

GEORGIA BAR Journal

DECEMBER 2000 • VOL. 6 NO. 3

A low-angle photograph of the Georgia State Capitol dome, featuring a prominent golden-yellow dome and a statue on top. The building is surrounded by trees, and the sky is visible in the background.

Gearing up for the Session

PROTECTIVE ORDERS • CHOICE OF ENTITY • SPRING MEETING

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On the Cover: *The State Bar is gearing up for the upcoming legislative session. See what's in store on page 10.*
Photo by Richard T. Bryant.

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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (16th ed. 1996). Please address unsolicited manuscripts to: D. Scott Murray, Attorney at Law, 1030 Powers Place, Alpharetta, Georgia 30004. Authors will be notified of the Editorial Board's decision following its next meeting.

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.

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

PUBLISHER'S STATEMENT

The *Georgia Bar Journal* (ISSN-1085-1437) is published six times per year (bi-monthly) by the State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303-2934. © State Bar of Georgia 2000. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. **POSTMASTER:** Send address changes to same address.

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SEIZE THE OPPORTUNITY TO ACHIEVE CAREER SATISFACTION



By George E. Mundy

"I shall pass this way but once. Therefore, any kindness I can show or any good I can do, let me do it now ... for I shall not pass this way again." Etienne de Grellet

Career satisfaction can be elusive to those who practice law. Bar Association polls indicate a large percentage of our members lack the sense of fulfillment they had once taken for granted. "Burnout" has been cited by a number who have left the profession. Many lawyers feel overwhelmed, disorganized, and suffer the consequences of entrenched procrastination. The question arises as to what can effectively be done to insure a positive career experience. Let me share with you a personal experience.

My mother was extremely fond of the above quote. So fond that at one point, she did a needlepoint incorporating the quote, and had the needlepoint framed.

When I returned from the Air Force, I obtained my first house in Cedartown. My mother was a frequent visitor. After she would leave, I would discover she had somehow—without my knowledge—rearranged furniture, and relocated other items throughout my house. A wooden carving I had obtained in

Spain was very much appreciated by me, but disliked by my mother. Several times after a visit, I would find my mother had relegated the carving to a closet. I would then rearrange items in my house to my liking only to have them rearranged the next time my mother visited.

On one occasion after a visit, I entered my living room to find the framed needlepoint quote hanging above the living room sofa. I quickly replaced the quote with something I felt was far more appropriate—such as an aerial view of Sanford Stadium on game day.

Back about 1980, I looked in the mirror one day and was not particularly impressed with what I saw. I was practicing law as if I were due respect because of the accomplishments of my father and grandfather before me. While I committed significant time to the office, I was totally disorganized. I procrastinated to the point that I rarely resolved any matter while accepting every new case that came through the door. It seemed I spent much of every day dealing with my worst clients who were impossible to satisfy. I had little time for family or enjoyable activities. I had a feeling of being overwhelmed, and was far from experiencing the satisfaction I thought the practice of law would involve.

It was about this time I remembered the quote. I pulled it out of the closet and hung it in a position of my home where I would see it everyday. I then developed my own unique interpretation of the quote's value.

In an effort to develop some level of consistency and progress, I began to approach each day as if it

was the last opportunity I would ever have on that particular day to accomplish a goal, make a positive impression, or achieve the resolution of some issue. I decided each and every day would offer opportunities that I would seize rather than squander. Little did I know I had stumbled upon some basic tenets of law practice management.

I began to prioritize the matters that needed consistent attention. I developed a keen appreciation of the value of effective staff support, and began to delegate non-essential duties.

While the practice of law is demanding, I realized I had to make time for activities outside the office. I organized my day to obtain sufficient exercise, rest, and especially sleep. I committed my schedule to insure quality time with family, and regular breaks from the office to simply accomplish personal enjoyment.

I realized community involvement was also essential to obtaining satisfaction. As lawyers, we are uniquely gifted in our ability to make significant contributions to our communities.

Becoming better organized and getting a grip on procrastination helped me to feel I had some control over my destiny. With any profession, we must commit the time necessary to achieve an acceptable level of career satisfaction.

Finally, your State Bar has an excellent Law Practice Management (LPM) program. Assistance is readily available to achieve office organization and management. The LPM department can provide hands-on experience and volumes of references which assist in the day-to-day law office operation and effective stress management. If your sense of satisfaction is lacking, I urge you to seize this opportunity on this date to achieve your career goal. The holiday season offers this possibility. Best wishes for a prosperous New Year. ☞

THANK YOU ANLIR; BAR CENTER UPDATE

By Cliff Brashier



A special thanks to American National Lawyers Insurance Reciprocal for once again conducting excellent, three-hour MCLE approved malpractice prevention seminars for Georgia lawyers including insureds of both ANLIR and competing carriers. This year's locations were Savannah, Tifton, Columbus, Dalton, Atlanta, Athens, Macon, and Augusta. In addition, they co-sponsor other seminars and events in Marietta, Thomasville, and St. Simons at a registration fee of only \$10 for ANLIR insureds and \$20 for others. The cost is highly subsidized by ANLIR and represents a great value open to all members of the State Bar of Georgia. In addition, insureds receive a five percent premium discount for their attendance.

Under the State Bar's agreement, which makes ANLIR our recommended carrier, three percent of all premiums are returned to Georgia for a variety of risk management services. These seminars are part of this effort to help our members prevent client harm and malpractice claims.

Other unique benefits under this agreement include a malpractice advice hotline (888) 288-8164, a seat on ANLIR's Board of Directors with

full access to all claims, financial, and other operation information, and a State Bar committee to consult with ANLIR on behalf of our members on matters like coverage, underwriting, claims, and rates.

I hope you were able to take advantage of the 2000 seminar program. If not, I encourage you to try them next year. Further information is available from Barbara Evans, ANLIR's Georgia representative at (770) 645-3070 or (888) 889-4664.

CLE Reminder

On another CLE matter, please remember that mandatory CLE credit is available for approved online, CD-ROM, teleconference, audiotape, videotape, and other forms of distance learning beginning in 2001. While still subject to the normal 6-hour limit on in-house CLE, individual study is permitted without the prior necessity of a group seminar format.

Bar Center Update

Finally, numerous members responded to my last column with requests for continuing updates on the new Bar Center. The Board of Governors has approved a strategic plan for the operation of your new professional facility. The philosophy of the plan is expressed in the following statements:

Preamble: The State Bar of Georgia is a unified association of all lawyers licensed to practice in Georgia. It has over 30,000 members residing in all 50 states and many other countries. Every member contributed financially to purchase

the Bar Center. This strategic plan is dedicated to the recognition that all members are entitled to benefit financially and professionally from their investment in the future of the legal profession in Georgia.

Mission Statement: The Bar Center is the home of the lawyers of Georgia. It is their professional gathering place. As such, it is dedicated to serve all members of the State Bar of Georgia and the public through the administration of justice in the highest traditions of the legal profession. All Georgia lawyers are welcome to enjoy their new home today and for many decades to come.

Under the plan, appropriate legal institutions may contribute to the furnishing of rooms or other areas in the Bar Center and receive recognition for their donations. I am pleased to report that 100 percent of the past and present presidents of the State Bar of Georgia, together with some of the past presidents of the old Georgia Bar Association, recently contributed \$171,000 to furnish the primary board room located on the conference floor of the building. They raised \$21,000 more than their \$150,000 goal with individual contributions ranging from \$1,000 to \$10,000 with an average of almost \$5,000 per president. I hope you will join me thanking these leaders of our profession who continue to contribute to strive to make us all proud to be Georgia lawyers.

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). ☒

Letters to the Editor

We received a number of letters about "The Harper Standard and the Alcosensor: The Road Not Traveled," by Lance J. LoRusso, which appeared in the August 2000 issue of the *Journal*. In the interest of space, we have excerpted the letters below.

As a criminal defense attorney, I have had to educate myself about the alcosensor, other fuel-celled devices, and the Intoxilyzer 5000. The alcosensor is not sophisticated enough to distinguish acetone, toluene, or acetaldehyde from alcohol. Further, without a slope detector, there is the danger of false positives as a result of a suspect burping, vomiting, or hiccuping.

Christine A. Koehler
Lawrenceville, GA

I wish to call your attention to a couple of issues that appeared as I read the article. The application of the fuel-cell technology to the portable hand-held alcohol testing unit is probably appropriate to a screening test, although it is certainly not always accurate. A variety of environmental factors can change the results of the test. The alcosensor can be manipulated to produce a false positive or an elevated result.

Sean A. Black
Toccoa, GA

When someone's freedom is at stake, scientific testing should be carried out in circumstances as controlled as possible. The alcosensor, by its portability, almost guarantees variability (hence uncertainty) of its results.

Tracy J. Murray
Winterville, GA

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

(Required by 39 U.S.C. § 3685)

Georgia Bar Journal, published February, April, June, August, October and December of each year.

Office of Publication: 800 The Hurt Bldg., 50 Hurt Plaza, Atlanta, GA 30303-2934.

Headquarters of Publisher: 800 The Hurt Bldg., 50 Hurt Plaza, Atlanta, GA 30303-2934.

Publisher: State Bar of Georgia, 800 The Hurt Bldg., 50 Hurt Plaza, Atlanta, GA 30303-2934.

Editor: D. Scott Murray, Esq. 1030 Powers Place, Alpharetta, GA 30004.

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Owner: State Bar of Georgia, 800 The Hurt Bldg., 50 Hurt Plaza, Atlanta, GA 30303-2934.

(a) total number copies (net press run): average-27,293; single issue published nearest to filing date-27,700; (b) paid and/or requested circulation: (b1) paid/requested outside-county mail subscriptions stated on form 3541 (include advertisers' proof copies/exchange copies): average-21,430; single issue published nearest to filing date-16,558; (b2) paid in-county subscriptions (include advertisers' proof copies/exchange copies): average-5,284; single issue published nearest to filing date-10,544; (b3) sales through dealers and carriers, street vendors, counter sales, and other non-USPS paid distribution: average-0; single issue published nearest to filing date-0; (b4) other classes mailed through the USPS: average-0; single issue published nearest to filing date-0; (c) total paid and/or requested circulation [sum of 15b (1), (2), (3), and (4)]: average-26,714; single issue published nearest to filing date-27,102; (d) free distribution by mail (samples, complimentary, and other free): (d1) outside-county as stated on form 3541: average-0; single issue published nearest to filing date-0; (d2) in-county as stated on form 3541: average-0; single issue published nearest to filing date-0; (d3) other classes mailed through USPS: average-107; single issue published nearest to filing date-102; (e) free distribution outside the mail (carriers or other means): average-82; single issue published nearest to filing date-88; (f) total free distribution (sum of 15d and 15e): average-189; single issue published nearest to filing date-190; (g) total distribution (sum of 15c and 15f): average-26,903; single issue published nearest to filing date-27,292; (h) copies not distributed: average-231; single issue published nearest to filing date-244; (i) total (sum of 15g and 15h): average-27,134; single issue published nearest to filing date-27,536; (j) percent paid and/or requested circulation (15c/15g x 100): average-99%; single issue published nearest to filing date-98%.

I certify that all information furnished is true and complete.
Jennifer M. Davis, Managing Editor

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State Bar Gears Up For Legislative Session

By Mark Middleton

As the annual process to establish the State Bar legislative agenda begins, the State Bar Board of Governors is making plans to involve every willing member in the legislative effort.

Each year the various State Bar substantive law sections prepare legislative proposals that primarily compose the State Bar's legislative agenda. These initiatives are then discussed by the Bar's Advisory Committee on Legislation (ACL), which decides whether to recommend the proposals to the Board of Governors for final consideration. Upon approval by the Board, the legislative representatives develop strategies for passing the State Bar bills through the General Assembly.

The Board of Governors has already approved various budget requests for inclusion in the agenda (see sidebar article on page 12). Many other issues will be

discussed and added to the agenda at the Bar's Midyear Meeting in January.

This year, in an effort to maintain the legislative success of the past decade, the State Bar is seeking the participation of every lawyer in a grass roots effort to develop and strengthen relationships between individual lawyers and their respective members of the General Assembly.

The State Bar's Executive Committee approved a plan at its October meeting creating the State Bar Legislative Grass Roots Program. Over a period of time, this effort will provide a means for the State Bar to coordinate contact between members of the State Bar and members of the General Assembly.

"We must build bridges with every member of the legislature if we are going to continue our success in the General Assembly," said State Bar President George Mundy. As we look forward to this changing future, it is important to understand the past.



Background: A History of Success

For years, the State Bar has enjoyed extraordinary success in its efforts at the General Assembly of Georgia. The State Bar has been most active and accomplished in seeking the passage of new legislation that positively affects the practice of law.

Through the efforts of the Board of Governors, the Advisory Committee on Legislation, the Sections, and the professional legislative representatives, the State Bar has successfully advocated the passage of approximately 65 bills in the General Assembly during the past 10 years. In many of those years, only the Governor's agenda exceeded the size and scope of the legislative agenda sought by the State Bar.

Also, numerous State Bar appropriations requests have been funded on a regular basis. For instance, just three years ago, the Bar helped secure \$2 million in initial funding for legal services for victims of domestic violence. The Bar also routinely seeks funds for judicial salaries, indigent defense, and court appointed special advocates.

Over the years, the Bar has also been effective in defeating bills that were detrimental to the practice of law, including measures regarding the taxing of services, scope of practice, and governance of law practice, etc. These efforts always involve educating members of the legislature on the issues affecting the State Bar.

There are many reasons for this historic success. First and foremost, able members of the State Bar have dedicated themselves to service in the legislature. These members, despite representing different geographic areas, political parties, and philosophies have consistently been united in their support for their profession.

Recently, lawyers from both political parties have also enjoyed success in statewide elections. Currently, lawyers occupy the offices of Governor, Lt. Governor, Secretary of State, Attorney General, Insurance Commissioner, Labor Commissioner, and three Public Service Commission seats.

The Challenge to Stay on Top

However, the State Bar's extraordinary legislative success cannot be taken for granted. As the issues facing the legal profession continue to become more complex, the challenges facing the State Bar become greater.

For instance, the number of lawyers in the legislature continues to decline. In 2000 there were 34 lawyers in the General Assembly as compared to 52 in 1980. This means that more time and effort will be needed to educate non-lawyer legislators on the importance of issues relating to the administration of justice and the practice of law. It also means a smaller number of legislators who are naturally sympathetic to State Bar issues.

Also, as political winds change, and as other groups

become more organized in their efforts to attack the practice of law, the State Bar must add to its current lobbying efforts by expanding the number of participating lawyers and by using technology to modernize its lobbying efforts. The Grass Roots Program is a step toward this goal.

Grass Roots Program

The Grass Roots Program recognizes a political truth famously stated by former U.S. Speaker Tip O'Neil: "All politics is local." Thus, contacts from actual constituents of the legislator are the most effective form of communication on any particular issue.

Ironically, while the average member of the General Assembly receives a large volume of mail and contacts from lobbyists and special interest groups, the number of issues generating genuine contact from the folks back home is rela-

Legislative Agenda

The Board of Governors (BOG) at its October 28, 2000 meeting approved the following items for inclusion in the State Bar's legislative agenda:

1) CASA budgetary request: CASA is the Court Appointed Special Advocates who are trained to advocate for children in court deprivation proceedings. The BOG approved a \$554,000. increase in funding to continue serving in 34 existing programs, and to begin seven new programs. CASA is currently funded at approximately \$1.2 million.

2) Domestic Violence Legal Services budgetary request: The BOG approved an initiative by the Women & Minorities in the Profession Committee to fund legal services for domestic violence legal services to the poor. The request is for a total appropriation of \$2.5 million, an increase of \$375,000.

3) Georgia Indigent Defense Council Budget Request: The BOG approved a funding request for an additional \$1,805,353. The state currently provides approximately \$6 million for the various indigent defense programs. The bulk of the requested funding will be used to increase the grants to the counties to a level equal to 15% of their actual expenditures. Currently, the state only provides approximately 12% of the total funding.

The BOG will be presented with numerous other legislative initiatives at its Midyear Meeting in January. ■

tively small. Therefore, the State Bar's Grass Roots Program is designed to facilitate these constituent contacts between State Bar members and their local General Assembly member(s).

The first step of the Grass Roots Program will be an organized Board of Governors (BOG) contact program in which BOG members from around the state will maintain contact with their hometown legislators. Later, the Advisory Committee on Legislation (ACL) will formally add a component expanding participation by local bar associations and others to strengthen relationships between members of the local bar and members of the General Assembly.

When fully implemented, the program will provide a means to mobilize the entire bar when critical issues arise through individual contact between Bar members and their local legislators.

In the meantime, it is important for each and every member of the State Bar to participate in the legislative effort by developing a relationship with their local legislator. We must

be more purposeful about inviting legislators to our local bar association meetings, court proceedings, and other activities to help them understand the issues facing the legal profession and ultimately the justice system.

Over the years, the Bar has also been effective in defeating bills that were detrimental to the practice of law, including measures regarding the taxing of services, scope of practice, and governance of law practice, etc.

As the State Bar continues its efforts in the 2001 General Assembly and beyond, don't hesitate to contact your legislative representatives regarding issues impacting the practice of law. And take the time to make personal contact with your legislators to ensure that your voice will be heard should the time arise.

Tom Boller, Rusty Sewell, Wanda Segars and Mark Middleton are the State Bar's

legislative representatives. They can be reached at (404) 872-2373, via fax at (404) 872-7113 or e-mail bssinc@bellsouth.net. Also the Bar's legislative agenda can be found online at www.gabar.org/legislat.htm. To aid you in establishing contact with your legislator, a list appears on the next page. ☒

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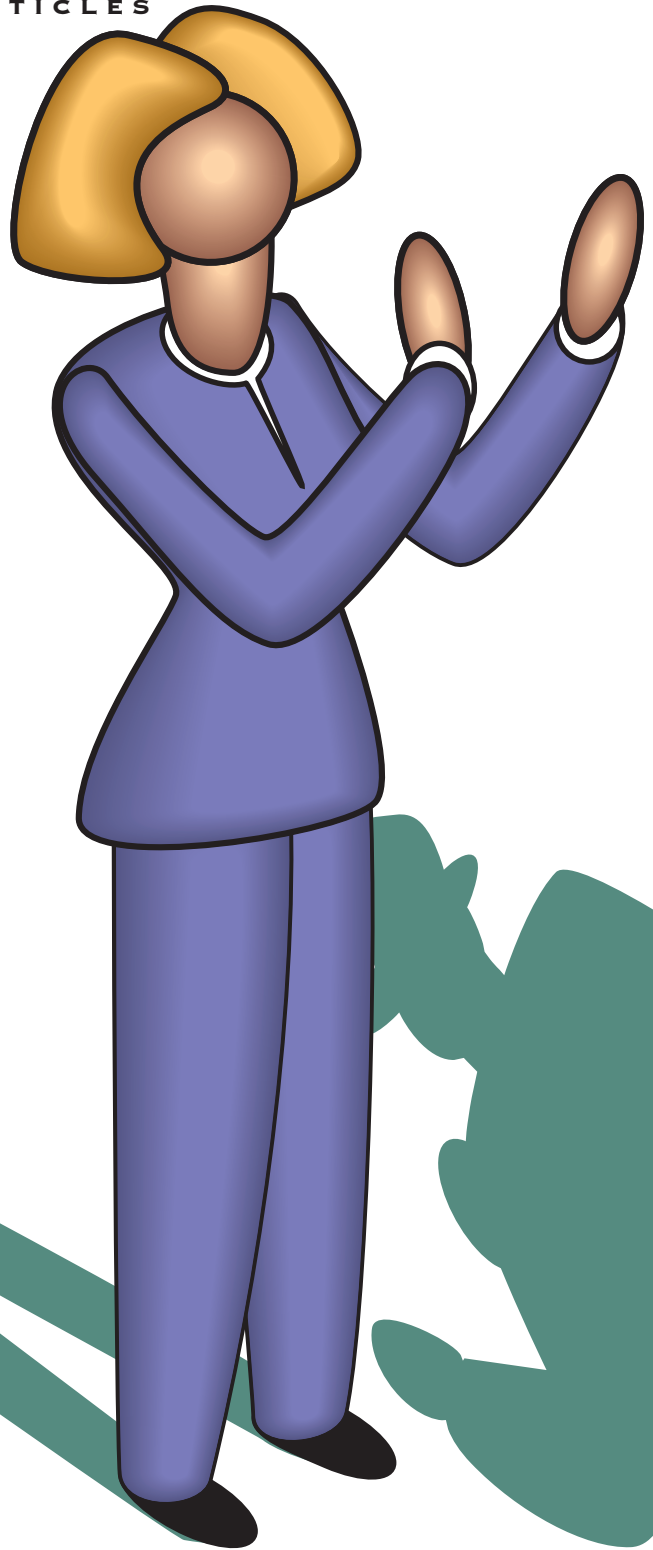
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Obtaining Protective Orders For Relief

From Family Violence



By Roger B. Handberg



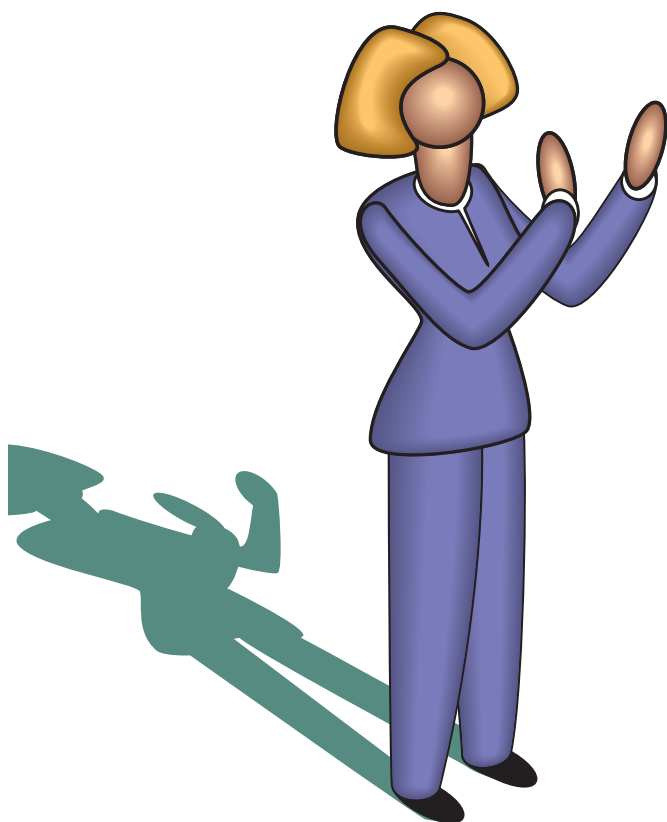
There were over 49,000 incidents of family violence in Georgia in 1999.¹ Georgia provides a variety of criminal penalties for perpetrators of violence.² Victims of family violence, however, are not limited to seeking relief from the criminal justice system. In 1981, the State of Georgia enacted the Family Violence Act (hereinafter the “Act”) to provide a civil remedy to victims of family violence in the form of a protective order.³ This article provides a guide to obtaining an ex parte protective order and a six month protective order under the Act and an overview of some of the practical issues that an attorney should consider before filing a petition for relief on behalf of a victim.

