GEORGIA BAR
Journal
JUNE 2001 • VOL. 6 NO. 6

Marital Privileges in Georgia:

What You Should Know

DISSENTERS' RIGHTS • FICTION CONTEST WINNER • LEGISLATIVE RECAP

West Group New art--”Muscular Research cite” 4c full page

GEORGIA BAR Journal

June 2001 • Vol. 6 No. 6

On the Cover: *Georgia law recognizes two marital privileges "to foster the harmony and sanctity of the marriage relationship." What you should know begins on page 8.*

QUICK DIAL

Attorney Discipline	(800) 334-6865 ext. 720 (404) 527-8720
Consumer Assistance Program	(404) 527-8759
Conference Room Reservations	(404) 527-8712
Fee Arbitration	(404) 527-8750
Continuing Legal Education Transcripts	(404) 527-8710
Diversity Program	(404) 527-8754
ETHICS Hotline	(800) 682-9806 (404) 527-8741
Georgia Bar Foundation/IOLTA	(404) 527-8766
Georgia Bar Journal	(404) 527-8736
Lawyer Assistance Program	(770) 612-1122 (800) 327-9631
Law Practice Management	(404) 527-8772
Membership Records	(404) 527-8777
Meetings Information	(404) 527-8790
Pro Bono Project	(404) 527-8763
Professionalism	(404) 527-8793
Sections	(404) 527-8774
Unauthorized Practice of Law	(404) 527-8743
Young Lawyers Division	(404) 527-8778

HEADQUARTERS

800 The Hurt Building • 50 Hurt Plaza • Atlanta, GA 30303-2934
(800) 334-6865 (404) 527-8700 FAX (404) 527-8717
Visit us on the Internet at *www.gabar.org*

South Georgia Office

244 E. Second St. (31794) • P.O. Box 1390 • Tifton, GA 31793-1390
(800) 330-0446 (912) 387-0446
FAX (912) 382-7435

Manuscript Submissions

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

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

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

Publisher's Statement

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

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

Disabilities

If you have a disability which requires printed materials in alternate formats, please contact the ADA coordinator at (404) 527-8700 or (800) 334-6865.

Merchant and gould p/u april 2001 page 4

GEORGIA BAR
Journal
JUNE 2001 VOL. 6 NO. 6

Table of Contents

Cover Story

Legal Article

Features

Pro Bono

Departments

Fiction

STRENGTH IN NUMBERS

By George E. Mundy

The State Bar of Georgia became a unified, integrated Bar in 1964, and the path to unification took almost 40 years. Forming a mandatory association of lawyers was a formidable challenge considering the process of unification in Georgia was lengthy. Since there remain today a minority of states that do not mandate bar association membership, it comes as no surprise that reasonable people can differ on this subject.

In fact, many question whether a unified bar is necessary. The experience that I have had with State Bar leadership convinces me a unified Bar in Georgia is critical to the continuing progress of our legal profession and the justice system.

Professional Asset Locs pu 2/01 p38

The challenge of providing competent, qualified and ethical legal service to the public cannot be secured simply through the good efforts of lawyers who are "joiners" and who voluntarily reach out beyond the boundaries of their practice. As a unified, integrated bar, our Georgia lawyers produce an enormous pool of diverse views and talents within the context of a shared set of core values. While there are many dedicated and committed lawyers in Georgia, it is clear to me that combining the unified efforts of all our lawyers produces a real difference for the betterment of our profession.

The diversity of our membership is a strength. Although we all individually hold different opinions and beliefs, there are core values that bind us together as a professional community.

The serious concerns that confront us are complicated and go far beyond discipline to include such issues as multidisciplinary practice, multijurisdictional practice and the unauthorized practice of law, as well as expanding legal services to those members of the public who are not adequately served. As lawyers, we develop independence and are driven by individual effort. However, we are all committed to improving the justice system and our profession. While many lawyers volunteer and go beyond the call of duty, I have concluded that the combined resources of 31,000 Georgia lawyers are necessary to enable the State Bar of Georgia to maintain the highest quality of service to our membership and the public.

The diversity of our membership is a strength. Although we all individually hold different opinions and beliefs, there are core values that bind us together as a professional community. Serving our legal system demands extraordinary effort from all our lawyers. Individual rights, freedoms and diverse views can be preserved, but in the context of standing together to preserve the core values upon which our justice system rests.

Together, we have the resources to present a strong voice that cannot be ignored and hopefully attracts and utilizes the creative energy of a large group striving to effectively represent the profession.

The State Bar of Georgia is not just an organization that we are mandated to join, but it is the instrument that ensures we bring together the talent and resources to protect the values which make our profession unique. The unified Bar enhances our shared principles of providing the highest quality of professional and ethical legal services while increasing access to justice.

During the past year, I have attempted to make decisions based upon what was in the best interest of our unified Bar, and I believe we have made some progress. In this, my final column as State Bar President, I want to say that this has been a wonderful year and an incredible experience for me. I have renewed old friendships while making many new ones throughout the state. The rewards have been fantastic. I thank you all for the memories.

LAWYERS: HONORABLE PROFESSIONALS

By Cliff Brashier

Our professionalism creed says much about our profession:

To my clients, I offer faithfulness, competence, diligence and good judgement. I will strive to represent you as I would want to be represented and to be worthy of your trust. To the opposing parties and their counsel, I offer fairness, integrity and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one. To the courts, and other tribunals, and to those who assist them, I offer respect, candor and courtesy. I will strive to do honor to the search for justice. To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship. To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service. To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

I am proud to say that nearly all Georgia lawyers believed in these aspirations when they chose this honored profession and still maintain their dedication in their daily law practice.

This message is delivered each week through the Speakers Bureau and other components of the State Bar's Foundations of Freedom program. You can help by talking to the program chairs of your civic, church and other groups. Bonne Cella at the State Bar's South Georgia office coordinates the Speakers Bureau and would be happy to work with you to schedule a presentation. Bonne can be reached at (229) 387-0446 or (800) 330-0446.

Everyday, thousands of Georgia lawyers help to improve the lives and preserve the freedoms of our citizens. These same lawyers are the volunteer leaders of our communities. Their professional efforts are essential to the well being of our collective life as a society.

The State Bar is pleased to help communicate this message so that more citizens will better understand the importance and significance of the role of law in their own lives.

golden lantern new art
bw enclosed "free report"

Health Care Auditors pickup 2/01 p45

THE MARITAL PRIVILEGES IN GEORGIA: What You Should Know

By Barbara J. Nelson

In both criminal and civil cases, the possibility exists that a party has shared information with a spouse that is relevant to a case. A criminal defendant may tell his spouse where he hid the murder weapon. A plaintiff in a negligence suit may admit to her husband that she was at fault in the car accident that caused her injuries. Knowing when to assert a marital privilege, and being prepared to respond when a witness or opposing party asserts a marital privilege, could substantially impact the outcome of a case.

Georgia law recognizes two marital privileges — the adverse testimony privilege[1] and the confidential communication privilege.[2] The adverse testimony privilege provides that a witness may not be compelled to testify against his or her spouse. It is, in effect, a disqualification of the witness. The confidential communication privilege gives a party the power to prevent his or her spouse from testifying regarding confidential marital communications. The rationale for both privileges is the same — to foster the harmony and sanctity of the marriage relationship.

The privileges have been given several names. Some scholars refer to the adverse testimony privilege as a "disqualification" and the confidential communication privilege as a "privilege."[3] In Georgia, the courts and many lawyers often refer to the two privileges interchangeably as either a "marital privilege" or a "spousal privilege," which makes them difficult to distinguish.[4] In an attempt to clearly differentiate between the two privileges, this article will refer to them as the "adverse testimony privilege" and the "confidential communication privilege."

The Adverse Testimony Privilege

The adverse testimony privilege belongs to the witness/spouse,[5] applies only in criminal proceedings[6] and provides a complete disqualification of the witness from

testifying.[7] For example, in *Smith v. State*,[8] the Court stated that the nature of the evidence was irrelevant and held that the wife could not be forced to answer any questions or produce any other evidence which would either help or harm the defendant in any criminal proceeding.[9]

The privilege only applies if the defendant and spouse are married at the time of the court proceeding. In *State v. Peters*,[10] the state argued that because the defendant/wife and her witness/husband had married the day before a hearing to avoid having the husband testify against the wife, the privilege should not be recognized. The Court rejected the state's argument and read the privilege statute literally, holding that O.C.G.A. § 24-9-23 was clear and unambiguous and did not provide an exception in the circumstances presented.[11]

Whether a common-law spouse is considered a "husband" or "wife" within the meaning of the statute also has been addressed. A common-law spouse may assert the privilege,[12] but he or she has the burden to prove that a common-law marriage exists. As Georgia no longer recognizes common-law marriages, the putative spouse would have to prove the existence of the common-law marriage before Jan. 1, 1997, to assert successfully the adverse testimony privilege.[13]

Georgia courts have refused to consider the viability of a marriage. In *Brown v. State*,[14] the Court rejected the defendant/husband's claim that the marriage was moribund and held that the privilege applied.[15]

In some cases, there is a conflict between the statutory privilege and the constitutional right to present exculpatory evidence. The courts have recognized the possibility that a defendant may make a showing of a necessity to present evidence through his spouse consistent with his constitutional right that would outweigh the marital privilege.[16] However, the courts have been very reluctant to find the requisite necessity.

In *Brown*, the defendant was convicted of murder and sentenced to death.[17] The defendant argued that his constitutional right to present exculpatory alibi evidence through his wife's testimony outweighed her right to the statutory marital privilege. The Court held that the defendant did not make a showing of necessity to abrogate the marital privilege.[18] Specifically, the defendant did not prove that the evidence in question was important to his defense or that his wife had knowledge that would have exculpated him.[19]

Because the privilege belongs to the witness/spouse, the witness may voluntarily waive the privilege by testifying.[20] If the spouse waives the privilege, he or she would no longer be disqualified and would be subject to cross-examination.[21] In *Repres v. State*,[22] the Court held that the witness/spouse could assert the privilege during the state's case, but then choose to waive it later in the trial and testify on behalf of the defendant/spouse.[23] However, the witness/spouse does not waive the privilege by testifying in pretrial proceedings.[24]

The waiver by a witness/spouse is usually considered voluntary, even if he or she is given a choice by the state of either testifying or being prosecuted as a co-defendant with the spouse in the case at issue and/or as a defendant in another independent case.[25] The question arises whether the voluntary waiver was truly voluntary or whether it was unduly coerced by prosecuting attorneys. In *Trammel v. U.S.*,[26] the wife was an unindicted co-conspirator who had been granted immunity by the prosecutor in exchange for her testimony against her husband.[27] The Court held that the privilege had been voluntarily waived.[28]

If the witness/spouse does not voluntarily waive the privilege, then a necessity exception to the hearsay rule

based on the unavailability of the witness may apply. In *Perkins v. State*,[29] a death penalty case, the Georgia Supreme Court recognized a hearsay exception based on necessity and allowed a wife's out-of-court statements to police officers to be admitted.[30] In that case, the defendant's wife exercised the adverse testimony privilege and refused to testify. The state argued that as a result of the assertion of the privilege, the wife was unavailable as a witness. Therefore, it was necessary to allow the police officers to testify as to her hearsay statements to them because she was the only eyewitness to key evidence. The Court agreed and found the wife's statements to the police officers to be trustworthy, permitting their testimony.[31] The wife had spoken to the officers within two hours of her observations, other evidence corroborated her statements and there was no attempt on the part of the wife to recant later the statements given to the officers.[32]

Further, the adverse testimony privilege statute provides an exception where the husband or wife is charged with a crime against a minor child.[33] In *Hamilton v. State*,[34] this exception was applied under the unique circumstances in which the witness/wife was also the minor child and victim. The defendant/husband was charged with statutory rape of the wife, who was 12 years old at the time of the alleged criminal acts. The wife claimed the marital privilege and elected not to testify. However, the Court held that because she was a minor, her testimony could be compelled.[35] The Court also allowed the testimony of a police officer and a Department of Family and Children Services caseworker regarding statements made by the wife during the investigation.[36]

The Confidential Communication Privilege

Unlike the adverse testimony privilege, the confidential communication privilege belongs to the communicator and applies in both criminal and civil proceedings.[37] In *Georgia International Life Ins. Co. v. Boney*,[38] the Court held that since the privilege belongs to the communicator, it could not be waived by the administrator of the estate of the communicator or by his surviving spouse.[39]

Moreover, the confidential communication privilege does not provide a complete disqualification of the witness from testifying. The witness/spouse can only be precluded from testifying regarding matters that are deemed confidential communications.[40]

Not every communication between a husband and wife, however, is confidential. The courts have held that if the communication is an impersonal one that is not made in reliance on the marriage relationship, the communication is not confidential and therefore not privileged.[41] Confidential communications have been defined as those where one spouse derives knowledge from the other by virtue of the special confidence of the husband/wife relationship.

In *Wilcox v. State*,[42] . … the Wife Testified:

> [O]nly to such matters as the time the appellant called her from the office the afternoon of August 31, 1972, the time he told her that he and his father arrived there, and the fact that the appellant told her, after the party in their honor, he was going to return to the office to make sure it had been locked.[43]

The Georgia Supreme Court held that such communications were impersonal and not made in reliance on the marital relationship. Therefore, the communications were not confidential and no policy reasons barred their admissibility.[44]

Alternatively, in *Century 21 Pinetree Properties Inc. v. Cason*,[45] the Court held that the wife's affidavit statements regarding her husband's reasons for not wanting to buy property were protected under the confidential communication privilege.[46] According to the statements, the husband had told his wife that he did not want to buy property due to marital problems they were having. The Court held that the "privilege inures to the communicator for all communications made to a spouse for all consensual marital acts of a personal nature involving married persons, where the communication or act results from a reliance upon the confidential relationship of husband and wife. …"[47]

If a husband and wife have a conversation in the presence of third parties, the conversation will not be considered confidential.[48] Acts, as well as spoken words, may qualify as a confidential communication. However, the burden is on the proponent to prove that the act was a confidential communication. In *Brown v. State*,[49] Brown, a *pro se* appellant, lost his appeal in a split opinion with four justices dissenting and one justice concurring with the majority opinion in judgment only.[50] Brown, a confidential informant, took some crack cocaine from a district attorney's evidence cabinet in the presence of his wife. She testified at trial that she saw him take the cocaine from the cabinet and she saw him use it. The Court held that Brown failed to carry his burden of proving his acts were confidential.[51]

The *Brown* case was distinguished in *White v. State*.[52] In *White*, the defendant was convicted of rape, aggravated sodomy and child molestation. On appeal, he argued that his wife's testimony violated his right of marital confi-

Continued on page 63

lexis nexus full page 4c ad new art included

FAIRNESS AND FAIR VALUE:

Why Discounts are Now Inappropriate Under Georgia's Dissenters' Rights Statute

By James D. Blitch IV

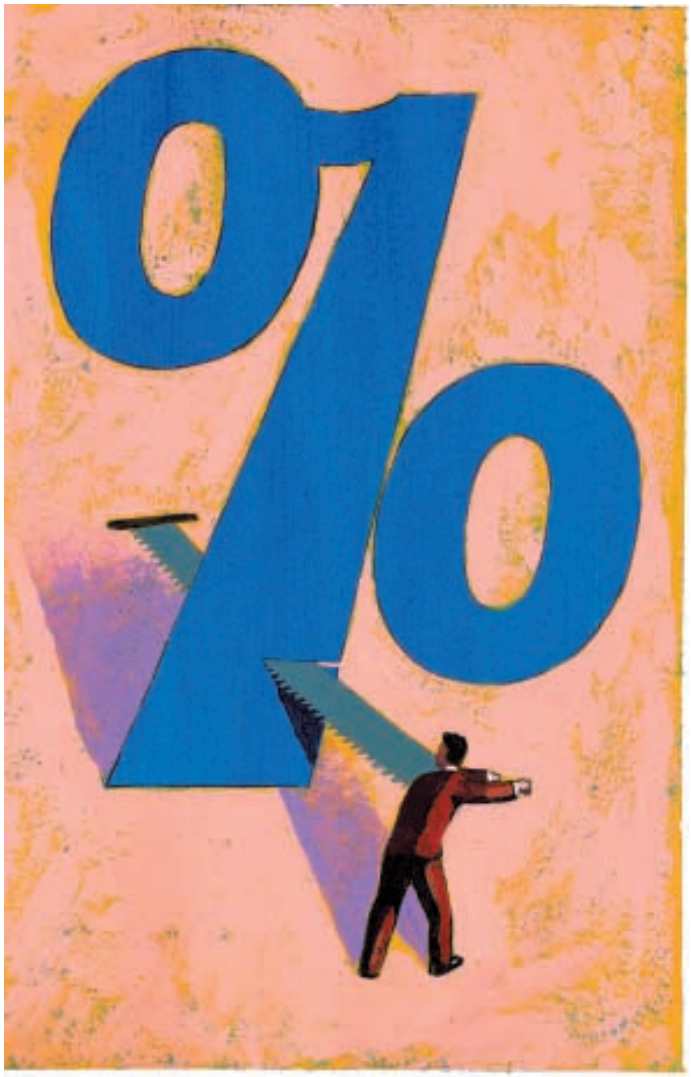
Under Georgia's Dissenters' Rights Statute,[1] shareholders who dissent from certain corporate actions are entitled to receive the "fair value" of their shares in the corporation as determined by a court.[2] The right to dissent and obtain fair value through a judicial appraisal is an exclusive remedy,[3] making the determination of fair value critically important to shareholders that assert their dissenters' rights.

A fundamental issue in determining fair value has been whether or not to discount the dissenter's shares because of their minority status and the lack of marketability of shares in a closely held corporation. In *Blitch v. Peoples Bank*,[4] the Georgia Court of Appeals recently held that minority interest and lack of marketability discounts do not apply to the determination of fair value. This marks the first time an appellate court in Georgia has considered the issue of discounts since the 1984 Court of Appeals decision in

Atlantic States Construction Inc. v. Beavers.[5] *Blitch* now brings Georgia in line with the more modern view that dissenting shareholders are entitled to their pro rata share of the value of the corporation as a whole.

In addition to discussing the *Blitch* decision, this article also provides an overview of the major procedural requirements under the statute. Practitioners representing corporations or dissenting shareholders should be familiar with these requirements and the potential pitfalls in failing to comply with them.

The Case Against Discounts



In *Blitch*, the corporation, a closely held bank, executed a merger that forced J. Dan Blitch III to exchange his shares for cash. Until the merger, Blitch was the bank's only minority shareholder. He wanted to remain a shareholder, but the bank gave him no other choice but to leave when it merged with an interim corporation wholly owned by its holding company. This corporate action provided Blitch the right to dissent, which he exercised in order to receive the fair value of his shares.[6]

In litigation, the bank took the position that minority interest and lack of marketability discounts applied to the transaction. Blitch maintained that these discounts should not be used in determining the fair value of his shares. The trial court agreed with the bank and applied both discounts. Blitch appealed on the basis that the application of these discounts constituted legal error.[7]

Interpreting "Fair Value"

In *Blitch*, the Court of Appeals first examined the historical origins of the statute. When first created, corporations governed themselves by unanimous consent among the shareholders. From a practical perspective, this proved an unmanageable form of governance. To solve the problem, legislatures granted corporations the right to majority rule and, in turn, gave minority shareholders the right to dissent from certain corporate actions.[8] The remedy of fair value represented a quid pro quo measure designed to protect minority shareholders from being victimized by majority rule.

But, as the court in *Blitch* recognized, the statutory definition of fair value did not indicate whether discounts were appropriate.[9] Under the Code, fair value means "the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action."[10] Whether the value of the shares immediately before the corporate action should be discounted requires statutory interpretation.[11]

Blitch explained that no Georgia appellate court has interpreted the meaning of fair value since the legislature adopted a new dissenters' rights statute based on the Model Act in 1988.[12] Georgia's legislature did not change the basic definition of fair value when it adopted the Model Act, which left the courts with the question of whether or not discounts apply. Numerous other jurisdictions have interpreted fair value and determined that discounts should not be applied.[13] Moreover, in 1999, the drafters of the Model Act changed the definition of fair value so that it specifically provided that discounts are generally inappropriate in dissenters' rights proceedings.[14]

Decided in 1984, *Beavers* noted that Georgia's statute was based on the dissenters' rights statute in New York, and that discounts may be applied in a given case but only with caution.[15] *Beavers* explained that the purpose behind dissenters' rights was to provide "an orderly and fair

method" for valuing the shares, and the "apparent intent" in the fair value standard was simply one of valuation flexibility.[16] This conclusion, however, ignored the historical roots of the statute and the intention to protect minority shareholders. Moreover, *Beavers* is physical precedent only.[17] *Blitch* marks the first time Georgia has considered the discounts issue since the legislature adopted the Model Act four years after *Beavers*.[18]

In interpreting fair value and whether it allows for discounts, the *Blitch* court found persuasive the reasoning of the majority of other jurisdictions. Courts in those jurisdictions have explained why minority and lack of marketability discounts are inappropriate.[19] For example, reasons for not applying discounts are that "using discounts injects speculation into the appraisal process, fails to give minority shareholders the full proportionate value of their stock, encourages corporations to squeeze out minority shareholders and penalizes the minority for taking advantage of the protection afforded by dissenters' rights statutes."[20]

Blitch was also guided by the comment to the Model Act's new definition of fair value. First, as the comment explained, "discounts give the majority the opportunity to take advantage of minority shareholders who have been forced against their will to accept the appraisal triggering transaction."[21] Second, discounts run counter to the more modern view that shareholders who dissent are entitled to their proportional interest in the value of the corporation as a whole.[22]

For these reasons, *Blitch* held that the trial court committed error in applying discounts to the value of the shares at issue. Dissenting shareholders in Georgia should be awarded their proportional interest in the value of the corporation as a whole. "[T]he term fair value in our statute encompasses the modern view expressed by the Model Act that a shareholder should generally be awarded his or her proportional interest in the corporation after valuing the corporation as a whole."[23]

Decisions Against Discounts in Other Jurisdictions

Starting with Delaware, a number of state supreme courts have held that discounts are not permitted in fair value proceedings. The law regarding discounts and fair value shifted in 1989 when the Supreme Court of Delaware issued its decision in *Cavalier Oil Corp. v. Harnett*.[24] After noting that discounting injects speculation into the appraisal process, the *Cavalier Oil* court explained:

> More important, to fail to accord to a minority shareholder the full proportionate value of his shares imposes a penalty for lack of control, and unfairly enriches the majority shareholders who may reap a windfall from the appraisal process by cashing out a dissenting shareholder, a clearly undesirable result.[25]

All but one of the jurisdictions that permit or require the application of discounts precede Delaware's decision in *Cavalier Oil*.[26]

In *In re McLoon Oil Co.*,[27] the Supreme Court of Maine explained that the origins of the appraisal remedy "has deep roots in equity."[28] It pointed out the quid pro quo nature of the remedy: "By the bargain struck in enacting an appraisal statute, the shareholder who disapproves of a proposed merger or other major corporate change gives up his right of veto in exchange for the right to be bought out — not at market value, but at 'fair value.'"[29]

Fairness requires that the buy-out price equal the shareholder's proportionate interest in the business as a whole. Thus, discounts are not permitted. "In the statutory appraisal proceeding, the involuntary change of ownership caused by a merger requires as a matter of fairness that a dissenting shareholder be compensated for the loss of his proportionate interest in the business as an entity."[30] Importantly, the focus is not on the stock as a commodity, but on the stock as a part of the company as a whole.[31]

Two supreme court decisions in other states involved minority shareholders in closely held banks. In *State Security Bank v. Ziegeldorf*,[32] which the *Blitch* court cited, the Supreme Court of Iowa considered the issue of discounts in the context of a reverse stock split that cashed out the minority shareholders. The banks in *Ziegeldorf* argued that a marketability discount applied because the stock was not publicly traded.[33] The court disagreed with that argument. Finding that the trial court did not err in rejecting a marketability discount, the *Ziegeldorf* court emphasized: "To allow a marketability discount under this record would undermine the legislature's intent to protect minority shareholders from being forced out at a price below the fair value of their pro-rata share of the corporation."[34] That court reached this holding by first stressing that the purpose of dissenters' rights was to give majority shareholders "their voting rights to control the corporation" while giving the dissenting minority shareholder the right to get out for fair value.[35]

Arnaud v. Stockgrowers State Bank[36] also concerned a reverse stock split by a bank that cashed out minority shareholders. The bank did so because the minority shareholders did not want to transfer their bank stock to the holding company.[37] After extensively examining what other jurisdictions have said about discounts, *Arnaud* held that "minority and marketability discounts are not appropriate when the purchaser of the stock is either the majority shareholder or the corporation itself."[38]

Emphasizing the sale of the shares back to the corporation, the Supreme Court of Montana in 1998 decided that discounts were inappropriate in *Hansen v. 75 Ranch Co.*[39] *Hansen* overruled a prior Montana decision that permitted consideration of minority interest and lack of marketability discounts when determining fair value.[40] It recognized and stressed that a sale back to the corporation or the majority shareholder differed from a sale to a third party.[41] "[T]he transferring shareholder would expect that the shares would have at least the same value in her hands as in the hands of the transferee."[42]

Hansen also referred to the Model Act and stressed that discounts destroy the legislative intent behind fair value.

O.C.G.A. § 14-2-1302	Right to Dissent	This section lists the various corporate actions that provide record shareholders with the right to dissent.
O.C.G.A. § 14-2-1320(a)	Notice of Right to Dissent (C)[57]	If shareholders are entitled to vote on a particular corporate action, the corporation must send this notice along with a copy of the statute.
O.C.G.A. § 14-2-1320(b)	Notice of Right to Dissent (C) the corporate action.	If shareholders are not entitled to vote, the corporation must send the notice in O.C.G.A. § 14-2-1322 within 10 days of
O.C.G.A. § 14-2-1321	Notice of Intent to Demand Payment (SH)[58]	If shareholders are entitled to vote, shareholders must deliver this notice to the corporation *before* the vote is taken and must not vote in favor of the action. Failure to meet these two requirements means the shareholders are not entitled to fair value.
O.C.G.A. § 14-2-1322	Dissenters' Notice (C)	If the corporate action is authorized, the corporation must send this dissenter's notice within 10 days to all shareholders that complied with O.C.G.A. § 14—2—1321. There are four requirements to this notice.
O.C.G.A. § 14-2-1323	Duty to Demand Payment (SH)	Shareholders who receive a dissenters' notice must demand payment by the date set by the corporation and deposit their share certificates. Failure to meet these two requirements means the shareholders are not entitled to fair value.
O.C.G.A. § 14-2-1325	Offer of Payment (C)	Within 10 days of the later of the corporate action or the demand for payment, the corporation must provide a statement of its estimate of fair value, along with four other requirements. The shareholders can accept the offer within 30 days.
O.C.G.A. § 14-2-1327	Demand if Dissatisfied	If dissatisfied with the offer, with Offer (SH) dissenting shareholders can demand in writing their estimate of fair value. The right to make this demand is waived if not made within 30 days of the offer by the corporation.
O.C.G.A. § 14-2-1330	Court Action (C)	The corporation must commence the lawsuit within 60 days of demand by the dissenting shareholders, if the matter has not settled. Failure to do so means that the corporation must pay each shareholder the amount demanded.

> The dissenters' rights provisions protect the minority shareholders by allowing them to obtain payment of fair value for their shares. Based on this policy, many courts realize that applying discounts when valuing the shares of a dissenting shareholder destroys the legislative intent to protect the minority shareholder's right to dissent.[43]

Perhaps the most comprehensive look at this issue is *Lawson Mardon Wheaton, Inc. v. Smith*, decided by the Supreme Court of New Jersey in 1999.[44] *Blitch* cited to *the Smith case* several times.[45] Like other decisions, *Smith* pointed out how changes in corporate governance gave birth to the appraisal remedy. "Unanimity was traded for 'majority rule' and veto power [by minority shareholders over corporate actions] exchanged for appraisal rights."[46]

Smith recognized that the term "fair value" contains principles of fairness and equity.[47] "Indeed, equitable considerations have led the majority of states and commentators to conclude that marketability and minority discounts should not be applied when determining the fair value of dissenting shareholders' stock in an appraisal action."[48] As the *Smith* court decided, "The history and policies behind dissenters' rights and appraisal statutes lead us to conclude that marketability discounts generally should not be applied when determining the 'fair value' of dissenters' shares in a statutory appraisal action."[49]

Finally, the Supreme Court of Wisconsin recently decided *HMO-W, Inc. v. SSM Health Care System*.[50] That opinion was also guided by the purpose of the dissenters' right statute.[51]

Consistent with the statutory purpose in granting dissenters' rights, an *involuntary* corporate change approved by the majority requires as a matter of fairness that a dissenting shareholder be compensated for the loss of the shareholder's proportionate interest in the business as an entity. Otherwise, the majority may 'squeeze out' minority shareholders to the economic advantage of the majority.[52]

Like other courts, *HMO-W* recognized that the equitable purpose of dissenter's rights is to protect minority shareholders.[53] "A dissenting stockholder is thus entitled to the proportionate interest of his or her minority shares in the going concern of the entire company."[54]

Traversing the Procedural Landscape

Before actually litigating the issue of fair value, corporations and dissenting shareholders must comply with all of the procedural requirements under Georgia's Dissenters' Rights Statute. Those requirements are anything but simple. The process of receiving notice, demanding payment, tendering shares, making offers and demands of fair value, and, if necessary, filing suit, resembles a high-stakes tennis match between the corporation and its minority shareholder(s).

