

# GEORGIA BAR **Journal**

OCT



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# GEORGIA BAR Journal

OCTOBER 2000 • VOL. 6 No. 2

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**On the Cover:** *In this issue, we take a look at Georgia's child support guidelines. Illustration by Danny Woodard.*

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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: Jennifer M. Davis, Managing Editor, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303; phone: (404) 527-8736.

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# GEORGIA BAR Journal

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# LEARNING BY ASSOCIATION



By George E. Mundy

I never considered being anything other than a lawyer. Growing up, I had many opportunities to witness my father's practice as well as to observe my grandfather on the bench. The media analogies to lawyers were Perry Mason and E.G. Marshall in "The Defenders." There was no question that practicing law was an honorable profession, and the practice of law had certainly been kind to my family.

When I began my freshman year at Emory, most everyone I knew was pre-something, usually pre-med. I was the only one who, from the very beginning, said he was pre-law. It was interesting that after freshman chemistry, many of the pre-meds became pre-law.

The summer between my sophomore and junior years I got a patronage job in the office of Richard Russell in Washington. Having this opportunity to work for Senator Russell at the height of his seniority was quite an experience. I delivered messages to the White House, as well as to Capitol Hill and was assigned to a number of tasks in his office. However, the primary component of my job was the operation of an elevator in the Senate Office building. On one occasion, Vice-President Hubert Humphrey rode with me and Senator Bobby Kennedy rode with me every day. I realized I was observing individuals and events that had profound influence. Most of the individuals were lawyers.

My fondest recollection of that summer was observing oral argument at the United

States Supreme Court. At that stage in my life, it seemed the legal profession had unlimited possibilities. That was the profession for which I was headed, and I could hardly wait.

The summer before I entered law school, I obtained a job with the firm of Kilpatrick, Cody, Rogers, McClatchey & Regenstein, the forerunner to Kilpatrick Stockton. They were located in the Hurt Building and had about 50 lawyers, which I felt to be an unbelievable number at the time. I spent the summer delivering documentation to the Appellate Courts as well as the State Capitol and did the firm's daily banking along Marietta Street. I got to observe distinguished lawyers in their

## The State Bar of Georgia exposed me to some of the most gifted, innovative and dedicated members of our profession.

prime, such as Buster Kilpatrick, Lewis Regenstein and Gus Cleveland. I even observed struggling younger lawyers like Emmett Bonderant, Lurton Massey and Matt Patton. Again, the experience excited me about the practice of law. Law school was next and I could hardly wait.

My theory that Athens would have a broader social life than Emory was quickly shattered by the daily assignment of over 300 pages of material. Much time was spent in the library, but I did have the opportunity to get to know fellow classmates like Robert Benham and Roy Barnes. Great anticipation was felt as graduation neared. The drudgery of the bar exam was offset by the exhilaration I experienced when Judge Dan Winn telephoned me one day to say the results were in and I had, in fact, passed. My first job as a lawyer was with the Air Force Judge Advocate Corp. I spent four years alternating as a court martial trial council, defense council

and trial judge. However, it seemed much of the time was spent prosecuting or defending cases involving the length of someone's hair or their sexual preference.

By the time I returned to Cedartown, the unbridled optimism of a few years ago had been tempered by assassinations, an unpopular war, highly publicized miscarriages of justice, as well as the resignation of an American president. Media analogies were no longer to Atticus Finch but more akin to the characters on "L.A. Law." A constant diet of lawyer jokes became the norm. At my first criminal arraignment, I was appointed to 14 criminal cases including one for murder. The atmosphere was not as enchanted as I had once expected. I wondered how I could keep at least some aspect of my practice on a higher plane. Thankfully, I had been given some very good early advice.

As a child, we often visited my grandfather. When I was eight years old, he once asked me what I wanted to do in my life. I quickly said I would be a lawyer. My grandfather responded, "George, if you're gonna be a lawyer, be a good lawyer." Coming from my grandfather, this simple statement spoke volumes. When I later relayed this conversation to my father after my grandfather's death, he added, "If you're gonna be a good lawyer, associate with good lawyers." It was this advice that led me directly and inevitably to participation in the State Bar of Georgia.

The bar association exposed me to some of the most gifted, innovative and dedicated members of our profession. I was able to learn from and attempt to emulate the brightest and the best. The experience renewed my confidence that we all participate in a great profession. I have never been prouder of being a Georgia lawyer than I am at this very moment.

Participation in State Bar committees and sections provides rewards that far outweigh the time and effort expended. The opportunities for State Bar involvement are limitless. The more you know about the State Bar, the more confidence you will have in the fact that our profession is sound. If you have not committed significant time to your State Bar, I urge you to discover this method to associate with good lawyers. ☐

# IT'S YOUR STATE BAR



By Cliff Brashier

**I**n 1964, the State Bar of Georgia was created by order of the Supreme Court of Georgia, which assigned its governance to officers, Board of Governors representatives, and Executive Committee members who are elected volunteers. Almost all are practicing attorneys or judges who serve without pay and attend meetings at their own expense.

In addition, policy guidance comes from thousands of members who serve on the large number of sections, committees, commissions and divisions of the State Bar.

Your individual thoughts, comments, suggestions, and even criticisms (hopefully constructive) are always welcome. There are several ways to submit them. I receive many letters and

e-mails daily. These are shared with the appropriate committees and leadership.

Chairs of sections, committees, commissions and divisions also receive good ideas from interested members. Finally, the officers and members of the Board of Governors are your elected representatives. They are interested in your advice and are available both to you and to your voluntary bar associations to discuss any of the many challenges and opportunities of our profession.

In summary, the State Bar of Georgia is your professional association, and your insight on how we can best serve

tion of Peachtree and 10<sup>th</sup> Street. They plan to move by the end of September, 2001. After a six-month renovation/construction period, the State Bar will occupy our new home by the end of March 2002. As soon as that occurs, I hope every member of the State Bar can visit and use this wonderful new gathering place of our profession.

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

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**Your individual thoughts, comments, suggestions, and even criticisms (hopefully constructive) are always welcome.**

our profession is always welcome.

On a different topic, I receive inquiries daily on the status of our purchase of the Federal Reserve Bank Building. The building is currently leased to the Bank pending the completion of their new facility at the intersec-

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LEGAL ARTICLES

# **Why Georgia's Child Support Guidelines Are Unconstitutional**

By William C. Akins





Prior to the adoption of Georgia's Child Support Guidelines, codified in O.C.G.A. § 19-6-15, (hereinafter the "Guidelines") in 1989, child support was determined by balancing the needs of the child against the non-custodial parent's (hereinafter the "NCP") ability to pay. In Georgia and other jurisdictions using similar criteria, this resulted in widely varying obligations. In an effort to bring some predictability and uniformity to child support awards, the federal government mandated the use of economically based numeric guidelines as a requirement for a state's continued receipt of federal funds under Title IV-D of the Social Security Act.<sup>1</sup>

The Guidelines adopted by Georgia were taken, with little modification, from those used by the State of Wisconsin (hereinafter the "Wisconsin Model"). Unfortunately for NCPs in Georgia, the Wisconsin

Model was designed for use in low-income and poverty situations in which the obligors pay little, if any, income tax. As a result of the erroneous economic assumptions upon which these Guidelines are based, low income NCPs are often pushed below the poverty income level and higher income NCPs pay grossly excessive child support payments which are tantamount to hidden alimony.<sup>2</sup>

Perversely, the federal laws in effect in 1989 rewarded states based on total dollars of child support collected. Those laws were amended in 1998 to reward efficiency of collection, rather than gross collections.<sup>3</sup> That is, from 1989 to 1998, the federal government provided welfare and collection incentive funds to the states based on the gross amount of the total child support payments recovered from NCPs, thus creating a corresponding incentive to establish

support obligations as high as possible without regard to appropriateness of amount. The 1998 revision bases welfare and incentive funding on the percentage of child support awards collected, thus rewarding efficient recovery of appropriate awards.

The effect of the earlier federal statute and Georgia's adoption of Wisconsin Style Guidelines is one of the most onerous child support schemes in the country, and one which violates both substantive due process and equal protection guarantees of the Constitutions of the United States and the State of Georgia.

## How do the Guidelines Work?

The Guidelines calculate presumptive child support obligations based on a range of percentages of the NCP's gross income with no consideration for payroll deductions for federal and state income tax, social security, mandatory insurance contributions, etc.<sup>4</sup> Furthermore, current tax laws grant all tax benefits to the custodial parent (hereinafter, the "CP").<sup>5</sup> In Georgia, trial courts are powerless to apportion tax benefits absent an agreement between the parties.<sup>6</sup> While the Guidelines provide some 18 bases for departing from the presumptive award,<sup>7</sup> there is no guidance as to how they are to be applied and they are so seldom addressed as to be non-existent in any practical sense. Let us examine how the application of Georgia's Guidelines would affect a hypothetical, typical couple.

### Example 1

Dick and Jane have filed for divorce. They have two children. Dick's gross income is \$30,000 per year and Jane's is \$21,000. Assume that both pay federal and state income taxes, medicare and social security, with no insurance or retirement contributions, and that during their marriage, they both supported their children from their combined after-tax, take-home pay of \$41,069.

In the divorce, Jane is awarded physical custody of the children. Dick is given alternating weekend and holiday visitation with some longer stretches in the summer. He is also ordered to pay 25.5% (the mid-point percentage) of his gross monthly income as child support, or \$638. Dick's after-tax, take-home pay, from which he supported his children while married, is now \$1,912. The \$638 he has been ordered to pay is in reality, then, 33% of Dick's after tax take-home pay. Thus, after paying his basic child support, Dick has \$1,274 left from which to pay rent, utilities, automobile loans, insurance and maintenance, food, health insurance, and clothing. In addition, he will also have to pay to feed, house, and clothe his children during visitation periods, not to mention birthday and Christmas presents.

Jane, on the other hand, now takes home \$1,752 after

taxes. She then receives, tax-free, \$638 from Dick for a total monthly net income of \$2,390. It should be noted that, even before receiving Dick's child support payment, Jane's child tax credits and earned income credit of \$246 (\$2952 annually) almost totally offsets the \$248 in federal and state income tax, social security and medicare for which she is liable. After taxes and child support, Jane now nets \$28,677 annually, or 70% of the combined marital net income. Dick's after tax, after child support net annual income is \$15,296. Interestingly, Dick makes 58% of their combined gross income of \$51,000.

### Example 2

Assume that with only *one* child, Dick made \$70,000 per year gross or \$62,950 federal taxable income, and Jane made only \$40,000 or \$28,150 in federal taxable income. After the divorce, Dick's after-tax income would be \$46,631 (\$70,000 less \$14,300 federal income tax, \$3,713 state income tax, \$4,340 social security tax and \$1,015 Medicare tax). These calculations include the \$4,300 federal standard exemption for Dick and \$6,350 for Jane (as head of household), a \$2,750 personal exemption for each and a \$2,750 child exemption and \$500 child credit for Jane. Dick then pays Jane \$14,000 (20%) per year as child support, which is non-taxable income for Jane. Net after-tax, after child support incomes? Dick makes \$32,631 and Jane makes \$45,533, or 14% over her gross.

It should be noted that such excess is not just a matter of a few dollars. In the first example, Dick's \$638 monthly obligation is 15% or \$81 higher than in North Carolina, 28% or \$141 more than South Carolina, 21% or \$112 higher than Alabama, and \$11 higher than in Florida. In the second example, Dick's \$1,167 obligation is 80% or \$518 per month higher than the *average* obligation for his and Jane's income levels in all four of the aforesaid states.<sup>8</sup> And these figures presume *no* visitation. Any visitation arrangement would entail further reductions. In addition, although these states' guidelines consider CP income, they ignore tax benefits, result in a higher standard of living for the CP, and exceed actual child care costs.

And you thought divorce was an equitable proceeding.

## The Economic Problems

The Guidelines are not based on sound economic principles. The economic flaws in the Guidelines include, without limitation, the following:

(a) An intact family supports its children from *both* parents' incomes. Therefore, a sound method for calculating support awards *requires* consideration of the CP's income at some point in the calculation of the presump-

tive award. The Guidelines do not do this, instead; they base the presumptive award solely on the NCP's income. The CP's income is only addressed as a special circumstance for departing from the presumptive award, which circumstance is seldom, if ever, considered.

(b) The Guidelines create an obligation based on a percentage of pre-tax income. In other words, a 17% obligation to a person who loses 35% of his income to taxes and other involuntary deductions requires 26% of his after-tax income to meet this obligation. Similarly a 23% award becomes a 35% obligation. *No* economic study supports such a result. It is simply not based on child cost patterns.

(c) The absolute amount of money expended on children decreases as a percentage of intact family spending as income rises. In other words, higher income households do not spend as much of their income on their children as lower income families. The Guidelines do not reflect this economic reality, however, imposing a straight line percentage on all income levels without any cap.

(d) The Guidelines do not contain a provision for self-support reserve. That is, an NCP whose gross income is just above the poverty level will be forced below the poverty level by making support payments required by the Guidelines, a result which is likely to add to the public assistance roll as the result of government action. While the Guidelines allow this issue to be addressed by a finder of fact on a discretionary basis, there is no assurance of reasonably consistent application of such deviation.

(e) The economic study which underlies the Wisconsin Model upon which the Guidelines are based states that "obligor-only" guidelines should only be used at the poverty level, not for general application.

(f) The Guidelines result in presumptive awards so far above child rearing costs as to result in the granting of hidden alimony without the satisfaction of the requirements for alimony awards under Georgia law.

Dr. Robert Williams of Policy Studies, Inc. in Denver, Colorado, testified at length before Georgia Commission on Child Support (the "Commission") on May 1, 1998. As to the use of guidelines designed for poverty/welfare cases, Dr. Williams was asked "[w]hen the federal government mandated states adopt presumptive-type guidelines and the advisory panel ... specifically recommended against Wisconsin-style guidelines, is anything changed that would revise those recommendations?" He replied, "there's never been another advisory panel, so I would say basically not."<sup>9</sup>

At least one state's supreme court has held that the use of poverty level guidelines for calculating support obligations at higher income levels is irrational and inappropriate; although the decision was based on simple logic, rather than constitutional grounds.<sup>10</sup>

## The Due Process Problem

The Guidelines were enacted in 1989 to insure Georgia's receipt of an estimated \$25,000,000 in federal funds.<sup>11</sup> They were hastily adopted using the Wisconsin Model to beat the federal deadline for enactment of guidelines.<sup>12</sup> 45 C.F.R. § 302.56(h) (1999) states in pertinent part, "a State must consider economic data on the cost of raising children . . ." That no such study on the costs of raising children in Georgia has been done, and that such a lack of data is a problem, was admitted by the Commission in the REPORT TO THE GOVERNOR FROM THE GEORGIA COMMISSION ON CHILD SUPPORT (1998) (hereinafter, the "MAJORITY REPORT"). The Commission also recommended seeking federal funds to conduct the federally mandated studies.

The United States Constitution provides that no state may "deprive any person of life, liberty, or property, without due process of law."<sup>13</sup> Similarly, Georgia's Constitution provides that "[n]o person shall be deprived of life, liberty, or property, except by due process of law."<sup>14</sup> Protection from arbitrary state action is the very essence of substantive due process.<sup>15</sup>

The test to be applied in a due process analysis of governmental action infringing on non-fundamental rights is whether or not the legislation was aimed at a legitimate state objective and whether the means adopted are rationally related to accomplishing that objective.<sup>16</sup> Substantive due process guarantees are said to be violated if the questioned state statute or a part thereof is a patently arbitrary classification lacking any rational justification.<sup>17</sup>

It is readily conceded that the objective of the Guidelines, *i.e.* providing a consistent basis for the award of appropriate child support, is a permissible state objective. Note, however, that 45 C.F.R. § 302.56 (e) (1999) mandates a review of each state's guidelines every four years, "to ensure that their application results in the determination of *appropriate* child support award amounts." (emphasis added). The question then, is whether the means adopted, *i.e.* the Guidelines, are rationally related to that economic objective.

To attack a statute on due process grounds, a showing must be made that such government action is motivated, at least in part, by an improper purpose, bias, or bad faith.<sup>18</sup>

One constitutionally impermissible motive is a governmental pecuniary interest. For example, in *Doss v. Long*,<sup>19</sup> the district court held that Georgia's "fee system" courts, in which judges were paid directly by the parties, violated the federal due process clause. Given the direct link to federal funds which motivated the legislature's adoption of the Guidelines and which was expressly articulated in H.B. 139, Act No. 543 (1989) (later codified as the Guidelines) and recognized by the Court of Ap-



peals in *Department of Human Resources v. Offutt*,<sup>20</sup> it is clear that the Guidelines were enacted almost exclusively for a governmental pecuniary purpose. Furthermore, the complete failure of the State to gather the objective economic data required to support the Guidelines amounts, and the continued use of the Guidelines in the absence of such data, render the adoption and application of the Guidelines an arbitrary, bad faith exercise of governmental power.

This assertion of arbitrariness is buttressed by the State's hasty adoption of the Wisconsin Model. That scramble to beat the federal deadline is not unlike the almost impromptu literacy test foisted on Florida's high school seniors in violation of both federal due process and equal protection guarantees in *Debra P. v. Turlington*.<sup>21</sup>



The MAJORITY REPORT admits that no study on Georgia child-rearing costs has been conducted<sup>22</sup> and justifies its assertion that no change in the Guidelines is required, in part, with vague references to data from other states. This is startlingly similar to the arbitrary and capricious conduct on the part of the U.S. Forest Service set out in *Sierra Club v. Martin*.<sup>23</sup> In that case, the Forest Service approved certain timber projects in the Chattahoochee and Oconee National Forests without sufficient studies of the projects' impact on endangered species. The Eleventh Circuit declined to defer blindly to the Forest Service's conclusions, holding that "[a]gency actions must be reversed as capricious and arbitrary when the agency fails to 'examine the relevant data.'"<sup>24</sup> Although decided under the Administrative Procedures Act,<sup>25</sup> the underlying rationale of *Sierra Club v. Martin* makes plain that such arbitrary conduct cannot support a rational connection between the facts

found and the choices made. Thus, by analogy, Georgia's adoption of a child support scheme unsupported by economic data is irrational, regardless of the state's legitimate interests, and is, therefore, violative of due process. The State of Georgia, by subjecting its citizens to a statutory child support scheme totally lacking in supporting data, is also engaging in impermissible arbitrary and capricious state action.

