the Treasurer, the President of the Young Lawyers Division, the President-elect of the Young Lawyers Division, the Immediate Past President of the Young Lawyers Division and the Attorney General of Georgia;

~~(b)~~ **(2)** ~~a number of members from each Judicial Circuit equal to the number of superior court Judges authorized for the Circuit as of July 1, 1979, excluding Superior Court Judges emeritus~~. **the number of Board of Governors members for each Judicial Circuit as exist on January 1, 2001, plus an additional 7 Board of Governor members to be elected from the Atlanta Judicial Circuit**.

(i) Each Judicial Circuit shall have an additional member ~~if its membership contains one thousand active members of the State Bar of Georgia, and each Judicial Circuit shall have an additional member~~ for each additional five hundred active members of the **State** Bar ~~over one thousand who are members of the Bar of such circuit~~ **added to that circuit after January 1, 2001. The size of the Board of Governors, excluding those designated in subsection (a)(1) above, shall not exceed 150, except as set out in subsection (b) below.**

~~Conversely, a judicial circuit, the membership of which decreases to less than 100- members, will thereupon lose the addition member heretofore authorized; and those judicial circuits allocated an additional member of the Board of Governors for every 500 additional members over 1000 as heretofore authorized, shall lose one member of the Board of Governors in accordance with each reduction in circuit membership of less than such 500 members; provided however, that every judicial circuit shall be entitled to elect at least one member to the Board of Governors, and provided, further, that in the event of any reduction in membership as provided in this paragraph the representative filling the post to be eliminated shall serve for the remainder of the term for which that representative was elected.~~

(ii) If the geographical limits of a judicial circuit are changed, and by reason of said change there is a reduction in the number of Superior Court judges to which that circuit was entitled on July 1, 1979, then and in that event, there shall be a corresponding reduction in the number of members of the Board of Governors representing that circuit provided there was more than one Board member representing that circuit. In the event that there is such a reduction, the last created post will be the first post eliminated.

(iii) If the change in the geographical limits of a judicial circuit does not result in a reduction in the number of Superior Court judges in such circuit, then such circuit shall retain at least as many members of the Board of Governors as it had on July 1, 1979. Additional Board representation will be determined by the number of active members of the State Bar residing in that circuit as provided above. A change in the name of a judicial circuit shall have no effect upon that circuit's Board of Governors' representatives, except as otherwise provided.

~~Upon the creation of a new circuit, such circuit shall be entitled to elect at least one member to the Board of Governors and may be entitled to elect additional members depending on the number of active members of the State of Georgia residing in the circuit as herein provided.~~

~~The provisions of this section shall be retroactive to January 1, 1981.~~

~~(c)~~ **(3) two** ~~one~~ representative**s** of the active members of the State Bar of Georgia residing outside of the State of Georgia, **who themselves must be residents of different states of the United States**. The nonresident representative**s** shall be ~~an~~ active member**s** of the State Bar of Georgia in good standing residing outside of the State of Georgia.

(4) three members appointed as follows: The President-elect in office when this rule becomes effective shall appoint three members to the Board of Governors. Thereafter, the President-elect shall appoint the number of such members whose term expired at the annual meeting at which the President-elect assumed office. The appointed members shall be chosen in such a manner as to promote diversity within the Board of Governors.

(b) Upon the creation of a new circuit, such circuit shall be entitled to elect one member to the Board of Governors even if the cap of 150 Board of Governors members has been reached, and if the cap has not been reached, may be entitled to elect additional members depending on the number of active members of the State of Georgia residing in the circuit as provided above.

(c) ~~(d)~~ A member of the Board of Governors must be an active member of the State Bar of Georgia in good standing. A member representing a judicial circuit shall be a member of the bar of that circuit.

(d) ~~(e)~~ Members of the Board of Governors shall receive no compensation for their services.