Missing the ball can be fatal. "The statutory scheme for exercising dissenters' rights involves a tight timeline within which minority shareholders must exercise their right to force the corporation to repurchase their shares once certain corporate decisions trigger the right of dissent."[55] In several instances, failure to meet a deadline or take the proper steps will eliminate the right to receive fair value. The corporation may also find itself in jeopardy.[56] Such severe consequences make it important for practitioners to know the various twists and turns along the procedural way. The chart on the previous page provides an overview of the major requirements.

Conclusion

Regarding discounts, the law in Georgia now stands in contrast to the earlier *Beavers* decision. Georgia no longer permits the discounting of shares, based on their minority nature and lack of marketability, in dissenters' rights proceedings. In the interest of fairness, *Blitch* does not permit closely held corporations that cash out minority shareholders to penalize these shareholders further by discounting the value of their shares. As in numerous other jurisdictions, dissenting shareholders in Georgia are now entitled to their proportional interest in the value of the corporation as a whole.[59]

James D. Blitch IV is an associate with the law firm of Kidd & Vaughan in Atlanta, where he practices business and personal injury litigation. He received his J.D. and M.B.A degrees from the University of Georgia and his undergraduate degree in history from Duke University. He is the son of J. Dan Blitch III, and worked on the Blitch case.

Endnotes

1. O.C.G.A. §§ 14-2-1301 to 1332.
2. O.C.G.A. §§ 14-2-1302 1330.
3. O.C.G.A. § 14-2-1302(b); *Id.*, Comment, Note to 1989 Amendment; Grace Bros. v. Farley Indus., 264 Ga. 817, 821, 450 S.E.2d 814 (1995).
4. 546 Ga. App. 453, 540 S.E.2d 667 (2000).
5. 169 Ga. App. 584, 314 S.E.2d 245 (1984).
6. Blitch v. Peoples Bank, 246 Ga. App. 453, 454, 540 S.E.2d 667, 668 (2000).
7. *Id.*
8. *Id.* at 455, 540 S.E. 2d at 669.

9. *Id.*
10. O.C.G.A. § 14-2-1301.
11. *See, e.g.*, HMO-W, Inc. v. SSM Health Care Sys., 611 N.W.2d 250, 253 (Wis. 2000) (the question of whether to apply a minority discount involves statutory construction and is a question of law).
12. Blitch, 246 Ga. App. at 454, 540 S.E. 2d at 669.
13. *Id.*
14. *Id.*, 540 S.E. 2d at 670
15. Beavers, 169 Ga. App. at 586, 588-89, 314 S.E. 2d at 248, 251.
16. *Id.* at 586, 314 S.E. 2d at 249.
17. Blitch, 246 Ga. App. at 457 n. 21, 540 S.E. 2d at 670 n.21.
18. *Id*. at 457, 540 S.E. 2d at 670.
19. *Id.*
20. *Id.* at 456, 540 S.E. 2d at 669.
21. *Id*., 540 S.E. 2d at 670.
22. *Id.*
23. *Id.* at 457, 540 S.E. 2d at 670.
24. 564 A.2d 1137 (Del. 1989).
25. *Id.* at 1145. *See also* Rigel Corp. v. Cutchall, 511 N.W.2d 519, 525 (Neb. 1994) (citing extensively to the rationale of *Cavalier Oil* in rejecting minority interest and lack of marketability discounts).
26. Arnaud v. Stockgrowers State Bank, 992 P.2d 216, 220 (Kan. 1999) (mentioning Georgia because of the *Beavers* decision); *see also* Rigel, 511 N.W.2d at 526 (mentioning *Beavers*).
27. 565 A.2d 997 (Me. 1989).
28. *Id.* at 1004.
29. *Id.*
30. *Id.*
31. *Id.*
32. 554 N.W.2d 884 (Iowa 1996).
33. *Id.* at 889.
34. *Id.* at 890.
35. *Id.* at 889.
36. 992 P.2d 216 (Kan. 1999).
37. *Id.* at 217.
38. *Id.* at 220.
39. 957 P.2d 32 (Mont. 1998). *Blitch* cites approvingly to this decision. *See* Blitch, 246 Ga. App. at 456 n. 16, 540 S.E. 2d at 669 n. 16.
40. 957 P.2d at 41.
41. *Id.*
42. *Id.*
43. *Id.* at 41-42.
44. Lawson Mardon Wheaton, Inc. v. Smith, 734 A.2d 738 (N.J. 1999).
45. Blitch, 246 Ga. App. at 454 n. 3, 456 nn. 16-17, 540 S.E. 2d at 668-69 nn. 16-17.
46. Smith, 734 A.2d at 745.
47. *Id.* at 748.
48. *Id.*
49. *Id.* at 749.
50. 611 N.W.2d 250 (Wis. 2000).
51. *Id.* at 254.
52. *Id.* at 255-56 (emphasis added) (citing *McLoon Oil*). *HMO-W* also cites to the "seminal case" of *Cavalier Oil*. *See id.* at 256.
53. *Id.* at 256.
54. *Id.*
55. Riddle-Bradley, Inc. v. Riddle, 217 Ga. App. 725, 725-26, 459 S.E.2d 576 (1995).
56. *See id.* (affirming summary judgment for the dissenting shareholders because the corporation failed to commence the valuation proceeding within the statutory period); VSI Enter., Inc. v. Edwards, 238 Ga. App. 369, 374-75, 518 S.E.2d 765 (1999) (affirming summary judgment for the dissenting shareholder because the corporation waived its right to treat the dissenting shareholder as being in default).
57. "C" indicates a requirement for the corporation.
58. "SH" indicates a requirement for the shareholder.
59. Numerous journal and law review articles have thoroughly examined dissenters' rights and fair value. These articles are in many respects beyond the scope of this article. For further reading in this area of the law, the following articles may prove helpful: Joseph W. Anthony & Karlyn V. Boraas, "Betrayed, Belittled . . . But Triumphant: Claims of Shareholders in Closely Held Corporations," 22 Wm. Mitchell L. Rev. (1996); Harry J. Haynsworth IV, "Valuation of Business Interests," 33 Mercer L. Rev. 457 (1982); Mary Siegel, "Back to the Future: Appraisal Rights in the Twenty-First Century," 32 Harv. J. on Legis. 79 (1995); Robert B. Thompson, "Exit, Liquidity, and Majority Rule: Appraisal's Role in Corporate Law," 84 Geo. L.J. 1 (1995); and Barry M. Wertheimer, "The Shareholders' Appraisal Remedy and How Courts Determine Fair Value," 47 Duke L.J. 613 (1998).

2001 Legislative Session Proves Productive for Bar

By Mark Middleton

In a legislative session that will be remembered for the historic vote on the state flag, the State Bar once again enjoyed success in advancing the Board of Governors' legislative proposals and funding initiatives. In particular, the General Assembly passed State Bar endorsed bills revising Article 9 of the Uniform Commercial Code and simplifying the Probate Court fee schedule. Also, the Senate passed a State Bar agenda bill revising the Limited Liability Company Act, and the House passed a Fiduciary Law Section bill clarifying the law relating to renunciation of succession. Each of these bills will be ready for immediate consideration when the two-year session resumes next January. The State Bar also spent considerable time defending against proposed legislation considered to be threatening to the profession.

Mitchell Kaye valuations ad pick up 2/01 page 41 bw

In addition, State Bar initiatives, such as the Victims of Domestic Violence Program, the Court Appointed Special Advocates (CASA) Program, the Indigent Defense Council and the Georgia Appellate and Educational Resource Center, received additional funding for fiscal year 2002.

2001 Legislative Accomplishments

Revision of Uniform Commercial Code Article 9

HB 191, the Revised UCC Article 9, changes the scope, rules and procedure for secured transactions involving personal property. The improvements recognize new types of collateral, and provide procedural consistency among the various states. The passage of Revised Article 9 had many hurdles to overcome before its eventual passage near the end of the legislative session. First, HB 191, authored and championed by House Judiciary Chairman Jim Martin (D-Atlanta), faced a series of hearings before a House Judiciary Sub-Committee. During these sessions, State Bar advocates addressed issues raised by various parties, such as the commercial realtors and professional search companies. An amendment to postpone the implementation date of the bill was defeated in the committee and on the House floor.

The bill also faced political cross currents caused by concerns that the Revised UCC Article 9 bill would be a vehicle for a predatory lending proposal. However, the bill was eventually placed on the respective House and Senate Rules calendars for a floor vote. The State Bar owes a debt of thanks to State Bar members Dana Kull, Roger Martin, Dick Hillis, Hazen Dempster, Amanda Witt and others who provided so much of their personal and professional time to the passage of the bill.

The importance of Chairman Martin's commitment to the passage of Revised Article 9 cannot be overstated. In addition to authoring the bill, he personally met with all interested parties to draft and discuss amendments that addressed key issues raised by other groups.

"We are extremely grateful to Jim Martin for his commitment to passing the Revised Article 9 legislation,"

said ACL Chairman Gerald Edenfield. Several other members of the legislature, including Rep. Robert Reichert (D-Macon), Senate Banking & Finance Chairman Don Cheeks (D-Augusta) and Sen. Michael Meyer Von Bremen (D-Albany), were also instrumental in making this long-term project a reality.

Probate Court Fee Simplification

During the legislative session, the State Bar Executive Committee added HB 541 to the State Bar agenda. This Fiduciary Law Section proposal was a priority for The Council of Probate Judges. The measure replaces the existing Probate Court fee schedule with a simplified fee schedule. This reform will benefit Georgians as they do business before the Probate Courts of the state.

Funding of Bar Endorsed Initiatives

The General Assembly appropriated funding for several State Bar initiatives. The grant program for Victims of Domestic Violence received $2.2 million for fiscal year 2002 — an increase of $75,000. CASA also received an increase of $125,000 and a $300,000 block grant transfer. The Indigent Defense Council received increased funding of $500,000 for its fiscal year 2002 Grants To Counties, and $237,946 for its Improvement Grant program. The Georgia Appellate Resource Center was appropriated an additional $100,000, for a total of $800,000.

"We are very fortunate to receive these increases in an otherwise tight judicial budget," stated State Bar legislative representative Tom Boller. Sen. Greg Hecht (D- Jonesboro) and Rep. Alan Powell (D-Hartwell), chairs of their respective Judicial Appropriation Subcommittees, worked diligently on behalf of the State Bar funding initiatives. "The Bar owes a special thanks to Sen. Hecht and Rep. Powell for their support of the State Bar's agenda," said Boller.

Revision of the Limited Liability Company Act

The State Bar requested the passage of SB 253, authored by Sen. Hecht, which provides technical amendments to Section 601.1 of the LLC statute. The primary amendment explicitly states that neither the withdrawal nor death of a member forces the dissolution of the company without agreement by the other members of the LLC. The bill passed the Senate, and will begin the next session in the House Judiciary Committee. The State Bar is grateful to Sen. Hecht for his efforts on behalf of this State Bar initiative. Rep. Michael Boggs (D-Waycross) is handling the bill in the House.

Renunciation of Succession

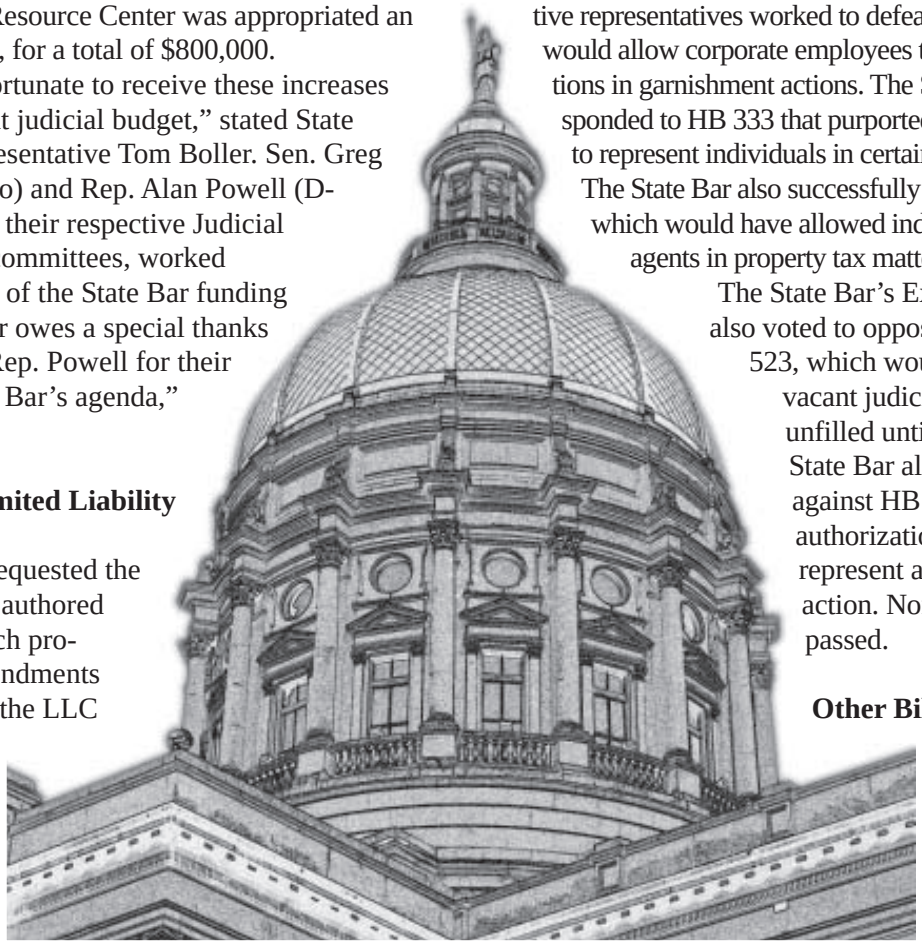
HB 646, authored by Rep. Reichert, passed the House and received favorable recommendation by the Senate Special Judiciary Committee before being caught up in the last minute flurry of bills in the Senate Rules Committee. The bill will be eligible for immediate Senate consideration next year. This Fiduciary Law Section initiative provides clarity to the law relating to the renunciation of a future interest. This clarification will assist estate planning attorneys as they advise their clients in this area.

Other Legislation

Bills Opposed by the State Bar

The State Bar had an unusually active year in opposing and defeating various legislative initiatives affecting the scope of practice/separation of powers issues. Once again, legislative representatives worked to defeat a bill (SB 146) that would allow corporate employees to represent corporations in garnishment actions. The State Bar also responded to HB 333 that purported to allow non-lawyers to represent individuals in certain immigration matters. The State Bar also successfully opposed HB 418, which would have allowed individuals to designate agents in property tax matters.

The State Bar's Executive Committee also voted to oppose HB 522 and HB 523, which would have required vacant judicial positions to remain unfilled until an election. The State Bar also took a position against HB 524 requiring written authorization for an attorney to represent a member of a class action. None of these bills passed.



Other Bills of Interest to the State Bar

In addition to implementing the State Bar agenda, legislative representatives also tracked

numerous bills relating to the practice of law. Several bills of interest passed and have been signed by the Governor. For example, SB 118, The Uniform Child Custody Act, authored by Sen. Seth Harp (R-Columbus), passed with the support of interested Bar members. "This legislation will benefit Georgians who find themselves in an interstate custody battle," said Shiel Edlin, a prominent Atlanta attorney who devoted countless hours to providing information to the legislature on the issue. Also, a bill raising the jurisdictional caps for matters appealed from Magistrate Court passed. Another important measure extended the Fulton County Family Court pilot project for an additional three years.

Bar Section Program

The Bar continues to rely on its Bar Section Legislative Tracking Program where Bar Section members can monitor bills of importance to the Bar during the legislative session. Bar members tracked bills through the GeorgiaNet web site, and numerous bills were sent out to the sections for review and comment. A special word of thanks goes out to all Bar members who provided timely responses to legislative representatives regarding issues affecting the practice of law.

Conclusion

This has been another productive and successful legislative session for the State Bar. The State Bar once again thanks Speaker Tom Murphy and Lt. Governor Mark Taylor — two lawyers who have always supported the State Bar's legislative efforts. We also owe special debts of gratitude to the chairmen of the House and Senate Judiciary Committees, Rep. Martin and Sen. Rene Kemp (D-Hinesville), and Special Judiciary Committee chairs, Sen. Charles Tanksley (R-Marietta) and Curtis Jenkins (D-Forsyth). Their thoughtful and dedicated service illustrates the contributions that State Bar members make in the legislature. The State Bar is grateful for the lawyers who make personal sacrifices to serve in the legislature. As the State Bar now turns its attention to identifying matters of importance for next year's legislative session, every willing member is encouraged to participate in the legislative activities of their Bar Section.

The State Bar legislative representatives are Tom Boller, Rusty Sewell, Wanda Segars, and Mark Middleton. Please contact them at (404) 872-2373 or (770) 825-0808 for further legislative information, or visit the State Bar's Web site at www.gabar.org. Bar members can track bills through the GeorgiaNet Web site, found at www.ganet.org/services/leg.

The following bills of interest passed in the 2001 Session and have been signed by the Governor

HB 330: The bill extends the Fulton County Family Court pilot project to 2004.

HB 478: The bill, authored by Speaker Murphy, changes provisions relating to an insurers liability for bad faith refusal to pay a loss.

HB 569: The bill amends 9-11-5 to state that failure to enter pleadings results in a loss of right to notice of entry of judgment.

SB 24: This bill, relating to electronic signatures, exercises an exemption to preemption provided for in the federal electronic signature legislation, and states that the Georgia statute relating to electronic signatures applies unless it is specifically exempted by another Georgia provision.

SB 25: This bill simply adds additional situations to the list when notice can be executed through "statutory overnight delivery," a concept that was passed into law last year.

SB 34: The 2001 Crime Prevention Act strengthens punishments relating to various crimes such as cruelty to children, sexual offenses, escape, etc.

SB 50: The bill requires court clerks to electronically collect and transmit certain civil and criminal court data to the clerk's authority and the Georgia Crime Information Center.

SB 57: The Family Violence and Stalking Protective Order Registry Act seeks to provide a clearinghouse for domestic and foreign protective orders.

SB 118: The Uniform Child Custody Act benefits Georgians involved in interstate custody actions.

SB 269: The bill removes the Magistrate jurisdictional amount when the case is appealed.

There's Only One Name You Need To Know.

American National Lawyers Insurance Reciprocal (Risk Retention Group) (ANLIR) believes that nobody knows what a lawyer needs better than a lawyer. So we listen to the attorneys on our Board of Directors and those on our various committees and our own employees who have law degrees to develop the best and most flexible coverage available.

Rated A (Excellent) by A.M. Best Company, ANLIR has proven its financial strength and ongoing ability to provide Georgia lawyers with legal malpractice coverage designed to meet their ever changing coverage and service needs.

But ANLIR delivers much more than flexible coverage options and exceptional industry ratings. ANLIR offers a level of claims support not found with other insurers. Our claims handlers are all licensed attorneys with an average of fifteen years of law and insurance experience. As licensed attorneys, ANLIR's claims handlers are often able to dispose of frivolous claims without hiring outside counsel and offer an immediate level of understanding and support for insureds facing lawsuits. Call us today to find out why ANLIR is the right choice for you.

AMERICAN℠ NATIONAL LAWYERS INSURANCE RECIPROCAL

Risk Retention Group

A Member of The Reciprocal Group®

Contact Barbara Evans, Esq. ♦ (770) 645-3070 ♦ (888) 889-4664 ♦ http://www.anlir.com

Revised Article 9 of Uniform Commercial Code Adopted

By Dana Smith Kull

On April 20, 2001, Gov. Roy E. Barnes signed House Bill 191[1] into law, making Georgia the thirtieth state to adopt Revised Article 9[2] as part of its Uniform Commercial Code (UCC). This was the culmination of two years of work in Georgia by the State Bar, bankers' groups, legislative sponsors, and others.

Rep. Jim Martin (D-47), chair of the House of Representatives' Judiciary Committee, Rep. Robert Reichert (D-126) chair of the Property, Trusts and Estates subcommittee of the House Judiciary Committee, and members of that subcommittee (Reps. Mike Boggs, Tom Campbell, Mack Crawford, Kasim Reed, Glenn Richardson, Mary Squires and John Wiles) spent many hours in hearings on the bill in February and March, soliciting the views of all interested parties.

The Business Law Section of the State Bar, through its UCC Committee, devoted substantial resources to the effort, as did the Bar's legislative liaisons, particularly Tom Boller and Mark Middleton, and the Georgia Bankers' Association's legislative affairs officers, Joe Brannen and Elizabeth Way. House Rules, the Senate Banking and Financial Institutions Committee chaired by Sen. Don Cheeks, as well as the Senate Rules Committee, made extraordinary efforts to move this massive piece of legislation along efficiently.

On the Senate floor, on the thirty-ninth day of the 40-day session, Sen. Michael S. Meyer von Bremen (D-12) presented the bill and it was passed.

The significant educational effort that began more than two years ago is accelerating; every industry association and trade group for banks or other financers, every bar association, for-profit seminar presenter, title insurance company, and corporate service company has already conducted programs on Revised Article 9. A quick survey of seminars to be presented over the next couple of months, suggests that there will continue to be many good offerings available.

Will Revised Article 9 Change My Life?

Will Revised Article 9 change your life? If you are a financing lawyer, the answer is "yes." If you aren't, the answer is, at least, "probably."

The revision of Article 9[3] is a thorough, top-to-bottom, linguistic overhaul of the statute. Almost every section number of Revised Article 9[4] is different from the number of the existing Article 9 section that deals with the same subject matter. Where existing Article 9 has about 30 defined terms, Revised Article 9 has 79.[5] Existing Article 9 speaks in terms of documents that are executed or signed and delivered; the Revised Article 9 vocabulary refers instead to "records" and their "authentication." A distinction is made in Revised Article 9 between the "debtor" (who has rights in the collateral) and the "obligor" (who is liable on the secured obligation, but may not have any interest in collateral). Changes of this magnitude are very numerous.

The substance of Article 9, however, is much less changed. Revised Article 9 will continue to be the source of definitive rules governing transactions secured by personal property. The primary method of achieving perfection — filing a financing statement in a specified office in a state — will continue to be the same. And for the vast majority of transactions, especially in Georgia, we may see almost no difference at all.

That said, what appear to be the most significant changes that will be made by Revised Article 9 in the everyday practice of lawyers? The following is my list, not in any order of significance.

First, if you've heard nothing else about Revised Article 9, you have probably heard that the "filing is all different." This is both true and false.

In Georgia, we are fortunate to have a filing system that works very well and that is managed by the Georgia

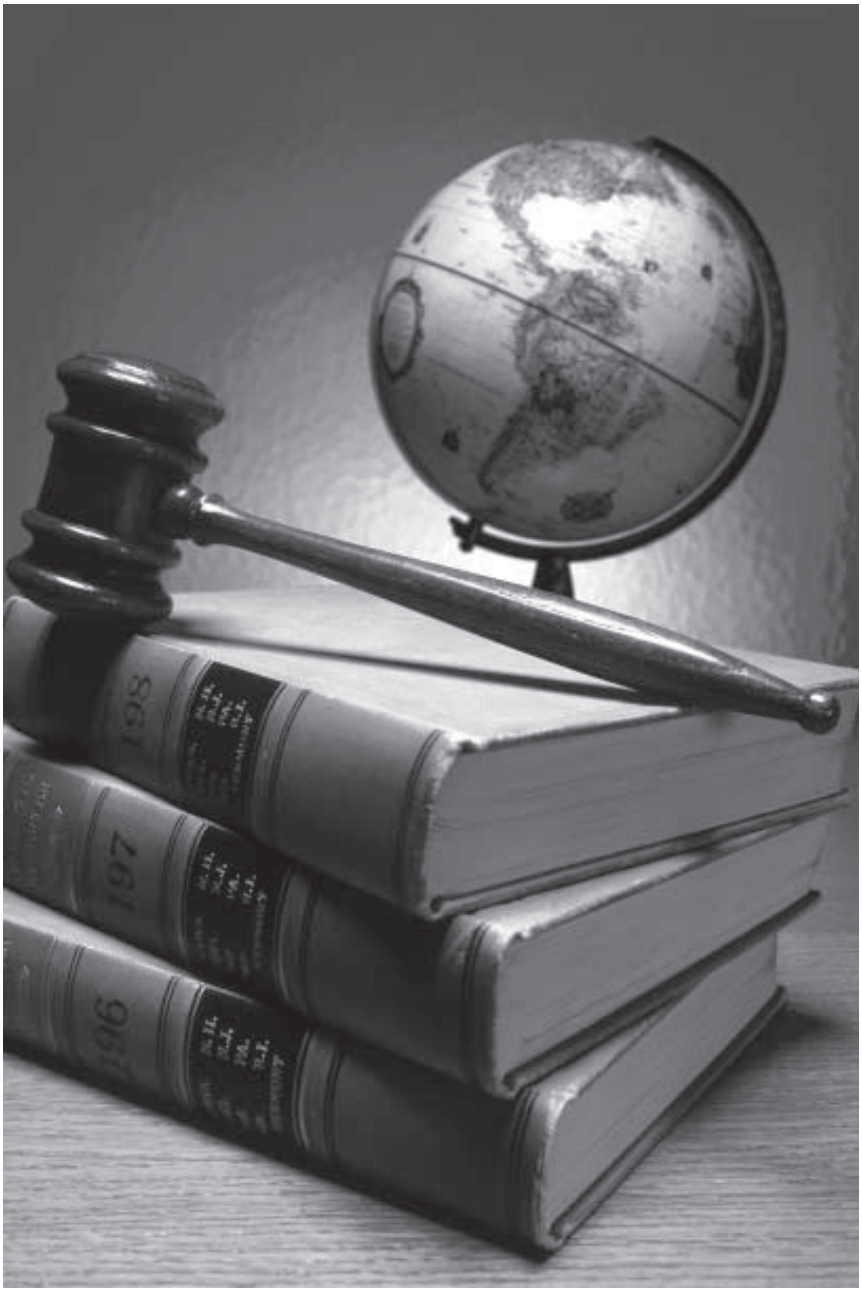
Superior Court Clerks' Cooperative Authority (GSCCCA), an efficient quasi-governmental entity, dedicated to innovation. The Georgia filing system – file in any county, search in a single central index – will not change at all. The forms of financing statement adopted by GSCCCA for use in Georgia are very similar to the new uniform national forms, so you will notice very little difference in completing a form of financing statement.

The shift, however, from defining any non-individual debtor's location in terms of the location of its property or chief executive office, to defining its location exclusively in terms of its jurisdiction of organization, represents a major change. As you know, today, under existing Article 9, a debtor is located at his/her residence, if an individual, at its place of business, if not an individual, or, if it has more than one place of business, at its chief executive office.[6] Financing statements intended to perfect a security interest in most intangible personal property (*e.g.*, accounts, general intangibles), are to be filed in the appropriate office of the jurisdiction in which the debtor is located.[7] Financing statements intended to perfect a security interest in goods, on the other hand, are to be filed in the appropriate office in the jurisdiction in which the goods are located.[8]

Today, the secured lender to a Georgia corporation that has its chief executive office in North Carolina and inventory stored in warehouses in a single town in North Carolina, in South Carolina, and in Tennessee, would file four or more financing statements to perfect its interest in accounts and inventory of this debtor. None of these filings would be in Georgia. At least one filing would be made in each of the Carolinas and in Tennessee and a second filing would be made in North Carolina pursuant to the "dual filing" rules.[9]

Under Revised Article 9, the **only** financing statement filed to perfect a security interest in accounts and inventory of this same debtor, would be in Georgia.[10] A single financing statement for **all** collateral a security interest in which can be perfected by filing a financing statement under Revised Article 9, filed at the debtor's location (its residence or jurisdiction of organization), is the only requirement.

This means that monitoring an organized-entity debtor's continuing situs and status as an entity in good standing is perhaps more important under Revised Article 9 than under existing Article 9.[11] Before complaining that it seems burdensome to have to order a certificate of existence quarterly (or require one to be delivered with the quarterly financial statements), remember that under the new regime there will be only one financing statement out there to check on, to keep current, whether by amendment or continuation, to terminate or to search for.



