

A man with short brown hair, wearing a blue and green plaid polo shirt and light-colored trousers, stands on a large, gnarled tree root. He is smiling and has his left hand on his hip and his right hand resting on the tree trunk. The background is a lush green forest with a body of water visible in the distance.

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AUGUST 1998 • VOL. 4 NO. 1

**BILL CANNON:  
LET'S RESTORE  
PUBLIC CONFIDENCE**

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**On the Cover:** Bill Cannon, who was sworn-in as President in June, relaxes on the banks of the Flint River in his hometown, Albany. One of his goals is to help restore public confidence in the legal system. See his article on page 44. (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: Theodore H. Davis Jr., Editor-in-Chief, Kilpatrick Stockton LLP, 1100 Peachtree St., Suite 2800, Atlanta, GA 30309-4530. Authors will be notified of the Editorial Board's decision following its next meeting.

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# A CHIP OFF THE OL' BLOCK, I HOPE

By William E. Cannon Jr.

**M**y father ran a general store in Leesburg during my childhood years. I spent many afternoons after school sweeping the wooden floor, exploring many fascinating tools in the hardware department and looking through a large collection of catalogues.

The highlight of my day was a visit from one of the many traveling salesmen who called upon my father. Most possessed a wonderful sense of humor and I enjoyed participating in the easygoing banter that accompanied their visits. As I grew older, these visitors would often call me “a chip off the ol’ block.” I would grin and exchange glances with my father, proud to accept such a designation. My father questioned the status quo, spoke plainly and believed that one should not compromise one’s principles no matter what the cost. Although he was never a lawyer, my father’s values offered a strong foundation upon which to build my professional life.

In the summer of 1976, Dawn and I packed everything we owned into a U-Haul truck and headed from Athens to Louisville, Georgia for my job as a summer clerk with Jim Abbot. I had no idea what to expect. I knew very few lawyers and had never worked with a lawyer before. Now I was heading to the middle of nowhere, not knowing what I would be doing and very little about the lawyer with whom I would be working. That summer was the beginning of my real education in the art of being a lawyer.

Jim Abbot was the perfect template for a young lawyer. He had a thriving practice representing a variety of people and institutions and had achieved a level of respect that would have inflated the ego of a lesser person. In one brief summer I participated in labor negotiations, worked on a large estate,



**Bill Cannon with his father.**

learned to check a title and sat at counsel table as Mr. Abbot prosecuted cases in State Court. While these practical experiences were invaluable, my most delightful moments with Mr. Abbot came when we were walking to the courthouse or driving to Wrens, Stapleton or Augusta to attend to some business. I was eager to understand how he was always able to deal with difficult people or situations in such a calm, dignified manner. Mr. Abbot would patiently explain how the profession of law was a calling and that honor,

civility and candor were the badges of a “real” lawyer. He had great admiration for those lawyers who exemplified professionalism and little patience for those who would embarrass our profession. I knew within a few days of working with Mr. Abbot that he was the kind of lawyer I would strive to emulate.

My first job after graduation from law school was with Edmund Landau of Albany. Mr. Landau had an excellent reputation as a defense lawyer based upon his easygoing manner and brilliant legal mind. Mr. Landau had little interest in money. He was a lawyer because he loved the law. He woefully undercharged for his work and was so loyal to his clients that they frequently took advantage of him. Mr. Landau practiced each day as if his reputation depended on it.

I found myself in his office many afternoons as the day drew to a close seeking his advice on the challenging assignments he had given me. Within a few months my afternoon visits expanded beyond the usual questions of a beginning lawyer to encompass all aspects of the practice of law. I learned that clients deserved absolute loyalty and prompt service. I also learned that professional satisfaction had little to do with income.

My father, Jim Abbot and Mr. Landau were my mentors — I just didn’t know it at the time. Without the benefit of any formal program, they taught by example. All of us have the same opportunity. It is easy to become so caught up in the daily grind of law practice that we forget what called us to this profession of service. Our words and our actions are being watched closely by the next generation of lawyers. What they become will be largely determined by the example we set. ☒

# LOOKING BACK ON A HISTORICAL YEAR



By Cliff Brashier

The past year was like no other in the history of the State Bar of Georgia. The Midyear Meeting was in Savannah and more members attended than ever before. The Annual Meeting was in Atlanta and attendance quadrupled. Participation in the Sections increased. The State Bar had more committees and more volunteer attorneys than ever working for the legal profession. Local bars joined the State Bar to aid the victims of domestic violence. For the first time, State funding in the amount of \$2 million was obtained to give access to the protection of the judicial system for domestic violence victims who are too poor to retain civil counsel. The lawyers of Georgia received more fair and favorable media coverage of their professional and community service to the public. The High School Mock Trial program saw record participation by Georgia schools, students, and lawyer coaches. The State Bar's Web site ([www.gabar.org](http://www.gabar.org)) became one of the best in the nation to assist both lawyers and the public. The Consumer Assistance Program assisted thousands of members and their clients. The public was protected by an improved disciplinary system and by a very active unauthorized practice of law program. Information

on emerging issues was gathered and passed on to lawyers so that they could have early input. A new program to address bench and bar professionalism issues at the local level was started. The Bar Center was refinanced to lower the interest rate from 8 percent to 6.59 percent for a \$200,000 savings. Work on a pilot mentor program continued. A service to match underutilized lawyers with low to middle income clients was initiated. And, as you will see from this issue of the *Journal*, the foregoing is only a small part of all that was accomplished.

To the thousands of volunteers who donated your expertise, time, and money to make all of this happen, we thank you.

To Stephanie Parker who gave more than any other volunteer and provided a model for future Annual Meetings, we thank you.

To your elected leaders on the

Board of Governors and Executive Committee who guided and administered all of the many services and programs of the State Bar, we thank you.

To Linda Klein, President of the State Bar of Georgia (1997-1998), who gave tremendous leadership, dedication, time, inspiration and hard work to make the State Bar of Georgia the best it could be for all its 30,000 members, we thank you, thank you, thank you.

To those who were not able to participate in the many, many activities of the State Bar this past year, we welcome you to get involved this year in whatever part best suits your interests. If you need some ideas or if I can help you in any other way, please call me.

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). ☒

## ASI - new

## CREATING LIMITED LIABILITY FOR A GENERAL PARTNERSHIP

# LLP or LLLP?

By Bradley R. Coppedge and W. Fray McCormick

**T**he partnership is one of our oldest business entities. For many years, it was the most basic, if not the only, entity choice that combined the efforts of more than one individual. For example, who could forget the partnership of Jacob Marley and Ebenezer Scrooge in Charles Dickens' Elizabethan England? As commerce progressed, though, other entities, such as the chartered corporation and later the corporation, gained favor. These choices offered limited liability as a main advantage because it enabled businessmen to pursue more ventures, which, in turn, created exponential-like business growth.

Gradually, as people (and their state governments) began to recognize that limited liability was productive, the process of incorporating and gaining the limited liability advantage became easier. In light of this, incorporators no longer have to seek a legislative act or a judicial decree to gain limited liability. Instead, this process has now been reduced to a simple public filing with the Secretary of State's office in recognition of the fact that the cornerstone of limited liability is notice to third parties.

Despite this growth, the extension of limited liability to general partnerships has been a fairly recent development. The Georgia Limited Liability Partnership Act, which provides for the creation of Limited Liability Partnerships ("LLPs"), became effective only as recently as July 1, 1995.<sup>1</sup> The amendments that allow for Limited Liability Limited Partnerships ("LLLPs") are even more recent.<sup>2</sup> As with any new law, refinements have been made and will continue to be made as various situations shine light on confusing or complicated provisions.

This Article's purpose is to address one such confusing area — the conversion of a general partnership to an LLP or an LLLP. Although creating a *new* partnership with limited liability for its partners is a simple process, creating limited liability for an *existing* partnership can be more complicated. Nevertheless, a full understanding of the fundamentals of the partnership entities is a prerequisite to fully comprehending the issues such a conversion raises. Accordingly, this Article will first examine the entities of the partnership, the general partnership, and the limited partnership. It will then address the possible routes to take in the conversion from a general partnership to an LLP or LLLP. Finally, it will focus on which is the better choice for a particular situation.



## I. The Partnership Genre

There are two types of partnerships. The first type is the older partnership entity, the “general partnership,” while the second is the “limited partnership.” In a general partnership, the only type of partner is a “general” partner. In addition, there is no limitation on the liability of any of the partners, and each has the authority to bind the partnership and transact business on behalf of the partnership. This is the oldest form of partnership, and, as such, the term “partnership” is often used ambiguously to refer to it as well as the overall genre of partnership entities.

The second type of partnership is the “limited partnership.” In a limited partnership, there are both general and limited partners. The general partners in a limited partnership manage the partnership, and as a result of this privilege, they are the ones on whom the burden of liability falls. In contrast, the limited partners have limited liability as they can only lose the amount of their investments.<sup>3</sup> In addition, as a cost of this limited liability, limited partners are limited both in their authority to act on behalf of the partnership and in their ability to participate in management decisions.

## II. Partnerships: The Practical Steps of Creation

The creation of the entity known as a “general partnership” is a relatively simple process. The partnership may come into being upon the filing of a statement of partnership in the office of the Clerk of Superior Court of any county.<sup>4</sup> If a statement of partnership is filed, it must state: (1) the name of the partnership; (2) the location of the principal place of business; (3) the names and addresses of all the partners; (4) the term of the partnership, and such other information as expressly required by Official Code of Georgia Annotated (“O.C.G.A.”) § 14-8-10.1.<sup>5</sup>

In contrast, to initially create a new entity as a “limited partnership,” the entity, at its inception, must file a certificate of limited partnership with the Secretary of State pursuant to O.C.G.A. § 14-9-201.<sup>6</sup> The certificate must set forth certain information and must be accompanied by the filing fee as set forth in O.C.G.A. § 14-9-1101.<sup>7</sup> Pursuant to O.C.G.A. § 14-9-206.2, an existing general partnership may elect to become a limited partnership by filing an election with the Secretary of State setting forth the information that that Code section requires.<sup>8</sup>

### III. LLPs and LLLPs: Additional Limited Liability Vehicles

In addition to using the traditional limited partnership as a vehicle for limited liability for partners, Georgia law now provides a means to obtain limited liability for all partners in both the general partnership and in the limited partnership entities. A general partnership accomplishes this by forming a Limited Liability Partnership (“LLP”), while a limited partnership would form a Limited Liability Limited Partnership (“LLLP”).

Both an LLP and an LLLP are creatures of their respective parents, the general partnership and the limited partnership, though with certain modifications. The primary distinction between the two is that an LLP descends from a general partnership while an LLLP descends from a limited partnership. Otherwise, there is *no* substantial difference between the two entities, at least in terms of liability. Each provides limited liability for all of its partners, be they general or limited.

This is an important concept that is easily overlooked due to the confusing similarities in the nomenclature of the entities. One may find it helpful to take a moment and actually walk through the names of each because, despite their complexity, they are quite instructive and illustrative. First, an LLP is actually a limited-liability partnership. Remember that the term “partnership” is used ambiguously to refer both to the entity family of partnerships and as a reference to the “general partnership” subset of that entity family. (One could academically refer to the LLP as an LLGP, or a limited-liability *general* partnership.) The LLP is a general partnership in which (1) all the partners are general partners, and (2) they all have limited liability.

Using this same approach, the LLLP is a limited-liability, *limited* partnership. It is a limited partnership in which all the partners, be they general or limited, have limited liability. One differentiates an LLLP from an LLP in just this way.<sup>9</sup> It has both general and limited partners. Considering the fact that an LLLP provides the limited liability to all the partners, the primary remaining distinction between the general partners and limited partners is that the general partners have the managerial capacity to control the partnership while limited partners do not.

### IV. General Partnership: Conversion to an LLP or an LLLP

With an understanding of these entities now in hand, it becomes clear that an existing general partnership has two options when seeking limited liability. It can become either an LLP or an LLLP.

#### A. Conversion of a General Partnership to an LLP

If the general partnership seeks to become an LLP, O.C.G.A. §14-8-62 states that the partnership needs only to record a limited liability partnership election in the Superior Court Clerk’s office.<sup>10</sup> As for tax consequences of this choice, there should generally be none upon the conversion of a general partnership to an LLP. This assumes, however, that the partners’ share of profits and losses and capital remain the same. If there is a change in the percentage share of profits, losses or capital, the usual partnership rules under the Internal Revenue Code would apply to determine if there is any gain.<sup>11</sup> This same rule should hold true for the analogous conversion of a limited partnership into an LLLP.

#### B. Conversion of General Partnership to an LLLP

On the other hand, a general partnership may wish to convert to an LLLP. In analyzing such a conversion, one needs to remember that an LLLP is the derivative of a *limited* partnership. Thus, although all the partners have the desired limited liability, there remains a distinction between limited and general partners in an LLLP. This distinction is that the general partners still have managerial authority, while the limited partners do not. As a result, the conversion should be a two-step process in which the general partnership first converts to a limited partnership, and that limited partnership then converts to an LLLP.

A general partnership may become a “limited partnership” by adding limited partners or by giving its general partners limited partnership interests, in addition to their general partnership interests. Either of these is easily accomplished by amending the partnership agreement and filing the appropriate elections to become a limited partnership.<sup>12</sup> After this first step of converting to a limited partnership, the new “limited partnership” can file an election to convert from a limited partnership to an LLLP under O.C.G.A. §14-8-62(g).<sup>13</sup>

One could argue that this second step could be left out, with the general partnership filing only one filing and one amendment to transform the general partnership directly to an LLLP. This argument arises from the fact that since one can form a new partnership as an LLLP without having to first form as a limited partnership,<sup>14</sup> one should be able to convert from a general partnership directly to an LLLP just as easily as one could convert to a limited partnership. Despite the possible validity of this argument, the safe route (at least until the state legislature can clarify the process) is to make the additional step, especially since this will leave a paper trail clearly showing the transformation of the general partnership to an LLLP.

The conversion of a general partnership to an LLLP should not have tax consequences if structured properly. To insure such an avoidance of tax consequences, the conversion must not alter any partner's share of profits, losses, or capital.<sup>15</sup> For example, if a general partnership with four equal general partners (25 percent each) desires to become an LLLP, each general partner could be given a limited partnership interest. More specifically, each partner could be given a 1 percent general interest and a 24 percent limited interest. Each partner would then still have the same percentage interest in the partnership and would still receive distributions in the same amount as if no change had been made. The only difference would be that such distributions would be allocated to the respective limited and general partnership interests of each partner, rather than solely to her general interest.

Furthermore, a conversion could also be made in which only one partner would retain the sole 1 percent general partnership interest. As with the previous example, this would be a tax-free transaction because, for tax purposes, the primary consideration in such a conversion is whether the percentage interests in the partnership's profits and losses remain the same. Thus, it would not matter whether these percentages are in general or limited partnership interests.<sup>16</sup> For example, again assume a general partnership with four equal general partners desires to become an LLLP. Only one partner would be the general partner, however, with a 1 percent general partnership interest and a 24 percent limited partnership interest. The three remaining partners would each be 25 percent limited partners.<sup>17</sup> This conversion should generally result in no tax consequences.<sup>18</sup>

Nevertheless, one might argue the application of a control premium when a partner becomes the holder of the sole 1 percent general partnership interest. The argument would be that, even though the partner's percentage interest in the profits and losses remains the same, this would be a taxable event because the partner, as the only 1 percent general partner, now has complete control of the entity, where before he had only 25 percent control of the entity. Fortunately, Rev. Rul. 84-52, 1984-1 C.B. 157 provides guidance on this issue, clearly stating that gain is recognized in such conversions *only* to the extent that a change in a partner's share of liabilities results in a deemed distribution in an amount greater than the partner's adjusted basis. As a result, as long as the conversion does not result in a deemed distribution in an amount greater than the now-controlling partner's adjusted basis, the conversion should be a tax-free event.

## V. LLP vs. LLLP: Which is the Better Choice?

Now that the reader understands how to proceed with the conversion of a general partnership to an LLP or an LLLP, the issue becomes which is the better choice.

The first advantage of converting a general partnership to an LLP is that it is easier to do and has fewer possible consequences. The sole requirement is the filing of an election, which entitles partners to limited liability with respect to creditors.<sup>19</sup> Further, there is no change that needs be made to the partnership agreement, and there is no change among the partners except that each now has limited liability.

In contrast, the conversion of a general partnership to an LLLP would be a fundamental alteration of the entity. The conversion not only changes liability rules, but potentially changes the relationship between the partners themselves. As a result, in addition to filing the appropriate elections, the partnership agreement itself must be changed. Furthermore, if in so doing, the partners' percentage share of gains and losses is altered, then gain may be recognized under the applicable partnership provisions.<sup>20</sup>

The primary reasons why a general partnership would convert to an LLLP instead of an LLP is to admit new "limited" partners or to accomplish certain estate planning goals. If a general partnership is converted to an LLLP, then steps should be taken to avoid gain. These preventative steps include, among other possibilities, allocating limited partnership interests in proportion to general interests so as to not change the partners' share of gains and losses, or, pursuant to Rev. Rul. 84-52, 1984-1 C.B. 157, making certain that if percentage shares are changed, any deemed distribution is in an amount less than the partner's adjusted basis. It should be noted that for estate planning purposes, an LLLP, in some instances, may also offer greater discounts than afforded by an LLP.<sup>21</sup> A detailed discussion on such discounts, however, is beyond the scope of this Article.

## VI. LLP or LLLP: The Initial Choice

If one happens to be forming a new entity and is choosing between an LLP and an LLLP, there are several things to consider. If the objective is that all the partners are to have equal control, an LLP is the appropriate choice. Nevertheless, there are particular instances where an LLLP may be the better choice. One such instance is the obvious situation in which there may be some limited partners. Other such instances may include, as stated above, estate planning considerations.<sup>22</sup> In short, the

choice hinges on the relationship the partners seek to have among themselves.

## Conclusion

As can be seen, the partnership entity has evolved over time, and continues to evolve to provide new opportunities to the entrepreneur. No longer is limited liability confined to corporations or only to the traditional limited partner. The new entities of LLP and LLLP can provide this limitation of liability to all partners, be they limited or general, with the added advantage of no corporate formalities.

Whether the LLP or the LLLP will be the appropriate choice for your client will depend on the facts and circumstances of each situation. Again, in terms of liability, there is no meaningful difference between an LLP and an LLLP. Nevertheless, there are nuances between the two that need to be analyzed in order to choose the entity that best suits your client's needs and goals. ☒

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## Endnotes

1. See 1995 Georgia Laws 470, §11.
2. See 1996 Georgia Laws 7B7, § 3.
3. Throughout this article, the term "limited liability" will refer to the fact that liability is generally limited to the amount of the partners' investment, be they general partners or limited partners.
4. See O.C.G.A. §14-8-10(a) (1994).
5. *Id.*
6. O.C.G.A. §14-9-201 provides that the certificate must set forth:
  - (1) the name of the partnership;
  - (2) the address of the registered office and the name and address of the agent for service of process;
  - (3) the name and business address of each general partner; and
  - (4) any other matters the general partners determine to include.

This section is for limited partnerships formed after July 1, 1988. For provisions relating to limited partnerships formed prior thereto, see O.C.G.A. §14-9A-20 (1994).

7. The fee currently is \$60.00. See *id.* §14-9-1101(1).
8. O.C.G.A. §14-9-206.2 requires, in addition to approval by the partners, that the following information be set forth in the election:
  - (1) the name of the partnership, corporation, or LLC making the election;
  - (2) that it elects to become a limited partnership;
  - (3) the effective date and time of such election, if later than the time of filing;
  - (4) that the election has been approved by the partners pursuant to O.C.G.A. §14-9-206.2(a);
  - (5) that filed with the certificate of election is a certificate of limited partnership in proper form pursuant to O.C.G.A. §14-9-201; and (6) a statement that states the manner and basis for converting the interests of the partners in the general partnership into interests as members of the limited partnership formed pursuant to such election. This section became effective July 1, 1997.
9. As a practical matter, the authors recommend the use of verbal references to the entities as "2LPs" and "3LPs" or "Double LPs" and "Triple LPs," which are both easier for the speaker to say as well as for the listener to understand. The reader may find this terminology helpful as it is easy for even the most astute partnership expert to get tongue-tied with these terms.
10. Under O.C.G.A. § 14-8-62(a), this election must include:
  - (1) The name of the partnership, which must include the words "limited liability partnership" or "LLP" or an abbreviation thereof pursuant to O.C.G.A. §14-8-63.
  - (2) The business, profession, or other activity in which the partnership engages.
  - (3) That such partnership elects to be an LLP.
  - (4) That the election has been duly authorized.
  - (5) Any other matters the partnership determines to include therein.
11. If there were such a change, there would be a "deemed" distribution. To the extent the deemed distribution exceeded that partner's basis, gain would be recognized. See Rev. Rul. 84-52, 1984-1 C.B. 157, for a more detailed analysis.
12. See O.C.G.A. §14-9-206.2 (1994).
13. This election is filed in the office of the Clerk of Superior Court and should be accompanied by a fee of \$60.00. The office of the Secretary of State, Corporations Division, indicates the LLLP election should also be filed with their office, though an additional \$60 fee is not required. This requirement is far from clear in the Georgia Code and should be legislatively corrected.
14. See *Id.*
15. See Rev. Rul. 84-52, 1984-1 C.B. 157.
16. *Id.*
17. Note, however, that in certain situations this could bring into play the Passive Activity Loss rules. See I.R.C. §469 (West 1998) and accompanying regulations. Generally, an interest in a limited partnership as a limited partner is inherently passive. The regulations provide some exceptions, such as where the partner also owns a general interest at all times during the year.
18. See Rev. Rul. 84-52, 1984-1 C.B. 157.

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# Structuring Corporate and Real Estate Transactions Involving Contamination

By John H. Johnson Jr., Douglas A. Henderson, and J. Michael Childers

Until recently, the identification of any significant degree of contamination on or near property included in a pending real property transaction, corporate merger or business acquisition would typically kill or substantially delay the deal. The presence of leaking underground storage tanks, buried wastes, or chemical releases to soil or groundwater were reason enough to sidetrack even the most attractive transaction. Given the potentially major, frequently unquantifiable liabilities associated with contaminated property, the common wisdom was that no prudent purchaser would knowingly acquire such property.

Today, however, buyers, sellers, and lenders no longer consider the mere presence of site contamination to be a deal killer. An increasing percentage of deals in Georgia today involve some type of environmentally impaired property, including soil and groundwater conditions which trigger notification to the Georgia Environmental Protection Division and possible listing on the State's Hazardous Site Inventory.<sup>1</sup> As discussed below, concerns over buying and selling contaminated property, and of taking contaminated property as security,

no longer should derail the typical real estate or corporate transaction. A useful assortment of approaches have emerged that allow buyers, sellers, and lenders to address their needs and manage the risks related to transferring contaminated property.

## Risks Associated With Contaminated Property

The fear of owning contaminated property is justified given the potentially serious legal, economic, and social implications. Under the Georgia Hazardous Site Response Act,<sup>2</sup> for example, and its federal counterpart, the Comprehensive Environmental Response, Compensation and Liability Act,<sup>3</sup> a party that owns contaminated property is strictly liable for the cost of cleaning up the contamination, unless the party can meet the criteria of a handful of narrowly drawn defenses.<sup>4</sup>

One of these defenses, the "innocent purchaser" defense, applies only where a party conducts "all appropriate inquiry" concerning the environmental condition of the property, purchases the property, and subsequently discovers environmental contamination. Conversely, if a

party conducts due diligence, discovers contamination prior to purchase, and purchases the property anyway, the party probably becomes, strictly, and in most cases, jointly and severally liable for the costs of cleaning up the contamination. Likewise, if a party purchases contaminated property without conducting appropriate due diligence and discovers contamination after the closing, the party is liable for the contamination. In addition to liability for the cost of cleaning up property under federal and state environmental laws, the owner may be subject to personal injury claims for exposure to the contamination, as well as property damage claims if the contamination extends off-site or continues unabated.<sup>5</sup>

The economic risks of purchasing contaminated property are no less important. Even if an “innocent purchaser” defense can be established, an owner may be saddled with property of diminished value, if other parties who are liable for the contamination are defunct or insolvent. Even owning property near a site on the Georgia Hazardous Site Inventory or the federal National Priorities List may generate significant marketability problems for the owner, because of prospective purchaser or lender concerns about the potential for the property to become contaminated. In addition, publicity-conscious companies do not want to be known as the owner of contaminated real estate.

## Considerations Involving Contaminated Property

As a general rule, the appropriate approaches for structuring a deal involving contaminated property frequently will depend on several interrelated factors, including the scope and extent of contamination, the regulatory status of the contamination, the nature of the parties, and the timing and characteristics of the deal. For any deal, these issues must be identified and taken into

consideration in crafting an optimum structure.

### Information on Contamination

The structure of all real estate and corporate transactions depends on the extent and quality of technical and legal information available on the property being conveyed and the assets being transferred. When the property or the assets involve contamination, or the potential for contamination, this information be-

comes critical in scoping out and then fashioning a successful structure for the deal. Sound environmental due diligence may enable the parties to identify precisely any significant environmental problems associated with the property or assets so that the parties can determine the best means of addressing environmental problems in the deal. If the parties know nothing about the property or the assets covered by the deal—other than they might be contaminated—then the range of options for structuring the deal are far fewer than if some information, even if only from a “Phase I Environmental Site Assessment,”<sup>6</sup> has been gathered on the property. Overall, if the type and extent of contamination is known, and that information is

reliable and up-to-date, the parties involved with the transaction will have the widest range of alternatives to formulate the deal.

It may be possible to limit, or in some cases avoid, new environmental assessment work if abundant environmental information on the property and assets is otherwise available. Nevertheless, abundant information does not necessarily equate to reliable information. For example, past environmental assessment work may be outdated, incomplete, or otherwise limited. In fact, some environmental reports can be out of date within a few months (such as if some chlorinated solvents such as dry cleaning solvents are identified in groundwater).

Another critical piece of information is whether the



contamination originates on-site or off-site, and whether the contamination has moved off-site if it originates on-site. If the contamination has moved off-site, whether by surface runoff or by groundwater flow, or if the potential exists for those, a wider range of issues may need to be considered in structuring the deal and allocating the risks and liabilities. At the least, there may be a need to deal with off-site property owners. Likewise, the parties will have to address the possibility of third party liability for environmental impact.

The push to conduct additional environmental assessments creates conflicting pressures for the parties in the deal. For example, purchasers often will (and should) undertake a Phase I environmental site assessment on some or all of the properties to identify known or potential environmental problems and then, if the Phase I results so indicate, conduct a strategic Phase II assessment on any problematic or potentially problematic areas revealed by the Phase I environmental site assessment. It may be prudent to supplement the Phase I environmental site assessment and/or Phase II assessment with a compliance audit if the business to be acquired is regulated under environmental laws. As a matter of law, however, the current owner of the property may be reluctant to perform any environmental assessment because knowledge of an environmental problem may trigger a legal duty on the part of the owner to report and remedy the problem, regardless of whether the deal goes through.<sup>7</sup> As many Georgia real estate and corporate attorneys already know, the release notification obligations imposed on property owners under the Georgia Hazardous Site Response Act created several new strategic considerations involved in the purchase or sale of properties with certain types of environmental conditions.<sup>8</sup>

### Regulatory Status

If a property is or may be subject to a regulatory enforcement action, the range of options for managing the risks probably are, other things being equal, fewer in number. The parties will have to address the requirements of the regulatory agency concerning the environmental conditions. Likewise, if only one regulatory program is involved, the number of key issues involved in structuring

the transaction may be reduced, and the deal structure may develop quickly. Having to deal with only one regulatory agency may speed up the deal, and the range of regulatory actions for managing contaminated property may be wider in one agency than in another.

### Nature of Deal

Like any other deal, the immediacy of the closing also affects transactions involving contaminated property. For example, a closing scheduled to occur within a week or two weeks probably does not allow sufficient time to conduct thorough environmental due diligence. If the deal

involves a large number of properties and facilities, thorough due diligence may not be economically feasible or may not be possible if the deal is on a fast track. If the deal is a hostile takeover, it may be impossible to review appropriate records or conduct on-site sampling.

As in any deal, whether involving contamination or not, the power and resources of the parties will influence the structure and success of a deal. If a party is on the brink of bankruptcy, it will

have little or no negotiating power, and usually, although not always, the structure of the deal will be very one-sided. Ironically, however, where environmental contamination is involved, the threat of bankruptcy may actually provide a party with some incentive to negotiate a deal because, in certain situations, the cleanup costs may be dischargeable as a pre-petition claim.<sup>9</sup>

### Characteristics of Parties

The parties' available resources, their financial strength and stability, and their degree of risk aversion all determine the underlying structure of a deal. The sophistication of their advisers, and their advisers' prior experience in handling deals involving contaminated property, also shape the success and structure of a deal.

### Integration of Factors

A sophisticated consideration of these factors will influence the structuring of a transaction involving contaminated property. For example, if the timing of the deal and resources of the parties allow for comprehensive environmental due diligence prior to the closing, the parties may be able to resolve any environmental prob-

## **The release notification obligations imposed on property owners under the Georgia Hazardous Site Response Act created several new strategic considerations involved in the purchase or sale of properties with certain types of environmental conditions.**

lems prior to the closing or, more likely, to allocate specifically the responsibility for identified problems using one or more of the options discussed below.

Conversely, if the transaction must be closed in a time frame that does not allow for adequate due diligence, then the risks of the transaction may have to be addressed through precisely-drafted, very broad warranties and representations and indemnities (provided the indemnifying parties have adequate financial resources to back the indemnity) which cover any environmental problems discovered after the closing. Even if the purchaser anticipates that the seller will remain financially viable after the closing, the broad warranty approach many times involves more risk to the purchaser (and lenders) because environmental indemnities in contracts usually are limited in duration and are capped at a maximum liability amount, and the negotiated duration and cap may be arbitrary because the environmental risk has not been quantified.

## Options For Structuring A Deal

The success and speed of a deal involving contaminated property often will depend on the creativeness of the parties in identifying, prioritizing, and allocating the environmental risk. Numerous techniques have been developed over the past ten years to allocate risks and manage liabilities associated with contaminated properties.

### Carve Out

A “carve-out” of the contaminated portion of the deal may be appropriate where the carved out property is not needed (*e.g.*, for future plant expansion), the site assessment data conclusively defines the area of contamination, and site conditions (such as groundwater flow direction) provide sufficient confidence that the presently uncontaminated property will not be subsequently impacted. Care must be taken, however, not to run afoul of regulatory guidance on carve-outs because some regulatory guidance suggests that certain carve-outs may not be permitted as a matter of public policy.

### Lease v. Purchase

If ownership of the property is not a key element of the deal, leasing may be an alternative. In certain situations involving improved property, a prospective purchaser may opt to purchase only the facility buildings and equipment and enter into a ground lease instead of purchasing the property. In other situations, a prospective purchaser may opt to lease only the interior of site buildings.

Leasing in and of itself, however, does not immunize prospective purchasers against the potential liabilities associated with contaminated property. Under most environmental laws, including those in Georgia, a tenant may be considered an “operator” of contaminated property, or at least the part of the property used by the tenant. Many environmental cleanup laws name both the current owner and the current operator as potentially liable for contamination at the property, unless a defense such as the third party defense is available. Even in a lease, therefore, it still is important to carve out any unnecessary part of the property or any part known or suspected to be contaminated and to ensure that the lease agreement holds the owner responsible for pre-existing contamination.

