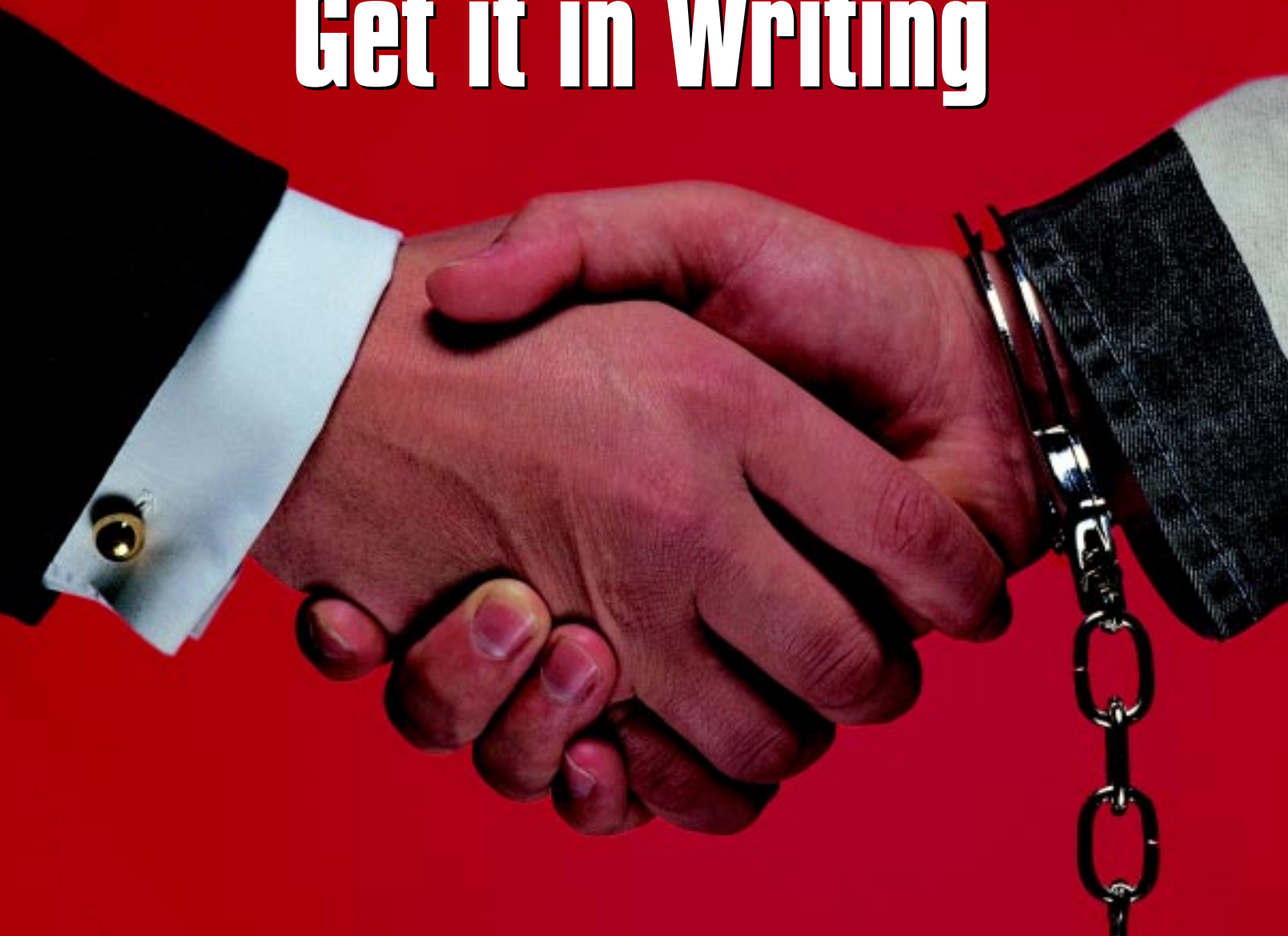


GEORGIA BAR Journal

FEBRUARY 1999 • VOL. 4 NO. 4

Get it in Writing



EXPLORING PRODUCE LAW • CHILD SUPPORT CENTER • MIDYEAR MEETING

KeyCite - pickup 12/98 inside
front

EDITORIAL BOARD

THEODORE H. DAVIS JR., *Editor-in-Chief*

JENNIFER M. DAVIS, *Managing Editor*

LYN ARMSTRONG

D. SCOTT MURRAY

GARY C. CHRISTY

MARISA ANNE PAGNATTARO

O. WAYNE ELLERBEE

EARNEST REDWINE

GEORGE W. FRYHOFFER III

AMELIA TOY RUDOLPH

MICHAEL JABLONSKI

WILLIAM W. SAPP

ANNE R. JACOBS

JOHN SPANGLER III

MICHELLE W. JOHNSON

PAMELA WHITE-COLBERT

SARAJANE N. LOVE

J. MICHAEL WIGGINS

**OFFICERS OF THE STATE BAR OF GEORGIA
(EX OFFICIO MEMBERS)**

WILLIAM E. CANNON JR., ALBANY
President

RUDOLPH N. PATTERSON, MACON
President-elect

JAMES B. FRANKLIN, STATESBORO
Secretary

GEORGE E. MUNDY, CEDARTOWN
Treasurer

LINDA A. KLEIN, ATLANTA
Immediate Past President

ROSS J. ADAMS, ATLANTA
YLD President

JOSEPH W. DENT, ALBANY
YLD President-elect

JAMES D. HYDER JR., AUGUSTA
YLD Immediate Past President

EDITORS EMERITUS • (EX OFFICIO MEMBERS)

L. BRETT LOCKWOOD, 1995-1997

STEPHANIE B. MANIS, 1993-1995

WILLIAM L. BOST JR., 1991-1993

CHARLES R. ADAMS III, 1989-1991

L. DALE OWENS, 1987-1989

DONNA G. BARWICK, 1986-1987

JAMES C. GAULDEN JR., 1985-1986

JERRY B. BLACKSTOCK, 1984-1985

STEVEN M. COLLINS, 1982-1984

WALTER M. GRANT, 1979-1982

STEPHEN E. RAVILLE, 1977-1979

ROBERT H. WALLING, 1975-1977

COMMUNICATIONS COMMITTEE

DENNIS C. O'BRIEN, MARIETTA
Chairperson

LAMAR W. SIZEMORE JR., MACON
Vice-Chairperson

STAFF

JENNIFER M. DAVIS
Director of Communications

AMY E. WILLIAMS
Communications Coordinator

ERIN E. MILES
Internet Coordinator

DENISE PUCKETT
Administrative Assistant

GEORGIA BAR Journal

FEBRUARY 1999 • VOL. 4 No. 4

On the Cover: *U.S. District Judge William T. Moore Jr. and Timothy M. O'Brien address the ethical issues surrounding a criminal defense attorney's agreement with his or her client. (Photo by Richard T. Bryant)*

QUICK DIAL

Attorney Discipline	(800) 334-6865 ext. 720	(404) 527-8720
Consumer Assistance Program		(404) 527-8759
Conference Room Reservations		(404) 527-8712
Fee Arbitration		(404) 527-8750
Continuing Legal Education Transcripts		(404) 527-8710
Diversity Program		(404) 527-8754
ETHICS Hotline	(800) 682-9806	(404) 527-8741
Georgia Bar Foundation/IOLTA		(404) 527-8766
Georgia Bar Journal		(404) 527-8736
Lawyer Assistance Program	(770) 612-1122	(800) 327-9631
Law Practice Management		(404) 527-8773
Membership Records		(404) 527-8777
Meetings Information		(404) 527-8790
Pro Bono Project		(404) 527-8763
Professionalism		(404) 527-8793
Sections		(404) 527-8774
Unauthorized Practice of Law		(404) 527-8743
Young Lawyers Division		(404) 527-8778

HEADQUARTERS

800 The Hurt Building • 50 Hurt Plaza • Atlanta, GA 30303-2934
(800) 334-6865 (404) 527-8700 FAX (404) 527-8717

Visit us on the Internet at www.gabar.org

SOUTH GEORGIA OFFICE

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

MANUSCRIPT SUBMISSIONS

The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (16th ed. 1996). Please address unsolicited manuscripts to: 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.

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

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

PUBLISHER'S STATEMENT

The *Georgia Bar Journal* (SSN-0016-8416) is published six times per year (bi-monthly) by the State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303-2934. © State Bar of Georgia 1996. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia and additional offices. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. **POSTMASTER:** Send address changes to same address.

DISABILITIES

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

Lexis Nexis (Reputation) - new - full

GEORGIA BAR Journal

FEBRUARY 1999 • VOL. 4 NO. 4

T A B L E O F C O N T E N T S

LEGAL ARTICLES

Of Clients & Fees: Ethical Issues for Criminal Defense Attorneys

*By The Hon. William T. Moore Jr.
and Timothy M. O'Brien*
10

Perishable Agricultural Commodities Act: A Produce Debtor's Nightmare; A Produce Creditor's Dream

By D. Richard Jones III and Greg B. Walling
20

Is There a National Child Support Center in Your Future?

By Robert Swain
26



10



20

FEATURES

Governor Barnes Keynotes Midyear Meeting

By Jennifer M. Davis
30

Board of Governors Outlines 1999 Legislative Agenda

*By Thomas M. Boller
and Mark Middleton*
34

Georgia Justice Project Gets Boost with a \$100,000 UPS Grant

By Andy Bowen
36

Clayton County Restoring Courthouse, Building Justice Complex

37

Fulton County's Child Advocacy Center in Planning Stage

37

President-Elect Seeks Committee Participation for 1999-2000

38

DEPARTMENTS

From The President

A Lesson From Annie
By William E. Cannon Jr.
6

From The Director

An Invitation to Young Lawyers
to Get Involved
By Cliff Brashier
7

From the YLD President

Seen Up Close, The Bar's Work
is Very Impressive
By Ross J. Adams
40

Section News

Record Attendance at Midyear Meeting
43

Law Practice Management

Making 1999 Gossip-Free in Your Firm
By Terri Olson
44

Practice Tips

Drafting Divorce Settlement Agreements
By Doug Hill
46

Professionalism

Forsyth County Bar Goes to School
By Lisa C. McCranie
50

Book Review

A Litigation Resource Worth Its Weight
By John A. Chandler
52

From the Attorney General

53

Who's Where

54

South Georgia News

Tifton Bar Hosts Chamber Event
55

Client Relations

Involving the Client in Decision-Making
56

In Memoriam

58

Lawyer Discipline

58

Georgia Trial Reporter

59

Bench & Bar

60

Notices

First Publication: FAO 94-R11
Notice of Filing: FAO 94-R6
Proposed Changes to Disciplinary Rules
62

CLE Calendar

68

Ad Index

69

Classifieds

70

A LESSON FROM ANNIE



By William E. Cannon Jr.

When Annie first came to my office she was in tears. Her husband had died unexpectedly and she was totally unprepared to cope with the years ahead of her. He had taken care of every detail of her life. She did not know where bank accounts were located, what bills were paid every month or what taxes were due. She had been a loving wife and mother but was now alone. Her two children were grown and had left home. She had no job and no real skills to offer a prospective employer. Behind her tears her eyes had the fearful look of a child separated from a parent for the first time.

Nothing had prepared me for this experience. Sure, I had taken trust and estates in law school and had probated a fair number of wills. I had developed some comforting words to utter to the survivors and a smooth way of letting them know that everything would be all right. But this was different. This client needed more than words — she needed someone to lean on.

Over the next few months we met several times. At first our meetings began with fearful questions and words of encouragement. Annie was experiencing difficulty learning the basic activities of

independent living. I thought it was just a matter of time until she moved in with one of her children.

As a few months passed I began to see a change. She learned how to balance a checkbook and take care of the household budget. She found a job with an understanding employer. The questions became less desperate. As Annie talked about the changes in her life I saw new confidence in her

For many of us the most fulfilling aspect of our practice is ministering to the needs of our clients. They want someone to care about them.

eyes. She was no longer the fragile widow that I first met.

Each visit became something that I warmly anticipated. She would have some small problem or question. I would answer the question or give some advice and then we would talk about her children. She left feeling assured that her problem was handled and I was left with the warm feeling of accomplishment. Her visits brought a sense of satisfaction that I did not always receive from the rest of my practice.

The visits are not as frequent now. She has become much more confident and can handle most of the small problems that formerly re-

quired a visit with me. I occasionally receive a nice note asking a question and containing some small bit of news about her children. Sometimes I feel like a parent whose child has grown up and left the nest.

Neither of my children have expressed a desire to enter the practice of law. My daughter appears headed for a career as a Methodist minister, and my son is likely to do the same. When I began to realize that they were not interested in becoming lawyers, I was a little disappointed. I would not have the opportunity to dispense sage advice on the practice of law to children eager to follow in their father's footsteps.

However, I now realize that my law practice has left some imprint on my children. Although they won't become lawyers, they will take the most important element of lawyering with them. They will possess a desire to help people like Annie.

For many of us the most fulfilling aspect of our practice is ministering to the needs of our clients. They want our counsel, they want our ear, they want someone to care about them. Maybe that explains why so many ministers began their college years interested in law and why so many lawyers have considered entering the ministry.

The practice of law can be such fun when we spend more time listening and counseling with our clients. How I wish that I could discipline myself so that I would only take on as much work as I enjoy doing.

So many of us are looking for greater satisfaction in our practice. We think that relocation, financial success or prestige can provide it. I am beginning to believe that the key to satisfaction is held in our own hands. We just need to spend more time practicing the kind of law we enjoy and less time becoming "successful." ■

AN INVITATION TO YOUNG LAWYERS TO GET INVOLVED



By Cliff Brashier

One of the best programs the State Bar of Georgia offers to lawyers and the public is its Young Lawyers Division. It would take more than every page in this issue of the *Georgia Bar Journal* to list the many accomplishments and good deeds of the YLD since its creation on May 31, 1947 at the State Bar's Annual Meeting. While my space is limited, I do want to provide the following brief summary for your information. Also, I cannot think of a better way for new lawyers to serve our profession, to help the public, and to enhance the quality of their own legal careers. We welcome the participation of all young lawyers, and I hope you will accept this invitation to become involved.

A Long Tradition

Throughout the years, many YLD leaders have gone on to serve their profession and the public in other leadership roles. For example, Griffin Bell served as YLD President from 1949-50, and later became the Attorney General of the United States during Jimmy Carter's administration.

William Ide of Atlanta served as YLD President from 1974-75, and

later served as President of the American Bar Association from 1993-94.

Many YLD Presidents have continued their leadership roles by later serving as State Bar of Georgia Presidents (*e.g.* Robert Brinson, James Elliott, Charles Lester Jr., Kirk McAlpin, Frank Jones and John Sammon).

The YLD offers leadership opportunities, professional relationships, as well as a fun, friendly environment in which to get to know others with common interests.

Public Service

The YLD has long been considered the "working arm of the Bar." Through its committees, YLD members participate in various community service and pro bono projects.

Sponsored by the YLD, the "Great Day of Service" is a statewide effort by Bar members to give back to their communities by completing much-needed public service projects in communities across the state.

The Aspiring Youth Committee works with middle school students

during the "latch-key" hours of the day, a time when many children are left unsupervised and often get into trouble. Committee members help students understand the importance of a good education. They provide tutoring, play out conflict-resolution scenarios, and in general act as mentors and positive role models.

Five YLD committees sponsor annual mock trial and moot court competitions for high school and law school students. The committees rely on hundreds of volunteer attorneys to help implement the competitions, giving many students their first taste of a trial procedure and an overview of the judicial system. The committees are: High School Mock Trial, Intrastate Moot Court Competition, National Moot Court Competition, William W. Daniel National Invitational Mock Trial Competition, and Youth Judicial Program Committee.

Service to New Lawyers

For newly-admitted lawyers, the YLD twice a year sponsors a mass swearing-in ceremony to the Court of Appeals, Supreme Court and the U.S. District Court of the Northern District of Georgia.

A newly-formed committee called the MCLE/Trial Credit Assistance Committee assists new bar admittees with finding courts where which they can obtain their required trial experiences.

The YLD has 15 additional committees that focus on substantive areas of law, while helping new attorneys gain practical knowledge and develop professional relationships with fellow colleagues.

Each committee takes on various projects. Some produce public service brochures and guidebooks. For example, the Corporate and Banking Committee publishes a

CONTINUED ON PAGE 8

Continued from Page 7

brochure entitled "Which Legal Entity is Right for Your Business;" and the Elder Law Committee has published a *Senior Citizens Handbook* and written two brochures: "Legal Rights of Nursing Home Residents" and "Selecting a Personal

Care Home." Other committees sponsor annual events and seminars, like the Legislative Affairs Committee's Annual Legislative Breakfast where lawyer-legislators are invited to hear esteemed members of the executive, judiciary and legislative branches discuss hot-button topics.

Getting Involved Can Be Fun for Young Members

Getting involved with the Young Lawyers Division is a great way for young attorneys to participate in their State Bar organization and their new profession. The YLD offers leadership opportunities and professional relationships, as well as a fun, friendly environment in which to get to know others with common interests.

The YLD holds five meetings a year at various resorts and locations in the southeast. All young lawyers are invited to attend. Attending one meeting is a great first step toward getting involved.

For more information on how to get involved with YLD committees, or for future meeting information, call the YLD office at the State Bar of Georgia at (404) 527-8778 or (800) 334-6865. ☐

ASI - pickup
12/98 p.42

South Ga. Mediation Service-
new - use border

Lexis Nexis (New Level) - new- full 4C

OF CLIENTS AND FEES:

Ethical Issues for Criminal Defense Attorneys

By The Hon. William T. Moore Jr. and Timothy M. O'Brien

Introduction

Just as in any other area of law, the criminal defense practice contains an infinite number of ethical issues which can emerge without warning. Like angry little bumble bees, these issues can sting you on the posterior when you think you're doing nothing wrong by simply bending over to smell a patch of daisies. For this reason, we have decided against giving you all a general survey on ethical issues. Were we to do so, we would be doing little else but reciting a never-ending laundry list of items and would have little time to go into any substantive discussion of any of those issues. So, instead of doing that, we will concentrate our attention on a finite set of ethical issues which can appear when a criminal defense attorney first assumes the

responsibility for representing a client in a criminal investigation or prosecution.

Issues concerning fee arrangements will be discussed. First, we will discuss one common sense practice ignored by an alarming number of criminal defense attorneys: reducing the fee arrangement to writing. Secondly, we will focus upon ethical considerations to be taken into account when establishing a fee for a case.

Reducing the Fee Agreement to Writing

Through his experiences as United States Attorney, criminal defense attorney, and District Judge, one of the things that has never ceased to amaze the senior author of this article is how many defense attorneys fail to put on paper the fee agreement reached with their clients. The



State Bar of Georgia has adopted Canons of Ethics and Ethical Considerations (which state the principles that attorneys are to follow), Directory Rules (which follow the Canons with imperatives to attorney), and has also adopted the more simplified Standards of Conduct. Nowhere in these three sets of rules is it stated that a criminal defense attorney *must* reduce his fee arrangement to writing. However, let us review at length Ethical Consideration 2-19. Bear with us, as this is the only time we will quote any rule or canon for longer than a few phrases. Ethical Consideration 2-19 states:

As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunder-

standing but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

As we will briefly discuss later, the phrase pertaining to contingent fees does not apply here as attorneys are precluded from using them in criminal cases. The American Bar Association's Model Rule of Professional Conduct 1.5(b), meanwhile, refers to the need for documenta-

tion as follows: “When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, *preferably in writing*, before or within a reasonable time after commencing the representation.”

You may be asking yourself: “Why, if there is no explicit command to memorialize the fee arrangement, is Judge Moore talking about the need to do so in the context of a discussion of ethics?” Well, we’ll tell you. There’s an old saying which goes: “Physician, heal thyself.” That saying applies to all those overweight, two-pack-a-day, scotch-guzzling doctors who, because of their abilities to conquer others’ physical problems, believe themselves to be invincible to medical afflictions. We propose a new saying which all lawyers should follow: “Attorney, counsel thyself.” Judges, as well as juries and ethical panels, consider it strange that attorneys routinely counsel their clients to document agreements with other parties and then fail to take their own advice and do the same. Remember, what you are doing with a client is creating a contract. How many times have you, in your private civil practice or even in a law school contracts class, scratched your head and said: “Why didn’t this fool put the agreement in writing?” Our simple advice to you is: don’t be one of those fools.

The purpose of this discussion is to give you some tips on how to avoid problems with the Bar or the many trial and appellate judges throughout this state. There is perhaps nothing more simple and easy to do than put on paper the fee agreement, have both parties (the attorney and client) sign the agreement, give a copy to the client, place a copy in the file, and secure the original.

There is no need to draw up some 20-page retainer contract that most criminal defendants would be incapable of understanding. We submit that such an agreement is not much better than no agreement at all. Rather, a plain-English engagement letter should be written, signed by the attorney, and then agreed to by the client (as indicated by his signature). This letter should be drafted only after the terms are discussed between attorney and client.

Keep in mind that attorneys and clients are adults, with the abilities to consult and consent. You should

discuss frankly with the client the basis of and terms for the fee. After you have discussed the following items with the client and are satisfied that the client understands and consents to the terms, you should incorporate the terms into the letter. The understanding should include:

1. Identification of the client.

2. Identification of the attorney.

3. Description of the matter of representation.

Give a simple description as to the criminal case against him. If there has been an indictment or case number

already assigned, put that in there. If the fee for your representation covers the grand jury investigation but does not include any trial, specifically put that in there. Also, if your fee does not include an appeal, put that in there. *It is important to err on the side of specificity.*

4. Fee charged. Be specific as to whether the fee covers non-attorney fee matters such as investigation, travel, etc. If the fee

does not cover these types of incidental costs, indicate that the client will be responsible for those costs *in addition to* the attorney fee.

5. Billing and payment arrangement. It is, of course, preferable to have the entire retainer paid up front. You should indicate that your duties of representation do not commence until the fee has been paid. If you are in the unfortunate position of having a client with whom you have agreed to institute an installment plan, spell out the terms of the plan. Also, spell out the terms for payment of incidental costs. To cover these costs, you may want to require that a separate general retainer be put in trust from which you can withdraw as expenses accrue.

6. Provisions on withdrawal from representation.

In this regard, refer to Standards of Conduct 22 and 23 and Directory Rule 2-110 pertaining to illegal/unethical courses of conduct desired by client. You may wish to include those terms in the letter in order to put the client on notice what events would require you to withdraw. This serves the purpose of eliminating surprises as well as giving your client a primer on what *not* to expect from his attorney.

