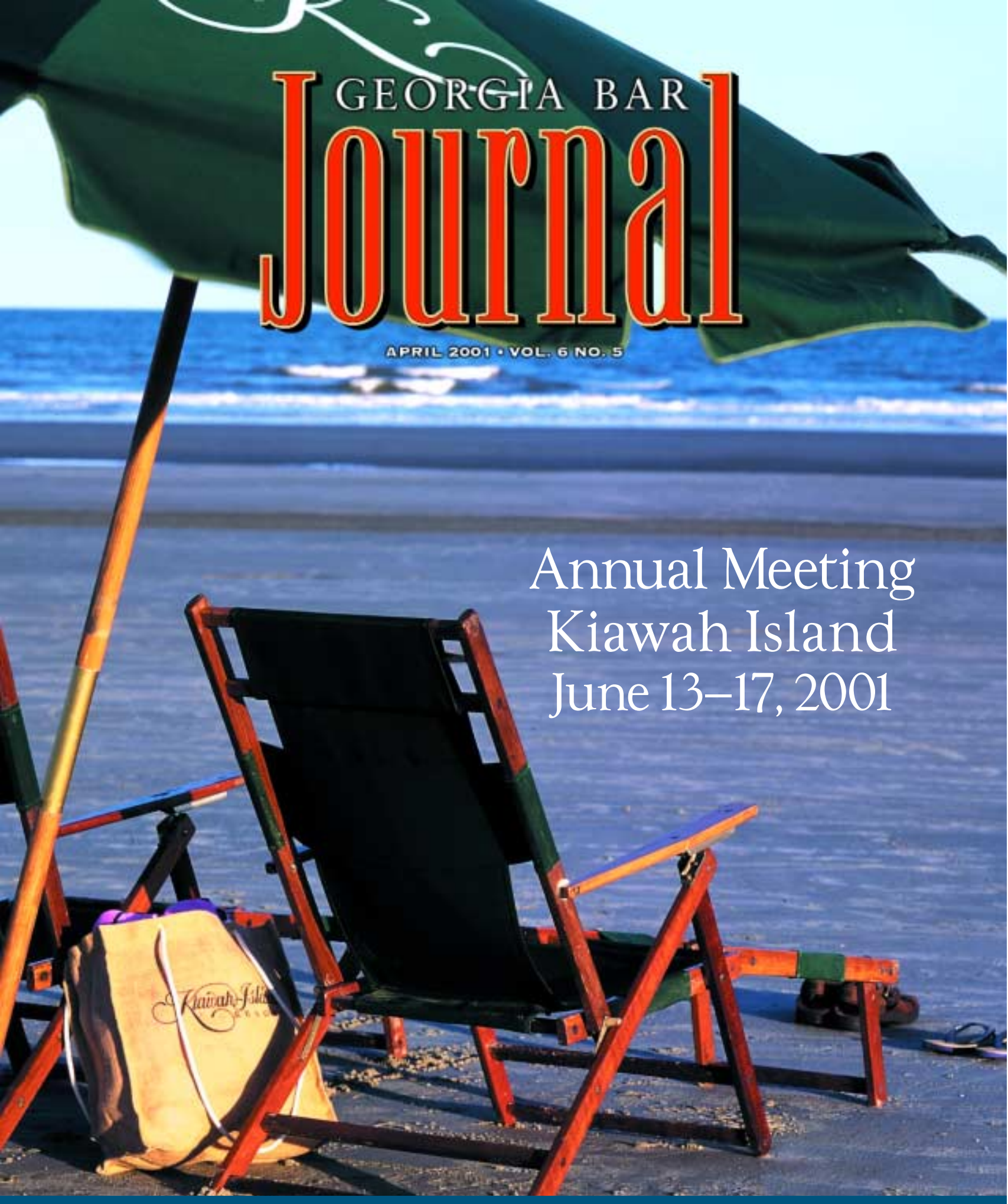

GEORGIA BAR
Journal
APRIL 2001 • VOL. 6 NO. 5

Annual Meeting
Kiawah Island
June 13–17, 2001

MEDICAL RECORDS SUBPOENA • PATIENT PSYCHIATRIST PRIVILEGE

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GEORGIA BAR Journal

April 2001 • Vol. 6 No. 5

On the Cover: *Plan now to attend the Bar's Annual Meeting, June 13-17! Kiawah Island offers recreational and social opportunities, along with CLE and professional development. Meeting highlights and registration information begins on page 17.*

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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Joe Conte, Director of Communications, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303; phone: (404) 527-8736.

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DIVERSITY IS KEY TO BAR'S SUCCESS

By George E. Mundy

In planning the 2000-2001 Bar year, I wanted to emphasize certain directions I felt were essential to the long-term strength of our unified Bar. After all, a mandatory Bar is only as strong as those who support and participate in accomplishing its professional goals. If a significant segment of our membership perceives the Bar as irrelevant, our profession suffers.

The demographics of our profession are changing along with the country's composition. I recently spoke to Mercer Law School's incoming freshmen class, and was pleased and surprised by the number and percentage of minorities and women. At a recent State Bar Executive Committee meeting held in Athens, the Dean of the Georgia Law School, David Shipley, pointed out similar numbers in the present Georgia Law School population. It is easy to envision a time when as many as half of all practicing lawyers are female, and a significant percentage of all lawyers represent diverse backgrounds and heritages.

It is extremely important for our profession's future to ensure that a welcoming message of inclusion is repeatedly delivered to all of our membership. We must have a bar association that attempts to reflect the diversity and changes occurring in our profession, as well as the communities we serve.

My year as Bar President has exposed me to the vast variety of specialty and diversity bar associations serving the many needs and concerns of their membership. I have been especially encouraged by the the potential for our unified Bar to benefit from the talent present in these organizations. Throughout my year, I have attempted to make appointments to vacancies on the Board of Governors and committees with diversity in mind.

It is a concern for all of us if our excellent and unified mandatory Bar, especially our Board of Governors, is perceived to be largely the province of white males. It is extremely important for our profession's future to ensure that a welcoming message of inclusion is repeatedly delivered to all of our membership. We must have a bar association that attempts to reflect the diversity and changes occurring in our profession, as well as the communities we serve.

In this regard, I imposed on our outstanding Women and Minorities Committee and the considerable talents of their chair, Karlise Grier, to organize and sponsor a diversity bar association luncheon in conjunction with the Mid-Year Meeting recently held in Atlanta. Invitations went out to representatives of every diversity bar association in Georgia to attend an open discussion of how their membership could become more involved with State Bar committees, sections and programs.

Karlise headed a panel of distinguished lawyers including Phyllis Holmen, Patricia Perkins Hooker, Linda Klein, Johnny Mason and Harry Spearman. The well-attended luncheon provided a forum for genuinely sincere discussion concerning greater opportunities to serve our profession, especially at the State Bar level. The enthusiasm was truly inspiring and is something we cannot squander.

My hope is this luncheon will become an annual event — encouraging additional efforts to insure involvement of a broad, cross range of our membership. Meeting the needs of our changing membership will always pose challenges. It is my wish that the State Bar of Georgia becomes more vital to our entire membership 50 years from now, as it is today.

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FISCAL HELP FOR GEORGIA LAWYERS

By Cliff Brashier

Georgia lawyers who serve on the Bar's Program Committee, Personnel Committee, Budget/Finance Committee, Executive Committee, and Board of Governors spend countless hours every year to keep your Bar dues and other costs of practicing law as reasonable as possible. Two examples of this fiscal responsibility are the new Bar Center and the Medical Insurance Committee.

A prime motivation for purchasing the Bar Center in 1997 was to reduce our facilities expense. Rent has been our second highest expense item in the budget, just below personnel costs. We have recently completed updated pro formas on the new building that we will occupy in March 2002. They show the wisdom of the decision of the Board of Governors to own rather than rent. In the next quarter of a century our lawyer population is forecasted to grow from 31,000 to 55,000. Had we continued to rent, our dues would pay for rent at an average of $869,000 per year for the next 25 years. Today, it is $400,000. This only includes administrative space and very limited meeting space for committees. The projected annual operating cost for the new building is an average of $279,000 for administrative space, a 40,000 square feet CLE conference center, free parking, and other member uses. This will save $14,750,000 over the next 25 years, which averages $590,000 each year. The savings for the following 25 years will be even better. These projections are based on very, very conservative estimates with the hope and expectation that the actual numbers will be even greater. And, they are based entirely on revenue generated by the building through leasing future expansion space and parking revenue from non-members. They include the cost of a new, 600-plus space parking deck. No additional assessments or dues increases are planned for the building.

I invite you to visit the new building soon after we move in March 2002 for a personal tour. I hope you will see for yourself that it was a sound economic decision. I hope you will show it to your family, clients and friends with pride.

Another expense that is too high for most members is medical insurance. With health costs continuing to rise, lawyers are being hit with large annual premium increases as high as 75 percent. Since June 1992, the State Bar has not recommended any particular medical plan primarily due to the difficulty of finding a good choice. With high competition, escalating costs for health care, and low profit margins in the industry, favorable discounts are not available even with a reasonably large group. It surprised me to learn that most insurers do not even participate in the association market due to adverse risk selection and the resulting high premiums that discourage participation by our younger or healthier members. Other state bars report similar experiences. On the other hand, we have surveyed our members and fully understand the extreme importance of medical insurance. A new medical insurance task force is working harder than ever to find a favorable solution and the leadership of the State Bar lists this effort as a top priority. I strongly hope they will be successful.

In summary, I invite you to visit the new building soon after we move in March 2002 for a personal tour. I hope you will see for yourself that it was a sound economic decision. I hope you will show it to your family, clients and friends with pride. Finally, I hope you will use it as the new home of our profession.

With regard to medical insurance, I hope we have favorable news to report long before your tour of the new building.

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).

LEGAL ARTICLE

THE MEDICAL RECORDS SUBPOENA AFTER *KING*:

The Medical Records Custodian's Perspective

By Terry L. Long

Across the country, various theories of privilege have protected medical records from disclosure. Courts have refused disclosure even though the interests of the parties seeking medical records appear great. For example, records have been kept secret even though they could establish physician malpractice such as performing operations while intoxicated,[1] providing a basis for criminal prosecution,[2] or even saving a child from an abusive custodial situation.[3] For the first time in Georgia, the Supreme Court expressly confirmed the constitutionally protected status of medical records in *King v. State*.[4]

Although "Georgia does not recognize a common-law or statutory physician-patient privilege,"[5] the Court found that "a patient's medical information . . . is certainly a matter which a reasonable person would consider to be private."[6] The Court made clear that medical records are protected by the privacy interest that emanates from the due process clause of the Georgia Constitution.[7]

According to the Georgia Supreme Court, the right to privacy "has its foundation in the instincts of nature."[8] Surely, privacy has been seen by many as the natural order of things since Adam and Eve realized that they needed to put on their clothes. Given our society's interest in keeping medical records private, what should a medical records custodian do when they find themselves inundated with subpoenas and non-party requests to produce? If the records are turned over improperly, a custodian could face litigation for violating privacy rights.[9] On the other hand, if the custodian fails to comply with discovery requests, the custodian may be hauled into court to face motions to compel and contempt sanctions.[10] The custodian cannot assume that it will be a bystander.

Prior to *King*, life was simple. A subpoena was sent pursuant to O.C.G.A. § 24-9-40,[11] and medical records were turned over.[12] Now, with every request for records, a disinterested custodian faces potential litigation. The following analysis is offered for some guidance through

these new murky waters. In analyzing a medical records discovery request there should be both an understanding of the scope of the protection afforded medical records under the *King* decision, and a consideration of possible discovery methods in light of these new parameters.

The Scope of the Medical Records Privilege

Defining the scope of privacy for medical records is like the 1958 movie "The Blob." Privacy interests are like the scary, growing, oozing creature from that movie in several respects. Neither the Blob nor privacy interests have sharply defined characteristics.[13] Both the Blob and privacy rights ooze from uncertain natural phenomena**.** Finally, both seem to keep growing larger. Following *King*, protected medical records should be an even more frightening issue for a records custodian. However, to help calm these fears, we must first understand what the *King* Court held.

In *King*, a prosecutor attempted to secure evidence of the criminal defendant's blood alcohol levels by subpoenaing hospital records of the defendant. The defendant had been treated by the hospital following a single-car collision. The Court concluded that the prosecutor could not circumvent the warrant process by relying on a subpoena to obtain medical records. Although the case involved a criminal prosecution, the Court's conclusions are equally applicable in civil proceedings. The message, while arguably only dicta, comes as a warning: "There is some doubt whether [O.C.G.A. § 24-9-40(a)] can even be construed as affirmative authority for a litigant to subpoena the medical reports of an opposing party who has not waived the privilege."[14] The Court more directly stated its unanimous opinion that: "[O.C.G.A. § 24-9-40] does not confer express authority on . . . another party to file a subpoena seeking a patient's medical records."[15]

The *King* decision criticized O.C.G.A § 24-9-40(a) as a means to subpoena medical records on three grounds: 1) the lack of specificity authorizing subpoena power; 2) the unlimited nature of the power; and 3) the inability of the patient to object to the production. First, the Court criticized the statute's "lack of specificity" in expressly authorizing release of medical records. The Court concluded that, "[s]ince . . . medical records are protected by the constitutional right of privacy, they cannot be disclosed without . . . consent unless their producion is [expressly] required by the law."[16] O.C.G.A. § 24-9-40, however, "confer[s] [no] *expres*s authority."[17] Thus, the lack of express authority may invalidate the statute as a means of obtaining medical records.

Second, the Court objected to the unlimited use of the

subpoena. "OCGA § 24-9-40(a) does not contain any express *limits* on the use of a subpoena to obtain a defendant's medical records for possible introduction as evidence."[18] Both relevant and irrelevant information may be obtained from use of the subpoena. Once the interest of the patient has been compromised, however, the inadmissibility or ultimate exclusion of the documents is of little recourse.[19] This unlimited ability to obtain medical records is described as a *per se* violation of the right to privacy.[20]

The final criticism by the *King* Court was lack of procedural due process afforded to the patient. "[T]he terms of OCGA § 24-9-40(a) do not provide [a patient] with an opportunity to contest the validity of the subpoena before the disclosure of her medical records."[21] Because the privacy interest is derived from liberty and liberty may not be infringed without due process, it follows that there must be some due process before infringement upon a patient's privacy interest. The *King* Court mandated some type of due process, such as notice to the patient and an opportunity for objections to be heard, before a party may obtain the patient's medical records.

Given the general applicability of the Court's criticism, the scope of *King* is broad. These three criticisms–the lack of specifically expressed subpoena power, the unlimited nature of the use of this power, and the inability of the patient to object–apply equally in civil and criminal cases. The decision will undoubtedly apply to all subpoenas for other arguably private information. The good old days of simply sending a subpoena for medical records are fading.[22] As a result, to discover medical records, the method used must clearly authorize an infringement upon the patient's rights, and it must provide some form of procedural due process involving the patient. Finally, the production of records should be limited to those specific records relevant to the proceeding and supported by a strong interest in the need to know.

Possible Discovery Methods

Discovery methods should now be analyzed in light of the Supreme Court's directions in *King*. Counsel who seek discovery of medical records or who represent the custodian should consider the following options.

Release

One obvious method for avoiding problems is use of a medical release. It is axiomatic that constitutional rights, even the right to privacy, may be waived.[23] O.C.G.A. § 24-9-40 obligates the custodian to release records upon "written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem."[24] Lawyers seeking the records of a client or a cooperative witness should attach a properly executed release to the request or subpoena. The release provides the records custodian with the ability to respond to the subpoena in a timely manner without possible objection. A letter with a release obligates the custodian to produce the records. A subpoena, on the other hand, provides deadlines and may attract more responsive attention to the request than a simple letter with a release.

Nonparty request to produce

The *King* Court cited with apparent approval a nonparty request to produce under O.C.G.A. § 9-11-34(c)(2)[25] as a means to acquire medical records. The notice to produce under this section arguably satisfies all three of the *King* concerns. This section, unlike O.C.G.A. § 24-9-40, expressly obligates "a practitioner of the healing arts or a hospital or health care facility, including those operated by an agency or bureau of the state or other governmental unit" to comply with the request.[26] Also, unlike O.C.G.A. § 24-9-40, this discovery provision provides "notice and opportunity to object" if the patient wishes to contest disclosure.[27] If contested, the court can consider the patient's objection and ensure that only relevant records justified by a genuine interest are released. The key is to ensure that the production request is served upon the patient or the patient's counsel.[28] Service on an opposing party when that party is not the patient will not satisfy *King*'s concerns. A custodian who releases records without verifying service of the request on the patient and allowing the patient an opportunity to object will do so at the custodian's own peril.[29]

The nonparty request to produce option is recommended with some hesitation in view of the recent decision in *Kennestone Hospital v. Hopson.*[30] In *Hopson*, the Georgia Supreme Court held that a patient did not waive the patient-psychiatrist privilege by failing to object to a nonparty request to produce within the ten-day period provided under O.C.G.A. § 9-11-34 (c) (2). A hospital could be found liable for releasing privileged information when responding to a nonparty request to produce, even though the patient was properly served and failed to object.[31]

Initially, the non-waiver in *Hopson* appears limited to psychiatric records, which are subject to a near-absolute privilege.[32] Since medical records are not protected to the same extent that psychiatric records are protected, silence on behalf of the medical patient may still be deemed a waiver after *Hopson*. The language in *Hopson* can, however, be construed more broadly. For example, the *Hopson* Court stated: "[W]e hold that a party's silence and failure to act in response to a request for privileged matter from a nonparty health care provider or facility

under OCGA § 9-11-34(c)(2) does not waive the party's privilege by implication" because of the "importance" of the mental health privilege.[33] Since the Court in *King* ascribed constitutional importance to the protection of medical privacy, *Hopson* could be read for a broad non-waiver under O.C.G.A. § 9-11-34(c)(2). If so, the records custodian may always be obligated to assert the privacy interests of a patient–whether medical or mental health records are involved. Thus, because of *Hopson*, the nonparty request to produce is less than certain protection for the records custodian.

Court Order

An attorney who foresees a dispute concerning medical records may consider resolving those issues immediately upon the initiation of discovery. A preliminary discovery motion that asks the court for an order to determine the relevance of the medical records and to direct a custodian to provide the copies, may expedite production in some cases. Reliance on an "appropriate" court order expressly relieves the custodian of any liability.[34] An appropriate court order presumably would be an order that addresses the concerns in *King*–giving the parties an opportunity to object and narrowing the request to relevant records.