Second, Revised Article 9 is "medium neutral." **Both paper and electronic filings** and searches are provided for. The demands of electronic record keeping mean that no signatures are required under Revised Article 9 for any

filing. Although this sounds radical, there is no way today for a filing office to verify a debtor's signature. Filing a forged or "unauthorized" financing statement should not be more or less difficult under Revised Article 9 than under existing Article 9 and Revised Article 9 permits a debtor who has been wrongly filed against to put the searching public on notice of such fact.[12]

Third, form numbers have been eliminated and **four uniform "national" forms of financing statement** have been mandated. There will be an initial filing form (analogous to the current UCC-1), a related amendment form, a continuation/release/termination form (analogous to the current UCC-3) and a related amendment form. No filing office in a jurisdiction that has adopted Revised Article 9 will be permitted to refuse a properly completed national form (accompanied by the correct filing fee, of course).

In Georgia, filing offices will continue to accept the current Georgia forms of UCC-1 and UCC-3, until Dec. 31, 2001 or a later date set by the GSCCCA. The new, national form will be accepted beginning July 1, 2001. The GSCCCA is well along in its development of an electronic filing and searching system for Georgia. The determination has been made, as reflected in Revised Article 9, not to continue the use of the Georgia real estate notice filing (currently Form UCC-2). Rather, at the filer's request, fixture filings made in the Clerk's office in the county in which the subject real estate is located will be cross-indexed to the real estate records in the same office.

Fourth, it will **be necessary to file a UCC financing statement to perfect certain statutory liens**. There appear to be at least five, statutory, non-possessory liens which fall within the Revised Article 9 term "agricultural liens" as to which filing a financing statement will now be necessary for perfection.[13] There may be others. Anyone who represents parties who hold obligations secured by interests in crops (including livestock), or the debtors in respect of such crops, will need to understand the changes wrought by Revised Article 9, as it applies to such party's particular circumstances.

Fifth, in addition to new lien interests being brought within the scope of Revised Article 9, **new types of collateral have been identified and included in Revised Article 9**. Though only two of the many new collateral types in Revised Article 9, deposit accounts and letter of credit rights deserve special mention, I think, as they are the types many of us will encounter in our practice, whomever we represent.

Deposit accounts are specifically excluded from existing Article 9's coverage. Lenders secured by accounts receivable and proceeds, for instance, often enter into three-party agreements with the debtor and the bank that maintains the account into which payment on the accounts (i.e., the proceeds of the accounts) are deposited. These agreements typically provide for daily automatic transfer by the depository bank to the lender of all collected funds in such account, without the necessity of further consent by the debtor, and are thought to enhance the lender's ability to defend against any attacks on the funds on deposit merely as "proceeds" under existing Article 9 §306.

A security interest in the proceeds of a drawing under a letter of credit of which a debtor is the beneficiary, is another new type of Article 9 collateral, "letter of credit rights." Note that this term does not include the right to draw on the letter of credit, but only to receive the proceeds of a drawing. Typically today, a secured party asks for an assignment of a letter of credit issued for the benefit of its debtor and for possession of the letter of credit itself, to prevent drawing by the debtor without notice to the secured party. Under this scheme, the secured party may simply instruct the debtor who wishes to draw, to request that funds be transferred directly to a blocked account, subject to the three-party agreement.

Revised Article 9 adopts the three-party agreement approach[14] to establish "control" over deposit accounts and letter of credit rights, the exclusive method of a perfecting a security interest in such property (other than to the extent any such accounts constitute proceeds).[15] Depository banks and letter of credit issuers are free to decline to enter into control agreements. Consumer deposit accounts continue to be excluded from Revised Article 9.

Sixth, Revised Article 9 has adopted the **definition "good faith"** found in UCC Articles 2 and 8, including not only honesty in fact (the "pure-heart-empty-head" standard), but "observance of reasonable commercial standards of fair dealing."[16] How this will translate into operational terms is not at all clear. We may find, though, that ignorance of public records (the UCC filing records, e.g.) is not consistent with "observance of reasonable commercial standards of fair dealing."

Seventh, the **obligations of secured parties after default are arguably greater** under Revised Article 9 than under existing Article 9. The universe of people who must be notified of a proposed disposition of collateral has been expanded to include, in addition to other secured parties from which the foreclosing secured party has received notice, (1) all "Secondary Obligors" and (2) if the collateral is other than consumer goods, any person named as the secured party in a financing statement filed against the same debtor and collateral, in the correct filing office, as of a date 10 days prior to the "notification date," which in turn would in most cases be at least 10 days before the earliest proposed date of disposition.[17] Including Secondary Obligors means that all guarantors must be notified, settling a dispute and source of uncertainty under existing Article 9.

The requirement that notice be sent to all secured parties of record in the correct filing office 10 days prior to the notification date apparently seemed onerous to some. Compliance with this requirement will be found if (1) the secured party requests "in a commercially reasonable manner", a UCC lien search report from (or made in) the correct filing office, not later than 20 days nor earlier than 30 days prior to the notification date and (2) (a)does not receive a response prior to the notification date or (b) sends notice to each secured party disclosed on the report issued in response to such request whose filing covers the collateral proposed to be disposed of.[18]

Given the requirements of Rev§§9-519 et seq. that provide, among other things, that filing offices must respond to requests for information within not more than two business days, a lien search request made 20 days before the notification date (the latest date permitted if one is to benefit from the "safe harbor" of Rev§9-611(e)(1)) will almost certainly *not* have a "through date" that includes the tenth day prior to the notification date. The practical implications of this set of provisions will be worked out by practitioners over time, but one can anticipate that eventually, the ability to search definitively, electronically, in a single name, in a single filing office that is obligated to respond within two business days (if not on-line), will render moot much of what looks confusing or potentially inconsistent in these provisions.

Eighth, Revised Article 9 permits partial strict foreclosure and expands the types of collateral a secured party may retain. O.C.G.A. 11-9-505 currently permits a secured party in possession of tangible personal property collateral, to retain the property only in full satisfaction of the obligations secured. Notice of intention to retain must be sent to the debtor and specified other parties, and the debtor can insist on disposition of the collateral, all within specified periods.

The Revised Article 9 notice mechanics in respect of strict foreclosure differ from existing Article 9's in the same way that the Revised Article 9 and existing Article 9 requirements of notice of proposed disposition differ. In addition, property not in the possession of the secured party may be accepted, intangible, as well as tangible, personalty may be accepted, and the secured party may retain or accept collateral in *partial* satisfaction of secured obligations.[19] The debtor may continue to insist upon disposition "in a commercially reasonable manner," but it is clear that sophisticated debtors will be able to negotiate liquidation values for collateral without incurring the expenses of sale.

It is important to note that strict foreclosure continues to be available in consumer transactions only when less than 60 percent of the principal of the secured obligation has been paid and only in full satisfaction of the outstanding obligation. If 60 percent or more of the principal in a consumer transaction has been paid, under Revised Article 9, the secured party must dispose of the collateral within 90 days after taking possession (or within any longer period debtor agrees to in writing after default).[20]

Ninth, under Revised Article 9, the information that must appear on the face of a financing statement is described in more detail than is the case under existing Article 9. Although the "reasonably identifies" standard continues to apply to the collateral description,[21] Revised Article 9 lists and explicitly approves of description by type (in Revised Article 9 terms), specific listing (serial number, e.g.), quantity, category, formula, etc., for all purposes. If the parties intend to create and perfect a "blanket lien" (i.e., a security interest in all personal property of the debtor), the collateral description in the financing statement — though not in the security agreement — may be "all assets" or "all personal property."[22]

The concept of what constitutes a "seriously misleading" financing statement has also been clarified somewhat. Under existing Article 9, O.C.G.A. 11-9-402(7), a filed financing statement is not effective to perfect a security interest in property in which the debtor acquires rights more than four months after "the debtor so changes . . . its name, identity, or corporate structure, that a filed financing statement becomes seriously misleading." The question of exactly what change renders a financing statement "seriously misleading" has occupied a lot of lawyer time and is exclusively dependent on the facts of each case.

Revised Article 9 does not go so far as to define "seriously misleading" exhaustively; it does, however, state flatly that a financing statement is seriously misleading if it does not provide the correct name of the debtor, by reference to the provisions that require, for any registered organization, use of the name of the organization as it appears in the definitive public record.[23] The harshness of the rule is mitigated to some extent by the provisions of Rev§9-506(c) which exclude from the category "seriously misleading"[24] any financing statement that would be disclosed by a search of the records in the office in which such financing statement is filed, using the filing office's "standard search logic" and the exact name of the debtor as it appears in its recorded, constituent documents. For example, if the search logic employed by a filing office ignored the organizational identifier (i.e., Inc., LLC, Ltd., etc.), a financing statement that omitted or reflected a wrong identifier would nevertheless **not** be seriously misleading.

The only way a secured party can be sure that its financing statement is not seriously misleading (at least by virtue of an error in the debtor name) is to conduct a post-filing search in the complete, correct debtor name and keep a record of the disclosure of such secured party's filing.

Tenth, Revised Article 9 provides for the transition from one secured transaction regime to another in a way designed to protect the legitimate expectations of parties to existing transactions, while providing reasonable incentives for a speedy migration to Revised Article 9. Part 7 of Revised Article 9 sets out the **transition rules**. They are, again, quite detailed.

Revised Article 9 is expressly made applicable to all transactions and interests within its scope, even those entered into or created before effectiveness of Revised Article 9. Parties to any transaction consummated before the effective date may choose to continue under the law in place prior to the effective date or they may choose to have Revised Article 9 apply. Law in force at the time any dispute arises will, of course, continue to apply to such dispute.[25]

It is fair to say that no security interest that is **perfected** (that is, superior to the rights of a person becoming a lien creditor thereafter) immediately prior to the effective date of Revised Article 9, whether "perfection" was accomplished under existing Article 9 or otherwise, will become unperfected by virtue of Revised Article 9's effectiveness. If perfection was achieved ***other*** *than by filing a financing statement,* the maximum period of such continuing perfection may be only one year following the effective date, if (1) Revised Article 9 requires that the secured party take additional or different steps to achieve perfection than were taken pursuant to existing Article 9 or other applicable law and (2) such additional or different perfection steps are not taken within such year.[26] If any such additional or different perfection steps (*e.g.*, obtaining an acknowledgment from a previously notified bailee) are taken with a year, then the interest will be treated as continuously perfected from the first perfection date after which there was no other lapse.

Dan turner Builders pickup 2/01 p36

A security interest perfected by filing a financing statement under existing Article 9 will remain perfected until the lapse date of that financing statement, whether that is six months or four years after the effective date of Revised Article 9.[27] It should be noted in this regard, that the inclusion of new types of collateral in Revised Article 9 and the ability to perfect a security interest in new types of property by filing, suggests that existing filings probably should not be relied upon without some review. The reclassification of an item of collateral from one type to another may result in absence of perfection as to any such item arising or acquired by the debtor after the effective date of Revised Article 9.

A financing statement filed or other perfection step taken in accordance with Revised Article 9 prior to the effective date and that is not effective to perfect a security interest under existing applicable law, will perfect such security interest as of the effective date of Revised Article 9. Only in contests with other secured claimants who are relying on ineffective pre-effective date filings, will the *filing date* matter, and in those contests, the first to file will be senior.[28]

Probably the single most important transition rule, though, is the provision for the "initial financing statement in lieu of continuation."[29] The so-called "in lieu" financing statement must meet the requirements for an effective financing statement under Revised Article 9; that is, it must be completed properly as if it were an initial financing statement (the Revised Article 9 equivalent of a UCC-1) and filed in the correct filing office under Revised Article 9. One may then list previously filed financing statements as financing statements to be continued, indicating the jurisdiction and date of filing and the file number of each statement to be continued (and the filing date and number of the most recently filed continuation statement, if any). These may be financing statements filed in any other jurisdiction, at any time (provided they are still in effect on the date the "in lieu" statement is filed) and there is no limit on how many financing statements may be listed to be continued in the new, single correct jurisdiction for filing under Revised Article 9.

The proper filing of such an "in lieu" statement has the effect of continuing all listed financing statements, thus preserving the secured party's priority based on the date of original filing. The filing date of the "in lieu" financing statement, however, becomes the new filing date for the purpose of filing further continuation statements. In other words, once pre-Revised Article 9 effective date financing statements filed in other than the correct Revised Article 9 jurisdiction have been continued by an "in lieu" filing, later continuations must be filed within six months prior to the fifth anniversary of the "in lieu" filing date.

If any pre-effective date financing statements need to be amended, whether because of enactment of Revised Article 9 or for any other reason, Rev§9-707 provides expressly that the amended information may be contained in the "in lieu" statement or in a separate amendment statement filed after the "in lieu" statement is filed. In any jurisdiction that has adopted Revised Article 9, it will not be efficacious after the Revised Article 9 effective date to file either an amendment or a continuation in the filing office in which a pre-effective date filing has been made (assuming such filing office is not also the correct Revised Article 9 filing office, of course), to this ability to continue and amend existing financing statements by filing elsewhere is critical.

The only exception to the principle that after the Revised Article 9 effective date, the only filings that count are those made in the correct Revised Article 9 filing office, is for termination statements. Terminations may be filed in the filing office in which the original filing was made, unless the original filing was continued by an "in lieu" statement, in which case, of course, the termination must be filed in the new Revised Article 9 filing office.

Conclusion

The advent of Revised Article 9 will affect our analysis of every personal property secured transaction, both those already closed and new transactions. This will be especially complex during the next several years because we will need to identify collateral and perfection steps both under existing Article 9 in each applicable jurisdiction and under Revised Article 9.

As of May 10, 2001, 35 states and the District of Columbia had adopted Revised Article 9, and all but one of such jurisdictions retained the uniform effective date of July 1, 2001. Revised Article 9 legislation has been introduced in the remaining 15 states and the U.S. Virgin Islands and informal polls suggest we will see adoption, effective July 1, 2001, in many of these. Of course, transition will be made more difficult if any jurisdiction fails to enact Revised Article 9, although the difficulties should be able to be overcome with analysis and foresight.

Revised Article 9 is a difficult work if it is approached as literature. I wouldn't recommend sitting down to read it, for instance, without the Official Comments. I would recommend going to as many seminars and programs at which Revised Article 9 is discussed as you have time for and beginning now to analyze each new transaction in Revised Article 9 terms. ▣

Dana Smith Kull is a partner with the international firm of Hunton & Williams. Kull received a J.D. degree in 1977 and a M.B.A. degree in finance in 1972 from the University of Chicago, and a B.A. degree in government in 1969 from Cornell University. Her practice focuses on private debt financing transactions and representing major U.S. lenders in connection with their asset-based, cash flow and syndicated loans.

Endnotes

1. Accessible at http://www.legis.state.ga.us/Legis/2001_02/fulltext/hb191.htm.
2. Official text of the Uniform Commercial Code, Revised Article 9 © 1999 by The American Law Institute and the National Conference of Commissioners on Uniform State Laws.
3. References to existing Article 9 are to UCC Article 9 as in effect in Georgia are to O.C.G.A. §§11-9-101 *et seq.*
4. References to Revised Article 9 are to UCC Article 9 as set forth in House Bill 191, to be published as O.C.G.A. §§11-9-101 *et seq.* with an effective date of July 1, 2001.
5. Revised Article 9 §102.
6. O.C.G.A. §11-9-103(3)(d).
7. O.C.G.A. §11-9-103(3).
8. O.C.G.A. §11-9-103(1).
9. N.C.G.S. §25-9-401.
10. Revised Article 9 §§301 and 307.
11. Revised Article 9 §316; security interest ceases to be perfected as to all property four months after debtor's location changes.
12. Revised Article 9 §518.
13. Liens in respect of boll weevil eradication obligations (O.C.G.A.§§2-7-150 *et seq.*), rent for farming property and other obligations to landlords for equipment, supplies, etc. (O.C.G.A.§§44-14-340 *et seq.*), laborers' wages (O.C.G.A.§§44-14-380 *et seq.*) and stud obligations attaching to offspring (O.C.G.A.§§44-14-511 *et seq.*).
14. Though there is no requirement that the depository bank, the debtor and the lender sign the same agreement; the undertakings can be contained in more than one record.
15. Revised Article 9 §314.
16. Revised Article 9 §102(a)(44).
17. Revised Article 9 §611 and 612.
18. Revised Article 9 §611(e).
19. Revised Article 9 §§620-621.
20. Revised Article 9 §620.
21. O.C.G.A. §11-9-110 (applicable to all collateral descriptions), Rev§§9-108 and 9-504.
22. Revised Article 9 §504.
23. Revised Article 9 §§506(b) and 503(a).
24. At least to the extent a financing statement is claimed to be seriously misleading because of an error in the debtor name.
25. Revised Article 9 §702.
26. Revised Article 9 §703.
27 Revised Article 9 §705(c). Pre-effective date financing statements will lapse on June 30, 2006, if that is earlier than the lapse date under prior law.
28. Revised Article 9 §§704(3) and 9-322(a). See also Official Comment to the uniform version of Revised Article 9 §709.
29. Revised Article 9 §706.

Board of Governors Meets at Pinehurst

By Robin E. Dahlen

More than 100 State Bar of Georgia members came together in the Village of Pinehurst, N.C., March 9-11, 2001, for a discussion-filled Board of Governors meeting, breakout sessions and a weekend full of recreational activities. Members of the Executive Committee, members-at-large and section leaders heard progress reports from high-priority committees and received an update on the 2001 legislative session. The following issues were discussed:

Member Discounts

Following an extensive report given by Kenneth L. Shigley, Membership Services Committee chair, the Board approved by unanimous vote the committee's recommendation that the following services, which are willing to offer various discounts to Bar members, be included in the Bar's recommended services: Paychex; Emory Vision Correction Center; Joseph A. Banks; The Surety Group/Sam Newberry; and United Parcel Service. The aforementioned services are subject to contract approval by Bar Counsel.

Legislative Activities

The Advisory Committee on Legislation provided an update on the 2001 session of the General Assembly. A complete report on the Bar's legislative program appears on page 18.

YLD Activities

Young Lawyers Division President-Elect Peter J. Daughtery reported on recent YLD activities, including: Bridge-the-Gap Seminar, which had over 600 members in attendance; the Great Day of Service; a Pro Bono campaign project; and plans for the YLD Spring Southeastern Regional Conference.

Practicing Across State Lines

Dwight J. Davis, co-chair, provided a report on the newly formed Multijurisdictional Practice Committee and the issues that the committee is reviewing. In addition, Davis passed out a survey to Board members to gather information on the practice of law across state lines. The survey will be used to aid the committee in determining its programs and directives.

1. Judge and Mrs. Hugh Sosebee (seated) enjoy the barbecue buffet at the Resort Club Veranda with Chris Phelps (standing). 2. John and Beth Chanis Chandler soak up some spring sun outside the Pinehurst clubhouse. 3. State Bar President George Mundy welcomes members of the BOG to the Spring Meeting. 4. (l-r) Rob Chambers, Tom Chambers, Rudolph Patterson and Robert Ingram test their skill on the legendary Pinehurst No. 2 course. 5. Lamar and Sandy Sizemore enjoy an afternoon of shopping in Pinehurst Village. 6. Huey and Brenda Spearman tour the Pinehurst Village with their son Brett. 7. YLD President-Elect Pete Daughtery addresses the BOG regarding plans for the YLD Spring Southeastern Regional Conference.

Other Business

The Board of Governors addressed a number of other issues, including:

- recognizing in memoriam State Bar members Omer W. Franklin Jr. and Ross Adams;
- reviewing a copy of the 2001 Board of Governors and officer election results;
- approving a proposed name change of the Computer Law Section to the Technology Law Section;
- receiving a copy of the new Unauthorized Practice of Law rules; and
- convening a special Board meeting in Macon, Ga., May 3, 2001 to discuss Board reapportionment.

Beyond Bar Business

In between meetings and breakout sessions, board members and their guests took advantage of an array of activities from golfing and tennis to shopping and walking tours of Pinehurst Village. On Saturday evening, attendees enjoyed a barbecue buffet fit for champions at the Resort Club Veranda, which overlooks the legendary Pinehurst No. 2 — site of the 1999 and 2005 U.S. Open Golf Championships. The evening also included live entertainment and a putting contest on the famed No. 2 putting green.

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

Corporate Counsel Share Views, Strategies

By Robin E. Dahlen

Close to 200 legal professionals gathered in Atlanta at the Hyatt Regency for the State Bar of Georgia Diversity Program's sixth CLE Conference — "A Candid Conversation with Corporate Counsel." The conference, held March 29, 2001, incorporated panel discussions on such topics as retention, maintaining effective outside counsel relationships and incorporating diversity. Panel members included: William Hawthorne, divisional vice president and assistant general counsel, Federated Department Stores Inc.; Robyn C. Mitchell, assistant general counsel, Bank of America; Terri Purcell, vice president and deputy general counsel, Coca-Cola Enterprises Inc.; and Paul Shlanta, senior vice president and general counsel, AGL Resources Inc. Steven Staes, member of the Georgia Diversity Program Committee, served as moderator for the half-day conference.

1


2


3

1. Luncheon guest speaker Lani Guinier shares her views on diversity and the future of the civil rights movement. 2. Members of the diversity panel share their experiences with conference attendees. (standing) Steven Staes, panel moderator. (l-r) Paul Shlanta, Robyn C. Mitchell, Terri Purcell and William Hawthorne. 3. Diversity conference attendees enjoy the post-CLE luncheon and guest speaker at the Hyatt Regency Hotel in Atlanta.

During the morning's program, attendees were given the opportunity to view a video created by Lawyers for One America (LFOA). The video was produced in response to a request from President Clinton for the legal community to intensify its diversity and pro bono efforts. The video featured Georgia Chief Justice Robert Benham and addressed pro bono and diversity projects currently at work in the state.

Following the CLE portion of the conference, attendees were treated to luncheon guest speaker Lani Guinier, professor of law, Harvard University. Guinier, the first black woman tenured professor at Harvard Law School, is the author of the recently published book, *Lift Every Voice: Turning a Civil Rights Setback into a New Vision of Social Justice*. During the luncheon, Guinier discussed her rise to public attention after President Clinton nominated her in 1993 to be the first black woman to head the Civil Rights Division of the Department of Justice and then withdrew her name without a confirmation hearing. For Guinier, the experience placed the spotlight on the civil rights movement - past, present and future - and prompted her to write her personal and political story.

The State Bar of Georgia Diversity Program represents a major commitment to increase opportunities for ethnic minority attorneys in the assignment of corporate and governmental legal work. Participating corporations and government entities seek to forge a lasting working partnership with minority lawyers throughout Georgia. This program is open to all minority- and majority-owned law firms, as well as corporations and governmental agencies in Georgia. For more information, contact Violet Ricks, Diversity Program executive director, at (404) 527-8754.

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

Symposium Examines Ethics in Settlement Negotiations

By Patrick E. Longan

On March 9 and 10, 2001, Mercer University's Walter F. George School of Law, and its new Mercer Center for Legal Ethics and Professionalism, held a symposium on ethical issues in settlement negotiations. The featured speakers for the symposium were Judge Patrick E. Higginbotham of the United States Court of Appeals for the Fifth Circuit and Lawrence J. Fox, a leading expert on legal ethics and a member of the American Bar Association's (ABA) Ethics 2000 Commission.

The symposium examined a set of Ethical Guidelines for Settlement Negotiations being drafted by a task force of the ABA Section of Litigation. The Litigation Section agreed that the Mercer symposium would provide a type of "public hearing" for the guidelines, in their draft form, as they stood in March 2001. In addition to the presentations by Higginbotham and Fox, the symposium consisted of panel discussions of the parts of the guidelines dealing with limits on misleading conduct, conditions in settlement agreements and fairness in settlement negotiations. The symposium concluded with a panel discussion about special issues in assisted settlement.

(l-r) Professor Nathan Crystal, Chief Justice Tom Zlaket and Reece Smith following their panel discussion on "Truthfulness in Negotiations."

Each panel included a practicing lawyer, an academic and a judge to ensure that the three different perspectives of each of these branches of the profession were heard. The panelists on the first day of the symposium included: Wm. Reece Smith Jr., former president of the ABA and the International Bar Association; Chief Justice Tom Zlaket of the Supreme Court of Arizona; Evett Simmons, the current president of the National Bar Association; Chief Judge Marvin Aspen of the United States District Court for the Northern District of Illinois; and C. Ronald Ellington, the A. Gus Cleveland Professor of Legal Ethics and Professionalism at the University of Georgia School of Law. Among the panelists the second day were: Judge Mary Scriven, United States Magistrate Judge for the Middle District of Florida; Jim Elliott, associate dean for External Affairs at Emory University School of Law and a former president of the State Bar of Georgia; Judge Phil Brown of the Superior Court for the Macon Circuit; and Ronald Jay Cohen, the founding partner of the Cohen Kennedy Dowd & Quigley firm in Phoenix and current chair of the ABA Litigation Section.

A transcript of the symposium is being published this summer in the *Mercer Law Review*. In addition to the transcript, the speeches of Higginbotham and of Fox will be published, along with other articles dealing with ethical issues in settlement negotiations.

Funding for the symposium came from a consent order, signed by United States District Judge Hugh Lawson, in which the DuPont Corporation settled claims of litigation misconduct in exchange for a payment of $11 million. In fulfillment of that consent order, each accredited law school in Georgia received $2.5 million to endow a faculty chair in ethics and professionalism, and the other $1 million was set aside to endow an annual symposium on issues of ethics and professionalism.

The symposium will rotate among Mercer University, the University of Georgia, Emory University and Georgia State University. The Mercer symposium was the first to be held pursuant to the Court's Order. The University of Georgia Law School will host next year's symposium.

Patrick E. Longan is the William Augustus Bootle Professor of Law in the Walter F. George School of Law at Mercer University in Macon, Ga.

georgia legal services full page b/w new art

The Georgia Justice Project: A Unique Approach

By Douglas B. Ammar

"When a poor person is accused of a crime, most of society sees this as the end. Georgia Justice Project sees it as a beginning."
—Martha Barnett, president of the American Bar Association

We are in the midst of a crisis. The prison population in the United States is over two million individuals. Incarceration rates in Georgia have more than quadrupled in the last 20 years. Private prisons are not only investment opportunities on the Stock Exchange, but also now are part of Georgia's Department of Corrections options.

Many feel that our current system of indigent defense is not working. In November 2000, Atlanta's Southern Center for Human Rights issued a preliminary report on Georgia's indigent defense system titled *Promises to Keep*: *Achieving Fairness and Equal Justice for the Poor in Criminal Cases*. That report found "that many [Georgia] counties are not meeting their constitutional, ethical and professional obligation to provide fair and equal treatment to poor people accused of crime." Thereafter, Chief Justice of the Georgia Supreme Court Robert Benham instigated a blue ribbon commission on indigent defense and Georgia held its first statewide symposium on indigent defense. This action followed a June 2000 national summit, sponsored by United States Attorney General Janet Reno, concerning the same subject — indigent defense.

Those on the receiving end of our nation's increased "war on crime" are overwhelmingly poor. In Georgia, over 80 percent (and over 90 percent in Fulton County) of those arrested and charged are poor. Our most vulnerable neighbors deserve our concern and attention. For many, arrest, jail, conviction, prison and returning to our community is a revolving door. The Georgia Justice Project (GJP), a small, non-profit in Atlanta, has been addressing these problems for 15 years with a creative, unique and innovative solution.

Measure of Success

Most lawyers gauge their success by the resolution of their case: jury verdicts, large settlements, acquittals, victories or favorable results for their clients. But rarely, for legal practices, is the vision of success broader than the resolution of the case. At GJP, the outcome of the case is only half of the success equation.

History of the Georgia Justice Project

Fifteen years ago, Atlanta lawyer John Pickens walked away from the lucrative world of corporate litigation. After practicing for over 10 years in this high-paying world, he took a walk of faith. After years of volunteering with churches and ministries around Atlanta, he felt the call to serve Atlanta's poorest citizens. His vision was two fold: to provide thorough and quality legal representation for people charged with crimes and to help those he represented to lead productive, crime-free lives. Thus, the GJP defines success not only by the question "Did we get a good legal result for our client?," but by also asking "Have we made a difference in our client's life?"

Though we realize much of what happens in the personal lives of our clients is beyond our control, it is not beyond our attention and concern. GJP is concerned and stays involved with clients, which is what makes GJP's version of services so compelling, so interesting and so fulfilling. GJP is about more than just doing a good job on a case — it's about staying in touch with clients and it's about being in relationship with them long after the case is over.

Services — What is the Georgia Justice Project (GJP)?

