

Georgia
Bar

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

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Headquarters

104 Marietta St. NW, Suite 100
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(800) 334-6865 (404) 527-8700 FAX (404) 527-8717
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South Georgia Office
244 E. Second St. (31794) P.O. Box 1390
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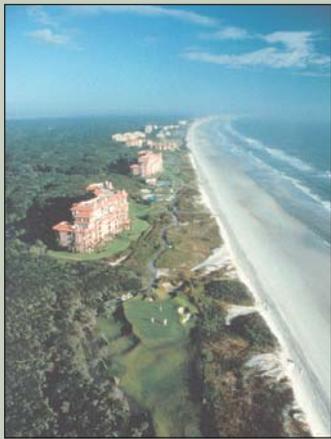
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On the Cover

Amelia Island offers Annual Meeting attendees a unique opportunity for education and entertainment. See pages 40-41 for more information.

Departments

- 4 From the President
- 6 From the Executive Director
- 8 From the YLD President
- 49 Bench & Bar
- 52 Office of General Counsel
- 54 Lawyer Discipline
- 56 Law Practice Management
- 60 South Georgia Office
- 61 Professionalism Office
- 66 Section News
- 68 In Memoriam
- 70 CLE Calendar
- 75 Notices
- 79 Ad Index
- 79 Classified Resources

Legal

10 Making Sense of Strategic Alliances

By Brett Lockwood

Features

18 Representing the Unpopular Client After Sept. 11

By Michael Mears

25 The Legality of U.S. Strikes Under International Law

By Daniel H. Joyner

32 Ambassadors of Orchestral Music

By Robin E. Dahlen

36 Midyear Meeting Combines Education and Networking

By Sarah I. Bartleson

39 New Board of Governors Members Named

By Robin E. Dahlen

45 Do You Know Where Your Charter Is?

By Robert L. Whatley

46 Georgia Legal Services Campaign Donors

Publisher's Statement

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By James B. Franklin

Law Day Offers Opportunity to Celebrate Liberty

Since 1961, a joint resolution of Congress designates May 1 as a day to celebrate our heritage of liberty under law. This day, which we know as “Law Day,” celebrates our freedoms as Americans — freedoms protected by our laws and legal institutions. Yet, Law Day is more than just a celebration — it’s a time of opportunity.

Law Day presents a renewed opportunity for lawyers to help educate the public about our system of justice. In light of recent events, this year’s Law Day presents an especially unique opportunity for lawyers to assume leadership in helping reassure that all our citizens appreciate the blessings of liberty, and all the benefits of a society based upon the rule of law.

The legal profession plays a historic role in connecting society with the rule of law. Our profession can and should take major responsibility for ensuring that the rule of law remains the glue that holds the fabric of our society together.

Through Law Day observances around the country, lawyers should avail themselves at every opportunity to meet with civic clubs, students and whoever will listen. We

should miss no chance to remind Americans that the first thing every tyrant in history, including Hitler, has done was to follow the advice of a character from Shakespeare’s King Henry VI, “to kill all the lawyers.” Only through the destruction of a system of laws can such despots seize and retain power and ultimately trample upon the freedoms of the people.

In these troubled times, it is our job to help ease concerns and misperceptions with regard to our system of justice. We understand that one of our roles as lawyers is to do all we can to protect civil liberties. As a result of certain aspects of the war on terrorism, there are those who suggest that certain constitutional rights are being jeopardized.

Although we may have to approach situations differently dur-

Law Day presents a renewed opportunity for lawyers to help educate the public about our system of justice.

ing those times, we must not be forced to concede the liberties we treasure as a country. We must recognize that as a profession and as a people we cannot compromise on the preservation and protection of civil rights and liberties, but we may be required to make some concessions for a short time in order to preserve the very system that has given us these freedoms.

Our nation is being tested. Our Constitution is being tested. Indeed, we as a people are being tested. But in the end, our system of democracy and justice will prevail and be stronger for the stress and wear.

The principals upon whom this nation was built are solid. Those who argue that the Constitution is being violated by some of the security measures being employed as a result of Sept. 11, while sincere and patriotic, might pause and reflect upon the long-term best interest of our country. Because we have enjoyed such an open and free society, it is easy to couch every inconvenience in our lifestyle as a violation of a constitutional right. This is not necessarily so. Historically, excesses and abuses of individual rights have been relatively short-lived because of the self-correcting characteristics of our system.

Our role as lawyers must be to assure that our civil liberties are preserved, but at the same time to support the security system necessary to preserve the greatest experiment in government yet devised. This is quite a balancing act. Who in our society is better trained to assure the maintenance of the proper balance than lawyers?

A jurist has said, "The saddest epitaph which can be carved in memory of a vanished or lost liberty is that the people who enjoyed

that liberty failed to stretch forth a saving hand while yet there was time." As we enter this season of the celebration of the law, I urge all of us, as lawyers, to never let it be said by future generations that we failed in our duty to stretch forth a saving hand to help preserve those freedoms so carefully crafted into our nation's Constitution by our founding fathers. Let us be ever mindful of our individual and collective duty to use our leadership positions, talents and education to assure preservation of this precious, but fragile, experiment in freedom. Attacks in the form of dilution of civil liberties or from those who would use terrorist

activities against our people and values could prove fatal if lawyers are not vigilant on both fronts.

On Law Day this year, as we celebrate our freedoms, let us not forget that freedom, justice and equality are not givens, even in our society. Courage, perseverance, constant attention and diligence are essential if we are to retain the system that has been handed down to us. At every opportunity, we must stand up to support, explain and teach our strengths and values.

At every critical point in our nation's history, lawyers have been at the forefront of the patriots fighting for the values that have provided us with our strength. We can do no less now! 

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By Cliff Brashier

“Hardest Working Site on the Web” www.gabar.org

I chuckled quietly at an ad I saw in the last issue of the *Georgia Bar Journal*. Our creative communications team ran a promo for the Bar’s Web site, calling it the “hardest working site on the Web.” The ad has pictures of hard hats arranged within the text. Clever, I thought. Then I put the magazine down and visited our site as if I hadn’t been before. I guess I wanted to see if there was any truth in advertising. Indeed, I realized, there is.

If you haven’t spent much time at www.gabar.org, I urge you to take a look, or “surf through it,” as the lingo goes. I thought I’d share some of my favorites with you in this article, and add my endorsement that www.gabar.org is a hard-working site and worthy of your time. Here are my favorites.

The first part of the site is conveniently devoted to providing members with the latest news and information. At the time of this writing, you can get information about the upcoming annual meeting, the Board of Governors election results, a Young Lawyers Division community service project to benefit domestic abuse shelters, legislative information and a link to the Bar’s

report on multidisciplinary practice. Once you’re caught up on the latest news, you can navigate to numerous worthwhile areas.

The Bar’s online directory offers the most accurate, up-to-date membership information available at www.gabar.org/DIRECTORY.htm. Just type in the name of the person you want to contact and up comes the information. And, if you’re not quite sure how to spell the person’s name, just key in half. If you’re looking for me, for example, and don’t know how to spell my last name, you’ll get my listing by typing in “B - R - A - S - H.” It beats fumbling through the 800+ page printed directory! Speaking of the

If you haven’t spent much time at www.gabar.org, I urge you to take a look, or “surf through it,” as the lingo goes.

printed directory, it is worth mentioning that, while always popular among members, it is dated once it is off to the printer. The online version is updated nightly through the Bar's database. Check it out if you don't already use the online directory. And check your own listing to ensure that we have the most current information. If you haven't already given it to us, please provide your e-mail address. In very limited instances, State Bar President Jimmy Franklin is using e-mail to communicate important issues to members.

If you're accustomed to using the printed directory for referencing Bar rules, the *Handbook* is also available online at www.gabar.org/HANDBOOK.htm. The best feature of the online version is that you may search through the entire document instantly using a keyword like "ethics" or "rule 1-201," for example.

There is a vast amount of member information located in the Membership section of the site at www.gabar.org/MEMBERINFO.htm. In this area, you can submit a change of address and learn about State Bar admissions and dues. You can get information on letters of good standing and membership certificates. You can also learn about Bar award programs and elections. In addition, you can access the latest list of membership services endorsed by the Bar.

While more popular at a certain time of the year, you can always check your CLE credits online for this year and last at www.ganet.org/ga_bar/BARCLE.html. This is great for tracking and ensuring against any dreaded deficit!

If you are a member of any of the Bar's 34 sections, you can find a great deal of information by visiting the section Web pages, or the section meetings or news sections at www.gabar.org/SECTIONS.htm. These pages will give you the latest in relevant information and point you to valuable resources like section newsletters, CLE programs and section membership lists. If you aren't currently a member of any sections, you can, of course, also get information about joining. State Bar committees also have a presence on the site, including a calendar of meetings that is updated weekly at www.gabar.org/COMMITTEEMEET.htm.

You almost can't talk about the Web these days without also talking about links. We certainly have them at www.gabar.org. You can link to courts, local and voluntary bars across the state, government agencies, court reporters, other legal organizations, research engines and the list goes on and on.

Finally, if you're curious about the State Bar structure, want to read about Bar programs or need to contact a staff person, you can get that information, too. In all, there are more than 1,500 pages that comprise the site, and we invite you to visit often and bookmark your favorite portions. We also invite your comments about additions, improvements or changes that will make the Web site more user friendly for you.

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

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The YLD is proud to be the service arm of the Bar and will continue to help address the legal needs of children and youth in Georgia.

By Pete Daughtery

Show Me the Money!

The Young Lawyers Division (YLD) is excited that two of the YLD's new service projects have been awarded an American Bar Association (ABA)/Young Lawyers Division Public Service subgrant. The YLD not only received the "money," but also received two of the largest subgrants available from the ABA Fund for Justice and Education. Since the YLD is emphasizing the needs of children and youth during this Bar year, it is particularly gratifying that the subgrants went to committees that have formulated projects, which focus on these needs.

The Minorities in the Profession Committee (MIPC), chaired by Brad Gardner, was awarded a \$1,000 subgrant for its project done in conjunction with the Fulton County Court Appointed Special Advocates, Inc. (CASA). The MIPC is developing a video outlining the mission, accomplishments and people who make up CASA in hopes of attracting volunteers and funding for those who advocate for the best interests of abused and neglected children involved in deprivation proceedings. Children served are victims of physical abuse, sexual abuse, emotional abuse and/or neglect, and range in age from newborn to 18 years. In 2000, more than 3,300 children were involved in new deprivation proceedings in the Fulton County Juvenile Court. The objectives of CASA are to provide watch of those children with a trained and committed volunteer

and to serve as the eyes and ears of the court while advocating for abused and neglected children — one at a time. Often times, the issues of abuse and neglect overlap with greater issues of truancy and delinquency. Volunteer staffing and funding will increase with the effective recruiting tool provided by this new video.

The Advocates for Special Needs Children Committee, chaired by Ali Marin, was awarded a \$2,000 subgrant for its project to develop a multi-lingual special education video. The Advocates Committee is also developing a video in Spanish and English explaining the educational rights of parents and children with disabilities under federal and state law. The video will offer techniques and advice that parents can use to better advocate for their special needs children.

Children with disabilities are too often ignored by public school systems. The YLD of Georgia recognizes that Georgia parents need assistance in gaining equal access to a meaningful education for their children with disabilities. To achieve this goal, the Advocates for Children with Special Needs Committee has joined forces with the Georgia Advocacy Office (GAO), a private, non-profit agency that is designated by the governor to provide protection and advocacy for people who have disabilities, and the Juvenile Advocacy Division of the Georgia Indigent Defense Council, a division of a state agency that provides support and consultation to attorneys representing clients within the juvenile courts and in administrative hearings.

The need for these special education videos is amplified by the small number of lawyers who practice in this field and who are unable to cover the entire state of Georgia. Although lawyers from the GAO, Georgia Legal Services and a handful of others represent students who seek assistance from their school systems and provide training to parents, the number of available attorneys and the amount of time available is limited. It is particularly difficult for parents who live in the more rural areas of the state and for parents who speak only Spanish to access information and resources.

These committees are doing excellent work, along with several other committees who have chosen to emphasize service to children and youth. The Aspiring Youth Program will hold its annual pro-

gram this spring, where lawyers will work with children in an after-school program where education, athletics and mentoring are emphasized. Several community service projects, such as the toy sort in December and the service project at the Spring Meeting in Savannah, have focused on children. In addition, the Truancy Intervention Project is expanding across Georgia to help with truancy issues in our Juvenile Courts, and the High School Mock Trial Committee has once again done an excellent job planning its competition for students, where they learn civility, respect for rules and professionalism.

The YLD is proud to be the service arm of the Bar and will continue to help address the legal needs of children and youth in Georgia. 



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By Brett Lockwood

Making Sense of Strategic Alliances

It is difficult not to notice the regularity with which businesses of all types, and particularly technology companies, announce that they have recently entered into a strategic alliance, joint venture or partnership with another company.

Often the particular alliance or partnership is touted as a vehicle that will produce significant benefits for both companies.

Entering into a strategic alliance of some sort with another business party is perceived by management of these companies as a key part of their broader business strategy. While these agreements are often associated with technology-related businesses, the value of strategic alliances and the issues that arise in putting them into place are equally relevant for non-technology businesses and their counsel. The purpose of this article is to shed some light on what such agreements try to accomplish, why a company might want to enter into such an agreement and typical provisions included in such agreements. This is not an exhaustive treatment of all such issues, but is intended as a primer on many of the major concerns encountered in negotiating such agreements.

THE ROLE OF STRATEGIC ALLIANCES

The reasons for strategic agreements or alliance agreements (here the terms are used essentially interchangeably) span the gamut of most conceivable business needs. Typical reasons include the following:

- Facilitating access by one or more of the parties to key technology;
- Developing an alternative to higher-cost internal research and development efforts;
- Furthering development of new distribution channels;
- Leveraging the marketing or branding resources of one or more of the parties;
- Paving the way for an equity investment or other capital transaction to one of the parties;
- Outsourcing of some non-core function to one of the parties;
- Collaboration on development of a business concept, service or product;
- Sharing costs; and
- Addressing a need for a business partner outside a core territory or home country.

Properly structured, an alliance arrangement can make a great deal of business sense for each party involved. Such an arrangement may offer an ideal vehicle to achieve the respective goals set by each party. However, an alliance arrangement that overlooks certain fundamentals may cause more problems than the lack of such an arrangement in the first place.

In reality, many "alliance" agreements are simply traditional business arrangements in disguise. Attaching the term "strategic" or "alliance" to such agreements in many cases is intended as nothing more than high-tone window dressing for an otherwise ordinary business agreement. The widespread use of "alliance" and "strategic" terminology is largely the result of the technology industry boom over the last few years, during which these type agreements became popularized. Many companies enter into so many so-called "strategic" alliances that their lawyers maintain an alliance agreement template for the

client company on their word processing systems. However, all too often these agreements are not truly strategic to the businesses involved in any substantive sense nor do they typically represent firm alliances.

The distinction between a true strategic alliance arrangement and a look-alike agreement that is labeled as such is often elusive to draw. Partly this is due to differing levels of importance that each party attaches to the arrangement. What is strategic to one party may be business as usual for another party. Thus, it is not necessary that both parties attach the same level of significance to the agreement for

it to rise to the level of a strategic relationship. As a general rule, an alliance that is cast in the form of a joint venture (one in which a separate business entity is organized) is most likely regarded by the joint venturers as a strategic arrangement. Beyond the joint venture, regardless of what label is attached, much will depend on the character of the arrangement and the relationship itself and the circumstances of each party.

Crafting a strategic alliance arrangement that will meet the needs of the parties typically requires legal counsel to draw upon multiple legal disciplines,

Recent Strategic Alliances in the News

Bank One and Microsoft announce three-year, \$30 million deal under which Microsoft will develop banking services and Microsoft products will be deployed on Bank One's Web site.

(Computerworld, 12/14/01)

Advanced Micro Devices and United Microelectronics Corp. form a joint venture to build a microchip factory in Singapore and to facilitate other aspects of a manufacturing alliance.

(New York Times, 2/1/02)

Eli Lilly and IBM announce strategic equity investment along with marketing agreements to assist Phase Forward, a provider of clinical trial data and software for pharmaceutical development.

(VentureWire, 2/8/02)

Walt Disney announces major agreement to provide various online content on BellSouth's portal page.

(Computerworld, 2/11/02)

Compaq Computer and Atlanta-based StoneSoft Corp. ink a partnership in which both parties will offer products and services of the other through their distribution channels.

(Atlanta Journal-Constitution, 2/11/02)

Tranzyme and Gemin X, both biotech companies, announce collaboration and cost-sharing arrangement to develop new drugs for neurological disorders.

(VentureWire, 2/14/02)

Apple Computer, Ericsson and Sun Microsystems announce a partnership to jointly offer a wireless multimedia content delivery solution that integrates products of all three companies.

(InfoWorld, 2/16/02)

HCL Technologies and Answerthink announce the formation of a joint venture to provide more cost-effective offshore development services.

(TechLinks, 2/16/02)



including those related to licensing, venture financing, marketing and distribution contracts, shareholder agreements and the rules for various business entities. These arrangements, in many respects, are each custom-built and cookie-cutter approaches that will not work. Because the business parties involved with a particular arrangement may seek to accomplish multiple goals, legal counsel must listen intently and intelligently to the parties' expression of their objectives and then use this perspective to combine the various components from applicable areas of substantive law into a coherent and workable structure.

PRELIMINARY MATTERS BEFORE DRAFTING

Almost near the beginning of the process of organizing a strategic alliance agreement, certain preliminary matters should be considered and addressed. These include defining and communicating goals and objectives, conducting background due diligence, maintaining confidentiality and deciding the scope of documentation required. Each is addressed in turn below.

1. Define and Communicate Goals and Objectives. It is essential to clearly articulate to each of the participants on the negotiating team exactly what the business objectives or goals are in entering into a particular arrangement and what the benchmarks will be for success once the business parties commence implementation of the arrangement. For the lawyer, this is a variation on knowing the right questions to ask, and you cannot know what questions to ask in this

context unless you understand what your client (and, ideally, the other party(ies)) is trying to accomplish and why. In many cases, a client's management requests the lawyer to assist with putting together a "standard" agreement of a particular sort thinking the lawyer or the other key participants for the company do not necessarily need to know all the key details about why a deal is even being done. To be most effective, legal counsel should seek out an opportunity to inquire about the underlying objectives and the parameters established to achieve those goals.

Once the business goals are defined, these reference points need to be constantly kept in mind during the process. Too often the basic goals are lost sight of in the desire to compromise during negotiations just to get a deal done. For a business intent on striking a key alliance, walking away from a deal that does not achieve basic objectives may be difficult after investing significant time, but it may be the right thing to do if basic business needs are not met or cannot be met by the proposed arrangement.

2. Conducting Background Diligence. If an alliance is truly of strategic importance to a company, the company should assure itself that it has the right partner for the mission to be accomplished. Assuming risks that are manageable is a normal and acceptable business practice, but assuming such risks without realizing the potential downside is foolhardy. In certain transactions, such as acquisition transactions, engaging in specified due diligence is commonly accepted as standard practice. The same should be true with

alliances, but because of the less structured nature in which alliance arrangements are initially approached by many business parties, this component is frequently overlooked or relegated to lesser importance. The nature and the importance to the company of the particular alliance relationship should dictate the level of scrutiny applied to a potential business partner. If not already known, areas to be reviewed should include things such as:

- Financial strength of the other party(ies);
- Technology capabilities;
- Past track record in similar arrangements or other business dealings;
- Recent press releases or news concerning the other party(ies);
- Industry reputation;
- If the proposed alliance partner is a public company, SEC filings for background information and examples of past deals;
- Role of key personnel; and
- Any obligations of either party to third parties that may interfere with or complicate the alliance and any need for consents.