I. Ex Parte Protective Order

The Act provides a two-step process for a victim of family violence to obtain protection against a perpetrator of family violence. The first step involves obtaining a temporary protective order. To initiate an action, a victim must file a verified petition that sets forth specific facts about an act of family violence.⁴ On the same day the verified petition is filed, the victim may present the petition ex parte to a superior court judge.⁵ If the court determines that the victim has sufficiently established that family violence has occurred in the past and may occur in the future, the court may enter a temporary protective order that will expire after thirty days.⁶ At the same time that the temporary protective order is entered a rule nisi must be issued to establish a hearing date at which time the perpetrator of family violence will have an opportunity to respond to the victim’s allegations.

The definition of “family violence” set forth in the Act has two components. One component regards the nature of the relationship between the family violence victim and the perpetrator of the violence. The second component relates to the type of crime committed against the victim. When it was first enacted in 1981, the Act only applied to violence between spouses, parents and children, stepparents and stepchildren, foster parents and foster children, and people living in the same household.⁷ In 1992, the Georgia Legislature expanded the Act to apply to crimes of violence committed between “persons who are parents of the same child” and “persons . . . formerly living in the same household.”⁸

The Act applies when the perpetrator of violence has committed a felony or one of the following offenses: battery, simple battery, assault, simple assault, stalking, criminal damage to property, unlawful restraint, criminal trespass.⁹ “[R]easonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention” is



excluded from the definition of family violence.”¹⁰

The Act requires that a suit be filed in the superior court of the county where the perpetrator of family violence resides.¹¹ In 1997, the Georgia Legislature expanded the Act to provide for jurisdiction over non-residents. Jurisdiction over non-residents lies either in the county where the victim resides or the county “where an act involving family violence allegedly occurred.”¹² Suits against residents must still be brought in the county of the perpetrator’s residence.¹³

To obtain an ex parte protective order, a victim need only allege “with specific facts that *probable cause* exists to establish that family violence has occurred in the past and may occur in the future.”¹⁴

The Act provides that an ex parte temporary protective order is effective for a maximum of thirty days after the filing of the original petition.¹⁵ In one case, however, the Georgia Court of Appeals held that such a temporary protective order was valid for six months after [its] issuance.”¹⁶ The Court of Appeals reasoned that

[a]n ex parte order obtained . . . is subject to the provisions of OCGA § 19-13-4, and under subsection (c) of that portion of the Code, any order obtained under the Family Violence Act, ex parte or otherwise, remains in effect for six months, unless specifically converted into a permanent order by the court.¹⁷

This analysis, however, is inconsistent with the statutory provision regarding ex parte protective orders that requires a hearing to be held “in no case later than 30 days after the filing of the petition” and that states that “[i]f a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree.”¹⁸

Despite the Court of Appeals’ decision, the better practice would be to assume that an ex parte temporary protective order can only be effective for thirty days. For that reason, a victim should have the court or the clerk of court issue a rule nisi with a date for a second hearing on the same day that the ex parte temporary protective order is entered by the court. This second hearing should be scheduled within thirty days after the filing of the original petition. The purpose of this hearing is for the court to decide whether to issue a protective order for up to six months in duration.¹⁹ Before the date of the rule nisi hearing, the perpetrator of family violence must be served with copies of the rule nisi setting the hearing date, the verified petition, and the temporary protective order.²⁰ If the perpetrator of family violence is not served with these papers prior to the date for the second hearing the hearing will have to be reset for another date.

II. Ability To Seek A Protective Order And A Divorce

In cases involving a married couple, a spouse may desire to seek a protective order under the Act as well as a divorce. The remedies under the Act “are not exclusive but are additional to any other remedies provided by law.”²¹ In an unofficial opinion, the Georgia Attorney General concluded that a person can file a Family Violence petition and a divorce action at the same time.²² The Attorney General noted, however, that the divorce action should be governed by the Civil Practice Act and “may not be ‘piggy-backed’ into court using the special abbreviated rules under the Family Violence Act.”²³

Many victims of family violence pursue protective orders on a pro se basis.²⁴ In recognition of this fact, the Act authorizes family violence shelters, social service agencies, and court clerks to provide certain types of assistance to family violence victims who are unrepresented by counsel. Family violence shelter and social service agencies “may explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition to the court.”²⁵ Similarly, “[t]he clerk of the court may provide forms for petitions and pleadings to victims of family violence.”²⁶ This assistance is to be provided without cost to the victim and does not constitute the practice of law.²⁷

A 1998 study funded by the Administrative Office of

the Courts found that there were 48 family violence shelter or social service agencies that provided assistance in 1996 to family violence victims in pursuing their cases.²⁸ The most common form of assistance provided is preparation of the petition, but some indicated that they also “appear before the judge with the victim, conduct support groups, refer victims to appropriate resources, transport the victims to court, provide necessary attorneys, and help serve the petition with the sheriff’s office.”²⁹

III. Six Month Order

Once a victim has obtained an ex parte temporary protective order, the second step in the process is for the victim to seek a protective order that will be effective for up to 6 months. In many respects, a hearing for a six month protective order is similar to any other civil hearing. The victim, as initiator of the action, begins the proceeding by setting forth the facts that are contended to establish that family violence has occurred in the past and may occur in the future. The alleged perpetrator of family violence then has an opportunity to respond to the facts set forth by the victim. Witnesses may be presented by either party. The standard of proof is a preponderance of the evidence. The victim and perpetrator of family violence are often unrepresented by counsel.³⁰ It is not uncommon for the judge to take an active role during the hearing. The judge will often ask questions of both the victim and the perpetrator to determine whether family violence has occurred in the past and may occur in the future. Both the victim and alleged perpetrator of family violence are sworn in at the hearing, which means that their statements in court and answers to the court’s questions are evidence that can be considered by the court in determining whether to issue a protective order although the testimony is often taken informally.

The court will usually rule on the petition at the conclusion of the hearing. If the court finds in favor of the victim it will issue the protective order on the same day as the hearing.

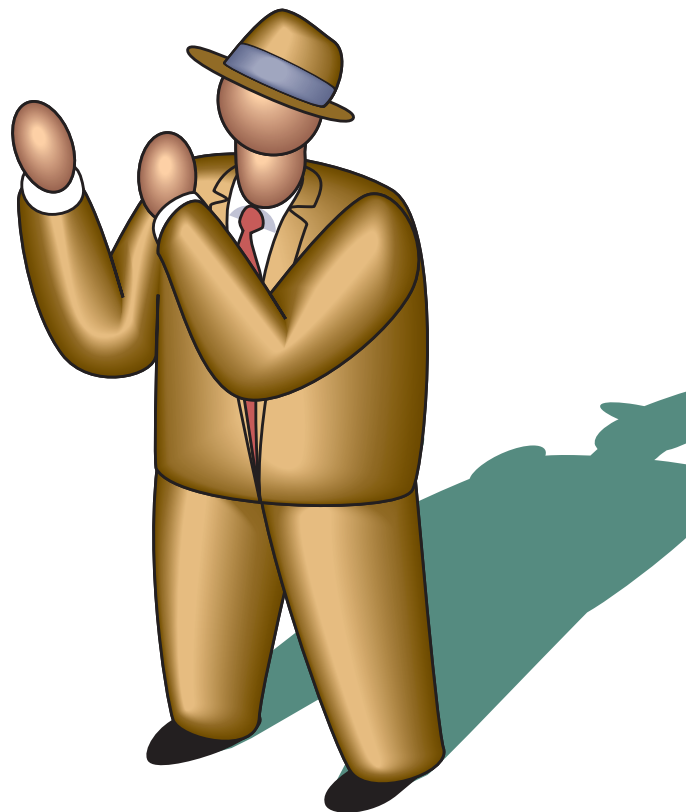
To bring about the cessation of family violence, the court has broad discretion to tailor the relief in its protective order to the specific facts of the case at issue. The Act provides eleven specific categories of potential relief.³¹ In addition to directing the perpetrator of violence to cease all acts of family violence, the court may, among other things, evict a party from a shared residence, award temporary custody of minor children, and order child support.³² Any failure of a party to obey the court’s order is enforceable by an action for civil contempt.³³

In the 2000 legislative session, the Georgia Legislature amended the Act to limit the discretion of courts in one respect. Family violence cases sometimes involve situa-

tions where the perpetrator of family violence claims that he also is a victim of family violence. In the past, some courts entered mutual protective orders that ordered both parties to refrain from harassing one another or from engaging in acts of violence. This practice is no longer permitted absent a special showing.³⁴

An order entered by the court under the Act is effective throughout Georgia, and every law enforcement officer in Georgia must enforce the terms of the order.³⁵ The clerk of court, however, is only required to issue a copy of the final order to the sheriff in the county where the order was entered.³⁶ For that reason, a victim who obtains a protective order should keep a copy with her at all times, so that she can show it to any law enforcement officer in the state if it becomes necessary to have the order enforced.

The Georgia Supreme Court has decided only one case regarding the Act. In *Schmidt v. Schmidt*,³⁷ the Georgia Supreme Court held that actions pursuant to the Family Violence Act must be appealed by discretionary application and that the Court of Appeals has jurisdiction over such appeals rather than the Georgia Supreme Court.³⁸ The Court concluded that the “ability to seek expedited review and relief through the application process is warranted in cases involving family violence” and that actions under the Act are not the type of divorce or alimony cases that fall within the Georgia Supreme Court’s jurisdiction.³⁹



IV. Practical Issues To Consider

Most cases of family violence do not present difficult legal issues. It is usually clear whether there has been family violence as defined in the Act and whether a person is entitled to a protective order. Nevertheless, family violence cases are not typical cases, and there are several practical issues that an attorney should consider before filing a petition for relief on behalf of a victim.

A. Serving the Perpetrator of Violence

A victim cannot obtain anything more than a thirty day protective order if the perpetrator of violence is not properly served. In some cases, service is easy to obtain. In other cases, it is difficult. The key to minimizing any problems with service is to be prepared before the petition is filed. For that reason, an attorney should have the victim compile a list of every address where the perpetrator might be found. In addition to the address, the list should include the times during the day when the perpetrator might be present at each particular location as well as telephone numbers for each address. All of this information should be provided to the sheriff when completing the initial form requesting service.

B. Tailoring Relief To The Needs Of The Victim

Before the petition is filed, an attorney should work with the victim to determine the types of relief that a victim should seek beyond an order directing the perpetrator of violence to refrain from further acts of family violence. The relief sought should be tailored to the needs of the victim with the goal of eliminating the reoccurrence of any acts of family violence to the extent possible.

One common set of problems arises when the victim and the perpetrator are parents of a minor child. If the victim wants temporary custody of the child, the victim will have to decide whether to allow temporary visitation rights to the perpetrator. If visitation is allowed, the victim's attorney will have to ensure that the victim is not placed in danger of another act of family violence or other harassment during the exchange of the child. In some situations, the solution might be to drop off and pick up the child in a public place. In others, an intermediary might have to be found that can be trusted to transport the child between the parents.

C. Need for Coordinated Efforts with Law Enforcement

Unfortunately, another practical issue that an attorney must sometimes consider is whether a family violence protective order is sufficient by itself to protect a victim of family violence from further violence. *Kinney v. State* presents a worst case scenario of what can happen to a victim of family violence.⁴⁰ In that case, a woman was

shot and seriously injured by her husband although a protective order was in place and he had previously been found in contempt of that order.⁴¹

Kinney illustrates the unfortunate reality that civil protective orders and criminal prosecutions that do not lead to incarceration are not always sufficient to protect family violence victims against further episodes of violence. Indeed, a recent study by the National Institute of Justice ("NIJ") of the United States Department of Justice found that such problems are most likely to occur when the abuser has a history of violent offenses: "violations of the protection order increase and reported effectiveness decreases as the criminal record of the abuser become more serious."⁴² Accordingly, it may be sensible in some cases to pursue criminal prosecution and a protective order under the Act simultaneously.

The problem of family violence in Georgia is a serious one. Although no one set of laws can eliminate all family violence, the Family Violence Act provides a civil remedy that should be considered as a supplement to the criminal prosecution of the perpetrator of family violence. ■



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Endnotes

1. GEORGIA BUREAU OF INVESTIGATION, 1999 SUMMARY REPORT: UNIFORM CRIME REPORTING (UCR) PROGRAM 10 (2000).
2. O.C.G.A. §§ 16-5-90 *et seq.* (1999 & Supp. 2000).
3. Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits* 9 (1996) ("By 1980, 47 States had passed domestic violence legislation mandating changes in protection orders. . ."); *see also id.* at 24 ("Beginning with the passage of the Pennsylvania Protection from Abuse Act in 1976, every State now provides for protection orders in cases of domestic violence.") (citation omitted).
4. O.C.G.A. § 19-13-3(a) & (b) (1999).
5. *Id.* § 19-13-3(b).
6. *Id.* § 19-13-3(c). *But see infra* notes 16-17 and accompanying text.
7. Act of Apr. 9, 1981, No. 606, § 1, 1981 Ga. L. 880, 880-81.
8. Act of Apr. 13, 1992, No. 985, § 3, 1992 Ga. L. 1266, 1269.
9. O.C.G.A. § 19-13-1 (1999). With one exception, each of the offenses identified in O.C.G.A. § 19-13-1(b) are specifically provided for in the Georgia Code. *id.* § 16-5-20(a) (simple assault); *id.* § 16-5-21(a) (Supp. 2000) (aggravated assault); *id.* § 16-5-23 (simple battery); *id.* § 16-5-23.1 (battery); *id.* § 16-5-90(a) (stalking); *id.* § 16-7-21(a) (1999) (criminal trespass); *id.* §

- 16-7-22 (criminal damage to property in the first degree); *id.* § 16-7-23 (criminal damage to property in the second degree). The one exception is “unlawful restraint.” The Georgia Code does not contain any crime with that name. The Code, however, does recognize the crime of false imprisonment, which appears to include the concept of an “unlawful restraint.” *Id.* § 16-5-41(a) (“A person commits the offense of false imprisonment when, in violation of the personal liberty of another, he arrests, confines, or detains such person without legal authority.”).
10. *Id.* § 19-13-1.
 11. 1981 Ga. L. 880.
 12. O.C.G.A. § 19-13-2(b) (1999). *See generally* Margaret Ann Shannon, Note, *Family Violence: Provide Jurisdiction and Venue Over Nonresidents in Certain Circumstances; Provide that it is Unlawful to Knowingly Disclose Location of Family Violence Shelter; Provide that the State Commission on Family Violence be Assigned to the Administrative Office of the Courts for Administrative Purposes Only*, 14 GA. ST. U. L. REV. 151 (1997) (describing legislative history surrounding the 1997 amendment to the Family Violence Act).
 13. O.C.G.A. § 19-13-2(a) (1999).
 14. *Id.* § 19-13-3(b) (emphasis added).
 15. *Id.* § 19-13-3(c).
 16. *Carroll v. State*, 224 Ga. App. 543, 546-47, 481 S.E.2d 562, 565 (1997).
 17. *Id.* at 546, 481 S.E.2d at 564.
 18. O.C.G.A. § 19-13-3(c) (1999); *see generally id.* § 19-13-3(b) (noting that “the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from violence”).
 19. *Id.* at § 19-13-4.
 20. *See id.* § 19-13-3(b) (1999) (“If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.”).
 21. *Id.* § 19-13-5.
 22. 1995 Op. Ga. Att’y Gen. 144 (No. U95-7, Mar. 10, 1995).
 23. *Id.* at 146.
 24. For example, a 1998 study funded by the Administrative Office of the Courts found that in Cobb County, Georgia that “only 80 plaintiffs in the 898 cases examined had their own attorney; 66 defendants had an attorney of record.” MARTHA A. GRIFFITH, ET AL., DESIGN AND ISSUANCE OF FAMILY VIOLENCE PROTECTIVE ORDERS IN GEORGIA FROM THE PERSPECTIVE OF CLERKS OF THE SUPERIOR COURTS AND AGENCIES THAT SERVE VICTIMS 25 (1998).
 25. O.C.G.A. § 19-13-3(d) (1999).
 26. *Id.*
 27. *Id.*
 28. GRIFFITH, ET AL., *supra* note 24, at 18.
 29. *Id.*
 30. *Id.* at 25.
 31. O.C.G.A. § 19-13-4(a)(1)-(11) (Supp. 2000) provides the following eleven categories of potential relief:
 - (1) Direct the respondent to refrain from such acts [of family violence];
 - (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
 - (3) Require a party to provide a suitable alternate housing for a spouse, former spouse, or parent and the parties’ child or children;
 - (4) Award temporary custody of minor children and establish temporary visitation rights;
 - (5) Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent’s eviction has not been ordered;
 - (6) Order either party to make payments for the support of a minor child as required by law;
 - (7) Order either party to make payments for the support of a spouse as required by law;
 - (8) Provide for possession of personal property of the parties;
 - (9) Order the respondent to refrain from harassing or interfering with the victim;
 - (10) Award costs and attorney’s fees to either party; and
 - (11) Order the respondent to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.
 32. *Id.* § 19-13-4(a)(1), (4), (5), (6).
 33. *Id.* § 19-13-6; *see generally* Schmidt v. Schmidt, 270 Ga. 461, 463, 510 S.E.2d 810, 812 (1999) (reversing finding of contempt where the trial judge applied a civil rather than a criminal standard of proof).
 34. O.C.G.A. § 19-13-4(a) (Supp. 2000) (“The court shall not have the authority to issue or approve mutual protective orders . . . unless the respondent has filed a verified petition as a counter petition pursuant to Code Section 19-13-3 no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing and the provisions of Code Section 19-13-3 have been satisfied.”).
 35. *Id.* § 19-13-4(d) (“It shall be the duty of every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of th[e] . . . [Act].”); *id.* (“A protective order issued pursuant to . . . [the Act] shall apply and shall be effective throughout this state.”).
 36. *Id.* § 19-13-4(b).
 37. 270 Ga. 461, 510 S.E.2d 810 (1999).
 38. *Id.* at 461-62, 510 S.E.2d at 811.
 39. *Id.* at 462, 510 S.E.2d at 811.
 40. 223 Ga. App. 418, 477 S.E.2d 843 (1996).
 41. *Id.* at 418-19, 477 S.E.2d at 845.
 42. SUSAN L. KEILITZ ET AL., CIVIL PROTECTION ORDERS: VICTIMS’ VIEWS ON EFFECTIVENESS 1 (1998).

