

GEORGIA BAR Journal

AUGUST 1999 • VOL. 5 NO. 1



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GEORGIA BAR Journal

AUGUST 1999 • Vol. 5 No. 1

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On the Cover: Rudolph N. Patterson of Macon becomes the 37th President of the State Bar of Georgia. He is pictured outside his alma mater — Mercer's Walter F. George School of Law. He is a partner with Westmoreland, Patterson & Moseley. His program for the year is outlined on page 40. (Photo by Richard T. Bryant)

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The Georgia Bar Journal welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (16th ed. 1996). Please address unsolicited manuscripts to: William Wall Sapp, Editor-in-Chief, Alston & Bird, One Atlantic Center, 1201 W. Peachtree St. Atlanta, GA 30309-3424. Authors will be notified of the Editorial Board's decision following its next meeting.

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

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

PUBLISHER'S STATEMENT

The Georgia Bar Journal (SSN-0016-8416) is published six times per year (bi-monthly) by the State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303-2934. © State Bar of Georgia 1999. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. **POSTMASTER:** Send address changes to same address.

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HELP AVAILABLE FOR PLAYING BY THE RULES



By Rudolph N. Patterson

When I was in college I played a good bit of baseball. So much in fact that I was offered an opportunity to try out for a St. Louis Cardinals farm team. I was the one behind home plate — the catcher. And let me tell you, when you have a baseball screaming towards you at 90 plus miles an hour, and a guy swinging lumber inches away from your face, you're relieved to be wearing a protective steel mask and pads.

Playing catcher is a lot like the practice of law. Ethical dilemmas fly towards you at the speed of light. You have to make split second decisions. You have to cover the plate and you need reliable safety gear. Right now we have lawyers practicing without reliable safety gear. More and more lawyers must practice defensively.

Obviously I chose a career in law over professional baseball — which given the starting salaries of the guys of summer, maybe I should have deferred law school. When I started practicing law, I was like a catcher without a mask. However, I was very fortunate because I began practice at a time when either I was bold enough to ask an ethical question or the lawyers seemed to have more time to chat with each other. I was also fortunate to be in a town where I

could have many mentors (including Judge Mallory Atkinson, former Bar general counsel) to riddle with ethical questions. They didn't always have the answer, but there was a comfort zone imagined by talking to them. Many lawyers who are starting out on their own do not have the luxury of guidance from a senior colleague. They are faced with ethical issues on a daily basis.

Over the years, the Bar has tried to address this concern in several ways. First, there is a Formal Advisory Opinion Board that receives and reviews requests for opinions on ethical matters. Next, there is an ethics hotline which lawyers can call and pose questions to an attorney in the Bar's Office of the General Counsel.

The problem with both of these programs is time. When an ethics problem is flying toward you like a "fast ball," you don't have one minute — let alone one year — to react. For an ethical quandary to weave its way through the Formal Advisory Opinion Board process (FAOB) may take 12-14 months — from the time the opinion is requested by an attorney until consideration and response from the FAOB which must include approval by the Supreme Court of Georgia. This is simply too long for lawyers and clients to wait before they can proceed. I have asked the FAOB to look at current procedures and consider ways to expedite the process..

The only other means of seeking ethical advice is the hotline operated by the General Counsel's office. This may take days for a response given the volume of calls and the limited staff of attorneys. Currently, a call to the hotline

is not that at all. In fact we have to utilize voice mail to leave a message and await a reply. This needs to change. Beyond the issue of time, the hotline offers no protective gear even if the lawyer follows our advice to the letter. The ethics hotline offers only "informal" opinions, nothing binding. This also needs to change so lawyers, based on a specific set of facts, can wear the advice as padding and protection, and not risk a black eye when they are blind-sided with a fastball. Lawyers and clients are entitled to this safe harbor.

The Bar's Web site continues to get better. We recently installed a discussion group section on the Bar's Web site (www.gabar.com). One of the new discussion groups on our Web site is established to give some temporary non-binding assistance to lawyers with ethical questions. We hope to provide lawyers with some protective gear, and have included — as part of the new discussion groups on the Web site — an area where lawyers can post an ethical question to the Bar's Office of the General Counsel. Lawyers in that office will respond and the answers will be posted for all to view. Hopefully if another lawyer has a similar situation, he or she can read the previously posted question and response for guidance. The discussion board is only accessible to lawyers using their bar number to enter.

Building on the concept of learning from others' experiences, we are also expanding the disciplinary report beginning with this issue of the *Journal* on page 70. Previously, we only listed the lawyer's name, city, disciplinary punishment and date of the Supreme Court order. Now and in the future, we will provide a synopsis of each case that explains what action led to the discipline. This is intended to answer the question,

CONTINUED ON PAGE 8

IT'S NOT TOO EARLY TO MARK YOUR 2000 CALENDAR



By Cliff Brashier

Many lawyers who have attended Annual Meetings of the State Bar in the past often continue to attend regularly because it is a great place to network, see old friends, enhance your professional knowledge, and enjoy family time. If you have never attended or have not done so in a long time, I hope you will mark your calendar for June 14-18, 2000.

The meeting will be in a new, world class resort in a friendly and beautiful old Georgia city. The Westin Savannah Harbor Resort is now under construction on

Hutchinson Island overlooking the Savannah River with two-minute water taxi service to River Street and the historic district. It will offer a swimming pool, fitness center, Greenbrier spa, championship golf on a course designed by Robert Cupp and Sam Snead, tennis, deep-sea and backwater fishing, sailing and beach excursions. The business program will include comprehensive CLE, law school alumni meetings, section and committee meetings, receptions, and ample opportunity for you to meet with judges and lawyers. I hope you will consider joining us in 2000.

While thinking about the year 2000, our Law Practice Management Service has received many calls from lawyers concerning their Y2K readiness. If you need help regarding your computer hardware or software, you are welcome to call Terri Olson or Natalie Thornwell at (404) 527-8773.

The Law Practice Management

program and many other services of the State Bar are included in the State Bar's Web site at www.gabar.org. You are invited to use this Internet page often to check your continuing legal education transcript, link to free legal research sites, find other lawyers in the membership directory, and review extensive information on many State Bar programs and matters of interest to Georgia lawyers. Please let us know if there is other information you would like to see added to this Web site.

The 1999-2000 President of the State Bar of Georgia is Rudolph Patterson of Macon, Georgia. He is available (along with other speakers on various topics) to address your local bar association to share information on our profession. Please call me if this would be of interest.

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

Continued from page 7

"What gets a lawyer disciplined?" by providing proven examples. The one thing I learned as a baseball catcher is "you don't get hit with the bat if you pay attention to the rules."

We want the Bar to assist the lawyers in their ethical choices before they become problems. The State Bar of Georgia was established to improve the administration and delivery of justice, not to be a stumbling block for hard working conscientious lawyers. The goal is for the Bar to be on the lawyer's team to coach and help them better serve their clients. ☐

Davis Honored for Editor-in-Chief Service



Theodore H. Davis (right) of Kilpatrick Stockton was honored for outstanding service as Editor-in-Chief of the *Georgia Bar Journal* from 1997-99. He was presented an award commemorating his dedication to the *Journal* and the State Bar by incoming Editor-in-Chief William Wall Sapp of Alston & Bird.

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Employment Law Responsibilities of Public Employers in Georgia

By H. Lane Dennard Jr. and Brian J. Sasadu

Introduction

Employees in the public sector generally enjoy most of the employment law protections afforded their private counterparts — and more. The interplay between federal, state, and local law creates a complex legal framework within which public sector employers must learn to be particularly sensitive to such issues as employee civil rights, labor disputes, and termination procedures. In some instances, federal and state employment laws which cover private employers may not apply to public employers. Conversely, certain constitutional constraints that impact

public employers do not impact private employers.

This article discusses the applicability of both federal and state employment laws to public employers in Georgia. After reviewing the basic framework of employment laws and their application to public employers, the article will discuss the extent to which public employees in Georgia can engage in union organizational or other concerted activity. It will conclude with a brief overview of recent federal and state legislative proposals in the employment and labor law areas and will discuss recent significant judicial decisions by the United States Supreme Court and the Circuit Courts of Appeals.



Basic Framework Of Employment Laws And Applicability To Public Employers

A. The Equal Employment Opportunity Laws

The equal employment laws, which include Title VII of the Civil Rights Act of 1964 (“Title VII”), the Age Discrimination in Employment Act of 1967 (the “ADEA”), the Equal Pay Act of 1963 (“EPA”), the Americans with Disabilities Act (“ADA”), and the Family and Medical Leave Act of 1993 (the “FMLA”), generally apply to public employers. These laws cover federal, state, and local government employees, and any differences between application of these statutes to private sector employers and public sector employers are generally minor.

Although the equal employment opportunity laws apply in basically the same manner to public employers as they do to private employers, among public employers the enforcement mechanism varies slightly for federal employees. The federal employment provisions of Title VII¹ require federal employees to pursue administrative remedies within the particular agency involved before they can bring a court action.

1. Title VII of the Civil Rights Act of 1964

Title VII² prohibits an employer from discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex (which includes pregnancy), or national origin.³ Although Title VII technically excludes from its definition of “employer” the United States and corporations wholly owned by the United States government, Congress extended coverage to public sector employers (federal and state) in subsequent amendments to the Civil Rights Act.

2. The Age Discrimination in Employment Act

The ADEA prohibits discrimination in public and private employment against individuals who are at least 40 years of age.⁴ The Act applies to various employment practices including hiring, firing, discriminatory treatment during employment, advertising indicating age preference, discrimination in referral by employment agencies, and retaliation for assertion of rights under the Act.⁵ Initially, the ADEA applied only to private employers, but coverage was eventually extended to include federal, state, and local government employees. Although there is no upper age limit for protection, employers may impose mandatory retirement at age 65 on certain “bonafide executive[s]” or “high policy making” employees.⁶

3. The Equal Pay Act

The EPA⁷ prohibits sex discrimination in the form of unequal pay for equal work.⁸ Thus, the EPA is narrower in

scope than the Title VII prohibition on discrimination and compensation.

For the EPA to apply, the work being compared must be substantially equal in effort, skill, and responsibility, and it must be performed under similar working conditions.⁹ Nevertheless, unequal pay may be justified if it is based on a seniority, merit, or productivity system, or if it is due to a factor other than sex. The EPA, like the other equal employment laws, originally applied only to private sector employers. In 1974, however, Congress amended this Act and removed statutory exemptions for federal, state, and local government employers.

4. The Americans with Disabilities Act

Title I of the ADA¹⁰ prohibits discrimination against qualified individuals with disabilities in private and public employment. The ADA applies to such activities as hiring, firing, promoting, compensating, recruiting, training, and other terms, conditions, and privileges of employment.¹¹ This law goes beyond most other employment discrimination legislation in that it not only prohibits “discrimination” in the traditional sense of that term, but also requires “reasonable accommodation” of individuals with disabilities unless the accommodation would impose an “undue hardship” on the employer.¹²

Certain other provisions of the ADA apply specifically to state and local government employers. For example, Title II of the ADA makes it unlawful for a state or local government, or any public entity that provides public transportation, to discriminate against a qualified individual with a disability in the provision of public services, regardless of whether that entity receives federal financial assistance.¹³ Likewise, Title III of the ADA makes it unlawful for owners and operators of places of “public accommodation” and private entities that provide public accommodations and transportation, to discriminate against individuals with disabilities in the provision of goods, benefits, services, facilities, privileges, advantages, or accommodations.¹⁴

5. The Family and Medical Leave Act

The FMLA¹⁵ applies to all public employers.¹⁶ Under the FMLA, each covered employee is entitled to 12 weeks of unpaid leave during a 12 month period for any of the following three reasons: (1) the birth or placement of adoption or foster care of a child; (2) the serious health condition of a spouse, child, or parent; or (3) the employee’s own serious health condition.¹⁷ The employer must continue “group health plans” for covered employees on the same terms and conditions applicable to active employees.

Under the FMLA, employers may require employees first to use their paid vacation, personal, or sick leave for any part of the 12-week period. Once an employee com-

pletes a period of leave, he or she must be returned either to the same position occupied before the leave or to a position equivalent in pay, benefits, and other terms and conditions of employment. In addition, leave should not result in the loss of any previously accrued seniority or employment benefits, although benefits are not required to accrue during the leave.

B. Other Laws Affecting Labor and Employment

1. The Fair Labor Standards Act

The Fair Labor Standards Act of 1938 ("FLSA")¹⁸ governs minimum wage and overtime compensation for employees. Although the United States Supreme Court has taken varying stances on whether the Act applies to public sector employers, at the present time the FLSA applies to both public and private sector employers.¹⁹ The FLSA sets standards for minimum wages and overtime compensation for all employees who are not specifically exempted under the Act. The Act requires that employers pay minimum wage for all hours worked and that employers pay overtime for all hours worked over forty (40) hours in a work week.²⁰ Currently, the minimum wage is \$5.15 an hour²¹ with considerable discussion by the Clinton Administration about raising it. Overtime, in its simplest form, requires one and one half times the regular rate of pay for hours worked over forty (40) hours in a week.²²

The FLSA allows for payment of compensatory time ("comp time") in lieu of overtime in certain situations some of which apply directly to public employers. Comp time is calculated at the rate of time and one-half of the employee's regular rate of pay for each overtime hour worked.²³ Under the provisions of the Act, public safety, emergency, and seasonal employees may earn up to 480 hours of comp time before cash payments are required; all other state and local workers may accrue up to 240 comp time hours.²⁴ However, the Act requires a public employer to enter into a comp time agreement prior to implementing comp time for its employees.

Other provisions of the FLSA allow state and local government employers to establish a longer work period than the normal seven-day week for purposes of computing overtime pay for law enforcement personnel and

firefighters.²⁵ Also, the FLSA provides a complete exemption from overtime pay for police or firefighters employed by public agencies with fewer than five employees.²⁶

2. The National Labor Relations Act

The National Labor Relations Act ("NLRA")²⁷ governs the right of employees to organize and bargain collectively with their employers, as well as to engage in other concerted activity. The Act covers private employers but specifically excludes "any State or political subdivision thereof."²⁸ An entity is an exempt political subdivision if it (1) was created directly by the State, so as to constitute a

department or administrative arm of the government, or (2) is administered by individuals responsible to public officials or the general electorate.²⁹ Examples of "political subdivisions" that have been exempt from NLRB jurisdiction include counties, cities, public hospitals, state universities, city operated gas and electric utilities, and certain urban development agencies.³⁰

3. The Occupational Safety and Health Act

The Occupational Safety and Health Act ("OSHA")³¹ provides for the adoption of safety and health standards and an administrative scheme for the enforcement of such standards. OSHA expressly excludes political subdivisions of a state from its coverage and therefore does not apply to public employers.

Some states, but not Georgia, have state administered plans that operate with the approval of the federal program.³² Currently, twenty-two (22) states have OSHA compliant plans which include provisions for coverage of state and municipal employees.³³

4. ERISA and COBRA

The Employee Retirement Income Security Act of 1974 ("ERISA")³⁴ and the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA")³⁵ regulate private sector benefit plans. Generally, public employer plans are exempt from compliance with ERISA. The Internal Revenue Code is the primary federal law regulating state and local public employee retirement systems. There is no blanket exception to coverage under the Internal Revenue Code, and any governmental plan must either meet certain participation, vesting, and funding requirements, or be exempt from such requirements under the Code.

The National Labor Relations Act specifically excludes "any State or political subdivision thereof. ... Examples of "political subdivisions" include counties, cities, public hospitals, state universities, city operated gas and electric utilities, and certain urban development agencies.

COBRA requires that sponsors of group health plans give former participants and beneficiaries an opportunity to elect continued coverage when they would otherwise lose such coverage on account of “qualifying events” such as death, divorce, termination of employment, reduced hours, and loss of dependency status. The COBRA continuation coverage rules affect all group health plans maintained by all public and private employers other than: (1) churches; (2) governmental entities of the United States; (3) *state and local government agencies that are not recipients of funds under the Public Health Service Act*; and (4) employers with less than twenty (20) employees.³⁶ Nevertheless, because all states receive Public Health Service Act funds, the COBRA requirements extend to virtually all state and local employers, except those that qualify for the small employer exemption.

5. The Worker Adjustment and Retraining Notification Act

The Worker Adjustment and Retraining Notification Act (“WARN”)³⁷ requires covered employers to notify affected employees and local governmental units sixty days prior to a plant closing or mass layoff. If the required notice is not given, the employer might be liable to affected employees for back pay and benefits for the period of violation. Federal regulations specifically exempt federal, state, and local government employers from coverage. Nevertheless, WARN covers public and quasi-public employers that engage in business (*i.e.*, take part in a commercial or industrial enterprise or provide a service or good on a mercantile basis), that are separately organized from the government, that have their own governing bodies and that have independent authority to manage their personnel and assets.³⁸

6. The Immigration Reform and Control Act

The Immigration Reform and Control Act (“IRCA”)³⁹ amended the Immigration and Nationality Act to add verification provisions and to provide protection against discrimination based on national origin and citizenship status. Simply stated, IRCA requires all employers to verify the identity and work authorization of employees. This law is also supposed to deter employers from intentionally discriminating against noncitizens or persons whose physical appearance or speech patterns suggest that they are not native-born citizens. Congress enacted IRCA to provide protection generally parallel to Title VII and to cover employers not already covered by Title VII. IRCA covers all employers of three or more employees with regard to citizenship status discrimination. With regard to national origin discrimination, IRCA covers all employers not covered by Title VII’s prohibition on national origin discrimination (*i.e.*, employers of three to fourteen employees).⁴⁰

7. Constitutional Rights of Public Employees

The United States Constitution places some constraints on public employers that are not placed on private employers. Because a public employer’s conduct constitutes state action, the First and Fourteenth Amendments are often invoked by employees to challenge employment practices. The Constitution guarantees public employees the rights of free association, free speech, and due process.

According to the United States Supreme Court, a “public employee . . . can associate and speak freely and petition openly, and he is protected by the First Amendment from retaliation for doing so.”⁴¹ Although freedom of association encompasses the right to join a union, whether a public employee’s speech is constitutionally protected “turns upon whether the speech related to matters of public concern or to matters of merely personal interest to the employee.”⁴²

The United States Constitution also guarantees public employees due process of law. The Due Process Clause of the Fourteenth Amendment provides that government may not deprive an individual of life, liberty, or property without due process of law. Essentially, due process requires that a public employer provide an employee who has a property or liberty interest in his or her employment with a meaningful opportunity to be heard regarding the reasons for termination of employment.⁴³ State or local law or custom is typically the primary source of a protected property interest in employment. A liberty interest is implicated when an individual is terminated for a reason that would be considered stigmatizing in the community.⁴⁴

In determining whether a public employer has a property interest, all of the potential governing provisions of the employment relationship must be examined. These include: (1) all state and local law; (2) city, county, and governmental codes; (3) departmental regulations and operational procedures; (4) employee handbooks, manuals, and other sources of policies, rules, and representations; and (5) all written and unwritten personnel policies.⁴⁵

What Rights Do Public Employees In Georgia Have To Engage In Union Organizational Or Other Concerted Activity?

Although the National Labor Relations Act is the basic law governing labor relations in the United States, its terms expressly exempt from coverage “any State or political subdivision thereof.”⁴⁶ Given this, what rights do employees of public employers in Georgia have to join and support unions?

Some states afford public employees the right to

support and join unions⁴⁷ and impose by statute a corresponding duty on public employers to bargain in good faith with the employees' union. For example, although Florida prohibits strikes by public employees in both its constitution and in its statutes, public employees in Florida do have a right to form, join, and participate in union organizations.⁴⁸ Furthermore, Florida law requires public employers to negotiate with the authorized representatives of public employees.⁴⁹ In Georgia, the law is different.

A. Georgia Statutory Law: Firefighter's Mediation Act

With the exception of the Firefighters Mediation Act, Georgia has passed no such laws. In fact, the Supreme Court of Georgia adheres to the rule that "local governmental entities generally are not permitted to bargain collectively with employee representatives."⁵⁰ Further, specific provisions of the Georgia Code prohibit strikes by public employees and provide for the lawful termination of any state employee who participates in or encourages a strike.⁵¹

The one statute relating to public sector employees' rights to organize and bargain collectively in Georgia, the Firefighters Mediation Act applies to "any paid fire department of any municipality of this state having a population of 20,000 or more."⁵² For such a municipality to be covered under the statute, "the governing authority of the municipality must agree by ordinance that the municipality would be so covered."⁵³

B. Constitutional Rights Afforded Georgia Public Employees

Although the NLRA exempts states and their political subdivisions and Georgia's state law provides no statutory right to organize or participate in unions, Georgia public employers must be careful not to infringe upon their employees' constitutionally protected rights. The First and Fourteenth Amendments have been used to support the guarantees of freedom of association, freedom of speech, and due process.

1. Freedom of Association

The First Amendment to the United States Constitution protects the right of one citizen to associate with other citizens for any lawful purpose free from government interference. This guarantee protects more than the right to attend a meeting. It includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it. Therefore, for public employees, union membership is protected by the First and Fourteenth Amendments.⁵⁴ Consequently, a public employer may not take adverse action against an employee based upon union activity or membership in a union. Importantly, however, "the First Amendment does not impose any affirmative

obligation on the public employer to listen, to respond or ... to recognize the ... [union] and bargain with it."⁵⁵

Other types of concerted activity, however, may not be protected under the First Amendment's freedom of association clause. Public employees, for example, do not have a constitutional right to strike.⁵⁶ Therefore, the termination of public employees in Georgia for participation in a strike does not infringe upon their First Amendment rights of association and free speech.⁵⁷

2. Freedom of Speech

Public employees, when exercising their right to speak and communicate ideas, may or may not be within the protection of the First Amendment. If an employee's speech is protected by the First Amendment, the State (or other public employer) may be prevented from taking action adverse to the employee in response to his speech. When an employee alleges unconstitutional retaliation by a public employer in violation of his First Amendment rights, the employee must prove both that the speech was constitutionally protected and that it was the motivating factor in the decision to terminate the employee.

"[T]he question of whether a public employee's speech is constitutionally protected turns upon whether the speech related to matters of public concern or to matters of merely personal interest to the employee."⁵⁸ Basically, speech that relates solely to matters of internal work policy, which is motivated solely by a personal dispute, and would only be of interest to employees is not protected by the First Amendment. Generally, speech relating to salaries, schedules, or working conditions is considered speech of a personal, grievance-type nature and is not protected. Nevertheless, speech that addresses the quality of services offered to the public (such as allegations of under staffing, unqualified employees, or inadequate facilities) may be deemed to be of "public concern" and thus may be protected.⁵⁹

If the employee establishes both that his or her speech was constitutionally protected and that the speech was a substantial or motivating factor in the decision to terminate, the employer then has the burden of showing that the decision to terminate the employee was "justified."⁶⁰ Generally, the employer's burden to show justification becomes "a balance between the interest of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."⁶¹

In Georgia, public employees receive no protection to engage in union organizational or other concerted activity through the National Labor Relations Act or Georgia statutory law (with the one noted exception for firefighters). Although both the federal and state constitu-

tions provide public employees with the right of free speech and association so that they may join a union and speak out in support of a union, a public employer in Georgia has no corresponding obligation to recognize or bargain with such a union.⁶² In fact, recognizing a union as a bargaining agent in negotiating a collective bargaining contract would be illegal under Georgia law. In addition, there is no right to strike under Georgia law, and it is expressly prohibited by public employees under sections of the Georgia Code.⁶³

Recent Developments

A. Recent Legislative Proposals

Although not always successful, federal and state legislators continue to propose changes to the labor and employment laws that may affect public employers. During both the last session and the current session of Congress, Democratic leaders have introduced legislation aiming to increase the minimum wage to \$6.15 an hour in two equal increments by January 1, 2000.⁶⁴ Also, the Family and Medical Leave Fairness Act was recently introduced by Senator Dodd of Connecticut and seeks to expand the FMLA to cover businesses with more than 25 workers, compared with 50 under the current law. This measure also would increase the percentage of covered employees from 57% of the work force to 71% according to Dodd.⁶⁵

Two bills have been introduced in the House of Representatives this session of Congress that apply specifically to public employers. A bill to amend the National Labor Relations Act sets forth provisions relating to the rights and obligations of public employees, and would establish procedures governing employer-employee relations in the special context of public employment. Specifically, the bill would create the National Public Employment Relations Commission and establish the right of public employees to form, join, or assist employee organizations and to bargain collectively with employers. Also, the bill would allow public employees the right to strike.⁶⁶

In addition, the Public Safety Employer-Employee Cooperation Act was recently introduced and would provide collective bargaining rights for public safety officers employed by states or local governments. The bill would require States to grant public safety employees the right to form and join a labor organization. It also would provide for means to issue regulations establishing collective bargaining procedures for public safety employers and employees and grant the public safety employer, employee, or labor organization the right to seek enforcement of such regulations through appropriate state courts. The bill would, however, prohibit public safety employers, employees, and labor organizations from engaging in lockouts or strikes.⁶⁷

Georgia state legislators have been busy as well in the last year. Some proposals that failed during the 1998 session of the state legislature include: the Public Employees Labor Relations Act,⁶⁸ which purported to afford the same rights to state, county, and municipal employees as the NLRA, and an attempt to amend the Georgia Code to provide that public employers must give at least ninety (90) days notice to an employee whom the employer intends to terminate without cause.⁶⁹ One successful proposal included an amendment to the Georgia Code to include a broader range of public employees in the prohibition against striking.⁷⁰ The 1999 session of the state legislature saw introduction of a bill prohibiting public employers from requiring employees or applicants to agree to not receive certain overtime or compensatory time as a term of their employment,⁷¹ and a bill amending provisions of the Georgia Code relating to retirement and pensions to establish the Public Employee's Retirement 401(k) Plan.⁷² Although neither was signed into law, each demonstrates the continuing efforts of state legislators to legislate in the public employer arena.