Often, businesses may look to counsel to assist in this process and in many cases it may be left to the lawyer to proactively suggest that such information gathering be done. Resourceful lawyers can readily access significant amounts of information relating to key issues, and sources of business intelligence abound (much of it available via the Internet, such as through the SEC's EDGAR database).

3. Maintain Confidentiality. One of the first steps to be taken should be to protect each party's confiden-

tial data and materials before significant information sharing occurs. Entering into a written non-disclosure or confidentiality agreement is customary and should not raise an objection. Related decisions should include:

- Whether confidentiality protection should be unilateral or mutual;
- Scope of confidential information;
- Duration of obligation; and
- Remedies for breach.

4. Decide Whether to Start with an Intermediate Agreement or Negotiate Definitive Documents. The complexity of a particular arrangement ordinarily dictates whether a letter of intent (LOI) or agreement in principle should be executed prior to negotiating a definitive agreement and related documents. If the negotiation is expected to take a considerable period of time or cover many complex areas or if several components that are typically treated separately (such as an alliance involving a marketing agreement and an equity investment or a product development collaboration) are involved in a deal, it is common for an agreement in principle or LOI to be entered into. These intermediate agreements provide a useful roadmap for the business parties and their counsel as they work through the more specific details of documenting the alliance. Normally, these agreements provide that they are non-binding, with the exception of provisions, such as confidentiality, exclusive dealing, public announcements and the handling of fees and expenses. Parties may want a preliminary agreement to assure them that many of the basic deal concepts are

agreed to before investing further significant time and expense in proceeding to definitive documents.

TYPES OF STRATEGIC ALLIANCES AND TYPICAL PROVISIONS

Among the many reasons for entering into strategic agreements, the most common are developing new distribution channels, gaining access to or developing specified technology, making or seeking an equity investment (which is typically tied to some other strategic reason for at least one of the parties), or exploiting a business opportunity that requires the additional resources typical available from a business partner. The following outlines some of the major concerns peculiar to each of these type arrangements.

1. Distribution Channel Arrangements. A strategic alliance agreement covering distribution or marketing matters is probably the most common type of strategic alliance agreement. It may involve a traditional bricks-and-mortar business partnering with a company that has a significant online presence to provide services to one or both of them, to leverage each other's existing distribution networks for their respective products or services or to collaborate on some other aspect of marketing. These agreements go by many different names depending on the variation and what is sought to be accomplished, including Co-Branding Agree-

ments, Co-Marketing Agreements, Teaming Agreements, Distribution Agreements, Reseller Agreements, Collaboration Agreements, Marketing Agreements and the like. In Co-Branding Agreements or Teaming Agreements, a product or service is jointly offered. This may be to target a particular subset of the customers or prospects of each party, to offer a collaborative product or solution, or to direct customers or prospects from one party to another.

The following are among the key concerns to address and provisions to include in marketing-related alliance agreements:

- Ownership of customer data;
- Duration of relationship;
- Usage of intellectual property of each party, particularly trademarks, service marks and logos;
- Territorial scope;
- Payment and pricing mechanisms;
- Royalty rates or referral fees (common for arrangements where customer visits result from a link on a partner Web site), duration of royalty or referral revenue stream (e.g., one-time or per future transaction or some other method) and tracking issues;
- Auditing revenues;
- Performance criteria;
- Exclusivity and, if so, within what parameters and whether it should be mutual;
- Termination rights and post-termination obligations;
- Indemnification obligations. (In the alliance context, there is greater potential for unaffiliated parties to be viewed as responsible for one another regardless of intent, and often the language used is even

problematic (i.e., calling one another “partners”). Also, parties need to be mindful of the need for indemnity with respect to intellectual property rights infringement.); and

- If a Web site is involved, ownership and portability of Web site content.

2. Alliances for Access to Technology. Although it is not always the case, technology-access alliances frequently involve a larger company making resources available to a smaller company in exchange for technology access. Typically, a smaller technology company may have developed a key piece of technology (a drug treatment or therapy, software, hardware, a device, etc.) that a larger business may find valuable and as a result both may seek to enter into an arrangement to provide favorable access to the technology to the larger company in exchange for certain benefits to the smaller company. If it is larger company making the technology available to the smaller company, this is typically not in the nature of a strategic relationship to the larger participant (although it may be viewed as a critically important relationship for the smaller company), but rather an arm’s length licensing or sale arrangement, unless other factors are involved (such as the larger company having a pre-existing ownership stake in the smaller company or some other non-typical aspect).

Negotiations around such arrangements frequently revolve around these issues:

- Ownership of existing technology and derivative works is key concern;

- Typically, the larger company will want the existing technology modified to conform to desired specifications (key concerns to be addressed include which company’s team will perform the development work, what development milestones will apply and what are consequences of failure to meet the development schedule);
- Scope and cost of license rights to larger company;
- Treatment of source code and whether an escrow or source code release arrangement will apply;
- Scope of market segment exclusivity, if any, and impact on ability of smaller company to maximize commercial benefits of its technology by licensing/selling to other companies competitive with larger company ;
- Duration of alliance;
- Any equity arrangements and trigger points for timing of investments; and
- Indemnity concerns over intellectual property infringements.

3. Equity Arrangements. In many cases, a larger business will agree to make a strategic equity investment in another company but in order for this to be considered a strategic alliance, as opposed to simply a financial investment, something else is usually involved. These may be issues of access to technology, establishing or expanding a distribution arrangement or obtaining a purchase option on the company being invested in. Assuming that the other driving factors in favor of the alliance are negotiated to each party’s satisfaction, major considerations with respect to the equity

Some Alliance DOs and DON'Ts

DO

- ✓ Define and communicate goals for the alliance.
- ✓ Address ownership issues relating to key assets, technology and other contributions.
- ✓ Consider whether a letter of intent will facilitate a more effective negotiation process.
- ✓ Perform due diligence on the other business partner(s).
- ✓ Make sure that the disparate agreements evidencing the alliance form an internally consistent framework.

DON'T

- ✗ Establish unrealistic expectations for the alliance.
- ✗ Expect that a standardized approach will work in structuring and drafting these type arrangements.
- ✗ Neglect to consider termination or exit scenarios at the outset.
- ✗ Assume that because it is called a “strategic” alliance that both parties will regard it that way.
- ✗ Expect that strategic investors will be less demanding than venture capital investors.

investment component of an alliance include:

- Whether the type of investment will be common stock, some form of preferred stock, convertible debt or other debt with equity features or something else;
- While the terms of an equity arrangement involving a strategic investor will often be less stringent than what is demanded by traditional venture capital investors, many strategic investors will seek terms similar to those accorded venture capitalists;
- Related issues that will arise will include valuation of the company, conversion features, liquidation preferences, anti-dilution rights, board seat rights or observation rights, redemption features, registration rights, activities requiring investor consent, voting rights, co-sale rights and information rights, among other concerns;
- If convertible debt is used, the timing and mechanisms for conversion will be addressed;
- Timing of the investment is highly negotiated (the “carrot and stick” approach can be frustrating to the company being invested in, particularly if the investment is tied to completion of technology development milestones or achievement of future business milestones);
- Whether it is appropriate in relation to equity acquired to impose standstill obligations, minimum holding periods, transfer restrictions and anti-dumping obligations;
- Consider repurchase obligations by company entitling it to buy out strategic investor upon certain triggering events;

- Consider desirability of granting option to strategic investor to purchase company upon certain contingencies, and, if so, parties need to consider valuation scenarios and whether company invested in has opportunity to pull trigger requiring buy-out or whether right only runs in favor of investor;
- Observe other formalities of securities laws (for example, investment representations, full disclosure, exemptions for issuance); and
- Don’t overlook accounting impact to both company and investor.

4. Scope of Documentation.

Alliances may be represented by a single agreement or a series of inter-related agreements, which will often be governed by the complexity of the arrangement. As noted earlier, because alliances potentially address many different subjects and seek to accomplish many different objectives, these arrangements defy standardized approaches. What should dictate the level and types of agreement are the goals to be accomplished by the business parties.

For example, if a joint venture is desired, a decision must be made as to the type of entity that will be formed, which will in turn dictate a series of related required documents. If a corporate entity is chosen for a joint venture structure, documents that will be needed and which will require customization to encompass the expectations of each party will include: articles of incorporation; bylaws and a shareholders agreement (each of which may contain extensive provisions dealing with preferences, protec-

tive provisions, corporate governance and transfer restrictions, among others); a buy-sell agreement; and possibly incentive compensation arrangements or plans. Contracts with one or more of the joint venturers may also be required depending on the types of contributions or other arrangements contemplated.

In some alliance arrangements, a separate entity (as in a joint venture) is not formed but a capital infusion is made in an existing company that is tied to specified contractual arrangements. In such a situation, the parties will need to review and possibly modify the charter documents of the company being invested in. In addition, because the investment or continuation of the investment may be contingent on performance milestones governed by the principal contractual arrangement, such transactions start to take on the characteristics of a combined venture capital transaction and a major commercial contract. Beyond revised charter documents, a shareholders agreement, a purchase agreement, a registration rights agreement, a proprietary rights agreement, among others, will frequently have to be addressed. To emphasize the point, in light of the different documentation paths that may be taken to accomplish the same objectives, counsel needs to stay attuned to the objectives and structure the alliance accordingly.

5. Exit Strategies. What do the parties do if the arrangement simply does not meet their expectations, whether because of inadequate performance by one or more of the parties, poor results or changed expectations or circumstances? Or alternatively, what if the alliance

achieved the goals set by the party but there is no longer a need because of this to perpetuate the arrangement? Contemplating a clearly defined set of guidelines within the definitive agreement(s) to address termination rights, obligations and remedies will allow all parties to move forward with a clearer understanding of the boundaries of the alliance.

Parties and their counsel should consider carefully what types of events should trigger or justify an exit from the arrangement. Frequently, these are tied to achieving or failing to achieve critical performance benchmarks that are viewed as necessary for the success of the relationship. In less complex situations, simply providing in the contract documents for termination upon breach of obligations and clarification of post-termination obligations (e.g., return of confidential materials, sell-off rights, transitional data transfers, ceasing to use other party's trademarks, etc.) may suffice. In addition to breach of obligations, other exit events might include change of control scenarios, force majeure events or major changed circumstances, insolvency or bankruptcy of the parties, management or investor deadlock, passage of an agreed upon time period or the fulfillment by the alliance of the objectives originally sought to be achieved or the achievement of specified milestones or performance benchmarks.

The following are some common strategies and issues for dealing with exit situations:

- With alliances closer to a joint venture structure or purpose, parties might elect to have put rights, call rights, rights of first refusal or buy-sell provisions come into play with differing triggers applicable to each;
- If buyback or purchase obligations come into play with equity, valuation mechanisms need to be agreed upon at the outset;
- If license or distribution rights are involved, parties will need to provide for what happens to those arrangements post-exit;
- Need to provide for transfers of confidential information and any other proprietary materials or rights;
- Desirability/applicability of post-termination non-competition or non-solicitation obligations; and
- In certain alliances, asset transfers or dissolution/liquidation may be appropriate.

CONCLUSION

By whatever name they are called, strategic alliances are

increasingly prevalent within the business world and therefore within the scope of matters that business lawyers are routinely called upon to assist with. Skilled counsel can add significant value in knowing how to guide a business through the process of reaching an arrangement that works for all parties. Understanding and thinking through the respective goals of the business parties at the outset will allow critical issues to be identified and resolved smoothly and should ultimately result in a strong foundation for a key alliance arrangement. 



Brett Lockwood assists technology companies and non-technology companies with strategic alliance

arrangements, venture capital financings, acquisitions, technology licensing issues and other business matters. He is a partner in the Corporate Technology Practice in the Atlanta office of Smith, Gambrell & Russell, LLP.

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Representing the Unpopular Client After Sept. 11

By Michael Mears

It was late in the evening of Sept. 30, but the cool air of the Los Angeles night did not prevent perspiration from forming on the faces of the men carrying the two heavy suitcases into the alley behind the *Los Angeles Times* newspaper building. The men were working against time and they were searching for just the right place to put their suitcases filled with over two hundred large sticks of dynamite. They found the perfect place for the explosives near a storage bin filled with barrels of printer's ink. After carefully arranging the suitcases and attaching a detonating device,

they hurried away into the late night of downtown Los Angeles. Their timing device was set to activate and explode just before 1 a.m.

Unfortunately, for the early arriving worker at the *Los Angeles Times*, the detonating device was not set correctly and did not set off the explosion until after daybreak of the next day, Oct. 1. The dynamite created a horrifying explosion, ripping huge craters in the side and back of the concrete and brick building. However, the dynamite had another unintended terrifying aspect. The barrels of printer's ink acted as an incendiary propellant and the vapors from the ink barrels sent horrific waves of secondary explosions and flames throughout the building. The south wall facing Broadway Street collapsed, causing the second floor to also collapse under the weight of its machines onto the first floor. The first floor then collapsed into the basement, destroying the heating plant and gas mains. The building, with many of its workers trapped inside, was soon an inferno.

When the smoke and debris settled, 22 bodies were found in the

building and scores of other workers suffering from horrible burns were taken to local hospitals. The public was outraged and newspapers across the country called the terrorist incident the "crime of the century." Before the day was out, it appeared that another bomb had exploded at the home of the owner of the *Los Angeles Times* and a third bomb was found at the home of the director of the California Merchants and Manufacturers Association. The police assumed that all three bombs were the work of one group of terrorists. The governor of California called upon federal authorities to track down and arrest everyone connected with the bombing.

A nationwide investigation ensued and it was learned that the explosives were purchased in San Francisco and that a boat was rented in Oakland, Calif., to transport the dynamite to Los Angeles. The federal authorities were quick to connect the Los Angeles bombing with bombings in Oakland, Seattle and Cincinnati. In April of the following year, the trail of the bombers led federal authorities to

Toledo, Ohio. There, the authorities found that the suspected terrorists had stored 300 to 400 pounds of dynamite in a locked garage. As a result of the discovery of the stored explosives, authorities arrested James and John McNamara, and an explosives expert named Ortie McManigal. It appeared that all three individuals were connected with an organized labor union group. The public demanded that the union terrorists be sentenced to death.

The defendant's went on trial the next year in November and were represented by one of the most prominent criminal defense attorneys of the day. The year was 1911 and the defense attorney was Clarence Darrow.

The Defense Attorney's Professional Duty

All attorneys have a professional and ethical duty to make legal services available to the public in a way that will inspire respect and confidence from the general public in the criminal justice system. After the tragic events in New York and Washington, D.C., on Sept. 11, this duty has become even more relevant and important. For the individual attorney, this means that his or her actions must be compatible with the integrity, independence and effectiveness demanded by our profession.

An attorney practicing in the criminal justice system should and must be guided by certain professional and ethical principles. These professional principles must be elevated above all other considerations including fees, social relations and personal political feelings. Every person who finds them-

selves facing criminal charges, no matter what those charges may be, must have access to, and the services of, a lawyer who is qualified to provide such services. The will and the ability to provide competent legal services are the guiding principles, which must be observed by any attorney contemplating legal representation, particularly in a high profile or notorious case. It is therefore important that the members of the legal profession make known the availability of legal services to the public to assist each member of the public in finding an attorney who is competent to deal with his or her particular problem.

The individual attorney who is approached by a prospective client has a duty to assist the person in finding a competent attorney willing and able to deal with that potential client's particular problem. If the attorney who is approached is unable to act competently, for example, because of lack of experience or lack of available time and resources, he or she has an absolute ethical duty to either refuse to represent that person, or, even more responsibly, to assist that person in finding an attorney who is qualified and able to act. Such assistance should be given willingly and, except in very special circumstances, without charge.

An attorney has a general right to decline particular employment (even when assigned as counsel by a court when the attorney is not competent to provide the required representation). Generally speaking, the attorney should not exercise this right merely because the person seeking legal services, or that person's particular case is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are

involved, or because of the attorney's private opinion about the guilt of the accused or because of private opinions about the reprehensibility of the charges against the accused. As stated in the above paragraphs, an attorney who declines to represent an individual in a criminal case has a duty to assist the person in securing the services of another attorney who is competent and capable of acting on behalf of the person accused.

In all instances, the attorney must comprehend, and appreciate, that the representation is for the person accused of a crime, not the cause for which the crime might have been committed.¹

Professional Consideration When Representing the Unpopular Client

It is not mere happenstance that the first Rule of the Georgia Code of Professional Responsibility is:

A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

This is a tall order in even the most mundane of criminal cases; however, under the glare of public opprobrium and disapproval,

these requirements can be seen as an encumbrance or impediment to the next scheduled news conference or “talking head” sound bite. Thirty years ago, Professor Marshall McLuhan taught us that the “medium is the message.” The “medium” in the criminal justice system can easily be seen as the attorney or the “cause” or “crime” which has brought the client to the attorney’s office. Unfortunately, the client too often becomes just another prop for the attorney’s next public appearance. Unfortunately, this criticism is most often spoken by the public and not by members of the legal profession. Attorneys seem to have accepted that it is our profession’s due to become an actor on humanity’s stage rather than an integral part of the criminal justice system’s adversarial process. Thus, it might be said that the first victim of the notorious client/case becomes the ethical responsibility of the attorney to provide competent representation rather than becoming a part of the notoriety of the case.

This critique of the attorney’s role in a high profile, notorious case certainly does not mean that the attorney should be nothing more than a part of the background scenery, however, the ethical responsibility of the attorney is first and foremost to provide competent representation of the “client,” not the cause or the “case” itself.

Standard 4-1.6 of the American Bar Association’s Standards for Criminal Justice, the defense function provides:

The duties of a lawyer to a client are to represent the client’s legitimate interests, and considerations of personal and professional

advantage should not influence the lawyer’s advice or performance.

The commentary to this standard discusses the natural desire of an attorney to be in the forefront in developing new legal concepts; however, this does not justify an attorney risking the client’s conviction and a severe sentence where a plea can be negotiated. This standard emphasizes that the correct role of a defense attorney is to strive not for “courtroom victories” or public exposure, but for results that serve the client’s long-range interests.

The Proper Professional Relationship

This is one of the most difficult areas for the attorney representing a high profile client. Does the attorney take on the mantle of the client’s case, personality or cause? How does an attorney establish the necessary public communications necessary to defend his or her client in the public arena and at the same time not become a part of the client’s cause or case? One of the most renowned, and for many of us who are criminal defense attorneys our most revered hero is Clarence Darrow. Darrow was seen by his generation as the defender of the downtrodden, the spokesperson for the oppressed and came to be, in life and death, an icon depicting the epitome of the criminal defense lawyer.

What many do not remember or even know, is that at age 54, and at the apex of his career, Darrow was indicted and prosecuted on charges of attempting to bribe jurors. Although he was acquitted of the

charges, the accusations made against him were substantial in the minds of many of his critics. The bribery charges came, in large part, as a result of his pushing the envelope and being perceived as being a part of the client’s cause rather than a defender of the client.