### Asset v. Stock Purchase

As a general rule, adopted by most federal and state courts and followed by the U.S. Environmental Protection Agency,<sup>10</sup> a merger, consolidation or stock purchase will include all the environmental liabilities of the acquired company. In contrast, an asset purchase will not include the seller’s environmental liabilities for historical violations or for previously owned or operated properties. Of course, a purchaser can still assume liability for contaminated properties acquired in an asset purchase. In an asset purchase, the key issue centers on the transactional documents which define the scope of the liabilities and responsibilities covered—and excluded—by the deal. If the asset purchase agreement fails to precisely identify environmental liabilities, the underlying legal liabilities may be allocated to the purchaser. A stock purchase may be appropriate for a wide variety of reasons, however, most non-environmental.

### Reduced Purchase Price

Where the liabilities associated with the contamination are reasonably quantifiable, it may be appropriate to reduce the purchase price of the property, and have the purchaser assume the liabilities. A reduced purchase price may be especially appealing for a purchaser if a seller’s continuing financial status is so uncertain that an environmental indemnity from the seller would be of limited value.

A necessary assumption of this option is that the costs of corrective action can be reasonably estimated, and the parties are willing to accept those numbers in the deal. Obviously, it will be imprudent for the purchaser to use this option without sound information on the contamination. Even with solid information, however, it can be difficult to estimate accurately the costs of corrective action, especially in the case of groundwater contamination. Cost overruns are common in environmental clean-

ups. Accordingly, a purchaser may need to include a premium in the price reduction to account for this risk or combine a price reduction with an indemnity or escrow for costs over the estimated amount. If third party claims are possible, the purchaser should consider additional protections.

### **Post-Closing Obligations**

If the time line for closing does not allow for adequate due diligence or does not allow for problems discovered prior to closing to be fully remedied, the parties may find it necessary to include a covenant in the agreement that obligates the seller to perform assessment and/or remediation post-closing. Such covenants must be carefully worded and probably combined with other measures, because the seller may not be enthusiastic about performing these obligations once the closing has occurred. For example, an agreed-upon percentage of the purchase price could be held in escrow pending the seller's completion of an environmental cleanup.

### **Escrow**

If the environmental liabilities have been quantified and corrective action can be completed within a reasonable period of time after closing, an escrow of the necessary funds deducted from the purchase price may be appropriate. Conversely, this approach is risky if the parties have not clearly and fully defined the extent of contamination and cleanup levels. Regardless, a purchaser should attempt to combine an escrow with environmental indemnities to cover any costs exceeding the escrow amount.

### **Letters of Credit**

If the purchaser needs additional assurance that post-closing obligations will be discharged on time, it may seek to require the seller to obtain a letter of credit or some other form of financial assurance regarding those obligations. The guarantor may be a financial institution or a financially viable owner of the seller, such as a parent company, individual shareholder or partner. Like many of the alternatives, however, the letter of credit must precisely identify the environmental conditions (*e.g.*, cleanup costs exceeding \$250,000 as defined by the agency) that allow a party to draw down on the letter of credit.

### **Environmental Insurance**

The past five years have witnessed the development of a broad range of insurance products aimed at underwriting the risk of contaminated property. Policies are now available to cover the risk of remediation cost overruns, third party liability from off-site migration of

contamination, and leaking underground storage tanks. If a purchaser is willing to proceed with a deal where the remediation costs will not exceed a set amount, then a remediation cost cap policy can cover the risk of the remediation exceeding that amount. The disadvantages of environmental insurance lie in the frequent ambiguities inherent in the policies, the significant level of environmental information required by the underwriter, the annual nature of the policies, and the transactional costs involved. With some exceptions, environmental insurance works best for larger-dollar deals where a purchaser or lender seeks additional risk management protection.

### **Trust Funds**

In approaching a deal involving contamination, both sides of the transaction should consider whether contamination can be addressed using monies from a regulatory trust fund. In Georgia, if an owner or operator of an underground storage tank system complies with certain requirements, that party may be able to recover its costs related to a leaking underground storage tank, including the tank closure itself.<sup>11</sup> Although the Georgia Hazardous Site Response Act offers a "fund,"<sup>12</sup> those trust fund monies are by law and in practice restricted to a very narrow class of sites where no responsible parties have stepped forward to address the contamination. Those trust fund monies will not, in all likelihood, be available to fuel a corporate or real estate transaction. Other states may have unique funds for certain types of contamination—*e.g.*, Florida has a trust fund program for dry cleaning solvent contamination cleanup—that may apply in some instances.

### **"Brownfields" Protection**

Also within the past few years, the federal government and many state governments have adopted a broad range of regulatory mechanisms to encourage redevelopment of contaminated property, typically contaminated urban properties, also known as "brownfields." In some states, less stringent cleanup standards may be available for purchasers who commit to redeveloping contaminated properties. Although cleanup standards usually are not reduced, some break on liability may be offered to the purchaser. For many corporate deals, however, which involve multiple properties and varied assets, the brownfields protection probably will not play a significant role in structuring the deal.

Georgia has established the Georgia Hazardous Site Reuse and Redevelopment Act<sup>13</sup> to provide relief to certain purchasers of contaminated property on the Georgia Hazardous Site Inventory. This Act, as amended effective July 1, 1998, provides a prospective purchaser

of “qualifying property” a limitation of liability from claims by the state or third parties for “costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release at the HSI site of which the qualifying property is a part.”<sup>14</sup> To obtain this limitation of liability, the purchaser must not be a responsible party, or have a connection to any responsible party, and must agree to perform corrective action or otherwise bring the property into compliance with the appropriate risk reduction standards. The limitation of liability also may extend to parties lending on the property, under the condition that if the lender forecloses, it loses its limitation of liability unless within 180 days it locates another qualifying prospective purchaser or itself qualifies as a prospective purchaser.

Because the Georgia’s brownfields provision is restricted to sites on the Georgia Hazardous Site Inventory, however, it will not apply to many deals, such as those involving property not on the Hazardous Site Inventory or property with underground storage tanks containing petroleum products. As a practical matter, although the Act offers significant limitations for certain limited sites, it probably will not apply to most deals in Georgia involving contamination.

### **Contractual Representations, Warranties, and Indemnities**

For the vast majority of real estate and corporate transactions involving contamination, the allocation of liabilities and responsibilities occurs in the sales agreement, asset purchase agreement, or security agreements, or in separate environmental indemnification agreements.<sup>15</sup> Various legal aspects of these agreements are discussed below, given their pervasive role in transactions involving contaminated property.

## **Environmental Contracts**

Generally, although parties cannot contract away their environmental liabilities to third parties such as the state or federal government, they can allocate their potential response costs or other environmental responsibilities among the parties to the agreement.<sup>16</sup> As in any deal, the challenge is to identify the key legal issues, negotiate a satisfactory resolution of those issues, and memorialize the agreement of the parties in a manner that will withstand later judicial scrutiny. This task is not unique to environmental transactions, but environmental conditions make the task considerably more difficult.

### **Validity of Contractual Allocations and Choice of Law Issues**

As a general rule of federal law, parties to an agreement can allocate their environmental response cost responsibilities by contract. At least two federal courts in Georgia<sup>17</sup> have held that, under Georgia law, private parties can allocate their environmental responsibility by contract, and this conclusion reflects the majority rule of law in other jurisdictions.<sup>18</sup> In some cases, the question arises over which law applies in interpreting contracts involving hazardous substances. The majority rule of law is that state law governs the interpretation of these agreements, not federal common law.<sup>19</sup>

### **Enforceability of Environmental Agreements: Federal Cases**

At least three legal perspectives have developed over the enforceability of an agreement referencing environmental conditions. In one set of decisions, courts have enforced agreements allocating environmental responsibilities, if the contract referred to “any and all claims, damages, judgments, fines” or used other similar all-inclusive language.<sup>20</sup> In another set of cases, courts have required specific reference to “CERCLA,” “environmental” or similar terms before the agreement will be enforced.<sup>21</sup> A final set of cases focuses not on the specific risk-allocation language of the agreement, but on the parties’ intent.<sup>22</sup> As developed in these cases, a widely different array of contractual provisions have been rejected and accepted as including environmental liability.

### **Interpretation of Environmental Agreements: Georgia Cases**

Although no Georgia state court has specifically addressed the validity and enforceability of agreements allocating environmental responsibilities, two federal courts in Georgia have interpreted Georgia contract law on this issue. In the first, *In re Diamond Manufacturing*,<sup>23</sup> the U.S. Bankruptcy Court for the Southern District of Georgia held that a broadly worded 1964 lease which required the tenant to comply with “all present or future laws ... at any time in the future” included environmental liabilities, although the lease was entered into prior to the enactment of CERCLA.<sup>24</sup> The court ruled that “[a]lthough the provisions may be couched in general risk allocation language, the parties clearly agreed that the lessee would be bound to comply with all laws which were either currently existing at the time of entering the lease or which might be enacted ....”<sup>25</sup> According to this court, Georgia law did not require a specific reference to “environmental,” “CERCLA,” or similar terms to be enforceable.

The Southern District of Georgia reached a somewhat different conclusion in *Union Carbide v. Thiokol*.<sup>26</sup> In this case, the court interpreted a 1976 asset purchase agreement that provided that Thiokol, the seller, would indemnify Union Carbide for “any and all losses, damages, claims, or expenses based upon the conduct of the Seller or its business at the Facility at any time,” and a survival clause limited the survival of all “representations, warranties and agreements” to 18 months after the signing.<sup>27</sup> Thiokol argued the expiration of the indemnity covered all claims, including all environmental liability for all claims.<sup>28</sup>

Citing *Hatco v. W. R. Grace*,<sup>29</sup> a district court decision from New Jersey, the court held “[n]o clear expression, no indemnity.”<sup>30</sup> Referring to a provision of the asset purchase agreement which limited the debts, liabilities and obligations assumed by Union Carbide and which did not mention “environmental,” the court ruled that Union Carbide did not assume environmental liabilities. Although CERCLA had not been enacted as of the asset purchase agreement, the court held there was no “clear expression of an intent to release Thiokol from all CERCLA claims.”<sup>31</sup> Accordingly, despite the expiration of an indemnity that seemed to cover “all claims,” the court ruled that environmental liability for Thiokol’s environmental actions prior to the asset purchase agreement remained with Thiokol.

## Practical Drafting Issues

As suggested above, the most common method for allocating the risks involved with contaminated property is by the warranty and indemnification provisions of a contract. Typically, the purported status of the property is set forth in warranties, and the allocation of risk, both as to the breach or inaccuracy of these warranties and as to responsibility for site conditions existing prior and subsequent to closing, is addressed through the indemnification provisions. As underscored by the varying interpretations discussed above, however, drafting environmental warranty and indemnity provisions of a contract can be challenging.

### Warranties and Covenants

The following represent some of the key subjects to be addressed in drafting warranties and covenants for transactions involving contaminated or potentially contaminated property:

- ♦ Current soil and groundwater conditions at and, in some cases, near the facilities or properties involved in the transaction or covered by the loan agreement;
- ♦ Compliance with applicable environmental laws and

regulations, including required permits and regulatory approvals;

- ♦ Pending or threatened claims involving the environment or human health such as lawsuits involving environmental claims or OSHA claims;
- ♦ Current or past underground storage tanks at the property; and
- ♦ Current and past waste disposal and spills or other releases of hazardous substances at the property.

To address these issues in an agreement, the seller will “except out” any non-conforming situations or conditions in separately identified schedules to the environmental warranty.

When negotiating an environmental warranty section of an agreement, one or more of the following issues frequently arise:

- ♦ Whether the warranty will be conditioned on (*i.e.*, limited to) the knowledge of the party making the warranty (*e.g.*, to the best of seller’s actual knowledge *v.* no knowledge qualifier);
- ♦ Whether the subject of the warranty will be limited to environmental conditions caused by the seller; and
- ♦ Whether the subject of the warranty will be limited to problems which could cause a material adverse effect on the purchaser.

### Indemnification Provisions

For any agreement involving environmental responsibilities and potential environmental liability, the indemnification provisions may be the most hotly contested provisions of the agreement. An indemnity embodies the overall allocation of liability among the parties. The following issues should be addressed in an environmental indemnity:

- ♦ Liabilities covered (*i.e.*, property damage, personal injury, diminution of value, investigatory costs, cleanup costs, penalties, attorney’s fees);
- ♦ Retained *vs.* assumed liabilities;
- ♦ Scope of environmental conditions covered (*e.g.* pre-existing, on-site, off-site known, unknown);
- ♦ Triggers for the duty to defend and duty to indemnify (*e.g.*, upon receipt of notice from an administrative agency *v.* discovery of contamination); and
- ♦ Survival (*e.g.*, one year post-Closing *v.* unlimited duration).

A frequent issue in negotiating environmental indemnities is whether the indemnity will apply only to a breach of an environmental warranty or will apply to all pre-existing environmental conditions or violations, or at least those caused by the seller. For instance, if the environmental indemnity only covers a breach of a warranty, the

indemnity will not cover known or suspected environmental problems or liabilities "excepted out" by the seller on a schedule to the environmental warranty.

As a practical and a legal matter, the information in a schedule to an environmental warranty may be critical to the scope of the environmental indemnity in some contracts. From the seller's perspective, it may be advisable to define environmental matters on the schedule in general terms. On the other hand, the purchaser may want to identify the precise problem that does not conform to the warranty or representation.

Another recurring issue is whether there will be a liability cap (*e.g.*, not to exceed the first \$1 million dollars of corrective action costs) and/or basket (*e.g.*, no liability under the indemnity until costs exceed \$1 million) on claims under the indemnity. Any resolution of this issue will depend on the size of the deal and the financial resources of the parties.

## Definitions

To try to avoid ambiguity and subsequent disputes over interpretation, it is important to clearly define many of the key terms typically used in environmental warranties and indemnities, such as environmental laws, hazardous substances, hazardous waste, hazardous materials, environmental claims, release, and disposal. In environmental law, definitions are critical.

Unless otherwise defined in the agreement, some of these terms may be construed as terms of art because they are defined in important environmental laws. For example, the terms "hazardous waste" and "hazardous substances" are defined in the Resource Conservation and Recovery Act<sup>32</sup> and the Comprehensive Environmental Response, Compensation and Liability Act,<sup>33</sup> respectively. Under these statutes, the definition of "hazardous waste" is more limited than "hazardous substances."<sup>34</sup> The terms "disposal" and "release" are also defined in the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act, respectively. The definition of "release" includes both affirmative acts such as disposal and dumping and passive elements such as leaking, leaching and migration.

For the uninitiated, the use of common environmental jargon in the agreement, without definition, could inadvertently limit or expand the meaning of an environmental warranty or indemnity, and thus the allocation of environmental liability among the parties, in a manner that is inconsistent with the deal struck by the parties and, consequently, result in a contractual dispute subject to differing interpretations.

## Conclusion

Just as all corporate deals are different, all deals involving contaminated property involve a host of factors that vary from party to party and property to property. The presence of contamination, whether based in fact or not, makes the process of structuring a successful deal a significant challenge. The tried and true agreements from other transactions do not always stack up well when contaminated property is the focus of the deal. Although the relative negotiating strengths of the parties ultimately will determine the terms of a deal, there are a wide range of mechanisms to be considered for allocating environmental risk and liabilities to facilitate the deal. In an environmental deal, the reliability and availability of technical information usually plays a prominent role in the final structure of the deal. ■



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## Endnotes

1. O.C.G.A. § 12-8-97 (1996). The Hazardous Site Inventory is a listing of sites that require "corrective action" as defined in the EPD regulations. For background on the Georgia Hazardous Site Response Act, see Hollister A. Hill and Douglas A. Henderson, *Property Owner Beware: The New Georgia Superfund Framework Takes Shape*, 34 GA. ST. B.J. 73 (1995).
2. O.C.G.A. § 12-8-92 to § 12-8-97 (1996).
3. 42 U.S.C.A. § 9601 to § 9675.
4. These acts provide only a limited number of defenses: (1) an act of God; (2) an act of war; (3) the third party defense; and (4) an innocent purchaser defense. Under the third party defense, a party must establish that another, non-contractually related person caused the contamination. In many situations,

such as the landlord-tenant relationship, the defense may not be available.

5. See *Crowe v. Coleman*, 113 F.3d 1536 (11th Cir. 1997); *Hoffman v. Atlanta Gas Light Co.*, 206 Ga. App. 727, 426 S.E.2d 387 (1992); *Citizens & Southern Trust Co. v. Phillips Petroleum Co.*, 192 Ga. App. 499, 385 S.E.2d 426 (1989).
6. Environmental due diligence can take several forms ranging from a records review to on-site inspections and assessments. A non-intrusive inspection of site conditions and review of historical operations and ownership of the property is known as a "Phase I environmental site assessment." Typically, a Phase I assessment does not include sampling and analysis of soil or groundwater conditions at the property or of other substances potentially identified at the facilities on the property, such as asbestos containing materials or lead-based paints. By comparison, a Phase II environmental site assessment typically includes some soil and groundwater sampling and analysis, as indicated by the potential nature and extent of contamination at the property. Neither CERCLA nor HSRA specifies the precise level of assessment that must be conducted to establish the "innocent purchaser" defense.
7. O.C.G.A. § 12-8-97(d) (1996).
8. The Georgia Hazardous Site Response Act requires property owners, not responsible parties, to submit a release notification to the Georgia EPD for certain releases to soil and groundwater. *Id.*
9. For recent guidance on this issue, see U.S. Environmental Protection Agency, *Guidance on EPA Participation in Bankruptcy Cases* (Sept. 30, 1997).
10. See Memorandum from Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring re: *Liability of Corporate Shareholders and Successor Corporations for Abandoned Sites Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)* (June 13, 1984).
11. O.C.G.A. § 12-13-9 (1996).
12. *Id.* § 12-8-95.
13. *Id.* § 12-8-200. Although the Hazardous Site Response Act contains provisions that appear to provide a limitation of liability for "bonafide" purchasers of contaminated property listed on the Georgia Hazardous Site Inventory, *Id.* § 12-8-96.3, the Georgia EPD probably would look to the Hazardous Site Reuse and Redevelopment Act to address brownfields in the State. Apparently, the Georgia Legislature did not remove the brownfield provisions in HSRA when it revised the Hazardous Site Reuse and Redevelopment Act.
14. *Id.* § 12-8-206.
15. For several reasons, it is advisable to address environmental conditions in a stand-alone environmental indemnity agreement rather than address the issues solely in a security deed.
16. See Douglas A. Henderson, *Environmental Liability and the Law of Contracts*, 50 BUS. LAW. 189 (1994).
17. *Union Carbide Corp. v. Thiokol Corp.*, 890 F. Supp. 1035 (S.D. Ga. 1994); *Georgia Ports Auth. v. Diamond Mfg. Co. (In re Diamond Mfg. Co.)*, 164 B.R. 189 (Bankr. S.D. Ga. 1994).
18. See, e.g., *Jones-Hamilton Co. v. Beazer Materials & Servs., Inc.*, 973 F.2d 688 (9th Cir. 1992).
19. *Mardan Corp. v. C.G.C. Music, Ltd.*, 804 F.2d 1454 (9th Cir. 1986); *Commander Oil Corp. v. Advance Food Serv. Equip.*, 991 F.2d 49 (2d Cir. 1993).
20. See *Kerr-McGee Chem. Corp. v. Lefton Iron & Metal Co.*, 14 F.3d 321 (7th Cir. 1994); *United States v. Hardage*, 985 F.2d 1427 (10th Cir. 1993).
21. *Wiegman & Rose Int'l Corp. v. NL Indus.*, 735 F. Supp. 957 (N.D. Cal. 1990); *Channel Master Satellite Sys., Inc. v. JFD Electronics Corp.*, 702 F. Supp. 1229 (E.D.N.C. 1988); *Southland Corp. v. Ashland Oil, Inc.*, 696 F. Supp. 994 (D.N.J. 1988).
22. *Commander Oil Corp. v. Advance Food Serv. Equip.*, 991 F.2d 49 (2d Cir. 1993); *C.P. Chems., Inc. v. Exide Corp.*, No. 93-1426, 1993 U.S. App. LEXIS 33716 (4th Cir. Dec. 28, 1993).
23. *Georgia Ports Auth. v. Diamond Mfg. Co. (In re Diamond Mfg. Co.)*, 164 B.R. 189 (Bankr. S.D. Ga. 1994). In the interest of full disclosure, one of the authors, Doug Henderson, assisted Ezra Cohen of Troutman Sanders in his representation of the Georgia Ports Authority as Special Assistant Attorney General.
24. *In re Diamond Mfg.*, 164 B.R. at 204.
25. *Id.*
26. *Union Carbide Corp. v. Thiokol Corp.*, 890 F. Supp. 1035 (S.D. Ga. 1994).
27. *Id.* at 1040, 1049.
28. *Id.* at 1049.
29. *Hatco Corp. v. W.R. Grace & Co.*, 801 F. Supp. 1309, 1321 (D.N.J. 1992).
30. *Id.* at 1050.
31. *Id.*
32. 42 U.S.C.A. §§ 6901 to 6992k (1995 & Supp. 1998)
33. 42 U.S.C.A. §§ 9601 to 9675 (1995 & Supp. 1998).
34. Likewise, the term "hazardous materials" is defined in the Hazardous Materials Transportation Act and consists of a similar but not identical list of substances. 49 U.S.C. § 5102(1) (1994); see generally 49 U.S.C.A. § 5101 to § 5127 (1997 & Supp. 1998).

# American Academy - New

Lawyer at  
work(West) pickup  
4/98: 2-page spread



# Making History: The Annual Meeting

By Jennifer M. Davis

**WHEN LINDA A. KLEIN WAS SWORN-IN AS** President of the State Bar of Georgia in June of 1997, she made history as the first woman to hold the office. Since that date, she has made history in a number of other ways. She successfully undertook an effort to get the Legislature to appropriate \$2 million in civil legal services funding for domestic violence victims. She brought the Midyear Meeting to Savannah attracting a record crowd. And she elected to bring the Annual Meeting to Atlanta where 70 percent of the state's lawyers practice. There she really attracted a crowd.

Her goal was for the Annual Meeting to be reasonably priced and accessible. Ms. Klein explains, "My vision when I became president of the Bar, because we have a mandatory Bar, was to make as many people feel welcome as possible." Making it accessible was easy by holding the meeting in close proximity to 14,000 local lawyers. Making it "reasonably priced" was more of an undertaking. Since Georgia has the lowest Bar dues in the country, there is little money in the budget for events. Therefore in prior years, the meeting registration fee was often more than Bar dues. This year, however, with a successful fund-raising campaign, sponsorship support subsidized the meeting making it possible to totally eliminate the registration fee.

Ms. Klein planned a tech show and exhibitor hall to offer lawyers ways to expand their practice tools. She sought to increase law school participation through alumni events. She wanted to include summer law clerks with special programs. She planned to augment the number of continuing legal education seminars and assemble the best and brightest local and national speakers. She wanted to offer activities that would

interest family members. She hoped all of this combined would result in increased participation. She was right. And probably more right than she ever expected.

The key to pulling off this monumental event was putting the right person in charge. And Linda Klein did just that, appointing Stephanie E. Parker, a litigator at Jones, Day, Reavis & Pogue, as chairperson. Together they took traditional Annual Meeting events and enhanced them with even more opportunities and fresh new ideas. Through their combined leadership, energy and dedication, they orchestrated a record-breaking event which between June 17-20 attracted almost 4,000 lawyers to the Grand Hyatt in Buckhead.

## Opening Day

The Annual Meeting began on Wednesday, June 17, with six CLE seminars, a tech show and exhibitor hall that was open throughout the meeting, an exclusive tour of Turner Field, a variety of committee meetings, and law school welcome receptions.

Some of the opening day CLE seminars were: Criminal Law led by U.S. District Court Judge Duross Fitzpatrick; Malpractice Prevention presented by ANLIR, the State Bar's endorsed professional liability insurer, which offered attendees a five percent premium credit upon renewal of their policies; and Recent Developments in Environmental Law organized by James S. Stokes of Alston & Bird, who serves as chair of the Governor's Environmental Advisory Council.

Also the State-Federal Judicial Council presented a discussion on lawyer discipline moderated by Stephen O. Kinnard with panelists Judge Julie E. Carnes, Judge Hugh Lawson, Judge Philip F. Etheridge, Judge Joe C. Bishop and 11<sup>th</sup> Circuit Court Clerk Miguel Cortez.

Attendees also heard from Cynthia Clanton, Director of the State Bar's Consumer Assistance Program (CAP), about how that office is assisting both lawyers and the public in resolving disputes that do not rise to the level of an ethical violation. Many judges in attendance asked Ms. Clanton to provide their court personnel with CAP brochures for distribution when they receive complaints from the public.

## Catching Up With Old Friends

After a flurry of activities and a constant flow of lawyers through the Grand Hyatt, the first day closed with a record number of law school welcome receptions. In addition to the usual alumni gatherings hosted by Emory, University of Georgia, Georgia State and Mercer, 14 other law schools greeted their alumni — University of Alabama, Cumberland, Duke, Florida State, University of Florida, George Washington, Harvard, John Marshall, University of Michigan, University of Tennessee, Vanderbilt, University of Virginia, Washington & Lee, and Yale.

## Get Your CLE

The alumni of several law schools were able to visit more the next morning at their respective breakfast meetings. Later on Thursday, nine CLE seminars drew a crowd of participants, while spouses and guests took a tour of the High Museum of Art. One popular seminar was Fair Measure, hosted by special guest Laurel Bellows and Georgia Court of Appeals Judge John H. Ruffin Jr. Ms. Bellows is a member of the ABA House of Delegates and Special Advisor to the ABA Commission on Women. Judge Ruffin serves as chair of the Georgia Supreme Court Commission on Equality. The seminar offered employers of attorneys — in corporate or government legal departments and law firm environments — a valuable guide in determining whether their present evaluation system is fair with respect to how all attorneys are appraised, compensated and promoted.

Another CLE seminar, Litigation Strategy, chaired by Jerry B. Blackstock, of Powell, Goldstein, Frazer & Murphy, attracted a standing-room only crowd eager to learn from experienced trial lawyers actual techniques for handling a contested matter. Denise Hipps of Coopers & Lybrand, chaired a seminar exploring Demonstrative Evidence and Electronic Discovery.

## Lunch with the Governor

The highlight of the second day was a luncheon

featuring a special address by Governor Zell Miller. Following his speech, Gov. Miller was presented a resolution by President Linda A. Klein in recognition of the impact he has had on Georgia's judicial system. As of June 1998, Gov. Miller had appointed five of seven Supreme Court justices, four of ten Court of Appeals judges, 67 of 169 superior court judges, and 43 of 96 state court judges. Even more noteworthy is that throughout the judicial nomination process, Gov. Miller sought to reflect the diversity of our state by making minority and female candidates almost half of his total appointments. This diversity is personified by his elevation of Justices Leah Sears and Carol Hunstein as the first women to serve on the Supreme Court bench.

The Bar's interest in diversity was apparent as the Georgia Minority Counsel Program (now the State Bar of Georgia Diversity Program) hosted a reception that evening for minority associates and summer law clerks. Also, the Georgia Association of Women Lawyers held a reception for their members and others interested in promoting gender equality in the profession. In addition, the Pro Bono Project of the State Bar held a reception to honor and thank those lawyers who had volunteered to handle pro bono cases throughout the year. Meanwhile 16 sections banded together to host one reception which proved a great way to exchange ideas especially where practice areas overlap.

## A Capitol Idea

After hearing Gov. Miller's reflections on state government at lunch, meeting participants enjoyed a different version of politics as the parody troupe, The Capitol Steps, took the stage at the Roxy Theater that evening. The event, which opened with a reception, was the first annual fund-raiser for the Lawyers Foundation (formerly the Fellows Foundation) of the State Bar of Georgia, and raised \$25,000 which will be used for charitable donations. Before an audience of 700, The Capitol Steps delivered side-splitting musical renditions of the latest Washington scandals, many of which parodied the life and times of Monica Lewinsky and President Clinton. As they self proclaim, "The Capitol Steps is the only group in America that attempts to be funnier than Congress." It was good humor for a good cause.

## CLE Opportunities Abound

After an evening of political forecasting, some meeting participants attended a breakfast on Friday, June 19, hosted by the Health Law Section, featuring



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**SCENES FROM THE ANNUAL MEETING: 1. (l-r) Carmen Smith, Roxanne Douglas and Judge Angela Butts visit before the Gov. Miller luncheon. 2. (l-r) Judge Patsy Porter and Judge John Mather greet the Governor. 3. Chief Judge Joseph Hatchett, David Meltz and Derek Alphan enjoy the Supreme Court reception.**

Donald Ratajczak, Director of the Georgia State University Center for Economic Forecasting. Others chose to attend the Products Liability Section breakfast to hear the latest on the federal tobacco litigation through the eyes of Mark Curriden, of the *Dallas Morning News*, who is also the exclusive reporter covering this issue for the *ABA Journal*. Meanwhile at the General Practice & Trial Section breakfast, the annual Tradition of Excellence Awards were presented as they remembered the late Judge A.W. Birdsong Jr., who was the recipient of the judicial category award (other winners on page 83). In addition to these three sections, 16 others also convened for breakfast meetings.

The day continued with eight CLE opportunities including a look at Unification of the Courts System, chaired by Judge Elizabeth Long and featuring special guest Talbot "Sandy" D'Alemberte, President of Florida State University and Past President of the ABA, who spearheaded Florida's unification experience. Another CLE, which focused on improving the delivery of legal services, taught lawyers how to use the Internet for legal research and development. The class was

offered twice and led by Harry Herington, a representative of GeorgiaNet, which hosts the State Bar's Web site.

The Chief Justice's Community Service Task Force reinforced the importance of integrating public service into our professional and personal lives during a CLE presentation. Special guest Charles H. Battle Jr., President of Central Atlanta Progress, joined Chief Justice Robert Benham and others to discuss how community involvement can be a means of improving the public's perception of lawyers. The first annual Chief Justice Robert Benham Awards for Community Service were given to 11 outstanding community servants during that program (see recipients on page 78).

## General Session

The annual meeting of the membership was held on Friday morning, during which the members voted to change the procedure for electing the Executive Committee at-large members. They voted to amend Bylaw Article IV, Section 1 (see page 89 for complete text)

such that members will now be elected by majority vote. Previously, candidates for Executive Committee vied for a particular post. Also, the membership approved changing the name of the Younger Lawyers Section to the Young Lawyers Division (see page 89).

Next Chief Justice Robert Benham delivered the State of the Judiciary address (see page 40), followed by reports from 11<sup>th</sup> Circuit Chief Judge Joseph Hatchett on the State of Federal Judiciary and Attorney General Thurbert E. Baker on the State of the Law Department. Finally, State Bar President Linda A. Klein presided over her final Board of Governors meeting and delivered her President's report recapping accomplishments of her term (see page 47).

Also, Sen. Mary Margaret Oliver was honored for her service to the Georgia General Assembly. As chair of the Senate Judiciary Committee, Senator Oliver has managed many vital issues of concern to Bar members: funding for legal services to domestic violence victims, corporate code revisions, guardianship revisions, ADR, indigent defense funding, CASA funding, centralized indexing of UCC filing, judicial compensation, LLC and LLP legislation, and many others.

## An Inaugural Event

As night began to fall on Friday, the largest Annual Meeting and the first one ever to be held in Atlanta began drawing to a close. Over 450 meeting participants enjoyed a special reception with the Justices of the Georgia Supreme Court, followed by the Presidential Inauguration Dinner and Awards Presentation. The event was a opportunity to reflect on the successes of the past year, and to recognize particular individuals whose leadership was exceptional. The evening was also a time to begin anew with the passing of the gavel to William E. Cannon Jr. of Albany, who was sworn-in by Chief Justice Benham as the 1998-99 President of the State Bar of Georgia.

## A Basketball Legend

Ask any youngsters what the best part of the Annual Meeting was, and they will tell you—breakfast on Saturday morning with Atlanta Hawk and NBA All-Star Dikembe Mutombo. (A close runner-up would be the Spice Girls who were rumored to be staying at the hotel.) A special treat at the Children's Breakfast included a color guard procession by the Thomasville Brownie troop. Following an inspirational message by the basketball great, children of from age 5 to 50 lined up for an autograph.