7. Refundable/nonrefundable nature of retainer.

State understanding as to whether retainer is refundable or is not. If it is a nonrefundable retainer, state the reasons why it is so—namely, that representation may prevent

How many times have you, in your private civil practice or even in a law school contracts class, scratched your head and said: “Why didn’t this fool put the agreement in writing?” Our simple advice to you is: don’t be one of those fools.

you from taking on other clients in the case or related cases.

The engagement letter is a simple thing to draft and execute and will not only help prevent problems with the client (and potentially the Bar), it also might help should a panel from the Eleventh Circuit see fit to impose the Tjoflat Rule¹ upon you.

Fee Considerations

In deciding what fee you will charge your client, there are several considerations which must be taken into account. Among these are the bans on contingency fee arrangements and media rights acquisition as well as the general requirement that the fee charged be “reasonable.”

Contingent fee ban

It should be known by all who practice criminal law that attorneys are precluded from charging a criminal defense client a contingent fee. Throughout the United States, the varying ethics rules uniformly prohibit the charging of a contingent fee in a criminal case.² The public policy reasons behind this ban include the idea that a defense attorney who lives under the fear of not getting paid is more likely to commit acts against the interests of the administration of justice—for example, suborning perjury—as well as against the interest of the client—for example, counseling the client to go to trial rather than sign on to a negotiated plea agreement. Essentially, the ban has been uniformly enacted in order to preclude an attorney from having any pecuniary interest in the *outcome* of a criminal case.

Looking quickly at the relevant rules, the ABA Standards for Criminal Justice, Defense Function Standard 4-3.3(f), as well as ABA Model Rule of Professional Conduct 1.5(d)(2), prohibit the contingent fee in a criminal case. These are the standards that federal courts often follow, although there is no written policy on this subject and, doctrinally, the federal courts are adrift as to what consolidated rules of conduct they should follow.³ The judges in the Southern District of Georgia, and many others, often look to the ABA Model Rules, but will also look to the state rules. If the truth be known, most federal judges simply employ something of a “smell test” while relying upon the ABA Model Rules, as well as the canons and rules of the State Bar as guiding authority. This is not unusual or even questionable as *no* codification of ethics can preemptively cover every set of ethical questions which arise.

In any event, referring back to the ABA considerations, you should know that certain fees—though they may appear to be contingent on a certain series of

events—are not contingent fees for the purposes of the prohibition. In the commentary section of the ABA Standards for Criminal Justice, Defense Function Standard 4-3.3, the drafters illustrate the difference between that type of contingent fee which is prohibited and that which is not: “An agreement for payment of an additional fee contingent on acquittal is prohibited. However, an agreement for payment of one amount if the case is disposed of without trial and a larger amount if it proceeds to trial is *not a contingent fee* but merely an attempt to relate the fee to the time and service involved.”

Looking now to the rules adopted and promulgated by the Georgia Bar, Ethical Consideration 2-20 states that contingent fees are prohibited largely on the public policy grounds that there is no *res* (or body of money, as in a civil personal injury suit) from which the fee can be deducted. Reading that provision literally, one would assume that the contingent fee prohibition is written for the lawyer’s protection but, clearly, the underlying concerns are geared toward the protection of the public as well as the client. Directory Rule 2-106(C), meanwhile, follows that statement with a flat prohibition against criminal contingent fees.

Despite the simplicity of this prohibition, some trial attorneys could be confused. Indeed, if one were to read The American Trial Lawyers Code of Conduct published by the American Trial Lawyers Association in 1982, one conceivably could be led astray. Rule 5.6(d) of that Code explicitly permits contingent fees in criminal cases. In support of that rule, the Association argues that contingent fees are needed more in a criminal case than in a civil case for the simple reason that the criminal defendant goes to prison if he loses and therefore is obviously less able to pay than he would were he acquitted. Furthermore, the contingent fee would not impact negatively on the cause of justice because criminal defense attorneys would take on a contingent fee in only those cases where the defense appears to be particularly strong. Whether or not you agree with the ATLA arguments as opposed to the ABA arguments, keep in mind that, in contrast to the ABA Code, the ATLA Code has *not* been adopted by any jurisdiction.⁴ Also, you should take note that ATLA is, in large respect, a practice-advocacy organization and, consequently, is more likely to advance positions which have not been accepted by those outside of its organization. If you have read the ATLA Code, our frank advice to you is consider it as an academic curiosity and position statement rather than as a viable ethics code in which you can take refuge.

We think that this prohibition is an easy one to understand. Quite simply, do not draft a contingent fee arrangement in a criminal case. As mentioned earlier, you

may create an escalating fee scale which sets varying fees conditioned upon the final stage of litigation without violating the prohibition. But do not do such things as giving yourself some sort of springboard bonus plan based upon the results you achieve for your client. (In other words, do not establish a \$10,000 fee and then include a provision which gives you a \$5,000 reward if you get your client off the hook.) The public and the Bar are wary of these agreements and, in no uncertain terms, have prohibited them as against public policy.

If you will, allow us to digress for a moment to mention briefly how some aspects of federal forfeiture laws have actually converted much of the criminal practice into a contingency fee practice. In 1984, Congress enacted the Comprehensive Forfeiture Act, which amended the RICO statute as well as the Continuing Criminal Enterprise provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970. The 1984 changes empowered the Government to seize and seek forfeiture of a defendant's assets that were either derived from profits from the criminal enterprise or were used in furtherance of the enterprise.

As those of you who practice in federal courts are aware, in 1989, the United States Supreme Court, in the twin cases of *United States v. Monsanto*,⁵ and *Caplin & Drysdale, Chartered v. United States*,⁶ declared that the amendments apply to those assets which were used to pay attorneys fees. Just think about this for a minute. In essence, the Court has stated that, when a criminal defendant's entire assets are subject to forfeiture, the payment of his attorney's fee is *contingent* upon his acquittal or, in the event of a guilty verdict, the jury finding the subject assets not forfeitable. Certainly, this is a contingent fee situation. Consider the following language from the pen of Justice White, the author of the majority opinion in *Caplin & Drysdale*: "The forfeiture statute does not prevent a defendant who has nonforfeitable assets from retaining any attorney of his choosing. Nor is it necessarily the case that a defendant who possesses nothing but assets the Government seeks to have

forfeited will be prevented from retaining counsel of choice. *Defendants ... may be able to find lawyers willing to represent them, hoping that their fees will be paid in the event of acquittal.*"⁷ If this does not smack of a contingent

fee situation, then we do not know what does.

Through these two decisions, the Supreme Court has stated to all attorneys concerned: "Sure you might get paid, but only if you spring your client." This has turned a large class of criminal forfeiture cases into *de facto* contingent fee cases. Indeed, the four dissenting justices in *Caplin & Drysdale* agreed that the majority opinion might have unwittingly created a new class of criminal contingent fee cases.⁸ One commentator has argued: "In the face of the Court's pronouncements implying

the legitimacy of criminal contingent fees, state ethics codes and contracts case law seem puny indeed."⁹

One can easily see how a client and his attorney might develop conflicting interests in a situation where the Government agrees to drop a few substantive counts in return for the defendant pleading guilty to the forfeiture count. The client may get a reduced sentence or no sentence at all while his attorney does not get paid. What may be good for the client may not be good for the attorney and the chief concerns behind most major ethical canons come into play. If you need further elaboration on this topic, ask F. Lee Bailey and those North Florida jurists whom he referred to as "backwater judges" and we are sure they will be happy to paint for you a more textured picture than we could ever hope to.¹⁰

Let us move on to something else and conclude by simply stating that we have mentioned the irony created by the Supreme Court for your amusement and consideration. Despite the Supreme Court's decisions, *de jure* contingency fees are still banned even while *de facto* contingency fees may have been created.

Media Rights Ban

This will not take much space nor should it. It is easy enough to see that the Ethical Considerations, Directory

One can easily see how a client and his attorney might develop conflicting interests in a situation where the Government agrees to drop a few substantive counts in return for the defendant pleading guilty to the forfeiture count. The client may get a reduced sentence or no sentence at all while his attorney does not get paid.

Rules, and Standards of Conduct preclude attorneys from acquiring interests in the media rights of their clients' stories. Directory Rule 5-104(B) unequivocally prohibits a defense attorney from acquiring any media rights interest in his client's case *prior* to the conclusion of "all aspects of the matter." This prohibition is particularly important in the criminal defense field where, because clients are often poor but may have a bestseller story to tell, the temptation to bargain for the rights to the story is strongest.

The media rights ban has been promulgated to keep a lawyer's attention where it should be—on the interests of the client. Ethical Consideration 5-4 explains that the acquisition of media rights by the attorney might tempt the attorney "to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his clients."

The prohibition is clear and unambiguous; unless any of you need to make a quick cellular phone call to your literary agent, nothing more needs to be said on that matter.

Reasonable Fee Requirement

ABA Model Code Rule 1.5(a) sets forth the requirement that an attorney's fee must be "reasonable." This requirement is worded somewhat differently in the Georgia Bar rules in that Directory Rule 2-106(A) does not mandate a "reasonable" fee but, rather, prohibits a "clearly excessive fee." This different language is essentially followed in the ABA Standards for Criminal Justice; Defense Function Standard 4-3.3(c) states that it is "unprofessional conduct for a lawyer to enter into an agreement for, charge, or collect an illegal or clearly unreasonable fee." Whether there is any practical difference between the differing language is an issue for the law professors to hash out during their coffee breaks. There are some factors, however, which appear to be universal when determining the propriety of the fee charged to the client by the attorney. These factors will be discussed below.

As one commentator has noted:

Setting the fee in a criminal cases that the client can afford to pay, as a practical matter, greatly differs from setting the fee in other cases because criminal defense lawyers often must charge flat fees and get it

in advance. Therefore, in apparently "routine" criminal cases, experience will dictate to the lawyer what the reasonable fee will be even at the initial client interview. In more complex cases, however, the attorney must do some preliminary investigation into what the case is all about before a reasonable flat fee can be quoted.¹¹

One authority gives the following checklist for an attorney to consider when determining the size of the fee to be charged:

1. The time and effort to be required in the case for effective representation;
2. The responsibility assumed by counsel considering the nature of the case;
3. The novelty and difficulty of the questions involved;
4. The skill requisite to the proper representation in that case;
5. The likelihood that other employment will be precluded;
6. The fee customarily charged in the locality for similar services;
7. The gravity of the criminal charge;
8. The experience, reputation, and ability of the lawyer;
9. The capacity of the client to pay the fee.¹²

All of these factors are important and they are essentially reflected in the ABA Model Code, as well as in the Georgia Bar Directory Rules and the ABA Standards for Criminal Justice. When discussing the fee with the client, it is important for you to identify which of these factors necessitate (or justify) your fee; clearly state to your client the reasons for the level of your fee. Once these factors have been explained and your client understands them, it would be to your benefit to include in your engagement letter the reasons for the fee.

Looking first to factor one. When discussing this factor, remember that in many instances, particularly in federal court, criminal defense attorneys are operating under the pressure of time. Therefore, if you anticipate a drawn-out case which will drag on for several months or even years, then the reason for a higher fee will be obvious given the high number of attorney hours likely to result. If, however, you are in federal court (for example) and have to prepare and try your case within two-and-a-half months from the date of indictment or initial appearance, then the time pressures are immense, thereby increasing the premium charged for the hours to be worked. Explain to your client that his case inevitably will cut into your own time with family and friends and that a higher fee must be charged due to the urgency of his situation and your 24-hour on-call status. Also, if you are in federal court with a criminal case, then you may

have to juggle or cancel personal plans (such as family vacations, etc.) due to the long arm of the local federal judge. While this may not solicit any sympathy from a client who is facing 20 years to life in the penitentiary, your purpose is not to make him feel sorry for you but to understand why he is forking over the money you are asking for.

Factor two simply refers to the magnitude of the case and the attorney's responsibility in that case. If your client is facing a stiff sentence, then a higher fee may be necessary due simply to the fact that the stakes are high and your resulting involvement (to the detriment of the rest of your practice) will be that much higher. This same analysis applies to factors three and four pertaining to the novelty/difficulty of the questions involved and the level of skills required to meet the challenge of the law and facts. In this instance, you are simply predicting that you will have to perform more legal research and leg work and, as a consequence, more time will be spent by you than if this were a simple one-count possession with intent to distribute indictment. Also, you are asserting that you possess or will obtain the skill necessary to meet your client's needs and that level of expertise justifies the rates charged.

In our experience, we have found factor five to be the most pertinent in setting the level of fees. When an attorney agrees to represent a client in a criminal matter, he essentially agrees to *not* represent anyone else who might have an adverse interest to his client—in practice, every other person, charged or uncharged, involved in the transaction at issue. This is simply a business decision which must be made by you as an attorney. Explain to your client the possibility of other fees in the case and that, because you are now precluded from accepting those other fees, he is the sole source of income you will achieve from the case. Explain how this makes necessary the charging of fees higher than the normal hourly rate.

Factor six is probably the least important of all the factors but is still a factor important enough to be considered and explained. Factor seven, meanwhile, is closely related to factor two.

Factor eight essentially repeats the reasons for the premium fee when you are one of those attorneys with an immense level of expertise in a matter. Also, consider the fact that, if you are a well-respected defense attorney who casts fear into the hearts of the prosecutor, then you may be more likely to get a better negotiated plea agreement for your client simply because the prosecutor does not want to risk losing a conviction. Be careful, however, when discussing this factor. Do not make any claims that you cannot back up because they may come back to haunt you in either an ethics complaint or malpractice action. If

you are an attorney who is just now getting into the practice of criminal defense, remember that you are wet behind the ears and that there are many, many things out in the practice that you learn about only through experience. No one becomes an expert in criminal defense by taking a seminar in law school or by reading the latest book by Professor Alan Dershowitz. Remember that and, if you take nothing else away from this portion of the discussion, remember this: make no false claims as to your reputation or level of expertise. *Err on the side of humility.*

Finally, factor nine is simple common sense. Do not make your client rip the gold teeth out of his mother's mouth to pay your fee. While the fee need not be comfortably assumable by your client, it should take into consideration his worldly circumstances. "If paying the fee takes all the client's money, then a lower fee might be appropriate. If the client is well off, a higher fee would be justified. In addition, this overlaps with the seventh factor on the gravity of the charge and the second factor on responsibility assumed because the wealthy first offender facing substantial jail time has a greater financial risk involved in the case than a habitual offender accustomed to going to jail with not much to lose even by imprisonment."¹³

Of course, these factors are not all-inclusive. There are a multitude of other factors which you feel may require a higher fee. Our point is simply this: explain the relevant factors and, where possible, put them into the engagement letter.

Nonrefundable retainer fees

Many, if not most, criminal defense attorneys charge nonrefundable retainer fees in their cases. Recently, this practice has generated some controversy due in large part to the rabble-rousing of two professors from Cardozo Law School in New York: Lester Brickman and Lawrence A. Cunningham.¹⁴

"Ethical rules do not specifically address non-refundable fee agreements. Most ethics committees to have passed on the question permit this distinction in fee agreements that nonrefundable retainers are permissible *if properly handled.*"¹⁵ Georgia is one of these states. If you look at the State Bar of Georgia Formal Advisory Opinion No. 91-2 (which can be found in the back of your State Bar of Georgia *Directory and Handbook*), you can see that the Bar considers it "okay" to charge nonrefundable fees in criminal cases: "A 'flat' or 'fixed' fee is one charged by an attorney to perform a task to completion, for example, to draw a contract, prepare a will, or represent the client in court, as in an uncontested divorce or a criminal case. Such a fee may be paid before or after the

task is completed.”¹⁶ The Bar contrasts this with a prepaid fee arrangement: “A ‘prepaid fee’ is a fee paid by the client with the understanding that the attorney will earn the fee as he or she performs the task agreed upon.”¹⁷ The Bar advises that “flat fees” may be placed in a practice’s general operating account when paid whereas “prepaid fees” should be placed in a trust account until earned, hour by hour, by the attorney.¹⁸

This Advisory Opinion indicates that the Georgia Bar has no problem with the assessment and immediate realization of the flat fee in criminal cases. This is good for the Georgia criminal law practitioner. The question, however, is not thoroughly resolved and there are wolves out there of which you should be aware.

We want to discuss briefly the contentions of Professors Brickman and Cunningham. The main problem Brickman and Cunningham have with the nonrefundable retainer fee is that it deprives a client of his right to choose an alternate course of legal action. Essentially, the imposition of a nonrefundable retainer fee deprives a client of his right to discharge his lawyer, with or without cause, at any time, without penalty. Brickman and Cunningham propose that the American Bar Association incorporate a new rule into its Model Rules of Professional Conduct. Specifically, the new rule would state:

Nonrefundable Retainers Prohibited; Advance Fees Deposited to Client Trust Account. When a client (or any other person on behalf of a client) pays a lawyer or law firm any sum of money or delivers any other property as payment in advance for specified services to be rendered in a specified matter, no such money or property shall be or become the property of the lawyer or law firm until such time, if any, as it shall have been earned through the rendering of such services. All such money and property shall be deposited by the lawyer or law firm promptly upon receipt into a separate trust account mandated in this jurisdiction for the receipt of client property, and shall be withdrawn only when such portions of it shall have been earned through the rendering of such services. The lawyer or law firm shall promptly refund any unearned money or property to the client upon the conclusion of the representation. Any ef-

fort, by contract or otherwise, to contravene this Rule shall be null, void, and unenforceable, and lawyers or law firms involved in making any such effort shall have violated this Rule.¹⁹

In support of their proposition, the professors argue that “the attorney-client relationship is not an arm’s-length one involving parties bargaining in parity; rather it is a relationship between a fiduciary and a beneficiary in which . . . the client reposes trust and confidence in the

lawyer. Accordingly, the lawyer has a built-in advantage over his client simply because of his professional status.”²⁰

In their *North Carolina Law Review* article, Brickman and Cunningham celebrate the fact that the New York Appellate Division (and, as it would turn out later, the New York Court of Appeals) adopted their position pertaining to

Do not make your client rip the gold teeth out of his mother’s mouth to pay your fee. While the fee need not be comfortably assumable by your client, it should take into consideration his worldly circumstances.

the ethics of nonrefundable fee agreements. The case discussed is *In re Cooperman*.²¹ Let us give you a quick overview of the highlights of the *Cooperman* decision and then we will discuss how—and if—it applies to you as a Georgia lawyer.

A New York Bar disciplinary proceeding was brought against the attorney, Edward Cooperman: the proceeding was focused upon the issue of whether “nonrefundable fee” and “minimum fee” retainer agreements were valid in criminal cases (or in any case for that matter).²² The attorney was a general practitioner who also claimed to specialize in criminal law; the disciplinary committee of the New York Bar sent him a letter in September 1985 warning him not to charge or accept nonrefundable retainers because those retainers were unethical.²³ Despite this warning, the attorney subsequently entered into several nonrefundable fee agreements.²⁴

The agreements contained the following provision (although the fees varied): “My minimum fee for appearing for you in this matter is fifteen thousand (\$15,000) dollars. This fee is not refundable for any reason whatsoever once we file a notice of appearance on your behalf.”²⁵ This matter was brought to the Bar’s attention when one of the clients fired the attorney at a very early stage in the proceedings and the attorney refused to refund any portion of the fee to the client.²⁶

The New York Appellate Division held that the nonrefundable fee violated the rules of ethics: “The words

'nonrefundable fee' are imbued with an absoluteness which conflicts with DR 2-110(A)(3), which provides that a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned. We find the use of these retainer agreements to be unethical and unconscionable in spite of the inherent right of attorneys to enter into contracts for their services."²⁷ In so ruling, the court seemed primarily concerned with the fact that such an agreement impermissibly fettered a client's ability to seek alternate legal representation without penalty. The court stated, "Since an attorney's fee is never truly nonrefundable until it is earned, the use of this term, which by definition allows an attorney to keep an advance payment irrespective of whether the services contemplated are rendered, is misleading, interferes with a client's right to discharge an attorney, and attempts to limit an attorney's duty to refund promptly, on discharge, all those fees not yet earned."²⁸

You might say: "Well, Judge Moore, you just told us that flat fee arrangements are fine in Georgia so what is the purpose of discussing *Cooperman* and the academic arguments?" The answer is this: the ground has been shaken and to prevent it from opening into an abyss in Georgia the burden is upon you to act ethically when it comes to these nonrefundable fees, particularly when a client fires you.

In our opinion, it is pretty clear that, though you may tell the client the fee is nonrefundable and though the client may agree to that facet of the engagement letter, public policy is strongly leaning towards requiring attorneys who are fired to refund those portions of the "unearned" fees. This may never apply to you. You may survive your whole legal career without having a client fire you. But, considering that it might happen to any Georgia defense lawyer at any time for any reason, we suggest that you take simple steps to protect yourself from the client and the ethics panel.

Once you have written the engagement letter, you should record your hours with the same exacting scrutiny as if you were handling a civil case for a bank. Most criminal defense attorneys do not do this. They take the attitude that they charge a simple flat fee which renders

unnecessary the recording of billable hours. As will be borne out below, the recording of hours is, for your purposes, a safety measure and is easy enough to do.

Despite the Advisory Opinion mentioned previously, State Bar of Georgia Standard of Conduct 23 still applies to criminal attorneys. That standard states: "A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned." Standard of Conduct 21 shows that the term "withdraws from employment" not only refers to the voluntary act of

the attorney, but also to the involuntary withdrawal after his discharge by the client.²⁹ Therefore, if you are fired by a client, you might anticipate that he will come back to you looking for some refund of his fee. This is the purpose that the recording of hours serves. In the event that a client persists in seeking a refund after firing you during a preliminary stage of the representation, the advisable thing would be to hold on to a *quantum meruit* fee and return the remainder to

the client.

Just as in a civil case, record every minute of time you work on the case and describe what work was done on the case. This way, if a client comes back to you seeking a refund after firing you, you can figure out what hourly fee you charged and for how many hours. Keep in mind that you might be justified in charging a premium hourly fee due to the nine factors discussed earlier. Then you tender a refund to your client. If he complains, explain to him the work performed, show him the billing records and the method of computing the hourly rate, and, hopefully, that will be the end of it. Should he complain to the Bar, then at the very least you will have documentation of your work and, with the engagement letter, documentation of the reasons for the higher than normal hourly fee (particularly when it comes to the inability to represent other individuals in the case).

Conclusion

We all have to keep in mind that, in this day and age, attorneys, as a profession, are subject to constant criticism and public reprobation. It is our impression that criminal defense attorneys are particularly singled out as targets of

Do not do such things as giving yourself some sort of springboard bonus plan based upon the results you achieve for your client. In other words, do not establish a \$10,000 fee and then include a provision which gives you a \$5,000 reward if you get your client off the hook.

blame for what's wrong with America and are described as destroyers of the national community. As criminal defense attorneys, we know that these criticisms are unfounded. We know that criminal defense attorneys are the shield between the accused citizen and a Government which is capable of abuses of powers as well as innocent mistakes. We know that criminal defense attorneys are the essential fibers which hold together our constitutional fabric. *But the majority of most Americans do not see us this way.* Therefore, criminal defense attorneys have to be particularly careful when it comes to ethical matters or else they will simply contribute to the unfavorable impression held by the public.