GJP's mission is to ensure justice for indigent criminally accused and take a holistic approach to assisting in establishing crime-free lives by addressing the whole person and building relationships with clients by providing:

- **Free Legal Representation in Criminal Cases**
  Excluding sex offenses, domestic violence, traffic and large drug cases.
- **Individual and Group Counseling**
  GJP employs a MSW and a certified drug counselor.
- **Prison Visitation and Post Release Support**
  GJP continues to visit clients, once convicted, and offer post-release support.
- **Jobs - New Horizon Landscaping (NHL)**
  Seven years ago NHL was launched to employ GJP clients released from prison and jail.
- **Community Dinners**
  With past and current clients, staff, volunteers and interns.
- **GED and Literacy Classes**

The Georgia Justice Project has been successful in implementing its program of representation and rehabilitation, and has helped many indigent clients in Atlanta. Clients who have active criminal cases pending receive quality legal representation free of charge; however, the relationship between GJP and the client is contractual. Potential clients work with GJP's social worker to create a contract that addresses the client's social service needs. The client must fulfill his or her part of the contract for the relationship to continue and to receive legal representation.

All clients must commit to participating in weekly individual and group counseling sessions and to performing service hours at the GJP office. Where appropriate, clients also commit to work for the GJP jobs program (New Horizon Landscaping), attend addiction counseling and attend GED classes. When applicable, GJP will help clients find an addiction treatment program. The goal is to offer a holistic program that addresses each client's legal and personal needs, while giving clients the tools they need to build a better, crime-free life.

One indicator of GJP's success is that over 80 percent of GJP clients remain crime-free, a rate that is nearly twice the Georgia average. This statistic shows GJP has been successful in implementing a cost-effective program. GJP operates without any support from the government. Instead, it is supported by the community via gifts from individuals, private foundations, churches and corporations. This makes GJP unique compared to most legal services.

Another indication of success is replication. In Athens, Ga., a group aptly named the Athens Justice Project (AJP) is starting a version of GJP. They have wide involvement from the Athens/Clarke County community. Three University of Georgia law professors (Milner Ball, Russell Gabriel and Alex Schurr) and a number of local lawyers are the driving force behind its inception. Within the next few months, AJP should be off the ground.

Below are three stories. Nothing better illustrates GJP's mission than clients' stories. These stories show how GJP's definition of success is much broader than most practices — even legal aid practices. Some say that GJP is "redefining the role of the lawyer;" that it is extending the realm and scope of a lawyer's work. You be the judge.

Neil's Story — Trouble in East Lake

We all thought he wouldn't make it. He had a few cases, mostly drug related. Nothing too serious yet, but he was only 17. Hanging out and selling drugs, he played a dangerous game of "follow the leader" in a culture dominated by the young, rough and ruthless. Neil came to GJP asking for help. He grew up on the streets of East Lake Meadows (a notorious housing project referred to as Little Vietnam). He used to carry guns — Tech 9s, Glock 9 mm and 38 calibers. He was arrested 17 times as a juvenile. Stealing cars and running from the police were his hobbies. "Nothing but trouble in East Lake. That's where everything started," he says.

His mouth is full of gold. His hair alternates between braids and a wild looking afro. His appearance and demeanor, tough and unyielding, shouted out for help. He dropped out of high school, hung out on the streets, sold dope, following in the footsteps of so many around him.

After he went through our required three interviews, we were not hopeful, but because I knew Neil (we represented his brother and mother), we decided to put him on a four-week contract. We always try a trial period with all of our clients to give them a chance to meet us halfway by showing up for counseling, groups and volunteer work at GJP before we agree to representation.

Neil was one of the first NHL employees who got a bonus check. For the first time in NHL's six-year history, we made a profit during some of the months in 1999 and Neil earned an extra $80.

While Neil worked at NHL, he regularly got another bonus, which he earned by being on time for work everyday, by not leaving early and by working all of his hours. He also got a raise for making good grades in night school and for his performance both on the crew and with GJP's counseling staff.

Few clients have been as dependable as Neil, who showed up everyday on time, worked hard and came to counseling meetings. His drug screens were always negative. He participated in planning the direction and future of NHL — all from a kid we almost didn't give a chance because we thought he was unreachable, too street, too removed. Now, Neil is in night school, trying to finish high school. He also still comes to GJP for tutoring. He has an apartment in College Park and his 17-month-old son is his pride and joy. He has a savings account. "Selling drugs was easy money, but this is legal money, good money, not dirty

money. You can put it in the bank and nobody can touch it." And after working for over 1 1/2 years for NHL, he got another job paying almost twice what he was making here.

After over 1 1/2 years, we were finally able to successfully resolve all of Neil's cases, which were spread out in three different courts. Neil's conduct and involvement with GJP gave us something to use, to leverage, to show the judges that this young man was changing his life. Once the judges and DAs saw this change, it was easy resolving his cases.

Al's Story — A Redemptive Alternative

It started around noon. Al and Dan skipped school with some classmates. Five high school guys cruising around Atlanta. Liquor, beer and marijuana flowing freely. The drugs and alcohol were not hard to get, except when the money ran out, which it did around 8 p.m.

That is when Rod, the ringleader of the truant partiers, pulled out a silver 32 caliber pistol, turned to Al and Dan and said, "I bought the first round now it's your turn." "We don't have any money," they protested. "Then it's your turn to rob somebody." Rod dropped them off near a local university. He shoved the gun into Dan's front pocket. Drunk, high, threatened and feeling pressured to pull their weight, Al and Dan got out and held-up the first three students they saw. Their loot was a total of $16.

The police arrested them a few minutes after the robberies. They were hard to miss: two African American kids, one 6'5" and the other 5'2", walking in a secluded area of campus where the robberies occurred. Shortly after the arrest, both Al and Dan confessed.

A few days later, a Young Life (a Christian outreach program for teenagers) friend called and told me that Al and Dan were in jail for armed robbery. For years I volunteered with inner city Young Life . I knew Al and Dan. Both were good kids. They lived in the Techwood housing project. They availed themselves of positive opportunities that required commitment and dedication: Yes Atlanta, The Atlanta Youth Project, Young Life, Techwood Baptist Center and the Atlanta Project. Though they struggled with school, both went to night school in addition to regular high school.

Al and Dan are not saints, but they are also not demons. They had not gotten into trouble before. But this night, under the influence of drugs, alcohol and a tough kid with a gun, they succumbed to peer pressure by making the wrong choice.

We decided to represent Al. His case was not about guilt or innocence. Al confessed as soon as he was arrested. The only issue left was sentencing. My plan was to create a sentencing alternative (to prison) that would deal with the causes of why he committed the crimes. I wanted to give the district attorney and the court an option instead of sending him to prison. I put together a team of mainly youth workers and ministers who knew Al from various programs he participated in.

Al remained in jail while we put together a plan. We regularly visited him during his incarceration. As with most criminal cases, drugs and alcohol were involved. Thus, foremost in our plan was securing a drug program for Al. After months of interviews and phone calls, we located an inpatient, long-term drug program that agreed to admit Al. We lined-up two employment readiness programs for Al after the drug program. People wrote letters to the court and the district attorney. One even visited with the district attorney.

I interviewed the victims, all young international college students, who said that Al and Dan appeared more frightened than they were, that Al and Dan even shook their hands, said goodbye, wishing each of them a good night after the robberies. At my suggestion, Al wrote the victims and asked for their forgiveness. As a result, one of the victims became an ally for Al, writing a letter to the district attorney saying, "They made a mistake. Please don't make a second mistake by sending these kids to prison. That will only ensure their continued spiral downward."

Finally, after months of prayer, phone calls and letters, the district attorney agreed to the plan. We presented it to the judge. One of the victims even came to court in support of our plan. After hearing all this support and our specific sentencing plan, the judge accepted it. After spending nearly a year in jail, Al was sentenced to five years probation with strict conditions that he complete the drug program, maintain employment and obtain his G.E.D.

Al completed the drug program successfully. Then he came to work for NHL. Al proved himself to be serious, dependable and hard working. After attending counseling sessions and working on his G.E.D., he left NHL for a better job. Today, Al is a productive, drug-free citizen.

Cedric's Story — Sometimes Once is Not Enough

Five years ago, Cedric called GJP for legal help. His drug addiction had landed him in jail and prison more times than he could count. There was a problem and he didn't have the answer.

We conditioned our representation on Cedric's getting help. If he were willing to get clean, then we would be his lawyers. In jail, faced with little hope, he agreed. We filed a bond motion, argued for his release and arranged a spot for him in a treatment center.

He lasted two weeks in the treatment center. Taking to the streets again, he relapsed into a world of drugs and street crime. A world he was trying to shake loose; a world with a stingy grip.

Like many fledgling recovering addicts, Cedric sobered and relapsed several times. This cycle repeated a few more times until finally Cedric knocked on our door. A buddy accompanied him — no one is allowed to leave the drug program alone. He hugged me tight and told me he had been clean for a month. I smiled and told him to check back every month. When he was serious about staying clean, then we'd get involved. After nine months of sobriety, I knew he was serious. He signed a GJP client contract, agreeing to come to the Men's Support Group and work around the office a few hours each week.

It was over a year later that we resolved all of Cedric's legal troubles. It took months to compile letters and records showing Cedric's progress (including letters from his job, letters from the recovery center, drug screen test results) and to negotiate with the prosecutors and the probation officers. After that, it took months to convince calendar clerks and sheriffs to put his cases on the calendar without having him arrested for his outstanding warrants.

By the time we went to court, Cedric was clean for nearly two years. He was working, living in a long-term residential treatment facility and saving enough money to pay restitution for his property offenses. Though he had a long record, the judges sentenced him to probation, allowing him to resume his new life. The changes Cedric made in his life created this opportunity, and we used our position as lawyers to urge him down a path of recovery and redemption.

Reflections on GJP's Mission

These stories demonstrate how many folks in the criminal justice system are eager to rebuild their lives, but need help. Prison sentences and probation are often the narrow view and, by themselves, do not solve the problem. Though not every court is so enlightened, more and more people in the criminal justice system are realizing that the one-dimensional approach to crime (and criminal defendants) does not work. It only results in more prisons, more lost lives, less rehabilitation and more polarized communities — less redemption for all of us. Alternative sentencing and the movement towards restorative justice point toward both a tiredness with the old system and a need for openness with processes and structures that change the underlying issue.

Recently, a GJP supporter told me that our ministry is one of forgiveness. "Forgiveness?," I asked. "How do you figure that?" She said that to represent the folks we do, take an interest in them, develop a relationship and be with them for the long haul, we had to forgive them first, otherwise we could not form a relationship. I never thought about it, but perhaps she is right. We gave Neil a chance to succeed and he did. Neil reminds us that even those we think will fail, even those we hold little hope for, even those least likely to garner our confidence, they are the ones who sometimes surprise us. In Al's case though, it took more than my forgiveness; it took the victims to forgive him, too.

A few weeks ago, I was having dinner with a friend. After talking about GJP's work, he paused, looked me in the eye and said, "Do you know what makes GJP so different? It's that you are more than lawyers. You offer not just services, but you offer yourselves in relationship." I think he is right. It is in the context of relationship, specifically the attorney-client relationship, that we address our clients' needs. We do more than simply offer technical assistance to solve the legal problems of the poor. We are not just a lawyer or an advocate or a technician. We are present before and after the legal problem.

Everyone at the GJP was reminded of this at our November 1998 community dinner. Consistent with our custom, we asked one of our clients to share his journey. This time it was Cedric's turn. Dressed in a pressed white shirt and black pants with a distinct crease, Cedric looked good as he stepped through the door. He offered deep hugs to everyone. Sitting down and talking with him, a calm, refreshing presence was felt. Like a spring rain, he was present, speaking with a soft confidence and gentle warmth. He's giving out love now. GJP has the privilege to forge such redemptive relationships. This was our founding vision - to be more than lawyers. And by being more, we not only change our clients, but also offer a broader vision for what it means to serve and for what it can mean to be a law office. It is a call to serve with your heart and mind at the same time.

Occasionally I am asked: "Why is there a need for GJP? Doesn't the government provide a public defender?" I respond there is no legal group in the country who represents the family, follows clients to prison, offers counseling, offers education, offers a job and continuing support to their clients. GJP's commitment is to help clients break their cycle of poverty, prison and pain. GJP's approach is more than indigent defense — it is an integrated and holistic response to those in desperate need. Len Horton, director of the Georgia Bar Foundation, once wrote that "GJP creates a new family" for our clients. Though we do not normally phrase it that way, he's right.

Most structures, even service-oriented organizations, don't allow for such "extravagances." Yet, in the midst of an increasingly isolated society, the need to create community, the need for significant and redemptive human connectedness, has never been greater. Our culture has been losing the battle of community and relationships. I believe that it is the context of relationships that we find our own redemption. Why should lawyers be any different? ▣

Douglas B. Ammar is the executive director of the Georgia Justice Project.

Pro Bono Honor Roll

The Pro Bono Project of the State Bar of Georgia salutes the following attorneys who demonstrated their commitment to equal access to justice by volunteering their time to represent the indigent in civil pro bono programs during 2000.

Georgia Legal Services Program

Abbeville
David Morgan
Albany
(*Sponsored by The Dougherty Circuit Bar Association*)
Eugene Black Jr.
Jerry Brimberry
Valerie Brown-Williams
William Cannon
Susan Carpenter
Greg Clark
Cawthon Custer
Shelley Davidson
Samuel Engram
William Erwin
Gregory Fullerton
Johnnie Graham
Kevin Hall
Tony Jones
Rodney Keys
Michael Meyer von Bremen
Rudolph Patterson
Holcombe Perry
Noel Perry
Keith Pflepsen
Randolph Phillips
Ralph Scoccimaro
Herbie Solomon
Alma
Frank Gonzalez
Americus
Cecelia Cooper
Benjamin F. Easterlin IV
Donald Lamberth
Ashburn
Stephen Ivie
Athens
J. Edward Allen Jr.
Patrick Beall
Thomas A. Camp
Brian Carney
Stan Durden
George Peters Jr.
William Sotter
Atlanta
Jeremy D. Arkin
John Bennett
Robert Brazier
J. Franklin Burns
B. Knox Dobbins
Pete Duitsman
R. Michael Edmonds
Hannibal Heredia
Rick Hertzog
James Kane
Michelle Kenyon
Michael Mason
Vicky Norrid
Tim Phillips
Neal Ray
Joseph E. Smith
T. Martin Smith
Fred Westberry
Kay Young
Augusta
Thomas Alford
Benjamin Allen
David S. Anderson
Lisa L. Clarke
Jean M. Colohan
J. Edward Enoch Jr.
Douglas J. Flanagan
Peter Flanagan
Stanley C. House
Pamela S. James
Clayton L. Jolly III
William O. Key
Leon Larke
Angela C. McElroy
Lauminnia F. Nivens
Evita A. Paschall
Marilyn S. Protzeller
Catherine V. Ryan
Mark Williamson
Helen W. Yu
Bainbridge
Paul Fryer
Blackshear
Teresa G. Bowen
Bremen
David Smith
Brunswick
R. Flay Cabiness
Robert M. Cunningham
Denise S. Esserman
Carlton Gibson
Eugene Highsmith
Newell M. Hamilton Jr.
Patrick C. Kaufman
Steven L. Morgan
Richard Simpson
Lloyd E. Thompson Jr.
Holle Weiss-Friedman
Buford
Marion Ellington Jr.
Calhoun
Barry Benton
Joseph Little
Camilla
Randolph Giddings
Canton
Rebecca Cruse
Colquitt
Danny Griffin
Carrollton
Michael Flinn
James Hopkins
Christopher Scott
Greg Shadrix
Ruben Word
Cartersville
Kelly Dial
Don Evans
Michael Evans
Garland Lea
Anthony Perrotta
Christina Stahl
Cohutta
Todd Johnson
Columbus
(*Sponsored by The Columbus Bar Association*)
Thomas Affleck
William Arey
Jacob Beil
Gary O. Bruce
Mary Buckner
Joyce Bussey
Lois Byrd
Arnez Cherry
Richard Childs
Leslie P. Cohn
Andrew C. Dodgen
William A. Edwards
Walter L. Fortson
Dana Gentry
Larry Gordon
Maxine Hardy
Kenneth M. Henson Jr.
Ronald S. Iddins
Robert K. Imperial
Gary L. Johnson
Clay D. Land
Bemon G. McBride III
Elizabeth McBride
Ashley Cooper McKenna
Nancy Miller
William Nash II
John H. Nix III
John P. Partin
Houser Pugh
Pedro Quezada
Alan F. Rothschild Jr.
William Rumer
Larry L. Taylor
William Tucker
Hillman Toombs
Joseph Wiley Jr.
Dorothy Williams
Richard B. Zimmerman Jr.
Conyers
(*Sponsored by The Rockdale County BarAssociation*)
Nancy Bills
William Lavigno
John Leggett
John Llewellyn
Garland Moore
Albert Myers
Michael Waldrop
Cordele
Clifford Harpe
G. Russell Wright
Cornelia
James R. Acrey
Covington
Ronnie Cowan
John Degonia
Reed Edmonson
Stephanie Lindsey
Mario Ninfo
Dallas
Kimberly Puckett
Randall Williams
Dalton
(*Sponsored by The Conasauga Bar Association*)
David Blackburn
Steve Bolding
Dianne Cook
Scott Cunningham
Tommy Goddard
Michael D. Hurtt
Robert Jenkins
Cindy Morris
Matthew Thames
J. Tracy Ward
Darien
Adam S. Poppell III
Dawson
Wilbur T. Gamble III
Charles Hunt
Donaldsonville
William Shingler
Douglas
Clyde W. Royals
Douglasville
Leonard Danley
Victoria Embs
Ellene Welsh
Dublin
Rocky Wendell Adams
Carolyn Hall
Eastman
Jeffrey W. Cacioppo
Rita Llop
Fayetteville
Leonard Presberg
Fitzgerald
Robert W. Chasteen Jr.
Forsyth
Ashley W. Hawkins
Fort Oglethorpe
Steven Moore
Gainesville
Susan D. Brown
John Knight
Neil Smith
Hal Walker
Christopher W. Willis
Griffin
Tim Cramer
Dean Fuchs
Griffin Howell
William Johnson
Lance Owen
Don Taliaferro
Hartwell
Joanna B. Hannah
Hawkinsville
David Venable
Hazlehurst
John B. Brewer III
Hinesville
John Pirkle
Hiram
Donald Donovan
Jackson
William P. Bartles
Jefferson
Joseph H. Booth
Paula O'Neal Free
Walter B. Harvey
Thomas E. McCormack
LaGrange
David Alan Fowler
Lee R. Hasty
Luther W. Jones
Ricardo G. Samper
Anthony Sandberg
Frank Thornton
Lawrenceville
Randall F. Forester
Leesburg
William Oakes II
Lexington
Susanne F. Burton
Louisville
H. Brannen Bargeron
Macon
(*Sponsored by The Macon Bar Association*)
Danny Akin
James W. Avant
Nancy Atkinson
Thomas Bohan
Pamela Boylan-Hill
Michael Carpenter
Donna Culpepper
Jeffrey Hanson
Thomas Herman
Roxanne Hinson
Thomas Jarriel
Dana Johnson
Paula Kapiloff
Richard Katz
A. G. Knowles
Allen Lawson
J. Patrick Myer Jr.
Richard B. Miller
Kirby Moore
Darryl Morton
Stacey Nestor
Ann Parman
Rudolph Patterson
Brian Randall
Rhonda Roell-Taylor
William Lee Robinson
Margrett A. Skinner
Kim Stroup
Susan Teague
Richard Thornton
Joy Webster
Carl Westmoreland
Larry Williams
James Wootan
Randy E. Wynn
Madison
Jeffrey Davis
Marietta
Kenneth Clark
Martinez
Dewitt R. Dent
Jennifer McKinzie
Roy D. Tritt
McRae
William T. Straughn
Milledgeville
Phillip J. Carr
Cassandra Ford
Monroe
W. Randolph Ashe
Larry Pruden
Moultrie
Rodney Allen
Sam J. Gardner
William McIntosh

Pro Bono Honor Roll

Mickey Waller
Newnan
Jonathan Hickman
Ike Hudson
Alan Jackson
Robin Mayer
Doris Orleck
Oglethorpe
G. Leonard Liggin
Pearson
William A. King
Pooler
Charles C. Grile
Powder Springs
James Hindmon
Quitman
Allen D. Denton
Gerald Spencer
Ringgold
Lawrence Stagg
Rockmart
Charles Pinkard
Rome
(*Sponsored by The Rome Bar Association*)
Scott Callan
Paul T. Carroll
Timothy Crouch
Floyd Farless
Mary Beth Gregorie
John Niedrach
James Satcher
Bob Steinbrueege
Michael Strickland
Rebecca Strickland
Savannah
(*Sponsored by The Savannah Bar Association*)
Kathleen Aderhold
Norman C. Anderson
Solomon A. Amusan
Robert Asby
Karen Dove Barr
Langston T. Bass Jr.
Thomas R. Bateski
Charles W. Bell
Audrey Biloon
James B. Blackburn Jr.
Frank P. Brannen
Robert B. Brannen Jr.
Dana F. Braun
Kenneth "Chip" Cail Jr.
Dolly Chisholm
Jeffrey Clements
Dorothy W. Courington
Brian Daly
Charles M. Dalziel
Richard M. Darden
Robert J. Duffy
Gwendolyn Fortson-Waring
Joseph M. Gannam
J. Hamrick Gnann Jr.
Richard J. Harris
John M. Hewson III
William F. Hinesley III
W. Thomas Hudson
Edward Hughes
Leamon R. Holliday
Kathleen Horne
George M. Hubbard
William T. Hudson
Martin S. Jackel
G. Terry Jackson
Lester B. Johnson III
J. Stephen Lewis
Charles V. Loncon
Malcolm Mackenzie
Janna Martin
Albert Mazo
Christine T. McDonnell
Zena McLean
Richard C. Metz
Burton F. Metzger
Shari S. Miltiades
Diane Morrell
Gary Michael Newberry
Patrick T. O'Connor
Gerald Olding
Virginia E. Patterson
Patricia T. Paul
Carl S. Pedigo Jr.
Janice Powell
Bonzo C. Reddick
Kran Riddle
Christopher Rouse
Mark Schaefer
Michael G. Schiavone
William W. Shearouse Jr.
Robert B. Simonton
Christian J. Steinmetz III
Kevin J. Street
Bridget D. Swing
Bryon A. Thernes
Leonard M. Trosten
J. Scott Vaughan
Janice Wahl
J. Reid Williamson III
Willie T. Yancey II
Stephen Yekel
St. Marys
Garnett Harrison
John S. Myers
Stockbridge
Michelle Boyd-Clark
Summerville
Albert Palmour
Thomaston
Allen Adams
Alan Connell
Don Snow
Thomasville
S. Andrew Seery
Tifton
Melinda Phillips
Toccoa
Russell W. Smith
Valdosta
Michael S. Bennett Jr.
Patrick Cork
James Council
Pauline Council
William Edwards
William R. Folsom
Laverne Gaskins
John D. Holt
J. E. Jarvis Jr.
Robert D. Jewell
Patricia Karras
Vernita Lee
Molly S. Mathis
Floyd Moon
Douglas Mutert
James R. Smith Jr.
David F. Sandbach Jr.
James Tunison
Vidalia
Sarah Tipton-Downie
Warner Robins
William J. Camp
Danielle Hynes
Charlene Gail Robinson
Keith Salmon
Charles Taylor
George Williams
Carl A. Veline Jr.
Wayne Yancey
Washington
M. V. Booker
Waycross
Justine Cabral
Mary J. Cardwell
Scott C. Crowley
Martin Eaves
William R. Little III
Jeffrey D. Garmon
Huey W. Spearman
Talethia R. Weekley
Waynesboro
Edward J. Grunewald
Winder
John Russell
Woodbine
Catherine M. di Lorenzo

Attorneys Who Volunteered Through the Pro Bono Project in 2000

Atlanta
Philip Darke
Crystal M. James
Denise Kaufman
Mark D. Lefkow
Thomas C. Lundin Jr.
Meredith Ragains
Juliette W. Scales
Ashley Stinson
Brunswick
Carlton Gibson
Cairo
Dan Williams
Chamblee
Chris Palazzola
College Park
Muriel B. Montia
Jefferson
Juli Wisotsky
LaGrange
Anthony B. Sandberg
Lithonia
Felita Weldon
Roswell
Cam Head
Elizabeth Sharpe
Robert Michael Sheffield
Sparks
Mickey Johnson
Tucker
Charles H. McAleer
Valdosta
Robert Daniel Jewell
James Gostin Tunison Jr.

AIDS Legal Project

Atlanta
Chip Rowan
Decatur
David Paul Pollan

Atlanta Volunteer Lawyers Foundation

Alpharetta
Elyse Aussenberg
Veronica Cherniak O'Brien
Stephen F. Dermer
Stuart Gordon
Tara McNaull
Atlanta
E. Jay Abt
Amy K. Alcoke
Jan Allen
Carsten Alting
Gloria Alvarez
Precious Anderson
Moore Adan D. Araujo
Lisa Arent
Joel Arogeti
Katherine Arrington
Susan Arrington
William R. Asbel Jr.
Mike Athans
G. William Austin III
Andrea L. Bailey
Emily S. Bair
Mark A. Baker
Henry Balkcom
Gracy Barksdale
Peter B. Barlow
Robert Barnaby
Sidney Barrett
Angela Batterson
Nancy Baughan
Stanley Baum
R. Daniel Beale
Kenneth Behrman
Jeff Berg
Amy Bergeron
Kathryn Cater Bergquist
Betty Green Berman
Christopher Berney
Karen Bernstein
J. Stephen Berry
Kenya D. Berry
Matthew Berry
John Bielema
Maria Blanco
Lisa Radtke Bliss
Simon H. Bloom
Melissa Blum
Bridget Bobick
Teresa Thebaut Bonder
Hon. Alice Bonner
Phillip A. Bradley
Wayne N. Bradley
Jeffrey O. Bramlett
Nancy Bramlett
Lisa Branch
Benjamin Briggs
Winston Briggs
Hon. M. Gino Brogdon
Benjamin John Brooks
Michael E. Brooks
Frank O. Brown
Ivory T. Brown
W. Jeffrey Brown
James S. Bruce
John Patterson Brumbaugh
Allen Buckley
Landon Buffington
Carol L. Buffum
Carin Burgess
Brian D. Burgoon
Alexandra E. Burns
Kaye W. Burwell
Annarita McGovern Busbee
Katherine Butler
Kathlynn L. Butler
Torris Butterfield
Courtney C. Camp
Stephen Camp
Sally Cannon
David S. Cartee
Christine Cason
Thomas Hauser Castelli
Jay Castle
David L. Cates
Camille Cazayoux
Henry Chalmers
Roger Chalmers
John Chandler
Susan Chiapetta
Betsy Choder
Samuel S. Choy
Jeremy E. Citron
James A. Clark
Charlotte Clark Knight
J. Keth Coates Jr.
Larissa M. Cochron
Jason H. Coffman
Walter Cohen
Mark Cole
Sean J. Coleman
Shania Coleman
Carolina Colin-Antonini
Katrenia R. Collins
Joyce Colmar
Sue Colussy
Charlotte Combre
Marissa G. Connors
Douglas Cook
Donald L. Cook Jr.
Marsha D. Courtright
Matthew T. Covell
Joan Cravey
Scott Crisler
Rebecca Culpepper
Tracy Culver
Thomas W. Curvin
Lesley Daigle
Steven Daniels
Lauren Danielson
Aaron Danzig
David Darden
William de Golian
Shelli N. de Roos
George R. Dean
Patrick Deering
Scott D. Delius
Bruce DelMonico
Carolina Den Brok-Perez
Jennifer DeSimone
Audra A. Dial
Nikola R. Djuric
Ken Dobkin
Roslyn Dodell
Alex J. Dolhancyk
Art Domby
M. Owen Donley
Robert F. Dow
James B. Drew Jr.
Melvin Drukman
Michael Dubus
Marshall B. Dukes
Elizabeth A. Dungey
John A. Earles