## The New Board of Governors

The first Board of Governors meeting of the 1998-99 term Saturday morning marked the official end of the Annual Meeting and the beginning of a new year. President William E. Cannon Jr. reported on his goals and projects for the year (see his address on page 44). Also of significance, the Board voted to approve the formation of "district professionalism committees" throughout the state to utilize peer pressure on an informal basis in an effort to discourage unprofessional and uncivil conduct. The program was proposed by the Bench and Bar Committee under the leadership of co-chairs Robert D. Ingram and Judge Robert L. Allgood. Look for an in-depth article on this developing program in a future issue of the *Journal*. Following are highlights of the remainder meeting:

- ♦ The Board unanimously approved the 1997-98 State Bar budget.
- ♦ Following a report by Linda A. Klein, the Board adopted a resolution opposing Auto-Choice, a proposed federally mandated no-fault insurance. It passed unanimously as germane to the purposes of the Bar and was supported on the merits.
- ♦ The following were elected by majority ballot vote to the Executive Committee for 2-year terms: Judge Edward E. Carriere Jr., Decatur; Phyllis J. Holmen, Atlanta; George R. Reinhardt Jr., Tifton.
- ♦ The Board approved the appointment of Harold T. Daniel Jr., Carol M. Wood, and James John Clark to the Georgia Legal Services Board for 2-year terms.
- ♦ The Board approved President Cannon's appointments to the Investigative Panel: Bobby T. Jones, Metter (2001-8th District); Rafe Banks III, Cumming (2001-9th District); Susan Martin Reimer, Augusta (2001-10th District); John Andrew Nix, Conyers (1999-At-Large).
- ♦ The Board approved President Cannon's appointments to the Formal Advisory Opinion Board: H. Michael Bagley, Atlanta (2001); George G. Dean II, Buford (2001); Kathleen Horne, Savannah (2001); Pickens A. Patterson, College Park (2001); John S. Sims Jr., Tifton (2001).
- ♦ The Board approved the appointment of Kathy B. Ashe for a 3-year term to the Chief Justice's Commission on Professionalism.
- ♦ The Board approved proposed Bylaw changes to the Criminal Law Section and the International Law Section.
- ♦ Judge Edward E. Carriere Jr. provided an update on proposed revisions to the Model Rules of Professional Conduct for future possible adoption in Georgia. ☐



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**ANNUAL MEETING SNAPSHOTS:** 1. Charles Mathis (left) visits with Justice Leah Sears and her campaign manager Haskell Ward. 2. Following his CLE seminar on criminal law, Judge Duross Fitzpatrick (right) talks with attendees. 3. Sen. Mary Margaret Oliver received the Special Legislative Service Award during the Board meeting. 4. Attorney General Thurbert Baker delivers the State of the Law Department address. 5. (l-r) Board of Governors members Todd Carroll, Phyllis Holmen and Wilson DuBose listen during the Saturday meeting. 6. (l-r) Gerald Weber and Brian Kintisch talk at the pro bono reception. 7. Judge Jack Ruffin (right) presents a special award to Gus Cleveland in honor of his service to ICJE. Accepting the award since Mr. Cleveland was unable to attend, were his son, Dave, and

wife, Lollie. 8. (l-r) Bench & Bar Committee Co-chairs Robert Ingram and Judge Lyn Allgood discuss the district professionalism committees at the Board meeting. 9. At the Georgia Association for Women Lawyers reception, Past President Laura Kurlander (left) and President Nancy Whaley (right) greet twins Ruby and Ruth Crawford, who each served as President of GAWL in the 50s. 10. President-elect Rudolph Patterson shares a laugh with Capitol Steps performer and co-founder Elaina Newport. 11. Hawks player Dikembe Mutombo signs autographs for the Brownie troop. 12. Aisel Smith (right) is congratulated by Dikembe Mutombo for winning an essay contest sponsored by the YLS Aspiring Youth Program. She received a scholarship from the national Aspiring Youth Foundation.



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**RECORD NUMBER OF LAW SCHOOLS PARTICIPATED:**

1. (l-r) Washington & Lee welcomed J.D. Humphries, Hon. William Hill, Dean Barry Sullivan and Linda Klein; 2. Annual Meeting Chair Stephanie Parker and law student John Gannon visit at the Vanderbilt reception. 3. The University of Georgia recognized distinguished alumni Paul Kilpatrick and Judge Julie Carnes. 4. The University of Alabama greeted (l-r): Alumni President Judy Whalen, Prof. Tom Jones, Prof. Susan Randall, Dean Ken Randall and alumnus Thomas Christopher. 5. Former Chief Justice Harold and Nora Clarke are pictured with a portrait which was presented to the University of Georgia Law School. 6. (l-r) Florida State welcomed Associate Dean Nat Stern, Bob Rothman and Thomas Gaines. 7. (l-r) George Washington alumni Frank Mulcahy and Roger Mills talk with Dean Tom Morrison. 8. Visiting at the University of Tennessee reception were (l-r): Dean Dick Wirtz, Doug Thompson and Robert Schock.



ANLIR- new

# State Bar and Related Organizations Honor 1997-98 Award Winners

By Jennifer M. Davis

**THE STATE BAR OF GEORGIA AT ITS ANNUAL** Meeting honored several individuals and organizations for outstanding community leadership and commendable service. Their commitment reflects the belief that community involvement and responsible citizenship are integral components of the practice of law. Legal professionals such as these award winners are involved in continuing a long-standing tradition for the profession. Winners were honored on Friday, June 19, at the Inaugural Dinner at the Grand Hyatt.

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 Scott Walters Jr. of the South Fulton Bar Association and John J. Tarleton Jr. of the DeKalb Bar Association.

Also presented were the annual **Law Day Awards of Achievement**. Every year, local and circuit bar associations plan Law Day activities in their respective communities to commemorate this occasion which is celebrated on May 1. This year's awards were presented to: **Atlanta Bar Association, Dougherty Circuit Bar Association, Gwinnett County Bar Association, and Sandy Springs Bar Association.**

The **Award of Merit**, given to local and circuit bar associations for their dedication to improving relations among local lawyers and serving their communities, went to: **Atlanta Bar Association, Gwinnett County Bar Association, and Georgia Association for Women Lawyers (Best New Entry).**

In addition to Law Day and Award of Merit competitions, voluntary bars had the opportunity to participate in a **Newsletter Award** competition. Awards were presented to bars that provide

the best informational source to their membership. The 1997-98 winners were: **Atlanta Bar Association**

**Cobb County Bar Association, Dougherty Circuit Bar Association, South Fulton Bar Association, and DeKalb Lawyers Association (Best New Entry).**

The **President's Cup**, the highest honor within the voluntary bar awards, is presented annually to the bar with the best overall program. This year's winner, the **South Fulton Bar Association**, was led by President David R. Moore.

In addition, voluntary bars were honored for participating in the State Bar-sponsored "**1997 Season of Hope: Aid-A-Shelter**" collection drive for Georgia domestic violence shelters. The project was a precursor to the State Bar push to get the Legislature to allocate \$2 million to provide civil legal services to domestic violence victims. Those groups who participated were: Atlanta Bar Association, DeKalb Bar Association, Gate City Bar Association, Georgia Association of Black Women Attorneys, Georgia Hispanic Bar Association, Gwinnett County Bar Association, National Asian-Pacific Bar Association, Paulding County Bar Association, Rome Bar Association, Tallapoosa Circuit Bar Association, and the Tifton Bar Association.

Also, **Edward Meniffee**, Director of the State Bar's BASICS (Bar Association Support to Improve Correctional Services) program, was honored for 22 years of commendable service to the State Bar and the community. During his tenure as Director, he has provided invaluable support, education and inspiration to thousands of Georgia's soon-to-be released and post-released prison inmates.

## Honoring the Media

The Silver Gavel Awards, sponsored by the State Bar, recognize published material and radio and television broadcasts that accomplish any of the following purposes: 1) Foster greater public understanding of the inherent values of our legal and judicial system; 2) Inform and educate citizens as to the role of the law, the



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1. The South Fulton Bar took home the highest honor, the President's Cup. Accepting were: President David Moore (left) and Past President Scott Walters. 2. Jack Tarleton, of the DeKalb Bar, received one of the Excellence in Bar Leadership Awards from President Linda Klein. 3. Best Newsletter winners (l-r): Scott Walters, South Fulton Bar; Gwendolyn Keyes, DeKalb Lawyers; Deborah Zink, Atlanta Bar; and Jeff Kuester, Cobb Bar. 4. Law Day winners (l-r): Patrick Longhi, Sandy Springs Bar; Judy King, Gwinnett County Bar; and Jay Reynolds, Dougherty Circuit Bar.

courts, law enforcement agencies, and the legal profession in today's society; 3) Disclose practices and procedures in need of correction or improvement; 4) Encourage and promote local and state legislative efforts to update and modernize our laws, courts and law enforcement agencies.

First place in the category of daily newspapers with a circulation of 20,000 or over went to the *Columbus Ledger-Enquirer* (Mike Burbach, Executive Editor) for the special section written by Dusty Nix entitled "Domestic Justice." These articles, sidebars and columns were inspired by a visit from then-State Bar President Linda Klein to inform the public about the problems of domestic violence and encourage the role of law practitioners in the fight against this epidemic. The special section included a listing of resources for victims, including battered women's shelters and other hot line numbers. It also urged the legislature to pass a State Bar-proposed \$2 million appropriation to represent indigent victims of domestic violence. In an unprecedented move, the General Assembly did eventually pass the funding proposal.

*The (Gainesville) Times* (Johnny Vardeman, Editor) received second place in the same category for "Hispanics on Hall Juries" written by Richmond Eustis.

Hispanics constitute nearly half of the population of Hall County. After research, however, the reporter discovered that a small number of Hispanics are called for jury duty in comparison with their presence in the population. This series caused the community to respond with letters about the value and necessity of including Hispanics in the legal process.

Finally, *The Albany Herald* (Kay Read, Editor) won third place for the editorial "Doing Jury Duty a Critical Task." During one of a two-part series, the writer explains the importance of citizens serving on juries. The editorial explains to readers the current situation and why the equal strike procedure would benefit taxpayers and the judicial system.

For the category of weekly newspapers with a circulation of 3,000 or over, the winner was the

*Forsyth County News*, Cumming (Leanne T. Bell, Corporate Editor) for a three-part series about Karla Faye Tucker written by Beth L. Chester. The articles examined the highly-publicized case, local opinion about her execution, and highlighted distinctions between Georgia and other states regarding clemency decisions. State officials and civil rights supporters explained the importance and the legal procedures of clemency.



For the category of radio programs produced by stations within the top five metro areas, the co-winners were: **WABE-FM, 90.1 — Atlanta Public Radio** (Earl Johnson, Station Manager) and **Peach State Public Radio** (Norman Bemelmans, Station Manager). The story on WABE-FM, “Hays Prison Lawsuit,” was reported by Joshua Levs. This report of a “shakedown” at Hays State Prison sparked a story by ABC News a few months later. Mr. Levs’ investigative reporting included interviews with former prisoners, employees, attorneys, the ACLU and an examination of records. The other winner, Peach State Public Radio, was honored for its program “Legislative Reports,” hosted by James Argroves. The informative program airs weekly when Georgia’s General Assembly is in session to educate the public about issues being considered at the state capitol.

The final category is for radio programs produced in other areas of the state. The winner was

**WZLG-FM/WMXY-AM** in LaGrange for “Insight” hosted by News Director David L. Bell. “Insight” is a weekly public affairs presentation that provides listeners with information about local politicians. This particular entry featured Coweta Judicial District Attorney Pete Skandalakis.

## Related Organization Awards

In addition to the State Bar of Georgia, several legal organization present awards of honor. The Pro Bono Project presents two awards at the Annual Meeting every year, the **William B. Spann Award** and the **H. Sol Clark Award**.

The Spann Award honors a local bar association or



1. Award of Merit winners (l-r): Deborah Zink and Paula Frederick, *Atlanta Bar*; Judy King, *Gwinnett County Bar*; Nancy Whaley and Laura Kurlander, *Georgia Association for Women Lawyers*. 2. Scott Walters, of the *South Fulton Bar*, received one of the Excellence in Bar Leadership Awards from President Linda Klein. 3. Silver Gavel Awards honoring the media went to (l-r): Milton

Robins, *The Albany Herald*; Richmond Eustis, *The (Gainesville) Times*; Dusty Nix, *Columbus Ledger-Enquirer*; Beth Chester, *Forsyth County News*. 4. Debra Fox Stone was honored for pro bono service with the H. Sol Clark Award. 5. David Lipscomb won the GACDL's 1997 Indigent Defense Award. 6. Ed Menifee won the Bar's Outstanding Service Award.

community organization for developing a pro bono program to satisfy previously unmet needs or for extending services to underserved populations. The award is named for Georgia lawyer and former ABA president William B. Spann. This year's winner, **The SSI Kids Project, sponsored by Nelson Mullins Riley and Scarborough**, was recognized for fulfilling the legal needs of low-income families with disabled children in Georgia by expanding the number of lawyers available to the poor through a creative approach to the delivery of volunteer legal services.

The Clark Award honors an individual lawyer who excels in extending legal services to the poor. 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." This year's recipient **Debra Fox Stone** regularly represents pro bono women who are victims of domestic violence in and around Houston County, Ga. She donates 50 hours per month of free legal representation to clients referred to her by the Macon Regional Office of Georgia Legal Services Program. Through her pro bono efforts on behalf of low-income Georgians, she has provided a shining

example of professionalism and dedication to the provision of justice for all.

Georgia Legal Services presented the annual **Dan Bradley Legal Services Award** to **Susan Jamieson**. This award is named in memory of Georgia native Dan J. Bradley, who was President of the Federal Legal Services Corporation from 1979-1982. The award recognizes the work of an Atlanta Legal Aid or Georgia Legal Services attorney. Ms. Jamieson was honored for her 24 years as an attorney for Atlanta Legal Aid serving the legal needs of low-income persons with mental disabilities.

The Georgia Association of Criminal Defense Lawyers honored **David S. Lipscomb** with its **1997 Indigent Defense Award**. This award recognizes an individual who has made an outstanding contribution in the area of indigent defense. Mr. Lipscomb was honored for his work as Chairman of the Gwinnett County Indigent Defense Governing Committee for the last nine years.

The State Bar commends and congratulates each award winner for their dedication and service to the legal profession, their communities and the Bar. ☒

# Mary Ann B. Oakley Honored for Distinguished Service

By Harold T. Daniel Jr.

*Following are the remarks of Past President Harold T. Daniel Jr. as he presented the State Bar's highest award to Mary Ann B. Oakley on June 19 at the Annual Meeting.*

## FOR 17 YEARS, THE DISTINGUISHED SERVICE

Award has been given to a lawyer for conspicuous service to the advancement of the legal profession in the State of Georgia. Beginning in 1981, when the first Distinguished Service Award was presented to Gus Cleveland and continuing through last year, when the award was given to Frank Jones, the award has been given to a lawyer who has distinguished himself over a career of service to the bar and to his profession. In each instance, each man

to whom this award has been given has demonstrated an unusually high level of commitment and dedication to our profession and to the State Bar of Georgia. Today, for the first time, the Distinguished Service Award will be presented to a woman.

When you review the roster of recipients for this award, you may be surprised to see that no woman is listed. We are, of course, well aware of the many and important contributions by women in our profession in the State Bar of Georgia. A woman has served with distinction as President of our Bar for the past year. A

woman in my household, who brings issues relating to women in our profession to my attention on a daily basis, recently served as President of the venerable Lawyers Club of Atlanta. Many women serve in our federal and state appellate and trial courts. Even more are partners in leading law firms around the state. A woman serves as dean of one of the law schools in Georgia.

Someone reported recently that about half of the lawyers in in-house legal departments are women, and

many hold the top positions. Because women account for approximately 50 percent of admissions to our law schools, we can expect even greater contributions to our profession from women lawyers in the future. It has not always been so.

In 1893, Logan E. Bleckley, Chief Justice of the Supreme Court of Georgia, addressed



**Harold T. Daniel and Linda A. Klein present the award to a surprised Mary Ann Oakley (center).**

the Georgia Bar Association, the predecessor of the State Bar of Georgia, at its annual meeting in Rome on the subject of, "The Future of Woman At The Georgia Bar." In his remarks, Justice Bleckley observed:

The fact that there is no woman at the Georgia Bar and never has been, greatly embarrasses prediction. To forecast the future of something which has neither a present nor a past is like limiting a possibility upon a possibility. ...I am not aware that any woman reared in this State has ever studied law or

manifested any desire or inclination to do so. When a native Georgia woman with legal proclivities and aspirations appears, if she ever should, I think it would be wise for her, if not already married, to marry a lawyer; and I think it would be wise for some young lawyer to marry her, and for the two to study and practice on the principle of both doing the loading and letting him do the shooting.

Even when I began practicing law in Georgia about 27 years ago, relatively few women attended law school or practiced law. When the recipient of the 1998 Distinguished Service Award began her practice in Atlanta in 1974, the term "glass ceiling" was not yet in vogue. It would have been more appropriate to have used the term "iron curtain" when you described the practice by women in major law firms in Atlanta and around the state. She could not have imagined, nor could I, that in 1998 we would practice in a law firm in which approximately 25 percent of its 700 lawyers are women.

The recipient of the 1998 Distinguished Service Award earned her B.A., *magna cum laude*, from Duke University and her J.D. with distinction from Emory University. Beginning her practice at a time when the welcome mat was not extended to women by most established law firms, she practiced primarily with other women in small firm settings for many years. Like many of her colleagues in these firms, one of whom has become a distinguished trial judge, she developed her skills, and her reputation grew. Eventually she became known as one of the leading attorneys in the field of labor and employment law in Georgia. In 1996, she joined a national law firm where she now practices.

Our recipient, however, has done far more than excel as a trial and appellate lawyer. She has also made major contributions to her profession and to her community in addition to billable hours or their equivalent. Among other things, she has served on the Board of Bar Examiners; served on the Investigative Panel of the State Disciplinary Board; served as Trustee for the Georgia Legal Services Program and

as its statewide fund-raising chair; served as President of the Bleckley Inn of Court; and taught pretrial litigation at Emory Law School and trial practice at the Georgia State College of Law.

In 1996, she received the H. Sol Clark Pro Bono Award. In addition to all of this, she has also advised on a pro bono basis the Executive Director and the Executive Committee of the Board of Governors of the State Bar of Georgia on labor and employment matters.

When I took office as President of the State Bar in 1994, our Executive Director told me of his high regard for her and that she had always given him sound legal advice over the years. In her spare time, our recipient has also been active in her church and has raised a family. Throughout it all, she has maintained a remarkable sense of balance and kept her sense of humor. Our recipient did not follow all of Justice Bleckley's advice. She married a physician, not a lawyer, and she has not just done the loading; she has done a lot of shooting. On behalf of the Executive Committee of the Board of Governors of the State Bar of Georgia, I am very pleased to present the 1998 Distinguished Service Award to my friend and law partner at Holland & Knight, Mary Ann Oakley. ☐

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# State of the Judiciary Address

*Following is the State of the Judiciary address as delivered by Chief Justice Robert Benham on Friday, June 19, at the Annual Meeting.*

## Introduction

It gives me great pleasure to report to you that the state of the judiciary in Georgia is fine. With ongoing initiatives being implemented and leadership being provided, we are well positioned to become the best judicial system in the country. Last year, I reported on the excellent national reputation we have for our leadership on issues of professionalism, alternative dispute resolution and equality in the courts. This year, I am pleased to announce that not only have we maintained these leading roles, we are consistently moving ahead in areas of family law, judicial resources, child placement, substance abuse, equality, technology, and efficient and speedy disposition of appellate cases.

I would like to express appreciation to the many lawyers, judges and staff people who have worked faithfully to improve Georgia's ranking so that we are now considered a progressive state with a progressive legal system. I would also like to thank the media for providing coverage to the legal arena and reporting on legal proceedings throughout the state.

In order to improve the professionalism of lawyers, I call on you to be creative in addressing community problems and to be supportive of courts that create imaginative and cost-effective approaches to the many problems we face in the courts. If we truly believe in

ADR we must help communities develop alternatives to litigation in their own communities before the controversies even reach the courts.

Many citizens are turning to the courts as avenues of first resort without first exhausting avenues available in their own communities. I encourage you to work in your communities to create Human Relations Councils

to address problems before they reach the crisis stage and end up in the court system. We must train lawyers to be leaders in their communities and to participate in every aspect of community life.

## IOLTA

By now most of you have heard the disturbing news about the U.S. Supreme Court's decision in the IOLTA case. In an opinion released just this Monday, the Court found that interest earned from IOLTA trust accounts is the private property of the clients for Taking Clause purposes

(see article on page 60). Our IOLTA program, which is administered by the Georgia Bar Foundation, utilizes over \$4.3 million each year to provide civil legal services to poor people, to fund the Georgia Indigent Defense Council and many other worthy charitable programs. Nationally, over \$100 million is generated for IOLTA programs in all 50 states.

Fortunately, the Supreme Court remanded the case to the lower court to resolve several critical issues. These are issues of grave consequence for access to justice for millions of poor people in this country and in Georgia. Our Court stands firmly behind the IOLTA program and agrees with Linda Klein that the program



**Chief Justice Robert Benham**

has worked amazingly well by serving thousands of our State's poorest citizens who otherwise would not have had access to our system. In the meantime, I encourage the Georgia Bar Foundation and its grantees to continue serving the needs of the system of justice in this state until these matters are ultimately resolved.

## Doing Justice

As is customary for this address I want to tell you why we believe in our system and why it is well positioned to become the best in the country. To be the best in the country, we believe we must have the talent to do justice, the tools to do justice, the will to do justice, and most importantly, a clear vision as to what justice is.

"Doing justice" requires adequate resources, talented lawyers and judges, and a clear and creative vision. Let me first address the issue of judicial resources. Georgia now has over 1,600 judges at the appellate, trial, and administrative levels. Nearly one thousand new lawyers are being added each year to the state's more than 30,000 lawyers. This fiscal year, the legislature appropriated \$99,738,650. for the operation of the judicial branch of the government. This amount represents a nine-point-seven percent (9.7 percent) increase over last year's appropriations but it still amounts to less than one percent (1 percent) of the overall state budget. More than 2,000,000 cases were filed in the various courts throughout the state, excluding city courts, recorders courts and administrative tribunals.

## Legislation

During the 1998 legislative session, 67 measures passed affecting court operations. This new legislation included: an increase pay for senior judges, an increase in the penalty for stalking, an increase in probation fees, new judgeships for five superior court circuits, new state courts in counties, modification and streamlining of child placement procedures and training certifications for judges and clerks. A superior court judgeship bill was passed creating six new superior court judgeships. This will bring the total number of superior court judges to 175. Regrettably, a bill for two additional judges for the Court of Appeals (SB 78) did not succeed.

The Atlanta Judicial Circuit will add two superior court judgeships. The Douglas, Ocmulgee, Gwinnett and Stone Mountain judicial circuits will add one judge each.

A forty-seventh judicial circuit, the Bell-Forsyth

Judicial Circuit also becomes a reality on July 1, 1998.

On the ballot in the coming months will be a proposal for a state compensation commission which, if passed, will provide an orderly process for increased judicial compensation.

## Talent to Do Justice

The *talent* to do justice means that the judiciary needs women and men with keen legal minds, who have an unshakable commitment to fairness and a pride in public service. Those who aspire to judicial office must be open-minded, level-headed, even-handed, sure-footed and firmly anchored in good moral values.

Whether judges are elected or appointed, we want to attract the best and brightest talent to the judicial branch. We want to continue to stress to the General Assembly and to the citizens of our state that justice can only be served where there is adequate staffing. Our court system will not be subject to criticism regarding backlogs or delays when we have enough talented judges and resources to do justice for all citizens of this state.

## Courts

As you know, this year we have suffered a great loss with the passing of Judge A.W. Birdsong Jr. His death is grieved throughout the state and we will miss him greatly.

In the past I have reported to you on the activities of the various classes of courts. However, this year I will discuss only a few projects since just five months ago I mentioned that same information to the General Assembly in my State of the Judiciary speech.

### I. Ongoing Initiatives

The General Assembly funds special projects and ongoing initiatives. These initiatives are manned by lawyers and non-lawyers who are committed to achieving excellence. I will take a few minutes to describe the ongoing initiatives which are ensuring Georgia's leadership role in advancing a fair and efficient system of justice.

### II. Georgia Courts Automation Commission.

The Administrative Office of the Courts (AOC) provided staff and project management for the many of the commissions and commissions authorized by the legislature and the Supreme Court. Funding for the Georgia Courts Automation Commission (GCAC) goes toward improving our technological tools. In addition to

work on the statewide court information systems, GCAC is involved in projects designed to provide for electronic filing of court documents, the use of electronic signatures for court documents, and the electronic conversion of court records.

We are working in cooperation with Georgia Tech to create two state-wide databases for judges to use in researching matters.

### III. Supreme Court Child Placement Proceedings Project.

This project, under the direction of an advisory committee appointed by the Georgia Supreme Court, is part of a nationwide effort to assess and improve child placement proceedings in the courts. The project has now entered its implementation phase, launching pilot record-keeping projects, cross-training programs, a newsletter and Web page.

### IV. Supreme Court Committee on Substance Abuse and the Courts.

Financial support for the committee comes from the Criminal Justice Coordinating Council and the state funds appropriated to the Supreme Court.

During fiscal year 1997, the committee produced educational material, sponsored the creation of a statewide organization of drug court professionals, initiated efforts to create drug courts in half a dozen jurisdictions, helped in the creation of the Fulton County Drug Court, provided a forum for discussion of substance abuse related problems, refined its statewide resource handbook, helped obtain grants for various programs totaling almost a million dollars, and applied for a \$300,000 grant to help in the creation of additional drug courts.

### V. Supreme Court Commission on Equality.

This year, a new project coordinator was hired by the Supreme Court to assist the commission, Supreme Court, State Bar and various courts in addressing problems related to equality and fair treatment. The commission produced a training video, a "Guide to Bias-Free Communication, attended a National Judicial Education Program to Promote Equality for Women and Men in the Courts, attended the American Judicature Society Workshop on Improving Access to the Courts for the Deaf and Hearing Impaired and the National Consortium of Racial and Ethnic Bias Task Forces and Commissions.

### VI. Alternative Dispute Resolution

Our ADR office continues to receive commenda-

tions as being a pioneer in the area of alternative dispute resolution. We now have 29 court connected programs in 81 counties. A few of ADR's accomplishments include the creation of a long range planning committee, focusing of attention on juvenile court mediation, the development of a survey to measure public satisfaction, and selection to participate in five state mediation program through an application for state justice institute grant.

### VII. Chief Justice Commission on Professionalism

The ninth year in the life of the Chief Justice's Commission saw the Commission achieve wider national recognition through presentations to the Southern Conference of Bar Presidents, the ABA Leadership Forum, and the Board of Bar Councilors of the North Carolina State Bar. Five states — Florida, New Jersey, North Carolina, Ohio and Oregon — give Georgia credit for providing the model on which each has created a professionalism commission. At the same time, the Commission remained constant to its primary charge to promote professionalism among Georgia's lawyers through numerous local bar professionalism initiatives designed to maintain and enhance local cultures that value professionalism in the practice of law.

## The Determination to do Justice

The *determination* to do justice includes our efforts at improving justice for all citizens: for children, for women, for low income citizens, for substance abusers and others who have traditionally been less able to negotiate our complex legal system. As you already know we have state-wide initiatives, some of which are in cooperation with the State Bar, that target specific constituencies. Our Commission on Family Violence, and Pro Se Litigation Committee are each at work everyday on projects that demonstrate our determination to seek better solutions and a higher quality of justice.

I want to mention briefly two recent successes of which we are very proud. One is the \$2,000,000 appropriation to provide civil legal services to indigent victims of domestic violence. Your President Linda Klein took the lead in securing this funding and the request was placed as a line item in the Judicial Council budget for FY 1999. According to Georgia Legal Services these funds will provide legal assistance to approximately 4,000 families. Domestic violence and the damage that it causes to our families and our society is of particular concern to the courts. We want to thank

each of you and Ms. Klein for your determination to make a difference in the quality of justice for these families.

The Fulton County pilot project to establish a Family Court will become a reality next month with the support of \$220,000 from the General Assembly. Under the leadership of Judge Thelma Wyatt Cummings Moore the pilot project will bring jurisdiction of matters involving families into this specialized court. Jurisdiction will include: divorce, child support, child custody, child abuse, domestic violence, adoptions and other designated cases from Fulton county state court, juvenile court, probate court and magistrate court. The family court was envisioned, planned and made a reality by the determination of the judges and court personnel of Fulton County who wanted to improve the quality of justice.

Of course there are many other projects that I could point to which demonstrate our continuing determination to do justice. I am thinking of the Drug Court directed by Judge Isaac Jenrette. This spring the drug court held a session at Therrell High School in Atlanta so that high school students could see for themselves some of the legal consequences of negative behavior. The list of our determined efforts goes on and on. With your help we will go forward with the talent, the tools and the continuing determination to do justice.

## Conclusion

As we continue in our efforts to become one of the best — if not the best — court system in the country, we must realize that there are changing expectations in the marketplace. As it relates to legislation we can no longer limit our consideration just to matters pending in the Georgia legislature we must also have a national perspective. Many statutes are being considered in Congress that will directly impact on the states. Some of these statutes are not consistent with traditional notions of federalism. More and more causes of actions that have heretofore been within the exclusive province of state courts are now becoming the subject of federal legislation. This move toward federalizing issues and creating federal causes of action, if allowed to go unchecked, will lead to less state involvement in policy making on critical issues. The changing role of the federal courts is a matter of considerable concern. In the past, in many areas, the federal government set minimum standards and simply required the states to meet these standards in order to become eligible for federal funds. Now we are seeing a sweeping array of statutes being proposed that preempt whole fields of

law that were heretofore left to state courts. Issues presently under consideration involve: Prison Litigation Amendments, Judicial Reform Act of 1998, Private Property Rights Implementation Act, Securities Litigation Uniform Standards Act of 1998

Issues on the horizon involve: Mass Tort Litigation, Tobacco Litigation, Amendments to the Bankruptcy Code which might affect the Homestead Exemption and issue preclusion, Class Action Litigation, and Managed Care. All of these statutes seek to expand federal involvement in these areas and in some instances usurp the whole field.

Of particular interest to the Supreme Court and lawyers alike is Rule 4.2 of the American Bar Associations Rules of Professional of Conduct . This rules governs contact with represented persons. 28 C.F.R. Pt.77 seeks to change the requirements of Rule 4.2 and it has been the subject of discussions between the Attorney General, Conference of Chief Justice and the American Bar Association. Just recently the Eight Circuit Court of Appeals addressed this issue in *United States of America v. McDonnell Douglas*. All of these issues will concern you in one way or another. I call upon you to maintain the state's right to decide issues within its traditional sphere of responsibility.

We must realize that all problems cannot be solved in a legal setting. Therefore lawyers must become involved in their communities and participate in every aspect of community life. The courthouse must be made user friendly and reflect the contributions of all segments of society. Our courthouse should portray an image of inclusiveness.

The newest initiative at the national level is the creation of a commission to study Public Trust and Confidence in the Courts. National symposiums will be held and we will ask judges, lawyers and lay persons from Georgia to attend these conference. We must realize that we cannot work in a vacuum We must seek new ways of solving age old problems and in doing so we must involve members of the private sector in a manner that provides for a cross pollination of ideas and approaches.

