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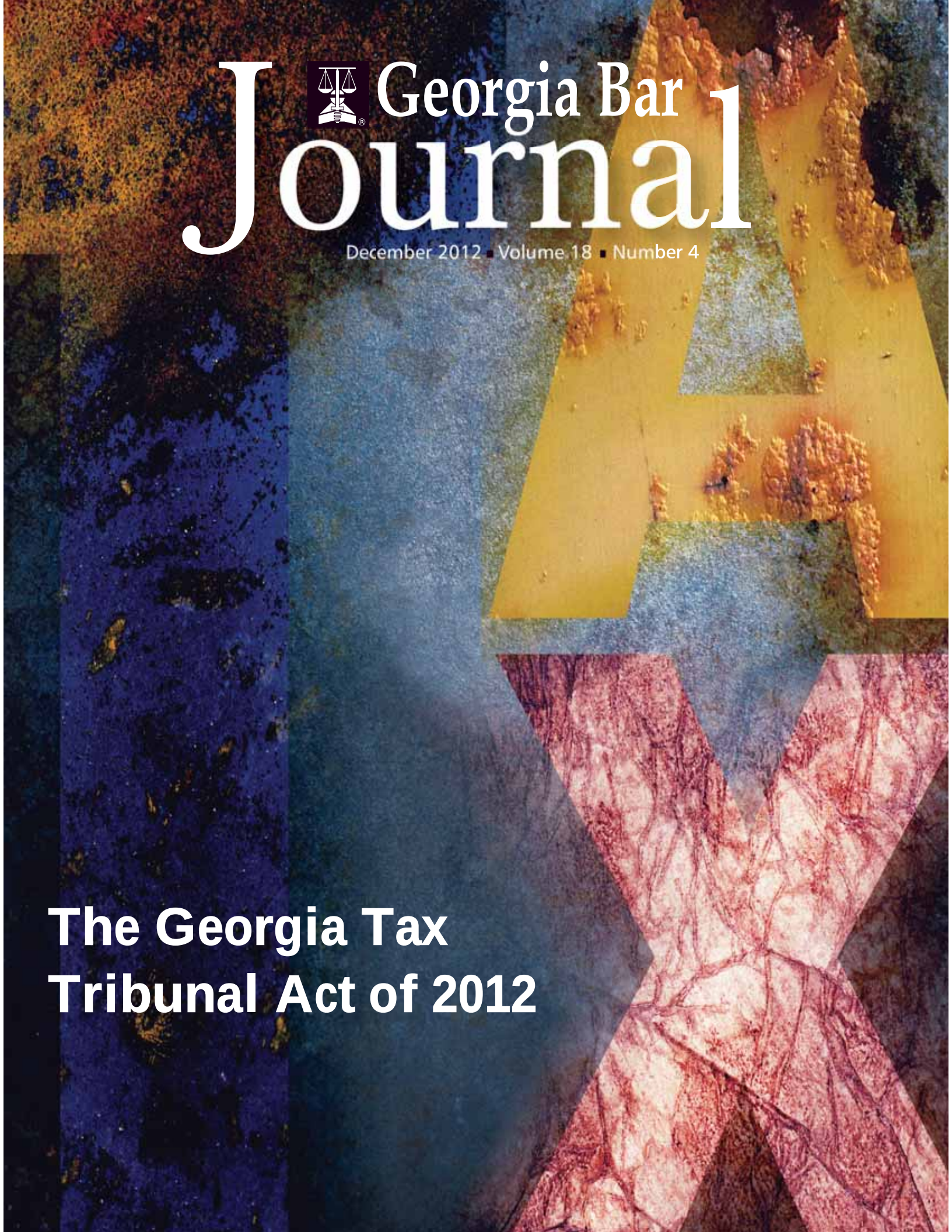

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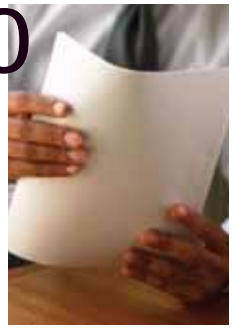
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Photo by Zach Porter Photography

by Robin Frazer Clark

How to Save a Life

Where did I go wrong, I lost a friend
Somewhere along in the bitterness
And I would have stayed up with you all night
Had I known how to save a life

– "*How to Save a Life*" The Fray

Suicide is a subject that most of us would consider unthinkable. Therefore, we don't think about it—until we are forced to do so when the unthinkable occurs and someone we are close to takes their own life.

Then, it's difficult to think of anything else except persistent questions: Why? What did I miss the last time I saw or talked to my friend? What could I have done to have kept this from happening? The answers don't come easy.

Suicide has touched me personally, many years ago and, unfortunately, this year. I am certain it has touched most of you. When I first brought up this subject during the last Board of Governors meeting on Jekyll Island, it was clear it had touched many in the room. It, unfortunately, touched the families and friends of an Emory Law School student this year. My fellow bar presidents in our sister states are dealing with this very issue right now, too. In Kentucky, for example, five Kentucky Bar members committed suicide in the last several months.

It might surprise you to know that suicide is the third-leading cause of death among lawyers. Then again, it might not surprise you. The nature of our work presents a unique level of stress. Many of us handle life-and-death issues for our clients. Putting food on our families' tables, meeting payroll and other law practice expenses, repaying law school debt and business loans and generally keeping our heads above water financially is dependent on success in the courtroom and/or long days and nights compiling a required number of billable hours. As Judge Anne Workman put it in her address to the DeKalb Bar Association in 2008, "Our clients do not routinely believe we serve their interest. We are not admired by the public in general. Management of our workload overwhelms us. We are beset by ever-increasing overhead, by an overload of technological devices that tether us to the office around the clock, by unhappy and at times unmanageable clients, by a surfeit of mind-numbing work just to keep afloat and by a general malaise brought about by the combination of all these factors."

Failure is not an option in a high-stakes profession such as ours. As a result, lawyers are three times as likely to suffer from depression as any other profession,

and the rate of death by suicide is two to six times that of the general population. These statistics come from the website of the State Bar of Texas, which has taken a leading role toward suicide prevention awareness in the legal profession. Soon, the State Bar of Georgia will follow suit.

If the State Bar of Georgia, with its resources, can save a life, then I think we should do it.

Next month, our Lawyers Assistance Program (LAP) Committee Chairman Charles B. "Chuck" Pekor Jr. will appoint a Suicide Prevention Subcommittee, whose primary goal will be to raise awareness among Bar members about addressing the dangerous situation within the legal profession, how to recognize the risk factors and warning signs of suicide, and the fact that help is available to Georgia lawyers through the LAP.

Pekor says, "Anxiety and depression can go hand in hand, and anxiety, if not depression, is almost impossible to avoid in this profession. Obviously, when depression gets severe enough, it can lead to the tragic results we have unfortunately seen lately more than once. I think it is important that as many members of the Georgia Bar as possible are aware that the State Bar has a very good set of resources in place for any lawyer dealing with these issues (including, obviously, substance abuse and other mental health problems), which is accessible with one totally confidential phone call to our LAP hotline which is on the Bar website."

He adds, "As a recovering alcoholic with 27 years in recovery, and in my work with the LAP Committee and program over the years, I have learned that it is amazing how much help you can get just by talking with someone who is sympathetic and willing to listen. We can't force lawyers who are in major/clinical depression to call us (or the other resources that are available), but we can certainly do all we can to at least make as many lawyers as possible know that help is one phone call away. We take calls 24-hours a day, and have very qualified counselors available all over the state. Our people will talk with any lawyer who calls 24-hours a day, and then get them to the help they need. If it will help, we also have attorney volunteers who will help any way they can. I suspect that many suicides could be prevented if the person had just been able to make a call to someone sympathetic and trained."

Pekor especially emphasizes the strict confidentiality of the LAP hotline, which he says is "almost stronger" than the attorney/client privilege. "I think that is sometimes a deterring factor even for lawyers who have heard about us, so the absolute confidentiality in the Bar rules is very important."

Our suicide prevention awareness initiative, which will be named "How to Save a Life," borrowing the title of the song by the rock band The Fray, will have a dual purpose, directed toward those who are suffering from anxiety and depression and may be at risk for suicide, as well as all Bar members, who need to recognize the severity of the problem and be able to identify warning signs among our colleagues.

The Dave Nee Foundation, based in New York and created in the wake of the 2005 suicide of Fordham University law student Dave Nee, lists these 12 signs you might notice in yourself or a friend that may give cause for concern and at least point to a need to talk with someone:

- Feelings of hopelessness or worthlessness, depressed mood, poor self-esteem or guilt
- Withdrawal from friends, family and activities that used to be fun
- Changes in eating or sleeping patterns
  - Are you sleeping all the time? Or having trouble falling asleep?
  - Are you gaining weight or never hungry?
- Anger, rage or craving for revenge
  - Sometimes people notice they are overreacting to criticism
- Feeling tired or exhausted all of the time
- Trouble concentrating, thinking, remembering or making decisions
  - Are you suddenly struggling in school or at work?
  - Sometimes academic or professional performance suffers and grades drop or work product worsens
- Restless, irritable, agitated or anxious movements or behaviors
- Regular crying
- Neglect of personal care
  - Have you stopped caring about your appearance or stopped keeping up with your personal hygiene?
- Reckless or impulsive behaviors
  - Are you drinking or using drugs excessively?
  - Are you behaving unsafely in other ways?
- Persistent physical symptoms such as headaches, digestive problems or chronic pain that do not respond to routine treatment
- Thoughts about death or suicide

If you are dealing with one or more of these issues or know someone who is, please take advantage of the State Bar's confidential LAP hotline at 1-800-327-9631. Staffed by trained counselors 24-hours a day, seven days a week, the hotline is for anyone associated with the legal profession—whether a lawyer, law student, support staff or family member—who has a personal problem that is causing you significant concern. LAP also offers up to three prepaid in-person counseling sessions with a licensed counselor per year. To help meet the needs of its members and ensure confidentiality, the Bar contracts the services of CorpCare Associates Inc. Employee Assistance Program, a Georgia-headquartered national counseling agency.

I have also asked Executive Committee member Elizabeth L. Fite to take a leading role in the "How to Save a Life" awareness campaign. Elizabeth recently attended "Uncommon Counsel," a panel discussion (including Chuck Pekor as a presenter) at Emory Law School. While the event was directed toward law students, she described it as an informative session that featured discussion of many symptoms of stress that, when combined, could mean the sufferer is on a dangerous path to substance abuse, malpractice or suicide.

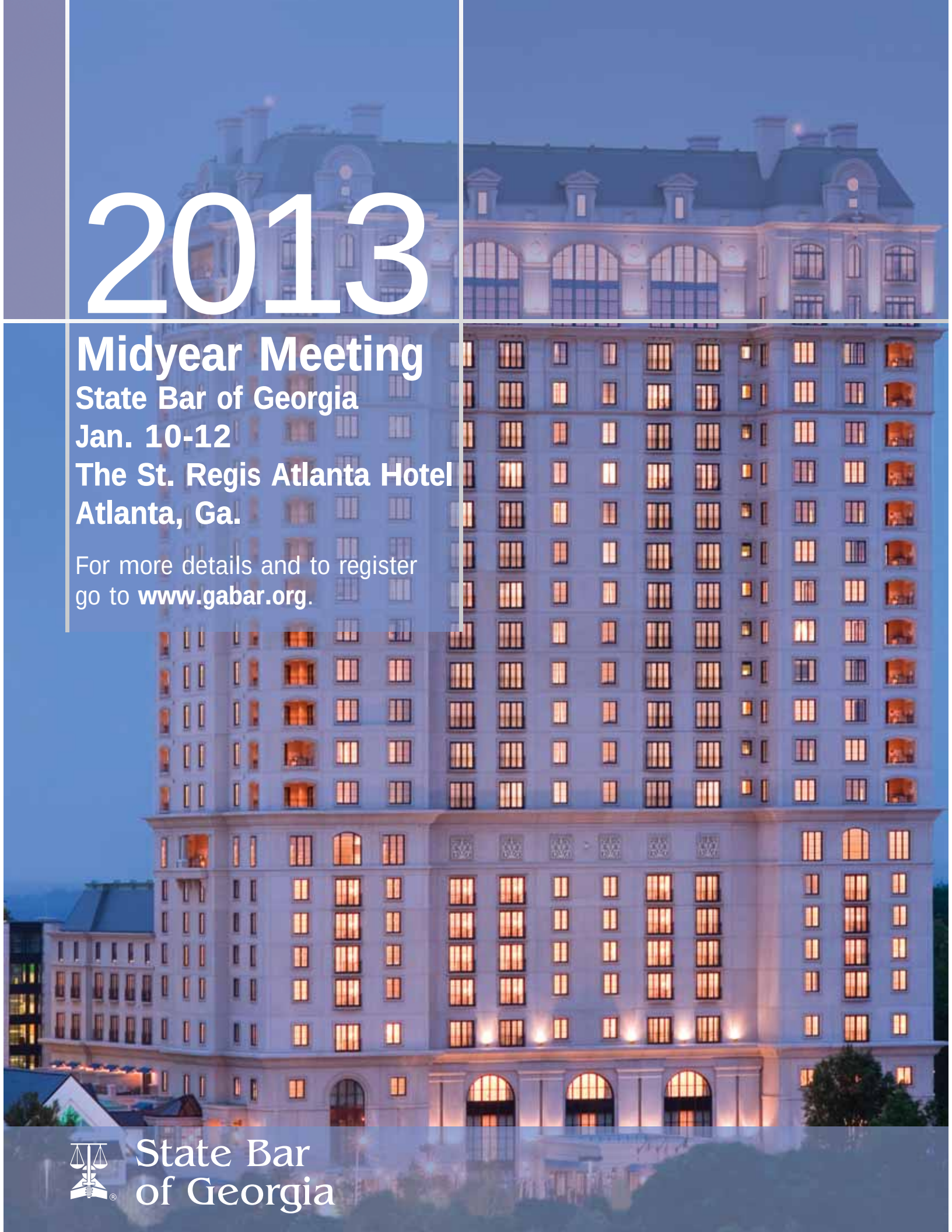
"The best takeaway (from the panel discussion) . . . was that it really is OK to talk to other people about the stress you are feeling," Fite said. "People in law school, as well as members of the Bar, probably feel like there will be some negative repercussions for sharing about the stress they are feeling. I think that is an important aspect for us to emphasize, which is that talking about it won't land you in trouble, but not talking about it may." As the president of the Kentucky Bar Association, Doug Myers, wrote this month in his President's Page titled "You Are Your Brother's—and Sister's—Keeper," "Depression is a health problem, not a character flaw. We should neither be ashamed nor afraid to seek treatment."

You will hear much more about the "How to Save a Life" initiative in the months ahead. We will be brainstorming for awareness—raising ideas such as panel discussions and CLE sessions on suicide prevention for professionalism credit, promoting the program on the Bar's website and others. Feel free to send me an email with any suggestions you have.

In the meantime, if you are worried a friend may be thinking about suicide, immediate action is critical. Call the LAP hotline, 1-800-327-9631, or the National Suicide Prevention Hotline, 1-800-273-TALK (8255), for a referral.

No one wants to be in the position of having to ask themselves, when it's too late, "Why didn't I do something?" Do something now. GBJ

Robin Frazer Clark is the president of the State Bar of Georgia and can be reached at robinclark@gatriallawyers.net.



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State Bar of Georgia

by Jon Pannell

Will YLD Project Become Law in 2013?

When the Georgia General Assembly convenes for its annual legislative session next month, a major item on the agenda will be a proposed comprehensive update of the state's 42-year-old juvenile justice code. The YLD is hopeful that 2013 will be the year both the House of Representatives and the Senate will approve the legislation and Gov. Nathan Deal will sign it into law.

> "It is most encouraging that Gov. Deal has thrown his support behind the concept of updating the law regarding juvenile justice, calling it 'an important component of our overall justice system.'"

And to think it all began as a project of the Young Lawyers Division of the State Bar of Georgia. A year ago in this column, my predecessor, Stephanie Joy Kirijan, provided a timeline of the juvenile code rewrite progress, starting in 2004 when the Georgia Bar Foundation funded the project for the YLD to create a model juvenile code. The following year, members of the General Assembly passed a resolution calling for an overhaul of the current juvenile code.

In 2006, JUSTGeorgia, a statewide juvenile justice coalition, was formed for the purpose of advocating for changes to the state's juvenile code and the underlying social service systems to better serve Georgia's children and promote safer communities. The coalition's founding partners are Georgia Appleseed, the Barton Child Law and Policy Clinic of the Emory University School of Law and Voices for Georgia's Children.

Two core needs were identified by JUSTGeorgia: to pass an updated juvenile code that reflects the best practices and the latest research and scientific findings in the child and adolescent brain development field, and to cause policy changes in the social services system that can prevent detention and sustain healthy behaviors outside the juvenile justice system.

JUSTGeorgia began to collect stakeholder feedback in 2007 through a series of town hall meetings around the state and hundreds of personal interviews, the goal being to collect substantive input on how changes to the juvenile code could best meet Georgia's needs. A year later, the YLD released its proposed model code. The initiative first appeared before lawmakers in 2009 as SB 292.

The legislation failed to get out of committee during the 2009-10 legislative session, but the Senate Judiciary Committee held about 10 hearings on the proposal,

which resulted in valuable public comment and discussion for future consideration and drafting of new legislation.

As a result, the proposed juvenile code rewrite came very close to becoming law during the 2012 legislative session. HB 641, the Child Protection and Public Safety Act, was introduced by House Judiciary Committee Chairman Wendell Willard (R-Sandy Springs) and handled in the Senate by then-Judiciary Committee Chairman (and now Superior Court Judge) Bill Hamrick (R-Carrollton).

HB 641 was approved in the House by a vote of 172-0 on Feb. 29, 2012. It also received unanimous approval by the Senate Judiciary Committee on March 22, 2012, but failed to reach the full Senate for a vote when it stalled in the Senate Rules Committee amid concerns about funding issues.