Although Dr. Robert Williams of Policy Studies, Inc., acknowledged in testimony before the Commission that determining what portion of the CP's household costs could be defined as child support was not always easy, he was quite clear that "it's [the presumptive award amounts under the Guidelines] exceeding what we estimate would have been spent on that child at those combined income levels."<sup>26</sup> In other words, Guideline-based awards exceed child-rearing costs.

It is a further indication of the state's arbitrary treatment of these issues that by recommending no change, the Commission essentially ignores the advice of the economists called to testify. In addition, the commissions appointed to review the Guidelines have been composed, in large part, of individuals who are unqualified to assess the economic validity of the Guidelines, or who arguably have an interest in maintaining the status quo, or both. In 1998, for example, of the 11 members of that Commission, two were members of the judiciary, two represented CP advocacy groups, four were either present or former child support enforcement personnel and two were state legislators who were up for re-election.<sup>27</sup> Only one, R. Mark Rogers, author of the MINORITY REPORT, is an economist.

This lack of qualification and concern about reality-based results is further exemplified by the Commission's blind acceptance of such assertions as that after divorce, the CP has a limited ability to earn additional income, and the child's standard of living drops significantly while the NCP's rises,<sup>28</sup> without a shred of supporting data. Such reliance on anecdote and general impression has created the present inequitable situation.

It is also troubling that, while the language of O.C.G.A. § 19-6-15(a) requires the NCP to provide health insurance where reasonably available, O.C.G.A. § 19-6-15(c)(16) does not *require* a deduction from the presumptive award for the cost of said coverage, thereby allowing disparate results for similarly situated NCPs. Nor does O.C.G.A. § 19-6-15(c) provide a method for mandatory and consistent application of the factors for deviating from the presumptive awards.

It should also be noted that the due process protection of Georgia's Constitution is greater than that of its federal counterpart which is construed in most cases cited herein.<sup>29</sup>

## The Equal Protection Problem

The federal regulations governing state plans for calculating child support specifically provide that such awards shall be in amounts which are “appropriate.”<sup>30</sup> By imposing an obligation on NCPs based on a percentage of their gross income while the CPs (or, for that matter, any married or cohabiting parents) pay from their net income, the resulting Guideline awards are not only grossly inappropriate, but also violate equal protection guarantees. Such a distinction of class and burden is in no way related to the legitimate governmental purpose of providing economically appropriate support to Georgia’s children.

The United States’ Constitution provides that no state may “deny to any person within its jurisdiction the equal protection of the laws.”<sup>31</sup> Georgia’s Constitution also states that “[n]o person shall be denied the equal protection of the laws.”<sup>32</sup> These protections are difficult to define with precision and must be applied to the particular facts of each case.<sup>33</sup>

A reviewing court must apply different levels of scrutiny to a questioned statute depending on the nature of the governmental classification.<sup>34</sup> As the instant case involves neither classification by race or national origin, the strict scrutiny/compelling state interest test does not apply. Because the Guidelines have a highly disproportionate impact on men *as applied*, however, they discriminate on the basis of sex and must undergo the intermediate scrutiny test, that is, that the statutory classification must be substantially related to an important governmental objective.<sup>35</sup>

A survey of child custody awards in 14 south Georgia counties for the years of 1995-97 was conducted by Kent Earnhardt, Ph.D., J.D. of College Park.<sup>36</sup> That survey found that in contested custody cases, 82.22% of the custody awards went to the mothers. Most domestic relations practitioners’ observations would likely show a similar or higher percentage. Therefore, since the application of the Guidelines overwhelmingly impacts men, it constitutes sex discrimination in violation of equal protection.<sup>37</sup>

Even if the Guidelines did not discriminate on the basis of sex, under the minimum scrutiny test, that is, whether the statutory classification bears a rational relationship to a legitimate governmental purpose, they still violate equal protection guarantees.

As with the due process claim, the analysis proceeds from the premise that providing appropriate child support is a legitimate state objective and seeks to ascertain whether the classification created by the Guidelines bears a substantial or rational relationship to that purpose.

The equal protection clause of the United States’ Constitution does not allow one group to be singled out for extraordinary burdens or benefits when such classification is not rationally related to the state objective. That

is, similarly situated persons must be treated alike.<sup>38</sup> The Guidelines violate equal protection, by imposing a greater burden on NCPs and providing greater benefits to CPs. Prior to being classified on the basis of custody, both parents supported their children from after-tax, net income. Upon being classified, however, one parent, the NCP, is suddenly required to support his children from a totally different pool of funds, most of which he never receives. An NCP must pay an amount equal to a given percentage of his gross income to the CP. That payment is made from the NCP’s *net* income without any consideration for involuntary reductions, or the CP’s income. The CP, who stands on exactly the same footing as the NCP regarding parenthood, save for the fact of having primary custody of the children, is afforded a truly amazing windfall as described in the examples of Dick and Jane.

In this regard, the Guidelines present a situation functionally similar to that found in *South Central Bell Telephone Co. v. Alabama*.<sup>39</sup> That case involved a negative commerce clause challenge to Alabama’s corporate taxation scheme in



which domestic corporations were required to pay an amount equal to one percent (1%) of the par value of their stock. By contrast, foreign corporations were required to pay an amount equal to three-tenths of a percent (0.3%) of the value of the actual amount of capital employed in Alabama. Domestic corporations were granted great leeway in setting the par value of their stock and otherwise reducing their tax base, which was not extended to their foreign counterparts. The result of this scheme was that foreign corporations paid approximately five times the tax required of domestic corporations. The plaintiffs sued Alabama on equal protection and commerce clause grounds seeking a refund of taxes paid. After the Supreme Court of Alabama upheld the tax scheme 5-4, the United States Supreme Court struck it down.

Although decided under the commerce clause employing the strict scrutiny test, the Court’s decision

clearly held that when similarly situated parties—corporations doing business in Alabama—are required to pay a common obligation—corporate taxes—from different “sources”—firmly fixed asset value versus highly fluid, easily minimized stock value—based on a single statutory distinction—domestic versus foreign status, the resulting disparity in the size of the obligation violates the commerce clause of the Constitution of the United States.

Notwithstanding the fact that the Alabama tax scheme failed under the strict scrutiny test used in commerce clause cases,<sup>40</sup> the Court’s analysis strongly suggests that the Guidelines would not withstand an equal protection challenge under any level of scrutiny because, by analogy, the Guidelines’ require that similarly situated individuals—parents—be required to pay a common obligation—the support of their children—from different sources—gross income versus net, after-tax income—based on a single, statutory distinction—custody of the children.

As with the due process analysis, a discriminatory intent must be shown, but such intent need not be the sole, primary or even predominant motive for the questioned legislation.<sup>41</sup> In the Guidelines, discriminatory intent is clear as, by its very terms, only the NCP must pay child support based on gross income without accounting for involuntary reductions that substantially reduce disposable income or otherwise addressing the CP’s income.

In Georgia, both parents have an obligation to support their child(ren).<sup>42</sup> No rationale justifies singling out the NCP on that basis alone and imposing upon him (and, occasionally, her) a disproportionate financial burden while awarding the CP a windfall of tax-free income and other benefits.

In *Romer v. Evans*,<sup>43</sup> the Supreme Court scrutinized Amendment 2, a Colorado statute which stated that homosexuals could not be granted any special privileges by any governmental entity. Because homosexuality is not a suspect class, the Court applied the minimum scrutiny test and reviewed the Amendment for a rational relationship to a legitimate state end. In holding Amendment 2 unconstitutional on equal protection grounds, the majority noted that the statute singled out a class of persons identified by a single trait, then denied them protection across the board. The majority said that such a scheme is not within our constitutional tradition as “[e]qual protection of the laws is not achieved through indiscriminate imposition of inequalities.”<sup>44</sup> Worse, such laws “raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected.”<sup>45</sup>

By comparison, the Guidelines single out a class of persons by a single trait, *i.e.* non-custodial parenthood. They then go on not only to impose a burden on that class on a basis that is not rationally related to the statutory objective, but, even worse than Amendment 2, also benefits a similarly situated class, the CPs. All this is done in the complete absence of supporting economic data and is contrary to demonstrated economic reality.

The MAJORITY REPORT cautions that using the NCP’s net income would not be desirable because net income is subject to too much variation. Presumably, the concern was that an obligor might engage in creative accounting to artificially lower his obligation. Every Georgian must pay (or be exempted from) federal and state taxes, however, and most pay social security (F.I.C.A.) and medicare taxes as well. In addition, many must pay mandatory insurance premiums, union dues, and the like. Many states employ a definition of “adjusted gross income” which sets forth specific deductions, thus eliminating creative accounting as a concern.<sup>46</sup> The State of Washington even allows a \$2,000 annual retirement contribution to be deducted prior to calculating the presumptive award if the investment plan was in place prior to the divorce.<sup>47</sup> Involuntary reductions nonetheless are ignored by the Guidelines. Married parents, cohabiting parents and CPs may take advantage of such reductions before supporting their children, but the NCP in Georgia may not. Although the degree of this disparity varies somewhat with income level, the Guidelines create an economic underclass (NCPs) and a relatively privileged class (CPs) out of similarly situated persons without empirical data to justify the distinction.

The Guidelines also allow unequal treatment between similarly situated NCPs by the use of a range of percent-

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## SUPPORTING GEORGIA'S CHILDREN:

# Constitutionally Sound Objectives And Means

By Rebecca A. Hoelting

**T**his article will demonstrate that Georgia's child support guidelines are the product of a constitutional process and produce results that are not only constitutional, but generally fair to both custodial and noncustodial parents.

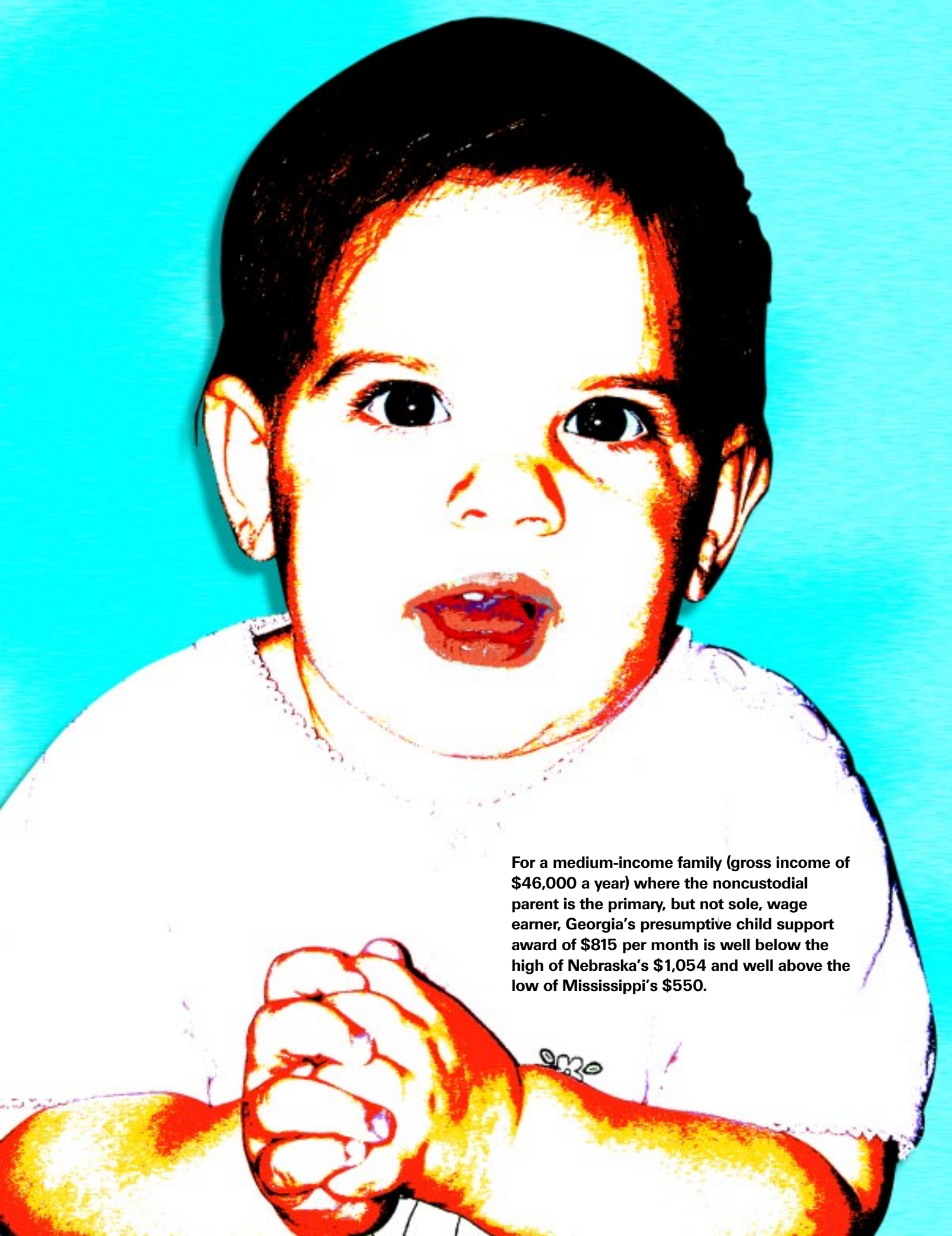
Many competing interests and approaches must be balanced in devising a system of awarding child support. The choices reflected in the Georgia child support guidelines violate neither the due process clause nor the equal protection clause of the Constitution.

Before undertaking a constitutional analysis of Georgia's child support guidelines, it is important to consider the underlying purpose of child support. The focus must be on the children, not the parents. Child support has been dissected and reinvented so often that this focus is often obscured. The true meaning of child support should be to try to find a way to best allocate the

available resources to nurture, educate, and raise children when they are not in a two-parent family. The overwhelming import of child support led the Federal government to become involved in making sure that states set up guidelines to determine the appropriate allocation of parental resources.<sup>1</sup> The federal rules were specific about how to establish the guidelines and provided a helping hand to states in the form of economic studies and descriptions of various models of guidelines.<sup>2</sup>

### History Of Georgia's Guidelines

Georgia's guidelines were initially adopted for use by "IV-D" welfare agencies only. Prior to their adoption, a Georgia commission considered the most appropriate method of setting guidelines. Among other things, the commission reviewed the Office of Child Support



For a medium-income family (gross income of \$46,000 a year) where the noncustodial parent is the primary, but not sole, wage earner, Georgia's presumptive child support award of \$815 per month is well below the high of Nebraska's \$1,054 and well above the low of Mississippi's \$550.



Enforcement's recommendations on establishing child support guidelines. The commission eventually decided to follow the Wisconsin model, which assigned child support as a percentage of the obligor's income. Choice of this model was based upon careful consideration of economic data and ease of administration.

Before the guidelines were passed into law for use in all cases, a broader commission was convened. That commission included custodial parents, non-custodial parents, lawyers, judges, child support administrators and others. It considered the critiques of the Wisconsin model, such as its failure to expressly take the income of the custodial parent and other circumstances into account. As a result of these critiques, the commission incorporated a list of factors to be considered for deviations from the guidelines.<sup>3</sup> These eighteen factors remain part of the statute.<sup>4</sup> Although I can offer no statistical evidence, as a domestic relations attorney, I can attest that these factors often play an important role in negotiating a child support agreement or a child support award decided by a judge or jury.<sup>5</sup>

## Economic Considerations

The Georgia child support guidelines are based upon sound economic principles. Calculation of child support using gross income makes sense because net incomes can be almost impossible to calculate using pay stubs and other readily available documentation. Decisions must be made about which of the deductions from a paycheck are mandatory and which are voluntary deductions. The gross income method should produce more, rather than less, consistent results. It is important to remember that intact and divided families cannot be compared because the fact that a family is divided will necessarily change the nature of and increase the cost of maintaining the family. There is widespread disagreement about the most appropriate method to determine childcare costs.<sup>6</sup> There are many different ways of measuring such costs and subsequently many ways to interpret the numbers that are obtained. Some experts have stated that child-rearing cost data is not necessarily the best yardstick for determining the appropriateness of child support. Dr. Roger Williams, of Policy Studies, Inc., while testifying before the 1998 Georgia Child Support Commission, stated:

I think one of the reasons that child support is always controversial is that by definition the child is in the custodial parent's house. And by definition, a lot of the expenditures are pooled between the custodial parent and the child, so basically to the extent the child support exceeds our best estimates of child-rearing costs, it doesn't necessarily mean it's not going to the child.<sup>7</sup>

In other words, the majority of the expenses for the



children are incurred in the custodial parent's home. The Office of Child Support Enforcement report points out that the overall standard of living for all family members declines when a family separates, since two families have more expenditures than one.<sup>8</sup>

Concerns about the inadequate resources left to the non-custodial parent for supporting the children during her or his visitation are misguided. In reality it is custodial parents who are more likely to suffer economic hardships. The Georgia Supreme Court in the *Blanchard*<sup>9</sup> case held that a court could not award the non-custodial parent the federal income tax dependency deduction. In so holding, the Court wrote: "Each day more custodial parents fall below the poverty level, crowding welfare rolls, and needy children face serious shortages in government programs because of massive cuts in federal, state, and local budgets."<sup>10</sup> In that context the Court decided that it could not allow judges to assign an income tax deduction to the detriment of the already financially disadvantaged custodial parent.

The Georgia guidelines also take into account the income of the custodial parent. Although the guidelines do not mathematically factor in that income, it was a consideration in the manner that the guidelines were set up. With regard to the model adopted by Georgia, the federal guidelines stated: "[It] does not ignore custodial parent income. Rather based on an alternate interpretation of economic evidence, it counts custodial parents' income implicitly under the presumption that the custodial parent allocates the same percentage to the children as the non-custodial parent."<sup>11</sup> Also, the Georgia guidelines list as a special circumstances the situation in which the obligor has gross income in excess of \$75,000 per year.<sup>12</sup> This is an important aspect of the guidelines and must be considered by parties, attorneys, judges, and juries.