Simple measures can prevent complicated problems. Talk with your potential client, not just at him, and counsel him as to the reason for your proposed fee. Once he agrees to the fee, put the agreement in writing and have the client sign on to it. Keep in mind that you cannot charge a fee which gives you an extraordinary pecuniary interest in the outcome of your client's case; contingent fees and fees comprised of the assignment of media rights are prohibited. Remember that the nonrefundable retainer fee is completely legal and ethical in Georgia in criminal cases but that you, as attorneys, should take steps to not abuse that privilege. Perhaps the easiest step to take is to keep time records of your criminal cases; show your client and the Bar that you have "earned" your fee and you will keep your fee as well as your reputation. ☒

This article is taken from written materials and a speech delivered by the Hon. William T. Moore Jr. to the Georgia Association of Criminal Defense Lawyers. Judge Moore was sworn-in as U.S. District Judge, Southern District of Georgia, on October 31, 1994. He is a graduate of Georgia Military College and the University of Georgia School of Law. Prior to his appointment to the bench, Judge Moore was a partner in the Savannah law firm of Oliver Maner & Gray LLP where he concentrated in federal criminal defense and federal and state trial practice. From 1977 through 1981, he served as the U.S. Attorney for the Southern District of Georgia.



Timothy M. O'Brien is an associate with the Savannah law firm of Oliver Maner & Gray LLP. He is an honors graduate of the University of Virginia and the University of Florida College of Law, and is a member of the State Bars of Georgia and Florida. From 1995 to 1997, Mr. O'Brien served as law clerk to Judge Moore. Currently, he practices in the firm's litigation section handling federal criminal defense and federal civil litigation.



Endnotes

1. The Tjoflat Rule is that rule, passed during the Chief Judgeship of Gerald Tjoflat, through which the United States Court of Appeals for the Eleventh Circuit has essentially stated that retained counsel are presumptively required to represent their clients during any appeal from the final judgment of conviction and/or sentence imposed. The Tjoflat Rule presumes that a flat fee charged by a criminal defense lawyer is sufficient to ensure that lawyer's representation of his client on appeal.
2. See JOHN WESLEY HALL, *PROFESSIONAL RESPONSIBILITY OF THE CRIMINAL DEFENSE LAWYER* 166 (2nd ed. 1996).
3. Bruce A. Green, *Whose Rules of Professional Conduct Should Govern Lawyers in Federal Court and How Should the Rules Be Created?*, 64 GEO. WASH. L. REV. 461, 463-64 (1996).
4. Peter Lushing, *The Fall and Rise of the Criminal Contingent Fee*, 82 J. CRIM. L. & CRIMINOLOGY 498, 513 (1991).
5. 491 U.S. 600 (1989).
6. 491 U.S. 617 (1989).
7. *Id.* at 625 (emphasis added).
8. *Id.* at 649 (Blackmun, J., dissenting.)
9. Lushing, *supra* note 4, at 539.
10. For a well-written article discussing how to avoid being cast into such an undesirable position, see Mark C. Hansen, *Taking Fees: A Primer on Attorneys' Fee Forfeitures*, 19 NO. 2 LITIGATION 17 (1993).
11. Hall, *supra* note 2, at 153.
12. *Id.* at 155-56.
13. *Id.* at 156 n.20.
14. See Lester A. Brickman & Lawrence A. Cunningham, *Nonrefundable Retainers Revisited*, 72 N.C. L. REV. 1 (1993); Lester A. Brickman, *The Advance Fee Payment Dilemma: Should Payments Be Deposited to the Client Trust Account or to the General Office Account?*, 10 CARDOZO L. REV. 647 (1988); Lester A. Brickman & Lawrence A. Cunningham, *Nonrefundable Retainers: Impermissible under Fiduciary, Statutory and Contract Law*, 57 FORDHAM L. REV. 149 (1988).
15. Hall, *supra* note 2, at 163.
16. State Bar of Ga. Formal Advisory Op. No. 91-2.
17. *Id.*
18. *Id.*
19. Brickman & Cunningham, *Nonrefundable Retainers Revisited*, *supra* note 14, at 39-40.
20. *Id.* at 10-11.
21. 591 N.Y.S.2d 855 (N.Y. App. Div. 1993), *aff'd*, 611 N.Y.S.2d 465 (N.Y. 1994).
22. *Id.* at 856.
23. *Id.* at 859.
24. *Id.*
25. *Id.* at 856.
26. See *In re Cooperman*, 611 N.Y.S.2d at 470-71.
27. *In re Cooperman*, 591 N.Y.S.2d at 857.
28. *Id.*
29. See *In re Collins*, 246 Ga. 325, 326 (1980).

A PRODUCE DEBTOR'S NIGHTMARE; A PRODUCE CREDITOR'S DREAM

Perishable Agricultural Commodities Act

By D. Richard Jones III and Greg B. Walling

I. Overview

If a Produce Debtor does not promptly pay the Produce Creditor, there are powerful weapons available to the unpaid Produce Creditor: The federal Perishable Agricultural Commodities Act (PACA)¹ and its state counterpart, Georgia's "mini-PACA."² PACA establishes a floating trust over the Produce Debtor's inventories, receivables, and cash for the benefit of unpaid creditors who sold produce to the Produce Debtor.³ If the requirements of PACA are met by the unpaid seller of produce, PACA is a powerful weapon to collect the sums due from the Produce Debtor. Since PACA establishes a trust, the assets of the trust are not

property of the bankruptcy estate. The claims of PACA Creditors are superior to claims of secured lenders.⁴ If a PACA Debtor makes payment from the trust assets to other creditors who have notice of a breach of the PACA trust, then the PACA Creditor may trace the trust proceeds and collect it from third parties.⁵ The interest of PACA beneficiaries trumps that of nearly every other creditor.⁶

II. PACA: The Federal Act

Congress, in passing the 1984 Amendments to PACA that established the floating trust, recognized the unique flow of commerce of agricultural products and its importance to the survival of the nation's food distribution

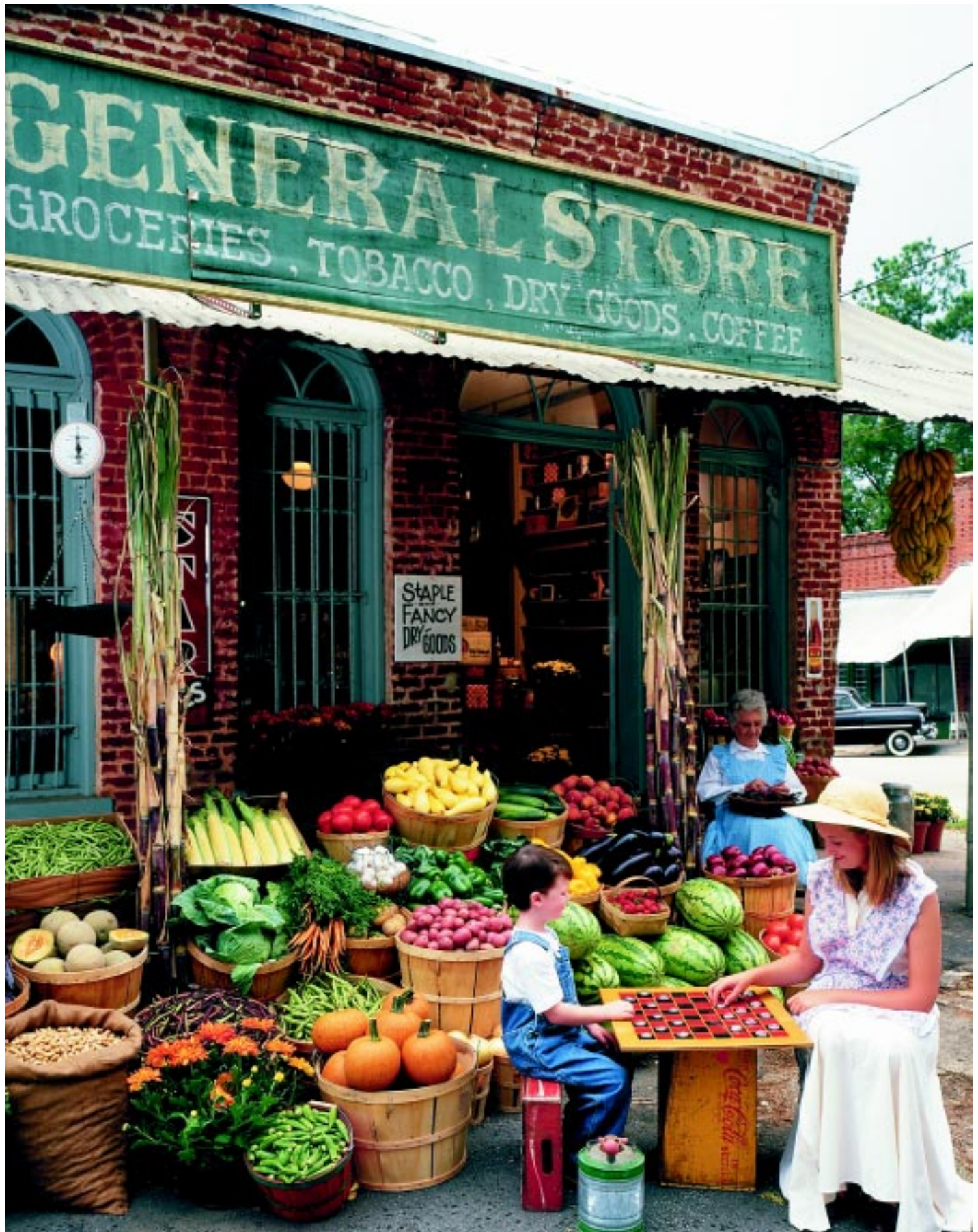


Photo courtesy of the Georgia Department of Agriculture, Tommy Irvin, Commissioner

system.⁷ If a seller's invoice for perishable agricultural commodities is not promptly paid, the seller in turn cannot make payment to the persons from whom it purchased the produce - either another broker or dealer in agricultural commodities or the farmer himself. If it were not for the special non-segregated trust created by the 1984 Amendments to PACA, these unpaid dealers and farmers would have only an unsecured claim against the PACA Debtor and would not have any pre-judgment recourse against the PACA Debtor's remaining perishable agricultural commodities, cash and receivables.

It must be remembered that PACA was not enacted to protect those in the Debtor's shoes, but rather to prevent the chaos and disruption in the flow of perishable agricultural commodities sure to result from an industry-wide proliferation of unpaid obligations. While in isolation this may seem a harsh course to follow, in the macroeconomic sense PACA serves to ensure continuity of payment and therefore survival of the industry. Congress has plainly decided that it would be less disastrous to risk the liquidation of a single purchaser than to threaten the entire production chain with insolvency.⁸

PACA is concerned with "perishable agricultural commodities," defined in the Act to be fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice.⁹ PACA protects unpaid suppliers and sellers who sell perishable agricultural commodities in interstate or foreign commerce to commission merchants,¹⁰ dealers¹¹ or brokers.¹² A transaction is considered to be in interstate commerce if the commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one state with the expectation that they will end their transit, after purchase, in another.¹³

The heart of PACA is the provision that perishable agricultural commodities received by a commission merchant, dealer or broker in all transactions, and all inventories of food or the products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by the commission merchant, dealer or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction until full payment has been received by the unpaid suppliers, sellers or agents.¹⁴

Trust assets are to be preserved by the Produce Debtor as a nonsegregated "floating" trust. This unusual "floating" characteristic applies to all of the Produce

Debtor's produce-related inventory and proceeds thereof, regardless of which produce seller is the source of the inventory.¹⁵ The burden is on the Produce Debtor to determine which assets, if any, are not subject to the trust.¹⁶ Commingling of trust assets is contemplated.¹⁷

A. Technical Requirements

The Act specifies several technical requirements that must be carefully satisfied by the unpaid seller who desires to obtain the benefits of the statutory trust. The unpaid supplier, seller or agent will lose the benefits of the trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer or broker within thirty days (i) after expiration of time prescribed by which payment must be made, as set in regulations issued by the Secretary of Agriculture, or (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction.¹⁸ The regulations define prompt payment to be ten days after the day on which the produce is accepted by the PACA Debtor.¹⁹ Accordingly, the unpaid seller ordinarily will lose the benefits of the trust unless he gives written notice of intent to preserve trust assets within thirty days following the expiration of ten days after the produce is accepted.

The parties may agree in writing for prompt payment to be longer than ten days, but the seller cannot qualify for coverage under the trust if the agreement allows payment more than thirty days after the buyer's receipt and acceptance of the produce.²⁰ When the parties expressly agree to a payment time different from that established by the regulations, a copy of the agreement must be filed in the records of each party in the transaction and the terms of payment must be disclosed on invoices, accounting and other documents relating to the transaction.²¹

The written notice of intent to preserve trust benefits should set forth information in sufficient detail to identify the transaction subject to the trust.²² The regulations specify that the notice must be in writing, and must include the statement that it is a notice of intent to preserve trust benefits, and must include information which establishes for each shipment: (i) the name and address of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable; (ii) the date of the transaction, commodity, contract terms, invoice, price and the date payment was due; (iii) the date of receipt of notice that a payment instrument has been dishonored (if appropriate); and (iv) the amount past due and unpaid.²³

Courts tend to construe strictly the technical requirements of PACA. If the written notice of intent to preserve benefits is not sent to the Produce Debtor, the Produce Creditor will lose the benefits of the trust.²⁴ Invoices or notices addressed to the individual principal of the corporate debtor without identifying the corporate debtor, have been held to be insufficient under PACA.²⁵

In 1995, Congress amended PACA to provide for an additional method for unpaid PACA Creditors to preserve their trust claims without having to file a written notice of intent to preserve trust assets. However, the 1995 PACA amendment only applies to PACA Creditors who are licensed under PACA.²⁶ An unpaid PACA licensee may use ordinary and usual billing or invoice statements to provide notice of the licensee's intent to preserve the trust. The bill or invoice must include (i) the payment time period if it is different from that established by the regulations, (ii) the terms of payment, and (iii) the following statement:

The perishable agricultural commodities listed on this invoice are sold subject to statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.²⁷

B. Remedies

The Federal district courts are vested with jurisdiction specifically to entertain actions by trust beneficiaries to enforce payment from the trust.²⁸ The district courts have jurisdiction to entertain injunctive actions by unpaid beneficiaries.²⁹ An unpaid PACA Creditor has several weapons at his disposal in enforcing the remedies in PACA.

Upon showing that the trust is being dissipated or threatened with dissipation,³⁰ the court should require the

PACA Debtor to escrow its proceeds from produce sales, identify its receivables, inventory and assets, and then separate and maintain produce-related assets as the PACA trust for the benefit of all unpaid suppliers having a bona fide claim.³¹ The court may prevent further dissipation of trust assets and set up mechanisms to conserve the assets needed to satisfy the trust creditors.³²

Often, an unpaid seller of perishable agricultural commodities will find that few others have satisfied the technical requirements of the Act. Therefore, a PACA Creditor who has satisfied the technical requirements and who promptly files suit in federal district court will be in a better position to be paid in full out of the trust assets, prior to payments to secured creditors, unsecured creditors or bankruptcy creditors. If, however, there are multiple PACA creditors and the PACA trust assets are insufficient to satisfy all of their claims, the PACA trust assets are distributed on a pro rata basis to all

beneficiaries who protect their rights to trust benefits.³³

If the PACA Debtor files bankruptcy to stay a suit in federal district court, some bankruptcy courts have granted the creditor's motion for withdrawal, deferring to the action in the federal district court.³⁴ The automatic stay in bankruptcy may be lifted to allow claims against the PACA trust assets to continue in federal district court, since the trust assets are not property of the bankruptcy estate.³⁵ Other courts prefer for the bankruptcy courts to have jurisdiction over the collection of PACA assets and administration of payments to PACA Creditors.³⁶ In either case, the trust proceeds are separate from a PACA Debtor's bankruptcy estate.³⁷ A PACA trust beneficiary is entitled to claim trust property even ahead of creditors holding security interests in the property.³⁸

A PACA Debtor may have transferred trust assets to third parties. If that is the case, another weapon available to the unpaid PACA Creditor is the tracing of trust assets into the hands of third parties. Transferee liability for receiving assets subject to the PACA trust rests on traditional trust law and depends upon whether the transferee received the trust assets for value and without notice of

Congress recognized the unique flow of commerce of agricultural products and its importance to the survival of the nation's food distribution system. If a seller's invoice for perishable agricultural commodities is not promptly paid, the seller cannot make payment to the persons from whom it purchased the produce.

breach of trust.³⁹ Lenders with actual or constructive knowledge of a PACA trust must refund any monies they receive in violation of the trust.⁴⁰ Accordingly, if an unpaid PACA Creditor learns, in discovery or otherwise, that trust assets have been conveyed to a third party in violation of the trust, the third party may also be subject to suit brought by the unpaid PACA Creditor to recover the trust assets.

A final weapon of the PACA Creditor is the imposition of personal liability on the managing agents, officers and directors of a corporate PACA Debtor. The courts that have imposed personal liability on a corporate officer rely on the trust principal that an individual who is in a position to control the assets of the PACA statutory trust may be personally liable for breach of fiduciary duty. The PACA trust imposes liability on the trustee, whether a corporation or a controlling person of the corporation, who uses trust assets for any purpose other than repayment of the supplier.⁴¹ The imposition of personal liability of the corporation's officers or directors is a powerful weapon even if the corporate officer or director files a Chapter 7 bankruptcy, seeking a discharge of liability. The Bankruptcy Code provides an exception to discharge for fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny.⁴²

II. Georgia's "Mini-PACA"

Georgia's "mini-PACA"⁴³ may apply to intrastate transactions.

Mini-PACA protects sellers of fruits, vegetables, eggs and pecans, but it does not apply to dairy products, cotton, tobacco, grains and other basic farm crops.⁴⁴ The requirements of the mini-PACA apply to dealers in these agricultural products covered by the Act.⁴⁵

The Georgia Act makes it unlawful for a dealer in agricultural products to engage in business in Georgia without a state license issued by the Commissioner of Agriculture.⁴⁶ Before a license is issued, the Commissioner is required to receive a surety bond of at least \$1,000; the Commissioner may require a greater amount, not exceeding the maximum amount of business done or estimated to be done in any month by the applicant. The bond is conditioned to secure the faithful accounting for and payment to producers of all proceeds of all agricul-

tural commodities handled by the dealer.⁴⁷

The Georgia Act provides that the dealer in agricultural products must make prompt payment for agricultural products purchased in Georgia. Prompt payment is defined to be payment twenty days following delivery, unless explicitly stated otherwise in a written contract agreed to by the producer and dealer.⁴⁸

Mini-PACA attempts to prevent disputes as to identity, quantity, quality or condition of produce delivered by the producer to the dealer. The Georgia Act provides that, at the time of delivery of the agricultural products to the dealer, the dealer and producer shall jointly issue a Certificate of Receipt and Quality to the producer or the producer's agent unless explicitly stated otherwise in the written contract. The Certificate should at the

least contain information regarding the: (1) name and address of the dealer in agricultural products; (2) name and address of the producer; (3) delivery date and time of receipt; (4) description of the product as to identity, quantity, quality and condition and grade of the products; (5) price per unit; and (6) terms of the transaction.⁴⁹

Information contained in the Certificate of Receipt and Quality pertaining to quality, quantity and price is presumed to be satisfied unless the agricultural product is inspected and a certificate stating the product is in a different condition is issued by an inspector within 48 hours of delivery of the agricultural product to the dealer.⁵⁰

When a dealer to whom produce has been shipped finds the produce to be in a spoiled, damaged, unmarketable or unsatisfactory condition, the dealer must have the produce examined by an inspector assigned by the Commissioner. The inspector executes and delivers a certificate to the applicant, with a copy to the shipper, stating the day, the time, the place of inspection and the condition of the produce.⁵¹

If the dealer of agricultural products fails to make prompt payment within 20 days of receipt of the agricultural products, fails to have the Certificate of Receipt and Quality issued where products are delivered to the dealer, or fails to have an inspection conducted if the produce is spoiled, damaged or unmarketable where products are shipped to the dealer, the dealer is in violation of mini-PACA.⁵² Any person claiming damage from a breach of the conditions of a dealer's bond may enter a complaint to the Commissioner for investigation and hearing and, ultimately, for action on the bond.⁵³ The Commissioner also has the power to

Counsel for an unpaid seller of perishable agricultural commodities who has satisfied the requirements of PACA has powerful weapons to ensure prompt and full payment.

suspend or revoke the license of the dealer on certain grounds, such as failure to account promptly and properly or to make settlements with the producer.⁵⁴

The Georgia Act does not apply to farmers or groups of farmers in the sale of agricultural products grown by themselves, persons who paid cash at the time of the purchase of agricultural products, or holders of food sale establishment licenses issued pursuant to the Georgia Food Act.⁵⁵

III. Summary

Counsel for buyers and sellers of produce should be aware of the federal PACA⁵⁶ and Georgia's mini-PACA. Counsel for an unpaid seller of perishable agricultural commodities in interstate or foreign commerce who has satisfied the technical requirements of PACA has powerful weapons to ensure prompt and full payment. The primary weapon is suit in federal district court to implement the PACA trust for the benefit of unpaid PACA sellers. Further, if a third party receives PACA trust assets in breach of and with notice of the trust, the unpaid PACA seller can file suit against the third party to trace the PACA trust assets. If the PACA Debtor files bankruptcy, the PACA trust assets, whether administered in federal district court or in bankruptcy court, are not property of the bankruptcy estate. Courts impose personal liability on the managing officers for breach of their corporate fiduciary duty, which may not be dischargeable in bankruptcy.