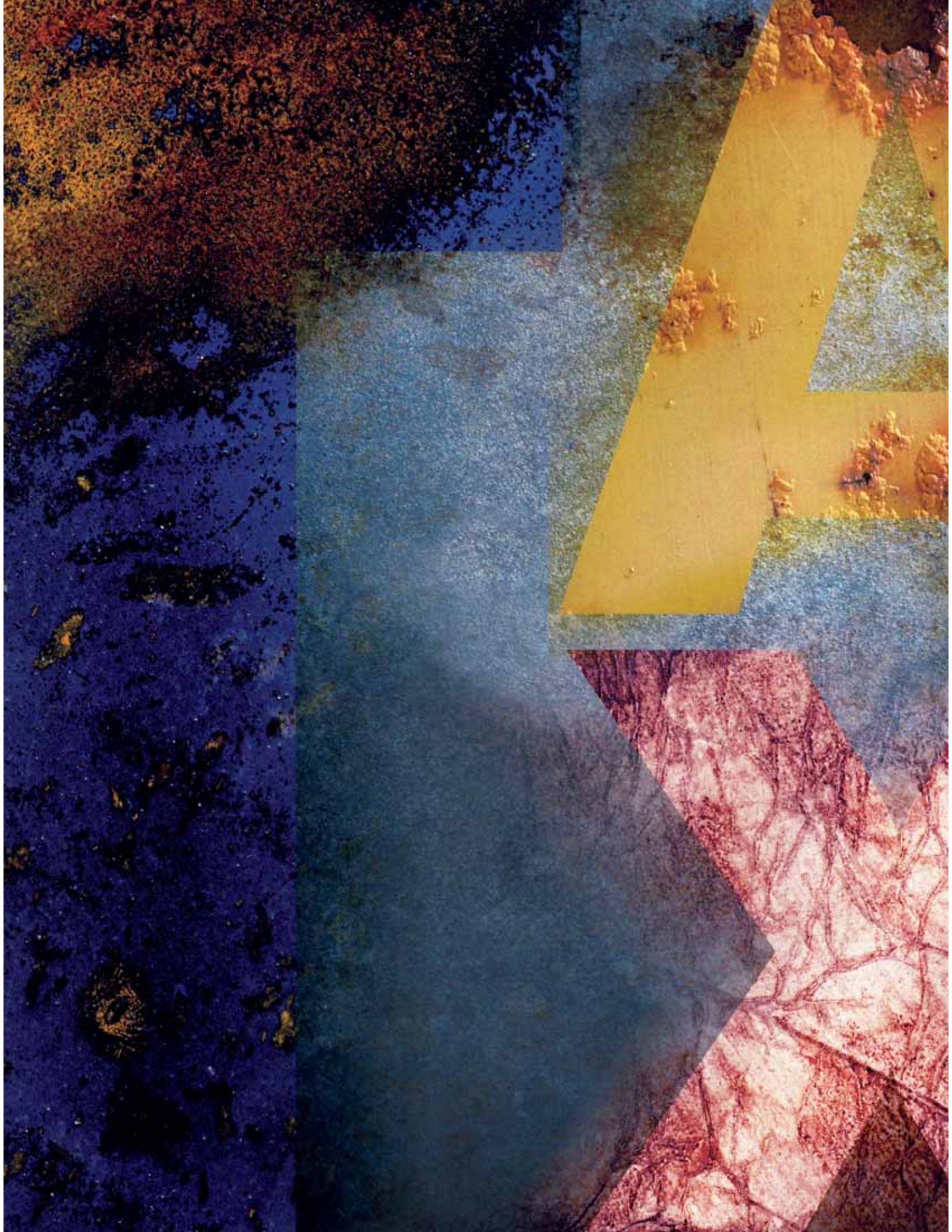
The good news is that the Governor's Criminal Justice Reform Council, which was formed in 2011 and recommended the changes to the adult prison system enacted earlier this year, is now focused on reforms to Georgia's juvenile law.

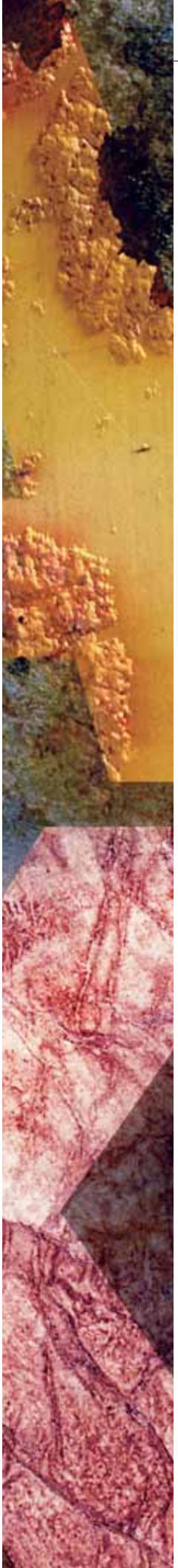
In September, council members heard a report from the Pew Center on the States about the challenges faced by Georgia's juvenile justice system. Analyzing youth arrest and disposition data collected by the Georgia Bureau of Investigation, the state Department of Juvenile Justice and the state Council of Juvenile Court Judges, the Pew Center on the States found:

- The majority of offenses committed by youth are of a nonviolent nature.
- The recidivism rate among young offenders who spent time in youth detention centers has been increasing.
- The risk assessment tool used by the Department of Juvenile Justice is a better predictor of whether a child will commit a future offense than the type of offense committed by the child.

It is most encouraging that Gov. Deal has thrown his support behind the concept of updating the law regarding juvenile justice, calling it "an important component of our overall justice system." Hopefully the fiscal issues that kept the legislation from passing earlier this year will have been resolved, and the work product originated by the YLD—along with years of hard work by a succession of YLD leaders, members of the JUSTGeorgia coalition, the governor's Criminal Justice Reform Council and many others—will finally bear fruit. GBJ

Jon Pannell is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at jonpannell@gpwlawfirm.com.





The Georgia Tax Tribunal Act of 2012

by Richard C. Litwin and John Masters

On April 19, 2012, Georgia Gov. Nathan Deal signed into law House Bill 100 (HB 100 [2011-12 Reg. Session]), cited as the Georgia Tax Tribunal Act of 2012 (the Act). The Act established a specialized tribunal in the executive branch of government to hear state tax disputes.

Starting Jan. 1, 2013, taxpayers seeking to contest a state tax liability can petition to the Georgia Tax Tribunal. This article examines the methods by which a taxpayer can challenge a state tax liability under current tax procedure and highlights the advantages of using the new Georgia Tax Tribunal instead. This article also addresses key provisions of the Act.

Background—Limits Under Current System Accentuates Need for a Tax Tribunal

Under the Commissioner of Revenue's authority set out in Georgia tax procedure,[1] the Georgia Department of Revenue (the Department) issues an Official Assessment and Demand for Payment (Official Assessment) to notify a taxpayer of the Department's final assessment of tax, penalty and interest. If a taxpayer wants to challenge the Official Assessment, then the taxpayer has four options for doing so, but limitations and conditions tied to these options restrict their utility. First, the taxpayer can file a tax appeal in superior court within 30 days of the date of the Official Assessment. With a few exceptions, the appeal is filed in the county of the taxpayer's residence, but to use this option, the taxpayer must "pay-to-play."[2] Specifically, the taxpayer must post a surety bond (not a bail bond) to cover the entire tax, penalty and interest. Although, the taxpayer can avoid the bond requirement if the taxpayer has an interest in real estate sufficient to cover the liability,[3] the "bond requirement" discourages many taxpayers from putting their tax case before a superior court judge.[4]

Second, the taxpayer can challenge the Official Assessment by filing with the Commissioner of Revenue a demand for hearing under the Georgia Administrative Procedures Act.[5] The taxpayer's case is heard by an administrative law judge at the Office of State Administrative Hearings (OSAH). This remedy is a pre-deprivation remedy, to wit: the taxpayer is not forced to make a financial sacrifice as a condition to using the remedy. Nonetheless, after the administrative law judge issues his initial decision, the Commissioner of Revenue can

overturn the administrative law judge's initial decision.[6]

Georgia law requires that the taxpayer act within 30 days of the date of the Official Assessment to file a tax appeal (first option) or a demand for hearing (second option). If the taxpayer fails to act within this 30-day period, then the Commissioner of Revenue can issue a State Tax Execution and begin collection proceedings.[7]

Third, the taxpayer can contest the Official Assessment by paying the amount assessed and filing a refund claim with the Department.[8] If the refund claim is denied, then the taxpayer can file a complaint for refund in superior court,[9] but the taxpayer must pay the liability before the taxpayer can file his complaint for refund in superior court.

Fourth, a taxpayer who fails to challenge the Official Assessment within the 30-day period can wait for the Department to issue the state tax execution. After the state tax execution is issued, the taxpayer can file an affidavit of illegality of tax execution.[10] The "surety bond" barrier exists here as well. As a condition to bringing the action, the taxpayer must post a surety bond (not a bail bond) to ensure payment of the tax, penalty and interest, in the event that the taxpayer loses the case.[11]

The limitations on the various options for challenging an Official Assessment have left many practitioners and their clients frustrated by the system. To compound taxpayer angst tied to the system for contesting a state tax liability, substantive case law on Georgia state taxation is scarce. Decisions issued by superior courts are often unpublished and as result are difficult to access. Further, decisions issued by OSAH are confidential, and therefore they cannot be leveraged effectively as precedent. Moreover, appellate review by the Court of Appeals of Georgia of both OSAH decisions and superior court decisions is obtainable only by application and is subject to discretionary review procedures.[12]

Recognizing the growth of tax courts and tax tribunals in other states, practitioners gathered, caucused and shared ideas for several years to develop a solution. Their efforts led to the Georgia Tax Tribunal Act of 2012.

The Act creates a specialized Tax Tribunal to replace the demand-for-hearing option provided under the Administrative Procedure Act (the APA). Indeed, the demand for hearing prescribed in the APA (at O.C.G.A. § 50-13-12) is repealed.[13] The Act also provides that a taxpayer can file a petition in the Tax Tribunal as an alternative to filing a tax appeal in superior court. The Act contains various provisions aimed at ensuring efficient and fair resolutions to state tax disputes. Key provisions of the Act are examined below.

Independence and Location of the Tax Tribunal

The Georgia Tax Tribunal's main location will be in Fulton County in offices separate from the Commissioner of Revenue (and, presumably, the Department of Revenue).[14] The Tax Tribunal will be part of OSAH but will be an independent and autonomous division of OSAH. The Tax Tribunal will operate under the sole direction of the chief tribunal judge.[15] The Tax Tribunal can hear cases in Fulton County at its main location or at any other place in Georgia.[16]

Types of Cases Heard by the Tax Tribunal

Under the Act, the Tax Tribunal functions to resolve taxpayer disputes with the Georgia Department of Revenue.[17] To that end, it has jurisdiction to hear cases between a taxpayer and the Department of Revenue. The Tax Tribunal also has jurisdiction to hear a taxpayer refund action following the Commissioner of Revenue's denial of a taxpayer's claim for refund of sales taxes, income taxes, real estate transfer taxes and intangible recording taxes.[18] The Tax Tribunal can also hear the traditional tax appeal, to wit: an appeal from "any order, ruling, or finding of the Commissioner of Revenue."[19] This type of tax appeal arises typically following the issuance of an Official Assessment.[20]

In addition, the Tax Tribunal has jurisdiction to hear the Commissioner of Revenue's denial of corporation's petition for alternative apportionment under Georgia income tax laws.[21] The Tax Tribunal can hear appeals of special taxpayers (such as public utilities and railroads) whose property, for *ad valorem* property tax purposes, is centrally assessed by the Commissioner of Revenue.[22] The Tax Tribunal can also hear a declaratory judgment action challenging the Commissioner of Revenue's adoption of a Department of Revenue regulation.[23]

Finally, the Tax Tribunal can hear a petition filed to challenge a state tax execution.[24] As noted above, under current law, only a superior court has jurisdiction over an affidavit of illegality and cannot hear the case, unless that taxpayer posts a surety bond to cover an adverse judgment. But the Act explicitly dispenses with the bond (or other security) requirement as a condition to bringing the appeal before the Tax Tribunal.[25] Thus, in contrast to current law, a taxpayer that fails to appeal an Official Assessment within 30 days of the date of the Official Assessment is not barred from bringing an action in the Tax Tribunal to challenge the liability asserted in the State Tax Execution.

Notably, however, the Tax Tribunal cannot hear every tax-related challenge. It cannot hear challenges tied to the Department's administration of the state alcoholic beverages laws, under Title 3, or motor vehicle laws, such as the issuance of car titles, under Title 40.[26] Further, the Tax Tribunal cannot hear *ad valorem* property tax cases. In addition, a taxpayer seeking to challenge an assessment of value

on real or personal property must follow the procedures set out in O.C.G.A. § 48-5-311(e).[27] Finally, the Tax Tribunal does not have jurisdiction to rule on constitutional issues.[28]

Concurrent Jurisdiction with Superior Courts

Under the Act, superior courts retain jurisdiction to hear all matters over which superior courts have jurisdiction currently, but the taxpayer now has a choice.[29] He can file the action in superior court (in which case, the same conditions for jurisdiction, such as the bond requirement, apply), or he can file a petition in the Tax Tribunal. The Act does not allow the taxpayer to move the case from superior court to the Tax Tribunal or vice-versa.

Tax Tribunal Judges—Qualifications and Term of Office

A chief objective of the Act is to resolve a dispute through a specialized tribunal. Consistent with this objective, the Act imposes guidelines for qualified candidates for the position of Tax Tribunal judge. First, the candidate must be a U.S. citizen and a Georgia resident during his term in office. Second, the candidate must be an attorney licensed to practice in Georgia. Finally, as a condition to the appointment, the candidate must have practiced primarily in tax law for eight years prior to serving as judge.[30]

The Tax Tribunal's initial judge(s) shall be appointed by the governor.[31] Term of office for the judges depends upon the number of judges appointed initially. If the tribunal has only one judge initially, then the judge shall serve a term of four years and shall be chief tribunal judge. If the tribunal has more than one judge initially, then the chief tribunal judge is appointed for an initial term of six years and the other judge (or judges) is appointed for a term of four years. After the appointment of the initial judge or judges, subsequent appointments

of all judges will be for a term of four years. As stated in the Act, the initial staggered terms remove the possibility that all tribunal judges leave office in the same year.

Judges can serve for successive terms. They can be reappointed by the governor with the consent of the Senate and for a term of four years.[32]

Finally, the Tax Tribunal will have an administrative staff and other accommodations needed to function effectively.[33]

Filing an Action in the Tax Tribunal—Petition, Response and Default

Actions may be filed with the Tax Tribunal beginning Jan. 1, 2013.[34] All actions must be filed within the time periods prescribed by law. Thus, if the time allowed to appeal an Official Assessment is 30 days, then the petition must be filed with the Tax Tribunal within 30 days of the date of the Official Assessment.[35]

Like a tax appeal filed in superior court, a petition filed in the Tax Tribunal must include a summary statement of facts and law upon which the petitioner relies in seeking the relief. The petition must name the Commissioner of Revenue as respondent (in his official capacity).[36]

The taxpayer must pay a filing fee at the time that the taxpayer files the petition.[37] In most cases, the taxpayer is not required to post a surety bond as a condition to filing the petition in the Tax Tribunal.[38] When a taxpayer challenges a "jeopardy assessment," the Commissioner of Revenue can require a bond.[39]

Within 30 days after service of the petition, the Commissioner of Revenue must file and serve a response (an answer) to the petition.[40] If the Commissioner of Revenue's response is not filed timely, then the case is placed in default. Default will not occur if the parties agree to extend the time period.[41] To open default as a matter of right, the Commissioner of Revenue must (1) file the response within 15 days of the default date and (2) pay costs.[42] Otherwise, the judge may open default in his/her discretion prior to final judgment.[43]

Filing an Action in the Tax Tribunal—Amendment, Service of Pleadings and Remand

Pleadings can be amended and/or supplemented as per the Georgia Civil Practice Act.[44] Thus, a party can amend its pleadings at any time and without leave of court before entry of the pretrial order. After the pretrial order is entered, the party can amend only by leave of court or by agreement of the adverse party.[45]

A party may supplement its pleading to address transactions or occurrences or events that arise after the date of the pleading sought to be supplemented.[46] The party must serve other items required to be served, including pleadings, motions, responses or statements, by first-class mail or by hand-delivery.[47]

The Act specifies the date that a document is deemed filed with the Tax Tribunal. The deemed-filed rule applies to any pleading, motion, response, statement or documents required (by law, rule or regulation) to be received or filed with the Tax Tribunal. Such item is deemed received or filed on the earlier of (1) the date the document is actually received by the Tax Tribunal, (2) the official postmark date that such document was mailed, properly addressed with postage prepaid, by certified or registered mail or (3) the date on which the document was delivered to a commercial delivery company for statutory overnight delivery, as per O.C.G.A. § 9-10-12 and as evidenced by the receipt issued by the delivery company.[48]

Personal service on the taxpayer is effected by mailing or delivering to the taxpayer's address noted on the petition or the address of the taxpayer's attorney of record.[49] Service on the Commissioner of Revenue is effected by mailing or delivering the item to the usual place of business for the Commissioner of Revenue.[50] Presumably, the Commissioner of Revenue's usual place of business is the Georgia Department of Revenue's headquarters in Atlanta.[51]

The tribunal judge must schedule a prehearing conference as soon as reasonably practicable.[52] At the prehearing conference, the judge must address discovery issues and deadlines, scheduling and other matters.[53]

The judge may remand the case to the Commissioner of Revenue for further consideration. Remand can occur based upon a motion by either party, for good cause shown on motion by one party, or *sua sponte*, when the judge determines that the case should be remanded.[54] For instance, the taxpayer may have failed to resolve the matter at the Department level before filing the petition, or the dispute may focus on a computational error, misunderstanding or misapplication of payments by the Department.