Notice of Expiring Board of Governors' Terms

Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2002. They will be candidates for the 2001-2002 State Bar elections. Please refer to the elections schedule at right for important dates.

Circuit	Board Member
Alapaha Post 2	Thomas C. Chambers III, Homerville
Alcovy Post 2	Michael R. Jones Sr., Loganville
Atlanta Post 2	Matthew H. Patton, Atlanta
Atlanta Post 4	Patrise M. Perkins-Hooker, Atlanta
Atlanta Post 6	Dwight L. Thomas, Atlanta
Atlanta Post 8	J. Robert Persons, Atlanta
Atlanta Post 10	Myles E. Eastwood, Atlanta
Atlanta Post 12	C. Wilson DuBose, Atlanta
Atlanta Post 14	Jeffrey O. Bramlett, Atlanta
Atlanta Post 16	William N. Withrow Jr., Atlanta
Atlanta Post 18	Foy R. Devine, Atlanta
Atlanta Post 20	William V. Custer IV, Atlanta
Atlanta Post 22	Frank B. Strickland, Atlanta
Atlanta Post 24	Joseph Anthony Roseborough, Atlanta
Atlanta Post 26	Anthony B. Askew, Atlanta
Atlanta Post 28	J. Henry Walker, Atlanta
Atlantic Post 1	Thomas J. Ratcliffe Jr., Hinesville
Augusta Post 2	Leland M. Malchow, Augusta
Augusta Post 4	William R. McCracken, Augusta
Bell-Forsyth	Philip C. Smith, Canton
Blue Ridge Post 1	Ellen McElyea, Canton
Brunswick Post 2	James Dewey Benefield III, Brunswick
Chattahoochee Post 1	Joseph L. Waldrep, Columbus
Chattahoochee Post 3	Richard A. Childs, Columbus
Cherokee Post 1	S. Lester Tate, Cartersville
Clayton Post 2	Larry M. Melnick, Jonesboro
Cobb Post 1	Dennis C. O'Brien, Marietta
Cobb Post 3	David P. Darden, Marietta
Cobb Post 5	J. Stephen Schuster, Marietta
Conasauga Post 1	James Michael Brown, Dalton
Coweta Post 1	Gerald P. Word, Carrollton
Dougherty Post 1	Gregory L. Fullerton, Albany
Douglas	Barry R. Price, Douglasville
Eastern Post 1	William C. Hartridge, Savannah
Eastern Post 3	J. Daniel Falligant, Savannah
Enotah	Jeffrey L. Wolff, Dahlonega
Flint Post 2	Judge A. J. Welch Jr., McDonough
Griffin Post 1	Andrew J. Whalen III, Griffin
Gwinnett Post 2	Barbara B. Bishop, Lawrenceville
Gwinnett Post 4	Phyllis A. Miller, Lawrenceville
Houston Post 1	Carl A. Veline Jr., Warner Robins
Lookout Mountain Post 1	William David Cunningham, Lafayette
Lookout Mountain Post 3	Lawrence Alan Stagg, Ringgold
Macon Post 2	Hubert C. Lovein Jr., Macon
Middle Post 1	J. Franklin Edenfield, Swainsboro
Northeastern Post 1	Bonnie Chessher Oliver, Gainesville
Northern Post 2	R. Chris Phelps, Elberton
Ocmulgee Post 1	Wayne B. Bradley, Milledgeville
Ocmulgee Post 3	Donald W. Huskins, Eatonton
Oconee Post 2	John P. Harrington, Eastman
Ogeechee Post 1	Sam L. Brannen, Statesboro
Rockdale Post 1	John A. Nix, Conyers
Rome Post 2	S. David Smith Jr., Rome
Southern Post 1	James E. Hardy, Thomasville
Southern Post 3	William E. Moore Jr., Valdosta
Stone Mountain Post 1	John J. Tarleton, Decatur
Stone Mountain Post 3	Lynne Y. Borsuk, Decatur
Stone Mountain Post 5	William Lee Skinner, Decatur
Stone Mountain Post 7	Hon. Anne Workman, Decatur
Stone Mountain Post 9	Hon. Edward E. Carriere Jr., Decatur
Tallapoosa Post 2	Brad Joseph McFall, Cedartown
Tifton Post 1	Currently vacant due to Rob Reinhardt Jr. being elected Bar treasurer
Waycross Post 1	Joseph J. Hennesy Jr., Douglas
Western Post 2	Edward Donald Tolley, Athens