Georgia's mini-PACA provides a powerful remedy in intrastate transactions in agricultural products if the dealer fails to meet its obligation under the Act. Upon complaint of the unpaid seller, the Commissioner of Agriculture, after investigation and hearing, may pursue action on the bond or, in certain cases, the Commissioner may revoke the license of the dealer in agricultural products. ☐

Endnotes

1. 7 U.S.C. § 499a *et seq* (1994).
2. Dealers in Agricultural Products Act, O.C.G.A. § 2-9-1, *et seq.*
3. 7 U.S.C. § 499e(c)(2).
4. C.H. Robinson Co. v. B.H. Produce Co., 723 F. Supp. 785, 791 (N.D. Ga. 1989), *aff'd on other grounds*, 952 F.2d 1311 (11th Cir. 1992).
5. A creditor receiving payment of PACA assets must show that any trust property received was transferred "for value" and "without notice of breach of trust." *C.H. Robinson Co.*, 952 F.2d at 1314.
6. Continental Fruit Co. v. Thomas J. Gatziolis & Co., 774 F. Supp. 449, 453-454 (N.D. Ill. 1991).
7. Congress intended to eliminate the burden of commerce and to create the special PACA non-segregated floating trust, which would be enforced over the interests of lenders, secured creditors, and unsecured creditors in bankruptcy. *See In Re Fresh Approach, Inc.*, 51 B.R. 412, 422 (Bankr. N.D. Tex. 1985); *see also* 7 U.S.C. § 499e(c)(1).
8. *In Re Fresh Approach*, 51 B.R. at 420.
9. 7 U.S.C. § 499a(b)(4).
10. Defined in *id.* § 499a(b)(5).
11. Defined in *id.* § 499a(b)(6).
12. Defined in *id.* § 499a(b)(7).
13. *Id.* § 499a(b)(8).
14. *Id.* § 499e(c)(2).
15. *In re Fresh Approach*, 51 B.R. at 422.
16. *Id.* at 421.
17. 7 C.F.R. § 46.46(b).
18. 7 U.S.C. § 499e(c)(3).
19. 7 C.F.R. §§ 46.46(e) & 46.2(aa)(5).
20. *Id.* § 46.46(f)(2)(ii), (e)(2).
21. 7 U.S.C. § 499e(c)(3).
22. *Id.*
23. 7 C.F.R. § 46.46(f)(1).
24. *In re Milton Poulos, Inc.*, 947 F.2d 1351 (9th Cir. 1991).
25. *In re John De Francesco & Sons*, 114 B.R. 335 (Bankr. D. Mass. 1990).
26. Licenses, in any event, are required for commission merchants, dealers and brokers. 7 U.S.C. § 499c(a).
27. *Id.* § 499e(c)(4).
28. *Id.* § 499e(c)(5).
29. *Frio Ice, S.A. v. Sunfruit, Inc.*, 918 F.2d 154 (11th Cir. 1990).
30. "Dissipation" means any act or failure to act which could result in the diversion of trust assets or which could prejudice or impair the ability of unpaid sellers to recover money owed in connection with produce transactions. 7 C.F.R. § 46.46(a)(2).
31. *Frio Ice*, 918 F.2d at 159.

D. Richard Jones III is a trial lawyer. He was born and raised, and lives and works in Atlanta. He received his Bachelor of Arts degree from the University of Virginia in 1974 and his law degree, Order of the Coif, from Emory University Law School in 1978. His diverse trial practice includes wrongful injury and death, malpractice, employment law, contract and PACA cases.

Greg B. Walling is a partner of Jones & Walling P.C. in Sandy Springs, concentrating in commercial real estate, wills and estates, and litigation. He received his B.A. from Mercer University in 1982 and his J.D., cum laude, from the Walter F. George School of Law at Mercer University in 1985.



CONTINUED ON PAGE 61

Is There a National Child Support Center In Your Future?

By Robert Swain

You have never been on welfare? No one you know receives welfare? Welfare reform means little or nothing to you. But do you pay child support? Or receive child support? Or represent someone in a legal action involving child support? Are you an employer? Do you do business with a bank? insurance company? credit company or a utility company in America? If you do business or own property or have a bank account in America, then welfare reform touches you. It reaches deep into every business and into many employee's pocketbooks. Half of all marriages end in divorce. Most divorces involve children and child support.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)¹ reformed welfare. Welfare ended as an entitlement. States created with block grant money new temporary assistance programs to replace welfare. Now, many welfare recipi-

ents must work or lose benefits. But the law which freed welfare reform from federal red tape, created new federal mandates for child support enforcement programs.

All states, including Puerto Rico, the Virgin Islands, Guam, and the District of Columbia operate child support enforcement programs under federal law, title IVD of the Social Security Act. PRWORA made changes to the U.S. Code that affect businesses and workers in America. The 1996 federal law among other things requires:

- ◆ the creation of a national registry of new hires;
- ◆ the enactment by states of nation-wide wage withholding laws;
- ◆ new state laws for bank account matching of delinquent payors;
- ◆ the creation of a national registry of support orders; and
- ◆ the creation of "state disbursement units" for wage withholding.

National New Hire Reporting²

All employers, as defined by IRS must report new hires or re-hires to each state's child support registry.³ In Georgia these reports are sent to the Department of Administrative Services. DOAS collects the data and creates a state "new hire" data base. All states must provide copies of these data bases to the federal Office of Child Support Enforcement. The composite of all the employer "new hire" reports from all the states is the "national new hire data base."⁴ State child support agencies use the state and national "new hire" data bases to find people who owe or may owe child support. Once an absent parent is found, the state agency has two business days to send a wage withholding order to the employer⁵ or initiate other administrative or legal actions to obtain an order for support or enforce an existing order.

National Wage Withholding

All states have enacted the Uniform Interstate Family Support Act (UIFSA).⁶ One part of this Act requires the interstate enforcement of child support orders by wage withholding. Georgia did this during the 1997 legislative session, effective January 1, 1998.⁷ The enactment of UIFSA effectively repeals the venerable Uniform Reciprocal Enforcement Act (URESA).⁸ One part of UIFSA requires the interstate enforcement of child support orders by wage withholding.⁹ Under this provision a state child support agent or private attorney can send a wage withholding order to an employer in Omaha, Nebraska. The Nebraska employer must honor the Georgia order by deducting the amount stated in the order from the employee's pay check. The employer must send the money to the state issuing the order, Georgia in this example, where the State Disbursement Unit will process (beginning April 1, 1999) the money for distribution to the family. The employee can fight the wage withholding but the employer cannot.¹⁰ The federal consumer protec-

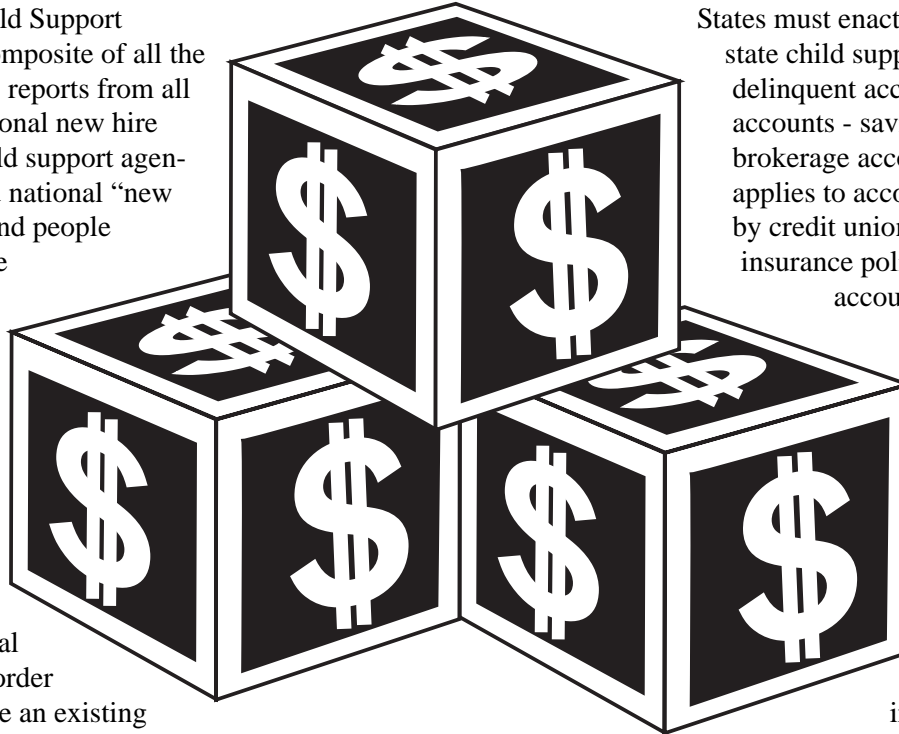
tion law limits the amount that can be withheld; generally, the limit is set at 50% of the employee's net pay after taxes.¹¹ The employer must send the child support deduction to Georgia which distributes the money in accordance with federal law to the family.

Bank Account Matching

States must enact laws that allow for the state child support agency to match delinquent accounts with bank accounts - savings, checking and brokerage accounts.¹² This law also applies to accounts and funds held by credit unions, stock brokers, and insurance policy issuers.¹³ Once an account is found belonging to a delinquent obligor, the CSE agency can administratively seize the account.¹⁴ The account holder can appeal the seizure and receive a hearing. But while waiting for a hearing, the money in the account is frozen.

If there is no appeal, the state agency takes up to the amount of the child support owed from the account.¹⁵ The same process works to find and seize the cash value of an insurance policy or the money in a credit bureau or money market account.

A 1998 amendment to PRWORA authorizes the federal parent locator service (FPLS) to establish or assist states in establishing a clearinghouse for multi-state financial institutions.¹⁶ Multi-state financial institutions will be able to submit "account" data to a clearinghouse rather than to each state in which it does business. Computer matches, (hits) obtained from the financial institutions then will be sent to each state for enforcement actions including the seizure of accounts. This clearinghouse operation will enable states to search for accounts without regard to state boundaries. Financial institutions will benefit by the reduction of the costs in terms of time and money associated with requests from multiple states for the data matching of accounts. Logically, this could lead to a computer matching program of national financial data against a national registry of all support orders. The federal law anticipates this by requiring the creation of a national case registry.



National Case Registry

You should not be surprised to learn that states are required to create a registry of all support orders.¹⁷ If you get a divorce and child support is ordered after October 1, 1998, this order must be included in the state registry. Any order that is modified after October 1, 1998 also will be added to the registry of orders. This registry will record all payments and legal actions taken for each registered order. All of this information will be sent by each state to a National Case Registry.¹⁸ To make this dream (or nightmare to some) a reality, eventually all child support payments must be matched to this national case registry. This means that there must be a central point of accountability for all child support payments.

The State Disbursement Unit

States must establish a single collection point in each state for all wage withholding payments from employers.¹⁹ Since January 1, 1994, federal and state law requires wage withholding as part of virtually all orders for child support.²⁰ Collectively these state collection centers will process all of the employer deducted child support payments in the nation. To further centralize the collections in each state, the federal government wants to end the local payment of support to CSE agencies and the courts. The centralization and re-direction of payments started in many states October 1, 1998. By October 1, 1999, courts and child support receivers, assuming state law is enacted pursuant to the federal mandate, will no longer process income deduction payments. Even income deduction payments between private parties paid by the employer directly to a family must be re-directed to the SDU. This mandate ostensibly will make the processing of wage withheld support easier for employers. One check, one list, sent to one place in each state for processing. This payment information will eventually become part of the National Case Registry.

Conclusion

Most of the money needed to pay child support is in the hands of employers and financial institutions. People grudgingly accept payroll deductions. Employers are efficient tax collectors. Employers collect a lot of child support. In Georgia, 70% of the more than \$335 million in child support collected by the state in State Fiscal Year 1998 came from employer deductions. The remainder came from tax offset programs and direct payments from obligors as the result of court or administrative actions. The amount of support collected by employers will continue

to grow as long as it is relatively easy for employers to comply with the mandates. And computers make compliance by employers relatively painless.

In the soon-to-be twenty-first century world, state enforcement agencies and private attorneys will still perform the front-end work; *i.e.*, establish paternity and orders for support and perform reviews and modifications of existing orders. The rest, from locating the absent parent to the collection of the last dollar owed, will be done through the evolving automated federal/state child support enforcement system. Without most people knowing it, we may discover that we have created a National Child Support Enforcement Center based on a linking of all states and employers, perhaps via the Internet²¹ and the Eastern Regional Interstate Child Support Enforcement Association—<http://www.ericssa.org>.

The non-payment of child support is a national problem, indeed a disgrace. If parents cared financially for their children, there would be no need for welfare or state child support enforcement programs. But there are too many irresponsible parents. The 1996 congressional response to the non-payment of support moves the nation step-by-step toward a federal solution. It is a solution that takes the choice of paying support away from responsible and irresponsible parents alike. ☐



Robert Swain is the Deputy Director of the Child Support Enforcement Section of the Division of Family and Children Services. He currently is assigned as the manager of the State Disbursement Unit project. He earned a B.A. and a J.D. from Mercer University.

Endnotes

1. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).
2. 42 U.S.C. § 653(i) (Supp. III 1997).
3. O.C.G.A. § 19-11-9.2. Duty of employers to report hiring or rehiring of persons.
4. 42 U.S.C. § 653(A)
5. *Id.* § 653(A)(g) (transmission of wage withholding notice to employers).
6. *Id.* § 666(a)(19)(f) (Uniform Interstate Family Support Act (UIFSA)).
7. O.C.G.A. § 19-11-100 *et seq.* (effective January 1, 1998).
8. *Id.* § 19-11-40.1.

CONTINUED ON PAGE 60

Imagine This (West) Pickup 8/98 p60

Governor Barnes Keynotes Midyear Meeting

By Jennifer M. Davis

THE BOARD OF GOVERNORS of the State Bar of Georgia returned to Atlanta for the Midyear Meeting which was held January 21-23 at the Swissôtel in Buckhead. In addition to the Board meeting on Saturday, there were the usual array of events for sections, alumni groups, committees, and foundations.

Learning to Lead

Lawyers from across the state gathered on Thursday to begin the convention with a training workshop. The Bar Leadership Institute (BLI) attracted a variety of leaders who are involved with the State Bar, local bars, voluntary bars, and sections or committees within these groups. The intensive three-hour workshop let attendees choose from breakout sessions on topics including: planning a successful Law Day celebration; coping with the media; communicating with your members; recruiting and retaining members; top 10 secrets of successful bars; and dealing with access to justice.

Following three workshop sessions, attendees reconvened to learn ideas for revitalizing their association from Dianne Dailey, who works with the ABA Section Officers Conference Committee on Community Outreach to State and Local

Bars. Perhaps even more helpful than the BLI program itself was the extensive manual of resources presented to every attendee to share with their respective groups.

Gathering with Colleagues

Later Thursday evening, the Lawyers Foundation of Georgia hosted a reception and introduced its new director, Lauren Larmer Barrett. She brings her experience as a lawyer who formerly worked in the fundraising division of Georgia Tech to this position which will run the charitable arm of the State Bar of Georgia.

Friday began early with law school alumni breakfasts held by Emory, Georgia State, Mercer and the University of Georgia. Also that day the State Bar Executive Meeting hosted a luncheon gathering with the Council of State Court Judges. Lunch proved to be a popular time to meet with a total of 14 sections taking the opportunity to learn, network and visit. Later that evening, two more sections held business meetings and receptions, as did the Young Lawyers Division.

Governor Reminds Lawyers to be Proud

The highlight of the Midyear Meeting was a keynote address by

Governor Roy E. Barnes during the annual Board of Governors dinner. He discussed the pride he had in his chosen profession and vowed to stand up for lawyers during the course of his administration. He explained that given the adversarial nature of the legal system, “we can’t expect everyone to love us, we just expect them to respect us.” He asked everyone in the room to promise “whenever a lawyer is disparaged — even if it’s your worst adversary — you’ll speak up. The day and time to let lawyers be trashed for no reason is gone.” Gov. Barnes said, “I’ll speak up for the profession. When the Bar is attacked wrongly, I’ll say, ‘Wait, what if we didn’t have this system?’” He added, “Lawyers are what separates us from other systems of government where disputes are settled with the butt of a gun or the force of arms.”

Gov. Barnes reminded everyone that another value of our democracy is the right to counsel. “When I was first practicing, we all had to take appointed criminal cases. Now, lawyers disdain those who defend criminals as much as the public. We all have the obligation to represent criminals. It is our duty as lawyer to tell the public that those who defend liberty are entitled to as much respect as other lawyers.”

He next explained the early days when he developed his propensity to



1. Gov. Roy Barnes (third from left) pauses with the Cobb delegation of the Board of Governors: (from left) Dennis O'Brien, Judge Adele Grubbs, Robert Ingram, Bob Beard and YLD President Ross Adams. 2. President Bill Cannon presents Georgia Legal Services Executive Director Phyllis Holmen with a \$250,000 check representing lawyers' donations to the annual fundraising campaign. 3. Visiting at the Mercer alumni breakfast are: (l-r) Lamar Sizemore, President-elect Rudolph Patterson and Anton Mertens.



pursue a legal career. In fact, the Governor was the first in his family to go to college and ultimately law school. His father owned a general mercantile in Mableton where he spent his after school days working. Across the railroad tracks lived the man who would change the Governor's life. His name was Harold Glower and he was the professional law assistant to Supreme Court Justice Harrill Dawkins. When the young Roy Barnes tired of hoisting Purina feed sacks, he would slip over to Mr. Glower's and read one of the many books that stocked his neighbor's shelves. Mr. Glower shared books along with his daily experience as a laborer in the justice system. "By senior high school, I was already Shepardizing cases," recalled the Governor. "Mr. Glower instilled not only a love but also respect for the law. He showed me that the law protected us and made us what we are [as Americans]. The love of law gives us order."

Gov. Barnes went on to say that the most rewarding cases he has handled over the years as those that

did not earn him a lot of money. He told the story of Jake Sterling, a sharecropper who lived for years with his father. Jake worked for 30 years for the railroad laying track. One day, the Governor's father asked him to investigate whether Jake was entitled to any Social Security. Jake put on a starched white shirt and overalls to accompany his lawyer downtown. Once there, officials asked Jake for his middle name. The elder gentleman explained he didn't have one officially but had adopted a middle name when filling out paperwork when he first went to work for the railroad. He chose as his new middle name the last name of his crew foreman, John Bell. From that day on, he was known as John Bell Sterling. Officials next asked when Jake was born. He innocently replied, "I don't rightly know. Mama said it was cold." As it turns out his lawyer, the future Governor of our state, had an affidavit stating Jake had been a railroad laborer during the presidency of Woodrow Wilson from 1912-1920. They checked the census, found "John Bell Sterling"

listed and he got his pension. Gov. Barnes concluded, "It took a lawyer to demand that Jake get what he was entitled to. That's what it means to practice law."

Mentoring New Lawyers

At the 165th meeting Board of Governors on Saturday morning, members heard an update on a program which will ensure the values that drew the Governor to the profession are instilled in new lawyers. John T. Marshall reported the Standards of the Profession Committee he chairs is implementing a pilot study to test the program which was approved by the Board in June of 1997, and authorized by Supreme Court order in October of that year. The proposed program was initiated during the term of then-Bar President Ben F. Easterlin IV.

The program will explore whether law school graduates become better lawyers if guided during their first two years of practice by an experienced lawyer. The pilot is a four-year program: 1998

was spent planning and obtaining funding; 1999 will mark the selection of 150 lawyer mentors and beginning lawyers; 2000 would see the actual implementation of the mentorship program which would last two years.

Ron Ellington, former dean of the University of Georgia School of Law, is developing the curriculum which will take place in CLEs and outside the classroom. The lawyer mentor and student will be required to meet a minimum of once a month. Three six-hour continuing legal education seminars will apply a series of practical problems to the practice of law. The first year will concentrate on skills like setting fees, resolving legal disputes, dealing with other lawyer, etc. In the second year, participants can choose two of four courses on specific areas of law.

John Marshall explained in his report to the goal of the pilot program is to find out whether it will work. And if the answer is yes, then can it be sustained? But the most important question he said is, "Does it make a difference in the level competence and professional values?" Mr. Marshall pointed out the potential added value of reminding those who volunteer as mentors of the same core values that lead them to the practice.

The State Bar had allocated \$50,000 to test the program. Since then, the Open Society Institute (OSI) donated \$25,000 to the pilot

so the Bar was refunded half its initial contribution. The Standards of the Profession Committee is continuing to explore other funding sources.

Dues to Remain Same

This Committee and over 80 others continuously strive to offer

Governors meeting:

♦ **Judicial District Professionalism Program (JDPP):** Robert D. Ingram, Co-chair of the Bench and Bar Committee, updated the Board on this program which uses peer intervention to address professional problems at the local level. The Committee is drafting Bar rules

to govern the program which will eventually be submitted to the Board for consideration. In developing the rules, the Committee is exploring hypotheticals to determine exactly how possible problems — such as a judge who is ignoring the uniform rules — will be addressed. Implementation efforts will continue over the next several months.

♦ **Georgia Bar Foundation:** Executive Director Len Horton reported that 1998 was the best year thus far for the

program. He discussed the *Phillips* case in Texas which challenged the constitutionality of IOLTA at the U.S. Supreme Court. He also announced that Board of Governors members John Chandler and Charles T. Lester Jr. affirmed that their firm, Sutherland, Asbill & Brennan, would defend the IOLTA program in Georgia if such a case was ever filed. He also reported on the unique action of the Georgia Supreme Court following the *Phillips* decision. Unlike other states where the high court was either remained silent or merely suggested its support for IOLTA, Georgia's Supreme Court issued an order instructing the

SOUTHERN CONFERENCE STATISTICS: BUDGET PER MEMBER					
Rank	State	Number of Staff	Number of Members	Total Budget	Budget per Member
1	Georgia (97-98)	55	29,630	\$4,474,000	\$151.00
2	Louisiana	21	18,000	\$3,000,000	\$166.67
3	Maryland	25	18,300	\$3,200,000	\$174.86
4	Missouri	40	23,100	\$4,500,000	\$194.81
5	Virginia*	78	34,200	\$7,275,000	\$212.72
6	Oklahoma	34	14,224	\$3,500,000	\$246.06
7	Kentucky	35	12,536	\$3,200,000	\$255.26
8	Arkansas	10	4,145	\$1,100,000	\$265.38
9	Alabama	35	12,409	\$3,460,000	\$278.83
10	West Virginia*	12	4,835	\$1,390,000	\$287.49
11	North Carolina*	86	27,532	\$8,000,000	\$290.57
12	Tennessee	12	6,800	\$2,000,000	\$294.12
13	Mississippi	20	6,000	\$1,900,000	\$316.67
14	Texas	300	62,144	\$23,304,000	\$375.00
15	Florida	265	57,500	\$23,000,000	\$400.00
16	South Carolina	37	9,500	\$4,100,000	\$431.58
17	Kansas	27	6,000	\$2,600,000	\$433.33

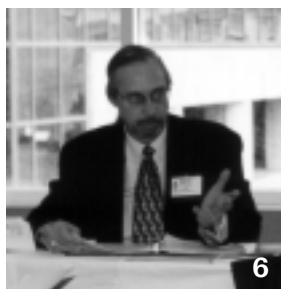
*Voluntary and Unified figures combined

the highest quality programs at a minimal cost. Because the leaders and staff of the Bar watch expenses carefully, we are able to maintain the lowest bar dues in the country. For the fifth year in a row, the Board of Governors voted to set the State Bar license fees at \$150 for active members. The chart on this page shows how Georgia compares to other bars within the Southern Conference of Bar Associations.