Subpoena

Continued use of subpoenas to obtain medical records remains an option–albeit a risky option. As indicated, *King* did not expressly prohibit the possibility of subpoenas for medical records in civil cases. A medical records custodian may find it worth the risk to continue business as usual, complying with subpoenas, hoping that someone else will provide the test case. Some custodians may even claim immunity from liability because O.C.G.A. § 24-9-

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LEGAL ARTICLE

The Absolute Privilege Between Patient and Psychiatrist in Civil Cases

By Michael L. Goldberg

In today's world of stress and high pressure, people often turn to a psychiatrist to discuss their problems. Patients feel that they can talk openly with a psychiatrist about their fears and concerns without risking exposure or a reprisal that may come from speaking with a friend or relative. The key to the psychiatrist-patient relationship is confidentiality. Patients tell a psychiatrist their innermost secrets because they trust that the psychiatrist will never disclose this information to anyone else. They expect that their conversations with a psychiatrist will always remain confidential, regardless of the situation or circumstances. From this expectation of confidentiality has arisen the psychiatrist-patient privilege.

Scope of the Privilege

By statute, admissions and communications between a psychiatrist and a patient are privileged and excluded from discovery on the grounds of public policy.[1] Confidential relations and communications between a licensed psychologist and client are placed upon the same basis as those provided by law between attorney and client.[2] The privilege also extends to communications between a patient and a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or a licensed professional counselor.[3] The term "psychiatrist" is not defined by statute, and


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DOCTOR
PRIVILEGE

consequently, courts have defined a psychiatrist as "a person licensed to practice medicine, or reasonably believed by the patient so to be, who devotes a substantial portion of his or her time engaged in the diagnosis and treatment of a mental or emotional condition, including alcohol or drug addiction."[4] Under this definition, communications between a patient and a medical doctor are protected by the psychiatrist-patient privilege if the patient seeks treatment for mental disorders and the doctor treats mental illnesses on a regular basis.[5] The privilege does not extend to nurses and attendants at a hospital or facility unless they are acting as agents of the attending psychiatrist.[6] Because of the expectation of confidentiality, a patient's clinical records are protected by a constitutional right to privacy.[7] By statute, Georgia prohibits disclosure of clinical records that are privileged under the laws of this state.[8]

The psychiatrist-patient privilege protects both oral and written communications, as well as any other types of disclosures made in confidence.[9] The privilege cannot be abrogated by allowing a psychiatrist to reveal a confidential communication by couching it as an inference, evaluation, observation or conclusion.[10] A psychiatrist's general opinion that a patient is suffering from a mental disorder falls within the scope of the privilege since he could not have arrived at his opinion without taking into account confidential information disclosed by the patient.[11]

The privilege can usually be raised only by the person who has sought or undergone treatment.[12] The exception to this rule is that a parent has standing to claim the privilege on behalf of a minor child.[13] The privilege is not waived by the presence of a third party where the additional person is a necessary or customary participant in the consultation or treatment of the patient.[14] The privilege is not diminished by the fact that the patient sought or contemplated treatment jointly with other persons or in family therapy, or primarily for the benefit of another person who is in treatment by the same psychiatrist.[15] The privilege continues even after the death of the patient.[16]

The privilege does not apply to situations where treatment is not sought or contemplated by the individual, such as when a person is evaluated pursuant to a court order,[17] at the insistence of the Department of Family & Children Services,[18] only for the purpose of providing a psychiatrist with information to testify at trial,[19] or pursuant to an independent psychiatric evaluation.[20] Records which do not reference or contain confidential information disclosed by the patient are not privileged and should be disclosed upon a proper request after being separated from privileged matter.[21] The fact that the patient underwent treatment with a psychiatrist, as well as the dates of treatment, do not come within the scope of the privilege.[22]

The Georgia Supreme Court in *Bobo v. State*[23] held that in a criminal case the psychiatrist-patient privilege must give way to a defendant's constitutional right of confrontation if the defendant's need for disclosure outweighs the patient's expectations of confidentiality.[24] In *Bobo*, the Court upheld the claim of privilege upon finding that the defendant had not demonstrated the requisite need.[25] Since that decision, courts have repeatedly refused to hold a defendant's need outweighed the patient's privilege despite the existence of this balancing test.[26] Because the rationale behind the test is the criminal defendant's constitutional right to confrontation, the holding in *Bobo* has no application in a civil matter.[27]

The Absolute Privilege In Civil Cases

Although the psychiatrist-patient privilege has always been described as "absolute,"a large gap in the privacy of such communications existed until the 1999 decision of *Hopson v. Kennestone Hospital*.[28] Prior to *Hopson*, a patient could waive the privilege by failing to act in a timely manner such as failing to object to a request for production of documents served on his psychiatrist.[29] The Court of Appeals in *Hopson* expressly overruled prior precedent and elevated the psychiatrist-patient privilege to an absolute status by holding that the privilege cannot be waived by a failure to act.[30] On petition for writ of certiorari, the Georgia Supreme Court affirmed the

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Kiawah program insert (15 pages) starts here on Page 17 of this publication and is 4 color. The other 14 pages of the insert are b/w only. Final page of insert is page 31 of journal.

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"Where Is Dean Prosser When We Need Him?"

By Senior Judge Dorothy Toth Beasley

For the nineteenth year in a row, the State Bar and the Georgia members of The American Law Institute (ALI) joined in arranging a breakfast at which current work of the ALI was highlighted. The annual meeting is one of the activities of the State Bar Judicial Procedure and Administration Committee. As noted by Committee Chair Tommy Malone of Atlanta, among the committee's charges is to "confer and advise with the ALI in its work and promote its programs as may be of interest and benefit to the State Bar."

The Commerce Club of Atlanta was the venue on Friday morning, Feb. 2, for a southern buffet breakfast and an address by Professor Michael D. Green of Wake Forest School of Law. The title he chose was "Torts in the Third Millennium: Where is Dean Prosser When We Need Him?" Professor Green's comprehensive view of the law of torts stems from his area of teaching and writing and from his eminent perch as co-reporter for the ALI Restatement (Third) of Torts: General Principles, A Work Now in Progress; co-reporter of the Restatement (Third) of Torts: Apportionment of Liability; and member of the Advisory Committee on the Restatement (Third) of Torts: Products Liability. A lively discussion followed, including comments by Professor Frank Vandall of Emory, who has published a critique of Apportionment Restatement in the *Emory Law Journal*.

Preceding Professor Green's presentation, Atlanta attorney James H. Wilson Jr., a member of the ALI Council, gave tribute to Professor Charles Alan Wright, seventh president of ALI until his sudden death this past July. He referred to this well-known authority on federal practice and jurisdiction as "a gentleman and a scholar" and reminded us that Supreme Court Justice Ruth Bader Ginsburg described Professor Wright as a colossus standing at the summit of our profession.

Committee Chair Tommy Malone reported on the activities of the JP&A Committee, Senior Judge Dorothy Toth Beasley made the introductions, Dean Larry Dessem of the Walter F. George School of Law at Mercer University gave the invocation, and Eddie Potter of the State Bar and Helene Cohen of the ALI engineered the arrangements.

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Board of Governors Midyear Meeting in Atlanta

By Wendy Robinson

The 177 Board of Governors' Midyear Meeting convened Jan. 11-13 at the Swissôtel in Atlanta. Attendees were treated to an enchanted evening at the Fabulous Fox Theater's Egyptian Ballroom and an entertaining musical theater revue by "BOOMERS!" The gathering was a blend of committee meetings, section luncheons and receptions, alumni functions, and CLE offerings.

On Saturday, Jan. 13, the Board of Governors convened conduct the work of the Bar. The following are items of note:

• The Board approved 2000-2001 bar dues assessment at $175 for active members and $85 for inactive members; assessments for the Bar Facility and Clients' Security Fund for new members; a $20 legislative check off; solicitation for Georgia Legal Services contributions with a suggested contribution of $100; and Section dues that range from $5 to $30.

• Construction of a new 12-story deck to replace the existing structure at the new Bar Center.

• Assia Mustakeem, chair of the Organization of the State Bar Committee, presented amendments to Bar Rules 4-221 9(g) and 4-221(d) for the Board's consideration. After discussion, the Board approved both amendments as they appear in the Notices (page 60) of this *Bar Journal*.

The famous Fox Theatre marquis welcomes the State Bar of Georgia to Friday night's Boomers! musical review dinner show.

• President George E. Mundy presented Phyllis Holmen, executive director of Georgia Legal Services Program (GLSP), a check for $275,000, representing voluntary contributions from Georgia's attorneys through their dues payments. GLSP provides civil legal services to the less fortunate.

• The Board passed the following proposed legislation by unanimous vote: Georgia Appellate Practice & Educational Resource Center and Legal Services/Legal Aid (Resolution: Access to Client Records). In the Business Law Section, the Board approved UCC Article 9 Revision by a two-thirds-majority voice vote and the LLC Act Amendments unanimously. The group passed both proposed measures by the Fiduciary Law Section, Roth IRA's and Renunciation of Succession, unanimously. The Board passed the Real Property Law Section's proposals unanimously: Cancellation of Security Deed, Brokers' Liens and Recordation of Maps and Plats; the section's Cancellation of Security Deeds was passed by a two-thirds majority voice vote.

The Board recognized Lamar Sizemore Jr. on his appointment as Superior Court Judge for the Macon Circuit.

1. (l-r) Harvey Weitz, Kendall Butterworth, James Durham, Peter Daugherty, Joe Dent, and Rudolph Patterson enjoy lunch at the Palm restaurant for the State-Federal Judicial Luncheon. 2. (l-r) Brenda Spearman, Brett Spearman, Tom Chambers, and Huey Spearman enjoy conversation and refreshments before dinner at the Fox Theatre. 3. (l-r) Cubbedge Snow Jr., Linda Klein, and Frank "Sonny" Seiler attend the Past Presidents Meeting on Thursday. 4. Board of Governors member Dennis O'Brien attends the "Boomers!" musical review at the Fox Theatre with his wife Hedwig and daughter Phoebe. 5. (r-l) President George Mundy and his wife Martiti visit with Past President Bill Cannon and his wife Dawn before the dinner show on Friday night. 6. (l-r) Hon. Lamar Sizemore Jr., Barbara Bishop, Rudolph Patterson, and Hon. Fred Bishop at Friday nights dinner show at the Fox Theatre.

INDIGENT DEFENSE IS A PROBLEM AFFECTING ALL

By S. Kendall Butterworth

All of us are familiar with the principle that anyone who is accused of committing a crime in the United States should receive adequate legal representation to defend against the charges, whether the accused person can afford to pay for the representation or not. The rights accorded by our legal system to a defendant in a criminal case cannot be exercised adequately without representation by qualified and diligent counsel.

In Georgia, the vast majority of people accused of committing crimes rely on the indigent defense system for adequate representation. Today, over 80 percent of the defendants who pass through Georgia's criminal justice system are indigent and cannot afford to pay for legal representation. In Fulton County, over 90 percent of the criminal defendants are indigent. Thus, in Georgia, the fairness and the functionality of the criminal justice system depends in large part on the fairness and the functionality of the indigent defense system.

The Georgia Indigent Defense Act places the responsibility for providing indigent defense services[1] on local indigent defense committees appointed by the Superior Court, the County Commission and local bar associations. Each of the local indigent defense committees in Georgia's 159 counties decides whether to provide indigent defense services through a county public defender program, an assigned counsel system or a contract defender program. The majority of the cost of indigent defense falls on the state's 159 counties; the state contributes only 15 percent of the funding. The Georgia Indigent Defense Council (GIDC) disburses the state money to the counties and is charged with ensuring that the local programs meet state guidelines, including caseload restrictions and minimum fees for defenders.

Georgia also has many excellent lawyers who do indigent defense work. Those lawyers toil long hours for low pay, and they should be commended for helping the criminal justice system work fairly and efficiently.

Some counties have systems that work fairly well. Those counties have created and funded programs that secure capable lawyers and provide the lawyers with training and supervision, adequate compensation, and investigative and expert assistance.[2] Georgia also has many excellent lawyers who do indigent defense work. Those lawyers toil long hours for low pay, and they should be commended for helping the criminal justice system work fairly and efficiently. The systems in other counties, however, are not quite as successful. In some instances, indigent defendants are receiving little or no representation at all – even in felony cases. Some defendants meet their lawyers for the first time when they appear in court before entering a guilty plea or going to trial. In such cases, the lawyers have not conducted any in-depth interviews with their clients or any investigations into the charges against their clients. Furthermore, even when the defending lawyers meet with their clients prior to the day of trial, they often have not been provided with the training or resources necessary to conduct a proper defense. Former Georgia Supreme Court Chief Justice Harold Clarke has made the following comments about Georgia's system of providing for indigent defense:

> We set our sights on the embarrassing target of mediocrity. I guess that means about halfway. And that raises the question. Are we willing to put up with halfway justice? To my way of thinking, one-half justice must mean one-half injustice, and one-half injustice is no justice at all.[3]

Surely, as members of the Bar, we cannot be content to stand by and allow any part of our system of justice in Georgia to be merely "mediocre."

Chief Justice Benham has appointed a Commission on Indigent Defense to study the status of indigent defense in Georgia, to develop a strategic plan and to set a timetable for its implementation. The

Commission probably will hold public hearings in an effort to obtain input from those persons involved with indigent defense. This Commission is made up of a blue ribbon group of individuals from the public and private sectors. All of the various viewpoints on the indigent defense system are represented.

As lawyers, we are charged with supporting our judicial system and striving to make sure that all litigants, whether civil or criminal, receive adequate representation. When one part of our legal system fails to function properly, it affects all of us. Therefore, I urge you to provide your input to help the Commission develop a proposal to create a more effective system of indigent defense representation in Georgia. If you would like to share information with the Commission or simply state your opinion about how the system could be improved, please write to Angie Wright-Rheaves, Executive Director, Commission on Indigent Defense, Supreme Court of Georgia, 244 Washington Street, Suite 572, Atlanta, GA, 30334.

Endnotes

1. "Indigent defense" is the term used to describe the provision of lawyers to represent poor people who are charged by the state with felonies or misdemeanors and the provision of lawyers to represent parties in juvenile court. 2000 Annual Report of the Georgia Indigent Defense Council.
2. So. Center for Human Rights, A Preliminary Report on Georgia's Compliance with the Constitution of Georgia and the United States in Providing Representation to Poor People Accused of Crimes, p.3.
3. Chief Justice Harold Clark, 1993 State of the Judiciary Address.

Chief Justice Robert Benham Awards for Community Service Deadline Drawing Near

By Barbara Latimer Jennings

THE COMMUNITY SERVICE Task Force of the Chief Justice's Commission on Professionalism invites nominations for the 2001 Chief Justice Robert Benham Award for Community Service. Up to 11 awards will be given to lawyers and judges from all over the State of Georgia for outstanding service to their local communities. The awards will be presented at the Annual Meeting of the State Bar on June 15, 2001, on Kiawah Island, South Carolina.

These awards recognize judges and attorneys who have combined a professional career with outstanding service and dedication to their community through voluntary participation in community organizations, government-sponsored activities, or humanitarian work outside of their professional practice. These lawyers' contributions may be made in any field including, but not limited to the following: social service; church work; politics; education; sports; recreation; or the arts. Continuous activity over a period is an asset.

Eligibility

To be eligible, a candidate must: 1) be an attorney admitted to practice in Georgia; 2) be currently in good standing; 3) have carried out outstanding work in community service; and 4) not be a member of the Task Force.

Nominations should be made by letter describing the nominee's community service work, and accompanied by at least three letters of support, sufficient to allow the Task Force to make a reasonable judgment. Additional pages of information about the candidate should be attached to the nomination.

Selection Process

The Community Service Task Force will review the nominations and select the recipients. One recipient will be selected from each judicial district for a total of 10 winners. If no recipient is chosen in a district, then two or more recipients might be selected from the same district. Stellar candidates may be considered for the Lifetime Achievement Award. All Community Service Task Force decisions will be final and binding. Award recipients will be notified no later than May 21, 2001.

Nominations must be **postmarked by April 16, 2001**

Send all nominations to: Barbara Jennings, The Community Service Task Force, 572 State Office Annex, 244 Washington Street, S.W., Atlanta, GA 30334, Fax: (404) 656-2253, Phone: (404) 651-9385.

THE TEXAS TECH UNIVERsity School of Law named **Timothy W. Floyd, JD**, the J. Hadley Edgar professor of law. Floyd earned his Bachelor of Arts and Master of Arts degrees from Emory University, and his law degree from the University of Georgia. Before joining Texas Tech, Floyd served as law clerk for Judge Phyllis Kravitch of the U. S. Court of Appeals for the Fifth Circuit, was legal counsel to the lieutenant governor of Georgia, practiced with the firm of Sutherland, Asbill & Brennan, and was assistant director and director of the University of Georgia Law School Legal Aid Clinic.

Oscar Marquis, counsel in the technology, e-commerce, and privacy group of the international law firm **Hunton & Williams**, was one of 10 people appointed to three-year terms on the **Federal Reserve Board's Consumer Advisory Council**. The Council advises the Board on the exercise of its responsibilities under the Consumer Credit Protection Act and on other matters in the area of consumer financial services. The Council meets three times a year in Washington, DC.

Fulton County Juvenile Court Chief Judge Sanford Jones accepted a proclamation commending the Juvenile Court on its recent selection as one of the state's first "**Model Courts**." The goal of the nationwide Model Court Project is to prevent further victimization of abused and neglected children by improving court policies and practices. The Fulton County Juvenile Court is working to increase its effectiveness by improving inter-agency collaboration and communication, limit the number of continuances granted, and help parties better understand the system and their rights.

Thirty-two **Kilpatrick Stockton** lawyers have been chosen as **Best Lawyers in Atlanta®** 2000-2001. More than 11 percent of the firm's 285 local attorneys were selected, a higher percentage than any other large Atlanta law firm. **Wyck A. Knox** of Augusta, a partner at Kilpatrick Stockton, has been chosen by his peers for business litigation and health care law in "**Best Lawyers in America 2000-2001**." He is one of 65 lawyers honored by the publication across the firm's eight domestic offices.

Riverdale High Wins State Title

The **Riverdale Raiders Mock Trial** team is the 2001 Georgia State Champion. The two finalists in the competition were **Riverdale High** and **Paideia School**.