Should the proposed amendments be adopted, the amended Rule 1-302 will read as follows:

Rule 1-302. Composition.
(a) The Board of Governors shall be composed of the following:

(1) the President, the President-elect, the Immediate Past President, the Secretary, the Treasurer, the President of the Young Lawyers Division, the President-elect of the Young Lawyers Division, the Immediate Past President of the Young Lawyers Division and the Attorney General of Georgia;

(2) the number of Board of Governors members for each Judicial Circuit as exist on January 1, 2001, plus an additional 7 Board of Governors members to be elected from the Atlanta Judicial Circuit.

(i) Each Judicial Circuit shall have an additional member for each additional five hundred active members of the State Bar added to that circuit after January 1, 2001. The size of the Board of Governors, excluding those designated in subsection (a)(1) above, shall not exceed 150, except as set out in subsection (b) below.

(ii) If the geographical limits of a judicial circuit are changed, and by reason of said change there is a reduction in the number of Superior Court judges to which that circuit was entitled on July 1, 1979, then and in that event, there shall be a corresponding reduction in the number of members of the Board of Governors representing that circuit provided there was more than one Board member representing that circuit. In the event that there is such a reduction, the last created post will be the first post eliminated.

(iii) If the change in the geographical limits of a judicial circuit does not result in a reduction in the number of Superior Court judges in such circuit, then such circuit shall retain at least as many members of the Board of Governors as it had on July 1, 1979. Additional Board representation will be determined by the number of active members of the State Bar residing in that circuit as provided above. A change in the name of a judicial circuit shall have no effect upon that circuit's Board of Governors' representatives, except as otherwise provided.

(3) two representatives of the active members of the State Bar of Georgia residing outside of the State of Georgia, who themselves must be residents of different states of the United States. The nonresident representatives shall be active members of the State Bar of Georgia in good standing residing outside of the State of Georgia.

2001-2002 Election Schedule

2001

August Official election notice, *Georgia Bar Journal*

Sept. 12—Nominating petition package mailed to Board of Governors (BOG) incumbents (petitions for other candidates supplied upon request to the membership).

Oct. 15—Deadline for receipt of nominating petitions for incumbent BOG members (Article VII, Section 2).

Nov. 2-4—Nomination of officers, Fall BOG Meeting

Nov. 15 (5:00 p.m.)—Deadline for receipt of nominating petitions by new BOG candidates - non-incumbents (Article VII, Section 2).

Nov. 30—Deadline for write-in candidates for officer to file a written statement - not less than 10 days prior to mailing of ballots (Article VII, Section 1(c)).

Dec. 14—Ballots mailed (Article VII, Section 7 (c)).

2002

Jan. 10-12—Mid-Year Meeting, Swissotel, Atlanta

Jan. 23—Ballots must be received to be valid

Jan. 25—Election results available

(4) three members appointed as follows: The President-elect in office when this rule becomes effective shall appoint three members to the Board of Governors. Thereafter, the President-elect shall appoint the number of such members whose term expired at the annual meeting at which the President-elect assumed office. The appointed members shall be chosen in such a manner as to promote diversity within the Board of Governors.

(b) Upon the creation of a new circuit, such circuit shall be entitled to elect one member to the Board of Governors even if the cap of 150 Board of Governors members has been reached, and if the cap has not been reached, may be entitled to elect additional members depending on the number of active members of the State of Georgia residing in the circuit as provided above.