B. Recent Court Decisions

The courts have also endeavored to further define the role between employers and their employees. Just this term, the United States Supreme Court decided that the EEOC has the authority to require agencies to pay compensatory damages when they discriminate against federal employees in violation of Title VII.⁷³ The Seventh Circuit had ruled that the EEOC lacks the power to award compensatory damages reasoning that such awards were not allowable because federal agencies cannot seek to overturn such awards in court.⁷⁴ In fact, federal agencies are bound by EEOC determinations of discrimination unless the affected employee decides to take his or her Title VII claim to court after exhausting administrative remedies. However, the Supreme Court held that denying the EEOC the authority to grant compensatory damages would undermine Title VII's remedial scheme and force into court matters which the EEOC might have been able to resolve.⁷⁵

Also this term, the Supreme Court ruled that Congress does not have the constitutional authority to subject non-consenting states to private suits to enforce a federal statutory right under the FLSA.⁷⁶ The decision affirmed a state court's dismissal of a lawsuit brought by state probation officers seeking overtime pay and liquidated damages under the FLSA. This case when read together with the Supreme Court's decision in *Seminole Tribe of Florida v. Florida*,⁷⁷ essentially blocks individual enforcement of the FLSA against unconsenting states by state employees.

Among the lower courts of appeal, the Eleventh Circuit recently decided that the Eleventh Amendment protected

the State of Florida from suits brought by three state employees under the Age Discrimination in Employment Act.⁷⁸ This Eleventh Circuit decision stands in contrast to rulings from other federal appeals courts that have ruled state employees can sue their employers in federal court under the ADEA.⁷⁹ The Supreme Court recently granted certiorari and is expected to hear the case soon. These forthcoming decisions will no doubt substantially impact public employers.

Conclusion

Public employers face an ever-increasing number of federal and state laws with which they must comply. Although generally the equal employment opportunity laws such as Title VII, the ADEA, and the ADA apply to public sector and private sector employers alike, there are a number of other laws such as OSHA, ERISA and the NLRA which vary in their applicability.

Recent legislative proposals and decisions by the federal courts continue to help redefine the parameters within which public employers must relate to their employees. As a result, employers need to stay knowledgeable about the laws impacting them and should enact proactive measures to ensure compliance with state and federal employment laws. ☒



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Endnotes

1. 42 U.S.C. § 2000e-16 (1994).
2. *Id.* § 2000e, *et seq.*
3. Georgia's Fair Employment Practices Act, which prohibits essentially the same conduct as Title VII, also applies to public employers in Georgia. *See* O.C.G.A. §§ 45-19-20 (1994), *et seq.*
4. 29 U.S.C. §§ 621, *et seq.*
5. *Id.* § 623(a)-(e).
6. *Id.* § 631(c)(1).
7. *Id.* § 206(d) (the EPA was enacted as Section 6(d) of the Fair Labor Standards Act of 1938).
8. Georgia statutory law also forbids discriminatory wage practices based on sex. *See* O.C.G.A. § 34-5-3 (1998).
9. 29 U.S.C. § 206(d)(1).
10. 42 U.S.C. § 12101, *et seq.*
11. *Id.* § 12112(a).
12. *Id.* § 12112(b)(5)(A).
13. *Id.* § 12131 - 12154.
14. *Id.* §§ 12181 - 12189.
15. 29 U.S.C. § 2601, *et seq.*
16. *Id.* § 2611(4); 29 C.F.R. § 825.104(a).
17. *Id.* § 2612(a)(1).
18. *Id.* § 201, *et seq.*
19. *See, e.g.,* Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)).
20. 29 U.S.C. §§ 206-207.
21. *Id.* § 206(a)(1).
22. *Id.* § 207(a)(1).
23. *Id.* § 207(o)(1).
24. *Id.* § 207(o)(3)(A).
25. *Id.* § 207(k). Under the special overtime rules, public employers may establish a work period or "tour of duty" for its firefighters or police officers of up to 28 consecutive days.
26. *Id.* § 213(b)(20).
27. *Id.* § 151, *et seq.*
28. *Id.* § 152(2).
29. *See* NLRB v. Natural Gas Util. Dist., 402 U.S. 600 (1971).
30. *See, e.g.,* The Developing Labor Law 1601-04 (Patrick Hardin ed., 3d ed. 1996).
31. 29 U.S.C. § 651, *et seq.*
32. *See* 29 C.F.R. § 1952 (setting forth the rules and regulations for state approved OSHA plans).
33. Among the states with approved plans under OSHA are: South Carolina, Oregon, North Carolina, Iowa, Tennessee, Kentucky and Arizona. *See also* 29 U.S.C. § 667(c)(6); 29 C.F.R. § 1956 (setting forth the rules and regulations for coverage of state and local government employees under state plans).
34. 29 U.S.C. § 1001, *et seq.*
35. Pub. L. No. 99-272, 100 Stat. 82.
36. 29 U.S.C. § 1161(b); Internal Revenue Code § 162(K)(2); 42 U.S.C. § 300bb-1(b)(1).
37. *Id.* §§ 2101-2109.
38. 20 C.F.R. § 639.3(a)(1)(ii).
39. 8 U.S.C. § 1324b.
40. *Id.* § 1324(a)(2)(A)-(B).
41. Smith v. Arkansas State Highway Employees, 441 U.S. 463, 465 (1979).
42. Ferrara v. Mills, 781 F.2d 1508, 1512 (11th Cir. 1986).
43. *See* Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985); *see also* Burnley v. Thompson, 524 F.2d 1233, 1240-41 (5th Cir. 1975) (finding due process did not require a hearing prior to suspension of City of Macon firefighters who were engaged in an illegal strike). When a property interest is involved both a pre-termination and a post-termination hearing may be required.
44. *See, e.g.,* Board of Regents v. Roth, 408 U.S. 564 (1972); Wisconsin v. Constantineau, 400 U.S. 433 (1971).
45. *See* J. Michael McGuinness, Procedural Due Process Rights of Public Employees, 554 P.L.I./LIT 1057, 1071 (Nov. 1996); *see also* Beckham v. Harris, 756 F.2d 1032 (4th Cir. 1985).
46. *See supra* note 28.
47. At least 36 states plus the District of Columbia have enacted

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Subrogation Under Georgia's Workers' Compensation Act

By John G. Blackmon Jr. and Lucian Gillis Jr.

Introduction

Of all the changes to Georgia's Workers' Compensation Act,¹ perhaps the reintroduction of subrogation was the most radical. Although the concept was first introduced in 1922, it disappeared in 1972 with the repeal of Georgia Code Ann. § 114-403, leaving Georgia as one of three states without subrogation.² Subrogation returned in 1992 when the General Assembly made extensive and controversial changes to the Georgia Workers' Compensation Act. Though criticized by practitioners as vague and unworkable, the statute has been applied in numerous instances. Over the years, Georgia courts have addressed many of the questions that were posed when O.C.G.A. § 34-9-11.1 was enacted, thereby giving practitioners and parties some guidance in the area of subrogation in the workers' compensation context.

The purpose of this article is to discuss how subrogation works in Georgia. The article begins by explaining the elements that are typically included in a good workers' compensation subrogation statute. Then the article focuses on the Georgia subrogation provision, both pointing out areas of settled subrogation law and areas that are still being shaped by the courts.

Background

To the uninitiated in the field of workers' compensation law, we offer the following as way of background. The workers' compensation laws were devised to provide injured workers with scheduled benefits on an expedited basis. Before states adopted these laws, workers were subject to the common law defenses of contributory negligence and assumption of the risk, which made it

difficult – if not impossible – to obtain relief. Moreover, when relief was available, it took an inordinate amount of time to obtain. In exchange for benefits that were specifically limited by statute, as well as immunity from tort claims, employers waived the right to certain common law defenses.³

Subrogation, which has its roots in equity, is essentially the substitution of one person in the place of another.⁴ In the workers' compensation setting, subrogation is the right of an employer or its insurer to seek indemnification against a third party for benefits paid to an employee because of the third party's negligence. The goal is to make the true wrongdoer pay. Typically, subrogation applies to automobile accident cases, medical malpractice actions, products liability suits, or any claim where a third party is legally liable for injury to an employee and where the employer has paid the employee scheduled benefits as a result of that injury.

Workers' Compensation Subrogation Generally

To understand subrogation in the workers' compensation setting, one should be familiar with the objectives of a well-drawn workers' compensation statute. According to Professor Arthur Larson, a leading scholar in this field, these objectives are as follows:

- (1) To prevent double recovery with the employer recouping no more than what it paid and the third-party tort-feasor paying as if there is no insurance;
- (2) to recognize that injured employees, who might be

uneducated, may need assistance in looking after their rights;

- (3) to provide an incentive for both sides to file suit and seek a full [and complete] recovery;

- (4) to coordinate the subrogation period with the applicable statute of limitations for personal injuries; and

- (5) to identify and resolve ethical dilemmas.⁵

Because a workers' compensation statute is in derogation of the common law, courts are reluctant to grant rights not explicitly given under the statute. Thus, for these statutes to operate efficiently, it is important that they are detailed and clear. Likewise, when a statute confers benefits, the courts should strictly construe any subsequent statute curtailing such benefits.⁶



Subrogation Under O.C.G.A. § 34-9-11.1

A. Explicit Provisions

Although the terminology and construction of Georgia's statute leaves many issues open-ended, there are a few certainties. First, the statute applies only to accidents occurring on or after July 1, 1992, the date the statute became effective. Second, and as with all subrogation matters, the employer and employer's insurer stand in the shoes of the employee.⁷ They therefore are subject to the same defenses the third-party tort-feasor could have raised against the employee.⁸ Last, if the exclusive remedy provision of O.C.G.A. § 34-9-11 bars the suit, then there can be no subrogation.⁹

B. Areas Shaped by Judicial Interpretation

1. Time At Which A Subrogation Lien Arises

A subrogation lien arises when an employee recovers workers' compensation benefits, but still files a lawsuit against the third party. If the employee prevails, under the subrogation lien provision, the employee must return the workers' compensation benefit paid by the employer. Under Georgia's statute, there are two elements of a valid subrogation lien. First, workers' compensation benefits must have been fully or partially paid.¹⁰ Second, these benefits must have been paid under "circumstances creating a *legal liability* against some person other than the employer."¹¹ It goes without saying that the latter element is more problematic.

The phrase "circumstances creating a legal liability" can be traced to Georgia's first subrogation statute, Ga. Code Ann. § 114-403, that was in effect from 1922 to 1963. In an early decision interpreting this statute, the Georgia Court of Appeals held that the term "legal liability" meant "a liability which may be enforced in a court of competent jurisdiction."¹² Thus, the employee must recover some amount from the third party, and the third party must have liability that can be enforced in court. Considering this, there is a question as to whether an employer or insurer may still recover if the employee and the third party settle on a "no liability" basis. As explained below, the answer probably depends on the circumstances.

In settlements, an employer or its insurer should be alert for agreements made primarily, if not solely, to allow the employee to argue that the third party is not legally liable, or that the employee has not been fully and completely compensated. Georgia's general lien law provides that a third party's insurer cannot defeat a subrogation

claim by settling with the victim, without the consent of the victim's insurance company, if the third party's insurer had actual or constructive knowledge of the subrogation claim.¹³ The wrongdoer is not permitted to profit from wrongdoing, even if subrogation subjects the wrongdoer to double payment. One can avoid double payment by withholding from the settlement a sum sufficient to satisfy the subrogation claim.¹⁴

Under O.C.G.A. § 34-9-11.1(b), the employer may "protect and enforce" its lien by intervening in any tort action the employee brings. However, if the

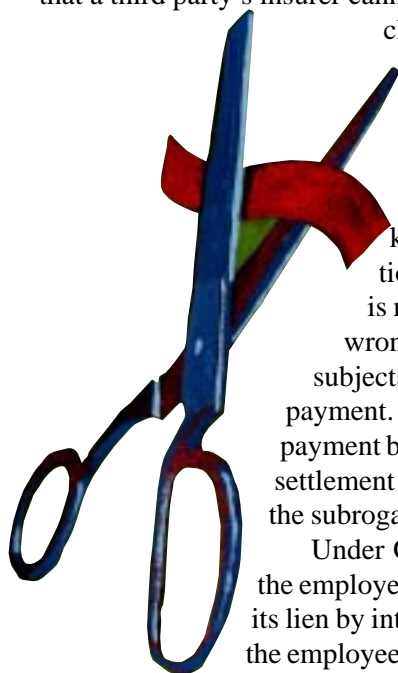
parties to the tort claim settle before suit, and the third party does not have *actual* knowledge of the subrogation lien, the employer has no remaining right of action against the third party. Nonetheless, losing the right to bring an action does not extinguish the *lien* on the employee's *recovery*. That means the employer may still recover the lien from the money then in the hands of the injured employee. On the other hand, if the third party settles with the employee despite knowing about the subrogation interest, the settlement does not defeat the subrogation right against the third party.¹⁵

2. Fully and Completely Compensated

Even if the requirements for a valid subrogation lien have been met, the employer must, as the Georgia Workers' Compensation Act requires, show that "the injured employee has been fully and completely compensated, taking into consideration both the benefits received under this chapter and the amount of the recovery in the third-party claim, for all economic and noneconomic losses incurred as a result of the injury."¹⁶ This one requirement led observers to question the Georgia subrogation statute's strength.¹⁷ Some have argued that it will rarely, if ever, be met, thus rendering the subrogation statute ineffective. These critics have, as it turns out, been proven wrong. Since subrogation returned in 1992, it often has worked successfully, both from the perspectives of the employer and employee alike.

No presumption of full and complete compensation arises merely from the fact that the award paid by the third party to the employee exceeds the amount of workers' compensation benefits received by the employee, or the amount of economic damages proven. The *employer has the burden* of establishing full and complete compensation. Absent any other evidence of the jury's intent, a *general* jury verdict is insufficient to prove the amount needed to make the plaintiff whole. The amount of damages claimed is merely a factor in determining the issue of full and complete compensation. The Court of Appeals repeatedly has suggested that a *special* verdict form may be the most practical solution.¹⁸

An obvious situation in which the issue of full and complete compensation arises is when the employee contributes to his own injuries. The injured employee must be made whole — regardless of any fault on his part — before the employer is allowed to recover from the employee any workers' compensation benefits paid by the employer. The Court of Appeals has held that if the jury reduces the award because the employee was comparatively negligent, the employer may not recover from either the tort-feasor or the employee.¹⁹ The Court has stated in the context of a lawsuit between an employee and an alleged tort-feasor that the Georgia Workers' Compensation Act "does not direct courts to take into account the



employee's contributory/comparative negligence or assumption of the risk, and we [the court] must assume the omission [by the legislature] was intentional."²⁰ In other words, if the jury reduces the employee's award because of his comparative negligence, the employer gets nothing.

A similar situation occurs if the third party contests the cause of the injuries and attempts to show that some injuries arose from a previous accident. Under those circumstances, a general verdict alone cannot rule out the possibility that the jury reduced its award based on that defense.²¹ Therefore, if the employer/insurer does not ask the trial court for a special verdict form, the employer/insurer probably cannot meet its burden to prove the employee has been fully compensated.

Surprisingly, the Georgia Court of Appeals has recently held that different types of injuries do not merge when considering whether an employee has been completely compensated. Specifically, in *North Bros. Co. v. Thomas*, the Court found that an employee had been fully compensated for medical expenses, but not for pain and suffering.²² In *North Bros.*, the employee had recovered \$25,000 for medical expenses and \$25,000 for pain and suffering. The employer had previously paid over \$60,000 in medical expenses. In deciding the fate of the employer's subrogation lien, the Court of Appeals held that the employer could only recover the \$25,000 portion of the award that the jury had earmarked for medical expenses.²³

In most instances the question of full and complete compensation is for the trier of fact to decide. Thus, unless it is obvious that the employee was not, or could not possibly be fully compensated because of the extent of his injuries or the lack of a deep pocket third-party,²⁴ it makes sense for both sides to agree up front as to whether the employee had been fully and completely compensated. This can avoid a nasty and expensive legal battle on this issue.²⁵ If an employee and employer fight between themselves while pursuing a third-party, the only likely winner is the third party.

It makes much more sense for the employer and employee to combine efforts to effectuate a maximum recovery. Nothing prevents an employer and an injured worker from agreeing to reimbursement based on a projected recovery, or reimbursement for a specified portion of the benefits. For example, they could agree to reimburse

medical costs or indemnity benefits up to a certain amount. The employer can often provide the employee with both technical and financial support, each of which are essential to a successful recovery. Combining efforts can work to the advantage of all. If compromise is not possible, then this is an ideal situation in which to request arbitration or mediation.

3. Effect of Employer's Negligence

State courts are divided on the issue of whether an employer's negligence can operate to reduce a verdict in a lawsuit between an employer and a third party. Georgia seems to follow the better argument that the employer's negligence does not reduce the award. The employer is not suing in its own right, but instead is standing in the shoes of the injured employee to whom it has paid benefits. Under the exclusive remedy doctrine, the employer is not liable in tort to the injured employee and the employer is not considered a joint tortfeasor.²⁶

In the workers' compensation setting, subrogation is the right of an employer or its insurer to seek indemnification against a third party for benefits paid to an employee because of the third party's negligence.

4. Time Limits

An injured employee has two years from the date of injury to file a personal injury lawsuit in Georgia.²⁷ The General Assembly originally drafted the subrogation provision to track the personal injury statute's two-year period, but initially broke it down into two distinct periods of ownership. During the first year, the cause of action belonged solely to the employee. If one year passed and the employee had not filed suit, the cause of action was automatically "assigned" to the employer. The problem with this approach was that if the employee failed to act, the employer arguably could be "saddled" with a claim it did not want. If the employer did not file, then the employee lost his right to sue entirely.

In 1995, the General Assembly amended the statute and rectified this problem. Now, in the first year after the injury, the cause of action still belongs solely to the employee. If the employee does not file suit in the first year, then either side may file in the second. The filing entity must give notice of filing to the nonfiling entity.²⁸ The nonfiling entity may then intervene, but is not required to do so. Nor is the employer required to file suit if the employee fails to do so. Finally, the 1995 amendment expressly provides that the revision applies retroactively to injuries occurring after July 1, 1992.²⁹

5. Recoverable Benefits

In its present form, the subrogation statute allows the employer to recover “disability benefits, death benefits, and medical expenses paid “under the subrogation statute.”³⁰ Disability benefits include temporary total, temporary partial, permanent partial, and salary paid in lieu of benefits. Death benefits were added for injuries occurring on or after July 1, 1995. Interestingly, the 1995 amendment did *not* include an explicit provision to make the subrogation lien provision retroactive.³¹ This meant that an employer/insurer could not recover death benefits or burial expenses paid before the amendment was enacted. Medical expenses should include anything paid under O.C.G.A. §§ 34-9-200 and 200.1. It is doubtful that an employer could recover fines, penalties or assessed attorney’s fees, because these are not explicitly provided for in the statute.

Some subrogation cases may very well involve the distribution of an employee’s recovery from a third party when liability for future workers’ compensation benefits is undetermined. The question becomes whether the employer is entitled, as a credit or set-off, to a portion of the monies recovered based on an estimated payout of future workers’ compensation benefits, or whether the employer is limited to the benefits paid at the time of the recovery from the third-party. A well-drafted statute should anticipate this problem, and provide a means for resolving it.³² Georgia’s subrogation statute unfortunately does not address the situation specifically. However, the subrogation lien section implies that future benefits are to be included, stating the employer “shall have a subrogation lien, not to exceed the actual *amount of compensation paid pursuant to this chapter*”³³

If Georgia does allow recovery for future benefits, as Alabama has done, the “correct holding is ... that the excess of third party recovery over past compensation actually paid stands as a credit against future liability of the carrier.”³⁴ If this problem arises, and the employer and employee choose to settle, or take a lump sum in lieu of credit, then they have to estimate the future benefits. This calculation can be made using such documents as annuity tables, present value tables, life care plans, medical reports, or vocational studies. This type of settlement can also be done through a court, or by arbitration or mediation.

6. Attorney’s Fees and Costs

O.C.G.A. § 34-9-11.1 does not specifically apportion attorney’s fees between an injured employee and an employer when both parties pursue a recovery from a third-party tort-feasor. The statute merely provides that an attorney representing an injured employee in a third-party action is entitled to a “reasonable fee.” Under Georgia law, a “reasonable fee” can either be hourly or contingent. If the employer has hired outside counsel to pursue a recovery

against a third party, the trial court may apportion the fee if the parties are unable to agree.³⁵ O.C.G.A. §§ 15-19-14 and 15 would apply in that context.

Although not explicitly stated, our statute seems to be in line with the majority rule requiring the employer to pay a portion of the attorney’s fees from its own share.³⁶ Apportionment of fees should be considered before commencing a subrogation action. In the event of a dispute, the outcome is likely to depend upon the efforts of each attorney. Alternatively, the court could apportion the fees in proportion to the net proceeds recovered by each side.³⁷

The same argument can be made for costs. As one court noted, there is an equitable principle that a party who incurs costs in creating a common fund that benefits others may call upon them to share.³⁸ If the General Assembly intended the employer to be responsible for its fair share of the attorney’s fees, then arguably it intended the same for costs. As with attorney’s fees, however, there may be a dispute regarding apportionment. A Michigan court, construing Michigan’s subrogation statute, apportioned costs based on the percentage of recovery by each party.³⁹ If apportionment of costs does lead to a dispute, it will likely be in those cases in which the employer was not actively involved, but is still asserting lien rights, or in which the third-party action was unsuccessful. Once again, the employer and employee would be wise to agree on both fees and costs before filing suit against a third party.

7. Distribution of Proceeds

Assuming a successful third-party action, and a full and complete recovery, not merely a judgment, the parties are then faced with how to distribute the proceeds. Attorney’s fees and costs, which were discussed above, are likely to come “off the top.” Court apportionment is necessary if the parties cannot agree. The balance should then be divided between the employee and employer, with the employer being reimbursed for benefits paid to date and given credit for future benefits to be paid “under this chapter.”

While simple on its face, the distribution process can undoubtedly be complicated by multiple subrogees, including other insurers and health care providers, other lien holders, successive injuries, bankruptcies, and a host of other factors.⁴⁰ A detailed analysis is beyond this paper’s scope, but the one guiding principle is that the “[r]eimbursement of the compensation payor according to the terms of the statute is mandatory, and cannot be modified by courts.”⁴¹

8. Employer Intervention to Enforce Subrogation Lien

a. Procedural Basis

Holders of Georgia workers’ compensation liens can intervene in the injured employee’s lawsuit against the

third-party as a matter of right by virtue of their subrogation lien under O.C.G.A. § 34-9-11.1, coupled with a state statutory right to intervene.⁴² A lienholder's interest normally is not adequately represented by the employee, because both the employee and the third party potentially stand to benefit if the lien can be defeated.⁴³ Similarly, lienholders should meet the criteria for permissive intervention because their claim and the main action have both questions of law and of fact in common, i.e., the nature and extent of the plaintiff's injuries and the liability of the defendants for those injuries.⁴⁴

Intervention is also necessary to give the employer standing to complain about adverse rulings in an employee's suit against a third party. No person who is not a party to a proceeding can successfully assert a beneficial interest in that proceeding. Furthermore, only a party, or one who has sought intervention, can appeal from a judgment.⁴⁵

b. Timeliness

In Georgia, the trial court is charged with determining whether a motion to intervene to enforce a worker's compensation subrogation lien is timely.⁴⁶ Failure to allow intervention amounts to an abuse of discretion when each of the following are present: (i) a motion to intervene is filed before final judgment; (ii) where the rights of the intervening party have not been protected, and (iii) where the denial of intervention would dispose of the intervening party's cause of action. Furthermore, the intervention need not be brought within the two-year limitation period for filing the lawsuit.⁴⁷ Similarly, the federal courts have held that intervention by a party whose only interest in the litigation is a lien on the proceeds is proper at any time before final judgment.⁴⁸

c. Participation at Trial

The employer's insurance company's right to intervene in the employee's suit does not necessarily carry with it the right to participate in the conduct of the suit without the employee's consent. This is related to the fear of prejudicing the employee's case by revealing to the jury that an insurance company is going to profit by any damage award the jury might make.⁴⁹ The Eleventh Circuit reversed a defendant's verdict because the trial court refused to limit the intervening workers' compensation carrier's participation at trial, and allowed the jury to learn that the employee

had recovered workers' compensation benefits. The opinion stated that under Alabama law, any showing that the plaintiff has received such payments constitutes reversible error.

The federal courts have also vigorously applied the collateral source rule to prohibit evidence regarding payment of workers' compensation benefits. As the Eleventh Circuit held in *Southern v. Plumb Tools*: "[A] procedural rule permitting an intervenor or defendant to show the plaintiff has received workmen's compensation benefits from his employer would undermine the substantive

collateral source doctrine because such evidence is considered unquestionably prejudicial to the plaintiff's case."⁵⁰

Disclosure to the jury that the employee has received benefits is almost always as detrimental to the intervening subrogee as it is to the employee. It therefore behooves the intervenor/employer to cooperate with the employee to prevent such disclosure. Normally both

the employee and the intervenor/employer should seek an order that the intervention is subject to the following provisions:

- (1) The intervenors will not be named in the style of the case.
- (2) The plaintiff must present to the jury "all available evidence" of economic and non-economic damages.
- (3) The plaintiff must do nothing at the trial to prejudice the intervenors' lien.
- (4) The jury will return a special verdict, separating the various special damages.
- (5) The intervenors may present evidence to support their lien outside the jury's presence.
- (6) The plaintiff may raise objections and present evidence disputing the validity or extent of the intervenors' claim.
- (7) If the plaintiff recovers from the defendant, the court apportions a reasonable attorneys' fee between the plaintiff's attorney and the intervenors' attorney in proportion to the services rendered under O.C.G.A. § 34-9-11.1 (d).⁵¹

9. Wrongful Death Cases

Some practitioners contend that O.C.G.A. § 34-9-11.1 does not provide a subrogation lien for dependency and death benefits. In this regard, a few acting on behalf of either the deceased employee or the alleged tort-feasor have

State courts are divided on the issue of whether an employer's negligence can operate to reduce a verdict in a lawsuit between an employer and a third party. Georgia seems to follow the better argument that the employer's negligence does not reduce the award.

even taken the position that the employer has no right to intervene in a wrongful death action brought by a deceased employee's personal representative only for the full value of the decedent's life. Georgia's appellate courts have not yet addressed these issues. Nonetheless, employers have a strong argument that there is a subrogation lien under O.C.G.A. § 34-9-11.1 in wrongful death cases, just like other personal injury tort cases. The 1995 amendment specifically added a provision for recovery of death benefits for injuries occurring on or after July 1, 1995.⁵² When the injury *or death* for which compensation is payable is caused under circumstances creating a legal liability against some person other than the employer, the employer has the *right* to intervene in *any* action in which the injured employee or *those to whom such employee's right of action survives* at law pursues the remedy against such other persons.