While Georgia may boast the lowest dues, there is no shortage of programs and services offered by the Bar and related organizations. Following are just three which were reported on during the Board of



1. The General Practice & Trial Section, led by Chair John Timmons (left) and outgoing Chair Bill Lundy (right) honored lawyer legislators during their annual luncheon. Pictured (l-r) are Rep. Jim Martin, Rep. Stephanie Stuckey, Secretary of State Cathy Cox, Rep. Rich Golick and Sen. Billy Ray. 2. (l-r) During the Lawyers Foundation reception, President Bill Cannon visits with John Chandler and Earle Lasseter, who serves as ABA Treasurer-elect. 3. (l-r) Udai Vikram Singh and Albert Bolet visit during the Women and Minorities in the Profession Committee luncheon. 4. During the Bar Leadership Institute, speaker Dianne Dailey shares ideas with Jesse Lael of the Georgia Asian Pacific American Bar Association. 5. During the annual American Law Institute breakfast, Judge Dorothy Beasley introduces Lance Liebman, the new Director of ALI. 6. At the Board meeting Saturday, David Lipscomb leads a breakout group discussion of proposed revisions to the disciplinary rules. 7. Paul Kilpatrick presents the Court Filings Committee report at the Advisory Committee on Legislation meeting. 8. On behalf of the Council of Juvenile Court Judges, Judge A.J. Welch presents their legislative proposal to the Board of Governors. 9. Standards of the Profession Committee Chair John Marshall updates the Board on the mentoring pilot project for law students. 10. Stonewall Bar Association members Melinda Agee and James Tarleton discuss topics presented at the Bar Leadership Institute.



Trustees of the Georgia Bar Foundation to conduct business as usual.

♦ **Foundations of Freedom:**

The many public service programs which benefit from IOLTA monies distributed by the Georgia Bar Foundation are just one example of the good work that lawyers do.

President William E. Cannon Jr. hopes to spread the message of these good deeds across the state in an effort to improve the public's perception of lawyers. He instituted the Foundations of Freedom program which was discussed in detail in the last issue (Dec. 1998, page 50).

Dennis C. O'Brien, who chairs the effort, updated the Board on the group's work. All lawyers are invited to be part of the speaker's bureau to take the message to civic, community and school groups. Volunteers

CONTINUED ON PAGE 57

Board of Governors Outlines 1999 Legislative Agenda

By Thomas M. Boller
and Mark Middleton

THE 1999 GEORGIA GENERAL

Assembly convened on Monday, January 11. Thirty-eight attorneys were sworn in to serve in the 180-member House and eight attorneys were elected to serve in the 56-member Senate. And for the first time in 16 years, a lawyer, Roy E. Barnes, was inaugurated as Governor of Georgia.

While the 1999 legislative session is expected to be dominated by initiatives addressing urban sprawl, regional transportation planning, health care reform, and property tax relief, the legislature will address a number of key issues affecting the operation of the courts and the practice of law. The State Bar's 1999 legislative agenda, adopted and approved by the Board of Governors at its November and Midyear meetings, is summarized below:

Expansion of the Court of Appeals: This proposal expands the Georgia Court of Appeals by adding a new panel of three judges and one judge to serve as administrative and chief judge.

State Funding of Juvenile Courts: Currently, county revenues are the primary source for juvenile court judgeships. This proposal entitles each circuit to state funding

at a rate of 90 percent of the state base salary for superior court judges. House Judiciary Chair, Rep. Jim Martin, is the author of the bill.

Amending Service Statute to Conform to Federal Rule: The proposal would require payment of service costs by certain defendants, such as corporations or competent adults, that choose to not acknowledge service. The acknowledgment of service would not waive defenses relating to venue and jurisdiction.

Appellate Judge Retirement: This proposal conforms appellate retirement criteria to the Superior Court standard by lowering the age from 65 to 60 years of age. Under legislative rules, this bill would be carried over to the next session after a mandatory actuarial study.

Choice of Law in Commercial Transactions: This bill allows non-resident parties to choose Georgia law in commercial transactions. The bill also provides for venue in cases involving this choice, but the bill does not affect other venue provisions currently provided for under Georgia law.

Sanctions for Failure to Cancel Security Deeds: The bill provides for a \$500.00 penalty when lenders fail to cancel satisfied loan instruments.

Requirement for Superior Court Clerks to Maintain Printed Indices and Books: This proposal

would require the clerks to maintain printed copies of indexes even if the filing system is computerized. This protects against computer system failures and addresses questions over accuracy and availability of records.

Urge Congress to Reject the Repeal of McDade Amendment: Congress has passed legislation known as the McDade Amendment which reversed efforts by the Justice Department to exempt their prosecutors from state ethics rules. The State Bar's position is consistent with requiring all attorneys to abide by state ethics rules.

Endorsement of State Court Filings Committee Report: This report by the State Bar's Courts Filings Committee contains recommendations for a plan and procedure for collecting civil and criminal case filing data on a statewide basis. The State Bar has not adopted specific legislation, but all interested parties are in the process of working on a bill that would resolve data ownership issues. The State Bar recognizes that the data is public information and will insist that the public have access to this data.

Appropriation for Domestic Violence Program: This position endorses the Chief Justice's budgetary request of \$2.5 million for use in providing legal services to the victims of domestic violence. The request represents an increase of

\$500,000 from the \$2 million appropriated for the first time last year.

Appropriation for CASA Program: This item endorses additional funding of \$219,541 for a total allocation of \$839,541 for the CASA (Court Appointed Special Advocates) program.

Revisions to Corporate Code: The following proposal contains five revisions to the corporate code.

1. Amendment of unused classes of blank preferred stock: Amend O.C.G.A. Section 14-2-602 to allow a board of directors to amend the rights of series of preferred stock without shareholder approval if no such shares were outstanding.
2. Electronic proxy voting: Amend O.C.G.A. Sections 14-2-722 and 14-2-140 to add a new definition for "electronic transmission" or transmitted electronically." It is believed that this amendment would allow Georgia to join several states in bringing significant cost savings to corporations with large numbers of shareholders.
3. Mergers of parent corporations into subsidiary corporations: Amend O.C.G.A. Sections 14-2-1104 and 14-2-1302 to allow a parent corporation owning at least 90 percent of a subsidiary corporation to merge into the subsidiary.
4. Definition of beneficial owner: Amend O.C.G.A. Section 14-2-1110(4) and 14-2-1131(1) harmo-



On January 11, two lawyers were sworn-in to the state's highest public offices—Governor and Lieutenant Governor. Above, former Gov. Zell Miller hands over the seal of Georgia to Gov. Roy Barnes. Below, Lt. Gov. Mark Taylor is sworn in by Judge Cindy Wright as his son, Fletcher, looks on.



- nize the definition of "Beneficial Owner" to be consistent with the most recent definition adopted by the General Assembly.
5. Exceptions to transacting business in Georgia: Amend O.C.G.A. Section 14-2-1501 to clarify instances when a certificate of authority is not necessary to conduct business in Georgia.

Revisions to Limited Partnership and Limited Company Act: This proposal amends the Georgia LLC Act and Limited Partnership

Act to implement changes appropriate in light of recently adopted regulations by the Internal Revenue Code.

The State Bar's Advisory Committee on Legislation agreed to support the Indigent Defense Council's funding request, which includes an increase of \$2 million for FY 2000, and to support the Appellate Resource Center's funding request, which includes an addition of \$200,000.

In addition to advocating the State Bar's adopted agenda, we provide legislative tracking services to each section of the State Bar. If you become aware of legislation that impacts your area of practice, please contact the legislative contact person for your section or Mark Middleton at (770)825-0808.

For full texts of the Bar's legislative proposals, weekly legislative updates, addresses/phone numbers for House and Senate members, or other important information regarding legislative activities and the Bar's legislative program, visit our Web site at www.gabar.org, or call our office at (404) 872-0335; fax (404) 872-7113. ☒

Thomas M. Boller and Mark Middleton are legislative representatives for the State Bar of Georgia.

Georgia Justice Project Gets Boost with a \$100,000 UPS Grant

By Andy Bowen

THE GEORGIA JUSTICE

Project (GJP), a unique non-profit group that provides legal defense, counseling and support for indigent clients to help them lead crime-free lives, is the 1998 recipient of a \$100,000 Corporate Office Region/District Grant from the United Parcel Service Foundation.

"They're doing so much good in the community, and they've been doing it without significant financial resources for so long, that the choice was not a difficult one for us

to make," commented Evann Cooper, UPS Foundation Executive Director. "The employees who nominated GJP and the UPS Foundation's Board of Trustees felt strongly that the Georgia Justice Project truly was meeting an urgent human welfare need, which was one of the selection criteria."

GJP Executive Director Doug Ammar said the grant will be used to help them acquire more building

space for their client/offender job training program, New Horizon Landscaping (NHL). The service employs indigent clients who are just out of prison, awaiting trial or are

Founded in 1986 by John A. Pickens, a top Atlanta lawyer who left a promising corporate career to provide free legal help for the poor, the Georgia Justice Project uses a

holistic approach combining advocacy and rehabilitative services that has helped more than 1,100 indigent men and women get through their legal problems and reach the potential to go on to lead crime-free, drug-free lives.

GJP's lawyers provide aggressive legal defense for clients who sign a contract agreeing to take part in rehabilitative programming,

addiction counseling, job training, GED classes and other activities and treatment. And, they must stay crime-free. It is unique in the nation and will soon be joined in its work by a sister organization, the Athens Justice Project. ☐



Jerry Collins (left), employee relations manager for United Parcel Service, receives a thank-you plaque from David Rocchio of the Georgia Justice Project (right). Behind are Doug Ammar (left), Executive Director of GJP, and Marcus Cook, a team member of New Horizon Landscaping Service.

trying to get back on their feet financially, physically or emotionally. NHL provides landscaping services for residential and commercial customers in the metro-Atlanta area.

"Now we're going to be able to touch the lives of so many more people," commented Mr. Ammar. "On their behalf, and on behalf of the community it will benefit, we can't say thanks enough to UPS."

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

Clayton County Restoring Courthouse, Building Justice Complex

MORE THAN 100 years later, the 1898 Clayton County Courthouse will undergo a renovation to restore the building to its original charm. The renovation is part of a \$119 million project that includes the creation of the new Clayton County Justice Complex. Beginning in 2000, the historic

Clayton County Courthouse will be restored for use in county operations, to include administrative functions.

The courthouse, one of Jonesboro's most enduring and familiar landmarks, was transformed in the 1960s when the original facade was covered by a brick and cement annex, and again in the 1980s. Today, the larger, more



The new Clayton County Justice Complex will be completed in 2000, and the Courthouse restoration will begin. (Art courtesy of Hellmuth, Obata & Kassabaum, Inc.)

modern structure houses property deeds, wills and judge's courtrooms. Current renovation plans include raising the annex, restoring the original, Early Southern style architecture facade and remodeling the interior for office space.

The ground-breaking of the state-of-the-art justice complex, took place in October. To be completed in

2000, the complex was designed to alleviate overcrowding at both the present courthouse and the current detention facility in Lovejoy. Both existing facilities will be renovated for governmental use by the project team as part of the overall plan by 2001.

Due to extensive population growth in Clayton County, the county's justice system has undergone great changes. The current Lovejoy detention center was built in 1986 and was at capacity within two years. A one-percent special purpose, local option sales tax is funding the 726,855-square-foot facility, which is expected to meet the county's needs through 2015 and beyond. ☐

Fulton County's Child Advocacy Center In Planning

FULTON COUNTY DISTRICT Attorney Paul L. Howard announced that his office will spearhead efforts to establish metro-Atlanta's first Children Advocacy Center, a multi-disciplinary approach to assisting victims of child abuse and non-offending family members. In addition to the Fulton County District Attorney's Office, the Children's Advocacy Center will be a collaborative project involving law enforcement, child protective services, medical professionals, educators, victim's rights advocates, civic and business leaders, as well as representatives from the judicial system. ☐



During a recent trip to Texas, representatives of the Fulton County District Attorney's Office and the Georgia Center for Children gathered on the steps of the Children's Advocacy Center in Dallas. Back row (l-r): Cynthia Williamson, Suzie Ockleberry, LaVann Weaver and Leslie Miller-Terry. Front row (l-r) Jacquelyn Drake, Paul Howard, Cynthia Roberts-Emory and Deborah Espy.

President-elect Seeks Committee Participation for 1999-2000

EACH YEAR THE STATE BAR offers Georgia attorneys an opportunity to contribute to the legal profession and the public by volunteering to serve on one of the State Bar's many standing and special committees. President-elect Rudolph N. Patterson, who will take office in June, encourages Bar members to take advantage of this opportunity.

If you presently serve on a

committee and wish to continue, please indicate on the form below. Prior service does not ensure automatic reappointment. Also, you can let us know if you wish to change to another committee.

A listing of committees appears on page 53 of your *Directory & Handbook*. Members are encouraged to express committee preferences using the form below. There is also a form

on the Web site where you can e-mail your preferences. To find it, go to www.gabar.org/ga_bar/bar/index.htm.

The Bar strives to make appointments that will achieve diversity and broad representation of Georgia's legal community. While we would like to appoint everyone to their preferred committees, the number of requests often exceeds the number of vacancies. Thank you for your interest. ☐

State Bar of Georgia Committee Preference Form 1999-2000

Name: _____ Bar No.: _____

Firm, Employer, Agency: _____

Address: _____

Phone: _____ Year Admitted to Practice: _____

Fields in which you practice: _____

How many attorneys practice in your office: _____

Have you ever served on a State Bar Committee? If so, which one(s)? _____

Are you presently serving on a Committee? If so, which one? _____

Do you wish to continue serving on that Committee? If not, please list a new Committee _____

Please list a maximum of three committees you are interested in working with in 1999-2000:

1. _____

2. _____

3. _____

Return by mail to the State Bar, Attn: Committees, or fax to (404) 527-8717

Rave Reviews (West) - New

SEEN UP CLOSE, THE BAR'S WORK IS VERY IMPRESSIVE



By Ross J. Adams

The President of the Young Lawyers Division has a multitude of responsibilities in addition to presiding over an almost 9,000-member section of the State Bar of Georgia. While my duties are not nearly as extensive as those of the State Bar President, the YLD President has many other responsibilities, which are assigned by the State Bar's bylaws, the YLD bylaws and the President of the State Bar.

Most importantly, of course, the YLD President is the chief executive officer of the Division, responsible for carrying out the purposes of the Division. Those purposes include fostering among the members of the Bar the principles of duty and service to the public; improving the administration of justice; furthering the aims, purposes and ideals of the State Bar of Georgia; fostering discussion and interchange of ideas relating to the duties, responsibilities and problems of the younger members of the State Bar; and encouraging the interest and participation of the younger members of the State Bar in the activities of the Bar. To fulfill those responsibilities, the YLD has about 30 committees devoted to service to the bar, service to the public and substantive legal issues. The President is an ex-officio

member of each of those committees, and with the assistance of the YLD Executive Committee, uses those committees to fulfill the purposes of the Division.

However, in addition to those duties, the YLD president also sits on the Executive Committee and the Board of Governors of the State Bar, which adds more responsibilities. Among those duties is to be a liaison to several State Bar committees. This

As a result of my participation in the Bar, I have seen so many good things that our Bar is accomplishing that I am truly amazed.

year, I am liaison to the Uniform Rules Committee and the Family Courts Committee. I also serve on the Program Committee and the Standards of the Profession Committee. In addition, the YLD President sits on the Chief Justice's Commission on Professionalism, the Georgia Bar Foundation and the Lawyers Foundation of Georgia.

As a result of my participation in so many parts of the Bar, I have seen so many good things our Bar is accomplishing that I am truly amazed. The problem with being aware of so much good work is deciding how to write about that work. Writing these columns can be stressful, but that stress stems

primarily from there being too much about which to write. Nevertheless, it is such great work that is being accomplished that I am going to try. But I must warn you that this column may turn into a work to be continued.

Just focusing on the Young Lawyers Division, there are dozens of topics. For example, we recently hosted the 10th Annual Legislative Breakfast. The panel consisted of Chief Justice Robert Benham, Attorney General Thurbert Baker, Judge J. D. Smith of the Court of Appeals, Sen. Rene Kemp, Chair of the Senate Judiciary Committee and Rep. Jim Martin, Chair of the House Judiciary Committee. In attendance were several lawyer-legislators, many members of the Supreme Court and Court of Appeals and representatives of the executive branch, including Secretary of State Cathy Cox. Also present were dozens of lawyers gathered to speak with our guests and to hear the panel speak. This was a fantastic opportunity for young lawyers to meet our lawmakers and find out what is planned for the upcoming legislative session.

Another major YLD project just completed is the Aspiring Youth Program. Over 50 young lawyers donated their time assisting 6th, 7th and 8th graders at Walden Middle School in Atlanta, helping them with their school work and teaching them sportsmanship. BellSouth Telecommunications sponsored the program and the honorary chair was Chief Justice Benham. This is an ongoing program, and will take place again in the spring, and also will be expanding to other parts of the state.

The Corporate and Banking Committee has also done some great work. In addition to sponsoring a seminar entitled "Nuts and Bolts of

MARCH 18-21 AT CALLAWAY GARDENS

YLD Planning Spring Meeting

JOIN THE YOUNG LAWYERS

Division and State Bar of Georgia Executive Committee for the YLD Spring Meeting the weekend of March 18-21, 1999 at Callaway Gardens in Pine Mountain, Georgia.

The weekend convenes Friday with the YLD Executive Committee meeting at 4:00 p.m. Then the YLD invites everyone to join them for a group dinner at 7:00 p.m. at the Oak Tree Victorian Restaurant near Callaway.

Saturday morning, the YLD Executive Council will meet at 10:00 a.m. Once the meeting wraps up, the rest of the day is free to enjoy the many activities available at Callaway

Gardens. The YLD has reserved tee times on Callaway's famous Mountain View Course, which is among the nation's top-rated courses, and is home to the PGA TOUR'S Buick Classic. Other leisure activities include tennis, raquetball, fishing, boating and hiking. And don't forget about the Horticultural and Butterfly Centers!

The meeting will conclude Saturday evening with a wine-tasting reception and group dinner. Wine lovers will not want to miss this reception, which will feature Anita



LaRaia, wine connoisseur and teacher from the The Wine School in Atlanta. The demonstration will continue through dinner, as Anita explains the techniques of proper wine tasting. The evening will not be complete though, without first playing a few games of the YLD's famous Bingo! We've got great prizes lined up, so we hope to see you there!

To register for the meeting, please call the YLD Office at (404) 527-8778 or (800) 334-6865. The room rate for Callaway Gardens is \$96 per night. To reserve your room, please call the hotel directly at 1-800-CALLAWAY. ☒

Corporate and Banking Law" the Committee has also worked on projects benefiting youth and small business owners. With the assistance of Equifax, the Committee established the YES program to teach high school age children about budgeting and credit. The Committee also published a pamphlet, sponsored by CT Corporate System, entitled "Which Legal Entity is Right for your Business," describing each type of business entity available in Georgia. This pamphlet was so well done that the Secretary of State's office began including it in every corporation formation packet that the office distributed.

As I feared, I have reached the end of my allotted space without even scratching the surface of the good work accomplished by the Young Lawyers Division and the State Bar of Georgia. As such, I am forced to end this column with those dreaded words, to be continued. ... ☒



**It's not too late to volunteer to serve
as a judge/evaluator**

**Saturday, March 13 at the
State Finals in Lawrenceville**

**For more information contact
the mock trial office at:**

**800/334-6865 (ext. 779), 404/527-8779
or mtrial@gabar.org**

Wallace Law registry
pickup 12/98 p37

Record Attendance at Midyear Meeting

STATE BAR SECTIONS MEMBERS turned out in record numbers to attend sponsored events in conjunction with the Midyear Meeting. On January 22, seventeen sections held meetings at either the Swissôtel or Ritz-Carlton Buckhead. Those groups who held events were: Aviation, Bankruptcy, Computer, Environmental, Family, Fiduciary, General Practice & Trial, Health, Intellectual Property, International, Labor & Employment, School & College, Senior Lawyers, Taxation, Tort & Insurance Practice, and Workers' Compensation. At right are some photo highlights of the various events.

Computer and Intellectual Property Law combined their meetings. Pictured (photo 1) is Larry K. Nodine of Atlanta, Chair of Intellectual Property. The Computer Law Section is chaired by Jeffrey R. Kuester of Atlanta (not pictured).

Taxation, chaired by Lyonnnette M. Davis of Atlanta, announced upcoming plans for their section. (Pictured l-r, photo 2, are Ms. Davis and Gregory L. Fullerton of Albany, Past Chair of the Section).

Secretary of State Cathy Cox addressed the **General Practice & Trial Section** (photo 3).

Workers' Compensation, chaired by Larry Neal Hollington of Augusta, held their (renowned) midyear reception. (photo 4, l-r, Larry Hollington and H. Michael Bagley, Immediate Past Chair).

E. Alan Armstrong, Atlanta, Chair of the **Aviation Law Sec-**

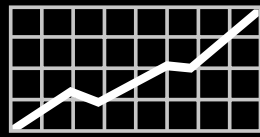


tion, speaks to members at their luncheon meeting (photo 5).

Labor & Employment broke attendance records as outgoing Chair James M. Walters of Atlanta, con-

ducted elections and turned the gavel over to Jean S. Marx of Atlanta (photo 6). ☒

—Lesley T. Smith, Section Liaison



Making 1999 Gossip-Free in Your Firm

By Terri Olson

GOSSIP IS PARTICULARLY damaging in law firms, because not only does it contribute to the same problems it does elsewhere—paranoia, tension, bad relationships and wasted time—but it's possible that client confidences will be part of this gossip. It's hard to control because, like bad driving, everyone deplores it yet most people are guilty of it at one time or another.

Therefore, the first rule for diminishing gossip is to recognize

that everyone can fall under its spell. No one is exempt, although of course some people are by nature chattier,

Gossip is rampant in organizations where little real information is shared with staff or associates. It is also common when employees feel powerless.

less kind, or less concerned over the validity of rumors than others. But gossip is a universal human weakness, not something limited to women, secretaries, or those with too much free time. So when you say, "I never gossip" (which *everyone* says), admit "except when I think it's a relevant issue; except when it's true and everyone knows it anyway; except when it's too good to waste; except when I'm telling someone who won't pass it on" or whatever applies to you.