Filing an Action in the Tax Tribunal—Stay of Collection

Perhaps the most important provision of the Act is the "stay." Filing a petition with the Tax Tribunal operates as a stay of enforcement or collection action. Specifically, the Commissioner of Revenue cannot proceed with collection of taxes, penalties, interest or any collection costs disputed in the petition after the petition is filed.[55] The "stay" remains in place until the case is finalized.[56] Nevertheless, upon good cause shown by the Commissioner of Revenue (and by motion), the judge may lift the stay.[57]

The Proceeding—Discovery and Stipulation of Facts

Although the Georgia Civil Practice Act applies to cases in the

Tax Tribunal,[58] several exceptions are intended to streamline the proceeding and minimize costs for all parties.

First, under the Act, the parties must make every effort to conduct discovery by informal consultation or communication.[59] A party may use formal discovery processes (interrogatories, requests for documents, depositions). Upon motion by a party, the judge can limit the frequency or extent of the formal discovery.[60] The discovery period (beginning and ending date) shall be determined either by the rules of the Tax Tribunal or by order in the specific case.[61]

Second, and in accord with the Act's objective to streamline the case, the parties must stipulate to all relevant and nonprivileged matters[62] upon completion of discovery. Service of discovery by one party does not excuse the other party from entering into the stipulation.

The Proceeding—Trials

All trials shall be *de novo* bench trials (without a jury).[63] Thus, the parties must make their record (for possible review by an appellate court) at the Tax Tribunal level.

Trials will be open to the public. Nevertheless, any party may move the court for an order excluding the public from attending all or a portion of the trial by showing a need to protect against disclosure of certain information.[64]

All testimony shall be given by oath or affirmation.[65] Further, except for proceedings in the Small Claims Division, all Tax Tribunal hearings shall be recorded by a tribunal court reporter.[66]

The Tax Tribunal judge generally must apply the rules of evidence that are used in civil nonjury trials in superior courts.[67] In cases heard in the Small Claims Division (see below), the Tax Tribunal judge may relax the rules and consider facts that may otherwise be excluded under the evidence rules.[68]

Decisions and Publication of Decisions

The Tax Tribunal judge must issue final judgments and interlocutory orders in writing.[69] Final judgments and interlocutory orders must include findings of fact and conclusions of law.[70] The method by which confidentiality is maintained is left to the chief tribunal judge who must draft rules that address confidentiality of taxpayer information.[71]

To ensure uniformity of decisions, tribunal judges must follow the principle of *stare decisis*.[72] Prior decisions are precedent, and the Tax Tribunal should adhere to cases decided previously.[73]

Finally, except for cases in the Small Claims Division (see below), all final judgments of the Tax Tribunal must be indexed and published in a print or electronic form.[74] The publications will be considered the official reports of the Tax Tribunal.[75]

Small Claims Division

Within 90 days of filing a petition, the taxpayer can elect to have the case heard in the Tax Tribunal's Small Claims Division. To qualify for the Small Claims Division, the total of the tax and penalty (but not interest) in controversy cannot exceed a threshold amount.[76] Once the "small claims" election is made, the taxpayer cannot revoke the election.[77]

Small Claims Division proceedings are informal.[78] The tribunal judge can consider hearsay testimony or review an unauthenticated document when he/she deems such is necessary to gather the facts. But the evidence must be a "type commonly relied upon by reasonably prudent persons" in conducting their affairs.[79] Further, the taxpayer may bring his/her accountant or tax return preparer to the hearing to provide facts about positions taken on a tax return.[80] All Small Claims Division decisions are final and cannot be appealed.[81]

Appeals

Any party can appeal a final judgment issued by the Tax Tribunal. The appeal is heard in the Superior Court of Fulton County.[82] The appealing party is not required to ask the Commissioner of Revenue to review an Initial Decision.[83]

The party must file the appeal with the Superior Court of Fulton County within 30 days after service of the Tax Tribunal's final judgment.[84] The party must state the grounds for the appeal.[85]

Review by the superior court is confined to the record as established at the Tax Tribunal level.[86] Any further appeal is by discretionary review to the appellate courts.[87]

Conclusion

Georgia's new Tax Tribunal faces many logistical tasks before the first case is filed after Jan. 1, 2013. The Tax Tribunal must adopt rules of practice and procedure. The Tax Tribunal also must obtain office space at the Office of State Administrative Hearings. Further, the Tax Tribunal judge must hire a clerk, a court reporter, a law clerk and administrative staff. When such tasks are completed, the Georgia Tax Tribunal promises to benefit all Georgia taxpayers by providing a much needed logical and understandable procedure for resolving Georgia state tax controversies. GBJ

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Endnotes

1. O.C.G.A. § 48-2-47 (2012). The Commissioner of Revenue may also issue the less formal Notice of Proposed Assessment to give the taxpayer an informal process by which to challenge the assertion of tax. *See* O.C.G.A. § 48-8-46 (2012). The Commissioner of Revenue typically issues a Proposed Assessment before issuing an Official Assessment. The taxpayer has 30 days to protest the Proposed Assessment. *Id.*
2. O.C.G.A. § 48-2-59(a) (2012). If the taxpayer is a nonresident business with an office in Georgia or a public utility, then the tax appeal must be filed in the county of the taxpayer's principal place of business or in the county in which the highest corporate officer residing in Georgia maintains his/her office. O.C.G.A. § 48-2-59(a)(1) (2012). If the taxpayer is a nonresident individual or foreign corporation with no place of business in Georgia and no officer or employee residing and maintaining his/her office in Georgia, then the appeal must be filed in the Superior Court of Fulton County or to the superior court of the county in which the Commissioner of Revenue resides. O.C.G.A. § 48-2-59(a)(2) (2012). Some confusion exists surrounding filing the tax appeal. Georgia tax procedure indicates that the tax appeal must be filed with the Commissioner of Revenue, who then certifies the appeal to superior court. O.C.G.A. § 48-2-59 (2012). As a practical matter, and to be safe, some tax practitioners file the original tax appeal in superior court and also serve the Commissioner of Revenue with a service copy.
3. O.C.G.A. § 48-2-59(c) states that the bond must be posted before the superior court has jurisdiction to hear the case. If the taxpayer's interest in real property in Georgia exceeds the liability, then the taxpayer is not required to post the bond.
4. The taxpayer must also meet other conditions. For instance, the taxpayer must agree in writing to pay all taxes admittedly owed. *Id.* If the taxpayer does not meet the conditions, then the tax appeal is subject to dismissal for lack of subject-matter jurisdiction. *See* O.C.G.A. § 48-2-50 (2012) (only the procedures prescribed in the Georgia Code can be used to challenge an assessment); Undercofler v. Ernhardt, 111 Ga. App. 598, 142 S.E.2d 317 (1965). *See also* Ingalls Iron Works Co. v. Blackmon, 133 Ga. App. 164, 210 S.E.2d 377 (1974).
5. O.C.G.A. §50-13-12 (2012).
6. In particular, after the administrative hearing, the administrative law judge issues an Initial Decision. The Department of Revenue has 30 days after the issuance of the Initial Decision to reject or

modify the decision. O.C.G.A. § 50-13-41(e) (2012). Thus, the Commissioner of Revenue can overturn the Initial Decision. If the Initial Decision is adverse to the taxpayer, then the taxpayer must appeal the Initial Decision to the Department of Revenue for review by the Commissioner of Revenue. O.C.G.A. § 50-13-17 (2012). This layer of appeal (to the Commissioner of Revenue) adds costs and another layer of concern for the taxpayer.

7. The Official Assessment becomes final if no action is taken within 30 days. O.C.G.A. § 48-2-45(a)(1) (2012).
8. O.C.G.A. § 48-2-35 (2012).
9. O.C.G.A. § 48-2-35(4) (2012).
10. Collection action begins, in earnest, by the issuance of a State Tax Fi. Fa., also known as a State Tax Lien or State Tax Execution (and will be referred to as a "State Tax Execution"). A typical creditor trying to collect a delinquent account must first obtain an order from a court of law (state or superior) and then request the clerk of court to issue the *fi. fa.* Before a judgment creditor can get a *fi. fa.*, the creditor must file a civil action in court and get a judgment. The creditor will then record the *fi. fa.* in any county in which the debtor owns real property. The recorded *fi. fa.* clouds title and is a lien on the debtor's property. Unlike other creditors, the Department of Revenue is not required to get a court order from a judge as a condition to getting the *fi. fa.* Indeed, when a taxpayer fails to challenge an Official Assessment, the Department of Revenue has the power to issue and prepare the State Tax Execution. The Department can then file the State Tax Execution with the clerk of superior court in the taxpayer's county of residence. O.C.G.A. § 48-3-21 (2012). *See* Oxford v. Generator Exchange, 99 Ga. App. 290, 295, 178, 108 S.E.2d 174 (1959) (to be enforceable the tax *fieri facias* must, among other things, be recorded on the general execution docket of the county of the residence of the defendant in *fi. fa.* within seven years from the date of the assessment).
11. O.C.G.A. § 48-3-1 (2012). Further, the taxpayer's case is heard by a judge without a jury. The Department of Revenue can also issue a "jeopardy assessment," which empowers the Department of Revenue to begin collection proceedings immediately. Currently, a taxpayer can challenge a "jeopardy assessment" only through an appeal to superior court. The taxpayer must post a surety bond to cover the liability. Otherwise, the superior court cannot hear the case. O.C.G.A. § 48-2-51 (2012).
12. O.C.G.A. § 5-6-35(a)(1) (2012).
13. *See* H.B. 100, 151st Gen. Assem., Reg. Sess., §§ 12, 13, 14 (Ga. 2012).
14. O.C.G.A. § 50-13A-7(a) (2012).
15. O.C.G.A. § 50-13A-3 (2012). Indeed, the Tax Tribunal will have a seal engraved with the words "Georgia Tax Tribunal." The Tax Tribunal will authenticate its orders, records and proceedings with the seal, and Georgia courts shall take judicial notice of the seal. O.C.G.A. § 50-13A-4 (2012).
16. O.C.G.A. § 50-13A-7(b) (2012). This flexibility gives the taxpayer opportunity to appear before the Tax Tribunal at minimum inconvenience and expense. As such, the Tax Tribunal can hear a case anywhere in the state. Naturally, rules and regulations must be adopted to address logistics on asking for an alternative hearing location.
17. *See* O.C.G.A. § 50-13A-2 (2012).
18. O.C.G.A. § 50-13A-9(a) (2012); H.B. 100, 151st Gen. Assem., Reg. Sess., § 2, (income and sales and use taxes), § 8 (real estate transfer taxes) and § 9 (intangible recording taxes) (Ga. 2012). O.C.G.A. § 50-13A-9(a) lists, by identifying the Code Sections, those actions for which relief can be sought by filing a petition with the Tax Tribunal.
19. O.C.G.A. § 50-13A-9(d) (2012); H.B. 100, 151st Gen. Assem., Reg. Sess., § 5 (Ga. 2012).
20. O.C.G.A. § 48-2-59 addresses appeal rights and the procedure for filing a tax appeal in superior court. The statute contains the surety bond requirement traditionally associated the proverbial brick wall that for many years prevented a taxpayer from access to superior court. The amendment to O.C.G.A. § 48-2-59, found in H.B. 100, specifically removes the bond requirement for appeals filed with the Tax Tribunal. *See* H.B. 100, 151st Gen. Assem., Reg. Sess., § 5 (Ga. 2012). A taxpayer seeking to file a tax appeal in superior court must post a surety bond or demonstrate that he owns an interest in real property that is sufficient to cover the liability in the event that he loses.
21. O.C.G.A. § 48-7-31(d)(2)(C) (2012). *See* H.B. 100, 151st Gen. Assem., Reg. Sess., § 10 (Ga. 2012).
22. H.B. 100, 151st Gen. Assem., Reg. Sess., §§ 1, 7 (Ga. 2012).
23. O.C.G.A. § 50-13A-9(a) (2012).
24. *Id.*; H.B. 100, 151st Gen. Assem., Reg. Sess., § 6 (Ga. 2012).
25. O.C.G.A. § 50-13A-9(d) (2012). Should the taxpayer seek to challenge a jeopardy assessment issued under O.C.G.A. § 48-2-51, the Commissioner of Revenue can require that the taxpayer post a surety bond. O.C.G.A. § 50-13A-9(d) (2012).
26. O.C.G.A. § 50-13A-9(c) (2012).
27. As noted above, utilities that are centrally-assessed under O.C.G.A. § 48-2-18 and railroad equipment companies assessed under O.C.G.A. § 48-5-519 may seek relief in the Tax Tribunal.
28. A ruling on the constitutionality of a statute is beyond the scope of the executive branch tribunal and would exceed the scope of the Tax Tribunal's authority under the Act. *See* O.C.G.A. § 50-13A-17(g) (2012).
29. O.C.G.A. § 50-13A-9(b) (2012). Thus, after January 1, 2013, a taxpayer may still file in superior court (1) a tax appeal, (2) a complaint for refund, or (3) a declaratory judgment action.
30. O.C.G.A. § 50-13A-6(a) (2012).
31. O.C.G.A. § 50-13A-5(b) (2012).
32. O.C.G.A. § 50-13A-5(c) (2012).
33. O.C.G.A. § 50-13A-8(a) authorizes the chief tribunal judge to appoint a court reporter, staff attorneys and clerks. Also, the Act authorizes the chief tribunal judge to buy items necessary to operate the office, such as a library and equipment.
34. O.C.G.A. § 50-13A-10(a) (2012). The Act specifically prohibits the transfer to the Tax Tribunal of any matters pending before OSAH. But on or after January 1, 2013, if a taxpayer files a demand for hearing under the

old law, O.C.G.A. § 50-13-12, then the case will be sent to the Tax Tribunal automatically, as long as the matter falls within the Tax Tribunal's jurisdiction under O.C.G.A. § 50-13A-9 (2012).

35. O.C.G.A. § 50-13A-10(a) (2012).
36. O.C.G.A. § 50-13A-10(a) (2012). A copy of the petition must be served on the Commissioner of Revenue and on the Georgia Attorney General. The action must include a certificate of service. For an action seeking refund of real estate transfer taxes or intangible recording taxes, the taxpayer must also name the clerk of the respective superior court as a party and serve the clerk with a copy of the petition. Personal service of the petition is not required. Rather, service can be made by certified mail or by statutory overnight delivery. *Id.*
37. The amount of the fee will be determined by the rules of the Tax Tribunal. O.C.G.A. § 50-13A-12(a) (2012). At the time of this writing, no rules have been adopted or proposed.
38. O.C.G.A. § 50-13A-9(d) (2012).
39. Currently, pursuing a case in superior court requires that the taxpayer post a surety bond or otherwise show that he/she/it has an interest in real estate sufficient to cover an adverse judgment. This is commonly known as the "pay-to-play" rule. Dispensing with this rule is an important element of the Act. When, however, the Department of Revenue issues a jeopardy assessment under O.C.G.A. § 48-8-51, the taxpayer must post a surety bond. The statute does not allow the taxpayer "show of an interest in real estate" as an alternative to posting the bond.
40. O.C.G.A. § 50-13A-10(b) (2012).
41. The parties cannot extend the time period for more than 30 days. Also, the judge can agree to extend the time period. O.C.G.A. § 50-13A-10(b) (2012). Thus, if the parties cannot agree to an extension of the response time, the judge, presumably, when presented with a motion to extend, can extend the deadline for the response.
42. O.C.G.A. § 50-13A-10(b) (2012).
43. *Id.* The standards for opening default under O.C.G.A. § 9-11-55(b) (providential cause that prevented filing the response, excusable neglect) apply.
44. O.C.G.A. § 50-13A-10(c) (2012). The Georgia Civil Practice Act is found at O.C.G.A. § 9-11-1, *et seq*.
45. O.C.G.A. § 9-11-15(a) (2012). Amendments relate back to the original pleading.
46. O.C.G.A. § 9-11-15(d) (2012). A party must receive permission from the court, through a motion, to supplement pleadings.
47. O.C.G.A. § 50-13A-18 (2012).
48. O.C.G.A. § 50-13A-18(b) (2012).
49. O.C.G.A. § 50-13A-18(c) (2012).
50. *Id*.
51. The Georgia Department of Revenue's headquarters is located at 1800 Century Blvd., Atlanta, Georgia 30345. The Georgia Department of Revenue also has regional offices spread throughout the state. The Act is not clear that service can be effected on the Commissioner of Revenue by mailing or delivering to one of the regional offices. To that end, the practitioner should deliver the document to the 1800 Century Blvd. address or the address of the Commissioner of Revenue's legal counsel (once the Georgia Attorney General's Office appears in the case).
52. O.C.G.A. § 50-13A-10(e) (2012). The rules and regulations of the Tax Tribunal will likely address pretrial/prehearing proceedings.
53. *Id*.
54. O.C.G.A. § 50-13A-10(f) (2012). Remand does not divest the tribunal of jurisdiction. Indeed, the judge's remand order must provide that either party may, upon proper advance notice to the other parties, have the matter returned to the Tax Tribunal for resolution. *Id*.
55. O.C.G.A. § 50-13A-11(a) (2012). A taxpayer that challenges only a portion of the tax, penalty, interest or collection fee, therefore, should be prepared to pay the undisputed portion.
56. Collection cannot proceed until all appeals, including appeals to superior court and any appellate court, are completed. O.C.G.A. § 50-13A-11(a) (2012). Filing a petition does not stay the collection of a jeopardy assessment issued under O.C.G.A. § 48-2-51 (2012). O.C.G.A. § 50-13A-11(a) (2012).
57. O.C.G.A. § 50-13A-11(b) (2012). Current law provides no "automatic stay," so the Commissioner of Revenue is not barred from pursuing a collection action (by filing a state tax execution), even while the tax appeal is pending. However, such is not the standard practice of the Department of Revenue's current administration.
58. O.C.G.A. § 50-13A-13(a) (2012). Indeed, a party must disclose expert witnesses prior to the hearing. The disclosure must include a written report prepared and signed by the witness, if such a report has been prepared or will be used at the hearing. O.C.G.A. § 50-13A-13(c) (2012). At a party's request, the judge or clerk shall issue subpoenas for attendance of witnesses and giving testimony and subpoenas for the production of evidence or things. O.C.G.A. § 50-13A-13(d) (2012). Witnesses who are subpoenaed or whose depositions are taken receive the same fees as a witness in superior court. O.C.G.A. § 50-13A-13(f) (2012). Currently, the witness fee is $25.00 per day and 20 cents per mile. O.C.G.A. § 24-10-24 (2012). The Tax Tribunal judge can compel a party or witness as provided for under the Georgia Civil Practice Act. O.C.G.A. § 50-13A-13(g) (2012). The power is limited. To hold the party or witness in contempt, the judge must refer the matter to the superior court of the county in which the contempt is committed. *Id*.
59. O.C.G.A. § 50-13A-13(a) (2012).
60. The judge, however, must find that the discovery is unduly burdensome or expensive based on the amount in controversy, limitations on the parties' resources and the importance of the issues in the case. O.C.G.A. § 50-13A-13(a) (2012).
61. O.C.G.A. § 50-13A-13(b) (2012).
62. *Id*. Such stipulation must be done to the fullest extent to which complete or qualified agreement can be reached or fairly should be reached. Thus, a heavy burden is imposed on both sides to enter into a stipulation of the facts in the case no later than the conclusion of the discovery period. The Act does not prevent the parties from stipulating to facts before the expiration of discovery.