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LEGAL ARTICLE

Choice of Entity

With Emphasis on

Estate Planning

By Bradley R. Coppedge

I. Background

Choice of entity is one of the most important decisions that can be made for a start-up business or for family planning. The options are ever expanding: C-Corporation, S-Corporation, limited liability company ("LLC"), general partnership, limited partnership, limited liability partnership, and limited liability limited partnership. Each of these entities has advantages over the others, such as liability protection, supporting case law, and general operational concerns. Moreover, entity choice has significant tax consequences, some subtle, others not so subtle.

The tax choice requires an understanding of Subchapter K of the Internal Revenue Code (the "Code") for partnerships and LLCs, as well as an understanding of Subchapters C and S of the Code for corporations. In addition, there are other considerations in selecting an entity.

Two general scenarios in which choice of entity issues arise are business formation and estate planning. Where business matters are of more primary concern than estate planning matters, the choice is often narrowed to one of the corporate forms or an LLC. To the extent there exists an operating business with employees, there may be some advantage to corporate forms of business (*e.g.*, fringe benefits, etc.). Where the business is primarily real estate based, an LLC taxed as a partnership is most often the best choice.¹ On the other hand, where estate planning is the primary concern, the choice is often quickly narrowed to a partnership or an LLC. Partnerships have traditionally been the entity of choice for estate planning (*e.g.*, "Family Limited Partnerships"), though LLCs are gaining favor.

Valuation discounts, which are discussed later in this article, are another consideration with regard to estate planning, and are not limited solely to partnerships and LLCs, but may also often be applied with either corporate entity. There is never an "absolute" answer, however, and the facts and circumstances should be considered in every new situation.

This article will focus primarily on the use of partnership entities and LLCs taxed as partnerships.²



II. Entities Taxed As Partnerships

A. Partnerships

In a number of states, there are now four choices of partnership entity. For a long time, the only options were a general partnership and a limited partnership. In a *general* partnership, all partners are “general” partners, which means each partner can bind the partnership and no partner has any liability protection from debts of or claims against the partnership. In a *limited* partnership, there exist both general and limited partners. The limited partners have limited liability, but are also limited in their authority to act on behalf of the partnership or participate in partnership management. Until recent years, the traditional limited partnership was often the vehicle of choice for estate planning.

In recent years, several states, including Georgia, have added two new forms of partnerships: limited liability partnerships (“LLP”)³ and limited liability limited partnerships (“LLLP”).⁴ An LLP (or “double LP”) could also be called a limited liability “general” partnership (“LLGP”), because each partner is a general partner, having authority to bind the partnership and manage the same, though each has limited liability. In an LLLP (“triple LP”) the limited partners as well as the general partners have limited liability.

In this author’s opinion, there is almost no reason to form a new partnership as a traditional general partnership or limited partnership. Through one additional step with both entities, the general partners may also be granted the shield of limited liability. This is true in an LLLP even where the sole general partner is a closely held corporation with minimal capitalization. There is simply no reason not to add this protection.⁵

For family estate planning purposes, a partnership will, in fact, still often be the entity of choice, in part because of clients’ familiarity with it and in part because they still “work” fine. Although it is always essential to respect the entity, whatever it may be, as separate and apart from its owners, partnerships are attractive entities because there are fewer formalities and less ongoing documentation required for partnerships and LLCs: no stock certificates to maintain, no annual meetings, no shareholder meetings, no minutes, etc. It is still *advisable*, however, to document actions through partnership minutes, as well as to provide written documentation of transfers and partnership amendments.

In forming a family limited partnership (“FLP”)⁶, it is essential that general partners own at least a 1% interest. Specifically, section 4.01 of Revenue Procedure 89-12 generally requires that the collective interests of the general partners must be equal to at least 1% of the total partnership interests at all times. (There is some indication under the Revenue Procedure that limited partnership interests

owned by a general partner may be considered.) Similarly, section 4.03 of Revenue Procedure 89-12 generally provides that the general partners must collectively maintain a minimum capital account balance equal to the lesser of \$500,000 or 1% of the total positive capital account balances of all partners, with some exceptions.

Additionally, note that if a partner “transfers” an interest in a partnership, the transferee partner must succeed to the capital account balance of the transferor. A “transfer” means a sale or exchange, however, NOT a gift. Thus, a gift of partnership interest will not entitle the donee to succeed to a portion of the donor’s capital account balance.⁷

As a side note, with a partnership it is important to make sure there are at least two initial partners (otherwise there is not a “partnership”). By the same token, “gifts on formation” are not recommended because they will not qualify for any valuation discounts⁸ and could raise an argument that the partnership wasn’t properly formed. Ideally, in fact, one should wait several months to make a gift⁹. Although there is one Private Letter Ruling from 1991¹⁰ appearing to sanction formation by one partner, the IRS occasionally argues this point. An alternative is to have other partners contribute very nominal amounts for nominal interests. For example, in Private Letter Ruling 93-09-001, several partners contributed \$50 for a 0.000661 interest each.

B. Limited Liability Companies

LLCs are rapidly gaining favor as an estate planning tool. With the introduction of the “check-the-box” rules of the Small Business Job Protection Act of 1996¹¹, an LLC may elect to be disregarded, taxed as a corporation, or taxed as a partnership. Most often, the choice will be made to be taxed as a partnership. Advantages to using an LLC are that state laws are more uniform as to LLCs than they are to the new partnership forms, and there also exists a larger body of case law on LLCs than there does on LLPs or LLLPs. To the extent not superceded by state law or new cases, common law of partnerships will generally apply to the new partnership forms and LLCs.

Georgia has a very good LLC Act¹² that should help to support valuation discounts without the interference of Chapter 14 of the Internal Revenue Code. An oversimplified summary of Chapter 14 is that for purposes of determining valuation and discounts, any restrictions in the agreement or organization documents that are more restrictive than state law will be disregarded for purposes of valuation. In 1999, Georgia made a few significant amendments to its Act that should serve to help support valuation discounts. The most significant change now provides that an LLC will not be deemed terminated until the occurrence of an event resulting in a “cessation of membership” with respect to the *last* remaining member.¹³ Under prior law when any member

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incurred a cessation of membership event (previously a “withdrawal event”) such as death, assignment to creditors or bankruptcy, the LLC was deemed terminated *unless* continued by the affirmative action of all remaining members.¹⁴ Under the old law, it was more likely that an “accidental” termination could occur through oversight, by failure of the remaining partners to take action.

A few words of caution about LLC operating agreements. As with any area of law and drafting, it is easy to fall into the trap of using a “form” with which one is comfortable, even if you developed it. Sometimes these forms do not keep up with changes in the law.

Most LLC forms define ownership in terms of relative capital account balances, which is acceptable probably 90% of the time. But consider the following scenario assuming ownership is defined in terms of capital account balances:

A and B form LLC, each contributing \$10,000 for a 50% interest each. LLC buys an asset for \$20,000. Assume it produces little or no income, such as raw land held for investment or future development. After 10 years, the asset is worth \$100,000. A and B now wish to admit C for a 1/3 interest perhaps to help develop the land, with A and B each retaining a 1/3 interest. (Remember, assume A and B still have capital account balances of \$10,000 each.) If C contributes \$10,000, then A, B, and C each will have a \$10,000 capital account balance and each will own a 1/3 interest. This results in an incredibly good result for C, doesn’t it? (And a bad result for A and B!) C has contributed \$10,000 and has a 1/3 interest in a \$100,000 asset. By the same token, if C were to contribute \$33,333, a “bad” result is also reached. He now owns 33,333

53,333 (roughly 3/5) or a 62% interest.

This result can probably be remedied by defining ownership in terms of “percentage ownership,” largely ignoring capital accounts for ownership purposes. So long as allocations and distributions are made in accordance with ownership interests and liquidating distributions are made first in accordance with positive capital account balances, the allocations should still have “substantial economic effect,” a requirement under the Section 704 regulations.¹⁵ (Note there are several methods for allocations to have substantial economic effect under the regulations.)

The above is similar to how most FLPs are structured. Ownership of most FLPs is based on ownership of partnership units. Capital accounts are referred to primarily to determine the character of income/distributions and to control liquidating distributions. Distributions of income are made in accordance with ownership interests, and liquidating distributions are often made first in accordance with positive capital account balances, then in accordance with ownership interests.

Another alternative is to define ownership in terms of units. In fact, an Operating Agreement could be drafted to

contain both voting and non-voting units, though the effect of Chapter 14 of the Code on such an arrangement is somewhat unclear at this point in that Georgia law does not specifically provide for such an arrangement.

In both a partnership and LLC, it is possible to contribute additional appreciated assets after formation without worrying about adverse tax consequences under Section 351 of the Code. Doing so is not generally advisable, however, at least where estate planning is the primary concern, because where additional assets are contributed, the contributing partner has either increased his interest or made indirect (*but taxable*) gifts to the other partners, unless he makes corresponding gifts of partnership interests. Rather, a new partnership should be formed in this case.

III. Corporations

Unless an operating family business is involved, a partnership or LLC is generally far more widely used for estate planning purposes than is an S-corporation or C-corporation. One primary disadvantage of using any corporate entity for family estate planning is the corporation’s inability to make tax free distributions of property as can be done with either an LLP, LLLP, or LLC. Another disadvantage to both corporate forms is illustrated where a new family member wishes to buy into the partnership. If appreciated property is contributed to a corporation, gain will be recognized unless certain “control” requirements under Section 351 of the Code are met; however, this may be done tax-free in a partnership entity.¹⁶ (This scenario may only rarely occur, but it should be considered. It also illustrates the additional flexibility of a partnership type entity.)

A corporation can still be an effective tool for family estate planning. An LLC, LLP, or LLLP will often be preferred, however, unless there is involved an operating business, and even then, an S-corporation may be preferred over a C-corporation.

A. S-Corporations

One tax note on S-corporations. You may find that many clients will say they prefer an S-corporation over an LLC, especially for an operating business, because they have “heard” the self-employment tax may be avoided. This is not *really* true. Self-employment tax must still generally be paid on “salary” paid to participating owners, though distributions can be made without being subject to the self-employment tax. You must first pay a *reasonable* salary; otherwise you run into the problem of unreasonably *low* compensation. In this case, the IRS could reclassify some part of the distributions as salary, making them subject to the self-employment tax (and possibly interest and penalties).

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B. C-Corporations

The main advantage with a C-corporation comes where there are a number of employees, and qualified plans and MERPs (Medical Expense Reimbursement Plans) are desired. It might also be used where income is not significant, and the corporation's income can be "zeroed-out" through salary and business expenses to avoid a corporate level tax.

IV. Valuation Discounts

Valuation discounts are theoretically available for any of the above entities. Indeed, for many years a C-corporation was one of the few available entities, and discounts were applied for minority interests, lack of marketability, etc.¹⁷ The vast majority of new cases, however, are on discounts for family partnerships (or LLCs). Discounts can range from a very small percentage to as high as 60%. It appears that the IRS is often not even challenging discounts of 25% to 30%, where the facts are not otherwise egregious, such as deathbed formations followed by immediate transfers of large interests.

It should be remembered, however, that there should always be business reasons for formation of the entity. These reasons should also be addressed with the client as groundwork for any future IRS litigation. The business reasons for formation should be stated in the partnership or LLC Operating Agreement. These reasons can include, but are not limited to, the following:

- 1) Maintain control of and manage entity assets;
- 2) Increase the value of entity assets;
- 3) Protect entity assets from claims of creditors;
- 4) Consolidate fractional interests in assets transferred to the entity;
- 5) Facilitate and simplify intra-family gifting and ownership;
- 6) Provide flexibility on business planning not available through trusts or corporations.

Note that this is just a sample of business reasons. Additional reasons should be analyzed based upon the facts and circumstances of each case.

Having valid business reasons for the formation of an estate planning vehicle is arguably the most important issue in one's ability to obtain discounts. There are other issues that are often addressed by the IRS in disputes on valuation, and the IRS has come up with a "laundry list" of questions they now ask regarding formation of entities for estate planning. A small sampling of these questions are listed below, with the author's comments on several in parentheses. There is also a partial list of documents often requested.

Questions:

1. Was the FLP created in conjunction with estate planning? If so, what was it? (You don't want to have to answer "Yes; to reduce estate taxes," *i.e.*, be able to document

business reasons, and try to detail these reasons in letters from the attorney, minutes, or otherwise.)

2. At whose suggestion was the FLP created? (The answer will often be the attorney or CPA, and such professional should document the business reasons for the client, and avoid correspondence that deals solely with valuation discounts.)
3. What notes were kept of the advice received?
4. Of what benefits was the Donor advised? (Again, business reasons are *essential*.)
5. Did the Donor have a prior history of gift giving? If so, provide the details. (If so, the IRS will ask why not continue outright gifts? Protection from creditors is one answer.)
6. Why could the Donor's assets no longer be managed as they were before the creation of the FLP? (1. Failing health/mental capacity; 2. Desire to involve family members; 3. Other?)
7. Describe the business purpose(s) for establishing the FLP.
8. Explain why the business purpose(s) for establishing the FLP could not be achieved equally as well through the medium of a trust or through outright gifts of the underlying property. (1. Facilitate gifting; 2. Consolidate partial interests; 3. Creditor/divorce protection; 4. Provide flexibility of business planning.)
9. If the FLP consists of marketable securities held in brokerage accounts, explain whether the investment decisions are made by the general partner or by an investment advisor or manager who is responsible for the account and whether this has changed since the creation of the FLP. (It would be helpful if you can show some involvement of all partners.)
10. Did the children's involvement in the family business change as a result of the FLP? If so, explain how. (Hopefully, you can say it increased.)
11. Were the other partners involved or consulted in the operation of the FLP? If so, explain how and when.
12. Were books and records kept? If so, describe them.

Documents:

1. All documents relating to the creation of the partnership (including bills) from any attorney, accountant or firm involved in recommending the creation of the partnership or in drafting the partnership agreement. (Watch what you say; recite business reasons!)
2. Articles of incorporation of the general partner, if the general partner is a corporation.
3. Minutes of all partnership meetings; if none, indicate the dates of all meetings and the business discussed. (*i.e.*, better to document it as you go!)
4. Evidence showing how the value of each partnership

asset was arrived at as of the date: a.) it was contributed to the partnership; b.) of each gift of a partnership interest. (*i.e.*, valuations)

5. For each partnership explain/provide: How the asset was used by the donor since its acquisition and how the partnership has used the asset since *i.e.*, held for rent, personal residence, investment, etc. (Watch out for excessive personal use.)
6. For each gift or transfer of a partnership interest, provide:
 - a.) any assignment of partnership interest prepared (keep in partnership minute book!)
 - b.) also need partnership amendment.
7. A statement describing the donor's state of health at the time of the formation of the partnership and for the six month period prior thereto.

As to the choice between a partnership or LLC, both can result in substantial valuation discounts. The extent of the discount will depend in part upon state law. In many states, a limited partnership will result in deeper discounts, though this is not necessarily true in Georgia. Most states' LLC acts state the death or withdrawal of a member terminates the LLC, unless affirmatively continued, which reduces the discount available. As discussed previously, Georgia amended its statute in 1999 to change this result.

It may also be appropriate to address a term limit in a partnership agreement. Initially, term limits were written into both LLC and partnership agreements prior to the "check-the-box" regulations, to make certain the entity was taxed as a partnership. It is still appropriate, particularly with a partnership, to include a term limit in the Partnership Agreement itself (though not necessarily in the certificate filed with the Secretary of State), due to the fact that the laws of most states contain more favorable default laws if it is a term partnership. Among these provisions is generally the right to restrict the withdrawal of a limited partner in a term partnership, resulting in increased discounts.

One other note on valuations. It is generally acceptable for an attorney or CPA to do the valuation if the discount is relatively conservative (maybe 20-35%) and if it is a relatively small partnership (under \$5,000,000). Otherwise, a professional appraiser, preferably with Tax Court experience, should be engaged. It is also important that any engagement letter *NOT* be worded to state the appraisal is for a specific purpose, such as for gifting.

V. Summary

In summary, the analysis of the type of entity to use for an estate planning vehicle requires careful consideration. Though both C- and S-corporations have continued viability, entities taxed as partnerships are generally preferable in this author's opinion. In forming any entity in conjunction with estate planning, it is

essential to document the business reasons for its formation. Through careful documentation, planned giving and reasonable discounts, one can provide an estate planning tool that both reduces estate taxes and will provide legitimate business benefits to the younger generation for years to come. ☐



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Georgia and Alabama bars and practices in the areas of qualified plans, estate planning, entity selection, probate and general taxation.

Endnotes

1. Due to the partnership provisions of the Internal Revenue Code, allowing for certain contributions and distributions that are not taxable events.
2. Hereafter, we will assume any reference to an LLC is to one which has elected to be taxed as a partnership.
3. See O.C.G.A. §§ 14-8-62 to -63, -9-100 to -1204 (1994 and Supp. 2000).
4. See O.C.G.A. §§ 14-8-62 to -63 (Supp. 2000).
5. State law still varies somewhat as to LLPs and LLLPs. Nearly all states now provide for LLPs, and a number also now provide for LLLPs. Georgia amended its statutes in 1995 to allow for LLPs, *see* Act of Apr. 11, 1995, No. 307, § 1, 1995 Ga. Laws 470, 471; and in 1997 to allow for LLLPs, *see* Act of Apr. 29, 1997, No. 424, § 1, 1997 Ga. Laws 1380, 1380.
6. A "family partnership" or "family limited partnership" ("FLP") may take any of the partnership forms discussed herein. The most common scenario, however, will be that of a limited liability limited partnership.
7. While capital accounts are an essential (and complex) element of a partnership type entity, a detailed discussion of this issue is beyond the scope of this article.
8. A discussion of valuation discounts may be found in Section IV of this article.
9. Also, try to avoid initial large transfers of interests; otherwise, it is hard to support a "business reason" for formation. The business reasons should be stated in the partnership Operating Agreement.
10. See Priv. Ltr. Rul. 91-31-006 (Apr. 30, 1991); Priv. Ltr. Rul. 86-11-004 (Nov. 15, 1985).
11. See Treas. Reg. § 301.7701-3 (1999).
12. See O.C.G.A. §§ 14-11-100 to -1109 (1994 & Supp. 2000).
13. See *id.* § 14-11-601.1 (Supp. 2000).
14. See *id.* § 14-11-602(a) (1999).
15. See Treas. Reg. § 1.704-1 (1999).
16. See I.R.C. § 721(a) (West Supp. 2000).
17. Discounts are often available even for outright ownership of publicly traded stock, such as a blockage discount for large blocks of stock. See Alan F. Rothschild, Jr., *The Blockage Discount: When More Might Mean Less*, PRAC. TAX LAW. 41 (Spring 1997)

Board of Governors Meets on St. Simons

By Jennifer M. Davis

One of the south's greatest college football rivalries set the stage for the Board of Governors Fall Meeting, October 27-29, 2000. An avid Bulldogs fan, President George E. Mundy set the meeting at the King & Prince Resort on St. Simons to coincide with Georgia-Florida weekend. But before kick-off on Saturday, there was business to address.

To accommodate a heavy agenda and the game day schedule, the Board of Governors divided its meeting into two days, convening first on Friday afternoon. Also during the day, a number of groups held meetings—State Disciplinary Board, Institute of Continuing Legal Education, Institute of Continuing Judicial Education. The Young Lawyers Division also held its Fall Meeting in conjunction with the Board.

Bar Center Update

During the Friday session of the Board of Governors, Past President Harold T. Daniel Jr. updated the group on the progress of the Bar Center. He reported on behalf of the committee overseeing this important transition to the new facility in 2002. He stated the committee has commissioned a parking study to explore whether the current deck needs to be expanded. This study will include a review of potential parking revenue, which could be substantial given the development of the downtown sector.

Daniel concluded, "The principal goal of the committee is to provide adequate free parking to Georgia lawyers for CLE and other business." Then Treasurer James B. Durham assured the Board that members would not be assessed to construct a new parking deck.