(c) A member of the Board of Governors must be an active member of the State Bar of Georgia in good standing. A member representing a judicial circuit shall be a member of the bar of that circuit.

(d) Members of the Board of Governors shall receive no compensation for their services.

II.
Proposed Amendment to State Bar of Georgia Rule 1-208

It is proposed that Part I (Creation and Organization), Rule 1-208 be amended as shown below by deleting the stricken portions of the Rule and inserting the phrases in bold typeface as follows:

Rule 1-208. Resignation from Membership.
(a) Resignation while in good standing: A member of the State Bar ~~of Georgia~~ in good standing may, under oath, petition the Board of Governors for leave to resign from the State Bar ~~of Georgia~~. Upon acceptance of such petition by the Board of Governors by majority vote, such person shall not practice law in this state nor be entitled to any privileges and benefits accorded to active members of the State Bar ~~of Georgia~~ in good standing unless such person complies with ~~the Rules governing admission to the practice of law in Georgia as adopted by the Supreme Court of Georgia~~ **part (b) or (c) of this Rule**.

(1) The petition for leave to resign while in good standing shall be filed, under oath, with the Executive Director of the State Bar ~~of Georgia~~ and shall contain a statement that there are no disciplinary actions or criminal proceedings pending against the petitioner and that petitioner is a member in good standing. A copy of the petition shall be served upon the General Counsel of the State Bar ~~of Georgia~~.

(2) No petition for leave to resign while in good standing shall be accepted if there are disciplinary proceedings or criminal charges pending against the member or if the member is not a member in good standing.

(3) A petition filed under this paragraph shall constitute a waiver of the confidentiality provisions of Rule 4-221(d) as to any pending disciplinary proceedings.

(b) Readmission within five years after resignation: for a period of five years after the effective date of a voluntary resignation, the former member of the State Bar who has resigned while in good standing may apply for readmission to the State Bar upon completion of the following terms and conditions:

(1) payment in full of the current dues for the year in which readmission is sought;

(2) payment of a readmission fee to the State Bar equal to the amount the member seeking readmission would have paid if he had instead elected inactive status; and,

(3) submission to the membership section of the State Bar of a determination of fitness from the Board to Determine Fitness of Bar Applicants.

(c) Readmission after five years: after the expiration of five years from the effective date of a voluntary resignation, the former member must comply with the Rules governing admission to the practice of law in Georgia as adopted by the Supreme Court of Georgia.

Should the proposed amendments be adopted, the amended Rule 1-208 will read as follows:

Rule 1-208. Resignation from Membership.
(a) Resignation while in good standing: A member of the State Bar in good standing may, under oath, petition the Board of Governors for leave to resign from the State Bar. Upon acceptance of such petition by the Board of Governors by majority vote, such person shall not practice law in this state nor be entitled to any privileges and benefits accorded to active members of the State Bar in good standing unless such person complies with part (b) or (c) of this Rule.

(1) The petition for leave to resign while in good standing shall be filed, under oath, with the Executive Director of the State Bar and shall contain a statement that there are no disciplinary actions or criminal proceedings pending against the petitioner and that petitioner is a member in good standing. A copy of the petition shall be served upon the General Counsel of the State Bar.

(2) No petition for leave to resign while in good standing shall be accepted if there are disciplinary proceedings or criminal charges pending against the member or if the member is not a member in good standing.

(3) A petition filed under this paragraph shall constitute a waiver of the confidentiality provisions of Rule 4-221(d) as to any pending disciplinary proceedings.

(b) Readmission within five years after resignation: for a period of five years after the effective date of a voluntary resignation, the former member of the State Bar who has resigned while in good standing may apply for readmission to the State Bar upon completion of the following terms and conditions:

(1) payment in full of the current dues for the year in which readmission is sought;

(2) payment of a readmission fee to the State Bar equal to the amount the member seeking readmission would have paid if he had instead elected inactive status; and,

(3) submission to the membership section of the State Bar of a determination of fitness from the Board to Determine Fitness of Bar Applicants.