Since everyone admits office gossip is bad, yet most people spread rumors at one time or another, simply telling your employees "no gossiping" is rarely effective: everyone will agree and unfortunately continue as before. Hold a meeting or circulate a

memo that provides concrete examples of what constitutes unacceptable gossip, such as:

- ♦ Discussing anything related to a client matter within the firm to anyone who does not have a specific business need to know, or to anyone outside of the firm for any reason;
- ♦ Talking about other employees' personal problems, including health, reasons for absences or marital difficulties;
- ♦ Talking about other employees' work habits, work hours or abilities;
- ♦ Talking about employee relationships, whether romantic, good or bad;
- ♦ Speculating about personnel issues, including hiring or firing plans, salaries, bonus distributions and evaluations.

When you tell employees that they shouldn't gossip about others, make sure that you have not removed their only outlet for complaints about co-workers. All staff should have a supervisor who can listen to and deal with personnel problems; the trick is to ensure that complaints are delivered *only* to that person and not to other sympathetic ears.

Because gossip is an outlet in stressful situations, it is frequently a symptom of other problems in the firm. It is rampant, for example, in organizations where little real information is shared with staff or associates. It is also very common in situations where employees feel that they are fundamentally powerless concerning major issues like salary, distribution of work and feedback on

Health
Care
Audi-
tors
pickup
12/98
p75

performance; gossip makes them feel involved and important. In addition, gossip is frequently a symptom of poor management. If tardiness, poor performance, or even worse is allowed to continue unchecked, resentful employees will gossip about the offender, and the offender's friends will spread rumors in return. So provide your staff with less material for gossip by providing them with firm management and a suitable level of information about firm business. Involved and respected employees typically have fewer gossip problems because they already know what the facts are, and they are too busy to listen to anyone else's version.

Rumors and tales cannot spread without two participants: the one talking and the one listening. Most employees will attempt to defend themselves by indicating that they are only guilty of hearing gossip; they weren't spreading it. Nip this justification in the bud. If everyone in an office walks away the second someone else begins gossiping, the rumor dies right there. Make it clear to staff that, although it may seem harsh, someone who is known to while away the hours listening to someone else's chatter will be subject to the same discipline as the

one who started the rumor. Refusing to listen to gossip need not come across as rudeness: the best response (albeit one that comes surprisingly slowly to most employees) is "I'm sorry, but I've got work to do."

As your mother probably told you long ago, the only way to make sure that nobody else finds out about something is to tell nobody else about it. Nobody, not even your secretary. Sometimes those with long-term secretaries feel that a sort of spousal privilege extends to all conversations held with that person. Bear in mind that your secretary may not feel the same way; although many are extraordinarily discreet, some are not. I once worked with a firm where partners were mystified about why confidential hiring information kept filtering down to the associates even though the partners had not said a word to them. It turned out that the associates were good friends with most of the partners' secretaries.

The anecdote also illustrates another one of the problems mentioned earlier: if the associates had been provided with a discreetly edited version of the facts up front, they would not have been hounding the secretaries for tidbits from the rumor mill.

In summary, remember the following tips to avoid gossip problems in your office:

- ♦ Admit that at one time or another, we are all part of the problem and all need to be part of the solution;
- ♦ Agree with your employees about what constitutes gossip, and why it is harmful;
- ♦ Keep confidential information absolutely confidential, not shared with one or two "trustworthy" people;
- ♦ The truth or falseness of the rumor being spread is irrelevant;
- ♦ Whether you are spreading gossip or soaking it in is irrelevant;
- ♦ Provide as much information and feedback to employees as possible; gossip does not flourish under these circumstances. ☒

Terri Olson is the Director of the State Bar's Law Practice Management Program.

Garret new

Medical
Expert
Testi-
mony
pickup
12/98
p74



Drafting Divorce Settlement Agreements

By Doug Hill

THE KEY TO DRAFTING A divorce settlement agreement, as with drafting any contract, is to anticipate and provide for all contingencies while avoiding the use of vague generalities or ambiguous terms. This article will discuss some of the more common pitfalls and tips for avoiding them.

Probably a majority of disputes between former spouses involve issues relating to custody and visitation. It is impossible to foresee and forestall all of the potential issues that can arise in relation to child-rearing; however, a lot of recurring problems can be avoided with a little foresight.

Child Custody

Increasingly, parties are agreeing to exercise "joint custody" of their children. Unfortunately, that phrase can mean entirely different things to different people. In drafting an agreement it is a good idea to address physical and legal custody separately.

Legal custody governs the right to make decisions which affect the education, health and welfare of the child. In addition to providing for consultation between the parties and access to school and health records, any agreement should provide that one parent has the ultimate decision making authority over particular decisions (or a practical means of resolving any "tie"). Remember, it is possible to divide this responsibility,

for instance by allowing one parent to make medical decisions and the other to decide educational matters.

In providing for visitation or "secondary physical custody," in addition to granting the noncustodial parent the right to see the child "at all such times and under such reasonable conditions as the parties may agree upon," always provide for a schedule to take effect in the event the parties are unable to agree. In the absence of a schedule, even the slightest disagreement can spawn litigation.

Make the visitation schedule as specific as possible. Define what is meant by the "first and third weekend," *i.e.*, "the weekend commencing on the first and third Friday of each month." If the parties intend to alternate weekends, identify the first weekend in the cycle, which parent will have the child, and how the pattern will be affected by holidays that interrupt the normal cycle. There must be some way of determining who is entitled to a particular weekend, often months or even years in the future, if the court is to enforce either party's rights in a contempt hearing.

Speaking of holidays, avoid a mere reference to "alternate holidays." At least identify them by reference to "school holidays" or "federal holidays" or the specific events, *e.g.*, Memorial Day, Labor Day, etc. Remember, Spring Break and Easter are not synonymous. Some years Easter falls during the school Spring Break, but not always. If it is intended for one party to have Easter (does that include the preced-

ing Saturday? Good Friday?) and the other party to have Spring Break in a given year, define both holidays in a way that is mutually exclusive.

Better yet, give the same party both Spring Break and Easter in the same year to avoid a conflict. Another solution is not to award specific holidays to either party, but to provide that "in the event a school or federally recognized holiday falls on the Friday preceding or the Monday following the noncustodial parent's weekend to have the child with him or her, visitation shall be extended 24 hours to include such holiday."

Under this arrangement, each parent will get one-half of the holidays over time. If the agreement does provide for visitation by the noncustodial parent during specific holidays, don't forget to supersede the normal weekend schedule by providing that the custodial parent will have the child at reciprocal times, *e.g.*, "during all holidays as defined above which are not expressly granted to the noncustodial parent."

When providing for time with the child during the summer, consider using the same dates each year, *e.g.*, July 1 through July 31, or a specific trigger date, *e.g.*, "commencing at 6:00 p.m. on the seventh day following the last day of school for the school year." If the dates are going to change each year, be sure to provide that whoever has the authority to select the dates for that year does so by a certain date, such as May 1, or require sufficient advance notice that the other party can plan his or her summer vacation with the

child. Be sure to provide specifically that the custodial parent is allowed uninterrupted time with the child for that purpose and that he or she has the same right to telephone contact with the child, and even weekend visits, if the child is with the other parent for an extended length of time. The agreement should also specify whether the summer visitation will be exercised in one continuous block of time or, if not, a minimum increment of time. (Otherwise, "30 days" can be spread out to include 15 two-day weekends!)

Defining "Christmas" presents its own set of problems. Christmas Day does not always fall at the midpoint of the winter school holiday. Thus, giving each parent "one-half" of the holiday or "one week at Christmas" could result in one parent having the child on Christmas Day during successive years. If the parents live in the same area, they may choose to divide the school break at 12:00 noon on Christmas Day, but that may result in one parent getting more than half of the school holiday. If one parent lives out of state, forcing a child to travel on Christmas Day may be impractical, as well as unfair to the child. Giving each parent one week commencing on December 25 or 26 in alternate years assures an approximately equal division of the school holiday, but, by dividing the remaining time into two short segments, it may not give the other party sufficient uninterrupted time to travel with the child to visit out-of-state family. In short, there is no magic language for dealing with this holiday; family traditions vary greatly and what works for one family may not work for another. The emphasis should be on what will work in each situation and then make

it clear what the parties intend.

Birthdays, Mother's Day, Father's Day, and other special family occasions need to be identified and specific times established for their observance, if the parties desire. The same holds true for week night visits. Often the parties want to keep the schedule flexible to accommodate changes in the child's activities or the parents' employ-

divorce photo from 12/96 issue

ment; however, language should be included that designates a specific night and time in the event the parties cannot agree or designates which party will choose the night and how and when notice is to be given to the other party.

Finally, there is the issue of telephone communication. This remains a problem in some cases in spite of, or perhaps because of, improved communication technology. The solution to this problem will vary with the age of the child and the parties' circumstances. Setting a definite day and time for each call is just one possibility. Getting a separate telephone line and answering machine for the child (even a cellular phone or a pager so the child is accessible at all times) is another, if the parties can afford it. Stipulating that the child who is old enough to do so can call whenever he or she wishes is a third option.

Just be sure the agreement specifies who will pay for these expenses and how long the calls will last.

Dividing Personal Property

The division of property can be the most complex issue in a divorce agreement, particularly if the assets are substantial. Provisions relating to Qualified Domestic Relations Orders and tax and bankruptcy considerations are beyond the scope of this article. Instead, this article will focus on common oversights involving the sale or transfer of the marital residence and common forms of personal property.

In dividing personal property, including bank accounts, vehicles, stocks and bonds, and household goods and furnishings, always provide for the payment of any debts secured by such property. (Even bank accounts may serve as collateral for certain loans.) If the property has not been physically divided already, specify the date by which the property will be picked up or delivered and by whom. Remember, if any property is not addressed in the agreement, the parties' ownership rights in that property, whether individual or joint, remain as they were before the divorce.

If one party is awarded the ownership of the marital residence, be sure to include the requirement that the other party execute a quitclaim deed as well as language to effectuate the transfer of title in the event they fail to do so. The agreement should also specify what debts are secured by the real property and who is responsible for satisfying each loan. While the parties cannot, between themselves, alter their respective obligations to a lender,

each can and should agree to indemnify and hold the other harmless from any indebtedness assumed by that party.

If one party is to receive a future lump sum payment in exchange for his or her interest in the home, be sure to specify the date or the circumstances under which the payment will become due, *e.g.*, “at the earlier of such time as the youngest child attains the age of 18 years or ceases to reside in the home or the former spouse sells or refinances the residence.” Particularly if you represent the recipient, make sure the various contingencies establish an outer time limit within which the payment must be made, otherwise both parties may be dead before any money changes hands.

If the agreement requires the marital residence to be sold, now or in the future, you must clearly define each party’s rights and responsibilities in connection with the sale. Establish a method for selecting the real estate agent and determining not only the listing price but, more importantly, the ultimate selling price. Keep in mind that the property may not sell immediately. Include provisions to govern which party will have the use of the home pending the sale, who will pay the monthly mortgage payment and the taxes and insurance premiums (if the latter are not included in the monthly payment), who will pay for routine maintenance as well as repairs that may be necessary to make the home more marketable, and specify whether the payor will be reimbursed for any of these expenses from the proceeds of the sale. Don’t overlook the possibility that neither party will choose to reside in the home pending the sale. In that event, special provision may need to be made for payment of the mortgage and utilities and the right to rent the home.

Alimony & Child Support

The issues associated with alimony and child support are often relatively simple compared to custody and property matters; however, there are a few areas in

If the agreement does not specifically provide to the contrary, alimony payments terminate upon the death of either party or the remarriage of the party receiving the payments and child support terminates when the youngest child attains 18 years of age or otherwise becomes emancipated.

which special care needs to be taken.

Even the most basic agreement should specify the amount of the payments, when they are due, *e.g.*, “on or before the first and fifteenth days of each month,” and when or under what circumstances they will terminate. Remember, if the agreement does not specifically provide to the contrary, alimony payments terminate upon the death of either party or the remarriage of the party receiving the payments and child support terminates when the youngest child attains 18 years of age or otherwise becomes emancipated.

(Unless the agreement provides otherwise, child support is not reduced *pro rata* as each of several children attains the age of majority.)

Be careful drafting an agreement which provides for an automatic modification based upon a change in the payor’s income. A minimum payment should be specified to avoid the possibility that the amount could decrease to zero. Also specify what type of compensation is being or will be considered as income. Salary, commissions, bonuses, a vehicle allowance or reimbursement for expenses, and contributions to a retirement plan may all constitute “income,” and the parties may intend to include or exclude any or all of these. Don’t forget to provide for a means of verifying changes in income, such as requiring the parties to exchange income tax returns, and to specify the date on which the automatic change will take effect, preferably annually or on the effective date of an increase in salary.

Another area involving support which can trap the unwary practitioner arises when one or both parties agree to pay for a child’s college education. The agreement should first specify the particular expenses to be covered, *e.g.*, tuition, room and board, books, student activity fees, transportation, etc. The agreement should also provide for the manner in which any scholarship monies received (or monies contributed by the child or from other sources) will be credited against the amount otherwise due.

Be careful that the obligation to pay is not conditioned upon the approval or input of the payor into the decision of which college the child will attend. Such a provision may permit a party to avoid his or her obligation merely by voicing an objection to the school selected.

However, most agreements should contain some parameters on

the parties' obligation. Generally, the parties will want to limit the amount they may be required to pay to "the cost of attending the University of Georgia for an in-state resident student." Consider also restricting the length of time payments will be made, *e.g.*, a maximum of four years or until the child reaches a specified age (typically age 22 or 23, by which time the child is expected to graduate), and requiring that the child attend school as a full-time student while maintaining a specified minimum grade point average. In setting these parameters, be aware that, in the absence of language to the contrary, once the obligation to pay post-minority expenses terminates, such as if the child does not attend school one quarter, the obligation may not be revived if the child subsequently reenrolls. Also, since the child could be held to be a third-party beneficiary of such an agreement, it is a good idea to include a clause that permits the parents to avoid their obligation, or to impose additional conditions on the child, if both parents consent to a modification.

In conclusion, there is no such thing as a failsafe divorce agreement. People intent on antagonizing their former spouses can be fiendishly clever. Even so, clear and comprehensive language can go a long way toward avoiding future litigation. By following these suggestions, the parties' rights and obligations should be clear enough to avoid fruitless disputes over petty matters, thereby limiting counsels' future involvement to those more serious issues for which he or she can expect to be compensated. ☒

Doug Hill is an attorney at Custer & Hill PC in Marietta. This article is reprinted with permission from the Cobb Bar News.

Hill International - 4C pick up 12/98

Forsyth County Bar Goes to School

By Lisa C. McCranie

LAW-RELATED EDUCATION IS making a difference in Forsyth County. According to Superior Court Judge Richard S. Gault of the Bell-Forsyth circuit in Cumming, "It teaches students the importance of being law-abiding citizens and the consequences of their conduct. With law-related education, there is a better chance of keeping them from being in court as adults."

The Forsyth County School System has integrated law-related education (LRE) into its classrooms thanks to a cooperative effort between the teachers and the local bar association. Last year, members of the Forsyth County Bar Association purchased LRE materials from the Carl Vinson Institute for every school in Forsyth County. These materials have become part of the curriculum in classes like government, social studies and history, as well as a part of extracurricular activities such as the Mock Trial competition.

Judge Gault became involved with the Forsyth County schools five years ago as a Partner in Education by working with a second grade class, visiting a couple times a year

and planning a field trip to the courthouse. For the past two years he has been involved with a mock trial team in Jane Grebe's fifth grade class at Sawnee Elementary. Judge Gault feels it is important for stu-

familiar with these stories, they had to look at each story from a different perspective and come up with a verdict. Participating in the mock trial helps the students see both the prosecuting attorney's and the

defendant's points of view, and learn that there are two sides to every story.

At Otwell

Middle School, Connie Lenich and Christine Hartley's eighth grade Georgia history classes put on a mock trial as well. Each student received part of a scenario involving a murder case and had to come up with their own testimony based on the information they were



North Forsyth High School's 1998 Mock Trial team.

dents to gain knowledge as early as possible not only of the legal profession, but also other professions to expose students to possibilities for their future. Getting involved with the students is personally rewarding because of the positive feedback he receives from them. "It's fun for me to see them get excited; but it's difficult to disabuse them of how they see lawyers portrayed on t.v.," he said.

Ms. Grebe's fifth graders love doing the mock trial. The first year the case was based on "Goldilocks and the Three Bears," and the second year on "The Three Little Pigs." Even though the students were

given. The students were responsible for all aspects of the trial from making a stage look like a courtroom, to costumes, to testimony and questions. All of the court officials were represented from the bailiff to the judge with even the other eighth grade classes making up the court audience. The mock trial is a great way for students to learn about court procedures. To help the students prepare for the trial, Ms. Lenich and Ms. Hartley relied upon *An Introduction to Law in Georgia*, written by the State Bar Young Lawyers Division and published by the LRE Consortium at the Carl Vinson Institute.

Ms. Lenich feels LRE is important for students to realize that in a few years they could be on a jury, making decisions for their peers; they are citizens and in just a few years will be legal adults, voting and making decisions for themselves and the people around them. Mock trial helps them to think things through and make an informed decision based on the facts at hand.

While mock trials in the elementary and middle schools are integrated into the curriculum, at the high school it is an extracurricular activity. Teacher Kathy Vail has been the mock trial team coach at North Forsyth High School for the past 10 years and has enjoyed every minute of it. In fact, she is a former Georgia LRE Teacher of the Year. The mock trial team is made up of 14 members from grades 9-12 who actively compete for their position on the team. Some of the students are interested in a legal career while others just wish to refine their verbal and analytical skills. Most students like the mental challenge of never knowing what will happen next. It's different from drama where you follow a script. High school junior Lauren Ducharme recognizes the skills she has developed as a member of the team: "From this program not only do you obtain a better understanding of the law, but you are given an opportunity to improve your speaking style and to learn to think logically on your feet, which are skills transferred into everyday life."

Working with Ms. Vail, attorneys

in the community help the students on the defense and prosecuting teams refine their case. Judge Gault holds a dress rehearsal for each team,

According to Ms. Vail, "Once students become involved they want to do it over and over again. Kids get hooked on this." Some students

enjoy it so much that they return as practicing attorneys to help the teams prepare for the competition.

If you are interested in law-related education, please contact the Georgia LRE Consortium at the Carl Vinson Institute of

Everything that mock trial has to offer I am directly rewarded by. ... College admissions especially like seeing 'mock trial team member' on applications because it shows determination, aggressiveness, public speaking, getting along well with others and a host of other characteristics."

—Taylor Howard, Sophomore

usually in his courtroom, giving feedback to each attorney and witness regarding his or her performance. Experience has proven Judge Gault to be a good teacher; North Forsyth High School has come in second place at the state Mock Trial Competition for the last four years.

Government of the University of Georgia; 201 North Milledge Avenue; Athens, Georgia 30602-5482; (706) 542-2736. ☒

Lisa C. McCranie works with the Chief Justice Commission on Professionalism.



Second Annual Awards Banquet

Saturday, April 24, 1999

North Central Marriott, Clairmont Road, Atlanta



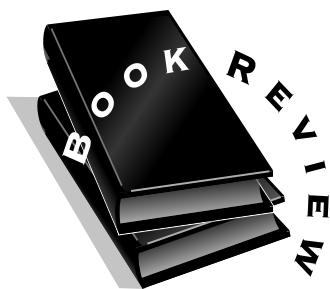
Among the honorees:

Georgia Bar Foundation

Gwinnett Judicial Circuit and Court Administration Staff
and the 1999 Georgia Champion Mock Trial Team



For tickets and sponsorship information contact Carol Brantley at
404/874-9300 or cbrantley@mindspring.com



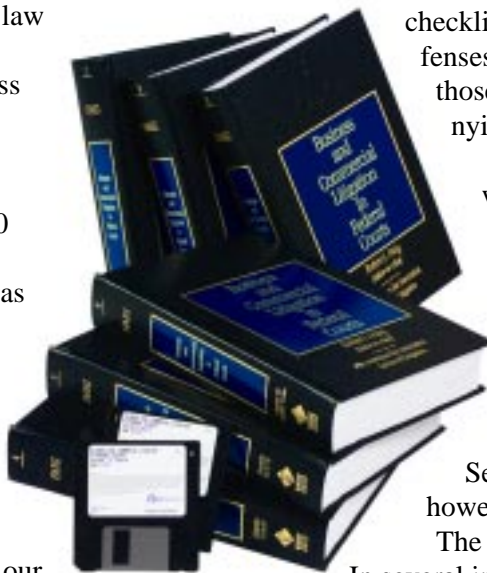
A LITIGATION RESOURCE WORTH ITS WEIGHT

Robert L. Haig, ed. *Business and Commercial Litigation in Federal Courts*, American Bar Association Litigation Section and West Group. 6 vols., 6690 pages and 2 diskettes of forms/jury charges \$480

Reviewed by John A. Chandler

The American Bar Association's Section of Litigation has published a massive, six-volume work entitled *Business and Commercial Litigation in Federal Courts*, which arrived on my desk complete with a WordPerfect disc of forms. Edited by Robert L. Haig, a partner in Kelley Drye and Warren LLP in New York, this work was written by 152 lawyers and judges. This series fills the void between treatises that focus on the Federal Rules of Civil Procedure and Evidence and those that are oriented toward single subjects or state law claims. By focusing on the substance, strategy and tactics for handling business litigation in federal court, the treatise is worth its hefty \$450 price (15 percent discount to ABA members).

The thought of reading nearly 7,000 pages seemed somewhat daunting. I therefore first looked at the authors—was this written by lawyers trying to make names for themselves or by seasoned veterans? The latter is the gratifying answer. I turned to the chapter devoted to the area in which I most often find myself—the representation of accounting firms and law firms—to discover that the authors are the best in our area of concentration: Dan Kolb and Jerry Snider at Davis Polk & Wardwell. Representing accounting firms, Dan tried the Butcher Bank cases in Tennessee (settled after months of trial) and tried and won (after an 18-week jury trial) the combined FDIC/class action growing out of the failure of Continental Illinois Bank. These are not rookies and are not lawyers who are afraid to try cases. The same can be said for Charlie Shaffer and Dan King from King & Spalding (“Sanctions”), and a number of the chapters are written by highly respected federal judges such as Chief Judge Roger Vinson of the Northern District of Florida (“Removal”). The authors know what they are talking about.



The most striking features of this work are its subject matter orientation and its emphasis on strategy and practical issues. Litigating an ERISA case? Go to Chapter 68 on ERISA. Are you troubled by a pesky RICO or Securities Fraud issue? The experts will tell you how. In addition to substantive areas, there are informative chapters on subjects such as jury selection and closing arguments. Moreover, the Shaffer/King chapter on Sanctions (Rule 11, discovery abuses) provides wise counsel: “Even well-founded sanctions motions entail costs that may not be worth the fight” (Vol. 3, Ch. 48.2, p. 853).