Workers' compensation dependency and death benefits are intended to compensate the deceased employee's dependents for the same loss of economic value recoverable as part of the "full value of the life of the decedent."⁵³ Under the Act, the employer must pay a deceased employee's total dependents a weekly compensation equal to the compensation provided in O.C.G.A. § 34-9-261 for total incapacity.⁵⁴ This is compensation for loss of the decedent's earning capacity, just as compensation for the full value of the decedent's life includes loss of the decedent's earning capacity. Again, the subrogation lien under O.C.G.A. § 34-9-11.1 specifically includes such "death benefits." Under the wrongful death statutes, "No recovery had under [O.C.G.A. § 51-4-2(a)] shall be subject to any debt or liability of the decedent."⁵⁵ However, workers' compensation dependency and death benefits are not a debt or liability of the decedent. They are *benefits* to the dependents, just as the term denotes.

Similarly, the personal representative of the *estate* has the right of action for burial expenses and expenses of last illness.⁵⁶ Workers' compensation benefits are intended to compensate the deceased employee for these same last illness and death expenses.

10. Potential Ethical Pitfalls

A federal district court in Pennsylvania, in passing on subrogation in general, noted that there might be a conflict of interest in all cases since the insurance carrier is interested only in its reimbursement.⁵⁷ While probably too harsh a view, conflicts are likely to arise in subrogation matters. This is especially true when the carrier insures both the employer and the third party. In one setting an employee sued his employer's insurance carrier asking that it be denied subrogation because he felt that it hindered his recovery. The court ruled against the employee, but asked rhetorically what it might have done if the carrier had

leaked confidential data tending to decrease the employee's recovery.⁵⁸ Such conduct would likely prevent recovery of the lien and may even subject the carrier to punitive damages.

Another decision denied the insurer's attempt to intervene under a discretionary statute because of what the court deemed extraordinary circumstances, i.e., that the carrier insured both the employer and the third-party. The court noted that whether the carrier intervened was unimportant since it would still be reimbursed under Alabama law if the employee prevailed.⁵⁹

If the carrier insures both parties, then it is best to treat the situation as if it were handling a coverage issue while at the same time defending the insured on the liability issue. The solution may be to construct an "ethical wall." The carrier could do this by hiring two attorneys, and by prohibiting the one handling the subrogation portion from disclosing any information to either the attorney representing the third-party or the adjuster handling that side of the claim. Failure to do so invites a court to "even the playing field."

Another conflict possibility, and one more likely to occur, is when one attorney represents parties with varying interests. For example, the attorney defending the workers' compensation claim may naively take on the subrogation action for the employee. The Canons of Ethics address this situation.⁶⁰ Notice of the conflict and consent for continued representation is required. On June 7, 1993, the Georgia State Bar issued a formal advisory opinion on the subject, Number 93-2. Hypothetical situations that were discussed included initiation of suit in the insured's name without permission, representation of both the insured and the insurer, and possible conflicts of interest in the representation of the insured (in our context the employee) on other potential causes of action.

Conclusion

There is no doubt that the reintroduction of subrogation was controversial for a number of reasons. The employer was perceived as an interloper by attorneys who represent injured workers. Moreover, subrogation was viewed as an unconscionable reduction in the employee's tort recovery. As for defense attorneys, the main complaint was that the statute, as drafted, lacked "teeth." Experience has taught us otherwise. The goal of subrogation is to make the wrongdoer pay. If the employee was injured by a third party and has been fully and completely compensated, then the employer should be reimbursed for the workers' compensation benefits as a result of the third party's legal liability. If applied to the right set of facts, subrogation works *for both sides*. ■



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Endnotes

1. O.C.G.A. §§ 34-9-1 – 34-9-421 (1998).
2. The other two states were Ohio and West Virginia.
3. Doss v. Food Lion, Inc., 267 Ga. 312, 477 S.E.2d 577 (1996); Critchfield v. Akin, 33 Ga. App. 668, 127 S.E. 816 (1925).
4. Lindsey v. Samoluk, 135 Ga. App. 852, 219 S.E.2d 464 (1975).
5. ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 74-16(a) (1999); *see also* Spengler v. Employer's Commercial Union Ins. Co., 131 Ga. App. 443, 206 S.E.2d 693 (1974) (purpose is to provide a means for recouping employer's loss and to prevent employee's double recovery).
6. Travelers Ins. Co. v. Luckey, 46 Ga. App. 593, 167 S.E. 907 (1933).
7. 82 AM. JUR. 2d, *Workers' Compensation* § 451 (1992).
8. *Id.* § 451.
9. Warden v. Hoar Const. Co., 269 Ga. 715, 507 S.E.2d 428 (1998).
10. O.C.G.A. § 34-9-11.1(b); Georgia Star Plumbing, Inc., v. Bowen, 225 Ga. App. 379, 484 S.E.2d 26 (1997).
11. O.C.G.A. § 34-9-11.1(a) (emphasis added).
12. Travelers Ins. Co. v. Georgia Power Co., 51 Ga. App. 579, 583, 181 S.E. 111, 113 (1935).
13. Martin v. Commercial Union Ins. Co., 935 F.2d 235 (11th Cir. 1991); Prudential Commercial Ins. Co. v. Michigan Mut. Ins. Co., 261 Ga. 637, 410 S.E.2d 30 (1991).
14. Poole Truck Line, Inc. v. State Farm Mut. Auto. Ins. Co., 163 Ga. App. 755, 294 S.E.2d 570 (1982); *see also* Commercial Union Ins. Co. v. State Farm Mut. Auto. Ins. Co., 823 F.2d 449 (11th Cir. 1987) (lienholders entitled to judgment against tort-feasor).
15. Rowland v. Department of Admin. Servs., 219 Ga. App. 899, 466 S.E.2d 923 (1996).
16. O.C.G.A. § 34-9-11.1(b). Subsection (c) states, "In any case, if the employer or insurer recovers more than the extent of its lien, then the amount in excess thereof shall be paid over to the employee." This does not mean that the employer may file suit and seek as recovery only the amount of benefits paid to the employee. The intent of the well-drawn subrogation statute is to provide incentive for a full recovery. If the employer files suit, she does so on behalf of the employee as well, and must fully and completely compensate him, both economically and non-economically, before she is entitled to retain any monies.
17. The "fully and completed compensated" requirement appears to have been borrowed from the uninsured motorist setting. *See, e.g.,* Travelers Ins. Co. v. Commercial Union Ins. Co., 176 Ga. App. 305, 335 S.E.2d 681 (1985).
18. North Bros. Co. v. Thomas, 236 Ga. App. 839, 513 S.E.2d 251 (1999); Bartow County Bd. of Educ. v. Ray, 229 Ga. App. 333, 494 S.E.2d 29 (1997), *cert. denied* (Ga. Mar. 6, 1998); Department of Admin. Servs. v. Brown, 219 Ga. App. 27, 464 S.E.2d 7 (1995).
19. Homebuilders Ass'n v. Morris, No. A99A1084, 1999 WL 318828 (Ga. Ct. App. May 21, 1999).
20. *Id.* at *2.
21. Ray, 229 Ga. App. 333, 494 S.E.2d 29.
22. North Bros. Co. v. Thomas, 236 Ga. App. 839, 513 S.E.2d 251 (1999).
23. *Id.* at 254.
24. For example, a subrogation lien does not attach to an employee's uninsured motorist coverage policy. Stewart v. Auto-Owners Ins. Co., 230 Ga. App. 265, 495 S.E.2d 882 (1998), *cert. denied* (Ga. May 14, 1998).
25. An excellent example of an agreement, but one that eventually went sour, can be found in *Sommers v. State Compensation Insurance Fund*, 229 Ga. App. 352, 494 S.E.2d 82 (1997). Sommers was paid workers' compensation benefits for an injury. She filed a personal injury lawsuit and the workers' compensation carrier intervened. The parties reached an agreement as to how to handle the lien and submitted it to the judge as a proposed order. The consent order provided for using a special verdict form and then allowing the trial court to determine any reimbursement due the workers' compensation carrier. After receiving judgment in her favor, Sommers tried to renege. The Court of Appeals refused to allow her to do so.
26. O.C.G.A. §§ 34-9-11, -289; Flint Elec. Membership Corp. v. Ed Smith Constr. Co., 270 Ga. 464, 511 S.E.2d 160 (1999) (WCA is an employee's sole remedy against an employer for work-related injuries, unless those injuries are due to the employer's failure to follow the safety provisions of the High Voltage Safety Act (O.C.G.A. § 46-3-40(b)); *Hadsock v. J.H. Harvey Co.*, 212 Ga. App. 782, 442 S.E.2d 892 (1994) (remedy is exclusive); *Williams Bros. Lumber Co. v. Meisel*, 85 Ga. App. 72, 68 S.E.2d 384 (1951) (employer not joint tort-feasor under prior law).
27. O.C.G.A. § 9-3-33 (1982).
28. For reasons unknown, there appears to be no requirement that the employee notify the employer or insurer if suit is filed in the first year. O.C.G.A. § 34-9-11.1(c).
29. O.C.G.A. § 34-9-11.1(e); *Wilson v. Christian*, 220 Ga. App. 221, 469 S.E.2d 362 (1996); *Conner v. Greene*, 219 Ga. App. 860, 467 S.E.2d 199 (1996); *Moore v. Savannah Cocoa, Inc.*, 217 Ga. App. 869, 459 S.E.2d 580 (1995); *Dowdy v. Earthwise Restaurant Management, Inc.*, 221 Ga. App. 220, 223, 471 S.E.2d 42, 45 (1996).
30. O.C.G.A. § 34-9-11.1(b).
31. *Id.* § 34-9-11.1(c); *Wausau Ins. Co. v. McLeroy*, 266 Ga. 794, 471 S.E.2d 504 (1996).
32. Both the New York and the Council of State Government draft statutes address the problem of future benefits. New York allows its Industrial Board to estimate future liability using specific annuity tables. It also addresses the possibility of subsequent modification of benefits.
33. O.C.G.A. § 34-9-11.1 (emphasis added).
34. 6 LARSON, *supra* note 2, § 74-31(e); *accord* *Ex parte Miller & Miller Constr. Co.* No. 1971933, 1999 WL 148099 (Ala. Mar.

CONTINUED ON PAGE 73

Good & Evil, Work & Fun Combine in Savannah Meeting

By Jennifer M. Davis

THE LAWYERS OF GEORGIA HAVE LONG known what the rest of the nation waited until *Midnight* to find out. Savannah is sublime. In fact, John Berendt's novel chronicling the steamy Southern town which debuted in 1994 is still on the list of top 25 best sellers according to *USA Today*. Yes, Americans are fascinated with the garden of good and evil. And after two years of convening in other destinations, Georgia lawyers got the chance to rekindle their love of Savannah when the Annual Meeting returned there June 17-22. Even the Supreme Court took advantage of the return to historic Savannah to hold oral arguments at the Georgia Historical Society.

Opening Day

Although there were some meetings held throughout the day on Wednesday — including the State-Federal Judicial Conference — events officially began that evening with an opening reception at the Hyatt Regency on River Street. The next day started early as lawyers gathered with fellow alumni at breakfasts hosted by Mercer, Emory, Georgia and Georgia State law schools. The Investigative and Review Panels of the State Disciplinary Board convened that afternoon, along with a number of Bar committees. The Lawyers Foundation of Georgia Inc. held its annual meeting on Thursday too (see page 53 for more details about the Foundation). And lawyers who had represented pro bono clients in the previous year were honored at an outdoor reception on Jackson Square following an all-day conference.

A Supreme Event

Prior to the session of court, the Supreme Court

justices were honored at a reception at the law firm of Bouhan Williams & Levy. The justices traveled to the reception in antique cars provided by the Coastal Georgia Regional Chapter of the Antique Automobile Club of America. The Court session was then held at the Georgia Historical Society's Hodgson Hall. Chief Justice Robert Benham compared the antique car business to the legal profession in "honesty, trustworthiness and respect." He explained that titles are never exchanged — instead the cars are bought and sold on a handshake and no one in the history of the industry has ever gone back on his word.

The Supreme Court honored three local judges as "friends of the court" and presented with amicus curiae certificates recognizing their contributions to the community: former Court of Appeals Judge H. Sol Clark, Senior Superior Court Judge Frank S. Cheatham Jr. and Senior Superior Court Judge Eugene Gadsden II.

The justices then heard oral argument in the case *Kolokouris v. State* (Case No. S99A0725) from Hall Superior Court.

Honoring 50+ Year members

On Thursday evening, members who have been practicing over 50 years were celebrated at a reception held in their honor at the Mighty Eighth Air Force Heritage Museum. There was a tremendous turnout of these members who for half a century have labored in the law. Perhaps as noteworthy as those who were able to attend were the letters President William E. Cannon Jr. received from senior members who could not make the journey. One such letter from Claud Reid Caldwell of Augusta said: "I am indeed honored to receive your most kind and timely invitation to attend the Bar Annual Meeting ... On July 13, 1932 I paid the fee and received my license to be a lawyer in the State of Georgia. I have



1. Members who have practiced 50-plus years were honored at a reception Thursday evening. 2. Kim Michael (left), Rachel Iverson and her guest Jim Johnson enjoy the Lawyers Foundation black-tie benefit.

3. President Rudolph Patterson (second from right) congratulates newly-elected Executive Committee members (l-r) Bryan Cavan, David Lipscomb and Robert Ingram.



since relinquished my right to active practice and am enjoying my leisure.

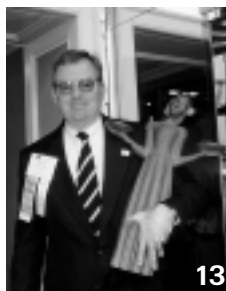
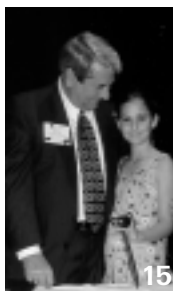
"To you and my erstwhile cohorts I extend my best wishes for a long and prosperous career in our honorable profession."

The reception was truly a special event for these members. Columbus attorney Robert O'Neal — who was admitted to the Bar in 1942 — and his wife Clarice were escorted to the celebration by their grandson, Peter Lull, who flew in from California to chauffeur the couple to the event (see photo 18, page 28). Mr. Lull explained why he traveled so far to bring them to the

party, "It was so important to my granddad to be here. And I'm so proud of him ... there was no question I was going to be sure he made it."

On Friday, a number of sections held breakfast meetings including the General Practice & Trial Section which delivered its Tradition of Excellence Awards (see page 62). The annual members meeting and the final meeting of the 1998-99 Board of Governors took place that morning.

Rep. Charlie Smith discussed the Governor's goals for improving the educational system in Georgia. Thus far, House Bill 605 has mandated character education



1. Past Presidents Sonny Seiler and Evans Plowden visit at the opening reception. 2. Conferring during the Board meeting are members (l-r) Chuck Driebe, John Pridgen and Brown Moseley. 3. Rep. Charlie Smith discussed Gov. Barnes' education platform at the Board meeting. 4. Laine Walker (right) shows off her tennis tournament "medal" to husband Henry. 5. (l-r) Mary Lee Davis and Judge Denise Majette enjoy the Mighty 8th reception. 6. Gerald Kunes catches up with Justice George Carley at the reception Thursday. 7. At the visiting bar presidents dinner, Harvey Weitz (left) shows outgoing President Bill Cannon how to shell crabs. Mr. Weitz chaired the Annual Meeting planning committee. 8. Judge Marion Pope congratulates Judge Frank Cheatham, shown with his daughter, for receiving the Supreme Court amicus curiae award. 9. Also a recipient, Judge Eugene Gadsen displays his amicus curiae award from the Supreme Court. 10. Board member Chris Townley (standing) makes a point at the meeting on Saturday. 11. (l-r) Judge J.D. Smith and Wade





Crumley enjoy the opening reception. 12. Judge Sol Clark, who also received a Supreme Court amicus curiae award, talks with Monte Mollere, Director of the Louisiana Bar Association Access to Justice program, at the pro bono reception. 13. President-elect George Mundy won the bird girl statue raffle benefiting the Lawyers Foundation. 14. Visiting at Wednesday's reception are Judge Jack Ruffin and Brenda Cole. 15. Following his swearing-in, President Rudolph Patterson is congratulated by his granddaughter Maria. 16. Savannah Bar members treated visiting bar presidents to boat tours. 17. Cheryl Custer, newly-named Judicial Qualifications Commissions Director, visits with Virgil and Linda Costley at the Mighty 8th reception. 14. Visiting at Wednesday's reception are Judge Jack Ruffin and Brenda Cole. 18. Grandson Peter Lull (right) traveled from California to Columbus to escort Robert and Clarice O'Neal to the reception honoring 50-plus year members. Mr. O'Neal was admitted to practice in 1942.



for grades K-12. That bill also gives teachers the right to remove disruptive students from the classroom — even over the protests of a weak principal. Gov. Barnes has appointed an Education Reform Study Commission to study a number of areas from accountability to financing to school climate (*i.e.*, violence). He urged lawyers to be active in enhancing Georgia's educational system.

The general session also included a report about the Clients' Security Fund, the Investigative and Review Panels, the Formal Advisory Opinion Board, the state of the law department and the state of the judiciary. In his address, Chief Justice Robert Benham encouraged lawyers to be proud of the profession and reminded everyone that "lawyers put on the armor of law every day and go out and slay the dragon of injustice." (See page 37 for the State of the Judiciary address).

State Law Department Update

Attorney General Thurbert Baker reported that the state law department is keeping continually busy with 100 lawyers handling about 11,000 matters that are open at any given time. He outlined some of the previous year's successes. Since its inception, the Medicaid Fraud Unit has convicted 83 defendants and recovered \$10.2 million for the state. The Attorney General's office has also recovered \$336 million in actual funds in back child support. Of that, \$63 million has been turned over to the state for welfare.

Also Georgia will recover \$4.8 billion as part of the tobacco litigation settlement which the Attorney General hopes will be used for health programs.

With regard to open meetings, Attorney General Baker said he believes the 1996 Olympic bid records should be open, and that his office had intervened on the side of the *Atlanta Journal/Constitution* to do so.

He also reminded everyone that domestic violence is a plague that continues to grow. The Crimes Against Family Members Act was signed into law giving prosecutors new tools to punish offenders. Attorney General Baker also said he advocates abolishing parole for violent criminals making them serve 100 percent of the sentence given.

The Attorney General closed saying, "As leaders, we play a significant role in creating the state of mind called society." He added that leaders are in a unique position to inspire people to greatness.

Activities Galore

Thursday afternoon was left open for lawyers and their families to enjoy a variety of activities. The annual

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Voluntary Bar Golf Tournament was held in conjunction with the Young Lawyers Division golf competition at Henderson Golf Course. The defending champions from the Dougherty Circuit Bar Association were unseated by the Lookout Mountain Circuit Bar with team members: Judge Gary B. Andrews, Judge Charles D. Peppers Sr., W. David Cunningham and Larry B. Hill. There was also a mixed doubles round robin tennis tournament where Chuck Driebe of Jonesboro prevailed as the winner. Others set sail on a dolphin watching cruise.

An Inaugural Event

On Friday evening, the justices of the Supreme Court of Georgia were honored at the reception preceeding the Presidential Inauguration Dinner. During dinner, Forrest J. Bowman, a law professor at West Virginia Law School, delivered an inspirational address reminding lawyers to rekindle their pride in the profession. His address was the perfect complement to President William E. Cannon Jr.'s Foundations of Freedom program which was featured on the cover of the June *Journal*.

Following Professor Bowman's remarks, outgoing President Cannon was presented with an antique framed picture of a cannon, which he collects for obvious reasons. Next, Rudolph N. Patterson of Macon was sworn-in as 1999-2000 President of the State Bar of Georgia by Chief Justice Robert Benham.

The New Board of Governors

On Saturday, the athletically inclined early risers ran the YLD 5K Fun Run, sponsored by the Lawyers Foundation of Georgia.

The first Board of Governors meeting of the 1999-2000 term on Saturday morning marked the official close of the Annual Meeting and the beginning of a new year. President Rudolph N. Patterson reported on his plans and goals for the year (see his address on page 40). He will serve along with the officers and Executive Committee shown at right. Executive Committee members Bryan M. Cavan, Robert D. Ingram and David C. Lipscomb and were elected by majority ballot vote for two-year terms.

Also of significance, the Board discussed amending Bar Rules 5-101 and 5-104. The former requires that members receive notice of proposed rules and bylaws changes in the *Journal*; and the latter requires similar notice if a dues increase or decrease is proposed. In light of the recent costly printing of the proposed changes to the disciplinary rules, which took up 34 pages in the April issue, the Board debated whether to allow for notice to be sufficient if it is posted on Bar's Web site. The Board considered that some members may not have Internet access, and suggested that a notice be placed in the *Journal* that the full text of the proposed amendment would be available on-line or from the State Bar in hard copy form if the member requested it. After much discussion, the motion to amend Rule 5-101 was tabled.

Bench and Bar Committee co-chairs Robert D. Ingram and Judge Robert L. Allgood presented a set of suggested rules and operating procedures for the Judicial District Professionalism Program (JDPP). According to the proposal, the JDPP — which was applauded by the Chief Justice in his address — “shall promote professionalism within the legal profession through increased communication, education, and the informal use of local peer influence to alter unprofessional or uncivil conduct.” The proposed Bar Rule Part XII and Internal Operating Procedures were deferred to another meeting.

The Board also discussed a proposed change to Bylaw Article III which governs how posts on the Board of Governors are added or stricken based on the number of members in the circuit. The proposed bylaw change, which was tabled, would also change the current system of the President appointing a member to the Board when the circuit population has grown thereby warranting another representative. The new bylaw would leave the post open until the next election, rather than filling the post immediately by Presidential appointment.

President Patterson has appointed a special commit-

EXECUTIVE COMMITTEE

The Executive Committee is composed of officers and six members of the Board of Governors elected by the Board.

| | |
|--|---------------------------------|
| President | Rudolph N. Patterson, Macon |
| President-elect | George E. Mundy, Cedartown |
| Secretary | James B. Franklin, Statesboro |
| Treasurer | James B. Durham, Brunswick |
| Immediate Past President | William E. Cannon Jr., Albany |
| President Young Lawyers Division | Joseph W. Dent, Albany |
| President-elect Young Lawyers Division | S. Kendall Butterworth, Atlanta |
| Immediate Past President Young Lawyers Division | Ross J. Adams, Atlanta |

Executive Committee at Large Members

Judge Edward E. Carriere Jr., Decatur
Bryan M. Cavan, Atlanta
Phyllis J. Holmen, Atlanta
Robert D. Ingram, Marietta
David S. Lipscomb, Duluth
George Robert Reinhardt Jr., Tifton

tee to continue studying this and other important issues associated with Bar governance.

Following are highlights of the remainder of the meeting:

- ♦ The Board approved the 1999-2000 State Bar budget.
- ♦ The Board approved the President's appointments to the Investigative Panel: William R. Jenkins, Atlanta; Delia T. Crouch, Newnan; and William L. Lundy Jr., Cedartown.
- ♦ The Board approved the President's appointments to the Review Panel: Myles E. Eastwood, Atlanta; Louise E. Hatcher, Albany; and Sarah Brown Akins, Savannah.
- ♦ The Board approved the President's appointments to the Formal Advisory Opinion Board: Carl Richard Langley, Albany; and Walter Ray Phillips, Athens.
- ♦ The Board approved the President's appointment of Rachel K. Iverson of Atlanta to the Insitutute for Continuing Judicial Education (ICJE) Board of Trustees.
- ♦ The Board approved the President's appointments to the Georgia Legal Services Board: Delia T. Crouch, Newnan; Frank B. Strickland, Atlanta; Andrew M. Scherffius III, Atlanta; Charles T. Lester Jr.
- ♦ The Georgia Diversity Program was honored with a resolution in recognition of seven years of successful operation in fostering a community of unity between minority and majority lawyers. ☐

Eight Local Bars, 2 Leaders Receive Excellence Awards

By Amy Williams

EVERY YEAR THE COMPETITION STIFFENS in the running for the coveted Law Day, Award of Merit and President's Cup awards, making it hard on the judges. With so many well-qualified entries, picking only one in each category is never an easy task. This year's Voluntary awards recognize those bar associations with exceptional records of service through such programs as providing legal aid to the needy in their communities, educating their Bar members, visiting local schools, or making Law Day extra special. All local bar awards were presented at a ceremony during the State Bar's Annual Meeting in Savannah.

Law Day

The Law Day Award recognizes organizations whose Law Day activities are effective and extensive in their scope. This award is broken down into categories according to membership. The Blue Ridge Bar Association took the award in the 100 members or less category for its numerous programs at local schools and civic groups that focused on educating about legal careers, court procedure, state government, real estate and banking law, and the availability of the local law library.

In Albany, Mayor Tommy Coleman signed a public proclamation declaring May 1 as Law Day, Supreme Court Chief Justice Robert Benham was honored with a reception at the Dougherty County Courthouse, many Albany lawyers visited local schools, and students wrote about freedom in an essay contest. These activities, among others, won the Dougherty Circuit Bar Association a Law Day Award in the 101 to 250 members category.

In the 251 to 1000 members category, the Gwinnett

County Bar Association was honored for showing its appreciation to outstanding members of the bar and community with a Law Day banquet, a reception for Gwinnett County Judges and a Law Enforcement Appreciation Day Picnic. The Gwinnett Bar promoted law-related education in the county schools through educational materials, school visits, inviting students to the courthouses, recognizing outstanding law students and providing student scholarships.

Award of Merit

The Award of Merit, also broken into membership categories, goes to the bar associations whose activities throughout the year improve the administration of justice and the image of lawyers, and serve the public and its members. In the category of 100 members or less, the Blue Ridge Bar Association's daily efforts were honored with an award. In the 101 to 250 members category, the Dougherty Bar Association was also awarded once again. For its scholarship funds, recognition of members and educational programs, the Cobb County Bar Association received the Award of Merit in the 251 to 1000 members category. The Atlanta Bar Association was awarded in the 1001 or more members category for its expansive program of service to the public and metro lawyers.

Best Newsletter

Within the Award of Merit competition is an award for the best bar association newsletter. This year's Newsletter Awards went to the Douglas County Bar Association in the 100 members or less category, for the *Douglas County Bar Association Discovery*; the Georgia Association of Black Women Attorneys

(GABWA) in the 101 to 250 members category, for the *GABWA Reporter*; the Gwinnett County Bar Association in the 251 to 1000 members category, for the *Gwinnett County Bar Association Newsletter*; and the Atlanta Bar Association in the 1001 or more members category, for *The Atlanta Lawyer*.