Pro Bono Honor Roll

Sterling P. Eaves
Deborah Ebel
Kurt D. Ebersbach
Nina J. Edidin
C.T. Ejisoby-Nwosu
Donald J. Ellis
Robert A. Elsner
Kevin Elwell
Sarah Evans
Marian Exall
Tamar Falhauber
Neil D. Falis
Guanming Fang
Rebecca D. Farber
Joe Farrell
Scott Farrow
Laura Fenn
George R. Ference
Gary Flack
Andrew B. Flake
Teri Forehand
Hon. J. Owen Forrester
Hon. Susan Forsling
David Foshee
Anne Franklin
Elizabeth Frazier-May
Shannan Freeman
Scott E. Friedlander
David E. Friedman
Eric J. Frisch
Karen D. Fultz
Richard Gaalema
Richard Game
Teresa Garcia
Laura Gartin
Adam R. Gaslowitz
Bruce H. Gaynes
George Geeslin
Carol Geiger
David Ghegan
Tiffany Gilbert
Monica K. Gilroy
Neil Ginn
Katherine F Glennon
Kyle Globerman
Jim Gober
Rebecca Godbey
David Golden
Julia Gonzalez
Dale R. F. Goodman
Andrea Goodrich
Schuyla Goodson
Patricia A. Gorham
John L. Gornall
Joseph J. Gottlieb
Benning Grice
Nancy Levy Grossman
Cheri A. Grosvenor
Amy E. Groves
Guy W. Gupton III
Stacia L. Guthrie
Hon. C. Christopher Hagy
Andrew C. Hall
Lauren D. Hammer
Carrie A. Hanlon
John Harbin
Sarah Hardy
Steven W. Hardy
Cathy Harper
Peter Hasbrouck
Stewart Haskins
Brent Hatcher
D. Tully Hazell
Andrew C. Head
Mark Hebbeln
Laurel E. Henderson
R. Charles Henn
Steven J. Hewitson
Robert S. Highsmith
Holly Hill
Scott Hilsen
Lydia Hilton
Michael Hobbs
Rebecca Hoelting
W. Todd Holleman
William Holley
April Hollingsworth
James L. Hollis
James E. Holmes Jr.
Dorsey E. Hopson
Ashley R. House
Susan Housen
Kimberly Houston
Marc Howard
Monica Howard
Susan Howick
Dan Huff
Ashley Hurst
Susan A. Hurst
Darian M. Ibrahim
Nicole M. Imamshah
Erika N. Jackson
Gregory A. Jacobs
Mary James
Robert E. James II
Anne Jarrett
Alan R. Jenkins
Wendy Jerkins
Julye Johns
Charis Johnson
David Johnson
Donna L. Johnson
Felisa Johnson
James Johnson
Michael Johnson
Michelle W. Johnson
Nancy Johnson
Stuart Johnson
Will Johnson
Weyman T. Johnson Jr.
Andrea Smith Jones
Lewis B. Jones
Loren Kalish
James Kane
Adam S. Katz
Seth S. Katz
Lisa Katz Golod
James H. Keaten
Leslie Kehoe
Stephen V. Kern
Gloria Kilanko
Dawn Elizabeth King
H. Elizabeth King
Hon. Janet F. King
Kevin King
Mary Kirby
P. Bruce Kirwan
Joyce E. Kitchens
William Kitchens
Dena R. Klopfenstein
D. Keith Knight
Naho Kobayashi
Steve Krumm
Jeanney M. Kutner
Yasho Lahiri
Patrick Lail
Lisa Griffith Lake
Judy Lam
Gmerice H. Lamb
John Lamberski
Frank Landgraff
Hon. Bensonetta T. Lane
Holly B. Lanford
W. Scott Laseter
Nancy F. Lawler
Stanley Lefco
Michael Leff
Kimberly Lerman
Jonathan R. Levine
Anne W. Lewis
Sarah A. Lewis
Stephen E. Lewis
Sharon Lewonski
Edward H. Lindsey Jr.
David W. Liu
Jay E. Loeb
James Long
Tammi S. Long
A. Kel Long III
J. Anthony Love
Willie Lovett
Deborah Lubin
Susan L. Ludi
Michael Lundy
Catherine G. Lynch
Anita Lynn
Charles W. Lyons
Mary F. Mackin
Dana K. Maine
Russell Maines
Dennis Manganiello
Joana P.L. Mangum
Hon. Stephanie B. Manis
David Markus
Caralinda J. Marris
Shawn Martin
Sylvia Martin
Adrienne Marting
Jonathan Mason
Michael L. Mason
Robert B. Matlock
Granvette Matthews
Kevin A. Maxim
William W. Maycock
John C. Mayoue
Douglas J. McAlpine
Katie McBride
Emily McBurney
Jason McCarter
Brendan McCarthy
Rosemarie McConnell
Dan McDevitt
Kenneth P. McDuffie
R. Sean McEvoy
P. Joseph McGee
Carl McGehee
Amy McGruder
Lance McMillian
Laurin M. McSwain
Chad I. Michaelson
B. Rose Miller
Greg Miller
Janice Miller
Paula R. Miller
S. Ashley Miller
John B. Miller Jr.
Christopher B. Millner
Caesar C. Mitchell
Rick Mitchell
M. Todd Mitchem
Kristine Mitchum
Richard Moberly
Charlene D. Moody
Kenneth L. Mooney
Camellia Moore
Robin Moore
William Morrison
Rob Muething
Catherine Munson
Nirupa L. Narayan
Sherry V. Neal
Robert Neis
Jesus Nerio
Hon. Henry Newkirk
Gregory J. Newman
Elizabeth H. Noe
Julie T. Northup
Matthew R. Nozemack
Judith O'Brien
Mary Ann B. Oakley
Celey Ogawa
Ugo Okafor
David Oles
Teresa Ou
Andy Pachman
William A. Palmer
Benjamin C. Pargman
Christopher E. Parker
Tracy Parsons
Trevor Parssinen
Stefan Passantino
Russell Patterson
Peter J. Pawlak Jr.
Jacqueline L. Payne
Ralph Perales
Henry M. Perlowski
Joseph Perrotta
Michel Phillips
Holly Pierson
Allyson Pitts
Wendelyn L. Pizer
Jeffrey Plowman
Robert C. Port
Carole E. Powell
Christopher Scott Prince
Adam P. Princenthal
Benjamin H. Pruett
Katrina M. Quicker
Meredith H. Ragains
William M. Ragland
Michelle B. Rapoport
Rayne M. Rasty
Todd Ratner
Marc Rawls
David K. Ray
LaVonda N. Reed-Huff
Michael T. Reynolds
John Rezac
Thomas W. Rhodes
Richard Rice
Bill Rich
William M. Rich
Melody Richardson
Nicole A. Richardson
Don Rickertsen
Kimberly Houston Ridley
Coral A. Robinson
Tina Shadix Roddenbery
Beth E. Rogers
Rupal Naik Romero
Steven Rosen
Chip Rowan
Thomas G. Sampson II
Valerie Sanders
Ted Scartz
Richard W. Schiffman Jr.
Rebecca J. Schmidt
David Schoenberg
P. Charles Scholle
Mary Jo Schrade
Barry Schwarz
Justin S. Scott
Kathryn N. Shands
Johnathan H. Short
Debra Siert Cline
Joel L. Silverman
Angela Simpson
Clayton Sinclair
Howard P. Slomka
Heather Slovensky
Alvah O. Smith
Joseph E. Smith
Lynette Eddy Smith
Rebecca Christian Smith
Rachel Snider
Carl Luttrell Sollee
Alison Solomon-Roberts
Lee Ann Sparks
Jesse J. Spikes
Thomas A. Spillman
John C. Spinrad
Avital Stadler
Robert E. Stanley
Brett Steele
Ashley Steiner
Bruce Steinfeld
Bruce R. Steinfeld
David N. Stern
Howard L. Stopeck
Richard Story
Carla Strobl
J. David Stubins
Greg Studdard
Natalie Sullivan
Scott Sultzer
Jeri N. Sute
Robert J. Svets
Rob Svetz
Donald L. Swift III
James Tabb
Laura Tallaksen
Frances F. Tanner
John C. Tanner
Mary W. Tapper
Brian S. Tatum
Jane Taylor
Jeffrey Michael Taylor
Scott E. Taylor
Wesley Taylor
Renee Tedrick
Jeanne A. Thibadeau
Anita Wallace Thomas
Andrew M. Thompson
James R. Thompson
William C. Thompson
Hon. Thomas W. Thrash
Stephanie E. Tillman
Torin Togut
Kathleen Tomcho
Pamela L. Tremayne
Lisa Tripp
Cheryl Turner
Renata Deann Turner
John G. Valente
Shelly Valente
Richard K. Valldejuli Jr.
Frank Virgin
Michael T. Voytek
Connie Walters
Laurance Warco
Kimberly A. Warden
Gene Watkins
Kathryn E. Watson

Pro Bono Honor Roll

E. Adam Webb
David Webster
Daniel Weede
Beryl Weiner
Alice Weinstein
Rob Wellon
Frank N. White
Jimmy White
William K. Whitner
Leigh M. Wilco
Karen D. Wildau
Susan Wilkerson
David H. Williams
Karen Brown Williams
Michael Williams
Paul G. Williams
John Williams Jr.
Price S. Williams Jr.
Debra Wilson
Kali Wilson
Raffaela N. Wilson
Joseph M. Winter
Sandra Denise Witherspoon
Timothy W. Wolfe
Janet L. Womack
W. Swain Wood
John F. Woodham
Laura Woodson
Vertis Worsham
Angelyn M. Wright
Scott Wright
Wade R. Wright
Peter York
Bonnie Youn
Lela M. Young
Leslie Zacks
Barry Zimmerman
David A. Zimmerman
Jeffery Zitron

Decatur
Thomas Affleck
Arthur Castleberry
Stephen M. Gibbs
M. Debra Gold
Lawrence Gordon
Yvonne Hawks
Wendell Henry
Deborah Johnson
Maurice G. Kenner
Charles Martin
Donna Rowe-Hibler
Katrina V. Shoemaker
David R. Trippe
Tom Westbury
Harvey Whiteman

Douglasville
Michelle Gozansky

Duluth
Holly A. Trenam

Dunwoody
Jeannine M. van der Linden

East Point
Sonya Bailey
Kaaren Robinson

Ellenwood
William W. Bond Jr.

Forest Park
Sylvia Goldman

Jonesboro
Fred Eady
Richard Genirberg
Dorothea McCleon

Lawrenceville
L. Patricia Arias
Denise Holmes

Lilburn
David L. Holbrook

Marietta
Ron Boyter
Michael Brewster
Elizabeth M. Leonard
Margaret Paton
Stephen Worrall

McDonough
Suzanne Whitaker

Norcross
Debra Hale

Peachtree City
Mark Oldenburg

Roswell
Lauren G. Alexander
Matthew Dominick
Margaret C. Gibson
Patricia Sue Glover
Robert D. Johnson
Janis L. Rosser
Eileen Thomas

Stone Mountain
Beverly L. Bull
Bridgette Dawson
Robert W. Hughes Jr.
Sabrina R. Scott

Tucker
Anne H. Hicks
J. Henry Norman
Tahira Piraino
Timothy J. Santelli

Woodstock
Kathleen A. Kerr

Miami, Fla.
Ellen C. Ham

N. Potomac, Md.
Paul Greco

Washington, D.C.
Dean A. Calloway

Clayton County Pro Bono Project

Atlanta
Gary Flack
Muriel B. Montia
Nina L. Roberts

College Park
Valrie Y. Abrahams

Decatur
Matthew Collins
Andrew Williams

East Point
Glen E. Ashman
Willie G. Davis
Karen Robinson
Scott Walters Jr.

Forest Park
Emily George
Sylvia Goldman

Jonesboro
Emmett J. Arnold Jr.
John Beall, VI
Allen W. Bodiford
Barbara Briley
George Brown
Johnny Castoneda
Renia Clay
Fred Eady
Michelle Ferguson
Monroe Ferguson
Pam Ferguson
Steven Frey
Richard Genirberg
Leslie Gresham
Yvonne Hawks
Kathryn A. Heller
Darrell L. Hopson
Glen B. Icard Jr.
Rolf Jones
Susan M. Kirby
Randall L. Keen
Ricky Morris
Byron Morgan
Jerry L. Patrick
Gloria Reed
Darrell B. Reynolds
Margot Roberts
Avery T. Salter Jr.
Arlene LeBrew-Sanders
Lee Sexton
Janet M. Taylor
Louise Thomas
John Walroth
Harold Watts
Jan Watts
Stephen White
Keith Wood
Fred Zimmerman

McDonough
Faye W. Hayes

Morrow
Greg Hecht

Stockbridge
William W. West

Cobb County Pro Bono Project

Atlanta
Charles Chesbro
Gary Flack
Michael E. McLaughlin
Jody A. Miller
Michael Phillips
Carol B. Powell
Carletta Sims
Lynn Stevens
Melinda D. Taylor
Karen B. Williams
Derek M. Wright

Austell
Martin E. Valbuena

Douglasville
Donald R. Donovan

Marietta
Timothy W. Bailey
Nicholas E. Bakatsas
Michael J. Brewster
Marston C. Brown
Dean C. Bucci
William C. Buhay
Lawrence E. Burke
David A. Canale
David J. Casey
Kenneth Clark
Timothy G. Cook
Vicki T. Cuthbert
C. Lee Davis
Joan P. Davis
Robert I. Donovan
Ian M. Falcone
James Friedewald
Jessica H. Frost
Alec Galloway
Robert J. Grayson
H. Darrell Greene
E. Linwood Gunn
Susan B. Harkins
W. Stephen Hart
David P. Hartin
Jason R. Hasty
Melissa Heifferon
William B. Herndon
Douglas A. Hill
Vic B. Hill
James D. Hogan
William P. Holley III
Jeffery A. Johnson
M. Scott Kimbrough
Candace M. Kollas
David J. Koontz
Constance McManus
Melanie McNeil
Jack J. Menendez
Courtney H. Moore
Richard L. Moore
Melissa Mullin
Dennis C. O'Brien
G. Cleveland Payne III
Debbie C. Pelerose
Carmen V. Porreca
Dorine Pries
Rob Rickman
Scott Semrau
W. Allen Separk
Brian D. Smith
Jere C. Smith
Donald D. Smith
Jamie L. Smith
Mary A. Stearns
James R. Whitfield
Bonnie L. Wilson
Amy Woo
Diane Woods

Roswell
Irene Steffas

Smyrna
David B. Brennan
Carol L. Lawing

DeKalb Volunteer Lawyers Foundation

(Sponsored by the DeKalb Bar Association)

Atlanta
Jeffrey A. Bashuk
Stanley M. Baum
Kenya D. Berry
Ivory T. Brown
J. Michael Brown
R. Peter Catlin
Richard Farnsworth
George R. Ference
Gary Flack
Alysa Freeman
Michael P. Froman
D. Joseph Girardot
Scott Halpern
Charles F. Hicks
H. Martin Huddleston
James D. McGuire
Graham G. McMurray
Gregory R. Miller
Anne H. Orr
Anne H. Palmer
Randie H. Siegel
Theodore A. Speaker
Wendell K. Willard
Kay Y. Young
Anthony Zezima

Conyers
Felita Weldon

Decatur
L. Katherine Adams
Herman D. Baker
Prince A. Brumfield Jr.
Mark G. Burnette
Arthur D. Castleberry
JoAnn D. Collins
Matthew P. Collins
Randall P. Collins
John P. Cross II
James G. Edwards II
Susan B. Ellis
James Martin Feagle
Henry D. Frantz Jr.
Michael M. Gabel
Stephen M. Gibbs
Ross M. Goddard Jr.
C. Benjamin Guile III
Richard G. Harwell Sr.
Donna Rowe Hibler
Adella D. Hill
Donald Hillsman
Timothy W. Hoffman
Warren W. Hoffman
Laura C. Horlock
William T. Hudson Jr.
Deborah Johnson
Jacqueline L. Johnson
Mereda Davis Johnson
David L. G. King Jr.
William C. McFee Jr.
Fredrick C. McLam
Eloise W. Newhard
Johnny N. Panos
Bette Elaine Rosenzveig
M. T. Simmons
Stephanie Stuckey
Donald Charles Suessmith Jr.
Allen F. Townsend
W. Jason Uchitel
Mary Walton Whiteman
Bonny Berry Wilder
William G. Witcher Jr.

Doraville
LouElla B. Jenkins
Tom Pye

Dunwoody
Brenda Peters Mannino

Lithonia
E. Noreen Banks-Ware

Scottdale
Gerard D. Hegstrom

Snellville
William Clinton Rhodes

Stone Mountain
Teri E. Brown
Beverly L. Bull
Randy Joan Comins
Mark Gaffney
Dana M. Harris-Abraham
N. Wallace Kelleman
Toni G. McDowell
Sabrina Scott

Tucker
Mark J. Siskin
Sandra W. Thornton

Georgia Law Center for the Homeless

Alpharetta
Dan Mitnick

Pro Bono Honor Roll

Atlanta
Jeff Golomb
Crystal James
Decatur
James Feagle
Smyrna
Gracy Barksdale

Georgia Volunteer Lawyers for the Arts

Atlanta
Brian Anderson
Chris Arena
Mark Baker
Joseph Bennett-Paris
Tracey Bewrell
Dan Bloom
Scott Burton
Allen Clarke
Seth Cohen
David Crockett
Michael Dailey
Audra Dial
John Doughty
Steve Drahos
Judy Dray
Steven Dubner
John Eaton
Reka Eaton
Kelli Felentzer
Melanie Fenwick
Pilar Finkel
Alysa Freeman
Michael Friedman
Alan Garber
William R. Gignilliat III
Phillip Gura
Victor Haley
Walt Hamberg III
Marc Hawthorne
Andrea Hayworth
Benjamin F. Johnson IV
Jennifer White Johnson
Lorraine Johnson
William Jordan
Lisa Kincheloe
Daniel Klein
Jon Lober
Robert Lower
Jonathan Mason
Theresia Moser
Antanette Mosley
Peter J. Pawlak Jr.
Michael Phillips
Mark Plotkin
Evan Pontz
John Renaud
Lisa Samuels
Marshall Sanders
Stephen Schaetzel
Daniel Schmalo
Steve Sidman
Bernadette Smith
Jamie Nordhaus Shipp
Theodore Speaker
Rebekah Strickland
Gregory Taube
George Thomas
John Timar
James Trigg
Mark VanderBroek
Tony Walsh
Mark Williamson
Doug Witten
Donald Woodard
Chuck Young

Jeffrey Young
Jeff Zitron
Columbus
Michael Phillips
Decatur
Andrew Coffman
Hank Kimmel
Larry Pankey
Jonesboro
Amy Abrames
Norcross
Mary Galardi
Riverdale
Denise Holt
Roswell
Janis Rosser
Savannah
John Hewson Jr.
Stanley Karsman

Gwinnett County Pro Bono Project

Atlanta
Clarke & Washington
Franklin D. Hughes Jr.
Buford
Marion E. Ellington Jr.
Dianne Frix
Duluth
Mary Prebula
Lawrenceville
Tom Cain
Jerry A. Daniels
Chet Dettlinger
Rodney Harris
Sandra Hicks
Suzanne Laird
Michael B. Lyndall
Joseph McLaughlin
Mark Merritt
Jorgia Northrup
Steve Reilly
Kip Shepherd
Macklyn Smith
Jessica Towne
Michelle Vereen
Lawrence L. Washburn
Thomas L. Williams
Lilburn
Anne Marie Lugo
Robert Waller
Lithonia
N. Wallace Kelleman
Robert L. Mack Jr.
Norcross
William F. Brackett
Glen E. Cooper
Snellville
Douglas R. Daum
Charles Giallanza
Billy Howick
Clint Rhodes
Stone Mountain
Steven R. Ashby
Robert W. Hughes Jr.
Barry E. Kaplan

Truancy Intervention Project

(Sponsored by the Atlanta Bar Association)
Atlanta
Will Adams
John Ayoub
Liz Baumgarten
Mary Benton
Nowell Berreth
E. Thomas Branch
James Brantley
Rosamond Braunrot
Paul Breme
Susan Bronston
Brian Buckelew
Rebecca Burnaugh
Hilliard Castilla
Marsha Courtright
Pamela Dada
Denise de la Rue
Horatio Edmondson
Patrick Elsevier
N. Sandy Epstein
Deborah Gale
Jerolyn Webb Ferraro
David Forbes
Fannie Gilliam
Michelle Gilliam
K. Lea Goodman
Patricia Gorham
Sherri Graves
Wit Hall
Jeff Handler
Bradley Heard
Chad Henderson
Jeffrey Hickcox
Owen Hill
Catherine Hobard
Todd Holleman
Oni Holley
Theresa Hood
Ashley Hufft
Lori Hughes
Bacardi Jackson
Angela Payne James
J. Lorraine Johnson
Katrina Jones
Dawn King
Rebecca Lamberth
Allegra Lawrence
Bob Lee
Anne Lewis
Steven Luper
Molly Mackin
Gib Malm
Ashlee Mann
David Marmins
Catherine McClellan
Reagan McClellan
Jennifer Meyerowitz
Charlene Moody
Brian Nestor
Neal Newman
Erik Olson
Ron Pak
Melissa Peeler
Patrise Perkins-Hooker
Jeff Pope
Patrice Russell
Quincy Shang
Dana Siragusa
Robert Stanley
Nichole Starr
Erin Stone
Richard Storrs
Suzanne Sturdivant
Mark Trigg
Ted Vick
Bryan Vroon
Ryan Walsh
Vicki Wiley
Shawnna Wilson
Karen Worthington
Alpharetta
Angela Chadwick
Avondale Estates
Rachel Susie Kezh
College Park
Moore-Moses Ibekwe
Decatur
Tiffany Boulware
Xernia Fortson
East Point
Valerie Adams
Ellenwood
Sharon Young
Forest Park
Sylvia Goldman
Jonesboro
Lynette Clark
Rosalind Watkins
Lithonia
Robert Mack
Marietta
Don Mize
Mary Claire Wolf
Mark Yun
Norcross
Bill Fletcher
Jeff Mueller
Stone Mountain
Denise Warner

THE YEAR IN REVIEW

By S. Kendall Butterworth

It happened as many said it would — the 2000-01 bar year, and my term as YLD president, passed like a bolt of lightning. How could 12 months pass so quickly? When I think about what the YLD accomplished during those 12 months, I am even more amazed. Let me share with you some of the year's highlights.

The YLD committees had an outstanding year. The **Legislative Affairs Committee** hosted its annual breakfast during the legislative session, which featured **Gov. Roy Barnes** as the keynote speaker. The **Community Service Committee** sponsored six projects, including a suit drive at the Midyear meeting to benefit the Welfare to Work program. The **LRE Committee** raised over $14,000 to benefit the Law Related Education Consortium through its Annual Golf Tournament and sales of its cookbook, *Belly Up to the Bar*. The **Aspiring Youth Committee** extended its tutoring program for at-risk students at Walden Middle School to two, six-week sessions and concluded the spring session with the students meeting Gov. Barnes and touring the Capitol. The committee also arranged for Walden Middle School to receive 20 computers, which were donated by **Wired Resources Inc.**

The **Pro Bono Committee** developed the **Pro Bono Initiative**, a statewide program to encourage lawyers to handle a pro bono case through **Georgia Legal Services** or one of the **Atlanta Legal Aid Society's Affiliates**. The project culminated on May 19 in Atlanta and Columbus with seminars on consumer law, elder law and immigration law.

The Georgia YLD joined the North Carolina, South Carolina and Virginia YLDs to host the first **Southeastern Regional Conference** in 22 years. Based on the American Bar Association (ABA) YLD conferences, this meeting featured seminars on topics such as public service projects and Federal Emergency Management Association (FEMA) training. The YLD launched a **Membership Initiative** to increase the participation of young lawyers in Metro-Atlanta in the Division. A team of six young lawyers and **Judge John Ellington** from the Court of Appeals visited 10 Atlanta firms to promote the YLD and recruit new participants. The YLD also co-sponsored a party with the **Atlanta Council of Young Lawyers** at the Midyear Meeting to encourage interaction between the two organizations.

None of these fantastic projects would have been possible without the many young lawyers who volunteered their time.

The ABA's YLD featured the **Litigation Committee's Shadowing Program** (where high school students "shadow" a litigator for a day) as a model program at the ABA's Midyear Meeting. The **Career Issues Committee** conducted a salary survey to capture a realistic picture of the market for legal services in Georgia. And, of course, there were the CLE programs – from the **Nuts & Bolts of Business Law** to **A Practical Guide to the New Rules of Professional Conduct: From the Bench and the Bar**, to name a few.

Finally, the YLD held its **Sixth Annual Great Day of Service**. On April 28, over 200 lawyers in 12 communities throughout Georgia worked on projects ranging from cleaning community centers to working on a Habitat for Humanity house.

None of these fantastic projects would have been possible without the many young lawyers who volunteered their time. I thank the **committee chairs**, **vice chairs**, **committee members** and **Executive Committee** for the countless hours they devoted to the YLD.

I particularly thank the **officers and directors**. I was fortunate to have so many talented individuals serving on the Executive Committee. I frequently called on them, and they never let me down (in fact, their efforts usually surpassed my expectations). Their dedication has made the Georgia YLD an outstanding organization, and I am confident they will lead the YLD to even greater levels of success in the future.

I especially thank **Jackie Indek**, **Sharon Bryant** and **Eddie Potter** at the State Bar. Without you, I could not have made it through the year.

Finally, I thank **my family**, **my friends** and the **BellSouth Legal Department** for their strong support of my Bar participation over the past six years.

It has been an incredible year, and I hope you have enjoyed it as much as I have!

GEORGIA TRIAL REPORTER

Summary of Recently Published Trials

Chatham State Ct.....Auto Accident - Head-On - Uninsured Motorist.....$41,300
Clayton State Ct.....Auto Accident - Rear-End - Liability Admitted.....$10,600
Clayton State Ct.....Fraud - Money Owed on Lottery Game.....11,200
Dekalb State Ct.....Auto Accident - Turning - Speed.....$5,306
Dekalb State Ct.....Auto Accident - Right-of-Way - Red Light.....$11,823
Dekalb State Ct.....Auto Accident - Center Line - Head-On.....$9,610
Dekalb State Ct.....Falldown - Church - Dirty Floor.....Defense Verdict
DeKalb State Ct.....Medical Malpractice - Diagnosis - Drug Reaction Rash.....Defense Verdict
Dekalb State Ct.....Auto Accident - Turning - Low Speed $75,000
DeKalb State Ct.....Auto Accident - Rear-End - Traffic on Highway.....$13,500
DeKalb State Ct.....Auto Accident - Rear-End - Liability Admitted.....$18,886
DeKalb State Ct.....Auto Accident - Rear-End - Liability Admitted.....$33,406
DeKalb Superior Ct.....Auto Accident - Vehicle Runs Off Roadway.....$7,954
DeKalb Superior Ct.....Auto Accident - Rear-End - Liability Admitted.....$38,322
Fayette State Ct.....Auto Accident - Rear-End - Liability Admitted.....$14,000
Floyd U.S. District Ct.....Retaliation - Police Officer - Termination.....Defense Verdict
Fulton State Ct.....Auto Accident - Pedestrian - Crosswalk.....$5,000
Fulton State Ct.....Insurance Contract - Theft of Vehicle.....$10,935
Fulton State Ct.....Auto Accident - Settlement - Bad Faith.....$325,000.
Fulton Superior Ct.....Pharmacist Malpractice - Prescription - Increased Dosage.....$19,750
Fulton Superior Ct.....Trespass - Construction - Siltation of Creek.....$10,000
Fulton U.S. District Ct.....Sex Discrimination - Employment.....Defense Verdict
Fulton U.S. District Ct.....Employment - Race Discrimination.....Defense Verdict
Gwinnett State Ct.....Auto Accident - Stop Sign - Multi-Vehicle Accident.....$11,000
Gwinnett State Ct.....Auto Accident - Chain Reaction - Construction Area.....Defense Verdict
Gwinnett State Ct.....Landlord/Tenant - Collection - Counterclaim.....$28,500
Gwinnett State Ct.....Medical Malpractice - Failure to Counsel Family.....Defense Verdict
Gwinnett Superior Ct.....Auto Accident - Loss of Control - Liability Admitted.....$6,500
Gwinnett Superior Ct.....Malicious Prosecution - Theft of Contact Lenses.....$11,000
Richmond Superior Ct.....Insurance - Declaratory Judgment - Intentional Tort.....No Coverage Owed

Construction Worker is Electrocuted While Working on a Renovation Project and His Surviving Spouse Settles for $225,000

Plaintiff’s decedent was working on the exterior of defendant’s building when his aluminum ladder came into contact with defendant power company’s line. Whether the power line was sufficiently distanced from the building was an issue. *(Allen v. Georgia Power; Fulton County State Court)*

• • •

Coca Cola Settles a Class Action Race Discrimination Case for $192,500,000

Plaintiffs were black employees of defendant Coca Cola and claimed race discrimination regarding promotions, compensation and performance evaluations. *(Abdallah v. Coca Cola; United States District Court)*

• • •

Employees of Defendant City of Atlanta Win $472,953 in Civil Rights/False Claims Act Case

Plaintiffs claimed they were terminated from their jobs for exposing fraud, waste and abuse, particularly in the misuse of federal funds. Defendants contended that plaintiffs were terminated for poor job performance. *(Thomas v. Private Industry; United States District Court)*

• • •

Plaintiff Recovers $1,500,000 in a Van/ Semi-Tractor Trailer Accident

Defendant trucker admitted driver error, but alleged that plaintiff’s complaints of lumbar disc injury requiring spinal blocks was related to a prior accident. *(Williams v. Ingles Markets; United States District Court)*

• • •

Estate of 17 Year Old Killed in Auto Accident Wins $4,048,000

Plaintiff’s decedent was killed when the driver of a commercial van disregarded a stop sign. Decedent died while being transported from the accident scene. (*Stanley v. Middle Georgia; Laurens County Superior Court)*

GEORGIA STATE UNIVERSITY College of Law selected **Clifford Oxford** of **McGee & Oxford**, **LLP**, as recipient of the **Ben F. Johnson Public Service Award**. Oxford earned both his bachelor's and law degrees from Emory University. In 1949, he chaired the committee that sought and won legislation to unmask the Ku Klux Klan in Georgia. He also took a leadership role in the development of MARTA in the 1970s and won the State Bar of Georgia's Distinguished Service Award in 1982. Oxford has served as president of the Atlanta Junior Chamber of Commerce, the Georgia Association for Mental Health, the Downtown YMCA, Buckhead Kiwanis Club, Atlanta Bar Association, Emory Law Alumni Association, Atlanta Voters League and the Old War Horse Lawyers Club of America. He was also a driving force on the committee appointed to establish a law school at Georgia State University.