The four semi-finals were **Riverdale, North Forsyth, Paideia** and **Clarke Central**. Riverdale will now represent the state of Georgia at the National High School Mock Trial Championship, May 9-13, 2001, in Omaha, Neb. The following teams were named regional champions:

School/City	Coordinator(s)
Central High School, Macon (Central GA)	Melisa Bodnar, coordinator
North Forsyth High School, Cumming (Cherokee Co.)	Meredith Ditchen, coordinator
Riverdale High School, Riverdale (Clayton Co.)	Scott and Janet Watts, coordinators
Ware Magnet School, Waycross (Coastal GA)	Donna Crossland, coordinator
Lakeside High School, Atlanta (Dekalb Co.)	Stacy Levy, coordinator
Grady High School, Atlanta (Fulton Co.)	Deborah Craytor and Patrick Moore, coordinators
South Gwinnett High School, Snellville (Gwinnett Co.)	William M. Coolidge, III, coordinator
Paideia School, Atlanta (Metro Atlanta)	Faison Middleton and Jim Manley, coordinators
Northwest Whitfield High School, Tunnel Hill (North GA)	George Govignon, Chris Twyman, Jeff Denny and Mike Prieto, coordinators
Clarke Central High School, Athens (Northeast GA)	Steve Curtis, coordinator
Jenkins High School, Savannah (Southeast GA)	Christy Barker, coordinator
Lee County High School, Leesburg (Southwest GA)	Leah McEwen, coordinator
The Walker School, Marietta (West GA)	Jeff Richards and Linda Spievack, coordinators

For information on how your bar association, firm or legal organization can help the new Georgia champion defray competition expenses, contact the Mock Trial office at (404) 527-8779, (800) 334-6865 (ext. 779) or mocktrial@gabar.org

Do You Play an Instrument?

Did you play an instrument that you have been wanting to pick-up, polish off, and play again? The **Atlanta Lawyers' Orchestra** is looking for you!

The Atlanta Lawyers' Orchestra (ALO) was founded in October 1999 to bring people who work in the legal field together to make music and to enjoy each other's company in a non-legal setting. The ALO is composed of attorneys, law students, paralegals, legal secretaries and law office staff members, and warmly welcomes any musician who is not in the legal field and would like to join.

The ALO is modeled after established lawyer orchestras in New York, Boston, and Chicago, performed four concerts in its inaugural year, and has at least six concerts scheduled for 2001. The concert schedule includes at least one public service performance each year. Rehearsals are held Monday evenings from 7 p.m. - 9 p.m. in the auditorium of the William Breman Jewish Home, located on Howell Mill Road, just off I-75; (404) 351-8410.

To join other musically inclined members of the legal community, please contact Alysa Freeman at (404) 873-8000 or at abfree@webtv.net. Also, check the web at www.zilleon.com/alo. The ALO welcomes you!

Valdosta Bar Combines Work, Fun

LU LU'S WAS THE PLACE TO be recently for the Valdosta Bar Association. Bar President Walter Elliott arranged this convivial event for his members to enjoy while making an otherwise onerous task completely enjoyable. After the elegant luncheon was served, General Council Bill Smith greeted the group with his usual casual style and quick wit. The changes to the *Georgia Rules of Professional Conduct* were suddenly pellucid and the attendees received one hour of ethics CLE in the process.

If you would like help facilitating a similar program for your bar association, contact the Satellite Office of the State Bar of Georgia at (800) 330-0446.

(The videotape, *Introduction to the Georgia Rules of Professional Conduct* presented by Bill Smith and Deputy General Counsel, Paula Frederick is also available through ICLE.)


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The Feb. meeting of the Executive Committee of the State Bar of Georgia was held in the Tifton Satellite Office. 1. The Executive Committee starts arriving early for a day of State Bar work. 2. The Committee recessed for lunch and joined the Tifton Circuit Bar for their monthly meeting at the Holiday Inn. State Bar of Georgia Secretary, Bill Barwick, addresses the members of the Tifton Circuit Bar. 3. Executive Committee Member David Lipscomb greets members. 4. Bill Smith speaks with Betty Walker- Lanier of the Tifton Circuit Bar. Walker-Lanier gave a report on Court Appointed Special Advocacy Program (CASA) of which she is local chairperson. 5. State Bar of Georgia President George Mundy meets the Tifton Circuit Bar. 6. State Bar President-Elect, Jimmy Franklin looks over his notes after the Tifton Circuit Bar Meeting.


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1. All seats were taken for the luncheon and CLE 2. Bill Smith explains *The Rules* 3 and 4. Valdosta Bar members enjoying lunch and the CLE at Lu Lu's.

In Albany

LANGLEY & LEE, LLC, announced that **William W. Calhoun** has become a partner in the firm. Calhoun joined Langley & Lee as an associate in November 1999. Previously, Calhoun served as an assistant attorney general for the State of Georgia, primarily representing the State Health Planning Agency and the Department of Insurance, with a secondary emphasis on the Board of Regents. The firm's offices are located at 412 West Tift Ave., Albany, GA 31701; (229) 431-3036.

W. James Sizemore, Jr. has begun a solo practice, **Sizemore Law Offices**, with offices in Albany, located at 413-C Flint Avenue, Albany, GA 31701; (229) 420-0029, and in Leesburg at 101-A Walnut Avenue, Leesburg, GA 31763; (229) 759-0430.

In Atlanta

David Levy has joined the Atlanta office of **King & Spaulding** as of counsel. Previously, Levy, worked as executive vice president, administration, for National Service Industries.

Greenberg Traurig LLP announced that **Gerald L. Baxter**, corporate and securities, and **Vernon L. Slaughter**, entertainment, have become shareholders. Greenberg Traurig is located at The Forum, 3290 Northside Parkway, Suite 400, Atlanta, GA 30327; (678) 553-2100; Fax (678) 553-2212.

Womble Carlyle Sandridge & Rice, PLLC announced its merger with **The Jefferson Law Firm, PLC** of McLean, VA. The merged firm operates as **Womble Carlyle Sandridge & Rice PLLC**. The office is located at One Atlantic Center, Suite 3500, 1201 W. Peachtree Street, Atlanta, GA 30309; (404) 872-7000; Fax (404) 888-7490.

Kilpatrick Stockton LLP announced the election of six new members as partners in its Atlanta, GA office: **Richard Cicchillo**, **Cindy D. Hanson**, **Christopher Lyman**, **Daniel F. Piar**, **Kenneth B. Pollock** and **Sue Stoffer**. Kilpatrick Stockton is a full-service international law firm with more than 500 attorneys in 11 offices. The Atlanta office is located at Suite 2800, 1100 Peachtree Street, Atlanta, GA 30309-4530; (404) 815-6500; Fax: (404) 815-6555.

Ford & Harrison, LLP announced that **Brooke Wallace** has been named Business Development Manager. Wallace was formerly with **Jones & Askew, LLP** as Director of Client Services. Ford & Harrison represents employers in all areas of labor and employment law, and is located at 1275 Peachtree Street, NE, Suite 600, Atlanta, GA 30309; (404) 888-3800; Fax (404) 888-3863.

Morris, Manning & Martin, LLP promoted six attorneys to partner. They are **Lauren Z. Burnham**, **Carl J. Erhardt**, **William J. Sheppard**, **Susan L. Spencer**, **Terresa R. Tarpley**, and **Robert C. Threlkeld**. Morris, Manning & Martin LLP has 175 lawyers engaged in sophisticated commercial, transactional and litigation practices.

The intellectual property firm of **Thomas, Kayden, Horstemeyer & Risley LLP** announced the promotion of **Dan R. Gresham** to partner. In addition, the firm announced that attorneys **William F. Heinze**, **Monica H. Winghart**, **Lawrence E. Thompson**, **Robert B. Dulaney III**, **Christopher B. Linder, Ph.D**, **Kenneth C. Bruley**, **Adam E. Crall**, **Sami O. Malas**, and **David Rodack** have joined the firm as associates.

James L. Matte has joined **McGuire Woods LLP** as a partner in the firm's Atlanta office. Matte focuses his practice on labor-management relations, government compliance and employment discrimination. McGuire Woods also elected **Mark L. Keenan** as partner. Keenan's practice focuses on labor-management relations and employment discrimination. **Mary Anne Walser** has joined the Atlanta office of McGuire Woods LLP as an associate in the Labor & Employment Department. McGuire Woods LLP is located at 285 Peachtree Center Avenue, NE, Marquis Tower Two, Suite 2200, Atlanta, GA, 30303.

Paul, Hastings, Janofsky & Walker LLP has elected **Elizabeth Noe** to partnership. She is a member of the Firm's Corporate Department and its Corporate Finance Practice Group. Paul Hastings' Atlanta office is located at 600 Peachtree Street, NE, Atlanta, GA 30308-2222; (404) 815-2400; Fax: (404) 815-2424

Schnader Harrison Segal & Lewis LLP announced that two attorneys have joined the firm's Atlanta office. **Richard D. Flexner** has joined the firm as counsel and is a member of the Business Services Department and the Real Estate Practice Group. **Kirtan Patel** is an associate in the Business Services

Department. The Atlanta office is located at SunTrust Plaza, Suite 2800, 303 Peachtree Street, NE, Atlanta, GA 30308-3252; (404) 215-8100; Fax (404) 223-5164.

Peck, Shaffer & Williams LLP announced that **David H. Williams Jr.** has become an associate with the firm. Williams focuses on healthcare, housing and industrial development bonds. The Atlanta office is located at Suite M20, Atlanta Financial Center, 3353 Peachtree Road, NE, Atlanta, GA 30326; (404) 995-3850.

Jonathan W. Johnson and **Mitchell D. Benjamin** announced the formation of **Johnson & Benjamin LLP**, practicing in the areas of wrongful death, personal injury and employment. The firm is located at One Securities Centre, 3490 Piedmont Road, Suite 302, Atlanta, GA 30305; (404) 995-8590; Fax (404) 995-8593.

In Columbus

The firm of **Hatcher, Stubbs, Land, Hollis & Rothschild** announced that **Neal J. Callahan** and **Alan G. Snipes** have become partners. The office is located at 233 12th Street, Suite 500 Corporate Center, Columbus, GA 31901. Phone (706) 324-0201.

In Lawrenceville

Greg O'Bradovich has joined the intellectual property firm of **Hinkle & Associates, P. C.** O'Bradovich is a member of the New York Bar and is a registered patent attorney. The firm is located at 395 Scenic Highway, Lawrenceville, GA 30045; (770) 995-8877; Fax (770) 995-0116.

The **Charles A. Tingle Jr., P.C. Law Firm** announced the association of **Christopher A. Ballar.** While the law firm is a general practice firm, Ballar will concentrate on estate planning issues. The office is located at 538 Scenic Highway, Lawrenceville, GA 30045. (770) 822-5635; ballar@mindspring.com.

In Savannah

Michael J. Thomerson announced the formation of **Michael J. Thomerson P.C.,** where he will practice litigation, corporate law, commercial transaction, and bankruptcy. The new office is located at 7 East Congress Street, Suite 306, P.O. Box 8472, Savannah, GA 31412; (912) 790-7778; Fax (912) 790-7797.

In Kansas City

Bryan T. White, formerly of **Fisher & Phillips, LLP**, has joined the law firm of **Spencer Fane Britt & Browne LLP** as of counsel practicing in the firm's labor and employment group. Spencer Fane is located at 1000 Walnut Street, Suite 1400, Kansas City, MO 64106-2140; (816) 474-8100; Fax (816) 474-3216

In Washington DC

Roger Plichta, former State Court Magistrate Judge in Cobb County, announced the expansion of his Georgia-based law firm of **Plichta & Walton-McFalls** to Washington DC as governmental affairs advisors.

VOLUNTARY BARS

Spotlight on the Georgia Association of Black Women Attorneys

BY SUSAN S. COLE

ACCORDING TO GEORGIA Supreme Court Justice Leah Sears, 1981 was not an easy year to be an African-American female lawyer in Atlanta. It was lonely. Sears and other like-minded women attorneys, wives and mothers decided to join together. They were not looking for power or prestige, but for fellowship, and they were motivated by a desire to serve. Out of their gatherings and conversations grew the Georgia Association of Black Women Attorneys (GABWA). Their mission? To focus on issues affecting women and children, increase African-American representation in the judiciary and in public office, and encourage members to be politically active.

As GABWA celebrates its twentieth anniversary, its members can look back with satisfaction and pride at their accomplishments. They continue to carry out their mission using creative and imaginative ways.

1. Judge Glenda Hatchett, who presides on *Judge Hatchett,* a nationally syndicated courtroom television show and Avarita Hanson, 1985 GABWA President and current Dean of the John Marshall Law School, smile for the camera at the Jan. 2001 meeting. 2. Judge Glenda Hatchett poses with the 2001 GABWA officers. (From left to right) Karlise Grier, President; Allegra Lawrence, Vice-President; Monique Walker, President-Elect; R. Jayoyne Hicks, Secretary; Judge Glenda Hatchett; Kenya Berry; Allyson Pitts, Treasurer; Joy Campley; Judge Judy Walker, Former President (1994) and Anita Wallace Thomas, Former President. 3. Judge Glenda Hatchett and Judge Ural Glanville enjoy the GABWA Jan. 2001 meeting.

Today, GABWA has approximately 200 dues paying members. It is open to all persons, regardless of race or sex. GABWA members serve in all areas of city, county and state government. Five of GABWA's 19 presidents have become full time judges.

One of GABWA's most popular projects is the "AIM Back to School Blowout." Each year, GABWA members contribute money to provide school supplies to children whose mothers are incarcerated. GABWA members then stuff book bags with the supplies and present them to the children at a party hosted in coordination with "Aid to Children of Imprisoned Mothers" (AIM).

GABWA members also enjoy the annual breakfast held at the Cascade House, a shelter for women and children. Each year, GABWA members gather on the Martin Luther King Jr. holiday to prepare a hot breakfast for Cascade House residents. GABWA takes special pride in this project because GABWA members helped raise the funds to modernize the Cascade House kitchen back in 1995.

GABWA currently supports three major community service projects. "Noble African-American Girls" (NAAG) is a mentoring program started in 1998 at Eastlake Elementary School for fifth grade girls. The mission of NAAG is to prepare girls to be successful, productive, and caring, and to have pride in themselves, their culture and their history. Today, NAAG includes all Eastlake girls from kindergarten through the fifth grade. Twenty-eight GABWA members and friends volunteer to staff the program.

"Sister to Sister" is another GABWA mentoring program. Begun by GABWA and the Fulton County Juvenile Court, with the assistance of the Georgia Supreme Court Commission on Equality, it is designed for 15 "at-risk" girls who have entered the Fulton County Juvenile Court System as either truant or status offenders. It is the only program of its kind in Fulton County. Mentors and protegees meet on the second and fourth Sunday of each month for two hours. They attended a retreat at Cochran Mill Nature Reserve and worked on team building. Other enrichment activities, such as camping trips and theater outings are planned when the anticipated funding arrives. By introducing girls to the promise that their lives hold if they make positive choices, "Sister to Sister" hopes to encourage these young women to continue their education, to remain abstinent, and to develop behaviors that insure they will have no further involvement with the juvenile justice system.

GABWA's membership is over 200 with members statewide. Officers for 2001 are: Karlise Y. Grier, president; Allegra J. Lawrence, vice president; Monique R. Walker, president-elect; Sonja B. Prophet, vice president - Macon; Gwendolyn S. Fortson, vice president-Savannah; R. Javoyne Hicks, secretary; Kenya Berry, assistant secretary; Allyson R. Pitts, treasurer; C. Joy Lampley, parliamentarian; E. Jewelle Johnson, historian; and Anita Wallace Thomas, immediate past president. Dues are $60 for lawyers, $20 for law students and $50 for associate members. The bar year begins Jan. 1.

GABWA's third major community service project is the "Civil Pro Bono Project." This is a joint effort by GABWA and the Georgia Access to Justice Project ("GAJP") to assist imprisoned mothers with civil legal matters involving their children. The goal is to to help these women in prison make informed decisions and choices about their parental rights and responsibilities.

In addition to these projects, GABWA has established a scholarship foundation for outstanding African-American female law students. They have sponsored or co-sponsored CLE programs dealing with issues that are essential to GABWA's mission, such as the legal impact of a mother's incarceration, and racial profiling. As if that is not enough, GABWA produced a TV show called "Legally Speaking!" which successfully aired for three years. Consumers received information on a variety of topics including civil rights, family law and bankruptcy.

What began out of a need for fellowship has endured with a legacy of service, caring and achievement.

Congratulations, GABWA, on your twentieth anniversary!

Get Noticed!

The Local Bar Activities Committee intends to highlight a local bar in each issue of the *Bar Journal*, and welcomes and encourages interest from members of local bars. Contact the *Journal* if you would like to have your bar highlighted in a future issue, journal@gabar.org or 404.527.8736.

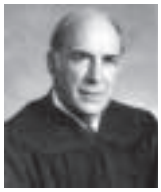
IN MEMORIAM

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

Judge Ross J. Adams Marietta, Georgia	Admitted 1988 Died February 2001
Phil C. Beverly Jacksonville, Florida	Admitted 1953 Died January 2001
M. Ross Becton Jr. Savannah, Georgia	Admitted 1974 Died January 2001
Harold J. Bowman Jr. McDonough, Georgia	Admitted 1968 Died October 2000
Tilden L. Brooks Riverside, California	Admitted 1937 Died February 2001
Bruce W. Callner Atlanta, Georgia	Admitted 1974 Died January 2001
Archie B. Culberth Alpharetta, Georgia	Admitted 1966 Died February 2001
Henry L. DeGive Atlanta, Georgia	Admitted 1932 Died January 2001
Judge Omar W. Franklin Jr. Berkeley Lake, Georgia	Admitted 1939 Died February 2001
Judge William F. Grant Elberton, Georgia	Admitted 1957 Died January 2001
Charles F. Harris Jonesboro, Georgia	Admitted 1978 Died January 2001
Thomas J. Hartland Jr. Atlanta, Georgia	Admitted 1977 Died September 2000
Henry Heffernan Augusta, Georgia	Admitted 1930 Died September 2000
George R. Jordan Douglas, Georgia	Admitted 1949 Died 2000
Dawn B. Keaton Atlanta, Georgia	Admitted 1987 Died February 2001
Susan Landrum Jasper, Georgia	Admitted 1975 Died February 2001
R. Joneal Lee Warner Robins, Georgia	Admitted 1969 Died September 2000
Marvin P. Nodvin Atlanta, Georgia	Admitted 1951 Died February 2001
James A. Parker McDonough, Georgia	Admitted 1949 Died February 2001
Judge Charles M. Roach Canton, Georgia	Admitted 1974 Died December 2000
John M. Royall Jr. Decatur, Georgia	Admitted 1951 Died February 2001
Henry G. Shugart Roswell, Georgia	Admitted 1978 Died January 2001
Russell G. Turner Jr. Atlanta, Georgia	Admitted 1947 Died February 2001
Judge Alex D. Williams Atlanta, Georgia	Admitted 1951 Died December 2000

Henry L. de Give Jr., 93, of Atlanta, died Jan. 12, 2001. Born in Atlanta, he graduated from Princeton with a B.A., cum laude in 1929. He earned his LLB from Harvard University School of Law in 1932. In addition, he attended the University of Paris from 1932-33. Her was admitted to the State Bar of Georgia in 1932. He practiced in Paris, France with Coudert Brothers from 1932-34, and he was in private practice with a New York firm for six years and then a partner with another New York firm for two years, interrupted by his military service. He moved to Atlanta in 1948, where he was in private practice from 1948 to 1966. He then went to work for the Equal Employment Opportunity Commission until 1977. He was a member of the Atlanta Bar Association, the American Bar Association and the Lawyers Club of Atlanta. He was also a member of the National Conference of Christian and Jews, and St. Vincent de Paul Society, where he was past chairman of the Southeastern Region and the Particular Council of Atlanta. He was Honorary Consul of Belgium for Georgia and South Carolina from 1948 to 1970. De Give served on the American Friends Service Committee from 1960 to 1966, and was a member of the Atlanta Urban League, the American Arbitration Association, trustee and vice-chairman of Catholic Social Services, member of the Atlanta Chamber of Commerce and the Atlanta Historical Society. He served in the United States Navy from 1941 to 1947. He is survived by his wife of 55 years, Elena de Give; daughters Maria Kubersky, Elena Allison, Anna

de Give and Teresa Wilber; sons Henry L. de Give, III, Michael de Give, Joseph de Give, Laurent de Give, Paul B. de Give and Louis de Give, and 12 grandchildren.