Darrow was indicted on charges that he had authorized the bribing of two jurors at a murder trial he was litigating. The case arose out of the bombing of the *Los Angeles Times* building. Two labor organizers were arrested for the crime, and organized labor leaders sought out Darrow to defend them. According to Geoffrey Cowan, one of the biographers of Darrow,² Darrow did not want to get involved. At 54, he had become tired of legal practice and disenchanted with the political process. As one friend described him during this period: “He is humorous, but he is also tragic hopelessness of his outlook. . . His aggressive cynicism makes him repellent to many.” Samuel Gompers, one of the major labor leaders of the day, finally persuaded him to take the case by offering him \$50,000 — at the time a huge sum.

However, Darrow’s sense of hopelessness got worse when he arrived in Los Angeles to begin the defense of the labor leaders who were accused of the bombing. Darrow quickly realized that the case and the evidence against his clients were overwhelming. But in his life-long cynicism and alienation from the criminal justice system, he also felt that the judicial system was rigged against the brothers and that they would not receive a fair trial in the anti-union city.³

The case ended suddenly during jury selection when Darrow plead-

A close-up photograph of a hand holding a globe of the Earth. The hand is positioned on the left side, with fingers gently gripping the globe. The globe shows continents in various colors (yellow, green, brown) and oceans in blue. The background is a dark blue gradient.

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ed his clients guilty. Three days earlier, authorities had arrested one of Darrow's investigators when he attempted to bribe a potential juror. Whether Darrow's decision to end the case was a result of arrest is unknown. Nevertheless, he incurred the universal condemnation of those who believed he had betrayed labor's cause.

Darrow himself was later charged with conspiring to bribe several of the jurors. At his trial, Darrow acted as his own lawyer. When the three-month trial finally moved to summation, Darrow delivered the most impassioned speech of his life, arguing that he was being persecuted for his vigorous defense of the poor and workers. In his closing argument he told the jurors:

I have tried to live my life and to live it as I see it, regarding neither praise nor blame, both of which are unjust. No man is judged rightly by his fellow men. Some look upon him as an idol and forget his feet are clay, as are the feet of every man. Others look upon him as a devil and can see no good in him at all. Neither is true. I have known this, and I have tried to follow my conscience and my duty the best I could and to

*do it faithfully, and here I am today in the hands of you twelve men who will one day say to your children, and they will say it to their children, that you passed on my fate.*⁴

The jury deliberated less than one hour before acquitting Darrow.

Darrow recovered from the humiliation of his indictment and subsequent trial and went on to defend John Thomas Scopes' right to teach Darwin's theory of evolution. In 1924, his clemency plea on behalf of Nathan Leopold and Richard Loeb, the Chicago

teenagers who were charged with murdering one of their schoolmates because they thought they were capable of committing the perfect crime. On May 21, 1924, Bobby Franks was kidnapped, beaten to death, and his lifeless body was thrown into an industrial swamp in south Chicago. Franks was the 14-year-old son of a wealthy Chicago family.

It was the Leopold and Loeb case in which Darrow so eloquently voiced one of the most memorable statements about the American justice system and, quite appropriately

for this place and time, why the notorious client should be represented in the face of public outcries for their execution.

The Leopold and Loeb case came shortly after World War I and the injury to our national conscience by the enormous loss of lives in the European conflict was a raw wound on the public psychic. The worldwide press had a feeding frenzy on the case. Because of the wealth of the families of Leopold and Loeb, speculation was rife with predictions that Darrow would raise an insanity defense and bring in expert witness from around the



world to explain the conduct of his clients. However, Darrow waived a jury trial and entered a guilty plea on behalf of his clients and pleaded for mercy from the trial judge. Darrow's closing summation and argument to Judge Caverly on behalf of Leopold and Loeb lasted three days.⁵ No more eloquent statement can be made about the proper relationship of a defense attorney to an unpopular client than in the words of Darrow during Leopold and Loeb's sentencing hearing. These words can have no greater meaning than they do in today's climate of outrage over the tragic events in New York City and Washington, D.C. — events which have led our nation to a new war

and to the brink of the renunciation of many of our nation's most precious civil liberties.

How long, your Honor, will it take for the world to get back the humane emotions that were slowly growing before the war? How long will it take the calloused hearts of men before the scars of hatred and cruelty shall be removed? We read of killing one hundred thousand men in a day. We read about it and we rejoiced in it if it was the other fellows who were killed. We were fed on flesh and drank blood. Even down to the prattling babe. I need not tell your Honor this, because

you know; I need not tell you how many upright, honorable young boys have come into this court charged with murder, some saved and some sent to their death, boys who fought in this war and learned to place a cheap value on human life. You know it and I know it. These boys were brought up in it. The tales of death were in their homes, their playgrounds, their schools; they were in the newspapers that they read; it was a part of the common frenzy what was a life? It was nothing. It was the least sacred thing in existence and these boys were trained to this

cruelty. It will take fifty years to wipe it out of the human heart, if ever. I know this, that after the Civil War in 1865, crimes of this sort increased, marvelously. No one needs to tell me that crime has no cause. It has as definite a cause as any other disease, and I know that out of the hatred and bitterness of the Civil War crime increased as America had never known it before. I know that growing out of the Napoleonic wars there was an era of crime such as Europe had never seen before. I know that Europe is going through the same experience today; I know it has followed every war; and I know it has influenced these boys so that life was not the same to them as it would have been if the world had not been made red with blood. I protest against the crimes and mistakes of society being visited upon them. All of us have a share in it. I have mine. I cannot tell and I shall never know how many words of mine might have given birth to cruelty in place of love and kindness and charity. Your Honor knows that in this very court crimes of violence have increased growing out of the war. Not necessarily by those who fought but by those that learned that blood was cheap, and human life was cheap, and if the State could take it lightly why not the boy?

... ..

The easy thing and the popular thing to do is to hang my clients. I know it. Men and women who do not think will applaud. The cruel and

thoughtless will approve. It will be easy to-day; but in Chicago, and reaching out over the length and breadth of the land, more and more fathers and mothers, the humane, the kind and the hopeful, who are gaining an understanding and asking questions not only about these poor boys, but about their own - these will join in no acclaim at the death of my clients. These would ask that the shedding of blood be stopped, and that the normal feelings of man resume their sway. And as the days and the months and the years go on, they will ask it more and more. But, your Honor, what they shall ask may not count. I know the easy way. I know your Honor stands between the future and the past. I know the future is with me, and what I stand for here; not merely for the lives of these two unfortunate lads, but for all boys and all girls; for all of the young, and as far as possible, for all of the old. I am pleading for life, understanding, charity, kindness, and the infinite mercy that considers all. I am pleading that we overcome cruelty with kindness and hatred with love.

... ..

I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men. When we can learn by reason and judgement and understanding and faith that all life is worth saving, and mercy is the highest attribute of man.⁶

Indeed, the final word on the question on why the unpopular client must be fairly and competent-

ly represented lies in the future. Unless we acknowledge our own humanity in the way we, as a society treat the unpopular criminal defendant, how can we ever hope for a time when hatred and cruelty will not control the hearts of men? 



Michael Mears is director of the Multi-County Public Defender's Office, Atlanta, Ga. Mears received his B.A. and

M.A. degrees from Mississippi State University. He received his J.D. from the University of Georgia Law School. In 1983, Mears was elected to the Decatur, Ga., City Commission and, in 1985, was elected mayor of the City of Decatur, where he served until 1993. He is the author of *The Death Penalty in Georgia: A Modern History 1970-2000* and *A Brief History of the Georgia Indigent Defense Council*.

ENDNOTES

1. See, Preamble to the Georgia Rules of Professional Conduct, "A Lawyer's Responsibilities [1] A lawyer is a representative of clients, an officer of the legal system and a citizen having special responsibility for the quality of justice.
2. COWAN, Geoffrey, *The People V. Clarence Darrow: The Bribery Trial of America's Greatest Lawyer*, Times Books, 1993
3. *Id.*
4. Geoffrey Cowan. "The People v. Clarence Darrow: The Bribery Trial of America's Greatest Lawyer." New York: Times Books/Random House, 1993.
5. *People v. Richard Leopold and Nathan Loeb*, Circuit Court Case Numbers #33623 and 33624, Cook County, Illinois.
6. *Id.*

The Legality of U.S. Strikes Under International Law

By Daniel H. Joyner

As the United States continues the military phase of the recently proclaimed “war on terrorism,” attention has turned, among international law scholars, to the legality of U.S. strikes within the territory of countries that the U.S. claims harbor or aid terrorist groups.

And while international law concerns routinely take a back seat in the minds of policy and law makers to matters of perceived policy imperative, when the dust from the current campaign inevitably clears, we will be forced to live with the decisions we make now, and with their precedential effect on international relations, which is likely to be significant. Thus, a moment’s reflection upon the degree to which our current and prospective actions are in harmony with established principles of international law is warranted.

The Right to Self-Defense

The U.S. ambassador to the United Nations, John Negroponte, recently delivered a letter to the U.N. Security Council in which was stated the official U.S. position that military strikes thus far executed in Afghanistan have been carried out in reliance on the self-defense article of the U.N. Charter. The letter stated further that “[w]e may find that our self-defense requires further actions with respect to other organizations and other states,”¹ though it did not specify which states are being considered as potential targets.

The substantive law for examining any international act of force by states that are members of the United Nations can be found in various provisions contained in the United Nations Charter. The most comprehensive of these provisions can be found in Article 2(4) of the Charter which states “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.”

This provision has come to be understood as a broad and binding nonintervention norm and has generally been interpreted by international legal scholars to provide a blanket prohibition on international acts of force by members of the United Nations (including, notably, the United States and the United Kingdom) that violate, directly or indirectly, the territory or internal sovereignty of another state.

However, the Charter does provide, in Article 51 and Chapter VII, limited exceptions to this blanket prohibition. These exceptions are to be found in cases of legitimate self-defense and authorization of force by the U.N. Security Council.

The right of self-defense under the Charter authorizes defensive action by the victim state “if an armed attack occurs against a member of the United Nations.”² The words “if an armed attack occurs” have traditionally been interpreted to mean that defensive action can only be taken after a state has actually been attacked by another state. Thus, textually, there is little support for a right of preemptive or anticipatory self-defense in the United Nations Charter.

The Facts

At this point, an examination of the facts is necessary. In this case, there has undeniably been a serious violation of the territorial integrity of the United States from a foreign source constituting an armed attack on U.S. soil. This prompts many, including many in positions of policymaking, to feel that international use of force by the United States directed at a variety of terrorist organizations within a variety of foreign states with varying degrees of connection to the Sept. 11 attacks is completely justifiable on self-defense grounds.

It is at this juncture, however, that the facts of the current case begin to pose analytical problems for examining the legality of current and future U.S. military strikes under international law. The traditional paradigm for invocation of the self-defense clause of the U.N. Charter has, of course, been a response to an attack on the victim state traceable to a foreign nation against whom the victim state now plans to retaliate for the purpose of repulsing the aggression and ceasing its further continuance. The notable difference in the present case, of course, is that the links to state sponsorship of the terrorists who carried out the Sept. 11 attacks are more tenuous and the support itself (though further investigation may reveal otherwise) seems at this point to have been limited to knowledgeable failure to expel terrorist cells from within state borders on one end of the spectrum and to active financial backing and sympathy on the other end.

These less than direct contacts with the actual prosecution of the Sept. 11 attacks against the United States make the case for a broad

war against state aiders and abettors of terrorism a novel proposition, and one the legality of which is, quite frankly, an arguable question under a strict textual reading of the self-defense provision of the U.N. Charter, and arguments in support of the legality of such a campaign, it must be said, grow less tenable as the links between a state and the terrorist cells actually involved in the acts of terrorism become more distant.

As the facts are currently understood, and without the benefit of full disclosure of evidence the United States and its allies have thus far gathered, it seems that a compelling case has been made that the Al Qaeda organization, headed by Osama bin Laden, was materially connected to the acts of terrorism on U.S. soil on Sept. 11. It has also been established that not only have bin Laden and Al Qaeda been given sanctuary in Afghanistan in full knowledge of the general nature of their terrorist activities (as witnessed by the rash of training camps across the country, a knowledge of the existence and purpose of which cannot realistically be disavowed by the Taliban leadership), but there are further reports of evidence that Al Qaeda has enjoyed financial and other support, through both direct and indirect means, from the Taliban government.

Under these facts, much of the current U.S. led military campaign against Al Qaeda and other targets located within Afghanistan is arguably justifiable and rests upon a reasonably sound international law foundation. Assuming that material facts are verifiable, such a legal justification would proceed as follows: attacks on U.S. soil took place; Al Qaeda was material in

planning and carrying out the attacks; the Taliban government both actively and passively supported Al Qaeda through harboring Al Qaeda in Afghan territory and otherwise facilitating their operations.³ These facts, coupled with later statements by Taliban officials endorsing the Sept. 11 actions,⁴ arguably give rise to a greater degree of state liability under international law for acts committed by non-state actors than would have arisen had Al Qaeda simply been based in Afghanistan and not enjoyed the de facto government's substantive support and open approbation.⁵

In the opinion of the present author, a strong argument can be made that due to the significant level of support given Al Qaeda by the Taliban, Afghanistan's ruling regime rendered itself legally susceptible to resulting military measures taken by the United States in its territory, at least to the degree that those measures expressly targeted Al Qaeda and related forces located therein.⁶

A Larger War on Terrorism

Thus far in the war on terrorism, the United States is on relatively stable legal ground.⁷ However, a wider war on terrorism, which statements of high-ranking U.S. officials would seem to indicate is in its formative stages in U.S. policymaking circles, presents more significant analytical problems. The parameters of such a wider and prolonged war have not been made entirely clear, but as the scope of the campaign enlarges both to include bringing to justice all terrorist cells affiliated with Al Qaeda, be they in whatever nation they might, and even further to



confront and subdue other terrorist groups throughout the Middle East and elsewhere who have little or no direct connection to the Sept. 11 attacks, the U.S. and its allies are likely to find both international political support for their anti-terror coalition waning and international legal criticism intensifying.

However, the practice of states in the area of international use of force has established considerable precedent for expanding the recognized scope of the right of self-defense under the U.N. Charter to include acts of force by a state which has not yet been attacked but which, upon compelling evidence, believes that an attack by another state is imminent.

Examples of such practice include Israel's 1981 bombing of a nuclear reactor in Iraq, which Israel claimed was justified as anticipatory self-defense because the reactor was to be used to manufacture nuclear weapons for use against Israel (though the Israeli attack was later censured by the Security Council as premature in light of the fact that the reactor had not yet come on line, and thus was not a potential threat at the time it was attacked). The United States has also invoked the doctrine of anticipatory self-defense to justify its actions in the past, most relevantly in the cases of the 1986 bombing of Libya, which the United States claimed was a preemptive strike on

the capabilities of state-sponsored terrorists who had carried out a bomb attack on U.S. soldiers at a nightclub in Berlin, and the 1998 missile attacks in Afghanistan and Sudan following the bombings of U.S. embassies in Tanzania and Kenya.

As previously noted, the United States and its allies are dealing with a largely revolutionary paradigm of armed aggression and the legality of responses thereto. The magnitude of the terrorist attacks on the United States and the resulting loss of life and collateral effects on the nation have been unprecedented. So too is the task of uncovering the identities of the attackers and their web of support and funding, some

of which is bound to be traceable to individuals or agencies with state attributes. And while, traditionally, acts of pure reprisal by a state which has been the victim of a terrorist attack, against another state due to the terrorists' origin therein have not been viewed as permissible under international law, never has there been a terrorist attack the

As previously noted, the United States and its allies are dealing with a largely revolutionary paradigm of armed aggression and the legality of responses thereto.

character of which has been so comparable to a state-sponsored act of war in its destructive impact.⁸

Furthermore, the continued statements of such terrorist groups, notably from the Al Qaeda organization, but also from other fundamentalist groups not directly associated with bin Laden, make clear that the Sept. 11 attacks were not isolated events and that a continued and very real threat from these organizations yet exists, making legitimate desires by the United States, which has been explicitly mentioned in these threats and perhaps other potential target states, to pursue preemptive action against the terrorist groups themselves and states without whose support such future attacks would be impossible.⁹

This "new breed" of terrorists, whose force capability has been proven to be on par with direct state action, may indeed require a

progression in the law of international use of force in order to clarify the doctrine of self-defense to unambiguously include within its legitimizing ambit preemptive acts of force against terrorist organizations within other states.

However, to justify violations of the territorial sovereignty of foreign states and the forceful apprehension or

elimination of terrorists and their supporters within their borders under a doctrine of anticipatory self-defense, the presence of three key

elements is likely to be required absolutely by the international law community.

Direct State Sponsorship

The first is direct state sponsorship. It is probable that a finding of knowledgeable failure by a state to expel terrorist groups from its borders will not be sufficient to justify the invocation of the doctrine of anticipatory self-defense in the forceful intervention by the United States and/or its allies into the territory of the target state. Such a defense, if accepted by the international community, would cast far too wide a net over potential candidates for U.S. intervention, and would include many states in the Middle East and elsewhere who desire to aid in a global campaign against terrorism, but who are unable to crack down seriously on known terrorist organizations in their countries because they lack

the enforcement capabilities to carry out such a broad domestic police action, which if attempted would inevitably provoke such groups to retaliate, thus escalating conflict in the region and possibly destabilizing legitimate and relatively progressive moderate governments.

Indeed, states like Egypt and Saudi Arabia, while cognizant of the existence of terrorist cells within their boundaries cannot realistically be expected to root out all such groups, even if put under considerable diplomatic and economic pressure by the United States and the international community. An analogy to organized crime syndicates in U.S. cities during the 1920s seems apt, but without the possibility of rescue by in this case non-existent super-national regulators. Some, including former Secretary of State Henry Kissinger, believe the United States should fill such a role and provide assurances of added security to bolster domestic crackdown efforts.¹⁰ This seems, however, to be a formula for excessive U.S. force dilution around the world unparalleled in other proposals put forward thus far. In the present author's opinion, it is entirely unrealistic, and would present serious national sovereignty and military mission concerns, for the United States to be put in a position of providing substantial domestic policing support for nations attempting to crack down on terrorist elements within their borders.¹¹

Thus, a standard of knowledgeable failure to expel would leave to the United States and its allies a great deal of discretion regarding which states are worthy of being the targets of anti-terrorism outside intervention, and on what scale.

While this may be palatable to those who trust the judgement of the great western powers in choosing where and when to use force, the purpose of having a body of international law covering the area of international use of force (which was a primary goal of the United Nations Charter) has always been to assure that the acts of every individual state will be measured by the same standard without regard to economic status or military might. Such a non-limiting standard would seriously weaken the restrictions set forth in Article 2(4) of the U.N. Charter and would establish a dangerous precedent upon which other states could justify

interventions based on the fact alone of a target state's failure to quell known terrorist movements within its borders.

However, as the famed *Nicaragua* decision of the International Court of Justice makes clear, the liability of a state may be established for interventions into the territory of another state conducted by non-state agents but with state support.¹² Thus, if a clear money trail could be established, linking a state government to willful or knowledgeable funding of the relevant terrorist activities, this fact would present a strong argument that the funding state has materially participated in

the acts themselves and thus that invasions of their territory for the purpose of killing or apprehending the terrorists would be defensible under a doctrine of anticipatory self-defense.

Future Terrorist Attacks

The second element the presence of which will likely be required is compelling evidence of imminent future attacks by the specific terrorist groups to be targeted. Interventions into the territory of other states cannot be justified on purely punitive or retaliatory grounds. As the name implies, anticipatory self-defense will only

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be invocable upon a finding of clear evidence that an attack on the state or states wishing to use force under that doctrine is imminent. This evidence need not necessarily be shared with all who wish access to it, but disclosure to responsible, friendly foreign governments will be useful not only in garnering increased international support for the proposed intervention, but also in allowing objective scrutiny of the evidence, which will in turn aid the intervening state in its later claims of anticipatory self defense against counterclaims of *post-hoc* manufacture of incriminating evidence to justify strikes.