The **Pro Bono Committee** of the **American Bar Association Section of Business Law** presented its **National Public Service Award** to Georgia attorney **Leonard C. Presberg** at the section's Spring Meeting Luncheon in Philadelphia. Presberg has been in private practice with the Fayetteville, Ga., firm **George N. Sparrow Jr., PC**, since 1997. He practices primarily in the areas of residential and commercial real estate, business and corporate, estate planning and civil litigation. He was honored for providing sustained counsel to Henry County Residential Housing Authority, a nonprofit organization serving the low-income community.

4th Annual Law-Related Education Golf Tournament

Monday, October 8, 2001

The Oaks Course
11240 Brown Bridge Rd.
Covington, GA
770/786-3801 ◇ www.golfoaks.com

12 Noon Shotgun Start . . . . Rain or Shine

$85 per player $340 per team

Lunch and beverages will be provided
Payment due when registering . . . . Sorry, no refunds.

EXCITING PRIZES
◇ 1st, 2nd and 3rd Place Teams
◇ Longest Drive
◇ Closest to the Pin

Pick your teams early - competition is FIERCE!

Entry Deadline: September 24, 2001

Register and join in the fun!!!

Visit www.cviog.uga.edu/Divisions/cited/lre/ and click the Golf Tournament button for online information, forms, and all the pictures from the 2000 tournament.

Organized by the Young Lawyers Division Law-Related Education Committee
Sponsored by the State Bar of Georgia's Law-Related Education Standing Committee

4th Annual LRE Golf Tournament

Sponsorship Section

If you would like to contribute merchandise bearing your company logo, such as balls, towels, bottles, etc., for tee gift bags, or for more sponsorship information, please call Jay Sadd at 404/255-6677

Yes! I would like to help sponsor Law-Related Education at the level indicated below.

___ **General Sponsor:** $250 contribution includes partial hole sponsorship

___ **Silver Sponsor:** $500 contribution includes partial hole sponsorship and 2 player's fees

___ **Gold Sponsor:** $1000 contribution includes exclusive hole sponsorship 4 player's fees

☐ As a Sponsor I will be sending the players shown below ***OR,***

☐ I am sponsoring as shown above but will not send players

Name of Organization_____ Contact _____

Address_____

_____

Phone _____ e-mail _____

Make Sponsorship Checks payable to: **Lawyers Foundation of Georgia, Inc.** and mail with form to:
YLD • c/o Ga. LRE Consortium • Univ. of GA • 201 N. Milledge Ave. • Athens, GA 30602

Player's Section

Entry Deadline: Monday Sept. 24th

☐ **I'm entering the tournament ~ Please assign me to a team**

Name _____

Address_____

_____

Phone _____ e-mail _____

☐ **We're entering the tournament ~ Please enter us as a team**

Team Name _____

please name your team, it helps with registration and it's fun!

Player **#1**_____ Player **#2**_____

Address_____ Address_____

_____ _____

Phone _____ Handicap_____ Phone _____ Handicap_____

Player **#3**_____ Player **#4**_____

Address_____ Address_____

_____ _____

Phone _____ Handicap_____ Phone _____ Handicap_____

Make check payable to: **Young Lawyers Division** and mail with entry form to:
YLD • c/o Ga. LRE Consortium • Univ. of GA • 201 N. Milledge Ave. • Athens, GA 30602

In Atlanta

CONSTANGY, BROOKS & Smith, LLC, announced the addition of **David L. Smith, Timothy R. Newton** and **Timothy L. Williams** to the firm. **Newton** and **Williams** will practice in the areas of employment law and litigation, and **Smith** will practice in the area of Occupational Safety and Health Administration (OSHA) law. **Colleen V. Grogan** has also become an associate with the firm. Constangy, Brooks & Smith is located at 230 Peachtree Street, NW, Suite 2400, Atlanta, GA; (404) 525-8622; Fax (404) 525-6955; www.constangy.com.

Eric Tanenblatt, President Bush's Georgia state chairman, has joined the Atlanta and Washington, D.C.-based firm of **Long Aldridge & Norman** as a senior adviser in the firm's Government Affairs Practice. Tanenblatt will focus on governmental and regulatory affairs at the federal, state and local levels. The Atlanta office of Aldridge & Norman is located at 303 Peachtree Street, Suite 5300, Atlanta, GA 30308; (404) 527-4000; Fax (404) 527-4198.

The law firm of **Baker, Donelson, Bearman & Caldwell** announced the addition of **Mark R. Parris**, former U. S. Ambassador to Turkey, as senior public policy advisor. Parris will provide consulting services to select corporate clients, drawing on his extensive experience and contacts in Turkey, Israel, the Middle East and former Soviet Union. **Laura Hines** has also joined the firm as director of marketing. The office is located at Five Concourse Parkway, Suite 900, Atlanta, GA 30328.

Gambrell & Stolz, LLP, announced that **Steven G. Hall** and **Jed Steven Beardsley** have become partners in the firm. Hall will practice in the areas of commercial litigation and business law. Beardsley will concentrate in the areas of commercial real estate and taxation law. Gambrell & Stolz, LLP, is located at SunTrust Plaza, Suite 4300, 303 Peachtree Street, NE, Atlanta, GA 30308; (404) 577-6000; Fax: (404) 221-6501.

AFC Enterprises has appointed **Allan Tanenbaum** vice president of legal affairs, general counsel and corporate secretary. Tanenbaum has been in private practice for 30 years in Atlanta, specializing in business transactions. For the past five years, he was a shareholder with the law firm of Cohen Pollock Merlin Axelrod & Tanenbaum, PC, where his clients included AFC Enterprises. AFC Enterprises is located at Six Concourse Parkway, Suite 1700, Atlanta, GA 30328.

Hoffman & Associates has named **Joseph B. Nagel** an associate with the firm. Hoffman & Associates is located at 6075 Lake Forrest Drive, Suite 200, Atlanta, GA 30328; (404) 255-7400; Fax (404) 255-7480.

Andrew Velcoff, former senior vice president of legal and business affairs for Turner Entertainment Group, has joined the Atlanta office of **Greenberg Traurig** as a shareholder in the entertainment practice. Greenberg Traurig is located at The Forum, 3290 Northside Parkway, Suite 400, Atlanta, GA 30327; (678) 553-2160.

In Conyers

Talley & Sharp, PC, announced that **Michelle L. Chaudhuri** has become an associate with the firm. Talley & Sharp is located at 1892 GA Hwy. 138, SE, Conyers, GA 30013; (770) 483-1431.

In Decatur

Rogers & Howard, LLC, announced the relocation of its offices to Decatur. The firm is now

located at 205 Swanton Way, Suite 200, Decatur, GA 30030; (404) 373-4200; www.lawyers.com/rogershoward.

In Marietta

The McKee Firm announced that **Linda J. Spievack** joined the Firm of Counsel. The McKee Firm is located at 140 Vann Street, Suite 420, Marietta, GA 30060; (770) 218-0104.

In Newnan

William J. Stemberger and **D. Scott Cummins** announced the merger of their law practices. Stemberger, Cummins and associate, **Kelly K. Tull**, will continue representing clients in jury trials and settlements of cases involving auto accidents, insurance claims, criminal and DUI defense, family law and civil litigation. The firm is located at 27 Jackson Street, P. O. Box 1175, Newnan, GA 30264; (770) 253-0913.

In Savannah

Ellis, Painter, Ratterree & Bart, LLP, announced that **Maury Bowen Rothschild**, former assistant general counsel for Imperial Sugar Company, became associated with the firm practicing in the areas of employment, labor, business and corporate law. The firm is located at 2 East Bryan Street, 10th Floor, Savannah, GA 31401; (912) 223-9700.

In Tucker

John J. McManus, Ray S. Smith III and Ricky Benjamin announced the formation of **McManus, Smith & Benjamin, LLP.** The firm's main office is located at 3554 Habersham at Northlake, Tucker, GA 30084; (770) 492-1000.

In Jacksonville, Florida

Rayonier announced the election of Associate General Counsel **Ed Frazier** to corporate secretary. Prior to joining Rayonier in 1999, Frazier practiced corporate law in Atlanta, initially in private practice with Troutman Sanders, and later as in-house corporate chief counsel. Rayonier is located at 50 North Laura Street, Jacksonville, FL 32202; (904) 357-9100; Fax (904) 357-9101.

In Jackson, Mississippi

The law offices of **McGlinchey Stafford** announced that **Jill D. Prussack** has recently joined the firm as a staff attorney in the Jackson office. Prussack practices in the areas of commercial and business litigation. Prior to joining the Jackson office, Prussack practiced in Atlanta and taught business law and ethics as an adjunct professor at Georgia State University. McGlinchey Stafford is located at Skytel Centre, Suite 100, 200 Lamar Street, Jackson, MS 39201.

In Richmond, Virginia

John R. Pudner has joined **McGuireWoods Consulting** as vice president in the Grassroots Issue Management Department. Prior to joining McGuireWoods, Pudner served as senior project manager with Century Strategies, LLC, in Atlanta. McGuireWoods Consulting is located at One James Center, 901 East Cary Street, Richmond, VA 23219; (804) 775-1000; Fax (804) 775-1061.

VOLUNTARY BARS

Douglas County Bar Association Promotes Education

By Peggy H. Walker

SEVERAL YEARS AGO, THE Douglas County Bar Association was known for having great parties. Such a reputation, of course, does not promote professionalism or respect for the profession of law in the community, but it did improve attendance!

As new officers came in, they began to look for speakers who promoted professionalism and respect. President Barry Price extended an invitation to the Honorable Ed Johnson, judge of the Court of Appeals, and Anna Boling, executive director of the Georgia Law Related Education (LRE) Consortium, to present a program during the summer of 1998. They brought the materials produced by the LRE Consortium for use in schools to teach about law and the legal system. They also presented a program that challenged the association to take an active part by purchasing LRE materials for the schools, being a resource for the schools and becoming actively involved with the education of the children in the legal system within the community.

As a former teacher and newly appointed judge of the Juvenile Court, I was excited about the idea because of the community involvement by the association. In order to have healthy communities, families and children, the Search Institute has developed the asset approach. The underlying concept is that there are 40 developmental assets that accomplish these objectives. The goal for each child and family is to achieve at least 27 of the assets. For information on the Search Institute, call (800) 888-7828 or visit the web site at www.search-institute.org.

The officers of the Douglas County Bar Association met to discuss the project. At that time, Barry Price was president, Jimmy Allison was treasurer and I served as vice president. We then decided to take Judge Johnson's challenge. I met with Dr. Doris Marlow, coordinator for curriculum for the Douglas County Board of Education, to determine if the school system had an interest in the project. She invited me to speak to an in service meeting of social studies teachers. The teachers knew about the LRE materials and were very interested in having the resources. In fact, they were so interested that they wanted a set in each school.

Douglas County has remained a relatively small school system serving approximately 17,000 children, but the cost of materials for every school had an estimated cost of more than $5,000. Like the school system, we have always been a small bar association, but we

accepted the challenge of undertaking a large project.

The next step was getting others involved. We began by writing letters about the project to the Partners in Education for each school. Members of the association followed up with calls to get sponsors and donations for the project. I spoke to the Rotary Club, Kiwanis Club and Sertoma Club about the importance of the project. But after two years, we had not raised sufficient funds to complete the project. When new officers came in, they continued to work to raise funds. As treasurer, Sherri Kelley included the project in the quarterly statements to encourage members to make additional contributions. We also increased our quarterly dues to assure adequate financial support for our organization.

We received contributions from: the Sertoma Club; Community Trust Bank; Barry Price; Andrea Moldovan; Edwards & McLeod; Jennings Garbade; Nick Winn; Hartley, Rowe & Fowler; Sherri Kelley; Best Bonding; Don DeFoor; Frank Winn; and Michelle Gozanksy Harrison. Bob Kauffman, as the new president of our local bar association, and Barry Price, as our representative to the Board of Governors, brought me some information about Challenge Grants available through the Lawyers Foundation of Georgia (LFG).

The LFG is a nonprofit organization that distributes grants for the purposes of promoting duty and service to the public by members of the bar. In the 2000 grant cycle, the program matched dollar for dollar up to $10,000 for projects that met the goals of the foundation. An applicant must submit a pre-proposal briefly outlining the project within the time frames of the grant cycle. The pre-proposals are reviewed by the foundation. Then, the foundation sends out formal applications to those whose pre-proposals are selected for further consideration. After receipt of the applications, awards are announced.

With the encouragement and support of Kauffman and Price, I drafted the pre-proposal and forwarded it to Lauren Larmer Barrett at the LFG. We were fortunate to receive an application to apply for a Challenge Grant. We named our project the "Douglas County Bar Association Community Action Projects" to encompass not only the purchase of LRE materials, but also to include our support of the Young Lawyers Division Mock Trial Program and our Legal Law Explorer program. Our mission is to expand educational opportunities for children of all ages to learn about the legal system, to promote respect for the law and to increase knowledge of career opportunities in the legal field.

The bar association received notice in December 2000 that our project was selected for receipt of a Challenge Grant. In February, Barrett attended our meeting and presented us with the check. We have ordered the LRE materials that will provide all elementary, middle school and high school teachers in Douglas County access to age appropriate resources. Before the close of the school year, Boling will conduct an introductory workshop for teachers about the LRE materials. Then, she will return to conduct intensive training when the new school year begins. The association will serve as a resource for teachers who are using the curricula, including participating in the workshops and being available in the future when teachers request assistance.

We are proud of our progress and our project. The Douglas County Bar Association challenges other local bar associations to purchase LRE materials for use in schools throughout the state. The LFG supports this challenge and has grants available to assist. For more information contact Lauren Larmer Barrett at Laurenb@gabar.org.

As a final note, we still have great parties!

Take the Challenge

By Anna Durham Boling

AS EXECUTIVE DIRECTOR of the Georgia LRE Consortium, I want to reiterate the challenge of the Douglas County Bar Association to other local bar associations around the state. Law-related education is an excellent avenue for the educating children about legal rights and responsibilities, as well as maintaining active citizenship skills. Further, research has shown that LRE deters delinquency and reduces disciplinary problems in young people. So, take the challenge and help make this great program a reality in your local schools. Partnering with you, the Consortium will offer free, on-site training workshop for teachers interested in the program. The children in your communities will reap the rewards.

For more information about materials or workshop opportunities, please contact me at (707) 542-6223 or boling@cviog.uga.edu. I look forward to hearing from you.

Peggy H. Walker is a judge with the Juvenile Court of Douglas County.

Hard Work, Camaraderie Drive Savannah Bar Association

By Bonne D. Cella

FORMALLY ORGANIZED IN 1917, the Savannah Bar Association (SBA) has long been known as a convivial group that has a grand time in a grand city. However, Judge Louisa Abbot, current president of the Bar, says that there is much more to her Bar than the social component.

Community support and outreach continues to be a significant part of the group's mission. Abbot says that she "is delighted to see many new programs the Bar has developed."

The most significant accomplishment of the past year was the creation of the Chatham County Domestic Relations Initiative, a cooperative venture with the Superior Court of Chatham County. A groundbreaking program unique to Georgia, the initiative administers the appointment and compensation of guardians' ad litem to represent minor children in family law disputes. Over 40 attorneys attended a one and a half-day training on the initiative last August.

This year also saw the creation of the SBA Eugene H. Gadsden Memorial Scholarship Fund, which will provide a four-year scholarship each year to a graduating high school student in Chatham County. The first scholarship will be awarded to a student who exemplifies academic excellence and a commitment to community.

A fund-raising effort led by Paul Painter and Kathy Horne is currently underway to complete the decorating and furnishing of the Attorney Conference Room on the third floor of the U.S. Courthouse on Wright Square. Items of historical significance to the local bar will be displayed in this much needed conference room.

To improve media relations between the bench, the bar and the local media, the SBA co-sponsored with the *Savannah Morning News* a workshop for local media representatives. The print media and some television media attended the workshop. Chief Judge Perry Brannen Jr., Court of Appeals Judge Charles Mikell and Georgia First Amendment Foundation Director Hollie Mannheimer spoke.

Committee work is also in full swing. The Mediation Committee is producing an educational video to air on public access television. A Juvenile Court Advisory Committee has been formed and a Family Law Section has been organized. Together, with the Juvenile Court of Chatham County, the SBA plans to start a training intervention program. The Grievance Committee has also had a busy year, resolving virtually all of the grievances presented to them satisfactorily to the complainant and attorney.

The Younger Lawyers Section, as usual, puts the "older" bar to shame with the level of their activity. From their hard work landscaping the grounds at Hospice House on the Great Day of Service to their outreach to the needy and school children, as well as their outstanding management of the High School Mock Trial Competition, they continually demonstrate zeal and commitment. In fact, Savannah has been selected to host the American Bar Association's (ABA) Young Lawyers Division (YLD) meeting in 2002 as a result of efforts of local members.

Some of the many notable members of the SBA are Judge Sol Clark, Judge John Sognier, Judge Charles Mikell and Former State Bar President Frank W. (Sonny) Seiler. The SBA is particularly proud of its

2000-2001 Savannah Bar Association Officers

President:	The Honorable Louisa Abbot
President-Elect:	James M. Pannell
Treasurer:	George M. Hubbard
Secretary:	Ruth Young

Over 400 of the approximately 700 lawyers who reside in the Savannah area are members of the SBA. The SBA program year begins in June with the swearing-in of the officers. Monthly membership luncheons begin in September.

1. Members of the Savannah Bar Association (SBA) gather to set sail during the SBA Lawyer's Boat Ride. 2. (l-r) SBA members Judge George E. Oliver, Judge John Sogmer and Judge James Head enjoy a day on the water in Georgia's low country. 3. (l-r) Judge Perry Brannen Jr., Judge Charles Mikell and Sam P. Inglesley Jr. gather inside the Spirit of Savannah. 4. The Young Lawyers of the SBA hosted a golf tournament this year to raise money for various projects. Participants included (l-r) Mike McHugh, Judge Lamar Davis, Jim Drake and Dana Braun.

first woman president, the Honorable Phyllis Kravitch, judge of the U.S. Court of Appeals for the Eleventh Circuit, and its first African-American President Lester B. Johnson III, elected in 1996.

Although the SBA has been busy, they still find time for some fun. The October Barbecue and the December Oyster Roast receive high marks, as well as the SBA Lawyers Boat Ride in April.

"Admiral" Harvey Weitz, newly elected member of the State Bar Executive Committee had this to say about the outing: "It is a tradition that began over 55 years ago. It provides an opportunity for the lawyers and judges of Chatham County to renew and enjoy the collegiality that has historically been the most important element of the chemistry that preserves Savannah as the best city in which to practice law, at least in Georgia, if not the universe! A day on the water in the Low Country of Georgia and South Carolina with good friends, good food and great fun is enjoyed by all who attend."

The SBA should be commended for giving back to their lovely city and providing excellent examples of the legal profession.

Find out more about the SBA on their Web site at www.savannahbar.org or, better yet, see if you can be invited to one of their wonderful social events.

Bonne D. Cella is the office administrator for the State Bar of Georgia's South Georgia office.

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.

William C. Calhoun Augusta, Ga.	Admitted 1944 Died July 2000
William E. Dismer St. Simons Island, Ga.	Admitted 1950 Died April 2001
Glenn W. Ellard Clarkesville, Ga.	Admitted 1935 Died March 2001
J. Alton Gladin Macon, Ga.	Admitted 1948 Died December 2000
Lee Roy Hasty LaGrange, Ga.	Admitted 1979 Died March 2001
Henry M. Hatcher Jr. Alpharetta, Ga.	Admitted 1949 Died March 2001
William P. Holley Jr. Marietta, Ga.	Admitted 1952 Died April 2001
Judge J. Wesley Jernigan Rockledge, Fla.	Admitted 1942 Died July 2000
Edwin Epes Jones III Marietta, Ga.	Admitted 1974 Died April 2001
Albert E. Martin III Atlanta, Ga.	Admitted 1984 Died February 2001
Mary A. McCravey Portland, Ore.	Admitted 1947 Died December 1999
C. Dallas Mobley Decatur, Ga.	Admitted 1937 Died July 1997
G. C. Payne Jr. Mableton, Ga.	Admitted 1949 Died April 2001
James A. Robbins Jr. Clayton, Ga.	Admitted 1967 Died March 2001
Ernest Woodie Smith Stockbridge, Ga.	Admitted 1962 Died February 2001
Harold S. Willingham Marietta, Ga.	Admitted 1940 Died August 2000

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

In Memory of Charles R. Adams III
Rudolph N. Patterson

In Memory of Mr. George Talmadge Bagby
Judith Frances Bagby

In Memory of A. Gus Cleveland
W. Stell Huie
Charles T. Lester Jr.
Rudolph N. Patterson
Cubbedge Snow Jr.

In Memory of Mr. Larry Fowler
Charles T. Lester Jr.

In Memory of Alton Gladin
Rudolph N. Patterson

In Memory of Mr. Christopher D. Langley
Mr. W. Carl Reynolds

In Memory of Wallace Miller
Rudolph N. Patterson

In Memory of Judge Stephen Toth
Chief Judge Dorothy T. Beasley

The following gifts were made to honor individuals at a holiday or special occasion in their lives:

In Honor of Cliff Brashier
The Jane and Randy Merrill Foundation Inc.

In Honor of the 50th Anniversary of Mr. and Mrs. Paul Webb Jr.
Chief Judge Dorothy T. Beasley

In Tribute

In recognition of 52 years of outstanding service and dedication to the legal profession and the community, the friends and former associates of **Gordon Lee Dickens Jr.** paid tribute to him with a contribution in his name to the Lawyers Foundation of Georgia, Feb. 18, 2001.

John Michael Brennan, 89, of Savannah, died Feb. 12, 2001. Born in Savannah, he graduated from the Marist School for Boys and Benedictine Military School before obtaining his A.B. in 1933 and his L.L.B. in 1935 from University of Georgia. He was admitted to the State Bar of Georgia in 1935, and joined Bouhan, Williams & Levy in Savannah. He was a member of the American Bar Association and president of the Savannah Bar Association. He also served on the boards of St. Mary's Home and the Savannah Speech and Hearing Foundation, and was former president of the Catholic Laymen's Association, designated a Knight of St. Gregory by His Holiness, Pope John XXIII. Additional service includes: 1961, president, the Hibernian Society; 1962, Grand Marshal, Savannah St. Patrick's Day Parade; and 1971, chairman, Chatham County Democratic Executive Committee. He is survived by his sons, Joseph Michael Brennan Jr., Joseph Patrick Brennan and Steven James Brennan, and his daughters, Mary Ann Brennan Smith and Virginia Brennan Snedeker, as well as 15 grandchildren and three great-grandchildren.

Christopher D. Langley, 53, of Norcross, died on March 8, 2001. Born in Seattle, he graduated from the University of Georgia with a B.S., and earned his J.D. from Atlanta Law School in 1979. He was admitted to the State Bar of Georgia in 1979, and spent five years with Constangy, Brooks and Smith in Atlanta before joining Contel Corporation as corporate counsel and later director of human resources in 1985. In 1988, he left Contel for solo practice. He also served in the U.S. Army from 1967 to 1969 as a spc. 5th class. His wife of 23 years, Pat Langley, and sons, Rob and Kevin Langley, as well as his mother, Virginia Langley, brothers Bobby, Joe and Tim Langley, and sisters Susan Taylor, Ann Bruce, Lani Gendron and Teresa Byrnes survive him.

Malcolm R. Maclean, 81, of Savannah, died Jan. 24, 2001. Born in Savannah, he graduated with an A.B. from Yale and earned his L.L.B. from Harvard. He was admitted to the State Bar of Georgia in 1948, and practiced with Anderson, Connerate, Dunn & Hunter, which later became Hunter, Maclean, Exley & Dunn in Savannah. He was mayor of Savannah from 1960–1966, and served on the Board of Governors of the State Bar. He was a member of the American College of Trial Lawyers, the American Bar Association, the American Bar Foundation and former president of the Savannah Bar Association. He served in the U.S. Navy during World War II, was awarded the Bronze Star and the Navy Commendation ribbon, served as commanding officer of the USS Edsall and USS Frankovitch. He also served during the Korean War, leaving service with rank of commander. Additional service includes: vestryman, junior warden and senior warden with Christchurch; chancellor of the Episcopal Diocese of George; 33rd degree Mason; former president of the Oglethorpe Club; president of St. Andrew's Society; governor, Society of Colonial War; honorary member Society of the Cincinnati; and member of the Board of Curators, Georgia Historical Society. His wife, Frances Grimball Maclean, daughter Nancy Maclean, son, John Helm Maclean, and two grandchildren survive him.

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

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

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

LAWYERS FOUNDATION OF GEORGIA

Slaying Paper Dragons: Document Management for Today's Practitioner

By Natalie R. Thornwell

SOMETIMES IT SEEMS THAT paper gets the best of us. Y2K has come and you were probably thinking that by this time lawyers would be working from sleek, silver workspaces via voice-activated systems and paper would be nowhere in sight. Well, we all know how untrue that is. Now we can only wonder what things might be like when Y3K rolls around. Well, regardless of what shows up in our personal crystal balls, we have to realize that if it has anything at all to do with a law practice, paper will undoubtedly be involved.

So exactly how do we deal with all of this paper? Where do we store it? How can we find it? What if we really do want it to disappear from our workspaces and have a paperless office? How can we slay these paper dragons in our law offices? The following are some concepts and tips that might arm you with the lance and armor you need to get started.

Document Creation

Mommy, where do documents come from? When your firm first creates a document, it probably does so using either Corel WordPerfect or Microsoft Word. However, not all documents are simply word processing files. They may also be spreadsheets, video clips, scanned images, voice files, etc. Regardless of its format, a document created on the PC can be saved and then the document's creator or another person can retrieve the document from its saved location. The problem usually begins for most firms when a document can't be found — it can't be located in the physical file (office) or on the computer, and losing the entire file is a whole other article.

Saving Documents

Let's first examine the saving of documents as computer files. Start by asking, "Where should documents be saved and under what file names?" Here are some tips on saving documents:

- Have everyone save documents to the proper place on your computer network. (After my last article, you should now all have your computers networked.)
- If documents are saved to local hard drives in your office and not to your network, make sure that those who need access to the documents are aware of their locations, can open the documents and, if required, be able to make changes to the documents.
- Make documents read-only files if you need to protect them from unwanted changes. Use "Save" and "Save As" options in both Word and WordPerfect or use Publish to PDF (portable document format) in WordPerfect.
- Strictly adhere to your firm's file naming conventions.
- Create a mandatory file naming convention for the firm.
- Add the filename to the bottom of each document. Often, firms place the filename in small font on the document or include it as a footer.
- Use long file names. We are no longer stuck with the old eight-three setup (xxxxxxxx.xxx) anymore, so make the names as descriptive as possible, i.e. john doe divorce complaint 12 31 00.wpd or john doe complaint.doc.
- Complete document summaries (under the File/Properties) for every document you create. (This useful feature is available in most applications, not just word processors.)
- Use the Windows file and folder structure effectively. A sample setup might include making a folder for each practice area in which work you and a subfolder within the practice area folder for each client. All of the documents created on behalf of that client would then be saved to the client's subfolder.
- Use WordPerfect's Index Manager and Word's Advanced Find features to quickly locate documents.
- Attach documents to existing matters/cases/files in your practice/case management software programs.