(c) Readmission after five years: after the expiration of five years from the effective date of a voluntary resignation, the former member must comply with the Rules governing admission to the practice of law in Georgia as adopted by the Supreme Court of Georgia.

Continued from page 13

employer's needs. A good time to do so is at the employee's yearly performance review. Has the employee been promoted? If so, do the old covenants continue to meet the employer's needs with respect to the new position and any new responsibilities? If no covenants were signed before because none were needed for the former position, are they now needed? Have the employee's responsibilities been altered, such that new restrictions are needed to protect the employer's interests? Has the employee been transferred to a different location, or had a geographic area of responsibility altered?[25]

Employers in Georgia are fortunate because continued employment, where the employee is employed "at-will,"[26] will serve as sufficient consideration to bind the employee to a new restrictive employment covenant.[27] Employers can therefore update restrictive covenants even if no promotion or increased compensation is provided to the employee. By consistently reviewing who has restrictive covenants within the company, as well as the provisions of those covenants, employers can ensure that their covenants will not only be enforceable, but also effective, when and if they must be enforced against the employee.

Exit Stage Left

One final situation in which employers make mistakes in enforcing restrictive employment covenants is when the employee announces that he or she is leaving. This is an excellent time for the employer to assess whether it will have to enforce the covenant against the employee by legal measures, or whether the employee intends to abide by the covenant voluntarily. Having this information at the time the employee leaves is valuable for two reasons. First, if the employee is not going to abide by the covenant, the employer can take practical steps to prevent loss of business assets. For example, to ensure that harmonious relations continue, the employer can immediately contact any customers with which the employee worked. Second, the employer can preserve any evidence (for example, contracts or customers lists) necessary for enforcement of the covenant and begin planning its legal strategy to enforce the covenants.

So what's the best way to find out what an employee's intentions are when he or she announces an intent to depart? Ask. The usual way this is done is through an exit interview. While exit interviews provide other valuable information to the company — such as whether other problems exist in the business and whether the company's salary and benefits are competitive with other similarly-situated employers — they can also help in enforcing restrictive covenants. Some typical questions that the employer would want to ask include: Where is the employee going to work next? What duties will the employee be performing at the new job? Does the employee foresee moving positions or taking on other responsibilities or territories in the next few months after beginning the new job?

The employer should also ensure that all company property (for example, computers, access passes, cell phones, identification badges) are returned, and the employee should be asked to sign a statement representing that all such property has been returned. Lastly, the employee should be reminded that there is a contract in place containing restrictive employment covenants by which the employee must abide. The employee should be given another copy of the agreement. Of course, if the employee's new position appears to present a problem with respect to the restrictive covenants, the employee should be informed of this, preferably in writing, and informed that the company will enforce its covenants with the employee.

While these steps won't prevent all disputes, they will confer several benefits to the employer, including: (1) hopefully dissuade employees who are thinking of breaching their covenants; (2) ensure that the employer is in a good position for any necessary litigation; and (3) identify early for the employer which employees it will have to enforce the covenants against by legal process. As noted above, because time is of the essence in these matters, early notification of a problem can be an invaluable asset to an employer.

Conclusion

Restrictive employment covenants are an invaluable tool that employers should consider when attempting to protect business assets such as customer relationships, intellectual property, proprietary or confidential business information and employment relationships with employees. Such covenants must be carefully drafted to ensure that they comply with the law of the state in which they will be enforced and that they achieve the protections that the individual employer seeks from them. While it is impossible to foresee every problem that employers may have in attempting to enforce such covenants, many of these problems can be significantly lessened by drafting easily understood covenants, ensuring that such covenants are up-to-date with protections for the information and assets that they are intended to protect and interviewing departing employees to remind them of their responsibilities under the covenants. Careful attention to these matters can result in significant protections for the information and relationships that businesses rely upon for profitability and survival.