It is also important to note that the Georgia Child Support guidelines produce results similar to the guidelines in other states. A recent comprehensive state-by-state

comparison of child support awards in three hypothetical cases places Georgia well within the high and low extremes and in line with the majority of states. For example, for a medium-income family (gross income of \$46,000 a year) where the noncustodial parent is the primary, but not sole, wage earner, Georgia's presumptive child support award of \$815 per month is well below the high of Nebraska's \$1,054 and well above the low of Mississippi's \$550. Our neighboring states of Alabama, Florida, North Carolina and South Carolina would award, on the same facts, \$808, \$876, \$864, and \$799, respectively.<sup>13</sup>

## Constitutional Due Process Review Of The Georgia Child Support Guidelines

Due process analysis requires two separate inquiries. First, does the state have a valid interest or objective to justify the legislation? Second, is the legislation rationally related to the objective? Due process rights are violated if the legislation is "utterly lacking in rational justification."<sup>14</sup> Clearly the state has a valid objective in providing a method to ensure that child support awards are consistent and appropriate. Other states have made judicial inquiries into whether similarly drafted guidelines are rationally related to the objective of ensuring appropriate child support awards and have held that the guidelines in those states are rationally related and do not violate due process rights.<sup>15</sup>

In *Boris v. Blaisdell*,<sup>16</sup> the Illinois Appellate Court considered the constitutionality of the Illinois child support guidelines that set child support based upon a percentage of the non-custodial parent's net income. The Illinois court found that the statute was constitutional and specifically rejected the due process arguments. The noncustodial parent had argued that the guidelines violated his fundamental right not to support his children beyond the necessities, regardless of his

financial ability. The court held that there was no authority for that argument. The non-custodial parent had also argued that the child support guidelines violated due process by infringing on that parent's right to remarry. In rejecting the argument, the court wrote: "This argument, if accepted, would impede the traditional authority of both the state legislature and the state courts to regulate the determination and enforcement of child support orders beyond basic necessities."<sup>17</sup>

The Ninth Circuit Court in *P.O.P.S. v. Gardner*<sup>18</sup> held that Washington's child support guidelines were constitutional. The court noted that "the appropriate level of child support is a debatable issue dependent on policy and value judgments. On issues of social policy, the state has the power to make such judgments as long as they are not made arbitrarily. The table was developed based on economic studies and hard data. The presumptive support levels are not arbitrary."<sup>19</sup> Similarly, the commission that adopted Georgia's Child Support guidelines did so after careful study. Although the commission did not conduct its own economic studies, it did examine economic data and performed a careful analysis of the guidelines.<sup>20</sup> The Georgia Court of Appeals has noted that the guidelines were in fact adopted "in response to the risk of losing substantial federal funding,"<sup>21</sup> and were part of an ongoing reform of family law.

The facts in *Immediato v. Rye Neck School District*<sup>22</sup> are analogous to the Georgia Child Support guidelines. In that case a high school student and his parents alleged that the school district's mandatory community service program violated their constitutional rights. The court disagreed, noting that the state clearly has a legitimate interest in teaching children the importance of community service. Similarly, the state has a legitimate interest in assuring that child support awards are consistent and appropriate.

The court further reasoned that the program set up by the school district was specifically tailored to achieve the objective by allowing the children to recognize the needs of the community and how they could serve them and by asking the children to engage later in a discussion regarding those needs.<sup>23</sup> Georgia likewise achieved its objective by convening a commission to determine the most appropriate manner in which to achieve consistent awards. The commission recommended the use of the Wisconsin model, presumably because of the ease of application and the predictability of result. Barring special circumstances, litigants in a divorce or child support case easily can predict the range of child support they will be obligated to pay or can expect to receive. Although the statute does not specifically state that the guidelines were chosen for predictability and ease of use, it is apparent that they were chosen for that purpose. "A legislative body need not explicitly state its reasons for passing legislation so long as a court can divine some rational purpose."<sup>24</sup>



## Equal Protection Clause Review Of The Georgia Child Support Guidelines

Arguments that the child support guidelines violate the equal protection clause of the Fourteenth Amendment of the United States Constitution have not been upheld, even when subjected to strict scrutiny. Analyzing the Washington guidelines, the Court in the *P.O.P.S.* case held that the state had a rational basis for the guidelines. That court held:

“In the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some ‘reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality.’”<sup>25</sup>

Nor is it valid to argue that the guidelines are discriminatory as applied, based upon the fact that men are disproportionately effected by the statute. Standing alone, that argument would not establish a *per se* constitutional violation. The finding that the guidelines are discriminatory as applied would dictate merely that the guidelines are subject to intermediate scrutiny under the equal protection clause.<sup>26</sup> Analysis of a statute under intermediate scrutiny entails examining whether the statute furthers an important government objective and whether it is substantially related to furthering the objective. The child support guidelines further an important government objective of appropriate support for children and the guidelines are substantially related to the objective of ensuring that the support is appropriate.

Similarly, an argument may be raised that the child support guidelines classify on the basis of gender. This argument, however, cannot be upheld. The statute is directed toward non-custodial parents, whatever their gender may be in a particular case. An equal protection analysis therefore asks the questions whether similarly situated persons are being treated differently and, if so, whether such classification is related to the state’s objective. The view that custodial and non-custodial parents are similarly situated persons because both are parents is not appropriate. There is vast disparity of obligations between custodial and non-custodial parents. A custodial parent has the obligation to provide a full-time home, care, clothing, food, and other necessities and niceties for the children. The non-custodial parent may visit or not visit at her option and may provide as little as a few meals a month for the children. The custodial parent must provide the primary care for the child and cannot require the non-custodial parent to provide anything above and beyond the child support she is ordered to pay.

The United States Supreme Court in *Truax v. Corrigan*<sup>27</sup> distinguished between necessary classification

of people and arbitrary classification of people. In *Truax*, the Court struck down an Arizona statute that gave striking workers special immunity from injunction. The Court held that if other persons committing similar acts would be subject to injunction, the strikers should be subject to injunction as well. The state could not constitutionally give special legislative treatment to one class of tortfeasors. The Court recognized that not all classifications imposed by the state are unconstitutional; “classification of persons is constantly necessary . . . .”<sup>28</sup> With regard to divided families, the state’s classification of some parents as custodial parents and some parents as non-custodial parents is by no means arbitrary; it simply reflects reality. Some parents have the physical and financial responsibility for the children the majority of the time, and some do not. The 1998 Georgia Commission on Child Support considered this difference in rejecting the income shares model of child support. “[T]he custodial parent is maintaining a separate household, has the child most of the time and has a limited ability to earn additional income. In almost all cases, the child’s standard of living drops significantly after a divorce while the non-custodial parent’s standard of living usually rises.”<sup>29</sup> Thus it is imperative to distinguish

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the custodial parent and his or her household from the non-custodial parent and her or his household.

The obligation that the parties are paying is not a common obligation. The custodial parent's obligation to maintain a primary residence for the children and to care for the children for the majority of the time is quite different from the non-custodial parent's obligation to pay a specified amount of money toward the support of the children on a periodic basis. As the Illinois Court stated in the *Boris v. Blaisdell* case:

"[C]ustodial and noncustodial parents are not 'similarly situated' since, after divorce, the custodial parent's responsibility for the child's support as well as care is general and plenary, while the noncustodial parent's responsibility is usually limited to the requirements of the support order."<sup>30</sup>

In *Winningham v. United States Department of Housing and Urban Development*<sup>31</sup>, the 5th Circuit Court of Appeals upheld a federal statute that treated two categories of low-income tenants differently. The court held that such differentiation "may be unfair but it is not unconstitutional."<sup>32</sup> Although it may be argued that it is unfair for non-custodial parents to pay a percentage of gross rather than net income, perceived unfairness is not necessarily tantamount to unconstitutionality. Georgia's child support statute is constitutional because it fulfills the undeniably important state interest of ensuring that children are adequately supported. The 1998 Georgia Commission on Child Support rejected the use of net income in calculating child support because it "is obviously inefficient since varying payroll deductions make it difficult to define."<sup>33</sup> The Commission's primary concern was with fulfilling the State of Georgia's legitimate interest in awarding appropriate child support for children.<sup>34</sup>

Georgia has a long history of upholding legislative judgments about the classification of people. One example is *Bickford v. Nolen*,<sup>35</sup> a Georgia case upholding Georgia's automobile guest passenger rule, which denies a guest or non-paying passenger injured in a car the same rights of suit as a paying passenger injured in a car. The Court held that the rule is constitutional because there is a valid state interest in "the fostering of hospitality by insulating generous hosts from lawsuits instituted by injured guests . . . ."<sup>36</sup> If the state can create classifications of persons for the purpose of fostering hospitality, then surely the state can recognize classifications for the purpose of supporting children.

Although the guidelines may not produce a perfect result in each case, the Constitution does not require that they do so. They are aimed at an undeniably legitimate state interest, and therefore do not violate the equal protection clause.

## Conclusion

Georgia's child support guidelines are constitutional and, by most accounts, result in appropriate awards.<sup>37</sup> The guidelines' focus is the interests of the child. They are intended to be responsive to children's needs for adequate support, not the needs or desires of non-custodial parents. This focus on the child does not violate the constitutional rights of non-custodial parents. In deciding a Georgia case, the United States Supreme Court wrote: "There can be no question about the legitimacy of the purpose to cause parents to support their children."<sup>38</sup> The Court has recognized the basic importance of this purpose, and the guidelines were carefully constructed to fulfill it. ☐



Rebecca A. Hoelting is an associate in the litigation department at Long, Aldridge & Norman LLP. She currently serves on the editorial board of the Georgia Bar Journal.

## Endnotes

1. "Effective October 13, 1989, as a condition of its state plan, the state shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support amounts within the state." 45 C.F.R. § 302.56 (a) (1999).
2. Office Of Child Support Enforcement, U.S. Dep't of Health and Human Services, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report (1989) [hereinafter cited as *U.S.H.H.S. Report*].
3. Telephone interview with Hon. John Girardeau, Judge, Superior Court Northeastern Judicial Circuit, Georgia (January 25, 2000). Judge Girardeau was a member of the original child support commission.
4. O.C.G.A. § 19-6-15 (c) (1999). The factors are:
  - (1) Ages of the children;
  - (2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;
  - (3) Educational costs;
  - (4) Day-care costs;
  - (5) Shared physical custody arrangements, including extended visitation;
  - (6) A party's other support obligations to another household;
  - (7) Income that should be imputed to a party because of suppression of income;
  - (8) In-kind income for the self-employed, such as reimbursed meals or a company car;
  - (9) Other support a party is providing or will be providing, such as payment of a mortgage;
  - (10) A party's own extraordinary needs, such as medical expenses;
  - (11) Extreme economic circumstances including but not limited to:
    - (A) Unusually high debt structure; or
    - (B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over \$75,000.00 per annum;

- (12) Historical spending in the family for children which varies significantly from the percentage table;
  - (13) Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact;
  - (14) In-kind contribution of either parent;
  - (15) The income of the custodial parent;
  - (16) The cost of accident and sickness insurance coverage for dependent children included in the order;
  - (17) Extraordinary travel expenses to exercise visitation or shared physical custody; and
  - (18) Any other factor which the trier of fact deems to be required by the ends of justice.
5. The author has practiced domestic law since 1995 in seven metro Atlanta counties.
  6. Dr. Robert Williams of Policy Studies, Inc., uses a marginal cost estimate while the U.S. Department of Agriculture uses a per capita calculation. *Georgia Commission on Child Support, Atlanta, Georgia* 44 (1998) (presentation by Dr. Robert Williams, Policy Studies, Inc., Denver, CO).
  7. *Id.* at 46. Dr. Williams ultimately testified that in his opinion Georgia should adopt an income shares model. He emphasized problems with perceptions of fairness rather than concerns with economically appropriate child support.
  8. *U.S.H.H.S. Report, supra* note 2 at II-37.
  9. *Blanchard v Blanchard*, 261 Ga. 11, 401 S.E. 2d 714 (1991).
  10. *Blanchard*, 261 Ga at 14.
  11. *U.S.H.H.S. Report, supra* note 2, at II-48.
  12. O.C.G.A. § 19-6-15 (c)(11)(B).
  13. Laura W. Morgan and Mark C. Lino, A Comparison of Child Support Awards Calculated Under States' Support Guidelines with Expenditures on Children Calculated by U.S. Dept. of Agriculture, 33 Fam. L.Q. 191, 206-211 (1999).
  14. U.S. CONST. amend. V.
  15. *P.O.P.S. v. Gardner*, 998 F.2d 764 (9th Cir. 1993); *City and County of San Francisco v. Garnett*, 70 Cal.App.4th 845, 82 Cal. Rptr.2d 924 (1999); *Boris v. Blaisdell*, 142 Ill.App.3d 1034, 492 N.E.2d 622 (1986).
  16. *Supra* note 15.
  17. *Boris*, 142 Ill.App.3d at 1046, 492 N.E.2d at 630.
  18. *P.O.P.S.*, 998 F.2d 764.
  19. *Id.* at 769.
  20. REPORT TO THE GOVERNOR FROM THE GEORGIA CHILD SUPPORT COMMISSION (1998) [hereinafter cited as *Report to the Governor*]. The commission considered:
    - (1) Economic data on the cost of raising children.
    - (2) Whether the current guidelines result in appropriate child support awards.
    - (3) Available case data relating to the applications of the current guidelines.

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# The Consequences of Pleas in Immigration Law

By Grace A. Sease and Socheat Chea

On April 27, 2000, Governor Roy Barnes signed House Bill (HB) 584 to amend O.C.G.A. § 17-7-93 by adding the provision set out below, making it effective July 1, 2000. This bill was the product of the efforts of many jurists, lawyers, and immigrant advocates who wished to bring basic due process to the burgeoning immigrant population in Georgia. As discussed in more detail in this article, the Immigration Nationality Act (INA) is perhaps one of the most complicated bodies of law<sup>1</sup>—all the more reason and necessity for the passage of House Bill 584 to become part of the Georgia Code.

HB 584 adds a new section (c) to O.C.G.A. § 17-7-93 as follows:

In addition to any other inquiry by the court prior to acceptance of a plea of guilty, the court shall determine whether the defendant is freely entering the plea with an understanding that if he or she is not a citizen of the United States, then the plea may have an impact on his or her immigration status. This subsection shall apply with respect to any state offense in any court of this state or any political subdivision of this state.

This law affects all courts which exist in Georgia including municipal courts. As of July 1, 2000, HB 584 mandates that in accepting a guilty plea, the court, must ask one critical question of every defendant: “Are you a U.S. citizen?”

If the answer is in the negative, the court must then ask the defendant specifically whether he or she understands the impact the plea may have on his or her immigration status. Failure to do the above may open the door for the defendant in the future to set aside the plea

through a *habeas corpus* petition on the ground that the plea was not entered freely or voluntarily.

Furthermore, it is highly important for the court to make a written record of this warning. O.C.G.A. § 17-7-93(a) and (b) require the guilty plea to be immediately recorded (by the clerk) on the minutes of the court. Therefore, it is reasonable to conclude that the General Assembly, by adding this requirement, wanted the courts to take great care in carrying out this provision by making a written record of the proceedings.

It is recommended that criminal defense attorneys inquire at the initial meeting with their clients whether they are U.S. citizens.<sup>2</sup> This will allow the attorney to comply with HB 584 and to avoid undue delay in preparation for future hearings in compliance with this provision. In view of this law, it is essential that criminal defense attorneys carefully investigate the impact of the plea on their foreign national client. This does not mean a simple question or warning, such as “Do you know that you may be deported for this plea?”<sup>3</sup> On the contrary, due to the complexity of immigration law, it is necessary that a criminal defense attorney prepare a well-detailed due diligence letter to the foreign national client outlining the possible consequences of the plea to his or her immigration status. If the defense criminal attorney is not equipped or prepared to tackle the immigration issues, it is vital to secure an opinion from an immigration attorney who has in-depth knowledge of deportation and naturalization issues. Failure to do so opens the door to charges of ineffective assistance of counsel and perhaps a malpractice claim.

To demonstrate the importance of the above and the complexity of immigration law, we will now examine some of the pitfalls that exist in Georgia state law which may lead to a problem under the INA through several specific examples.





## What are the Immigration Consequences of a Criminal Conviction?

Immigration law is fact-specific and bewildering in its application. It is subtle and highly nuanced. This is particularly true in the application of immigration law to non-citizens who have committed a criminal offense. A myriad of factors are dispositive, so that two cases which may seem identical will result in very different outcomes. As outlined below, a series of hypotheticals are presented to graphically illustrate the complexities of this area of law. Every case is fact-specific and must be analyzed in its entirety before any conclusion can be reached regarding the immigration consequences of a criminal conviction.

In case #1, Alfred Alien is a lawful permanent resident alien. He can live and work in this country without incident—unless he breaks the law. Alfred is married to Carla, a United States citizen. He has lived in the U.S. for 22 years and adjusted his status to that of a lawful permanent resident 17 years ago. He has four United States citizen children, one of whom is severely disabled and dependent upon Alfred's health insurance for expensive medical care. He and his wife own a home, and he has been a volunteer coach of the neighborhood soccer league for years.

Ten years ago, Alfred Alien was charged with shoplifting a pack of cigarettes from the neighborhood convenience store. On the advice of counsel, he entered a plea of guilty and received First Offender treatment under Georgia law. He was sentenced to 12 months confinement, suspended. Alfred heralds the new millennium by applying for citizenship, and his conviction comes to light at that time. Are there immigration consequences because of that 10-year-old conviction? Yes, and the consequences are severe.

Because Alfred Alien has been convicted of a theft offense, and because he received a sentence of 12 months, albeit suspended, his conviction, for immigration purposes, is defined as an aggravated felony, regardless of how the State of Georgia defines the offense. The ameliorative aspects of the Georgia First Offender statute are also not recognized for immigration purposes.

The definition of "conviction" for immigration purposes is found at Section 101(a)(48)(A) of the INA.<sup>4</sup> This was specifically drafted to ensure a more uniform definition of conviction for immigration purposes<sup>5</sup>. Thus, this federal definition of conviction does not recognize

state first-offender or deferred adjudication treatment.

A lawful permanent resident convicted of an aggravated felony is ineligible for a waiver of the offense, and the *only* relief/protection from removal he is eligible to apply for is withholding of deportation and/or protection under the Convention against Torture. Both of these forms of relief/protection have high thresholds and more applicants than not fail to meet their burden of qualifying.