With your help we feel confident that we will continue to address the needs of society in a calm and deliberative setting where all citizens are treated fairly, where business is handled expeditiously, and where the law is not a respecter of person or position but is always a respecter of principle. ☐

# President Cannon Sets Goals For the Year

*The following is a speech delivered by incoming President William E. Cannon Jr. to the Board of Governors on June 20 at the Annual Meeting. In it he outlines some of his plans for the upcoming year.*

**SINCE I BECAME PRESIDENT-ELECT OF THE State Bar,** I have spent a lot of time on the road between Albany and Atlanta. I know the route well and it doesn't require 100 percent of my concentration to drive it. As a result I have had a great deal of time to reflect on the practice of law and the challenges we face.

Our greatest challenge is the ongoing attack on the legal profession and the entire justice system. When lawyers increasingly became the target of nasty mean-spirited lawyer jokes, we largely hunkered down and hoped it was a fad that would blow over. As the attacks broadened to encompass judges and our entire justice system, we came to realize this was no fad and it would not disappear if we ignored the threat.

As I report on my plans for the coming year, I want you to know that I am making restoration of public confidence in lawyers and the justice system my number one priority. We did not reach this point overnight, and we won't head the list of most admired professions in one year; but we can make a start and significant progress in the next 12 months. Allow me to share with you some thoughts on how we can proceed.

## Restoring Public Confidence in Lawyers

In the proposed budget is a modest sum to begin a program entitled Foundations of Freedom. Once this program moves beyond the start-up phase it will have very little recurring cost. I have been Treasurer of this organization and I know we have a great tradition of

frugality. Foundations of Freedom is in keeping with that great tradition. This program will require your time and effort more than your money.

Foundations of Freedom is essentially an education program aimed at attorneys, judges and the public. Its success will depend on the willingness of lawyers and judges to participate. The Florida Bar began an educational effort last year and enjoyed the participation of over

500 volunteers in the first year alone. Our effort will need a similar response from the members of our organization.

The initial effort in our program will be the establishment of a grass roots speakers organization to contact business, community, civic and school groups and offer programs on all aspects of our legal system, the role that attorneys play in protecting our freedom and ensuring justice, the importance of an independent judiciary, as well as current legal topics of interest. Under the leadership of Judge Ed Johnson, the Law-Related Education Program is doing a wonderful job of educating our young people about the legal system and their role in it. I believe education of our adult popula-



**Chief Justice Robert Benham (left) swears in the new President.**

tion can be just as successful.

In the spring I had the opportunity to speak to a civic club on the Georgia coast. Attending a cocktail party held just prior to the meeting at a member's home, I was introduced to the host as the President-elect of the State Bar of Georgia. The gentleman responded by saying that if he had known I was a lawyer he would never have asked me in his home.

At the meeting of that civic club I spoke about the decline of public confidence in the legal system and the efforts the Bar and its members were making to address legitimate concerns. However, I also explained how there is an increasing element of our society that does not believe in the rule of law and would cripple the judicial system if necessary to have their way. I even talked about lawyer jokes and explained why we find some of them so offensive. The response was overwhelmingly positive and it told me that education is the key to our program.

An important part of the Foundations of Freedom program will be the establishment of a dialogue with business leaders to reduce distrust and combat the misinformation that so many people have been given. In many of our local chambers of commerce and development authorities, attorneys have key leadership roles. This is only natural since after all, we share the same concerns as other chamber members — making payroll, paying the rent, satisfying our clients. There is no reason for national organizations to ignore this important role that attorneys play in economic development and bash us as anti-business. Give our business leaders the facts and they will become our allies.

The Alabama Bar developed a short videotape, using Georgia's professionalism creed, to assist its members in speaking to the public. I believe such a tool should be used in Georgia in conjunction with our civic speeches and in our meetings with business leaders. It can also be used in reminding the lawyers of this state about the importance of professionalism in maintaining public confidence in our profession.

Lawyers and the legal system have been attacked by some of the slickest media campaigns that can be produced. From the *Reader's Digest* to *Dateline* on NBC, the public has been fed a steady diet of greedy and unethical lawyers and aberrant jury verdicts. Even the June 1947 issue of *Reader's Digest* contains an

article entitled "When Will You Be Sued?" The article states that 1947 "is the heyday of damage suits, when even the curiosity of a neighbor's child may pauperize you for life." So you see, anecdotal articles designed to scare a misinformed public are nothing new.

In the face of these inaccurate attacks, what have we done to defend the American system of justice? Very little. Because some of our fellow lawyers use distasteful ads, we have to a large degree refused to use one of the basic tools of good communication.

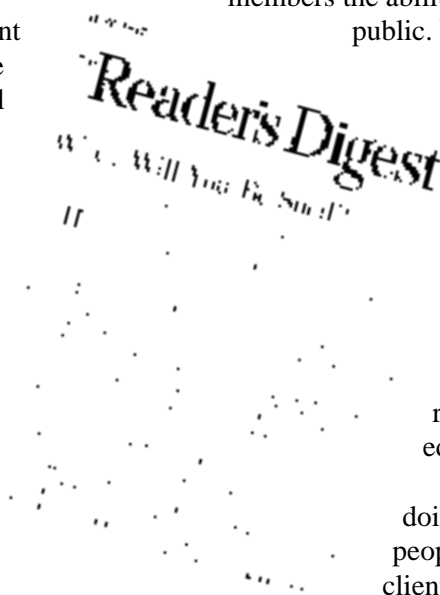
The Foundations of Freedom program will give our members the ability to deliver our message to the public. We will prepare camera-ready public service print ads that individual lawyers, law firms and bar associations can sponsor in local newspapers, high school football programs and civic magazines. Recognizing that some of the worst attacks on our justice system originate on talk radio, we will prepare radio spots that can also be sponsored locally to reach that important audience. Again, education is the key.

Some studies indicate that we are doing the worst job of education with the people we see most frequently — our clients. The coming year will see a regular section in the *Bar Journal* to assist our members in communicating effectively with our clients. The other group of people we frequently see is jurors. We have plans to develop a pattern jury instruction that will explain the role of lawyers in peaceful dispute resolution and explain how the adversary system works. This will have the dual benefit of educating jurors and, at the same time, encourage trial counsel to be on their best behavior.

The Foundations of Freedom program is designed to use the skills we developed during law school and in the practice of law for the good of our profession. We are trained communicators. We practice daily the art of persuasion. We must now use our special gifts to support our American system of justice in its hour of crisis.

## Reaching Out to Lawyers Statewide

In addition to a strong effort on behalf of our profession and our legal system, I see other needs to be addressed during the coming year. The first is a redirection of the Local Bar Activities Committee and the



Tifton branch office. I practice in a circuit that has a proud history of a strong program of local bar activities. This tradition creates in our lawyers a desire to work with and serve the State Bar as well. Too many of our voluntary and local bars are inactive or fail to offer substance to their members.

Past President Linda Klein spoke often of the need for greater participation. I believe one source of increasing participation in the State Bar is to strengthen our local and voluntary bars. I will be asking the Local Bar Activities Committee to find ways that the State Bar can breathe life into these organizations. Our State Bar sections and committees are successfully reaching the needs of many lawyers throughout the state. We need to share the methods that have worked for us with local and voluntary bar associations. As a part of this outreach program the budget includes funds for a part time receptionist at the Tifton branch so Office Administrator Bonne Cella can spend time on the road meeting with local bar officers and assisting them in having regular meetings, local CLE and increased involvement in State Bar activities.

## Service First

You have heard many members of this organization describe our staff as a dedicated, hard-working group. They are also a very intelligent group of people. I want to tap into that experience and intelligence and improve the delivery of services to our members and the public.

In many private businesses the principles of Total Quality Management have been adopted to offer greater employee involvement in business decisions. Put simply, Total Quality Management asks employees to commit all of their effort toward delivering a quality product or service. Most importantly, the employees are given great latitude in determining where and how improvements can be made. Service First, A Staff Led Initiative for Quality Service will offer the staff of your State Bar the chance to tell us what needs fixing and how to go about it.

## Other Plans

Space does not permit me to cover all the work ahead, so I will touch lightly on the rest of my plans. I am committed to bringing the Georgia version of the Model Rules to the Board of Governors for full debate and a decision. Times have changed greatly since the adoption of our Standards of Conduct and there is a need for careful consideration of changes. I encourage Board members to carefully study and be prepared to discuss

these changes when we have a meeting for that purpose.

The past year saw the birth of the State Bar's Web page. The Law Practice Management Program is eager to dramatically increase the variety and amount of material available to our members through the Internet, and I have pledged my support to this important undertaking.

Two areas that have always been of interest to me but perhaps are considered boring by some are long range planning and budgeting. I realize the mention of these two topics causes some of you to nod off, but none of our programs could operate as efficiently as they do without careful planning and budgeting. I want to see the Long Range Planning Committee regularly updating and revising a long range plan approved by the Board of Governors. Along those same lines, I hope to work with Treasurer George Mundy to develop a three-year rolling budget. As many experienced Board members know, we generally have a predictable cycle in our financial situation whereby we accumulate surpluses for a period of time and then use those to defray future expense rather than changing our dues each year. I believe a working budget that covers multiple years will facilitate our financial planning and give the Board of Governors better information to use in the decision making process.

## Conclusion

My last area of concern has to do with the future of the Board of Governors and the future of our profession. I am excited by Linda Klein's efforts at opening up State Bar participation to the diverse population of our membership. Although I don't look like Linda, sound like Linda or even act like Linda, I assure you and all of our members that I am deeply dedicated to continuing the process of diversity within the Bar. I think, however, it would be unfortunate if, at a time when we are making such great strides in reaching out to members long overlooked, we become divided by the locality in which we practice.

As members of this learned profession we have so much in common and so little that should separate us. All parts of this great state must work together if we are to succeed. I ask each of you, when we get together to take care of business let's not worry about where we came from, let's focus on where we are going.

I thank you for the greatest opportunity of my life. For the next year you have my hands, my head and my heart at your disposal. I look forward to working with each of you. ☐

# Wrapping Up a Year of Firsts

*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 on 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 1997-98 President Linda A. Klein's report delivered on June 19.*

**AT THIS TIME IN THE PRACTICE OF LAW, WE** are in a paradox: Things are exactly the same as they have always been; yet things are changing rapidly. Perhaps that is true of everything in life. As evidence that the things we complain about are as they have always been for our profession, consider this:

In Hamlet's great soliloquy, "To be or not to be," Hamlet laments "the law's delay" after he laments the pangs of unrequited love. Almost 400 years ago, Shakespeare

criticizes a slow court system, much as people do today.

What this year has taught me, above everything else, is something that is indeed old news: Georgia lawyers are the best. They care about their fellow Georgians, especially those less fortunate. Georgia lawyers volunteer in their communities, they provide tens of thousands of hours of pro bono service, and they work hard to protect their clients' rights. This is why I am proud to be a Georgia lawyer.

Regarding this State Bar, our lawyers benefit from every cutting edge program offered by any bar in the country, and yet, with the help of the best and hardest

working bar staff in the country and hundreds of volunteer lawyers, we enjoy the lowest bar dues in the country. We are indeed lucky here in Georgia. As Bar President I was the envy of my counterparts in other states with good reason.

I have had a privilege this year that I know few will have, but I sincerely wish all of my colleagues could enjoy. What being Bar President has meant to me, I truly cannot express. The best I can offer is these remarks.

You will hear what Georgia's lawyers did this year to make the practice better for their colleagues and the

public. We coped with the changes, yet kept the good things the same. This is not about me. It is about our Bar. I deserve none of the credit for the successes of this year. I took the helm of a well run bar association that had the benefit of many great past. I will now serve my last important

duty, to summarize what the Bar has accomplished this year, with a deep sense of pride and, of course, some regret that we could not do everything. This is just a summary. All that Georgia's lawyers did this year fills volumes.

## Involvement in the Bar

Our primary goal for the year, was certainly not a secret; it was getting lawyers involved in the Bar. Georgia lawyers were involved in record numbers and they did so much good. We wanted to get as many



**Immediate Past President Ben Easterlin applauds Linda Klein for a successful year.**

lawyers as possible interested in our mandatory association of nearly 30,000. I admit having a passion for this topic. I treasure our unified Bar. I do not want it to stop being important to lawyers. Our efforts in this regard have been an enormous success. I get too much of the credit for this success. A Bar President with a goal such as this cannot hope to achieve success working alone. We were successful because of the efforts of our excellent staff and all the lawyers who served our Bar this year, holding hundreds of meetings, encouraging broad participation, and spreading enthusiasm. I wish I could thank you all personally, but that would take more than my allotted time.

**Bar Committees and Sections:** Perhaps the best way to encourage involvement by attorneys in our Bar is to provide them with a way to participate. We had 97 committees this year. Ten of them were new, and we will talk about some of them later. Thirty-six of the committees were YLS committees. Our Bar now has 34 Sections. Section membership is a great way for lawyers to get information about their practice areas and be involved in the Bar at the same time. Thousands of lawyers participate in Section activities.

**Voluntary Bars in our State:** Bar leadership and staff visited a record number of local and minority bar associations. Many of these bars were honored by resolution. Press releases celebrated their good work. We worked with local and minority bars to introduce them to each other and to offer the services of our Bar staff. Our voluntary bars, and the important work they do, in their communities, do much for the image of lawyers. Our voluntary bars are more reasons why I am proud to be a Georgia lawyer.

**Government Attorney Involvement:** This was a new committee. We have started our first effort at reaching out to lawyers who work in our state, local and national governments. We do not know how many of them are members of our Bar, but we suspect the number exceeds 10 percent. Since these hard-working lawyers pay the same Bar dues as the rest of us, and represent such a large block of our constituency, we want to be sure that they feel served by their association.

**Meetings:** "Y'all come!" was our motto this year and we succeeded. While we made some bold moves, we had record attendance at every meeting we held. Our goal was to remove all obstacles to participation by our members. We cut our costs and member ticket prices whenever possible. We asked sponsors for contributions to make the meetings more accessible. We had different entertainment at all of our Board and general membership meetings. Our new Midyear

Meeting Committee, chaired by Walter Jospin and Paul Painter, made our first Midyear Meeting in Savannah the largest ever. We added extra programming to meet the needs of our members. We had more CLE than ever at our Midyear Meeting, and it was very popular. We will not soon forget the creative thinking that Judge Mills B. Lane brought to our Midyear Meeting or the creative song writing that the Capitol Steps brought to our Annual Meeting.

Speaking of the Capitol Steps — during our first-ever fund-raiser, our newly reorganized Lawyers Foundation got a boost during this meeting with a check for \$25,000. Please guard our Foundation. In the future it will do the important good work that cannot be done with mandatory Bar dues. It will help the image of our profession and help the public so very much. It is an honor to be invited to join that Foundation. I hope you all have that opportunity some day.

Let's talk about our Annual Meeting here in Atlanta. We tried to bring to this meeting what the lawyers wanted: lots of advanced level CLE, first class entertainment by the Capitol Steps, Governor Miller as key note speaker, and low cost. This was indeed the largest Annual Meeting ever, with thousands participating. The work involved in creating this meeting was truly a labor of love. We have the entire State Bar staff, but especially Lynne Carpentier, our Meetings Director, to thank. A special thank you to our sponsors for making this possible. Our Annual Meeting Program Chair, Stephanie Parker, did more for the lawyers of Georgia this year than any other volunteer. I cannot thank her enough for making possible my dream of holding an Annual Meeting with no registration fee. When you see Stephanie, please thank her. She makes me proud to be a Georgia lawyer.

## Communications With Our Members

Communications is the other side of that paradox, things are changing. In this age of rapidly improving technology, we had a goal of improving our method of communications with each other and the public.

Our *Bar Journal* continues to improve thanks to the hard work of our Communications Director, Jennifer Davis. The *Journal* is more useful than ever. Every issue now contains Practice Tips, jury verdict information, Law Practice Management information, a professionalism page and news from our South Georgia office.

A favorite new *Bar Journal* feature is the work of one of our new committees, the Emerging Issues Committee. David Rusnak, its Chair, worked hard all

year gathering information about which our lawyers need to know, but could not easily learn. Issues that affect the practice of law and the rights of our clients are exploding every day, especially at a national level. Our legislative report will make it obvious why the work of this Committee is so important to the future of our profession.

We improved our Web site to make it more useful to lawyers and the public.

The entire Bar directory is available, with active e-mail links to every member of the Bar who has e-mail. At national meetings, I heard that our Web site is a model for other bars to follow. We are a gateway, a one stop shopping for lawyers who want to research government documents or the law on the Internet. Government information, which is readily available on the Internet, is also easy to find by starting at

www.gabar.org. Georgia lawyers are embracing technology to make their offices run more efficiently and save their clients money. Using our Law Practice Management Program, primarily, our Bar will be there to help all of our lawyers into the technology age.

## Changing the Public's Perception of Lawyers

I said earlier that I regret we could not finish everything. This is particularly true of another goal we worked on — the image of lawyers. It is so important to all of our constituents, but I learned that the problem is as old as Hamlet. By doing the things that Georgia lawyers care about — the things they were doing anyway — but letting people know that it is lawyers who are doing these good things, we did so much to help lawyer image.

**Aiding Domestic Violence Victims:** The best program that we did to help the image of lawyers pervaded our legislative program and local bar program as well. This was the work we did to obtain a legislative appropriation to get legal assistance for the victims of domestic violence. Several years ago, after I was elected Bar Secretary and there was some publicity in the media, I started receiving calls from women who

were victims of domestic violence. Their stories were heart wrenching, and they were having trouble getting access to our legal system. Since Georgia lawyers are the best, I called my friends all over the state. While a lawyer agreed to help everyone who called me, I learned how many more were going without help and how lawyers were reluctant to subject their families and office staff to the problems posed by family violence.

There were lawyers trained to do these cases efficiently. They primarily work at Atlanta Legal Aid and Georgia Legal Services, where budget cuts made it impossible for these lawyers to help all the families who needed them. We began with the idea that although our legislature had never given support to civil legal services for the poor, the public and our representatives would want to help these poor families break the cycle of violence. We

commissioned an opinion poll that proved us right. We learned that 80 percent of Georgians agreed with us. We then asked non-lawyer groups to join us in our request for \$2 million to help an estimated 4,000 families. To be sure, the effort took a year of planning, some good luck and the hard work of hundreds of lawyers.

During the holiday season, voluntary bars collected donations to help battered women's shelters throughout Georgia. We called the program Season of Hope: Aid-A-Shelter. The lawyers collected so much; I could not believe my eyes when I saw the generosity of our colleagues. Canned food, diapers, mattresses, bunk beds, and patio furniture were among the items I saw. I must mention there were toys galore. The good press our local bars received all over the state did much to help the image of lawyers. The Supreme Court agreed that the place for the money was in the judicial council budget, and I am proud to say that in a few weeks, the judicial council will be making the first grants of this money.

**School Children/Juvenile Justice:** We also did some out-reach to children and children's issues in this Bar year. We devoted an issue of our *Bar Journal* to Law-Related Education and other children's issues. Our Bar supported four committees that worked exclusively on issues effecting children; two of them were new

**Georgia lawyers care about their fellow Georgians, especially those less fortunate. They volunteer in their communities, provide tens of thousands of hours of pro bono service, and work hard to protect their clients' rights. This is why I am proud to be a Georgia lawyer.**

committees. Through the efforts of Ed Meniffee, who is the Director of the successful BASICS program, our first effort at preventing recidivism in juvenile detention facilities was possible. The success of this first juvenile program encouraged a foundation to provide funding for future programs.

#### **Matching Unmet Legal Needs to Underutilized**

**Lawyers:** About a year ago, some lawyers complained to me that fee-paying clients were using non-lawyers to solve their legal problems. As a long-time vocal opponent of the Unauthorized Practice of Law, our Bar wants to find a way to assure that every one who needs legal services can get them. We learned that many middle class people wrongly think lawyers are too expensive, so they turn to non-lawyers. It is heart breaking to hear that these consumers often pay more to non-lawyers to do substandard legal work. With the help of our Committee Chair, Jim Winkler, we examined different programs from all over the country. Our Committee chose as its model a program that has been working successfully in Macon for many years. Consumers who need legal advice will now be able to find lawyers to help them on financial terms that they can afford. The lawyers agree to serve these clients at the affordable rate.

My successor, Bill Cannon, has exciting plans to carry forward this important work on our public image (see page 44). I know that he will have your full support as he has mine.

## **Legislative Successes**

We had an enormously successful legislative program this year. Our biggest triumph was the \$2 million appropriation to get legal services to the indigent victims of domestic violence. We had other successes as well. There were the revisions to the Uniform Commercial Code. We also lobbied for and received an increase in the appropriation for indigent criminal defense.

We conducted three studies at the request of the legislature that will help our state immensely. The most comprehensive was called our Court Filings study. Our Co-chairs, Paul Kilpatrick and Jon Peters, worked with a very diverse committee to find ways to collect information about the cases that are filed in our courts. This information, once it is available, can help our courts and our legislature in planning how best to allocate the limited resources in our third branch.

At the end of the last legislative session we learned that a Representative introduced legislation that could have changed the way lawyers who violate a few of our

disciplinary rules were disciplined. With the Representative's cooperation, we jointly appointed a committee to study the problem he perceived was occurring. The Committee, Chaired by Mary Ann Oakley, discovered that the problem — attorneys having sex with clients — was not as prevalent as the Representative thought. There are already rules in place, and attorneys are prosecuted for taking advantage of clients. Other states tried and failed to enact measures specifically addressing this problem. The Committee proposed, and the Bar endorsed a program to better educate attorneys on this important topic.

We had an unusual number of issues arising on the Federal level that affected, or potentially affected, the practice of law in Georgia. Much of what we learned came from our Emerging Issues Committee's work. For example, we faced new tax laws that treated lawyers differently from every other profession, and took a stand against them. We responded to these increased national attacks on our profession by inviting Senator Coverdell to address our Board of Governors and otherwise attempting to improve our relationship with Georgia's representatives in Washington. Unprecedented activity in Washington will continue to concern our Bar, and will require constant study.

We owe our success in our legislative program to all of you who wrote and called your legislators and largely to our Advisory Committee on Legislation Chair, Aasia Mustakeem, and our lobbyists — Tom Boller, Rusty Sewell, Wanda Segars and Quintus Sibley.

Next year the leaders of our state will be new. Some of what we have accomplished over the years may be challenged. It will be up to our legislative program to protect the ideals that this Bar has supported over its history: judicial independence; merit selection of judges with lawyer input on the Judicial Nominating Commission; and legal services, both civil and criminal, for those who cannot afford them. Encourage lawyers to be involved and stay involved in the process. That includes supporting lawyers who are willing to run for elected office. We need them.

## **Getting Our House in Order**

We achieved another goal; I called it getting our house in order. Our Bar has endured record growth in membership and in programs in the last several years. We have maintained our enviable stature nationally as a leading bar, all while keeping the lowest bar dues in the country. We have added a satellite office, a Law Practice Management Program, and bought a building, all in

the last few years. While it would be attractive to add a new program, after looking around the country, I did not find a program, or rather a program that needed a budget, to add to our Bar. My observation is testimony to the great leadership that our Bar has had in the past.

Instead we embarked on an effort to examine our Bar programs, and “get our house in order” for the future. I called this effort a “Scope and Correlation” of our programs to the purposes of the Bar. I assigned our President-elect to lead this effort as Chair of the Program Committee. This Committee worked hard all year and made a report of its progress at each meeting of the Board of Governors. I am delighted to tell you that after careful study, a few programs were found to be obsolete and will be abolished, but overwhelmingly we discovered the Bar was “not broke,” so we did not have to fix it. What we did learn was that we can maintain low bar dues and yet have every innovative program offered by bars with more than twice our dues. This is possible because of the hard work of the volunteers. I want to thank all the lawyers who volunteered, making our Bar programs so successful. This is the true spirit of professionalism. This makes me proud to be a Georgia lawyer.

Our financial house is in order too. Our Treasurer, George Mundy, should be praised for helping turn a predicted \$130,000 deficit into \$285,000 in the plus column. Our Bar is financially prepared for the challenges it will face next year. Also this year we refinanced the new Bar center, saving nearly a quarter of a million dollars. Our new Construction Law Committee is advising us on how we can make the most of our new headquarters as quickly as possible.

We asked some old committees to take on new or redefined jobs. Our Unauthorized Practice of Law (UPL) committee worked hard to fight the threat to consumers posed by untrained, unlicensed people who give alleged legal advice, but only do harm. The Chair, Bruce Cohen, reached out to each Bar Section and the media. Our UPL efforts have been successful, a record number of violators are in jail now, but there remains much work to be done.

For several years we have had a committee to study Court Futures. It was formed in response to a report. Since the report, there has not been much for the committee to do. This year we asked the Committee, chaired by Holly Pritchard and Ben Studdard, to go beyond the recommendations in the report and study or suggest innovations that could benefit our court system. The Committee was diverse and very creative. It has given us ideas that are provocative and will assist our courts, our Bar and our legislature in planning.

## Lawyer Discipline

Historically, the State Bar of Georgia has continually studied our disciplinary rules and proposed changes to the Supreme Court. Over the years, the Court has accepted nearly every change proposed by the Bar. This year, as in past years, the Bar has continued this effort. On the first day of this Bar year, the Court entered a sweeping Order changing some disciplinary rules and requested that the Bar respond to six questions. Our Disciplinary Rules and Procedures Committee, in conjunction with the Executive Committee and other committees where appropriate, worked on responses to the questions. After the Bar met the Court's deadline of October 1, the Disciplinary Rules Committee turned its attention to a complete review of the disciplinary rules (in Georgia we call them “standards”) to determine whether the current rules, now over 30 years old, needed any updating. The task was formidable, and because of the late start, the Committee will not make its final report in this Bar year. However, the Committee Chair, Judge Edward Carriere, has made a report at each Board Meeting. In the near future, the Board of Governors will have the important task to act on that Committee's recommendations.

This year saw an expansion in our enormously successful Consumer Assistance Program. This program allows members of the public to receive personal attention for their concerns, even if these concerns do not reach the level of a disciplinary violation. Unfounded disciplinary complaints against lawyers have dropped. While the program is among the most expensive that our Bar has adopted, its success has caused the Board of Governors to assure it is funded.

Perhaps the reason for the historical success of the Bar's disciplinary program is the good relationship that our Bar enjoys with the Supreme Court. In other states, where the Court and the bar do not have a positive relationship, both institutions suffer and are unable to best serve the public and the lawyers. The Chief Justice has been an inspiration to us and a role model for lawyers and citizens alike. He has been available to all calls at any time and most supportive of our Bar. Thank you Chief. I have experienced the same level of cooperation from all members of the Court and I want to thank them as well.

## Message for the Future

My grandmother used to say, “Linderann, one thing is for certain, nothing is for certain.” Nothing could be truer today. Our world is changing at an increasingly

fast pace. This is the other end of the paradox. When I started practicing law, we used dictabelts and carbon paper. Then came memory typewriters, Wang systems, Federal Express packages, fax machines and now the Internet and books on CD-ROM. Think of all the things that are happening to our profession at once: technology, lawyer advertising, the unauthorized practice of law, low image, sweeping legislative changes, and the explosive growth in the number of lawyers. Our Bar has in the past and must in the future continually change to stay relevant to our members and respected by the public.

When you make the necessary changes, you have the benefit of the best Bar staff in the country. I thank you, Cliff Brashier, Bill Smith, Sharon Bryant, Paula Frederick, Sue Harvey, Romaine White, and everyone else, who time does not permit me to mention. These are the people who make it possible to have this strong Bar.

I also want to thank the hard-working Executive Committee. They met 12 times this year, all full days with reams of material to review in between meetings. I must also thank the Board of Governors, who work hard to assure that the Bar stays relevant to *all* of Georgia's lawyers. Ben Easterlin, my predecessor, was a wonderful President. His courageous leadership kept the Bar moving forward and challenged us to be the best we could be. I also want to thank Bill Cannon, who was a supportive President-elect, and will be a great President. Bill is the model of professionalism and credibility. Our Bar needs him and we are lucky that he has agreed to serve.

While I am thanking people, I cannot ignore my family — my husband Michael who had the toughest job this year. Michael brought me into the computer age and showed me how lawyers will be filing documents electronically, and otherwise using technology to be more competitive. I want to thank my law partners and associates at Gambrell & Stolz. I was uniquely lucky to have the support of two past Bar Presidents as my law partners, David Gambrell and Irwin Stolz. They were always available to help anytime I asked. My family and my law firm made the real sacrifice, not me.

The dreams of past Bar Presidents, the changes that needed to be made, have largely come true through the hard work of the Bar leaders who followed them and the Board of Governors. Some of our more recent Bar programs are moving forward, and will need your continued dedication to make them the best they can be. I know that is a foregone conclusion because we are Georgia lawyers. Our new Bar Center will need your hard work to make it run effectively for our lawyers and

the public. It may even run at a profit.

In the future we must encourage participation in our Bar activities, so everyone will feel welcome and part of the solutions to the problems. Local bars, minority bars, government attorneys, rural lawyers, big firm lawyers, they are all critical to our Bar's success. With your support, future leaders will be able to keep the meetings accessible to encourage maximum participation. Participation by everyone is important. Every one needs to feel welcome and part of it. The basis of democracy is participation by everyone. It doesn't work if no one participates.

It will now be up to you to guard the disciplinary process. It is our most precious function. It makes us a true profession. Do not let anyone criticize the hard work of our colleagues in this process. Georgia lawyers have toiled hard to make the practice of our profession so valuable to both the public and ourselves. When the naysayers complain about our process, forgive them because they are ignorant of its strengths, then correct them. We are not perfect, but we are always looking for ways to make it better. Accept constructive criticism, and use it to improve our system.

It takes a lot to be a good lawyer. You must work hard. You must put your clients and the judicial system ahead of your own interests. This challenge is met every day by nearly 30,000 Georgia lawyers. Unfortunately, those who seek to advance their personal interests, criticize lawyers. Do not tolerate this behavior.

Just as they did 400 years ago, people will complain. Things will be the same, ironically, in the face of rapid change.

These are the good old days in the practice of law in Georgia. The law is a Meritocracy now. Lawyers get opportunity based on qualifications. It is what you know, not who you know that gets the job and the client. We do not accept those who would practice law without a license and harm the public we work so hard to help. We protect the independence of the third branch and keep working to improve our disciplinary system. We assure there is access to justice for the poor, We study ethics and professionalism. We use technology to make all information accessible to all lawyers. We support legislation to protect the system of justice.

We are proud Georgia lawyers. Our association is precious. We will do what it takes to keep it vibrant. I will always support the State Bar of Georgia because it's only through our organized professional association that all we stand for, these important ideals, will be protected. Thank you for giving me the privilege of being your President. ☐

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# Redeeming Our Profession: Georgia Justice Project

By Andy Bowen

**IT WAS, IN FACT, 90 DEGREES** in the shade. But they couldn't hold back; they had to talk.

Barry Green, Marcus Cook and Antonio Rushin, long-time clients of The Georgia Justice Project (GJP), were unloading some equipment from the New Horizon Landscaping truck when they stopped to answer a few questions from a friend. As they talked, at times passionately, beads of sweat rolled down the faces of these hard-working young men, all of whom have criminal records.

Yes, they acknowledged, they'd made some pretty big mistakes. But things would be a lot different if The Georgia Justice Project hadn't entered their lives. If it hadn't been for the faith The Georgia Justice Project had shown in them, they're sure that on this steamy July day they wouldn't be working with the GJP-sponsored New Horizon Landscaping Service, trimming hedges and cutting grass at the Ivan Allen Printing Co. in Atlanta. Instead, they'd be wearing prison whites, doing their yard work under the gun towers at some Georgia prison.

It's not that the GJP *got them off*, *helped them walk or beat the rap*, they assert, almost in unison. It's that the GJP, and especially its Executive Director Douglas B. Ammar, "was

just there for us."