Bryan L. Tyson, a former associate in the Atlanta office of Littler Mendelson P.C., a national labor and employment law firm representing management, is currently attending Georgetown University and will receive his LLM in taxation with a concentration in employee benefits in May 2002. He received his J.D. with honors from the University of North Carolina-Chapel Hill in 1996 and his B.A. with honors in political science from the University of North Carolina-Chapel Hill in 1993.

Endnotes

1. *Cambridge Suit Says Ex-Officers Violated Noncompetition Pacts*, WALL ST. J., Apr. 6, 2000, at A4.
2. Frances Katz, *IXL sues ex-employee, says he raided its staff*, THE ATLANTA CONST., Mar. 15, 2000, at D1.
3. Ronna Abramson, *Monster.com Growling Over Rival Site*, (Mar. 7, 2001) <http://www.thestandard.com/article/0, 1 902, 22698, co.html>.
4. *Judge Sees Fireworks Over Former Employee's Use of Client List*, IP L. WKLY. . . . (Mar. 17, 2000) <http://www.lawnewsnetwork.com/practice/employmentlaw/news>.
5. Ruth Bryna Cohen, *Employer's Restrictive Covenant Modified, But Upheld: Pizza-Box Salesman Can't Solicit Old Customers For 6 Months*, Vol. 225, No. 9 THE LEGAL INTELLIGENCER 3 (January 12, 2001).
6. Such covenants are also generally referred to as "non-competition covenants." To distinguish between a true "non-competition" covenant — where a former employee is prohibited from competing against a former employer — this article will refer to the general category of contractual arrangements prohibiting some form of post-employment conduct as "restrictive employment covenants."
7. Such covenants are often also known as "non-solicitation of employee" covenants. To distinguish such covenants from non-solicitation of *customer* covenants, this article will refer to them as "non-piracy" covenants.
8. The Georgia Trade Secrets Act, O.C.G.A. §§ 10-1-760 to 767 (2000), also offers protections for trade secrets, as that term is defined in the statute.
9. CAL. BUS. & PROF. CODE §§ 16600-16602.5 (Deering, 2001 Suppl.).
10. Kevin Livingston, *Aetna Dinged for $1.2 Million Over Noncompete Contract*, Vol. 2, No. 1 EMPLOYMENT L. WKLY. 22 (January 6, 2000).
11. Central Adjustment Bureau, Inc. v. Ingram, 678 S.W.2d 28, 37 (Tenn. 1984); Baker v. Hooper, 2001 Tenn. App. LEXIS 172, at **11-12 (2001), No. E2000-01615-COA-R3-CV.
12. *See e.g.*, W.R. Grace & Co., Dearborn Div. v. Mouyal, 262 Ga. 464, 465, 422 S.E.2d 529, 531 (1992).
13. Durham v. Stand-By Labor, Inc., 230 Ga. 558, 561, 198 S.E.2d 145, 148 (1973).
14. *See e.g.*, Reardigan v. Shaw Indus., Inc., 238 Ga. App. 142, 518 S.E.2d 144 (1999) (enforcing a covenant prohibiting an employee, for a period of up to two years, from competing against his former employer within "the Atlanta Metropolitan Statistical Area" (the area where the employee had worked on behalf of the employer) by engaging in a business where the employee's responsibilities and duties were "substantially similar" to those he performed for his former employer).
15. W.R. Grace & Co., Dearborn Div. v. Mouyal, 262 Ga. 464, 465, 422 S.E.2d 529, 531 (1992) (upholding non-solicitation covenant prohibiting, for a period of eighteen months, solicitation of customers with whom former employee had contact while employed); Wright v. Power Indus. Consultants, Inc., 234 Ga. App. 833, 837, 508 S.E.2d 191, 195 (1998) (enforcing non-solicitation covenant prohibiting, for a period of one year, solicitation of customers to which the former employee "marketed, promoted, distributed or sold" the former employer's services).