In case #2, Aretha Alien is in the United States illegally. She entered as a visitor and remained longer than permitted. She has been in the United States for 17 years. She is married to Sam Citizen and has two United States citizen children. One of her children has a relatively minor learning disability and is in a specialized treatment program. Sam filed a visa petition (I-130) on Aretha's behalf and has just received the notice that the visa was approved.

Aretha is caught shoplifting a pair of designer shoes from a department store. On advice of counsel she, enters a plea of guilty, receives a sentence of 12 months confinement, suspended, and treatment under the Georgia First Offender program.

Aretha's offense is also classified as an aggravated felony, but she may have relief from deportation. Because she is here illegally and

because she has an immediate relative visa available to her, she may file an application for adjustment with a section 212(h) waiver; and, if the waiver is granted, she would be able to adjust her status to that of a lawful permanent resident and remain in the United States. She must establish that extreme hardship—a term of art—would result to her United States citizen husband and children should she be deported, but she nonetheless has the opportunity to apply for relief from removal.

Let's change the facts again. In case #3, Albert Alien, a lawful permanent resident, is arrested, charged and convicted of shoplifting, but only receives a sentence of 11 months, 29 days. He has been convicted of a crime involving moral turpitude (CIMT) but not an aggravated felony, for immigration purposes. If he has no other convictions and if the conviction occurs more than five years after he obtained his legal permanent resident status, he will not even be placed in proceedings.

If Albert is a two-time offender, the consequences are different. Let's make Albert a recidivist, twice convicted of shoplifting within five years of his entering the U.S. or obtaining his status. He can be placed in proceedings and charged with having committed two CIMTs within five

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**Congress has chosen to be particularly severe with aliens who commit drug offenses, and only the most minor can be excused or waived in the parlance of immigration law.**

years of entry. His opportunity for relief from removal is minimal at best since, given the facts above, he does not have the requisite number of years of residency in the United States to apply for Section 240A cancellation of removal.

Section 240A cancellation is a form of relief available to aliens convicted of certain offenses. The alien must have been lawfully admitted for permanent residence for at least five years and must have resided in the United States for at least seven years after having been admitted in any status. Further, the alien cannot have been convicted of an aggravated felony. There is a special “stop-time” provision in the statute that stops the accrual of time on the date the offense was committed for certain criminal offenses<sup>6</sup>.

If Albert had entered the United States as a lawful permanent resident when he was a child of three, fallen in with a bad crowd as a teenager and committed two CIMTs, he would be placed in removal proceedings. Can he apply for any relief from removal? Yes, he can, as long as he committed the first crime *after* he had lived in the United States for at least seven years, five of them as a lawful permanent resident. He would be eligible to apply for cancellation of removal.

Congress has chosen to be particularly severe with aliens who commit drug offenses, and only the most minor can be excused or waived in the parlance of immigration law. A drug trafficking offense is an aggravated felony. Section 212(h), the waiver that Aretha could apply for above, is not available to anyone convicted of a drug offense *other than* a single offense of simple possession of 30 grams or less of marijuana. Arthur Alien, who has been a lawful permanent resident for 10 years and has the requisite years of residency, is convicted of simple possession of cocaine. Because the drug offense is not an aggravated felony, he is eligible to apply for the Section 240A waiver mentioned above. A gubernatorial or presidential pardon does not waive a drug offense for a lawful permanent resident alien.

Certain provisions of the Immigration and Nationality Act are specifically retroactive in effect. The statute was dramatically changed in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Basic grounds of removability for criminal action were amended and enlarged significantly. Many of these changes are retroactive, so that an individual who committed a criminal offense many years ago and who has not come to the attention of the INS until now may nonetheless be subject to removal. This may happen when an individual seeks to apply for citizenship or other benefits under the Act and the mandatory criminal background check discloses any prior conviction, regardless of when it occurred.

Today, the INS and local jurisdictions have a close working relationship, so that most criminal aliens are

detected early in the process. The INS may take a criminal alien into custody following completion of his or her state sentence. Depending upon the nature of the offense, that individual may be subject to the mandatory detention provisions of the statute.

Further a final criminal conviction cannot be collaterally attacked in immigration proceedings. A conviction is final for immigration purposes when the direct appeal process is exhausted. Thus, one cannot remedy or repair defects in criminal defense pleading when the alien finds himself before an immigration judge.

In short, it is difficult for an alien to escape the consequences of criminal activity. The impact of a criminal conviction may be mitigated if the criminal defense attorney is aware of the consequences of a plea and the length of sentence imposed on his client's immigration status. ☒

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*Grace A. Sease is a member of the Virginia and District of Columbia Bars. A graduate of George Mason University School of Law, she received her B.A. from the University of South Carolina and her M.A. and Ph.D. from Michigan State University. She is an Assistant District Counsel with the Department of Justice, Immigration and Naturalization Service in Atlanta. Sease has been an attorney with the Service since 1991.*

*Socheat Chea is a member of the State Bar of Georgia. He graduated from Emory University with a B.A. In 1991, he received a J.D. from Boston College Law School. He has been a solo practitioner since 1991. Currently, he is the vice-chair of the Atlanta Chapter of the American Immigration Lawyers Association.*

*The views expressed in the article are solely those of the individual authors.*

## Endnotes

1. U.S. Immigration law is the product of many revisions as determined by the political and economic needs of each period of our history. The Immigration and Nationality Act is found at 8 U.S.C. 5 1101 *et seq.*
2. There may be not an obvious answer to this question because some children who are now adults may have acquired U.S. citizenship through various provisions laid out under the INA.
3. It is the authors' view that in light of the legislative changes a more vigorous inquiry into this issue is necessary.
4. 8 U.S.C. § 1101 (a)(48)(A) at § 101 (a)(48)(A).
5. See H.R. REP. 104-828 at 207.
6. 8 U.S.C. § 1229b(d)(1) at § 240 A(d)(1).

# *Georgia Legal Services and Atlanta Legal Aid:* Representing Victims of Family Violence

**T**he statistics are staggering: according to the Georgia Department of Human Resources, 50,000 calls were made to domestic violence crisis lines in Georgia in 1998. In that same year, Georgia family violence programs served more than 18,000 adults and 10,000 children. Sixty-four percent of victims surveyed were married to their abusers.

In 1996, the State Bar of Georgia installed its first female president-elect, Linda A. Klein. Her election was met with a great deal of media coverage, and subsequently she began receiving calls from the public seeking her advice and aid on a variety of topics. One that seemed to be recurrent was a cry for help from victims of domestic violence who were having difficulty finding a lawyer to take their cases. Often times lawyers were understandably reluctant to take their cases because of fears for the safety of themselves, their employees and their families.

In our state, there are two major legal services providers that provide free legal assistance to low-income Georgians who can't afford a lawyer: Georgia Legal Services Program (GLSP), which serves all 154 counties outside metro Atlanta, and Atlanta Legal Aid Society (ALAS), which serves the five metro-Atlanta counties.

Back then, the funding for these two programs came solely from the national Legal Services Corporation and private donations. Previously, the state of Georgia had not provided for civil legal services as part of its budget; although there were funds allocated for indigent criminal defendants.

With the constant cuts in federal funding and the subsequent cutbacks to GLSP and ALAS, which resulted in extensive layoffs and office closings, then President-elect Linda Klein decided to change the state's history of not funding civil legal services. It was determined the only way to get such an appropriation through the doors of the state Legislature would be to earmark the funds to

aid a specific group. For Klein, the choice was easy—domestic violence victims.

She approached the Chief Justice Robert Benham of the Supreme Court of Georgia, Attorney General Thurbert Baker and key legislators to test the idea and received overwhelming support. They decided to pursue \$2 million in funding, a figure that would provide for presentation of 4,000 domestic violence cases.

As a precursor to the legislative push for funding, the State Bar organized a campaign called Season of Hope: Aid-a-Shelter, which kicked off during Thanksgiving 1997 and ran through the holiday season. Voluntary bars around the state were matched with battered women's shelters in their area to sponsor a collection drive for necessary day-to-day items—from toys to clothes to canned goods to appliances. The campaign was used to generate media attention to the plight of these victims. In addition, the Bar developed op-ed pieces as well as public service advertisements for local newspapers.

Remarkably, even in an election year, the funding request was passed by the General Assembly as part of the Chief Justice's budget. As Klein explained, "The \$2 million will ensure that these women who are already suffering at the hands of their abuser are not also suffering at the hands of the legal system. This money will open the doors of the justice system to those who otherwise would have no key." Each year thereafter, the funding has been increased and approved again by the Legislature.

Since October is national Domestic Violence Awareness Month, the *Georgia Bar Journal* thought it a fitting time to sit down with Phyllis Holmen, Executive Director of GLSP, and Steve Gottlieb, Executive Director of ALAS, to hear how their programs are helping victims of family violence with the aid of this additional funding.



**Journal:** Family violence is a big problem in Georgia. How are your organizations addressing the problem?

**Holmen:** Largely thanks to grants from the Judicial Council of Georgia, we have been able to provide legal representation that has changed the lives of thousands of victims of family violence, both adults and children.

**Gottlieb:** Although we have always focused on protecting clients against domestic violence, we have increased the impact of our work by new collaborations with shelters, victims assistance groups, law enforcement, the bar, and the bench.

**Journal:** What, specifically, do you do to help a victim of family violence?

**Gottlieb:** We provide direct legal representation for victims. We help clients obtain and enforce protective orders, child custody awards and child support orders, access personal property and keep their children in their home, and whatever else the client needs that is available under the law for her and her children's safety and security.

**Holmen:** We have learned through experience that, in addition to their immediate safety needs, victims are most concerned with the safety and wellbeing of their children. Our staff of 95 lawyers is trained to identify and deal with the legal issues that particularly affect families in violent homes. We also provide advice and lots of counseling during these difficult periods.

**Journal:** How does a victim deal with day-to-day life for herself and her children in the midst of these legal processes?

**Holmen:** Good question. We've seen how hard it is to escape from the violence and still provide a stable life for herself and her family. That's another way we help victims. Housing and income are two of the most critical needs. We have had several victims threatened with eviction because the batterer showed up and caused disruptions at the victim's home. Our attorneys have been successful keeping these clients in their homes.

In another case, a family violence client worked at the same grocery store as her husband who battered her. When he threatened her on the job, she asked the employer for protection at work, but the employer did nothing. The client fled the state for her safety. She filed for unemployment benefits and was denied. Our attorney appealed to the Superior Court, arguing that the employer's refusal to try and protect the client was good cause for her to quit. We were able to find a private attorney to file an Amicus brief on behalf of the Georgia Coalition Against Domestic Violence. We

got her unemployment benefits so she can start a new safer life.

**Gottlieb:** Some victims also have immigration problems that directly relate to their domestic violence. We regularly see victims who depend on their abuser to stay in the country. Often they have no idea where to go. They get to us through our Spanish Hotline. We are able to get them protection against the violence, and also help them take advantage of a new immigration law that allows battered spouses to self-petition for a change of immigration status. These cases sometimes involve terrible instances of violence; I remember one case where, in addition to getting a protective order, we arranged for a battered

CONTINUED ON PAGE 63

## Domestic Violence Ad bw

# Georgia Family

<b>Town</b>	<b>Name</b>	<b>Phone</b>	<b>Area served</b>
<b>Albany</b>	Liberty House of Albany	912-439-7065	Crisp, Dooly, Dougherty, Lee, Macon, Miller, Sumter, Terrell, Ben Hill, Clay, Quitman, Early, Randolph, Webster, Stewart, Schley, Baker, Calhoun, Mitchell, Turner, Wilcox, Worth
<b>Athens</b>	Project Safe, Inc.	706-543-3331	Clarke, Oconee, Barrow, Jackson, Madison, Oglethorpe
<b>Atlanta</b>	The Partnership Against Domestic Violence	404-973-1766	Fulton
<b>Augusta</b>	Safe Homes of Augusta, Inc.	706-736-2499	Columbia, Glascock, McDuffie, Richmond, Jefferson, Warren, Wilkes, Burke, Emanuel, Lincoln, Talliaferro, Jenkins
<b>Blairsville</b>	Support in Abusive Family Emergencies (S.A.F.E.), Inc.	706-745-8900	Towns, Union
<b>Blue Ridge</b>	North Georgia Mountain Crisis Network, Inc.	706-632-8400	Fannin, Gilmer, Pickins
<b>Brunswick</b>	Glynn Community Crisis Center, Inc. (Amity House)	912-264-4357	
<b>Calhoun</b>	Calhoun/Gordon City Council on Battered Women, Inc.	706-629-1111	Gordon
<b>Canton</b>	Cherokee Family Violence Center, Inc.	770-479-1703	Cherokee, Pickens
<b>Carrollton</b>	Carroll County HeardEmergencyShelter, Inc.	770-834-1141	Carroll, Haralson, Coweta,
<b>Cartersville</b>	Christian League for Battered Women, Inc. (Tranquility House)	770-386-8779	Bartow
<b>Clayton</b>	Fight Abuse in the Home (FAITH), Inc.	888-782-1338	Rabun
<b>College Park</b>	The Women's Crisis Center, Inc.	770-969-6423	Fulton
<b>Columbus</b>	Columbus Alliance for Battered Women, Inc.	706-324-3850	Muscogee, Ft. Benning, Harris, Talbot, Taylor, Marion, Chattahoochee
<b>Conyers</b>	Project Renewal Domestic Violence Intervention Program, Inc.	770-860-1666	Newton, Rockdale, Walton
<b>Cornelia</b>	Georgia Mountain Women's Center, Inc. (Circle of Hope)	706-776-4673	Habersham, Stephens, White
<b>Cumming</b>	Forsyth County Family Haven	770-887-1121	Forsyth
<b>Dahlonega</b>	NOA's Ark, Inc.	706-864-1986	Lumpkin, Dawson
<b>Dalton</b>	N.W. Georgia Family Crisis Ctr.	706-278-5586	Murray, Whitfield
<b>Decatur</b>	International Women's House	404-299-1550	DeKalb, Fulton, Metro Atlanta

## 24-Hour Domestic Violence

# Violence Agencies

<b>Town</b>	<b>Name</b>	<b>Phone</b>	<b>Area served</b>
<b>Decatur</b>	Women's Resource Center to End Domestic Violence, Inc.	404-688-9436	DeKalb
<b>Douglasville</b>	S.H.A.R.E. House, Inc	770-489-7513	Douglas, Paulding, Polk
<b>Dublin</b>	Women in Need of God's Shelter, Inc. (WINGS)	800-WINGS03	Dodge, Laurens, Telfair, Treutlen, Bleckley, Johnson, Montgomery, Toombs, Wilcox, Wheeler, Pulaski
<b>Gainesville</b>	Gateway House, Inc.	770-536-5860	Hall
<b>Greensboro</b>	Greene County Family Violence Council, Inc.	706-453-4017	Greene, Morgan, Taliaferro
<b>Hinesville</b>	Tri County Protective Agency, Inc.	912-368-9200	Liberty, Bryan, Evans, Long, McIntosh, Tattnall
<b>Jesup</b>	Wayne County Protective Agency, Inc. (Fair Haven)	912-588-0382	Wayne, Appling, Jeff Davis
<b>Lafayette</b>	Family Crisis Center of Walker, Dade, Catossa, Chattooga Counties	706-375-7630	Catoosa, Chattooga, Walker, Dade
<b>Lawrenceville</b>	Partnership Against Domestic Violence	770-963-9799	Gwinnett
<b>Marietta</b>	YWCA of Cobb County, Inc.	770-427-3390	Cobb
<b>McDonough</b>	Flint Circuit Council on Family Violence (Haven House)	770-954-9229	Henry, Butts, Lamar, Monroe
<b>Milledgeville</b>	Oconee Family Crisis Center Milledgeville/Baldwin County Rape Crisis Center, Inc.	912-445-4673	Baldwin, Hancock, Jones, Putnam, Washington, Wilkinson, Jasper
<b>Morrow</b>	Association of Battered Women of Clayton County, Inc. (Securus House)	770-961-7233	Clayton, Fayette, Butts
<b>Rome</b>	Hospitality House for Women, Inc., and Hope House	706-235-4673	Floyd
<b>St. Mary's</b>	Camden Community Crisis Center, Inc.	912-882-7858	Camden, Charlton
<b>Savannah</b>	Savannah Area Family Emergency Shelter, Inc. (SAFE)	912-234-9999	Chatham
<b>Statesboro</b>	Citizens Against Violence, Inc. P.O. Box 2494 Statesboro, Ga. 30459	912-764-4605	Bullock, Effingham, Jenkins, Screven, Candler
<b>Thomasville</b>	Halcyon Home, Inc.	912-226-6666	Grady, Thomas, Seminole, Mitchell, Decatur
<b>Valdosta</b>	Battered Women's Shelter, Inc. (The Haven)	912-244-1765	Brooks, Colquitt, Echols, Lawndes, Lanier, Berrien, Cook, Irwin, Tift, Clinch, Atkinson, Thomas
<b>Warner Robins</b>	The Salvation Army Safe House	912-923-6294	Houston, Peach, Pulaski
<b>Waycross</b>	Concerted Services, Inc.	912-285-5850	Ware, Bacon, Coffee, Clinch, Atkinson, Pierce

**Hotline: 1-800-33-HAVEN**

# Georgia Legal History Foundation Teaches Lessons From the Past

By W. Rhett Tanner

One of the best-kept secrets in Georgia is the Georgia Legal History Foundation—and this is something I hope to change.

In 1985, a group appointed by the Supreme Court of Georgia and Georgia Court of Appeals began the Foundation, one of the first organizations in the nation to be created to promote the study and preservation of the legal history of a state. This was a part of the implementation of professionalism programs originated by former Chief Justices Harold G. Clarke and Thomas O. Marshall. These jurists, along with former Chief Justice Harold N. Hill Jr., have remained active in support of the Foundation, a tradition continued by Chief Justice Robert Benham, who presently serves as Chairman of the Board of Trustees. Other jurists who have been steadfast in their support include former Chief Justice Charles L. Weltner, Justice George A. Carley, former Chief Judge Dorothy A. Beasley, and Judges Marion Pope, Clarence Cooper, Frank M. Hull, and Frank S. Cheatham Jr. Judge Griffin Bell is the Chairman of the Foundation's Executive Committee. We also were honored to have Governor Roy E. Barnes as a trustee for a number of years; and our trustees are and have been lawyers and laymen of distinction.