Daniel also discussed the status of leasing the additional 140,000-sq. ft. in the building. The committee anticipates leasing 40-60,000 sq. ft. to Bar-related entities, and hopes to have them on-site day one. The committee is also in negotiations with a technology company to lease an entire floor.

Nomination of Officers

For the first time, the State Bar will conduct its election online in addition to traditional voting by mail. In coordination with election.com, the Bar in the future hopes to move to a paperless election process with the goal of saving a substantial amount of money. Ballots were mailed on December 15 and members were given the option of going online with a special pass code to vote for officers and Board of Governors representatives. The system will not allow voting online and by mail, as it will disqualify duplicative votes. The last day to vote online, or postmark your paper ballot, is January 15, 2001.

These individuals were nominated in uncontested races for the following offices: James B. Durham, Brunswick, for President-elect; William D.

Barwick, Atlanta, for another term as Secretary; and G. Robert Reinhardt, Tifton, for Treasurer.

The following were nominated for ABA Delegates: Gregory S. Smith, Washington, D.C., Post 2; and Paula J. Frederick, Atlanta, Post 4.

Also, the Young Lawyers Division nominated for officer the following: Derek J. White, Savannah, for YLD President-elect; Damon E. Elmore, Atlanta, for Secretary; and Andrew W. Jones, Marietta, for Treasurer.

To enter the election area online, where you can find biographies for the various officers and other candidates, go to www.gabar.org/election/.

Disciplinary Rules

Judge Edward E. Carriere Jr., chair of the Disciplinary Rules Committee, reported on their study of the confidentiality rules governing the lawyer discipline process. They will make a final recommendation to the Board of Governors for its consideration at the Midyear Meeting in January 2001.

This is the next step in the process for the Disciplinary Rules Committee. That committee's recent work resulted in revamping the lawyer discipline process in Georgia. The Committee drafted the rules that were unanimously passed by the Board of Governors and ultimately adopted by the Supreme Court in June 2000. The new Georgia Model Rules of Profes-

sional Conduct appear in the *Directory & Handbook*, which was mailed in early December. The rules are also available on the Web site at www.gabar.org/modrul.htm/.

Multijurisdictional Practice

General Counsel William P. Smith III, who serves on the ABA's Commission on Multijurisdictional Practice (MJP), discussed that group's initial findings. It used to be that only lawyers in border areas faced this quandary; but with the advent of the Internet, borders have become seamless and practicing law in a jurisdiction where you may not be licensed is easier to do.

"Time, space and technology have created an atmosphere where we must deal with this increasing problem," explained Smith. President Mundy is appointing a committee to explore the problem within our state. For an article on the ABA's work, see page 40.

Board Reapportionment

Jeffrey Bramlett and Lamar Sizemore, co-chairs of the Board of Governors Representation Committee, gave a history of apportionment and a preview of their committee's work.

When the State Bar was unified in 1964, the Board was formed by giving each circuit one seat for every superior court judge they had. In the beginning, there were 4,600 active members with 57 Board representatives and five officers. That made the ratio of Board members to constituents 80:1.

In 1979, the Board of Governors reconsidered the apportionment plan based on judgeships and changed it such that a circuit would receive another seat on the Board after they had 500 new lawyers. By 1984, with 14,000 active members and 117 Board members, the ratio had climbed to 120:1. Then in 1994, with 21,000

active members and 171 Board members, the ratio reached 160:1.

The Board has struggled with this issue for several years. One problem is finding meeting space to accommodate this exponential growth. Another concern is that Atlanta lawyers are under-represented on the Board. And the metro area is where 65 percent of the lawyers practice in Georgia.

The committee is studying various models and investigating how other states operate their governing bodies. For example, Florida has two-and-a-half more lawyers than us, but their Board of Governors is 50 people, as opposed to our 142. The committee will recommend models to the Board for consideration in the spring.

Unauthorized Practice of Law

Five years ago, the Board of Governors recommended to the Supreme Court proposed rules to handle the unauthorized practice of law (UPL). That plan was based on rules proposed in Ohio and Virginia, which subsequently came under attack and were never adopted.

Now the Supreme Court, under the leadership of Justice Carol Hunstein, has produced a plan based instead on the program in Florida. The Court has sent the Bar a draft of the rules to study.

Treasurer Durham reported that the Bar will implement a pilot program in Districts 2 and 4 to test the rules for one year. The Bar will employ its current UPL staff to test the program, after which the Court will deem if and how to expand the enforcement of UPL under the proposed plan.

2001 Legislative Agenda

Following a presentation by Advisory Committee on Legislation Chair Gerald M. Edenfield, the Board approved a number of proposals for

inclusion on the Bar's 2001 legislative agenda. In addition, State Bar Legislative Representative Tom Boller discussed the institution of a Grass Roots Program to boost individual lawyer's contact with respective members of the General Assembly (see article on page 10).

Other Business

Other highlights from the Board meeting include:

- YLD President Kendall

Butterworth reported on her group's activities, which included raising almost \$12,000 at a golf tournament to benefit Georgia's Law-Related Education Consortium. Also, the YLD is asking lawyers to bring old business suits to donate to the needy at the Midyear Meeting in January 2001 (consult the *YLD Newsletter* for details).

- Walter C. Hartridge of Savannah was re-appointed to the Judicial Qualifications Commission.

- Rudolph N. Patterson of Macon and Harold T. Daniel Jr. of Atlanta were appointed to the Commission on Continuing Lawyer Competency.

Team Spirit

Everyone's team spirit was elevated Friday night with a pre-game bash. The reception and seafood buffet, followed by dancing to the beach music sounds of a live band, were made possible by the generosity of our corporate sponsors — ANLIR, eAttorney, Insurance Specialists, LEXIS and West Group.

The next day, many boarded buses to watch the collegiate collision in person. Others "tailgated" at the hotel watching Georgia vs. Florida along with various other college teams vying on the gridiron. ☒



1. President-elect Jimmy Franklin addresses the Board. 2. Dwight Thomas (center) and his guest, Lynn Walker, visit with Judge Fred Bishop on Friday evening. 3. Enjoying the opening reception are (l-r) LaRonda Barnes and Karlise Grier, who was newly-appointed to the Board of Governors representing the Atlanta Circuit. 4. Judge Ed Carriere discusses confidentiality in the lawyer discipline process. 5. (l-r) Long-time Board member Jim Brim talks with his good friend and Bar General Counsel Bill Smith. 6. Judge Dane Perkins makes a point at the Board meeting. 7. Supreme Court Justice George Carley (center) models the Statesboro golf shirt given to him by Board member Gerald Edenfield (left) and President-elect Jimmy Franklin. The Court recently held oral argument in their hometown of Statesboro. 8. (l-r) Board member Jesus Nerio talks with Treasurer Jim Durham following the Saturday meeting. 9. Past President Hal Daniel (left) and his father, Harold Sr., visit with Board member Lynn Borsuk at the pre-game festivities. 10. (l-r) John and Sue Mobley mingle with Kate and Past President Jule Felton at the opening reception. 11. Relaxing at the pre-game bash on Friday are (l-r) Board members Leland Malchow, Henry Walker and Tom Chambers. 12. Board member Wilson DuBose, who chairs the Bar's Indigent Defense Committee, discusses the Georgia Indigent Defense Symposium. 13. President George Mundy (right) talks with Board member Jack Tarleton at dinner Friday. 14. Robert Ingram nominates fellow Board member Rob Reinhardt for the office of Treasurer. In honor of the occasion, Ingram accessorized with a bow tie and cigar—two of Reinhardt's trademarks.





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LOOKING THROUGH THE HALF-FULL GLASS: Filling Non-legal Needs While Preserving The Dignity Of Indigent Clients

By Robyn E. Ice

MANY OF US WHO GREW UP IN THE 1950S AND '60s view the legal system as a weapon to effect social change without sacrificing the dignity of the human beings whose lives and rights are in question. Entering law school later in life than most, I knew that the financial constraints attendant to parenthood would prevent me from choosing a full-time career in public service law. I learned that, fortunately, many Atlanta law firms encourage associates to participate in the community by providing legal services to clients who cannot afford to pay.

As an associate at Alston & Bird, I became involved early on in the Truancy Intervention Project (TIP), is a partnership of the Fulton County Juvenile Court, Kids in Need of Dreams Inc. (KIND), and the Atlanta Bar Foundation. I also worked with Saturday Lawyers, which is sponsored by Atlanta Legal Aid and other groups.

Advocating a pro bono client's legal interests actually amounts to only a portion of the volunteer lawyer's commitment. The remainder involves identifying and securing the best means of addressing the basic needs that often underlie the client's legal problems, and doing so in a manner that does not destroy the client's dignity and self respect.

TIP lawyers quickly learn that many children do not attend school because they lack basic human necessities. A child who has no food, soap, clean clothes, or warm bed does not want to go to school. Although education is important, school may seem superfluous when existence is so tenuous.

Initially, situations of extreme poverty appear bleak at best and shocking at worst, and a volunteer lawyer may become overwhelmed by the sheer magnitude of the unmet

needs. To survive, we learn to break down the problems into separate components and identify the resources that may fill the specific needs. Listed in the table at the end of this article is information about the programs with which I am most familiar. For a complete list, see www.unitedwayatl.org/211 or call United Way at 211.

Candor demands that I not only admit but also stress that I have not succeeded in improving the lives of all of the clients I have represented. Sometimes, even after following all leads, I found no answer. If I dared to calculate my "success rate," the numbers would be low, but maybe not so low as they would have been if I had not attempted to do anything at all.

Food: While Many Diet, Others Starve

Divorce, abandonment, downsizing, and other events may render a parent unable to put food on the table. Some parents are eligible for governmental assistance to feed their children, but they cannot fulfill the administrative requirements. Whether hunger results from inconsistent employment or from changed circumstances, the necessity for immediate help is the same.

Qualifying for the food stamp program may take time that is not available. In such instances, food pantries or food banks may be the answer. Several ministries provide food, rent and utility assistance, and budgeting and nutrition classes for families inside and outside the metro Atlanta area.

Holiday Meals

The mother of a TIP client called on the morning before Thanksgiving, searching frantically for access to a

free Thanksgiving dinner. A few calls resulted in a referral to the Salvation Army. In another case, a truancy client's mother had no means of providing a Christmas dinner and gifts for her four children. Two days after sending an e-mail to the lawyers at Alston & Bird, I was able to fill my station wagon to capacity with beautifully wrapped gifts. In addition, Lisa Cassilly of Alston & Bird provided all of the ready-made components for a sumptuous Christmas dinner. On a larger scale, the Salvation Army and the ministry of the late Rev. Hosea Williams regularly serve Thanksgiving and Christmas dinners.

Clothing: Warmth, Status, and Self-esteem

Clothing for School

Even in the optimistic economy of recent years, many children do not attend school because they lack adequate or appropriate clothing. To respond to this need, TIP created a clothing bank stocked by donations from a variety of sources. In addition, several other organizations provide clothing at low cost or no cost, depending upon specific criteria and circumstances.

National Legal
Research pickup
10/00 p20 bw

Clothing and Other Assistance for Parents Returning to Work

In one truancy case, I represented five boys who lived with both parents. Unfortunately, neither parent held a job. The father claimed disability based upon a vague and undocumented back injury, and the mother never had worked. The children began attending school regularly, but I found no lasting remedy for the unemployment that caused the family's financial condition.

Many parents are willing and able to return to work but lack appropriate clothing and skills. Several organizations, including the Atlanta Union Mission, Intown Community Assistance, Salvation Army, Samaritan House, and St. Anne's Perry Homes Support to Employment, provide varying levels of job readiness support, including computer training; gently worn professional and business clothing; personal grooming items; and spiritual support.

Shelter

Two of my truancy cases resulted from the parents' refusal to allow their children to walk to school through unsafe neighborhoods. One child's mother finally altered her work schedule so that she could accompany her daughter past the crack house between home and the bus stop, thereby resolving the child's truancy case.

The parents of the five siblings described above did not allow their five sons to walk to school because drug dealers in the neighborhood had threatened the family. Even in summer, the parents would not allow the children to play outside, and covered the windows of the unairconditioned apartment with blankets. I hoped to help this family find a home in a safer neighborhood, but I did not succeed. The Atlanta Housing Authority had evicted the family from their previous apartment because the children allegedly had damaged walls, light fixtures, and closet rods through rough indoor play. The eviction precluded the family from leasing another AHA unit. Although Habitat for Humanity and other organizations specialize in providing housing for low income working families, this family did not qualify, because eligibility is based upon factors that include proof of income, paid bill receipts, references, and employment verification.

In one of the first TIP cases, which did end in success, the young client was not attending school because the heat had been turned off at his home. The TIP lawyer obtained an order restraining the utilities from shutting off the heat. Such measures are not necessary in all cases, because a number of organizations provide utility bill payment assistance for qualifying applicants.

Removing a Child from an Unsafe Family Unit

Sometimes a lawyer must seek to remove a child from a family unit that is unsafe, due to child abuse, drug addicted parents, or other dangers. Several facilities provide shelter for children and abused parents. In Atlanta, many TIP clients have found help and hope at The Bridge.

Grandparents: Raising Another Generation

The mother of a 15-year-old TIP client suffered from cancer, alcoholism, and drug addiction. As a result, the child and his siblings relied heavily upon their grandmother, who was bedridden, due to heart disease and diabetes. One day the grandmother called in a panic because she was facing eviction. Not knowing that he was avoiding arrest, she had allowed her grandson to spend several nights at her home, in violation of AHA rules. With assistance from Atlanta Legal Aid, we managed to halt the eviction.

Many families now consist of a grandparent and grandchildren whose parents are absent or unable to care for the children due to a variety of circumstances. Project Healthy Grandparents was organized specifically to support and assist grandparents who are raising children in the absence of parents.

Medical Care

The mother of a 14-year-old TIP client kept him home for days because he was depressed and suffered from persistent headaches, which she believed resulted from the recent deaths of several family members. She had not attempted to seek medical care because she was sure that she could not afford it. At the truancy hearing, it became apparent that, although the boy probably was eligible, she had not attempted to enroll him in Medicaid because she could not understand the requirements and had no transportation. Atlanta Legal Aid agreed to assist with the application process. Applying for Medicaid may be too time consuming if the client needs immediate medical assistance. Some facilities provide outpatient medical care for qualifying persons based upon a sliding fee scale or other factors.

Transportation: You Can't Get There from Here

The fast-paced lifestyle of the 21st Century adds transportation to the list of basic human needs, but even now many families do not have cars. The mother of my first TIP client burst into tears at the prospect of meeting with her child's parole officer at the same time each week. Fortunately, we found a source for free MARTA tokens.

Many parents find it difficult to shop for groceries, attend meetings with teachers, or fulfill other routine obligations that most of us take for granted. Some families not only cannot afford to maintain a car, but also cannot stretch the monthly budget to allow for MARTA tokens, cab fare or other transportation. Fortunately, several agencies in the Metro Atlanta area attempt to address this need.

Intangible Support

Some clients benefit less from legal assistance than from intangible types of support. An elderly retired minister applied to the Saturday Lawyers program because he wanted to sue the church-affiliated burial society to which he had paid ten cents per week for 65 years. The burial society had notified all members that growing expenses mandated an additional \$200 charge to cover the opening and closing of graves. After several lengthy conversations, it became clear that, although the elderly minister was outraged at the prospect of paying the additional \$200 out of his fixed income, he was even more hurt because the elderly church deacons had visited him only a few times following his wife's death and his own recent illness. Worse yet, they had asked him to stop preaching lengthy, spontaneous sermons after his stroke.

After over a year of working with him, I was in despair, fearing that I was doing nothing for him. Finally, he agreed that defending a lawsuit might bankrupt his burial society, many of whose members were even more ancient than he. If that occurred, he would lose his investment and pay for his own funeral anyway. Even with the additional \$200, his burial society funeral costs would amount to only \$538, \$338 of which he had pre-paid over his lifetime. If he sued his burial society and church, he would lose the companionship of life-long friends. He accepted apologies from the deacons, who invited him to lead the closing prayer at Sunday evening services.

After he had made peace with the church, he ap-

peared as satisfied as any client who has just won a huge judgment. The victory had nothing to do with money, but everything to do with dignity. ☒

Professional
Asset Locs
pu 10/00 p46

Robyn E. Ice is a partner in the environmental and land use practice group at Alston & Bird LLP in Atlanta.

Resources for Indigent Clients

Food

- **Atlanta Inner-City Ministry**
404-622-7931 (Spanish language capability.)
- **Central Presbyterian Outreach Center**
201 Washington Street, S.W.
Atlanta, Georgia 30303
404-659-7119
- **Intown Community Assistance, Inc./ICA**
670 Seminole Avenue, N.E.
Atlanta, Georgia 30307
404- 872-7644
- **North Ga. Community Action, Inc.**
1344 Talking Rock Road
Jasper, Georgia 30143
706-692-5644
- **Salvation Army (Also Holiday Meals)**
675 Seminole Avenue
Atlanta, Georgia 30307 (404-352-3597 Main
number to call for information re all locations.)
- **St. Vincent de Paul Society, Inc.**
770-457-9798.

Clothing for School

- **Atlanta Inner-City Ministry**
404-622-7931
- **Family Life Ministries:**
404-761-6302 (Must live in East Point.)
- **Intown Community Assistance**
404-872-7644
- **North Georgia Community Action**
706-692-5644
- **Salvation Army:**
404-352-3597
- **St. Vincent de Paul Society, Inc.**
770-458-9607

Returning to Work

- **Atlanta City Baptist Rescue Mission**
404-577-3409 (Men's program.)
- **Atlanta Union Mission:**
404-588-4005
- **Intown Community Assistance**
404-872-7644
- **Salvation Army:**
404-352-3597

- **Samaritan House of Atlanta**
404-523-1239 (For homeless persons only.)
- **St. Anne's Perry Homes Support to Employment:**
404-577-7312 (Clothing, assessment, interview
training at several locations in Atlanta.)

Shelter: Utility Assistance and Furniture

- **Family Life Ministries**
404-761-6302
- **Midtown Assistance Center, Inc.**
404-681-5777
- **St. Vincent de Paul Society, Inc.**
770-458-9607
- **The Sullivan Center, Inc.**
404-753-0535
- **Metro Atlanta Furniture Bank**
404-355-8530

Removing Child From Unsafe Situation

- **The Bridge**
1559 Johnson Road
Atlanta, Georgia 30318
404-792-1700 (Residential, for qualifying teens,
sliding fee scale.)

Assistance for Grandparents

- **Project Healthy Grandparents**
404-651-0341

Transportation

(Limited number of MARTA tokens and cards for job interviews, jobs, and medical appointments.)

- **Central Presbyterian Outreach Center**
404-659-7119.
- **Family Life Ministries:**
404-761-6302
- **Intown Community Assistance**
404-872-7644
- **Midtown Assistance Center, Inc.**
404-681-5777
- **St. Vincent de Paul Society, Inc.**
770-458-9607
- **The Sullivan Center, Inc.**
404-753-0535

ABA Study of Multi-state Practice Is On Fast Track

By Harriet E. Miers

WHEN IS THE LAST TIME YOU took — or defended — a deposition in another state? Have you ever traveled to another state to consult with and advise someone who works for a subsidiary of your client? How often have you called out of state to negotiate on behalf of a client? If you work for a corporation, do you travel to states in which you are not licensed in order to do your work?

When you did any of these things, were you thinking about the unauthorized practice of law? Probably not. Were you committing the unauthorized practice of law (UPL)? Some would say a resounding and concerned “Yes.” At least technically speaking. At least in some states. Which states? It’s hard to know.

But even if you were guilty of a technical violation, do you think you were you doing something improper, or do you think you were performing work you *should* be able to perform in order to serve your clients’ legal needs?

Traditionally, lawyers in the United States may practice law only in the states in which they are licensed, a restriction typically backed up by UPL provisions which, although sporadically invoked, *may* be enforced by fee forfeiture, disqualification, professional discipline and, even in some jurisdictions, criminal conviction. The sanction

most frequently invoked is probably fee forfeiture arising from an unhappy client’s challenge.

A state’s UPL restrictions are meant to protect its residents by ensuring that lawyers who represent them in the state are familiar with state law, procedures and ethics rules, and are subject to state disciplinary regulation. Many, but not all, lawyers believe that the changing nature of clients’ legal needs, the changing nature of technology and communications and, consequently, the changing nature of law practice in this country may make the old restrictions outmoded.

In August of 2000, American Bar Association (ABA) President Martha Barnett appointed an 11-member Commission on Multijurisdictional Practice to examine and make recommendations on these issues. The new Commission began its work in September. It expects to issue a preliminary draft report in March 2001, and by May 23, 2001, to have completed a report with recommendations for consideration by the American Bar Association House of Delegates in August 2001.