Proportionality

The final element of any assertion of self-defense is proportionality. Responses to aggression must not be significantly disproportionate to the underlying aggressive actions themselves. This is most importantly gauged by the degree to which civilian property is incidentally destroyed and lives are lost in excess of a reasonable calculus based on the gravity of the attacks to which such force is in response. In the case of the recent attacks on New York City and Washington, D.C., that standard will likely leave considerable leeway for U.S. and allied response, due to the magnitude of the destruction and number of lives lost, which should have a material bearing on the calculus of threat which such actions seek to preempt. However, as the anti-terror campaign progresses, the United States will need to be mindful of this standard both in its selection of targets, including number and character of target states, and in its use of ordnance, lest the response

to the attacks on U.S. soil and the continued threats to U.S. interests of which those attacks are indicative be deemed to have exceeded its concededly broad mandate.

Conclusion

If all three of the above elements are not present, the doctrine of anticipatory self-defense will likely fail as a justifying principle, and liability under international law for non-compliant international uses of force by United Nations members will likely result, if those actions are not taken with the legitimizing sanction of the U.N. Security Council through resolution grounded in Article VII of the U.N. Charter. This fact could very likely limit the currently envisioned U.S.-led campaign against terror in its selection of targets and in its duration, which will be unwelcome restrictions to policy makers in Washington and other capitals — but one must consider the alternative.

Unrestrained international uses of force and weak international law constraints have brought about untold suffering over the centuries, as the sole discretion regarding whether or not military operations against a foreign nation were justifiable, if a part of strategic calculus at all, has largely been left to the powerful states who had the resources necessary for such campaigns. On some occasions, outside evaluation of the merits of such decisions yields strong international support for the resulting intervening actions, as in the present case. However, at the current stage in the evolution of international law, in which international norms are often enforced only through voluntary coalitions of powerful

states, if those same states do not voluntarily regulate themselves and bring their own behavior into compliance with international law regarding legitimate uses of force, their subsequent attempts to regulate the behavior of less well meaning states by reference to the same legal principles will surely be severely compromised.

No one is benefited from an international system in which hypocrisy of the powerful reigns, and especially not in an area of international interaction as vital as communal regulation of international use of force. Therefore, the great nations of the world, who are now engaged in a cause the worthiness of which few doubt, must temper their justified outrage with respect for international law and work within its limiting, but necessary, confines as an investment in their own security and protection from those states who will in the future be mindful of precedents set now, and who may seek to engage in regrettable acts against which the world will be able to assert only increasingly hollow claims of affronted principle. 



Daniel H. Joyner is an associate with Alston & Bird LLP, Atlanta, Ga. Joyner received his B.A. from Brigham Young University and his J.D. from

Duke Law School. Joyner is the author of a number of law journal articles on international law topics. The opinions expressed herein are solely those of the author and do not necessarily represent the opinions of Alston & Bird LLP.

ENDNOTES

1. UN Doc. S/2001/946, available at <http://www.un.int/usa/s-2001-946.htm>.
2. UN Charter, Art. 51.
3. In Ambassador Negroponte's words "[t]he attacks on 11 September 2001 and the ongoing threat to the United States and its nationals posed by the Al-Qaeda organization have been made possible by the decision of the Taliban regime to allow the parts of Afghanistan that it controls to be used by this organization as a base of operation. Despite every effort by the United States and the international community, the Taliban regime has refused to change its policy. From the territory of Afghanistan, the Al-Qaeda organization continues to train and support agents of terror who attack innocent people throughout the world and target United States nationals and interests in the United States and abroad." UN Doc. S/2001/946, available at <http://www.un.int/usa/s-2001-946.htm>.
4. See "Mullah Omar – in his own words," *Guardian*, September 26, 2001, Features, pg.3 (interview translation).
5. See Michael Byers, *Terrorism, the Use of Force and International Law after 11 September*, INTERNATIONAL & COMPARATIVE LAW QUARTERLY, Volume 51(2) (2002). There are of course questions concerning the status of the Taliban regime, officially recognized by only a handful of states, under international law and whether that regime had developed the requisite attributes for state responsibility to attach. However, with their forceful passing and with the emergence of a relatively Western friendly and beholden government in Kabul, it is unlikely that a cognizable challenge to coalition actions in Afghanistan will be brought within the foreseeable future. See also *United States Diplomatic and Consular Staff in Tehran* (1980) I.C.J. Rep. 3 at 36, para. 74 (Iranian government's liability for the actions of non-state actors arising from endorsement of those actors' deeds).
6. Some elements of U.S. military action in Afghanistan, in particular coalition actions in pursuance of strategic collaboration with internal opposition forces with the overt intention of overthrowing the de facto government of Afghanistan, may prove more difficult to reconcile with the non-intervention norm embodied in Article 2(4) of the United Nations Charter and with classical international law which generally prohibits international involvement in civil wars. See the *Nicaragua Case*, I.C.J. Rep. 1986.
7. This article will not address the merits of claims of justification under law forwarded by allies of the United States in the current strikes on Afghanistan. Those claims are based largely on Article V of the treaty establishing the North Atlantic Treaty Organization (NATO), which was invoked shortly after September 11th, and which purports to authorize all NATO members to come to the aid of a member who is attacked. This recital of authority is however clearly controverted by the same members' obligations under the UN Charter, discussed previously, which by their terms preempt all other obligations in the area of international use of force. For more on this point, see Daniel H. Joyner, *The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm*, forthcoming in the EUROPEAN JOURNAL OF INTERNATIONAL LAW. Thus, justification for non-U.S. involvement in military strikes in Afghanistan in the war on terrorism can only be based on the doctrine of anticipatory self defense, discussed in more detail hereafter.
8. See Michael Akehurst, *AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW*, 316 (7th edition, Peter Malanczuk ed.) (1997).
9. See *Bin Laden's sole post-September 11 TV interview aired: Fugitive al Qaeda leader vows fight to the death*, CNN.com, January 31, 2002, available at <http://www.cnn.com/2002/US/01/31/gen.binladen.interview/>; *Voice of radical Islam grows louder in Indonesia*, CNN.com, October 3, 2001, available at <http://www.cnn.com/2001/WORLD/asiapcf/southeast/10/03/indo.radicals/index.html>.
10. From a speech given by Secretary Kissinger at a Carnegie Bosch conference October 5, 2001.
11. See *Court Challenge for U.S. Troops*, CNN.com, February 6, 2002, available at <http://www.cnn.com/2002/WORLD/asiapcf/southeast/02/05/phil.legal.us/index.html>.
12. See 1986 I.C.J. Reports 14 at 103, para. 195 in which the Court concluded that legitimate self-defense could be pleaded by a state responding to the "sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to (*inter alia*) an actual armed attack conducted by regular armed forces, or its substantial involvement therein."

Ambassadors of Orchestral Music

By Robin E. Dahlen

Artist and filmmaker Hans Richter once said, “The hardest thing in the world is to start an orchestra, and the next hardest, to stop it.” And there’s no stopping one of Atlanta’s newest musical assemblages — The Atlanta Lawyers’ Orchestra (ALO).

The ALO was founded in late 1999 to bring together musicians from the legal field who share a common love for music. The orchestra is composed of more than 40 dedicated members, including attorneys, law students, paralegals, legal secretaries and other musicians who are not in the legal field.

The brainchild of Alysa Freeman, an attorney with Parks, Chesin, Walbert & Miller, P.C., a 20-year musician and flutist, the ALO is modeled after established lawyers’ orchestras in New York, Boston and Chicago. “After moving to Atlanta I soon learned that



Founded in 1999, the Atlanta Lawyers’ Orchestra is composed of more than 40 dedicated members.

the city didn’t have a lawyers’ orchestra and I thought this would be an excellent opportunity to start an ensemble that would perform the orchestral repertory,” says Freeman. “There are a lot of people in the legal profession who are also artists and who I thought may welcome this opportunity to perform.”

Freeman, who has recently stepped down as the ALO’s president, generated interest in the group through various articles and announcements in local publications, such as the *Fulton County Daily Report*, the *Atlanta Journal-Constitution* and *Creative Loafing*. In addition, Freeman conducted a public relations blitz by sending faxes to

over 35 Atlanta law firms, generating e-mails and contacting area law schools to get the word out.

Freeman’s efforts were not in vain and interest in the ensemble grew quickly. During the orchestra’s infancy, rehearsals were held at the Atlanta Opera’s rehearsal facility and in the band room at Druid Hills High School in Decatur, Ga. Since spring 2000, the ensemble has been rehearsing in the auditorium of the William Breman Jewish Nursing Home on Monday evenings. The group’s inaugural concert was held in June 2000 at the Douglasville, Ga., Borders Books and Music Store as a part of the nationally known “Save

the Music" program sponsored by VH1.

"In the beginning, we had maybe 10 musicians at the rehearsals," Freeman recalls. "A lot of us were rusty and it took a while to grow to our now regular attendance numbers. At our two-year mark, we reached 20 members, and today we have a very good core group of regulars. Many of our most recent rehearsals have had close to 25 musicians. I think that if we can pick up five to 10 solid members each year, we can soon reach our goal of a full small chamber orchestra."

The orchestra's conductor, Patrick Denney, stepped in as interim conductor in March 2000 and soon took over the reigns of the ALO shortly thereafter. Denney, a veteran musician and music educator at South Forsyth High School in Cumming, Ga., was recently named the Georgia representative of *School Band and Orchestra* magazine's "Fifty Directors Who Make a Difference" for 2001.

"My time with the ALO has been invaluable to my personal growth as a musician," says Denney. "I hope to have a long relationship with this fine organization."

As music director of the ALO, Denney chooses pieces for the group based partially on upcoming concerts. "I'll try to select pieces that will not only be entertaining to a wide audience, but ones that will challenge the members of the orchestra, as well," notes Denney. "I want them, and myself, to keep stretching as musicians. But, there are always the 'old favorites' that we can pull out of the music folder if we need some extra music."

Past musical selections have included the classics, such as



In July 2001, the ALO performed a pre-laser show concert of classical music and show tunes on the veranda at Stone Mountain Park.

Mozart's *Ein Kleine Nachtmusik*, Bizet's *Carmen: A Suite for Orchestra* and Rossini's *Barber of Seville*. The group has also played the likes of more modern favorites, such as George Gershwin, Percy Grainger and Aaron Copland.

"Patrick Denney provides wonderful leadership for the group," says Kim Johnson, an associate with Jones Day, violist and current ALO president. "Patrick continues to push us to expand our repertoire and our musicianship."

Atlanta Lawyers' Orchestra
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www.zilleon.com/alo

The ALO invites all interested musicians. No audition is necessary for membership. For more information, contact Kim Johnson at (404) 581-8398.

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ALO musicians entertain during a performance at the Sunrise Assisted Living Facility of Dunwoody in April 2001. The ensemble gives two public service concerts per year.

The ensemble typically performs five to six concerts per year, including at least two public service concerts. The ALO has performed at the Atlanta Bar Association's Doctors and Lawyers Dinner, the State Bar of Georgia's 2002 Midyear Meeting, the "On the Lake" series in Roswell, Ga., the United Methodist Children's Home, Stone Mountain Park and the Georgia Special Olympics 2002 Winter Games Opening Ceremony.

"The Atlanta Lawyers' Orchestra performance was the perfect complement to the many activities at this year's Midyear Meeting," notes State Bar of Georgia President Jimmy Franklin. "Meeting attendees truly enjoyed the program and it was nice to see some of our Bar members showcasing their musical talents."

In order for the ALO to function and perform, members of the orchestra are assessed a yearly membership fee of \$25. Dues are used to purchase music and, in the future, they will be used to purchase instruments. The ALO is also about to obtain its non-profit status

and orchestra leaders hope this will encourage individuals and organizations to donate funds to the ensemble.

"I hope that we can continue to provide public benefit concerts," says Johnson, who once taught junior high school orchestra before pursuing her law degree. "For example, the Georgia Special Olympics performance was an inspiring experience for all of us. We've also performed at nursing homes and these concerts make us part of a larger community by providing music and acting as an ambassador for the legal community."

In addition, Johnson would also like to see the size of the ensemble expand, particularly the string section. The ALO is also seeking a percussionist, as well as additional players to build up its brass section. "We have a solid group of dedicated members," notes Johnson, "but I know there are more frustrated musicians out there in the legal community and we'd love to have them join us."



In December 2001, members of the ALO participated in a holiday performance at the Governor's Mansion in Atlanta. Participating musicians included (left to right): Teri Smith, Alysa Freeman, Jordan Forman, Shinji Morokuma, Patrick Denney, Jeana Girard, Heather Peck and Sandra Cuttler.

Atlanta Lawyers' Orchestra Musicians

Conductor

Patrick Denney

Bass

Joey Sirmons

Cello

Janet Conley
David Wilkes

Clarinet

Patricia Buonodono
Barbara Carkenord
Sandra Cuttler
Jordan Forman
Jeana Girard
Garvin Kleber
Laura Mihill
Debbie Moore
Shinji Morokuma
Charlotte Turner

Flute

Jane Blount
Alysa Freeman
Melissa Silverman
Teri Smith
Jeannie Wiley

French Horn

Janice Scanling
Elizabeth Semancik

Oboe

Susan Aaron
Arlene Wharton

Piccolo

Robin Dahlen

Saxophone

Bob Cook
Lorraine Kipp
David Kleber
Heather Peck

Trombone

Ron Barab
Leigh H. Jones
Scott Johnson

Trumpet

Mitch Block
Christopher Terrell
Ken Winkler

Viola

Kim Johnson
Amy Miller
Rivka Monheit

Violin

Aimee Adamek
Nicole Allen
Mitzi Baron
Salvia Choi
Anna Eley
Catherine Hackler
Tom McDermott
Rienhard von Hennigs

For Elizabeth Semancik, an attorney with King & Spalding and French horn player, the ALO provides an opportunity to further grow her musical background, which has included, in addition to the French horn, the piano and bagpipes. Semancik believes that participating in the orchestra is "a refreshing contrast to the constant clash of daily life."

And so does Johnson. "Playing with this group allows me to use a different part of my brain than I use the rest of the week," she says. "So, every Monday night, I take a mini-vacation from the practice of law. Playing with the ALO also gives me an excellent opportunity to network with people from

the legal community in a non-legal setting." 

Robin E. Dahlen is the assistant director of communications for the State Bar of Georgia.

Upcoming Performances

April 14, 2002

William Breman Jewish Nursing Home, Atlanta, Ga.

3:00 p.m.

May 11, 2002

South Forsyth High School, Cumming, Ga.

7:00 p.m.

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Midyear Meeting Combines Education and Networking

By Sarah I. Bartleson

The 184th Board of Governors Midyear Meeting was held at the Swissôtel, Atlanta, Jan. 10-12, 2002. The meeting was a mixture of section receptions and luncheons, committee meetings, CLE opportunities and a Board of Governors (BOG) dinner. The featured speaker at the BOG dinner was the Hon. Johnny Isakson, United States House of Representatives, 6th District of Georgia. In addition, the Atlanta Lawyers' Orchestra performed prior to the dinner.

Board Meeting Highlights:

- Following a report by Robert D. Ingram, the Board, by unanimous voice vote, approved a Bench and Bar Committee proposal to create two annual awards recognizing a judge and lawyer for the professionalism they have exhibited throughout their careers.



Phyllis Holmen, executive director of the Georgia Legal Services Program (GLSP), was presented a check in the amount of \$295,000, by James B. Franklin, president of the State Bar of Georgia. The \$295,000 represents contributions from attorneys and law firms to GLSP.

- The Board, by unanimous voice vote, approved setting the 2002-03 Bar dues at the current level of \$175 for active members and \$87 for inactive members, assessments for the Bar Facility and Clients' Security Fund for new members, a \$20 legislative check off, solicitation for Georgia Legal Services contributions with a suggested contribution of \$100, and section dues, which range anywhere from \$5 to \$35.
- President James B. Franklin provided an update on the tree appeal and the Bar's continued efforts to disseminate informa-

tion to Bar members and other interested entities, such as the Atlanta Chamber of Commerce, Central Atlanta Progress, *Atlanta Journal Constitution*, and the Georgia Conservancy regarding the appeal. Thereafter, George R. Reinhardt Jr. provided an update on the State Bar building budget, leasing and other issues affected by the appeal.

- The Board, by unanimous voice vote, approved the reappointments of William J. Cobb, John L. Cromartie Jr. and William C. Thompson for three year-terms to the Georgia Access to Justice Project.

- The Board, by unanimous voice vote, approved the reappointments of Charles R. Adams III, Hugh Brown McNatt, Judge Walter McMillan, Senior Judge Hugh Sosebee and Bettieanne C. Hart to the Code Revision Commission.
- Young Lawyers Division (YLD) President Peter J. Daughtery reported on the various activities of the YLD including: its upcoming Legislative Breakfast; its Welcome Reception at the Midyear Meeting honoring Georgia Legal Services; and he thanked those members who donated clothes to the Community Service Project Committee's suit drive. Following that, Leigh Martin provided information on the Great Day of Service, which will held April 27, 2002.
- President James B. Franklin presented Phyllis Holmen, executive director of the Georgia Legal Services Program, a check in the amount of \$295,000, which represents contributions from attorneys and law firms to help provide civil legal services to the poor.

Board of Governors Upcoming Meetings

Spring 2002	April 5-7, Westin Harbor Resort, Savannah, Ga.
Annual 2002	June 13-16, Amelia Island Plantation, Amelia Island, Fla.
Fall 2002	Sept. 27-29, Holiday Inn, Athens, Ga.

Foundation Fellows Gather at the Governor's Mansion

Gov. and Mrs. Roy E. Barnes hosted the members of the Fellows Program of the Lawyers Foundation of Georgia at a reception held on Jan. 10, 2002, in concert with the State Bar of Georgia Midyear Meeting. Gov. Barnes posed for photographs with the guests and then joined them for hors d'oeuvres and conversation. This event was made possible through the generosity of Insurance Specialists Inc., a corporate sponsor of the Bar.

The Fellows Program of the Lawyers Foundation of Georgia, an honorary, invitational program, was established in 1978 to honor those attorneys whose professional and private careers exemplify the highest standards of legal excellence and community involvement. Membership is limited to three percent of the active membership of the State Bar or 786 members. There are 734 fellows at this time.

The Lawyers Foundation of Georgia strives to enhance the system of justice, to support the lawyers who serve it and assist the community served by it. It does this through the support of a variety of programs throughout the state. For more information, visit www.gabar.org/lfg.htm. 



Gov. Roy Barnes addresses Foundation Fellows and guests at the Lawyers Foundation reception (top) and shares a laugh with State Bar of Georgia Executive Committee member Gerald Edenfield of Statesboro (bottom). More than 200 people attended the event.



■ President James B. Franklin provided background information on the issue of indigent defense and the format for the presentations and breakout sessions. Thereafter, presentations were made by C. Wilson Dubose, chair of the Indigent Defense Committee, Judge Walter Matthews, chair of the Council of Superior Court Judges, and Rick Malone, director of the Prosecuting Attorneys Council.

The events of the Midyear Meeting were made possible by the generosity of the Bar's corporate sponsors — LexisNexis, Insurance Specialists Inc., ANLIR, West Group and the ABA Members Retirement Program. 