The founding President, the late Lawrence B. Custer of Marietta, served in that position for 10 years. During his years of service, the Foundation conducted a number of continuing legal education seminars, established the Woodrow Wilson Dinner tradition, and the Nestor Award. The Foundation also took possession of the artifacts of Woodrow Wilson's Atlanta law office.

Of great significance was the publication of the *Journal of Southern Legal History*, beginning in 1991. The first editor was George E. Butler II, now succeeded by Charles R. Adams III. Volume VIII of that publication is now in preparation and will include Part Two of an oral history of Hon. William Augustus Bootle, as well as other

articles pertaining to the history of the law in the South.

In 1996, the Foundation entered into an arrangement with Mercer's Walter F. George School of Law establishing the Institute of Southern Legal History, directed by Professor Joseph Claxton. This institute has provided much needed stability and support of the Foundation and the *Journal*—and the assistance of the students and staff at Mercer Law has been invaluable.

Over the years, the Foundation has sponsored a series of Woodrow Wilson dinners, at which the speakers have been Prof. Arthur S. Link of Princeton University, editor of "The Papers of Woodrow Wilson" (1988); Sen. Albert Gore Sr. of Tennessee (1989); Hon. Andrew Young (1991); Hon. Clarence Thomas (in his first outside speaking tour after being confirmed for the Supreme Court (1993); and Hon. William Webster (1999).

The Foundation has established a tradition of the Nestor Award. Nestor, of course, was the King of Pylos who aided Menelaus in seeking help of the other Greek Kings in rescuing Helen from the Trojans. A "Nestor" is, therefore, an experienced mentor well known for wisdom. Recipients of the Nestor Award have been: Will Ed Smith, 1980; Hamilton Lokey, 1990; Donald Lee Hollowell and Hon. Elbert Tuttle, 1991; and Hon. H. Sol Clarke, 1993.

In this year, 2000, the last year of the 20<sup>th</sup> century—or the first of the 21<sup>st</sup> depending on how technical you are—at the beginning of a revolution in information, communications and technology, it is well to dwell on our history. We will need the lessons of the past to sort through the rigors of a new age.

The Chairman and Board of Trustees of the Georgia Legal History Foundation cordially invite you to join with us in our effort to bring the past to the present, and to the future. A membership application is printed here for your use. Membership brings with it a subscription to the *Journal*. ☒

*W. Rhett Tanner is President of the Georgia Legal History Foundation.*



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# Georgia Bar Foundation Grant Awards Set New Records

By Len Horton

**T**he Georgia Bar Foundation at its meeting August 25, 2000, made grant awards that set records both in terms of total dollars and in the number of individual grants awarded. The Board of Trustees approved 39 grants, totaling \$2,641,900—the most grant applicants receiving awards and the largest total amount ever awarded in one year.

The total amount awarded in discretionary grants was in addition to almost \$2.5 million awarded in mandatory grants by order of the Supreme Court of Georgia. The two recipients named in the Supreme Court order are the Georgia Indigent Defense Council and the Georgia Civil Justice Foundation.

The Foundation, recipient of Interest On Lawyer Trust Accounts (IOLTA) money by order of the Supreme Court of Georgia, was able to help Atlanta Legal Aid and Georgia Legal Services provide significant civil legal services to needy Georgians. A total of almost \$1.7 million was awarded to these organizations.

In addition to these two organizations, the Foundation also awarded funds to other providers of civil legal services. The Georgia Access To Justice Project, the Georgia Law Center for the Homeless, the Southern Center for Human Rights, and the Statewide Independent Living Council of Georgia received awards totaling \$200,000. Furthermore, the Pro Bono Project of Georgia Legal Services and the State Bar of Georgia received \$50,000.

The Foundation also awarded several other grants for legal assistance to low income people charged with crimes. The Athens Justice Project, the BASICS Program, and the Georgia Justice Project received awards totaling \$108,000. BASICS—an acronym for Bar Association Support to Improve Correctional Services—provides assistance to inmates who are about to be released. It gives them skills to find and hold a job without reverting to crime. The Athens Justice Project is patterned after the Georgia Justice Project, which provides a holistic approach to individuals

in the criminal justice system. Recidivism statistics show that these three programs are effective in having people stay out of trouble after being released from confinement.

The Foundation has become a significant force in efforts throughout Georgia to help children. Grant awards focused on helping those who have been abused by their parents, those who need help to avoid living lives involved with drugs and crime, and those who need to learn about our form of government including the judicial system. The Adopt-A-Role Model Program in Macon, a first-time grant recipient focusing on mentoring children, received \$25,000 to help meet its transportation needs. The Atlanta Volunteer Lawyers Foundation in Atlanta and the Chatham County Domestic Relations Initiative in Savannah received grants totaling \$80,000 for their guardian ad litem programs. The Center for Children and Education received \$10,000 to help youth and their parents deal with school problems. Georgia CASA (Court Appointed Special Advocates) received a grant to help expand the number of programs throughout the state. The Barrow County Child Advocacy Center in Winder, The Children's Tree House in Columbus, the Golden Isles Children's Center in Brunswick, and the Rainbow Connection Child Advocacy and Assessment Center in Jonesboro received grant awards amounting to \$47,500.

Kids in Need of Dreams (KIND), also known as the Truancy Intervention Project, has been in operation in Fulton County since 1991. Seventy-two percent of the participating youth have not had any court charges following their involvement with KIND. After seeing the positive effects of the program in Fulton County, the Georgia Bar Foundation Board of Trustees asked KIND to expand its program throughout the state. A total of \$63,000 was awarded.

Educating Georgia's youth received a high priority. The Youth Judicial Program of the State YMCA introduces 11th and 12th graders to our judicial system by having them debate both sides of an issue before a panel of lawyers and judges. The recipient of \$9,400 this year, it

is a very popular and highly praised program that has been supported by the Foundation annually since 1986.

Also, the YLD High School Mock Trial Committee, which has received grant awards from IOLTA money annually since 1986, received \$58,000. The resignation of its director, Philip Newton, one of the most effective leaders of any mock trial program in the country, would be a major setback to any program, but the YLD has hired Stacy Rieke who, under Newton's tutelage, has the program on track for even more successes. The program has become an effective and popular part of a comprehensive, law-related educational curriculum in many Georgia schools.

Another major educational effort targeting Georgia's school children is the Georgia Law-Related Education (LRE) Consortium of the Carl Vinson Institute of Government at the University of Georgia. This year's grant award of \$85,000 ensures that the Consortium will help provide civics education to children from kindergarten through the 12th grade. The Foundation is also helping to translate into Spanish the Consortium's book, *An Introduction to the Law in Georgia*, and to have added a chapter on immigration law. This grant recipient is managed by its able executive director, Anna Boling.

Two new programs focusing on children also received \$5,000 each in funding: the Macon-Bibb County Teen Court, a diversion program for first-time juvenile offenders, and the Tift Area YMCA, also dealing with at-risk youth.

Since 1989, the Lowndes County Drug Action Council (LODAC) has become a special project of the Foundation. This program has taken the streets back from drug dealers in Hudson Docket and Ora Lee West housing projects in Valdosta. Under the leadership of attorney Steve Gupton, the Valdosta Bar Association has made LODAC its major project and has seen LODAC become a model for how cities can fight crime and win. LODAC received a grant award of \$25,000.

Two additional educational programs received funding this year. The Southern Entertainment and Art Law Center received \$2,000 to conduct seminars to educate artists about important legal issues such as copyright, licensing, and contracts. The Georgia First Amendment Foundation received \$10,000 to help conduct a series of workshops in rural Georgia to educate people about the importance of holding business meetings only when in view of the public. This organization also promotes respect for the First Amendment.

The Diversity Program of the State Bar of Georgia received \$25,000 to assist attorneys to establish their practices and become part of the law firm mainstream in Georgia in accordance with its objectives. The Atlanta Lawyers Orchestra received \$1,500 to help with its start-up costs. Also, Georgia Public Broadcasting received an

award of \$45,000 to create video materials to reduce the impact of telemarketing fraud affecting the elderly.

The Foundation awarded \$15,000 to the Georgia Unit of the Recording for the Blind and Dyslexic. The funds will be used to produce audio recordings of legal books.

The Greater Augusta Citizens Advocacy received \$7,500 to assist people with developmental disabilities who are involved in the judicial system. The Halcyon House in Thomasville received \$10,000 to provide legal assistance to victims of domestic violence.

The State Bar of Georgia received three grant awards totaling \$42,000 for its Family Law Study Project, for a study of attitudes toward the judicial system, and for its video conferencing project.

Because of the IOLTA partnership of lawyers and bankers under the direction of the Supreme Court of Georgia, the Georgia Bar Foundation has become Georgia's major charitable organization devoted to helping solve some of the most important and challenging legal problems of the state. By working together, Georgia's lawyers and bankers have made a significant contribution to our state. On behalf of the Board of Trustees, we thank you. ☐

*Len Horton is the Executive Director of the Georgia Bar Foundation.*

# Insurance Specialists #8

# ARE YOU A PROFESSIONAL YOUNG LAWYER?



By S. Kendall Butterworth

**W**hat is professionalism? I recently had the honor and pleasure of speaking about professionalism to the first-year law students at the University of Georgia School of Law's Orientation Program. As I prepared my remarks, I thought about my present understanding of professionalism as a practicing attorney, and I tried to remember what my notions of professionalism would have been as a first-year law student. All of us are aware of ethics—the minimum standards that are required of all lawyers. Professionalism, however, is a higher standard.

To a practicing lawyer, “professionalism” refers to a number of possible attributes, including an ability to combine zealous advocacy with trustworthiness, courtesy and civility to judges and opposing counsel. In the words of the United States Court of Appeals for the Seventh Circuit:

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously, as lawyers we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and soci-

etal problems in a rational, peaceful and efficient manner.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay, and often to deny, justice.

Unfortunately, some of us have experienced unprofessional conduct by opposing counsel—whether the conduct consisted of abusive discovery practices or lack of appropriate respect or deference—in the day-to-day practice of law.

Because these first-year law students are at least three years away from the traditional contexts where unprofessional conduct occurs (*i.e.*, the courtroom, negotiations or the deposition), I decided to focus my comments on the basic principles of professionalism that are more applicable to the law school setting: treating classmates, law school administrators and professors with respect; developing solid legal skills; and volunteering some time to help those who are less fortunate. In doing so, I began to question how many young lawyers truly conform to these

principles of professionalism.

Certainly, the majority of us are respectful to our colleagues, judges, opposing counsel and clients, and are well on the way to becoming proficient attorneys. But how many of us volunteer our time? As lawyers, we are unable to enter inner-city neighborhoods or third-world countries to perform medical miracles, but we can provide legal services on a pro bono basis to those in need, and we can work to improve the legal profession by actively participating in the State Bar of Georgia.

The Young Lawyers Division has a variety of projects waiting for you—ranging from teaching elementary school students about the legal system and their responsibilities as citizens through the Kids and Justice Committee, to developing seminars to assist attorneys who are considering a job change (either from one firm to another or perhaps from private practice to an in-house or government position) through the Career Issues Committee, to providing legal advice to victims of natural disasters through the Disaster Legal Assistance Committee. If none of our existing projects appeals to you—be creative and develop your own! We always are looking for new talent!

You can decide how much time you have to give—but I urge you to give some, and, who knows, you may even have a great time! Remember, a true professional has many more facets than his or her business persona. ☒

## IT'S THAT TIME AGAIN!

- Deadline for Team Registration and Law Academy Application is Monday, Oct. 2nd
- 3<sup>rd</sup> Annual Law Academy is November 9-12 at Emory Law School
- Contact Stacy Rieke at the Mock Trial office to inquire about coaching, judging and Law Academy opportunities.
- 404/527-8799 or 800/334-6865, [mocktrial@gabar.org](mailto:mocktrial@gabar.org)
- visit our website: [www.gabar.org/mocktrial.htm](http://www.gabar.org/mocktrial.htm)





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## ANNOUNCEMENT

# Annual Fiction Writing Competition

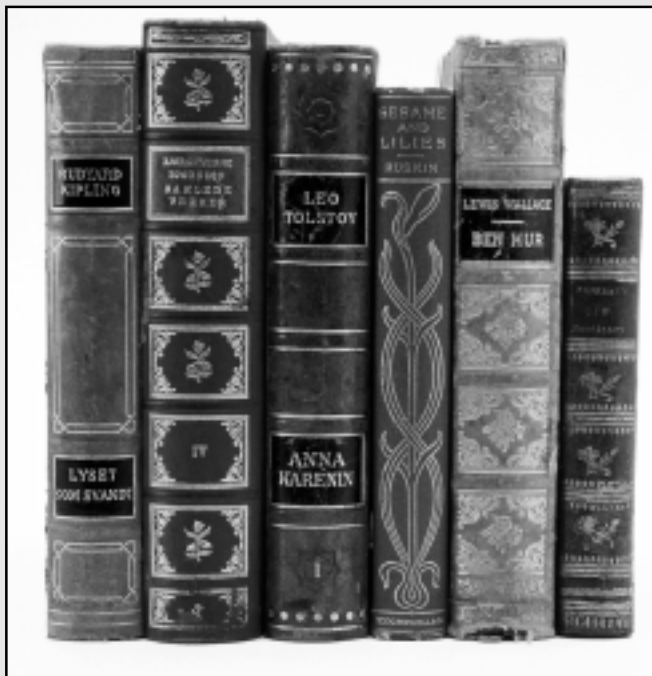
### THE EDITORIAL BOARD

of the *Georgia Bar Journal* is pleased to announce that it will again sponsor the Annual Fiction Writing Competition in accordance with the rules set below. The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar, and to provide an innovative vehicle for the illustration of the life and work of lawyers. For further information contact Jennifer M. Davis, Communications Director, State Bar of Georgia, 800 The Hurt Bldg., 50 Hurt Plaza, Atlanta, GA 30303. Phone (404) 527-8736.

### Rules for Annual Fiction Writing Competition

The following rules will govern the Fiction Writing Competition sponsored by the Editorial Board of the *Georgia Bar Journal*:

- (1). The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
- (2). Subject to the following criteria, the article may be on any fictional topic, and may be in any form (humorous, anecdotal, mystery, science fiction, etc.) Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgment of the Board, contains matter that is libelous, or that violates ac-



cepted community standards of good taste or decency.

- (3). All articles submitted to the Competition become the property of the State Bar of Georgia, and by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental, and that the article has not been previously published.

- (4). Articles should not be more than 7,500 words in length and should be submitted in *triplicate* on

double-spaced, typed, letter-size (8½" x 11") paper.

- (5). Articles will be judged without knowledge of the identity of the author's name and State Bar ID number should be placed only on a separate cover sheet with the name of the story.

- (6). All submissions must be *received* at State Bar Headquarters in proper form prior to the close of business on **January, 26, 2001**. Submissions received after that date and time will not be considered. Please direct all submissions to: Fiction Writing Competition, *Georgia Bar Journal*, 800 The Hurt Bldg., 50 Hurt Plaza, Atlanta, GA 30303. The author assumes all risks of delivery by mail.

- (7). Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the Competition by letter. Honorable mentions may be announced.

- (8). The winning article, if any, will be published. The Board reserves the right to edit articles, and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality. ☒

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## WHO'S WHERE

### In Atlanta

**Gregory T. Gronholm** and **Jeffery E. Young**, former partners of the Atlanta firm Jones & Askew, recently joined **Alston & Bird LLP's** intellectual property practice as partners. Gronholm and Young have worked on a broad range of cases involving patent law, and both are registered to practice before the U.S. Patent and Trademark Office. Visit the firm's Web site at [www.alston.com](http://www.alston.com).

**Bruce R. Steinfeld** and **Shayna M. Steinfeld** announce the opening of **Steinfeld & Steinfeld PC, Attor-**

**neys at Law.** Bruce practices family law while Shayna's concentration is on bankruptcy, business reorganization and creditors' rights. Bruce was formerly a shareholder with Alembik, Fine & Callner PA, as well as a law clerk to the Hon. Dorothy A. Robinson. The Steinfelds are graduates of Emory University. Their new office is located at 31 Lenox Pointe, N.E., Atlanta, GA 30324; (404) 495-0740 or (770) 493-1163, Fax (404) 261-3670 or (770) 492-0788; [www.steinfeldlaw.com](http://www.steinfeldlaw.com).

**Davis, Matthews & Quigley PC** announces that **Robert O. McCloud Jr.** has joined the firm as a shareholder. Also, **William A. Rountree** and **R. Lawton Jordan** have become associated with the firm. McCloud will continue his practice in the areas of corporate law, estates and trust, taxation, bankruptcy and associated litigation. The firm is located at 3400 Peachtree Road, N.E., 14<sup>th</sup> Floor, Lenox Towers II, Atlanta, GA 30326; (404) 261-3900, Fax (404) 261-0159.

**Russell C. Ford** has joined the Atlanta office of **Fragomen, Del Rey, Bernsen & Loewy** as an associate concentrating in business immigration law. The office is located at 1175 Peachtree Street, N.E., 100 Colony Square, Suite 700, Atlanta, GA 30361; (404) 249-9300, Fax (404) 249-9291; [www.fragomen.com](http://www.fragomen.com).

**G. Mark Cole** has been named partner of the Atlanta law firm **Autry & Horton, LLP**, which will continue its representation of electric utilities and other companies in corporate and power supply matters, litigation and dispute resolution under the

name **Autry, Horton & Cole, LLPP.** Also, **James H. Curry** has joined the firm as an associate. The firm is located at 2100 East Exchange Place, Suite 210, Tucker, GA 30084; (770) 270-6974, Fax (770) 270-6970.

**Love and Willingham, LLP** announces that **Jeffrey L. Shaw** and **Michael D. Harper** have become associates of the firm, which is located at Suite 2200, Bank of America Plaza, 600 Peachtree Street, Atlanta, GA 30308; (404) 607-0100, Fax (404) 607-0465.

The national law firm of **Seyfarth Shaw** has announced an agreement with Atlanta-based **McCullough Sherrill** whereby the latter's 40 attorneys will join Seyfarth Shaw's Atlanta office. The Atlanta office is located at One Peachtree Pointe, 1545 Peachtree Street, N.E., Suite 700, Atlanta, GA 30309-2401; [www.seyfarth.com](http://www.seyfarth.com).