16. Mouyal, 262 Ga. 464 at 466, 422 S.E.2d at 532 ("A restriction relating to the area where the employee did business on behalf of the employer has been enforced as a legitimate protection of the employer's interest."); Nunn v. Orkin Exterminating Co., 256 Ga. 558, 558-59, 350 S.E.2d 425, 426 (1986) (upholding non-solicitation covenant prohibiting, for a period of two years, solicitation of any of the former employer's customers within the territory that the former employee worked).
17. Harrison v. Sarah Coventry, Inc., 228 Ga. 169, 171, 184 S.E.2d 448, 449 (1971) (upholding non-piracy covenant prohibiting a former employee from soliciting current employees for a period of two years despite the absence of a territorial or scope of activity restriction in covenant; stating that cases refusing to enforce non-competition covenants because of a lack of a territorial restriction "have no application to the instant case"); Sanford v. RDA Consultants, Ltd., 244 Ga. App. 308, 311, 535 S.E.2d 321, 324 (2000) (enforcing a non-piracy clause prohibiting a former employee, for a period of one year, from soliciting current employees, regardless of whether the former employee had contact with such employees); Wright v. Power Indus. Consultants, 234 Ga. App. 833, 839, 508 S.E.2d 191, 196 (1998) (same). *But see* Capricorn Sys., Inc. v. Pednekar, 248 Ga. App. 424, 427, — S.E.2d — (2001) (declining to enforce a non-piracy ovenant and stating: "[S]uch restrictive covenant had no definite geographic area limitations as to . . . recruiting of employees, which also renders the covenant unenforceable for being overbroad"); Club Properties, Inc. v. Atlanta Offices-Perimeter, Inc., 180 Ga. App. 352, 355, 348 S.E.2d 919, 922 (1986) (stating that a non-piracy covenant "as a partial restraint of trade, . . . must also meet the 'rule of reason' as to limitation of time, territory and proscribed activities").
18. Durham, 230 Ga. at 563, 198 S.E.2d at 149 (1973) ("[N]ondisclosure clauses bear no relation to territorial limitations and their reasonableness turns on factors of time and the nature of the business interest sought to be protected."); Witty v. McNeal Agency, Inc., 239 Ga. App. 554, 559, 521 S.E.2d 619, 626 (1999) ("The reasonableness of the non-disclosure provision turns on the factors of time and the nature of the business interest sought to be protected.").
19. Equifax Servs., Inc. v. Examination Mgmt. Servs., Inc., 216 Ga. App. 35, 37-38, 453 S.E.2d 488, 491-92 (1994) (noting that return of property clauses have been upheld "even though the language used reflects no limits as to 'time, territory or activity'" (quoting Nunn, 256 Ga. at 560, 350 S.E.2d at 427)). Such clauses often may be omitted from an employment contract because tort doctrines of conversion generally will protect the employer's interest in its tangible property. *Cf.* Equifax Servs., Inc., 216 Ga. App. at 42, 453 S.E.2d at 495 ("It is difficult to ignore the extent to which a case for misappropriation of Equifax's property, though not properly characterized as trade secrets, has been established in the course of Equifax's attempt to prove the confidential character of the information contained on its proprietary computer database and microfiche. However, we . . . cannot ignore the fact that Equifax has litigated this action as if property rights in the items at issue exist if and only if they may be characterized as embodiments of certain Equifax trade secrets.").
20. Richard P. Rita Personnel Servs., Int'l, Inc. v. Kot, 229 Ga. 314, 317-18, 191 S.E.2d 79, 81 (1972); Howard Schultz & Assoc., Inc. v. Broniec, 239 Ga. 181, 185-86, 236 S.E.2d 265, 269 (1977). *But cf.* Habif, Arogeti & Wynne, P.C. v. Baggett, 231 Ga. App. 289, 291, 498 S.E.2d 346, 350 (1998) (questioning whether

court could blue-pencil non-solicitation and non-competition covenants in a professional partnership agreement).