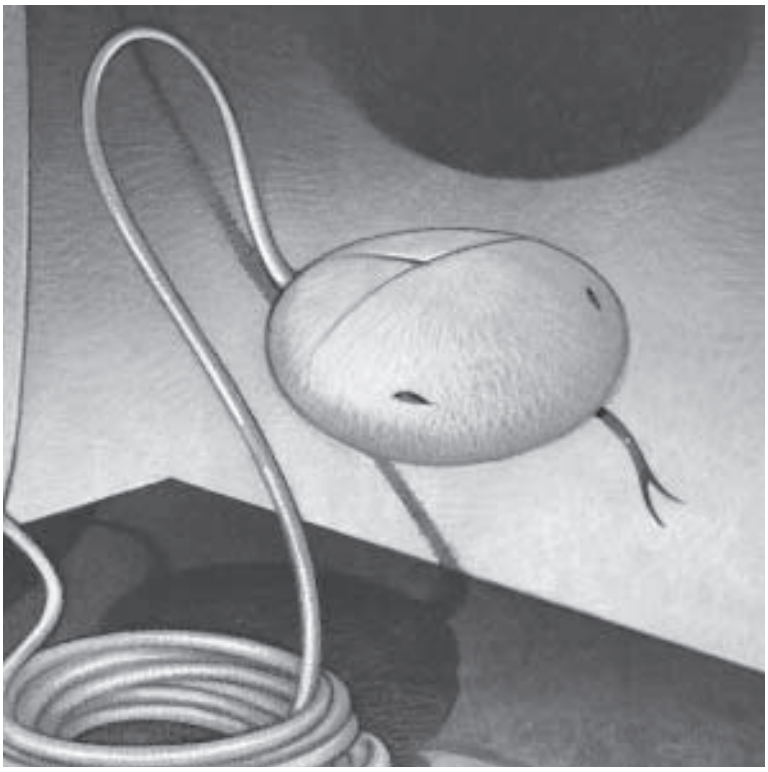
Scanning Documents

Some documents are generated outside of the firm. So, how do those documents get saved? How are they indexed within our internal document management systems? This is where scanning and OCR (optical character recognition) comes into the process of document management. A good scanner and software that includes OCR will allow you to save external documents internally as images that can then be treated as if you had created the document in house. Good scanners are available from Visioneer and Hewlett Packard. Caere's OmniPage and Visioneer's scanning software is also very reliable and compatible with word processors and case managers.

Some firms have projects for scanning that would expend all of its resources and still not get the job done, so they turn to outsourcing for the answer. Several national vendors, such as IKON, Quorom Lanier, Ricoh and Bowne, provide the scanning, indexing and even storage of documents for law firms. Along with the national vendors, you can also find online services that will serve as an offsite repository for your documents. Nowadays, electronic Bates numbering and bar coding can be found, too. The following are some Bates numbering products and sites: VisionShape, www.visionshape.com; Image Access, www.imageaccess.com; and XibiTag, www.xibitag.com. Outsourcing services can differ from vendor to vendor, so shop wisely before signing up for the outsourcing of your document management projects.

Retrieving Documents

Retrieval is the next major process for documents. After the document has been saved and is once again needed, it must then be retrieved. So, what is involved with finding and retrieving documents? Mainly, there is the process of locating documents via a profiling and indexing process or document management software system. In these systems, each document is profiled (document summary information including descriptive keywords and identifiers is generated) and then indexed. A full text searchable database is sometimes created from this information. Today's litigation support software will sometimes have some of these features built in as well.



Some of the most popular document management programs currently on the market are Worldox, GroupWise, iManage and PC Docs. These programs are not all designed alike or suited for all firms. They have different hardware requirements and even different feature sets, so be sure to consult with the State Bar's Law Practice Management Program or other certified technology consultants before purchasing any of these systems. If you are in need of an immediate solution and need to begin your search now, visit www.tech.lp.findlaw.com/general_software/documents.html for a listing of the current online legal and general document management products and vendors. You can also find downloadable programs to manage documents. One to check out is called Wilbur, and it can be downloaded for free (at the time of this article) from www.redtree.com.

Staying Organized

The "paperless" law office will probably only exist in fairy tales as my friend and noted legal technologist, Ross Kodner, suggests with his revised concept, the "PaperLESS™ Office." (see his materials on the topic at http://www.microlaw.com/cle/plessindex.html). Paper is simply a necessary dragon for law firms. To slay the paper dragons, you simply have to continually implement and use proper document management solutions. If you need help with choosing the proper solution, contact our program at (404) 527-8770.

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

Discipline Notices (Feb. 6, 2001 - April 13, 2001)

DISBARMENTS

M. Kirby Wood
Cordele, Ga.

M. Kirby Wood (State Bar No. 774593) has been disbarred from the practice of law in the state of Georgia by Supreme Court order dated March 2, 2001. A client hired Wood to represent him in a personal injury claim arising out of an automobile collision. Wood agreed to represent the client on a contingency fee basis and filed the lawsuit. Thereafter, Wood would not return the client's calls. Wood finally advised the client that he intended to voluntarily dismiss the case, without prejudice, in order to do more research and that he would refile the case within six months. He repeatedly told the client that the case was progressing as it should, when in fact he had never refiled the case. By the time the client discovered the deception, he had lost his right to pursue his claims. Wood failed to respond to the State Bar's Formal Complaint.

Robert A. Wilkinson
Chamblee, Ga.

Robert A. Wilkinson (State Bar No. 760050) has been disbarred from the practice of law in the state of Georgia by Supreme Court order dated March 2, 2001. In June 1998, Wilkinson agreed to represent a client in an immigration matter for $750. The client paid Wilkinson $375 and he told her that he would file her immigration application and that she could expect the INS to process it in 90 to 120 days. Wilkinson also accepted $295 for filing fees and then commingled the money with his own funds. In October 1998 and September 1999, Wilkinson assured the client's husband that he had filed the applications and that the case was proceeding as it should, but Wilkinson had in fact not filed the applications. He also told the client's husband that he was going to the INS office to check on the status of the case and would call him with an update, but he never called the husband back. The client finally went to the INS office and discovered that Wilkinson had not filed her applications. The client filed the applications herself in September 1999.

In another case, Wilkinson agreed to file an application for a "green card." The client paid Wilkinson $450 and advised him that her temporary visa had expired three days before on May 3, 1999. Wilkinson said he would file the application and she could expect it to be processed in this 90 to 120 days. The client paid Wilkinson $455 for filing fees that Wilkinson eventually deposited into his own operating account. In August 1999, Wilkinson told the client that he filed the application in June, but he had not. In December 1999, the client paid Wilkinson a $95 filing fee to file an Application for Travel Document on her behalf that he commingled with his own funds. On Dec. 21, 1999, Wilkinson filed a travel permit application and application for a green card for the client, but the INS rejected the green card application because it was not filed timely. As a result, the INS rejected the client's application for a travel permit. Wilkinson failed to file an answer to the State Bar's Formal Complaint.

David Anderson Swift
Decatur, Ga.

David Anderson Swift (State Bar No. 695150) has been disbarred from the practice of law in the state of Georgia by Supreme Court order dated March 2, 2001. Swift wrote 18 checks from his trust account totaling $20,725, all of which were payable either to Swift, Swift's wife, or David Swift, P.C. Some of the checks were cashed while others were deposited to accounts at other banks, including Swift's payroll account. None of the checks written were for attorney's fees earned by Swift.

In a second case, Swift represented two clients and their children regarding personal injuries they sustained in an automobile accident. In July 1996, Swift filed suit on their behalf against two defendants. In November 1996, one of the defendants moved for summary judgment and, in December 1996, Swift filed a voluntary dismissal without prejudice in the case without just cause and without informing his clients. In February 1997, Swift told one of his clients that the suit was still pending against both defendants. In December 1997, the client learned of the dismissal when she discovered it in the court clerk's file.

In a third case, Swift represented two clients in a personal injury case arising from a May 1997 automobile accident. He settled the case in June 1998. In March 1999, Swift received a check for $4,095 from Safeway Insurance Company for property damage to the car of one of the clients. Although the check was made payable to the client who owned the car, a co-signor on the car loan, the lienholder and Swift, Swift did not notify any of the parties that he had received the check. Swift subsequently endorsed the

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

check stating that it was with the express permission of the other payees. Swift deposited the check into his trust account in April 1999. In June 1999, one of the payees learned that Swift had received the check. Swift agreed to deliver the funds to him if he would sign Safeway's release. After the payee refused to do so, Swift issued a check from his escrow account for the $4,095 to Safeway Insurance and mailed the check to Safeway's lawyers.

SUSPENSIONS

Thomas L. Burton
Brunswick, Ga.

By order of the Supreme Court of Georgia dated Feb. 16, 2001, Thomas L. Burton (State Bar No. 097950) was suspended from the practice of law in the state of Georgia for a period of 36 months with conditions for reinstatement. Burton represented a client from Florida who had entered a *nolo contendere* plea to a traffic citation for driving under the influence of alcohol. Burton was hired in October 1995 to withdraw the plea. The client signed a fee contract and gave him a $3,000 retainer. The fee contract established a fee of $1,000 for representation at an evidentiary hearing, $1,000 for any appellate work and $4,000 for representation at trial. Burton filed a motion to withdraw the *nolo contendere* plea, but took no further action, failed to return calls and correspondence from the client and the client's Florida attorney, failed to notify the client when the motion to withdraw the plea was denied, failed to return any of the retainer, and failed to respond to the State Bar's Notice of Investigation.

PUBLIC REPRIMAND

Wendell S. Henry
Decatur, Ga.

On Feb. 16, 2001, the Supreme Court ordered Wendell S. Henry (State Bar No. 348066) to receive a Public Reprimand. A client hired Henry to represent her in a wrongful death action concerning her daughter, who was killed in an automobile accident. The client subsequently discharged Henry and requested her file. Henry stated the file was in storage and he would have to retrieve it, but he never did so.

INTERIM SUSPENSIONS

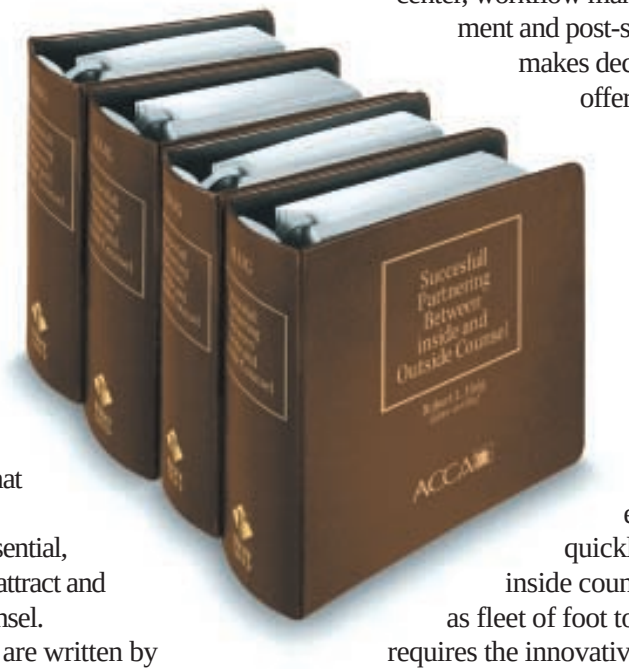
Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Feb. 6, 2001, five lawyers have been suspended for violating this Rule.

MAINTAINING EFFECTIVE COLLABORATIONS

***Successful Partnering Between Inside and Outside Counsel,* Robert L. Haig, editor, West Group and ACCA, 4 vols., 6,032 pp. and four diskettes of forms, $350. To order, call (800) 344-5009.**

Reviewed by Carol Todd Thomas

IN THIS AGE OF THE INTERNET, E-MAIL AND on-line access to publications and information, it is curious that more books, publications and printed resources are available now than ever before. The legal profession ranks near the top of the list of books published each year, and most are in multiple volumes. This year, West Group and the American Corporate Counsel Association released *Successful Partnering Between Inside and Outside Counsel*, edited by Robert L. Haig, a four-volume set that includes over 6,000 pages. With time pressures more intense than ever, the prospect of plowing through these volumes can be daunting.



As firm-wide director of client relations and marketing for a major U.S. law firm, I primarily focused on those chapters devoted to "marketing issues." What I came to realize is that all of the chapters contain valuable, even essential, information about what it takes to attract and maintain business from inside counsel.

The majority of the chapters are written by counsel from some of the largest corporations, with contributions by legal consultants and lawyers in many of the private law firms serving those corporations. These authors have experienced the rapid transition from long-standing relationships with law firms to competitive bidding. Increased competition and pressure to decrease the high cost of legal services impacts the profitability of the corporation. Private law firms are being forced to behave as businesses — marketing, budgeting, "partnering" with their customers and continuously improving their product and service offerings to maintain a competitive advantage.

For example, Chapter 6, "Marketing to Potential Corporate Clients," sets the stage for the challenges that face both inside and outside counsel. The authors establish the baseline that is "law services marketing." With a broad overview of the current legal climate for both inside and outside counsel, the authors establish the foundation needed to attract and service corporate legal departments. A very clear statement of what it takes for a successful partnership between inside and outside counsel is made by the authors, who state, "a firm's marketing efforts will not succeed unless the firm's lawyers themselves take front-line responsibility for client retention, relationship building and new client development." Where once work came into a firm based on decades of relationships and a firm's or lawyer's reputation, the competition now requires lawyers to become the sales and marketing department, the production center, workflow manager, billing and collection department and post-sales satisfaction center. Inside counsel makes decisions based on brand, product offering, price, service and relationship with the firm and the engagement lawyer. Quality of product, ability of the lawyers involved and a certain level of technology are expected and assumed in large part by lawyers inside the corporations. Inside counsels are calling the shots and are themselves operating at a much higher level within the corporation than ever before.

With the rapid rate of the economy and the need to move quickly to respond to market changes, inside counsels require outside law firms to be as fleet of foot to keep up with their demands. This requires the innovative use of technology. In Chapter 28, the authors discuss the use of technology to provide the expected service levels, to reduce costs and to maintain relationships with inside counsel. Communications are 24 hours a day, seven days a week and 365 days a year between inside and outside counsels. Lawyers on both sides carry pagers, cell phones and palm-size computers. They are expected to be available and able to respond instantly. These forms of communication challenge the protection of information and maintenance of the attorney-client privilege.

This trend increases law firm costs as the investment in technology and the resulting increase in staff to maintain that technology cuts into a firm's profitability. The authors discuss the necessity of investing in litigation support systems,

extranets, databases, e-mail, Internet access and compatible software products to attract and maintain client relationships. All of this technology is expected to be a "cost of doing business" and no longer can a firm pass these costs through to the client. Inside counsel requires that their outside counsel make the necessary investment and use it creatively and effectively to increase service levels while decreasing costs.

The case study in Chapter 76, "Federated's Acquisition of Broadway — Deal Making at High Speed," is evidence of the need to respond rapidly and effectively in this rapid-fire economic environment. The case illustrates a $1.8 billion transaction that had to be completed within five days. From the selection of the team to the execution of the details of the transaction, a fast-paced process was used. This transaction illustrates the current speed of transactions, the need to use technology creatively and to understand the economic conditions operating today.

Other chapters of particular interest to law firm marketing directors are: Chapter 3, "The Make or Buy Decision;" Chapter 4, "Selection of Outside Counsel;" Chapter 5, "Requests for Proposals, Bidding, Presentations and Beauty Contests;" and Chapter 7, "Optimizing the Number of Outside Counsel Through Convergence and Partnering Strategies." These chapters provide direct and practical advice for any lawyer seeking to obtain work from corporate counsel. These chapters should be required reading for practice leaders whose practices serve corporate legal departments as well.

Despite the length of this four-volume set, there is something here for everyone in the legal field — inside and outside counsel, law firm marketing directors and legal administrators. The set would be well placed as a resource in the offices of each of these groups to effectively market and manage legal services.

Carol Todd Thomas is a dual graduate of the University of Denver (B.A., M.P.A.) and recently graduated with honors from the masters program in Organization Development from Bowling Green State University. She has over 15 years experience serving as legal administrator and marketing director for private law firms and currently serves as firm-wide director of client relations and marketing with Powell, Goldstein, Frazer & Murphy, LLP.

Lawyers Foundation of Georgia Grant Program

The Lawyers Foundation of Georgia is pleased to announce its 2001 Challenge Grant Program. The challenge grant program will match funds raised by State, local and voluntary bars of Georgia, including bar sections and other law related organizations for projects that meet the criteria of the Foundation. The total amount of the grants will be determined prior to the time the applications will be mailed, Aug. 1, 2001. If your organization is interested in applying for a challenge grant, please request an application, in writing, by July 13, 2001.

Applications are due Sept. 14, 2001. The grant recipients will be identified by Oct. 15, 2001. A portion of the Challenge Grant would be paid out at the time of the award notice. The balance of the grants will be paid out shortly after the recipients meet the challenge and raise the required funds. Twenty-five percent of the challenge must be met by January 1, 2002, and the entire amount of the challenge should be raised within one year of receipt of the award notice.

The challenge funds:

- Must be derived from sources other than the project grantee
- Must be raised and dedicated specifically for the project in question
- Must be applied only to the Foundation grant.

Last years recipients were the Individual Rights Section and Access to Justice Committee for their Georgia Legal Services Public Education Campaign; the State Bar of Georgia Diversity Program for its Small Practice Development Center, the Douglas County Bar Association for the Law Related Education Materials for Schools in Douglas County, the Western Circuit Bar for its Literacy Project, the Augusta Conference of African American Attorneys for its Law School Scholarships, and the General Practice & Trial Section for its High School Mock Trial Instructional Video.

If your organization is interested in applying for these grants, please contact:

Lawyers Foundation of Georgia
Lauren Larmer Barrett
800 The Hurt Building · 50 Hurt Plaza · Atlanta, GA 30303 · 404-526-8617 · 404-527-8717 (fax) · laurenb@gabar.org

2001 LAW SCHOOL ORIENTATIONS NEED YOU!

The Orientations on Professionalism conducted by the State Bar Committee on Professionalism and the Chief Justice's Commission on Professionalism at each of the state's law schools have become a permanent part of the orientation process for entering law students. The Committee is seeking lawyers and judges to volunteer to return to their alma maters or any of the schools to help give back part of what the profession has given by dedicating a half day of time in August.
Please respond by completing the form below or calling the Chief Justice's Commission on Professionalism at (404) 527-8793 or 1-800-334-6865 x. 793, fax: (404) 527-8711.

2001 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM

FullName(Mr./Ms.)_____Nickname:_____
Address:_____
Telephone:_____Fax:_____
Area(s) of Practice:_____
Year Admitted to the Georgia Bar:_____ Bar #:_____
Reason for Volunteering:_____

(Please circle your choice)

Law school	Date	Time	Reception/Lunch	Speaker
*****Emory	August 24, 2001			TBA
Georgia State	August 14, 2001	3:30 - 5:30 p.m.	5:30 - 6:30 p.m.	TBA
John Marshall	August 27, 2001	10:00 a.m. - 12:00p.m.	12:00 - 1:00p.m.	Chief Judge G. Alan Blackburn
Mercer	August 17, 2001	2:00 - 4:00 p.m.	4:00 - 5:00 p.m.	Judge M. Yvette Miller
UGA	August 13, 2001	2:00 - 4:00 p.m.	4:00 - 5:00 p.m.	James B. Franklin

*(No additional volunteers are needed for the Emory Orientation sessions - Thank you.)

Please return to: State Bar Committee on Professionalism; Attn: Mary Donaldson · 800 The Hurt Building · 50 Hurt Plaza · Atlanta, Georgia 30303 · ph: (404) 527-8793, fax: (404) 527-8711. Thank You!

Continued from page 10

dential communication privilege because she testified that she and the defendant had engaged in anal intercourse. The Georgia Court of Appeals noted that in *Brown*, the defendant's act of stealing cocaine in his wife's view could have been done in disregard or indifference to her presence, which therefore was not deemed to be a confidential communication.[53] The Court observed that White's wife's knowledge of the fact that they had engaged in anal intercourse was acquired by virtue of her participation resulting from a reliance upon the confidential marital relationship. Therefore, the act in *White* was deemed a privileged communication and White's conviction was reversed.[54]

Finally, the confidential communication privilege only applies if the communication was made during the marriage. As long as the parties were married at the time of the communication, the privilege may be exercised after the dissolution of the marriage and upon the death of one of the spouses.[55] The courts have held that since communications between husband and wife are perpetual, they survive death and are protected forever.[56] Thus, contrary to the adverse testimony privilege, the confidential communication privilege may be invoked during the court proceeding regardless of the status of the marriage at that time, as long as the marriage existed at the time of the communication.

Conclusion

The two marital privileges recognized in Georgia are distinct. Understanding which privilege applies, and in what circumstances, may be difficult. The adverse testimony privilege belongs to the witness/spouse and applies only in criminal cases. The confidential communication privilege belongs to the communicator and applies in both criminal and civil cases. It is not a complete disqualification from testifying. Rather, the witness may not be compelled to testify regarding confidential marital communications. Both privileges could become critical at trial and practitioners should be prepared to address the issues raised by their assertion.

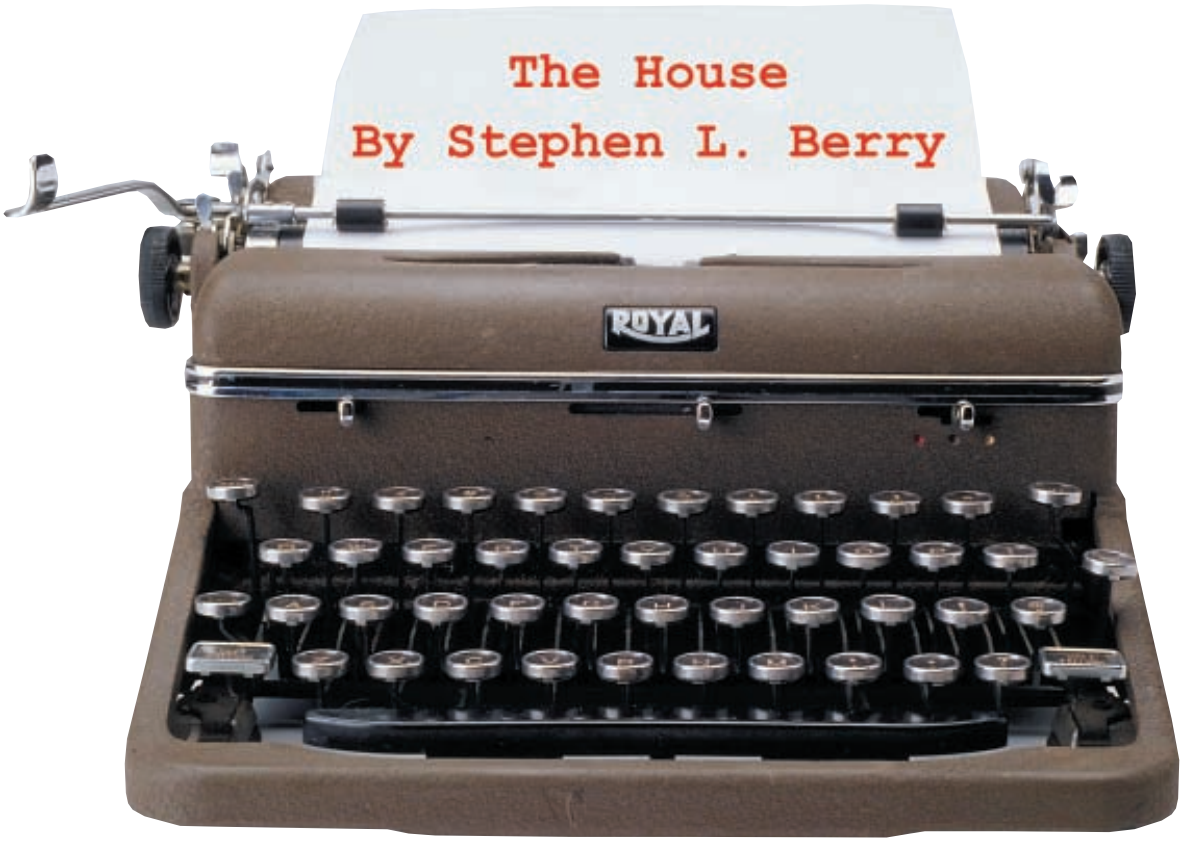
Barbara J. Nelson is a lawyer in Claxton. She is a part-time Evans County State Court Judge with her private practice concentrating on local government law and litigation. Nelson received an A.B. degree in economics from the University of Georgia in 1986, a J.D. degree from Stetson University College of Law in 1989, and an LL.M. degree from the University of Georgia School of Law in 1999.

Endnotes

1. O.C.G.A. § 24-9-23(a) ("Husband and wife shall be competent but shall not be compellable to give evidence in any criminal proceeding for or against each other.").
2. O.C.G.A. § 24-9-21(1) ("There are certain admissions and communications excluded on grounds of public policy. Among these are: (1) Communications between husband and wife . . . .").
3. *See* RONALD L. CARLSON ET AL., EVIDENCE: TEACHING MATERIALS FOR AN AGE OF SCIENCE AND STATUTES, 683 (4th ed. 1997).
4. *See, e.g.*, Perkins v. State, 269 Ga. 791, 795, 505 S.E.2d 16, 20 (1998), *cert. denied*, 526 U.S. 1118, 119 S. Ct. 1768 (1999); Pirkle v. State, 234 Ga. App. 23, 23-24, 506 S.E.2d 186, 187-88 (1998); Duncan v. State, 232 Ga. App. 157, 158-59, 500 S.E.2d 603, 606 (1998).
5. Pirkle, 234 Ga. App. at 23, 506 S.E.2d at 188; Smith v. State, 138 Ga. App. 683, 685, 227 S.E.2d 84, 86 (1976), *aff'd*, 237 Ga. 647, 229 S.E.2d 433 (1976). *See also* Trammel v. U.S., 445 U.S. 40, 100 S. Ct. 906 (1980) (setting forth the standard for adverse testimony rule in federal cases).
6. State v. Smith, 237 Ga. 647, 647-48, 229 S.E.2d 433, 434 (1976) (privilege applies in any criminal proceeding, including grand jury proceedings).
7. O.C.G.A. § 24-9-23(a).
8. 138 Ga. App. 683, 227 S.E.2d 84.
9. *Id.* at 685, 227 S.E.2d at 86. *See also* Farmer v. State, 100 Ga. 41, 28 S.E.26, 27 (1896) (production of paper belonging to spouse was not compellable). *But see* Barbour v. State, 66 Ga. App. 498, 18 S.E.2d 40, 44 (1941) (documentary or oral evidence of banking accounts was admissible in spite of the marital privilege).
10. 213 Ga. App. 352, 444 S.E.2d 609 (1994).
11. *Id.* at 352, 444 S.E.2d at 610.
12. *See, e.g.*, Drane v. State, 265 Ga. 663, 664, 461 S.E.2d 224, 225 (1995).
13. *See* O.C.G.A. § 19-3-1.1.
14. 261 Ga. 66, 401 S.E.2d 492 (1991).
15. *Id.* at 70-71, 401 S.E.2d at 496.
16. *See, e.g.*, Robinson v. State, 221 Ga. App. 865, 867, 473 S.E.2d 519, 521 (1996).
17. Brown, 261 Ga. at 66, 401 S.E.2d at 492.
18. *Id.* at 71, 401 S.E.2d at 496.
19. *Id.*
20. White v. State, 211 Ga. App. 694, 695, 440 S.E.2d 68, 70 (1994).
21. White, 211 Ga. App. at 695, 440 S.E. 2d at 70. *See also* Stanley v. State, 240 Ga. 341, 348, 241 S.E.2d 173, 179 (1977) (wife who testified against her husband was not compelled by grant of immunity).
22. 244 Ga. App. 689, 536 S.E.2d 586 (2000).
23. *Id.* at 691, 536 S.E.2d at 589 (trial court committed procedural error by not permitting defendant to call his wife as a witness after she had asserted the marital privilege during the state's case; the wife should have been summoned to state her intentions before the presiding judge).
24. Brown, 261 Ga. at 70, 401 S.E.2d at 496 (witness-wife did not waive her privilege by testifying at the pretrial hearing).
25. *See* Trammel, 445 U.S. at 53, 100 S. Ct. at 914.
26. 445 U.S. 40, 100 S. Ct. 906 (1980).
27. *Id.* at 42, 100 S. Ct. at 908.
28. *Id.* at 53, 100 S. Ct. at 914.
29. 269 Ga. 791, 505 S.E.2d 16 (1998), *cert. denied*, 526 U.S. 1118, 119 S. Ct. 1768 (1999).