This is a very fast track, and we know it. But there is really no time to waste. State legislatures are acting; other organizations, both public and private, are acting; and cases against lawyers involved in the kind of conduct described above are going forward. A

national telephone seminar was sponsored by the Attorneys’ Liability Assurance Society in December 1999 to discuss unauthorized practice and multijurisdictional practice issues that could affect its member law firms. That seminar attracted nearly 1,500 participants. The issue is ripe. If there is to be a consensus of any kind among the states, and if the American Bar Association is to play a meaningful role in the debate, the ABA needs to act, and act quickly.

The Commission is committed to undertaking an objective and comprehensive national study. To do so, it needs the participation of state and local bar associations, ABA entities, individual lawyers, clients and other interested parties across the country. If you are a practicing lawyer, or a client, or otherwise have views to offer, the Commission would like to learn about your experience and to receive your insight about the questions it will be addressing. It is important for the Commission to learn whether, and to what extent, lawyers are practicing across state lines, and whether lawyers believe there are preferable alternatives to existing restrictions on such practice.

So far, proposed alternatives that arose out of a March 2000 symposium at Fordham Law School range from doing nothing — maintaining the status quo — all the way to providing for national licensing of lawyers, with many suggestions in between those


two alternatives. Intermediate proposals have included developing uniform state laws setting forth narrower and clearer restrictions on out-of-state practice, making it possible for out-of-state lawyers to receive permission to render a broader array of legal services in a particular state, and allowing more liberal admission of out-of-state lawyers for general purposes. A report on the symposium, together with other writings on this subject, may be found on the Commission's Web site, www.abanet.org/cpr/mjp-home.html.

The Commission does not now know the answers to all the questions raised and needs to receive your views. Tell us: Are there really problems? If so, what problems are you encountering? Is multi-state law practice increasingly common? Is multi-state practice *necessary* if lawyers are to serve their clients effectively and efficiently? Should steps be taken with respect to practicing "Internet law" or "telephone law"? If so, how (if at all) should the laws and ethical rules be reformed to better accommodate such practices?

The Commission will be holding public hearings around the country prior to March 2001, including ones on February 17 and 18, 2001 at the ABA Midyear Meeting in San Diego, and others in Atlanta, Chicago, Dallas and New York. The format of the hearings will include an educational segment designed to

stimulate thought and dialogue. You are invited to attend one of the hearings and to provide us with written testimony. We will be providing more details about the hearings, including the dates and specific locations. This information will be posted online at the Commission's Web site as soon as it is available.

To arrange to testify, please contact John A. Holtaway of the ABA Center for Professional Responsibility at (312) 988-5298, or jholtaway@staff.abanet.org, or you

may send written comments to him at the Center at 541 North Fairbanks Court, 14th Floor, Chicago, IL 60611. There is also a listserv available for those who wish to keep up to date on the issue. To subscribe, send an e-mail message to jholtaway@staff.abanet.org. 

Harriet Miers is the chair of the American Bar Association Commission on Multijurisdictional Practice.

daniels head insurance new bw

Lawyers Foundation Awards First Challenge Grants

By Lauren Larmer Barrett

THE LAWYERS FOUNDATION of Georgia is pleased to announce that it has awarded its first Challenge Grants. These awards were presented to the Individual Rights Section and Access to Justice Committee for their Georgia Legal Services Public Education Campaign; the State Bar of Georgia Diversity Program for its Small Practice Development Center; the Douglas County Bar Association for the law-related education materials for schools in Douglas County; the Western Circuit Bar for its Literacy Project; the Augusta Conference of African American Attorneys for its Law School Scholarships; and the General Practice & Trial Section for its High School Mock Trial Instructional Video. The final amount of each award will be based on the amount of challenge funds raised by the award recipients.

The Georgia Legal Services Public Education Campaign, a project of the Individual Rights Section and the Access to Justice Committee, is aimed at educating Georgia lawyers about the legal services available for low income Georgians.

The High School Mock Trial Video, a project of the General Practice & Trial Section, is a teaching video to assist in preparation for team mock trial competitions. It will also show the general public how a competition of this nature works, and

provide information on how to become active in the program.

The Western Circuit Bar Association's Student Literacy Project will provide each child in Gaines Elementary School with a book for his or her birthday, and will enlist judges and attorneys to read to the students twice a week.

The Douglas County Bar Association Community Action Project will purchase law-related materials for elementary, middle, and high schools to expand opportunities for children to learn about the legal system, and to promote respect for the law and knowledge of career opportunities in the legal field.

The State Bar of Georgia Diversity Program Small Practice Development Center will assist new attorneys in their efforts to start a

small practice through start-up loans, mentoring and business planning.

The Augusta Conference of African American Attorneys Scholarship Competition provides law school scholarships to those in need, in addition to promoting an understanding of the history of the legal principles and judicial rationale behind equal access to education.

Congratulations to all involved for your hard work and dedication, and good luck with your projects!

These challenge grants are made possible through the generous support of gifts to the Lawyers Foundation of Georgia. For more information, please contact Director Lauren Larmer Barrett, 800 The Hurt building, 50 Hurt Plaza, Atlanta, GA 30303. 404-526-8617 or 404-527-8717 (fax).

E-mail: laurenb@gabar.org 

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Supreme Court of Georgia Convenes In Statesboro

AS PART OF THEIR

commitment to travel around the state and educate our citizens and youth about the judicial system, the Supreme Court of Georgia recently visited Statesboro. And, as every community has thus far, the people of Statesboro opened their doors letting the justices sample the local flavor that makes their hometown special.

On Thursday, September 28, the Georgia Southern University Raptor Center gave an awesome demonstration with falcons and other birds of prey diving for food. Judge Anthony Alaimo and Judge Dudley Bowen joined the justices at a quail supper at Marsh Hunting Preserve.

The Friday, September 29, the justices savored breakfast at the Lupton Building, which is the field house overlooking Georgia Southern's football field. Coach Paul Johnson addressed the group, which included Judge Alaimo and Judge Avant Edenfield.

Next the justices heard oral argument at the newly renovated Bulloch County Courthouse. The courthouse was dedicated last August, and the Supreme Court's visit was part of Statesboro's ongoing celebration of the remodeled building

Chapel Middle School were in attendance for the session, which also included presentation by the Court of three **Amicus Awards**. The **Honorable Faye Sanders Martin** of Statesboro, the **Honorable John R. Harvey** of Pembroke, attorney

James B. Franklin of Statesboro, and attorney **Hugh Brown McNatt** of Vidalia received Amicus Awards from the Georgia Supreme Court in recognition of their substantial contributions in the furtherance of justice and in the interests of their respective communities.

For lunch on Friday, the Bulloch County Commissioners entertained the justices. Then that evening, local attorney Gerald Edenfield, who serves on the State Bar's Board of Governors, hosted a

barbeque at this farm.

Presiding Justice Norman Fletcher and Justices George Carley and Harris Hines stayed over Saturday to watch Georgia Southern and VMI clash on the football field. ☒



Pictured are the justices and Amicus Award winners: (l-r front row) Justice George Carley, Jimmy Franklin, Justice Carol Hunstein, Judge Faye Sanders Martin, Chief Justice Robert Benham; (l-r back row) Justice Hugh Thompson, Judge John Harvey, Presiding Justice Norman Fletcher, Justice Leah Ward Sears and Justice Harris Hines.

and of the city's history.

The two cases heard were *Hogan v. Nagel* and *Freeman v. The State*. Students from Georgia Southern, Statesboro High School, Bulloch Academy and Langston

Symposium Reviews History, Explores Status & Future of Georgia Indigent Defense

By Nikki Hettinger

THE WEATHER MAY HAVE been dreary, but the discourse certainly was not, as an estimated 200 individuals from the political, judicial, legal, educational and other arenas braved blustery winds and heavy rains to attend “Developing a Statewide Vision of Indigent Defense: Three Branches of Government, Three Roots of Support,” a symposium held on Thursday, November 9 at the Atlanta Hilton Downtown.

The event, modeled after the Department of Justice’s recent National Symposium on Indigent Defense 2000, was sponsored by the State Bar of Georgia’s Indigent Defense Committee, chaired by Wilson DuBose, along with Emory University School of Law, Georgia State University College of Law, University of Georgia School of Law, and Mercer University School of Law, and featured a videotaped introductory address by Governor Roy E. Barnes.

Among the many notable speakers on hand were State Bar President George E. Mundy; the Honorable Harold G. Clarke, former Chief Justice of the Supreme Court of Georgia; the Honorable Robert Benham, Chief Justice of the Supreme Court of Georgia; and the Honorable Stanley F. Birch Jr., Judge of the 11th Circuit Court of Appeals and the event’s keynote speaker.

Four plenary sessions explored a range of topics, from the status of

indigent defense in Georgia today, to methods used in other states, to possibilities for future improvement of our system. Diversity amongst panel members and lively question-and-answer opportunities following each session allowed for a liberal exchange of ideas among judges,

“Equal justice is a redundancy; unequal justice is no justice at all.”
—Hon. Harold Clark

attorneys, criminal justice professionals, and even students, providing multi-faceted perspectives on both problems and solutions.

“Equal justice is a redundancy; unequal justice is no justice at all,” stated Clarke during his address, reminding the audience that, throughout history, cultures have enjoyed a system of legal rights, but not necessarily for the poor. Although he illustrated how our society has certainly come a long way in terms of providing indigent defense, subsequent discussions made it clear that there is some disagreement on just

how far we have, indeed, come.

“Many [indigent defense attorneys] just don’t do their jobs,” said John Cole-Vodicka of the Prison and Jail Project in Americus. “It’s an epidemic in Southwest Georgia.” He cited various examples of court-appointed lawyers who, when they arrive in court, do not recognize their client and are not familiar with the case they are handling. Cole believes these attorneys either do not have the necessary resources or the commitment to do a thorough job.

The Honorable Lawton E. Stephens, President of the Council of Superior Court Judges, countered that in Athens appointed attorneys do an excellent job, perhaps partly due to the fact that they tend to be “younger, hungrier lawyers who want the trial experience.” He went on to say that part of their system’s success is attributable to the support and commitment of their local bar.

The pros and cons of using contract lawyers for indigent work was discussed, as well as the need for additional state funds, more accountability, and modification of restrictions and standards. Even bilingualism (or the lack thereof) was considered. Recent law school graduates expressed their frustration with a system that does not allow young attorneys to work in the area of indigent defense because, in many cases, the starting salaries are lower than the attorney’s monthly student loan payments.

While opinions certainly differed throughout the day, most participants seemed to agree that, as Mundy stated during his introduction, "We have a window of opportunity to make a difference."

Wilson Dubose added:

The symposium was a good first step toward building momentum for comprehensive improvements to Georgia's indigent defense system. No one knows exactly at this point what form those improvements will take, but I think it was very useful to start the process of thinking about change. It is my hope that the dialogue begun at the symposium will carry over to the Chief Justice's indigent defense commis-

sion and that the commission the commission members will be able

"Many [indigent defense attorneys] just don't do their jobs," said John Cole-Vodicka of the Prison and Jail Project in Americus. "It's an epidemic in Southwest Georgia."

to reach a consensus that will involve meaningful, long-term solu-

tions to the major problems that exist under the current system. The State Bar's leadership on this issue has been crucial in getting us to where we are today and will be equally crucial in moving the process forward to a successful conclusion.

Former Chief Justice Clarke was presented with an award by Flora B. Devine, Chairperson of the Georgia Indigent Defense Council, in recognition of his efforts on behalf of indigent defense. Attendees earned up to seven CLE hours for attending the symposium. ☒

Nikki Hettinger is the Assistant Director of Communications.

**morning star p/u aug
00 pg 79**

EXECUTIVE, LEGISLATIVE & JUDICIAL BRANCHES PARTICIPATE Restored Appropriations Room Dedicated

ON THURSDAY, OCTOBER 19, 2000, Governor Roy Barnes, Robert Benham, Georgia Supreme Court Chief Justice, Senators, and Representatives of Georgia's General Assembly participated in the dedication of the restored Appropriations Room at the State Capitol Building.

The Appropriations Room was the original home of the Supreme Court of Georgia before the Court moved in 1956 to its present location in the State Judicial Building.

Governor Barnes noted the illustrious history of the room (See page 47) and shared stories and amusing

anecdotes about former justices who served on the Supreme Court when it met in the Appropriations Room. State Senator Terrell Starr and State Representative Terry Coleman offered remarks about the beauty and majesty of the Appropriations Room.

Chief Justice Benham was the



Scenes from the dedication (clockwise): Chief Justice Benham, the plaque, and many dignitaries participated in its unveiling.

featured, guest speaker. Chief Justice Benham acquainted the audience with other historical aspects. He marveled at the elegance of the room with its fine wood, and likened the strength and quality of the wood to the strength of the quality of services provided by all three branches of Georgia's government to the citizens. The Chief Justice presided over the unveiling of the dedication plaque, installed on the east wall of the lovely room. Other members of the Supreme Court, the General Assembly, and the public were present for the festivities.

Historical Overview

1. The Capitol Building opened in 1889.
2. The Supreme Court of Georgia

had three justices who convened in the Appropriations Room.

3. Four more justices were added in 1897.
4. In 1907 the Court of Appeals was formed and shared the Appropriations Room with the Supreme Court.
5. The Supreme Court moved to its current chambers in the Judicial Building in 1956.
6. The Appropriations Room was then turned over to the legislature.
7. The original chambers was an eclectic combination of Classical and Victorian design.
8. The February 10, 1889 Atlanta Constitution said that the original courtroom was "frescoed in a style of quiet magnificence."
9. The newly remodeled chambers

has maintained the classical proportions, although most of the original furniture and other appointments have been removed.

10. New furniture, including a newly remodeled judges bench, has been chosen for the new space.
11. The rich colors and intricate stenciling design are examples of how the original decorative scheme of the Georgia Supreme Court's first chambers has been melded with the functional needs of today. New lights, and audio and television systems have been added. ☒

Thoughts on the Dedication of the Appropriations Room at the State Capital

By Hon. Robert Benham

THE MAGNIFICENT

temple of justice is a monument to all of the judges and all of the lawyers whose accumulated knowledge and wisdom molded, shaped, and perfected the law. This temple, this monument, this shrine is dedicated to the sanctity of the law upon which all of human liberty rests. It is dedicated to the court—the living voice of the constitution and custodian of that liberty.

It is dedicated to the members of the bar who brandish the shield and buckler in defense of liberty and the sacred ideals of the law. And this is a shrine dedicated to the people of Georgia—strong

citizens who continue to demand and expect the best from all who work on their behalf.

The magnificently restored temple of justice inspires. All marvel at the beauty and richness of the Victorian design and are inspired by the Classical proportions of the great chamber.

Faith in mankind is renewed because to create this type of beauty and to create the wonderful system of justice that it represents, man does not walk alone. Faith in our system of justice is renewed. Being here today allows us to look with fresh eyes, comprehending the awesome responsibility that we have inherited.

This magnificent temple of justice, with its the rich color scheme and intricate designs create such a

pleasing atmosphere. The men who served on the court in this very room and the men and women who were their predecessors have likewise constructed the rich schemes and intricate designs of the law to protect and enrich the lives of Georgia's citizens.

The lovely, awesome chamber, the beautiful monument, the fitting shrine has stood here between the two houses of the General Assembly for 111 years, a silent witness to the ebb and flow of the human tide whose problems were resolved, whose lives were changed, who sought and found justice right here. This is a fitting monument to us all. ☒

THE YLD: NOT JUST FOR THOSE 36 AND UNDER!

By S. Kendall Butterworth



How many of you breeze past this column and think, “YLD — I remember my days as a young lawyer,” only to have that thought short-circuited by the not-so-pleasant realization that you are no longer within the age limits set by the bylaws for membership in the YLD. Just because you don’t meet the YLD’s membership criteria to vote or to hold elected office doesn’t mean that you are ineligible to participate in the Division’s programs, as the YLD has a variety of projects that involve and benefit all lawyers in Georgia. Here is just a sampling:

The **Georgia Mock Trial Competition**, sponsored by the YLD’s High School Mock Trial Committee, is in its 14th year and is looking for volunteers to serve as attorney coaches to the 104 teams that will be competing. If you do not have time to serve as a coach, consider serving as a judge in your region’s competition. This program is one of the YLD’s most successful, with more than 1,500 students and 550 attorneys participating; but it wouldn’t be so successful without the involvement of young and not-so-young lawyers.

The YLD’s **Legislative Affairs Committee** will be hosting the 13th Annual Legislative Breakfast, which

offers those in attendance the invaluable opportunity to interact with Georgia’s legislators at the start of the session. For only \$15 per person (or \$120 for a table of eight), you can attend the breakfast on January 12, 2001. Be sure to sign up on the Midyear Meeting registration form to reserve your spot, as this event sells out quickly.

Lawyers of all ages have a great opportunity to help those in need through the **YLD Community Service Committee**. The Committee will be conducting a clothing drive at the Midyear Meeting in Atlanta to collect business suits. Now that many

Stop thinking that the YLD doesn’t include you—it does—in more ways than you ever could have imagined!

law offices have adopted business casual as part of the dress policy, this is a great time to clean out your closets and rid yourselves of suits you may not have worn since you were a young lawyer! Look for the collection bin near the registration desk at the Midyear Meeting.

The YLD also will be organizing its **6th Annual Great Day of Service** in the spring. For those of you who are unfamiliar with this project, the “Great Day” takes place on one day, with volunteer lawyers of all ages in communities across Georgia

participating in a service project that specifically was selected to benefit that community. Watch this column for an announcement of the date and project locations.

The YLD also can assist you with obtaining information needed for employment decisions and satisfying your CLE requirements. The YLD’s **Career Issues Committee** is distributing a salary survey to young lawyers to gather data on the Georgia legal market. All identifying data of the participants will be kept confidential, and the results of the survey will be published in the spring *YLD Newsletter*. The data obtained from this survey will assist all lawyers in Georgia—those looking for employment and those hiring.

The YLD’s **11th Annual Caribbean Seminar** will take place in Puerto Vallarta, Mexico on February 8-12, 2001. This seminar offers 12 hours of CLE credit, including one ethics, and one professionalism, and three trial hours. Registration is open to all members of the Bar and, based on my past experiences at this seminar, it has to be the best way to fulfill the CLE requirement.

So stop thinking that the YLD doesn’t include you—it does—in more ways than you ever could have imagined! I look forward to seeing you at a YLD-sponsored event soon. ☐

bright di-
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new bw



Coaches, Judges, Evaluators Needed!

Inquire about coaching opportunities or volunteer for judging opportunities by contacting the mock trial office.

Volunteers for all positions may register online at
www.gabar.org/mtjoin.htm

For more information, contact the Mock Trial Office
404/527-8779 ♦ 800/334-6865 ♦ mocktrial@gabar.org

Mainstreet pickup 10/00 p33 bw

FOR THE SECOND TIME THIS year, **Judson Graves** of **Alston & Bird LLP** has been recognized by *The National Law Journal* for his successful record in defending medical malpractice cases. Graves, a partner in the firm's medical products & services practice group, was chosen by the publication in its annual recognition of 10 of the nation's top trial attorneys.

C. Murray Saylor Jr., a partner in **The Saylor Law Firm LLP**, has been elected Vice President of the **American Association of Attorney-Certified Public Accountants**, which is comprised of individuals dually qualified to practice as lawyers and as CPAs. Murray, a personal financial specialist and an accredited estate planner, is a member of the Atlanta Estate Planning Council, the Atlanta Tax Forum, the Fiduciary and Taxation Law Sections of the State Bar of Georgia, and the Estate and Probate Section of the Atlanta Bar Association.

J. Pat Sadler, a shareholder in the Atlanta law firm **Sadler & Hovdesven PC** has been elected to the Board of Directors of the **Public Investors Arbitration Bar Association** (PIABA), a national bar association of attorneys who represent public investors in securities and investment disputes.

The **American Arbitration Association (AAA)**, the world's leading provider of conflict management and dispute resolution services, sent three members of its National Roster of Arbitrators to Sydney, Australia to resolve disputes related to the U.S. Olympic Team members during the **2000 Olympic Games**. The three arbitrators, who served pro bono for the event, are all attorneys in the Atlanta area: **Robert N. Leitch** is a full-time arbitrator and mediator; **Joia M. Johnson** is Executive Vice President and General Counsel of RARE Hospitality International, Inc. and a member of the Executive

Committee of the Board of Directors of the AAA; and **John A. Sherrill** is a partner of the law firm Seyfarth, Shaw, Fairweather & Geraldson.