Best New Entry

Two bar associations entering for the first time in the last four years were presented with the Best New Entry Award for their excellence. GABWA was designated Best New Entry in the Award of Merit competition, and the Augusta Bar Association won Best New Entry in the Law Day Award category.

President's Cup

The President's Cup goes to the most outstanding voluntary bar association for the year out of all membership categories. The Dougherty Circuit Bar Association was presented with this honor due to an outstanding record of activities throughout the year, including a reduced fee and pro bono lawyer referral service, the Elderly Legal Assistance Program, continuing legal education programs, award-winning Law Day activities, and participation in the Partners in Excellence program with local schools and the High School Mock Trial Competition.

Excellence in Bar Leadership

This year the State Bar bestowed the Excellence in Bar Leadership Award on two individuals. The award recognizes a lifetime commitment to the legal profession and the justice system in Georgia through dedicated service to a local bar, practice bar, specialty bar or area of practice section. The winners were the Honorable T. Jackson Bedford of the Atlanta Bar Association and George T. Brown of the Clayton County Bar Association.

The State Bar of Georgia sincerely congratulates all these award winners and thanks them for their service to the Bar and the public. ☐



Above, President Cannon (left) presents the highest local bar honor, the President's Cup, to Dougherty Circuit Bar President Bill Erwin. President Cannon also presented the Excellence in Bar Leadership Award to George T. Brown of the Clayton County Bar Association (below), as well as the Honorable T. Jackson Bedford of the Atlanta Bar Association (right).



Attorneys Receive Chief Justice Community Service Awards

AT THE STATE BAR OF GEORGIA'S ANNUAL Meeting, 12 attorneys from across the state received the "Chief Justice Robert Benham Award for Community Service" for their outstanding contributions to the community.

Created in 1998 by the State Bar of Georgia and the Community Service Task Force, this award is named for Chief Justice Robert Benham of the Georgia Supreme Court, who has drawn the attention of lawyers and judges to the community and public service aspects of professionalism. According to Justice Benham, attorneys and judges improve their quality of life and communities when they give their time to others. The awards were created to recognize that volunteerism remains strong among Georgia's lawyers and to encourage all lawyers to become involved in serving their communities. The 1999 Community Service Award recipients are:

Cheryle Thompson Bryan of Ashburn is honored for her representation of juveniles in the Tifton Circuit. She has counseled and provided after-school jobs for youth and furnished them with clothes and other personal items through 4-H and the First Baptist Church of Ashburn.

John M. Clark of Elberton is honored for his dedication to education. He has held leadership positions in the Savannah State University national and local alumni association and chapters. He has given tirelessly to the Northeast Georgia Council of Boy Scouts of

America and serves as the Second Vice President of the Georgia Branches of the NAACP and as Elbert County NAACP Legal Counsel.

Peter K. Daniel of Atlanta is honored for his work with Habitat for Humanity in Atlanta. Mr. Daniel first volunteered with Habitat as a legal intern at their headquarters in Americus, Ga. in 1987. He served two and a half years as vice-chair and two years as chair of the Board of Habitat Atlanta Inc., during which Habitat Atlanta built more homes than any other affiliate of the national organization.

Ira L. Foster of Macon is honored for his role as founder of the Saxon Heights Elementary School Role Model/Drug Prevention Program, and founder and President of the Young Professionalism Network. He chairs the Board of Directors of Rhythm Nation Center for the Arts Inc., which provides training in dance, voice, music and martial arts to young people. He is also active with the Dublin-Laurens County Boys and Girls Club and the Adopt-a-Role-Model Program.

Don C. Keenan of Atlanta is honored for his work with Keenan's Kids Foundation, which he personally funds. He formed the Foundation to improve the lives of children at risk through direct assistance. Through its continuing legal education programs, Keenan's Kids has raised new awareness among members of the bench and bar concerning children's issues and special needs in the community. Keenan's Kids also gathers and distributes clothing and toys for needy children.

E. Roy Lambert of Madison is honored for the standard of public and community service he has set for all lawyers in the Ocmulgee Circuit. A sole practitioner for 20 years, Hon. Lambert spent half of them in the Georgia General Assembly, first as a senator and then as a member of the House, eventually devoting 26 years to public service while also practicing law.

The **Honorable Eugene E. Lawson** of Jonesboro is honored for being a founder and trustee of the "Rainbow House" for abused and

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neglected children and of the Association of Battered Women of Clayton County. Judge Lawson also helped found the Walter and Emilie Spivey Foundation — where he serves as vice-chairman and member of the Board of Trustees — and Samaritans Together for Clayton County.

Richard J. Lundy of Cedartown is honored for his commitment to education in Polk County. He was recently elected to a third term on the Polk School District Board of Education, is active with the Renaissance program in local schools, and serves as volunteer public address announcer at every Cedartown High School football game.

Albert Mazo of Savannah is honored for his volunteer work with the Savannah Regional Office of Georgia Legal Services. He has been volunteering with the organization since 1990, providing legal assistance to low-income persons in 11 counties in southeast Georgia. In 1998, he handled in excess of 300 cases and provided about 2,000 hours of volunteer service.

The **Honorable Frank C. Mills** of Canton is honored for his involvement with the Boy Scouts of America. He served as district chairman from 1991-1994, and received the Boy Scout District Award of merit in 1992 and the Silver Beaver Award in 1996. Judge Mills also contributes to his community through Leadership Georgia, Masons, Lions Club, Gridiron Society and Chi Phi.

Rebecca C. Moody of Warner Robbins is honored for her involvement with such organizations as the Rape Crisis Center, the Salvation Army Safehouse, the Houston Family Violence Prevention Council, the Rainbow House and Hope in Recovery. She has led training in treatment of sexual assault victims at Robins Air Force Base Hospital and the Salvation Army Safehouse.

The **Honorable Alvin T. Wong** of Decatur is honored for his volunteer efforts with youth and the Asian community. He is involved with the DeKalb Prevention Alliance and YouthBuild DeKalb — organizations that work to prevent crime, save lives and encourage young people to lead productive lives. Thought to be the first lawyer of Chinese heritage to practice in Georgia, Judge Wong has served as Atlanta Chapter President and national Executive Director of the National Association of Chinese-Americans and is co-founder of the National Asian Pacific American Bar Association.

Each of these lawyers and judges was recognized for having successfully combined a professional career with outstanding service and dedication to their communities through voluntary participation in community organizations, government sponsored activities, or humanitarian work. ☒

Pro Bono Awards Go to Three Recipients

AT THE ANNUAL MEETING IN SAVANNAH, THE Pro Bono Project and the Access to Justice Committee of the State Bar of Georgia conferred their highest pro bono honors — the William B. Spann Award, the H. Sol Clark Award and the Dan Bradley Legal Services Award — to the Grandparents Project and lawyers Linda A. Klein and Rachael A. Henderson, respectively.

The Grandparents Project, sponsored by the law firm of **Kilpatrick Stockton** under the leadership of **Richard Horder**, was awarded the William B. Spann Jr. Award in recognition of the program's exemplary service, dedication, hard work, and creativity in fulfilling the legal needs of low-income grandparents and their grandchildren in Georgia. The project expanded the number of lawyers available to the poor through a creative approach to the delivery of volunteer legal services. Named for Georgia lawyer and former ABA president William B. Spann, this award honors a local bar association or organization for developing a pro bono program to satisfy previously unmet needs or extending services to underserved populations.

The H. Sol Clark Award, which honors an individual lawyer who excels in extending legal services to the poor, was awarded to **Linda A. Klein** of Atlanta. Ms. Klein has used her many leadership positions to send a strong message about the importance of equal access to justice and support of pro bono services. Recently she successfully lobbied for a legislative initiative to obtain state funding for civil legal services for victims of domestic violence. The award is named for retired Georgia Court of Appeals Judge H. Sol Clark of Savannah, who is considered the "Father of Legal Aid in Georgia."

Dan Bradley Legal Services Award winner **Rachael A. Henderson** of Waycross has dedicated her legal career to protecting the rights of individuals. She has helped develop social security disability law in Georgia and is recognized nationally for her disability law knowledge. She was also a guiding force in the highly successful SSI Kids Disability Project from 1996 to 1998. This award is named for Dan Bradley, a Georgia native and former president of the Federal Legal Services Corporation. It is presented annually to an outstanding lawyer employed by a legal aid or legal services program. ☒

Joseph T. Tuggle Recognized for Distinguished Service

By Amy Williams

JOSEPH T. TUGGLE JR. WAS RECENTLY selected to receive yet another honor for his lifelong commitment to service. The State Bar of Georgia's Executive Committee and then President Bill Cannon selected Joe Tuggle as the recipient of this year's Distinguished Service Award. The award was to be presented on Friday, June 18 during the State Bar's Annual Meeting in Savannah. Mr. Tuggle, who was diagnosed with pancreatic cancer in November of 1998, passed away at his home on Sunday, June 13. He was 59. The Distinguished Service Award was presented posthumously by Bill Smith, State Bar General Counsel and Mr. Tuggle's fishing buddy, at the Awards Ceremony on June 18.

After receiving a B.S. from Auburn University in 1961 and a LL.B. from Mercer University School of Law in 1964, Mr. Tuggle spent his 35-year career practicing family law with one firm, now McCamy, Phillips, Tuggle & Fordham. He is described admirably by colleagues as an "absolutely honest" attorney.

Mr. Tuggle devoted much of his time and talent to the Bar. He served on the Bar's Board of Governors for 12 years, was former chairman of the Family Law Section, a member of the Investigative Panel and a Fellow of the Lawyer's Foundation of Georgia. His

reputation for integrity and professional example served him well as chair of the Clients' Security Fund, a fund to which clients can apply for reimbursement when they suffer a financial loss at the hands of a suspended or

disbarred attorney, and volunteer arbitrator with the Fee Arbitration program.

Smith describes Mr. Tuggle as "the kind of guy who doesn't go looking for recognition. He's just interested in getting the job done." But Mr. Tuggle got the job done so well that despite his unassuming nature, he has received recognition for the many contributions he made to the legal profession and the community. Among others, in March of 1999 the Family Law Section presented him with an award for professionalism, which they renamed in his honor "The Joseph T. Tuggle Professionalism Award."

Mr. Tuggle leaves behind him a legacy of hard work and "looking out for the little guy."

He is survived by his wife Sue

Tuggle of Dalton, two sons, Jonathan Tuggle of Marietta, and Michael Tuggle of Dallas, Texas; and grandson Matthew Tuggle, also of Dallas. "He had a lot of friends, and he was a friend to a lot of people," said Mr. Smith. There is no doubt he will be missed by many. ☒



Joseph T. Tuggle Jr.

Amy Williams is Communications Coordinator for the State Bar of Georgia.

State of the Judiciary Address

Following is the State of the Judiciary address as delivered by Chief Justice Robert Benham on June 18 at the Annual Meeting.

I APPRECIATE THE OPPORTUNITY YOU HAVE provided me to report on the activities of the judiciary. I come this morning to thank you for your many years of support of the judicial branch of government and your dedication to improving the quality of life of all Georgians. I come to celebrate the accomplishments of the judicial branch of government and the State Bar of Georgia.

I do want to express appreciation to you for the role that the Bar has played in positioning Georgia so that it can become a leader in the South and a leader in the country in the 21st century. I want to report to you that the State of the Judiciary is fine. We have some of the best lawyers, some of the best judges, and some of the best court officials in the nation.

Because we have such excellent people, I have no doubt that in the not too distant future we will have one of the best court systems in the nation. We will have it because of the wonderful relationship we have had with the State Bar of Georgia.

I just returned from the Federal State Jurisdiction Committee where I not only requested that Georgia lawyers be placed on national committees, but also asked that Georgia professors become advisors to national committees. I also requested that we receive our fair share of funding from the federal government in terms of grants that are going to various states. I

searched out Georgia natives who served upon these various committees and impressed upon them the need to send the money back home, so that we can address problems here in the state of Georgia. I for one believe that all knowledge does not come from New York or California.

During this address it has been customary to give you a broad breadth approach to the State of the Judiciary, and I would like to divide it into four topics

dealing with resources, responsiveness, initiatives and federal/state relations.

I do want to make you aware that at this Annual Meeting, we had many members of the federal judiciary join us for the yearly State and Federal Judicial Conference. These judges came to hear about our mentorship program we are initiating in the state of Georgia. This program will involve about 150

lawyers and 150 law students in a formal mentoring arrangement to equip our budding lawyers with the professional skills they will need to become not only good lawyers in Georgia, but also the best lawyers in the nation. We look forward to improving the relationship with members of the federal judiciary.



Chief Justice Robert Benham

Funding for Judgeships

We are proud to report that thanks to your efforts effective July 1, we have four panels on the Court of Appeals. We have worked for a number of years to increase the number of judges on the Court of Appeals and we were successful in this last session, adding two

judges to that bench. Judge Dorothy Beasley has left the Court of Appeals. Including her replacement, we will bring the number of judges up to 12. I am sure that in future years additional requests will be made to add members to the Court of Appeals.

We want to thank you for your help and encouragement along the way. I especially want to thank the members of the General Assembly who made the additions possible. Now our Court of Appeals will be better equipped to serve the people of Georgia.

We were also successful in creating two additional judgeships in the Northeastern Circuit and Southwestern Circuit. Again, I want to commend all of you who worked long hours to improve the state of the judiciary. As you know, for a number of years we have begged the General Assembly for money. Chief Justice Harold Clarke would always say *not* could you spare a dime but could you spare a penny out of the state dollar for the judiciary.

Thankfully this year we finally got one penny out of each state dollar and our budget this year saw a 10 percent increase in the funding for the judiciary from \$99 million to \$110 million. However, we were not

successful in gaining funding for the juvenile court judges, but we will make an additional effort in the future.

New Commission to Study Judiciary

Also, we have created one additional commission known as the Blue Ribbon Commission on the Judiciary. It is chaired by former Justice Hardy Gregory and it has many distinguished members of the bench and the bar who will serve alongside him. We look forward to seeing great things from that group.

The Commission will evaluate our court system and make recommendations on how the courts can ensure greater access to quality treatment and superior service to all of our citizens. They will explore how courts can be more effective in responding to societal violence and how a coherent statewide system can be created to keep pace with technological advances in the country. It is no small task, and we solicit your support and encouragement as we address many of the problems that will come before the Blue Ribbon Commission.

Professionalism & Mentoring

We are also involving the State Bar in an initiative that will establish a Judicial District Professionalism Committee for each of the 10 judicial administrative districts. This program is designed to bring a local focus to questions of professional conduct of lawyers and judges. The State Bar's Bench and Bar Committee has been working on proposed rules to govern the operation of these local committees.

In addition to these committees, we are initiating a mentorship program, which I mentioned earlier. It is a four-year pilot project, and we have already spent two years in the embryonic stages making sure we have the right curriculum and the right participants. We appreciate your support as we launch this new and innovative effort.

Commissions Lead the Nation

For many years, we at the Supreme Court have created Commissions in various areas — alternative dispute resolution, substance abuse, equality issues, child deprivation and professionalism. We are very proud of the record of all of these committees and commissions. Our commissions now serve as models for the rest of the nation. We continue to ask for your support of these commissions.

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Drug Courts Established

Just last month Governor Roy Barnes signed a proclamation recognizing national drug court week in Georgia. We became one of the first states in the nation to create a statewide committee for drug court professionals. We now have drug courts in five different counties — Bibb County, Fulton County, Laurens County, Newton County and Glynn County. It is our goal to create at least four new drug courts each year and seek state and federal funding to create these courts.

Techonology Advances

We are also moving aggressively in terms of technology. At this point there are some 22 pieces of federal legislation requiring state courts to report to the federal government. And while we have the requirement of reporting, we have little if any funds to meet those requirements; therefore, we are continuing to ask the federal government for funds to improve our reporting because our ability to obtain funding in other areas is dependent upon our meeting the reporting requirements.

Commission to Study Public Trust

The newest commission being created is the Commission on Public Trust and Competence. It will be made up of members of the bench and the bar and the public. It will join a national committee to improve not only the delivery of services, but also to acquaint the public with the things that lawyers and judges are doing.

All too often we hear the bad stories about lawyers. Very seldom do we hear stories about the many lawyers who were recognized here today [at the Annual Meeting] — these recipients are not only good lawyers but also good community servants. I call on you once again to stop telling lawyer jokes. I used to

tell lawyer jokes until I took a trip down to Savannah with my wife 10 years ago, and a radio station featured lawyer jokes for two hours. My wife started out sitting next to me because it was just the two of us, having left the kids at home. But by the time we got to Savannah, she was sitting as close as she could to the door on the passenger side — mainly because of the lawyer jokes she had heard for two hours during the trip.

I hope you understand this is an honorable profession. Lawyers put on the armor of law every day and go out to slay the dragon of injustice.

Conclusion

We hope that you will be actively involved in your communities, churches, and civic groups to let your fellow citizens know that you are not just good lawyers, but instead you are good neighbors and good citizens. It has been a pleasure for the members of the Supreme Court, Court of Appeals, and some 1,600 judges throughout the state to serve you as lawyers and members of the public. We will continue our efforts to make our judicial system a user-friendly system. We solicit your support and encouragement. Once again we thank you for this opportunity to come and deliver information on the state of the judiciary. ☐



President Patterson Outlines Program

The following is a speech delivered by incoming President Rudolph N. Patterson to the Board of Governors on June 19 at the Annual Meeting. In it he outlines some of his plans for the upcoming year.

THE STATE BAR OF GEORGIA HAS HAD 36 years of sound and progressive leadership from its past Boards of Governors and officers. Before that, the voluntary Georgia Bar Association represented the legal profession for 81 years beginning in 1884. With your help, I hope to continue this tradition of excellence.

Since my first year on the Board in 1991, I've carefully observed the operations of the State Bar by attending several hundred committee, section, and other meetings. Through the National Conference of Bar Presidents, the Southern Conference of Bar Presidents and the ABA's Bar Leadership Institute, I've had the opportunity to compare Georgia to other states' bar associations. I've visited the headquarter offices of the State Bars of Arizona, Mississippi, North Carolina and Virginia. I have talked to staff members and officers from many other bars. After all of this study, I'm happy to report to you today that Georgia is in the top 10 percent in almost every category you could think of and first in most of them. We have served the public and our members well for 36 years. And we did so without the high dues that lawyers pay in other states.

Many of you who have been on the Board of Governors for several years played an important part of that success. We have several past presidents in the room today. Without the leadership of these former leaders, Board members and officers, this success would not have happened. On behalf of the over 30,000 members of the State Bar of Georgia, I thank

you for your leadership and honor you for all that you have accomplished.

Given the successful history of our Bar, I can tell you that any new President, and especially this President, really feels the pressure. We have gotten where we are by continuously striving for excellence. My program is simply to continue that tradition, and I ask for your individual help in this effort.

We have gotten where we are by continuously striving for excellence. My program is simply to continue that tradition, and I ask for your individual help in this effort.

Committees and Boards

Our 36 standing and 19 special committees, the Young Lawyers Division, and our 32 sections do much of the work of the State Bar; but, we all know that without Executive

Director Cliff Brashier, General Counsel Bill Smith and their staffs, no Board of Governors could ever do the job that is done, year in and year out.

I have appointed William Jenkins of Atlanta, William L. Lundy of Cedartown, Larry Fowler of Cleveland and Dee Crouch of Newnan to the Investigative Panel. I've also appointed Myles E. Eastwood of Atlanta, Sally Akin of Savannah and Louis Hatcher of Albany to the Review Panel. To the Formal Advisory Opinion Board I've appointed James B. Hughes Jr. of Atlanta (Emory), Ann Emanuel of Atlanta (Georgia State), Walter Ray Phillips of Athens (University of Georgia) and Jack Sammons of Macon (Mercer). The Supreme Court will select the public members.

I have appointed our standing and special committees for the 1999-2000 Bar year, and every Board member should be on at least one committee.

Now, let me highlight a few special goals that some of these committees will work to accomplish this year.

First, I have asked Rob Reinhardt, our Finance Committee chair and Jim Durham, Treasurer of the Bar,



President Rudolph N. Patterson (left) is sworn-in by Chief Justice Robert Benham.

to review any and all financial aspects of the operation of the Bar to see if there is any way to become more economically efficient.

After much investigation, thought and study over the past decade, I am absolutely convinced that we have one of the best discipline systems in the nation. Studies have shown that for comparable size states, the State Bar of Georgia is near the top in terms of fulfilling our responsibility to the public to recommend discipline in the cases where it is warranted.

Ethics and Discipline

Still, there should be no end to our commitment to make discipline and ethics services even better. There are three areas which I believe could be improved. The first two are the ethics hotline and the formal advisory opinion service. The third one is the structure of the disciplinary process.

Our advice to lawyers who seek help with the ethical issues that arise in their daily law practices should be both sound and prompt. Lawyers should be able to rely on our advice without the risk of prosecution if they follow it. Under our present system, they can rely on

formal advisory opinions, which normally deal with bar wide issues, but even that process takes an average of 12 to 14 months to get an answer. How many clients or lawyers can wait that long for an answer? If we could reduce it to even two to four months, that would be a step in the right direction.

The ethics hotline is also too slow and offers no safe harbor even if the lawyer follows our advice to the letter. We need to do better. It should protect the lawyer and the public when a lawyer acts ethically. Asking for advice in advance proves a lawyer is trying to act ethically and professionally. We need to encourage them to do so by giving prompt service they can follow with confidence.

The promise of the disciplinary process is fairness and impartiality for both the public and lawyers. General Counsel Bill Smith and I have discussed some alternatives, and I want to continue working with him and the appropriate committees to examine the system to be sure we keep this promise. If there are enhancements that could be done to ensure fairness and impartiality, we need to do them.

Fee Arbitration

The Fee Arbitration program offers a similar opportunity for review and possible improvement. In a way this service is a victim of its own success. In short, it is overrun with fee disputes that we need to try and resolve. As a result, it normally takes over a year to hear a case when historically it was only four months. I will seek the assistance of our ADR Section to explore mediation or other alternative ways to deliver this important service in a more timely and user-friendly manner.

Technology

As you know from your own law practices and experiences, we are now communicating with each other and with our clients in ways that did not exist even several years ago. Almost everyone uses fax machines in their offices and some even have them in their homes. Pagers and cell phones make us available everywhere we go. My office even gave me something called a Palm Pilot to tell me *where I am supposed to be*. Sometimes I wonder if this progress is good, but I do not doubt it is here to stay and even increase.

Because we were faced with the Y2K problem at the Bar, we had to update our computers. We now have the newest communications technology at our disposal. Our Web site is a perfect example of how we're using it to better serve our members and the public. I plan to continue to add more relevant information to our Web page. If you haven't looked at it, I encourage you to do so. The address is www.gabar.org. It is fantastic and it will save you time and money.

E-mail is the latest and a very efficient high tech tool to help us communicate. We hope to make some progress this year with Court filings and communication. Eventually, every lawyer in the state will find e-mail as necessary as the telephone, both internally and externally. It is new to some of us, but, it is not new to many lawyers. Currently, 6,235 Georgia lawyers have their e-mail address registered with the Membership Department of the State Bar. This represents 20.4 percent of our Membership of 30,556. That number is

Currently, 6,235 Georgia lawyers have their e-mail address registered with the membership department of the State Bar. This represents 20.4 percent of our membership of 30,556. That number is expected to more than double annually.

expected to more than double annually so most of our members will regularly use e-mail within the next two to three years. With over 30,000 members and about 10,000 address, telephone or fax changes per year, the addition of e-mail addresses will significantly increase the workload of our small membership staff. But the

good news is that this new, inexpensive and fast way to communicate offers a great opportunity to quickly and economically share important information with our members. This year I plan to take advantage of this by establishing a basic method of sending news and other items to our members by e-mail, as well as placing it on the Web site. We may try different formats and contents to see what best works for our members. Your input on this new communication effort will

be very helpful to us in assessing the success of the effort. The Bar must keep in touch with its membership.

Board Reapportionment

On an equally important topic, the reapportionment and size of the Board of Governors are issues that we are carrying over into this new year. We have discussed them often and even voted on it in the past few years. It is time to conclude this matter. I hope we can all work together to finally resolve it in a cooperative and not divisive spirit. To facilitate this I am appointing a special committee co-chaired by John Chandler of Atlanta and Gerald Edenfield of Statesboro to make a thorough analysis of all aspects of the matter, and to present the committee's recommendations to the Executive Committee and the Board of Governors. We may use breakout sessions like we did when drafting the model disciplinary rules so that every Board member can participate in this study.

Multidisciplinary Practice

Another important, and perhaps even larger issue, facing our profession is multidisciplinary practice. As you may be aware, in June the American Bar Association recommended that lawyers be allowed to partner with professionals from other disciplines. This concept

has the potential to change the practice of law and the rights of our clients more than anything I can remember during my lifetime. We will hear much more on this from a special committee that Linda Klein has agreed to chair. She and her committee will conduct a comprehensive study and present us with a thorough analysis of the issues and our options. Material on multidisciplinary practice has and will continue to be included in Board agenda books. I encourage you to read it and all other available information so we can make good decisions on this most important potential change to the independent practice of law and the attorney-client relationship.

Our future meeting schedule appears on this page. I promise to work hard to make each meeting productive, informative and enjoyable. To help Board members have the time to carefully lead the State Bar through the many issues that they will consider this year, I have returned to the former slate of five Board meetings. The extra meeting was held August 27-29 at Amelia Island Plantation.

Conclusion

My program of activities would not be complete without my pledge to continue the good programs started under previous presidents and boards. Legislation, pro bono, consumer assistance, law practice management, lawyer assistance, diversity, professionalism, high school mock trial, Clients' Security Fund, unauthorized practice of law, bench and bar, standards of the profession, and our other efforts will also receive the attention they need to continue to perform well.

For example, Bill Cannon has agreed to continue to lead his very successful Foundations of Freedom program and I thank him for his willingness to continue to work for all of us. Past President Bob Brinson of Rome has agreed to chair the Long Range Planning Committee and bring us proposals and projected expenses necessary to bring the State Bar of Georgia into the next millennium.