William Forrest Grant, 70, of Elberton, died Dec. 28, 2000. Born in Helena, Ga, he graduated from Brewton-Parker Junior College and the University of Nevada. He earned his JD from Mercer University Walter F. George School of Law. He also attended the National Judicial College. He was admitted to the State Bar of Georgia in 1957. He practiced with Williford & Grant from 1958 to 1964, Grant & Matthews from 1964 to 1972 and Grant & Smith from 1972 to 1977. He became a Superior Court Judge of the Northern Circuit in 1977, and became a Senior Judge in 1997. He was a member of the American Bar Association, American Judicature, Elberton Bar Association, Northern Circuit Bar Association, Prosecuting Attorneys Council of Georgia, State Trial Judges and Solicitors Association. He served in the United States Air Force from 1949 to 1952. He is survived by his wife of 46 years, Willene Jones Grant; daughter Anna Grant Kay; son William F. Grant Jr.; and grandchildren Katie Grant and Elizabeth Grant.

Henry Gerald Shugart, 68, of Roswell, died Jan. 14, 2001. Born in Dalton, he graduated from North Georgia College in 1953. He earned his JD from the University of Louisville in 1978. He was admitted to the State Bar of Georgia in 1978. He practiced with Moore/Shurgart and as a sole practitioner before joining the Attorney General of Georgia as a Senior Assistant Attorney General. He served in the United States Army from 1953 to 1978 in the Korean and Vietnam Wars. He is survived by his wife of 39 years, Nan Jeraldine Shugart; daughter, Debra M. Pastush; and son, David K. Shurgart.

Judge Omer Franklin, 86, of Duluth, Ga, died Feb. 8, 2001. In 1937, he graduated from the University of Georgia, and joined the FBI. Judge Franklin served in World War II and as a bodyguard to President Harry Truman. Following his military service, he practiced law in Valdosta and served as Superior Court Judge in the Southern District from 1969 to1972. From 1966 to 1967, Judge Franklin served as President of the State Bar of Georgia after it integrated in 1964. In 1972, he was appointed the State Bar of Georgia's general counsel and moved from Macon to Atlanta. Judge Franklin was known as an accomplished lawyer, and invaluable to the organization of the State Bar of Georgia. Survivors include his wife, Patricia Franklin, of Duluth; son, Omer W. "Dub" Franklin III of Smyrna; two daughters, Anne Nordland of Norcross and Dana Champion of Smyrna; and nine grandchildren.

Judge Ross J. Adams, 38, of Marietta, Georgia, died Feb. 26, 2001. A graduate of New Trier West High School and the University of Florida, Judge Adams earned his law degree from Washington University in 1988. He was a member of the Florida Blue Key Honorary Society, Student Bar Association President and associate editor of the *Washington University Journal of Urban and Contemporary Law* from 1987-1988.

After receiving his law degree, Judge Adams moved to Atlanta and devoted countless hours to many civic and legal organizations. He was an active member of the State Bar of Georgia, serving as a member of the Board of Governors and Executive Committee from 1997-2000. Judge Adams also served as an Investigative Panel Member, as the Young Lawyer Division President, on the Budget and Finance Committee, and as a member of the Family Law Section. In the Cobb County Local Bar Association, Judge Adams served on the Cobb Justice Foundation and CLE Committees. He also served as the Young Lawyers Division Liaison to the American Bar Association's General Practice Section, and as a member of the ABA General Practice and Family Law sections. In 1998, he was appointed a judgeship in the Cobb County Magistrate Court.

Judge Adams is survived by his wife, Robin Adams; their two children, Paige Michelle and Alexander Harlan; his mother, Marilyn Adams Gogol and stepfather, Edward Gogol of Skokie, Ill; sister, Meredith and brother-in-law, Barry Kaltman; and niece and nephew, Sydney and Phillip Kaltman, also of Skokie.

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

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

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

Hot Technology Basics for 2001

By Natalie R. Thornwell

THE LAW PRACTICE Management Program continues to receive more telephone calls on its Practice Management Help Line for technology than any other subject. While the technology stocks may be cooling, the desire for more efficient applications and products in the law office continues to be HOT! Let's talk about some of the basics and review some of the most popular products and services for lawyers. I'll also tell you about things that are an absolute must for today's law firms.

Basic legal computing requires a few things. I have found that while most firms have at a very minimum these systems in place, every now and then I encounter firms who still haven't bothered to catch up. Not even Y2K was frightening enough to bring them up to speed.

So, here's my short list of the basic technology must-haves for today's lawyer.

Networked computers

As scary as it sounds in 2001, there are still some law offices running multiple computers that are not networked. This is down right awful! With the rarest of exceptions, the benefits of networking computers far outweigh any reason for not linking your computers together. The ability to share file information and resources, like printers, is reason alone to hunt down a local computer person for an estimate on running the cables from one computer to the next. If you are one of the "techno dinosaurs" that remains, please contact our program for more information and a review of specific needs for networking computers in your office.

Backups

Another scary thing is that lawyers are still found storing all of their work on computers, but not performing any type of backup. Whether you choose to copy files to floppy, Zip or Jaz disks, or invest in an online data storage account you *must* have some backup procedure in place. You also *must* make sure that the procedure works. Ask yourself this: If I am away from my office and there is a flood, can I retrieve my work? Enough said. *Backup,* store backups off site, and make sure you can get data back in case of disaster. If you need help with developing these procedures for your firm don't hesitate to contact our program.

Upgrades

Whether you have 386s (ouch!) and need to be on the lastest system on the market or you are on version 1.1 of some legal specific software package, upgrading is inevitable. Make sure you stay abreast of any upgrades that are on the market. While hardware does not require as much tweaking as software, keep your techno tools sharp and in good working order. Download the latest maintenance releases, service patches or bug fixes on a regular basis. What's the old saying about "an ounce of prevention…" Works for computers and software too!

Virus Protection

You would think that lawyers who are highly skilled at protecting the interests of others would have no problem protecting themselves. However, many firms operate with no form of protection from computer viruses. Bottom line: there are a lot of bored computer criminals and they will continue to build destructive things that can harm other folks. Make sure you have downloaded or purchased a virus protection system for your office. Don't think that non-networked systems don't need it, too. In fact, using floppy disks and other transportable media may make the need even more pressing!

Training

A pet peeve that I have is being told that training is not necessary. Everyone has to learn how to use new systems. You can spend several weeks (read whenever I have time or the work in the office slows down) or a day or two in the process. You can teach yourself (didn't someone say something about: "blind leading the …) or hire professionals. You can immediately begin to get a return on

your investment or wait until later (okay, much later). No one can convince me that there is no benefit to proper training. It is necessary!

Internet

In some form or another, we all need to be able to go online. For e-mail, legal research, visiting Web sites, participating in listservs, downloading information, and on and on, we need to harness the power of the Internet in law offices. Many firms are already making full use of the Internet. Many benefits lie in being able to communicate with others. If you need help getting there, call our program to discuss the benefits and the best way to get connected with the rest of us.

Practice/Case Management

I used to have trouble explaining the benefits of case management software. There were just too many features to focus in on. It has gotten a little easier. Now, I just ask the unbeliever, "how long does it take you to find a phone number for a particular judge on a particular case, and how long does it take to update a change to that number throughout the office?" With case management software you have the ability to make much more money and save much more time. I can't think of one reason why you would not have one of these programs that allows you to keep a copy of the physical file on the computer. Contact our program for help in deciding what program will work best for you. You can't afford not to.

Automated Time Billing and Accounting

Recreating time entries for bills you make in the word processor and doing manual ledgers should be things of the past, but unfortunately, they are not. Today's time and billing and legal accounting software is the answer. Back office procedures are needed in all businesses, law offices included. I can tell you that you need it and show you why if you contact our program. Trust me.

Handheld Devices

If you are walking around with a paper calendar in your pocket or a bulky day planner, I say, "stop it and get a hand-held." With many flavors to choose from, PDAs are still hot techno gadgets. You can buy a little thing that can actually be held in your hand that can hold your entire calendar, all of your contact records, and on some units all of your e-mail. (We can talk about Blackberrys later for those who know what they are.) You can buy expandable keyboards for them and stop lugging around a heavy laptop computer. You can download games and beam them to your friends, or today's newspaper. If any of this sounds intriguing, and it should, you should look into purchasing a hand-held device.

Resources

If you do not know much about legal technology, then you should know this. There are many resources available to help you learn more. Whether it's an online venue like a listserv (the technolawyer listserv is a great one – expect a lot of e-mail though) or websites like www.webopedia.com or www.learnthenet.com that can help you learn about technology in general, you can look to the Internet for help. Legal technology shows also take place annually around the country. Checkout the American Bar Association's (ABA') Annual Techshow usually in Chicago each year or the various LegalTech shows that may take place in a location near you. At these shows you can learn the latest things about hot legal technologies like ASPs and voice recognition software. Some print publications to check are *Law Office Computing* and *Law Technology News*. Finally, don't forget to contact the Law Practice Management Program. We will be glad to help with assessing your legal technology needs and give you a guided tour of our software library before you make any purchases. ▣

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

LAWYER DISCIPLINE

Discipline Notices (Dec. 13, 2000 - Feb. 5, 2001)

DISBARMENTS

Douglas E. Soons
Atlanta, Ga.

Douglas E. Soons (State Bar No. 667030) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated Jan. 8, 2001. Soons represented a client in the reinstatement of his peace officer's license. The client paid Soons, but Soons failed to take action on the case for over three years, which led to the denial of the client's appeal. Soons did not return the client's calls and did not return the client's original documents. He did not respond to disciplinary authorities or to the Supreme Court during these proceedings.

Paul McGee
Atlanta, Ga.

Paul McGee (State Bar No. 491700) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated Jan. 8, 2001. The State Bar filed two formal complaints against McGee. McGee acknowledged service and filed petitions for voluntary discipline in both cases.

In one case McGee was paid $1,500 to represent a client in a criminal matter. McGee failed to take any action. When McGee failed to respond to the Notice of Investigation arising out of the client's grievance, he was suspended from the practice of law. In the other case, McGee was paid $2,000 to file a petition for writ of habeas corpus, but he never filed the petition. Although McGee acknowledged service and filed Petitions for Voluntary Discipline in both cases, the petitions were rejected by the Special Master. The State Bar has been unable to locate McGee since 1999, and a default judgment was entered against him.

Larry W. Threlkeld
Mableton, Ga.

Larry W. Threlkeld (State Bar No. 710725) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated Jan. 8, 2001. In 1998, Threlkeld visited his 17-year-old client who was detained at the Marietta Regional Youth Detention Center. The client's mother had asked Threlkeld to check on the client, who had been diagnosed as having a hernia. Threlkeld met with the client in a holding cell which was located in a high traffic area, had windows, and a visible closed circuit camera. The director's office observed Threlkeld massaging his client's penis. Threlkeld was subsequently convicted of public indecency. The Supreme Court cited several aggravating factors in the case, including Threlkeld's two prior disciplinary infractions.

Herbert A. Zoota
Duluth, Ga.

Herbert A. Zoota (State Bar No. 786098) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated Feb. 5, 2001. Despite being served with a formal complaint, Zoota failed to respond and the facts alleged were deemed admitted. In April 1996, Zoota was retained to represent a client in a slip and fall claim against the owner of an apartment complex. The client signed a contingency fee contract. Zoota called the apartment owner's insurance carrier and obtained an offer to settle for $1,000, but the client rejected the offer. Thereafter, Zoota failed to take any further action and did not return the client's numerous phone calls. In September 1999, Zoota told the client he gave her file to another attorney although he had not asked any other attorney to assume responsibility. As a result of Zoota's action, his client suffered needless worry and concern and lost the right to file suit.

John Thomas Woodall
Savannah, Ga.

John Thomas Woodall (State Bar No. 774950) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated Feb. 5, 2001. Woodall represented Julia Mae Shiggs and her husband in a medical malpractice and loss of consortium action. After Woodall dismissed with prejudice the husband's loss of consortium claim, the case settled for $3.325 million in cash plus some limited future medical services. However, Woodall valued the settlement at $4.8 million, adding to the cash his valuation of the future medical services. Though the husband's claim had been dismissed, Woodall paid him

and his sister a portion of the settlement cash. Woodall, together with attorney David Roberson, collected $2.4 million in attorney's fees. Finding he violated Standards 4, 30, 31(a), 31(d)(2), 36, 44, 61, and 63 of Bar Rule 4-102(d) and no evidence of mitigating factors, the Supreme Court disbarred Woodall. The Court found he inflated the value of his client's settlement to justify collecting excessive attorney's fees and otherwise improperly handled the client's settlement funds. Woodall was disbarred with the special condition that, prior to submitting any petition for reinstatement, he must make full restitution of all moneys he received in regard to his client's case.

David Roberson
Savannah, Ga.

David Roberson (State Bar No. 608043) has been disbarred from the practice of law in the State of Georgia by Supreme Court order dated Feb. 5, 2001. Roberson represented Julia Mae Shiggs and her husband in a medical malpractice and loss of consortium action. After Roberson dismissed with prejudice the husband's loss of consortium claim, the case settled for $3.325 million in cash, plus some limited future medical services. However, Roberson valued the settlement at $4.8 million, adding to the cash his valuation of the future medical services. Though the husband's claim had been dismissed, Roberson paid him and his sister a portion of the settlement cash. Roberson, together with attorney John Thomas Woodall, collected $2.4 million in attorney's fees. Finding he violated Standards 4, 30, 31(a), 31(d)(2), 36, 44, 61, and 63 of Bar Rule 4-102(d) and no evidence of mitigating factors, the Supreme Court disbarred Roberson. The Court found he inflated the value of his client's settlement to justify collecting excessive attorney's fees and otherwise improperly handled the client's settlement funds. Roberson was disbarred with the special condition that, prior to submitting any petition for reinstatement, he must make full restitution of all moneys he received in regard to his client's case.

SUSPENSIONS

Dennis S. Childers
Marietta, Ga.

By order of the Supreme Court of Georgia dated Jan. 8, 2001, Dennis S. Childers (State Bar No. 124408) was suspended from the practice of law in the State of Georgia for a period of six months backdated to Dec. 1, 1999.

Childers filed a Petition for Voluntary Discipline admitting that he had abandoned clients in two matters. In the first case, Childers failed to respond to repeated discovery requests which ultimately led to the dismissal of the client's case. In the second case, Childers failed to respond to a Motion for Summary Judgment, then failed to communicate with the client or to return her file.

Childers requested a six-month suspension for his admitted violation of Bar Rules, but as Childers was already under an interim suspension since Dec. 1, 1999, the court ordered that the six-month suspension be backdated.

James William Quinlan
Cumming, Ga.

James William Quinlan (State Br No. 591365) was suspended on Feb. 5, 2001, for a period of three years by the Supreme Court of Georgia. The State Bar filed two formal complaints against Quinlan. He answered the complaint in the first case and participated in an evidentiary hearing. He failed to respond in the second case, despite having been personally served.

In one case Quinlan represented a client whose home was scheduled for foreclosure. Quinlan assured the client that her bankruptcy petition would be filed and foreclosure would not take place. The client paid a $60 filing fee on July 31, 1998. On Aug. 4, the client called Quinlan and discussed the fact that the foreclosure was scheduled for that day. She was again reassured that it would not take place. No bankruptcy petition was ever filed by Quinlan. As of result, the client's home was foreclosed upon and her car repossessed.

In a second case Quinlan was suspended by Supreme Court order dated April 23, 1999, for failure to respond to a Notice of Investigation. The suspension order was mailed to Quinlan at the last address provided to the State Bar. While under suspension, Quinlan filed an answer in a case pending in the United State Bankruptcy Court for the Northern District of Georgia. Quinlan did not inform the bankruptcy court of his suspension.

REVIEW PANEL REPRIMAND

James E. Tramel
Lilburn, Ga.

James E. Tramel (State Bar No. 715347) has been ordered to receive a Review Panel reprimand by Supreme Court order dated Jan. 5, 2001. Tramel accepted representation of a client in connection with a claim for overtime pay against the US Army. The client paid a flat fee of $1,500, and Tramel agreed to file suit, but never did so. A year later when the client's attempts to reach Tramel were not successful, the client filed a grievance with the

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Alcohol/Drug Abuse and Mental Health Hotline

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

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

Continued from page 51

State Bar. While the grievance was pending the Army attorney made a settlement offer in the case which Tramel never conveyed to the client. Ultimately, the client obtained a new attorney. Tramel refunded the fee and returned the client file after the State Bar filed the formal complaint in this matter. The Supreme Court found that Tramel's conduct violated Standard 44, not by abandoning the matter, but by disregarding it by failing to communicate with his client, which failure was detrimental to the client by causing him needless worry and frustration.

INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Dec. 13, 2000, three lawyers have been suspended for violating this Rule.

LAW PRACTICE MANAGEMENT ASSESSMENT

Jeffrey Rothman
Athens, Ga.