Alan C. Cason, a partner in the Baltimore, Maryland office of **McGuireWoods** has been elected to serve as a member of the Board of Governors of the **University of Maryland Alumni Association**.

Brent O.E. Clinkscale has been named general counsel to the **Thurgood Marshall Scholarship Fund Inc.** and will serve on the Board of Directors. As general counsel, Clinkscale, a member of **Womble Carlyle Sandridge & Rice PLLC** will provide pro bono legal services to the non-profit organization, which is headquartered in New York City. The Fund is the only national organization founded for the sole purpose of providing merit scholarships and other support to students attending the nation's 40 historically black public colleges and universities.

Substance Abuse Conference Held

More than 600 people including judges, addiction counselors, law enforcement officers and individuals in recovery gathered for "Bringing Us Together: A State-wide Substance Abuse Conference," held on September 20-22, 2000 at Callaway Gardens in Pine Mountain, Georgia. The Supreme Court Committee on Substance Abuse and Courts and the Georgia Association for the Prevention of Substance Abuse co-sponsored the

event, now in its third year.

Conference offerings included 37 workshops and seminars, and more than 40 speakers. A featured topic was drug courts, which require that misdemeanor offenders with suspected substance abuse problems undergo evaluation and treatment as a condition of bond before their case can be heard. "We know that treatment works," said Fulton County Superior Court Judge Isaac Jenrette during a panel discussion. "The drug courts give us an opportunity for early intervention."

Speakers included **William Cope Moyers** (son of newsman Bill

Moyers), **Terry Gorski** (the "father of relapse prevention"), **James Mosher** and **Georgia Supreme Court Chief Justice Robert Benham**, who stated, "The extraordinary growth in the number of drug courts across the country is evidence that this approach to the problem of substance abuse is very effective." Benham, who is Chair of the Supreme Court Committee on Substance Abuse and Courts, also presented the **Chief Justice's Award for Excellence in Public Service** to **Sandra L. Ward** during the conference.

Other participants included the **Georgia Association of Drug Court**

Tifton Named Reading Capital of the World



THE SOUTH GEORGIA OFFICE often hosts local community organizations as part of its outreach. Pictured in **photo 1** are members of the Tift County Foundation for Educational Excellence, which held its meetings at the State Bar satellite office. The group, which is populated with many local attorneys, planned a community-wide celebration on November 15 to celebrate Tifton being named as the Reading Capital of the World. A related article appeared in *Time* magazine on October 23. The reading program, called Accelerated Reader, requires readers to take a test following completion of a book to test comprehension.

Law Staff Learn Skills

The satellite office recently hosted the fourth in a series of Law Staff training seminars, drawing an audience from Albany, Valdosta, Tifton, Thomasville, Ashburn, Moultrie and Adel. The seminar, entitled "Relieving Stress, Getting Healthy and Getting Organized," was co-sponsored by the General Practice & Trial Section (GPTS) and the Law Practice Manage-

Professionals; the Georgia Addiction Counselors Association; the Georgia Association of Risk Reduction and Defensive Driving Educators; the Georgia Department of Human Resources; the Southeast Addiction Technology Transfer Center; the Georgia Association of Community Service Boards; the Georgia Prevention Network; the Georgia Drug-Free Workplace Coalition; and the Zadie Institute for Prevention. ☒

ment (LPM) program of the State Bar. Presenters included GPTS Director Betty Simms and LPM Director Natalie Thornwell. In addition, Maria Glisson, owner of Pro Body Health & Fitness, and Dr. Sue Hammons who lost over 70 lbs. working with Glisson, spoke on the importance of good health. In **photo 2**, Glisson makes a Crisco sandwich to demonstrate the equivalent of eating fast food for lunch. The Law Staff seminars are available for law firms statewide. If you would like your staff to have a similar presentation, please contact natalie@gabar.org.

Secretary of State Addresses Thomasville Bar

The South Georgia office also acts as a resource for voluntary bar associations. On September 19, they facilitated a dinner program for the Thomasville Bar Association at the Plaza Restaurant in Thomasville. Bar members and their guests, including law enforcement officials and judges, enjoyed a presentation by Secretary of State Cathy Cox **see photo 3** (Thomasville Bar President Catherine Williams is pictured at left). Cox spoke on e-commerce and gave an overview of her office's Web site and that of the State Bar.

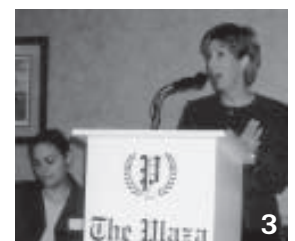
The satellite office can also orchestrate a program for your voluntary bar. If you are interested, please call (800) 330-0446.

Domestic Violence Seminar in Augusta

More than 90 people recently participated in a seminar on domestic violence, held on October 13 at the Sheraton in Augusta, and sponsored by the Augusta Bar Association, Georgia Legal Services and the Pro Bono Project. Attorneys, judges, advocates, law enforcement and hospital staff were among the attendees.

Vicky Kimbrell, Director of the Domestic Violence Project for Georgia Legal Services, reported that many favorable evaluations have been received. According to Kimbrell, this indicates not only an interest in the issue but also the importance of providing ongoing and updated information and training opportunities for attorneys, law enforcement, advocates and judges.

The Domestic Violence Program carries CLE hours in ethics, professionalism and trial practice. If you would like to have this seminar presented in your area, you may call the State Bar's satellite office at (800) 330-0446 to facilitate the event. ☒



In Atlanta

R. David Ware has joined the labor and employment law firm of **Constangy, Brooks & Smith LLC** as a member. Formerly of Ware & Leonard LLC, Ware brings more than 20 years' experience to the employment litigation practice at the firm's Atlanta headquarters office, located at Suite 2400, 230 Peachtree Street, N.W., Atlanta, GA 30303; (404) 525-8622; Fax (404) 525-6955; www.constangy.com.

Love and Willingham LLP is pleased to announce that **Michael Tad Carithers** is now an associate with the firm, located at Suite 2200, Bank of America Plaza, 600 Peachtree Street, N.E., Atlanta, GA 30308; (404) 607-0100; Fax (404) 607-0465.

Kristin Gray Pell has joined the firm of **Claxton & Claxton LLC** as an associate, practicing in the areas of general insurance defense, arson and insurance fraud. Pell holds an undergraduate degree from the University of Georgia and a law degree from the Cumberland School of Law at Samford University in Birmingham. The firm is located at Suite 425, 2500 Windy Ridge Parkway, Atlanta, GA 30339-5679; (770) 933-1946; www.claxtonclaxtonllc.com.

Ed Hirsch has joined **Morris, Manning & Martin LLP** as a partner in the firm's corporate practice. Also, the following associates have joined the firm: technology group – **Brannan Anthony, Steve Combs** and **Dana Schwind**; insurance group – **Amy Atkinson**; litigation group – **Becky Bryan**; intellectual property – **Kirk Goodwin** and **Greg O'Bradovich**;

real estate group – **Reid Harbin**; corporate securities – **Leslie Head, Nancy McDaniel** and **Bill Roberts**; healthcare group – **Sidney Summers**. Morris Manning is located at 1600 Atlanta Financial Center, 3343 Peachtree Road, N.E., Atlanta, GA 30326; (404) 233-7000; Fax (404) 365-9532; www.mmmlaw.com.

Neel & Robinson, Attorneys at Law, LLC is pleased to announce that **Joseph M. Ferguson** and **Shawn D. Stafford** have joined the firm as partners, and that **Amy H. Ferguson** has become associated with the firm. Neel & Robinson focuses on residential real estate and related transactions. The firm's main office is located at 5555 Glenridge Connector, Suite 400, Atlanta, GA 30342; (404) 459-9600.

Jefferson M. Allen has joined the Atlanta office of **McGuireWoods LLP** as an associate in the commercial litigation department; he was formerly an associate with Freeman Mathis & Gary LLP. Also, **George H. Heberton**, managing partner of the McGuireWoods Atlanta office, has been selected chair of the firm's real estate and environmental department. The office is located at 285 Peachtree Center Avenue, N.E., Marquis Tower Two, Suite 2200, Atlanta, GA 30303; www.mcguirewoods.com.

Kilpatrick Stockton LLP announces the addition of **Daniel T. Falstad** to the firm's Atlanta corporate finance and technology practices. Also, 30 lawyers from Jones & Askew have joined Kilpatrick, making its intellectual property practice the largest in the Southeast. Kilpatrick also welcomes **George**

Murphy Jr., Michael D. Crisp and **Corin McCarthy** to its litigation practice. The law firm has offices in Atlanta and Augusta, Georgia; Charlotte, Raleigh and Winston-Salem, North Carolina; Washington, D.C.; Miami, Florida; London; Brussels; and Stockholm.

Jay C. Ruby 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.

Troutman Sanders LLP and Virginia-based **Mays & Valentine LLP** have voted to merge; the union will be one of the Southeast's largest law firm mergers. The combined firm will be known as **Troutman Sanders LLP** and will operate in Atlanta, Georgia; Washington, D.C.; Richmond, Tysons Corners, Norfolk and Virginia Beach, Virginia; and Hong Kong. Troutman's Atlanta office is located at Bank of America Plaza, 600 Peachtree Street, N.E., Suite 5200, Atlanta, GA 30308-2216; (404) 885-3000.

In Cochran

Dennis Mullis has been appointed **Juvenile Court Judge** for the **Oconee Judicial Circuit** effective October 1, 2000. He will continue his private law practice, located at 202 Cherry Street, Cochran, GA 31014; (478) 934-6352.

In Columbus

Daniel P. Amos, president and CEO of **AFLAC Incorporated**, announces the promotion of **Joey M. Loudermilk** to executive vice president, legal and governmental relations, and general counsel. Loudermilk joined the company in 1983 and has served as general counsel since 1991. AFLAC is the leading underwriter of supplemental insurance marketed at the work site in the U.S. — www.aflac.com.

In Hinesville

William A. Parker Jr. has become a member of **Rene' D. Kemp's** law practice, **Kemp & Parker**, located at 209 E. Court Street, Hinesville, GA 31313; (912) 876-5125; kempparker@clds.net

In Peachtree City

Michael W. McElroy, formerly of the firm Harman, Owen, Saunders & Sweeney PC, is pleased to announce the formation of the **Law Office of Michael W. McElroy PC** where he will practice civil litigation including medical malpractice, nursing home, personal injury and commercial litigation. The new office is located at 403 N. Highway 74, Suite C, P.O. Box 3450, Peachtree City, GA 30269; (770) 632-5850; Fax (770) 632-5453; mwmcelroy@aol.com.

In Woodstock

Sam Sparks has joined **Colony Homes** as general counsel and vice president/land acquisition. Sparks was formerly with D.R. Horton Homes, Torrey Homes, and Kessler & Sparks of Atlanta. For more information, visit www.colonyhomes.com.

In Florida

The Atlanta-based labor and employment law firm **Ford & Harrison LLP** is continuing its national expansion by combining its practice in Florida with **Garwood, McKenna, Wolf & Finnigan PA** of Orlando, where the firm will be known as **Ford & Harrison**. For more information, visit www.fordharrison.com.

Timothy M. O'Brien, formerly of Oliver, Maner & Gray LLP in Savannah has become associated with **Levin, Middlebrooks, Thomas, Mitchell, Echsner, Proctor & Papantonio PA** where he concentrates on personal injury and wrongful death litigation. The office is located at 316 S. Baylen Street, Suite 600, Pensacola, FL 32501; (850) 435-7000.

Skip Klauber has been named vice president and general counsel of **Prime Entertainment Inc.**, one of the largest distributors of closed-circuit sporting events in North America. Klauber practices in the areas of telecommunications law, licensing and intellectual property law. The office is located at 7777 Glades Road, Suite 208, Boca Raton, FL 33434; (561) 482-2088.

In Los Angeles

John M. Genga has joined **Paul, Hastings, Janofsky & Walker LLP** in the firm's Los Angeles office as a partner. Genga practices general business litigation, concentrating on copyright, entertainment and intellectual property litigation and counseling. Paul Hastings is an international law firm with more than 700 attorneys located in nine offices: Atlanta; Los Angeles, Orange County and San Francisco, California; New York City; Stamford, Connecticut; Washington, D.C.; London and Tokyo.

In San Francisco

Blake W. Larkin has joined **Paul, Hastings, Janofsky & Walker LLP** in the firm's San Francisco office as of counsel. Larkin represents domestic and international companies in matters before the federal and state courts and in international arbitration.

In Washington, D.C.

Powell, Goldstein, Frazer & Murphy LLP continues to expand its antitrust practice with the addition of **Robert W. Doyle Jr.** as a partner in the firm's Washington, D.C. office. Doyle concentrates his practice on all aspects of antitrust and trade regulation law, with particular emphasis on private and government antitrust investigations and litigation, including merger and acquisition matters, and Hart-Scott-Rodino pre-merger counseling. For more information, visit www.pgfm.com.

Sotiris A. (Ted) Planzos, former deputy chief of the U.S. Justice Department's Organized Crime and Racketeering Section, has joined **Troutman Sanders LLP's** Washington, D.C. office, located at 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005; (202) 274-2955.

Patton Boggs LLP is pleased to announce that **C. Donald Johnson**, former ambassador in the Office of the United States Trade Representative and member of Congress, has joined the firm as a partner resident in the Washington, D.C. office, located at 2550 M Street, N.W., Washington, D.C. 20037; (202) 457-6500; Fax (202) 457-6315; www.pattonboggs.com. ☒



Spotlight on the Atlanta Bar Association

By Charles A. Mobley

JOKES ABOUT LAWYERS, and nearly everyone has a favorite, usually portray us as disreputable and wholly untrustworthy. Often we acknowledge as funny, bad behavior we abhor and can do nothing about — humor perhaps mollifies that helpless feeling we get each time our profession is low rated.

In the spring of 1888, Atlanta lawyers were not so passive and definitely not amused when the *Atlanta Constitution* editorialized "...while we have a very able Bar, we have quite a lot of shysters who make money by hunting up cases..."

"This is disreputable," concluded 100 of Atlanta's "leading" lawyers, who 20 days later, met at the State Capitol

and in order to "...maintain the honor and dignity of the profession of law..." formed the Atlanta Bar Association.

This Atlanta Bar Association, Georgia's oldest and largest local bar, was founded on April 28, 1888, and incorporated by State charter in 1906 with an initial white male membership of 177 lawyers. Fifty years later, the Association had reached the 1,000 member mark and now, with close to 6,000 members from Atlanta's nine metro counties, this association is the largest in the southeastern United States representing the cultural and ethnic diversity of the community it serves.

The Association has a full-time staff of 10 members, 29 standing committees, 18 sections, and an annual budget of \$1.5 million. Its reputation and record of service to society and our profession is

well-known. However, as history demonstrates, and like many other professional organizations, it has come a long way. In 1911, for example, the Atlanta Bar debated whether women should be allowed to practice law and in 1999, Paula J. Frederick, an African-American female, became its president.

Diane O'Steen, the association's full-time executive director, points with pride to the growth and the variety of projects the Atlanta Bar has undertaken under the capable leadership of lawyer volunteers. "It is gratifying to work with so many unselfish, dedicated professionals who emphasize service ahead of personal gain," she stated. Charity, community service, and education are what this association is all about.

The Foundation Aids All In Need

The Atlanta Bar Foundation, a 501(c)(3) non-profit organization created by the association in 1985, administers their philanthropic activities and depends in large part on the generosity and commitment of the association's membership for its funding. Its programs have received both national and local recognition.

Last year, the City of Atlanta commended the Police Scholarship Fund for its significant contribution to children and their families. The Truancy-Intervention Project has received an award of merit from the American Bar Association, a National Volunteer Award, and the State Bar of Georgia William B. Spann Jr. Pro Bono Award.

The Foundation continued its sponsorship of a number of programs — including the annual Santa programs, Truancy-Intervention Project,



Pictured above are (l-r) Rita Sheffey of Hunton & Williams; Randall Jeffrey Cadenhead of BellSouth Advertising & Publishing Corp.; John W. Harbin of Powell, Goldstein, Frazer & Murphy LLP; Debbie Segal, then Executive Director of Atlanta Volunteer Lawyers Foundation; Jim Gober of Arnall, Golden & Gregory; Paula J. Frederick, Atlanta Bar Association Past President; and Jill Pryor of Bondurant, Mixson & Elmore.

Police Scholarship Fund, and the Legal Run-Around 5K Road Race to benefit the scholarship fund — this year to help it achieve its long range goals.

Fighting Domestic Violence

During the last year, it was brought to the Association's attention that more than 5,000 women each day are victims of domestic assaults in our city. Many times help that is just a phone call away never arrives because there is no phone available to call 911, while many old cell phones simply gather dust.

The Atlanta Bar Association decided to help give those phones new life that may help save a life. The Association's community outreach committee put out a call to the Association's members to help fight domestic violence. The Atlanta Bar teamed up with the Atlanta Volunteer Lawyer Foundation and BellSouth to promote CALL to PROTECT: Wireless Phones for Domestic Safety, a national program sponsored by the Wireless Foundation and the National Coalition of Domestic Violence. The Association's members responded to the call for help by donating more than 300 phones that will be programmed by BellSouth to dial only 911. Phones will be distributed

through the Fulton County Solicitors Victims Assistance Office to people who need them.

CLE Continues To Evolve And Improve

During the summer of 1999, the Atlanta Bar sponsored free CLE programs on Fridays at noon. Each program featured a lunchtime video, which was played at the Bar headquarters and offered participants one CLE

Membership: over 6,000

Officers:

President—Jeffrey Bramlett

VP/President Elect—

Seth Kirschenbaum

Treasurer—William deGolian

Secretary—S. Wade Malone

Immediate Past President—

Paula Frederick

ACYL President—

Kristine Moschella

Dues: Dues range from \$60 for lawyers admitted after June 1997, to \$180 for those admitted before May 1992.

Bar Year: Begins June 1.

credit hour and at least one specialty hour. While most continuing education seminars include the cost of the seminar in the CLE credit, the only cost to Atlanta Bar members was the \$3.00 CLE credit fee, which was then paid to the State Bar's CLE department.

The Atlanta Bar Association Continuing Legal Education's Board of Trustees afforded numerous opportunities for members to accumulate required hours with 18 seminars throughout the year. In addition to the always popular annual winter seminar at a ski destination, the ACLE Board of Trustees, whether it was a solo effort or cosponsorship with the Section, has presented seminars such as "Practice in Fulton Superior Courts New Family Division" and two update seminars "Old Age Ain't for Sissies" and "Probate and Long-Term Care Issues," "A Map to the Courthouse," "Trial Tips for the Middle Income Divorce Case," "We Can Work It Out – Judges and Lawyers: Improving the Relationship," "Litigating Work Injuries," and "Evidence." Also, many of the Atlanta Bar Sections offer CLE credit at breakfast and luncheon meetings.

The Atlanta Bar Association office is now located on the fourth floor of the International Tower at Peachtree Center. On February 1, 1999, the Association moved into its new headquarters which is the third headquarters location in the history of the Atlanta Bar. In 1955, the first office was opened for the Atlanta Bar in the Fulton County Courthouse. The Bar remained housed in the Courthouse until 1978 when it moved to the Equitable Building.

Judge Carolyn S. Weeks, the Association's first female president, summed up what many have often stated about Atlanta Bar, "it's a world class organization for a world class place." ☐

N.GA Mediation pickup, 10/00 p14 bw

Charles A. Mobley, an attorney with Arrington & Hollowell in Atlanta, is a member of the State Bar's Local Bar Activities Committee, which plans to spotlight a voluntary bar in upcoming issues of the Journal.

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.