21. Ward v. Process Control Corp., 247 Ga. 583, 584, 277 S.E.2d 671, 673 (1981); Harville v. Gunter, 230 Ga. App. 198, 200, 495 S.E.2d 862, 864 (1998). *But see* Wright, 234 Ga. App. at 835, 508 S.E.2d at 193-94 (refusing to enforce non-competition clause but enforcing non-solicitation clause); *cf.* Physician Specialists in Anesthesia, P.C. v. MacNeill, 246 Ga. App. 398, 405, 539 S.E.2d 216, 223 (2000) (applying middle level of scrutiny applicable to restrictive employment covenants in professional partnership agreements, declining to hold a non-solicitation covenant invalid based solely on the invalidity of a non-competition covenant, and reviewing the enforceability of the non-solicitation covenant on its own terms).
22. Nasco, Inc. v. Gimbert, 239 Ga. 675, 675-676, 238 S.E.2d 368, 369 (1977); Wolff v. Protégé Sys., Inc., 234 Ga. App. 251, 255-56, 506 S.E.2d 429, 434 (1998) (evaluating restrictive employment covenant under Georgia legal standards, despite choice-of-law provision selecting Illinois law). *But cf.* Iero v. Mohawk Finishing Prods., Inc., 243 Ga. App. 670, 671-72, 534 S.E.2d 136, 138 (2000) (upholding forum selection clause contained in employee's restrictive covenant contract).
23. Of course, an employer must ensure that its injunction is legally justified, because a party wrongfully enjoined during the pendency of an action may be able to recover damages against the party that enjoined it. *See*, *e.g.*, Hogan Management Servs., P.C. v. Martino, 242 Ga. App. 791, 793-95, 530 S.E.2d 508, 511-12 (2000).
24. See *supra* note 21 and accompanying text.
25. *See* Lighting Galleries, Inc. v. Drummond, 247 Ga. App. 124, 126-27, 543 S.E.2d 419, 421 (2000) (holding that a restrictive covenant could not be enforced against an employee because of his long absence from his previous sales area).
26. In Georgia, employees are presumed to be employed "at-will" unless their employment is for a definite duration. O.C.G.A. § 34-7-1 (1998) ("An indefinite hiring may be terminated at will by either party."); Wheeling v. Ring Radio Co., 213 Ga. App. 210, 210, 444 S.E.2d 144, 145 (1994); Porter v. Buckeye Cellulose Corp., 189 Ga. App. 818, 818-19, 377 S.E.2d 901, 903 (1989). Generally, employment at-will means that the employer may terminate the employee for any reason absent a discriminatory one, and that the employee may quit at any time for any reason. O.C.G.A. § 34-7-1 (1998); Wheeling, 213 Ga. App. at 210, 444 S.E.2d at 145.
27. Mouldings, Inc. v. Potter, 315 F. Supp. 704, 713 (M.D. Ga. 1970); Thomas v. Coastal Indus. Servs., Inc., 214 Ga. 832, 832, 108 S.E.2d 328, 329 (1959); Landrum v. Pritchard & Co., 139 Ga.App. 393, 394, 228 S.E.2d 290, 291 (1976). In some states, however, continued at-will employment is not sufficient consideration for a restrictive employment covenant. *See e.g.*, Cox v. Dine-A-Mate, Inc., 129 N.C. App. 773, 778, 501 S.E.2d 353, 356 (1998) ("[K]eeping one's existing job is insufficient consideration for the signing of a covenant not to compete."); Poole v. Incentives Unlimited, Inc., 338 S.C. 271, 275, 525 S.E.2d 898, 900 (Ct. App. 1999) ("[I]f an at-will employment relationship already exists without a covenant not to compete, any future covenant must be based upon new consideration.").

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