"They care. He cares. And they listen to you and help you talk about your problems," says Barry. "But

some of his problems with someone else for the first time in years. "I never really had nobody to talk to except my grandfather, and he died



**GJP Executive Director Doug Ammar, above. At right, in front of the GJP logo are Administrator and Jobs Program Director David Rocchio, client Ronald Kent, Prison Visitation and Post Release Support Director Kevin Muller and Mr. Ammar.**



they give you awesome defense in court, too, and they investigate and do their homework, tell you the truth about your chances, and you know they are working hard for you." Barry says the program "kept me motivated," and that the counseling GJP provided allowed him to share

when I was a teenager," says Barry.

"The project gets into a relationship with you," declares Marcus. "You got respect for them and they got respect for you. It builds your self-esteem. The main thing is they don't judge you, and they take you as you are. They took me as me. When

somebody cares for you, it makes you care for them.”

“They let you know that you’re not somebody out there that society doesn’t see. Society sees you as a person, as a human being first, that’s the way they look at you,” declares Antonio, who is so dedicated to the landscaping service that his conversation always drifts back to it sooner or later. It’s like he has something meaningful to hold onto.

So, Barry, Marcus and Antonio believe they are obligated to the GJP for the legal services they’ve received, yes, but also for the assistance they’ve been given in getting their lives on track. How can they ever repay that debt?

“By never going wrong again,” says Antonio. “By making this landscaping service work, it’s grown from one lawnmower to a truckload of equipment and a crew, and by making our lives work right, maybe for the first time for some of us.”

Such powerful statements and genuine promises from ex-offenders are commonplace at The Georgia Justice Project, headquartered in Atlanta in an old hardware store at Boulevard and Edgewood, appropriately within sight of the Martin Luther King Jr. Center for Nonviolent Social Change. Founded in 1986 by Atlanta attorney John A. Pickens, a highly-respected litigator who literally dropped out of a lucrative corporate practice to provide free legal help to the poor and homeless, GJP is unique in the nation. Ammar says no other organization in the nation operates from a non-profit base to provide legal and spiritual support to the indigent criminally-accused.

The organization “is as much about redeeming our profession as it is about redeeming our clients,” observes Mr. Ammar. “It’s almost like another way of practicing. We are combining a lawyer’s humanity

# GJP Wins Accolades

The Georgia Justice Project, which provides aggressive defense for clients who exhibit a strong desire to lead crime-free, productive lives, has been honored for its service four times since the fall.

- ◆ In October, the National Association of Public Interest Law bestowed its Exemplary Public Service Award on GJP intern Dorian Murray. The award was presented to Murray by Attorney General Janet Reno during ceremonies in Washington, D.C.
- ◆ GJP founder and current board member John A. Pickens received the American Bar Association’s John Minor Wisdom Public Service Award in February. He was one of only four recipients in the nation for 1998-99, the ABA said.
- ◆ The GJP was honored by the Catholic Social Services division of the Archdiocese of Atlanta in June with a special award for organizations that stand against violence in society.
- ◆ Also in June, Mr. Pickens received Restorative Justice Award from the Presbyterian Church (USA).

and intellect at the same time. It’s not just about being a lawyer.”

In its 13-year existence, GJP has given another chance to more than 1,100 other indigent criminally-accused like Barry, Marcus and Antonio. GJP does so by providing aggressive defense in court and visitation in prison or jail in return for clients’ pledges to take part in

mandatory rehabilitative programming, group meetings, GED programs, personal finance classes, counseling and hard work – often with New Horizons Landscaping, the company created by GJP specifically to provide job skills training for clients.

“Our research shows we have hit upon a formula that works, with just the right mix of advocacy, support, counseling, job-training, employment and legal assistance,” says Kenneth Stewart of Georgia Pacific, GJP Board Chair.

Research shows the recidivism rate for former GJP clients is only 16 percent after three years, compared to about 40 percent for offenders who don’t receive similar attention and programming. Even offenders on intensive parole recidivate at about 30 percent, according to the State Board of Pardons and Paroles.

On GJP’s Board of Directors are some of the most prominent attorneys, business people, academics and leading citizens in the Atlanta region. They serve because they fully believe in the GJP’s vision: Changing our community by transforming individuals one person at a time.

“We are not soft on crime,” says A. Felton Jenkins Jr., of King & Spalding, immediate past Board Chairman. “We are realists who know that we must apply accountability, rehabilitative programming and support if those expressing a commitment to change their lives are to be successful.”

GJP’s success is measured in other ways, most notably the savings to the taxpayers. GJP research shows that during the five-year period from 1989 to 1993, the cost savings to the taxpayers for the years GJP clients did not go back to prison was a total of about \$9 million – or \$1.8 million per year. The reduction in human suffering and reduced victimization

because fewer crimes were committed is incalculable. If one includes the avoidance of police and court costs, the savings are even more significant, but Mr. Ammar asserts that there is even more value to the community, the individual and the family in breaking the cycle of criminal activity.

A key characteristic – among many – that makes GJP unique in the nation is this: there are no tax dollars supporting the organization. It is funded entirely by donations from about 500 individuals, 15 churches and 21 foundations. Attorneys make up the largest block of individual financial supporters, Mr. Ammar says, and The Georgia Bar Foundation is a leader among foundations giving to GJP.

Expenses for 1998 will run about \$250,000. Staffing at GJP includes two full-time lead attorneys, a host of law school summer interns, one post-release support counselor, a director of the jobs program, part-time volunteer attorneys and about 25 volunteers and student interns during various times of the year.

The cornerstone of the program is the long-term, holistic relationship developed and nurtured between the clients, attorneys and volunteers at GJP. In many cases, the relationship lasts for years: Barry came through the program six years ago, and Marcus and Antonio are four-year veterans. All know they can always come home again.

Before they can be considered for enrollment in the GJP program, potential clients must be drug and alcohol free. They also have to exhibit a near-passionate desire to want to work to become crime-free, productive citizens, and they will

sign a contract to that effect. Of some 450 applicants a year, only about 70 new cases are accepted.

Cedric Phillips, a former sub-



**Georgia Justice Project headquarters is in the Martin Luther King Jr. historic district.**

stance abuser with a lengthy criminal record who now is a supervisor with an airline, observed wryly on a recent television talk show appearance that the aggressive legal defense he was provided by GJP was without charge, yes, but it was *not free*. “No, you pay in other ways,” Cedric asserted, grinning. “You will give and give of your time and attention to the parts of the program that will make you better. You have to be dedicated, and you will work hard and seriously toward turning your life around. It takes a lot, and it’s worth it.”

In its mission to ensure justice for the indigent criminally-accused, the program can touch all aspects of

a client’s life, depending on his or her needs. For instance, client Ronald Kent spent two years in jail before GJP won an acquittal for him on a murder charge in May. He came out of incarceration in severe need of the basics, and GJP supplied some food, clothes, shelter, spending money – and even a job. Ronald took up the landscaping profession temporarily as a crew member with New Horizon until he was tapped for a nurse’s aide position at Grady Memorial Hospital.

After Ronald’s acquittal, in a rare move, the judge granted Mr. Ammar’s motion to allow Ronald to be freed from the courthouse rather than return to jail for processing out. “You ask me what makes them unique, and I say that’s what makes them unique,” insists Ronald. “That’s what kind of defense they give you. That’s never before been done. After Doug’s motion, the bailiffs said ‘you know that can’t happen.’ But, oh yes, it can happen. And it did.

“I’ve talked to a lot of lawyers,” Ronald says, a bit of understatement in his voice. “But it’s nothing like talking to Doug and the GJP. They got love. They got caring. Their word is their bond. They were there for me at all times.

“I’ve told them now that I’m part of that family,” he jokes. “I’m like that spot on the shirt, you know, you just can’t seem to remove me.” ☒

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*Andy Bowen is a former daily newspaper editor in Georgia who is a freelance writer and media relations practitioner.*

## REMEMBERING GEORGIA'S OLDEST PRACTICING LAWYER: WENDELL J. HELTON

# A Full Life: 53 Years Practicing Law

By Mary Ann Parker

*Editor's Note: The following is a tribute to Georgia's oldest practicing lawyer, who recently passed away, by his daughter, Mary Ann Parker.*

### MY DAD WAS HARDWORKING AND ACTIVE

throughout his whole life. He spent his early years in his hometown of Bainbridge where he received his early education, including musical training in several instruments. His mother saw that each person in the family knew how to play *at least* one instrument. A proficient musician, my dad played the coronet, trumpet, and saxophone, and in growing up routinely teamed with his older brother, Erle, a pianist, in playing at churches, social gatherings and various functions in the local community. My father's mother was a member of the Austell family, long time Atlanta residents whose name is on the building which housed the early offices of the *The Atlanta Journal and Constitution* in downtown Atlanta.

A true conversationalist, my dad loved to relate his recollection as a young boy of the air arrival of the Wright brothers in one of their flying contraptions to Bainbridge. Seems pretty much everyone in the town headed out to an open area very near this southwest Georgia city for the big event, many in their best duds. The soil in that part of the state is extremely sandy, and when the flying outfit landed, dry dust and grit blew in great crowds all over the expectant and eager crowd, sending the onlookers running for cover.

He had another delightful story which reflected the reactions of local people to the *new* inventions of the day: the arrival of the automobile in that part of the state. He remembered drivers with long coats, caps, goggles, and

cranks to get the new-fangled vehicles moving. Seems one of the most frightful and humorous events came when one of the old-timers of the town took a ride with his son in one of the new contraptions. A group of cronies awaited anxiously as their buddy took the ride, only to see him bolt out of the contraption at the end of the adventure, obviously shaken and agitated, shouting to his offspring, "You'll never get me in that d... contraption again!" The son smiled to the wide-eyed onlookers and boastfully said, "I got it up to 35 miles an hour."

My dad moved to Atlanta, already the home of other family members, when he was still an adolescent. He immediately began to work all types of odd jobs after school and continued to play musically with his brother for functions and church gatherings all over the city.

He attended Tech High, where he played football and was instrumental in implement-

ing military training at the school in his years there.

After graduating from Tech High in 1921, my dad and uncle formed the Helton Brothers Orchestra. An article from *The Atlanta Journal's* March 26, 1922 edition, calls the group as "one of Atlanta's best jazz organizations with top-notch pep." This particular article described a "wireless" radio program which was broadcast on WSB radio, the *Journal's* radio broadcasting station. The band was the first to play on WSB's radio broadcast. The group continued to play to delighted audiences over the next several years, expanding to radio station WGN, *The Atlanta Constitution's* station, and throughout the Atlanta area at social gatherings and dances. In his heyday, my father organized and led a nine-piece orchestra complete with singers, which played at functions all over Atlanta and on radio throughout the late 1920s and 1930s.



Wendell Helton and his daughter, Mary Ann Parker

I'm not sure what steered my dad toward the study of law, but in the early 1930s he began classes at Atlanta Law School while continuing to perform with his orchestra in the evenings and then studying in the wee hours of the morning. Graduating from Atlanta Law in 1933, he was admitted to the Georgia Bar in 1936. While music had been dad's first passion in life, he began a romance with the law that would last a lifetime.

He met my mother, the late Mary Wells Helton, while playing a dance with his orchestra, and romantically closed his radio shows thereafter with the famous song of the 30s, *Let Me Call You Sweetheart* — a secretive ending dedicated just to her. The two were married in April of 1937, and before long my dad began to curtail his musical engagements and focus more on his practice of the law.

To contribute to the war effort in the 1940s, my father worked in a managerial position with Bell Bomber Plant in Marietta (now Lockheed) before returning to practice law and sell farm implements to help struggling southeastern farmers modernize and streamline their work. He supplemented his income as an attorney with his music, but in the late 40s, with a wife and baby daughter, my dad saw that the frequent late hours of a musician and traveling were not compatible; the dance band ceased making contracts to play and law moved into the forefront. The time had come to put his full attention toward his life's work which would continue for the remainder of his 95 years — the law.

My dad's early practice covered all areas of the law, but primarily divorces, property sales, wills and estates, bankruptcy, and personal injury. In the 1960s, however, he began to handle an increasing number of criminal cases. Before the days of the Public Defender system, my father, along with a fellow practitioner, Ward Matthews, was appointed to represent an escalating number of cases for the indigent, numbering in the thousands over the next eight to 10 years. Dad would represent those accused zealously, and when I questioned why and how he could represent them with such fervor, he would always tell me that the laws of our country were so designed that even those who had pled guilty had the right to competent representation in a court of law.

He felt that as a member of the bar, he had accepted the challenge to thoroughly represent those he accepted as his clients, whether the accused was too poor to pay or was the wealthiest and most important person in the country. He labored daily in the courtroom and then researched and prepared in the afternoons and evenings, often late into the night. A tiring work schedule for

anyone, dad seemed to acquire his energy from the challenges he would face in the courtroom on behalf of those he represented. At times, I would accompany him to the jail and wait in the visitor waiting area while he went behind the buzzers and clanking bars to speak with some of his clients. On the ride home, I would question him about their accused crimes and was in amazement that he had actually emerged alive from his consultations!

As dad got older, he was determined not to let the physical ailments that elder citizens face deter him from his practice of the law as long as he felt mentally capable of representing his clients well. After his beloved wife of over 45 years passed away, he continued to live in his own home by himself and continue to practice law; he was 82 at the time, and still exceptionally active for a man far past the usual retirement age.

As late as December 1997, my father went to the Fulton County jail

by the judge's invitation to represent those accused of various crimes. As he had since the late 1970s, my father almost exclusively rode MARTA to the jail and to the Fulton County facilities where he represented the clients to whom he had been appointed. Until March of this year, he was a fixture at the courthouse, usually arriving before 9 a.m. The Sunday before he died, my dad was trying to figure out an arrangement with a local cab company to travel to the courthouse when he got stronger. He enjoyed talking with younger attorneys and sharing legal wisdom.

One of his most fitting honors came in 1989 from the State Bar of Georgia for 53 years of devotion to the practice of law. Gene Mac Winburn, President of the State Bar of Georgia in 1989, closed his letter of recognition to my father that year in a most fitting manner: "Thank you for your long and honorable service to our profession." ❧



**Mr. Helton was a fixture at the Fulton County Courthouse where he visited old friends and gave advice to young lawyers.**

# West group directory - New

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# IOLTA's Future Remains Uncertain After High Court Ruling

By John Sirman

**ON JUNE 15, THE U.S. SUPREME** Court finally weighed in on the constitutional challenge of the Texas IOLTA program, which funds legal services to the poor with interest generated by lawyer trust accounts. Neither side in the case, however, has reason to celebrate yet. The Washington Legal Foundation's challenge of the program enjoyed only a partial victory with the Court's ruling in *Phillips v. Washington Legal Foundation*, No. 96-1578. In a 5-4 decision, the Court affirmed the Fifth Circuit's finding that clients have property rights in interest generated by IOLTA accounts containing their money.

But IOLTA remains intact for now, because the Court addressed only the narrow property rights issue. The Court did not decide whether use of funds for IOLTA is a "taking" for Fifth Amendment purposes, or if so, whether clients are due "just compensation" for the funds. These issues were left for the Fifth Circuit and possibly the district court to consider on remand.

Chief Justice William Rehnquist wrote the majority decision, joined by Justices Antonin Scalia, Clarence Thomas, Sandra Day O'Connor, and Anthony Kennedy. Justices Stephen Breyer, Ruth Bader Ginsburg, David Souter, and John Paul Stevens joined in two dissenting opinions, one authored by Souter, the other by Breyer.

The majority decided that the general rule followed in Texas is that "interest follows principal." Noting that there is no dispute that client funds in IOLTA accounts are a client's property, the Court found that the application of the "interest follows principal" rule gives interest on IOLTA accounts the same "property" status as the principal.

In his dissenting opinion, Justice David Souter maintained that by deciding for the Washington Legal Foundation on the property rights element, the Court in effect rendered a decision which will have no significance if the "taking" and "just compensation" elements are eventually decided in favor of Texas IOLTA:

If it should turn out that within the meaning of the Fifth Amendment, the IOLTA scheme had not taken the property recognized today, or if it should turn out that the "just compensation" for any taking was zero, then there would be no practical consequences for purposes of the Fifth Amendment in recognizing a client's property right in the interest in the first place; any such recognition would be an inconsequential abstraction.

A better approach, said Souter, would have been to refrain from deciding the property rights question

## IOLTA Timeline

**Feb. 7, 1994:** The Washington Legal Foundation and others filed suit in U.S. District Court in Austin against the Texas Equal Access to Justice Foundation, its chair, and the individual justices of the Texas Supreme Court. The suit alleged that IOLTA grants were made in violation of the plaintiffs' rights under the First and Fifth Amendments.

**Jan. 19, 1995:** The district court dismissed the suit, holding that the plaintiffs failed to allege any legally recognized claim under the Fifth Amendment. The court also ruled that plaintiffs had not shown a property interest in the interest generated by IOLTA accounts. The plaintiffs appealed to the Fifth Circuit.

**Sept. 12, 1996:** A three-judge panel of the Fifth Circuit ruled that Texas' traditional rule that interest follows principal applies to client funds placed by Texas attorneys in IOLTA accounts, and that any interest that accrues belongs to clients as owners of the principal.

**June 27, 1997:** The U.S. Supreme Court granted a petition for certiorari filed by the Texas Supreme Court and the Texas IOLTA program. Oral arguments were held Jan. 13, 1998.

**June 15, 1998:** The U.S. Supreme Court affirmed the Fifth Circuit ruling.

until the lower courts had a chance to decide the other constitutional questions. "The taking and compensation questions," he said, "are serious ones for [the] respondents."

Michael Mazzone, a shareholder in Dow, Cogburn & Friedman, PC in Houston and a respondent in the case, described the idea that there is no "taking" as "ridiculous." The property rights issue, he said, is fundamental. "The courts that ruled in favor of IOLTA addressed our challenge by focusing on whether or not there is a property interest involved," said Mazzone. "That question has now been answered. [Texas IOLTA] can no longer avoid our constitutional argument by focusing on the property rights issue."

Supporters of the Texas IOLTA program are cautiously optimistic about its chances on the "taking" and "just compensation" questions. Pro

bono counsel for the program, Darrell Jordan, Beth Bivans, Britt Buchanan, H. Robert Powell, and David Schenck, all of Hughes & Luce, have committed to stay with the case until its conclusion and at press time were preparing for its return to the lower courts. "We're back in the position of the plaintiff being put to its proof," said Schenck, "and they're a long way from doing that."

Jordan believes the narrowness of the Supreme Court's decision bodes well for IOLTA's future. "If the Supreme Court had wanted to send a clear message that IOLTA is not constitutional, it would have done so," he said. ☒

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*Reprinted from the July 1998 Texas Bar Journal.*

Arthur Anthony  
pickup 6/98 p76

Great American pick up  
6/98 p61

# MENTORING IS ESSENTIAL TO A LAWYER'S CAREER

By Ross J. Adams



**T**he Random House College Dictionary, Revised Edition (the most current dictionary I have on my bookshelf), defines the term mentor as "a wise and trusted counselor." My computer's thesaurus provides synonyms such as teacher and guide. However, I prefer the definition published in this column several years ago by one of my predecessors, Nolie Motes, whom I also consider one of my mentors. Nolie defined a mentor as a person you can ask questions that you are too embarrassed to ask anyone else. It is this definition that I use when considering the myriad mentor proposals I have heard discussed in every bar association with which I am involved. However, I also define a mentor as someone a person can look to for guidance when faced with a difficult or novel situation — though I am just as likely to consider and decide how my mentors would handle a situation as I am to actually discuss the situation with them. A mentor under this second definition teaches the parameters that we use to guide and control our lives.

In reality, almost everyone has had a mentor during some stage of life. Like most people, the first mentors I had were my parents. They tried to teach me how to handle a

situation, even before I could verbalize about it. As I grew older, and learned how to talk, much to my father's consternation, he became a mentor as defined by Nolie. Growing up with that false bravado we all had, I was certainly not going to admit to my contemporaries that I did not know everything, or at least almost everything. I am certain there were many questions I posed that my father would have preferred to dodge. However, he knew that I had to ask someone, so he did the best he could, notwithstanding his own embarrassment.

Even as a teenager, while I treated my father primarily as an ATM that rarely told me I had a negative balance, occasionally those questions would still arise. In thinking about his answers, he again was a mentor under the second definition, teaching me how to handle situations, eventually without even having to ask him the questions. He taught me the guidelines by which I have lived my life.

Upon entering college and eventually law school, I discovered that there were very few opportunities to develop a mentor of the first definition. However, I did develop some mentors of the second definition, primarily by observing their actions rather than asking questions — although I did get some good outlines from a few third years!

In the real world as a practicing lawyer, it is even more difficult to obtain mentors of either type. A young associate in a law firm would sooner work all night than ask that one, embarrassing question. After all, the associate would have to consult either

his employer, who controls the check book or a fellow associate, with whom he is competing for that ultimate goal of partnership. In addition, a new lawyer who does not start out in a firm, but immediately begins sole practice, has almost no one available to teach him or her the proper parameters of being a lawyer.

While the problem of obtaining a mentor is difficult to solve, it is not insurmountable. I have been lucky enough, through my bar work, to obtain mentors of both types. However, you do not have to be president of the Young Lawyers Division to find a mentor. There are a multitude of experienced lawyers who care enough about their profession that they are willing to lend a hand to a new lawyer. Simply joining a local bar association, and attending a few meetings, will provide a sufficient introduction to call upon a more experienced lawyer to ask that embarrassing question. Even in a large law firm, the actual consequences of asking the embarrassing question are almost assuredly significantly less than the anticipated outcome.

Obtaining a mentor is imperative to the life of a younger lawyer. It is only by acquiring this guidance that a young lawyer will grow professionally, intellectually and emotionally enough to handle those difficult and novel situations which we face almost every day. ☐



Now Registering for the 1999 Season

Deadline: October 1

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Young Lawyers Division's

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[mttrial@glbar.org](mailto:mttrial@glbar.org)

# 1998 LRE Golf Tournament

Tuesday, October 20, 1998 ♦ 12 Noon

The Oaks Course

11240 Brown Bridge Road

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Sponsored by the Young Lawyers Division Law Awareness  
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## Registration Form

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

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Player #2 \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

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Entry Deadline: October 1, 1998

Field limited to first 128 Golfers ♦ Money due with registration ♦ No Refunds

Mail or fax entry to: YLD ♦ State Bar of Georgia ♦ 800 The Hurt Bldg ♦ 50 Hurt Plaza ♦ Atlanta, GA 30303 ♦ fax (404) 527-8717



# Returning to the Trial of the Century

**Edward J. Larson, *Summer For The Gods: The Scopes Trial and America's Continuing Debate Over Science and Religion*. Basic Books. 318 pp. \$25.00.**

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**Reviewed by Sarah Bartholomew Ellerbee**

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**W**ith the award of the Pulitzer Prize for History, Edward J. Larson makes history himself. He becomes the first University of Georgia

professor to win the prestigious award. Dr. Larson holds a joint appointment in law and history and is very active in the classrooms of both schools. He also makes time to write and now he has the confirmation that he does it well.

In his new book, Dr. Larson examines the infamous Scopes "monkey trials" from a fascinating perspective. The evolution controversy is approached from the legal, religious, cultural, educational, scientific, and political arenas that it influenced then and continues to influence today. Dr. Larson's approach is very even-handed, neither siding with the creationists nor the evolutionists. When asked where his position on this question lies, Dr. Larson responds with his own views opposing any laws that restrict the teaching of evolution in schools. "I didn't have an agenda in writing this book. I just wanted everybody to hear both sides fairly, and then I didn't care what side readers came down on." He views the controversy as a three-sided stool. Those three sides being William Jennings Bryan, Clarence Darrow, and the ACLU. Through his extensive research for the book Dr. Larson came to respect and admire the personalities involved even more.

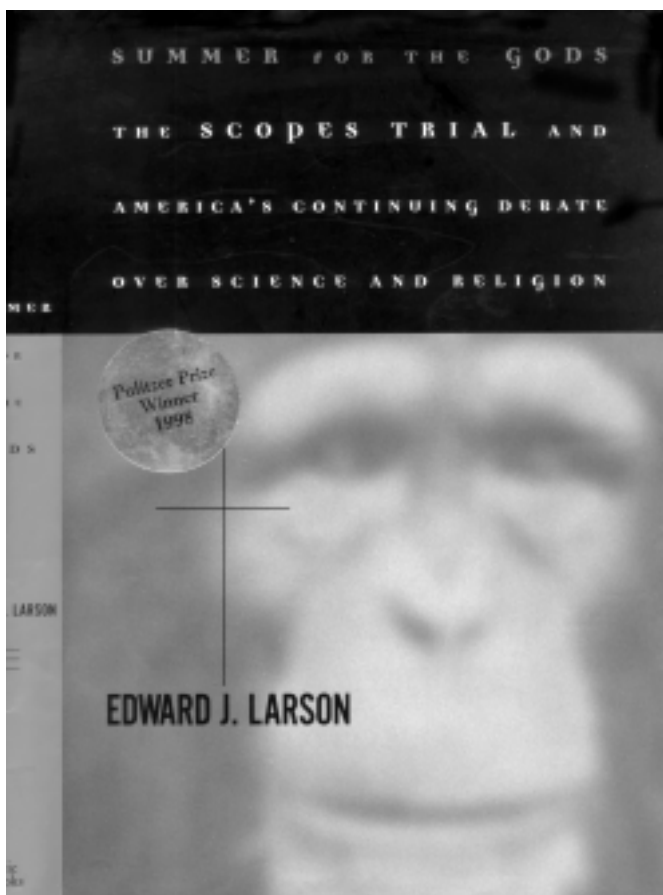
Much myth and legend has grown up around the trial that took place in a tiny courtroom in Dayton, Tennessee in 1925; it was truly the trial of the century. With a thorough examination of original material, Dr. Larson does much to debunk many of these myths and legends. He intensely investigates the background surrounding the controversy, including the ACLU's role in the trial. He then takes us through the actual trial, using trial transcripts and other sources to humanize the almost mythological men involved.

The coverage of the aftermath of the trial illuminates the reasons we have come to view the trial differently than those who were there at the time. Scopes continues to structure much of the current debate surrounding issues of science and religion.

Members of the Bar should not miss the opportunity to enlighten themselves about the important issues raised in this text. Dr. Larson states that he had lawyers in mind when he wrote the text. He unpacks the legal strategy of the participants. He also presents the methods used by Bryan and Darrow to shape a public interest law suit. It is an extremely enjoyable read because of the fascinating subject matter and the precise writing style of the

author. It is heavily footnoted, so sources for further investigation of the controversy are easily attainable.

The book was reviewed by Will Provine who stated, "Inherit The Wind, step aside!" I concur. ☞



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*Sarah Bartholomew Ellerbee is an associate professor of Political Science at Valdosta State University. Dr. Larson was one of her professors during her pursuit of an LL.M. at the University of Georgia Law School.*

# Duly Noted

*Over the past few months, the Bar Journal has received an eclectic number of books. Here is a sampling:*

***Legal Bases: Baseball and the Law* by Roger I. Abrams (Temple University Press, \$27.95)**

For those of you who love baseball and the law, Roger Abrams offers the opportunity to unite those two interests. This “all-star” lineup of stories includes plenty of anecdotes about the legal tribulations of both legendary and lesser-known players. The chapters cover a range of issues from the organization of the first baseball union to gambling and illegal drugs.

***Sisters in Law: Women Lawyers in Modern American History* by Virginia G. Drachman (Harvard University Press, \$35.00)**

Sometimes it may not seem like the law is very enlightened when it comes to women, but life in the Bar has certainly improved in this century. Virginia Drachman explores the history of women lawyers from the 1860s to the 1930s revealing a rigidly engendered profession. These women fought for access to law schools and then for admission to bar associations, but “never completely overcame the sexual discrimination that was so pervasive in the legal profession.”

***Cardozo* by Andrew L. Kaufman (Harvard University Press, \$55.00)**

In this well-researched biography, Harvard Law Professor Andrew Kaufman details the remarkable life of Benjamin Nathan Cardozo one of the most influential judges in the twentieth century. Cardozo’s personal and professional lives are intertwined in this study of a most distinguished legal career.

***Trial and Error: An Oxford Anthology of Legal Stories*, eds. Fred R. Shapiro and Jane Garry (Oxford University Press, \$30.00)**

Fred Shapiro and Jane Garry have assembled an excellent collection of literary works that raises a range of jurisprudential issues about the nature of truth and justice. The volume includes segments from well-known works such as *Bleak House*, *Billy Budd* and *To Kill a Mockingbird*, as well as less frequently read works from Susan Glaspell and Nadine Gordimer.

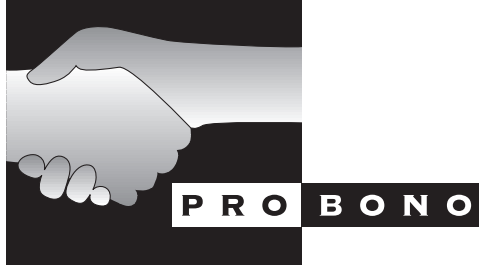
***Soft Tissue Injuries in Georgia, Including Whiplash* by Houston D. Smith III (The Harrison Company, \$94.95)**

This well-organized volume details all aspects of litigating a soft tissue injury case, including: preliminary considerations, investigating and documenting the case, understanding the injuries, and a wide variety of litigation issues. With its focus on Georgia law, this volume is an indispensable reference for anyone practicing in this area.

***Studies in Georgia Statutory Law* by R. Perry Sentell Jr. (Georgia Office of Legislative Counsel, \$25.00)**

Some members of the Bar may be familiar with University of Georgia Carter Professor of Law, Perry Sentell’s observation that “statutory law is the birds and bees of law practice.” This volume is a collection of Professor Sentell’s analysis and commentary on Georgia laws and legislation. These 14 “Studies” focus on “Georgia’s illustrious statutory history.” ☐

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# Access to Justice: Do the Public Good

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**By Michael L. Monahan**

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*Editor's Note: The Access to Justice Committee of the State Bar of Georgia begins here a series of articles on the topic of access to justice.*

## **WE AMERICANS PRIDE**

ourselves on our democratic values and institutions. We hold them up as models to the world. We cling tightly to the notion that we operate under the rule of law, not the rule of men. We insist that emerging democracies hold elections at the earliest opportunity to assure that leadership is chosen, not grabbed.

We pride ourselves as well on our peaceful means of dispute resolution, and the stability of our business transactions, our dealings with our government agencies, and even with each other, because they are all premised on a set of laws and court decisions that offer a high degree of predictability. Our jury system contemplates adjudication by a group of individuals who would themselves expect a fair shake by the system.

The public's confidence in our system of justice is rooted in the perception of fairness and equality. As lawyers, we are entrusted with the keys to the courthouse and the legal system on the premise that we promote, rather than impede, access to that courthouse.

But we have a problem. The public's confidence seems to be shaking. We know that not everyone

can get in the courthouse door. We know that not all disputes are resolved peacefully, or indeed, resolved at all. We know that government agencies make mistakes, sometimes costly ones to individuals. We know, in fact, that there is injustice in our system of justice, and too many times there's no redress.

Don't we as lawyers have to do something about this? Aren't we risking the stability of our society, our faith in the rule of law and its promise of fair dealing, our belief in the fundamental values of our democracy, and the public trust and confidence in the legal profession if we do not commit ourselves to tackling that work? We have all heard the deep frustrations expressed by individuals with serious legal problems who cannot find affordable legal assistance. We are all familiar with the hopelessness expressed by individuals who are tied up in government red tape and can't understand the problem. We know too well the apathy of individuals who feel that our democratic values don't apply to their situation.

Beginning with the next issue of the *Bar Journal*, we will explore who's not getting in the door, and why; and also what we know about what they do instead. We know it's not just poor people who can't find lawyers, can't get the basic information they need, can't get their problems addressed. Through these articles and other activities, the Access to Justice Committee hopes to generate a broader dialogue on

these needs and gaps which will include lawyers, clients, community leaders, business persons, and others around the state. Innovative ways to meet legal needs are being tried in Georgia and other places around the nation, and these need to be evaluated, and others need to be created. Methods include lawyer-designed and supervised legal information "hotlines," volunteer attorney clinics, Internet-based services, pro se assistance packets, "unbundling legal services" to make it more affordable, video and print materials, and courthouse information centers. Consumers need a range of services from basic information about legal rights and procedures to full representation in complex litigation and we hope to explore a variety of responses to these needs.