This work gives you more than the law. The Professional Liability chapter provides common law and statutory theories of liability for professional negligence, common pleading and discovery issues, a checklist of “essential allegations and defenses,” illustrative pleadings (including those you can easily lift from the accompanying disc) and jury instructions.

I kept the books around for a few weeks to see how they met the needs of a trial practice. A colleague asked for an “example of a petition for writ of mandamus filed in federal court against an officer or employee of the United States.” I could find no such form, though there is a petition for mandamus to the Court of Appeals.

Several other more mundane requests, however, were easily satisfied.

The law cited is illustrative, not exhaustive.

In several instances, key Eleventh Circuit decisions are not cited, although shepardizing the cases that are cited gets the reader to Eleventh Circuit precedent.

After using the books, I highly recommend them. They are an extraordinary effort and an extraordinarily useful work by knowledgeable practitioners. Any lawyer who regularly handles business litigation in federal court needs access to these works. ☐

John A. Chandler is a partner in Sutherland Asbill & Brennan LLP who has represented plaintiffs and defendants in business litigation in federal courts for more than 25 years.

Official Opinions

Education; Governor's Honors Program.

Official Code of Georgia Annotated § 20-2-306(a) does not authorize the State Board of Education to include home-schooled students in the Governor's Honors Program. (11/12/98 No. 98-18)



Attorney General
Thurbert Baker

Taxation; Real estate transfer tax. Georgia's real estate transfer tax applies to easements acquired by public utilities through condemnation. (11/12/98 No. 98-19)

Fingerprinting; misdemeanor criminal offenses. Updating of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file fingerprints. (12/14/98 No. 98-20)

Taxation; County ad valorem tax digest. O.C.G.A. § 48-5-304 permits the Department of Revenue to accept an ad valorem tax digest submitted for review by a county in a revaluation year of either (a) the disputed assessed value of property involved in arbitration or appeals is 5% or less of the total assessed value of all property reflected on the taxable tangible digest, or (b) the number of parcels of property involved in arbitration or appeals is 5% or less of the total number of parcels shown on the digest. (12/21/98 No. 98-21)

University System employees; tuition benefits. ROTC faculty members are not eligible to receive benefits pursuant to the Board of

Regents' Tuition Remission and Reimbursement Program, as the Board of Regents does not employ them as "full-time employees." (12/21/98 No. 98-22)

Unofficial Opinions

Judges, Superior Court; retirement system benefits. A superior court judge who was a member of the Superior Court Judges Retirement System and who paid the requisite contribution to obtain spousal benefits under that system may not recoup those spousal contributions if she subsequently chooses to reject spousal benefits under the new Georgia Judicial Retirement System. (11/2/98 No. U98-13)

Officers and Employees, Public; gratuities. Local school system employee suggestion programs do not violate the constitutional prohibition against gratuities. (11/12/98 No. U98-14)

Public funds; incentive grants to private entities. Under current precedent the Georgia Constitution does not permit direct grants to

private persons solely to induce economic activity for the general welfare. (12/14/98 No. U98-15)

Regents; Board of; appropriations for. The General Assembly is within its power to require information of the Board of Regents under Code Section 45-12-88 so long as its exercise of the power does not infringe upon the constitutional power of the Board to govern the University System, particularly its power to receive and allocate as a lump sum "[a]ll appropriations made for the use of any of all institutions in the university system." (12/14/98 No. U98-16) ☐

AAA -
pickup
12/98
p66

Arthur Anthony
pickup 12/98
p68



WHO'S WHERE

In Atlanta

Robert E. Banta has opened the Atlanta office of **Fragomen, Del Rey, Bernsen & Loewy**, an immigration firm headquartered in New York. Mr. Banta is managing partner of the Atlanta office. The office is located at 1175 Peachtree St. NE, 100 Colony Square, Suite 700, Atlanta, GA 30361; (404) 249-9300.

Elrod & Thompson announces that **J. Vance Burgess III**, **David A. Dismuke**, and **Thomas C. Grant** have become associates with the firm. The office is located at 1500 Peachtree Center-South Tower, 225 Peachtree St. NE, Atlanta, GA 30303; (404) 659-1500.

Williams & Henry LLP announces that **Joseph A. Fried** has become a partner in the firm and will continue to practice in the areas of medical malpractice, trucking and catastrophic personal injury. The office is located at 1100 Peachtree St., Suite 2020, Atlanta, GA 30309; (404) 873-3000.

Steven A. Nelson and **Leonard R. Gray Jr.** have joined **First American Title Insurance Company**, National Accounts Division, Mr. Nelson as Manager and Counsel, and Mr. Gray as Underwriting Counsel. Their office is located at 5775 Glenridge Dr., Suite A-240, Atlanta, GA 30328; (404) 836-6303.

Womble Carlyle Sandridge & Rice announces that **James H. Thompson**, a resident of the firm's Atlanta office, has been named a new member of the Banking, Finance and Property Practice Group. The office is located at 1201 W Peachtree St., 31st Floor, Atlanta, GA 30309; (404) 888-7463.

Jones & Askew LLP announces that **Holmes J. Hawkins III**, **Mary Anthony Merchant Ph.D.**, and **William L. Warren** have been elevated to partner. The office is located at 191 Peachtree St., NE, 37th Floor, Atlanta, GA 30303-1769; (404) 818-3700.

In Calhoun

The law firm of **Howard W. Jones PC**, in Calhoun, announces that **Brent Erwin** has joined the firm as an associate. The office is located at 109 North Wall St., P.O. Box 1147, Calhoun, GA 30703-1147; (706) 625-2233.

In Conyers

Jeremy A. Moulton has joined the firm of **Moulton & Massey** as an associate. The office is located at 904 Center St., Conyers, GA 30012; (770) 483-4406.

In Decatur

Gwendolyn R. Keyes, the youngest and first African-American female to be elected to DeKalb County's Office of Solicitor General, was sworn-in on Jan. 15, 1999. She replaces Ralph Bowden who served as Solicitor General for 16 years.

David Paul Pollan announces that the Law Office of David Paul Pollan, Attorney and Counselor has relocated. He will continue to practice in the areas of elder and disability law from his new location at 309 Sycamore St., Decatur, GA 30030; (404) 373-4562.

In Duluth

Lana L. Layton has joined the firm of **Mary A. Prebula PC** as an associate. The office is located at 3483 Satellite Blvd. NW, Suite 200, The Crescent Building, Duluth, Georgia; (770) 495-9090.

In Elberton

Phelps & Campbell LLP announces that **James W. Webb** has joined the firm. The office is located at 313 Heard St., P.O. Box 1056, Elberton, Georgia 30635; (706) 283-5000.

In Macon

Shaffer, Raymond & Dalton, a firm practicing in the areas of domestic relations, personal injury and wrongful death, announces their relocation. The new office is located at 3618 Vineville Ave., Macon, Georgia 31202; (912) 471-1112.

In Washington DC

Securities and Exchange Commission Chairman Arthur Levitt has named **Michael R. McAlevey** Deputy Director of the Division of Corporation Finance. Mike McAlevey will leave his partnership at the law firm of **Alston & Bird LLP** next month to join the Commission. As Deputy Director, Mr. McAlevey will be a senior advisor to the Director and will play a key role in the management of the Division of Corporation Finance.

Tifton Bar Members Host Chamber of Commerce Event

SUNSET TIFTON, A CHAMBER of Commerce sponsored “business after hours” event, was hosted by Tifton attorneys Joseph Carter and Bob Richbourg at their beautiful new office suite in the historic Lee building next to the State Bar of Georgia’s Satellite Office. The Satellite Office assisted Carter and Richbourg with preparations for the event. Several Tifton Circuit Bar Association members who are also Chamber members attended the evening of fellowship and networking.

Chamber Director Carla Willet expressed her appreciation to Carter and Richbourg for their support of the Chamber of Commerce. ☐



Tifton Bar Association and Chamber members (l-r): Ken Hiyler, Larry Mims, Benton Allen, Bob Richbourg, Lisa Gibbs, Joe Kunes, Melanie Cross, Joseph Carter and Buck Rigdon.

Mainstreet pick up 12/98 p.61



Involving the Client in the Decision-Making Process

By Henry W. Ewalt

The Initial Meeting: The Foundation of the Relationship

A COUPLE OF THINGS SHOULD never be done in an initial meeting, or ever, with a client. We will discuss them before we explore what should be done.

First, it does no good to guilt-trip the client by saying that if he or she had come to you before, the client would not be in all this trouble. Most lawyers who use this approach are trying to obtain a superior-inferior relationship with the client and also to position themselves in case the matter becomes worse. No matter how rewarding or protective to the lawyer it might be to guilt-trip the client, this paternalistic, judgmental approach obviously is not the way to build a good working relationship between adults, which includes most lawyers and clients.

Second, telling the client how busy you are and how many other matters you have to handle will not build the confidence of the client. The initial meeting with the client provides the lawyer with the perfect audience for boasting; however, to boast about how busy one is will only worry the client about whether you will devote sufficient time and

effort to the client's business to render effective representation.

Now let's examine some things that should occur between lawyer and client early in the relationship.

The initial meeting with the client is critical to setting the tone for the entire relationship. Permit the

If you feel the goals are totally unrealistic and that you won't be able to convince the client over time to modify them, you will probably be better off declining to undertake the representation.

client to tell every detail, even irrelevant ones, and to express feelings. Ask questions to gain relevant information and to show you are interested. Take notes to assure that what the client is saying is important to you and to remember what the client said about this particular situation. Discuss some of the general aspects of the law so the

client is reassured that he or she has retained a competent lawyer.

Ask what goals the client wishes you, as his or her lawyer, to accomplish. What does the client want out of this case? Make a list. Read it back to the client. Ask the client whether any other items should be included on the list.

Some clients need assistance in thinking through what their goals really are. They also may need help clarifying what they expect from their lawyer. You should use the information you acquired from the client about what is to be accomplished to assist in goal setting and lawyer expectations.

The success and strength of a lawyer's relationship is largely governed by acquiring this information and using it effectively to build the relationship. So, if the client does not articulate the expectations, the lawyer, in the interest of developing a fruitful relationship, must politely probe to marshal the materials necessary to construct the advantageous relationship.

In addition to goals, the lawyer should learn at least enough information from the client to answer the following questions by the end of the initial meeting with the client:

What Does the Client Expect From the Lawyer?

Each client brings unique expectations based on prior experiences or no experience with lawyers. If lawyers are going to meet those expectations, they must be known.

How Much Time, Effort, and Money is the Client Willing to Commit to this Matter?

Some clients will invest large sums of money in a legal pursuit but not the time required. Others have limited funds to expend or think a matter is only worth a limited investment of money. The lawyer needs to know this because it will determine what course-of-action options are available.

Being judgmental about the goals will accomplish nothing at this stage. For instance, saying that no one has ever won a case like this is not a confidence builder. If you feel the goals are totally unrealistic and that you won't be able to convince the client over time to modify them, you will probably be better off declining to undertake the representation. The reason for this is that under these circumstances, it is highly unlikely that you will be able to develop a satisfactory relationship with the client.

Failure to develop a satisfactory client relationship would, in the long run, do your practice more harm than good. It will cause harm because you will not be building toward repeat business and the client is very likely to "bad-mouth" you to others. ☒

Reprinted by Permission of the ABA from Through the Client's Eyes, by Henry W. Ewalt, published by the ABA Law Practice Management Section. © 1994 American Bar Association. All rights reserved.

Continued from Page 33

will be provided with pattern speeches and a seven minute video that depicts three lawyers in their everyday lives. The video is being produced by Dan Sperling Video Inc. and should be ready by mid-March. Also Adsmith, an advertising agency in Athens, has been hired to develop four camera-ready ads for use by lawyers, firms, or local bars within their communities — whether in a local paper, high school football program, theater playbill, etc. The Bar is also putting the finishing touches on the "Client Care Kit" which lawyers can disseminate to every client. It will contain important forms designed to open the lines of communication between lawyer and client. Finally the Bar is publishing a brochure to dispel 10 myths about lawyers, including, "How can a lawyer represent someone who's guilty?" This will be available as part of the Bar's consumer pamphlet series and for lawyers to display in their reception areas.

Improving the Disciplinary Process

One of the greatest services the State Bar offers the public is protecting them through the disciplinary process. During this meeting the Board again broke into small group discussions to review the draft of proposed changes to Georgia's current disciplinary rules to be more in line with the ABA Model Rules of Professional Conduct. President Cannon has called a special meeting of the Board on March 5 in Macon to solely discuss these revisions. The proposed disciplinary rules are posted on the Bar's Web site at www.gabar.org. Members are encouraged to review the rules and pass their comments on to their Board of Governors representative before the March 5 vote. If the Board approves

the proposed rules, they will be published in the *Georgia Bar Journal* for member comment.

Conclusion

With improvements to the disciplinary process and new programs like Foundations of Freedom, there is much to look forward to as the State Bar of Georgia approaches the new millennium. This is your chance to get involved by signing up for the speakers bureau on page 69 or joining a committee using the form on page 38. By working together, lawyers can make this a new dawn for the profession and rediscover, as Gov. Barnes said, "what it means to practice law." ☒

**Dan
Turner
Builders
pickup 8/
98 p50**

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.

Benbensity, Lewis M. Atlanta	Admitted 1973 Died November 1998	Johns, Alan Gordon Conyers	Admitted 1988 Died November 1998
Davis Jr., I. Burl Macon	Admitted 1969 Died December 1998	Mims, Gary Gene Atlanta	Admitted 1984 Died December 1998
Foss, Tony James Augusta	Admitted 1973 Died August 1998	Neisler Jr., Hugh Mitchell San Antonio, TX	Admitted July 1939 Died January 1999
Harmon, Nolan Bailey Myrtle Beach, SC	Admitted 1952 Died December 1998	Phillips, Erle Atlanta	Admitted 1948 Died January 1999
Henderson Jr., Devaul L. Richmond Hill	Admitted 1970 Died October 1998	Suddath, Ronald Newton Hogansville	Admitted 1990 Died November 1998
Hishon, Elizabeth Anderson Atlanta	Admitted 1972 Died January 1999		

LAWYER DISCIPLINE

Name	City	Discipline	Date of Supreme Court Order
Keith W. Benning	Augusta	indefinite suspension with conditions	Nov. 9, 1998
Reginia Rogers Jackson	Washington DC	voluntary surrender of license	Nov. 9, 1998
Donnie E. Perry	Woodstock	36-month suspension with conditions	Dec. 4, 1998
Frank B. Perry	Ringold	public reprimand	Nov. 20, 1998
William S. Sumner	Atlanta	reinstated	Nov. 19, 1998
E. Herman Warnock	McRae	public reprimand	Dec. 4, 1998
Christopher Lyle Weems	Molena	18-month suspension	Nov. 9, 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.

Summary of Recently Published Trials

Bibb Superior Ct.	Collection - Infliction of Emotional Distress	Defense Verdict
Chatham Superior Ct.	Artificial Stucco - Termite Damage - Bond	\$12,000
Clarke State Ct.	Institutional Care - Transporting Youth Offender - Falldown	\$95,000
Clayton State Ct.	Auto Accident - Turning - Right-of-Way	\$125,000
Clayton State Ct.	Auto/Van Accident - Intersection - Red Traffic Light	\$330,000
Clayton Superior Ct.	Auto/Truck Accident - Intersection - Right-of-Way	\$25,000
Cobb State Ct.	Contract - Sale of Travel Agency - Collection	\$96,054
Cobb State Ct.	Auto Accident - Intersection - Veering Off Road	\$65,000
Cobb Superior Ct.	Auto Accident - Intersection - Right-of-Way	\$30,000
Cobb Superior Ct.	Auto Accident - Intersection - Minor Passengers Injured	\$65,500
Coweta State Ct.	Single Vehicle Accident - Emergency - Deer in Road	Defense Verdict
DeKalb State Ct.	Multi-Car Accident - Rear-End - Liability Admitted	\$18,000
DeKalb State Ct.	Auto Accident - Exiting Parking Lot - Right-of-Way	\$25,500
DeKalb State Ct.	Dental Malpractice - Crowns - Preexisting Periodontitis	Defense Verdict
DeKalb Superior Ct.	Auto Accident - Removal of Road Shoulders - Warnings	\$62,459
DeKalb Superior Ct.	Falldown - Apartment Balcony - Railing Maintenance	Defense Verdict
Fulton State Ct.	Auto Accident - Rear-End - Sudden Stop	\$45,500
Fulton State Ct.	Auto Accident - Read-End - Epileptic Seizure	\$150,000
Fulton State Ct.	Auto/Cement Truck Accident - Lane Change - Settlement	\$50,000
Fulton State Ct.	Collection - Advertising Services - Quantum Meruit	\$125,500
Fulton State Ct.	Multi-Vehicle Collision - Speeding - Loss of Control	\$2,900,000
Fulton State Ct.	Dog Bite - Minor - Dog with Known Propensity to Jump Fence	\$30,000
Fulton State Ct.	Auto/Taxicab Accident - Rear-End - Stopped on Highway	\$40,000
Fulton Superior Ct.	Conversion - Shareholder Profits - Derivative Suit	\$259,071
Fulton U.S. Superior Ct. ...	Employment - Sexual Harassment - Constructive Discharge	\$23,932
Fulton U.S. District Ct.	Auto/Truck Accident - Rear-End - Braking Violations	\$5,800,000
Gwinnett State Ct.	Dental Malpractice - Placement of Crown - TMJ	Defense Verdict
Gwinnett Superior Ct.	Auto Accident - Rear-End - Following Too Closely	\$14,000
Hall U.S. District Ct.	Employment - Sexual Harassment - Juvenile	Defense Verdict
Muscogee State Ct.	Auto Accident - Rear-End - Following Too Closely	\$1,115

Let us help you settle your case

The Georgia Trial Reporter is the litigator's best source for impartial verdict and settlement information from State, Superior and U.S. District courts.

For 10 years GTR case evaluations have assisted the Georgia legal community in evaluating and settling difficult cases. Our services include customized research with same-day delivery, a fully searchable CD-ROM with 10 years of data and a monthly periodical of recent case summaries. Call 1-888-843-8334.



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

Defendant Employer Settles for \$275,000 When Employee Sexually Assaults Plaintiff During Job Interview

Plaintiff was being offered a job at defendant's retail shoe store when she was lured into a private room and sexually assaulted by Defendant's employee who had a prior record of sexual assault. (*Solomon v. Family Dollar Stores*; Fulton County State Court)

♦ ♦ ♦

Shopper Obtains \$390,000 Verdict in Falldown at Wal-Mart

Plaintiff, a middle-aged female, was shopping at Wal-Mart when she slipped and fell in auto cleaner residue resulting in a fractured sacrum. (*Vining v. Wal-Mart*; Muscogee County U.S. District Court)

♦ ♦ ♦

Failure to Remove Sponge From Chest After Heart Surgery Leads to \$554,000 Settlement in Wrongful Death Case

The very active 83-year-old plaintiff died from circulatory problems created by a surgical sponge that was left in the chest upon completion of aortic valve replacement surgery. (*Girardot v. Levy*; Fulton County — settled prior to filing)

♦ ♦ ♦

Retail Store Found Liable in the Amount of \$355,308 for Malicious Prosecution of Shoplifting Charge

Plaintiff, a middle-aged female, was shopping at Defendant KMart with friends when she was arrested and ultimately incarcerated for 24 days on shoplifting charges which were subsequently dismissed. (*Lovett v. KMart*; Cobb County State Court)

♦ ♦ ♦

Tenant Recovers \$500,000 Against Apartment Complex for Sexual Assault Resulting from Inadequate Security

While a tenant at defendant's apartment complex, plaintiff was sexually assaulted, battered and robbed by an intruder who entered the premises due to the inadequate security provided by defendant landlord. (*Zinn v. Tempo Vista Apartments*; Fulton County State Court)

Honorable Edward H. Johnson was installed as Chief Judge of the Court of Appeals of Georgia on Dec. 16, 1998. In a separate ceremony on Jan. 6, 1999, **Hon. Anne Elizabeth Barnes** was sworn-in as Judge of the Court of Appeals following her election this past November.

Beau Hays, of Hays & Potter PC in Atlanta, was appointed Chair of the Commercial Practice and Procedures Committee of the Commercial Law League of America. The Commercial Law League, founded in 1895, is North America's premier organization of bankruptcy and commercial law professionals. Mr. Hays is active in the practice of creditors' rights and business bankruptcy law.

The National Board of Trial Advocacy announces that **Alaric A. Henry** has successfully achieved Board Certification as a civil trial advocate through the NBTA.

The Carolina Patent Trademark and Copyright Law Association announces that **J. Bennet Mullinax** has been elected Second Vice

President of the association. Also, **Mark C. Dukes** has been appointed to the Board of Managers. Mr. Mullinax and Mr. Dukes are members of Dority and Manning PA, a South Carolina intellectual property law firm.

Cheryl Rivera Smith, shareholder of Smith & Jouette PC, was recently appointed President of Weststar Title Company. The law firm and Weststar Title Company are located at 17736 Preston Road, Suite 200, Dallas, TX 75252; (972) 931-7445.

George S. Stern, a senior partner with Stern & Edlin PC in Atlanta, has been elected President of the American Academy of Matrimonial Lawyers. Stern previously served in a number of official positions with the Academy, including President-elect, First Vice President, Treasurer and Governor. He also served as Governor and Treasurer of the International Academy of Matrimonial Lawyers and was a founder of the US chapter of the international organization. ☐

Justice Benham Honored by Law Students

The Quinnipiac College School of Law in Connecticut and the Black Law Students Association (BLSA) there, held a dinner in honor of Chief Justice Robert Benham in October 1998. The Chief Justice spoke to an assembly of students, professors, colleagues and friends and shared his passion for the law. Chief Justice Benham was presented a framed picture of the Supreme Court of Connecticut by Justice Norcott.