63. O.C.G.A. § 50-13A-14(a) (2012). The tribunal judge will hear all evidence and neither party is precluded from introducing evidence that may not have been introduced at the Department of Revenue level, such as during the audit or during the protest phase after the Proposed Assessment.
64. *Id*. For example, a party may seek to prevent disclosure of a trade secret or other information required to be presented at the trial but otherwise kept confidential in the normal course of its business.
65. O.C.G.A. § 50-13A-14(d) (2012).
66. O.C.G.A. § 50-13A-14(f) (2012).
67. O.C.G.A. § 50-13A-14(c) (2012).
68. The rules for the Small Claims Division are discussed below.
69. O.C.G.A. § 50-13A-15(a) (2012). An interlocutory order is an order that may resolve an issue in the case but does not contain a ruling on the ultimate question in the case. Indeed, all orders that are merely preparatory to the final hearing are "interlocutory." Interlocutory judgments do not dispose of the case. *See* Ruskell, Richard, *Davis & Shulman's Georgia Practice and Procedure*, § 23:2 (2008-09 Ed.). For instance, the Tax Tribunal judge's issuance of a protective order under O.C.G.A. § 50-13A-14(a), to close all or part of a hearing, may be considered "interlocutory" in nature. Also, a ruling on a motion (such as a *motion in limine)* is interlocutory. The Act includes no means by which a party can appeal an interlocutory order.
70. O.C.G.A. § 50-13A-15(a) (2012). Note that during the same legislative session that created the Georgia Tax Tribunal Act of 2012, H.B. 846 was also passed. This law adds O.C.G.A. § 48-2-15.2, which authorizes the Department to publish all letter rulings requested after May 1, 2012. Details of O.C.G.A § 48-2-15.2 are beyond the scope of this article.
71. O.C.G.A. § 50-13A-15(b) (2012).
72. O.C.G.A. § 50-13A-15(c) (2012).
73. In particular, under the Act, the Tax Tribunal judge's interpretation of a tax statute in one case shall be followed by the tribunal in future cases. Further, the judge's application of a statute to facts of one case shall be followed by judges in later cases that have similar facts, unless the interpretation has been supplanted by an appellate decision or the judge gives satisfactory reasons for deviating from the prior ruling. O.C.G.A. § 50-13A-15(c) (2012).
74. The chief judge can decide which form is best suited for public convenience.
75. O.C.G.A. § 50-13A-15(d) (2012).
76. O.C.G.A. § 50-13A-16(c) (2012). The threshold amount is (and will be) determined by the rules of the Tax Tribunal.
77. O.C.G.A. § 50-13A-16(c) (2012). Although, "for good cause," any party may move to have the case removed from the Small Claims Division. Also, the tribunal judge may on his/her own motion remove the case from the small claims division. Small Claims Division decisions are conclusive upon all parties, are not appealable, and cannot be cited as precedent in other cases. O.C.G.A. § 50-13A-16(g) (2012). Presumably, therefore, if the amount at issue is small but the underlying legal issue is significant, then a party (including the taxpayer) or the Tax Tribunal judge can remove the case from the Small Claims Division.
78. Hearings are conducted in a manner consistent with matters before magistrate courts, and the judge may receive evidence that he/she feels is appropriate in determining the case. O.C.G.A. § 50-13A-16(f) (2012).
79. O.C.G.A. § 50-13A-14(c) (2012).
80. O.C.G.A. § 50-13A-16(d) (2012). The accountant or tax return preparer "shall not be deemed" to serve as the taxpayer's advocate or as representing the taxpayer before the Tax Tribunal. *Id*. The Act does not require the accountant or tax-return preparer to be the same person who prepared the subject return.
81. O.C.G.A. § 50-13A-16(g) and § 50-13A-17(b) (2012).
82. O.C.G.A. § 50-13A-17 (2012). As noted above, small claims division judgments are not appealable.
83. This requirement under the Administrative Procedure Act created a trap for the unwary. Under O.C.G.A. § 50-13-41, the aggrieved party had 30 days from the issuance of an Initial Decision to ask the Commissioner of Revenue to review the Initial Decision. If, however, the aggrieved party failed to make such a request, then the Initial Decision became the Final Decision of the Department as a matter of law and could not be reviewed by the superior court. *See* Alexander v. Department of Revenue, 728 S.E.2d 320 (Ga. App. 2012) (taxpayer who did not ask the Commissioner of Revenue to review of the Initial Decision of the administrative law judge failed to exhaust administrative remedies).
84. O.C.G.A. § 50-13A-17(b) (2012). If a rehearing has been requested, then the petition for appeal must be filed within 30 days of the decision on rehearing. A copy of the petition for appeal must be served on the Tax Tribunal and all parties of record. *Id*.
85. O.C.G.A. § 50-13A-17(b) and § 50-13A-17(g) (list of bases upon which the judgment can be reversed).
86. O.C.G.A. § 50-13A-17(f) (2012). Nevertheless, by application for leave to the superior court, a party may present additional evidence not presented at the tribunal level. The evidence must be material. Further, the party must provide "good reasons" for failing to present the evidence in the tribunal hearing. If the application is granted, the party presents the evidence before the tribunal (upon conditions determined by the superior court). The tribunal judge may then modify his/her findings and judgment based on the additional evidence and file the new findings or judgments with the superior court. O.C.G.A. § 50-13A-17(e) (2012).
87. O.C.G.A. § 50-13A-17(h) (2012).

New Georgia Laws Affecting Georgia Drivers' Licenses

by Jennifer G. Ammons and William C. Head

Over the past 15 years, the Georgia General Assembly has enacted several new legislative laws relating to your Georgia driver's license. Substantial changes occurred in 1997 (ending the favorable nolo contendere plea to retain a first offender's license), 2001 (major overhaul of minimum punishment for repeat offense DUI offenders and lowering the adult BAC level to 0.08) and 2008 (adding a felony DUI). Major revisions occurred in 2012 that will have a significant impact on misdemeanor DUI practice in Georgia. Because these changes will affect many Georgia drivers who run afoul of the law, an overview of current laws will benefit all Georgia attorneys.

Among other sweeping changes, SB 236[1] made substantial changes to the driving consequences for teen drivers convicted of driving under the influence (DUI) in violation of O.C.G.A. § 40-6-391. This same new law will make it possible to accelerate the availability of ignition interlock limited driving permits for any defendant convicted of a second DUI within five years (measured by date-of-arrest to date-of-arrest). Current law requires a minimum of 12 months of total loss of driving privileges (a "hard suspension" in Georgia Department of Driver Services [DDS] terminology). The new law creates a method by which a limited driving permit can be obtained after only 120 days of hard suspension, assuming that certain conditions are completed or are being completed by the suspended driver.

Further, SB 236 modifies the permissible uses available for all limited driving permits issued by the DDS beginning Jan. 1, 2013. Sen. Bill Cowsert (R-Athens) championed the legislation at the request of the Council of State Court Judges. Recently retired State Court Judge N. Kent Lawrence of Athens-Clarke County, represented the State Court judges, with input from the DDS, prosecutors, criminal defense attorneys and other parties interested in the subject matter. The bill passed the Senate late in the 2011 Session, but it was not taken up by the House until 2012. Gov. Deal signed the bill on April 16, 2012, with an effective date of Jan. 1, 2013. Lawrence, a proponent of this major change in Georgia's DUI laws, has noted that impaired driving offenders convicted of a second DUI offense who demonstrate sobriety over

an extended period of time earn the privilege to drive to work, to school and to approved treatment facilities, provided that the offender installs an ignition interlock device for a minimum period of eight months on all vehicles owned and operated by the offender. Offenders who fail to comply with court-ordered sentence conditions may have their limited driving permit revoked.

Tougher Suspensions for Teen Drivers

Section 3 of SB 236 modifies O.C.G.A. § 40-5-57.1 relating to license suspensions for teen drivers convicted of DUI. Currently, the length of a driver's license suspension imposed for a DUI conviction depends upon the defendant's age *at the time of conviction*, his or her blood alcohol concentration (BAC), and his or her prior driving record. Under *current* law, in effect until Dec. 31, 2012, suspension imposed for DUI convictions for drivers who are between the ages of 16[2] and 20 range from six to 12 months depending upon the aforementioned factors.

SB 236 aligns the driving consequences for teens who are convicted of multiple DUIs with the provisions of Georgia law applicable to their counterparts who are age 21 and over. *The new language* no longer includes any reference to a teen's prior suspensions under O.C.G.A. § 40-5-57.1 in the calculation of the length of the license suspension or revocation triggered by his or her DUI conviction.

Additionally, Section 4 of SB 236 adds O.C.G.A. § 40-5-57.1 (the statute relating to drivers under age 21) to the list of suspensions for which a clinical evaluation is required for reinstatement of a suspension triggered by a second DUI conviction within 10 years. Once again, the measurement of time for whether an offense is a second (or subsequent) conviction is from date-of-arrest to date-of-arrest. Plus, this new law takes effect from offenses arising Jan. 1, 2013, and after.

Suspensions Imposed for Teen DUI Convictions Under Current Law	
First DUI with BAC < 0.08	6 months
First DUI with BAC ≥ 0.08	12 months
First DUI with prior suspension under O.C.G.A. § 40-5-57.1	12 months
Second DUI	12 months

Suspensions Imposed for Teen DUI Convictions Under New Law	
First DUI in 5 years[3] with BAC < 0.08	6 months
First DUI in 5 years with BAC ≥ 0.08	12 months
Second DUI in 5 years	18 months
Third DUI in 5 years	5 years

Availability of Limited Driving Permit as a Motivation for Treatment

SB 236 also makes substantial changes to ignition interlock permit eligibility. Currently, O.C.G.A. §§ 40-5-64 and 42-8-110, *et seq.*, provide that an adult driver convicted of a second DUI within five years must wait a full year before making application for an ignition interlock limited driving permit. Under the new law, such drivers may be eligible to seek an interlock permit sooner if he or she takes meaningful rehabilitation and education steps toward resolving the person's underlying substance use and abuse issues. Section 5 of SB 236 amends O.C.G.A. § 40-5-64 to state that an ignition interlock permit can be issued after the defendant has served the first 120 days of the hard suspension. As will be covered below, the issuance of a court order is required before the driver may receive that permit.

All access to issuance of ignition interlock permits will fall within the discretion of the court that handled the underlying DUI. Sections 5 through 9 of SB 236 remove the previous references to ignition interlock installation and remove provisions that required the use of the interlock device as a condition of probation. Instead, the new law requires defendants to seek the court's permission for the interlock installation when the suspended driver is ready to apply for an ignition interlock limited driving permit. These deletions of prior law and this new language of the 2012 legislation is intended to resolve any lingering issues relating to potential conflicts between the limits on subject matter jurisdiction (e.g., a 12-month maximum probation period) for misdemeanor traffic cases in O.C.G.A. §§ 40-13-32 and 40-13-33 and the "hard" suspension period, which could extend well beyond the end of the DUI sentence under the current law.

To be eligible for such an ignition interlock permit, the applicant must be enrolled in clinical treatment as defined in O.C.G.A. § 40-5-1 or engaged in a drug court program.[4] The existing prerequisite of completion of DUI drug or alcohol use risk reduction program remains in place, and repeat convicted offenders who are not engaged in a drug court must complete a clinical evalu-

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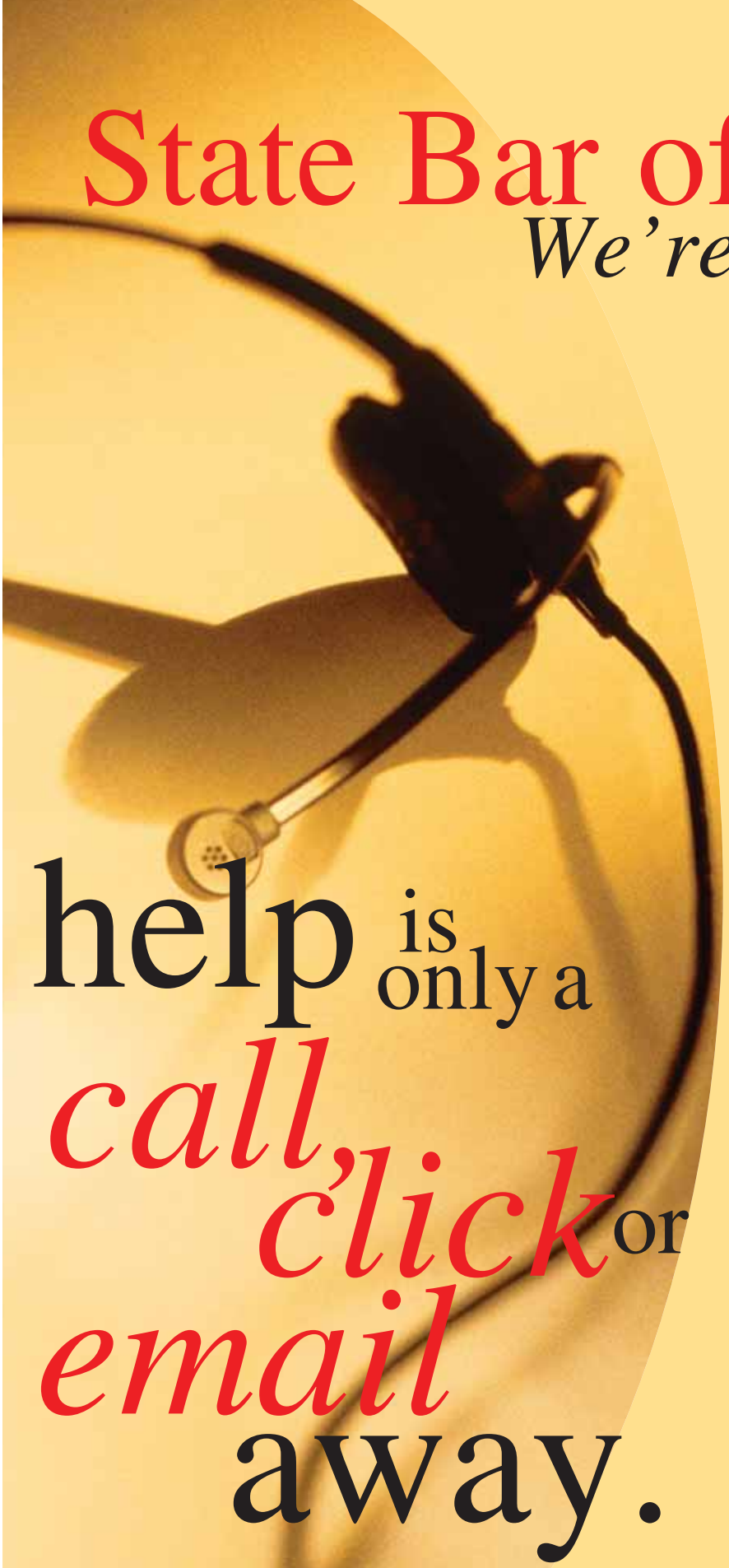

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ation from a provider approved by the DUI Intervention Program of the Georgia Department of Behavioral Health and Developmental Disabilities prior to enrolling in clinical treatment.[5] Knowledgeable and experienced DUI defense practitioners will appreciate the value of early "assessment" and enrollment in both risk reduction and the clinical evaluation program for many of their clients facing repeat offense DUI charges.[6]

The Legal Department of DDS, in consultation with the Attorney General's Office, has determined that the earlier eligibility language will apply to drivers *who are already under a suspension* imposed for a second DUI conviction prior to Jan. 1, 2013. This means that a person whose conviction is entered prior to the effective date of the new law, Jan. 1, 2013, will receive credit for the mandatory days of "hard suspension" required for all second DUI offenders within a five year period under the new legislation. So, a driver whose conviction is entered 120 days prior to Jan. 1, 2013, and who otherwise qualifies for issuance of the limited driving permit, may be eligible to receive the limited permit on Jan. 1 (or as soon as DDS offices are open after the holiday). This eligibility, however, will be facilitated greatly by the convicted person completing the necessary prerequisites to facilitate issuance of an interlock permit after Jan. 1, 2013.

Limited Permit Uses

Section 5 of SB 236 also modifies the purposes for which all limited driving permits may be used. *Currently*, O.C.G.A. § 40-5-64(c) restricts the permissible uses of permits to the following:

- Going to his or her place of employment or performing the normal duties of his or her occupation;
- Receiving scheduled medical care or obtaining prescription drugs;
- Attending a college or school at which he or she is regularly enrolled as a student;
- Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; or
- Attending under court order any driver education or improvement school or alcohol or drug program or course approved by the court which entered the judgment of conviction resulting in suspension of his or her driver's license or by the commissioner.

For more than a decade, many affected drivers, their legal counsel and many judges have complained about the extreme restrictions imposed by Georgia law for the limited permits, in light of the mobility of today's society, the limited availability of public transportation outside major metropolitan areas, and the need for so many citizens to drive to and from certain critical court-related and family matters. These severe limitations on driving currently include being allowed to drive to fulfill conditions of probation related to their underlying DUI sentences, such as reporting to probation officers, performing community service obligations and making visits to the ignition interlock device provider for monthly data downloads or installation maintenance.