We should all be proud of the excellent state of the Bar. Through the years, you and our previous leaders have continuously worked to make our system that good. The Board's recent major revision to the disciplinary rules is a perfect example and it was unanimously adopted. Since the Board is made up of lawyers from every walk of the legal profession — private, public, prosecutors, legal services, etc. — the unanimous approval of the disciplinary system overhaul represented two things to me:

1. When we undertake a project it may begin with a complete diversity of initial opinions; and

2. When we conclude the project, the diversity of initial opinions merges into a finished document that is totally supported by all.

By working together and respecting each other's opinion, we can continue to have a Bar as good as any in the nation.

In conclusion, we will have much to work on as we begin this new year. It is indeed an honor and privilege for me to do this with you. I thank you for this opportunity that is far beyond anything that I would have thought possible. ☒

1999-2000 MEETINGS

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|--------------|----------------|-------------------------|
| Fall 1999 | November 12-14 | Brasstown Valley Resort |
| Midyear 2000 | January 7-9 | Swissôtel, Atlanta |
| Spring 2000 | March 24-26 | Macon Crowne Plaza |
| Annual 2000 | June 14-18 | Westin, Savannah |

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Looking Ahead Instead of Back

The Bylaws of the State Bar of Georgia specify the duties of the President. One of those responsibilities is to "deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia." Following is 1998-99 President William E. Cannon Jr.'s report delivered on June 18 to the Board of Governors.

I'VE MADE A CAREER OUT OF OCCASIONALLY— make that frequently — doing the unexpected. What better way to end my year as Bar President than by giving a nontraditional report. I don't want to spend this time covering what has happened this past year, but talk instead about our future.

We have unfinished business on the Board of Governors. As I look out across this body I see good friends who have devoted themselves to our profession. But good friends should be able to talk frankly and we need to do that.

We need to have a more diverse Board of Governors. We need more African-American board members, Hispanic board members, more Asian-American lawyers, more street lawyers, lawyers from large firms, sole practitioners, female lawyers, transactional lawyers and corporate lawyers. In short, we need to have as many different kinds of lawyers as possible.

You all know how much I have enjoyed participating in some of the spirited debates we have had. I've even instigated a few when things were getting too dull. The reason I love debate so much is that it generates such great ideas. How many mistakes have we avoided when someone raised a point that might have been overlooked? Now think how much better our debates could be if we had input from a more diverse group. Think also of how much better we could meet the needs of all our members if they were better represented on this Board.

Voluntary bars offer wonderful opportunities to ethnic and practice groups. But they also can insulate members from other groups of lawyers unless a continu-

ing effort is made at outside involvement. A unified bar can provide the opportunity for such groups to meet, exchange information and grow professionally and intellectually.

Each of us knows someone who would make a good Board member and just needs a little encouragement. I ask you to take the extra step, find people who don't look like most of us, don't act like most of us, and don't think like most of us and encourage them to consider running for a seat on this Board. We need broad representation at all levels of the Bar and we cannot be bashful about addressing the question.

My friends, we must also talk about our own involvement. As members of this Board we must do more than gather a few times a year and debate the issues of the day. We must be professional examples in our communities and inspire our members to higher professional conduct. We desperately need speakers to address civic clubs on some of the basic issues facing our profession and many Board members have not yet signed up for the Bar's Speakers bureau. Georgia Legal Services is always in need of funding and yet many Board members have not contributed. So many lawyers do not take advantage of services the Bar has to offer and yet many Board members do not promote the Bar with their constituents.

Please don't take this the wrong way. I know that your service on this Board takes a lot of time and I don't mean to belittle it. But I want to encourage you to do more than the minimum. Our profession needs you more than ever. You are in a unique position to make a positive impact on the practice of law and I beg you to do it. You hold positions of trust and honor because you are men and women of integrity and courage. Don't be afraid to step forward. Don't wait to be called.

Another area of concern I have seen this year is the growing dissatisfaction by lawyers with the practice of law. Too many lawyers now find law practice a burden rather than a challenge — a cynical business rather than an idealistic profession. We do not need cynical lawyers involved in our judicial system. If left unchallenged, this

problem poses grave danger not only to our profession but to society.

At the root of our legal system is a simple ideal — before the law everyone is treated equally. Rich and poor, black and white, men and women must believe that the law offers an inviolable sanctuary to the victims of bigotry, economic disparity and violence. Without this belief, some members of our society will no longer engage in peaceful resolution of political problems, but will resort to means frequently seen in other nations.

The guardians of this ideal of equality before the law are our lawyers. We are asked to put aside our natural desires for wealth, popularity and leisure time and represent those who cannot pay, whose views make us unpopular and whose representation requires long nights and weekends of work. Thus our satisfaction must come not from the material gains afforded nonlawyers, but from the knowledge that we protect the very foundation of our free nation.

However, this foundation is being eroded by changes in society which have allowed cynicism to creep into our minds. As some of our firms have become large international businesses we have forgotten that lawyers must remain independent from their clients and not erase the line between a profession and a business. As our income has grown we have all forgotten that we have a responsibility to represent even clients who cannot pay. We work harder and harder on a treadmill that our own expectations have created and then wonder out loud why we are not satisfied. And being the great rationalizers that we all are, we decide that there must be something wrong with our legal system rather than us. It's all become just a game in which right and wrong no longer matter. So maybe, we think, it's OK if we no longer care as much, if we focus more on ourselves, if we become more cynical.

But there is no satisfaction to be found down that road. A profession built upon idealism cannot offer satisfaction to cynics. We must remember why we

wanted to be lawyers and what that profession calls us to do if we want to be truly satisfied. And we must find that satisfaction if we are to provide the level of representation that much of our society needs.

An interesting side effect of loss of satisfaction with the practice of law is showing up in law students and young lawyers. Too many law students want to leave the practice of law before they actually obtain any real

experience as lawyers. They want to be judges before they gain expertise as lawyers.

Last year I was in the Midwest taking a deposition when a summer clerk with a large firm came in to observe. During a break in the deposition I asked the clerk what area of the law she was interested in. She told me she wanted to be a judge. I told her that I was disappointed

to hear that she had lost interest in becoming a lawyer before she had finished with law school.

It is so important that our judges gain experience as a lawyer before taking to the bench. Before dispensing justice they must have seen firsthand the practical results of judicial decisions on the parties involved. Before reaching a decision they must fully understand the positions of both sides and that is difficult to do if one has little experience as an advocate. The expression "been there, done that" is one that I hope most judges would find applicable to situations facing them. We have to keep young lawyers interested in the practice of law and satisfied with its rewards. We want young lawyers aspiring to greater proficiency in the practice of law rather than dreaming of leaving it. We must be honest and tell young lawyers that the real rewards of law practice are not material.

Another area of change that we must address in the future is the growing gap between large firms and small firms. Mid-sized firms are becoming an endangered species and I am concerned. As large firms have grown into national and international enterprises, common interests between those firms and lawyers in solo and small firm practice are disappearing. There is open talk



Immediate Past President Linda Klein (left) presents Bill Cannon and his wife, Dawn, with a gift in recognition of a successful year.

that the rules of conduct for the two groups should be different. That the lawyer-client relationship is somehow different when the size of the client or the law firm changes. It sounds more and more like some lawyers think large firm practice and small firm practice actually involve being a member of two different professions.

In truth, lawyers from all size firms face similar issues. Certainly the issue of maintaining independent professional judgment is not limited to either small or large firms. A solo practitioner may struggle to develop business and be tempted to assuage financial concerns by taking on clients that pose serious conflict of interest problems. A large firm department or practice area may have such close ties with a large client that it is reluctant to refuse to engage in certain conduct for fear that client may take a large amount of business to another firm.

Lawyers from a variety of practice environments must deal with the issue of professional responsibility. A solo or small firm lawyer may face challenges in this area because of a lack of peer support or counseling. With so many young lawyers hanging up a shingle right out of law school, there are no late afternoon sessions

with an older lawyer exchanging war stories that actually teach proper conduct and professional courtesy. With no partner watching, it may be tempting to meet payroll out of the escrow account. It is my fondest hope

that the Bar's Standards of the Profession mentoring program headed by John Marshall can address this problem, but we must be mindful of the challenge it poses.

Large firm lawyers also face future problems with responsibility. It is much easier to hide behind a large group and use the Nuremberg defense of "I was only following orders" when working for a large firm. Multi-state practice also tempts one to blame conduct on ignorance of local customs or rules.

The strength of the State Bar and the future of our profession depend upon unity. What ever our differences, we are all lawyers. We all took the same oath and we all have

a deep and abiding love for the law. At a time when other professions are casting a hungry eye upon us, we cannot keep moving in opposite directions.

This year we unanimously recommended to the Supreme Court new rules of discipline. The rules respond to some of the differences between firms and offer some common ground for unity in the profession,

We are asked to put aside our natural desires for wealth, popularity and leisure time and represent those who cannot pay, whose views make us unpopular and whose representation requires long nights and weekends of work. Thus our satisfaction must come not from the material gains afforded nonlawyers but from the knowledge that we protect the very foundation of our free nation.

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and I urge the Supreme Court to enact these rules as rapidly as possible.

I also ask the managing partners of large firms to encourage a return to Bar activity by their partners and associates by giving credit for such activity. I ask solo and small firm lawyers to sacrifice a day at the office occasionally to participate in a Bar committee or section. The State Bar can be an effective defender of our system of justice but it must have full participation by all segments of our membership.

I have closed every speech I gave to a civic club this year by telling the group how proud I am of Georgia lawyers — and I want you, my colleagues and friends, to know that I truly mean that. As we debate important issues, we do so with courtesy and understanding of differing opinions. This Board of Governors operates at the highest level of professionalism and your strong sense of fair play ensures that this organization will remain a great institution for years to come

I want to close by thanking you and all Georgia lawyers for allowing me to serve during the past year. (My wife) Dawn and I have made new friends, seen new places and have been the recipients of much kindness. I have been allowed to do something I enjoy so much — telling the public good things about Georgia lawyers. I have received much needed help from Immediate Past President Linda Klein, President-elect Rudolph Patterson and the Executive Committee, as well as Executive Director Cliff Brashier, General Counsel Bill Smith and all of the Bar staff. YLD President Ross Adams has been a trusted advisor and friend. To all of you I offer my deepest gratitude and to Rudolph my best wishes for a great year.

When I was a child sweeping the wooden floors of my father's store I had big dreams of what I might be doing as an adult. Nothing I dreamed of at the time could be any more exciting than the last 12 months. Thank you for the opportunity of a lifetime. ☐

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CLARKE CENTRAL HIGH SCHOOL BEATS FIELD OF 42 TEAMS

Georgia Named National Champion

By Philip Newton

A GEORGIA TEAM WON THE 1999 National High School Mock Trial Championship held in St. Louis, Missouri. The team from Clarke Central High School in Athens won the tournament from a field of 42 teams from across the country. Competition rounds were held on Friday and Saturday, May 8-9.

In preliminary rounds, Georgia defeated teams from Tennessee, Indiana, Pennsylvania, and Mississippi to produce a perfect ballot record ahead of all other teams in the tournament. The championship round pitted Georgia against Colorado. This was Clarke Central's second trip to the national tournament as Georgia's representative — last year they placed sixth. This is also Georgia's second national title. The first was won by South Gwinnett High School, Snellville, in 1995. Only two other



Team Georgia at National Tournament, drawn by 1999 Court Artist Contest Winner Adam O'Day from the Walker School in Marietta.



The justices of the Supreme Court of Georgia stand behind the team (flanked by Court of Appeals Judges J. D. Smith, William McMurray and Commissioner of Labor Mike Thurmond) after presenting their resolution honoring the new national champions in May.

states in the country, Arizona and New Jersey, have held the national title twice.

Several students were honored for outstanding presentations during the competition. Fred Smith Jr. was named Outstanding Attorney in three rounds, repeating his distinguished performance of the previous year. Kevin Epps was recognized as an Outstanding Attorney and an Outstanding Witness. Howard Guest and Heather James-Wyrick were also named Outstanding Witnesses. Other members of the team were: Jennifer Cudnik, Stacy Little, Tammy Luke, Allison Epstein, Robbie Mauney, Nia Ervin, Molly McCommons, Julia Ferguson, Barbara McRae, Antwone Fleming, Casey Mull, Hannah Goldhor, Carrie Parker, Allison Griner, Heather Shelnutt, Antoine Hester, Ann Cox Steedman, Jennifer Williams, Kalli James-Wyrick, and Sarah Woodall.

The Clarke Central team is led by teachers George Harwood and Joyce Harrison and 10 attorney coaches: Todd Brooks, Rich Connelly, Tom Eaton, Elizabeth Grant, Phillip C. Griffeth, Allison Thatcher Mauldin, Kenneth Mauldin, Dorian Murry, Blaine Norris, and Jennifer Parker.

The team was honored by the Western Circuit Bar Association at a luncheon on Tuesday, May 11, and by the State Board of Education, Office of the Governor, and Supreme Court of Georgia on Thursday, May 13. The parents feted the team at an awards banquet held in Athens on June 2.

The Georgia Mock Trial Competition is sponsored by the Young Lawyers Division of the State Bar of Georgia and funded in part by a generous grant from the Georgia Bar Foundation. ☒



Above, the team pictured with Gov. Roy Barnes at the State Capitol in May. Below, the team and coaches are pictured moments after being named national champion.



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DISCUSSION GROUPS, ON-LINE CLE TRANSCRIPTS AND MORE Bar's Web Site Redesign Unveiled

By Caroline Sirmon

THE STATE BAR OF GEORGIA'S Web site has undergone a dramatic restructuring. The data from the old site has been dissected and rearranged. New features have been added, and information has been expanded. We're excited about these changes and the possibilities that a new site affords us, but we also know that these changes can be bewildering and frustrating to those who are unfamiliar with the new structure.

The backbone of the new Web site structure is the interactive menu available on the left side of each major page. This menu allows access to any of the nine major sections of the Web site without having to return to the home page.

About the State Bar: This page is primarily intended for consumers. It gives general information about the history and purpose of the State Bar of Georgia.

Directory: The Directory button connects the user with our searchable database of bar members. Users can search for a particular attorney by name, or access data about all attorneys within a particular city. An address change form is also available on this page.

Discussion Board: The Discussion Board is one of the Web site's newest features. This bulletin board gives users a chance to create a

dialogue, share ideas, ask questions, and view other people's opinions. The Discussion Board has separate forums on a variety of legal topics, as well as an area to post ethics ques-

available as a free download. After downloading the Reader, users can simply click on the link to the PDF file they wish to view. Adobe Acrobat Reader will load automatically and allow users to view or print the file.

Attorney Information:

Attorney Information is the main listing of all resources for attorneys. This area is broken down into six additional sections: Officers and Board of Governors, Membership Information, Professional Resources, Legal Research, Committees, and News.

Officers and Board of Governors: The Officers and Board of Governors page serves as a directory for current State Bar of Georgia Officers, Executive Committee members, and Board of Governors members. Contact

information such as addresses, phone numbers, and fax numbers are listed for each person.

Membership Information: This site provides links to various membership-related information such as dues, letters of good standing, and membership certificates. This site also provides additional links to the Directory and an address change form. The entire State Bar of Georgia Handbook can be accessed from this page, as well as a comprehensive staff directory. Links to information about publications and awards programs give users data about resources available to them as Bar members.



tions to be answered by the Office of the General Counsel. Users can either register and have the ability to post and respond to messages, or stay unregistered and simply view the information. The Discussion Board is only open to attorneys.

Journal: On the official home page of the *Georgia Bar Journal*, users can view the cover story of the current issue, search through the Master Index, or view and print back issues of the journal in Portable Document Format (PDF). Since PDF files require Adobe Acrobat Reader, a link to the Adobe Web site is provided. Adobe Acrobat Reader is

Professional Resources: Professional Resources connects users with some of their most valuable professional contacts here at the State Bar of Georgia. The different departments of the State Bar are represented here, as well as important related organizations.

Legal Research: The Legal Research page gives attorneys a good place to begin legal research on the Web. The site provides links to the Handbook and member Directory, as well as a Search link which allows users to search the State Bar of Georgia's Web site. A new page called Online Resources gives numerous links to federal and state government sites, legal organizations on the Web, law schools, and powerful legal search engines.


Committees: The Committees page gives the user access to a complete detailed list of current committees and committee members. Also available on this page is the listing of committee meeting times, dates, and locations.

News: The News page is broken into several categories. Bar news tells the readers what is happening at the State Bar of Georgia. Job Announcements will be posted under the section of the same name. Press releases will be automatically updated when they are released, allowing users to keep completely current on what the bar is saying to the press. The Proposed Rule Changes page will allow the Office of the General Counsel to post proposed rules for member review and comment before they are sent on to the Supreme Court.

Consumer Information: Consumer Information is the main listing for consumer resources here at the State Bar of Georgia. This section of the Web site is broken down into two categories: General Information and Student Information.

General Information: Intended for the members of the general public who are seeking information about the State Bar of Georgia or lawyers in general, this site is packed full of

representatives of local bar associations are encouraged to submit data to the webmaster using the form provided. E-mail, fax, and regular mail are also accepted with appreciation.

We sincerely hope that this overview of the new State Bar of Georgia Web site has helped alleviate some of the initial confusion. For an interactive guide to the new site, check out the new Site Map. The Site Map is accessible by clicking the Site Map button at the top of each page, or by going to www.gabar.org/ga_bar/sitemap.html. 

Caroline Sirmon is the new Internet Coordinator for the State Bar of Georgia. She received her A.A. from Young Harris College in 1996 and her B.A. from the University of Georgia in 1998.



resources. Users will find links to the consumer-related departments of the Bar, as well as general information about attorneys and legal fees.

Student Information: While the Student Information page is primarily intended for law students, it does give high school students access to the Georgia High School Mock Trial Competition Web page. For law students, the site provides links to some of the top law schools in the country, as well as information about legal careers in general.

Local Bar Information: The Local Bar section of the State Bar of Georgia's Web site is one of our newest areas. Under the suggestion of the Local Bar Activities Committee, the site was created to help promote our local and voluntary bar associations. Data about the officers, activities, projects and meetings of many of the local bars are grouped in an organized manner to allow for easy access. Since much information is still missing from our records,

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Lawyers Foundation of Georgia to Fund Charitable Causes

LITTLE ATTENTION HAS BEEN paid to the countless efforts lawyers devote to helping the public. Few people know that the lawyers of many states have established voluntary foundations committed to improving the administration of justice, increasing public awareness and knowledge of the law, and fostering the principles of duty and service to the public.

Here in Georgia, the State Bar of Georgia laid the groundwork in 1978 with the Public Service Foundation and the Fellows Program. In 1996, the strictly voluntary Fellows Program was separated from the IOLTA-funded Georgia Bar Foundation, the name was changed to the Lawyers Foundation of Georgia, and the Fellows Program became the backbone of the Foundation. The Lawyers Foundation is a 501(c)(3) non-profit and as such is independent of the State Bar of Georgia, although the two organizations work closely together.

The Lawyers Foundation of Georgia is dedicated to serving the public and the legal profession by promoting the fair administration of justice, and encouraging the highest standards of integrity, competence, civility and well-being of all members of the profession.

The Lawyers Foundation of Georgia will continue the Fellows Program to recognize outstanding leaders in the legal profession, as well as work to fulfill philanthropic objectives set by its members.

Membership In Fellows Program

Membership in the Fellows Program is an honor reserved for individual attorneys whose leadership and outstanding citizenship is recognized by their peers, and is limited to three percent of the membership of the State Bar. Fellows are selected from among the membership of the

State Bar of Georgia whose public and private careers demonstrate outstanding legal prowess and a devotion to their communities.

Interested parties can contact the Lawyers Foundation of Georgia at 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303, 404-526-8617 or lbarrett@gabar.org for a Fellow nomination form. ☒

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| Anton Frans Mertens | Albert M. Pearson III | Frank W. Seiler | John J. Tarleton | Ben L. Weinberg Jr. | William E. Zachary, Sr. |
| M. Kim Michael | Gary R. Pelphrey | Ronald W. Self | T. Michael Tennant | H. Oliver Welch | Marvin H. Zion |
| James B. Middleton | Judge Carson Dane Perkins | W. Allen Separk | G. William Thackston Jr. | Robert G. Wellon | |
| Dana B. Miles | H. Holcombe Perry Jr. | Tina Shadix Roddenbery | Robert T. Thompson | Ruth Tinsley West | |
| A. Montague Miller | Gregory M. Perry | Michael M. Sheffield | Justice Hugh P. Thompson | | |
| Henry J. Miller | W. Ray Persons | Kenneth L. Shigley | Elizabeth F. Thompson | | |
| Judge M. Yvette Miller | Guy Douglas Pfeiffer | Judge Wendy L. Shoob | Judge Thomas W. Thrash Jr. | | |
| Ben B. Mills Jr. | H. Wayne Phears | James M. Sibley | Randolph W. Thrower | | |
| Teresa Saggese Mills | R. Chris Phelps | M. T. Simmons Jr. | Edward Donald Tolley | | |
| John H. Mobley II | Barry Phillips | John S. Sims Jr. | Christopher A. Townley | | |
| Chesley Wade Monk II | James B. Pilcher | Calder P. Sinclair Jr. | Judge William M. Towson | | |
| Nolie J. Motes | George A. Pindar | Richard H. Sinkfield | Kirby L. Turnage Jr. | | |
| Peter Deppish Muller | Evans J. Plowden Jr. | Lamar W. Sizemore Jr. | W. Randall Tye | | |
| A. L. Mullins Jr. | Paul K. Plunkett | William Lee Skinner | William F. Underwood Jr. | | |
| George E. Mundy | Jimmy Dalton Plunkett | Jeffrey M. Smith | Thomas Heyward Vann Jr. | | |
| Judge Margaret H. Murphy | Judge J. Richard Porter III | John H. Smith | Chilton D. Varner | | |
| Aasia Mustakeem | William J. Porter Jr. | Judge Sidney O. Smith Jr. | Chief Judge C. R. Vaughn Jr. | | |
| J. Frank Myers | Barnard M. Portman | William P. Smith III | | | |
| A. Joseph Nardone Jr. | John Carswell Pridgen | Stephen David Smith Jr. | | | |
| Dixon E. Nash | Edith Primm | Philip C. Smith | | | |
| William H. Needle | Carl A. Puls Jr. | Judge J. D. Smith | | | |
| James M. Ney | | | | | |

Deceased Fellows

| | |
|--------------------------------|---------------------------------|
| <i>F. Jack Adams</i> | <i>Lowell H. Huguen</i> |
| <i>Palmer H. Ansley</i> | <i>Charles H. Hyatt</i> |
| <i>Mallory C. Atkinson</i> | <i>Robert H. Jordan</i> |
| <i>F.M. Bird</i> | <i>Charles Kidd</i> |
| <i>Judge A. W. Binsong Jr.</i> | <i>L. Martelle Layfield Jr.</i> |
| <i>Larry H. Boling</i> | <i>Sam F. Lowe Jr.</i> |
| <i>Arthur K. Bolton</i> | <i>David Lorton Massee Jr.</i> |
| <i>Inman Brandon</i> | <i>Carlton McCamy</i> |
| <i>Lawrence B. Custer</i> | <i>Hendley V. Napier</i> |
| <i>Eugene H. Driver</i> | <i>Robert F. Oliver</i> |
| <i>William M. Fulcher</i> | <i>J. Walter Owens Jr.</i> |
| <i>E. Smythe Gambrell</i> | <i>James I. Parker</i> |
| <i>B.C. Gardner Jr.</i> | <i>W. Hays Pickett</i> |
| <i>Robert H. Hall</i> | <i>Charles D. Read Jr.</i> |
| <i>J. Robin Harris</i> | <i>Robert R. Richardson</i> |
| <i>Jack J. Helms, Sr.</i> | <i>Harold L. Russell</i> |

SENIOR LAWYERS: THE YLD NEEDS YOUR HELP



By Joseph W. Dent

For as long as I have been active in the Young Lawyers Division, my predecessors have emphasized the need to increase active participation among the membership of the YLD. Like those before me, I too want to focus on increasing participation in the Division. With the assistance of the "Big Bar," I am confident this goal can be reached.

You may be asking yourself, "How can members of the Big Bar assist in the growth of the Young Lawyers Division?" Before answering this question, I first want to tell you how I became involved in the YLD.

I started work as an associate at the firm of Watson, Spence, Lowe and Chambless LLP in Albany, Georgia. I was always conscious of making a good impression with my superiors, especially because a partner at our firm, Evans J. Plowden Jr., was completing his year as President of the State Bar.

One day a colleague of mine, John Stephenson, who was a member of the YLD Executive Council at the time and is now one of my partners, stopped by my office and asked if I wanted to attend the YLD Spring Meeting at the King & Prince on St. Simon's Island. If I agreed to attend, I would have to leave Thursday night in order to make the beginning of the

meeting on Friday. That also meant I would miss a day's worth of billable hours. Not knowing much about the YLD or other bar functions, I was a little hesitant, but then John mentioned that the firm would support my involvement in the meeting. Prior to John inviting me to that first meeting, I had no idea my firm supported participation in Bar activities, and as a relatively new associate, I was afraid to ask. Fortunately, John took the time to get me involved, and today I am President of the Division.

If young lawyers know they have their firm's support, they will be more inclined to become active in Bar activities.

I believe there are many young lawyers out there who want to get involved, but are afraid to ask their superiors for the time off — similar to the situation I faced several years ago. Most probably do not even realize that many attorneys in their firms are actively involved with bar committees, sections, or as members of the Board of Governors. I regret to think of those who do not get involved only because they do not know they can.

So back to my previous question, "How can members of the Big Bar assist in the growth of the Young Lawyers Division?" The answer is that older members of the Bar can

assist not only in the growth of the YLD, but in the future of the Bar as a whole, by encouraging young lawyers in their firms to get involved. I believe that if young lawyers know they have their firm's support, they will be more inclined to become active in Bar activities.

As I stated earlier, one of my main goals during my year as YLD President is to focus on recruiting new members to be active in the Division. The YLD has a lot to offer to attorneys of all ages. Every year the Young Lawyers Division, through its committee work, undertakes numerous projects that provide services to the bar membership and to the public at large. By participating in these projects and programs, attorneys have an opportunity to make a difference in their profession and in their communities. In turn, participation in YLD activities can help to foster professional and personal growth.

With this in mind, I encourage all attorneys to get active in the State Bar organization, whether it be through a YLD committee or a Big Bar Section. In addition, I invite all attorneys, regardless of age, to attend a YLD meeting this coming year. A schedule of future meetings is provided below, and anyone wishing to learn more about a particular meeting, or about the Young Lawyers Division in general, can call the YLD office at (404) 527-8778 or (800) 334-6865.