The impetus for this inquiry is coming from many sources, ranging from the Judicial Council which in 1997 established a Pro Se Litigants Committee, to the State Bar of Georgia and the Georgia Bar Foundation, to the federal Legal Services Corporation. State Bar President William E. Cannon Jr. has initiated a new program called "Foundations of Freedom" which will be another vehicle for addressing some of these questions.

Substantial numbers of our citizens cannot obtain justice. Some of their problems can be simply resolved if we are creative and have the will. More problems can be addressed with some

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**CONTINUED ON PAGE 69**



## Leah J. Sears

### Justice, Supreme Court of Georgia

When Leah Sears first donned the robes of a Georgia Supreme Court justice, she was the youngest person in Georgia's history to do so. She was also the Court's first woman.

It was not her only groundbreaking move. Justice Sears had already been the first African-American woman to serve as a Superior Court



judge in Georgia, following a civil practice at the 300+ lawyer firm of Alston & Bird and tenure as a judge on Atlanta's City Court. In between, she has worked on numerous community concerns — minority issues, drug abuse, children's rights, bat-

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### Continued from Page 68

strategic planning and allocation of existing resources. Full and equal access to justice for all no doubt requires an additional commitment from lawyers and others in our communities. But there's a lot at stake and a lot to gain. We will welcome your reactions to our thoughts in these articles. ☐

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*Michael L. Monahan is Director of the State Bar's Pro Bono Project.*

*This profile is part of a continuing series brought to you by the Chief Justice's Commission on Professionalism. The Commission congratulates Justice Sears on her recent re-election to the Supreme Court of Georgia.*

tered women — and chaired a litany of programs that leave few societal ills untouched.

In her Supreme Court chambers, the walls are lined with plaques and photographs. A half-open closet door reveals boxes marked "mementos," neatly arranged by year, presumably containing the overflow, or the more personal.

Justice Sears strikes you as someone who would keep reminders of personal moments. She clearly cares about her work and speaks passionately about the law and those who practice it. Answering questions directly and without hesitation, she leaves no doubt that she knows exactly where she stands, which appears to be solidly on the ground and looking straight ahead.

### What is the toughest decision you ever made as a lawyer or judge?

It was a decision I made as a Superior Court judge — *En re Jane Doe*. The case involved a baby girl who was dying. The father wanted life support and the mother didn't. It being so important in people's lives, nothing has quite hit that.

### What did you do?

I went in favor of life support — putting life above everything, even a scintilla of life.

**Do you think that there is anything different about the legal profession than other areas of work — is there some sort of "calling" associated with it — or is it primarily a commercial enterprise?**

I think it *is* a calling. It is a ministry — we are the ministers of the law — and we need to treat it as that. We hold people in our hands — lawyers even more so than judges.

### What advice would you give to people considering the law as a profession? What factors should they consider?

That it is a life's work and a helping profession. It is a calling — to not just do the business of the law but to be a leader in the community. Lawyers are more, to me, than people who just practice law. They are community leaders.

### What would you tell new lawyers?

That it's a tough profession to be in, trying to balance the interests [in your life]. And that the most important thing is to protect your reputation — your integrity, your honesty and your truthfulness.

### Now that you are a judge, do you miss anything about being a lawyer in private practice?

I like this a lot better. I like being able to mold and help shape where we're going from a big picture perspective. I like it with a passion. ☐

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*Laurel-Ann Dooley, who conducted the interview, is an Atlanta-based attorney and writer.*



# Some Tools for Estate Planning

By Matthew J. Howard  
and Brian D. Smith

## Intentional Grantor Trust

**THE GRANTOR TRUST IS A** trust which is treated as owned by the grantor and all of the income and deductions of which are therefore attributed to the grantor under Internal Revenue Code Sections 671-679. Prior to 1993, grantor trust status was to be avoided for all

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irrevocable trusts which were intended to be completed gifts for gift tax purposes and not part of the grantor's estate. However, beginning in 1987 and effective as of 1993, trusts became subject to the top income tax bracket at \$8,100 of income (1997 rates), by comparison with \$271,050 for individual taxpayers (income tax rates schedules for 1997). Now, therefore, the grantor is likely to be paying a lower tax on the trust income than would the trust if it accumulated the income. Thus, the benefit of the gift tax free gift, which has always been available through the grantor trust, is not off-set by any income tax costs for the family as a whole.

The intentional grantor trust has become one of the most popular vehicles for "leveraged" gifts. The leverage occurs by reason of the fact that the trust assets grow income tax free (like a qualified retirement plan or a charitable remainder trust), and distributions to a beneficiary are likewise income tax free to the beneficiary, while the grantor's conferring this additional benefit through repayment of the tax on the income in question is not a taxable gift because the grantor (and not the trust of the beneficiary) is liable for the tax under the Internal Revenue Code.

As used in this article, the term "intentional grantor trust" means a trust which is a "grantor trust" for income tax purposes, a completed gift for gift tax purposes, and a transfer which will not be included to any extent in the grantor's estate for

estate tax purposes. Thus, by definition the grantor is not a beneficiary of such a trust and can not control who will take under the trust (except subject to an ascertainable standard).

Grantor trust status is extremely useful if it is contemplated that there will be transactions between the grantor and the trust, and one wishes these transactions to be income tax free. The IRS has consistently taken the position that income and deductions of a grantor trust will be treated as realized by the grantor directly; thus a transaction between the grantor and a grantor trust cannot give rise to any taxable income because it is a transaction between the grantor and himself. Rev. Rul. 85-13, 1985-1C.B.184; PLR 9535026, 9525032, 9519029, 9345035. Contra: Rothstein v. U.S., 735 F.2d 704 (2d Cir.1984). For example grantor/taxpayer owns stock in a closely held business, ABC Inc. ABC Inc. stock continues to appreciate rapidly. However, ABC Inc. is an S-Corp and grantor does not want to forego the "S" distribution earnings. Therefore, grantor decides to sell off a portion of ABC Inc.'s stock to the intentional grantor trust in exchange for a promissory note. The promissory note will provide for interest only payments with a balloon payment at the end of 15 years. The note must carry

interest at the Applicable Federal Rate as published by the federal government. The interest payments will be paid with S corp earnings. In the meantime, the S corp stock owned by the grantor trust will appreciate outside of the grantor's estate. At death, the balance of the note will be included in the grantor's estate which will be far less than the value of the appreciated stock of ABC Inc.

The key to this planning is to achieve grantor's trust status without causing the trust either to be an incomplete gift or to be included in the grantor's estate. The fact that this is possible in the first instance attests to the disparity between the "retained strings" that will cause inclusion in the grantor's estate and the retained strings that will cause inclusion in the grantor's income tax base.

The trick therefore is how to expose a taxpayer who wants to make a trust taxable to the grantor in a safe and easy way without encountering unwanted wealth transfer tax consequences. In this respect, the secret is to think in terms of flunking various exceptions to grantor trust liability provisions, with an eye on the estate, gift, and generation-skipping transfer tax consequences of a particular interest or power.

By far the most popular defect is the one that the government loves to hate and, because it is easy and safe, upon which the government no longer will rule: The Section 675(4)C power to swap assets. This provision authorizes any person not acting in a fiduciary capacity and without the consent of a fiduciary to exchange trust assets for full and adequate consideration with entire trust portion rule consequences and no wealth transfer tax exposure to the power holder. However, other viable alternatives also should be

considered, given the governments antipathy for this approach. The relatively unconventional method of creating grantor trust liability, in this case without the help of a spouse or other third party, is for the grantor to borrow the corpus of the trust for less than adequate interest or security, triggering Section 675(3). Alternatively, if the trustee is the grantor's spouse or any other related or subordinate party, a loan to the grantor or to the grantor's spouse for adequate interest and security will still trigger Section 675(3) entire trust portion treatment.

In summation, the intentional grantor trust is a tax planning device which benefits all concerned. Even though the grantor remains liable for the income tax due on the trust earnings, this additional income tax paid is most affordable by the grantor and is not an additional gift by the grantor. Therefore the grantor can use his or her annual exclusion for other transfers of property. As with any tax planning, careful consideration should be given to the various gift, estate, and generation-skipping transfer tax consequences surrounding this planning.

## Charitable Remainder Trusts

The charitable remainder trust is a highly effective estate planning tool. For a trust to qualify as a charitable remainder trust, it must meet the requirements for either a charitable remainder annuity trust under § 664(d)(1) of the Internal Revenue Code (the "Code") or a charitable remainder unitrust under § 664(d)(2). Very simply, the charitable remainder trust allows the donor to transfer property to a trust retaining an income interest in the trust property for life or for multiple lives, with the remainder then passing to a charity at the death of

the last non-charitable beneficiary. Such a trust arrangement produces multiple charitable deductions—income, gift and estate. A simple testamentary transfer to a charity, on the other hand, only produces an estate tax charitable deduction.

The most common form of charitable remainder trust is the charitable remainder unitrust established under Section 664(d)(2) of the Code. The charitable remainder unitrust provisions of the Code require the trust to pay the non-charitable beneficiary an amount called the "unitrust amount" not less often than annually. Under Section 664 and the Treasury Regulations promulgated thereunder, the "unitrust amount" must be one of the following three amounts:

1. A fixed percentage of the net fair market value of the trust's assets, valued annually;

Health  
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2. The lesser of a fixed percentage of the net fair market value of the trust's assets, valued annually or the net income for the trust; or
3. The lesser of a fixed percentage of the net fair market value of the trust's assets, valued annually or the net income for the trust plus any amount of the net income from the trust which is in excess of the fixed percentage amount to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Many people quickly dismiss the validity of the charitable remainder unitrust as a part of their estate plan simply because they would rather their assets go to their descendants than to a charity. One thing to keep in mind, however, is that in some cases a significant portion of the estate is going to the IRS. In these

estates, the donor needs to consider whether they want the IRS to receive the bulk of their estate, or a charity. While these clients may be unable to pass all of their wealth on to future generations, they can at least direct a portion of their estate to a worthwhile cause. Typically, after looking at charitable planning in this way, the donor sees the charitable remainder unitrust in a completely different light.

The Taxpayer Relief Act passed by Congress in 1997 made several changes to the charitable remainder trust rules that all practitioners in the estate planning area should be aware of. One such change is the new 10 percent charitable remainder requirement found in new Code sections 664(d)(1)(D) and 664(d)(2)(D). This provision essentially says that upon funding the charitable remainder trust, the actuarially determined value of the remainder interest that will eventually pass to charity must equal at least 10 percent of the fair market value of the trust assets. This new requirement adds some complexity to charitable planning that all estate planners must understand. For example, assume Taxpayer A, a 47 year old individual, contributes \$100,000.00 to the Taxpayer A Charitable Remainder Unitrust on April 15, 1998. Under the trust agreement, Taxpayer will receive a unitrust amount of 10 percent of the

net fair market value of the trust's assets as determined on the first day of the tax year. Using Taxpayer A's age, the 6.8 percent applicable federal rate for April, 1998 and the actuarial tables found in IRS Publication 1458, the present value of the remainder interest that will eventually pass to charity is \$10,093.00. This remainder value just barely passes the new 10 percent requirement. Alternatively, assume all of the same facts except that Taxpayer A is now 46 years old.

Under the same facts, the Taxpayer A Charitable Remainder Unitrust no longer qualifies because of the new 10 percent requirement. In order to bring the trust within the 10 percent remainder requirement, the fixed percentage that is used as the unitrust amount must be changed to 9.67 percent. With a unitrust amount of 9.67 percent, the present value of the remainder interest that will pass to charity is \$10,015.00. As you can see from this example, the younger the donor, the more careful you must be with the unitrust fixed percentage.

There are numerous other charitable remainder trust issues that the practitioner should be aware of, however, this article is somewhat limited in space and cannot hold them all. It is important to keep in mind that charitable remainder trust planning is not a field to enter into lightly. If carefully pursued, however, it is an area that can effectively fulfill many of a client's estate planning needs. ☒

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*Matthew J. Howard is a partner and Brian D. Smith is an associate with the firm of Moore Ingram Johnson & Steele LLP in Marietta. The intentionally defective grantor trust and the charitable remainder trust are just two of the numerous estate planning vehicles available to practitioners. This article is reprinted from the Cobb Bar News.*

**Dan  
Turner  
Builders  
pickup 4/  
98 p83**

**Core  
Funding  
pickup  
4/98 p73**

The Anti-Defamation League (ADL) awarded **R. Lawrence Ashe Jr.**, of Paul, Hastings, Janofsky & Walker, it's first Judge Elbert Tuttle ADL Distinguished Jurisprudence Award. Lifetime Achievement awards celebrating careers of excellence were given to **Elliot Goldstein** of Powell Goldstein Frazer & Murphy and **Joseph F. Haas** of Arnall Golden & Gregory. The awards were established to recognize individuals in the legal community who have exhibited humanitarian concerns and whose personal and professional actions exemplify the principles on which ADL was founded.

The following judges were sworn-in by Gov. Zell Miller: **John Herbert Cransford** was sworn-in on May 27 as Judge, State Court of Coweta County; **Kathlene F. Gosselin** was sworn-in on June 3 as Judge, Superior Court, Northeastern Judicial Circuit; **Bonnie Chessher Oliver** was sworn-in on June 11 as Judge, State Court of Hall County; **Wayne M. Purdom** was sworn-in on July 9 as Judge, State Court of DeKalb County; and **Anne Workman** was sworn-in on July 9 as Judge, Superior Court, Stone Mountain Judicial District.

Georgia State University College of Law presented the Ben F. Johnson Jr. Public Service Award to **Randolph W. Thrower** in April. The award is presented annually to a Georgia lawyer whose life and career reflects the high tradition of selfless public service that the founding dean, Ben Johnson, exemplified during his career.

**David G. Epstein**, a professor of law at the University of Alabama

and counsel at King & Spalding in Atlanta, has been named a member of the *Collier on Bankruptcy* Editorial Board. Matthew Bender & Company Inc. is the publisher of bankruptcy research tools and practice material.

The High Museum of Art in Atlanta announces that **Rawson Foreman**, a real estate partner with Alston & Bird, has been named Chair of the museum's Board of Directors.

**Lee Ann de Grazia**, Assistant Attorney General for the State of

Georgia, has been named the first Turner Environmental Law Fellow by Emory University School of Law. She began the coordination of the activities of Emory's new Environmental Law Clinic in July 1998.

The Georgia Institute of Technology recently awarded the annual Young Alumni Award to **W. Scott Petty** for his commitment to his profession, his community and Georgia Tech. He is a patent attorney and partner of Jones & Askew LLP in Atlanta. ☐

## New Name For Minority Counsel Program

The Georgia Minority Counsel Program announces they have changed their name to the State Bar of Georgia Diversity Program. They hosted a reception for minority summer associates during the Annual Meeting. Pictured at the event are clockwise: **Damien Turner** (left) and Chief Justice **Harold Clarke**; a group of law clerks share experiences; and Co-chair **Brent Wilson** discusses the benefits of the Diversity Program.





## WHO'S WHERE

### In Atlanta

**Ross J. Adams** and **Michael R. Braun** announce the formation of **Adams Braun LLP**, a general practice firm in the areas of civil litigation, business litigation, family and personal injury law. The firm is located at 1100 Circle 75 Parkway, Suite 800, Atlanta, GA 30339; (770) 953-6775.

**Hunton & Williams** announces that **W. Tinley Anderson III**, **Adam L. Salassi** and **Christina S. Meador** have been promoted to partner. The firm is located at NationsBank Plaza, Suite 4100, 600 Peachtree St., NE, Atlanta, GA 30308-2216; (404) 888-4000.

**Camille Wright Brannon**, **Edward P. Hudson** and **J. Michael Campbell** have formed the firm of **Campbell, Hudson & Brannon LLC**. The two offices are located at One Lakeside Commons, 990 Hammond Drive, Suite 800, Atlanta, GA 30328; (770) 396-8535 and One Buckhead Plaza, 3060 Peachtree Rd., NW, Suite 1735, Atlanta, GA 30305; (404) 504-8700.

**Robert H. Buckler**, **Michael D. Kaufman**, **Richard W. Gerakitis** and **Alston D. Correll III**, formerly of **Alston & Bird**, have joined the firm of **Troutman Sanders LLP**. The office is located at 600 Peachtree St., NE, 5200 NationsBank Plaza, Atlanta, GA 30308-2216; (404) 885-3000.

**Arnall Golden & Gregory LLP** announces that **Todd M. Campbell** and **Scott Shuman** have joined the firm as associates. The office is located at 2800 One Atlantic Center, 1201 West Peachtree St., Atlanta, GA 30309-3450; (404) 873-8500.

**Freddy Codner**, formerly with **King & Spalding**, has joined **Jamison Shaw Hairdressers**. He will focus on the business, financial and marketing aspects of the salon and plans to complete a cosmetology apprenticeship. The salon is located at 3330 Piedmont Rd., Atlanta, GA 30305; (404) 233-7965.

**Alston & Bird LLP** announces that **James A. Harvey** and **James E. Meadows**, formerly of **Hicks, Maloof and Campbell**, have joined the firm as counsel. The firm has also named **J. Thomas Kilpatrick** as partner. The office is located at One Atlantic Center, 1201 West Peachtree St., Atlanta, GA 30303-3424; (404) 881-7000.

**Ernst & Young LLP** announces that **Jeffrey D. Paquin**, **Michelle J. Weckslers**, and **Jennifer L. Boyens** have joined the Litigation & Dispute Resolution Services Group of the firm. The address is Suite 2800, 600 Peachtree St., Atlanta, GA 30308-2215; (404) 874-8300.

**Lee B. Perkins** announces the opening of his law office at 305 Buckhead Ave., Suite 201, Atlanta, GA 30305; (404) 231-9229.

**World Color Direct**, a division of World Color Press, announces that **Luanna B. Petti** has been appointed vice president, associate counsel. The mailing address is P.O. Box 19833, Atlanta, GA 30325.

**Kevin A. Ross** has resumed his managing partner responsibilities at **Hunton & Williams** following his leave of absence to manage the reelection campaign of Mayor Bill Campbell. The office is located at NationsBank Plaza, 600 Peachtree St., NE, Atlanta, GA 30308-2216; (404) 888-4000.

**Jones & Askew** announces that **Katrida Collier** has joined the firm. She will work on a broad range of intellectual property matters involving patent, trademark and copyright law. The office is located at 191 Peachtree St., NE, 37th Floor, Atlanta, GA 30303-1769; (404) 818-3700.

**Shayna M. Steinfeld**, formerly of **Macey, Wilensky, Cohen, Wittner & Kessler LLP**, has opened her own firm concentrating in bankruptcy, business reorganization and creditor right law. The mailing address is P.O. Box 49446, Atlanta, GA, (770) 493-1163; [steinfeld@mindspring.com](mailto:steinfeld@mindspring.com).

**Wimberly, Lawson, Steckel, Nelson & Schneider PC**, announces that **Martin H. Steckel** and **Clifford H. Nelson Jr.** have been named senior principals. **Les A. Schneider** has been named managing principal and **Paul Oliver** has joined the firm as principal. **Francine N. Silverstein**, **Alison Jacobs** and **Paul C. Munger** have joined the firm as associates. The office is located at 3400 Peachtree Rd., NE, Suite 400, Lenox Towers, Atlanta, GA 30326-1107; (404) 365-0900.

**Schnader Harrison Segal & Lewis LLP** announces that **Warren N. Sams III** has been elected partner of the firm. Mr. Sams will practice out of the Atlanta office.

**Raymond S. Willoch** has been promoted to senior vice president of **Interface Inc.**, an Atlanta-based manufacturer of commercial carpets, office fabrics and chemicals. He also serves as the general counsel and corporate secretary of the company. The office is located at 2859 Paces Ferry Road, Suite 2000, Atlanta, GA 30339; (770) 437-6800.

## In Columbus

**Charles W. Miller, L.M. Layfield III** and **H. Owen Lee Jr.**, formerly of **Self, Mullins, Robinson, Marchetti & Kamensky PC**, have formed the firm of **Miller, Layfield & Lee PC**. The office is located at Corporate Center, 233 12th St., Suite 910, Columbus, GA 31901; (706) 322-4220.

**Hatcher, Stubbs, Land, Hollis & Rothschild** announces that **C. Morris Mullin, Theodore D. Morgan** and **Teri Yancey Callahan** have become partners of the firm. **Forrest L. Champion Jr.** has joined the firm as of counsel. The firm also announces that **W. Fray McCormick** and **Bradley R. Coppedge** have become associates. The office is located at 233 12th St., Suite 500, Corporate Center, Columbus, GA 31901; (706) 324-0201.

## In Roswell

**Janis L. Rosser** announces the relocation of her office to 1144 Canton St., Suite 100, Roswell, GA 30075; (770) 645-45400.

## In Savannah

**Bouhan, Williams & Levy LLP** announces that **Melanie L. Marks** and **Carlton E. Joyce** have been elected partner. **Ann Marie Stack**, formerly of **Kilpatrick Stockton** has become a partner of the firm and will continue to practice in environmental law. The office is located at 447 Bull Street, The Armstrong House, Savannah, GA 31901; (912) 236-2491.

## In Toccoa

**Adams, Clifton, Sanders & Smith PC**, announces that former member **Alton M. Adams** has left

the firm to open his own office and **Marie K. Evans** has joined the firm as an associate. The office is located at 311 S. Big A Road, Toccoa, GA 30577, (706) 886-7533; [CSSPC@ALLTEL.NET](mailto:CSSPC@ALLTEL.NET).

## In Alabama

**Perry G. Shuttlesworth Jr.** announces the offices of **Perry G. Shuttlesworth Jr. PC**, located at 300 North 21st. St., Suite 301, Birmingham, AL 35203; (205) 322-2331.

## In Florida

**Hopping Green Sams & Smith PA** announces that **Gary K. Hunter Jr.** has become a shareholder in the firm. The office is located at 123 South Calhoun St., Tallahassee, FL 32301; (850) 222-7500. ☒

# Mainstreet pick up 4/98 p.59

## IN MEMORIAM

The Georgia Bar Foundation Inc. sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Georgia Bar Foundation 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.

|  |                                    |                                       |                                     |
|--|------------------------------------|---------------------------------------|-------------------------------------|
| Barnes, Grace H.<br>Atlanta              | Admitted 1945<br>Died June 1998    | McManus Jr., Donald McLean<br>Atlanta | Admitted 1995<br>Died June 1998     |
| Bates III, Sturgis G.<br>Atlanta         | Admitted 1967<br>Died May 1998     | Miller, Lawton<br>Macon               | Admitted 1941<br>Died March 1997    |
| Birdsong Jr., Judge A.W.<br>Atlanta      | Admitted 1950<br>Died June 1998    | Moore, Arnold C.<br>Atlanta           | Admitted 1959<br>Died June 1998     |
| Caswell, Judge Paul Edward<br>Hinesville | Admitted 1930<br>Died April 1998   | Nix, Charles A.<br>West Point         | Admitted 1957<br>Died October 1997  |
| Duncan, Judge Vernon W.<br>Marietta      | Admitted 1949<br>Died June 1998    | Pindar, George A.<br>Atlanta          | Admitted 1927<br>Died December 1997 |
| Echols, Ruth McLauchlin<br>Decatur       | Admitted 1939<br>Died May 1998     | Robertroy, Martha<br>Port Huron, MI   | Admitted 1969<br>Died April 1994    |
| Haas, Daniel Saul<br>Marietta            | Admitted 1996<br>Died May 1998     | Roche, William J.<br>Atlanta          | Admitted 1960<br>Died June 1998     |
| Hamilton Jr., Frank E.<br>Tampa          | Admitted 1948<br>Died March 1998   | Smith Jr., Charles W.<br>Gainesville  | Admitted 1975<br>Died June 1998     |
| Hinton Jr., James M.<br>Augusta          | Admitted 1962<br>Died January 1998 | Starr, Harlan M.<br>Dalton            | Admitted 1979<br>Died June 1998     |
| Hunter, Trapnell E.<br>Decatur           | Admitted 1950<br>Died June 1998    | Underwood III, Frank C.<br>Savannah   | Admitted 1962<br>Died April 1998    |
| Jenkins, Ralph C.<br>Canton              | Admitted 1950<br>Died July 1998    | Wingate Jr., John W.<br>Macon         | Admitted 1971<br>Died June 1998     |

## LAWYER DISCIPLINE

| Name                           | City              | Discipline                   | Date of Supreme Court Order |
|--------------------------------|-------------------|------------------------------|-----------------------------|
| Anthony, LaGrant .....         | Conley .....      | public reprimand .....       | May 1, 1998                 |
| Bennett, Charles Anna .....    | Duluth .....      | disbarred .....              | June 15, 1998               |
| Creson, John L. ....           | Augusta .....     | reinstated .....             | May 21, 1998                |
| Joyner, Gordon L. ....         | Atlanta .....     | public reprimand .....       | May 1, 1998                 |
| Lenoir, Alvin R. ....          | Dunwoody .....    | reinstated .....             | May 26, 1998                |
| O'Marra, Brendan Robert .....  | Smyrna .....      | review panel reprimand ..... | May 1, 1998                 |
| Redding, Valerie Annette ..... | Atlanta .....     | disbarred .....              | June 15, 1998               |
| Rehberger, Robert L. ....      | Stockbridge ..... | disbarment confirmed .....   | July 6, 1998                |
| Robbins, William N. ....       | Atlanta .....     | review panel reprimand ..... | May 1, 1998                 |
| Salter, Donald Travis .....    | Atlanta .....     | disbarred .....              | May 4, 1998                 |
| Sims, Wayman .....             | Atlanta .....     | review panel reprimand ..... | May 1, 1998                 |
| Swearingen, John C. ....       | Columbus .....    | disbarred .....              | June 1, 1998                |

**CAUTION! Over 30,000 attorneys are eligible to practice law in Georgia. Many attorneys share the same name. You may call the State Bar at (404) 527-8700 or (800) 334-6865 to verify a disciplined lawyer's identity. Also note the city listed is the last known address of the disciplined attorney.**



The South Georgia office has participated in a number of events including the annual Law-Related Education Summer Institute for teachers. 1. The Thomasville Bar hosted a dinner meeting where State Bar President-elect Rudolph Patterson (right) talks with then local bar President Brian Bellamy. 2. (l-r) State Bar President Bill Cannon, Justice Norman Fletcher, Chief Judge Loring Gray and Albany mayor Tommy Coleman participated in the dedication ceremony for the new Albany courthouse. 3. Tanya Sikes was part of a mediation training sponsored by the Georgia Office of Dispute Resolution.

## Continued from page 12

19. O.C.G.A. §14-8-62 (1994).
20. See Rev. Rul. 84-52, 1984-1 C.B. 157. To the extent the alteration results in a deemed distribution in an amount greater than a partner's adjusted basis, gain would be recognized.
21. This is due in part to the argument that limited partnership interests could never be worth as much as general partnership interests because, by definition, limited partners do not have any management rights.
22. One common estate planning scenario is where a family patriarch is given a small general partnership interest that manages the partnership plus a large limited partnership interest that

he can gift away over the years. An even better variation of this estate planning situation is to set up a corporate general partner that would have perpetual life. Of course, the family patriarch's desire for control could still be met by his ownership of a majority of the general partner's corporate stock. It may be desirable to appoint the family patriarch as the managing partner and have the partnership agreement provide that the agreement cannot be amended until after his death. Thus, even if he has only a 1 percent interest at his death and has gifted the rest away, he still controls. All other general partnership interests should be subject to discounts for lack of control and marketability. With either option, though, the

partnership is set up for an effective gifting plan and can be maneuvered into a position to take advantage of the appropriate discounts.

**Atlanta Attorneys Directory - new**

# Annual Meeting Seminar a Success

By Willie Jordan

**LAWYERS, FAMILIES, AND** friends gathered on the third day of the Annual Meeting for a unique seminar on professionalism and community service. This program, inspired by Chief Justice Robert Benham, showed attendees how to improve public trust and confidence in the legal system and their own lives through the help and assistance they give to others. Panelists presented thought-provoking challenges regarding public and community service, and outlined how attorneys can incorporate service into their work and personal lives.

Justice Benham opened the program by explaining that lawyer service to the community is near and dear to his heart. He stated that the courthouse should be a user-friendly place for all people. He explained that attorneys set the tone for the community, and if they are professional in their dealings with the community, then they will raise the level of expectations for the entire community. He said, "As young people come to the bar, we want them to understand that the practice of law is not just about making money. The practice of law is being a servant to your community."

Charles Battle, president of Central Atlanta Progress, former

King & Spalding partner and managing director for international relations and chief liaison to the Olympic Family for ACOG, told attendees about the link between lawyer professionalism and community



**Henry Troutman (center) was presented the Lifetime Achievement Award for Community Service by President Linda Klein and Chief Justice Benham.**

service. Mr. Battle talked about the importance of serving the community, the profession, and self. His view is that as lawyers we accept obligations to the community and the profession, as well as to our selves. He invoked Atlanta community servant Pollard Turman as a community service role model.

Patrise Perkins-Hooker of Atlanta's Johnson, Freeman & Perkins-Hooker PA, gave practical suggestions on how to integrate community service with a busy law practice. She asked, "How do you find the time *not* to be a community servant?" She provided three guide-

lines: (1) identify an organization for which you have a passion, (2) view your time as an investment in your professional life; and (3) coordinate all of your personal, professional, and community service activities on one calendar. She advocated making volunteerism a family affair.

Fiona Brett, a second-year student at Emory University School of Law, provided a law student's perspective on the issue. Ms. Brett explained that law students know the importance of community service in the real world, but sometimes they do not understand how the law affects individuals and their communities. She said the legal community

must demand that law students become aware of the needs of their communities and the impact that the law has on the people who live there. She summed up her presentation by stating that the legal community should require law students to see the "conscience of [their] commun[it]ies reflected in the law."

Following these insightful presentations, Immediate Past President Linda Klein presented Community Service Awards sponsored by the State Bar of Georgia and the Community Service Task Force. Henry B. Troutman Jr. of Atlanta was honored with a Lifetime

## Official Opinions

### Officers and employees, Public; conflict of interest.

A Community Service Board that has a contract with the Georgia Department of Human Resources may subcontract

with a provider who is a General Assembly member only when there is no intermissable conflict of interest. (5/12/98 No. 98-8)

**Education; state incentive grants.** State incentive grants under O.C.G.A. § 20-2-209 may be awarded for sixth grades only when they are housed in middle schools also containing the seventh and eighth grades. (5/13/98 No. 98-9)

**Development Authorities.** The Development Authority of



**Attorney General  
Thurbert Baker**

Fulton County has the power under the Development Authorities Law (O.C.G.A. § 36-62-1 *et seq.*) to enter into lease transactions and pay the cost of tenant improvements for a project defined by the Development Authorities Law. A State local assistance grant and the use of such grant by the Development Authority for such a project does not contravene the provisions of Article VII, Section IV, Paragraph VIII of the Constitution of the State of Georgia 1983. (5/14/98 No. 98-10)

**Ethics in Government Act; campaign contributions.** Under O.C.G.A. § 21-5-30.1(d), individuals

*The full text of the opinions of the Attorney General can be seen at: <http://www.georgianet.org/ago/gaagopinions.html>*

who hold licenses issued by examining boards under jurisdiction of the Secretary of State are permitted to make campaign contributions from their personal funds to the Secretary of State or a candidate for that office. (6/11/98 No. 98-11)

**Education, Local boards of; bonds.** Bonds may be issued by county school boards under applicable provisions of Title 36 of the Official Code of Georgia Annotated for school system administration facilities, bus maintenance and storage facilities and warehouse facilities including facilities for the storage of equipment, paper products, school lunch supplies and food products, upon compliance by the county school board with the notice of purpose and other requirements set forth in O.C.G.A. § 36-82-1 *et seq.* (6/29/98 No. 98-12)

## Unofficial Opinions

### Firearms; local ordinances.

The proposed Columbus ordinance regulating the manner and location in which a firearm may lawfully be placed in a home, building, trailer, vehicle, or boat would be ultra vires in that ordinance conflicts with the general laws of the State of Georgia and because the regulation of firearms, with exceptions not relevant hereto, has been preempted by the General Assembly. (6/18/98 U98-6)

**Jails; local costs.** Official Code of Georgia Annotated § 15-21-90 does not prohibit a county from considering a reduction on a city's inmate housing bill in the amount equivalent to the ten percent add on monies paid to the county pursuant to the statute. (6/29/98 No. U98-7) ☒

Achievement Award for Community Service. Ten Georgia attorneys received Chief Justice Robert Benham Awards for Community Service which are named in honor of Justice Benham. The recipients were the following: Marvin S. Arrington Sr., of Atlanta; Leon Boling of Cumming; Robert M. Clyatt of Valdosta; J. Anderson Davis of Rome; Denise F. Hemmann of Jackson; Hon. Steve C. Jones of Athens; Frederick D. Lee of Ellabell; George M. Peagler Jr., of Americus; William C. Rumer of Columbus; and W. Terence Walsh of Atlanta. The Community Service Awards recipients were also recognized later that

evening at the Inaugural Dinner.