By order of the Supreme Court of Georgia dated Jan. 5, 2001, Jeffrey Rothman (State Bar No. 615820) must undergo an assessment of his firm by the Law Practice Management Program of the State Bar. Rothman filed a Petition for Voluntary Discipline admitting that he had appeared in court on behalf of clients during a time when he was suspended from the practice of law. Rothman contended that he did not receive the suspension order and thus was not aware that he was suspended, but that once he found out he did not make any further appearances for clients or have any contact with them until his suspension was lifted. Although Rothman did not admit any conduct in violation of Bar Rules, he agreed that within the next six months he will undergo an assessment by the Law Practice Management Program of the State Bar, provide the Office of the General Counsel with a copy of the assessment report, and implement the Law Practice Management Program's suggestions or explain his reasons for not doing so.

Summary of Recently Published Trials

Clayton State Ct.....Auto Accident - Rear-End - Signal.....$99,000
Cobb State Ct.....Promissory Note - Business Loan - Collection.....$480,000
Cobb Superior Ct.....Securities Fraud - RICO Violations.....$15,900,000
Cobb Superior Ct.....Auto Accident - Rear-End - Traffic Signal.....$26,847
Dekalb State Ct.....Contract - Storm Damage - Residence.....$35,000
Dekalb State Ct.....Auto Accident - Intersection - Red Light.....$20,000
Dekalb State Ct.....Auto Accident - Intersection - Turning.....$20,000
Dekalb Superior Ct.....Auto Accident - Rear-End - High Speed.....$15,000
Dekalb Superior Ct.....Malicious Prosecution - Police Arrest - Trespass.....Defense Verdict
Fulton State Ct.....Falldown - Zoo - Uneven Asphalt.....$400,000
Fulton State Ct.....FELA - Railroad Crane Operator - Falldown.....$500,000
Fulton State Ct.....Auto/Truck Accident - Rear-End - Significant Impact.....$100,000
Fulton State Ct.....Employment - Medical Office Manager - Unpaid Wages.....$19,038.
Fulton State Ct.....Contract - Real Estate Leases - Brokerage Fees.....$24,500.
Fulton State Ct.....FELA - Railroad Laborer - Back Injury.....$525,000
Fulton State Ct.....Premises Liability - Security at Condominium - Rape.....$235,000
Fulton State Ct.....Wrongful Death - Falldown - Hair Salon.....$200,000
Fulton State Ct.....Auto Accident - Intersection - Rear-End.....$50,000
Fulton State Ct.....Emotional Distress - Daycare Center - Release of Children.....Defense Verdict
Fulton State Ct.....Assault & Battery - Shooting - Off-Duty Policeman.....Defense Verdict
Fulton State Ct.....Auto/Truck Accident - Traffic Light - Jack-Knife.....$30,000
Fulton U.S. District Ct.....Malicious Prosecution - False Imprisonment - Shoplifting.....$125,000
Fulton U.S. District Ct.....Employment - Retaliation - Protected Speech.....Defense Verdict
Fulton U.S. District Ct.....Employment - Discrimination - Race.....Defense Verdict
Gwinnett State Ct.....Workplace Fatality - Stress Induced Aneurysm.....$312,500
Gwinnett State Ct.....Auto Accident - Rear-End - Traffic Light.....$36,519
Gwinnett Superior Ct.....Promissory Note - Collection - Business Deal.....$75,000
Gwinnett Superior Ct.....Products Liability - Broken Plate Injures Customer.....$30,000
Richmond Superior Ct.....Auto Accident - Right-of-Way - Turning.....$60,000
Richmond Superior Ct.....Employment Contract - Extra Benefits.....$20,000

A "Plus Size" Model Wins $800,000 in Defamation Case Involving Published Photographs

Plaintiff model appeared in a lingerie fashion show but never executed a "model release" for any photos taken during the show and her pictures were later published in defendant's magazine. (*Fain v. Firestone; Cobb County Superior Court*)

• • •

Welder Sustains Brain Injury in Worksite Accident and is Awarded $1.3 Million

Plaintiff welder, working at defendant's chemical manufacturing plant, was using a welding torch when a fire ignited resulting in injury from smoke and fumes. (*Mitchell v. Long Leaf Industries; Cobb County Superior Court*)

• • •

Sales Associate Recovers $1.65 Million (Including $1.5 Million Punitive) in Sexual Harassment Suit

Defendant retail store manager was found liable for subjecting a female sales employee to sexually explicit and vulgar language. (*Sanders v. Kinder's Furniture; United States District Court*)

• • •

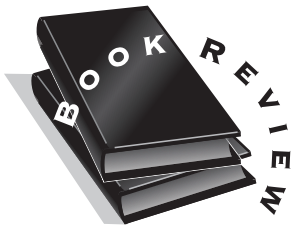
Severe Leg Fractures From a Head-On Collision Result in $1.3 Million Award

Defendant trucking company admitted liability and this Atlanta motorcycle patrol officer claimed his leg injuries prevented him from returning to his employment. (*Merritt v. Moore; Rockdale County Superior Court*)

• • •

Extermination Company Owes $2.55 Million for Poisoning Plaintiff Office Worker

Plaintiff was working in an office building which was regularly sprayed with pesticides by defendant resulting in poisoning symptoms after 10 years of exposure.(*Carder v. Orkin; Fulton County State Court*)



NEW APPROACH REMOVES PIT BULLS FROM NEGOTIATIONS

Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello, *Beyond Winning: Negotiating To Create Value In Deals And Disputes,* Harvard University Press, 368 pp., $28.00

By Allison Burdette

IN *BEYOND WINNING: NEGOTIATING TO* *Create Value in Deals and Disputes*, Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello want to move negotiations away from the predominate distributive model, or zero-sum game, to a value-creating, problem-solving negotiation model. The authors build on the premises of value-based negotiation introduced by Roger Fisher, Bill Ury, and Bruce Patton in *Getting to Yes: Negotiating Agreement Without Giving In.*

In the preface to *Beyond Winning*, the authors state their goal very modestly: "to help lawyers and their clients work together and negotiate deals and disputes more effectively" (ix). Likewise, in the introduction they claim that the book is "not intended to be a manifesto for overthrowing current practices in the legal or business community" (8). Despite the authors' claims, after reading this extensively researched, well-written, and bold prescription for value-based negotiation, I have no doubt that the authors are hoping for nothing less than to revolutionize how people reach negotiated settlement and to turn the tables on the distributive pit bulls at the negotiating table.

Principal author Robert Mnookin, Williston Professor of Law and Chairman of the Program on Negotiation at Harvard Law School, as quoted in a Harvard press release on the book, stated: "But if we can help lawyers, and the people who hire them, to understand the positive potential in every legal negotiation, then we are helping to improve the legal system—by solving clients' problems one case at a time." The authors want lawyers to do good, be peacemakers, problem-solvers. This approach is in contrast to the more traditional distributive negotiation model which, more often than not, aggravates hostilities and runs up substantial transaction costs while missing opportunities for cooperation.

While the novice negotiator would clearly benefit from this book, even the most experienced negotiator could gain powerful new insights into the negotiation process and learn new strategies to become a better negotiator. For example, in Part I, "The Dynamics of Negotiation," the authors identify three tensions present in every negotiation scenario, the tension between: value creation and value distribution; empathy and assertiveness; and principals and agents. In these and later chapters, the authors present tools for recognizing and managing these tensions in dispute resolution and deal-making and in the context of complex negotiating relationships.

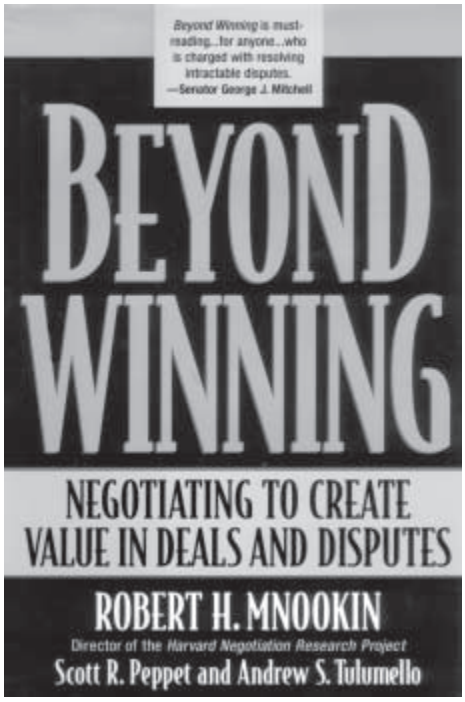
The first chapter, "The Tension between Creating and Distributing Value" addresses the core problem of value-based negotiation: "how to create value while minimizing the risks of exploitation in the distributive aspects of a negotiation" (27). Some negotiations, by their nature, almost exclusively revolve around distributive issues; for example, when negotiating to buy a car, ultimately you pay more or less for the car. *Beyond Winning*, however, argues convincingly that in most other dispute resolution or deal-making, even those that at first glance appear purely distributive in nature, often provide an unparalleled opportunity to reach value-based agreement. Contrary to what most negotiators think, it is differences that create value and "set the stage for possible gains from trade" (x).

Beyond Winning moves easily between theoretical models and practical advice. For example, Chapter 2, "The Tension between Empathy and Assertiveness," sets out how the negotiator needs to "know thyself" and "be curious about the other side" to better develop strategies to effectively manage the negotiation. By placing yourself and other negotiators within one of the three common negotiator modes: competitor, accommodator, and the avoider, and by understanding the empathy-assertiveness dynamic, the negotiator can "diagnose what's going wrong and often figure out what to do about it" (54).

Whereas Part I introduces the tensions which must be managed in a successful negotiation, Part II "Why Lawyers" focuses on creating value in two common legal situations: dispute resolution and dealmaking. (96). "The Challenges of Deal-Making" chapter provides a signifi-

cant amount of practical information although it does not clearly fit the author's paradigm and seems to be directed more to clients than to seasoned lawyers.

The most engaging part of the book is Part III, "A Problem-Solving Approach," which provides a game plan for lawyers who wish to "establish relationships that will support problem-solving with your own client and with the other side" (176). Chapter 7, "Behind the Table," provides a guide for lawyers to establish "a collaborative and client-centered relationship that supports problem-solving negotiation" (xxx). Attorneys who are committed to value-based bargaining and minimizing actual and psychic costs should have their clients read this chapter – if for no other reason than to dispel the common perception that the most effective attorneys are pit bulls. Changing the client's perception can be as important to the goal of value-creation as the actual negotiation itself. By educating the client as to the true costs of different types of negotiating strategies, the lawyer can be a skilled professional rather than just a hired thug in a suit.



Full of practical advice and examples, Chapter 8, "Across the Table," is a must read for the negotiator interested in using value-based negotiation. The chapter suggests a two-step approach to negotiating. First, be "process architects" and proactively design the negotiation process (119). Second, recognize and manage distributive "hardball" tactics, such as "take-it-or-leave-it offers" or "extreme claims followed by small, slow concessions" (211-12). This practical approach enables negotiators to pursue value-based solutions.

The two chapters in Part IV address special negotiation situations including ethical issues and multiple-party negotiations. The ethics section provides valuable information for avoiding ethical and legal violations, as well as tips for recognizing when the other negotiator might be engaging in questionable ethical tactics.

One over-arching criticism of the book is that, at times, *Beyond Winning* seems to exist in a negotiation utopia only found at Harvard's Program on Negotiation. For example, at one point the authors suggest that to create a value-based negotiation, you should first conduct a brainstorming session with the other negotiator to establish the negotiation process. The authors' suggest approaching this conversation: "first we'll talk about interests and how to create value. Then we'll brainstorm—no ownership of ideas! Then we'll try to resolve our distributive differences by approaching this as a shared problem" (209). While probably a great idea in theory, it is hard to imagine most lawyers having this conversation during a negotiation.

Further, readers could well be skeptical that value-based negotiation will work effectively in an exploitive world where some negotiators will be playing XFL football while others are playing by the NFL rules. The authors directly address this problem, warning value-based negotiators to proceed with "cautious optimism." The research results and studies in Chapter 6 illustrate what appear to be the insurmountable cultural and psychological barriers to value-based negotiation. Despite acknowledging the odds against a pure value-based negotiation, the authors remain committed to this model because the data also demonstrates that the distributive game is inefficient and costly, that "blood is expensive" (169). The authors explain techniques for recognizing and effectively and realistically dealing with exploitive techniques. At best these techniques may enable the value-based negotiator to change the game, at the least the value-based negotiator will avoid being exploited.

Despite this criticism, *Beyond Winning* moves easily between theoretical models and practical advice and examples. Anyone who participates in negotiations – essentially all of us – can benefit from reading and periodically re-reading this practical and applicable guide to value-based negotiation. For the seasoned negotiator who already uses these tactics to create value, then *Beyond Winning* is a well-written affirmation of these negotiating techniques. For all other negotiators, this is a chance to learn how "to change the traditional game from adversarial bargaining to problem-solving without exposing themselves or their clients to an unacceptable risk of exploitation" (6). ▣

Allison Burdette is a 1989 graduate of Harvard Law School. While she attended Harvard, she participated in Roger Fisher and Bruce Patton's Negotiation Workshop. Currently, she is teaching business law at Emory University's Goizueta Business School.

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Chapter 14. Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law

The Supreme Court, in issuing the following changes to the rules governing the unauthorized practice of law (UPL), has established a pilot program in the state of Georgia to address the investigation and prosecution of UPL. The program will be administered by the State Bar of Georgia, and will be conducted in the second and fourth judicial districts.

14-1. PREAMBLE

RULE 14-1.1 JURISDICTION

The Supreme Court of Georgia has the inherent authority to regulate the practice of law. Wallace v. Wallace, 225 Ga. 102, cert. denied, 396 U.S. 939 (1969); Sams v. Olah, 225 Ga. 497, cert. denied, 397 U.S. 914 (1970); Fleming v. State, 246 Ga. 90, cert. denied, 449 U.S. 904 (1980). This authority necessarily includes jurisdiction over the unlicensed practice of law.

RULE 14-1.2 DUTY OF THE STATE BAR OF GEORGIA

The State Bar of Georgia, as an official arm of the Court, is charged with the duty of considering, investigating, and seeking the prohibition of matters pertaining to the unlicensed practice of law and the prosecution of alleged offenders. The Court hereby establishes a Standing Committee on the unlicensed practice of law and at least one District Committee on unlicensed practice of law in each judicial district.

14-2. DEFINITIONS

RULE 14-2.1 GENERALLY

Whenever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(a) Unlicensed Practice of Law. The unlicensed practice of law shall mean the practice of law, as prohibited by statute, court rule, and case law of the State of Georgia.

(b) Nonlawyer or Nonattorney. For purposes of this chapter, a nonlawyer or nonattorney is an individual who is not an active member of the State Bar of Georgia. This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to the State Bar of Georgia, inactive lawyers, disbarred lawyers, and suspended lawyers during the period of suspension.

(c) This Court or the Court. This Court or the Court shall mean the Supreme Court of Georgia.

(d) Counsel for the Bar. Counsel for the Bar is a member of the State Bar of Georgia other than Staff Counsel representing the Bar in any proceedings under these rules.

(e) Respondent. A respondent is a nonlawyer who is either accused of engaging in the unlicensed practice of law or whose conduct is under investigation.

(f) Judge. A Judge is the Superior Court Judge who conducts proceedings as provided under these rules.

(g) Standing Committee. The Standing Committee on UPL is the committee constituted according to the directives contained in these rules.

(h) District Committee. A District Committee is a local unlicensed practice of law District Committee.

(i) Staff Counsel. Staff counsel is an attorney employee of the State Bar of Georgia employed to perform such duties as may be assigned.

(j) UPL. UPL is the unlicensed practice of law.

(k) The Board or Board of Governors. The Board or Board of Governors is the Board of Governors of the State Bar of Georgia.

(l) Executive Committee. The Executive Committee is the Executive Committee of the Board of Governors of the State Bar of Georgia, composed of such officers

and members of the Board of Governors as may be designated in the bylaws, which shall exercise the powers and duties of the Board of Governors when it is not in session, subject to such limitations as the bylaws may provide.

14-3. STANDING COMMITTEE

RULE 14-3.1 GENERALLY

(a) Appointment and Terms. The Standing Committee shall be appointed by the Court, and shall consist of 23 members, 11 of whom shall be nonlawyers. The nonlawyer members should be geographically representative of the State. The lawyer members shall be appointed by the Court and shall include at least one member from each judicial district. The Court shall appoint a chair and at least one vice-chair of the Standing Committee, both of whom may be nonlawyers. Eight of the members of the Standing Committee shall constitute a quorum. All appointments to the Standing Committee shall be for a term of three years, except that it shall be the goal of the initial appointments that one-third (1/3) of the terms of the members appointed will expire annually. The members who initially serve terms of less than three years shall be eligible for immediate reappointment. No member shall be appointed to more than two full consecutive terms.

(b) Duties. It shall be the duty of the Standing Committee to receive and evaluate District Committee reports and to determine whether litigation should be instituted in Superior Court against any alleged offender. The Standing Committee may approve civil injunctive proceedings, civil or criminal contempt proceedings, a combination of injunctive and contempt proceedings, or such other action as may be appropriate. In addition, the duties of the Standing Committee shall include, but not be limited to:

(1) the consideration and investigation of activities that may, or do, constitute the unlicensed practice of law;

(2) the supervision of the District Committees, which shall include, but not be limited to:

(A) prescribing rules of procedure for District Committees;

(B) assigning reports of unlicensed practice of law for investigation;

(C) reassigning or withdrawing matters previously assigned, exercising final authority to close cases not deemed by the Standing Committee to then warrant further action by the State Bar of Georgia for unlicensed practice of law, and closing cases proposed to be resolved by a cease and desist affidavit where staff counsel objects to the closing of the case or the acceptance of a cease and desist affidavit by the District Committee;

(D) joining with a District Committee in a particular investigation; and

(E) request staff investigators, staff counsel, and voluntary bar counsel to conduct investigations on behalf of or in concert with the District Committees; and

(F) suspending District Committee members and chairs for cause and appointing a temporary District Committee chair where there has been a suspension, resignation, or removal, pending the appointment of a replacement chair by the Court;

(3) the initiation and supervision of litigation, including the delegation of responsibility to staff, or Counsel for the Bar to prosecute such litigation;

(4) the giving of advice regarding the unlicensed practice of law policy to the officers, Board of Governors, staff, sections, or committees of the State Bar of Georgia as requested; and

(5) furnishing any and all information, confidential records, and files regarding pending or closed investigations of unlicensed practice of law to any state or federal law enforcement or regulatory agency, United States Attorney, District Attorney, Solicitor, the Georgia Office of Bar Admissions and equivalent entities in other jurisdictions, the State Disciplinary Board of the State Bar of Georgia and equivalent entities in other jurisdictions where there is or may be a violation of state or federal law or the Rules of Professional Conduct of the State Bar of Georgia, or when required by law or court order.