**Fios**, a national provider of electronic evidence discovery services and corporate records auditing, announces that **Denise Kaufman** has joined the company as account manager at its new Atlanta office. Kaufman received her J.D. from Georgia State College of Law. She previously served as Director of Provider Relations and Network Development for One Health Plan/ Great West Life and Annuity in Atlanta. Visit the company's Web site at [www.fiosinc.com](http://www.fiosinc.com).

**Robert E. DeWitt** has joined **Troutman Sanders LLP's** health care practice group as of counsel. DeWitt, formerly a partner with Gambrell & Stolz LLP, received his law degree from the Cornell Law School. The firm is located at Bank

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of America Plaza, Suite 5200, 600 Peachtree Street, N.E., Atlanta, GA 30308-2216; (404) 885-3000.

**McGuire, Woods, Battle & Boothe LLP** has changed its name to **McGuireWoods LLP**, reflecting the firm's commitment to redefining the traditional role of law firms by providing innovative legal and consulting solutions. Also, **Mildred A. Bennett** and **Erin R. Schatz** have joined the firm's Atlanta office as associates in the labor and employment department, and **Howard W. Walker** has joined the firm as a partner in the financial services department. Visit the firm's Web site at [www.McGuireWoods.com](http://www.McGuireWoods.com).

The new firm of **Owen, Gleaton, Egan, Jones & Sweeney LLP** has been formed by: **H. Andrew Owen, Timothy J. Sweeney, Perry A. Phillips, David C. Will, Charles J. Cole, and Rolfe M. Martin** (all former partners of Harman, Owen, Saunders & Sweeney PC), together with **Frederick N. Gleaton, M. Michael Egan, W. Seaborn Jones, Marla Eastwood, and Philippa V. Tibbs** (all former partners of Gleaton, Persons, Egan & Jones). Associates **R. Keith Whitesides, Patricia A. Wager, Merritt McGarrah Wofford, J. Pargen Robertson Jr., Roger E. Harris, Amy J. Kolczak, and John S. Stevens** will continue as associates with the new firm, which is located at 230 Peachtree Street, N.W., Suite 1900, Atlanta, GA

30303; (404) 688-2600, Fax (404) 525-4347.

## In Savannah

**Brennan & Wasden LLP** announces that **Mark H. Glidewell** has joined the firm as an associate and **James V. Painter** has been named partner. Painter, who has been with the firm since 1994, is a graduate of the University of Georgia Law School. Glidewell is a 1997 graduate of Mercer Law School. The firm is located at 590 SunTrust Bank Building, 33 Bull Street, Savannah, GA 31401; (912) 232-6700, Fax (912) 232-0799.

## In Florida

**Sutherland Asbill & Brennan LLP** is pleased to announce that **Russell S. Kent** has joined the firm's

Tallahassee office. He will practice in the litigation group, focusing on the representation of car, truck and motorcycle manufacturers and importers in civil and administrative litigation against motor vehicle dealers. Previously, Kent practiced with Hunton & Williams in Atlanta.

## In Virginia

**Cantor Arkema & Edmonds PC** is pleased to announce that **Wallace B. Wason Jr.** has been elected as a director of the firm. Wason is a member of the State Bar of Georgia and a graduate of the University of Georgia School of Law. The firm is located at The First National Bank Building, 823 East Main Street, 15<sup>th</sup> Floor, P.O. Box 561, Richmond, VA 23218-0561; (804) 644-1400; visit the firm at [www.cantorarkema.com](http://www.cantorarkema.com). ☒

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# Appellate Practice and Elder Law Sections Formed

**WHEN YOU RECEIVED YOUR** dues notice, the new **Appellate Practice Section** had not been established; however, you can join now. This new group is headed by Laurie Webb Daniel of Holland & Knight. Section dues are \$15 a year. To join, make your check payable to the State Bar of Georgia and mail it to the attention of the State Bar's Membership Department, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA 30303. Please list your name and Bar number, and mention

the section's name on the check.

As previously reported, an **Elder Law Section** has been formed. Amazingly, the section already has 280 members and a newsletter! This group is headed by Ellie Crosby of the Georgia Senior Legal Hotline.

**Section Leaders** met August 29<sup>th</sup> at Bar Headquarters to map out section activities for the new Bar year. The **Midyear Meeting** of the State Bar will be held again at the Swissotel in Atlanta in January, 2001, and section members will

receive a program of the meeting's activities with their section's plans noted. For the first time ever, Midyear Meeting notifications will be mailed statewide in November. Last year, 17 State Bar sections met and this year promises to be even busier.

The **Antitrust Section** hosted Michael Hausfeld in June. Hausfeld was named one of the country's top 10 litigators by the *National Law Journal*. He spoke on "The Class Action As a Tool For Social Change."



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1. Pictured left to right are Major General Blesse and Alan Armstrong, Aviation Section Chair. 2. Pictured left to right at the Computer Law meeting are Thomas C. Arthur, George Shepard and Jeffrey S. Cashdan. 3. Pictured left to right are Barbara Tinsley, former Chair of the Antitrust Section, and Michael Hausfeld. 4. Program Chair John Webb and Aviation Section Chair Alan Armstrong exhibit the State Bar Section Achievement Award for the 1999-2000 Bar Year.



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The **Aviation Law Section** held another, always popular, luncheon at the 57th Fighter Group Restaurant on August 23. Their speaker was flying ace Major General Frederick “Boots” Blesse. Major General Blesse completed his first combat tours over Korea in 1951, and he volunteered for a second combat mission. He also flew 108 combat missions over North Vietnam and retired in 1975 as Director of Operations for the Pacific Air Command. His talk was so spellbinding that section members talked him into staying a little longer. He autographed his book, *Check Six, A Fighter Pilot Looks Back*.

**Computer Law Section** members met August 24. Their speakers’

subject was “The Microsoft Breakup: A Point/Counterpoint Discussion,” and a spirited discussion it was! Thomas C. Arthur of Emory University School of Law served as moderator. Presenters were George Shepard of the Emory University School of Law and Jeffrey S. Cashdan of King & Spalding. The section’s new chair is Sandra Cuttler of Consumer Financial Network, Inc.

Many of our sections have community projects, and the **Health Law Section** is no exception. They recently gave \$2,500 to the University of Georgia Foundation for a Home Health Care Project. Specifically, this project will create a home health care services guide for

consumers. This is the third year the section has supported health care projects. Members receive a biannual newsletter. The section is headed by Kevin Grady of Alston & Bird.

The **Labor & Employment Law Section** recently elected William Snapp of the EEOC as its new chair. Section members should look for a new member directory in the next month or so, along with other planned activities.

Visit the State Bar’s Web site at [www.gabar.org](http://www.gabar.org) for a wealth of section information. ☐

— By Lesley T. Smith, *Sections Liaison*

# S. Ga. Mediation pickup 8/00 p57



# CHALLENGING THE WAY WE SEE THE LAW

**Milner S. Ball, *Called by Stories: Biblical Sagas and Their Challenge for Law* Duke University Press, 264 pages \$17.95**

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**Reviewed by Douglas B. Ammar**

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**GROWING UP POOR, MY PRIMARY GOAL WAS** escape. What better way than to become a lawyer? Surely that would quiet the demons urging me to replace my childhood poverty with a thick wallet. Surely status and security would set my life on a different course.

Instead, out of my sense of faith and calling, within a year of graduating from law school, I began representing the poorest of the poor, reaching out to neighborhoods that haunted me, working for a non-profit law office. I entered the practice of indigent defense law both reluctant and willing. Lawyering was supposed to be my way out of the neighborhoods I ran from, a way of distancing my past from my future and ensuring both to be full of promise and prosperity yet it was (and is) here, with the poor, that my truest salvation lays. Perhaps similar to Moses' journey back to Egypt to free the Israelites, my freedom lies in the place of apparent oppression.

Perhaps that is true for most of us — the counter-intuitive paths towards our heart's desire are the only way out. The way out is back. And back is painful. It doesn't appear at first to be progress . . . yet it is only in going back that we can be freed of the past, free not to repeat the past. Such progress tilts our conventional understanding.

This article was originally intended to be a straightforward, block-and-tackle approach to a book review. Like the "meat and three" cafeterias found throughout the South (good but you've seen it before), this article would have been no different. The generic approach is neither in keeping with who Milner Ball is nor with what he writes.

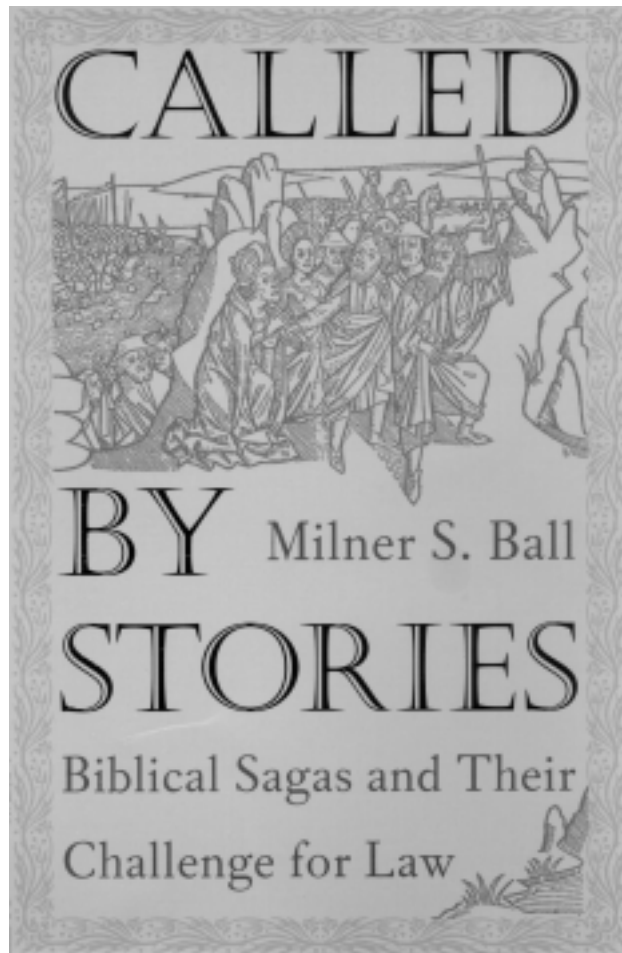
In my interview with Professor Ball (on the next page), true to the title of his new book, *Called by Stories: Biblical Sagas and Their Challenge for Law*, he inspired me in a different direction, which lead me to begin this

review with a bit of my own story. He encourages us to think about stories differently, to add validity to our stories and calls us out into the open spaces of our faith, our journeys, our practice. Just as I expected my life and my life in the law to go in one direction, so too can the power of stories alter our intention, our understanding, and our life.

*Called by Stories*, challenges the way we see our lives, the way we see law, the way law is taught, and the way we practice law. Professor Ball is encouraging us to value our stories—value the listening and the telling—where there is a different kind of learning that we open ourselves up to, a learning that runs counter to the way so many lawyers and law students are trained to think.

Professor Ball is both the Harmon W. Caldwell Professor of Constitutional Law at the University of Georgia

School of Law and is an ordained Presbyterian minister. As the author of four books and numerous articles, he has



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**CONTINUED ON PAGE 46**

# “Law Is A Wonderful Tool”

**P**rofessor Milner Ball is back in school. As a Presbyterian Minister, lawyer and law professor, he has always been something of an enigma. But now, the picture is even more interesting. After nearly 22 years of teaching at the University of Georgia, after graduating from UGA's law school first in his class about 30 years ago, he has now “re-enrolled” as a student in the University of Georgia's Legal Aid & Defender clinic run by Russell Gabriel—one of Professor Ball's former students.

## **Where did you grow up?**

Well, I was born in Atlanta on the night of a terrible tornado in Gainesville. So my father wasn't present at my birth. He was covering the story in Gainesville. Then we lived in New York. During the war years, I lived in Eatonton, where my family came from. All of my family came from Eatonton and Milledgeville. After the war, when my dad returned, we moved to Tennessee. That's where I met my wife [June].

## **Tell me about that.**

June was in the 8<sup>th</sup> grade and I was in the 2<sup>nd</sup> year of high school and we have been dating ever since.

## **How did you meet?**

I played mandolin and called square dancing. That's what I was doing [when we met]. June didn't remember who I was at all but there she was . . .

## **How about college and school?**

We went east for education to Princeton and then to the Harvard Divinity School. I had a Fulbright to study theology in Europe. Among others, I studied with Karl Barth.

## **Did you get your Masters of Divinity at Harvard?**

Actually, it's a Bachelor of Scientific Theology—they've changed the name of it . . . only Harvard did stuff like that. . . . It was so exciting to be there at that time. You had a sense that something really important was happening there.

## **After Europe . . . ?**

I came home from my Fulbright and was minister at a church in Manchester, Tenn. Then in 1965 or 1966, I came to be the campus minister at the University of Georgia.

## **What about law school?**

[After graduating from UGA's law school in 1971] I was planning on going to work for Georgia Indigent Legal Services (now Georgia Legal Services). Dean Rusk, in the meantime, had come to the University of Georgia and taught at the law school. I boycotted his classes. I demonstrated against him when he came down from being Secretary of State. And that was one of the reasons he was angry with me for what I was doing as campus minister. He came up to me (after completing law school) and said

would you like to stay on and represent me at the UN Conference on Human Rights. That was so odd to me that I accepted. It was so odd that it must be something that I need to do . . . I stayed on with the University of Georgia for a year. The UN Conference was in 1972 held in Stockholm.

## **Then you entered academics?**

After coming home from Stockholm, I started looking for work . . . I got a call from a former teacher of mine to come up to Rutgers in Camden, New Jersey. I had still thought that I was going to work for Georgia Legal Services, but I honored my teacher. I went up there but I determined in advance that no one would ever want me in South Jersey. I taught there from 1972-1978. Then I came back here.

## **So you have been here (at UGA) for 22 years.**

Yes. I love it. I love what I do. I really love the law school . . . It's interesting. One of the good things is that there is not a rigid distinction at UGA between students taking clinical courses and those who are taking strictly academic courses.

At many law schools the people interested in public interest/pro bono and that sort of thing tend to gather around the clinical courses, and the people going into the established practices stay on the academic side. But at the University of Georgia, there is not that kind of ideological distinction . . .

As a consequence, there is not a distinction among the Georgia Bar—at least not among our alumni. It is much more natural for lawyers of the State Bar of Georgia in established kinds of practice to accept their own obligations to do public interest work and understand others doing public interest work. It has a really nice affect on the Georgia bar.

## **Why law school? Was it the time? The '60s and '70s?**

I found increasingly that, while I was the minister to the students, they needed legal counsel. They would be demonstrating. I can remember having to send as many as 150-200 people to attorneys. If you wanted to be able to give voice to those who had been denied it, that law would be the way you would go to get the equipment to do that. And in the late '60s and early '70s, the issues I cared most about had no place, no voice. Except in the courts . . .

It seemed to me that that was the place to go to give voice to the poor, the excluded. What you did was to become a lawyer . . . That seems not to be an approach to law that young people coming to law school think about. I don't know why . . . There [in the courts] goodness and justice were being done and could be seen. You had two choices. Court was one and demonstration was the other. It seemed to me obvious, just like now, that law is a wonderful tool to be able to give voice to others. ☒

inspired a myriad of students, lawyers and academics alike. Weaving together his theological perspective with his continued commitment to justice, Professor Ball inspires us through *Called by Stories*. His book is divided into three primary sections. The first focuses on the story of Moses. The second section, “The Encompassing Women,” focuses on the role of the midwife. The final section centers on the “Gospel According to John.” Some of my favorite chapters involve the more personal stories from Professor Ball. One such example is in Chapter 12 (in the middle of the second section) in which Professor Ball shares his journey with the Public Interest Practicum that he started at UGA. I also found much to meditate on in the last section where he devotes considerable time to the life and influence of a mutual hero: William Stringfellow (1928-1985), the theologian and Harvard-educated attorney who devoted himself to representing and ministering to the poor. Even as one who is likewise dedicated to the cause of the poor, I was challenged by his discussion of Stringfellow’s ideas and life.

One of the most striking challenges that Professor Ball offers readers is to think about the law in a different way. In Chapter Three, he

writes about being “counsel for the situation,” a Justice Brandeis quote. Using the stories of both Justice Brandeis and Moses, Professor Ball encourages us to think about the limitations and still present opportunities in the practice of law. He engages us in the potential broader context, the impact (positive and negative) that a lawyer has on humanity. Moses offers a poetic backdrop to this analogy as he would often alternate between “representing” (*i.e.*, speaking for) God and the Israelites. He was counsel for the situation—representing both the divine and the people. Lawyers, like Moses, are often considered “a mouthpiece;” as such there is room to examine how lawyers’ conduct affects the humankind.

Professor Ball’s book is also about relationships. It is about Biblical images of “standing in the middle,” being appropriately disobedient, bridging the often-rigid world of lawyering with the power of story. Using stories such as that of the midwives who stood on the edge of life—saving Moses from the pharaoh and the heroic example of William Stringfellow—Professor Ball links the narrative and the analytical, the past and the future. Underscoring the importance of stories, he says:

Remembered stories do not offer, as a substitute for the responsibility of judgment, a mechanical literalism of one-to-one correlations between story and present action. Stories nurture apperception and the discernment of guiding presences between the lines of legal texts and between the facts of situations.

Law, he writes, is a constructed world, not a given world. As a world of our creation, he encourages us to use different tools—not to neglect the tools of lawyer—but also to take up new ones that are present all around us to become active participants in the creation of a just world.

*Called by Stories* encourages us to commit to effecting justice. This is not an idle or empty call to action; just as Professor Ball exhorts us to live out the values of service, sacrifice and humility (difficult, at best, for many in the legal community), he is not exempt. As of this writing, this distinguished scholar is doing what few others have the courage to do. He is enrolled, as a *student*, in UGA’s Legal Aid and Defender clinical program (*e.g.*, the Athens-Clark County public defender). He has taken on the yoke of student in a trial clinic, working side by side with other students to represent the poor. He extols us by his actions as well as by his words. He lives out the example he preaches.