Fall: October 8-10, 1999 - Marriott Convention Center, Chattanooga, TN

Midyear: January 6-9, 2000 - Swissôtel, Atlanta, GA

Spring: March 18-21, 2000 - Macon Crowne Plaza, Macon, GA

Annual: June 15-18, 2000 - Westin Savannah Harbor Resort, Savannah, GA ☒

1999 LRE Golf Tournament

Tuesday, October 12, 1999

The Oaks Course ♦ Covington, Georgia

12 Noon ♦ Shotgun Start

\$85 per Golfer ♦ \$340 per Team ♦ Lunch included

Proceeds benefit Law-Related Education
programs in Georgia



Entry Form

____ Yes, I would like to help sponsor Law Related Education at the level indicated below:

____ General Sponsor: \$250 contribution includes partial hole sponsorship

____ Silver Sponsors: \$250 contribution entitles donor to partial hole sponsorship.

____ Gold Sponsors: \$500 contribution entitles donor to exclusive hole sponsorship.

If you would like to contribute merchandise with your company logo, such as balls, towels, bottles, etc., for tee gift bags, or for more sponsorship information, please call the Young Lawyers Division office at (404) 527-8778.

Name of Organization _____ Contact _____

Address _____

Phone _____ FAX _____

Golfer Entry: October 20, 1998 - 12:00 Noon - The Oaks Course - \$85 per Golfer

Name of Organization _____ Contact _____

Address _____

Phone _____ FAX _____

____ I wish to be assigned to a team. Amount Enclosed \$ _____

We would like to register as a team

Player #1 _____

Address _____ Phone _____

Player #2 _____

Address _____ Phone _____

Player #3 _____

Address _____ Phone _____

Player #4 _____

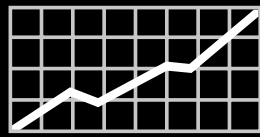
Address _____ Phone _____

Amount Enclosed: \$ _____

Entry Deadline: September 27, 1999 ♦ Field limited to first 128 Golfers

Make check payable to Young Lawyers Division and mail entry to:

YLD ♦ 800 The Hurt Bldg ♦ 50 Hurt Plaza ♦ Atlanta, GA 30303



Choosing an Office Manager for Your Firm

By Terri Olson

LAST ISSUE, WE TALKED about how to determine whether your firm would benefit from (and be willing to use) the skills of an office manager. This month, we're looking at ways to get the best person and make him or her a productive member of your team.

When hiring a manager for the first time, many firms assume they should promote from within. In other words, they take the senior secretary or bookkeeper and add on to his or her duties, transforming the position into one of office manager.

Unfortunately, this is rarely effective for several reasons. The primary one has to do with existing relationships within the firm. Your new manager may already be best friends with another employee, or may have been a partner's long-time secretary. How will he or she react when forced to tell that best friend that he's coming in late too often, or that former boss that she needs to get her timesheets in pronto? Even if the new office manager is fair and neutral toward all parties, he or she will likely be the subject of rumors and complaints that "(s)he always treats those people better" or "(s)he never liked me." An outsider is less subject to these criticisms.

Another reason promoting from within may be a problem has to do with qualifications. If Susan has been your bookkeeper for 15 years, then (we hope) she's good with numbers. But what about her skill with personnel, computer systems, facilities

management, or any of the other duties you're hoping your office manager will take charge of? To be honest, most office managers have one or two areas in which they shine, and others in which they're merely competent. But you want to avoid someone with no experience in a critical area.

For these reasons, I strongly encourage anyone looking for an office manager to pursue more mainstream routes, such as going through a placement service or placing an advertisement in a legal journal, and hire only after a thorough examination of all the candidates' qualifications and backgrounds.

Once a firm has hired someone, the next question becomes "how do we use this person to the fullest?" To which I have a standard reply: "If you're not giving your office manager *more* responsibility than you're comfortable with, you're doing something wrong."

What does this mean? Let's look at a real-life scenario. A firm hires an office manager with the best of intentions and some pretty set ways of doing things. The office manager is told that she's to have responsibility for hiring and firing staff, purchasing equipment, and ensuring that timesheets are submitted promptly, among other things. A computer breaks down and what happens? Probably the managing partner will tell the office manager, "Well, eventually you're supposed to take care of this, but I really need to authorize this for the time being." A

secretary quits, and again the office manager is told, "This is something that you'll be doing soon, once you know your way around here. But in the meantime I happen to know someone who's really interested in the position, so I'll just bring him in."

As you might guess, "soon" never arrives. Office managers complain that frequently there is no real responsibility and no authority to carry out tasks on the job description. Spend money? Not without a partner's signature. Get a new copier? After the partners meet to approve the purchase. Hire someone? No, a partner already did it and informed the office manager of the starting salary.

Probably the hardest job for the new office manager to step into is that of managing the secretaries. Most secretaries are loyal to their bosses and run to them with any question or problem. Convincing the secretaries — *and* the lawyers — that the rules are different now is a job that requires the complete cooperation of the highest levels of the firm. The firm's managers must, over and over again if necessary, let the attorneys know that questions about vacations, work loads, and someone else's tardiness are now the province of the office manager.

Because of this, I feel that the "cold bath" approach is often necessary. If the job description says that the office manager should hire and fire, develop a personnel handbook, or choose a network, don't delegate

CONTINUED ON PAGE 59

Continued from page 58

these tasks back to the partners, even for a short amount of time. Remember, you wanted an office manager so you would have more time to practice law!

Instead, arrange for the managing partner to meet with the office manager regularly as he or she becomes oriented to the firm, answering questions and providing support. However, let the office manager make the decisions. In some instances these will not be the same decisions you would have made. But that is a price that can be well worth paying. ☒

Official Opinions

Officers and Employees, Public; retirement. The right to receive an actuarially reduced retirement allowance upon attaining twenty-five (25) years of service, provided for in O.C.G.A. § 47-2-120(e), is not a new "benefit" that has accrued and, therefore, is not proscribed by O.C.G.A. § 47-2-70(c). (6/17/99 No. 99-10)



Attorney General
Thurbert Baker

Claims Advisory Board; inmate claims. Beginning July 1, 1999, 1999 Ga. Laws 798, amending O.C.G.A. §

28-5-85 and O.C.G.A. § 28-5-104, prohibits the Claims Advisory Board from recommending compensation to an inmate injured while in the custody of the Department of Corrections. (6/30/99 No. 99-11)

Unofficial Opinions

County commission, Teacher serving on. There is no general prohibition against a teacher employed by a local board of education serving as a county commissioner. However, such a prohibition could arise under the terms of a local law or because the county commission is able to directly affect the terms or conditions of the teacher's employment. (6/15/99 No. U99-3) ☒

Continued from page 17

public sector collective bargaining statutes of one sort or another. Among the states that have enacted public sector collective bargaining statutes: California, Florida, Illinois, Michigan, Ohio, Tennessee, and Pennsylvania.

48. Fla. Stat. Ann. § 447.301(1)(1998).
49. *Id.* § 447.301(2).
50. Local Div. 732 Amalgamated Transit Union v. Metro Atlanta Rapid Transit Auth., 320 S.E.2d 742, 744 (Ga. 1984).
51. See O.C.G.A. §§ 45-19-2, 45-19-4.
52. *Id.* § 25-5-2.
53. *Id.* § 25-5-14.
54. See *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965); *Thomas v. Collins*, 323 U.S. 516 (1945).
55. *Smith*, 441 U.S. at 465.
56. See, e.g., *Johnson v. City of Albany*, 413 F. Supp. 782 (M.D. Ga. 1976).
57. *Id.*
58. *Ferrara*, 781 F.2d at 1512 (*citing Connick v. Myers*, 461 U.S. 138, 146-47 (1983)).
59. See *Maples v. Martin*, 858 F.2d 1546, 1546-53 (11th Cir. 1988).
60. See *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).
61. See *Pickering v. Board of Educ.*, 391 U.S. 563 (1968).
62. See *supra* note 49.
63. See *supra* note 50.
64. See Fair Minimum Wage Act of 1999, S. 8, 106th Cong. (1999); Fair Minimum Wage Act of 1998, H.R. 3510, 105th Cong. (1998).
65. See Family and Medical Leave Fairness Act of 1999, S. 201, 106th Cong. (1999).
66. See Workplace Democracy Act of 1999, H.R. 1277, 106th Cong. (1999).
67. See Public Safety Employer-Employee Cooperation Act of 1999, H.R. 1093, 106th Cong. (1999).
68. H.B. 1462, 1998 Ga. Leg., Sess.
69. H.B. 872, 1998 Ga. Leg., Sess.
70. H.B. 1373, 1998 Ga. Leg., Sess.
71. H.B. 1080, 1999 Ga. Leg., Sess.
72. H.B. 440, 1999 Ga. Leg., Sess.
73. *West v. Gibson*, 119 S.Ct. 1906 (June 14, 1999) (No. 98-238).
74. *Gibson v. Brown*, 137 F.3d 992 (7th Cir. 1998).
75. *West v. Gibson*, 119 S. Ct. 1906 (June 14, 1999) (No. 98-238).
76. *Alden v. Maine*, ____ S. Ct. ____, 1999 WL 412617 (U.S. June 23, 1999) (No. 98-436).
77. 517 U.S. 44 at 72 (1996).
78. See *Kimel v. State of Florida Bd. of Regents*, 139 F.3d 1426 (11th Cir. 1998), *cert. granted*, 119 S.Ct. 901 (1999).
79. See *Goshtasby v. Board of Trustees of the Univ. of Ill.*, 141 F.3d 761 (7th Cir. 1998).

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WHO'S WHERE

In Atlanta

Carrie L. Christie, Vincent A. Toreno and Todd E. Hatcher, formerly of Savell & Williams, announce the formation of **Christie, Toreno & Hatcher LLP**, practicing in corporate law and commercial litigation. **Jeffrey R. Davis** will be of counsel and maintain an office in Madison. The Atlanta office is located at 233 Peachtree St., Suite 812, Harris Tower, Atlanta, GA 30303; (404) 522-6888 phone; (404) 522-0108 fax. The Madison address is P.O. Box 811, Madison, GA 30650; (706) 342-9461 phone; (706) 342-9839 fax.

Holt Ney Zatcoff & Wasserman LLP announces that **Thomas K. Anderson, Gregory A. Randall and Scott E. Morriss** have become associated with the firm. **Pennia A. Dudley** has become of counsel, and **Jay Frank Castle** has become a partner in the firm. The office is located at 100 Galleria Parkway, Suite 600, Atlanta, GA 30339; (770) 956-9600.

Hunton & Williams announces that **Jeffrey R. Banish, Daniel O. Kennedy and Jerry C. Newsome** were named partners in the Atlanta office. All three join the firm's business practice group, in its tax and ERISA team, corporate & securities team, and part of the labor & employment team. Also **Peter G. Golden** and **Kelly D. Ludwick** join the firm's Atlanta office as associates in the labor & employment practice group. The office is located at NationsBank Plaza, Suite 4100, 600 Peachtree St., NE, Atlanta, GA 30308-2216; (404) 888-4000.

Arnall Golden & Gregory LLP announces that **David O. Eldridge**

has joined the firm's real estate and financial institutions practice group as of counsel. The office is located at 2800 One Atlantic Center, 1201 West Peachtree St., Atlanta, GA 30309-3450; (404) 873-8500.

Miller & Martin LLP, a regional full service law firm established in 1867, announces the relocation of its Atlanta office. The office moved to downtown Atlanta from its former location in the Galleria. The new office is located at 1275 Peachtree St., NE, Seventh Floor, Atlanta, GA 30309-3576; (404) 962-6100.

Jack N. Sibley has been named chair of the business litigation group at **Hawkins & Parnell LLP**. **Cullen C. Wilkerson Jr. and Robert S. Thompson** have joined the group full-time. The office is located at 4000 SunTrust Plaza, 303 Peachtree St., NE, Atlanta, GA 30308-3243; (404) 614-7400.

Joe Ferrero, Emory Law '92, was appointed Assistant Commissioner of the Georgia Department Corrections on May 6, 1999. He assists Commissioner Jim Wetherington in leading a department with nearly 16,000 employees, a budget of over \$750 million and more than 175,000 probationers and prisoners. He previously served as the Department's assistant director of legal services, a Georgia assistant attorney general and the State Bar's legislative liaison.

In East Point

Atlanta Legal Aid Society announces the opening of a southside office. The office is located at 1514 East Cleveland Ave., East Point, GA 30344.

In Macon

Adams, Hemingway & Wilson LLP announces that **Scott C. Huggins** has joined the firm as an associate. The office is located at Suite 1000, American Federal Building, 544 Mulberry St., Macon, GA 31201; (912) 743-4601.

In Roswell

Barbara B. Evans, a 1987 graduate of Emory Law School, was recently hired by **American National Lawyers Insurance Reciprocal** as the new Director of Marketing for the Georgia lawyers program. Ms. Evans most recently practiced law in Atlanta with Dennis, Corry & Porter LLP. The Georgia office is located at Building 100, Suite 300, 1080 Holcomb Bridge Rd., Roswell, GA 30076; (888) 889-4664.

In Savannah

Kathleen Aderhold announces the relocation of her law offices to 31 West Congress St., Suite 203, Savannah, GA 31401. Her numbers will be (912) 233-9227 phone; (912) 231-1213 fax; AderholdK@aol.com.

In Smyrna

Torrey Homes announces that **Anthony (Andy) W. Oxley III** will join the Atlanta-based company as Vice President of Legal Affairs for all the Divisions and Companies in the D.R. Horton family of companies for the East Coast and Coastal Regions. The office is located at 5400 Highland Pkwy., Smyrna, GA 30082; (770) 431-8311.



Due to its long-standing involvement in the Atlanta Bar Association, **Alston & Bird LLP** was recently presented with the association's Law Service Award for 1999. The conferral took place at the Annual Meeting and Member Appreciation Reception of the association on May 24 at the Atlanta History Center. The firm has over 10 past Atlanta Bar Association Presidents and, in 1999, more than 10 attorneys on the Boards of Directors of various Atlanta Bar Sections.

The Minority Corporate Counsel (MCCA) honored general counsels of three resident corporations at the MCCA/American Lawyer Media Diversity 2000 Dinner in Atlanta in May. **James O. Cole**, General Counsel, AutoNation; **Joseph R. Gladden Jr.**, General Counsel, Coca-Cola; and **Charles R. Morgan**, General Counsel, BellSouth, were recognized for their accomplishments in implementing innovative programs to increase diversity in the legal profession.

Patrick A. Dawson, a partner with the law firm of Dawson & Huddleston, has been elected President of the Trial Lawyers Section of the Cobb County Bar Association.

In Woodstock

Steven M. Campbell, formerly with Conrad & Abernathy, has formed the law firm of **Steven M. Campbell & Associates PC**. **Bryan K. Wood** has joined the firm as an associate. The office is located at 8838 Main St., Woodstock, GA 30188; (770) 926-5850. ☐

Mr. Dawson is also Regional Vice President of the Georgia Trial Lawyers Association.

Donald P. Edwards was installed in May as District Chairman of the Boy Scouts of America, south Atlanta District. As the chief volunteer for the District, he will assist over 2500 Boy and Cub Scouts and 500 volunteers in that district obtain funding and other resources. Mr. Edwards will also be a part of the team to increase the number of boys participating in scouting there.

Luther House, retired partner of the Atlanta law firm Smith, Currie & Hancock and its former managing partner for 25 years, was recently presented with the 1999 Cornerstone Award for lifetime professional achievement by the American Bar Association's 5,000 member Construction Law Forum at its recent annual meeting in Las Vegas, Nev. He served as chair of the group in 1991-1992.

R. William Ide III, Senior Vice President, General Counsel and Secretary of Monsanto Company, has been re-appointed to the Board of Trustees of the American Inns of Court Foundation. Appointed as a Public Trustee by the Board of Trustees at large, Mr. Ide began a second one-year term July 1.

The Keenan Law Firm announces that Atlanta attorney **Don C. Keenan** has been appointed to the National Judicial College (NJC) Advisory Council. The NJC Advisory Council operates nationwide training programs for judges and has a full college curriculum in Nevada.

Steven Luper of Atlanta has been admitted to membership in the Commercial Law League of America. The Commercial Law League,

founded in 1895, is a North American organization of bankruptcy and commercial law professionals.

Barry S. Marks, partner in the Birmingham, Ala., law firm of Berkowitz, Lefkovits, Isom & Kushner, was recently awarded the Bill Granieri "Top Gun" Memorial Award by the National Association of Equipment Leasing Brokers. Mr. Marks was presented the award in recognition of his efforts to raise the standards of practice in the equipment leasing industry and for his commitment to education and service.

Joan B. Sasine, an environmental partner with Powell, Goldstein, Frazer & Murphy LLP, has been elected chairperson of the Southern Section of the Air & Waste Management Association (A&WMA). She previously chaired the Georgia Chapter. A&WMA is an international professional association with over 2,000 members and associates.

Philip A. Theodore, a partner in King & Spalding, was elected Chairman of the Board of Trustees of Atlanta International School on June 7, 1999 for a two-year term. Mr. Theodore has been a member of the school's Board of Trustees since 1997 and served as Vice Chairman of the Board last year.

The United States District court Judges for the Northern District of Georgia have named **Linda T. Walker** as the next United States Magistrate Judge for the district. Ms. Walker, a 1989 graduate of the University of Georgia School of Law, is the former County Attorney for Fulton county, where she was responsible for all civil litigation involving Fulton County. ☐

Sections Honored at Annual Meeting

Section of the Year

Environmental Law Section
Carol M. Wood, Chair

Achievement Awards

General Practice & Trial Section

John W. Timmons, Chair
Betty Simms, Executive Director

Labor & Employment Law Section

James M. Walters, Chair

Aviation Law Section

E. Alan Armstrong, Chair

During the Annual Meeting in Savannah, several sections held breakfasts, including the **Family Law Section**, the **Individual Rights Law Section** and the **Workers' Compensation Law Section**,

where Chief Justice Robert O. Benham presented a "Kids Chance Scholarship."

The Annual Meeting also featured a **Section Booth**. Over

\$2,000 worth of prizes and section memberships were given out, as were the "now famous" section cookies and lemonade.

The guide will be distributed to agencies and nonprofit groups like DFACS, Area Agencies On Aging, VA Clinics and Medical Centers, etc. The section is headed by Paul G.

Justice.

The **Entertainment & Sports Law Section** celebrated Black History Month during their February meeting at the Awarehouse, an Atlanta Arts Center.



Paul Cadenhead, outgoing Chair of the Senior Lawyers Section, was recently honored by Georgia State University School of Law with the Ben F. Johnson Award. Pictured (l-r) are Mr. Johnson, Mr. Cadenhead and Dean Janice C. Griffith.

Featured presenter was Reginald Carver, author of the new book *Jazz Profile: The Spirit of the Nineties*, which features biographies of jazz artists of the 1990s.

The **Aviation Law Section** held a luncheon at the 57th Fighter Group. Their speaker was Lt. Col. Charles W. Dryden (USAF Retired), one of the original Tuskegee Airmen. Col. Dryden is pictured autographing his book, *A-Train, Memoirs of a Tuskegee Airman*. Aeronautical art was available for display and purchase.

If you haven't joined sections for the new year — it's not too late. Include membership on your dues notice or contact the State Bar for information on how to join. Membership Department (404) 527-8777. Many exciting things are planned for this new Bar year!

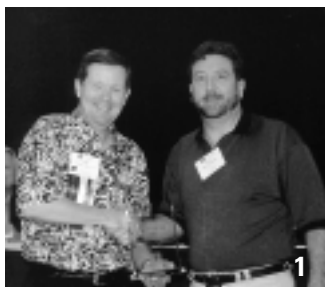
— Lesley T. Smith, *Section Liaison*



The 1999 "Tradition of Excellence Awards" were presented at the General Practice and Trial Section Breakfast during the Annual Meeting. (l-r) Section Chair John Timmons presented the awards to Justice George H. Carley, Atlanta, judicial recipient; Thomas W. Malone, Atlanta, plaintiff recipient; Albert P. Reichert, Macon, general practice recipient; and William S. Goodman, Atlanta, defense recipient. The winners were honored at a reception held at the First City Club.

In other section news, the **Administrative Law Section** has re-instituted their section newsletter. Members should look for it in the mail soon. The section will also produce a directory.

The **Health Law Section** recently contributed \$5,000 to the Mercer University Walter F. George School of Law for a grant for the Georgia Advocates Guide to Healthcare Project.



1. Douglas Henderson, current Chair, accepts the Section of the Year Award from President Bill Cannon. 2. Jim Walters (right) accepts the Achievement Award for the Labor & Employment Law Section. 3. Bill Cannon presents an Achievement Award to Immediate Past Chair Bill Lundy of the General Practice & Trial Section. 4. Special Recognition went to Bruce P. Cohen (right), Immediate Past Chair of the Legal Economics Section. President Cannon presented him with a plaque, which read "In Grateful Appreciation For His Many Contributions To the State Bar of Georgia, The Real Property and Legal Economics Law Sections." 5. (l-r) Lee Beitchman, Tony Daniel, Reginald Carver, Alan Clarke, and Herman Hudson enjoy the Entertainment & Sports Law Section's celebration of Black History Month. 6. Lt. Col. Charles W. Dryden autographed his book at the Aviation Law Section luncheon. 7. (l-r) John Webb and E. Alan Armstrong display the Aviation Law Section's Achievement Award. 8. Sam Welch of Marietta is pictured with the artwork he won during the Aviation Law Section luncheon. 9. Incoming Chair Lisa A. Wade presents a plaque from the Workers' Compensation Law Section to outgoing Chair Larry N. Hollington. 10. At the Individual Rights Section breakfast are (l-r) Marc D'Antonio, Mike Monahan, Mary Lee Davis, Susan Garrett, Section Chair, Cindy Anderson, Phyllis Holman and David Webster. 11. Chief Justice Robert Benham presents a "Kids Chance Scholarship" at the Workers' Compensation Law Section breakfast. 12. (l-r) S.Car. President John McDougall, incoming Chair William Sams and outgoing Chair Anne Jarrett enjoy the Family Law Section breakfast.





A GRIPPING CORPORATE DRAMA THAT RINGS TRUE

***Running Out the Clock* by Joey Loudermilk
(Brentwood Publishers Group, \$9.95)**

Reviewed by Joseph L. Waldrep

Columbus attorney Joey Loudermilk has spun an intriguing tale of greed in the corporate environment rebuffed by lawyers and the legal system. As a corporate lawyer, Mr. Loudermilk's experience lends a ring of authenticity to his first long work of fiction. *Running Out the Clock* is a cleverly woven account of a lawyer's dogged but dangerous pursuit of the truth.

Jim Lockhart, an Atlanta attorney, represents The French Corporation in a dispute with its financial consultant, Rupert Mulligan. Mr. Mulligan produced a stock option contract which he contends entitles him to be paid the sum of \$11.2 million for stock options awarded him by the deceased, Floyd French, one of the co-founders of The French Corporation. The company's Special Litigation Committee approved the settlement of a claim for \$10 million. Mr. Lockhart, however, suspects that the document relied upon by Mr. Mulligan bears the forged signature of the deceased Mr. French. As the book begins, Mr. Lockhart finds himself in a New York hotel with no memory of how he got there and no evidence of his identity. The unfolding of Mr. Lockhart's drug-induced amnesia reveals a sinister plot to throw Lockhart off the trail at least until after a crucial settlement conference scheduled for the eve of trial before Judge Hammonds. Simply, If Mr. Mulligan can keep Lockhart indisposed, he gets the money. As this cleverly woven series of time lines and scenes unfold into intrigue, mystery and courtroom drama, the reader shares in the sense of urgency that imbues the text and the progress of the story. Lockhart's recovery from amnesia coupled with the task of searching through thousands of documents in a short time, creates an enjoyable, tense drama. *Running Out the Clock* is a well-written story that should interest all who enjoy the genre of lawyer tales. It is an easy weekend read. If you are looking for sex or profanity, however, you will not find it here.

Editor's Note: Joey Loudermilk's story "The Lawyer Riddle" was the 1998 winner of the Georgia Bar Journal

Annual Fiction Writing Contest. Mr. Loudermilk also won an honorable mention in the 1999 competition and is the author of *My Friend Rob & Me*, a nonfiction autobiographical account of the tragic loss of a friend in the 1960s.

Joseph L. Waldrep is with Hatcher, Stubbs, Land, Hollis & Rothschild in Columbus.

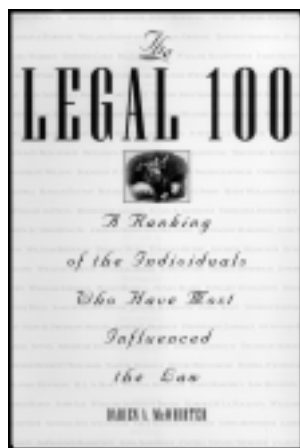
♦ ♦ ♦

***The Legal 100: A Ranking of the Individuals Who Have Most Influenced the Law* Darien A. McWhirter (Citadel Press \$27.50)**

As the Modern Library found last year when it published a list of the 100 greatest works of literature, ranking can be a dicey endeavor. *The Legal 100* is equally as controversial, but much more enlightening to read. Far from being a mere antiseptic list, Darien McWhirter includes several pages of information about each individual who has influenced Western law. Not surprisingly, the number one spot goes to James Madison, who is credited

with developing the concept of the three branches of federal government, and being the "master builder" of the U.S. Constitution and Bill of Rights. Here is a sampling of some of the other remarkable men and women included in this informative reference work: Clarence Darrow (6th) for defending the "working man"; Chief Justice Earl Warren (10th) for his decisions striking down separate but equal laws and championing due process; Aristotle (21st) for setting forth the basis for much of our legal philosophy; Mary Wollstonecraft (47th) and William Godwin (48th) the famous radical couple for vindicating the rights of women and reforming the

law; William M. Kunstler (97th) for championing the principles embodied in the Bill of Rights; and Sandra Day O'Connor (98th) for, among other things, breaking the gender barrier on the Supreme Court. The list concludes with John Mortimer, creator of the famous fictional barrister Horace Rumpole. As with any list, there are favorites who have not made the cut; the final entry will undoubtedly prompt some readers to wonder why the mythic, but nonetheless influential, Atticus Finch is not included. ☞



Lexis Nexis (sharper focus...) 4C

On May 24, 1999, Paula J. Frederick was sworn-in as the first African-American President of the 110-year old **Atlanta Bar Association**. Ms. Frederick is a graduate of Duke University and received her law degree from Vanderbilt University. She currently serves as Deputy General Counsel of the State Bar of Georgia, where she heads a 7-lawyer unit prosecuting lawyer discipline cases and serves as a frequent lecturer on ethical issues affecting Georgia attorneys.