RULE 14-3.2 STAFF COUNSEL AND COUNSEL FOR THE BAR

(a) Staff Counsel. The State Bar of Georgia shall provide staff counsel and other employees sufficient to assist the Standing Committee and the District Committee in carrying out their responsibilities as prescribed elsewhere in these rules.

(b) Appointment of Counsel for the Bar. The President of the State Bar of Georgia may appoint one or more Counsel for the Bar to assist the State Bar of Georgia in meeting its duties as prescribed in (a) above.

14-4. DISTRICT COMMITTEES

RULE 14-4.1 GENERALLY

(a) Appointment and Terms. Each District Committee shall be appointed by the Court and shall consist of not fewer than three members, at least one-third of whom shall be nonlawyers. All appointees shall be residents of the judicial district or have their principal office in the district. The terms of the members of District Committees shall be for three years from the date of appointment by the Court or until such time as their successors are appointed, except that it shall be the goal of the initial appointments that one-third (1/3) of the terms of the members appointed will expire annually. The members who initially serve terms of less than two years shall be eligible for immediate reappointment. Continuous service of a member shall not exceed six years. The expiration of the term of any member shall not disqualify that member from concluding any investigations pending before that member. Any member of a District Committee may be removed from office by the Court.

(b) Committee Chair. For each District Committee there shall be a chair designated by the Court. A vice-chair and secretary may be designated by the chair of each District Committee. The chair shall be a member of the State Bar of Georgia.

(c) Quorum. Three members of the District Committee or a majority of the members, whichever is less, shall constitute a quorum.

(d) Panels. The Chair of a District Committee may divide that Committee into panels of not fewer than three members, one of whom must be a nonlawyer. The three-member panel shall elect one of its members to preside over the panel's actions. If the chair or vice-chair of the District Committee is a member of a three-member panel, the chair or vice-chair shall be the presiding officer.

(e) Duties. It shall be the duty of each District Committee to investigate, with dispatch, all reports of unlicensed practice of law and to make prompt written report of its investigation and findings to staff counsel. In addition, the duties of the District Committee shall include, but not be limited to:

(1) closing cases not deemed by the District Committee to warrant further action by the State Bar of Georgia;

(2) closing cases proposed to be resolved by a cease and desist affidavit; and

(3) forwarding to staff counsel recommendations for litigation to be reviewed by the Standing Committee.

(f) District Committee Meetings. District Committees should meet at regularly scheduled times. Either the chair or vice chair may call special meetings. District Committees should meet as often as necessary during any period when the Committee has one or more pending cases assigned for investigation and report. The time, date and place of scheduled meetings should be set in advance by agreement between each Committee and staff counsel. Meetings may be conducted by telephone conference or by any other technology available and agreed upon by the Committee. Any participant, including staff counsel, may participate in the meeting by telephone conference or any other technology agreed upon by the Committee.

14-5. COMPLAINT PROCESSING AND INITIAL INVESTIGATORY PROCEDURES

RULE 14-5.1 COMPLAINT PROCESSING

(a) Complaints. All complaints alleging unlicensed practice of law, except those initiated by the State Bar of Georgia, shall be in writing and signed by the complainant in such form as may be prescribed by the Standing Committee.

(b) Review by Staff Counsel. Staff counsel shall review the complaint and determine whether the alleged conduct, if proven, would constitute a violation of the prohibition against engaging in the unlicensed practice of law. Staff counsel may conduct a preliminary, informal investigation to aid in this determination and may use a State Bar of Georgia staff investigator to aid in the preliminary investigation. If staff counsel determines that the facts, if proven, would not constitute a violation, staff counsel may decline to pursue the complaint. A decision by staff counsel not to pursue a complaint shall not preclude further action or review under the rules regulating the State Bar of Georgia. The complainant shall be notified of a decision not to pursue a complaint .

(c) Referral to District Committee. Staff counsel may refer a UPL file to the appropriate District Committee for further investigation or action as authorized elsewhere in these rules.

(d) Closing by Staff Counsel and Committee Chair. If staff counsel and a District Committee chair concur in a finding that the case should be closed without a finding of unlicensed practice of law, the complaint may be closed on such finding without reference to the District Committee or Standing Committee.

(e) Referral to Staff Counsel for Opening. A complaint received by a District Committee or Standing Committee member directly from a complainant shall be reported to staff counsel for docketing and assignment of

a case number. Should the District Committee or Standing Committee member decide that the facts, if proven, would not constitute a violation of the unlicensed practice of law, the District Committee or Standing Committee member shall forward this finding to staff counsel along with the complaint for notification to the complainant as outlined above. Formal investigation by a District Committee may proceed after the matter has been referred to staff counsel for docketing.

14-6. PROCEDURES FOR INVESTIGATION

RULE 14-6.1 HEARINGS

(a) Conduct of Proceedings. The proceedings of District Committees and the Standing Committee when hearings are held may be informal in nature and the committees shall not be bound by the rules of evidence. Committee deliberations shall be closed.

(b) Taking Testimony. Counsel for the Bar, Staff counsel, the Standing Committee, each District Committee, and members thereof conducting investigations are empowered to take and have transcribed the testimony and evidence of witnesses. If the testimony is recorded stenographically or otherwise, the witness shall be sworn by any person authorized by law to administer oaths.

(c) Rights and Responsibilities of Respondent. The respondent may be required to appear and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel.

(d) Rights of Complaining Witness. The complaining witness is not a party to the investigative proceeding although the complainant may be called as a witness should the matter come before a Judge. The complainant may be granted the right to be present at any District Committee hearing when the respondent is present before the committee. The complaining witness shall have no right to appeal the finding of the District Committee.

RULE 14-6.2 SUBPOENAS

(a) Issuance by Superior Court. Upon receiving a written application of the chair of the Standing Committee or of a District Committee or staff counsel alleging facts indicating that a person or entity is or may be practicing law without a license and that the issuance of a subpoena is necessary for the investigation of such unlicensed practice, the clerk of the Superior Court in which the committee is located shall issue subpoenas in the name of the chief Judge of the Superior Court for the attendance of any person and production of books and records before staff counsel or the investigating District Committee or any member thereof at the time and place within its district designated in such application. Such subpoenas shall be returnable to the Superior Court of the residence or place of business of the person subpoenaed. A like subpoena shall issue upon application by any person or entity under investigation.

(b) Failure to Comply. Failure to comply with any subpoena shall constitute a contempt of court and may be punished by the Superior Court that issued the subpoena or where the contemnor may be found. The Superior Court shall have the power to enter such orders as may be necessary for the enforcement of the subpoena.

RULE 14-6.3 RECOMMENDATIONS AND DISPOSITION OF COMPLAINTS

(a) District Committee Action. Upon concluding its investigation, the District Committee shall forward a report to staff counsel regarding the disposition of those cases closed, those cases where a cease and desist affidavit has been accepted, and those cases where litigation is recommended. A majority of those present is required for all District Committee recommendations; however, the vote may be taken by mail, telephone, fax, e-mail or other means rather than at a formal meeting. All recommendations for litigation under these rules shall be reviewed by the Standing Committee for final approval prior to initiating litigation.

(b) Action by Staff Counsel. Staff counsel shall review the disposition reports of the District Committee. If staff counsel objects to any action taken by the District Committee, staff counsel shall forward such objection to the District Committee within 10 business days of receipt of the District Committee report. Staff counsel shall place the action and objection before the Standing Committee for review at its next scheduled meeting. The Standing Committee shall review the District Committee action and the objection, and shall vote on the final disposition of the case. Once a case is closed or a cease and desist affidavit is accepted by the District Committee or by the Standing Committee, staff counsel shall inform the complainant and, if contacted, the respondent of the disposition of the complaint.

14-7. PROCEEDINGS BEFORE A JUDGE

RULE 14-7.1 PROCEEDINGS FOR INJUNCTIVE RELIEF

(a) Filing Complaints. In accordance with O.C.G.A. § 15-19-58, complaints for civil injunctive relief shall be by petition filed in the Superior Court in which the respondent resides or where venue might otherwise be proper by the State Bar of Georgia in its name.

(b) Petitions for Injunctive Relief. Except as provided in sub-paragraphs (1) through (7) of this Rule 10-7.1(b) such petition shall be processed in the Superior Court in substantial compliance with Georgia law:

(1) The petition shall not be framed in technical language, but shall with reasonable clarity set forth the facts constituting the unlicensed practice of law. A demand for relief may be included in the petition but shall not be required.

(2) The Superior Court, upon consideration of any petition so filed, may issue its order to show cause directed to the respondent commanding the respondent to show cause, if there be any, why the respondent should not be enjoined from the unlicensed practice of law alleged, and further requiring the respondent to file with the Superior Court and serve upon staff counsel within 30 days after service on the respondent of the petition and order to show cause a written answer admitting or denying each of the matters set forth in the petition. The order and petition shall be served upon the respondent in the manner provided for service of process by Georgia law, and service of all other pleadings shall be governed by the procedures applicable under Georgia law.

(3) If no response or defense is filed within the time permitted, the allegations of the petition shall be taken as true for purposes of that action. The Superior Court will then, upon its motion or upon motion of any party, decide the case upon its merits, granting such relief and issuing such order as might be appropriate.

(4) If a response or defense filed by a respondent raises no issue of material fact, any party, upon motion, may request summary judgment and the Superior Court may rule thereon as a matter of law.

(5) The Superior Court may, upon its motion or upon motion of any party, enter a judgment on the pleadings or conduct a hearing with regard to the allegations contained in the petition.

(6) Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued in the name of the Superior Court upon request of a party. Failure or refusal to comply with any subpoena shall be contempt of court.

(7) The Georgia Rules of Civil Procedure, including those provisions pertaining to discovery, not inconsistent with these rules shall apply in injunctive proceedings before the Judge. The powers and jurisdiction generally reposed in the Superior Court under those rules may in this action be exercised by the Judge. The State Bar of Georgia may in every case amend its petition one time as a matter of right, within 60 days after the filing of the petition. All proceedings under these rules shall be heard by a Judge sitting without a jury. There shall be no right to a trial by jury with regard to any proceeding conducted under these rules.

(c) Judge's Order.

(1) At the conclusion of the hearing, the Judge shall determine as a matter of fact and law whether the respondent has engaged in the unlicensed practice of law, whether the respondent's activities should be enjoined by appropriate order, whether costs should be awarded, and whether further relief shall be granted. Copies of the Judge's order shall be served upon all parties.

(2) The Judge shall have discretion to recommend the assessment of costs. Taxable costs of the proceeding shall include only:

(A) investigative costs;
(B) court reporters' fees;
(C) copy costs;
(D) telephone charges;
(E) fees for translation services;
(F) witness expenses, including travel and out-of-pocket expenses;
(G) travel and out-of-pocket expenses of the Judge; and
(H) any other costs which may properly be taxed in civil litigation.

(3) Should the parties enter into a stipulated injunction prior to the hearing, the stipulation shall be filed

with the Judge. The Judge may approve the stipulation or reject the stipulation and schedule a hearing as provided elsewhere in these rules.

(d) Review by the Supreme Court of Georgia.

(1) Objections to the order of the Judge shall be filed with the Court by any party aggrieved, within 30 days after the filing of the order. If the objector desires, a brief or memorandum of law in support of the objections may be filed at the time the objections are filed. Any other party may file a responsive brief or memorandum of law within 20 days of service of the objector's brief or memorandum of law. The objector may file a reply brief or memorandum of law within 10 days of service of the opposing party's responsive brief or memorandum of law. Oral argument will be allowed at the court's discretion.

(2) Upon the expiration of the time to file objections to the Judge's order, the Court shall review the order of the Judge, together with any briefs or memoranda of law or objections filed in support of or opposition to such order. After review, the Court shall determine as a matter of law whether the respondent has engaged in the unlicensed practice of law, whether the respondent's activities should be enjoined by appropriate order, whether costs should be awarded, and whether further relief shall be granted.

(e) Issuance of Preliminary or Temporary Injunction. Nothing set forth in this rule shall be construed to limit the authority of the Superior Court, upon proper application, to issue a preliminary or temporary injunction, or at any stage of the proceedings to enter any such order as the Superior Court deems proper when public harm or the possibility thereof is made apparent to the Superior Court, in order that such harm may be summarily prevented or speedily enjoined.

14-8. CONFIDENTIALITY

RULE 14-8.1 FILES

(a) Files Are Property of Bar. All matters, including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records in trials and other proceedings under these rules, except those unlicensed practice of law matters conducted in Superior Courts, are property of the State Bar of Georgia.

(b) Limitations on Disclosure. Any material provided to or promulgated by the State Bar of Georgia that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law.

14-9. ADVISORY OPINIONS

RULE 14-9.1 PROCEDURES FOR ISSUANCE OF ADVISORY OPINIONS ON THE UNLICENSED PRACTICE OF LAW

(a) Definitions.

(1) Committee. The Standing Committee as constituted according to the directives contained in these rules.

(2) Petitioner. An individual or organization seeking guidance as to the applicability, in a hypothetical situation, of the state's prohibitions against the unlicensed practice of law.

(3) Public Notice. Publication in a newspaper of general circulation in the county in which the hearing will be held and in the Georgia Bar Journal.

(4) Court. The Supreme Court of Georgia (or such other court in the state of Georgia as the Supreme Court may designate).

(b) Requests for Advisory Opinions. The Committee shall respond to written requests from all persons and entities seeking advisory opinions concerning activities that may constitute the unlicensed practice of law. Such requests shall be in writing and addressed to the State Bar of Georgia. The request for an advisory opinion shall state in detail all operative facts upon which the request for opinion is based and contain the name and address of the petitioner.

(c) Limitations on Opinions. No opinion shall be rendered with respect to any case or controversy pending in any court in this jurisdiction and no informal opinion shall be issued except as provided in rule 14-9.1(g)(1).

(d) Services of Voluntary Counsel. The Committee shall be empowered to request and accept the voluntary services of a person licensed to practice in this state when the Committee deems it advisable to receive written or oral advice regarding the question presented by the petitioner.

(e) Conflict of Interest. Committee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed advisory opinion or Committee recommendation

or any other conflict of interest that should prevent them from participating. However, no action of the Committee will be invalid where full disclosure has been made and the Committee has not decided that the member's participation was improper.

(f) Notice, Appearance, and Service.

(1) At least 30 days in advance of the Committee meeting at which initial action is to be taken with respect to a potential advisory opinion, the Committee shall give public notice of the date, time, and place of the meeting, state the question presented, and invite written comments on the question. On the announced date the Committee shall hold a public hearing at which any person affected shall be entitled to present oral testimony and be represented by counsel. Oral testimony by other persons may be allowed by the Committee at its discretion. At the time of or prior to the hearing any other person shall be entitled to file written testimony on the issue before the Committee. Additional procedures not inconsistent with this rule may be adopted by the Committee.

(2) The Committee shall issue either a written proposed advisory opinion, or a letter that declines to issue an opinion, or an informal opinion as provided in rule 14-9.1(g)(1). No other form of communication shall be deemed to be an advisory opinion.

(3) A proposed advisory opinion shall be in writing and shall bear a date of issuance. The proposed opinion shall prominently bear a title indicating that it is a proposed advisory opinion and a disclaimer stating that it is only an interpretation of the law and does not constitute final court action. The Committee shall arrange for the publication of notice of filing the proposed advisory opinion and a summary thereof in the *Georgia Bar Journal* within a reasonable time. Interested parties shall be furnished a copy of the full opinion upon request.

(g) Service and Judicial Review of Proposed Advisory Opinions.

(1) In the case of any proposed advisory opinion in which the Standing Committee concludes that the conduct in question is not the unlicensed practice of law, it shall decide, by a vote of a majority of the Committee members present, either to publish the advisory opinion as provided in rule 14-9.1(f)(3) as an informal advisory opinion, or to file a copy of the opinion with the Court as provided in rule 14-9.1(g)(2).

(2) In the case of any proposed advisory opinion in which the Standing Committee concludes that the conduct in question constitutes or would constitute the unlicensed practice of law, the Committee shall file a copy of the opinion and all materials considered by the Committee in adopting the opinion with the clerk of the Court. The proposed advisory opinion, together with notice of the filing thereof, shall be furnished by certified mail to the petitioner.

(3) Within 30 days of the filing of the opinion, the petitioner may file objections and a brief or memorandum in support thereof, copies of which shall be served on the Committee. Any other interested person may seek leave of the Court to file and serve a brief, whether in support of or in opposition to the opinion, in accordance with this same procedure. The Committee may file a responsive brief within 20 days of service of the initial brief. The petitioner, as well as other interested persons with leave of Court, may file a reply brief within 10 days of service of the responsive brief. At its discretion, the Court shall permit reasonable extension of these time periods. Oral argument will be allowed at the Court's discretion. The Georgia Rules of Appellate Procedure shall otherwise govern the above methods of filing, service, and argument.

(4) Upon the expiration of the time to file objections, briefs, and replies thereto, the Court shall review the advisory opinion, regardless of whether any such objections are in fact made, together with any briefs or objections filed in support of or in opposition to such opinion. Upon review, it shall approve, modify, or disapprove the advisory opinion, and the ensuing opinion shall have the force and effect of an order of this Court and be published accordingly. There shall be no further review of the opinion except as granted by this Court in its discretion, upon petition to this Court.

14-10. IMMUNITY

RULE 14-10.1 GENERALLY

The members of the Standing Committee and District Committees, as well as staff persons and appointed voluntary counsel assisting those committees, including, but not limited to, staff counsel, Counsel for the Bar and investigators; and the State Bar of Georgia, its officers and employees, members of the Executive Committee, and members of the Board of Governors, shall have absolute immunity from civil liability for all acts in the course of their official duties.

Notice to Attorneys Concerning the 2001 Eleventh Circuit Judicial Conference

The Judicial Conference of the Eleventh Circuit will take place on May 10-12, 2001, at the Westin Savannah Harbor Resort in Savannah, Ga. The Conference is being convened by the judges of the Eleventh Circuit to consider the business of their respective courts (the court of appeals and the district and bankruptcy courts in Alabama, Florida and Georgia) and to advise means of improving the administration of justice within the circuit.

A limited number of spaces are available to any attorney admitted to practice before the court of appeals of the district courts of the Eleventh Circuit who wishes to attend. If an attorney is interested in attending this conference, he or she should write to the Circuit Executive, Norman E. Zoller, at 56 Forsyth Street, NW, Atlanta, GA 30303. By return mail, he will forward Conference registration information, describe the Conference's hotel accommodations, room charges, and the substantive and social programs of the meetings. Preview information concerning the conference may be accessed on the Internet at www.ca11.org.