These "practical" concerns were taken into consideration in the drafting of SB 236 and will result in significant increases to the permissible uses of all limited driving permits, effective Jan. 1, 2013, and after.[7] *The new language* allows limited driving permits to include *any or all* of the following restrictions:

- Going to his or her place of employment;
- Receiving scheduled medical care or obtaining prescription drugs;
- Attending a college or school at which he or she is regularly enrolled as a student;
- Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner;
- Attending under court order any driver education or improvement school or alcohol or drug program or course approved by the court which entered the judgment of conviction resulting in suspension of his or her driver's license or by the commissioner;
- Attending court, reporting to a probation office or officer, or performing community service; or
- Transporting an immediate family member who does not hold a valid driver's license to work, to school, for medical care or to procure prescription medications.

To answer a likely, common question about whether a convicted repeat DUI offender (or one who plans to enter a plea to DUI between now and Jan. 1, 2013) can perform all of the minimum mandatory screening requirements, the answer is "yes." For example, in South Carolina, the ADSAP program cannot be started or completed without a judge's order prior to enrolling.

Representatives from the National Highway Transportation Safety Administration (NHTSA) requested the deletion of the verbiage under prior law[8] relating to travel for purposes related to employment. The NHTSA expressed concern that the inclusion of that language took the state of Georgia out of compliance with 23 U.S.C. § 164 relating to the federally mandated consequences for drivers convicted of multiple DUI offenses. Noncompliance with this federal statute could cost Georgia federal highway funds, simply by not making this aspect of Georgia's DUI laws compliant with federal mandate.

Language relating specifically to the permissible restrictions on ignition interlock limited driving permits for second and subsequent

repeat DUI offenders was added as O.C.G.A. § 40-5-64(c.1)(2) and include the following Jan. 1, 2013, and after:

- Going to his or her place of employment;
- Attending a college or school at which he or she is regularly enrolled as a student;
- Attending regularly scheduled sessions or meetings of treatment support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; and
- Going for monthly monitoring visits with the permit holder's ignition interlock device service provider.

Significantly, neither the old law nor the new law permits driving to and from religious services. Other states allow restricted driving privileges for such purposes.

Parental ADAP and Driver's Education for Military Dependents

Two provisions that were not included in early drafts of SB 236 were incorporated as the legislation made its way through the Capitol. These include a mandate added to O.C.G.A. § 20-2-142 for the creation of a component of the Alcohol and Drug Awareness Program, known as ADAP, which is required for teens seeking issuance of a first license.[9] Typically completed in ninth grade health classes, ADAP is regulated by the Georgia DDS. The DDS also offers the course online for children who are home-schooled or otherwise unable to complete it at school.[10]

The new parental "supervision" component of this law is not mandatory for all drivers. Current law provides that the teen driver who seeks a Class D license prior to his or her 17th birthday must complete at least 40 hours of supervised driving with a "learner's permit." This training must include not fewer than six hours of supervised driving at night. However, parents who complete the parental "provision" program for a teen driver are now eligible for a free copy of their driving history under O.C.G.A. § 40-5-25, as amended.

Additionally, language was added to allow for dependents of military personnel *who are stationed in Georgia* to satisfy the driver's education requirements of Joshua's Law found in O.C.G.A. § 40-5-22(a.2)(2) (relating to utilizing a licensed driver's education program *in their previous state of domicile*). However, to receive "credit" in Georgia, such a program from another state must be completed prior to the dependent's relocation to Georgia.

Practical Considerations for DUI Defense Attorneys

For the seasoned DUI practitioner, the changes in Georgia law are a welcome addition to our licensing laws. Most changes are common sense modifications that enhance and encourage a problem driver's rehabilitation prospects. Practitioners also must be aware, however, of several areas of concern. Judges may refuse to grant interlock permits, because the issuance is now discretionary with the sentencing court. There is an impact on sales representatives who are repeat offenders, who *must* drive from customer location to customer location to stay employed. Under the changes that seem to limit traveling to and from sales locations, these new rules could end the employment of thousands of workers. The new law took away a portion of prior law that addressed sales jobs by deleting the provision that allows driving when "performing the normal duties of his or her occupation." Lastly, the availability of DUI Court programs across the state has been limited to major metropolitan areas. These programs will be needed across Georgia to offer this program to all repeat DUI offenders. GBJ

Jennifer G. Ammons is general counsel for Georgia DDS, and a 1994 graduate of the University of Georgia School of Law.

William C. Head is senior partner of Head, Thomas, Webb & Willis, LLC, and is a 1976 graduate of the University of Georgia School of Law.

Endnotes

1. S.B. 236, 151st Gen. Assem., Reg. Sess. (Ga. 2012).
2. Driver's license suspensions for teens under age sixteen at the time of a DUI conviction fall under O.C.G.A. § 40-5-22.1 rather than O.C.G.A. § 40-5-57.1.
3. As with all other suspensions and revocations imposed by the DDS, the calculation of the driver's license consequence is based upon the number of prior offenses using the incident dates.
4. *See generally* S.B. 236, 151st Gen. Assem., Reg. Sess., § 7 (Ga. 2012).
5. *Id.*
6. Information about approved evaluation and treatment providers can be found on the DUI Intervention Program's website, www.mop.uga.edu, which can also be reached via the DDS's website, www.dds.ga.gov.
7. The revised language impacts permits issued for suspensions imposed pursuant to O.C.G.A. §§ 40-5-22(a.1)(2), 40-5-57.1 (4-point speeding tickets only), 40-5-57(d), 40-5-63(a)(1), 40-5-67.2, and 40-5-75 in addition to those imposed under O.C.G.A. §§ 40-5-57.1 or 40-5-63 due to a DUI conviction.
8. O.C.G.A. § 40-5-64(c)(1) (2012).
9. O.C.G.A. § 20-2-142(b) (2012).
10. Georgia Department of Driver Services, *eADAP Enrollment Form*, https://online.dds.ga.gov/eADAP/pdf/eADAP_Enrollment_Form.pdf.

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Technology Makes It All Possible

by John T. Longino

Original illustration from Longino's 1987 article in the *Miami Review*.

In August 1987, the president of The Florida Bar wrote an article in that month's issue of The *Florida Bar Journal* about the pending demise of the small law firm, alleging that economies of scale would drive small firms out of business. A year earlier, I had left my position in one of the early mega-firms and had opened my own firm as a solo practitioner. So, I saw things differently and wrote an article in September 1987—which The *Florida Bar Journal* declined to publish—for the Oct. 7, 1987, issue of the *Miami Review*, which proposed that the technology now known as the Internet would so revolutionize law practice as to make the large firms at an economic disadvantage.

In 1987, the term "Internet" was not widely in use, so I wrote using the name "Compuserve" which was a predecessor to AOL that was the GUI interface for the Internet. The World Wide Web had not yet been invented. There were no ISPs. There were no digital communications. Emails were unheard of in business communications. A basic fax machine cost more than $3,000. Typical hard drives were 20 MB. Not GB: MB. Color computer monitors were not available commercially. The best "Lap computers" commercially available ran the 80286 chip, weighed in excess of 12 pounds, and were *slow* in today's terms. My modem ran at a glacial 300 bits per second: an 8.5x11" page of plain text every 30 minutes or so. Even file names were limited to 8 characters followed by a 3 character extension. Texting? Search? Google? Social Media? Wi-fi? Cloud? All of these were far, far in the future. *(See excerpts from the original article.)*

From there we have come a long way. Some of the developments that have brought about rapid change in the availability of technological alternatives to labor intensive law practices include such seemingly obvious developments as Quickbooks. Before QB, attorneys had an accounting system and a separate time slip system (either paper or electronic but duplicative and never synched nor up to date). E-fax transformed document retention and saved the cost of a "land line" (for new attorneys, land lines were telephones that were physically connected to a location—I know, it seems strange, but that is how it was even into the 21st century in some older firms). External hard drives facilitated backup of digitally stored files and then, more recently, the Cloud has made even them obsolete. Attorneys without smartphones are today as rare as attorneys without briefcases were when I started practicing law in 1976, but most attorneys still use them mostly for talking and a few emails, eschewing their great capacities. I

Solo Practice Goes Online

Excerpted from the Oct. 7, 1987, issue of the *Miami Review,* by John T. Longino

In this article I will discuss my experience in opening a solo office, and how I have used computers to increase the efficiency, competitiveness, profitability, and fun of practicing law. *** I planned to compete with the big downtown firms for the legal work of first and second generation entrepreneurial manufacturing and service businesses and lending institutions. *** I have been able to compete in the area I chose, and I have been able to recruit and keep the kind of people who make this possible. Much of the underlying explanation for that is the sophistication of the office's computer system. *** I told [my computer consultant] that I wanted to put a terminal on each employee's desk, to have the system directly handle time records, calendar, bookkeeping, billing, taxes, etc. In other words, I wanted a machine to do repetitive tasks so that the people working here would not be swamped with drudgery but could use their minds to make this business work. *** It is the supplier of service, not the manufacturer of hardware, that makes the system work. I have five terminals, each of which has direct access to the entire system, except for confidential records – which are password protected. My telephone system requires input of a client code for any long-distance calls. *** The same system applies to copy charges. *** We [connected] the telephone system to the telecopier machine to the computer, so that documents can be "faxed" without the need for a hard copy and, more importantly, so that the fax can also serve as an optical character reader instantly eliminating the need for re-typing documents provided by other counsel. *** The modem (300/1200/2400 baud, the speed of transmission) allows my staff and me direct access to [the Internet] (a massive general information source), CBI credit and financial reports, as well as the records of the Secretary of State of Florida. I am told that Dade County public records will soon be on-line as well. *** Perhaps nothing is more significant in the operation of the office day-to-day than the fact that we have no time slips – none at all. Billing employees enter all time directly into their terminals. *** At the end of the month, a button is pushed and the computer generates, on the screen, a bill for all clients, with a separate bill for each matter handled, and with a narrative entered at the time the work is done. *** When a client wants to know about a recent document (within the last six to nine months) I can access the document on my screen… and can answer questions without searching madly for a file that my law clerk or paralegal has. The billing system also keeps on-line for me a calendar by matter …and with billing and general ledger tied together, I can get a complete performance report on any client or employee at the touch of a button. *** My most recent addition is a portable lap computer ($500) which has a built-in modem and which allows direct access to the main computer from any telephone in the world. I am tying that in with a hand-held portable telephone …. From any cellular area in America (and there are hundreds) I can tie in to my computer out of my briefcase … without the need for an electrical outlet or even a telephone line.

Today, speed and capacity of computers is no longer a constraining factor so that large, heavy, cumbersome computers need not be lugged around. Accessibility is the issue of the future.

receive client files by email or ftp, do most of the work myself, e-bill and earn an acceptable living while working a very acceptable number of hours, often only using my Droid.

One of my favorite photos was taken by my wife in 2007. We were in Cork Ireland in the St. Patrick's Day parade. I was even wearing a green wig. A client in Georgia sent me a text message that needed an immediate response. I stepped out of the parade to answer and send back to my billing computer the time charge. She snapped me leaning up against a burger stand, intently answering a question on corporate liability for third party acts. Within three minutes I was back in the parade, the question answered, billed and the fun restored. Technology makes this possible.

So, where are we now and where are we headed? Mega business will still hire mega law firms because the choice is safe. If ever we find our mega businesses hiring based on efficiencies and capacities, the large firms will be truly on their last legs. Today, I doubt that tablets will overcome laptop computers for business use: the typing on virtual keyboards is too hard to master. But eventually, a new sort of virtual keyboard will be in common use.

Today, speed and capacity of computers is no longer a constraining factor so that large, heavy, cumbersome computers need not be lugged around. Accessibility is the issue of the future. Wearable computers. Will computers regularly project images on the inside of one of our eyeglass lenses? Probably not until cars drive themselves. But in the near term, we can expect that Bluetooth linked laser projected keyboards will come into frequent use (they are already available and are the size of a pack of gum) and built-in projectors on smart phones will also gain great popularity in business applications. The reason is that smartphones now are coming to the speed and capacity where they can be the principle office computer, linked to the Cloud for storage. Already I generate documents on my 64 GB Droid and email them to the nearest printer for pickup. My kids will recall fondly the day where we had printers physically attached to our computers, sort of like I recall fondly rotary telephones.

In 1974 when I was getting my M.B.A., I heard a professor say that in the near future, businesses' single greatest asset would be intellectual property, not inventory. The idea intrigued me. In 1984, I heard Bill Gates say that every home soon would have a computer. I was skeptical but sought to imagine what could be done with such a machine. Three years later the two lessons merged, and I wrote that *Miami Review* article. Today, as I sit here in the anteroom to my bedroom, typing on a laptop, looking out on our lake, listening only to the sounds of the clicking of my keyboard and the chirping of the birds, I remember why it was that I undertook a radical transformation to working for life rather than living for work. Technology enabled it for me, as it can for you. Just imagine. . . . GBJ

Longino answering a client's text message in Cork Ireland in the St. Patrick's Day parade.

John T. Longino is the third attorney in his family in an unbroken line of lawyers in North Georgia extending back to 1876. From 1983–1990, Longino practiced law in Miami before returning to Ellijay. In 1990, Longino closed his practice in Miami and moved back to North Georgia, running a law practice from his home 15 miles northwest of Ellijay on the edge of the Cohutta Wilderness, using the technology previewed in the 1987 article. In 1994, Longino went staff-less. On Jan. 1, 2000, Longino went paperless. In September 2006, Longino sold his home and went location-less, practicing law using only a portable scanner, printer, cell phone and laptop. In this article, John has done as he did a quarter century ago, address where the small firm practice technology is now and where he foresees it being in the near future. In February 2013, for two months, Longino will temporarily relocate his law practice from somewhere in north Georgia to a 19th Century apartment in the 10th Arrondisement in Paris, France.














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Something New Under Georgia's Sun:

The Georgia Taxpayer Protection False Claims Act

by Lee Tarte Wallace

In the waning days of this year's legislative session, the Georgia Legislature took an exceedingly rare step: it established a brand new cause of action. The Georgia Taxpayer Protection False Claims Act (the Georgia TPFCA)[1] introduced a new false claims act,[2] and also strengthened the State False Medicaid Claims Act of 2007.[3]

Before Gov. Nathan Deal signed the bill on April 16, 2012, Georgia had a lackluster false claims act that addressed only Medicaid fraud. Today, Georgia stands poised to join a small group of states that have recovered hundreds of millions of dollars taken from them by fraud. Under the Georgia TPFCA, the state or a local government can recover treble damages, attorneys' fees, expenses and costs, as well as civil penalties for each false or fraudulent claim. To encourage whistleblowers to come forward, the Georgia TPFCA has a qui tam provision that allows private persons (called relators) to get the permission of the attorney general of Georgia to sue on the state's or a local government's behalf, and to collect a percentage of whatever the state or local government recovers, as well as their own attorneys' fees, expenses and costs. If a person faces retaliation in his job because he is trying to prevent fraud against the state or a local government, then the new Georgia TPFCA also provides for double back pay, damages and attorneys' fees.

Why the Georgia TPFCA was Passed

In 2008, Georgia stuck a toe in the false claims water when it passed the State Medicaid False Claims Act. As the title suggests, that Act addressed only Medicaid fraud; Georgia had no law that rewarded or protected the jobs of whistleblowers who reported other types of fraud against the state or a local government.

Though its first step was small, Georgia took even that step only after a strong push from the federal government. The federal and state governments jointly fund the Medicaid program, and each is entitled to recover its part in a case involving Medicaid fraud. To encourage states to participate in these lawsuits, Congress passed 42 U.S.C. 1396h. Under that statute, if a state passed a Medicaid false claims act that "was at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims" as the Federal False Claims Act, then the federal government would voluntarily reduce its recovery by 10 percent to give the state an extra share. Georgia joined half-heartedly, doing the bare minimum to recover the additional 10 percent.

By 2012, however, Georgia had two reasons to pass a broader, stronger false claims act. First, Congress had amended the Federal False Claims Act three times in less than two years: in 2009 in the Fraud Enforcement and Recovery Act (FERA),[4] in March 2010 through the Patient Protection and Affordable Care Act,[5] and again in July 2010 via the Dodd-Frank Wall Street Reform and Consumer Protection Act.[6] As a result of these amendments, the Office of Inspector General (OIG) determined that the states' Medicaid false claims act laws were no longer "as effective in rewarding and facilitating qui tam actions" as the amended federal law. The OIG gave states until March 31, 2013, to amend their statutes or face losing the 10 percent bonus.[7]

Second, in an interview for this article, one of the sponsors of the Georgia TPFCA legislation, Rep. Edward Lindsey (R-Atlanta), noted that Georgia was missing out on potential recoveries for other types of fraud against the state and local governments. "Other states, such as Texas, have recovered literally hundreds of millions of dollars as a result of having a false claims act that covered all aspects of state and local government operations," he said. According to Lindsey, the state of Georgia has experienced a good return on investment with the Medicaid False Claims Act that was enacted back in 2008: "Last year, in just dealing with Medicare and Medicaid fraud, the state of Georgia spent approximately $4 million prosecuting Medicaid false claims and recovered $16 million."

The bill introducing the Georgia TPFCA legislation was sponsored by a bipartisan group drawn almost entirely from the dwindling number of lawyers in the Georgia Legislature: House Majority Whip Edward Lindsey; and State Representatives Roger Lane (R–Darien); Alex Atwood (R–Brunswick); and Mary Margaret Oliver (D–Decatur); along with Matt Dollar

(R–Marietta). The five accomplished a feat generally reserved for commendations honoring notable Georgia citizens: their bill passed by a stunning, unanimous vote in both the House and the Senate.

Interpretation of the New Law

Like a pristine landscape of newly fallen snow, the Georgia TPFCA is unmarked by a single case. Lindsey said that Georgia's new Act is "tailored after the Federal False Claims Act." Logically, then, Georgia's courts will look for guidance in the cases interpreting the Federal False Claim Act.

The Elements of a Claim Under the Georgia TPFCA

The Georgia TPFCA sets out several criteria for a false claims act case: false or fraudulent claim or conduct; made knowingly; impact on the state government or local government; and the conduct has not been publicly disclosed *or* the relator is an original source.