Sarah I. Bartleson of the State Bar Communications Department is a contributing writer to the *Georgia Bar Journal*.

Peter J. Daughtery (left) and Cliff Holt (right), a corporate sponsor of the State Bar of Georgia, Insurance Specialists Inc., speak with each other during the Midyear Meeting, along with Cliff's wife, Brenda Holt.



Jimmy Franklin, Howard Cleveland, Lollie Cleveland, Dave Cleveland and Rudolph Patterson pose after the Cleverlands accept a resolution in honor of the late Gus Cleveland.



STATE BAR OF GEORGIA DELEGATION TO CHINA

Trip Postponed Until September 2002

**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 now scheduled for Sept. 5-18, 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 unique social and cultural opportunities, including a trip to the Great Wall and Tieneman Square. The delegation will be led by State Bar Immediate Past President George E. Mundy.

The 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, contact Gayle Baker, Membership Director, State Bar of Georgia, (404) 527-8785 or gayle@gabar.org

New Board of Governors Members Named

By Robin E. Dahlen

State Bar of Georgia Rule 1-301, which was recently approved by the Georgia Supreme Court, gives out-of-state members an additional seat on the State Bar of Georgia Board of Governors while giving the president-elect the appointment of three positions to reflect diversity on the Board.

"These three new positions will add immensely to the Board of Governors," notes State Bar of Georgia President-Elect James Durham. "They come from backgrounds that will offer unique and diverse perspectives to the Board and I look forward to their input during my year as president and beyond."

The new composition also gives Atlanta seven additional seats to make its representation more proportional. These seven seats were initially appointed and will then be elected once the terms expire.

"Filing the new appointments was a daunting task," says State Bar

President Jimmy Franklin. "There were so many excellent nominations that the selection process was very difficult. In the end, I believe we will have seven outstanding additions to the Board of Governors, and I am certain they will serve the Bar well."

Pursuant to the new rule, the following new appointments have been made by Franklin and Durham.

Atlanta Circuit



Bryan M. Cavan (Post 31, term expires 2004) —

Cavan is a partner with Miller & Martin LLP in the Business Litigation practice. Cavan received his B.A. from Belmont Abbey College in 1964 and his J.D. from Emory University School of Law in 1967. His professional memberships include: State Bar of Georgia (Board of Governors; Executive Committee; past chair, State Disciplinary Board Investigative Panel); American Bar Association (Forum Committee Construction Industry, Tort and Insurance Practice Section); Atlanta Bar Association; Dekalb Bar

Association (past president); DeKalb Volunteer Lawyers Foundation (co-founder and president); and the Atlanta Chamber of Commerce.



Elizabeth Brannen Chandler (Post 32, term expires 2003) — Chandler is vice president and corporate secretary for Mirant. Chandler received

her B.B.A. from the University of Georgia in 1985 and her J.D. from the University of Georgia School of Law in 1988. Her professional memberships include: State Bar of Georgia (Board of Governors); Leadership Georgia (Class of 1998); University of Georgia (Law School Alumni Council; National Alumni Association Board of Directors); American Corporate Counsel Association; American Society of Corporate Secretaries; Partnership Against Domestic Violence (Board of Directors; past chair, Resource Development Committee); and Peachtree Road United Methodist Church (trustee).

Continued on page 42

STATE BAR

ANNUAL MEETING JUNE 13-16, 2002 AMELIA ISLAND PLANTATION AMELIA ISLAND, FLORIDA

REGISTRATION AND PROGRAM INFORMATION

CLE AND SECTION EVENTS

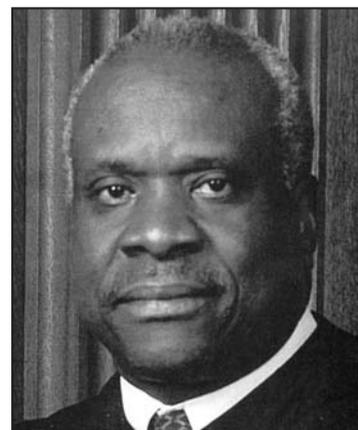
Many worthwhile programs including law updates, section sessions and business meetings, and plenary sessions.

SOCIAL EVENTS

An elaborate welcoming reception, the Annual Presidential Inaugural Dinner, alumni gatherings and plenty of recreational and sporting events to enjoy with your colleagues and family.

KEYNOTE ADDRESS BY JUSTICE CLARENCE THOMAS

United States Supreme Court Justice Clarence Thomas will speak to attendees during the Presidential Inaugural Dinner on Saturday, June 15.





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FAMILY ACTIVITIES

Relax and spend time playing golf or tennis, cycling, shopping and sight-seeing. With the beach practically at your fingertips, Amelia promises great family adventures.

KIDS CAMP AMELIA

Programs designed specifically to entertain the younger crowd will be available, including *Silly Rocket Science* and *Weird & Wonderful Water Wonders*. Kids Camp comes complete with child care services. Special events for teens include a pizza and movie night and a sailing excursion.

NETWORKING AND CAMARADERIE IN ABUNDANCE

**WATCH THE MAIL FOR REGISTRATION AND
PROGRAM INFORMATION, OR GO TO WWW.GABAR.ORG**



S. Kendall Butterworth (Post 33, term expires 2004) — Butterworth is a senior litigation counsel with BellSouth Corp.

in the Complex Commercial Litigation area. Butterworth received her B.A. from the University of Virginia in 1991 and her J.D. from the University of Georgia School of Law in 1994. Her professional memberships include: State Bar of Georgia (Board of Governors; State Disciplinary Board Review Panel; Chief Justice's Commission on Professionalism; Executive Committee; ICLE Board of Trustees; State Disciplinary Board Investigative Panel); State Bar of Georgia Young Lawyers Division (past president; Executive Council representative; past chair, The Great Day of Service Committee; past chair, Membership and Affiliate Outreach Committee); American Bar Association (Georgia YLD delegate, ABA House of Delegates; vice chair, Ad Hoc Committee on Career Forums, Business Law Section; Leadership Class of Young Lawyers; vice chair, TIPS International Law Committee; vice chair, Young Lawyers Forum, International Law and Practice Section); and the American Bar Association Young Lawyers Division (director, YLD Cabinet; YLD Leadership Advisory Board; past chair, YLD International Law Committee; YLD Task Force on International Presence; past chair, YLD Awards of Achievement Committee; vice chair, YLD Litigation Committee).



Allegra J. Lawrence (Post 34, term expires 2003) —

Lawrence is an associate with Sutherland, Asbill & Brennan LLP in the Litigation practice. Lawrence received her undergraduate degree from Spelman College and her J.D. from Yale Law School. Her professional memberships include: State Bar of Georgia (Board of Governors; Women and Minorities in the Profession Committee); Georgia Association of Black Women Attorneys (vice-president); and the Bleckley Inn of Court.



Terrence Lee Croft (Post 35, term expires 2004) —

Croft is a senior partner with King & Croft, LLP. Croft graduated from Yale University and the University of Michigan Law School. His professional memberships include: Atlanta Bar Association (past president; past chair, Litigation Section; past chair, ADR Lawyers Section); Atlanta Bar Foundation (past president); State

Bar of Georgia (Board of Governors; chair-elect, Alternative Dispute Resolution Section; Senior Lawyers Section); and the American Bar Association (House of Delegates; fellow, Litigation Section; Senior Lawyers Section; ADR Section). Croft also works as a mediator with Henning Mediation & Arbitration Services, Atlanta.



Robin Frazer Clark (Post 36, term expires 2003) —

Clark is a principal with the law firm of Jewett & Clark, L.L.C. Clark received her B.S. from Vanderbilt University in 1985 and her J.D. from Emory University School of Law in 1988. Her professional memberships include: Georgia Trial Lawyers Association (Education Committee co-chair); Atlanta Judicial Circuit (vice president); Atlanta Bar Association (member-at-large, Board of Directors, Litigation Section; Small Firm/Solo Practitioners Section); State Bar of Georgia (Board of Governors; Board of Directors, General Practice and Trial Section); Association of Trial Lawyers of America; and the Lawyers Club of Atlanta.

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Samuel M. Matchett (Post 37, term expires 2004) —

Matchett is a partner with King & Spalding in the Labor

and Employment Practice Group. Matchett received his B.A. from Morehouse College in 1981 and his J.D. from the University of Georgia School of Law in 1984. His professional memberships include: State Bar of Georgia (Board of Governors; Disciplinary Review Panel; Committee on Continuing Lawyer Competency; past chair, Corporate Council Committee, Young Lawyers Section); Dekalb Lawyers Association (past president); Gate City Bar Association (past Executive Committee member; past chair, Labor and Employment Section); University of Georgia School of Law (secretary, Alumni Council; chair, Board of Visitors); University of Georgia Foundation (trustee); Boy Scouts of America - Atlanta Area Council (board member); and Everybody Wins! (Advisory Board).

Out-of-State



C. Randall Nuckolls, Washington, D.C. (term expires 2004) —

Nuckolls is a partner with Long, Aldridge &

Norman, Washington, D.C., in the Government Practice Group. Nuckolls received his J.D. from the University of Georgia School of Law in 1977. His professional memberships include: Society of International Business Fellows (past chairman of

the Board); Leadership Georgia; Georgia State Society in Washington, D.C. (past president); University of Georgia School of Law Council (past president); District of Columbia Bar Association; State Bar of Georgia (Board of Governors); Georgia 4-H Foundation (chairman of the Board); Georgia Agribusiness Council (Board of Directors); and the Business Advisory Council of the Very Special Arts (Board of Directors).

President-Elect Appointments



Althea L. Buafo, Macon (term expires 2003) —

Buafo is in private practice. Buafo received her B.A. from Mercer Univer-

sity in 1983 and her J.D. from the Walker F. George School of Law at Mercer University in 1987. Her professional memberships include: State Bar of Georgia (Board of Governors; Review Panel; Judicial Procedure and Administration Committee); Macon Downtown Rotary; Tubman African American Museum (Board of Directors); Boys and Girls Clubs of Central Georgia (Board of Directors); and Mercer School of Law (Board of Directors).



Bettina Wing-Che Yip, Atlanta (term expires 2003) —

Yip is an associate with King & Spalding in the Labor and Em-

ployment Practice Group. Yip received her undergraduate degree from Wellesley College in 1996 and her J.D. from Columbia Law School

in 1999. Her professional memberships include: Georgia Asian Pacific American Bar Association (past president; vice-president); National Asian Pacific American Bar Association (southeast regional governor); State Bar of Georgia (Board of Governors); Atlanta Bar Association (chair, Diversity in the Profession Committee; chair, Multi-Bar Leadership Council's Joint Projects Committee; Nominating Committee); American Bar Association; Georgia Association for Women Lawyers; Anti-Prejudice Consortium (Board of Directors); Georgia Commission on Asian American Affairs; Georgia Supreme Court Commission on Professionalism; Georgia Law Related Education Consortium; and the Atlanta Volunteer Lawyer Foundation's Domestic Violence Program.



Lester B. Johnson III, Savannah (term expires 2004) —

Johnson is in private practice. Johnson received his under-

graduate degree from the College of Holy Cross in 1975 and his J.D. from the University of Miami in 1978. His professional memberships include: State Bar of Georgia (Board of Governors); Savannah Bar Association (past president); Leadership Savannah; and Leadership Georgia. Johnson is also a special assistant attorney general for the Georgia Department of Transportation and the Georgia Department of Corrections. 

Robin E. Dahlen is the assistant director of communications for the State Bar of Georgia.

Do You Know Where Your Charter Is?

By Robert L. Whatley

It is precisely 6 p.m. on the dot and all of the defendants are on time and present. There are no bench warrants tonight. You are safely in chambers surrounded by the entire Code and *Georgia Criminal and Traffic Law Manual*. The latest bench book is your companion. But you forgot one missing document. It is nowhere to be found. This is because it is down the street at the city museum with the archives. Not many visitors have inquired about it lately, but it is one in which a superior court judge may be very interested.

The bailiff summons. Time to go. No worries tonight. The defendant approaches the podium with yet another tag violation citation. You must give a jail sentence this time. Six months to serve. Next case, eluding a police officer. It is in the book. This misdemeanor carries up to 12 months. Clear. No need to cross reference.

Fast forward a month. You are sitting in the comfort of your chambers. The local sheriff has some papers for you. Nothing unusual. Peace officers give you

papers all the time — but this time the summon is for you to come to court. You call the city attorney and inquire if the city charter has any overriding provisions about sentences. Bad news. An old charter limits these cases to a term of 90 days and a \$300 fine. The charter section is close to the ban on horse drawn wagons being hitched to the post for more than 20 minutes.

Back to the Georgia Code and there it is: OCGA §40-13-22. “Nothing in the Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality’s charter.” However, it does not apply to all offenses. The next defendant was sentenced correctly. The charter says 90 days for eluding. State law says 12 months. You can give 12 months because OCGA §40-6-395 states, “Notwithstanding the limits set forth in any municipal charter, any municipal charter of any municipality shall be authorized to impose the punishments provided for in this section...”

This is not a fanciful story. It really happened in a Georgia municipality. A city prisoner filed a challenge and the superior court judge had to release him and others. Also, \$20,000 in fines had to be recalculated and some money refunded. There were 74 cases involved.

In the former court of the author, two charters seemingly were appli-

cable at the same time with differing provisions. Ex post facto city.

In some cities, there are yearly amendments to charters, and the current one may not have repealed an old one enacted years ago. Thus, a small fine must be imposed for an offense that, today, is considered more serious than when the charter was granted.

The moral to this story is simple: if you cannot get help in the city hall or from the city attorney, go to the museum down the street where the old jail used to be. It may be far more simple to locate the original charter than going to the law library and looking through years of local legislation for your city. The dust in the old jail may be preferable to searching the tables of indexes in the library. Assuring yourself personally and immediately may sometimes beat asking the city attorney to “check it out” before next Wednesday! 



Robert L. Whatley is a retired Fulton County tax assessor. He is presently a sole practitioner and part-time municipal court judge. Whatley

teaches MCLE courses and has taught criminal law at Clayton State College and State University.

This article first appeared in the Georgia Council for Municipal Court Judges Bulletin.

2001 "And Justice for All" State Bar Campaign for the Georgia Legal Services Program

We salute our 2,864 friends who contributed \$306,800.62! These gifts support GLSP's work to serve low-income individuals, families and communities in 154 counties across the state. The following lawyers, law firms, corporations, foundations and individuals contributed \$125 or more to the campaign. These gifts were received April 1, 2001 - Feb. 8, 2002.

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 Lisa Godbey Wood
 Karen L. Worthington
 & Mark Crowe
 W. Scott Wright
 Victoria W. Wuesthoff
 The Honorable
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 Edward R. Zacker
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In Memory of Henry C. Custer
 Black & Custer, LLP

In Memory of
The Honorable William F. Grant
 Willene J. Grant

In Memory of Agnes Key
 William K. & Susan W. Broker

In Memory of
Margaret B. Odell
 Martin S. Jackel

In Memory of
The Honorable Stephen Toth
 The Honorable Dorothy Toth
 Beasley

In Memory of
Carmen Toussignant
 Roxann Gray Daniel

IN KIND GIFT

The Honorable
 Duross Fitzpatrick

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KUDOS

At its Midyear Meeting in Philadelphia, the **American Bar Association (ABA)** nominated **J. Douglas Stewart** of Gainesville, Ga., to its **Board of Governors**. Stewart will take office in August at the close of the ABA's 2002 Annual Meeting in Washington, D.C. Stewart is nominated to represent District 6, composed of Louisiana, Tennessee and Georgia.

Frank Alexander, with **Powell, Goldstein, Frazer & Murphy LLP**, received the **Outstanding Leadership in the Public Interest Award** from the Emory Public Interest Committee at Emory University School of Law.



Richard Deane recently vacated the position of U.S. attorney. In recognition of his years of service to the people of Atlanta and the Northern District of Georgia, Fulton County District Attorney **Paul L. Howard Jr.** and State Attorney General **Thurbert Baker** presented him with several tokens of their appreciation at a brief ceremony in the district attorney's office upon completion of his term. Deane was replaced by William Duffey in November 2001.

Samuel W. Cruse, of **Samuel W. Cruse, P.C.**, successfully completed his doctorate in Educational Administration from Georgia Southern University in December.

Van Emberger, of **Norman & Associates**, Alpharetta, Ga., has been admitted to membership in the Commercial Law League of America (CLLA). CLLA, founded in 1895, is an organization of bankruptcy and commercial law attorneys and other business professionals.



Former Atlanta City Council President **Marvin S. Arrington** has been appointed to a newly created seat on the **Fulton County Superior Court**. Thirty litigators and judges applied to become Fulton County's 19th Superior judge, and Georgia Gov. Roy Barnes selected

Arrington from a list of five finalists recommended by a Judicial Nominating Commission.

Richard A. Jones has been named **senior vice president** and **general counsel** of the **Federal Reserve Bank of Atlanta**. Jones joined the Atlanta Fed in October 2000 as vice president and deputy general counsel and was promoted to general counsel in February 2001.

Charles N. Pursley Jr., a founding partner of **Pursley Lowery Meeks LLP**, was named the first recipient of the inaugural State Bar of Georgia **Eminent Domain Award**. The Eminent Domain Section of the State Bar of Georgia had its first official meeting in January, and is organized to promote continuing education and information related to eminent domain in the state of Georgia.

At the Annual Meeting of **Merchant & Gould, Christopher Leonard, James Withers** and **Leonard Hope** were made officers in the firm.

Georgia Gov. **Roy E. Barnes** recently commended the **Georgia Legal Services Program (GLSP)** on its **30th anniversary**. Gov. Barnes issued a written commendation honoring GLSP and the State Bar of Georgia Young Lawyers who were instrumental in the creation of the statewide civil program in 1971. The commendation was presented to GLSP's executive director, Phyllis J. Holmen, during a special presentation at the Midyear Meeting of the State Bar of Georgia. The Hon. Norman Fletcher, chief justice of the Supreme Court of Georgia, addressed the gathering. He praised the work of GLSP lawyers for the foresight and work of the State Bar's Young Lawyers from 1968-1971 in creating civil legal aid for poor Georgians beyond the city of Atlanta.

Robert F. Hershner Jr. was elected to the **Board of the Federal Judicial Center** by the Judicial Conference of the United States. Hershner's term of office is for a period of four years.

James K. Reap, Decatur, has been elected **secretary general** of the **International Scientific Committee on Legal, Administrative and Financial Issues of the International Council on Monuments and**

The Bench & Bar section recognizes happenings and accomplishments of Georgia Bar members.

Submissions are subject to editing. Photos are encouraged.

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104 Marietta St. NW
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Atlanta, GA 30303

Sites (ICOMOS). ICOMOS is an international non-governmental organization affiliated with United Nations Educational, Scientific and Cultural Organization. It is headquartered in Paris and has national committees in 107 countries, including the United States. Reap is also chair of the US/ICOMOS Preservation Law Committee.

ON THE MOVE

In Atlanta



Constangy, Brooks & Smith, LLC, announced that **Dan E. White**, formerly of Smith, Gambrell & Russell, LLP, has become a partner with the Atlanta office. He will head up the business immigration law practice group. Constangy, Brooks & Smith, LLC, is located at Suite 2400, 230 Peachtree St., NW, Atlanta, GA 30303; (404) 525-8622; Fax (404) 525-6955.