According to *The Quinnipiac Legal Times*, "Mr. Sekou Gary, President of BLSA and a third-year student at QCSL, introduced Chief Justice Benham as an extraordinary judge who is among the 100 most influential Black Americans today and whose court is noted as one of the most progressive." ☐

Continued from Page 28

9. *Id.* § 19-11-150 (issuance of income deduction order); *see also id.* § 19-11-151 (obligation of employer upon receipt of income deduction order).
10. *Id.* § 19-6-33(c) (grounds by which the obligor can contest the income deduction order).
11. *Id.* § 19-6-33(e)(1) (statutory reference to section 303b of the federal Consumer Protection Act, 15 U.S.C. § 1673(b)).
12. *Id.* § 19-11-30.1 (computer based registry); *see also* 42 U.S.C. § 666(a)(17) (financial institution matches).
13. O.C.G.A. § 19-11-30.2 (definitions; information from financial institutions).
14. *Id.* § 19-11-32 *et seq.* (process to collect delinquent support accounts; limitations).
15. *Id.* § 19-11-37 (challenges to levy, mistakes, procedures; reimbursement); 42 U.S.C. § 666(a)(19)(c)(1)(g) (securing assets).
16. 42 U.S.C. § 666(a)(14) (high volume, automated administrative enforcement in interstate cases).
17. *Id.* § 654(A)(e) (state case registry); O.C.G.A. § 19-11-39 (computerized central registry for support).
18. 42 U.S.C. § 654(A)(F)(1) (federal case registry of child support orders).
19. *Id.* § 654(27) (state disbursement unit); *Id.* § 654(B)(a) (state disbursement unit).
20. O.C.G.A. § 19-6-32(a)(3)(a.1)(1) (entering income deduction order for aware of child support; when order effective; hearing on order).
21. Internet sites of interest for those wishing more information include: Federal Office of Child Support Enforcement—<http://www.acf.dhhs.gov/programs/cse/>; National Child Support Enforcement Association—<http://www.ncsea.org/>; American Bar Association Family Law Section—<http://www.abanet.org/family/home.html>; and the Eastern Regional Interstate Child Support Enforcement Association—<http://www.ericssa.org/>.

Continued from Page 25

32. DeBruyn Produce Co. v. Olympia Produce Co., 734 F. Supp. 483, 485 (N.D. Ga. 1989), where the court ordered the escrow of \$567,519.03 for the benefit of trust creditors.
33. J. R. Brooks & Sons v. Norman's Country Market, Inc., 98 B.R. 47 (Bankr. N.D. Fla. 1989).
34. *In re* Anthony Tammaro, Inc., 56 B.R. 999 (D.N.J. 1986).
35. *In re* Ron's Produce Co., Case No. A90- 10975-ADK (Bankr. N.D. Ga. Oct. 29, 1990).
36. *In re* United Fruit & Produce Co., 86 B.R. 14 (Bankr. D. Conn. 1988).
37. *In re* San Joaquin Food Serv., Inc., 958 F.2d 939, 939 (9th Cir. 1992).
38. *In re* Kornblum, 81 F.3d 284 (2d Cir. 1996).
39. C.H. Robinson Co. v. B.H. Produce Co., 952 F.2d 1311 (11th Cir. 1992).
40. *In Re* Richmond Produce Co., 112 B.R. 364, 377 (Bankr. N.D. Cal. 1990).
41. Morris Okun, Inc. v. Harry Zimmerman, Inc., 814 F. Supp. 346, 348 (S.D.N.Y. 1993).
42. 11 U.S.C. § 523(a)(4); *In re* Jesse Russell Nix, 1992 WL 11943 (M.D. Ga. 1992).
43. Dealers in Agricultural Products Act, O.C.G.A. § 2-9-1 *et seq.*
44. O.C.G.A. § 2-9-1(1)(Supp. 1998).
45. A dealer in agricultural products is defined as any person, association, itinerant dealer, partnership or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating or soliciting for sale, resale, exchange or transfer of any agricultural products purchased from the producer or his agent or his representative or received on consignment from the producer or his agent or representative or received to be handled on a net return basis from the producer. *Id.* § 2-9-1(2).
46. O.C.G.A. § 2-9-2 (1990).
47. O.C.G.A. § 2-9-5 (Supp. 1998).
48. *Id.* § 2-9-11.1(b).
49. *Id.* § 2-9-11.1(c).
50. *Id.* § 2-9-11.1(c).
51. O.C.G.A. § 2-9-11 (1990).
52. *See supra* notes 48, 49 & 51.
53. O.C.G.A. § 2-9-6 (Supp. 1998).
54. O.C.G.A. § 2-9-7 (1990).
55. O.C.G.A. § 2-9-15 (Supp. 1998).
56. A similar arrangement exists in the sale of livestock to packers, namely the Packers and Stockyards Act, *codified* at 7 U.S.C. § 196 (1994).

West (Unlock the
Power) - new 4C

First Publication of Proposed Formal Advisory Opinion No. 94-R11

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

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

Fifteen copies of any comment to the proposed opinion must be filed with the Office of General Counsel by April 1, 1999 in order for the comment to be considered by the Formal Advisory Opinion Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether

the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia for formal approval.

Proposed Formal Advisory Opinion No. 94-R11

QUESTION PRESENTED:

In a transaction involving a real estate lending institution and its customer, may the in-house counsel for the institution provide legal services to the customer relative to the transaction? May the real estate lending institution charge the customer a fee for any legal services rendered relative to the transaction?

SUMMARY ANSWER:

The answer to both questions is "no". An in-house counsel for a real estate lending institution assists that entity in the unauthorized practice of law in violation of Standard 24, if he or she provides legal services to its customers which are in any way related to the existing relationship

between the institution and its customer. Such conduct would also constitute an impermissible conflict of interest under Standards 35 and 36. This prohibition does not, however, prevent in-house counsel from attending closings as attorney for the institution and preparing the documents necessary to effectuate the closing including those documents that must be signed by the customer and that may benefit both the institution and the customer. Nor does the prohibition prevent the institution from seeking reimbursement for the legal expenses incurred in the transaction by including them in the cost of doing business when determining its charge to its customer. The charge, however, may not be denominated as a legal or attorney fee but must be included in the charge being made by the institution. There is inherent risk of confusion on the part of the customer regarding the role of in-house counsel. Prudent lawyers will act on the assumption that courts will honor the customer's reasonable expectation of in-house counsel's duties created by the closing attorney's conduct at the closing.

OPINION:

Standard 24, proscribing assistance in the unauthorized practice of law, prohibits in-house counsel for a real estate lending institution from providing legal services to its customers. See also, Georgia Code of Professional Responsibility, Canon 3; Georgia Code of Professional Responsibility, Ethical Considerations 3-1 & 3-8; Georgia Code of Professional Responsibility, Directory Rule 3-101, and ABA Model Rules of Professional Conduct, Model Rule 5.4(d). Stan-

Notice Regarding Disciplinary Rules

At a special meeting on March 5, the Board of Governors will consider changes to the disciplinary rules. The proposed rules are posted on the Web at www.gabar.org. Every lawyer is encouraged to review them and contact their Board representative with comments prior to March 5.

dards 35 and 36 prohibit such conduct if the ability to exercise independent professional judgment on behalf of one client will be or is likely to be adversely affected by the obligation to another client. See also, Georgia Code of Professional Responsibility, Canon 5; Georgia Code of Professional Responsibility, Ethical Consideration 5-14 - 5-20; Georgia Code of Professional Responsibility, Directory Rule 5-105, and ABA Model Rules of Professional Conduct, Model Rule 1.7. Specifically, in-house counsel may not provide legal services at a closing or elsewhere to a customer borrowing from the lending institution and arising out of the existing relationship between the customer and the institution. This is true whether or not the customer is charged for these services. The role of employee renders the actions of in-house counsel the action of the employer. The employer, not being a lawyer, is thus being assisted in and is engaging in the unauthorized practice of law. The in-house counsel by virtue of the existing employer/employee relationship and its accompanying obligation of loyalty to the employer cannot exercise independent professional judgment on behalf of the customer.

This prohibition does not, however, prevent in-house counsel from attending the closing as the institution's legal representative and preparing those documents necessary to effectuate the closing. This includes those documents that must be signed by the customer. In such a situation, in-house counsel is providing legal services directly to the institution even though others, including the customer, may benefit from them.

The prohibition on assisting in the unauthorized practice of law does not prevent the lending institution from including the expense of in-house counsel in the cost of doing business when determining the fee to charge its customer. The lending institution may, in other words, recoup the expenses of the transaction including the cost of legal services. This conduct does not in and of itself, create a duty to the customer on the part of the in-house counsel nor does it constitute a violation of the prohibition against the sharing of legal fees with a non-lawyer. On the other hand, charging the cost of legal services to the

customer (1) is likely to create an unintended expectation in the mind of the customer, (2) constitutes a non-lawyer receiving the fee for legal services rather than an attorney, (3) constitutes a lawyer splitting a fee with a non-lawyer, or (4) directly invites the unauthorized practice of law. It is accordingly prohibited even if limited to actual costs. The customer cannot be made a part of the attorney/client, employer/employee relationship.

The situation in which in-house counsel attends closings as attorney for the lending institution and prepares the documents necessary to effectuate the closing is fraught with both legal and ethical risks beyond assistance in the unauthorized practice of law and conflict of interests. Even though the above analysis (1) requires that in-house counsel's lawyer-client relationship be restricted to the lending institution, and (2) prohibits the direct billing for legal services by the institution, the fact remains that the customer may benefit from the actions of in-house counsel. Thus the

risk of confusion about the role of in-house counsel at the closing will be high. Prudent in-house counsel should anticipate that courts may treat the reasonable customer expectations regarding these legal services as creating duties even in the absence of a lawyer-client relationship. The Restatement (Second) of Torts reports that an attorney who represents only the lender may still be held liable in negligence to a borrower. See, e.g., *Seigle v. Jasper*, 867 S.W. 2d 476 (Ky. Ct. App. 1973). A similar result may obtain under traditional contract or agency principles regarding third party beneficiaries. This position is supported by the Restatement of the Law of Lawyering. While declaring the current state of Georgia law on this issue would be inappropriate and beyond the scope of this Formal Advisory Opinion, it is clear that prudent in-house counsel will not ignore these risks both in advising the lending institution and in his or her conduct toward the customer as a matter of good lawyering. ☒

Golden Lantern -
pick up 12/98 - use
“advertisement” at
top

Notice of Filing of Proposed Formal Advisory Opinions in Supreme Court

Second Publication of Proposed Formal Advisory Opinion Request No. 94-R6

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 March 1, 1999. 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. 94-R6

QUESTION PRESENTED:

What are the ethical considerations of an attorney defending an insured client under an insurance policy while simultaneously representing, on unrelated matters, a separate insurance company that claims a subrogation right in any recovery against the insured client?

SUMMARY ANSWER:

Under Standard 35 and Standard

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

If it is, in fact, the insurance company that is the true client in the unrelated matter, then the interests of the simultaneously represented clients in the litigation against the insured client are directly adverse even though the insurance company is not a party to the litigation and the representations are unrelated. The consent by the clients provided for in Standard 37 is not available in these circumstances because it is not obvious that the attorney can adequately represent the interests of each client. This is true because adequate representation includes a requirement of an appearance of trustworthiness that is inconsistent with the conflict of interests between these simultaneously represented clients.

If, however, as is far more typically the case, it is not the insurance company that is the true client in the unrelated matter, but an insured of the insurance company, then there is no simultaneous representation of directly adverse interests in litigation and these Standards do not apply. Instead, the attorney may have a personal interest conflict under Standard 30 in that the attorney has a financial interest in main-

taining a good business relationship with the insurance company. This personal interest conflict may be consented to by the insured client after full disclosure of the potential conflict and careful consultation. The Standard 37 limitation on consent to conflicts does not apply to Standard 30 conflicts. Such consent, however, should not be sought by an attorney when the attorney believes that the representation of the insured will be adversely affected by his or her personal interest in maintaining a good business relationship with the insurance company for to do so would be to violate the attorney's general obligation of zealous representation to the insured client.

OPINION:

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

are guided by Ethical Consideration 5-14:

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

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

even if it is wholly unrelated.")¹

Of course, some simultaneous representation conflicts can be consented to by the simultaneously represented clients. Consent, under the Standards of Conduct is limited by two requirements. The first is that consent can only be obtained in those circumstances in which the full disclosure necessary to adequately inform the clients' consents can be provided without breach of confidentiality. The second is that consent is limited, by Standard of Conduct 37, to those circumstances in which it is "obvious that [the lawyer] can adequately represent the interests of each [client]. . . ." In interpreting the "obvious and adequate" test for consent, we are guided by the provisions of Ethical Consideration 5-15. Ethical Consideration 5-15 advises that all doubts about divided loyalties should be resolved against the propriety of the representation and that, generally, consent should not be obtained when clients have differing interests in litigation and rarely obtained when they have only potentially differing interests in litigation.

In the circumstances presented here, it would be reasonable for an attorney to be concerned that the adverse interests of the simultaneously represented clients could adversely affect the quality of the representation by jeopardizing the quality of the relationship with the client. It is, therefore, not obvious that

adequate representation will be provided. This is not because Georgia lawyers are not sufficiently trustworthy to act professionally in these circumstances by providing independent professional judgment for each client unfettered by the interests of the other client. It is, instead, a reflection of the reality that reasonable client concerns with the appearance created by such directly adverse interests could, by themselves, adversely affect the quality of the representation.

If however, as is more typically the case, what is referred to in the Question Presented as representation of the insurance company is, in fact, representation of an insured of that company, then the above analysis does not apply. In such a situation, the attorney's primary ethical obligation is to the insured and not to the company, thus the fact that the

National
Legal Re-
search
Group -
pickup 12/
98 p69

company may have interests directly adverse to the other insured client is not the issue. Instead, the attorney may have a personal interest conflict under Standard 30 which provides: "Except with the written consent or written notice to his [*sic*] client after full disclosure a lawyer shall not accept or continue employment if the exercise of his professional judgment on behalf of the client will be or reasonably may be affected by his own financial, business, property or other personal interests." Such a conflict arises because of the attorney's need to maintain, for financial reasons, a good business relationship with the insurance company.

Personal interests conflicts are not subject to the limitation on consent found in Standard 37. Here, the insured client may consent, in writing, to the conflict after full

disclosure of the potential adverse effect of the personal interest conflict and careful consultation with the attorney. No attorney, however, should seek such consent if he or she believes that his or her business interest will, in fact, adversely affect the quality of the representation with the insured client. To seek consent in such circumstances would be in violation of an attorney's general obligation of zealous representation of all clients.

We conclude, therefore, that if the representation in the situation described in the Question Presented is a true representation of an insurance company, then an unconsentable conflict of interests exists and that entering into or continuing with such simultaneous representations would be in violation of the Standards of Conduct. If, however, the representation is not a

true representation of an insurance company, but a representation of an insured of that company, then a personal interest conflict exists which ordinarily may be consented to by the insured client. ☒

Endnote

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

Great American pick up
12/98 p87

Lexis Nexis (New Level) - new- full 4C



CLE/Ethics/Professionalism/Trial Practice

MARCH 1998

1

MEALEY PUBLICATIONS INC.
*Emerging Insurance Battles
Conference*

Amelia Island, FL
11.3/0.0/0.0/1.5

4

ICLE

*Family Law Convocation on
Professionalism*

Atlanta, GA
3.0/1.0/01.0/0.0

ORGANIZATION
MANAGEMENT, INC.

*OMI's 35th Annual
Washington Non-Profit Legal
& Tax Conference*

Washington, DC
11.7/2.0/0.0/0.0

5

ICLE

Dealing with the IRS

Atlanta, GA
6.0/0.0/0.0/0.0

ICLE

Advanced Construction Law

Atlanta, GA
6.0/0.0/0.0/0.0

ICLE

Meet the Judges
Atlanta, GA
3.0/0.0/0.0/0.0

ICLE

Trial Strategy
Statewide GA
6.0/1.0/6.0/0.0

DISTRICT OF COLUMBIA BAR
- FORUM BAR ASSOCIATION

Consumer Law Training
Washington, DC
6.0/0.0/0.0/0.0

9

NBI, INC. DBA NATIONAL
BUSINESS INSTITUTE

*Georgia Land Use: Current
Issues in Subdivision
Annexation & Zoning*

Atlanta, GA
6.0/0.0/0.0/0.0

11

ICLE

Trial Strategy
Statewide GA
6.0/1.0/6.0/0.0

NATIONAL INSTITUTE OF
TRIAL ADVOCACY

Deposition Skills Program
Atlanta, GA
17.8/3.3/0.0/17.8

ICLE

Venture Capital
Atlanta, GA
3.0/0.0/0.0/0.0

12

ICLE

Whiplash
Atlanta, GA
6.0/0.0/0.0/0.0

ICLE

*Drivers License Revocation
and Suspension*
Atlanta, GA
6.0/0.0/0.0/0.0

ICLE

Basic Estate Planning
Atlanta, GA
6.0/0.0/0.0/0.0

ICLE

Georgia Appellate Practice
Atlanta, GA
6.0/0.0/0.0/0.0

NATIONAL INSTITUTE OF
TRIAL ADVOCACY

Nine - Day Program
Newark, NJ
55.5/2.0/0.0/55.5

18-19

ICLE

Trial Evidence
Atlanta, GA
12.0/0.0/0.0/0.0

18

ICLE

*Nuts and Bolts of Corp. and
Banking Law*
Statewide, GA
6.0/1.0/0.0/0.0

ICLE

*Workers' Compensation for
the GP*
Atlanta, GA
6.0/0.0/0.0/0.0

19

ICLE

*Trial of a Sexual
Harassment Case*
Atlanta, GA
6.0/0.0/0.0/0.0

ICLE

*Real Estate Practice and
Procedure
Statewide GA
6.0/0.0/0.0/0.0*

23

CHATTANOOGA BAR
ASSOCIATION
*HIPAA, COBRA & Health Care
Plans Update: Current ERISA,
Tax & Other
Chattanooga, TN
4.0/0.0/0.0/0.0*

24

NBI, INC.
*Georgia Foreclosure &
Repossession
Atlanta, GA
6.0/0.5/0.0/0.0*

25

ICLE
*Courtroom Techniques
Atlanta, GA
6.0/1.0/0.0/6.0*

ICLE

*Real Estate Practice and
Procedure
Statewide GA
6.0/0.0/0.0/0.0*

ICLE

*Mediation Advocacy
Atlanta, GA
6.0/0.0/0.0/0.0*

SOUTHEASTERN BANKRUPTCY
LAW INSTITUTE
*25th Annual Seminar on
Bankruptcy Law & Rules
Atlanta, GA
14.0/1.0/3.0/3.0*

26

ICLE
*Metro City and County
Attorneys
Atlanta, GA
6.0/0.0/0.0/0.0*

ICLE

*Professionalism and Ethics
Update
Statewide GA
2.0/1.0/1.0/0.0*

ICLE

*Jury Selection and Persuasion
Atlanta, GA
6.0/0.0/0.0/0.0*

30

ICLE
*Successful Trial Practice
Statewide GA
6.0/0.0/0.0/0.0*

jennifer ad

Advertising Index

AAA Attorney Referral	53
Analytical Services	8
ANLIR	67
Arthur Anthony	53
Dan Turner Builders	57
Garret Group	45
Golden Lantern	63
Great American Insurance Co.	66
Health Care Auditors	44
Hill International	49
Lexis Law Publishing	71
Lexis Nexis	Back Cover, 4, 9
Mainstreet	55
Medical Expert Testimony	45
National Legal Research Group	65
South Georgia Mediation	8
Wallace Law Registry	42
West Group	Inside Front, 29, 39, 61,

CLASSIFIEDS

EMPLOYMENT: ATTORNEYS

ASSOCIATE POSITION. Growing AV-rated Macon law firm seeks attorney with two to four years experience in civil litigation. Compensation and benefits are competitive based upon level of experience. Send resume and compensation requirements to: Mark E. Toth, Hall, Bloch, Garland & Meyer, P.O. Box 5088, Macon, GA 31208.

ATTORNEY JOBS. Harvard Law School calls our publication: "Probably the most comprehensive source of nationwide and international job openings received by our office and should be the starting point of any job search by lawyers looking to change jobs." Each monthly issue contains 500-600 current (public/private sector) jobs. \$45-3 months. Contact: Legal Employment Report, 1010 Vermont Avenue NW, Suite. 408-GBJ, Washington, DC 20005. (800/296-9611) Visa/MC/AMEX. www.attorneyjobs.com.

ATTORNEY WANTED: I need a pro-mother lawyer to help me in a custody battle for my young daughter. My case is interesting and can be won. Please contact me at the following address: Ms. Riggins, 861 E. Confederate Ave., SE, Atlanta, GA 30316. Thank you.

BOOKS/OFFICE FURNITURE & EQUIPMENT

LAW BOOKS FOR SALE. Georgia Supreme Court and Court of Appeals Reports supplemented with SE Reporter (Georgia cases) through Vol. 443-444; Georgia Digest 1st and 2nd; Official Cod of Georgia; US Code Annotate; American Jurisprudence; Am Jur Pleading & Practice; and Am Jur Forms 2nd, ALR 2nd, 3rd, 4th, 5th, Federal with Digest and Index. For sale due to retirement. G.L. Dickens, Jr. (912) 452-0595; e-mail: geelee@accucomm.net.

SOUTHEASTERN 2D DIGEST FOR SALE. This set is in excellent condition and is priced to sell. Call (864) 582-0879, Spartanburg, SC.

WILLIAM S. HEIN COMPANY.

More than 70 years later, still your #1 source for buying/selling law books. 50%-70% savings on single volumes, major sets, Federal & State, Foreign/International law, Rare/Antiquarian law. Appraisal services available. Call: 1-800-496-4346. Fax: 1-716-883-5595. Web site: lawlib.wuacc.edu/hein/heinused.htm

THE LAWBOOK EXCHANGE LTD.

buys, sells and appraises all major law book sets—state and federal. For the best prices, top quality and guaranteed satisfaction, call toll free (800) 422-6686 for free information. Mastercard, Visa and American Express accepted. www.lawbooks.exc.com

LAW BOOKS FOR SALE. OGGA, \$525. Georgia Digest II, \$690, or both sets for \$1100. Sets are complete and pocket parts are up to date. Call Mr. Smith at (770) 534-5269.

OFFICE SPACE

OFFICE FOR SALE. South Georgia. Established 16-year-old general practice with emphasis on litigation. Located in progressive and growing county. Furnished office, library, equipment, computers and network. Will remain "of counsel" to aid transition if desired. Send all inquiries to: Confidential Reply Box #892, *Georgia Bar Journal*, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA 30303.

OFFICE BUILDING FOR SALE/LEASE. 1901 square foot brick building in Decatur. 15 minutes to Atlanta, 2 to Decatur court. Furnished. Library/conference room, closets, phone system, basement, corner lot, free parking, MARTA line. Occupy all or lease out. 2 tenants leased. Well maintained. Excellent investment. 103 N McDonough Street. Jim Hollingsworth; (770) 493-9586.

DECATUR-DEKALB AREA.

Attorney and secretarial offices and suites available now at the Trinity Building, 118 East Trinity Place, Decatur. Full service for attorney tenants and their personnel available. Close to courthouse, MARTA and center of Decatur. Contact one of the following: Charles Bass, Bill Witcher or Bob Wilson at (404) 479-4400.

ad coming

Lexis Law Publishing -
new 4C

Lexis Nexis (Ease of Use) - new - full