False or Fraudulent Claim or Conduct

The statute addresses seven types of false claims or conduct.

The defendant "[k]nowingly presents or causes to be presented a false or fraudulent claim for payment or approval."[8]

This provision is the most direct one in the Georgia TPFCA, addressing situations in which the defendant directly presents a false claim to be paid for it. If the federal law proves any guide, then the vast majority of Georgia TPFCA cases will be brought under this particular category.

The defendant "[k]nowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim."[9]

Subsection (2) addresses situations in which the false statement is separated from the claim, but the claim is only paid because of the false statement. For example, a highway contractor might agree to use certain ingredients in mixing asphalt. If the contractor cuts corners and uses cheaper ingredients, and perhaps even falsifies invoices to suggest it had purchased the correct items, then its claim for payment is based on a false statement.

Subsection (2) has special proof requirements. To establish a claim under (2), the relator or the state or local government must show that the false record or statement is "material" to the false claim. The statute defines "material" as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."[10] At the same time, the state or local government and/or the relator do not have to prove that the claim was presented for payment or approval. In *Allison Engine Co. v. United States ex rel. Sanders*, the Supreme Court noted that: "the concept of presentment is not mentioned in [the federal counterpart,] § 3729(a)(2). The inclusion of an express presentment requirement in subsection (a)(1), combined with the absence of anything similar in subsection (a)(2), suggests that Congress did not intend to include a presentment requirement in subsection (a)(2)."[11]

The defendant "[c]onspires to commit a violation of paragraph (1), (2), (4), (5), (6), or (7) of this subsection."[12]

This provision wraps around the other six subsections, and enfolds defendants who were involved in the scheme, if not directly in the fraudulent representations.

Neither the federal statute nor the Georgia TPFCA defines "conspiracy." Lacking any statutory guidance, the Seventh Circuit concluded that: "general civil conspiracy principles apply."[13] The Fifth Circuit has stated that proof of "conspiracy" requires evidence of: "(1) the existence of an unlawful agreement between defendants to get a false or fraudulent claim allowed or paid by [the Government] and (2) at least one act performed in furtherance of that agreement."[14]

The defendant "[h]as possession, custody, or control of property or money used, or to be used, by the state or local government and knowingly delivers, or causes to be delivered, less than all of that money or property."[15]

Subsection (4) is aimed at situations in which, for example, a delivery driver picks up 10 desks headed for a local school, but keeps two and delivers only eight. In federal cases, this provision has been used not only in cases in which a defendant delivered fewer goods than its contract called for, but also when a defendant delivered inferior goods that did not meet the standard agreed upon in the contract.

Prior to the 2009 amendments, the federal provision read: The defendant "has possession, custody, or control of property or money used, or to be used, by the government *and, intending to defraud the government or willfully to conceal the property,* delivers, or causes to be delivered, less than all of that money or property."[16] In 2009, FERA eliminated the italicized language and substituted the word "knowingly," and the Georgia TPFCA tracks those changes.

The defendant "[b]eing authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or local government and, intending to defraud the state or local government, makes or delivers the receipt without completely knowing that the information on the receipt is true."[17]

Under the Federal False Claims Act, this provision has remained virtually unused. Presumptively this section would cover situations in which a contractor decides—for whatever reason—to look the other way as subcontractors deliver fewer goods than they are being paid to provide.

The defendant "[k]nowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or local government who lawfully may not sell or pledge the property."[18]

As with subsections (4) and (5), subsection (6) under the Federal False Claims Act that is comparable to the Georgia TPFCA has been used only rarely. Two federal courts that did address this subsection rephrased it in simpler terms, saying it addresses the: "unauthorized purchase of government property."[19]

The defendant "[k]nowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or local government, or knowingly conceals, knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the state or a local government."[20]

The federal government added the second phrase "knowingly conceals, knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government"[21] in the 2009 FERA Amendments. Georgia's TPFCA incorporates these changes. This provision has been referred to as a "reverse false claim" "because liability results from avoiding the payment of money due to the government, as opposed to submitting to the government a false claim."[22] Citing *Allison Engine*, the 11th Circuit ruled that: "[p]resentment is not an element in a cause of action under § 3729(a)(7)."[23]

The Claim was Presented to the State or a Local Government *or* is Related to Money or Property to Be Used on the Government's Behalf or to Advance a Government Program or Interest

The defendant is not liable unless it presented the false claim to the state or local government, or knew that the money was to be used on the government's behalf or "to advance a state or local government program or interest."[24]

Before 2009, the Federal False Claims Act required that a false claim be knowingly presented "to an officer or employee of the U.S. government or a member of the Armed Forces of the United States."[25] In 2008, in *Allison Engine*, the Supreme Court ruled that a subcontractor could not be held liable for making a false claim to a contractor, even if it knew the government ultimately would pay the claim.[26] The Court explained: "a request or demand may constitute a 'claim' even if the request is not made directly to the [federal] government, but under § 3729(a)(2) it is still necessary for the defendant to intend that a claim be 'paid . . . by the [federal] government' and not by another entity."[27]

Congress responded swiftly and amended the Federal False Claims Act in 2009 to eliminate the phrase "to an officer or employee of the U.S. government or a member of the Armed Forces of the United States." Congress also defined claim to include a request for money or property "if the money or property is to be spent or used on the [federal] government's behalf or to advance a [federal] government program or interest." Georgia's new TPFCA incorporates both of these amendments.

The Defendant Acted Knowingly

For all seven of the provisions, the defendant is liable only if it acted "knowingly."[28] The Georgia TPFCA defines "knowing" and "knowingly" as "requir[ing] no proof of specific intent to defraud."[29] A person acts knowingly when he or she "has actual knowledge of the information"; "acts in deliberate ignorance of [its] truth or falsity"; or "[a]cts in reckless disregard of its truth or falsity."[30]

The Allegations Have Not Been Publicly Disclosed or the Relator is an Original Source

The action cannot be based on allegations that are already "the subject of a civil or administrative proceeding to which the state of Georgia is already party"[31] or that are "substantially similar" to allegations or transactions that have been "publicly disclosed" "in a state criminal civil, or administrative hearing in which the state or local government or its agent is a party"[32] or "in a state or local government legislative or other state or local government report, hearing, audit, or investigation that is made on the public record or disseminated broadly to the general public,"[33] unless "the person bringing the action is an original source of the information."[34]

The Elements of a Claim for Retaliation

Recognizing that whistleblowers may be concerned that they will lose their jobs if they report fraud, the Georgia TPFCA makes it illegal to retaliate against a whistleblower. Under the Georgia TPFCA, an employee, contractor or agent may not be "discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of a civil action under this Code section or other efforts to stop one or more violations of this article."[35]

If a defendant does retaliate against the employee, contractor or agent, then such employee, contractor or agent has three years to sue[36] for "reinstatement with the same seniority status [he] would have had but for the discrimination, two times the back pay [he has lost], interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees."[37]

Damages Under the New Georgia TPFCA

The state of Georgia is entitled to a "civil penalty of not less than $5,500 and not more than $11,000 for each false or fraudulent claim, plus three times the amount of damages which the state or local government sustains because of the act of such person."[38]

A defendant can reduce the damages if it: (1) provides "officials of the state or local government responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information";[39] (2) cooperates "with any government investigation of such violation";[40] and if (3) "no criminal prosecution, civil action, or administrative action had commenced at the time the defendant reported the fraud, and the defendant "did not have actual knowledge" of an ongoing investigation into the matter.[41] When a defendant has self-reported, "the court may assess not more than two times the amount of the actual damages."[42]

The relator is entitled to a share of "the proceeds of the civil action or settlement of the claim."[43] If the state or local government chooses to intervene in the case, then the relator is entitled to a 15 percent to 25 percent share, "depending

upon the extent to which the person substantially contributed to the prosecution of the civil action."[44] In contrast, if the state or local government chooses not to intervene, then the relator is entitled to between 25 percent and 30 percent of the proceeds of the action.[45] The court can reduce these percentages if the relator "planned and initiated the violation" or "is convicted of criminal conduct" for his or her role in violating the statute.[46]

Conclusion

The Legislature passed the Georgia TPFCA in an attempt to reduce the loss of taxpayer dollars to fraud. Although the impact of Georgia's new law will not be known for years, the federal law has generated enormous financial recoveries for the United States. According to the Department of Justice, between Oct. 1, 1987, and Sept. 30, 2011, the federal government recovered $21,019,560,124 in False Claims Act/qui tam cases.[47] In fiscal year 2011 alone, the United States recovered $2,788,023,938.[48] If Georgia's law leads to recoveries of even a small fraction of those amounts, then the Georgia TPFCA will have an enormous impact on the state's and local governments' flagging finances. GBJ

Lee Tarte Wallace represents whistleblowers reporting fraud against the government, and also handles plaintiffs'-side catastrophic injury and product liability cases. She graduated first in her class at Vanderbilt University, and was an honors graduate of Harvard Law School. After clerking on the U.S. 11th Circuit Court of Appeals, she began practice in Atlanta. Wallace has been practicing more than 20 years, and in that time has worked on matters in 20 different states. She is a past president of the Georgia Association for Women Lawyers and is past chair of the Product Liability Section of the State Bar of Georgia. Wallace has been named a "Georgia SuperLawyer" every year since the poll began, and has repeatedly been named one of the top 50 female lawyers and one of the top 10 product liability lawyers in Georgia. She can be reached at lee@thewallacelawfirm.com.

Endnotes

1. O.C.G.A. §§ 23-3-120 to 23-3-127 (2012).
2. Although 30 states have enacted false claims acts of some sort, nine of those statutes cover only Medicaid fraud, like Georgia's old act. Taxpayers Against Fraud, *State False Claims Acts (Sept. 18, 2012), available at* http://www.taf.org/states-false-claims-acts. Of the remaining 21 states, almost none have amended their acts to match the changes to the federal statute in 2009 and 2010. The Office of Inspector General for the U.S. Department of Health & Human Services has given previously-approved states "a 2-year grace period, ending on March 31, 2013, during which state acts that were previously approved by OIG will continue to be deemed compliant pending state act amendment and resubmission to OIG." U.S. Dept. Health Hum. Services, Off. Insp. Gen., *State False Claims Act Reviews (Sept. 18, 2012), available at http://oig.hhs.gov/fraud/state-false-claims-act-reviews.*
3. O.C.G.A. §§ 49-4-168 to 49.4-168.6 (2012).
4. Fraud Enforcement and Recovery Act of 2009, Pub. L. 111-21, 123 Stat 1617 (codified as amended in scattered sections of 18 and 31 U.S.C.).
5. Patient Protection and Affordable Care Act of 2010, Pub.L. 111-148, 124 Stat. 119 (codified as amended in scattered sections of the Internal Revenue Code and 42 U.S.C.).
6. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub.L. 111-203, scattered sections of 103, 104, 106, 114, 122, 123 and 124 Stat., (codified as amended in scattered sections of 2, 5, 7, 11, 12, 15, 16, 18, 19, 20, 22, 25, 26, 28, 29, 30, 31, 41, 42, 44, 49 and 112 U.S.C.).
7. *See* OIG State False Claims Act Reviews (Sept. 18, 2012), available at http://oig.hhs.gov/fraud/state-false-claims-act-reviews/index.asp.
8. O.C.G.A. § 23-3-121(a)(1) (2012).
9. *Id.* at § 23-3-121(a)(2).
10. *Id.* at § 23-3-120(4).
11. Allison Engine Co. v. U.S. ex rel. Sanders, 553 U.S. 662, 670 (2008).
12. O.C.G.A. § 23-3-121(a)(3) (2012).
13. U.S. ex rel. Durcholz v. FKW Inc., 189 F.3d 542, 545 (7th Cir. 1999).
14. U.S. ex rel. Grubbs v. Ravikumar Kanneganti, 565 F.3d 180, 193 (5th Cir. 2009).
15. O.C.G.A. § 23-3-121(a)(4) (2012).
16. 31 U.S.C. § 3729 (a)(4)(amended 2009).
17. O.C.G.A. § 23-3-121(a)(5) (2012).
18. *Id.* at § 23-3-121(a)(6).
19. Cafasso v. Gen. Dynamics C4 Sys., 637 F.3d 1047, 1055-1056 (9th Cir. 2011); Neighorn v. Quest Health Care, 2012 U.S. Dist. LEXIS 62288 (D. Or. May 2, 2012).
20. O.C.G.A. § 23-3-121(a)(7) (2012).
21. 31 U.S.C. § 3729(a)(1)(G) (2012).
22. United States ex rel. Matheny v. Medco Health Solutions, Inc., 671 F.3d 1217, 1222 (11th Cir. 2012).
23. United States v. Bourseau, 531 F.3d 1159, 1169 (9th Cir. 2008).
24. O.C.G.A. § 23-3-120(1) (2012).
25. 31 U.S.C. § 3729(a)(1) (amended 2009).
26. Allison Engine, 553 U.S. at 662.
27. *Id.* at 670.
28. O.C.G.A. § 23-3-121(a) (2012).
29. *Id.* at § 23-3-120(2).
30. *Id.*
31. *Id.* at § 23-3-122(j)(2).
32. *Id.* at § 23-3-122(j)(3)(A).
33. *Id.* at § 23-3-122(j)(3)(B).
34. *Id.* at § 23-3-122(j)(3)(C).
35. *Id.* at § 23-3-122(l)(1).
36. O.C.G.A. 23-3-122(l)(3) (2012).
37. *Id.* at § 23-3-122(l)(2).
38. *Id.* at § 23-3-121(a).
39. *Id.* at § 23-3-121(b)(1).
40. *Id.* at § 23-3-121(b)(2).
41. *Id.* at § 23-3-121(b)(3).
42. *Id.* at § 23-3-121(b).
43. *Id.* at § 23-3-122(h).
44. *Id.* at § 23-3-122(h)(1).
45. *Id.* at § 23-3-122(h)(2).
46. *Id.* at § 23-3-122(h)(3).
47. Dept. of Justice, *Fraud Statistics – Overview, October 1, 1987 – September 30, 2011*, (Dec. 7, 2011) *available at* http://www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_statistics.pdf.
48. *Id.*

From the Other Side of the Bench—A Brief is Called a Brief for a Reason

by Leah Ward Sears

During my 17 years of service on the Supreme Court of Georgia, I read thousands of briefs and heard hundreds of arguments. Now that I'm on the other side of the bench, as leader of Schiff Hardin's national appellate practice team, I try to apply what I learned as a judge to how I advocate before judges.

Length ≠ Effectiveness

A brief is called a brief for a reason. Judges know that, but only a few practicing lawyers seem to. A simple and elegant presentation will make your points seem obvious. Conversely, a dense and complicated brief might convey that you are struggling to justify your position.

Make Your Brief "Judge Friendly"

Good legal writing is the same as any other good writing. It's prose that attracts and keeps the reader's interest. Good writers always write for their readers, and for lawyers, the readers are the judges before whom they appear. Obviously, certain legal conventions must be followed, but resist the temptation we all have to emulate the grandiose language of long-gone judges or law professors.

You know your case—you have lived with it—but it's just one of a number of cases that come before the judge. Avoid using the jargon, shoptalk and acronyms associated with the case. I'm not suggesting you

"dumb it down;" rather, select a communication style that helps the court understand your case.

Wise Words Borrowed From My Cousin, Retired Justice John Charles Thomas of the Supreme Court of Virginia

Take a complex case that involves the constitution, federal statutes, state statutes, related regulations and cases from federal and state courts. You might describe

the dispute to a knowledgeable colleague as a Fourth Amendment taking problem complicated by a collision between a federal statute and its regulations and a state statute and its regulations in an area of law where the federal government had by express statutory terms given discretion to the several states to decide the question. You could include all the statutory, regulatory and case citations, creating a jaw-breaking description of the dispute. You might be completely accurate, but totally incomprehensible and ineffective.

Think about this: if you visited your parents, both of whom, let's just say, are very smart people (which judges also tend to be) and they asked about the case you were working on currently, you wouldn't whip out a brief and read them the above paragraph. You wouldn't be pedantic, because you would respect your parents' education and sophistication. Nor would you be disrespectful or condescending. What you would likely do is say something like this: "Mom, Dad, it involves a situation where the federal government claims the power to tell my client what to do, the state government claims the power to tell my client what to do, both governments are telling my client different things, and my client is caught in the middle and about to lose everything he has." Believe me. There's no reason to use convoluted language because you want to impress a judge with your legalese.

Consider This Briefing Checklist

- Don't use long, unwieldy sentences. They are exhausting to plow through! Simple, declarative sentences tend to be more persuasive, and they make life easier for the judge. She'll also be more inclined to pay closer attention when you actually need to use a complex sentence to make an important point.
- When editing your own work, experiment with trying to reduce the number of words you use to convey each of your points. The need to satisfy word or page limits will often force you to strive for economy in your language. Even if you have plenty of space, shorter is almost always better if you can be concise without sacrificing meaning or nuance.
- Paragraphs are your friends. I always found paragraph breaks in a brief to be good resting places for my eyes and my brain. Reading three solid pages of non-paragraphed sentences is a daunting task, so avoid it whenever possible.
- Use division, subdivision, sections and headlines. In my experience, it was very helpful to know, going in, what I was about to read. Sometimes, I would even find myself anticipating reading what the headline announced as a critical point.
- Avoid sympathetic or emotional appeals. Judges rule on the law and generally aren't persuaded by emotional appeals, such as the ones you make to a jury. Keep the tone of the brief professional.
- Avoid absolute declarations. Whether something is "always" or "never" true is not important; what's important is whether it's true in this case.
- Don't run the risk of the judge getting lost in the brief. Omit irrelevant details—they are distracting and send false clues about what's important. I consulted on an appeal recently where the draft brief was so heavy with irrelevant details that I couldn't find the key legal argument until the last few pages. As such, I almost missed it completely!
- Use the active voice unless there is a specific reason not to. It's easier to follow.
- Avoid using long, abstract words or legalisms like "hereinafter" and "aforementioned." No one uses those words in real life, and you shouldn't weigh down your brief with them.
- When it's necessary to shorten a name for repeated reference, develop easily understandable abbreviations that will stay with the judge. For example, unless a company is well known by its acronym (such as AT&T), try using an abbreviation that's a short form of the name (for example, Coke rather than CCC when referring to The Coca Cola Company). Also, try to use the parties' proper names or appropriate generic designations, which will help the judge appreciate what certain parties allegedly did or why certain parties are advancing certain arguments. For example, speak about the "employer" and the "union," or the "manufacturer" and the "supplier," instead of the "appellant" and the "appellee" or the "plaintiff" and the "defendant."
- Proofread. Proofread. Then, when you're done, proofread some more. It's disconcerting to find spelling or grammatical errors in an otherwise competent brief. When you do, you tend to question the competency of counsel as well as the argument. And it says—worst of all—that counsel never bothered to read the whole thing through but expects the judge to do so.