In a moving ceremony at the end of the program, nominator and award recipient George Peagler presented a Kid's Chance Scholarship to his nominee Nick Driggers of Americus. Kid's Chance, founded by another award recipient, Robert Clyatt, provides educational scholarships to children of Georgia's workers who have been injured or killed in work-related accidents. Nick Driggers' mother and sister were also present to share this special occasion. ☒

*Willie Jordan is the Community Affairs Attorney for the Chief Justice's Commission on Professionalism.*



CLE/Ethics/Professionalism/Trial Practice

## SEPTEMBER 1998

1

**NBI, INC.**

*Tax Issues in Estate Planning &  
Probate in Georgia*

Atlanta, GA

6.7/0.5/0.0/0.0

2

**NBI, INC.**

*Successful Judgement Collections  
in Georgia—How to Get Your  
Money*

Atlanta, GA

6.0/0.5/0.0/0.0

3

**ICLE**

*Immigration Law*  
Atlanta, GA

6.0/0.0/0.0/0.0

**ICLE**

*Georgia Title Standards*  
Atlanta, GA

6.0/0.0/0.0/0.0

4

**ICLE**

*Urgent Legal Matters*  
Sea Island, GA

12.0/0.0/0.0/0.0

10

**SOUTH CAROLINA BAR -  
CLE DIVISION**

*Beyond Fundamentals: Lessons on  
Winning Trial Techniques*

*From the Master*

Columbia, SC

2.0/2.0/0.0/2.0

**PROSECUTING ATTORNEYS' COUNCIL  
OF GEORGIA**

*Forensic Evidence*

Decatur, GA

6.3/0.0/0.0/5.3

**ICLE**

*Representing Small & Start-Up  
Businesses*

Atlanta, GA

6.0/0.0/0.0/0.0

**ICLE**

*Cyber Crime*

Atlanta, GA

6.0/0.0/0.0/0.0

11

**PRACTISING LAW INSTITUTE**

*Understanding, Preventing &  
Litigating Year 2000 Issues*

San Francisco, CA

7.5/0.5/0.0/0.0

**THE BUREAU OF NATIONAL AFFAIRS INC.**

*20th Annual U.S. Law Week's  
Constitutional Law Conference*

Washington, DC

10.5/0.0/0.0/0.0

**CUMBERLAND SCHOOL OF LAW  
(SAMFORD UNIV.)**

*Developments & Trends in Health  
Care Law 1998*

Birmingham, AL

6.5/0.0/0.0/0.0

**ICLE**

*Health Care Law*  
Atlanta, GA

6.0/0.0/0.0/0.0

**ICLE**

*Nuts & Bolts of Family Law*  
Atlanta, GA

6.0/0.0/0.0/0.0

**ICLE**

*U.S. Supreme Court Update*  
Atlanta, GA

7.0/0.0/0.0/0.0

12

**D.C. BAR - FORUM BAR  
ASSOCIATION**

*Mandatory D. C. Course on the  
D. C. Rules of Professional Conduct*  
Washington, DC

5.0/3.5/0.0/0.0

16

**PRACTISING LAW INSTITUTE**  
*Understanding, Preventing &  
Litigating Year 2000 Issues*

New York, NY

7.5/0.5/0.0/0.0

**LORMAN BUSINESS CENTER, INC.**

*Workers' Compensation for  
Self-Insurers*

Atlanta, GA

6.0/0.0/0.0/0.0

17

**CHATTANOOGA BAR ASSOCIATION**

*Model Code: National Council of  
Juvenile & Family Court Judges*

Chattanooga, TN

1.0/0.0/0.0/0.0

**ICLE**  
*Taxation for the General  
Practitioner*  
Atlanta, GA  
6.0/0.0/0.0/0.0

**ICLE**  
*Computer Law Institute*  
Atlanta, GA  
12.0/0.0/0.0/0.0

**ICLE**  
*Institute for City & County Attorneys*  
Athens, GA  
12.0/0.0/0.0/0.0

**18**  
**NATIONAL INSTITUTE OF  
TRIAL ADVOCACY**  
*Trial - The Ultimate Theater*  
Miami, FL  
6.6/0.0/0.0/6.6

**PROFESSIONAL EDUCATION  
SYSTEMS INC.**  
*The Complete Trust Workshop*  
Atlanta, GA  
7.0/0.0/0.0/0.0

**UNIV. OF GEORGIA LAW SCHOOL**  
*Update & Review of  
Estate Planning Techniques*  
Tifton, GA  
6.5/0.0/0.0/0.0

**22**  
**LORMAN BUSINSS CENTER, INC.**  
*Collection Law in Georgia*  
Macon, GA  
6.0/0.0/0.0/0.0

**23**  
**NATIONAL INSTITUTE OF  
TRIAL ADVOCACY**  
*Arbitration Advocacy Workshop*  
Los Angeles, CA  
7.5/0.0/0.0/0.0

**NBI, INC.**  
*Major Land Use Laws in Georgia*  
Atlanta, GA  
6.0/0.5/0.0/0.0

**24**  
**PROFESSIONAL EDUCATION  
SYSTEMS INC.**  
*Out of Bounds: Exploring Georgia  
Boundary Law*  
Atlanta, GA  
6.3/0.0/0.0/1.0

**ICLE**  
*Psychiatric Malpractice*  
Atlanta, GA  
6.0/0.0/0.0/0.0

**ICLE**  
*Buying & Selling Privately Held  
Businesses*  
Atlanta, GA  
6.0/0.0/0.0/0.0

**ICLE**  
*Construction Law for the General  
Practitioner*  
Atlanta, GA  
6.0/0.0/0.0/0.0

**ICLE**  
*Insurance Law Institute*  
St. Simons Island, GA  
12.0/1.0/1.0/3.0

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## Alcohol/Drug Abuse and Mental Health Hotline

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

| Area                    | Committee Contact       | Phone          |
|-------------------------|-------------------------|----------------|
| Albany .....            | H. Stewart Brown .....  | (912) 432-1131 |
| Athens .....            | Ross McConnell .....    | (706) 359-7760 |
| Atlanta .....           | Melissa McMorries ..... | (404) 522-4700 |
| Florida .....           | Patrick Reily .....     | (850) 267-1192 |
| Atlanta .....           | Henry Troutman .....    | (770) 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 |
| Hazlehurst .....        | Luman Earle .....       | (912) 375-5620 |
| Macon .....             | Bob Daniel .....        | (912) 741-0072 |
| Macon .....             | Bob Berlin .....        | (912) 745-7931 |
| Norcross .....          | Phil McCurdy .....      | (770) 662-0760 |
| Rome .....              | Bob Henry .....         | (706) 234-9442 |
| Savannah .....          | Tom Edenfield .....     | (912) 234-1568 |
| Valdosta .....          | John Bennett .....      | (912) 242-0314 |
| Waycross .....          | Judge Ben Smith .....   | (912) 285-8040 |
| Waynesboro .....        | Jerry Daniel .....      | (706) 554-5522 |

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## Sections Honored at Annual Meeting

Four State Bar sections received top honors during the State Bar's Annual Meeting in Atlanta, June 17-20. Awards were presented during the President's Inaugural Dinner, June 19. This year's winners were:

### Sections of the Year

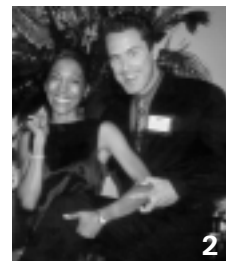
Computer Law Section  
Robert A. Currie and  
Scott K. Harris, Chairs

Entertainment & Sports  
Law Section  
Darryl B. Cohen and  
Ivory T. Brown, Chairs

### Awards of Achievement

Bankruptcy Law Section  
Mary Grace Diehl, Chair

Health Law Section  
Charity Scott, Chair



### Scenes from the Annual Meeting

1. Computer Law's Robert Currie (left) and Scott Harris (right) received the Section of the Year Award. Chip Cooper, section co-founder, is pictured in the center. 2. Entertainment & Sports' Ivory T. Brown and Alan S. Clarke, (always entertaining) were on hand to receive the "Section of the Year" Award. Darryl Cohen is not pictured. 3. Current Aviation Law Chair E. Alan Armstrong is pictured enjoying the all-in-one reception that 15 sections co-sponsored at the Annual Meeting. 4. Mary Grace Diehl, Bankruptcy Achievement Award winner, and Wendy Witten, incoming Chair of the Tort & Insurance Practice Section, share ideas during the section reception. 5. The brand new Creditor's Rights Section held its first meeting and the room was full. At press time, the section had 130 members and the numbers were rapidly increasing. B. Emory Potter (center back) chairs this group.

**AAA  
Attorney  
Referral  
pickup 6/  
98 p83**

Tradition of Excellence winners: Bill Lundy of Cedartown, Chairperson of the General Practice and Trial Section is pictured with the 1998 Tradition of Excellence recipients Paul W. Painter, defense recipient; Libba Birdsong, accepting for the family of Judge A.W. Birdsong Jr., judicial recipient; Scott Walters, general practice recipient; and Thomas R. Burnside, plaintiff recipient.



# N O T I C E S

## Board of Governors Meeting Attendance

| Annual<br>1997 | Fall<br>1997 | Midyear<br>1998 | Spring<br>1998 |                          |
|----------------|--------------|-----------------|----------------|--------------------------|
| *              | no           | *               | *              | Ross Adams               |
| no             | *            | *               | *              | Anthony B. Askew         |
| *              | *            | *               | *              | William Steven Askew     |
| *              | e            | *               | no             | Thurbert E. Baker        |
| *              | *            | *               | no             | Donna Barwick            |
| *              | *            | *               | *              | William D. Barwick       |
| *              | *            | no              | *              | Robert L. Beard, Jr.     |
| *              | *            | *               | *              | Barbara B. Bishop        |
| *              | no           | *               | *              | Joseph A. Boone          |
| *              | *            | *               | *              | Wayne B. Bradley         |
| *              | *            | *               | *              | Jeffrey O. Bramlett      |
| *              | *            | *               | *              | Sam L. Brannen           |
| *              | *            | *               | e              | James C. Brim, Jr.       |
| *              | *            | no              | *              | Thomas R. Burnside, Jr.  |
| *              | no           | *               | no             | W. Kent Campbell         |
| *              | *            | *               | *              | William E. Cannon, Jr.   |
| *              | *            | *               | *              | Edward E. Carriere, Jr.  |
| *              | *            | *               | *              | Paul Todd Carroll, III   |
| *              | *            | *               | *              | Bryan M. Cavan           |
| *              | *            | *               | *              | Thomas C. Chambers, III  |
| *              | *            | *               | *              | F. L. Champion, Jr.      |
| *              | *            | *               | *              | John A. Chandler         |
| *              | *            | no              | *              | Joseph D. Cooley, III    |
| *              | *            | *               | *              | Delia T. Crouch          |
| *              | *            | *               | *              | William D. Cunningham    |
| *              | *            | *               | *              | David P. Darden          |
| *              | *            | *               | no             | Dwight J. Davis          |
| *              | no           | *               | no             | Richard T. de Mayo       |
| *              | *            | *               | *              | Ernest De Pascale, Jr.   |
| *              | *            | *               | *              | Foy R. Devine            |
| n/a            | n/a          | n/a             | *              | Charles J. Driebe        |
| *              | *            | *               | *              | James B. Durham          |
| *              | no           | *               | *              | Ben F. Easterlin, IV     |
| *              | *            | *               | *              | Myles E. Eastwood        |
| *              | *            | no              | no             | Michael R. Eddings       |
| *              | *            | *               | *              | Gerald M. Edenfield      |
| no             | *            | no              | *              | J. Franklin Edenfield    |
| n/a            | n/a          | n/a             | *              | O. Wayne Ellerbee        |
| *              | *            | *               | *              | Michael V. Elsberry      |
| *              | *            | no              | no             | J. Daniel Falligant      |
| *              | no           | *               | no             | Nancy R. Floyd           |
| *              | *            | *               | *              | B. Lawrence Fowler       |
| *              | *            | *               | no             | Gregory L. Fullerton     |
| *              | *            | *               | e              | Gregory A. Futch         |
| e              | *            | *               | *              | Michael J. Gannam        |
| *              | *            | *               | *              | H. Emily George          |
| *              | *            | *               | *              | Adele P. Grubbs          |
| *              | no           | *               | no             | John P. Harrington       |
| *              | *            | *               | *              | Walter C. Hartridge      |
| *              | no           | *               | *              | James A. Hawkins         |
| *              | *            | *               | *              | Joseph J. Hennesy, Jr.   |
| *              | *            | *               | *              | Phyllis J. Holmen        |
| *              | *            | no              | no             | Roy B. Huff              |
| *              | *            | *               | *              | James D. Hyder, Jr.      |
| *              | *            | *               | *              | Donald W. Huskins        |
| *              | *            | *               | *              | Robert D. Ingram         |
| n/a            | n/a          | n/a             | *              | James Irvin              |
| *              | *            | *               | no             | Rachel K. Iverson        |
| *              | *            | *               | *              | William R. Jenkins       |
| *              | *            | *               | *              | Michael R. Jones, Sr.    |
| *              | *            | *               | *              | Linda A. Klein           |
| *              | *            | no              | no             | William P. Langdale, Jr. |
| *              | e            | *               | no             | Earle F. Lasseter        |
| no             | *            | *               | *              | J. Alvin Leaphart        |
| *              | no           | *               | *              | Francis Marion Lewis     |
| *              | *            | *               | *              | David S. Lipscomb        |

| Annual<br>1997 | Fall<br>1997 | Midyear<br>1998 | Spring<br>1998 |                          |
|----------------|--------------|-----------------|----------------|--------------------------|
| *              | *            | *               | *              | Hubert C. Lovein         |
| *              | *            | *               | *              | William L. Lundy         |
| *              | *            | no              | *              | James C. Marshall        |
| *              | *            | no              | *              | H. Fielder Martin        |
| n/a            | n/a          | n/a             | *              | C. Truitt Martin, Jr.    |
| no             | e            | *               | *              | William C. McCalley      |
| *              | *            | *               | *              | William C. McCracken     |
| *              | *            | *               | no             | Joseph Dennis McGovern   |
| no             | *            | *               | *              | Larry M. Melnick         |
| no             | *            | no              | *              | Mark Merritt             |
| *              | *            | no              | *              | C. Patrick Milford       |
| *              | e            | *               | *              | J. Brown Moseley         |
| e              | e            | *               | no             | A. L. Mullins            |
| *              | *            | *               | *              | George E. Mundy          |
| *              | *            | *               | *              | Aasia Mustakeem          |
| *              | *            | e               | *              | Carol R. Naughton        |
| *              | *            | *               | *              | John A. Nix              |
| *              | no           | *               | *              | Dennis C. O'Brien        |
| *              | *            | *               | *              | Bonnie C. Oliver         |
| *              | no           | *               | *              | Travers W. Paine, III    |
| *              | *            | *               | *              | Rudolph N. Patterson     |
| no             | *            | *               | *              | Matthew H. Patton        |
| no             | *            | e               | *              | Carson Dane Perkins      |
| n/a            | n/a          | n/a             | *              | Patrise Perkins-Hooker   |
| e              | *            | *               | *              | R. Chris Phelps          |
| *              | *            | *               | *              | Jimmy D. Plunkett        |
| *              | no           | *               | *              | John C. Pridgen          |
| no             | *            | *               | *              | Thomas J. Ratcliffe, Jr. |
| *              | *            | *               | *              | George Robert Reinhardt  |
| *              | *            | no              | *              | Jeffrey P. Richards      |
| *              | *            | *               | no             | Tina Shadix Roddenbery   |
| *              | *            | *               | *              | William C. Rumer         |
| *              | no           | *               | *              | Thomas G. Sampson        |
| no             | *            | *               | *              | Michael M. Sheffield     |
| *              | *            | no              | *              | M.T. Simmons, Jr.        |
| *              | *            | *               | *              | Lamar W. Sizemore, Jr.   |
| *              | *            | *               | *              | William L. Skinner       |
| *              | *            | *               | *              | Philip C. Smith          |
| *              | no           | *               | *              | R. Rucker Smith          |
| *              | *            | no              | no             | S. David Smith           |
| n/a            | n/a          | n/a             | *              | Huey Spearman            |
| no             | *            | *               | *              | Lawrence A. Stagg        |
| no             | *            | *               | *              | Frank B. Strickland      |
| *              | *            | *               | no             | Jeffrey B. Talley        |
| *              | *            | *               | *              | John J. Tarleton         |
| *              | *            | *               | *              | S. Lester Tate, III      |
| *              | *            | no              | *              | C. Henry Tharpe, Jr.     |
| *              | *            | *               | *              | Dwight L. Thomas         |
| *              | no           | no              | e              | Edward D. Tolley         |
| *              | *            | *               | *              | Christopher A. Townley   |
| *              | e            | *               | *              | Carl A. Veline, Jr.      |
| no             | *            | e               | *              | Joseph L. Waldrep        |
| *              | *            | *               | no             | J. Henry Walker          |
| e              | *            | no              | no             | W. Terence Walsh         |
| *              | *            | *               | *              | Scott Walters            |
| *              | *            | no              | *              | J. Tracy Ward            |
| *              | *            | no              | *              | George W. Weaver         |
| *              | *            | *               | *              | N. Harvey Weitz          |
| *              | *            | *               | *              | A. J. Welch              |
| *              | *            | *               | *              | Andrew J. Whalen, III    |
| *              | no           | *               | no             | James L. Wiggins         |
| *              | *            | *               | *              | William N. Withrow, Jr.  |
| *              | *            | no              | *              | Gerald P. Word           |
| *              | *            | *               | *              | Anne Workman             |
| *              | no           | *               | *              | Gordon R. Zeese          |
| no             | *            | *               | *              | Marvin H. Zion           |

\* - attended; e - excused; 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, 1999. They will be candidates for the 1998-99 State Bar election. Nominating packets containing petitions will be mailed out on Sept. 11, 1998 and must be returned by Oct. 15, 1998. 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. 16, 1998, 5:00 p.m.

| Circuit/Post         | Name/City                        |
|----------------------|----------------------------------|
| Alapaha Post 1       | Carson Dane Perkins, Nashville   |
| Alcovy Post 1        | W. Kent Campbell, Covington      |
| Appalachian          | George W. Weaver, Jasper         |
| Atlanta Post 1       | W. Terence Walsh, Atlanta        |
| Atlanta Post 3       | Carol R. Naughton, Atlanta       |
| Atlanta Post 5       | Thomas G. Sampson, Atlanta       |
| Atlanta Post 7       | Aasia Mustakeem, Atlanta         |
| Atlanta Post 9       | James L. Hawkins, Atlanta        |
| Atlanta Post 11      | Dwight J. Davis, Atlanta         |
| Atlanta Post 13      | William D. Barwick, Atlanta      |
| Atlanta Post 15      | Richard T. de Mayo, Atlanta      |
| Atlanta Post 17      | Scott Walters Jr., East Point    |
| Atlanta Post 19      | William R. Jenkins, Atlanta      |
| Atlanta Post 21      | John A. Chandler, Atlanta        |
| Atlanta Post 23      | Donna G. Barwick, Atlanta        |
| Atlanta Post 25      | Phyllis J. Holmen, Atlanta       |
| Atlanta Post 27      | A. L. Mullins Jr., Atlanta       |
| Atlanta Post 29      | Tina Shadix Roddenbery, Atlanta  |
| Atlantic Post 2      | Joseph D. McGovern, Glennville   |
| Augusta Post 1       | Travers W. Paine III, Augusta    |
| Augusta Post 3       | Thomas R. Burnside Jr., Augusta  |
| Blue Ridge Post 2    | Rachel K. Iverson, Cumming       |
| Brunswick Post 1     | J. Alvin Leaphart, Jesup         |
| Chattahoochee Post 2 | William C. Rumer, Columbus       |
| Chattahoochee Post 4 | Earle F. Lasseter, Columbus      |
| Cherokee Post 2      | Michael R. Eddings, Calhoun      |
| Clayton Post 1       | H. Emily George, Forest Park     |
| Clayton Post 3       | Charles J. Driebe Sr., Jonesboro |
| Cobb Post 2          | Judge Adele L. Grubbs, Marietta  |
| Cobb Post 4          | Robert D. Ingram, Marietta       |
| Conasauga Post 2     | Henry C. Tharpe Jr., Dalton      |
| Cordele              | John C. Pridgen, Cordele         |
| Coweta Post 2        | Delia T. Crouch, Newnan          |
| Dougherty Post 2     | Judge Gordon R. Zeese, Albany    |

| Circuit/Post         | Name/City   |
|----------------------|---|
| Dublin               | Francis M. Lewis, Dublin                          |
| Eastern Post 2       | Michael J. Gannam, Savannah                       |
| Eastern Post 4       | N. Harvey Weitz, Savannah                         |
| Flint Post 1         | Gregory A. Futch, McDonough                       |
| Griffin Post 2       | Roy B. Huff, Peachtree City                       |
| Gwinnett Post 1      | David S. Lipscomb, Duluth                         |
| Gwinnett Post 3      | Mark Merritt, Lawrenceville                       |
| Lookout Mtn. Post 2  | Christopher A. Townley, Rossville                 |
| Macon Post 1         | Lamar W. Sizemore Jr., Macon                      |
| Macon Post 3         | James C. Marshall, Macon                          |
| Middle Post 2        | William Steven Askew, Lyons                       |
| Mountain Circuit     | James T. Irvin, Toccoa                            |
| Northeastern Post 2  | Joseph D. Cooley III, Gainesville                 |
| Northern Post 1      | C. Patrick Milford, Carnesville                   |
| Ocmulgee Post 2      | Joseph A. Boone, Irwinton                         |
| Oconee Post 1        | James L. Wiggins, Eastman                         |
| Ogeechee Post 2      | Gerald M. Edenfield, Statesboro                   |
| Pataula Circuit      | C. Truitt Martin Jr., Dawson                      |
| Piedmont Circuit     | Nancy R. Floyd, Winder                            |
| Rome Post 1          | Paul Todd Carroll III, Rome                       |
| South Georgia Post 2 | James C. Brim Jr., Camilla                        |
| Southern Post 2      | William C. McCalley, Moultrie                     |
| Southwestern Circuit | Judge R. Rucker Smith, Americus                   |
| Stone Mtn. Post 2    | H. Fielder Martin, Atlanta/Decatur                |
| Stone Mtn. Post 4    | M.T. Simmons Jr., Decatur                         |
| Stone Mtn. Post 6    | Bryan M. Cavan, Atlanta/Decatur                   |
| Stone Mtn. Post 8    | Michael M. Sheffield, Decatur                     |
| Tallapoosa Post 1    | Jeffrey B. Talley, Dallas                         |
| Toombs               | Jimmy Dalton Plunkett, Huey W. Spearman, Waycross |
| Waycross Post 2      |   |
| Western Post 1       | Ernest De Pascale Jr., Athens                     |
| Out-of-State Circuit | Michael V. Elsberry, Orlando, FL                  |

## 1997-98 Election Schedule

### 1998

- August Official election notice, August *Georgia Bar Journal*
- Sept. 11 Nominating petition package mailed to Board of Governors (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. 6, 7 Nomination of officers, Fall Board Meeting
- Nov. 16 Deadline for receipt of nominating petitions for **new** BOG candidates 5:00 p.m. (i.e. 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. 7-11 Preparation of Ballots
- Dec. 15 Ballots mailed (Article VII, Section 7 (c))

### 1999

- Jan. 21-23 Midyear Meeting
- Jan. 18 Martin Luther King Holiday — Bar Headquarters closed
- Jan. 25-27 Ballots opened at Bar Headquarters
- Jan. 27 Ballots must be received at Bar Headquarters to be valid
- Jan. 28 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)

# Notice of Motion to Amend State Bar Rules

On or after the 1st day of September, 1998, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia (hereinafter referred to as "Rules").

It is hereby certified by the undersigned that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia desiring to object to these proposed Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Ga. Ct. and Bar Rules*, p. 11-1 *et seq.*

This statement and the following verbatim text are intended to comply with the notice requirements of Bar Rule 5-101.

Cliff Brashier  
Executive Director  
State Bar of Georgia

IN THE SUPREME COURT  
STATE OF GEORGIA

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

MOTION TO AMEND 98-1

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

The State Bar of Georgia, pursuant to authorization and direction of its Board of Governors in a regular meeting held on June 19, 1998, and upon concurrence of its Executive Committee and Committee on Organization of the State Bar, presents to the Court this Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, *Ga. Ct. & Bar Rules*, pp. 11-1 *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar be amended further in the

following respects:

## **I. Amendments to Part VII, Impairment Program, Chapter 1 (Committee on Lawyer Impairment)**

It is proposed that Part VII, Impairment Program, Chapter 1 (Committee on Lawyer Impairment), Rule 7-102, Membership, be amended by deleting the stricken portions and by inserting the double underlined phrases as follows:

### **Rule 7-102. Membership.**

The Committee shall have fifteen members, consisting of eight lawyers and seven additional members in any combination of psychiatrists, licensed or certified professionals in the area of either mental health and/or addiction, or persons experienced in conducting alcohol and drug rehabilitation intervention programs. ~~consist of seven lawyers, two psychiatrists, and two laypersons.~~ All members should have, but are not required to have, some experience in the field of chemical dependency. ~~The two laypersons appointed to the Committee shall have experience in conducting alcohol and drug rehabilitation intervention programs.~~ Any member of the Committee who is a recovered chemical dependent should have a period of sobriety of at least two years. All members shall be appointed by the President of the State Bar. The Impairment Program's Executive Director and Assistant Executive Director shall be non-voting ex-officio members of the Committee.

## **II. Amendments to Part VII, Impairment Program, Chapter 1 (Committee on Lawyer Impairment)**

It is proposed that Part VII, Impairment Program, Chapter 1 (Committee on Lawyer Impairment), Rule 7-103, Terms, be amended by deleting the stricken portions and by inserting the double underlined phrases as follows:

### **Rule 7-103. Terms.**

Initially, four members of the Committee including one of the laypersons and one of the psychiatrists, shall be appointed for a period of three years; four members, including the remaining layperson and remaining psychiatrist, for a period of two

years; and one member for a period of one year. All appointments shall be for staggered terms of three years so that one-third of the members of the Committee shall retire at the end of each year. Initially, Committee members may be appointed for one, two, or three year terms to achieve the staggered rotation of Committee members. As each member's term of office on the Committee expires, his or her successor shall be appointed for a period of three years. The President of the State Bar of Georgia shall appoint the chairperson of the Committee each year from among the members. Vacancies in unexpired terms shall be filled by the appointing authority.

## **III. Amendments to Part VII, Impairment Program, Chapter 1 (Committee on Lawyer Impairment)**

It is proposed that Part VII, Impairment Program, Chapter 1 (Committee on Lawyer Impairment), Rule 7-104, Responsibility, be amended by deleting the stricken portions and by inserting the double underlined phrases as follows:

### **Rule 7-104. Responsibility.**

The Committee shall be responsible for implementing an impairment program through education, intervention, and referral, and monitoring.

## **IV. Amendments to Part VII, Impairment Program, Chapter 2 (Guidelines for Operation)**

It is proposed that Part VII, Impairment Program, Chapter 2 (Guidelines for Operation), Rule 7-205, Referral, be amended by inserting the double underlined phrases as follows:

### **Rule 7-205. Referral and Monitoring.**

The Committee shall provide, in all cases where appropriate, the impaired attorney assistance in finding an appropriate rehabilitation program and shall monitor the impaired attorney's progress while in said rehabilitation program as well as for a period of up to two years after the impaired attorney's completion of the rehabilitation program.

#### IV. Amendments to Part VII, Impairment Program, Chapter 3 (Procedures)

It is proposed that Part VII, Impairment Program, Chapter 3 (Procedures), Rule 7-302, Referrals from the State Disciplinary Board, be amended by inserting the double underlined phrases as follows:

##### **Rule 7-302. Referrals from the State Disciplinary Board or Supreme Court.**

Upon the referral of any case to the Committee on Lawyer Impairment by the State Disciplinary Board of the State Bar, or at the request of the Supreme Court of Georgia, the Committee shall attempt to assist the attorney referred by the Disciplinary Board or the Supreme Court to rehabilitate himself or herself. Such assistance may include monitoring or treatment at a recommended rehabilitation program. The Committee shall report to the Board, from time to time, the progress or lack of progress of the attorney in issue and the Committee may issue letters of certification or compliance as may be appropriate.

#### IV. Amendments to Part VII, Impairment Program, Chapter 3 (Procedures)

It is proposed that Part VII, Impairment Program, Chapter 3 (Procedures), Rule 7-305, Disability Hearing, be amended by deleting the stricken portions and by inserting the double underlined phrases as follows:

##### **Rule 7-305. Disability Hearing.**

(a) If an attorney (hereinafter "Respondent") refuses to cooperate after an authorized intervention, or refuses the treatment recommended by the Committee on Lawyer Impairment or when Respondent is non-compliant with whatever appropriate monitoring program may be implemented by the Committee on Lawyer Impairment (hereinafter "Committee"), and it appears that the Respondent poses a substantial threat to himself or herself or others, then the members of the Committee may petition the Supreme Court for the appointment of a Special Master to conduct a disability hearing.

(b) The Petition for Appointment of a Special Master shall state any evidence of Respondent's impairment and the Committee's recommended treatment.

(c) Upon receipt of a Petition for Appointment of Special Master, the Clerk of the Supreme Court shall file the matter in the records of the Supreme Court, shall give the matter a docket number and notify the Court that appointment of a Special Master is appropriate. The entire proceeding, including the Petition for Appointment of Special

Master, shall remain under seal and shall be revealed to the public only at the discretion of the Supreme Court.

(d) Upon notification that a Petition for Appointment of Special Master has been filed by the Committee, the Supreme Court shall within seven days nominate a Special Master to conduct a disability hearing. The Court shall select as Special Masters experienced members of the State Bar; provided, that a Special Master may not be appointed to hear the evidence against a Respondent who resides in the same judicial circuit as that in which the Special Master resides. The disability hearing shall be held in the county of residence of the Respondent unless he or she otherwise agrees.

(e) Upon notification of the appointment of a Special Master, the Impairment Committee shall immediately serve the Respondent in person or by certified mail, return receipt requested, and by regular mail to the last known address contained in the official membership records of the State Bar with a copy of the Petition for Appointment of the Special Master and the Order Appointing Special Master.