By starting the Public Interest Practicum, by his courageous actions in the 1960s, by stepping away from the podium and into the fray of criminal practice, by standing up for justice, by delivering to us yet another provoking encounter with the law, with stories, with theology — Professor Ball invites us to become more than lawyers. He invites us, calls us back, into the human family. ☒

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*Douglas B. Ammar is the director of the Georgia Justice Project (GJP) in Atlanta. A graduate of Davidson College and Washington & Lee University School of Law, Ammar is originally from Charleston, West Virginia. GJP is a holistic and interdisciplinary law office whose mission is to ensure justice for the indigent criminally accused and to assist their clients to lead crime-free lives.*

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# Teaching Professionalism Early

**IN THE LAST ISSUE, YOU READ** about “Professionalism in the Classroom and Beyond.” In that article by Karen Raby, you learned about the highly-acclaimed Professionalism Orientations hosted annually for first-

year law students by the State Bar of Georgia and the Chief Justice’s Commission on Professionalism.

As Raby explained, “After a brief keynote address by either an appellate judge or a State Bar officer,

the first-year students split into breakout groups to discuss various hypotheticals related to professionalism and ethics dilemmas that arise during the practice of law and, sometimes, even in law school.” ☐



Now in its eighth year, the Professionalism Orientations were again a success at Georgia’s law schools. **1:** President George Mundy addressed law students at Mercer. **2:** (l-r) Supreme Court Justice Harris Hines and Dean Howard Hunter look on as Robert Preston Brown, president of Emory’s law alumni association, addresses their first-years. **3:** Donald Donovan (standing) leads a breakout group at John Marshall. Citing his belief in the importance of the orientations program, Donovan has been a volunteer since its inception in 1983 by

annually leading breakouts at three different law schools — Georgia, Georgia State and John Marshall. **4:** Stephen Boswell (standing right) took his group of Georgia law students outside to discuss professionalism hypotheticals. **5:** David Meltz, Dean Emeritus of John Marshall Law School, introduces the program to their first-year students. **6:** Georgia State law students and volunteer lawyers mingle at a reception following the orientation.

The Lawyers Foundation of Georgia Inc. sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible.

Clark, Irma Laning  
Cumming

Admitted 1972  
Died January 2000

Connally, Florence M.  
Atlanta

Admitted 1980  
Died July 2000

Davis, Thomas O.  
Decatur

Admitted 1932  
Died July 2000

Dutcher Jr., B. Dodge  
West Redding, CT

Admitted 1974  
Died September 1999

Gibson, Thad W.  
Americus

Admitted 1959  
Died May 2000

Glover, J. Littleton  
Newnan

Admitted 1935  
Died June 2000

Kyle, Pugh E.  
Atlanta

Admitted 1951  
Died July 2000

Owens, Norman A.  
Conyers

Admitted 1948  
Died March 2000

Pashley, Bruce E.  
Marietta

Admitted 1978  
Died July 2000

Roberts, Lawrence Wayne  
Cordele

Admitted 1973  
Died April 2000

Roberts, William C.  
Monroe

Admitted 1981  
Died July 2000

Schroeder, Gregory Z.  
Atlanta

Admitted 1981  
Died July 2000

Vann Jr., Thomas K.  
Thomasville

Admitted 1948  
Died July 2000

Whitehurst III, Andrew Jackson  
Thomasville

Admitted 1938  
Died February 2000

Young, Ronald Winston  
Brunswick

Admitted 1974  
Died July 2000

**Forrest L. Champion Jr.**, 78, of Columbus, Georgia died on May 4, 2000. Born in Chipley, Georgia, he attended West Georgia College and graduated from Emory University with a BS in Political Science. He earned his JD, *summa cum laude* from University of Georgia School of Law, and he was admitted to the State Bar of Georgia in 1945. Mr. Champion practiced with Foley & Chappell, Kelly Champion Henson, Champion & Champion and Hatcher, Stubbs, Land & Rothschild. He was a member of the Board of Governors of the State Bar of Georgia and the American College of Trial Lawyers. He is survived by his wife of 52 years, Irene S. Champion, daughter Grace C. Robbins, sons Forrest Lee Champion III and Stephen Spencer Champion, siblings Myrtle Hopkins, Lillian

Pic

Champion

Harris, Herbert Champion, and Lewis Champion and grandchildren Forrest Lee Champion IV, Lauren Champion, Forrest Jean Robbins, Leslee Champion, Sallie Irene Champion and Kirsten Champion.

**Robert Leslie Herman**, 57, of Atlanta, Georgia, died on August 18, 1999. Born in Brooklyn, New York, he attended the University of North Carolina, Chapel Hill and graduated from Emory University with a BBA in 1964. He earned his JD from Emory University School of Law. He was admitted to the State Bar of Georgia in 1967. Mr. Herman practiced law with Gambrell, Russell, Moye and Killorin, served on the tax staff of Arthur Anderson & Company and was with Herman & Sleppy and with Arnold Wright and Joe Freeman. He was a member of the American Bar Association, Atlanta Bar Association, American Trial Lawyers and the Old War Horse Club. He is survived by his wife of 20 years, Marsha Westbrook Herman, and his son Brandon W. Herman.

## Discipline Notices (June 23 - August 31, 2000)

### DISBARMENTS

None

### SUSPENSIONS

None

### PUBLIC REPRIMAND

#### Robert A. Falanga Atlanta, Georgia

Robert A. Falanga (State Bar No. 254400) petitioned the Supreme Court for voluntary discipline. The Court accepted Falanga's petition on

July 10, 2000, and ordered him to receive a public reprimand. Falanga admitted that he obtained clients by uninvited telephone solicitation in violation of the Bar Rules. He argued in mitigation that he believed he had a constitutional right to do so. Because Falanga had no prior disciplinary record and because the imposition of a public reprimand was consistent with the Court's prior orders, Falanga received a public reprimand. Justice Hunstein dissented, stating that Falanga should have been disbarred for knowingly violating the Bar Rules.

### INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since June 23, 2000, six lawyers have been suspended for violating this Rule.

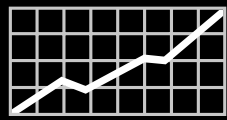
**Howard Thompson Oliver Jr.**, 86, of Gainesville, Georgia, died March 31, 2000. Born in Hall County, he graduated from Young Harris College in 1934 and Piedmont College in 1936. He was admitted to the State Bar of Georgia in 1939, and he practiced law in Gainesville for over 50 years. He was in private practice with his father, Howard Thompson Oliver, Sr., and he was Solicitor of the State Court in Hall County from 1979 to 1982. He was a member of the Northeastern Bar Association and the Gainesville Lodge No. 219 F&AM, Allegheny Chapter No. 64 of the Royal Arch Masons. He is survived by his wife of 60 years, Lucille S. Oliver, son Travis Oliver, daughter Euzelia Oliver Nix, and grandchildren Michelle O. Peets, Howard Thompson Oliver III, Natalie Nix, Dr. Lucy Nix Scarbrough, Nancy Nix, Earnest Nix, as well as great grandchildren Meritt Peets, Katherine Oliver, Donavon Oliver, and Paige Oliver.



Oliver

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





# Properly Communicating with Clients, Part II

By Natalie R. Thornwell

**IN PART ONE, WE EXPLORED** adequate telephone, voice mail, and fax systems; and some effective policies and procedures for properly communicating with clients when using these systems. In this article, our focus shifts to those areas of your law practice that do not always speak directly to the usage of common office equipment. Here we will examine some of the more subjective areas of client communications. For each ask yourself how the systems (the equipment or means used by your firm) and procedures (how your firm uses the respective equipment or means) affect clients. The reactions of your clients will be your guide in determining whether or not you are communicating with them properly.

## Face-to-Face Meetings

When meeting with clients face to face, first consider your surroundings. Take time to think about the physical layout of your firm. Is your conference room in an easily accessible area of the office? What about other private meeting space? Does the reception area say, "We welcome your business and are ready to serve you"? Do you have comfortable chairs and magazines of interest to your clients; a play area and toys for children? Are coffee and water available? Are these beverages routinely offered? Do you have tissues at your desk and a restroom close by? The test that always intrigues me is to have attorneys come into their own offices as if they were clients. What would you see in the surroundings at your firm when looking through your clients' eyes?

Monitor the length of your initial client interviews. Is the amount of time adequate to get the information you need? Will meeting for a particular length of time warrant a charge for the consultation? How are prospective clients reacting to a charge for the initial review of their matter? If you do not charge a fee for the initial consultation, do you make those seeking your help feel rushed in relaying their concerns? Are you reassuring and straightforward in your counseling role, providing a complete list of options to your clients, and explaining in terms they can understand what is likely to happen if they choose a particular option? Did you make your client feel protected and valued?

Clients, regardless of their situation, should always be treated respectfully and professionally. When you meet clients face to face, pay close attention to what they are trying to tell you both verbally and physically. Note the tone of their voice and the position of their body as they speak to you. Practice being an "active listener." Be sure to watch your own tone of voice and body position as well. Remember, clients "hear" just like you do, and you want them to "hear" the right message when they are meeting with you face to face.

Include a section on professional conduct that is expected from your legal team in your written policies and procedures manual. Also, get a report card on how your firm performed by using a client satisfaction survey. You can download our sample client satisfaction survey from [www.gabar.org/lpm.html](http://www.gabar.org/lpm.html).

A client survey is also part of the Client Care Kit, which was developed

by the State Bar to assist you in communicating with your clients. The kit also contains a booklet that explains the lawyer-client relationship; a brochure that dispels lawyer myths; and several forms for your client to use—About Your Fees, Who's Who in Your Lawyer's Office, Documents You Need, Schedule of Important Events, in addition to the Client Survey. The kits can and should be personalized to meet your needs.

To order the Client Care Kit, see page 51.

## Snail Mail and Other Correspondence

Keep up with all of the mail, correspondence, and documents from, to, and for your client. Can your clients rest assured that their file documents are not lost or mishandled by your firm? Clients are often very protective of their file documents. Be sure to send them copies of all items within their matter files. To check out a review of some good document management systems, give us a call.

Make sure your clients understand you when you write to them. Often, attorneys mistakenly assume that, because a client seems extremely sophisticated, he or she understands the information that is being presented. Don't make this mistake. Communicate in an easy-to-understand style; use little or no legalese. Be sure to send clear instructions and explanations of events to your clients as well.

It is always interesting to note the reaction of someone who might be in a stressful situation. The communication lines can become blurred when people

can't get their minds off of their legal crisis; it is easy for them to misunderstand or skip over important pieces of information. Take the initiative and send your client clear, descriptive file status reports often. Remember, no matter how sophisticated, everyone can relate to the age-old acronym KISS – Keep It Simple Stupid.

## E-mail Technology

Don't miss the opportunity to further impress your clients by showing them that you are using the latest, most efficient technological means of staying in touch. E-mail has taken off at a phenomenal pace over the last few years. In fact, I encourage the use of e-mail frequently to stay in touch with clients and to deal with some of your client's less sensitive

questions and concerns.

If you practice in a firm with advanced technological systems, then by all means exploit this means of communication. Express to clients how e-mail will save them time and, consequently, money. You may even consider having your firm utilize a virtual private network or Intranet. In this way, the client is given limited access and control over some of the actual workings of his or her file.

When communicating via mail and other forms of correspondence, always evaluate what you are telling the client about the firm. Is your letterhead professional? Informational? Ethical? Can a client easily see where your office is located, in what practice areas you work, who is on your team, and the like. If you have any ethical concerns about your letterhead or any other area

of your practice, don't forget to contact the Bar's Ethics Hotline for assistance. They can be reached at (800) 682-9806 or (404) 527-8720.

If you need more information or assistance on ways you can improve the operation of your practice by properly communicating with your clients, please contact the Law Practice Management Program at (404) 527-8773 or me directly at (404) 527-8770 or [natalie@gabar.org](mailto:natalie@gabar.org).

## Conclusion

In the next issue, we will discuss billing and marketing—two keys to success in client communication. ☒

*Natalie R. Thornwell is the Resource Coordinator for the Bar's Law Practice Management Program.*

# ORDER FORM

**C**lient Care Kit folders include: a booklet describing the working relationship between lawyers and clients; a pamphlet that dispels lawyer myths; and the following forms for your client to use — who's who in your lawyer's office, about your fees, documents you need to know about, schedule of important events, and a client survey. The cost is \$1.00 per copy (entire kit) and \$5.00 shipping and handling. Enhance communication with your client today!

### Client Care Kit Quantity (check one)

_____ 25 @ \$1.50 per kit:	\$37.50 + \$5.00 shipping & handling	= \$ _____
_____ 50 @ \$1.50 per kit:	\$75.00 + \$5.00 shipping & handling	= \$ _____
_____ 100 @ \$1.50 per kit:	\$150.00 + \$5.00 shipping & handling	= \$ _____

### Myths Brochure

The lawyer myths brochure can be purchased separately to display in your reception area. (Order in quantities of 100 — write quantity in blank)

\_\_\_\_\_ @ \$15 per 100 brochures price includes shipping & handling

### Total enclosed

Client care kits	\$ _____
Lawyer myths brochure	\$ _____
Total of Check	\$ _____

Make your check payable to State Bar of Georgia and return to:

State Bar of Georgia  
Communications Department  
800 The Hurt Building  
50 Hurt Plaza  
Atlanta, GA 30303

Payment must be received before order is processed.





## Alcohol/Drug Abuse and Mental Health Hotline

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

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

west group 4 color new art

**JUDGE CLINTON DEVEAUX** of Atlanta, who currently presides over the Atlanta Municipal Court, has been elected to a three-year term on the **National Judicial College Board of Trustees**. He was admitted to the Georgia Bar in 1975 and holds a B.A. from the State University of New York at Buffalo and a J.D. from Emory University.

Kilpatrick Stockton's Atlanta partner, **Rupert Barkoff**, was recently recognized by *Franchise Times* magazine in its legal focus issue and its listing of "Top Franchise Rainmakers." **Kilpatrick Stockton** was also named in the magazine's survey of leading franchise law firms. Barkoff was previously included in Woodward/White Inc.'s 1999-2000 issue of *Best Lawyers in America* and *An International Who's Who of Franchise Lawyers*. He was also quoted numerous times as an expert source in the just-released book, *Franchising for Dummies*, co-authored by Wendy's founder Dave Thomas and franchise consultant Michael Seid.

Also, Kilpatrick's **Tad Carithers** recently appeared on the popular game show, *Jeopardy*, winning more than \$60,000 and a brand new corvette. Carithers will return to the show for its Tournament of Champions in May 2001.

**Holland & Knight LLP** received the **Employer of the Year Award** from the **Marriott Foundation for People with Disabilities** on June 1, 2000. The firm was honored for its exemplary support of the Bridges . . . From School to Work program, which fosters paid employment opportunities for high school seniors with disabilities. In addition to employing Bridges youth, Holland & Knight has supported the program through \$35,000 in financial contributions, as well as by participating in the Bridges Foundation's local

## Executive Committee Meets in President's Hometown



From August 11-12, the State Bar's Executive Committee, guests and staff held a meeting and retreat in President George Mundy's hometown of Cedartown, Ga. The group is pictured at the Pope County Historical Society: (kneeling front l-r) Jim Durham, Treasurer; President Mundy; (standing l-r) Sharon Bryant, Chief Operating Officer; Cliff Brashier, Executive Director; Phyllis Holmen; Kendall Butterworth, YLD President; Jim Hawkins, Chair of the General Counsel's Office Overview Committee; Bob McCormack, Deputy General Counsel; Harvey Weitz; Rudolph Patterson, Immediate Past President; Bryan Cavan; Rob Rheinhardt; Robert Ingram; Jimmy Franklin, President-elect; Bill Smith, General Counsel; Bill Barwick, Secretary; Pete Daughtery, YLD President-elect; and David Lipscomb.

Business Advisory Councils.

**Philip W. Engle** has been elected to the **Board of Directors of the International Association of Attorneys and Executives in Corporate Real Estate (AECRE)** for a three-year term. Engle is vice president, general counsel and

secretary of I2G0.com. AECRE, a non-profit association with 250 members from 29 states and four countries, is the only forum in the U.S. that brings attorneys and real estate executives together for consideration of corporate real estate issues. ☐

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ages. As required by federal regulation, the state plan must be based “on specific descriptive and numeric criteria and result in a computation of the support obligation,” *not* a *range* of computation.<sup>48</sup> For a single child, for example, the Guidelines could result in one NCP paying 17% while an identical NCP elsewhere (or, one who may have offended the same judge in some way) will pay 23%.

As noted previously, where a child support case goes to trial, the trier of fact is required to consider 18 possible reasons for deviating from the presumptive award.<sup>49</sup> Even assuming an NCP could afford a trial, there is no factual basis for the amount or degree of deviation. Indeed, Dr. Williams told the Commission that “what troubles me about this is that it doesn’t tell anybody how you should deviate . . . you’re given a tremendous latitude for variation, but you have no idea how that latitude is being exercised and whether it’s being used to achieve results that are fair or not.”<sup>50</sup>

Georgia’s Constitution provides equal protection guarantees that are “coextensive” with those of the federal constitution.<sup>51</sup> “[A]n arbitrary classification, where there exists no real difference as concerns the purpose of the legislation, is not allowed and constitutes a violation of the [Georgia] Constitution notwithstanding an arbitrary attempt to classify and then discriminate between those in different classifications.”<sup>52</sup>

Thus, for the reasons stated, the Guidelines’ simultaneous imposition of a greater burden on one class of similarly situated persons and a greater benefit to the other violates the equal protection clause of both the state and federal constitutions.

## Other Constitutional Challenges

At least four other states’ child support guidelines have been subjected to constitutional scrutiny, with three decisions upholding them,<sup>53</sup> and one finding an equal protection violation.<sup>54</sup> The flaw in applying any of these cases to an analysis of the Guidelines is that “[d]omestic relations is ‘an area that has long been regarded as a virtually exclusive province of the States.’”<sup>55</sup>

No more varied patchwork quilt exists than with child support guidelines. Of the fifty (50) states and the District of Columbia, 35 use an income shares model (defined below), 11 use a percentage of obligor income and 5 use some type of hybrid.<sup>56</sup> Of the eleven using a percentage of obligor income only three, Wisconsin, Georgia, and Nevada, use total gross income in their evaluations without adjustment for any involuntary deductions. Nevada’s percentages are significantly lower than Georgia’s and have an upward limit of Five Hundred Dollars (\$500) per child.<sup>57</sup> Wisconsin also used lower, fixed percentages and

allows some deductions for business expenses.<sup>58</sup> Neither Wisconsin’s guidelines nor Nevada’s appear to have been challenged on constitutional grounds.