In sum, when writing a brief, always think of the overworked judge who must read hundreds of submissions. Make your masterpiece as short and clear as possible and a pleasure to read. Your judge will thank you for it. GBJ

Leah Ward Sears is a partner at the law firm of Schiff Hardin, LLP, where she is the leader of the firm's appellate client services team. She is also a former chief justice of the Supreme Court of Georgia.

The Committee to Promote Inclusion in the Profession

by Michelle Arrington

The Committee to Promote Inclusion in the Profession is committed to developing programs and initiatives designed to encourage, support and promote diversity in the legal profession in Georgia. The committee works toward the inclusion of lawyers who have been historically underrepresented and has worked feverously to initiate programs and events that highlight the diversity of the legal profession in Georgia. Two great events that have been held over the past year include a Bar Exam Workshop for law students from the five law schools in the state of Georgia and the Commitment to Equality Awards Ceremony.

Bar Exam Workshop for Georgia Law Students

The committee held a Bar Exam Workshop for law students in Georgia. The event was held at Sutherland and more than 50 students from Emory, Georgia State, the University of Georgia, Mercer and John Marshall attended the event designed to offer advice and tips on important topics and issues that they will face when preparing to take the bar exam. The panel of speakers included a judge, practicing attorneys and recent law graduates familiar with all aspects of the bar exam.

Photo by Michelle Arrington

Law students from Emory, Georgia State, the University of Georgia, Mercer and John Marshall attend the Bar Exam Workshop at Sutherland.

The workshop featured topics on the importance of candor on the character and fitness application, how to secure bar loans and funding while studying for the bar exam, choosing the right bar review course, the importance of time management and proper preparation and exam planning. The panel included Hon. Patsy Y. Porter, chief judge of the state court and former chair of the character and fitness board; Brian Basinger, King and Spalding; Shatorree Bates, Bates Law Firm, LLC; LaKeitha Daniel and Lisa Skinner, Lisa A. Skinner, P.C.

Commitment to Equality Awards Ceremony and Reception

The committee hosted the ninth annual Commitment to Equality Awards Ceremony and Reception in

February. These awards recognize the efforts of lawyers and legal employers who are committed to providing opportunities that foster a more diverse legal profession for members of underrepresented groups in Georgia. This year the Commitment to Equality Awards honored four well-deserving attorneys who truly represent the essence of diversity in the legal field, Harold Franklin Jr., Craig Fraser, Jessica Harper and S. Wade Malone.

Franklin is a partner with King & Spalding who practices in the firm's tort and environmental law practice group. He has served on the firm's hiring and diversity committees and has been recognized as a Rising Star and a Super Lawyer in *Georgia Super Lawyers*.

Fraser, the district attorney for the Dublin Judicial Circuit, was honored for recognizing the high crime rate for minority teenagers in the Dublin Judicial Circuit and implemented an educational pre-trial diversion program with the Oconee Fall Line Technical College. This program allows first-time offenders of nonviolent crimes to attend college and obtain a degree. Upon completion of the program, the criminal case is dismissed, enabling the juveniles in the program to enter a profession without a felon label.

Harper, a shareholder at Bodker, Ramsey, Andrews, Winograd & Wildstein, P.C., is very active in the legal community, serving as the chair of the Multi-Bar Leadership Council and on the boards of the Atlanta Bar Association's Women in the Profession Section, the Georgia Association for Women Lawyers and the South Asian Bar Association of Georgia. She also currently serves on the State Bar's Judicial Evaluation Committee. In 2011, Harper was named one of the Top 50 Female Georgia Super Lawyers and received the 2011 Women in the Profession Achievement Award.

Malone, a partner at Nelson Mullins Riley & Scarborough LLP, practices in the areas of business litigation and product liability defense. Malone is a past president of the Atlanta Bar Association and has served on the boards of directors of the Atlanta Bar Foundation, the Atlanta Legal Aid Society (past president), the Atlanta Volunteer Lawyers Foundation and Kids In Need of Dreams, Inc. He is also a past president of the Atlanta Legal Aid Society. In 2005, he was selected by the judges of the U.S. District Court for the Northern District of Georgia to serve on the Northern District of Georgia's 10-lawyer Bar Council. He has been selected by his peers as a Georgia Super Lawyer in Business Litigation for the years 2003-11, inclusive. Malone has also been selected by *Georgia Trend* as a member of their Legal Elite in Business Litigation.

The committee is excited to continue to bring programs and events and implement initiatives that will create growth and diversity in the legal profession. GBJ

Michelle Arrington is a staff attorney for Hon. Chief Judge Patsy Y. Porter in the State Court of Fulton County. She is co-chair of the Committee to Promote Inclusion in the Profession for the State Bar, along with Javoyne Hicks White.

Photo by Stephanie J. Wilson

(Left to right) 2012 Commitment to Equility Award recipients Harold Franklin Jr., S. Wade Malone, Jessica Harper and Craig Fraser.

Photo by Michelle Arrington

Hon. Patsy Y. Porter speaks to Georgia law school students during the Bar Exam Workshop.

Encounter with the Nations' Response to Genocide

by Judge Dorothy Toth Beasley

"We wish to inform you that we have heard that tomorrow we will be killed with our families." So wrote seven Seventh Day Adventist Tutsi pastors to the senior pastor of their church on April 15, 1994, still hoping, in vain, to be saved from slaughter in the Mugonero massacre in Rwanda which engulfed them. They were among the 800,000 to 1 million Tutsi and Hutu sympathizers murdered, raped, mutilated and tortured in the East African country of Rwanda in 100 days beginning on April 7, 1994. The plane of Rwandan president Juvénal Habyarimana, a Hutu, had been shot down on the night of April 6.

At once the genocide began, fomented by the government, aided by radio (RTLM) and newspapers (*Kangura*), the Rwandan army (FAR), the police force (gendarmerie), the Interahamwe (a youth movement within Habyarimana's MRND party), and citizens, forced or not, into a frenzy based on hatred and fear. The prime minister and her 10 Belgian bodyguards were among the first victims, brutalized and shot.

The monumental crime spree continued until the RPF (Rwandese Patriotic Front), an anti-Habyarimana political organization dedicated to the return of Tutsi exiles to Rwanda, with its guerrilla military force, the RPA (Rwandese Patriotic Army), eventually gained control of the capital of Kigali. Gen. Paul Kagame, leader of the RPF, became president of Rwanda in 2000, and is still in office.

What Led to the Creation of the ICTR?

The history of Rwanda from colonial times led to the genocide and was not the first bloodletting in that small country. However, the 1993 Arusha Accords were supposed to have ended civil war between the majority Hutus and the minority Tutsis. Implementation was to be assisted by a small force of United Nations (UN) peacekeepers, who were not permitted to use

Photos provided by Judge Dorothy Toth Beasley

Pictured above is a site visit to Rwanda to see massacre locations in the Gatete case. (Middle) Judge Dorothy Toth Beasley with judges, staff attorneys and prosecution and defense attorneys.

force unless attacked directly. Sadly, when the peace process dragged on and killings were ignited by the plane crash, the nations of the world were not interested enough to send adequate blue-helmet troops to stop the carnage, even after the killings became widespread. Maj. Gen. Roméo Dallaire of Canada, the commander of UN Assistance Mission in Rwanda (UNAMIR), repeatedly advised the Secretary General of the UN of the horror in progress, and the governments of the world were briefed. The UN never adopted Dallaire's plan for "an emergency international intervention of 5,500 troops to stop the slaughter."

Instead, on Nov. 8, 1994, months after the decimation, the UN finally created by Resolution 955 the International Criminal Tribunal for Rwanda (ICTR), prompted largely by a sense of guilt and remorse. This resolution was passed only after reports to the Secretary General by the UN Commission on Human Rights' Special Rapporteur for Rwanda and by the Security Council's Commission of Experts. The Security Council determined that what had occurred continued "to constitute a threat to international peace and security," which the situation under Chapter VII of the UN Charter authorized action by that organization. The Security Council also was moved to end such crimes and to "bring to justice" those responsible, ending a climate of impunity in Rwanda. The Security Council was convinced that this would also "contribute to the process of national reconciliation and to the restoration and maintenance of peace." It was reasoned that there could be no reconciliation without justice. And without reconciliation there would remain a "threat to international peace and security."

The temporary government of Rwanda, recognizing that it did not have the proper means to undertake the prosecution of persons responsible, particularly on the highest levels, had requested that the UN establish such a tribunal. The great majority of Rwanda's legal professionals had been killed or had themselves become killers, and the courts were not functional. The resolution expressed "grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law" had been committed.

A Georgia Senior Judge's Involvement

In August 2010, I went to Arusha, Tanzania, under the sponsorship of the International Senior Lawyers Project of New York, which had received a request for assistance in Chambers from the ICTR. By a stroke of luck I was able to meet in advance with the judge to whose panel I was assigned, Judge Khalida Rashid Khan of Pakistan. We shared an hour in Schiphol Airport in Amsterdam to further discuss my assignment (we had

"It was overwhelming to see the churches and the fields where the crimes were carried out, the houses where witnesses or victims lived, the places where planning meetings occurred or killers assembled."

earlier spoken by phone), as we were both changing planes there, I on to Arusha and Khan on to Canada. I went as a volunteer senior legal researcher and worked for four months with the panel of three judges and the three legal officers and one intern assigned to the case against Jean-Baptiste Gatete.

Gatete was a director in the Rwandan Ministry of Women and Family Affairs in Kigali when the genocide started in April 1994, but previously had been bourgmestre (mayor) of Murambi Commune, a member of the National Congress of the Hutu extremist MRND party and president of the MRND in Murambi Commune. He still exerted much influence in his home territory. He was charged with six counts: genocide, or in the alternative, complicity in genocide; conspiracy to commit genocide; and the crimes against humanity of extermination, murder and rape.

Gatete was arrested in the Democratic Republic of the Congo in September 2002 and transferred to Arusha. His trial was held from October 2009 to March 2010. Twenty-two witnesses were called by the prosecutor and 27 by the defense. Still to transpire upon my arrival in Arusha were the site visit, closing arguments, the private meetings of the judges on the panel to deliberate, the preparation of the judgment and, if there was a conviction, imposition of sentence. The judges were Presiding Judge Khan, who later became president of the Tribunal and is now on the Appeals Chamber, joined by Judge Lee Gacuiga Muthoga of Kenya and Judge Aydin Akay of Turkey.

Although I was not an employee of the UN, I received special permission to fly to Rwanda and participate in the site visit in October. Leaving each day out into the "country of a thousand hills" from the ICTR offices in Kigali, the capital of Rwanda, a convoy of UN vehicles with drivers and security personnel took the three judges, the lead prosecutor and lead defense counsel and one each of their respective teams, and two of the chambers' legal officers plus me. Food and drink had to be taken along, as there were no places for such provisions along the way. The locations of the alleged crimes were viewed and compared with testimony and exhibits.

It was overwhelming to see the churches and the fields where the crimes were carried out, the houses where witnesses or victims lived, the places where planning meetings occurred or killers assembled. Silent memorials at mass graves were stark, sober reminders of what had taken place less than 20 years prior. On the surface, everything seemed normal but very poor. Rice and bananas, coffee and vegetables were being grown, clinics and schools were operating, and Kigali was bustling with business, construction, vehicles and athletic events. The Hotel des Mille Collines, which was featured in the film "Hotel Rwanda," was open again.

Yet, except for the children, the people I saw along the way and in Kigali as I walked the streets, and those with whom I conversed in my hotel and restaurants and elsewhere were, I supposed, either victims or perpetrators or had fled the country during the genocide or earlier strife and returned after the genocide. The entire population of the country had been deeply and personally touched and scarred. What was in their minds and hearts? And what are they teaching the children? It is forbidden now to identify oneself as Tutsi or Hutu, and the identity cards originally required by the Belgians have been discontinued.

Hope lies with the children, that they may have the selfsame spirit as expressed by the 17 schoolgirls in Gisenyi and the 16 in Kibuye who, when ordered by attacking militants to separate themselves—Hutus from Tutsis—refused to do so and said they were simply Rwandans. So they were all beaten and shot. Their spirit, encouraged today, must be the foundation of a lasting peace.

Following the site visit, the closing arguments were heard in November, powerful recapitulations by experienced and well-prepared counsel of what had transpired during the trial. The lead prosecutor was from Canada and the lead defense counsel was from France. Gatete was present, of course, and sat impassively while those of us inside the courtroom and the spectators in the public gallery beyond the security window listened.

My work consisted primarily of reviewing and analyzing transcripts, physical evidence in light of the charges (photos, letters, documents from Rwanda courts and prior statements of witnesses to investigators), the opening statement and closing arguments, and the briefs. This was done in minute detail for the purpose of preparation of the judgment. I also attended, along with the legal officers, the private deliberations of the panel.

Shortly before I left Arusha, I was able to visit the UN Detention Facility on the grounds of the Tanzania national prison outside the city and meet with the deputy commander and another facility official, who cordially answered all my questions. On my tour of the facility, I was introduced to two detainees, one of whom invited me to see his cell. It was equipped with

books, notebooks of documents from his pending case, computer, radio and personal effects.

After I returned to Atlanta near the end of December, a judgment was delivered against Gatete. On March 29, 2011, he was convicted of genocide and extermination as a crime against humanity and sentenced to life in prison. While his appeal is still pending, he remains at the UN Detention Facility in Arusha.

Found as fact beyond reasonable doubt pursuant to Rule 87 (A) of the ICTR's Rules of Procedure and Evidence was that Gatete's orders resulted in the Interahamwe killing Tutsi civilians in Rwankuba sector and that soldiers, policemen and Hutu civilians who participated in those killings were recruited on his instructions. Found also was that he expressly ordered the killing of Tutsis civilians who had sought refuge at Kiziguro parish church. By way of a coordinated attack, "hundreds, if not thousands," were killed by soldiers, Interahamwe and civilian militia there. Likewise at Mukarange parish, "hundreds, if not thousands," were killed in a coordinated attack in which Gatete participated. He delivered weapons to the attackers, which acts were found to be a decisive factor in the outcome of those attacks. Neither law enforcement, the nation's military, nor the time-honored refuge of churches stopped the unimaginable horrors that had been perpetrated by Gatete and by other leaders and the legions of attackers they controlled throughout the country.

A Snapshot of the Tribunal

The mandate for the Tribunal provides for limited jurisdiction, for crimes committed inside Rwanda or by Rwandan citizens in neighboring states, as thousands of people had fled the country and many were implicated. Subject matter jurisdiction includes genocide, crimes against humanity and violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, otherwise known as "war crimes." Temporal jurisdiction covers crimes committed between Jan. 1 and Dec. 31, 1994. The ICTR seeks to end impunity by bringing leaders to trial, to further develop international criminal law so as to prevent such crimes and to punish under the rule of law rather than by retaliation.

The ICTR is located in Arusha due in part to the lack of infrastructure and security in Rwanda when it was created. Full complement is 24 judges from 24 countries, elected by the General Assembly from a list submitted

A Landmark Case:

The Prosecutor versus Hassan Ngeze, The Prosecutor versus Jean-Bosco Barayagwiza and The Prosecutor versus Ferdinand Nahimana

There were three accused in the media case. Hassan Ngeze was the editor-in-chief of the inflammatory newspaper Kangura. Ferdinand Nahimana was director of RTLM, the state-sponsored radio station. Jean-Bosco Barayagwiza was the government's director of political affairs and minister of foreign affairs as well as head of a political party. All were found guilty of conspiracy to commit genocide, genocide, incitement to genocide, plus extermination and persecution as crimes against humanity. *The Prosecutor versus Hassan Ngeze, Case No. 97-27; The Prosecutor versus Jean-Bosco Barayagwiza, Case No. 97-19; The Prosecutor versus Ferdinand Nahimana, Case No. 96-11. See www.unictr.org, "Cases."* Building on Nuremberg jurisprudence, persecution was seen to include "conditioning" a population and "creating a climate of harm." The chamber wrote that persecution is "not a provocation to cause harm. It is itself the harm."

Ngeze was sentenced to life, reduced to 35 years on appeal. Nahimana was sentenced to life, reduced to 30 years. Barayagwiza was sentenced to 35 years, reduced to 32 years on appeal, and was confined in Benin until he died in April 2010. For their words and deeds that instigated the killing of Tutsi civilians, the three were found directly guilty of genocide. Ngeze's writings and newspapers were permeated by "crass references to the physical and personal traits of Tutsi ethnicity" and "incessantly described Tutsi as snakes and evil." Cartoons sexualized the underlying political message that Tutsi women involved with Hutu men were spies. This as well as Ngeze's order to attack showed his genocidal intent. Nahimana was found by the chamber to be "the mastermind of the broadcasting system." RTLM was actually referred to by some people as "Radio Machete." It broadcast stereotyped Tutsi as the enemy, promoted contempt and hatred for them, and called on listeners to attack them. The Interahamwe and other Hutu militia at roadblocks and elsewhere listened and acted on broadcasts to kill both named and unnamed Tutsis. The chamber found that Nahimana set in motion the communications weaponry that fought the war by the media. Barayagwiza, who was also head of a political party, urged the masses to exterminate the Tutsi. RTLM was his weapon of choice.