30. *Id.*, 269 Ga. at 795-96, 505 S.E.2d at 20.
31. *Id.*
32. *Id. See also* Drane, 265 Ga. at 664, 461 S.E.2d at 224-25; Higgs v. State, 256 Ga. 606, 608, 351 S.E.2d 448, 450-51 (1987) (wife's statements to investigator about defendant/spouse were admitted under hearsay exception). *But see* Harrison v. State, 238 Ga. App. 485, 485-87, 518 S.E.2d 755, 757-58 (1999) (state failed to justify admission of hearsay testimony under necessity exception).
33. O.C.G.A. § 24-9-23(b). *See also* Sosebee v. State, 190 Ga. App. 746, 747, 380 S.E.2d 464, 466 (1989).
34. 210 Ga. App. 398, 436 S.E.2d 522 (1993).
35. *Id.* at 399, 436 S.E.2d at 523. *See also* O.C.G.A. § 24-9-23(b).
36. Hamilton, 210 Ga. App. at 399, 436 S.E.2d at 523.
37. *See* O.C.G.A. § 24-9-21(1).
38. 139 Ga. App. 575, 228 S.E.2d 731 (1976).
39. *Id.* at 576-77, 228 S.E.2d at 734.
40. White, 211 Ga. App. at 696-97, 440 S.E.2d at 70-71; Brown v. State, 199 Ga. App. 188, 189, 404 S.E.2d 469, 471 (1991).
41. *See* Wilcox v. State, 250 Ga. 745, 754-55, 301 S.E.2d 251, 259 (1983), *aff'd in part and rev'd in part on other grounds*, 813 F.2d 1140 (11th Cir. 1987).
42. 250 Ga. 745, 301 S.E.2d 251 (1983), *aff'd in part and rev'd in part on other grounds*, 813 F.2d 1140 (11th Cir. 1987).
43. *Id.*, 250 Ga. at 755, 301 S.E.2d at 259.
44. *Id.*
45. 220 Ga. App. 355, 469 S.E.2d 458 (1996).
46. *Id.* at 355, 469 S.E.2d at 459-60.
47. *Id.* (quoting White v. State, 211 Ga. App. 694, 695, 440 S.E.2d 68, 70 (1994)).
48. Helton v. State, 217 Ga. App. 691, 692, 458 S.E.2d 872, 874 (1995); Georgia Int'l Life Ins., 139 Ga. App. at 579, 228 S.E.2d at 735-36.
49. 199 Ga. App. 188, 404 S.E.2d 469 (1991).
50. *Id.* at 190, 404 S.E.2d at 472.
51. *Id.* at 190, 404 S.E.2d at 471-72.
52. 211 Ga. App. 694, 696-97, 440 S.E.2d 68, 70-71 (1994).
53. *Id.* at 696, 440 S.E.2d at 70.
54. *Id.* at 697, 440 S.E.2d at 71.
55. Georgia Int'l Life Ins., 139 Ga. App. at 576-77, 228 S.E.2d at 734.
56. *Id.*

martindale hubbell new art “legal services by request” full page 4c



Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present "The House," by Stephen L. Berry of St. Marys, Ga., as the winner of the *Journal's* 10th Annual Fiction Writing Competition. Honorable Mention goes to Edward J. Peterson of Macon, Ga., for "The Negotiation."

The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year's entries reflected a wide range of topics and literary styles. In accordance with the competition's rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author's identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Mr. Berry and all of the other entrants for their participation and excellent writing.

A bullet grazed the bulldozer's bucket, sparking off yellow steel stained by rust and sending the operator rolling from the cab. The monstrous machine stood idle; another bullet drove the operator back to where a team of hard-hatted highway workers, an engineer, an aggravated surveyor, three anxious sheriff's deputies and the lawyer waited.

The lawyer was there because everyone knew there'd be trouble.

The highway had to be built. Atlanta needed another outer perimeter to relieve the stifling congestion of its ancient I-285. Eight lanes of asphalt were simply not enough. So, after 10 years of talking, four years of study and two years of hearings, a new interstate was approved. It took $50 million to secure the necessary right-of-way. Thankfully for the taxpayers, most of the prescribed route ran through undeveloped land. But, at places, whole neighborhoods had to be relocated. The acquisitions ran 20 percent over budget since not everyone accepted the initial condemnation payments. Nearly 200 landowners went to court and tried hard to convince juries to give them ore.

Some won. Some didn't.

All of the trials were now over. Appeals exhausted. Cases resolved.

Except one.

The old man had refused every offer of payment. He owned an 800 square-foot, wood-sided cracker box with a chain-link fenced backyard and two narrow strips of decaying concrete for a driveway. He bought it 40 years ago. The blossoming holly bush which guarded one corner was thick from years of meticulous grooming. The dogwood planted after the birth of his son dominated the front yard. Plum and apple trees in the backyard were bushy from years of rainfall and manure.

To the old man the house was a shrine, a testament to his life, something tangible that memorialized his very existence. To the highway crew standing in the street it was another obstacle that had to be obliterated. To the state' s appraisers it was just another "tract of real property with dwelling" that had to be valued.

So, they unemotionally appraised its worth at $47,000 and eventually upped the offer to $50,000.

But the old man consistently said no.

It was then that the lawyer became involved.

After six months of depositions, interrogatories and document production, the state reverted to its initial offer of $47,000. But, the old man stood by his assertion that the house was priceless. He would never sell. The jury disagreed and awarded $47,000, granting title to the state.

That was five months back.

The last appeal was denied nine days ago. The bulldozers first arrived four days later, but were forced to leave by more bullets. They'd returned this morning armed with court orders and deputies. Predictably, the old man was locked inside.

"You know what you have to do," the foreman said.

Without hesitation, the lawyer walked toward the house. Despite the gun, there was no fear. Everyone realized the old man would never hurt him.

At the front door the lock clicked open and the old man let him in. The house was empty. All of the furniture has been moved last week when the lawyer finally convinced him to leave.

"Papa, you have to give this up," the lawyer said, his eyes clouding with tears.

But the old man only shook his head. "I can't let her go."

"She's already gone."

His grandfather shook his head, like last time. "She's not."

It all came out during the trial. After 54 years of marriage, his wife had finally succumbed to cancer. Always before she'd prepared three meals every day, washed clothes most Saturdays and trudged through the grocery store every Thursday. Sunday lunch was a certainty, usually with enough leftovers for Monday and sometimes into Tuesday. If he lost a button on his shirt, it reappeared no more than a day later. And there was never a time that he was without soap or shaving cream, along with a drawer full of clean underwear.

She'd done it all until she got sick.

Then he'd taken over and, for a year, made sure her medication was regular, that she was taken to the doctor and chemotherapy on time, and that there was food to eat and plenty of liquids no matter what time of day or night. When the end came, she died peacefully in the same bed they'd shared for over half a century.

Two years ago.

The condemnation notice came a year later.

And the reason why the house was, in the old man's work, priceless, was that his wife was still there.

That, too, had all come out during the trial.

The old man swore through tearful emotion that his wife still existed. Not in the physical sense, though she regularly appeared next to him in her maroon Lazy-Boy while he watched television, even complaining like she once did when he wanted to watch "Married With Children" reruns instead of "Inside Edition." She'd also be there at dinnertime, berating him about the frozen microwave entrees he now regularly consumed. He'd never liked green vegetables and always loved red meat. In life, she'd told him he needed the opposite and now, in death, kept up the reminder.

He felt her presence most at night.

The bed, the same one their child had been conceived in and the same one in which she died, was still warm and comforting. She was there. As surely as if physically cuddled to him in her flannel nightgown, still wanting the ceiling fan turned off, but never actually doing it since she knew he liked the breeze.

It was wonderful that she was still there. As if she'd never gone. Which explained why the old man had yet to grieve until last week when the lawyer finally convinced him to leave.

But it had not been easy.

"I can't," the old man pleaded. "She has to have the house. She told me that without this place, she'll move on."

The lawyer had been in tears. He'd loved his Nana, too. But unlike the old man, he'd released his grief two years ago when they buried her.

"Papa, she's gone."

"Don't you see, son? It's the house. It's what keeps her here. It's her world now."

And the lawyer had fought hard against a swell of agony. There was no doubt his grandfather sincerely believed what he was saying. He'd first heard the story when the condemnation action was filed. He'd heard it again when the state spent four hours in a deposition pelting

his grandfather with question after question. He heard the tale on more time at trial, and a fourth time last week.

On every occasion the facts were the same.

The assistant attorney general who had represented the state had been almost mocking in ridicule. In response, the grandson had done what he could, even retaining with his own money an expert in parapsychology who testified that metaphysical experiences were, at least to the person experiencing them, very real. Over objection, the judge allowed the testimony more out of compassion for the old man than out of respect for the law. It was certainly novel: arguing that the fair and reasonable value of a tract of real property should be governed by the presence of a supernatural entity which no amount of money could replace, therefore condemnation should be disallowed.

The jury listened attentively. A few even showed genuine sympathy with his grandfather's plight, but in the end, they had no choice but to reject the arguments as preposterous and award a monetary amount.

The highway had to be built.

And there was no such thing as a ghost.

The lawyer now gazed at the old man through grandson eyes. The two men were a mirror image of each other. One past 70, the other nearly 40. The man in between, the old man's son, the lawyer's father, had never been close to either. A failure, he spent his life drinking whiskey and blaming others for his shortcomings. The old man had grown to dislike him years ago, the son more recently. So, by skipping a generation, they had both acquired someone to love.

The lawyer spent most of his childhood with his grandparents. Together, they had paid for his college and helped with law school. They had been there on graduation day, and stood in the back of the courtroom when he was sworn into the State Bar. At his first jury trial they both sat through the entire proceeding, and though he lost, their enthusiasm made him feel like he won. His Papa had been his best man at the wedding, and his first born was named for him. He and his wife tried to have more children, but with no success. It seemed an almost inevitable cycle: an only child begat an only child who begat another only child.

When the condemnation papers arrived he had no choice but to defend his grandfather, even though he did not for a second believe his grandmother's spirit still dwelt in the house. In his heart, in his mind, in the eyes of his son, in the love of his grandfather was where she still existed. In the midst of unfolding memories that cascaded through his subconscious, in dreams that seemed real there she still existed. Among the hundreds of photographs and few video tapes-there she still existed.

But not within the house.

The house was merely two-by-fours, plywood, shingles and nails, not a sarcophagus of the supernatural or a gateway to another dimension. It was a house, nothing more, and it had to be razed.

"We went through this last week," the lawyer said, resignation in his voice. He pointed to the gun. "Where did you get that? I put it up."

"I found it," the old man said, with the defiance of a young child.

"You can't keep shooting at bulldozers."

"It seems to be the only thing that works."

"The only reason that there's not a SWAT team out there right now is everyone on that crew feels for you. They don't want to do this, but they have a job to do."

"I thought maybe the other day when we moved she'd go with the furniture. Maybe her spirit could be transferred, like the sofa or the television. But she'd not there. The bed is cold."

Trying to make him comfortable, the lawyer rented the old man an apartment. There was not enough from social security for rent and groceries, so he placed the lease in his own name and paid the rent himself. The old man refused to cash the $47,00 check from the state. He would never accept the money.

"I tried, son." He always called him that. "I really tried to see if that place would be the same. But she's not there, she's here."

"Have you seen her today?"

The ancient face lit up. "Right before you came. She's the one who told me to shoot at the dozer. Thought maybe it would scare 'em off, like last time. She's awful afraid, son. Doesn't want to pass on. She likes it here."

"Why won't Nana show herself to me?"

"I asked her. She says she's tried, but can't. Somehow, I'm the only one who can see and talk to her."

"Is she here now?"

"She only comes when I'm alone."

Which was what the state-hired psychologist testified about at trial. Once the judge ruled that the "supernatural defense," as it came to be called in the press, could be used, the state had tried to counter the argument with a dose of reality. Under court orders, the old man spent several hours with a professional. They'd repeatedly talked about his life, keying particularly on the past two years. The psychologist's notes, produced during discovery, revealed that the old man sincerely believed his wife's spirit still inhabited the house. It was as if their life together had never been interrupted by cancer. His diagnosis was not surprising: repressed grief — *an intentional denial of reality in an effort to stall the inevitable confrontation with acceptance.*

This was consistent with what the lawyer himself had observed.

Never once in two years had he seen his Papa weep. Never once had he ever been sad. Never once, to his knowledge, had Papa ever visited the cemetery. It was the grandson who made sure flowers were always on the grave. The husband never visited. In fact, his grandfather had been relatively happy, content, emotionally similar to before, never once speaking of his wife in the past tense.

Until last week.

The day after he finally agreed to move.

The lawyer crept toward the window and stared out. The rest of the neighborhood was in shambles. Mere piles of rubble that would soon be loaded onto truck beds and carted away. It looked like a bombsite, not the quaint neighborhood of working class stiffs it had been for the last half century. The only house still standing was the old man's. The fence still encircled the yard. Trees continued to reach for the sun. It was starkly out of place. A tiny spot of normalcy in what was otherwise chaos. Off ramps would soon lead to secondary streets. Twenty-four hour convenience stores and gas stations would sprout where flower beds and vegetable gardens once grew. The scent of magnolia blossoms and back-yard barbecue replaced by carbon and diesel exhausts.

The legal process had truly run its course.

"I can't go back to that apartment, son," the old man declared.

The lawyer feverently explained that if he didn't go peacefully he would be forcibly carried off. There was no choice.

"I've sat awake all night since getting there, hopin' maybe her spirit managed to hitch a ride with her clothes, or her hair brush, or with the bed. Something of importance from her life that maybe, somehow, her soul clung to." The voice went silent for a moment. "There's nothin', son. Only quiet and cold and loneliness."

The lawyer said nothing.

"That's why I came back today."

Enough. "Come on, we have to go."

He clasped the old man's hand and palmed the gun. Surprisingly, there was no resistance. Just tears. From both of them. So he hugged his Papa. If there was any other way he'd support him 100 percent, but unfortunately, there wasn't. Nana was gone. It was time he grieved. The state paid psychologist had said the same thing to the jury, suggesting the destruction of the house might very well be a mechanism to allow the old man to finally confront reality. In other words, it could actually be therapeutic to find against him and, secretly, a part of the lawyer agreed.

They stepped to the front door.

Before leaving the old man turned back.

The lawyer allowed him a final moment, staring too at yellowed-sheetrock, faded wallpaper and tattered carpeting. Once the backdrop for a loving home, soon it would be landfill.

"Good bye, my love," the old man whispered.

They left and the lawyer gently closed the door for the last time.

Outside, the crew stood silent.

The old man was crying. So was the lawyer. The grandson led his Papa to the old man's car. It was parked next to the fence, atop the same strips of grass-infected concrete that had supported it for years.

"Thanks, son," the old man said as he climbed inside.

"Where you going?"

"To the cemetery. She's there now." He cranked the car and left.

The lawyer walked to the street and told the foreman, "It's yours."

The bulldozer roared to life, and without delay began its assault, first crushing the chain length fence to clear a path both for itself and the dump trucks to follow. Approaching the house, the massive front-end loader raised its bucket, the leading edge jagged with teeth seemingly ready to devour the house. It was positioned directly adjacent to his grandparents' bedroom, and the lawyer watched as the operator released the lever and the bucket crashed onto the shingled roof, obliterating the wall, collapsing nearly half of the structure.

Hydraulics raised the blade again for another blow.

The lawyer could not watch and was just about to turn away when his gaze was suddenly drawn back. At first he thought it was only an illusion. A trick his subconscious was playing on his beleaguered mind. Wishful thinking brought on by almost unbearable emotion. But, as the bulldozer prepared to complete its assault and the first of many dump trucks backed in to accept the wreckage, the image was beyond dispute.

Framed by the living room's picture window where the Christmas tree had stood every holiday of his life, where he himself stood only minutes ago, was his grandmother, the gentle face unmistakable, tears streaming down both cheeks, her lips mouthing, *good-bye.*

Stephen L. Berry is a 1980 graduate of Mercer University School of Law. Prior to attending law school, Berry attended Valdosta State College, where he earned a bachelor's degree in political science. Since 1980, Berry has been in private practice in St. Marys, Ga. He also served on the Camden County Board of Education and is presently chairman of the Camden County Board of Commissioners. Berry has been writing since 1990 and currently has a novel circulating through New York publishers.

CLE/Ethics/Professionalism/Trial Practice

Note: To verify a course that you do not see listed, please call the CLE Department at (404) 527-8710. Also, ICLE seminars only list total CEL hours. For a breakdown, call them at (800) 422-0893.

June 2001

11
PRACTISING LAW INSTITUTE
Patent and High Technology Licensing
Various Dates and Locations
5.3/0.0/0.0/0.0

11
PRACTISING LAW INSTITUTE
Understanding Franchising
New York, N.Y.
13.5/1.0/0.0/0.0

11
JUDGE ADVOCATE GENERAL SCHOOL-U.S. ARMY
31st Staff Judge Advocate Course
Charlottesville, Va.
29.3/3.0/0.0/0.0

12
PRACTISING LAW INSTITUTE
Securities Law and the Internet
Various Dates and Locations
6.0/0.8/0.0/0.0

12
NATIONAL BUSINESS CENTER, INC.
Corporate Governance in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

13
PRACTISING LAW INSTITUTE
International Tax and Estate Planning
Boston, Mass.
7.5/1.0/0.0/0.0

13
NATIONAL BUSINESS INSTITUTE
Practical Guide to Zoning and Land Use in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

13
ICLE
State Bar Annual Meeting 2201
Kiawah Island, S.C.
To be determined

14
NATIONAL EMPLOYMENT LAW INSTITUTE
Employment Law Litigation
Washington, D.C.
11.5/1.0/0.0/0.0

15
LORMAN BUSINESS CENTER, INC.
Construction Claims in Georgia
Atlanta, Ga.
6.7/0.0/0.0/0.0

18
PRACTISING LAW INSTITUTE
Doing Deals
New York, N.Y.
9.0/0.5/0.0/0.0

18
MEALEY PUBLICATIONS, INC.
Asbestos, Bankruptcy Conference
Philadelphia, Pa.
11.0/0.0/0.0/0.0

19
LORMAN BUSINESS CENTER, INC.
Introduction to Collection Law in Georgia
Macon, Ga.
6.7/0.0/0.0/0.0

20
PRACTISING LAW INSTITUTE
What Lawyers Need to Know About the Internet
New York, N.Y.
6.3/1.5/0.0/0.0

20
NATIONAL ASSOCIATION OF COLLEGE AND UNIVERISTY
41st Annual Conference
San Diego, Calif.
20.3/3.0/0.0/0.0

20
LORMAN BUSINESS CENTER, INC.
Nuts and Bolts of 401K Plans in Georgia
Atlanta, Ga.
6.7/0.0/0.0/0.0

21
PRACTISING LAW INSTITUTE
Intellectual Property Issues in Structuring Deals and Drafting Agreements
Multi-Sites
5.0/0.3/0.0/0.0

21
LORMAN BUSINESS CENTER, INC.
Nursing Home Litigation in Florida
Jacksonville, Fla.
6.0/0.0/0.0/6.0

25
PRACTISING LAW INSTITUTE
2ND Annual Institute on Privacy Law
New York, N.Y.
10.3/1.0/0.0/0.0

25
JUDGE ADVOCACTE GENERAL SCHOOL-U.S. ARMY
3RD Joint Operational Law Training
Charlottesville, Va.
29.3/3.0/0.0/0.0

26
NATIONAL BUSINESS INSTITUTE
Stockbroker and Brokerage Firm Liability in Georgia
Atlanta, Ga.
6.0/0.0/0.0/0.0

27
NATIONAL BUSINESS INSTITUTE
School Law in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

28
PRACTISING LAW INSTITUTE
Information Technology Litigation
New York, N.Y.
5.5/0.5/0.0/0.0

28
PROFESSIONAL EDUCATION SYSTEMS, INC.
The Estate Planning Course
Atlanta, Ga.
6.7/0.0/0.0/0.0

28
CHATTANOOGA BAR ASSOCIATION
Intellectual Property Issues in Structuring and Drafting Agreements
Chattanooga, Tenn.
6.0/0.0/0.0/0.0

28
LORMAN BUSINESS CENTER, INC.
Florida Construction Law: Can This Job be Saved?
Jacksonville, Fla.
6.0/0.0/0.0/0.0

28
LORMAN BUSINESS CENTER, INC.
Buying and Selling Business in Florida
Jacksonville, Fla.
6.7/0.5/0.0/0.0

28
NORTON INSTITUTES ON BANKRUPTCY LAW
Western Mountain Bankruptcy Law Institute
Jackson Hole, Wyo.
15.5/2.0/0.0/0.0

29
ICLE
Southeastern Admiralty Law Institute
Orlando, Fla.
10.0/1.0/1.0/0.0

29
ICLE
Southeastern Admiralty Law Institute
Orlando, Fla.
10.0/1.0/1.0/0.0

29
LORMAN BUSINESS CENTER, INC.
Florida Legal Ethics
Tallahassee, Fla.
6.0/3.0/0.0/3.0

July 2001

2
NATIONAL INSTITUTE OF TRIAL ADVOCACY
Handley Advanced Advocates
Bloomfield, Colo.
32.5/2.0/0.0/0.0

6
LORAM BUSINESS CENTER, INC.
OSHA Regulations: Does Your Construction Site Comply?
Atlanta, Ga.
6.0/0.0/0.0/0.0

9
PRACTISING LAW INSTITUTE
Acquiring or Selling the Privately Held Company
Chicago, Ill.
11.3/0.8/0.0/0.0

10
NATIONAL BUSINESS INSTITUTE
Advanced Construction Law in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

12
PROFESSIONAL EDUCATION SYSTEMS, INC.
Tax Planning and Compliance for Tax Exempt Organizations
Las Vegas, Nev.
13.3/0.0/0.0/0.0

12
LORMAN BUSINESS CENTER, INC.
Accounting and Financial Statement Analysis for Lawyers
Jacksonville, Fla.
6.7/0.0/0.0/0.0

PUBLIC NOTICE

APPOINTMENT OF A BANKRUPTCY JUDGE

In light of the announced retirement of Judge A. David Kahn, the United States Court of Appeals for the Eleventh Circuit invites applications from highly qualified person for a 14-year term of appointment as United States Bankruptcy Judge for the Northern District of Georgia at Atlanta. The current annual salary is **$133,492.**

A full announcement and applications may be obtained from the clerk of any district court or bankruptcy court of the Eleventh Circuit or from Norman E. Zoller, Circuit Executive, United States Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia 30303; telephone (404) 335-6535. Interested person may contact the Circuit Executive for additional information. The application may be completed by the applicant only and must be received at the Circuit Executive's office not later than **July 30, 2001**.

LITIGATION GRANTS AVAILABLE

The Southern Poverty Law Center's Strategic Litigation Project is designed to assist lawyers in bringing worthwhile civil rights and poverty law cases that might not otherwise be brought. The project provides monetary grants to cover out-of-pocket litigation costs typically in the $2,500 to $15,000 range. The Project will also consider requests for funds to develop and distribute civil rights litigation manuals and training.

Please refer to www.splcenter.org for more application information or send a request for application information to Strategic Litigation Project, P.O. Box 2087, Montgomery, AL 36102 or fax it to (334) 956-8481.

12
LORMAN BUSINESS CENTER, INC.
Advanced Estate Planning in Florida
Atlanta, Ga.
6.7/0.5/0.0/0.0

13
LORMAN BUSINESS CENTER, INC.
Introduction to Workers Compensation
Atlanta, Ga.
6.0/0.0/0.0/0.0

13
LORMAN BUSINESS CENTER, INC.
Workers Compensation in Florida
Jacksonville, Fla.
6.0/0.0/0.0/0.0

16
PRACTISING LAW INSTITUTE
Taking and Defending Depositions in Commercial Cases
New York, N.Y.
6.5/0.5/0.0/0.0

17
PRACTISING LAW INSTITUTE
Trial Evidence and Direct Cross Examination
New York, N.Y.
6.3/1.0/0.0/0.0

18
NATIONAL BUSINESS INSTITUTE
EDCPA Compliance for the Georgia Practitioner
Atlanta, Ga.
6.0/0.5/0.0/0.0

19
PRACTISING LAW INSTITUTE
Understanding Basic Copyright Law
Various Dates and Locations
4.8/0.8/0.0/0.0

19
ROCKY MOUNTAIN MINERAL LAW FOUNDATION
47TH Annual Rocky Mountain Mineral Law Institute
Santa Fe, N.M.
23.0/0.0/0.0/0.0

19
LORMAN BUSINESS CENTER, INC.
The Examination in Georgia
Atlanta, Ga.
6.0/1.0/0.0/0.0

19
LORMAN BUSINESS CENTER, INC.
Multi-State Tax Issues
Atlanta, Ga.
6.7/0.0/0.0/0.0

19
ICLE
Fiduciary Law Institute
St. Simons Island, Ga.
12.0/0.0/0.0/0.0

31
LORMAN BUSINESS CENTER, INC.
Tax Aspects of Mergers and Acquisitions in Georgia
Atlanta, Ga.
7.2/0.0/0.0/0.0

August 2001

3
LORMAN BUSINESS CENTER, INC.
Legal Ethics in Florida
Jacksonville, Fla.
6.0/6.0/0.0/0.0

10
ICLE
Environmental Law Institute
St. Simons Island, Ga.
8.0/0.0/0.0/0.0

31
ICLE
Urgent Legal Matters
Sea Island, Ga.
12.0/0.0/0.0/0.0

September 2001

13
ICLE
Institute for City/County Attorneys
Athens, Ga.
12.0/0.0/0.0/0.0

20
ICLE
Insurance Law Institute
St. Simons Island, Ga.
12.0/0.0/0.0/0.0

pick up House ad www.gabar.org from page 59 of April 01 issue.

gilsbar new art full page 4c supplied as a quark file

Classifieds

Employment: Attorneys

FULL-TIME INTERNATIONAL LAW ASSOCIATE. Advise large corporate clients on financial analyses and evaluations. Must have J.D. degree. Must be in the top third of law class. Must have educational background in international law including coursework in drafting international contracts. Must have minimum of 1 year experience in financial analysis with a national company. Salary: $110,000. Send resume to Johan Droogmans, **Alston & Bird LLP**, One Atlantic Center, 1201 West Peachtree Street, Atlanta, GA 30309-3424.

CORPORATE ATTORNEY I. A leading manufacturer, headquartered in north Georgia, is seeking candidates to apply for a position in its legal department. This professional will work with the corporate legal team that formulates and implements corporate legal policy for a world-class organization and will perform a variety of legal assignments and projects. These will include consulting and advising employees, drafting and reviewing legal documents, assisting others in managing litigation, and participating in legal transactions. Candidates must possess strong analytical skills. Emphasis will be placed on interpersonal skills and ability to function as a team member. Application or admittance to the state bar required. A comprehensive benefits package reflects this corporation's status as a multi-billion dollar industry-leader. Please forward resume to Box A-Comm, 800 The Hurt Building, 50 Hurt Plaza, Atlanta 30303. AA/EEO Employer, M/F/D/V

FEDERAL STAFF ATTORNEY POSITIONS. U. S. Court of Appeals, 11th Circuit, Atlanta. Several three-year clerkships beginning immediately. Excellent academics, superior research/writing skills, law review/equivalent, and ability to work efficiently under time pressure. Resume, law school transcript, unedited writing sample, and professional references. To: U. S. Court of Appeals, 11th Circuit, Staff Attorneys' Office, 56 Forsyth Street, N. W., Atlanta, GA 30303-2289. Salary $43,720-$73,633.

Postitions Wanted

ATTORNEY [MD AND DC BARS] with thirty years of experience as solo practitioner in all areas of family law seeking to relocate. Tel/fax (301) 652-8629. Email - johnvkavanagh@worldnet.att.net.

Misc.

ATLANTA AREA ATTORNEYS: I am looking for the Last Will and Testament of Anna B. Winson, a.k.a. Anne Winson, a.k.a. Anna Cole. Anyone with a signed or unsigned copy, please contact Alan Winson at (510) 653-2685 or via email at alan_winson@yahoo.com.

Services

GEORGIA BRIEF WRITER & RESEARCHER All Georgia Courts: Appellate briefs, Notices of Appeal, Enumeration of Errors, Motions: Trial briefs, Motion briefs, etc. Reasonable rates. Over 30 years experience. Curtis R. Richardson, Attorney at Law. Admitted in 1964. (404) 377-7760. References upon request.

INSURANCE EXPERT WITNESS. Fee-only expert witness. Twenty-two years in risk management insurance consulting. Pre-filing evaluation, deposition and trial. Policy coverages, Captives, Excess, deductibles, self-insurance, agency operations, direct writers, property loss preparation. Mergers & Acquisitions. Member S. R. M. C. Contact: Douglas F. Miller, Employers' Risk & Insurance Management. Phone (205) 995-0002 Birmingham or Watts (800) 462-5602.

Books/Office Furniture & Equipment

THE LAWBOOK EXCHANGE, LTD. buys, sells and appraises all major lawbook sets. Also antiquarian, scholarly. Reprints of legal classics. Catalogues issued in print and online. MasterCard, Visa, AmEx, (800) 422-6686; fax: (908) 686-3098; www.lawbookexchange.com

Advertising Index

Pointclear communications new art Quark file “Is someone reading” full page 4c

back cover

west group new art “westlaw.com” full page 4c