Cruser & Mitchell, LLP, announced that **Nola D. Jackson**, formerly a staff attorney to Senior Judge Joel Fryer, has joined as an associate, where she will focus on litigation and a general trial practice. The firm is located at One Georgia Center, 600 West Peachtree St., NW, Suite 605, Atlanta, GA 30308; (404) 881-2622.



Richard H. Deane Jr. has left his position as the **U.S. Attorney for the Northern District of Georgia** and will become a partner in the international law firm of **Jones, Day, Reavis & Pogue**, Atlanta.

Dean is joining the firm's litigation practice, which was recently named "**Litigation Department of the Year**" by *American Lawyer Magazine*. The office is located at 3500 Suntrust Plaza, 303 Peachtree St., Atlanta, GA 30308-3242; (404) 521-3939; Fax (404) 581-8330.

Frank E. Martínez announced the relocation of his office to Powers Ridge, Building 7, Suite 150, 1827 Powers Ferry Road, Atlanta, GA 30339; (770) 541-1050.

Bill W. Crecelius Jr. announced the relocation of his Decatur office to 11330 Lakefield Drive, Suite 250, Duluth, GA 30097; (770) 495-8600; Fax (770) 622-4705; crecelius@bell-south.net.



Choi



Johnson



Malinovsky



Moseley



Taube

Nelson Mullins Riley & Scarborough, L.L.P., announced the naming of five new partners to the law firm's Atlanta office. Nelson Mullins' new partners, who were all with the firm as associates or of counsel, include **Han C. Choi, Michelle W. Johnson, Jennifer D. Malinovsky, Melinda L. Moseley** and **Gregory M. Taube**.



McGhee



Kees



Leonard



Lerner



Vaughn

Seven additional attorneys were added to the firm, including three of counsel and four associates. **Kirkland A. McGhee, Jay D. Mitchell** and **Ugo F. Ippolito** are of counsel. **G. Scot Kees, Jeffrey P. Leonard, Matthew B. Lerner** and **Carmen M. Vaughn** were added as associates. The Atlanta office is located at 999 Peachtree St., NE, First Union Plaza, Suite 1400, Atlanta, GA 30309; (404) 817-6000; Fax (404) 817-6050; www.nmrs.com.

Hamilton, Westby, Antonowich & Anderson, L.L.C., announced that **Joseph T. Brasher** has become a member of the firm and **Steven R. Armstrong, Laura M. Lanzisera** and **Stacy A. Ingle** have become associated with the firm. The firm is located at One Georgia Center, 600 West Peachtree St., NW, Suite 2400, Atlanta, GA 30308; (404) 872-3500; Fax (404) 873-1822.



Allen

Kisha N. Allen and Benjamin R. Kogan have joined **Haynsworth Baldwin Johnson & Greaves LLC**. Allen is a litigator with experience in employment litigation, and Kogan assists employers with employment law issues. The office is located at Suite 1250, 2500 Windy Ridge Parkway, Atlanta, GA 30339-5681; (770) 541-4940; Fax (770) 541-4954.



Kogan

Greenberg Traurig LLP announced the addition of seven attorneys to the Atlanta office. **David B. Kurzweil** and **James R. Sacca** join the firm as shareholders and will start the firm's Atlanta reorganization, bankruptcy and restructuring practice group. **Windy Hillman** and **Michael Wing** join the bankruptcy practice group as associates. **Robert E. Altenbach** joins the firm as a shareholder in the corporate and securities practice group. **Steve Lang** joins the corporate securities practice group as an associate. **DeWayne Nathaniel Martin** joins as of counsel in the firm's government practice group. The office is located at The Forum, 3290 Northside Parkway, Suite 400, Atlanta, GA 30327; (678) 553-2100; Fax (678) 553-2212.

Brock, Clay, Calhoun, Wilson & Rogers, P.C., announced three new shareholders to its professional corporation. **Bruce A. Dean**, **C. LaTain Kell** and **Nicholas P. Panayotopoulos**, all senior associates with the firm, were named as partners. The firm is located at 49 Atlanta St., Marietta, GA 30060; (770) 422-1776; Fax (770) 426-6155.

In Augusta



Hunter Maclean recently announced **James (Jeb) Murray** as an associate in the firm's Augusta office. Murray practices in the area of business litigation.

The office is located at 699 Broad St., 1200 First Union Building, Augusta, GA 30901; (706) 722-7062; Fax (706) 722-7201; www.huntermaclean.com.

In Columbus

The firm of **Hatcher, Stubbs, Land, Hollis & Rothschild, LLP**, announced that **Bradley R.**

Coppedge has become a partner of the firm. The office is located at 233 12th St., Suite 500 Corporate Center, Columbus, GA 31901; (706) 324-0201.

In Conyers

Daniel S. Digby announced the establishment of his general law practice. **Daniel S. Digby & Associates, LLC**, is located at 946 Main St., NE, Suite 100, Conyers, GA 30012; (770) 760-1771; Fax (770) 483-3559; dsdigby@bellsouth.net.

In Madison

Allan R. Roffman, formerly the managing member of **Lambert, Roffman and Reitman, L.L.C.**, of Madison, Ga., announced his retirement from the active practice of law. He will be a faculty member at Piedmont College in Athens, Ga., and Truitt-McConnell College in Watkinsville, Ga.

In Savannah

The firm of **McCorkle, Pedigo & Johnson, LLP**, announced that **K. Paul Johnson** has become a partner in the firm. **Jennifer L. Vardeman** and **Patricia M. Murphy** are also now associated with the firm. The firm is located at 319 Tattnall St., Savannah, GA 31401; (912) 232-6000; Fax (912) 232-4080 or (912) 232-7060.

In Valdosta

Young, Thagard, Hoffman & Smith, L.L.P., announced that **Matthew Russell Lawrence** has become a partner in the firm and that **William Long Whitesell** and **Trent L. Coggins** have become associates with the firm. The firm will be known as Young, Thagard, Hoffman, Smith & Lawrence, L.L.P. The office is located at 801 Northwood Park Drive, P.O. Box 3007, Valdosta, GA 31604-3007; (229) 242-2520; Fax (229) 242-5040; ythss@datasys.net.

In Chattanooga, Tenn.

Husch & Eppenberger, LLC, announced **Harry B. Ray** has joined the firm's Chattanooga office as a member of the firm. Ray practices in the corporate practice group. The office is located at 736 Cherry St., Chattanooga, TN 37402; (423) 266-5500; www.husch.com. 

You've Been Fired By Your Client — Now What?

“I really think you ought to accept the settlement offer — I don’t think we can do any better,” you say to the client for the umpteenth time. “I knew you didn’t believe in my claim! You’re fired!” the client shouts before hanging up the phone.

The regret you feel at losing any client’s business is tempered with a dose of relief. This particular client isn’t going to be happy with any settlement amount, and she resisted your attempts to give her a realistic picture of what her claim was worth.

Now what? What obligations do you have when a client fires you?

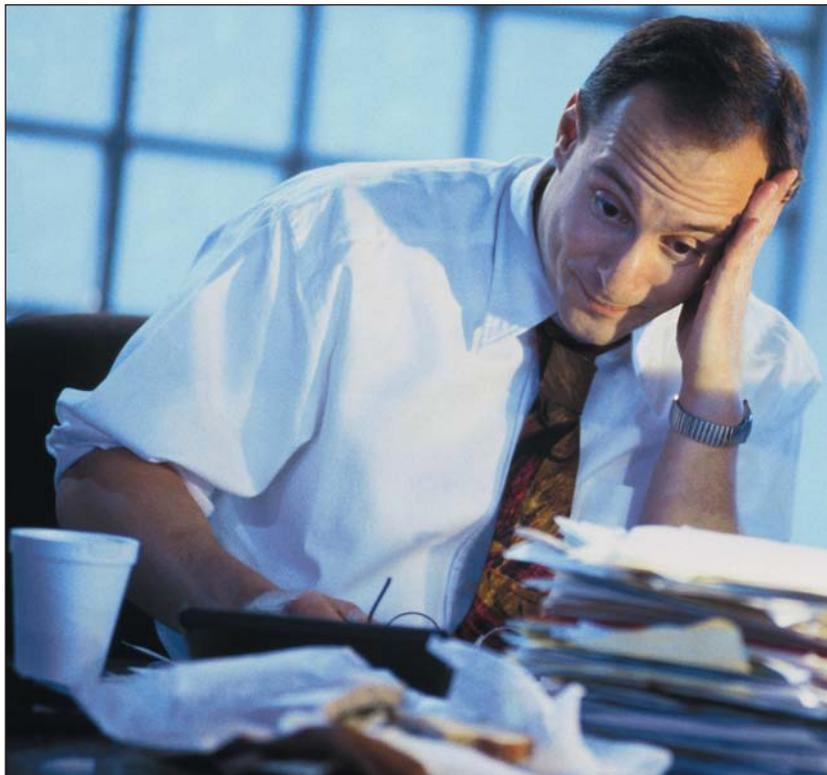
Rule 1.16 of the Georgia Rules of Professional Conduct (GRPC) deals with withdrawal from representation. It covers both the lawyer’s withdrawal from a case and the lawyer’s discharge by a client.

A good first step would be to write the client to confirm your understanding that she no longer wants you to represent her. Tell her that you will take no further action on her behalf, remind her of the status of the case and let her know if there are any imminent deadlines. Even if the client has sent a letter discharging you, it’s a good idea to send a response confirming the timing of your withdrawal.

Of course, if the client’s matter is pending before a tribunal, Rule 1.16 requires that the withdrawal be “done in compliance with applicable law and rules.” For instance, in Georgia the Uniform Rules of Superior Court

set forth the steps that a lawyer has to take before obtaining an order of withdrawal.

Second, make arrangements to return to the client any papers and other property that the client will need to pursue her case. Pursuant to Rule 1.16(d), the lawyer has an obligation to return “papers and property to which the client is entitled.” In determining whether the client is entitled to items you hold, remember that the goal of Rule 1.16 is to minimize harm to



the client. As a rule of thumb, if keeping a document or piece of property will impair the client's ability to move on with her case, the lawyer should return the item.

But, this client owes you money. You have advanced costs to her. Your written contingency fee agreement provides you will be compensated at your regular hourly rate if you are discharged before the contingency is reached, but the client cannot afford to pay you until her case settles.

You know that O.C.G.A. §15-19-14 grants to lawyers a "lien on all papers and money of their clients in their possession for services rendered to them." The statute allows a lawyer to hold a client's file to guarantee payment of a fee. Can you ethically hold this client's file until you receive a check from her?

No! Exercising your rights under the lien statute would deprive your former client of the paperwork she needs to pursue her case, and so would violate Standard 1.16. Formal Advisory Opinion 87-5, "Assertion of Attorneys' Retaining Liens¹," resolves the conflict between the statute and the requirement of the ethics rules. The opinion concludes that "[d]espite the existence of the lien statute...the power of attorneys to exercise their rights under the lien statute must give way to their ethical obligation not to cause their clients prejudice." The opinion includes a list of items which should be returned to the client, and finds that "it would be only in the rarest of circumstances that a client could be deprived of his or her files without eventually suffering some prejudice..." What's more, the opinion requires the lawyer to bear the cost of copying the file unless there is a prior agreement that the client will pay those costs.

In a profession that requires us to subjugate our own interests to those of our clients, even being fired by a client can be costly. Be sure that your retainer and fee agreements include provisions which clarify the client's financial obligations to you if you are discharged. (CB)

ENDNOTE

1. Formal Advisory Opinion 87-5 appears on page H-89 of the State Bar of Georgia 2001-2002 *Directory and Handbook*.

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Discipline Notices

(Dec. 13, 2001 - Feb. 15, 2002)

By Connie P. Henry

DISBARMENTS AND VOLUNTARY SURRENDER OF LICENSE

Larry D. Ruskaup
Rossville, Ga.

Larry D. Ruskaup (State Bar No. 620000) has been disbarred from the practice of law in Georgia by Supreme Court order dated Jan. 14, 2002. Ruskaup was retained to represent a client in a personal injury action. Ruskaup settled the client's claims and received \$18,882.05 in settlement checks. Both checks were made payable to Ruskaup and the client. Ruskaup endorsed the checks and used the money for his own benefit. After learning that Ruskaup had the checks, the client repeatedly directed Ruskaup to disburse the money due her and when he failed to do so, the client filed a civil action against him. Ruskaup sent a check for \$3,000 and informed the client's attorney that he would forward the remainder of the funds. Ruskaup never forwarded the rest of the money.

William Wright Jr.
East Orange, N.J.

William Wright Jr. (State Bar No. 778808) has been disbarred from the practice of law in Georgia by Supreme Court order dated Feb. 4, 2002. On March 17, 2000, the Supreme Court of New Jersey entered an order disbaring Wright from the practice of law in that state. Disbarment by another state is a ground for disbarment in Georgia. Wright acknowledged service of the Formal Complaint filed against him by the State Bar, but failed to respond to disciplinary authorities.

Christopher David Adams
Athens, Ga.

Christopher David Adams (State Bar No. 002705) has been disbarred from the practice of law in Georgia by Supreme Court order dated Feb. 4, 2002. In Docket No. 4240, Adams instituted and settled a lawsuit on his client's behalf without his client's authorization. He received the settlement check for \$1,200 made payable to himself and the client and forged the client's endorsement, keeping and converting all the settlement funds to his own use.

In Docket 4241, Adams instituted a lawsuit on behalf of two other clients, which he settled without their authorization for \$5,200. Adams kept the settlement check and converted the funds to his own use while concealing the fact of the settlement from his clients. When the clients learned of the settlement, Adams gave each of them a check for \$754.61, which was later dishonored by the bank due to insufficient funds.

In Docket No. 4242, Adams admits that despite being suspended he engaged in the practice of law in various cases.

In Docket No. 4243, Adams represented plaintiffs in a number of civil actions while he was suspended. In some of these cases he appeared and filed pleadings, in some he failed to properly withdraw as plaintiffs' counsel, and in some he failed to properly prosecute the cases or comply with orders of the trial court causing the cases to be dismissed.

Although Adams was personally served with a Notice of Investigation covering all four matters, he failed to respond.

The court order stipulates that Adams shall within 30 days notify all clients of his

inability to represent them and of the necessity for promptly retaining new counsel. He must certify to the court within 45 days that he has satisfied these requirements.

Richard Scott Baumhammers
Pittsburgh, Penn.

On Feb. 4, 2002, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Richard Scott Baumhammers (State Bar No. 042901). Respondent was sentenced in Pennsylvania for five counts of murder, one count of aggravated assault and two counts of ethnic intimidation, all felony violations.

Thomas Matthew Conway
Tonawanda, N.Y.

On Feb. 4, 2002, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Thomas Matthew Conway (State Bar No. 182540). Respondent was sentenced under the First Offender Act for one count of theft by taking and one count of forgery in the first degree in the Superior Court of Fulton County.

SUSPENSIONS

Ann Porges-Dodson
Macon, Ga.

Ann Porges-Dodson (State Bar No. 584633) has been suspended from the practice of law in Georgia for one year by Supreme Court order dated Jan. 14, 2002. In November 1998 and in January 1999, she wrote multiple checks on her attorney escrow account causing it to be overdrawn. The first overdraft occurred because respondent's purse, which contained the client funds, was stolen. Respondent deposited her personal funds into the account to replace the client funds. The second overdraft

occurred when respondent, who was entering the hospital, entrusted the client funds to a third party who neglected to deposit the funds into her escrow account. Upon discovery of the omission, respondent immediately deposited the funds. The Supreme Court noted in aggravation that respondent has substantial experience in the practice of law and that she has been disciplined on four prior occasions.

Patrick T. Beall
Athens, Ga.

Patrick T. Beall (State Bar No. 043950) has been suspended from the practice of law in Georgia by Supreme Court order dated Feb. 4, 2002. On two occasions, Beall received notice to appear before the Review Panel for administration of a reprimand as ordered by the court on April 30, 2001. On both occasions he failed to appear. Beall is suspended until such time as the reprimand is administered.

INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Dec. 13, 2001, five lawyers have been suspended for violating this rule.

REINSTATEMENT

Dewey N. Hayes Jr.
Douglas, Ga.

Dewey N. Hayes Jr. (State Bar No. 339906) has been reinstated to the practice of law by Supreme Court order dated Jan. 14, 2002. Hayes was suspended from the

practice of law in Georgia for 18 months for commingling his personal funds with those of his client. Hayes has complied with all conditions for reinstatement.

Constance Pinson Heard
Decatur, Ga.

Constance Pinson Heard (State Bar No. 342190) has been reinstated to the practice of law by Supreme Court order dated Feb. 4, 2002. On Oct. 5, 1998, the court accepted Heard's petition for voluntary discipline and imposed a suspension from the practice of law for a period of six months. The court also placed certain conditions on Heard before it would issue an order of reinstatement. Heard has complied with all conditions for reinstatement. 

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

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Financial Management: Basic Dollars and Sense for Lawyers

By Natalie R. Thornwell

Law schools do not teach their students how to be business owners. So, when it comes to handling money matters, sometimes attorneys need a little help. The Law Practice Management Program has several resources to help firms get on solid financial footing before starting a practice, or even well into a legal career. Outlined below are some general financial management tips and resources to help boost your bottom line. We'll call this information "The Basics."

Basic Financial Procedures

Whether performed by bookkeeping staff, yourself, or an outside accountant or bookkeeper, you can not operate a law firm without conducting most, if not all, of the following procedures. Of course, for many of these steps you can set your own firm policy

regarding how the step will be accomplished. For instance, for generating bills, your policy may be to bill monthly on the fifth of the month for all clients. Look closely at how you handle these procedures in your firm to make sure they are being carried out properly:

- Maintain an operating account;
- Maintain a trust account;
- Track time on all matters;
- Generate bills;
- Process payments;
- Pay firm bills;
- Reconcile firm's operating and trust accounts;
- Process payroll; and
- Send financial information to accountant for tax purposes.

Basic Software Systems

Basic systems for financial management come in the form of software these days. There are some firms that are still doing things by hand (yuk!), but most firms have software programs to handle financial matters. These programs cover time and billing, and general ledger accounting for law firms.

Time and Billing — You should use an automated time and billing system. Period. The basic feature sets for time and billing programs are quite user friendly and allow for easy time



tracking and bill generation. The programs have a place to input time entries or time slips. The programs usually require you to identify the person tracking the time (timekeeper), the matter/case for which the time is being tracked (client), the amount of time or the amount of the expense being incurred on behalf of the client and a description of the work or expense item. At the time of billing, the program collects the appropriate slips and allows you to generate a billing statement for your clients based on the settings you have entered regarding the format of the bill and the billing arrangement.

When payments are received, they are entered into the program to offset existing, and even future, invoices so that you have an up to the minute account of what clients

owe. Most systems allow flexibility in setting up clients' payment arrangements, charging interest on past due amounts and the formatting of the bill. You can also account for all of the funds that are held in trust for your clients, and even generate bank deposit slips. Writing checks is not available in every time and billing program, but rather is a standard feature for the integrated time and billing and accounting systems that are discussed below. Reports can be generated for virtually everything that is input into the system. Below also is a list of the basic reports you should be using to help properly manage your firm's finances.

Note: An "automated time and billing system" is NOT one where the attorney goes back through a file and "recalls" what was done, and then has

the staff "prepare" the bill by typing these entries out and manually calculating what the client owes. Automated systems DO replace manual client ledger card systems.