Errata Sheet for the 2000 - 2001 State Bar *Directory*

LISTED BELOW ARE CORRECtions to your 2000 - 2001 State Bar *Directory*. Included are corrections of errors made from information submitted in a timely manner and which were inadvertently omitted or otherwise incorrectly listed in our original publication. Each complaint has been researched and reviewed by the Membership Department, and a correction is due to those members listed below. Please mark your directory accordingly.

Atlanta

Ms. Rita M. Cherry: Axam, Adams & Secret, P. A.; Suite 310; 1280 West Peachtree Street; Atlanta, GA 30309; Rmcherry@bellsouth.net

Mr. Gary G. Grindler: Phone (404) 572-2441

Mr. Patrick J. Keenan: Pkeehan@schr.org

Mr. Joseph Mark Lucas: Calloway & Calloway, P. C.; Building 2, Suite 300; 7000 Peachtree Dunwoody Rd.; Atlanta, GA 30328; Phone (770) 394-7000; Fax (770) 698-2028

Birmingham

Mr. James B. Hawkins: 1604 Wingfield Trace; Birmingham, AL 35242; Phone (205) 991-3303

Conyers

Mr. William Rhymer: Rhymerlaw@aol.com

Demorest

Ms. Joanna Temple: 1250 Historic Hwy., 441; P. O. Box 550; Demorest, GA 30535

Macon

Mr. Marc T. Treadwell: Phone (478) 743-2159

Marietta

Judge Robert E. Flournoy III: Phone (678) 581-5400; Fax (678) 581-5407

Mr. Daniel K. McCall: Phone (770) 422-5140

Mr. Jason Lee Nohr: Phone (770) 919-7554; Fax (770) 449-0505

Zebulon

Mr. Robert L. Morton: Phone (770) 567-8534; Fax (770) 567-3786

Mr. Thomas H. Morton: Phone (770) 567-8534; Fax (770) 567-3786

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

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, *Ga. Ct. and Bar Rules*, pp. 11-1 *et seq.* (hereinafter referred to as "*Rules*").

I hereby certify that the following is the verbatim text of the proposed amendment as approved by the Board of Governors o the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to the proposed Amendment to the Rules is reminded that he or she may only do so in the manner provided by Rule 501-2, *Rules*, p. 11-93.

This Statement, and the following verbatim text, are intended to comply with the notice requirements of Rule 5-101, *Rules*, pp. 11-92.7 and 11-93.

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT
STATE OF GEORGIA

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

MOTION TO AMEND 01-1

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in a regular meeting held on January 13, 2001, and upon the concurrence of its Executive Committee, presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, *Ga. Ct. and Bar Rules*, pp. 11-1 *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I.
Proposed Amendment to
State Bar of Georgia
Rule 4-221 (d)

It is proposed that Part IV (Discipline), Rule 4-221 (d) be amended as shown below by deleting the stricken portions of the rule and inserting the phrases in bold and italicized typeface as follows:

(d) Confidentiality of Investigations and Proceedings.
(1 ***The State Bar shall maintain as confidential all disciplinary*** ~~All~~ investigations and proceedings ~~provided for herein prior to a filing in the Supreme Court shall be confidential unless the respondent otherwise elects or as hereinafter~~ ***pending at the screening or investigative stage, unless otherwise*** provided ~~in this rule~~ ***by these rules***.
(2) After a proceeding under these rules is filed with the Supreme Court, all evidentiary and motions hearings shall be open to the public and all reports rendered shall be public documents.
(3) Any person who is connected with the disciplinary proceedings in any way and who makes a publication or revelation which is not specifically permitted under these rules prior to a filing in the Supreme Court concerning such proceedings shall be subject to rule for contempt by the Supreme Court of Georgia.
(3) Nothing in these rules shall prohibit the complainant, respondent or third party from disclosing information regarding a disciplinary proceeding, unless otherwise ordered by the Supreme Court or a Special Master in proceedings under these rules.

(4) The Office of the General Counsel of the State Bar ~~of Georgia~~ or the Investigative Panel of the State Disciplinary Board may reveal ***or authorize disclosure of*** information which would otherwise be confidential under this rule under the following circumstances***:*** ~~so long as the recipient is admonished that the recipient may not disclose the information except as necessary to complete the tasks for which the information was provided:~~

(i) In the event of ~~the~~ **a** charge ~~or charges~~ of wrongful conduct against any member of the State Disciplinary Board or any person who is otherwise connected with the disciplinary proceeding in any way, either Panel of the Board or its Chairperson or his or her designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against ~~the~~ ***such*** charge ~~or charges~~.

(ii) In the event ~~that~~ the Office of the General Counsel receives information ~~which~~ ***that*** suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.

(iii) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.

(iv) A complainant or lawyer representing the complainant may be notified of the status ~~and/~~ or disposition of the complaint.

(v) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.

(5) The Office of General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties***:*** ~~so long as the recipient is admonished that the recipient may not disclose the information except as necessary to complete the tasks for which the information was provided:~~

(i) ***T~~t~~***he Committee on the Arbitration of Attorney Fee Disputes ***or the comparable body in other jurisdictions***;

(ii) ***T~~t~~***he Trustees of the Clients' Security Fund ***or the comparable body in other jurisdictions***;

(iii) ***T~~t~~***he Judicial Nominating Commission ***or the comparable body in other jurisdictions***;

(iv) ***T~~t~~***he Lawyer Assistance Program ***or the comparable body in other jurisdictions***;

(v) ***T~~t~~***he Board to Determine Fitness of Bar Applicants ***or the comparable body in other jurisdictions***;

(vi) ***T~~t~~***he Judicial Qualifications Commission ***or the comparable body in other jurisdictions***;

(vii) ***T~~t~~***he Executive Committee with the specific approval of the following representatives of the Investigative Panel of the State Disciplinary Board: the chairperson, the vice-chairperson and a third representative designated by the chairperson;

(viii) ***T~~t~~***he Formal Advisory Opinion Board;

(ix) ***T~~t~~***he Consumer Assistance Program;

(x) ***T~~t~~***he General Counsel Overview Committee; and

(xi) ***A~~a~~***n office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States.

(6) Any information used by the Office of the General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a Receiver to administer the files of a member of the ***State Bar*** ~~bar~~, ***shall*** ~~will~~ not be confidential under this rule.

(7) The Office of General Counsel may reveal confidential information when required by law or court order.

(8) The authority or discretion to reveal confidential information under this rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar or the State Disciplinary Board under Bar Rules or applicable law.
(9) Nothing in this rule shall prohibit the Office of the General Counsel or the Investigative Panel from interviewing potential witnesses or placing the Notice of Investigation out for service by sheriff or other authorized person.
(10) Members of the Office of General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent or third parties but are otherwise confidential under these rules by acknowledging the existence and status of the proceeding.
(11) The State Bar shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court Rules that was confidential when imposed, unless authorized to do so by said prior rules.

Should the proposed amendments be adopted, the amended Rule 4-221 (d) shall read as follows:

(d) Confidentiality of Investigations and Proceedings.
(1) The State Bar shall maintain as confidential all disciplinary investigations and proceedings pending at the screening or investigative stage, unless otherwise provided by these rules.
(2) After a proceeding under these rules is filed with the Supreme Court, all evidentiary and motions hearings shall be open to the public and all reports rendered shall be public documents.
(3) Nothing in these rules shall prohibit the complainant, respondent or third party from disclosing information regarding a disciplinary proceeding, unless otherwise ordered by the Supreme Court or a Special Master in proceedings under these rules.
(4) The Office of the General Counsel of the State Bar or the Investigative Panel of the State Disciplinary Board may reveal or authorize disclosure of information which would otherwise be confidential under this rule under the following circumstances:
(i) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board or any person who is otherwise connected with the disciplinary proceeding in any way, either Panel of the Board or its Chairperson or his or her designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against such charge.
(ii) In the event the Office of the General Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.
(iii) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.
(iv) A complainant or lawyer representing the complainant may be notified of the status or disposition of the complaint.
(v) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.
(5) The Office of General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties:
(i) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;
(ii) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;
(iii) The Judicial Nominating Commission or the comparable body in other jurisdictions;
(iv) The Lawyer Assistance Program or the comparable body in other jurisdictions;

Health Care Auditors pickup 2/01 p45

(v) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;
(vi) The Judicial Qualifications Commission or the comparable body in other jurisdictions;
(vii) The Executive Committee with the specific approval of the following representatives of the Investigative Panel of the State Disciplinary Board: the chairperson, the vice-chairperson and a third representative designated by the chairperson;
(viii) The Formal Advisory Opinion Board;
(ix) The Consumer Assistance Program;
(x) The General Counsel Overview Committee; and
(xi) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States.

(6) Any information used by the Office of the General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a Receiver to administer the files of a member of the State Bar, shall not be confidential under this rule.

(7) The Office of General Counsel may reveal confidential information when required by law or court order.

(8) The authority or discretion to reveal confidential information under this rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar or the State Disciplinary Board under Bar Rules or applicable law.

(9) Nothing in this rule shall prohibit the Office of the General Counsel or the Investigative Panel from interviewing potential witnesses or placing the Notice of Investigation out for service by sheriff or other authorized person.

(10) Members of the Office of General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent or third parties but are otherwise confidential under these rules by acknowledging the existence and status of the proceeding.

(11) The State Bar shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court Rules that was confidential when imposed, unless authorized to do so by said prior rules.

2000-2001 Election Results

State Bar of Georgia Officers

President-Elect	James B. Durham, Brunswick
Secretary	William D. Barwick, Atlanta
Treasurer	George Robert Reinhardt Jr., Tifton

Younger Lawyers Division Officers

President-Elect	Derek J. White, Savannah
Secretary	Damon E. Elmore, Atlanta
Treasurer	Andrew W. Jones, Marietta

ABA Delegates from Georgia

Post 2	Gregory Smith,Washington D.C.
Post 4	Paula J. Frederick, Atlanta

New Board of Governors Members

Atlanta Circuit Post 13	Pat McMahon, Atlanta
Atlanta Circuit Post 27	Nancy J. Whaley, Atlanta
Cordele Circuit	John N. Davis, Cordele
Dublin Circuit	Daniel M. King, Jr., Dublin
Gwinnett Post 4	Phyllis A. Miller, Lawrenceville
N.E. Circuit Post 2	Hon Robert. W. Chambers III, Gainesville
Ocmulgee Circuit Post 2	H. James Winkler, Madison
South Georgia Post 2	Gary O. Allen, Pelham
Towaliga Circuit	W. Ashley Hawkins, Forsyth

Current BOG Members Who Will Not Serve After June 2001

Atlanta Circuit 13	Jesus A. Nerio, Atlanta
Atlanta Circuit 27	A. L. Mullins, Jr., Atlanta
Cordele	Hon. John C. Pridgen, Cordele
Dublin	Francis Marion Lewis
Northeastern Post 2	Joseph D. Cooley III, Gainesville
Ocmulgee Circuit Post 2	Joseph A. Boone, Irwinton
South Georgia Post 2	James C. Brim, Jr., Camilla
Towaliga Circuit	Hon. Hugh D. Sosebee, Forsyth

All newly-elected Board of Governors members and officers will begin their term at the June 2001 Annual Meeting.

II.
Proposed Amendment to State Bar of Georgia Rule 4-221 (g)

It is proposed that Part IV (Discipline), Rule 4-221 (g) be amended as shown below by deleting the current 4-221 (g) in it entirety, and inserting the new rule 4-221 (g), shown below in bold typeface, in lieu thereof.

~~(g) Pleadings and Communications Privileged. Pleadings and oral and written statements of members of the State Disciplinary Board, members and designees of the Committee on Lawyer Impairment, special masters, Bar counsel and investigators, complainants, witnesses, and respondents and their counsel made to one another or filed in the record during any investigation, intervention, hearing or other disciplinary proceeding under this Part IV, and pertinent to the disciplinary proceeding, are made in performance of a legal and public duty, are absolutely privileged, and under no circumstances form the basis for a right of action.~~

(g) ***Communications and Pleadings***

(1) ***Communications Privileged: Oral and written statements of members of:***

(i) The State Disciplinary Board;

(ii) The Committee on Lawyer Impairment;

(iii) Special Masters;

(iv) Bar Counsel;

(v) Bar Investigators, Clerk of the State Disciplinary Board and other Bar personnel;

(vi) Complainants and their Counsel;

(vii) Witnesses; and,

(viii) Respondents and their Counsel,

made to one another, which are pertinent to and in the course of a disciplinary proceeding, and oral and written statements authorized by law, court order or these rules, except as provided in subsection (2) below, are made in performance of a legal and public duty, are absolutely privileged, and shall not form the basis for a right of action.

(2) ***Communications Not Privileged: Oral and written statements made or republished to any person other than those listed in 4-221(g)(1) above shall not be privileged under this rule. Oral and written statements made by complainants, witnesses or respondents during the course of a disciplinary proceeding which are intentionally false and address a material issue in the proceeding shall not be privileged under this rule***

(3) Pleadings: Pleadings and writings filed in the record of any proceeding under Part IV (Discipline) of these rules shall carry the same privilege as pleadings filed in civil cases under the laws of Georgia.

SO MOVED, this _____ day of _____, 2001

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44[35] provides immunity. This immunity statute, however, contains the qualification that only a release made "pursuant to laws requiring disclosure or pursuant to limited consent to disclosure" is immunized.[36]

Counsel for a records custodian should attempt to address some of the concerns raised in *King* to rely on good faith immunity, and several options exist. The custodian may notify the patient at the patient's last known address that it has received a subpoena and allow the patient an opportunity to object. Alternatively, the custodian may require the party presenting the subpoena to demonstrate that the patient has been notified. The custodian may simply use a standard Motion to Quash based on *King* in opposition to every subpoena. A continuous motions practice, however, can be expensive and leave the custodian liable for fees and costs should the motion be denied.

In-Camera Inspection

A favorite option, from the perspective of the custodian's liability, is to provide the records to the court for an in-camera inspection. Both federal and state courts require in-camera review when there is a question

regarding the privacy interest of records.[37] In-camera inspection addresses the *King* concerns by limiting production to relevant information presumably after the patient has had an opportunity to object. Since submitting the records to the court does not compromise the patient's privacy interests, the custodian may not be sued for violation of a right to privacy.[38] Turning the records over to the court also complies with the subpoena or request to produce so that the custodian may not be held in contempt of court. In-camera review is a particularly favorable option in federal cases. Because it is questionable whether federal courts will accept *King* as a basis for ignoring a federal subpoena, in-camera review gives a custodian a means to avoid deciding which prevails, *King* or the Federal Civil Practice Act. An attorney whose subpoena is questioned by a records custodian may either suggest that the custodian provide the records to the court as a means of expediting review or obtain a court order directing in-camera inspection.

Conclusion

The privacy interest recognized in *King* has broadened the scope of the medical record's privilege in both criminal and civil proceedings. Records custodians must produce records with greater caution, and attorneys seeking records will have to consider new and creative options to make discovery as painless as possible. The options that minimize a records custodian's exposure to costs or damages are a properly executed medical release, a court order directing the provider to turn over the records, and submission of the records to the court for in-camera review.

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Endnotes

1. *See, e.g.*, Danielson v. Superior Court, 157 Ariz. 41, 754 P.2d 1145 (1987) (medical malpractice); and Ornelas v. Fry, 151 Ariz. 324, 329, 727 P.2d 819, 824 (1986) (same).
2. *See, e.g.*, People v. Bickham, 89 Ill.2d 1, 431 N.E.2d 365 (1982) (criminal grand jury investigation).
3. *See, e.g.*, Simek v. Superior Court, 117 Cal. App.3d 169, 172 Cal. Rptr. 564 (1981) (use in child custody cases); and, Wing v. Wing, 393 So.2d 285 (La. Ct. App. 1980). *See also*, Wanda Ellen Wakefield, Annotation, *Physician-Patient Privilege as Extending to Patient's Medical or Hospital Records*, 10 A.L.R. 4th 552 (2000).
4. 272 Ga. 788, 535 S.E.2d 492 (2000).
5. *Id*. at 789, 535 S.E.2d at 494.
6. *Id*. at 790, 535 S.E.2d at 495 (ellipsis in original).
7. *Id.* at 793, 535 S.E.2d at 496-97.
8. *Id*. at 789, 535 S.E.2d at 494.
9. *See, e.g.*, Johnson v. Rodier, 242 Ga. App. 496, 529 S.E.2d 442 (2000) (physician sued for invasion of privacy based on alleged improper release of medical information).
10. O.C.G.A. § 9-11-34(c)(2) (Supp. 2000) (requesting party may move to compel discovery); and *id.*, § 24-10-25 (1995) (subpoenas may be enforced by attachment for contempt).
11. O.C.G.A. § 24-9-40 (1995 and Supp. 2000).
12. *See* O.C.G.A. §§ 24-10-70 to -76 (2000) on the procedure for production of medical records pursuant to subpoena.
13. The extent to which privacy protects a patient's medical history is difficult to define because the substantive limits of the privilege are based on the less than exact science of balancing competing interests–the patient's privacy interest versus the public's need to know. Athens Observer, Inc. v. Anderson, 245 Ga. 63, 66, 263 S.E.2d 128, 130 (1980); Pavesich v. New England Life Ins. Co., 122 Ga. 190, 201, 50 S.E. 68, 72 (1905); Aetna Cas. & Sur. Co. v. Ridgeview Inst., Inc., 194 Ga. App. 805, 806, 392 S.E. 2d 286, 287 (1990).
14. *King*, 272 Ga. at 791, 535 S.E.2d at 495.
15. *Id*.
16. *Id*. at 790, 535 S.E.2d at 495.
17. *Id*. at 791, 535 S.E.2d at 495 (emphasis added). The Court noted that medical records may be produced based on an "appropriate" subpoena under O.C.G.A. § 24-9-40, but the statute does not define what is an "appropriate" subpoena. Thus, the statute confers no express authority to release records pursuant to a subpoena. *Id*.
18. *Id*. at 792, 535 S.E.2d at 496 (emphasis added).
19. *Id*. at 792, 535 S.E. 2d at 496, "the constitutional right of privacy protects the initial unauthorized disclosure of . . . medical records."
20. *Id*. at 791, 535 S.E.2d at 496 (use of subpoena must be narrowly tailored).
21. *Id*. at 792, 535 S.E. 2d at 496.
22. Karpowicz v. Hyles, 247 Ga. App. 292, ___ S.E.2d ___, No. A00A1731, 2000 WL 1742162 (Nov. 28, 2000) extending the *King* analysis to psychiatric records.
23. Johnson v. Zerbst, 304 U.S. 458, 463 (1938) ("A waiver is ordinarily an intentional relinquishemnt or abandonment of a known right or privilege.").
24. O.C.G.A. § 24-9-40(a) (1995). *See also id.* § 31-33-2 (1996) (furnishing medical records to patient); and *id.* § 34-9-207 (2000) (medical release authorizes release of medical information to employer).
25. O.C.G.A. § 9-11-34(c)(2) (Supp. 2000).
26. *Id.* § 9-11-34(c)(2) (2000). Note that while medical records are expressly included for production, the mental health records privilege is expressly excluded from waiver via the nonparty request to produce. *Id.* at (d).
27. *King*, 272 Ga. at 794, 535 S.E.2d 497.
28. O.C.G.A § 9-11-5(b) (1993).
29. *See supra* note 10.
30. Kennestone Hosp. v. Hopson, 273 Ga. 145, 538 S.E.2d 742 (2000), affirming, Hopson v. Kennestone Hosp., Inc., 241 Ga. App. 829, 526 S.E.2d 622 (1999).
31. *Id*. The decision overrules Price v. State Farm Mut. Auto.