Ms. Frederick has a community service background, which she intends to draw on during her tenure as president. Her first position out of law school was with the Atlanta Legal Aid Society, and she has been actively involved in the legal community ever since. During her welcoming speech, she encouraged Atlanta Bar members to become involved with the various committees and law practice sections. In addition to her membership in the Atlanta Bar Association, Ms. Frederick has held leadership positions in the Gate City Bar Association and the Georgia Association of Black Women Attorneys, and is a member of the Georgia Association for Women Lawyers. Her involvement on the local and national levels include being a member of the City of Atlanta's Board of Ethics, serving on the Board of Directors of the ACLU of Georgia and the Atlanta Volunteer Lawyers Foundation, and serving as one of Georgia's representatives to the American Bar Association House of Delegates, where she also serves on its Nominating Committee — a small but very powerful group primarily responsible for selecting all officers of the 350,000-



1. Judge Ralph E. Merck presents Judge Arnold Shulman (left) with the Lifetime Achievement in Law Award. 2. Paula Frederick becomes the first African-American President of the Atlanta Bar Association. 3. Alec Galloway realigns a door at The Extension for the Cobb County Bar Association's Great Day of Service. 4. Sandy Sims, U.S. Attorney Beverly Martin and Judge Gary McCorvey visit a Tifton Bar lunch. 5. Robert Ingram takes a putt during Cobb County Bar Association's First Annual Charity Golf Tournament.



member American Bar Association.

♦ ♦ ♦

The **Georgia Association for Women Lawyers (GAWL)** Savannah and Atlanta Chapters sponsored a reception during the State Bar's 1999 Annual Meeting for all attendees and their guests. The reception has become an annual event for

GAWL. This year's reception honored "Georgia Women Lawyers of Achievement" who were nominated by GAWL members and others in the community for their outstanding achievements in a variety of legal and other disciplines. The nine women presented with awards were Paula Frederick, Judge Penny Haas

Freeseemann, Emily Grigsby, Kathleen Horne, Justice Carol W. Hunstein, Linda A. Klein, Elaine T. McGruder, Dara Redler and Susan B. Wardell.

◆ ◆ ◆

Greater Atlanta Hadassah is starting a new council under the local chapter specifically geared toward Jewish women attorneys. The council will be set up to help foster ties among Jewish women lawyers; to serve as a forum for Jewish women attorneys to meet, network and discuss pressing legal and social issues facing the Jewish community; to further educate themselves personally and professionally; to encourage them to become active in the Jewish community; and to support and advocate Hadassah's projects in Israel and the United States. For more information about the council, call Greater Atlanta Hadassah at (404) 256-5007.

◆ ◆ ◆

During its annual meeting on June 24 at the Holiday Inn Select in downtown Decatur, the **DeKalb Bar Association** members elected new officers and directors of the association. The Chief Judge Robert J. Castellani, DeKalb Superior Court, administered the oath of office to newly-elected officers: Clay W. Reese, President; Thomas M. Witcher, Vice President/President-elect; Elliott A. Shoenthal, Treasurer; and Claudia Saari, Secretary. Four new directors were elected to serve on the board: Deborah R. Johnson, Gregory J. Lohmeier, Jody L. Peskin and Louis J. Tesser.

The DeKalb Bar Association also presented its Lifetime Achievement in Law Award at the annual meeting to the Honorable Arnold Shulman, Senior Judge for the DeKalb Superior Court. After 40 years in private practice, Judge Shulman has spent 22

years on the bench, first in the Court of Appeals of Georgia, where he was Presiding Judge and then Chief Judge, then Senior Appellate Court Judge, and finally Court of Appeals Settlement Conference Chief Judge. Presently he is Senior Judge for the DeKalb Superior Court. The Lifetime Achievement in Law Award was presented in recognition of his 62 years of service in the legal profession and, specifically for his many years of dedication to the citizens of DeKalb County.

◆ ◆ ◆

The **Tifton Judicial Circuit Bar Association** had Beverly Martin, U.S. Attorney for the Middle District, as a speaker at their recent monthly.

◆ ◆ ◆

The **Cobb County Bar Association's** Law Day activities included the first annual Charity Golf

CONTINUED ON PAGE 68

So. Ga. Mediation new

An Offer to Voluntary Bar Leaders

Dear Fellow Bar Leader:

Greetings on behalf of the State Bar's Local Bar Activities Committee. We would like to offer you our help to enhance and invigorate your local bar.

We know that most of the good work lawyers do is done at the local level, person to person. Your local bar association is an invaluable means to serve your community and enhance your members' professional lives. We'd like to help you do so.

How can we help? Are you looking for new or improved service, or program ideas? We've surveyed local bars across the State and gleaned from them many successful programs they've implemented in their communities. We can share those ideas with you and put you in touch with the lawyers who carried them out.

Does your bar association have a written constitution and bylaws setting out your officers and committees, and their duties, dues and meetings? We've collected examples of local bar's constitutions and bylaws and distilled them into a "model" constitution and set of bylaws that you can use or adapt to meet your association's needs.

Are you looking for speakers to

give presentations at your local bar meetings? We can arrange speakers on a variety of bar-related topics for you.

Would your lawyers like local continuing education programs they wouldn't have to travel to attend? We can arrange to bring your associa-



Attending the Local Bar Activities Committee meeting at the Macon Museum of Arts and Sciences are, left to right, Ralph Merck, Thomas Herman, Margaret Washburn, Charles Mobley, Dennis Still, Local Bar Activities Vice Chairperson Susan Cole, State Bar President Rudolph Patterson, Local Bar Activities Chairman Gordon Zeese.

tion's members several popular CLE programs.

To recognize the good works of local bars in Georgia, we sponsor annual local bar awards, including an award for Law Day activities, the Award of Merit for overall program excellence and the Newsletter Award for the best newsletter (see this year's award winners on page 32). These awards are broken down into categories according to membership, so

each organization competes against bars of similar size. Although the deadline for entering is not until May of next year, now is the time to start taking photos and collecting flyers, brochures, newspaper articles, and so forth in order to document your bar's activities for the year.

If you'd like to get some more current recognition for your endeavors, we're going to publish photos of local bar projects and programs in the *Georgia Bar Journal* from time to time, as you've seen on the previous pages. Send photos and an explanation of your association's activities to Bonne Cella, State Bar of Georgia, P.O. Box 1390, Tifton, GA 31793-1390.

Please help us make sure we have the most current information about your bar. It's easy to do by filling in the

information on the State Bar's Web site, www.gabar.org, and click on local bar information. You'll find an online form in which to enter your bar's current information, including a place to let us know how we can help. You may also call me at (912) 430-4280 or Bonne Cella at (800) 330-0446.

Thank you,
Gordon R. Zeese, Chairperson
Local Bar Activities Committee
State Bar of Georgia

Continued from page 67

Tournament and the Great Day of Service. One hundred forty-four golfers from a variety of professions all over the community participated in the golf tournament, raising \$11,495.75 for the Alexis Grubbs Memorial Scholarship Fund. This year the fund gave two scholarships — one for \$4,000 and one for \$1,000

— to high school seniors who have chosen careers in the legal profession. The Cobb County Bar Association celebrated Great Day of Service on two Saturdays, not just one. It took Cobb County lawyers two weeks to renovate the premises at The Extension, an alcohol and drug recovery center in Marietta, which also provides vocational training and

family counseling. The Bar renovated the classroom that is actively used to train and treat residents. They repaired ceilings, removed walls, painted and realigned doors.

♦ ♦ ♦

The **Coweta Judicial Circuit Bar** Association has elected John D. Rasnick president for 1999-2000. He will serve until June of next year. ☐

Summary of Recently Published Trials

| | | |
|-------------------------------|---|-----------------|
| Chatham Superior Ct. | Legal Malpractice - Mishandling Settlement Money | \$175,000 |
| Cobb State Ct. | Medical Malpractice - Fracture Treatment | Defense Verdict |
| Cobb State Ct. | Auto Accident - Turning - Right-of-Way | \$400,000 |
| Cobb Superior Ct. | Falldown - Grocery Store - Mat Covering Ice and Snow | \$25,000 |
| Cobb Superior Ct. | Medical Malpractice - Positioning Patient During Surgery | Defense Verdict |
| Cobb Superior Ct. | Shooting - Residence - Accidental Discharge | Defense Verdict |
| DeKalb State Ct. | Falldown - Path near Railroad Underpass - Hole | Defense verdict |
| DeKalb State Ct. | Auto Accident - Rear-End - High Speed Impact | \$231,000 |
| Dougherty State Ct. | Auto Accident - Head-On - Left of Center | \$250,000 |
| Fulton State Ct. | Auto Accident - Head-On - Towed Vehicle Becomes Detached .. | \$1,295,000 |
| Fulton State Ct. | False Arrest - Store Patron - Suspected Shoplifting | \$475,000 |
| Fulton State Ct. | Cemetery - Delay in Closing Grave - Sacred Right of Burial | \$20,000 |
| Fulton State Ct. | Truck Accident - Intersection - Right-of-Way | \$933,100 |
| Fulton State Ct. | Medical Malpractice - Foot Surgery - Subsequent Fracture | \$45,000 |
| Fulton State Ct. | Falldown - Movie Theater - Greasy Substance on Floor | \$125,000 |
| Fulton State Ct. | Medical Malpractice - Surgery - Retained Sponge | \$600,000 |
| Fulton Superior Ct. | Shooting - Bar - Patron Seated in Automobile | \$600,000 |
| Fulton Superior Ct. | Hospital Negligence - Spinal Cord Injury - Evaluation | \$1,900,000 |
| Fulton Superior Ct. | Fraud - Sale of Franchises - Environmental Home Inspections | \$2,560,000 |
| Fulton U.S. District Ct. | Products Liability - Defibrillator Device - Infection | \$300,000 |
| Fulton U.S. District Ct. | Employment - Handicap Discrimination - Harassment . | Defense Verdict |
| Fulton U.S. District Ct. | Premises Liability - Store - Falling Boxes Strike Patron | \$375,000 |
| Fulton U.S. District Ct. | Civil Rights - Search of Residence - Wrong House | Defense Verdict |
| Fulton U.S. District Ct. | Van/Truck Accident - Broadside - Intersection | \$1,000,000 |
| Fulton U.S. District Ct. | Handicap Discrimination - Family & Medical Leave Act | \$113,000 |
| Gwinnett Superior Ct. | Auto Accident - Intersection - Right-of-Way | \$193,473 |
| Gwinnett Superior Ct. | Product Liability - Tea Powder - Contamination | Defense verdict |
| Hall U.S. District Ct. | Auto/Ambulance Accident - Intersection - Right-of-Way | \$214,204 |
| Lowndes Superior Ct. | Auto Accident - Rear-End - Slowing for Traffic | \$45,000 |
| Sumter State Ct. | Auto Accident - Rear-End - Low Speed Impact | \$52,000 |

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



Driver is Killed When Her Car Hydroplanes on Accumulated Water on a Georgia State Roadway and Her Estate Settles with GDOT for \$550,000

Plaintiff's decedent alleged that the GA State Department of Transportation (GDOT) constructed a defective roadway in that water flowed onto the roadway during a foreseeable rainstorm. (*Blizzard v. Georgia Department of Transportation; Twiggs County Superior Court*)

♦♦♦

Wrongful Death Verdict of \$4,735,000 for a Hydraulic Contractor Who was Electrocutted While Working Inside Defendant City's Manhole

Defendant city had poorly maintained its electrical wiring inside a manhole where the decedent was attempting to repair a water valve. (*Dickerson v. City of Conyers; Rockdale County Superior Court*)

♦♦♦

Medical Malpractice Results in Stroke Leaving Plaintiff in a Vegetative State and a \$25,000,000 Verdict

Defendant Hospitals and physicians failed to timely diagnose plaintiff's stroke and failed to administer heparin which may have prevented or lessened the severity of the stroke. (*Jones v. Bashuk, et al; Fulton County State Court*)

♦♦♦

Wrongful Discharge/Age Discrimination Verdict of \$153,299 for Four Plant Employees for Rearranging Their Work Schedules Without Permission

Defendant had allowed younger employees to rearrange their work schedules without penalty but took actions against plaintiffs six weeks after they rearranged their work schedules. (*Nida v. Bellsouth; U.S. District Court in Fulton County*)

♦♦♦

Faulty Brakes on Rental Truck Lead to Brakes Disengaging and Wrongful Death Verdict of \$2,030,000

Defendant's truck brakes failed after the truck was parked. Plaintiff's decedent driver attempted to jump in and re-engage the brake, but was crushed by the rolling truck. (*Tucker v. Ryder Truck; U.S. District Court in Fulton County*)

DISCIPLINARY NOTICES (Issued May 3, 1999 – June 1, 1999)

Disbarred**Fredrick Joseph Henley Jr.
Decatur, GA**

Attorney Fredrick Joseph Henley Jr. (State Bar No. 346970) has been disbarred from the practice of law by order of the Supreme Court dated May 3, 1999. Mr. Henley represented persons who falsely claimed they had been in automobile accidents and were seeking insurance payments for injuries and property damage. Mr. Henley also aided a non-lawyer employee in the unauthorized practice of law by allowing the employee to engage in negotiations with insurance adjusters over the legal rights of clients. Mr. Henley deposited personal funds into his attorney trust account and failed to maintain records of financial transactions involving the account.

**M. Randall Peek
Conyers, GA**

Attorney M. Randall Peek (State Bar No. 570300) has been disbarred from the practice of law by order of the Supreme Court dated May 3, 1999. Mr. Peek failed to respond to State Bar disciplinary charges. Accordingly, the Supreme Court found that Mr. Peek wrote a check on his attorney trust account for personal business. Mr. Peek also wrote a check from his attorney trust account on behalf of a client, and the check was presented against insufficient funds.

**Stephanie Delphine Blair
Savannah, GA**

Attorney Stephanie Delphine Blair (State Bar No. 061375) has

been disbarred from the practice of law by order of the Supreme Court dated May 3, 1999. Ms. Blair failed to respond to State Bar disciplinary charges in two matters. Accordingly, the Supreme Court found that Ms. Blair attempted to file a complaint on her client's behalf by facsimile. Ms. Blair told her client she had filed the complaint when she had not. Ms. Blair also abandoned a legal matter entrusted to her.

**Jeffrey Lee Hersh
Atlanta, GA**

Attorney Jeffrey Lee Hersh (State Bar No. 349492) has been disbarred from the practice of law by order of the Supreme Court dated May 3, 1999. Mr. Hersh failed to respond to State Bar disciplinary charges. Accordingly, the Supreme Court found that in three disciplinary matters, Mr. Hersh failed to provide to account for funds held in a fiduciary capacity.

**W. W. Larsen Jr.
Dublin, GA**

Attorney W. W. Larsen Jr. (State Bar No. 438450) voluntarily surrendered his license to practice law in the State of Georgia. The Supreme Court accepted Mr. Larsen's petition by Supreme Court order dated May 17, 1999. Mr. Larsen admitted he allowed the balance of his law firm trust account to drop below the amount necessary to cover settlement funds entrusted to him pending distribution to a deceased client's estate.

**Odrie Maria Chapman
Atlanta, GA**

Attorney Odrie Maria Chapman (State Bar No. 121453) voluntarily surrendered her license to practice law in the State of Georgia. The Supreme Court accepted her petition by Supreme Court order dated June 1, 1999. Ms. Chapman wrote a check to the recorder's court from her escrow account and the bank dishonored the check. She also failed to file an action on behalf of her client despite having received payment for doing so, and advised her client that the action had been filed. Ms. Chapman failed to notify clients that she had been suspended from the practice of law on November 3, 1997 for a period of 12 months, and continued to represent herself as an attorney in letters to several clients.

Suspended**James M. Corbeil
Warner Robins, GA**

Attorney James M. Corbeil (State Bar No. 187362) has been suspended from the practice of law for one year with conditions on his reinstatement by Supreme Court order dated May 10, 1999. Mr. Corbeil failed to respond to State Bar disciplinary charges. Accordingly, the Supreme Court found that Mr. Corbeil wilfully abandoned a legal matter entrusted to him by his client. Mr. Corbeil also failed to return legal documents to his client.

John J. Sowa
Atlanta, GA

Attorney John J. Sowa (State Bar No. 668595) petitioned the Supreme Court for voluntary discipline. The Supreme Court accepted Mr. Sowa's petition. Mr. Sowa has been suspended from the practice of law for 18 months with conditions on his reinstatement by Supreme Court order dated May 17, 1999. Mr. Sowa failed to promptly disburse settlement funds on his client's behalf to medical care providers. Mr. Sowa failed to provide his client with an accounting for funds held in a fiduciary capacity. Mr. Sowa closed his law office without informing his clients and used their trust funds for his personal use. Mr. Sowa dismissed a case without obtaining his client's permission. He improperly handled a real estate matter causing his trust account to be overdrawn.

John L. Creson
Augusta, GA

Attorney John L. Creson (State Bar No. 195950) has been suspended from the practice of law for six months by Supreme Court order dated May 17, 1999. Mr. Creson failed to file a timely response to State Bar disciplinary charges. Accordingly, the Supreme Court found that Mr. Creson was hired to represent a client in a divorce action but never drafted the petition for divorce. He also failed to return any of the client's telephone calls or letters and failed to return any of the unearned retainer to the client. In a second matter, Mr. Creson continued to practice law while he was subject to an interim suspension for failure to respond to the State Disciplinary Board.

Alvin L. Kendall
Atlanta, GA

Attorney Alvin L. Kendall (State Bar No. 414040) has been suspended

from the practice of law by Supreme Court order dated June 1, 1999 pending termination of his felony conviction appeal. Mr. Kendall was convicted of conspiring with members of a drug distribution organization in violation of federal law.

Warren Allen Evans
Atlanta, GA

Attorney Warren Allen Evans (State Bar No. 252751) petitioned the Supreme Court for voluntary discipline. The court accepted Mr. Evans' petition. Mr. Evans was suspended for three years from Oct. 31, 1994 by Supreme Court order dated June 1, 1999. He failed to keep his client advised about the status of the client's case. Mr. Evans failed to file a lawsuit on his client's behalf or return documents to the client. Mr. Evans failed to properly respond to disciplinary authorities in Georgia regarding a legal malpractice suit filed against him in South Carolina.

Emergency Suspension

Paige Elizabeth Samsky
Decatur, GA

Attorney Paige Elizabeth Samsky (State Bar No. 624445) has been suspended from the practice of law

pending the final disposition of disciplinary proceedings by Supreme Court order dated May 3, 1999.

Public Reprimand

Lynn McNeese Swank
Jonesboro, GA

Attorney Lynn McNeese Swank (State Bar No. 498450) petitioned the Supreme Court for voluntary discipline. The court accepted Ms. Swank's petition on May 25, 1999. Ms. Swank has been ordered to receive a public reprimand. Ms. Swank gave legal advice to a client and the client's husband regarding their divorce. She did not disclose the conflict to the parties. After the divorce, Ms. Swank continued to represent the client in various matters and began a personal relationship with her client's former husband. She did not disclose this information to her client. Ms. Swank had no prior disciplinary record. ☐

Editor's Note: Beginning with this issue, we are expanding the disciplinary column to provide more information about each case.

Garrett Group
pickup 6/99 p68

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.

| | | | |
|--|------------------------------------|---|--------------------------------------|
| Arnall, Haddon Pierce Conyers | Admitted 1950 Died January 1999 | Ivey, James Carlton Jonesboro | Admitted 1951 Died May 1999 |
| Avrett, John T. Dalton | Admitted 1959 Died April 1999 | McGregor, Scott Adams Norcross | Admitted 1986 Died September 1998 |
| Barham, William W. Atlanta | Admitted 1963 Died May 1999 | Porter Jr., William Jackson Norcross | Admitted 1959 Died June 1999 |
| Beall, S. Dick Atlanta | Admitted 1951 | Rogers, Jack Rome | Admitted 1930 Died September 1998 |
| Cameron, Don M. Union, WV | Admitted 1974 Died June 1999 | Slaughter, Thomas Adrian Atlanta | Admitted 1950 Died June 1999 |
| Chastain, Myron Neal Clearwater, FL | Admitted 1977 Died April 1999 | Tate V, Farish Carter Atlanta | Admitted 1969 Died June 1999 |
| Cunningham, Carl Anthony Decatur | Admitted 1984 Died June 1999 | Tuggle, Joseph T. Dalton | Admitted 1964 Died June 1999 |
| Custer, Henry Clayton Albany | Admitted 1966 Died May 1999 | Waters, Harold A. Savannah | Admitted 1951 Died March 1999 |
| Del Bello, Robert Anthony Atlanta | Admitted 1972 Died May 1999 | | |

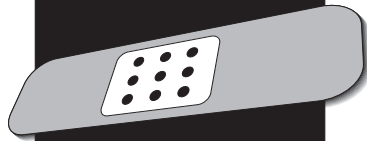
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Arthur Anthony
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99p104

Continued from page 25

- 19, 1999); *Ex parte BE&K Constr. Co.*, 728 So.2d 621 (Ala. 1998) (lien applies to future medical or vocational expenses as well but in the form of a credit).
35. *Sommers*, 229 Ga. App. 352, 494 S.E.2d 82.
36. 6 LARSON, *supra* note 2, § 74-32(a). Under Ga. Code Ann. § 114-403, the employer's lien was second only to the attorney's lien. The employer was not required to bear any of the pro rata share of attorney's fees except to the extent that the amount recovered was insufficient to satisfy the lien in full. *Johnson v. Lee*, 460 F.2d 1053 (5th Cir. 1972); *Commercial Union Ins. Co. v. Scott*, 116 Ga. App. 633, 158 S.E.2d 295 (1967). The result was that the employee could walk away with nothing if the judgment was not fully collectible.
37. This was done in *Keeler v. Hartford Mutual Insurance Co.*, 672 A.2d 1012 (Del. 1996).
38. *Quinn v. State*, 539 P.2d 761 (Cal. 1975) (dispute over attorney's fees).
39. *Fitzgerald v. Challenge Cook Bros.*, 264 N.W.2d 348 (Mich. Ct. App. 1978).
40. 6 LARSON, *supra* note 2, §§ 74-30 to -31(g).
41. *Id.* § 74-31(b).
42. *Sommers*, 229 Ga. App. 352, 494 S.E.2d 82; *AC Corp. v. Myree*, 221 Ga. App. 513, 471 S.E.2d 922 (1996); *Department of Admin. Servs. v. Brown*, 219 Ga. App. 27, 464 S.E.2d 7 (1995).
43. *See Redmond v. Devine*, 504 N.E.2d 138 (Ill. App. Ct. 1987) (representation inadequate if applicant's interest is different from that of representative party). In other contexts, adequacy of representation is a question of fact that the trial court must determine on a case by case basis. *Southwest Ga. Prod. Credit Ass'n v. Wainwright*, 241 Ga. 355, 245 S.E.2d 306 (1978); *Thurman v. FDIC*, 889 F.2d 1441 (5th Cir. 1989).
44. O.C.G.A. § 9-11-24(b) (1993).
45. *Astin v. Callahan*, 222 Ga. App. 226, 474 S.E.2d 81 (1996).
46. *Sommers*, 229 Ga. App. 352, 494 S.E.2d 82; *AC Corp.*, 221 Ga. App. at 515, 471 S.E.2d at 925.
47. *Payne v. Dundee Mills, Inc.*, 235 Ga. App. 514, 510 S.E.2d 67 (1998), *cert. denied* (Ga. Apr. 9, 1999).
48. *Meredith v. Schreiner Transp., Inc.* 814 F.Supp. 1001 (D. Kan. 1993).
49. 6 LARSON, *supra* note 2, § 74.41(c).
50. *Southern v. Plumb Tools*, 696 F.2d 1321, 1323 (11th Cir. 1983).
51. *Sommers*, 229 Ga. App. 352, 494 S.E.2d 82.
52. *Wausau Ins. Co. v. McLeroy*, 266 Ga. 794, 471 S.E.2d 504 (1996).
53. O.C.G.A. § 51-4-1 (1982).
54. O.C.G.A. § 34-9-265(b)(2).
55. O.C.G.A. § 51-4-2(e) (Supp. 1998)
56. *Id.* § 51-4-5(b).
57. *Lucas v. Durabond Prods. Co.*, 510 F.Supp. 999 (W.D. Pa. 1981).
58. *Rice v. Gruetzmacher*, 140 N.W.2d 238 (Wis. 1966).
59. *Hughes v. Newton*, 324 So.2d 270, 273 (Ala. 1975) (described by the court as a patent conflict of interest).
60. Georgia Code of Professional Responsibility EC 5-14 to 5-17, 5-19.