(f) Within five business days of service of the Notice of Appointment of a Special Master and of the Order Appointing Special Master, the Respondent shall file any and all objections or challenges he or she may have to the competency, qualifications or impartiality of the Special Master with the Clerk of the Supreme Court. A copy of the objections or challenges shall be served upon the Impairment Committee Chairperson, who may respond to such objections or challenges. If after reviewing the arguments presented by the Respondent and the Chairperson of the Committee, the Supreme Court elects to disqualify the appointed Special Master, the Special Master and the parties shall be notified of the disqualification and nomination of a successor Special Master shall proceed.

(g) Except as otherwise provided by these Rules, the disability hearing shall be held within ten business days after service of the Petition for Appointment of Special Master and of the Order Appointing Special Master.

(h) The Special Master shall conduct a disability hearing and receive whatever evidence he or she deems appropriate, including the examination of the Respondent by such qualified medical experts as the Special Master shall designate. At all times during the disability hearing, the burden of proof shall be on the Committee. The quantum of proof required of the Committee shall be a preponderance of the evidence.

(i) The disability hearing shall be stenographically reported and transcribed at the expense of the Committee. A copy of the

transcript shall be furnished to the Respondent at no cost. Upon receipt of the original transcript by the Chairperson of the Committee, the original transcript shall be filed with the Clerk of the Supreme Court.

(j) Within ten business days of the filing of the original transcript with the Clerk of the Supreme Court, the Special Master shall file Findings of Fact and a Recommendation with the Supreme Court. In the Findings of Fact, the Special Master shall determine whether the Respondent is disabled by virtue of his or her impairment to the extent that the Respondent poses a substantial threat to himself or herself or others. Upon receipt of the Findings of Fact and Recommendation, the Supreme Court shall order such action as deemed appropriate, including as a maximum sanction a temporary suspension of the Respondent from the practice of law, upon such terms and conditions as the Court may direct, including treatment in a qualified medical facility.

(k) If the Supreme Court elects to temporarily suspend the Respondent's license to practice law due to impairment, after a minimum of sixty (60) days, either the Respondent or the Committee may request that the Special Master conduct a hearing to place in evidence proof demonstrating whether the Respondent has successfully complied with the Supreme Court's Order as well as proof demonstrating whether the Respondent poses a substantial threat to himself or herself or others. The burden of proof shall be on the movant and the quantum of proof shall be the same as described in (h) above.

(l) Within ten days after the hearing provided for in (k) above, the Special Master shall make Findings of Fact and a Recommendation for Consideration of the Supreme Court for any action the Supreme Court deems appropriate.

(m) No record made of the proceedings authorized in this Rule shall be admissible against a Respondent in any proceeding before the State Disciplinary Board of the State Bar.

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# Formal Advisory Opinion: Second Publication

## NOTICE OF FILING OF PROPOSED FORMAL ADVISORY OPINIONS IN SUPREME COURT

Second Publication of Proposed  
Formal Advisory Opinion Request No. 97-R4

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has made a final determination that the following Proposed Formal Advisory Opinion should be issued. Pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, this proposed opinion will be filed with the Supreme Court of Georgia on or after September 15, 1998. Any objection or comment to this Proposed Formal Advisory Opinion must be filed with the Supreme Court within twenty (20) days of the filing of the Proposed Formal Advisory Opinion and should make reference to the request number of the proposed opinions.

## Proposed Formal Advisory Opinion No. 97-R4

### QUESTION PRESENTED:

Is it ethically proper for a lawyer to represent a criminal defendant when a co-defendant in the same criminal prosecution is represented by a second attorney who is listed on letterhead as "of counsel" to the same law firm?

# House ad from Jennifer

### SUMMARY ANSWER:

Because an attorney who is held out to the public as "of counsel" should have a close, regular, personal relationship with the affiliated firm, the standards of conduct applicable to multiple representations by partners and associates of law firms, should also apply to "of counsel" attorneys. Accordingly, when an "of counsel" attorney would be required to decline or withdraw from multiple representations under Standards 35, 36 and 37, then under Standard 38, no partner associate or other "of counsel" attorney of the principal firm may accept or continue such employment.

### OPINION:

#### I. USE OF THE TERM "OF COUNSEL" ON MATERIALS INTENDED FOR PUBLIC DISTRIBUTION.

The use of the term "of counsel" to denote relationships between attorneys and law firms has increased in recent years. Traditionally the term was used to designate semi-retired lawyers who desired to maintain a regular association with a law firm for which they were previously a full-time attorney. Today, the term "of counsel" is used to describe a wide range of associations and relationships including lateral hires or attorneys who are in-between associate and partnership classifications. While the primary purpose of this opinion is not to limit or define the terms of such relationships, the Board does believe that some clarification is necessary to protect members of the public who may rely upon the "of counsel" designation in selecting legal representation.

Although the Georgia Code of Professional Responsibility does not define the term "of counsel", the American Bar Association has issued a formal opinion which describes the core characteristics of the term as follows:

... A close, regular, personal relationship; but a relationship which is neither that of a partner (or its equivalent, a principal of a professional corporation), with the shared liability and/or managerial responsibility implied by that term; nor, on the other hand, the status ordinarily conveyed by the term 'associate', which is to say a junior non-partner lawyer, regularly em-

ployed by the firm.  
(Emphasis added). ABA Formal Advisory Opinion 90-357 (1990).

The ABA also continues to adhere to aspects of its earlier opinion which prohibited the use of the term "of counsel" to designate the following relationships: (1) a relationship involving only a single case, (2) a relationship of forwarder or receiver of legal business, (3) a relationship involving only occasional collaborative efforts, and (4) relationship of an outside consultant. See ABA Formal Opinion 90-357 (1990) (reaffirming in part ABA Formal Opinion 330 (1972)). Other jurisdictions which have considered this issue have adhered to the ABA's description of the "of counsel" relationships. See Florida Professional Ethics Committee Opinion Nos. 94-7 (1995); State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 1993-129 and the New York State Bar Association Committee on Professional Ethics Opinion No. 262 (1972).

The Board is of the opinion that the use of the term "of counsel" on letterhead, placards, advertisements and other materials intended for public distribution should denote more than casual contact such as mere office-sharing arrangements and that requiring a close, regular, personal relationship between the "of counsel" attorney and the principal firm is in accordance with the reasonable expectations of the consuming public. Requiring attorneys who are held out to the public as "of counsel" to have a close, regular, personal relationship with the principal firm is also in keeping with well-established standards of conduct requiring lawyers to be scrupulous in the representation of their professional status and prohibiting attorneys from practicing under trade names which are false, fraudulent, deceptive or that would tend to mislead laypersons as to the identity of lawyers actually practicing in the firm. See Standards of Conduct 8 and 9 and EC 2-11 and EC 2-13.

#### II. CONFLICTS ANALYSIS FOR "OF COUNSEL" RELATIONSHIPS.

The issue as to whether or not a member of a law firm may represent a defendant who potentially has an adverse interest to a co-defendant in the same criminal prosecution and who is simultaneously being represented by an "of counsel"

# Notice of Changes to Bylaws

*During the plenary session of the State Bar membership on June 19, the following two Bylaws were amended as printed below.*

## ARTICLE IV

### EXECUTIVE COMMITTEE

#### Section 1. Executive Committee.

There shall be an Executive Committee of the Board of Governors composed of the following: the President, the President-Elect, the Immediate Past President, the Secretary, the Treasurer, the President of the Young Lawyers Division, the President-Elect of the Young Lawyers Division, the Immediate Past President of the Young Lawyers Division and six members of the Board of Governors elected by the Board. The election of members of the Executive Committee by the Board of Governors shall take place at the meeting of the Board following adjournment of the annual meeting for the State Bar; the members shall serve for the term for which they are elected and until their successors are elected and qualified. Elections shall be by majority vote of those members of the Board of Governors present and voting. A ballot must contain one vote for each position to be

filled in order for it to be counted. No candidate may receive more than one vote per ballot. After the first or any succeeding ballot, those candidates with a majority of the votes cast shall be declared elected to the office. If after any ballot one or more positions remain unfilled, additional ballots shall be cast until all positions are filled. Those persons declared elected shall be dropped from all succeeding ballots. If on any ballot no candidate is declared elected, on the next succeeding ballot the person or persons who received the lowest number of votes cast shall be dropped from this and all future ballots, unless to do so would reduce the number of candidates to a number less than the positions to be filled plus one.

All members of the Executive Committee elected by the Board of Governors shall be elected for terms of two years each.

This bylaw shall apply to the first election of members of the Executive Committee by the Board of Governors after adjournment of the 1998 Annual Meeting of the State Bar. All persons who are serving in an elected position under any past bylaws

and whose terms do not expire at the meeting on which these bylaws are adopted shall continue in office or position until such time as their regular term expires.

## ARTICLE IX

### SECTIONS

#### Section 1. Young Lawyers Division.

The Young Lawyers Division of the State Bar shall be composed of (1) all members of the State Bar who have not reached their thirty-sixth birthday prior to the close of the preceding Annual Meeting of the State Bar and (2) all members of the State Bar who have been admitted to their first bar less than three years. This Division shall foster discussion of ideas relating to the duties, responsibilities, and problems of the younger members of the profession, aiding and promoting their advancement and encouraging their interest and participation in the activities of the State Bar. It shall elect officers and a governing board annually, and shall adopt regulations subject to the Rules and Bylaws of the State Bar. ☐

attorney to the same firm must be analyzed in light of the requirement that such an "of counsel" relationship be "close, regular and personal". The Board believes that the prudent and ethical course is for the attorneys involved to apply the same standards in analyzing this potential for conflict of representation as would be applied in more traditional relationships existing between associates and partners with other attorneys in their law firms.

Under these long-standing rules, an attorney is prohibited from continuing multiple employment if the exercise of his independent professional judgment on behalf of a client will be, or is likely to be, adversely affected by his representation of another client. See Standards of Conduct 35 and 36 and DR 5-105(B). If the lawyer is required to decline or withdraw from employment due to the reasons stated in Standards 35 and 36, then no partner or associate of his firm may accept or continue such employment. See Standard of Conduct 38 and DR 5-105(D). The standards do provide for an exception if it is obvious that the lawyer can adequately represent the interest of each of the clients and each client consents to the representation after full disclosure of the possible

effect of such representation on the exercise of the lawyer's professional judgment on behalf of each client. See Standard of Conduct 37 and DR 5-105(C).

In addition to associates and partners of law firms, the Board believes that these are sound principles for "of counsel" attorneys to follow as well. This is especially true, given the requirement that attorneys listed as "of counsel" on letterhead and other materials distributed to the public have a close, regular, personal, relationship with the principal firm. Accordingly, when an "of counsel" attorney would be required to decline or withdraw from multiple representations under Standards 35, 36 and 37, then, under Standard 38, no partner, associate or other "of counsel" attorney of the principal firm may accept or continue such employment. This opinion is consistent with those reached by other jurisdictions which have addressed this issue. See State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 1993-129; Florida Professional Ethics Committee, Opinion 94-7 (1995); and Opinion 72-41 (1973). ☐

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# Supreme Court Issues Three Formal Advisory Opinions

*During the month of June 1998, the Supreme Court of Georgia issued three formal advisory opinions that have been proposed by the Formal Advisory Opinion Board. Following is the text of the opinions issued by the Court.*

## Formal Advisory Opinion No. 97-1

STATE BAR OF GEORGIA  
ISSUED BY THE SUPREME COURT  
OF GEORGIA ON JUNE 5, 1998  
FORMAL ADVISORY OPINION  
NO. 97-1 (Proposed Formal Advisory  
Opinion No. 88-R3)

### QUESTION PRESENTED:

Is it ethically proper to work on a temporary basis for other attorneys? Is it ethically proper for a lawyer, law firm or corporate law department to hire other attorneys on a temporary basis?

### SUMMARY ANSWER:

Yes. While a temporary lawyer and the employing firm or corporate law department must be sensitive to the unique problems of conflicts of interest, confidentiality, imputed disqualification, client participation, use of placement agencies, and fee division produced by the use of temporary lawyers, there is nothing in the standards of conduct that prohibits the use of temporary lawyers.

### OPINION:

#### I. Conflicts of Interest

An attorney is ethically obligated to avoid conflicts of interest with respect to that attorney's client. A temporary lawyer represents the client of a firm when that lawyer works on a matter for a client. Thus, a temporary lawyer employed to represent clients or assist in representation of clients enters into an attorney/client relationship with those particular clients. Accordingly, the general rules pertaining to all attorneys regarding conflicts of interest are applicable to the temporary lawyer. Specifically, the temporary lawyer and the employing law firm or corporate law department must comply with Standards 30, 35, 36, 37, and 63 governing personal interest, simultaneous representation, and subsequent representation conflicts of interest. Therefore, temporary lawyers cannot represent multiple clients with opposing interests (Standards 35 and 36) or represent a client with adverse interests to a former client in a substantially

related matter unless the lawyer has written consent from the former client (Standard 69).

The opportunity for conflicts of interest is heightened in the context of the employment of temporary lawyers. The very nature of a temporary lawyer invokes conflict of interest issues. Obviously, a temporary lawyer is likely to be employed by many different firms or legal departments during the course of his or her practice. Therefore, the potential for conflicts of interest is great. As a practical matter, this potential for conflict imposes upon temporary lawyers and employing law firms or corporate law departments an obligation of great care in both record keeping and screening for conflicts. In fact, the potential for conflict is so high that law firms or corporate law departments that employ temporary lawyers would be acting unethically if they did not carefully evaluate each proposed employment for actual conflicting interests and potentially conflicting interests. Additionally, the temporary lawyer should maintain a record of clients and matters worked on in order to evaluate possible conflicts of interest should they arise. All firms employing temporary lawyers should also maintain a complete and accurate record of all matters on which each temporary lawyer works.

One of the more difficult issues involving conflicts of interest in the employment of temporary lawyers is imputed disqualification issues. In other words, when would the firm or legal department be vicariously disqualified due to a conflict of interest with respect to the temporary lawyer? Standard 38 states:

If a lawyer is required to decline employment or withdraw from employment under Standards 35, 36, or 37, no partner or associate of his or her firm may accept or continue such employment...

As noted above, temporary lawyers cannot represent multiple clients with opposing interests (Standards 35 and 36). Moreover, Standard 38 would vicariously disqualify the firm as well. However, there is an exception to disqualification under Standard 37 (a lawyer may represent multiple clients if the lawyer can adequately represent and has consent of each client). Furthermore, temporary lawyers cannot represent a client with adverse interests to a former client in a substantially related matter unless the lawyer

has written consent from the former client (Standard 69). However, in a disqualification under Standard 69, there is no vicarious disqualification of the firm pursuant to Standard 38 and the firm can represent such a client.

#### II. Confidences and Secrets

In addition to avoiding conflicts of interest, an attorney also is obligated to protect the client's confidences and secrets. As noted above, a temporary lawyer who is involved in the representation of clients or who provides assistance in the representation of clients enters into an attorney/client relationship with those clients. Therefore, the temporary attorney is obligated not to disclose client confidences. A temporary attorney is required to keep such information confidential in accordance with Standard 29.

Furthermore, Standard 29 requires:

A lawyer shall exercise reasonable care to prevent his employees, associates, and others who services are utilized by him from disclosing or using confidence or secrets of a client...

This Standard obligates the employing firm or corporate law department to impose upon temporary lawyers obligations of confidentiality identical to those requirements imposed on an associate or any other employee. This obligation of confidentiality includes all information regarding the representation of all clients of the firm or departments when that information is acquired by the temporary lawyer during his or her engagement and when that information would be considered confidential under the applicable Standards.<sup>1</sup>

However, there is an additional obligation regarding the protection of confidences and secrets which is placed on those firms who hire temporary lawyers. For that reason, it is a general rule that firms should, to the extent practicable, screen each temporary lawyer from access to any information relating to clients which is not related to the temporary lawyer's assignment. Moreover, a temporary lawyer working for several firms shall make every effort to avoid exposure within those firms to any information relating to clients on matters not assigned to the temporary attorney.

#### III. Use of Placement Agency for Temporary Attorneys

Placement agencies participate in a business that furnishes law firms and

corporate departments with the services of lawyers desiring to obtain part-time or temporary employment. Firms and corporate legal departments look to these agencies to find temporary attorneys. In accordance with ABA Formal Opinion 88-356 (1988), a firm does not violate the Standards by utilizing a placement agency. However, there are certain guidelines that should be followed to ensure that no ethical violations occur. First of all, the firm or corporate legal department must prevent any third party from exerting any control as to the client representation. Such control would be a violation of Standard 41. For example, an agency may have an interest in an attorney's taking additional time on a project so that it will result in higher fees. The solution is to prevent any control by the agency of the attorney's time.

Furthermore, there is an increased risk of disclosure of confidential information even though there must be compliance with Standards relating to confidences and secrets and conflicts of interest. This risk of disclosure may be lessened by the screening of temporary attorneys by the firm which, as discussed above, insures the temporary lawyers do not obtain unnecessary information. Moreover, a client is entitled to be informed that a temporary attorney is being used. A client reasonably assumes that only attorneys within the firm are doing work on that client's case, and thus, a client should be informed that the firm is using temporary attorneys to do the client's work. Because there is some risk of third party interference with the representation, the client should be advised of that risk. Compliance with Standard 41, which prohibits third party control of the client representation, requires full disclosure to the client of the arrangement. Finally, the client's consent should comply with Ethical Considerations 2-22 and 5-21.<sup>2</sup>

#### IV. Fee Arrangements

The last consideration that needs to be addressed is the appropriate manner in which to handle the fee arrangement. In accordance with the rationale contained in ABA Formal Opinion 88-356, a fee division with a temporary attorney is allowed. If a temporary attorney is directly supervised by an attorney in a law firm, that arrangement is analogous to fee splitting with an associate in a law firm, which is allowed by Standard 20. Thus, in that situation there is no requirement of consent by the client regarding the fee. Nevertheless, the ethically proper and prudent course is to seek consent of a client under all circumstances in which the lawyer's assistance will be a material component of the representation. The fee division with a temporary attorney is also allowed even if there is no direct supervision pursuant to the

exceptions in Standard 20, as long as the following three criteria are met: (a) client consent; (b) the division is proportionate as to services rendered and responsibility assumed; and (c) the total fee is reasonable.

The next issue regarding fee arrangements is allowing payment from those fees to the temporary agency that supplied the temporary attorney. It appears that payment is allowed under the above analysis if there is compliance with the criteria specified by Standard 20 for all fees. However, it is important to note that any interference by the agency with the representation must be avoided. As long as the agency does not control the representation then the objectives of Standard 26 (prohibiting fee sharing) and Standard 40 (prohibiting compensation for lawyer services from one other than the client) are met. Fees paid to agencies can be attributed to overhead expenses even if based on a percentage of compensation to the temporary attorney.

In summary, employment as a temporary lawyer and use of temporary lawyers are proper when adequate measures, consistent with the guidance offered in this opinion, are employed by the temporary lawyer and the employing firm or corporate law department. These measures respond to the unique problems created by the use of temporary lawyers, including conflicts of interest, imputed disqualification, confidentiality, fee arrangements, use of placement agencies, and client participation (consent). Generally, firms employing temporary lawyers should: (1) carefully evaluate each proposed employment for conflicting interests and potentially conflicting interests; (2) if conflicting or potentially conflicting interests exist, then determine if imputed disqualification rules will impute the conflict to the firm; (3) screen each temporary lawyer from all information relating to clients for which a temporary lawyer does not work, to the extent practicable; (4) make sure the client is fully informed as to all matters relating to the temporary lawyer's representation; and (5) maintain complete records on all matters upon which each temporary lawyer works.

#### Endnotes

1. "Confidence" refers to information protected by the attorney-client privilege under an applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client. Standard 28(c).
2. EC 2-22 states "without consent of his client, a lawyer should not associate in

a particular matter another lawyer outside his firm..."

EC 5-21 provides "the obligation of the lawyer to exercise professional free judgment solely on behalf of his client requires that he disregard the desires of others that might impair his judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political or social pressures upon the lawyer. These influences are often subtle and a lawyer must be alert to their existence. A lawyer subjected to outside pressures shall make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client."

### Formal Advisory Opinion No. 98-1

**STATE BAR OF GEORGIA  
ISSUED BY THE SUPREME COURT OF  
GEORGIA ON JUNE 1, 1998  
FORMAL ADVISORY OPINION NO. 98-1  
(Proposed Formal Advisory Opinion  
No. 94-R3)**

#### QUESTION PRESENTED:

Can a Georgia attorney, who has agreed to serve as local counsel, be disciplined for discovery abuses committed by an in-house or other out-of-state counsel who is not a member of the State Bar of Georgia?

#### SUMMARY ANSWER:

A Georgia attorney serving as local counsel can be disciplined under Standard 71 for discovery abuses committed by an in-house or other out-of-state counsel when local counsel knows of the abuse and ratifies it by his or her conduct. Knowledge in this situation includes "willful blindness" by the local counsel. Local counsel can also be disciplined for discovery abuse committed by an in-house or other out-of-state counsel when local counsel has supervisory authority over the out-of-state counsel also in accordance with Standard 71. Finally, the role of local counsel, as defined by the parties and understood by the court, may carry with it affirmative ethical obligations.

#### OPINION:

A client has asked in-house or other out-of-state counsel, who is not a member of the State Bar of Georgia, to represent him as lead counsel in a case venued in Georgia. Lead counsel associates local counsel, who is a member of the State Bar of Georgia, to assist in the handling of the case. Local counsel

moves the admission of lead counsel *pro hac vice*, and the motion is granted. During discovery, lead counsel engages in some form of discovery abuse.

Discipline of local counsel for the discovery abuse of lead counsel would, in all cases, be limited to discovery abuse that is in violation of a particular Standard of Conduct. If the discovery abuse is a violation of a Standard of Conduct, for example, the destruction of documents subject to a motion to produce, Standard of Conduct 71 defines local counsel's responsibility for the abuse. Because this Standard is entitled "Responsibilities of a Partner or Supervisory Lawyer" it may not be obvious to all attorneys that the language of this statute applies to the questions regarding ethical responsibilities between lead and local counsel. Nevertheless, the language of the Standard clearly applies and is in accord with common principles of accessory culpability:

A lawyer shall be responsible for another lawyer's violation of the Standards of Conduct if: (a) the lawyer orders, or with knowledge of the specific conduct, ratifies the conduct involved....

Under this Standard the extent of local counsel's accessory culpability for lead counsel's discovery abuse is determined by the answer to two questions: (1) What constitutes knowledge of the abuse by local counsel? (2) What constitutes ratification of the violative conduct by local counsel?

Actual knowledge, of course, would always be sufficient to meet the knowledge requirement of this Standard. Consistent with the doctrine of "willful blindness" applied in other legal contexts, however, sufficient knowledge could be imputed to local counsel if he or she, suspicious that lead counsel was engaging in or was about to engage in a violation of ethical requirements, sought to avoid acquiring actual knowledge of the conduct. The doctrine of "willful blindness" applies in these circumstances because local counsel's conduct in avoiding actual knowledge displays the same level of culpability as actual knowledge.

Thus, if local counsel was suspicious that lead counsel was "engag[ing] in professional conduct involving dishonesty, fraud, deceit, or willful misrepresentation" in violation of Standard 4, local counsel would meet the knowledge requirement of accessory culpability if he or she purposely avoided further inquiry. What would be sufficient suspicion, of course, is difficult to determine in the abstract. To avoid the risk of the effect of the doctrine of willful blindness, a prudent attorney should treat any reasonable suspicion as sufficient to prompt inquiry of the counsel of in-house or other out-of-state counsel.

What constitutes ratification is also difficult to determine in the abstract. Consistent with the definition of accessory culpability in other legal contexts, however, an attorney should avoid any conduct that does not actively oppose the violation. The specific conduct required may include withdrawal from the representation or, in some cases, disclosure of the violation to the court. Which measures are appropriate will depend upon the particular circumstances and consideration of other ethical requirements. In all circumstances, however, we would expect local counsel to remonstrate with lead counsel and to warn lead counsel of local counsel's ethical obligations under Standard 71.

Other than accessory culpability, and depending upon how the parties and the court have defined it in the particular representation, the role of local counsel itself may include an affirmative duty to inquire into the conduct of lead counsel and other affirmative ethical obligations. This is true, for example, if the court understands the role of local counsel as carrying with it any direct supervisory authority over in-house or other out-of-state counsel. In such circumstances, Standard of Conduct 71 provides:

A lawyer shall be responsible for another lawyer's violation of Standards of Conduct, if: (c) the lawyer has direct supervisory authority over the other lawyer and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Furthermore, at times lead and local counsel may have defined the relationship so that it is indistinguishable from that of co-counsel. In such cases the usual principles of ethical responsibility apply. Even short of this co-counsel role, however, typical acts required of local counsel such as the moving of admission *pro hac vice* or the signing of pleadings, always carry with them affirmative ethical obligations. For example, in this, as in all circumstances, the signing of pleadings by an attorney constitutes a good faith representation regarding the pleadings and the conduct of the discovery procedure of which the pleadings are a part. There is nothing in the role of local counsel that changes this basic ethical responsibility. Local counsel, if he or she signs the pleadings, must be familiar with them and investigate them to the extent required by this good faith requirement.

Finally, there is nothing in the role of local counsel that excuses an attorney from the usual ethical requirements applicable to his or her own conduct in the representation, either individually or in conjunction with lead counsel. Standard 45, for example provides that in the representation of a client

a lawyer shall not knowingly use perjured testimony, knowingly make a false statement of law or fact, assist the client in conduct that the lawyer knows to be illegal or fraudulent, or knowingly engage in other illegal conduct or conduct contrary to a Standard of Conduct. If local counsel engages in any such conduct, it is no defense to a violation that the conduct was suggested, initiated, or required by lead counsel.

Generally, Standards 3, 4, 28, 29, 41, 45, 46, 47, 48, 56 and 60 may apply to the conduct of local counsel depending upon the degree of local counsel's involvement in the discovery process. While all these Standards might not be applicable in a given case, taken together they cover the range of conduct that may be involved.

## **Formal Advisory Opinion No. 98-1**

**STATE BAR OF GEORGIA  
ISSUED BY THE SUPREME COURT  
OF GEORGIA ON JUNE 1, 1998  
FORMAL ADVISORY OPINION  
NO. 98-3 (Proposed Formal Advisory  
Opinion No. 97-R1)**

### **QUESTION PRESENTED:**

May a staff lawyer for a non-profit legal services group contact State officials to express concerns about the legality of treatment of non-clients?

### **SUMMARY ANSWER:**

A staff lawyer for a non-profit legal services group may contact State officials to express concerns about the legality of treatment of non clients and clients alike because such communication is authorized by law and because the State is not an adverse party in that situation.

### **OPINION:**

#### **I. Factual Scenario:**

A staff lawyer for a non-profit legal services group (hereinafter "lawyer") receives information that a state prison inmate is denied a constitutionally protected right by the housing institution. The lawyer contacts the Warden of the institution in writing, notifying the Warden of the situation from the perspective of the inmate. In addition, the writing cites legal authority and argues that the institution has denied the inmate's constitutionally protected rights. In conclusion, the letter asks the Warden to conform to the inmate's demands in light of the legal authority cited in the letter.

The lawyer knows that the Warden is a state official with managerial responsibilities. The lawyer also knows that the State is represented by the Attorney General of the State. The lawyer does not seek approval from the Attorney General's office prior to his correspondence.

## II. Ethical and Legal Considerations

The factual scenario raises questions about the application of Standard 47.<sup>1</sup> More particularly, the questions at issue are whether the government is a “party” as contemplated by Standard 47 and whether the communication described falls within the “authorized by law” exception to Standard 47.

### Standard 47

During the course of his representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior written consent of the lawyer representing such other party or is authorized by law to do so. A violation of this standard may be punished by a public reprimand.

The factual scenario describes a lawyer’s communication with a government agency he knows to be represented by a lawyer, without the prior written consent of the lawyer representing the government agency. While the question presented refers to a “non client,” the factual scenario describes a situation where the lawyer is offering legal assistance on behalf of a person who presumably requested the assistance. See *Huddleston v. State*, 259 Ga. 45 (1989) and *Legacy Homes v. Cole*, 205 Ga. App. 34 (1992) for a description of the formation of the attorney-client relationship. Thus, the communication is the subject of the lawyer’s representation of a client.

Because the government is not an adverse party in this situation and because the communication described is authorized by law, Standard 47 does not apply to the factual scenario presented. The communication prohibited by Standard 47 protects an adverse party from overreaching by opposing counsel, protects the attorney-client relationship, and reduces the likelihood that clients will disclose privileged information that could harm their interests. See *ABA Formal Advisory Opinion 95-396* for a description of the history and purpose of similar rules prohibiting such communication.

Standard 47 contemplates a situation where a party might take advantage of another with an *adverse interest*, through unauthorized communication. However, the factual scenario described above is not such a situation. The purpose of the government is to protect its people, including those it has taken into custody. This fundamental concept is well represented in our laws, including our Bar Rules.

The petition clause of the First Amendment is directly on point in this regard: Congress shall make no law ... abridg-

# Proposed 11th Circuit Rules Amendments

## 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 USC §2071(b), notice is hereby given proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit (Rules), and proposed amendments to Addendum Four of the Rules.

Some of the proposed amendments to the Rules would:

- allow electronic filing of emergency papers if authorized by the clerk and permit counsel to provide the court with a brief in electronic format in addition to and contemporaneous with the filing of any paper brief.
- provide that counsel may file an emergency motion outside of normal business hours only when certain conditions have been met.
- specify that the relevant parts of any document whose interpretation is central to the issues on appeal shall be included in

appellant’s record excerpts.

- ♦ conform to the new FRAP provisions concerning briefs scheduled to take effect in December 1998 which govern format, type style and type size, and impose type-volume (word or line count) limitations.

Addendum Four is proposed to be amended to clarify the time frame in which a CJA voucher must be filed, to provide that failure to file a CJA voucher within the time permitted may result in a reduction of fees awarded, and to clarify that interim CJA payments may be requested in extended and complex cases.

A copy of the proposed amendments may be obtained without charge on and after Aug. 15, 1998, from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia 30303; (404) 335-6100. The proposed amendments may also be obtained after that date from the Eleventh Circuit’s Web site at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). Comments of proposed amendments may be submitted in writing to the Clerk at the above street address by Sept. 15, 1998. ☐

ing ... the right of the people ... to petition the Government for a redress of grievances.

The government has a duty to make itself available to those who have legitimate grievances. If a person, even a lawyer representing a person incarcerated by the State, has reason to believe that the State is acting in an oppressive manner, that person has a right to communicate this grievance directly to the government agency involved. To do so is a Constitutionally protected right and thus falls within the “authorized by law” exception to Standard 47.

Even where State officials initiate a clearly adversarial proceeding, lawyers for the State are obligated to protect the interests of the accused. This concept is reflected in Directory Rule DR 7-103:

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

While the First Amendment and DR 7-103 contemplate different situations, they both incorporate the notion that the government has an interest in protecting its citizens that is a paramount to any interests it has in being protected from them. In the factual scenario

provided, the government agency has an interest in addressing the concerns raised by the lawyer. While the government may have competing interests, that alone does not make the government an adverse party.

In summary, a staff lawyer for a non-profit legal services group may contact State officials to express concerns about the legality of treatment of clients because such communication is authorized by law and because the State is not an adverse party in that situation. Regardless of the adversarial nature of the situation, a lawyer should always strive to maintain the integrity of the profession (*Canon 1*) while representing the best interest of his client, and should consider providing copies of the communication to the State lawyer. ☐

## Endnotes

1. This opinion does not address Standard 48 which prohibits a lawyer’s advice to a person who is not represented by a lawyer where the interests of the person are or have a reasonable possibility of being in conflict with the interests of his client. In the factual scenario described in this opinion, the lawyer knows that the state institution is represented by the Attorney General for the State.

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