None of the constitutional challenges in the four cases noted above were based on the arguments urged in this article, even though the equal protection and due process clauses were cited in support. Therefore, the use of cases construing other states’ guidelines is of little or no value in assessing the constitutionality of Georgia’s Guidelines.

## What About the Children?

As stated earlier, Georgia’s child support scheme is unique. Even the minority of other states that base support awards solely on the NCP’s income, known as “Obligor Only Models,” afford some degree of relief for involuntary payroll deductions. The majority of states, some 35 or so, use an Income Shares Model. This formula proceeds from the premise that, since the children of intact families are supported from both parents’ incomes, both incomes should be accounted for in calculating the presumptive obligation. This model then takes an amount of support for a given number of children at a given income level (based on an actual study of child-rearing costs) and assesses an award based on the percentage the NCP’s income bears to the combined income of both parents. The Guidelines ignore the CP’s income and duty of support except as a reason to deviate from the presumptive award. As a practical matter, Georgia courts seldom consider those statutory special circumstances. It is unreasonable to assume that the other 49 states in the country fail to provide adequate support for their children.

## What About Jane?

As is obvious in the earlier examples, Jane receives a huge transfer of income under the Guidelines. If one made no other change to the Guidelines than requiring that the calculation of the presumptive award be based on Dick’s after-tax income, in Example 1, Dick’s monthly take-home pay would be \$1912, his support obligation for two children (25.5%) would be \$488 instead of \$638 and Jane would still net \$2240 instead of \$2390. In the higher income, one child scenario of Example 2, Dick’s monthly take-home pay is \$3,886, his support obligation (20%) is \$777 instead of \$1,167, and Jane’s after-tax, after child support net income would be \$3405 instead of \$3794. After paying support, Dick would still have \$816 and \$296 less monthly income than Jane, respectively. Given the absence of economically sound child cost data from Georgia, however, it is unlikely that even these figures are economically appropriate, although they are likely somewhat closer.

## What About the Juries?

The MAJORITY REPORT notes that Georgia is the only state in the country that allows juries to set child support awards and expresses concern that they might not be able to calculate awards based on an Income Share Model or decide what deductions to allow under an Obligor Only Model. In fairness to that position, calculating the presumptive award can get quite complex when factoring in childcare costs, pre-existing support obligations, contributions of new spouses to household income, sums spent during visitations, etc., but simplicity does not necessarily equate to constitutionality. To this dilemma, there are several possible solutions of varying merit.

First, Georgia could join the rest of the country by taking the decision away from juries. This is undesirable, particularly at present, because jurors' experience with child rearing and the attendant costs is far more likely to result in appropriate awards. An alternative would require the trial judge to calculate the presumptive award and then charge the jury on the special circumstances for departing from that award. Another solution would involve the use of court-appointed financial experts who could use the parties' financial affidavits and discovery disclosures to calculate the presumptive award. Fourth, some type of Income Shares Model could be devised which addressed many of the above factors in calculating the set amount of support for each income level, or finally, Georgia could adopt the CRC Model Guideline discussed below.

## There is a "Better Mousetrap"

In a 1994 article, Donald J. Bieniewicz, an economist with the Office of Policy Analysts, U.S. Dept. of Agriculture who also works closely with the Children's Rights Council ("CRC") in Washington, D.C., sets forth an economically sound child support guideline based on actual, direct child costs whenever possible and on recent, more accurate government survey data where they are not.<sup>59</sup> The CRC guideline takes both parents' incomes into account, as well as visitation costs to the NCP, tax benefits related to the child(ren), etc.<sup>60</sup>

It also looks to the incremental costs attributable to a child. For example, after a divorce, the CP moves into a two-bedroom apartment with one child. Many previous studies and guidelines based thereon would erroneously assign 50% of the rent as a child

cost. In fact, the true child cost is the difference between a one bedroom unit and a two bedroom unit. Add a second child of appropriate age and gender to share a room and that second child has no incremental housing cost.<sup>61</sup>

Bieniewicz specifically states that guidelines which simply award a fixed percentage of NCP's gross income have "too many liabilities to be acceptable." He goes on to say that such guidelines "fail to consider, respect and encourage parenting by the non-custodial parent. Also, they are too crude—at high incomes generating support awards that are well beyond the reasonable needs of children . . ."<sup>62</sup>

Since the stated goal of the CRC Model Guideline is "not only to ensure that the financial needs of the children are met, but to seek to assure that the emotional needs of the children are met, as well,"<sup>63</sup> the State of Georgia would do well to implement it on an interim basis in place of the plainly flawed Guidelines that now exist, and to use the CRC's methodology in preparing the mandated study of child-rearing costs in Georgia.

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## What about Enforcement?

With the changes in the federal incentive laws enacted in 1998, the State of Georgia would stand to gain if it had more reasonable guidelines, because the efficiency of collection would improve almost automatically.

As more and more onerous sanctions for failure to pay child support are enacted, frequently involving loss of drivers' and professional licenses (including lawyers'), greater attention should be directed to what it is that is being enforced. True "deadbeat" parents should be punished, but having an unreasonably high support scheme artificially creates deadbeats and risks reducing NCPs' ability to earn what these licenses permit. The result of these increasingly draconian measures is that the NCP's income goes down as does the amount going to the children.

## Conclusion

In 1989, Georgia's legislature rushed to put a law on the books primarily to obtain \$25,000,000 in federal funds and, only coincidentally, to provide less variation in child support awards. The vehicle they chose, the Guidelines, was and is seriously flawed, both economically and constitutionally, and NCPs suffer harm every time a payment is made. Without commenting on the motives of those who have left such a vehicle in place for ten years, or pondering what representations have been made to the federal government over that time to continue the funding in the absence of the mandatory studies, it is sufficient to say that it is long since time for the Guidelines to be fixed. They impose an arbitrary and unequal burden on one of the two most important people in the life of every child in Georgia. This heavy handed and insensitive disparity creates rancor and ill-feeling between parents that will inevitably trickle down to the innocent child. The Guidelines also prolong domestic litigation by making custody of the children and the resulting support award an unjustifiably high-stakes affair. It is time for Georgia to scrap these arbitrary guidelines and adopt equitable and economically sound guidelines that consider the actual costs of raising children and the ability of both the NCP and CP to meet those costs. ☒

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*William C. Akins, an Assistant District Attorney for the Mountain Judicial Circuit, received his B.A. from the Citadel in 1976 and his J.D. from Woodrow Wilson College of Law in 1983. He gratefully acknowledges the editorial input of Nina M. Svoren and Sean A. Black, general litigation practitioners in Toccoa, Georgia, and the assistance of R. Mark Rogers, a research economist at the Federal Reserve Bank of Atlanta.*

## Endnotes

1. 42 U.S.C. §§ 651, 669b (1994 & Supp. II 1996); 45 C.F.R. §§ 302.55, 302.56 (1999).
2. See generally R. Mark Rogers, *Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation*, 33 FAM. L. Q. 135, 139-41 (1999).
3. The Child Support Performance and Incentive Act of 1998, 42 U.S.C. § 658a (1994 & Supp. IV 1998).
4. O.C.G.A. § 19-6-15(b) (1999).
5. 26 U.S.C.A. §§ 32, 152, 501 (West Supp. 2000); see also Department of Treasury, Forms and Instructions, Schedules X and Z in 1999 1040.
6. *Blanchard v. Blanchard*, 261 Ga. 11, 12-15, 401 S.E.2d 714, 715-17 (1991); *Bradley v. Bradley*, 270 Ga. 488, 488, 512 S.E.2d 248, 249 (1999).
7. O.C.G.A. § 19-6-15(c) (1999).
8. These are approximations based on the plain language of those states' guidelines. See Ala. Rules of Judicial Admin. Rule 32; Fla. Stat. Ann. § 61.30 (West Supp. 2000); N.C. Gen. Stat. § 50-13.4 (1999); and S.C. Code Ann. §§ 43-5-580 (b) (West 1985 & Supp. 1999), 20-7-852(A) (West Supp. 1999).
9. TR. OF TESTIMONY OF DR. ROBERT WILLIAMS BEFORE THE GEORGIA COMMISSION ON CHILD SUPPORT at 93 (May 1, 1998) [hereinafter DR. WILLIAMS].
10. See *Smith v. Smith*, 626 P.2d 342, 345-48 (Or. 1980).
11. F. Cullen, *Selected 1989 Georgia Legislation — Domestic Relations*, 6 GA. ST. U. L. REV. 133, 227 n.4 (1989).
12. R. Mark Rogers, MINORITY REPORT OF THE GEORGIA COMMISSION ON CHILD SUPPORT at 14 (1998).
13. U.S. CONST. amend. V; *id.* amend. XIV, § 1.
14. GA. CONST. art. I, § 1, ¶ 1.
15. See *Slochower v. Board. of Higher Educ.*, 350 U.S. 551, 559, 76 S. Ct. 637, 641 (1956); *Tolchin v. Supreme Court of N. J.*, 111 F.3d 1099, 1115 (3d Cir. 1997).
16. *Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454, 460-61 (2d Cir. 1996).
17. *United States v. Neal*, 46 F.3d 1405, 1409 (7th Cir. 1995), *aff'd*, 516 U.S. 284 (1996).
18. *Ersek v. Township of Springfield*, 102 F.3d 79, 893 n.4 (3d Cir. 1996).
19. *Doss v. Long*, 629 F. Supp. 127, 130 (N.D. Ga. 1985).
20. *Department of Human Resources v. Offutt*, 217 Ga. App. 823, 825, 459 S.E.2d 597, 599 (1995).
21. *Debra P. v. Turlington*, 644 F.2d 397, 404, 406 (5th Cir. Unit B May 1981).
22. REPORT TO THE GOVERNOR FROM THE GA. COMM'N ON CHILD SUPPORT at 2 (1998) (hereinafter MAJORITY REPORT).
23. See *Sierra Club v. Martin*, 168 F.3d 1 (11th Cir. 1999).
24. *Id.* at 5.
25. 5 U.S.C. § 706 (1994).
26. DR. WILLIAMS, *supra* note 9, at 20.
27. See MAJORITY REPORT, *supra* note 23, at signature page.
28. *Id.* at 3.
29. See *Suber v. Bulloch County Bd. Of Educ.*, 722 F. Supp. 736, 744 (S.D. Ga. 1989).
30. 45 C.F.R. § 302.56(e) (1999).
31. U.S. CONST. amend. XIV, § 1.
32. GA. CONST. art. I, § 1, ¶ 2.
33. See *Safeway Stores, Inc., v. Oklahoma Retail Grocers Ass'n Inc.*, 360 U.S. 334, 340, 79 S. Ct. 1196, 1200-01 (1959).
34. *Clark v. Jeter*, 486 U.S. 456, 461, 108 S. Ct. 1910, 1914 (1988).
35. See *Caban v. Mohammed*, 441 U.S. 380, 388, 99 S. Ct. 1760, 1766



- (1979); *Sims v. Sims*, 243 Ga. 275, 276, 253 S.E.2d 762, 762 (1979); *Stitt v. Stitt*, 243 Ga. 301, 301, 253 S.E.2d 764, 765 (1979).
36. Kent Earnhardt, *Georgia Selected Counties Child Custody Survey* (unpublished manuscript on file with author).
  37. *Cf. Searcy v. Williams*, 656 F.2d 1003 (5th Cir. 1981), *aff'd*, 455 U.S. 984 102 S. Ct. 1605 (1982).
  38. *Truax v. Corrigan*, 257 U.S. 312, 333, 42 S. Ct. 124, 130 (1921); *Caban*, 441 U.S. at 391, 99 S. Ct. at 1767; *Bickford v. Nolen*, 240 Ga. 255, 256, 240 S.E.2d 24, 26 (1977).
  39. *South Cent. Bell Tel. Co. v. Alabama*, 526 U.S. 160, 119 S. Ct. 1180 (1999).
  40. *See Fulton v. Faulkner*, 516 U.S. 325, 346-47, 116 S. Ct. 848, 861 (1996). *But see Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 874-83, 105 S. Ct. 1676, 1679-84 (1985).
  41. *United States v. City of Yonkers*, 96 F.3d 600, 611 (2d Cir. 1996).
  42. O.C.G.A. § 19-7-2 (1999).
  43. *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620 (1996).
  44. *Id.* at 633, 116 S. Ct. at 1628.
  45. *Id.* at 634, 116 S. Ct. at 1628.
  46. Miss. Code Ann. §§ 43-19-101 to 103 (1999); N.H. Rev. Stat. Ann. §§ 458-C:1 to 7 (1992).
  47. Wash. Rev. Code Ann. §§ 26.191-.100 (West 1997).
  48. 45 C.F.R. § 302.56(c)(2) (1999).
  49. O.C.G.A. § 19-6-15(c) (1999).
  50. Dr. Williams, *supra* note 9, at 18.
  51. *Grissom v. Gleason*, 262 Ga. 374, 376, 418 S.E.2d 27, 29 (1992).
  52. *Simpson v. State*, 218 Ga. 337, 339, 127 S.E.2d 907, 908 (1962).
  53. *Boris v Blaisdell*, 142 Ill. App. 1034, 492 N.E.2d 622 (1986); *P.O.P.S. v. Gardner*, 998 F.2d 764 (9th Cir. 1993); *Coghill v. Coghill*, 836 P.2d 921 (Alaska 1992).
  54. *County of Orange v. Ivansco*, 67 Cal. App. 4th 328, 78 Cal. Rptr. 886 (1998).
  55. *Blaisdell*, 492 N.E.2d at 629.
  56. Jane C. Venohr, Ph.D. and Robert G. Williams, Ph.D., *The Implementation and Periodic Review of State Child Support Guidelines*, 33 FAM. LAW Q. 7 (Spring 1999). It should be noted that this author disagrees with the characterization of the income base for the guidelines in the states of Mississippi and New Hampshire employed by Venohr and Williams. Those states use an adjusted gross which is much closer to net rather than the true gross basis of Georgia, Wisconsin and Nevada.
  57. Nev. Rev. Stat. §§ 125-B.070, .080 (1998).
  58. Wis. Admin. Code (DWD) 40.01-.05 (2000).
  59. Office of Child Support Enforcement, Admin. for Children and Families, U.S. Dept. Health and Human Servs., CHILD SUPPORT GUIDELINES: THE NEXT GENERATION 104-25 (Apr. 1994).
  60. *See id.* at 113-16.
  61. *See id.* at 108.
  62. *Id.* at 105 (emphasis added).
  63. *Id.* at 104.

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- (4) Whether deviations are limited as required by Federal law.
  - (5) High income families and whether the guidelines are being applied so as to place a \$75,000 cap on the gross income used to calculate child support thereby limiting child support awards for those children.
  - (6) Low income families and whether the existing guidelines provide adequately for the children.
  - (7) The criteria for deviation from the guidelines when necessary and whether those criteria take into consideration the best interests of the children and are being appropriately applied so that deviations from the guidelines are limited, as required by law.
  - (8) Other methodologies for determining child support including the "income shares" model, basing awards on net income...
21. Department of Human Resources v. Offurt, 217 Ga. App. 823, 825, 459 S.E.2d 597 (1995).
  22. Immediato v. Rye Neck School District, 73 F.3d 454 (2nd Cir. 1995).
  23. *Id.* at 462.
  24. United States v. Cyrus, 890 F.2d 1245, 281 U.S.App.D.C. 440 (1989).
  25. P.O.P.S., 998 F.2d 764 at 770, quoting Dandridge v. Williams, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161 (1970).
  26. Miller v. Albright, 523 U.S. 420, 118 S. Ct. 1428 (1998).
  27. Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124 (1921).
  28. Truax, 257 U.S. at 337
  29. Report to the Governor, *supra* note 20, at 3.
  30. Boris, 142 Ill.App.3d at 1047, 492 N.E.2d at 629.
  31. Wunningham v. United States Department of Housing and Urban Development, 371 F. Supp. 1140 (S.D. Ga. 1974), *aff'd*, 512 F.2d 617 (5th Cir. 1975).
  32. *Id.* at 1153.
  33. Report to the Governor, *supra* note 20, at 2.
  34. *Id.* at 3.
  35. Bickford v. Nolen, 240 Ga. 255, 240 S.E.2d 24 (1977).
  36. Bickford, 240 Ga. at 257.
  37. "Our survey of attorneys at the Family Law Institute Seminar indicated that they believed the current guidelines, in most instances, resulted in child support awards that were adequate for the child and fair to both parents." Georgia Commission on Child Support, *supra* note 6 at 4.
  38. Jones v. Helms, 452 U.S. 412, 101 S.Ct. 2434, 2442 (1981).

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## **Continued from page 29**

woman to have free reconstructive surgery on her face to repair what her husband had done to her.

### ***Journal:* With what other community groups and agencies do you work?**

**Gottlieb:** We have strengthened our ties with shelters in metropolitan Atlanta. For instance, we have provided training to the Partnership Against Domestic Violence, and we do weekly legal workshops for victims at the DeKalb Women's Resource Center. Our lawyers also serve on county task forces on domestic violence.

**Holmen:** Around Georgia, in addition to the groups Steve mentioned, we have collaborated with local bar associations and the State Bar's South Georgia Office to co-sponsor low-cost CLE seminars for lawyers on legal issues in representing victims of domestic

violence. Local judges and attorneys and GLSP offices have helped with training in Albany, Gainesville, Macon, Savannah and Valdosta. Over the years, GLSP lawyers have provided critical legal expertise needed to establish and support local shelter and advocacy groups across the state. We continue to work closely with them. We are also working with military base advocates to develop Memoranda of Understanding regarding protocols for family violence cases in the military.

### ***Journal:* What about private attorneys? How are they helping with this work?**

**Gottlieb:** Our grant from the Judicial Council supports a special project that the Atlanta Volunteer Lawyers Foundation has with Fulton County's Victim Witness Program through which pro bono attorneys provide legal representa-

tion to victims of domestic violence.

**Holmen:** Matching volunteer lawyers with clients in rural parts of Georgia is challenging. Our pro bono programs around the state have smaller pools of available lawyers, and there's always the danger of asking too much of too few volunteers. And in the rural counties, there are special problems for battered women looking for a way out of the violence caused by lack of transportation and limited job opportunities.

**Gottlieb:** There is a need in both urban and rural areas for more attorneys doing this work.

**Holmen:** Lawyers who don't practice family law or law in other areas needed by our family violence clients can also help by supporting these programs with time or money. We've made inroads, but there is still a huge unmet need out there. ☒

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