Ins. Co., 235 Ga. App. 792, 510 S.E.2d 582 (1998), in which the Court of Appeals found that a party's failure to timely object to the nonparty request to produce under Section 9-11-34 constituted a waiver.

32. *Id.* at 147, 538 S.E.2d at 743.
33. *Id.*, 273 Ga. at 149, 538 S.E.2d at 748. *See also* Hopson v. Kennestone Hosp., Inc., 241 Ga. App. 829, 831, 526 S.E.2d 622, 625 (1999), *aff'd*, 273 Ga. 145, 538 S.E.2d 742 (2000), in which the Court of Appeals stated, somewhat ambiguously, "By not objecting to the request, [the patient] waived only the objections that she might have made to the production of her medical records that are not privileged." The phrase "medical records that are not privileged" could suggest a distinction between medical records that are, and psychiatric records that are not, privileged, or it may suggest a distinction between privileged medical records (actual treatment records) and non-privileged medical records (billing, scheduling, statements recorded by non-treatment providers). If the latter is the intent, then *Hopson* extends to privileged medical records, and it would then be the responsibility of the custodian to object to the release of those records on a non-party request to produce.
34. O.C.G.A. § 24-9-40(a) (1995) (custodian may rely on an "appropriate" court order to release medical records).
35. O.C.G.A. § 24-9-44 (1995).
36. *Id.*
37. Federal court cases include: United States v. Zolin, 491 U.S. 554, 565-69, 109 S.Ct. 2619, 2627-28 (1989); Ely v. Federal Bureau of Investigation, 781 F.2d 1487 (11th Cir. 1986); and In re Grand Jury Subpoena, 831 F.2d 225, 228 (1987). State court cases include: McKinnon v. Smock, 264 Ga. 375, 378, 445 S.E.2d 526, 528 (1994); Harris v. Cox Enters, Inc., 256 Ga. 299, 302, 348 S.E.2d 448, 451 (1986); Georgia Advocacy Office v. Borison, 238 Ga. App. 780, 784, 520 S.E.2d 701, 705 (1999); Plante v. State, 203 Ga. App. 33, 34-5, 416 S.E.2d 316, 318 (1992); and, Aetna Cas. & Sur. Co. v. Ridgeview Inst. Inc., 194 Ga. App. 805, 807, 392 S.E.2d 286, 288 (1990).
38. United States v. Zolin, 491 U.S. 554, 568-69, 109 S.Ct. 2619, 2629 (1989) (in-camera review does not destroy the privileged nature of the contested communications). *See also* Vance v. Krause, No. 90-1687-5, 1990 WL 272727 (Ga.Super. Ct. Nov. 21, 1990).

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decision, emphasizing that "[g]iven the importance of the privilege in encouraging and protecting confidential communications concerning the emotional and mental health of individuals, we hold that a party's silence and failure to act in response to a request for privileged matter from a nonparty health care provider or facility under O.C.G.A. § 9-11-34(c)(2) does not waive the party's privilege by implication."[31]

In *Hopson*, Sherri Hopson and her husband executed a divorce settlement in which she agreed to undergo drug treatment on a regular basis. Several months later, her husband filed an action to terminate his alimony payments because he believed that she was not complying with the agreement. After her husband filed the action, Ms. Hopson participated in a drug treatment program at Kennestone Hospital. Her husband then served Kennestone with nonparty request for production of documents seeking her drug rehabilitation records pursuant to O.C.G.A. § 9-11-34(c)(2).[32] Ms. Hopson did not file an objection to the request. After waiting the statutorily required ten days, Kennestone produced the records, which contained privileged psychiatric information. The alimony suit was subsequently settled.

Ms. Hopson failed to pay for the therapy provided to her at Kennestone and the hospital filed an action against her for the costs of the treatment. She counterclaimed that Kennestone was liable to her for improperly releasing her privileged mental health records to her husband. The trial court granted Kennestone's motion for summary judgment and Ms. Hopson appealed. In reversing the trial court, the Court of Appeals held that communications between a patient and a psychiatrist are absolutely privileged and are not within the scope of a party's request for production of documents.[33] Since the communications were not within the scope of a request, the patient did not have to file an objection to maintain the privilege, and a patient who failed to object did not waive the privilege.[34] The court unequivocally stated that the psychiatrist-patient privilege can only be waived by an affirmative action, such as calling a psychiatrist to testify at trial.[35]

In affirming the trial court's ruling, the Georgia Supreme Court examined the relationship between O.C.G.A. §§ 9-11-34(c)(2) and 9-11-34(d). While § 9-11-34(c)(2) permits production of a patient's record if an objection is not received within ten days of a request, § 9-11-34(d) states that "[t]he provisions of this Code section shall not be deemed to repeal the confidentiality provided by Code Sections 37-3-166 concerning mental illness, 37-4-125 concerning mental retardation, and 37-7-166 concerning alcohol and drug treatment."[36] In trying to reconcile these sections, the Court recognized that there was no federal rule comparable to paragraphs § 9-11-34(c)(2) and (d), and that the General Assembly's intent in enacting these subsections could not be discerned from the legislative history.[37] Without guidance from the General Assembly, the Court focused on the purpose of the psychiatrist-patient privilege which is "to encourage the patient to talk freely without fear of disclosure and embarrassment, thus enabling the psychiatrist to render effective treatment of the patient's emotional or mental disorders."[38] According to the Court, an implied waiver of this privilege could only result from "a party's decisive, unequivocal conduct reasonably inferring the intent to waive [the privilege]"[39] Because of the overwhelming importance in protecting the privilege, a party's failure to object to a request for documents from a nonparty medical provider is not the kind of unequivocal conduct necessary to waive the privilege. "Considering the protection afforded by the mental health privilege, we conclude that a patient's failure to file an objection within ten days of the request for privileged communications from a nonparty is not the type of decisive and unequivocal conduct that justifies inferring an intent to waive the privilege."[40]

Problems in Civil Cases Resulting from the Absolute Privilege

The psychiatrist-patient privilege is not waived by the plaintiff's filing of a lawsuit for mental injuries.[41] As a result, a defendant is in an awkward position in defending a case in which the plaintiff claims a psychological injury as a result of an incident. For example, if the plaintiff claims that he is suffering from suicidal thoughts and depression as a result of injuries related to an automobile collision, the defendant would not be entitled to question the plaintiff about the extent of any psychiatric treatment prior to the accident or to obtain the plaintiff's psychiatric records from his providers.[42] Since the plaintiff can only waive the privilege by calling his psychiatrist as a witness at trial, the defendant would not even be allowed to question the plaintiff about the substance of his psychiatric treatment after the accident, depose any of his psychiatrists, or obtain his post-accident psychiatric records *until* the psychiatrist actually took the stand as a witness at trial.[43] The defendant would have no idea what psychiatric testimony to expect at trial and presumably would have to move for a recess when the plaintiff's psychiatrist took the stand in order to have an opportunity to question the psychiatrist outside the presence of the jury as to his opinions.

On the other hand, the plaintiff, who may have had a history of depression and suicidal tendencies, has the ability to block the defendant from access to his psychiatrists and psychiatric records and then choose to call as a witness the psychiatrist who will provide the most favorable opinion. The jury would never hear about the extent of plaintiff's treatment prior to the accident or the opinions of any psychiatrist who would not support the plaintiff's claim. The plaintiff would have almost unrestricted control over the presentation of evidence to the jury concerning his psychiatric profile.

A defendant does, however, have some options available to offset the plaintiff's control over his psychiatric history. Because the times and dates of treatment are not privileged,[44] a defendant can still cross-examine a plaintiff whether he was treated by other psychiatrists prior to the accident. The defendant may also be entitled to discover any psychiatric records which do not reference confidential disclosures.[45] The court should conduct an in-camera inspection of all psychiatric records and allow production of all unprivileged documents to the defendant.[46] Through this process, the defendant can discover records concerning a plaintiff's medications, medical treatment and other unprivileged information. A defendant may also seek permission of the court to require that the plaintiff submit to an independent medical examination and thereby have the testimony of an independent physician to counteract the plaintiff's psychiatrist.[47] The caveat to this rule is that a court has no authority to order that a party be evaluated by a psychiatrist who is not also a physician.[48]

Liability of Psychiatric Facilities

Under the Georgia Civil Practice Act, a party to a lawsuit may request a nonparty hospital or mental facility to produce a patient's records.[49] The patient, or any party or the nonparty, may object to disclosure of the requested documents, but if no objection is filed within 10 days, the nonparty shall comply with the request.[50] Pursuant to prior Georgia precedent, the facility would wait the statutory 10-day period and then produce all requested documents, regardless of their content, if no objection was filed. If the facility waited 10 days, it would have a defense to any liability for disclosing the documents, since the patient had the burden of filing an objection to protect the confidentiality of his records and failed to do so.[51] The *Hopson* decision now mandates that any production of psychiatric documents must be limited to unprivileged records regardless of the extent or breadth of the request or whether any objection is filed by the patient.[52] Thus, if a facility releases privileged psychiatric records without express authorization from the patient, the facility violates the patient's right to confidentiality and would be liable for any injury resulting from the disclosure.[53] The patient may recover for mental or emotional distress even though the facility's actions amount at most to negligence.[54] Facilities which are accustomed to waiting 10 days and then, if no objection is filed, releasing all requested documents, will risk significant liability if they do not make adjustments in their procedures for releasing psychiatric records to comply with the holding in *Hopson.* The duty now is squarely with the hospital or mental clinic to protect the confidentiality of its patient's records, and these facilities must insure that privileged communications are not disclosed unless the patient expressly consents to disclosure.

Conclusion

The psychiatrist-patient privilege is now an absolute privilege in civil cases and cannot be waived unless the patient takes an affirmative action which clearly demonstrates his intent to waive the privilege.[55] Psychiatric records of the patient are privileged to the extent that they reflect confidential communications and should not be produced absent an express waiver given by the patient.[56] Because of this privilege, it is difficult to defend a lawsuit where psychological injuries are alleged by a plaintiff. A defendant in this situation has no alternative but to obtain the limited information and documents that are not within the scope of the privilege and to request an independent medical evaluation of the plaintiff. In addition, the absolute nature of this privilege requires psychiatric hospitals and clinics to be careful in producing the records of a patient. When a facility discloses the psychiatric records of a patient without an express authorization, the facility violates the patient's right to confidentiality, even if the records were subpoenaed with a proper request and the patient failed to file an objection.[57] Patients who seek treatment with a psychiatrist expect absolute confidentiality. Now they have it.

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Endnotes

1. O.C.G.A. § 24-9-21(8) (1995).
2. *Id.*, § 43-39-16 (1999).

3. *Id.*, § 24-9-21(7) (1995).
4. Wiles v. Wiles, 264 Ga. 594, 597, 448 S.E.2d 681, 684 (1994).
5. *Id.* at 598, 448 S.E.2d at 684.
6. Myers v. State, 251 Ga. 883, 884, 310 S.E.2d 504, 506 (1984).
7. King v. State, 272 Ga. 788, 790, 535 S.E.2d 492, 495 (2000).
8. O.C.G.A. § 37-3-166(a) (1995).
9. Mrozinski v. Pogue, 205 Ga. App. 731, 734, 423 S.E.2d 405, 409 (1992).
10. *Id.* at 734, 423 S.E.2d at 409.
11. Freeman v. State, 196 Ga. App. 343, 344, 396 S.E.2d 69, 70 (1990).
12. In re K.R.C., 235 Ga. App. 354, 356, 510 S.E.2d 547, 550 (1998).
13. Mrozinski, 205 Ga. App. at 736, 423 S.E.2d at 410.
14. Sims v. State, 251 Ga. 877, 880, 311 S.E.2d 161, 165 (1984).
15. Mrozinski, 205 Ga. App. at 733, 423 S.E.2d at 408.
16. Boggess v. Aetna Life Ins. Co., 128 Ga. App. 190, 192, 196 S.E.2d 172, 174 (1973).
17. In re L.H., 236 Ga. App. 132, 136, 511 S.E.2d 253, 258 (1999).
18. In re M.N.H., 237 Ga. App. 471, 475, 517 S.E.2d 344, 348 (1999).
19. Fulbright v. State, 194 Ga. App. 827, 392 S.E.2d 298, 299 (1990).
20. Roberts v. Forte Hotels, Inc., 227 Ga. App. 471, 475, 489 S.E.2d 540, 544 (1997).
21. Dynin v. Hall, 207 Ga. App. 337, 339, 428 S.E.2d 89, 91 (1993); Weksler v. Weksler, 173 Ga. App. 250, 325 S.E.2d 874, 875 (1985).
22. Plunkett v. Ginsburg, 217 Ga. App. 20, 21, 456 S.E.2d 595, 597 (1995).
23. Bobo v. State, 256 Ga. 357, 349 S.E.2d 690 (1986).
24. "Thus we must also conclude that in a proper case a witness' statutory privilege must give way where countervailing interests in the truth-seeking process demand such a result. In order to abrogate the psychiatrist-patient privilege, the defendant must make a showing of necessity, that is, that the evidence in question is critical to his defense and that substantially similar evidence is otherwise unavailable to him."*Id.* at 360, 349 S.E.2d at 692.
25. *Id.* at 361, 349 S.E.2d at 693.
26. Salley v. State, 199 Ga. App. 358, 361, 405 S.E.2d 260, 264 (1991); Brown v. State, 261 Ga. 66, 71, 401 S.E.2d 492, 496 (1991); Atkins v. State, 243 Ga. App. 489, 496, 533 S.E.2d 152, 158 (2000).
27. Dynin v. Hall, 207 Ga. App. 337, 338, 428 S.E.2d 89, 90 (1993).
28. Hopson v. Kennestone Hosp., Inc., 241 Ga. App. 829, 526 S.E.2d 622 (1999), *aff'd*, 273 Ga. 145, 538 S.E.2d 742 (2000).
29. Jones v. Abel, 209 Ga. App. 889, 890, 434 S.E.2d 822, 824 (1993); Price v. State Farm Mut. Auto. Ins. Co., 235 Ga. App. 792, 794, 510 S.E.2d 582, 584 (1998), *overruled by*, Hopson v. Kennestone Hosp., Inc., 241 Ga. App. 829, 526 S.E.2d 622 (1999), *aff'd*, 273 Ga. 145, 538 S.E.2d 742 (2000).
30. Hopson, 241 Ga. App. at 830, 526 S.E.2d at 624.
31. Hopson, 273 Ga. at 145, 538 S.E.2d at 745
32. O.C.G.A. § 9-11-34(c)(2) (Supp. 2000) states in pertinent part that "This Code section shall also be applicable with respect to discovery against a nonparty who is a practitioner of the healing arts or a hospital or health care facility... Where such a request is directed to such a nonparty, a copy of the request shall be served upon all parties of record, the person whose records are sought, and if known, that person's counsel . . . . If no objection is filed within ten days of the request, the nonparty to whom the request is directed shall promptly comply therewith."
33. Hopson, 241 Ga. App. at 830, 526 S.E.2d at 624.
34. "Because privileged patient-psychiatrist communications are not within the scope of a nonparty document production request, there is no reason for a patient to assert the privilege in opposition to the request. Contrary to the Price holding, a patient who does not raise such an unnecessary objection is not waiving her psychiatrist-patient privilege. Rather, she is simply forgoing whatever objections she might have had to the nonparty's production of nonprivileged matter that is properly within the scope of the O.C.G.A. § 9-11-34(c) discovery request." *Id.* at 830, 526 S.E.2d at 624.
35. *Id.* 241 Ga. App. at 831, 527 S.E.2d at 744.
36. O.C.G.A. § 9-11-34(d) (Supp. 2000).
37. Hopson, 273 Ga. at 147, 538 S.E.2d at 744.
38. *Id.* at 148, 538 S.E.2d at 744.
39. *Id.* at 148, 538 S.E.2d at 745.
40. *Id.* at 149, 538 S.E.2d at 745.
41. Wilson v. Bonner, 166 Ga. App. 9, 16, 303 S.E.2d 134, 142 (1983).
42. Dynin v. Hall, 207 Ga. App. 337, 338, 428 S.E.2d 89, 90 (1993).
43. Hopson, 241 Ga. App. at 830, 526 S.E.2d at 624. The plaintiff possibly could also waive the privilege by listing his psychiatrist as a witness to be called at trial in the pretrial order or in discovery responses, although no Georgia decisions have addressed this issue.
44. Plunkett, 217 Ga. App. at 21, 456 S.E.2d at 597.
45. Annandale at Suwanee, Inc. v. Weatherly, 194 Ga. App. 803, 804, 392 S.E.2d 27, 28 (1990). *But see supra* n. 11 and accompanying text.
46. Aetna Cas. & Sur. Co. v. Ridgeview Inst., Inc., 194 Ga. App. 805, 806, 392 S.E.2d 286, 288 (1990).
47. "When the mental or physical condition . . . of a party, or person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control." O.C.G.A. § 9-11-35(a) (1993).
48. Roberts v. Forte Hotels, Inc., 227 Ga. App. 471, 475, 489 S.E.2d 540, 544 (1997).
49. O.C.G.A. § 9-11-34(c) (Supp. 2000).
50. *Id.*, § 9-11-34(c)(2) (Supp. 2000).
51. Jones, 209 Ga. App. at 890, 434 S.E.2d at 824.
52. Hopson, 241 Ga. App. at 830, 526 S.E.2d at 624.
53. Sletto v. Hosp. Auth., 239 Ga. App. 203, 205, 521 S.E.2d 199, 201 (1999).
54. *Id.* at 205, 521 S.E.2d at 201.
55. Hopson, 241 Ga. App. at 830, 526 S.E.2d at 624.
56. *Id.* at 830, 526 S.E.2d at 624**.**
57. Sletto, 239 Ga. App. at 205, 521 S.E.2d at 201.

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