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Alcohol/Drug Abuse and Mental Health Hotline

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

| Area | Committee Contact | Phone |
|-------------------------|-------------------------|----------------|
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| Athens | Ross McConnell | (706) 359-7760 |
| Atlanta | Melissa McMorries | (404) 522-4700 |
| Florida | Patrick Reily | (850) 267-1192 |
| Atlanta | Henry Troutman | (770) 433-3258 |
| 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 |

Brainstorm Intl. new

West (Introducing New) new BW

Board of Governors Meeting Attendance

| June 1998 (Fri) Atlanta | June 1998 (Sat) Atlanta | November 1998 Destin | January 1999 Atlanta | March 1999 Macon | April 1999 Lanier | |
|-------------------------------|-------------------------------|----------------------------|----------------------------|------------------------|-------------------------|-------------------------|
| • | • | • | • | • | • | Ross Adams |
| • | • | • | • | • | • | Anthony B. Askew |
| • | • | no | • | • | • | William Steven Askew |
| • | no | no | no | • | no | Thurbert E. Baker |
| • | • | no | no | • | no | Donna Barwick |
| • | • | no | • | • | no | William D. Barwick |
| • | • | • | • | • | • | Robert L. Beard Jr. |
| • | • | • | • | • | • | Barbara B. Bishop |
| e | e | • | • | • | no | Joseph A. Boone |
| • | • | no | • | • | • | Wayne B. Bradley |
| • | • | • | • | no | • | Jeffrey O. Bramlett |
| no | no | • | • | • | • | Sam L. Brannen |
| • | • | • | • | • | • | James C. Brim Jr. |
| • | • | • | no | no | • | Thomas R. Burnside Jr. |
| • | • | • | • | • | • | William E. Cannon Jr. |
| • | • | • | • | • | • | Edward E. Carriere Jr. |
| • | • | • | no | no | no | Paul Todd Carroll, III |
| • | • | • | • | • | • | Bryan M. Cavan |
| • | • | no | e | • | • | Thomas C. Chambers, III |
| e | e | • | • | no | no | F. L. Champion Jr. |
| • | • | no | • | • | no | John A. Chandler |
| • | • | no | • | • | • | Joseph D. Cooley, III |
| • | • | • | • | no | • | Delia T. Crouch |
| no | • | • | • | • | • | William D. Cunningham |
| n/a | • | • | • | no | • | William V. Custer, IV |
| • | • | • | • | • | • | David P. Darden |
| • | • | • | no | no | • | Dwight J. Davis |
| n/a | • | • | • | • | • | Joseph W. Dent |
| no | no | • | • | • | • | Ernest De Pascale Jr. |
| • | • | • | • | • | • | Foy R. Devine |
| • | • | • | • | • | • | Charles J. Driebe |
| n/a | • | • | • | • | • | C. Wilson DuBose |
| e | e | • | • | • | • | James B. Durham |
| • | • | • | • | • | • | Myles E. Eastwood |
| • | • | • | • | no | • | Gerald M. Edenfield |
| no | no | no | • | no | no | J. Franklin Edenfield |
| • | • | • | • | • | • | O. Wayne Ellerbee |
| • | • | • | • | • | • | Michael V. Elsberry |
| no | no | • | • | • | • | J. Daniel Falligant |
| • | • | • | • | • | • | B. Lawrence Fowler |
| n/a | • | • | • | no | • | James B. Franklin |
| • | • | • | • | • | • | Gregory L. Fullerton |
| • | • | • | • | • | no | Gregory A. Futch |
| • | • | • | • | • | • | H. Emily George |
| • | • | • | • | • | • | Adele P. Grubbs |
| • | • | no | • | no | no | John P. Harrington |
| no | no | • | • | • | • | Walter C. Hartridge |
| • | • | • | • | • | • | James A. Hawkins |
| • | • | • | • | • | • | Joseph J. Hennessy Jr. |
| • | • | • | • | no | • | Phyllis J. Holmen |
| • | • | no | • | • | no | Roy B. Huff |
| • | no | no | • | • | no | James D. Hyder Jr. |
| • | no | • | • | • | no | Donald W. Huskins |
| • | • | • | • | • | • | Robert D. Ingram |
| • | • | • | • | • | • | James Irvin |
| • | • | • | • | no | no | Rachel K. Iverson |
| no | • | no | • | • | no | Michael R. Jones, Sr. |
| n/a | n/a | • | • | • | no | William Alan Jordan |
| • | • | • | • | • | • | Linda A. Klein |
| • | • | • | • | no | • | William P. Langdale Jr. |
| e | e | e | • | e | no | Earle F. Lasseter |
| no | no | no | • | no | • | J. Alvin Leaphart |
| no | • | • | • | • | • | Francis Marion Lewis |

| June 1998 (Fri) Atlanta | June 1998 (Sat) Atlanta | November 1998 Destin | January 1999 Atlanta | March 1999 Macon | April 1999 Lanier | |
|-------------------------------|-------------------------------|----------------------------|----------------------------|------------------------|-------------------------|-------------------------|
| • | • | • | • | • | • | David S. Lipscomb |
| • | • | • | • | • | • | Hubert C. Lovein |
| n/a | • | no | • | • | • | Leland M. Malchow |
| • | • | • | • | • | • | H. Fielder Martin |
| • | • | • | • | • | • | C. Truitt Martin Jr. |
| no | no | • | • | • | • | William C. McCalley |
| • | • | • | • | • | • | William C. McCracken |
| n/a | n/a | • | no | • | • | Ellen McElyea |
| no | • | • | no | • | • | Joseph Dennis McGovern |
| • | no | • | • | • | • | Larry M. Melnick |
| • | • | no | • | • | • | C. Patrick Milford |
| no | • | • | • | • | • | J. Brown Moseley |
| no | • | • | • | no | no | A. L. Mullins |
| • | • | no | • | • | • | George E. Mundy |
| • | no | • | • | • | • | Aasia Mustakeem |
| • | • | • | • | • | no | John A. Nix |
| • | • | • | • | • | • | Dennis C. O'Brien |
| • | • | • | • | no | • | Bonnie C. Oliver |
| • | • | • | • | • | • | Rudolph N. Patterson |
| • | • | no | • | no | • | Matthew H. Patton |
| no | • | no | • | no | • | Carson Dane Perkins |
| • | no | • | no | • | • | Patrise Perkins-Hooker |
| n/a | • | • | • | no | • | J. Robert Persons |
| • | • | • | • | • | • | R. Chris Phelps |
| • | • | no | • | • | • | John C. Pridgen |
| no | • | • | no | • | • | Thomas J. Ratcliffe Jr. |
| • | • | • | • | no | • | George Robert Reinhardt |
| • | no | • | • | no | • | Jeffrey P. Richards |
| • | • | • | • | • | • | Tina Shadix Roddenbery |
| n/a | • | • | • | • | no | Joseph Roseborough |
| • | • | • | • | • | no | William C. Rumer |
| • | no | no | • | • | • | Thomas G. Sampson |
| • | • | • | • | • | • | Michael M. Sheffield |
| • | • | • | • | no | • | M.T. Simmons Jr. |
| • | no | • | • | • | • | Lamar W. Sizemore Jr. |
| • | • | no | • | • | • | William L. Skinner |
| • | • | • | • | • | • | R. Rucker Smith |
| • | no | no | • | • | • | S. David Smith |
| • | • | • | • | no | e | Huey Spearman |
| • | no | no | • | • | • | Lawrence A. Stagg |
| n/a | n/a | • | • | • | • | John Stell |
| no | no | • | • | • | • | Frank B. Strickland |
| n/a | • | • | • | • | no | Richard C. Suttan |
| • | no | • | • | • | no | Jeffrey B. Talley |
| • | • | • | • | • | • | John J. Tarleton |
| • | • | • | • | • | no | S. Lester Tate, III |
| • | • | • | • | no | no | C. Henry Tharpe Jr. |
| no | • | • | • | no | • | Dwight L. Thomas |
| • | • | no | • | • | no | Edward D. Tolley |
| • | • | • | • | no | • | Christopher A. Townley |
| no | • | • | • | no | • | Carl A. Veline Jr. |
| • | • | • | • | • | no | Joseph L. Waldrep |
| • | • | • | • | • | • | J. Henry Walker |
| • | • | • | • | no | no | J. Tracy Ward |
| • | no | no | no | no | no | George W. Weaver |
| • | • | • | • | • | • | N. Harvey Weitz |
| no | • | no | • | • | • | A. J. Welch |
| • | • | no | • | • | no | Andrew J. Whalen, III |
| • | • | no | • | • | no | James L. Wiggins |
| • | • | no | • | • | • | William N. Withrow Jr. |
| • | • | • | • | no | • | Gerald P. Word |
| • | • | • | • | • | • | Anne Workman |
| • | • | • | • | • | • | Gordon R. Zeese |
| no | no | • | • | no | • | Marvin H. Zion |

• - attended; e - excused; no - did not attend; n/a - not on Board

Notice of Expiring Board of Governors' Terms

Listed below are the members of the State Bar Board of Governors whose terms will expire June, 2000. They will be candidates for the 1999-2000 State Bar election. Nominating packets containing petitions will be mailed to incumbents on Sept. 10, 1999 and must be returned by Oct. 15, 1999. Other State Bar members who wish to receive a nominating packet should request one from the Membership Department and must have them completed and returned to Bar Headquarters by Nov. 15, 1999, 5:00 p.m.

| Circuit | Member |
|----------------------|-------------------------------------|
| Alapaha Post 2 | Thomas C. Chambers, III, Homerville |
| Alcovy Post 2 | Michael R. Jones, Sr., Loganville |
| Atlanta Post 2 | Matthew H. Patton, Atlanta |
| Atlanta Post 4 | Patrise M. Perkins-Hooker, Atlanta |
| Atlanta Post 6 | Dwight L. Thomas, Atlanta |
| Atlanta Post 8 | J. Robert Persons, Atlanta |
| Atlanta Post 10 | Myles E. Eastwood, Atlanta |
| Atlanta Post 12 | C. Wilson DuBose, Atlanta |
| Atlanta Post 14 | Jeffrey O. Bramlett, Atlanta |
| Atlanta Post 16 | William N. Withrow Jr., Atlanta |
| Atlanta Post 18 | Foy R. Devine, Atlanta |
| Atlanta Post 20 | William V. Custer IV, Atlanta |
| Atlanta Post 22 | Frank B. Strickland, Atlanta |
| Atlanta Post 24 | Joseph Anthony Roseborough, Atlanta |
| Atlanta Post 26 | Anthony B. Askew, Atlanta |
| Atlanta Post 28 | J. Henry Walker, Atlanta |
| Atlantic Post 1 | Thomas J. Ratcliffe Jr., Hinesville |
| Augusta Post 2 | Leland M. Malchow, Augusta |
| Augusta Post 4 | William R. McCracken, Augusta |
| Bell-Forsyth | Philip C. Smith, Canton |
| Blue Ridge Post 1 | Ellen McElyea, Canton |
| Brunswick Post 2 | James D. Benefield III, Brunswick |
| Chattahoochee Post 1 | Joseph L. Waldrep, Columbus |
| Chattahoochee Post 3 | F. L. Champion Jr., Columbus |
| Cherokee Post 1 | S. Lester Tate, Cartersville |
| Clayton Post 2 | Larry M. Melnick, Jonesboro |
| Cobb Post 1 | Dennis C. O'Brien, Marietta |
| Cobb Post 3 | David P. Darden, Marietta |
| Cobb Post 5 | Robert L. Beard Jr., Marietta |
| Conasauga Post 1 | James Michael Brown, Dalton |
| Coweta Post 1 | Gerald P. Word, Carrollton |
| Dougherty Post 1 | Gregory L. Fullerton, Albany |
| Douglas | Jeffrey P. Richards, Douglasville |
| Eastern Post 1 | William C. Hartridge, Savannah |

| Circuit | Member |
|----------------------|-------------------------------------|
| Eastern Post 3 | J. Daniel Falligant, Savannah |
| Enotah | B. Lawrence Fowler, Cleveland |
| Flint Post 2 | Judge A. J. Welch Jr., McDonough |
| Griffin Post 1 | Andrew J. Whalen, III, Griffin |
| Gwinnett Post 2 | Barbara B. Bishop, Lawrenceville |
| Houston Post 1 | Carl A. Veline Jr., Warner Robins |
| Lkt. Mtn. Post 1 | William David Cunningham, Lafayette |
| Lkt. Mtn. Post 3 | Lawrence Alan Stagg, Ringgold |
| Macon Post 2 | Hubert C. Lovein Jr., Macon |
| Middle Post 1 | J. Franklin Edenfield, Swainsboro |
| Northeastern Post 1 | Bonnie Chessher Oliver, Gainesville |
| Northern Post 2 | R. Chris Phelps, Elberton |
| Ocmulgee Post 1 | Wayne B. Bradley, Milledgeville |
| Ocmulgee Post 3 | Donald W. Huskins, Eatonton |
| Oconee Post 2 | John P. Harrington, Eastman |
| Ogeechee Post 1 | Sam L. Brannen, Statesboro |
| Rockdale Post 1 | John A. Nix, Conyers |
| Rome Post 2 | S. David Smith Jr., Rome |
| South Georgia Post 1 | J. Brown Moseley, Cairo |
| Southern Post 1 | O. Wayne Ellerbee, Valdosta |
| Southern Post 3 | William P. Langdale Jr., Valdosta |
| Stone Mtn. Post 1 | John J. Tarleton, Decatur |
| Stone Mtn. Post 3 | Marvin H. Zion, Decatur |
| Stone Mtn. Post 5 | William Lee Skinner, Decatur |
| Stone Mtn. Post 7 | Judge Anne Workman, Decatur |
| Stone Mtn. Post 9 | Edward E. Carriere Jr., Decatur |
| Tallapoosa Post 2 | Richard Candler Sutton, Tallapoosa |
| Tifton Post 1 | George Robert Reinhardt Jr., Tifton |
| Waycross Post 1 | Joseph J. Hennesy Jr., Douglas |
| Western Post 2 | Edward Donald Tolley, Athens |

1999-2000 Election Schedule

| | |
|-------------------|---|
| August | Official Election Notice, August <i>Georgia Bar Journal</i> |
| Sept. 10 | Nominating Petition package mailed to BOG incumbents (additional petitions for other candidates supplied upon request; call Membership Department at Bar headquarters, 404-527-8777) |
| Oct. 15 | Deadline for receipt of nominating petitions for incumbent Board Members (Article VII, Section 2) |
| Nov. 12-15 | Nomination of officers, Fall Board of Governors Meeting - Brasstown Valley |
| Nov. 15 5:00 p.m. | Deadline for receipt of nominating petitions for new BOG Candidates (<i>i.e.</i> not incumbents) (Article VII, Section 2) |
| Dec. 1 | Deadline for write-in candidates for Officer to file. (Not less than 10 days prior to mailing of ballots-Article VII, Section 1 (c)) |
| Dec. 6-10 | Preparation of Ballots |
| Dec. 15 | Ballots mailed (Article VII, Section 7 (c)) |
| 2000 | |
| Jan. 6-8 | Midyear Meeting - Swissotel, Atlanta |
| Jan. 17 | Martin Luther King Holiday - Bar Headquarters closed |
| Jan. 24-26 | Ballots opened at Bar Headquarters |
| Jan. 26 | Ballots must be received at Bar headquarters to be valid |
| Jan. 27 | Ballots tabulated at Datamatx, (Article VII, Section 9.) Candidates will be notified by telephone of results as soon as available; a printed copy of results will be mailed to each candidate |

New Towaliga Circuit, see page 81

First Publication of Proposed Formal Advisory Opinion No. 99-R3

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

Office of General Counsel
State Bar of Georgia
800 The Hurt Building
50 Hurt Plaza
Atlanta, Georgia 30303
Attention: John J. Shiptenko

An original and twenty copies of any comment to the proposed opinion must be filed with the Office of General Counsel by September 15, 1999 in order for the comment to be considered by the Formal Advisory Opinion Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the proposed opinion should be issued. If the Formal Advisory Opinion Board determines that the proposed opinion should be issued, final drafts of the proposed opinion will be published, and the proposed opinion will be filed with the Supreme Court of Georgia for formal approval.

Proposed Formal Advisory Opinion No. 99-R3

QUESTION PRESENTED

Ethical propriety of lawyers telephonically participating in real estate closings from remote sites.

SUMMARY ANSWER:

Formal Advisory Opinion No. 86-5 explains that a lawyer cannot delegate to a nonlawyer the responsibility to "close" the real estate transaction without the participation of an attorney. Formal Advisory Opinion No. 86-5 also provides that "Supervision of the work of the paralegal by the attorney must be direct and constant to avoid any charges of aiding the unauthorized practice of law." The attorney's physical presence at a closing will assure that there is supervision of the work of the paralegal which is direct and constant.

OPINION:

Formal Advisory Opinion No. 86-5 (86-R9) issued by the Supreme Court states that the closing of real estate transactions constitutes the practice of law as defined by O.C.G.A. §15-19-50. Therefore, it is ethically improper for lawyers to permit nonlawyers to close real estate transactions. Correspondent inquires whether it is ethically permissible to allow a paralegal to be physically

present at a remote site for the purpose of witnessing signatures and assuring that documents are signed properly. The paralegal announces to the borrower that he/she is there to assist the attorney in the closing process. The attorney is contacted by telephone by the paralegal during the closing to discuss the legal aspects of the closing.

The critical issue in this inquiry is what constitutes the participation of the attorney in the closing transaction. The attorney must be in control of the closing process from beginning to end. The supervision of the paralegal must be direct and constant.

Formal Advisory Opinion No. 86-5 states that "If the 'closing' is defined as the entire series of events through which title to the land is conveyed from one party to another party, it would be ethically improper for a nonlawyer to 'close' a real estate transaction." Under the circumstances described by the correspondent, the participation of the attorney is less than meaningful. He/she is not in control of the actual closing processing from beginning to end. He/she is brought into the closing process after it has already begun. Even though the paralegal may state that he/she is not an attorney and is not there for the purpose of giving legal advice,

CONTINUED ON PAGE 81

Supreme Court Issues New Formal Advisory Opinion

During the month of May, 1999, the Supreme Court of Georgia issued a formal advisory opinion that was proposed by the Formal Advisory Opinion Board. Following is the full text of the opinion issued by the court.

**State Bar of Georgia
ISSUED BY THE SUPREME
COURT OF GEORGIA
ON MAY 27, 1999
FORMAL ADVISORY OPINION
NO. 99-1 (Proposed Formal
Advisory Opinion No. 94-R6)**

QUESTION PRESENTED:

May an attorney ethically defend a client pursuant to an insurance contract when the attorney simultaneously represents a company in an unrelated matter and that company claims a subrogation right in any recovery against the defendant client?

SUMMARY ANSWER:

Under Standard 35 and Standard 36, an attorney may not simultaneously represent clients that have directly adverse interests in litigation that is the subject matter of either one of the representations. Whether or not this is the case in the Question Presented here, depends upon the nature of the representation of the insurance company.

If it is, in fact, the insurance company that is the true client in the unrelated matter, then the interests of the simultaneously represented clients in the litigation against the insured client are directly adverse even though the insurance company is not a party to the litigation and the representations are unrelated. The

consent by the clients provided for in Standard 37 is not available in these circumstances because it is not obvious that the attorney can adequately represent the interests of each client. This is true because adequate representation includes a requirement of an appearance of trustworthiness that is inconsistent with the conflict of interests between these simultaneously represented clients.

If, however, as is far more typically the case, it is not the insurance company that is the true client in the unrelated matter, but an insured of the insurance company, then there is no simultaneous representation of directly adverse interests in litigation and these Standards do not apply. Instead, the attorney may have a personal interest conflict under Standard 30 in that the attorney has a financial interest in maintaining a good business relationship with the insurance company. This personal interest conflict may be consented to by the insured client after full disclosure of the potential conflict and careful consultation. The Standard 37 limitation on consent to conflicts does not apply to Standard 30 conflicts. Such consent, however, should not be sought by an attorney when the attorney believes that the representation of the insured will be adversely affected by his or her personal interest in maintaining a good business relationship with the insurance company for to do so would be to violate the attorney's general obligation of zealous representation to the insured client.

OPINION:

Correspondent asks whether an attorney may defend an insured client when the attorney also represents, in unrelated litigation, an insurance company that claims a subrogation right in any recover against the insured client. If the representation of the insurance company is, in fact, representation of the insurance company and not representation of an insured of the company, then the analysis of this situation is governed by Standards of Conduct 35 and 36 which prohibit accepting or continuing representation if the exercise of the lawyer's independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client. In interpreting these Standards, we are guided by Ethical Consideration 5-14:

Maintaining the independent professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

Unlike the more familiar standard applied in subsequent representation conflicts, the prohibition in simultaneous representation conflicts is not dependent upon a showing that the matters involved are substantially

related. This is so because the prohibition against simultaneous representation of adverse interests is based, primarily, on concerns with loyalty to clients, the appearance of trustworthiness, and the preservation of a lawyer's independent professional judgment for each client. *See, generally*, ABA/BNA *LAWYERS MANUAL ON PROFESSIONAL CONDUCT* 51:104-105 and cases and advisory opinions cited therein. *See, also*, ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1495 (1982) (lawyer may not accept employment adverse to existing client even in unrelated matter; prohibition applies even when present client employs most lawyers in immediate geographical area, thereby making it difficult for adversary to retain equivalent counsel). *See, also*, ABA Model Rules of Professional Conduct, Comments, Rule 1.7 ("Thus, a lawyer ordinarily may not act as an advocate against a person the lawyer represents on some other matter, even if it is wholly unrelated.")¹

Of course, some simultaneous representation conflicts can be consented to by the simultaneously represented clients. Consent, under the Standards of Conduct is limited by two requirements. The first is that consent can only be obtained in those circumstances in which the full disclosure necessary to adequately inform the clients' consents can be provided without breach of confidentiality. The second is that consent is limited, by Standard of Conduct 37, to those circumstances in which it is "obvious that [the lawyer] can adequately represent the interests of each [client]. . . ." In interpreting the "obvious and adequate" test for consent, we are guided by the provisions of Ethical Consideration 5-15. Ethical Consideration 5-15 advises that all doubts about divided loyalties should be resolved against the propriety of the representation and

that, generally, consent should not be obtained when clients have differing interests in litigation and rarely obtained when they have only potentially differing interests in litigation.

In the circumstances presented here, it would be reasonable for an attorney to be concerned that the adverse interests of the simultaneously represented clients could adversely affect the quality of the representation by jeopardizing the quality of the relationship with the client. It is, therefore, not obvious that adequate representation will be provided. This is not because Georgia lawyers are not sufficiently trustworthy to act professionally in these circumstances by providing independent professional judgment for each client unfettered by the interests of the other client. It is, instead, a reflection of the reality that reasonable client concerns with the appearance created by such directly adverse interests could, by themselves, adversely affect the quality of the representation.

If however, as is more typically the case, what is referred to in the Question Presented as representation of the insurance company is, in fact, representation of an insured of that company, then the above analysis does not apply. In such a situation, the attorney's primary ethical obligation is to the insured and not to the company, thus the fact that the company may have interests directly adverse to the other insured client is not the issue. Instead, the attorney may have a personal interest conflict under Standard 30 which provides: "Except with the written consent or written notice to his [*sic*] client after full disclosure a lawyer shall not accept or continue employment if the exercise of his professional judgment on behalf of the client will be or reasonably may be affected by his own financial, business, property or other personal interests." Such a

conflict arises because of the attorney's need to maintain, for financial reasons, a good business relationship with the insurance company.

Personal interest's conflicts are not subject to the limitation on consent found in Standard 37. Here, the insured client may consent, in writing, to the conflict after full disclosure of the potential adverse effect of the personal interest conflict and careful consultation with the attorney. No attorney, however, should seek such consent if he or she believes that his or her business interest will, in fact, adversely affect the quality of the representation with the insured client. To seek consent in such circumstances would be in violation of an attorney's general obligation of zealous representation of all clients.

We conclude, therefore, that if the representation in the situation described in the Question Presented is a true representation of an insurance company, then an unconsentable conflict of interests exists and that entering into or continuing with such simultaneous representations would be in violation of the Standards of Conduct. If, however, the representation is not a true representation of an insurance company, but a representation of an insured of that company, then a personal interest conflict exists which ordinarily may be consented to by the insured client. ☒

Endnotes

1. The Supreme Court of Georgia has not, of course, adopted the ABA Model Rules. This citation is as persuasive authority only. The adoption of the ABA Model Rules by other jurisdictions did not change the analysis of simultaneous representation conflicts applied in this Opinion as an interpretation of Georgia Standards of Conduct. The point is that this analysis is well established.

Notice of and Opportunity for Comment on Proposed Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. §2071(b), notice is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit. Some of the proposed amendments provide that IN CIVIL APPEALS ONLY:

- ♦ an appeal will be dismissed WITHOUT NOTICE for appellant's failure to file briefs or record excerpts by the due date;
- ♦ an appeal will be dismissed WITHOUT NOTICE for appellant's failure to correct a deficiency in briefs or record excerpts within 14 days of the clerk's notice of deficiency;
- ♦ an appeal thus dismissed may be reinstated only upon the timely filing of a motion to set aside the dismissal and remedy the default showing good cause, accompanied by the required/corrected brief and record excerpts;
- ♦ a motion to extend the time to file a brief or record excerpts, or to correct a deficiency, will be granted only upon the filing of a verified motion showing extraordinary circumstances;
- ♦ a motion to extend the time to file a brief or record excerpts must be filed at least seven days in advance of the due date of the brief or record excerpts; a motion to extend the time to correct a deficiency must be filed within 14 days of the clerk's notice of deficiency;
- ♦ the clerk is without authority to file a party's motion for leave to file a brief or record excerpts out of time that is received by the clerk after the due date for filing a brief or record excerpts, or for correcting a deficiency, has expired.

A copy of the proposed amendments may be obtained on and after August 9, 1999, from the Eleventh Circuit's Internet Web site at www.call.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303 [phone: (404) 335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by Sept. 9, 1999. ☐

New Towaliga Circuit Created: Judge Sosebee Appointed

A NEW JUDICIAL CIRCUIT WAS created effective July 1. It is the Towaliga Circuit and is a split-off from the Flint Circuit. The Flint Circuit will consist of Henry County only. The Towaliga Circuit consists of three counties formerly in the Flint Circuit: Monroe, Lamar and Butts. The Flint Circuit will retain its two Board of Governors seats with Judge A.J. Welch Jr. and Gregory A. Futch as board members.

Present Rudolph Patterson has appointed Judge Hugh Sosebee as the new BOG representative for the Towaliga Circuit. Judge Sosebee is not a stranger to the BOG. He previously served as the Flint Circuit representative, stepping down in 1997. When he retired from the Board that year, he was the longest serving member, having been on the Board prior to the Bar's unification in 1964. ☐

FAO No. 99-R3 continued from page 78

circumstances may arise where one involved in this process as a purchaser, seller or lender would look to the paralegal for advice and/or explanations normally provided by an attorney. This is not permissible.

Formal Advisory Opinion No. 86-5 provides that "Supervision of the work of the paralegal by the attorney must be direct and constant to avoid any charges of aiding the unauthorized practice of law." By allowing a paralegal to appear at

closings at remote sites at which attorneys are present only by telephone conference will obviously increase the likelihood that the paralegal may be placed in circumstances where the paralegal is actually providing legal advice or explanations, or exercising independent judgement as to whether legal advice or explanation is required.

Standard 24 is not met by the attorney being called on the telephone during the course of the closing process for the purpose of responding to

questions or reviewing documents. The attorney's physical presence at a closing will assure that there is supervision of the work of the paralegal which is direct and constant. ☐

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