Armstrong, Christine Georgetown, SC	Admitted 1992 Died August 1998
Barabas, John B. Jenkinsburg	Admitted 1982 Died August 2000
Branch Jr., Harlee Atlanta	Admitted 1931 Died August 2000
Buckingham, Donna B. Atlanta	Admitted 1982 Died September 2000
Citrenbaum, Carroll Forest Park	Admitted 1949 Died July 2000
Cole, Robert W. Atlanta	Admitted 1960 Died June 1998
Crichton, George Thomas Decatur	Admitted 1964 Died August 2000
Dennis, Douglas Atlanta	Admitted 1938 Died August 2000
Freeman, Ben R. Greenville	Admitted 1940 Died October 2000
Haas, Joseph F. Atlanta	Admitted 1934 Died October 2000
Hawkins, John Edgar Atlanta	Admitted 1990 Died August 2000

Johnson Jr., Walker P. Macon	Admitted 1961 Died August 2000
McGarity, Edward E. McDonough	Admitted 1959 Died September 2000
McLanahan, Clarence R. Elberton	Admitted 1931
Morrow, Jonath A. Decatur	Admitted 1978 Died September 2000
Mosbey Jr., James H. Watkinsville	Admitted 1962
Neiger, David S. Duluth	Admitted 1995 Died June 2000
Owens, Edward L. Flowery Branch	Admitted 1952 Died September 2000
Paul, Larry Marshall Atlanta	Admitted 1975 Died October 2000
Rosenberg, David Michael Blue Ridge	Admitted 1988 Died April 2000
Russell, Patience M. Atlanta	Admitted 1998 Died August 2000

Irma L. Clark, 79, of Cumming, Georgia, died June 22, 2000. Born in Colonie, New York, she attended Russell Sage College in Troy, New York and Iowa State College. She later attended Woodrow Wilson School of Law in Atlanta. She was admitted to the State Bar of Georgia in 1972. She practiced law with Dan Mitchell in Atlanta, and upon his death, she purchased his firm. She is survived by her husband of 61 years, L. H. Clark, her daughters Judith Darby and Dona L. Duff, her brother Stephen Laning, and 2 grandchildren.

John Littleton Glover, 89, of Newnan, Georgia, died June 28, 2000. Born in Newnan, he graduated from the University of Virginia with a B.A. in 1932 and his law degree in 1935. He was admitted to the State Bar of

Georgia in 1935, and he practiced law in Coweta County for 65 years. He was a solo practitioner until the late 1950s, when he formed the firm of Glover & Davis. He was a member of the Newnan/Coweta Bar Association and the Coweta Circuit Bar Association, as well as the Board of Governors of the State Bar of Georgia. Mr. Glover was active as a high school football referee for many years, and he was an avid golfer up until the time of his death. He is survived by his wife of 64 years, Margaret Miller Glover, two sons, John Littleton Glover, Jr., and Wallace Glover, his brothers Dr. Howard C. Glover, Jr., Cliff C. Glover, Dr. Nathaniel B. Glover, his sister Winifred Glover Klein and 5 grandchildren.

Thomas J. Hartland, Jr., 47, of Atlanta, Georgia, died September 19, 2000. Born in Pittsburgh, Pennsylvania, he graduated from Columbia University with a B.A. in 1974 and Vanderbilt University School of Law with a J.D. in 1977. He was admitted to the State Bar of Georgia in 1977, and he spent his career with Troutman Sanders LLP. He was a member of the American Bar Association and the Atlanta Bar Association. He is survived by his parents, Dr. and Mrs. Thomas J. Hartland, 5 brothers, and 1 sister.

Thank You

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

Gifts In Honor Of Darrion Pam Bullock
Mr. Sterling P. Eaves

Gifts In Honor Of Forrest L. Champion, Jr.
Mr. Robert M. Brinson
Mr. H. Fielder Martin
State Bar of Georgia

Gifts In Honor Of J. Milton Grubbs, Jr.
Judge Adele L. Grubbs

Gifts In Honor Of John Wyrton Lipscomb, Sr.
Ms. Sharon L. Bryant

Gifts In Honor Of Judge Rosser Adams Malone
Mr. Thomas William Malone

Gifts In Honor Of Mary Kelley Norton
Mr. & Mrs. Robert W. Chasteen, Jr.

Gifts In Honor Of Harry N. Patterson
Ms. Denise H. Bare
Mr. Cliff Brashier
Ms. Sharon L. Bryant
Mr. & Mrs. Robert W. Chasteen, Jr.
Mr. & Mrs. Richard Wilkes

Gifts In Honor Of Joan G. Raley
Mr. Rudolph N. Patterson

Gifts In Memory Of Mrs. Mera Carter Sammon
Boller, Sewell & Segars, Inc.
Mr. Cliff Brashier
Mr. Thomas C. Chambers III
Mr. Robert W. Chasteen, Jr.
Mr. Harold T. Daniel, Jr.
Dr. Garland S. McIntyre, Jr., DDS

Gifts In Honor Of Ralph Shadix
Mr. Rudolph N. Patterson

Journal Memorials

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.

Memorial Gifts

A meaningful way to honor a loved one or to commemorate a special occasion is through a



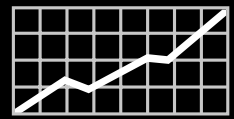
tribute and memorial gift to the Lawyers Foundation of Georgia. An expression of sympathy or a celebration of a family event that takes the form of a gift to the Lawyers Foundation of Georgia provides a

lasting remembrance. Once a gift is received, a written acknowledgement is sent to the contributor, the surviving spouse or other family member, and the *Georgia Bar Journal*.

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.

**lexis nexis new art 4c
“comp. yes....cost no.”**



Properly Communicating with Clients, Part III

by Natalie Thornwell

PROPERLY COMMUNICATING with your clients in a way that they understand and want to hire you and keep hiring you is direct evidence of delivering “quality” legal services.

Billing Statements Really “Talk”

Use billing statements with easy-to-read formats. Clients often want to get to the bottom line quickly. So make sure the statements you use indicate clearly what the client owes and by when. Clients should be able to see not only the account balance, but also any accrued interest or other finance charges, and a complete listing of trust account activity. The statement or invoice format should be very descriptive. Don’t use generic descriptions like “legal services” as the complete description of work you performed. You must be ever mindful of the fact that legal work is often work unseen. So use your billing statements to convey the quantity and quality of your efforts on a client’s behalf.

When clients sign their fee agreements, give them a copy of a sample bill. Allow them to review this sample and ask you questions about it. This preview is especially recommended if you opt to use a more complex format for your billing statements. Also, let clients know when your office mails out their bill or when they should expect to receive their bill. Good time and billing software programs are flexible enough to accommodate

multiple billing formats and arrangements. If you need help choosing an appropriate system, give us a call.

Sexy Client Attraction Methods

If you think about all of the items covered thus far, you will probably notice that they can all fall into the category of marketing in one way or another. What do clients think about the law firms that represent them? How did they become your clients in the first place? What attracted them to your firm? What marketing techniques work for you? Here are a few possibilities:

File Closing Letter – letter requesting client to contact you again if other legal matters arise

Referrals – learned of you from former client, current staff member, or fellow attorney

Walk Ins – “our welcome mat is always there”

Radio Advertising – “. . . didn’t I hear about you on the radio”

Case/Contact Management-Generated Reminders – see what our software can do?

Firm Brochure – this just caught my eye
Newsletter – your firm sent me a good update on legal issues in my industry or community

Formal Lawyer Referral Service – check with the Bar for an approved list of these agencies

Internet Search – found your informative and up-to-date Web site

Court Appearances – saw you in action in court (keep your best foot forward; you never know who’s watching).

Media Coverage – “. . . didn’t I see you on television?”

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- Marketing Success Stories: Personal Interviews with 66 Rainmakers
- The Lawyer’s Guide to Marketing on the Internet
- The ABC’s of Marketing
- The ABA Guide to Legal Marketing: A Collection of the Best Ideas, Approaches, and Success Stories
- Marketing and Legal Ethics: The Boundaries of Promoting Legal Services
- Through the Client’s Eyes: New Approaches to Get Clients to Hire You Again and Again
- Yellow Pages Lawyer Advertising: An Analysis of Effective Elements
- Marketing for Legal Support Staff: Jay Foonberg’s Proven Techniques
- How to Build a Million Dollar Practice
- How to Market Your Law Firm
- Action Steps to Marketing Success
- Marketing Your Law Firm on the Internet
- Marketing the Law Firm: Business Development Techniques

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. ☒

lexis publishing/ stackpole new art 4c “SE Transaction Guide”

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
Hazlehurst	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

**south georgia
mediation new art bw**

Discipline Notices (September 1 - October 25, 2000)

DISBARMENTS

James E. Thompson **Atlanta, GA**

Attorney James E. Thompson (State Bar No. 708512) has been disbarred from the practice of law by order of the Supreme Court dated September 11, 2000. Thompson wrote checks on his attorney trust account in amounts for which he had insufficient funds. Further, he commingled his client's funds with his own and withdrew money for his personal use.

John D. Watkins **Augusta, GA**

Attorney John D. Watkins (State Bar No. 740500) has been disbarred from the practice of law by order of the Supreme Court dated September 11, 2000. Watkins represented a client for a 40 percent contingency fee. The client was subsequently incarcerated and Watkins settled the claim without the client's permission for \$13,500. Watkins signed as a witness on the release; presented the release to the insurance company; endorsed the check; and either placed the client's name on the check or allowed the client's mother to sign the check. Watkins failed to deposit the settlement funds into his trust account. Although Watkins was due \$5,400, he commingled the balance of the money with his own funds, failed to account for the funds, and applied \$7,500 to another client's unpaid fees.

In another matter Watkins borrowed \$30,000 from a client in

1993. He knew about her financial situation because he had been her lawyer. Watkins failed to repay the client and suggested that he was entitled to keep the money to offset unpaid legal bills. Watkins was unable to prove that the client owed him money. During the period between August and November 1995, Watkins also collected \$20,000 in legal fees from the client, which was clearly excessive.

Quinton T. Hudson **Atlanta, GA**

Attorney Quinton T. Hudson (State Bar No. 374675) has been disbarred from the practice of law by order of the Supreme Court dated October 2, 2000. Hudson advised his client to create a trust and appoint Hudson and Hudson's housemate as trustee and successor trustee. Hudson prepared a trustee fee agreement in which he and the housemate would receive a large amount of trustee fees. Later Hudson convinced the client to give him \$15,000 which Hudson first characterized as attorney's fees but later characterized as a loan. Hudson failed to repay loans, deposited the client's money in his attorney trust account; withdrew the money for his personal use, and failed to provide the client with an accounting. After the client retained new counsel and a replacement trustee, the client obtained a judgment against Hudson for \$969,000, including compensatory and punitive damages and attorney's

fees. Hudson has not satisfied the judgment.

Joshua Ross Kenyon **Atlanta, Georgia**

Joshua Ross Kenyon (State Bar No. 415640) voluntarily surrendered his license to practice law in the State of Georgia. The Supreme Court accepted Kenyon's surrender by order dated September 11, 2000. While Chief of Staff for the Chairman of the Fulton County Board of Commissioners, Kenyon accepted cash totaling at least \$14,000 from a county contractor in violation of federal law. Kenyon surrendered his license in connection with pleading guilty to the federal felony.

C. Nelson Jarnagin **Brunswick, Georgia**

C. Nelson Jarnagin (State Bar No. 389494) voluntarily surrendered his license to practice law in the State of Georgia. The Supreme Court accepted Jarnagin's surrender by order dated October 2, 2000. Jarnagin pled guilty in the United States District Court for the District of South Carolina to a felony violation involving transmission of fraudulently obtained money in foreign commerce.

Darryl B. Segraves **Atlanta, Georgia**

Darryl B. Segraves (State Bar No. 634386) voluntarily surrendered his license to practice law in the State of Georgia. The Supreme Court

accepted Segraves' surrender by order dated October 23, 2000. Segraves intends to enter a plea of guilty to a single count of the criminal offense of theft by taking. Segraves admits that the entry of judgment on the plea will constitute a violation of Standard 66.

SUSPENSION

Susanne D. Steinman Bronxville, New York

On September 11, 2000, the Supreme Court suspended Susanne D. Steinman (State Bar No. 678250) for two years. Steinman, an inactive member of the State Bar of Georgia, admitted that she testified as a witness in a case in the United States District Court for the Southern District of New York that she was admitted to practice before the United States District Court for the Southern District of Georgia when she was not.

PUBLIC REPRIMANDS

None

REVIEW PANEL REPRIMANDS

Billy C. Mathis and John Philip Cannon Albany, Georgia

Attorneys Billy C. Mathis (State Bar No. 477023) and John Philip Cannon (State Bar No. 107895) have been ordered to receive a Review Panel reprimand by order of the Supreme Court dated September 8, 2000. Both lawyers admit they engaged in a conflict of interest. At the time Mathis formed a law partnership with John Cannon, Mathis had been appointed to represent Denver Perkins, one of three co-defendants in a criminal case. Brian Tabb, one of Perkins' co-

defendants, asked Cannon to represent him in the same case. On July 26, 1999, Mathis withdrew as counsel for Perkins, and Tabb retained Cannon. Tabb and Perkins were co-defendants in a case in which they could have raised antagonistic defenses, but Cannon continued to represent Tabb and negotiated a plea to a lesser offense on Tabb's behalf in exchange for which Tabb agreed to testify against Perkins if necessary.

William Lewis Vaughn Macon, Georgia

Attorney William Lewis Vaughn (State Bar No. 726450) has been ordered to receive a Review Panel reprimand by order of the Supreme Court dated September 8, 2000. A client hired Vaughn to domesticate a Florida judgment in the Superior Court for Crawford County, Georgia. Vaughn asked for a \$250 retainer but did not enter an appearance and did not appear for the hearing. The Court dismissed the petition for want of prosecution. Vaughn did not tell the client the case had been dismissed for three months. Vaughn did not refile the petition after he promised to do so, did not respond to any of the client's calls, and did not comply with a written request for either an update on the case or return of the retainer.

Frank B. Perry Ringgold, Georgia

Attorney Frank B. Perry (State Bar No. 572536) has been ordered to receive a Review Panel reprimand by order of the Supreme Court dated September 8, 2000. Perry was hired to represent a couple in connection with an automobile accident. Perry notified the insurance company of the other driver and the driver's employer. About a year later the insurance company sent Perry a letter indicating it had heard nothing further from him. Perry failed to respond to

the insurance company and the statute of limitations expired. Thereafter, Perry would not return the client's phone calls.

Karl Gregory Faerber Alpharetta, Georgia

Attorney Karl Gregory Faerber (State Bar No. 253935) has been ordered to receive a Review Panel reprimand by order of the Supreme Court dated September 29, 2000. Faerber was hired to by a client to resolve difficulties she was having with a debt collection firm. He mailed the client a representation letter, which included a provision authorizing him to settle her claim, but the client never received the letter. Faerber settled the claim for \$1,500 without the client's authority. Faerber paid himself \$1,000 and mailed a check for the remainder to his client. Faerber did not provide the client the terms of the settlement or a release. Faerber agreed to repay the \$1,500 to his client, waving any claim to attorneys' fees.

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 September 1, 2000, two lawyers have been suspended for violating this Rule. ☒

— *Compiled by Connie L. Peavy,
Clerk, State Disciplinary Board*

Summary of Recently Published Trials

Clarke State Ct.....	Medical Malpractice - Diagnosis - Cervical Spine Fracture.....	\$5,000,000
Cobb State Ct.....	False Imprisonment - Malicious Prosecution - Store.....	\$246,985
Cobb State Ct.....	Wrongful Death - Auto Accident - Single Vehicle.....	\$1,155,872
Cobb State Ct.....	Hospital Negligence - Falldown - Elderly Patient.....	\$283,000
Coweta U.S. District Ct.....	Federal Tort Claims Act - Wrongful Death - British Soldier.....	\$1,200,000
Coweta U.S. District Ct.....	Civil Rights - Free Speech - Termination.....	\$15,000
DeKalb State Ct.....	Auto Accident - Rear-End - Turning.....	\$220,484
DeKalb State Ct.....	Auto/Pedestrian Accident - Parking Lot.....	\$40,000
Dougherty U.S. District Ct.....	Insurance - Bad Faith - Auto Accident	\$520,000
Floyd United Ct.....	Civil Rights - Prisoner - Bathroom Facilities.....	Defense verdict
Fulton State Ct.....	Falldown - Grocery Store - Wet Floor.....	\$95,000
Fulton State Ct.....	Medical Malpractice - Cholecystectomy - Pregnant Woman.....	Defense verdict
Fulton State Ct.....	Wrongful Death - Auto Accident - Construction Site.....	\$1,875,000
Fulton State Ct.....	Falldown - Grocery Store - Leaf On Floor.....	\$49,500
Fulton State Ct.....	Auto Accident - Intersection - Right-Of-Way.....	\$650,000
Fulton State Ct.....	Medical Malpractice - Monitoring - Falldown.....	\$138,000
Fulton State Ct.....	FELA - Excessive Noise - Hearing Loss.....	\$2,000
Fulton State Ct.....	Construction Site - Falling Materials - Windy Day.....	\$800,000
Fulton State Ct.....	Falldown - Parking Lot - Ice.....	\$42,500
Fulton Superior Ct.....	Property Damage - Wooden Deck - Termites.....	\$7,500.
Fulton Superior Ct.....	Premises Liability - Residence - Deck Collapse.....	Defense verdict
Fulton Superior Ct.....	Falldown - Strip Mall - Loose Brick.....	Defense verdict
Fulton Superior Ct.....	False Arrest - Malicious Prosecution - Olympic Volunteer.....	\$11,000
Fulton Superior Ct.....	Auto Accident - Rear-End - Intersection.....	\$90,000
Fulton Superior Ct.....	Fraud - Conversion - Trust Assets.....	\$1,019,000
Fulton Superior Ct.....	Slander - Imputation Of A Crime - Homeowner's Meeting.....	Defense verdict
Fulton U.S. District Ct.....	Employment - Racial Discrimination - Administrative Position.....	\$100,000
Fulton U.S. District Ct.....	Employment - Reverse Racial Discrimination - Hiring.....	Defense verdict
Fulton U.S. District Ct.....	Police - Excessive Force - Effecting Arrest.....	Defense verdict
Fulton U.S. District Ct.....	Falldown - Hotel Parking Lot - Curb.....	\$46,689

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Wade Copeland, of Webb, Carlock, Copeland, Semler & Stair of Atlanta, says, "Our firm uses The Georgia Trial Reporter's verdict research on a regular basis to assist us in evaluating personal injury cases. We have been extremely pleased with both the results and service and would recommend them to both the plaintiff's and defense bar."

Plaintiff SUV Passenger Sustains Lower Extremity Crushing Fractures and Settles Case for \$440,000

Plaintiff was a 15 year old passenger in an SUV being operated by his teenage friend. The friend was trying to see how fast the SUV would go when the vehicle struck a tree. (*Wall v. Hill; Fulton County State Court*)

Three White Males Win \$2,568,281 in Race Discrimination Case Against Fulton County

Plaintiffs were supervisors at defendant's water and sewer treatment facilities. One was fired and two demoted for allowing a racially hostile environment to exist in their facility. (*Lambert v. Fulton County; U.S. District Court*)

Elderly Shopper Falls in Wal-Mart and is awarded \$347,855 for Her Fractured Hip

A 72 year old female plaintiff slipped and fell on water just inside Defendant Wal-Mart's entrance. Plaintiff claimed the water had accumulated in the area due to defendant's failure to maintain the floor on a rainy day. (*Miozza v. Wal-Mart; U.S. District Court*)

Wrongful Death Verdict of \$1,200,000 Results From a Brawl at Decedent's Employer's Workplace

Decedent's employer had a disagreement with a contractor and a fight ensued. The fight involved several people, but not the 50 year old decedent who accidentally was struck by an ax and died from a head injury. (*Foster v. Powell; DeKalb County State Court*)

Motor Vehicle Accident Results in Herniated Disc and \$1,300,000 Settlement

Plaintiff fireman was rendering assistance to another when an auto struck him. Plaintiff sustained a herniated disc in the low back and had two fusion surgeries, preventing him from pursuing his occupation. (*Park v. Moore; DeKalb County State Court*)

AUDITED 2000 FINANCIAL STATEMENT



303 Peachtree Street, N.E.
Suite 2000
Atlanta, GA 30308

Independent Auditors' Report

The Board of Governors
State Bar of Georgia:

We have audited the accompanying statements of financial position of the State Bar of Georgia (the "State Bar") as of June 30, 2000 and 1999, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the State Bar's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the State Bar as of June 30, 2000 and 1999, and its changes in net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

July 28, 2000

STATE BAR OF GEORGIA

Statements of Financial Position

June 30, 2000 and 1999

	2000	1999
Assets:		
Cash and cash equivalents	\$ 10,636,275	5,612,438
Accounts receivable	189,910	144,210
Receivable from Georgia Bar Foundation (note 7)	1,795	2,056
Receivable from Chief Justice's Commission on Professionalism (note 7)	17,032	35,817
Receivable from Commission on Continuing Lawyer Competency (note 7)	80,788	49,513
Prepaid and other assets	143,639	141,017
Investments (note 3)	2,054,807	4,941,614
Furniture, fixtures, and equipment, at cost, less accumulated depreciation (note 4)	182,630	212,931
Bar Center Building and equipment, at cost, less accumulated depreciation (notes 4 and 12)	8,180,863	8,518,513
Total assets	\$ 21,487,739	19,658,109
Liabilities:		
Accounts payable	\$ 604,538	748,315
Accrued vacation	153,564	124,579
Deferred income	3,594,577	2,690,769
Health claims reserve	292,462	213,567
Payable to Pro Bono	35,680	48,870
Payable to Client Security Fund	2,537,140	2,560,069
Deferred compensation payable (note 8)	429,729	468,892
Deferred income Bar Center	950,026	817,720
Note payable (note 12)	1,201,600	2,802,400
Total liabilities	9,799,316	10,475,181
Net assets:		
Unrestricted:		
Undesignated	1,209,249	1,296,630
Board-designated (notes 9 and 10)	10,196,782	7,666,493
Total unrestricted	11,406,031	8,963,123
Temporarily restricted (note 11)	282,392	219,805
Total net assets	11,688,423	9,182,928
Commitments and contingencies (notes 5, 6, 12 and 13)		
Total liabilities and net assets	\$ 21,487,739	19,658,109

See accompanying notes to financial statements.