General Ledger Accounting —

Beyond tracking transactions and work done on behalf of clients, the law firm also needs to be aware of the firm's bottom line. In order to get this information, the firm will need to utilize a general ledger accounting system. And, is this an automated system, too? Yes, it is. Well, it should be. The integrated system will give the firm information on all financial transactions (both for the client and for the firm) in one place and provide a break-out of income and expenses categorized with a chart of accounts. (Fun stuff!) How much money does the firm have on hand? How much

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money did the firm make? How much does the firm spend in office supplies? All of these firm money questions are answered with the help of the general ledger accounting system.

Integrated Time and Billing and General Ledger Accounting — General ledger accounting features are found in integrated time and billing/accounting packages. These integrated programs combine what the automated time and billing and general ledger accounting programs do into one program. As mentioned above, check writing is a standard feature of these programs. Checks can be written and then charged (allocated) back to the appropriate client or firm expense account. Payroll and tax reporting are also standard parts of these programs. When all is said and done, the money in the bank, what clients owe you (accounts receivable) and what you owe everyone else (accounts payable) is put into the system. These programs, when used properly, give you the firm's bottom line.

Some legal-specific financial management products covering time billing and accounting for solo and small firms are:

- **Timeslips** — www.timeslips.com. Pricing starts as low as \$80 (time and billing only).
- **PC Law** — www.pclaw.com. Pricing starts at \$195 (integrated system).
- **TABS** — www.stilegal.com. Pricing starts at \$495 (integrated system).

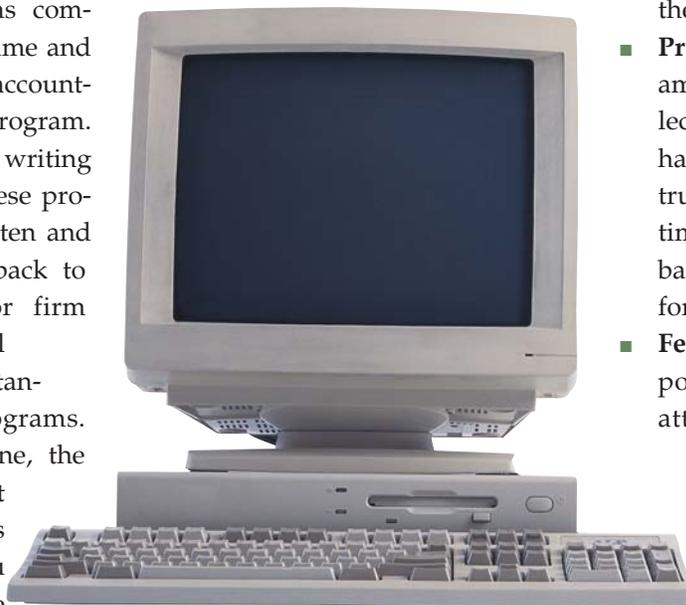
Mid-sized firms (read 10–25 timekeepers) might want to look at:

- **CMS Open** — www.cmsopen.com
- **Elite** — www.elite.com
- **Juris** — www.juris.com

- **ProLaw** — www.prolaw.com

Large firms should check with their internal IT departments for finding the appropriate enterprise solution. With larger firms, remote ASP Web-based solutions seem to be popular.

Other financial management software applications that are found in law firms include



Quicken, QuickBooks, and Peachtree. These accounting solutions are not legal specific, but when properly customized are also very helpful in tracking time, generating invoices and managing the bottom line.

Note: Contact the Law Practice Management Program to discuss your firm's needs for financial management software. The products here are a few among hundreds and, again, while they are highly recommended by this program, you need to find a system that will work for your specific needs.

Basic Financial Reports

Regardless of which software program you implement for financial management, you need to make sure the program provides these basic reports:

- **Accounts Receivable** — list of past due accounts by client. Use this report to determine how much is owed to the firm and for your collections process.
- **Productivity** — list of how much has been billed by timekeeper. This report is sometimes used to track firm goals for billable hours and even for compensation when used with the profitability report.
- **Profitability** — list of what amounts have actually been collected by the firm versus what has been billed. This gives a true picture of firm revenue by timekeepers, and is often the basis of compensation systems for attorneys.
- **Fee Allocation** — list of what portion of a collected fee is attributable to a timekeeper.

This report is also used to determine attorney compensation. Originating and responsible attorneys may sometimes receive certain percentages based on their work on cases.

- **Financial Statements (Profit/Loss)** — list of income versus expenses. This report gives a picture of how much money the firm is making or losing over a certain period. Detailed journals show what is coming in and what is going out of the firm.

Basic Firm Budgeting

You should also set up a budget for your firm operations. While this is often done at the business planning stages of a law practice, many firms don't realize how they can benefit from budgets well into the life of a practice. How would you like to see where the firm is spending the most money, or how you can make more money personally?

If your software does not include budgeting features, you can set up a simple budget on your own. Here's how:

Using a spreadsheet, or if you must, a table in a word processor, list all of the expenditures you expect to have over a specified period:

EXPENSE

Insurance	\$5,600
Bar Dues	\$300
Salaries/Draws	\$246,000
Office Supplies	\$8,500
TOTAL EXPENSES	\$260,400

Then list your projections for income. Remember, budgeting is a guessing process. Well, at least, educated guessing. List income projections like this:

INCOME

Fee Income	\$289,000
Partner Contributions	\$7,500
TOTAL INCOME	\$296,500

By taking the total for projected income and subtracting the expected expenses over a period of time, a simple budget for the firm is created. Also, by tracking the same figures as they are actually incurred, you create a profit and loss statement. In my short example above, the firm makes a profit of \$36,100 over the specified period. As this process is perfected over time, you will find that you are able to better monitor, and even influence, the financial direction of the firm.

Additional Resources

The Law Practice Management Program has available the following additional resources to help with financial management:

Surveys (may not be checked out)

- *2000 Survey of Law Firm Economics: A Management and Planning Tool*
- *1997 & 1996 Survey of Law Firm Economics*
- *1996 & 1995 Small Law Firm Economic Surveys*

Books

- *The ABA Guide to Lawyer Trust Accounts*
- *Accounting & Finance for Lawyers: Basic Understandings and Practices*
- *Cost Accounting for Law Firms*
- *Financial Statement Analysis and Business Valuation for the Practical Lawyer*
- *Guide to Time and Billing Software for Lawyers*
- *How to Draft Bills Clients Rush to Pay*
- *Identifying Profits (or Losses) in the Law Firm*
- *Improving Accounts Receivable Collection*
- *Law Firm Accounting and Financial Management*
- *Lawyer's Guide to Spreadsheets*
- *Lawyer's Quick Guide to Timeslips*
- *Managing for Profit: Improving or Maintaining Your Bottom Line*
- *Model Chart of Accounts*
- *Results-Oriented Financial Management*

- *Running a Law Practice on a Shoestring*
- *Simplified Accounting Systems and Concepts for Lawyers*
- *Win-Win Billing Strategies*

Video

- *Lawyers' Trust Accounts: Common Pitfalls and How to Avoid Them*

Audiotape

- *Fundamentals of Financial Management*

Reference (may not be checked out)

- *Time & Billing Reference Manual for Windows*

To check out materials or obtain more information on financial management for your firm, contact us at (404) 527-8770 or natalie@gabar.org. 

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



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Local Bars Welcome Guest Speakers



From top to bottom:

State Bar of Georgia President Jimmy Franklin (standing) recently spoke at the Southern Circuit Bar Association's Annual Fellowship and Barbecue held in Quitman, Ga. Franklin was on hand to discuss the status of the Bar's new building. Close to 85 members attended the evening function.



State Bar of Georgia Treasurer Rob Reinhardt (left) explains the new Bar building budget to interested Tifton Judicial Circuit Bar members.



Mary Verner (left), an attorney who works on legal issues facing Native Americans in Seattle, Wash., recently spoke to the Tift County Rotary Club. Verner, who recently moved back to Fitzgerald, Ga., has been researching her own Creek Indian background.



Render Heard, president of the Tifton Judicial Circuit Bar Association, recently spoke to the Tift County Rotary Club.

The South Georgia Office is Available to Assist Local Bars.

If your bar association needs assistance with programs, contact the satellite office of the State Bar of Georgia at (800) 330-0446 and they will facilitate the program for you.

Bobby Jones, Sept. 11 and Keeping the Lawyer's Oath

By Richard P. Kessler Jr.

Do you remember the oath you gave on the day you were sworn in?

Three years of rigorous law school training and personal sacrifice ended with our final exams and graduation. We either took the bar exam in our senior year or took it following our graduation. Excitedly, we scanned the newspaper reporting on the results of the bar exam for the listing of our name. Anxiously, we attended the "swearing-in" ceremony at the local courthouse or Supreme Court, which lasted maybe an hour or less. Our parents, spouses and friends congratulated us and we headed home to celebrate and prepare for our first day on the job as a licensed lawyer.

But, what did we say to the citizens and to God when we were "sworn-in?" The Georgia Oath taken by lawyers reads as follows:

I, _____ swear that I will truly and honestly, justly and uprightly demean myself, according to the laws, as an attorney, counselor, and solicitor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God.

On its face this is a simple statement. Its meaning, however, is profound. We, as lawyers, are charged by the citizens of the state of Georgia through their representatives to conduct ourselves in accordance with this oath. We freely swear to them and to God



Bobby Jones (Photo courtesy of Emory University School of Law)

that we will do so — what an awesome or fearsome responsibility.

We are held to a higher standard, yet the polls show that for some reason the public's impression of us is that we are not living in accordance with the oath that we took. Is this because we aren't or is it because the public is just mistaken? In poll after poll, lawyers are at or near the bottom in terms of respect for their "profession." Lawyers are cloaked with the mantle of public trust by the representatives of the citizens. Yet, we don't appear to "earn" the respect of the citizens. How can this be?

In the opinion of most knowledgeable people, Robert "Bobby" Tyre Jones of Atlanta was the greatest golfer who ever lived prior to 1960. He was an amateur golfer and a man of honor. He never became a professional golfer. Instead, he entered the legal profession — he was a lawyer.

Each year, from 1923 to 1930, Jones won at least one national golf title. He capped his competitive golfing career in 1930 at the age of 28 with the Grand Slam. He did this, as has been reported, with honor. As was recently written in the *Georgia Historical Quarterly* by Stephen R. Lowe, "...Jones would have won the 1925 U.S. Open had he not been so determined to uphold the rules and be so considerate of his opponents. Jones called a penalty on himself in that tournament for a rules infraction that no one but he witnessed. The one-stroke penalty made the difference because he finished the tourna-

Many of our older lawyers say that they remember the days when lawyers did what Jones did and what professional golfers now do. They were men and women of honor, abiding by the spirit and the letter of the oath that they took.

ment proper in a tie with Willie MacFarlane and lost the 36-hole playoff by one stroke the next day. Final tallies through the 108 holes of the 1925 U.S. Open: MacFarlane, 438; Jones, 439. O.B. Keeler later reported that when Jones was praised for his honesty, the amateur golfer replied, 'You'd as well praise me for not breaking into banks. There is only one way to play this game.'¹

Modern professional golfers play tournament golf in accordance with a set of rules. They do not take an oath to abide by the rules. They

play for millions of dollars each year. They impose penalties on themselves for violations of the rules; sometimes the self-imposed penalties cost them. In the 1997 British Open, Tom Lehman, the defending champion, marked his ball and then moved his marker to another location to allow his playing partner to putt without an obstruction. After his partner putted out, Tom placed his ball where his marker had been moved. He did not move it back to the original position. Then he putted. This was an infraction of the rules calling for a two-stroke penalty. No one surrounding the green or

watching on TV saw him fail to replace his mark to its original position. After Tom putted, he realized that he had broken the rule. He could have left the green for the next tee and no one would have been the wiser. Instead, in the tradition of Bobby Jones, he told his partner of the rule violation. He assessed himself the two-stroke penalty. Then, he placed the ball where he should have played it

from and putted out. He eventually lost the tournament. It cost him hundreds of thousands of dollars in prize money and millions in endorsement income. He did this without having taken an oath to conduct himself truthfully, honestly, justly and uprightly.

Many of our older lawyers say that they remember the days when lawyers did what Jones did and what professional golfers now do. They were men and women of honor, abiding by the spirit and the letter of the oath that they took. Now, these older lawyers lament

that the "profession" has changed and that we are no longer abiding by the spirit and, in many cases, the letter of the oath. The practice of law is perceived apparently by many to have become like some of our professional team sports where it appears that you break the rules until you are caught. It appears that the crime is in getting caught, not in breaking the rules. It appears to many that honor is no longer fashionable.

The pressures on the legal profession have multiplied. Law firms have grown into complex organizations requiring vast sums of money to meet overhead and make profit for their partners, members or shareholders. Extreme pressure is placed on lawyers, young and old, male and female, to produce substantial amounts of money for the firms. Law firm profits are vastly greater than at any other time in our history.

More lawyers are entering the ranks of the "rich and famous." Other disciplines, that do not take oaths, are at the gates trying to gain access to the vast amounts of money being generated by the firms. These disciplines appear to be attempting to gain entry by dangling even greater sums of money at the "owners" of the law firms. Clients, even those with licensed staff counsel, are demanding results at whatever costs and by whatever means. Winning and the accumulation of wealth appear to be the only prizes. The citizens give us the magic wand to gain these prizes, our license to practice law, and charge us to do so truthfully, honestly, justly and uprightly. Can this be done truthfully, honestly, justly and uprightly when the pressures require almost superhuman effort to achieve the goals?

Most lawyers that I personally know appear to live by the oath that they took even if they don't remember the words.² If the polls reflect the total reality, however, then it appears that the winning and accumulation of wealth is more important than living and practicing law with honor.

Some in the legal profession believe that it may be time to rethink the oath that lawyers take. They suggest that it may be time (i) to limit the taking of the oath to those who appear before the courts, (ii) to divide the practice of law into categories, such as consumer and business, or barristers and solicitors, and (iii) to require the oath for one but not all cate-

gories of the practice of law. It is further suggested that other disciplines should be allowed to participate in the categories of the "new" law practice that do not require the taking of an oath.

Change of the practice of law in this manner might require that lawyers in certain practice areas be relieved of the oaths that they took and be permitted to begin "practicing law" in an environment similar to business, regulated by the legislative and executive branches of government without the mantle of public trust and the requirement of swearing an oath to the citizens and God. Accountants and teachers function as professionals, but do not have to take an oath. If these

changes were made as the legal profession moves ever closer to the level of "big business," the pundits argue, fewer lawyers would be accused of being hypocrites.

Americans will long remember Sept. 11, 2001. In the aftermath of Sept. 11, many Americans rethought their patriotism and commitment to the common good. Many lawyers reflected upon their lives and their profession and stepped forward to help in our country's time of need — many doing so pro bono in the grand tradition of our profession.

Changes in our legal profession, as suggested by some in the profession, may take years. There are, however, several things that could

West group
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pick up from Feb 02
page 49
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be done this year to help Georgia lawyers abide by the oath with honor. Each year many married couples renew their marriage vows in ceremonies all across Georgia.

On March 17, 1902, Jones was born. During this 100th year anniversary of Jones' birth, Georgia lawyers could be given an opportunity to come together on Law Day - May 1. In the honor and memory of Jones and in the honor and memory of Sept. 11, 2001, Georgia lawyers could publicly reaffirm their oath to the citizens and to God. A public display of our recommitment to the state, the country, the citizens and God might help to change the public perception of us as lawyers.

Commencing in 2002, the State Bar of Georgia and the Supreme Court could provide to each lawyer a copy of the oath and require as a condition of our license to practice that the oath be prominently displayed in our offices. The oath could

also be displayed in our courthouses. Colleges adopt honor codes and have them displayed in the campus buildings for the students to see. Maybe seeing each day the oath that we took would in some small way enable us to keep our oath.

Most of us aspire to be honorable men and women in the practice of law, at least when we graduate from law school, and in the tradition of Jones, an Atlanta lawyer. The 100th anniversary of the birth of Jones and the soon-to-be one-year anniversary of Sept. 11, 2001, give us the opportunity to renew that aspiration.³ 

Richard P. Kessler Jr. is a partner in the Atlanta law firm of Macey, Wilensky, Cohen, Wittner & Kessler, LLP, and a cousin of Arnold Palmer.

ENDNOTES

1. The Georgia Historical Quarterly, Vol. 83, No. 4 at 667-668 (1999)

2. This includes my deceased wife Kathleen who was born on March 17, 1947 and died in the ValuJet Flight 592 crash in the Everglades near Miami on May 11, 1996.

3. This year the Board of Governors of the State Bar approved and submitted to the Board of Examiners a new Oath. The new Oath, *inter alia*, substitutes the word "conduct" for "demean" to eliminate a common misunderstanding. In addition, it adds the words "Georgia Rules of Professional Conduct". The new Oath as approved by the Board of Governors reads as follows:

"I _____, swear that I will truly and honestly, justly and uprightly conduct myself as a member of this learned profession and in accordance with the Georgia Rules of Professional Conduct, as an attorney and counselor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God."

LAWYER ASSISTANCE PROGRAM

Alcohol/Drug Abuse and Mental Health Hotline

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

All calls are confidential — we simply want to assist you.

AREA	CONTACT	PHONE
Albany	H. Stewart Brown	(912) 432-1131
Athens	Ross McConnell	(706) 359-7760
Atlanta	Melissa McMorries	(404) 522-4700
Atlanta	Brad Marsh	(404) 888-6151
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
Florida	Patrick Reily	(850) 267-1192
Hilton Head	Henry Troutman	(843) 785-5464
Hazelhurst	Luman Earle	(912) 375-5620
Macon	Bob Daniel	(912) 741-0072
Macon	Bob Berlin	(912) 745-7931
Norcross	Phil McCurdy	(770) 662-0760
Savannah	Tom Edenfield	(912) 234-1568
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Waycross	Judge Ben Smith	(912) 285-8040
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State Bar Sections Stay Active

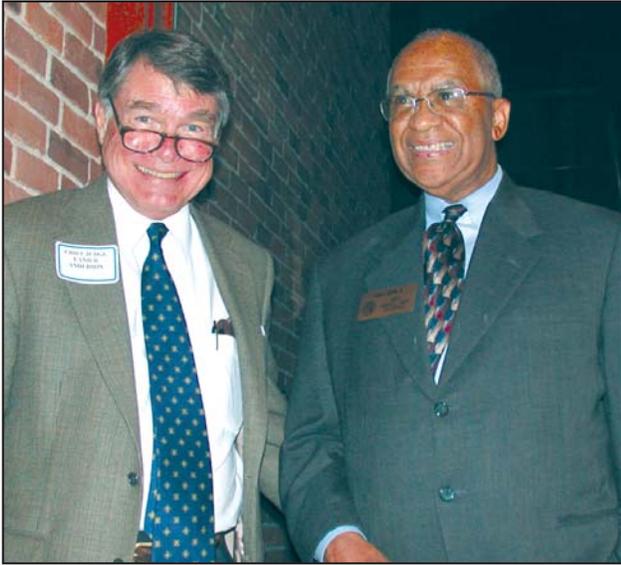


The Real Property Law Section has been hard at work planning, among other things, the upcoming Real Property Law Institute, May 9-11, 2002, at Amelia Island Plantation, Amelia Island, Fla. Pictured (left to right): Eldon Basham, chair-elect; Asia Mustakeem, chair; and Rachel Iverson, treasurer.



The Midyear Meeting of the State Bar of Georgia brought 17 sections together for luncheon meetings, seminars and receptions. Pictured above at left: Harold "Hal" T. Daniel Jr., State Bar past president and Lawyers Foundation chair, is pictured speaking with the Senior Lawyers Section regarding the new Bar facility. Pictured above at right: Guest speaker for the Health Law Section, Gary Redding, commissioner of the Department of Community Health.