AUDITED 2000 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Statement of Activities

Year ended June 30, 2000

	Unrestricted		Temporarily Restricted	2000 Total	1999 Total (memo only)
	Undesignated	Board- Designated			
Revenues and other support:					
Fees:					
License	\$ 4,494,097	—	—	4,494,097	4,257,218
Advertising	193,018	—	—	193,018	197,740
Membership	142,067	—	—	142,067	115,720
Sections	—	—	—	—	4,952
Total fees	4,829,182	—	—	4,829,182	4,575,630
Contributions	—	500,000	489,826	989,826	2,439,900
Section dues	—	478,933	—	478,933	449,438
Convention and meeting fees	—	274,382	—	274,382	134,649
Unrealized loss on investments	(91,086)	(40,551)	—	(131,637)	(82,290)
Interest income	278,956	215,637	—	494,593	384,874
Rental income (note 12)	—	812,000	—	812,000	812,000
Assessment income (note 12)	—	1,545,522	—	1,545,522	1,539,197
Other	88,907	42,733	—	131,640	170,429
Total other revenues	276,777	3,828,656	489,826	4,595,259	5,848,197
Net assets released from restrictions (note 11)	—	427,239	(427,239)	—	—
Total revenues and other support	5,105,959	4,255,895	62,587	9,424,441	10,423,827
Expenses:					
Program expenses:					
Counsel	2,104,601	—	—	2,104,601	2,054,296
Membership	378,127	—	—	378,127	296,331
Meetings	90,615	—	—	90,615	77,839
Communications	696,740	—	—	696,740	689,701
Consumer Assistance Program	304,798	—	—	304,798	318,711
Fee arbitration	216,127	—	—	216,127	210,466
Lawyers' Assistance Program	45,009	—	—	45,009	38,902
Law Practice Management	193,077	—	—	193,077	205,936
Younger Lawyers	200,307	12,391	—	212,698	190,389
Board of Governors	73,028	—	—	73,028	64,349
Section expense	—	532,566	—	532,566	401,377
Mock trial	—	119,870	—	119,870	128,950
Bar media conference	—	30,648	—	30,648	383
Legislative	—	181,727	—	181,727	179,041
Family and courts	—	—	—	—	714
Conventions and meeting	—	260,239	—	260,239	116,983
Georgia Diversity Program	—	69,950	—	69,950	66,342
Pro bono	76,000	—	—	76,000	76,000
Supreme Court Grant	—	12,500	—	12,500	2,500
CLJ School	—	153	—	153	2,900
Foundations of Freedom	—	—	—	—	25,600
Standards of the Profession	25,000	—	—	25,000	25,000
President's Program	10,000	—	—	10,000	3,020
Total program expenses	4,413,429	1,220,044	—	5,633,473	5,175,730
Management and general	785,366	500,107	—	1,285,473	1,359,726
Total expenses	5,198,795	1,720,151	—	6,918,946	6,535,456
Change in net assets	(92,836)	2,535,744	62,587	2,505,495	3,888,371
Other changes in net assets - transfers (note 10)	5,455	(5,455)	—	—	—
Net assets, beginning of year	1,296,630	7,666,493	219,805	9,182,928	5,294,557
Net assets, end of year	\$ 1,209,249	10,196,782	282,392	11,688,423	9,182,928

See accompanying notes to financial statements

STATE BAR OF GEORGIA

Statement of Activities

Year ended June 30, 1999

	Unrestricted		Temporarily Restricted	1999 Total
	Undesignated	Board- Designated		
Revenues and other support:				
Fees:				
License	\$ 4,257,218	—	—	4,257,218
Advertising	197,740	—	—	197,740
Membership	115,720	—	—	115,720
Sections	4,952	—	—	4,952
Total fees	4,575,630	—	—	4,575,630
Contributions	—	2,400,000	439,900	2,439,900
Section dues	—	449,438	—	449,438
Convention and meeting fees	—	134,649	—	134,649
Unrealized loss on investment	(82,290)	—	—	(82,290)
Interest income	304,978	79,896	—	384,874
Rental income (note 12)	—	812,000	—	812,000
Assessment income (note 12)	—	1,539,197	—	1,539,197
Other	130,086	40,343	—	170,429
Total other revenues	352,774	5,055,523	439,900	5,848,197
Net assets released from restrictions (note 11)	—	383,462	(383,462)	—
Total revenues and other support	4,928,404	5,438,985	56,438	10,423,827
Expenses:				
Program expenses:				
Counsel	2,054,296	—	—	2,054,296
Membership	296,331	—	—	296,331
Meetings	77,839	—	—	77,839
Communications	689,701	—	—	689,701
Consumer Assistance Program	318,711	—	—	318,711
Fee arbitration	210,466	—	—	210,466
Lawyers' Assistance Program	38,902	—	—	38,902
Law Practice Management	205,936	—	—	205,936
Younger Lawyers	187,757	2,632	—	190,389
Board of Governors	64,349	—	—	64,349
Section expense	—	401,377	—	401,377
Mock trial	—	128,950	—	128,950
Bar media conference	—	383	—	383
Legislative	—	179,041	—	179,041
Family and courts	—	714	—	714
Conventions and meeting	—	116,983	—	116,983
Georgia Diversity Program	—	66,342	—	66,342
Pro bono	76,000	—	—	76,000
Supreme Court Grant	—	2,500	—	2,500
CLJ School	—	2,900	—	2,900
Foundations of Freedom	25,600	—	—	25,600
Standards of the Profession	25,000	—	—	25,000
President's Program	3,020	—	—	3,020
Total program expenses	4,273,908	901,822	—	5,175,730
Management and general	683,769	675,957	—	1,359,726
Total expenses	4,957,677	1,577,779	—	6,535,456
Change in net assets	(29,273)	3,861,206	56,438	3,888,371
Other changes in net assets - transfers (note 10)	19,481	(19,481)	—	—
Net assets, beginning of year, as restated (note 11(d))	1,306,422	3,824,768	163,367	5,294,557
Net assets, end of year	\$ 1,296,630	7,666,493	219,805	9,182,928

See accompanying notes to financial statements

AUDITED 2000 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Statements of Cash Flows

Years ended June 30, 2000 and 1999

	2000	1999
Cash flows from operating activities:		
Change in net assets	\$ 2,505,495	3,888,371
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	416,905	478,427
Unrealized loss on investments	131,637	82,290
(Increase) decrease in accounts receivable	(45,700)	5,282
Decrease in receivable from Georgia Bar Foundation	261	533
Decrease (increase) in receivable from Chief Justice's Commission on Professionalism	18,785	(722)
Increase in receivable from Commission on Continuing Lawyer Competency	(31,275)	(25,316)
(Increase) decrease in prepaid and other assets	(2,622)	1,822
(Decrease) increase in accounts payable	(143,777)	96,587
Increase in accrued vacation	28,985	11,126
Decrease in accrued rent	—	(35,533)
Increase (decrease) in deferred income	903,808	(34,723)
Increase in health claims reserve	78,895	61,829
(Decrease) increase in payable to Pro Bono	(13,190)	6,777
(Decrease) increase in payable to Client Security Fund	(22,929)	16,259
Decrease in deferred compensation payable	(39,163)	(81,622)
Increase (decrease) in deferred income Bar Center	132,306	(8,387)
Net cash provided by operating activities	3,918,421	4,463,000
Cash flows from investing activities:		
Purchase of furniture, fixtures, and equipment	(48,954)	(80,152)
Additions to Bar Center building	—	(27,415)
Proceeds from sale of investments	2,755,170	25,642
Net cash provided by (used in) investing activities	2,706,216	(81,925)
Cash flows from financing activities -- principal payments on note payable	(1,600,800)	(3,100,800)
Net increase in cash and cash equivalents	5,023,837	1,280,275
Cash and cash equivalents at beginning of year	5,612,438	4,332,163
Cash and cash equivalents at end of year	\$ 10,636,275	\$ 5,612,438
Supplemental disclosure of cash flow information -- interest paid	\$ 162,116	\$ 334,259

See accompanying notes to financial statements.

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2000 and 1999

(1) Summary of Significant Accounting Policies

(a) Description of Business

The State Bar of Georgia (the "State Bar") is a membership organization of attorneys in the State of Georgia which performs as a society and regulatory agency for its membership.

(b) Accrual Basis

The financial statements of the State Bar have been prepared on the accrual basis of accounting and reflect all significant receivables and payables.

(c) Basis of Presentation

The State Bar's net assets and revenues, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets of the organization and changes therein are classified and reported as unrestricted and temporarily restricted.

Unrestricted net assets include amounts that are not subject to donor-imposed stipulations which are used to account for resources available to carry out the purposes of the State Bar in accordance with its charter and bylaws. The principal sources of unrestricted funds are membership fees and dues. The State Bar's governing board has designated certain unrestricted net assets to be held for specific purposes as indicated in the statement of financial position.

Temporarily restricted net assets are those resources currently available for use, but expendable only for purposes specified by the donor or grantor and may or will be met by the action of the State Bar and/or the passage of time. Such resources originate from grants and contributions restricted for specific purposes or a specific future time frame. When a donor or grantor restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions.

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulation or by law. Expirations of temporary restrictions on net assets (i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed) are reported as reclassifications between the applicable classes of net assets.

AUDITED 2000 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2000 and 1999

(d) Restatement

Beginning net assets have been restated to more accurately reflect amounts payable under the deferred compensation program (see note 8):

	<u>Unrestricted</u>
Net assets at June 30, 1998, as previously reported	\$ 1,481,422
Recognition of additional deferred compensation expense	<u>(175,000)</u>
Net assets at June 30, 1998, as restated	<u>\$ 1,306,422</u>

(e) Cash and Cash Equivalents

The State Bar considers all cash investments with maturities of three months or less to be cash equivalents. Cash equivalents are stated at cost which approximates market value.

(f) Investments

Investments consisting primarily of marketable securities are recorded at fair value.

(g) Building, Furniture, Fixtures, and Equipment

Building, furniture, fixtures, and equipment are carried at cost. Depreciation expense is computed based on the estimated useful life of the respective assets using the straight-line method of depreciation. The estimated useful lives range from five to twenty-seven and a half years.

(h) Deferred Income

Annual license fee and Bar Center assessment notices for the fiscal years ending June 30, 2001 and 2000 were sent out in May 2000 and April 1999, respectively. The amounts collected prior to June 30 were recorded as deferred income.

(i) Functional Allocation of Expenses

The costs of providing the various programs and other activities have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2000 and 1999

(j) Use of Estimates by Management

Management of the State Bar has made certain estimates and assumptions relating to the reporting of accrued expenses and deferred compensation to prepare the financial statements in conformity with generally accepted accounting principles. Actual results could differ from those estimates.

(k) Income Taxes

The State Bar is exempt from income taxes under Section 115 of the Internal Revenue Code.

(l) Reclassifications

Certain reclassifications have been made to 1999 balances to conform with 2000 balances.

(2) Membership

Membership in the State Bar was 31,646 and 30,596 at June 30, 2000 and 1999, respectively.

(3) Investments

Investments are recorded at fair value. At June 30, 2000 and 1999, investments consist of the following:

	<u>2000</u>	<u>1999</u>
Fixed income mutual funds	\$ 1,894,100	4,753,534
Annuity contract	<u>160,707</u>	<u>188,080</u>
	<u>\$ 2,054,807</u>	<u>4,941,614</u>

(4) Building, Furniture, Fixtures, and Equipment

Furniture, fixtures, and equipment consist of the following:

	<u>2000</u>	<u>1999</u>
Leasehold improvements	\$ 146,205	146,205
Furniture and office equipment	363,895	355,629
Telephone equipment	74,100	74,100
Computer equipment	<u>197,957</u>	<u>273,627</u>
	782,157	849,561
Less accumulated depreciation	<u>599,527</u>	<u>636,630</u>
	<u>\$ 182,630</u>	<u>212,931</u>

AUDITED 2000 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2000 and 1999

The Bar Center building and equipment is summarized as follows:

	2000	1999
Building	\$ 9,247,730	9,247,730
Equipment	27,415	27,415
	<u>9,275,145</u>	<u>9,275,145</u>
Less accumulated depreciation	1,094,282	756,632
	<u>\$ 8,180,863</u>	<u>8,518,513</u>

(5) Retirement Plan

The State Bar has a money purchase pension plan that covers substantially all employees. Contributions to this plan in 2000 and 1999 were approximately \$161,150 and \$160,511, respectively.

(6) Lease

During fiscal year 2000, the State Bar exercised its option to renew its lease for office facilities in Atlanta for an additional three and one-half years resulting in an expiration date of March 31, 2002. During 1999, the State Bar renewed its lease at a satellite office in Tifton, Georgia, entering into a lease agreement for office space which expires on September 30, 2000.

Future minimum rental commitments under these agreements are as follows:

Years ending June 30	
2001	\$ 412,014
2002	<u>307,323</u>
Total	<u>\$ 719,337</u>

Rental expense charged to operations amounted to approximately \$420,000 and \$416,000 for the years ended June 30, 2000 and 1999, respectively.

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2000 and 1999

(7) Related Party Transactions

The State Bar was reimbursed by related organizations for their share of salary and operating expenses during 2000 and 1999 as follows:

	2000	1999
Georgia Bar Foundation, Inc.	\$ 48,542	48,155
Chief Justice's Commission on Professionalism	229,067	217,364
Commission on Continuing Lawyer Competency	504,139	483,358
Lawyers' Foundation	<u>52,352</u>	<u>34,946</u>
	<u>\$ 834,100</u>	<u>783,823</u>

Amounts due from related parties totaled \$99,615 and \$87,386 at June 30, 2000 and 1999, respectively.

(8) Deferred Compensation for Retired General Counsel

The State Bar has an agreement with a retired general counsel ("retiree") in which the State Bar will provide a monthly pension payment to the retiree and his wife (the "beneficiaries"). Upon the death of the retiree, the monthly benefit payable will be reduced by one-half. To accrue for future payments which will be required under this agreement, the State Bar has recorded an actuarially determined liability of \$429,729 and \$468,892 at June 30, 2000 and 1999, respectively. This liability will be reduced by future payments to the beneficiaries. At June 30, 2000 and 1999, the monthly payment under this agreement was \$7,412 and \$7,205, respectively.

(9) Board-Designated Net Assets

The State Bar has Board-Designated net assets available for the following purposes at June 30, 2000 and 1999:

	2000	1999
Sections	\$ 822,262	785,355
Conventions	107,728	93,586
General operations	671,441	676,896
Bar Center	<u>8,595,351</u>	<u>6,110,656</u>
	<u>\$ 10,196,782</u>	<u>7,666,493</u>

AUDITED 2000 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2000 and 1999

(10) Operating Transfers

During the years ended June 30, 2000 and 1999, the State Bar transferred net funds totaling \$5,455 and \$19,481, respectively, from Board-designated to undesignated net assets to be used for enhancements to its computer systems.

(11) Temporarily Restricted Net Assets

Net assets were released from donor restrictions in 2000 and 1999 by incurring expenses satisfying the restricted purposes or by occurrence of other events specified by donors as follows:

<u>Purpose Restrictions Accomplished</u>	<u>2000</u>	<u>1999</u>
High School Mock Trial	\$ 119,870	128,950
Supreme Court Grant	12,500	2,500
CLI School	153	2,900
Bar Media Conference	30,648	383
Legislative	181,727	179,041
Family and Courts	—	714
Younger Lawyers	12,391	2,632
Georgia Diversity Program	69,950	66,342
	<u>\$ 427,239</u>	<u>383,462</u>

Temporarily restricted net assets at June 30, 2000 and 1999 were available for the following purposes:

	<u>2000</u>	<u>1999</u>
High School Mock Trial	\$ 27,995	(4,701)
CLI School	12,907	12,302
Bar Media Conference	25,012	40,943
Legislative	88,932	77,889
Family & Courts	4,042	4,042
Supreme Court Grants	—	12,500
Standards of the Profession	50,000	25,000
Younger Lawyers	17,732	12,770
Georgia Diversity Program	55,772	39,060
	<u>\$ 282,392</u>	<u>219,805</u>

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2000 and 1999

(12) Bar Center Purchase

On April 1, 1997, the State Bar purchased an office building from the Federal Reserve Bank of Atlanta for \$9,247,730 (purchase price of \$9,004,000 plus capitalized costs of \$243,730). This building will be utilized as headquarters for the State Bar and affiliated entities following renovation in 2001. The Federal Reserve Bank of Atlanta will remain as tenants of the office building until construction is complete on their new facility in 2001 and is paying monthly rent to State Bar of \$67,667.

To purchase the building, the State Bar entered into a note payable agreement with the Federal Reserve Bank of Atlanta for \$8,004,000. The State Bar refinanced its original note with the Federal Reserve Bank in 1999 to obtain a note requiring monthly interest payments based on a fixed interest rate of 6.59%. This note released the State Bar from all obligations from the previous note acquired through the Federal Reserve Bank. The balance of the note payable is \$1,201,600 and \$2,802,400 at June 30, 2000 and 1999, respectively.

Future minimum principal payments are as follows:

<u>Year ending June 30</u>	
2001	\$ 1,201,600

To assist in the funding of annual principal payments, the State Bar charges each of its members a \$200 assessment payable in \$50 installments over four years. For the years ended June 30, 2000 and 1999, these fee assessments totaled \$1,545,522 and \$1,539,197, respectively.

(13) Commitments and Contingencies

State Bar is subject to various suits and proceedings arising in the ordinary conduct of its affairs and has been named as a defendant in several lawsuits. In the opinion of the Office of the General Counsel, all suits and actions now pending, or likely to be filed, will be resolved without material adverse effect on the financial position of the State Bar.

Proposed Amendments to the Uniform Rules for the Superior Courts

RULE 33.8: DEFENDANT TO BE INFORMED.

At its business meeting on July 24, 2000, the Council of Superior Court Judges tentatively approved an amendment to the Uniform Rules for the Superior Courts, Rule 33.8. The proposed amendment shows exactly which language has been changed; additional material has been underlined; deleted material has been stricken. In accordance with the procedure for approval of uniform rules changes and with Section XVI of the Rules of the Supreme Court, the proposed amendment appears below:

PROPOSED AMENDMENT TO UNIFORM SUPERIOR COURT

Rule 33.8: Defendant to be informed.
(first reading, July 24, 2000)

The judge should not accept a plea of guilty or nolo contendere from a defendant without first:

(A) Determining on the record that the defendant understands the

nature of the charge(s);

(B) Informing the defendant on the record that by entering a plea of guilty or nolo contendere one waives:

- (1) the right to trial by jury;
- (2) the presumption of innocence;
- (3) the right to confront witnesses against oneself;
- (4) the right to subpoena witnesses;
- (5) the right to testify and to offer other evidence;
- (6) the right to assistance of counsel during trial;
- (7) the right not to incriminate oneself; and that by pleading not guilty or remaining silent and not entering a plea, one obtains a jury trial; and

(C) Informing the defendant on the record:

- (1) of the terms of any negotiated plea;
- (2) that a plea of guilty may have an impact on his or her immigration

status if the defendant is not a citizen of the United States;

~~(2)~~(3) the maximum possible sentence on the charge, including that possible from consecutive sentences and enhanced sentences where provided by law; and/or,

~~(3)~~(4) of the mandatory minimum sentence, if any, on the charge. This information may be developed by questions from the judge, the district attorney or the defense attorney or a combination of any of these. ☐

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