Photographs and cutlines by Lesley Smith, section liaison for the State Bar of Georgia.



The Appellate Practice Section has been very busy in recent months with luncheon seminars and, most recently, a reception held at the home of Judge Frank Mays Hull of the U.S. Court of Appeals. Section members and the judiciary were in attendance. The section is chaired by Christopher McFadden (Pictured below). Pictured at left (left to right): Hon. R. Lanier Anderson III, U.S. Court of Appeals, and Hon. John H. Ruffin Jr., Georgia Court of Appeals.



The State Bar's newest section, Eminent Domain, held its first seminar titled "Eminent Domain Trial Practice" at the Swissotel in Atlanta, Jan. 24, 2002. Justice P. Harris Hines, of the Supreme Court of Georgia, spoke to attendees at the seminar luncheon, and Charles N. Pursley Jr. was presented with the section's first Lifetime Achievement Award. Pictured (left to right): Justice Hines; Scott Jacobson, section secretary; Luther Beck, chair-elect; Charles Pursley; Charles Ruffin, chair; and Joel Sherlock, the section's newsletter editor.

Free Report Shows Lawyers How to Get More Clients

Call!— Why do some lawyers get rich while others struggle to pay their bills?

"It's simple," says California attorney David M. Ward. "Successful lawyers know how to market their services."

Once a struggling solo practitioner, Ward credits his turnaround to a referral marketing system he

developed six years ago.

"I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight," he says.

"Lawyers depend on referrals," Ward notes, "but without a system, referrals are unpredictable and so is your income."

Ward has written a new report, "How to Get More

Clients In A Month Than You Now Get All Year!" which reveals how any lawyer can use his marketing system to get more clients and increase their income.

Georgia lawyers can get a FREE copy of this report by calling 1-888-562-4627 (a 24-hour free recorded message), or visiting Ward's web site at www.davidward.com

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Henry Hill Blake
Suwanee, Ga.
Admitted 1954
Died November 2001

John M. Brennan
Savannah, Ga.
Admitted 1935
Died February 2001

L. A. Browne Jr.
Milledgeville, Ga.
Admitted 1951
Died December 2001

Wesley Eugene Cranmer
St. Simmons, Ga.
Admitted 1953
Died January 2001

Julius David Curry
Swainsboro, Ga.
Admitted 1948
Died March 2001

William W. Daniel
Alpharetta, Ga.
Admitted 1943
Died January 2002

Berrien C. Eaton Jr.
Phoenix, Ariz.
Admitted 1971
Died October 2001

Charles R. Free
Macon, Ga.
Admitted 1949
Died September 2001

Andrew J. Hill Jr.
Lavonia, Ga.
Admitted 1951
Died January 2002

Joseph Lotton Houston
Sylvester, Ga.
Admitted 1930
Died September 2001

Charles R. Jordan
Atlanta, Ga.
Admitted 1955
Died January 2002

Nick G. Lambros
Roswell, Ga.
Admitted 1951
Died January 2002

E. Neal Little Jr.
Stone Mountain, Ga.
Admitted 1951
Died December 2001

Joseph U. McDow
Villa Rica, Ga.
Admitted 1951
Died January 2001

William W. McNeal
Burlington, Iowa
Admitted 1948
Died March 2001

Guy Milton Massey
Wildwood, Ga.
Admitted 1958
Died January 2002

Edsel F. Moore
Moulton, Ala.
Admitted 1950
Died October 2001

David Kirk Peavy
Atlanta, Ga.
Admitted 1971
Died December 2001

George Bowie Ramsay Jr.
Toccoa, Ga.
Admitted 1939
Died January 2002

Charles Edwin Webb
Lilburn, Ga.
Admitted 1970
Died January 2002

Clyde N. Wells Jr.
Jacksonville, Fla.
Admitted 1963
Died October 2001

Dan Bessent Wingate Sr.
Atlanta, Ga.
Admitted 1975
Died February 2002

Andrew J. Hill Jr., 75, of Lavonia, died Jan. 23, 2002. Born Aug. 8, 1926, in Auburn, Ala., he graduated from West Georgia College with a B.A. He earned his J.D. from the University of Georgia School of Law and was admitted to the State Bar of Georgia in 1950. He served on the Board of Governors from 1964-1986 and its Executive Committee from 1982-1986. He had a solo practice in Lavonia from 1953 – 2002 and, in addition, he was city attorney for Lavonia and county attorney for Franklin County. His professional memberships included: the Lawyers Club of Atlanta; Old War Horse Lawyers Club; Georgia Trial Lawyers Association; American Trial Lawyers Association; American Bar Association; American Legion Post #92; V.F.W. Post 4828; Toccoa Elks Lodge; Lavonia Lodge #241; Free and Accepted Masons; Fred E. Lee Chapter Royal Arch Masons; Grand Chapter of Royal Arch Masons of Georgia; YAARAB Temple of AAON-MS; Atlanta

Athletic Club; Kappa Alpha Fraternity; Gridiron Secret Society; and the University of Georgia President's Club. He served in the United States Navy as a bombardier in the South Pacific Campaign during World War II. He is survived by his daughters, Shirley Popper of Macon and Libby Carson of Athens, and his sons, Drew Hill and Bert Hill of Athens, as well as eight grandchildren.

The Lawyers Foundation of Georgia would like to thank the following for their memorial gifts:

In Memory of Ross J. Adams

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In Memory of

Tilden L. Brooks, USN, Ret.

Mr. Thomas Brooks

Ms. Jeanette B. Hayes

In Memory of Mr.

Charles E. Camp

Mr. and Mrs. Robert M. Brinson

In Memory of Hal Daniel Sr.

Mr. and Mrs. Robert W. Chasteen Jr.

In Memory of Judge

Jefferson L. Davis Jr.

Akin and Tate

Mr. and Mrs. Robert M. Brinson

In Memory of Mr. Henry L. deGive

Mr. and Mrs. Harold T. Daniel Jr.

In Memory of Denmark Groover

Hubert C. Lovein Jr.

J. Frank Myers

In Memory of

Mr. Jackson B. Harris

Mr. and Mrs. Robert M. Brinson

In Memory of Andrew J. Hill

David Gambrell

In Memory of Mrs. Sarah McAlpin

Mr. and Mrs. Robert M. Brinson

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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 above.

Memorial Gifts

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

Information

For information regarding the placement of a memorial, please contact the Lawyers Foundation of Georgia at (404) 526-8617 or 104 Marietta St. NW, Suite 600, Atlanta, GA 30303.

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Note: To verify a course that is not listed, please call the CLE Department at (404) 527-8710. Also, ICLE seminars only list total CLE hours.

For a breakdown, call (800) 422-0893.

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2
NATIONAL BUSINESS INSTITUTE
Family Law Litigation in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

3
PRACTISING LAW INSTITUTE
Handling Construction Risk
Various Dates and Locations
6.5/1.0/0.0/0.0

4
ICLE
Flying Solo
Atlanta, Ga.
6 CLE

4
SOUTHEASTERN BANKRUPTCY LAW
INSTITUTE
28th Annual Seminar on Bankruptcy Law Rules
Atlanta, Ga.
14.2/1.0/1.0/3.0

4
UNIVERSITY OF NORTH CAROLINA
SCHOOL OF LAW
The Banking Institute
Charlotte, N.C.
8.5/1.0/0.0/0.0

7
PROFESSIONAL EDUCATION SYSTEMS INC.
The Absolute Litigators Conference VII
Law Vegas, Nev.
28.0/2.3/0.0/0.0

8
ICJE
*Workers' Compensation Judges
Annual 2002 Seminar*
Jekyll Island, Ga.
8.0/0.0/1.0/0.0

9
NATIONAL BUSINESS CENTER INC.
*The Essentials of Georgia
Construction Mediation*
Atlanta, Ga.
3.0/0.0/0.0/0.0

9
LORMAN BUSINESS CENTER INC.
Workers Compensation in Georgia
Atlanta, Ga.
6.0/0.0/0.0/0.0

10
NATIONAL BUSINESS INSTITUTE
Employment Discrimination Updates in Georgia
Atlanta, Ga.
6.0/0.0/0.0/0.0

11
ALI-ABA
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25
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Jacksonville, Fla.
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25
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Architect/Engineer Liability and Practice in Georgia
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26
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26
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26
LORMAN BUSINESS CENTER INC.
FMLA and Other Related Leave Acts in Georgia
Athens, Ga.
6.0/0.0/0.0/0.0

29
ICJE
Juvenile Court Judges Spring 2002 Seminar
St. Simons, Ga.
9.6/0.0/1.0/1.0

30
NATIONAL BUSINESS INSTITUTE
Major Land Use Laws in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

30
LORMAN BUSINESS CENTER INC.
Financial Statement Analysis
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2
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LLCs and LLPs
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9
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9
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Advanced Offshore Practice and Procedure
Las Vegas, Nev.
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9-11
ICLE
Real Property Law Institute
Amelia Island Plantation, Fla.
12 CLE

10
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3 CLE

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6-9
ICLE
Georgia Trial Skills Clinic
Athens, Ga.
24 CLE

7
NATIONAL BUSINESS INSTITUTE
Land Use Law Update in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

13
CHATTANOOGA BAR ASSOCIATION
Annual Estate Planning Practice Update
Chattanooga, Tenn.
3.3/0.0/0.0/0.0

14
LORMAN BUSINESS CENTER INC.
Workers Compensation in Georgia
Athens, Ga.
6.0/0.0/0.0/0.0

18
NATIONAL BUSINESS INSTITUTE
Insurance Law
Atlanta, Ga.
6.0/0.5/0.0/0.0

19
NATIONAL BUSINESS INSTITUTE
Advanced Issues in Georgia Elder Law
Atlanta, Ga.
6.0/0.5/0.0/0.0

20
CHATTANOOGA BAR ASSOCIATION
Intellectual Property Issues in Structuring Deals and Drafting Agreement
Chattanooga, Tenn.
6.0/0.0/0.0/0.0

21
ICLE
Defense of Drinking Drivers
Atlanta, Ga.
6 CLE

21-22
ICLE
Southeastern Admiralty Law Institute
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Proposed Formal Advisory Opinion Request No. 01-R5

Pursuant to Rule 4-403(c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the following proposed opinion should be issued. State Bar members are invited to file comments to this proposed opinion with the Office of General Counsel of the State Bar of Georgia at the following address:

Office of General Counsel
State Bar of Georgia
104 Marietta St. NW
Suite 100
Atlanta, GA 30303
Attn: John J. Shiptenko

An original and 18 copies of any comment to the proposed opinion must be filed with the Office of the General Counsel by May 8, 2002, in order for the comment to be considered by the Formal Advisory Opinion Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia for formal approval.

QUESTION PRESENTED:

Does the obligation of confidentiality described in *Rule 1.6, Confidentiality of Information*, apply as between two jointly represented clients?

SUMMARY ANSWER:

The obligation of confidentiality described in *Rule 1.6, Confidentiality of Information*, applies as between two jointly represented clients. An attorney must honor one client's request that information be kept confidential from the other jointly represented client. Honoring the client's request will, in most

circumstances, require the attorney to withdraw from the joint representation.

OPINION:

Unlike the attorney-client privilege, jointly represented clients do not lose the protection of confidentiality described in *Rule 1.6, Confidentiality of Information*, as to each other by entering into the joint representation. See, e.g., *D.C. Bar Legal Ethics Committee, Opinion No. 296* (2000) and *Committee on Professional Ethics, New York State Bar Association, Opinion No. 555* (1984). Nor do jointly represented clients impliedly consent to a sharing of confidences with each other since client consent to the disclosure of confidential information under *Rule 1.6* requires consultation. *Id.* Consultation, as defined in the Rules, requires "the communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." *Terminology*, Georgia Rules of Professional Conduct.

When one client in a joint representation requests that some information relevant to the representation be kept confidential from the other client, the attorney must honor the request and then determine if continuing with the representation while honoring the request will: a) be inconsistent with the lawyer's obligations to keep the other client informed under *Rule 1.4, Communication*; b) materially and adversely affect the representation of the other client under *Rule 1.7, Conflict of Interest: General Rule*; or c) both.

The lawyer has discretion to continue with the representation while not revealing the confidential information to the other client only to the extent that he or she can do so consistent with these rules. If maintaining the confidence will constitute a violation of *Rule 1.4* or *Rule 1.7*, as it most often will, the lawyer should maintain the confidence and discontinue the representation.

Consent to conflicting representations, of course, is often permitted under *Rule 1.7*.

Consent to continued joint representation in these circumstances, however, ordinarily would not be available either because it would be impossible to conduct the consultation required for such consent without disclosing the confidential information in question or because consent is not permitted under *Rule 1.7* in that the continued joint representation would “involve circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.” *Rule 1.7(c)(3)*.

Whether or not the attorney, after withdrawing from the representation of the other client, can continue with the representation of the client who insisted upon confidentiality is governed by *Rule 1.9: Conflict of Interest: Former Clients* and by whether or not the consultation required for the consent of the now former client can be conducted without disclosure of the confidential information in question.

The potential problems that confidentiality can create between jointly represented clients make it especially important that clients understand the requirements of a joint representation prior to entering into one. When an attorney is considering a joint representation, consultation and consent of the clients is required prior to the representation “if there is a significant risk that the lawyer’s . . . duties to [either of the jointly represented clients] . . . will materially and adversely affect the representation of [the other] client.” *Rule 1.7*. Whether or not consultation and consent is required, however, a prudent attorney will always discuss with clients wishing to be jointly represented the need for sharing confidences between them,

obtain their consent to such sharing, and inform them of the consequences of either client’s nevertheless insisting on confidentiality as to the other client and, in effect, revoking the consent. If it appears to the attorney that either client is uncomfortable with the required sharing of confidential information that joint representation requires, the attorney should reconsider whether joint representation is appropriate in the circumstances. If a putative jointly represented client indicates a need for confidentiality from another putative jointly represented client, then it is very likely that joint representation is inappropriate and the putative clients need individual representation by separate attorneys.

The above guidelines, derived from the requirements of the Georgia Rules of Professional Conduct and consistent with the primary advisory opinions from other jurisdictions, are general in nature. There is no doubt that their application in some specific contexts will create additional specific concerns seemingly unaddressed in the general ethical requirements. We are, however, without authority to depart from the Rules of Professional Conduct that are intended to be generally applicable to the profession. For example, there is no doubt that the application of these requirements to the joint representation of spouses in estate planning will sometimes place attorneys in the awkward position of having to withdraw from a joint representation of spouses because of a request by one spouse to keep relevant information confidential from the other and, by withdrawing, not only ending trusted lawyer-client relationships but also essentially notifying

the other client that an issue of confidentiality has arisen. See, e.g., *Florida State Bar Opinion 95-4* (1997) (“The attorney may not reveal confidential information to the wife when the husband tells the attorney that he wishes to provide for a beneficiary that is unknown to the wife. The attorney must withdraw from the representation of both husband and wife because of the conflict presented when the attorney must maintain the husband’s separate confidences regarding the joint representation.”) A large number of highly varied recommendations have been made about how to deal with these specific concerns in this specific practice setting. See, e.g., Pearce, *Family Values and Legal Ethics: Competing Approaches to Conflicts in Representing Spouses*, 62 *FORDHAM L. REV.* 1253 (1994); and, Collett, *And The Two Shall Become As One . . . Until The Lawyers Are Done*, 7 *NOTRE DAME J. L. ETHICS & PUBLIC POLICY* 101 (1993) for discussion of these recommendations. Which recommendations are followed, we believe, is best left to the practical wisdom of the good lawyers practicing in this field so long as the general ethical requirements of the Rules of Conduct as described in this Opinion are met. 



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

No earlier than 30 days after the publication of this notice, 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, 2001-2002 *State Bar of Georgia Directory and Handbook*, p. H-6 (hereinafter referred to as "Handbook").

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

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

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT STATE OF GEORGIA

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

MOTION TO AMEND 02-1

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in a regular meeting held on Jan. 12, 2002, 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 Dec. 6, 1963 (219 Ga. 873), as amended by subsequent Orders, 2001-2002 *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 1-202 (d), Emeritus Members

It is proposed that Part I (Creation and Organization), Rule 1-202 (d) be amended as shown below by deleting the stricken portions of the rule and inserting the phrases in bold and italicized typeface as follows:

Emeritus Members. Any member *in good standing* of the State Bar of Georgia who shall have attained the age of 70 years and who shall have been admitted to the practice of law in the State of Georgia for 25 years, may retire from the State Bar upon petition to and approval by the ~~Board of Governors~~ *Executive Committee*. Such a retired member shall hold emeritus status and shall annually confirm in writing this emeritus status. An emeritus member of the State shall not be required to pay dues or annual fees. An emeritus member of the State shall not be privileged to practice law except that an emeritus member may handle pro bono cases referred by either an organized pro bono program recognized by the Pro Bono Project of the State Bar or a non-profit corporation that delivers legal services to the poor. An emeritus member may be reinstated to active membership upon application to the ~~State Bar~~ *Executive Committee*.

Should the proposed amendment be adopted, State Bar Rule 1-202 (d) would read as follows:

Emeritus Members. Any member in good standing of the State Bar of Georgia who shall have attained the age of 70 years and who shall have been admitted to the practice of law in the State of Georgia for 25 years, may retire

from the State Bar upon petition to and approval by the Executive Committee. Such a retired member shall hold emeritus status and shall annually confirm in writing this emeritus status. An emeritus member of the State shall not be required to pay dues or annual fees. An emeritus member of the State shall not be privileged to practice law except that an emeritus member may handle pro bono cases referred by either an organized pro bono program recognized by the Pro Bono Project of the State Bar or a non-profit corporation that delivers legal services to the poor. An emeritus member may be reinstated to active membership upon application to the Executive Committee.

II. Proposed Amendment to State Bar of Georgia Rule 1-208 (a), Resignation from Membership

It is proposed that Part I (Creation and Organization), Rule

1-208 (a) be amended as shown below by deleting the stricken portions of the rule, and inserting the phrases shown below in bold typeface, in lieu thereof.

Resignation while in good standing: A member of the State Bar in good standing may, under oath, petition the ~~Board of Governors~~ **Executive Committee** for leave to resign from the State Bar. Upon acceptance of such petition by the ~~Board of Governors~~ **Executive Committee** 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.

Should the proposed amendment be adopted, State Bar Rule 1-208 (a) would read as follows:

Resignation while in good standing: A member of the State Bar in good standing may, under oath,

petition the Executive Committee for leave to resign from the State Bar. Upon acceptance of such petition by the Executive Committee 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. (GBJ)

SO MOVED, this _____ day of _____, 2002

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

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



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- ABA Members Retirement43
- ANLIR21
- Arthur Anthony42
- Best Law Firm Solutions35
- DSI Technology Escrow Services .67
- Dan Turner Builders55
- Daniels-Head Insurance29
- Duane Morris53
- Georgia Juris17
- Gilsbar65
- Golden Lantern67
- Insurance Specialists9
- LexisNexis2
- Mainstreet57
- Merchant & GouldIBC
- Mitchell Kaye Valuation69
- Morningstar Technology35
- Real Estate Exchange Services5
- SoftPro Corporation23
- South Georgia ADR Service, LLC65
- West Group . . .IFC, 59, 63, 79, BC

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State Bar of Georgia
104 Marietta St. NW, Suite 100
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