In sentencing Nahimana, Presiding Judge Navanethem Pillay said: "Without a firearm, machete or any physical weapon, you caused the deaths of thousands of innocent civilians." To Ngeze, the newspaper owner, she said: "Instead of using the media to promote human rights, you used it to attack and destroy human rights." Barayagwiza she referred to as the linchpin of the three men's conspiracy to incite genocide." *New York Times International, Thursday, December 4, 2003, beginning on page 1. Judge Pillay is now UN High Commissioner for Human Rights.*

by the Security Council from nominations by States Members and Permanent Observer Status missions. Although no one from the United States served on the Trial Chambers, an American sits on the appeals chamber in The Hague. That chamber considers appeals from both the ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY), thus ensuring a measure of uniformity in the development of international criminal law jurisprudence.

Of particular note is that the Tribunal jurisdiction is over "natural persons," not over groups or organizations. Persons who come before the Tribunal must answer for individual criminal responsibility, which is not relieved by the accused's official position or by his or her subordinate or superior position. The Tribunal has concurrent jurisdiction with national courts, but it has primacy and may formally request national courts to defer to its competence. On the other hand, after an indictment has been confirmed by a Tribunal judge as being based on a *prima facie* case, the Tribunal may refer the case to the authorities of a state where the crime was committed, where the accused was arrested, or where there is jurisdiction and a willingness and adequacy for proceedings in the case. However, the Tribunal must first satisfy itself that the state trial will be fair and that the death penalty will not be imposed, as the maximum penalty that can be imposed by the ICTR is life imprisonment. Only under certain circumstances may a person be tried in both places.

The Tribunal has three organs: Chambers, Prosecutor and Registry. The Prosecutor, who is responsible for investigations and collection of evidence as well as prosecution, and the Registrar and their respective staffs are appointed by the UN Secretary-General. Attorneys employed by the Tribunal come from many countries and serve as Legal Officers assisting the judges or as staff counsel in the Prosecutor's office. The rights of the accused and the protection of victims and witnesses are provided for in the Statute and are further detailed in the Rules of Procedure and Evidence adopted by the judges. Defense counsel for indigent suspects and accused persons are wholly independent qualified lawyers on a list of some 200 maintained by the Registrar from the principal legal systems of the world. Their fees and expenses are borne by the Tribunal.

Judgments are reached by majority rule of the panel of three and must be accompanied by a reasoned opinion in writing, which may include separate or dissenting opinions. The preparation of judgments often takes months because the voluminous recorded and transcribed testimony and exhibits are thoroughly reviewed, the findings of fact painstakingly set out and documented, the arguments of counsel answered and their acceptance or rejection explained, and the determination of guilt *vel non* detailed. This is not only to inform the accused but also to constitute an official record of the genocide, to inform the people of Rwanda and the world of the basis for judgments rendered, to give transparency to the Tribunal's deliberations, to justify the judgments to the appeals chamber when appeals are taken, and to contribute to the development of international criminal law. Sentences are enforced in one of the countries, including Rwanda, which have indicated to the Security Council their willingness to accept convicted persons, as determined by the ICTR.

To accomplish its purposes, of course, the ICTR needs the cooperation not only of Rwanda but also of other states for assistance in addition to incarcerating those convicted. The statute obligates the members of the UN to assist upon request or order for such action as identification and location of persons, taking of testimony and production of evidence, service of documents, arrest and detention of persons, and surrender or transfer of the accused to the ICTR. Arrests have been made in 20 countries,

One of the fields where massacres occurred in Gatete case, a school soccer field next to the school and the parish church.

including the United States.

The Tribunal also depends on its Witness Support and Protection Section (WVSS), which not only handles the presence of witnesses but also their security, privacy, psychological counseling, medical services and continued monitoring of the security of protected witnesses. Many witnesses testify under pseudonyms, and most testify in their Kinyarwanda language, which is immediately translated in court into French and English, the official languages of the Tribunal. The WVSS also is called on to provide impartial assistance to prosecutors and defense counsel during trial phases. The logistics are complex and challenging. For one thing, most witnesses must be brought from beyond the borders of Tanzania.

The Tribunal began its work in 1995 and is expected to complete the trial work by the end of 2012, as mandated by the Security Council. The appellate chamber, which sits in The Hague, is anticipated to continue until the end of 2014. A Completion Strategy was begun by the Tribunal in 2003 and is reported on to the Security Council semi-annually by the president of the Tribunal. Thousands of lower levels of responsibility are being dealt with in national courts and in a myriad of local proceedings, called Gacaca courts.

As of Sept. 16, 2012, the judgment of one accused, Augustin Ngirabatware, Minister of Planning during 1994, remains in progress. As of the same date, 72 cases have been completed at the trial level, including 10 acquittals. Of the 72, 16 cases were on appeal to the Appeal Chamber, which has jurisdiction of appeals from both the ICTR and the ICTY. Two other cases were transferred to France, two to Rwanda, and seven of the 65 accused had completed their sentences and were released.

Among those accused in the ICTR were a number of ministers in the top level of government, the chief of staff of the Rwandan army, bourgmestres of communes, leaders in the MRND governing party, high military officers, religious leaders, prefects (akin to state governors), members of the media and businessmen. One woman, Pauline Nyiramasuhuko, who ironically had been Minister of Family and Women Affairs in 1994, was tried with others in the so-called Butare group and sentenced in June 2011, as was her son, to life imprisonment.

Likewise as of Sept. 16, 2012, nine accused remain at large, including Félicien Kabuga, a businessman who financed the RTLM (Radio Télévision Libre des Mille Collines) and the Interahamwe, the MRND youth movement which became main perpetrators of the genocide. His file and those of two other high-level fugitives have been handed over to the Prosecutor of the Mechanism for International Criminal Tribunals. That body was created by the Security Council in December 2010 to continue the jurisdiction, rights and obligations, and essential functions of both the ICTR and the ICTY. It also monitors the referred cases and will maintain the archives and legacy of both tribunals.

The numbers show only the numerical achievements; many significant decisions and judgments have advanced the jurisprudence of international criminal law. Also, the complexities of international judicial administration, conducted in several languages with judges

A Landmark Case:

The Prosecutor versus Jean-Paul Akeyesu

The first case was against Jean-Paul Akeyesu, who was bourgmestre of Taba commune in Gitarama Prefecture. He was arrested in Zambia in 1995, convicted in 1998, and sentenced to life imprisonment. *The Prosecutor versus Jean-Paul Akeyesu, ICTR Case No. 96-4-T. See www.unictr.org, "Cases."*

For the first time in international criminal law, the chamber rejected the traditional definition of rape, which focuses on body parts. Also, it considered that the lack of consent of the victim was not an element the prosecutor had to prove when the circumstances such as present in the genocide were coercive themselves. The chamber defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive."

Sexual violence, which includes rape, was described in the judgment "as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact."

The definition of rape considered the crime in light of genocidal, or gang-rape, or unbalanced power circumstances where the victim's consent cannot be freely given. Rape was defined by the perpetrator's purpose, which was to subject and degrade the victim, together with its specific nature as being sexual. This constituted a crime against humanity by Akeyesu due to his individual responsibility for ordering, instigating, and aiding and abetting the sexual violence that took place under his aegis as part of a wide-spread attack on civilians. The chamber also found rape to be a crime of genocide, in that Akeyesu was found to be criminally responsible for abetting the rape on Tutsi women for the purpose of destroying the Tutsi ethnic group.

An impact of this judgment in Rwanda was to pierce the veil of shame that had shrouded and muffled rape victims. Survivors formed Avega and Abuka groups, a movement of solidarity for victims.

Gatete judicial panel (Judge Muthoga, Judge Khan and Judge Akay), staff attorneys and Senior Legal Researcher Dorothy Toth Beasley in deliberations on judgment.

and personnel from many countries plus evolving technology, have been more finely tuned.

The Way Forward

The ICTR and the ICTY, created 1.5 years earlier, constituted a radical departure from the long-accepted practice of nations which for so long had ignored the victims of mass international crimes and allowed the rule of tyrants in the name of promoting "stability." The groundbreaking Nuremberg and Tokyo Military Tribunals convened by the victorious Allies after World War II were focused solely on the vanquished Axis powers and were not international judicial bodies, as are the *ad hoc* ICTR and ICTY. Now, as ICTR then-president Dennis Byron stated in the Tribunal's periodic address to the Security Council on Dec. 6, 2010, the ICTR and the ICTY "established international criminal justice as an essential tool in challenging impunity for the most horrendous crimes" and have made "a significant contribution . . .to international law and to the acceptance of justice as an indispensable element of international peace and stability."

The ICTR mandate will soon end. But the commitment to eliminate top-level impunity for the perpetrators of the most serious crimes and to strengthen international criminal law so as to deter and punish will continue in the first-ever permanent, treaty-based court to enforce international criminal law. The International Criminal Court, which was created by a body of nations in Rome in July 1998 by way of the Rome Statute, is independent of the UN and is located in The Hague.

As of Sept. 16, 2012, the ICC has 121 States Parties by accession or ratification. The states of the Democratic Republic of the Congo, Uganda and the Central African Republic have referred situations to the Court; the Security Council has referred the situations of Darfur, Sudan and Libya, both non-state parties; and the Prosecutor's initiatives to open investigations into the situations of Kenya and Côte d'Ivoire were authorized by the court. Sixteen cases are pending. The Prosecutor's office is also analyzing situations in Afghanistan, Colombia, Georgia, Guinea, Honduras, Nigeria, Mali, Palestine and the Republic of Korea. In addition, conclusions have been published after preliminary examination into alleged crimes in Iraq and Venezuela.

All concern situations occurring since 2002, when the Statute entered into force by the ratification of 60 countries. The first conviction and sentence was of Thomas Luganga Dyilo of the DRC on July 19, 2012. The ICC, founded on the principle of complementarity and governed by its Statute, is building on the precedents and experience of the ICTR and the ICTY and other current *ad hoc* civilian tribunals such as the Special Court for Sierra Leone and the Extra-Ordinary Chambers for Cambodia, as well as continuing certain principles from the Nuremberg and Tokyo Military tribunals. At the present time, the United States is not a state party. GBJ

Judge Dorothy Toth Beasley now a Senior Judge of the state of Georgia, served as an assistant attorney general, an assistant U.S. attorney, a judge on the State Court of Fulton County and a judge and chief judge on the Court of Appeals of Georgia. She currently mediates and arbitrates cases at Henning Mediation and Arbitration Service, Inc., and was

at the UN International Criminal Tribunal for Rwanda from August to December 2010.

Sources in Addition to Author's Experience

Case:

- The Prosecutor versus Jean-Baptiste Gatete, ICTR Case No.00-61. See www.unictr.org, Cases/Cases on Appeal.

Official Documents:

- Convention on the Prevention and Punishment of the Crime of Genocide, adopted December 9, 1948. See www.un.org/millennium/law/iv-1.htm.
- S/1993/827, Security Council establishment of int'l tribunal for former Yugoslavia, under Charter Chapter VII. See http://undocs.org/S/RES/827 (1993).
- S/1994/1115, request of the gov't of Rwanda to establish an int'l tribunal, referenced in UN Security Council Resolution 955, 8 November 1994), establishing the Tribunal under Charter Chapter VII. See http://undocs.org/S/RES/955(1994).

Websites:

- www.coalitionfortheicc.org, the website of umbrella organization, the Coalition for the International Criminal Court.
- www.gc2pg.org, the website of the Georgia Coalition to Prevent Genocide.
- www.icc-cpi.int, the website of the International Criminal Court. Select "English."
- www.icty.org/sid/10874, the website of the Mechanism for International Criminal Tribunals.
- www.unictr.org, esp. General Information; Status of Cases; Press Releases; Speeches (12/6/10 & 12/7/11); Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal; Bilateral Agreements; Fact Sheets/International Cooperation with the Tribunal; Statute of the Tribunal, Arts. 2-5, 6, 8, 9, 12 *bis*, 12 *ter*, 12 *quater*, 12, 13, 15-23, 27, 28, 37; Rules of Procedure and Evidence, Rules 11 *bis*, 30-38, 44-46, 69, 75, 88, 105, 106.
- http://m.state.gov/md2861.htm, the website for U.S. Department of State "Background Note: Rwanda."

Books:

- BASSIOUNI, M. CHERIF, CRIMES AGAINST HUMANITY IN INTERNATIONAL LAW (2d revised ed. 1999, esp. p. 231.
- DALLAIRE, Roméo WITH BEARDSLEY, BRENT, SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY IN RWANDA (2004), esp. pp. 532, 547-548.
- GOUREVITCH, PHILIP, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA (1999), esp. Preface and pp. 34, 352-353.
- Prunier, Gérard, THE RWANDA CRISIS: HISTORY OF A GENOCIDE (1995, 1997 version), esp. pp. 241, 359-361, 402.

Articles:

- Abi-Saab, Georges, *Fragmentation or Unification: Some Concluding Remarks*, 31 N.Y.U. J. Int'l Law & Politics 919, 932 (1999).
- Bossa, Solomy Balungi, *The Successes and Challenges of the United Nations International Criminal Tribunal for Rwanda*, an unpublished paper presented to the Harvard University African Law Association, 1 November 2010, esp. p. 2.
- New York Times, Thursday, December 4, 2003. See http://www.nytimes.com/2003/12/04/world/court-convicts-3-in-1994-genocide-across-rwanda.html?scp=38sq=December+4.+2003&st.nyt.

2013 State Bar Legislative Preview

by Rusty Sewell

On Jan. 14, the Georgia General Assembly will return for the 2013 session, which will be the first year of a two-year session. Being the first year, there are no carry-over bills from the 2012 session, so everything starts fresh.

The legislators will again be facing a budget problem, as they have in the last several sessions. This year the deficit could be as high as half a billion dollars, and this does not include another $400 million that would be lost if the so called "bed tax" on hospitals is not renewed.

The Bar will have a number of new proposals for the coming year. While the Advisory Committee on Legislation (ACL) still has one meeting left to consider legislation originating from the State Bar sections and committees, some of the items already approved by the ACL and Board of Governors (BOG) include the following.

- **Funding request for victims of domestic violence.** As stated by the Committee to Promote Inclusion in the Profession, the Bar was responsible for starting this state funding in 2005 to provide legal services for victims of domestic violence.
- **Funding request for the Appellate Resource Center.** The Center, which has received State Bar support in the past, is again seeking the Bar's sup-

port as it asks the state to continue the funding it received in the budget for the 2012 fiscal year. The State Bar's BOG voted to support adequate funding for victims of domestic violence and the Appellate Resource Center as included in the judicial budget.

- **Uniform statutory rule against perpetuities.** This proposal presented by the Uniform Commercial Code Committee would modify the current rule to change the vesting period from 90 years to 360 years, making Georgia more consistent with surrounding states.
- **Prohibition of transfer fee covenants.** This proposal by the Real Property Section was approved by the BOG two years ago, but the bill did not pass the Legislature, not because of its merits, but because additional amendments were placed on the bill that caused it to be stopped.

Some other issues that affect lawyers and the judicial branch that are anticipated include:

- **Criminal Justice Reform and Juvenile Justice.** Last year, the Legislature passed a reform package of legislation and funding that was recommended by the Special Council on Criminal Justice Reform. These reforms were aimed at reducing nonviolent offenders in the prison system and improving public safety. Gov. Deal, by Executive Order, continued the life and work of the Council for this past year. The Council not only persisted with its previously assigned duties, but was also charged with the responsibility to review the Juvenile Code Revision and come up with a workable version. All parties so far believe that the Council is accomplishing this task.
- **Judicial Funding.** As always, the Bar will be working with the governor's office and the legislators to make sure that the judiciary has adequate funding. Hopefully, increases in judicial salaries are an item that may be considered by the General Assembly.
- **Other issues.** As usual, there will be other issues that will arise during the session. I encourage you to follow all the activities of the General Assembly by visiting the State Bar's website (www.gabar.org) where you will find summaries of legislative proposals and bills/resolutions that are supported or opposed by the State Bar. Also on the site are weekly updates of legislative activity and links to specific legislation that may be of interest, as well links to view live streaming of House and Senate floor activity and committee meetings. Please get involved in the process by contacting your legislators and asking for their support on issues of interest to you.

If you have any questions about the Bar's legislative program, don't hesitate to call our office at 404-872-1007, or email at rusty@georgiacp.com. GBJ

Rusty Sewell is one of the State Bar's professional legislative representatives. He can be reached at 404-872-1007 or rusty@georgiacp.com.

How to Contact Your Legislator

Your state legislators expect and want your input on legislation. The most effective communication with legislators comes from constituents—those who live in their communities and vote in their districts. You can find out who your state representative and senator are by visiting the following website: www.congress.org/congressorg/state/main/?state=GA. Then send them a letter or email or call their office and respectfully ask for their favorable consideration on legislation important to you.

Kitty Cohen Receives James M. Collier Award

by Len Horton

Every successful organization has people who give of themselves to make the organization a success. Many times those people are well known and almost cannot help being in the limelight. Others more quietly go about their work as volunteers who seldom get the recognition they deserve.

One of those quiet givers to the Georgia Bar Foundation (the Foundation) is Kitty Cohen of Sutherland, the Foundation's pro bono counsel since the mid-1980s. In the history of the Foundation, no one has given of herself more than Kitty Cohen.

"I don't know what we would do without Kitty," said Aasia Mustakeem, president of the Georgia Bar Foundation. "Since 1986 she has assisted us on every legal issue we have had to face, and she always guided us away from trouble and toward a solution to whatever problem we faced. The world, not just the Georgia Bar Foundation, is a better place because of her, and we are indeed fortunate that she is now a member of the Board of Trustees of the Georgia Bar Foundation. I cannot imagine a more deserving recipient of our most prestigious award." Cohen currently serves as the Foundation's secretary.

Every document created since IOLTA came into existence in Georgia reflects Cohen's special touch. No matter who she had to take on, no matter how many meetings she had to attend, no matter what new subject matter she had to learn, no matter how many hours she had to invest, Cohen has always been there for the Foundation.

Photo by Len Horton

(Left to right) Georgia Bar Foundation President Aasia Mustakeem presents the James Collier Award to Kitty Cohen.

The James M. Collier award is presented annually to an individual who has performed extraordinary service to the Georgia Bar Foundation. It is named for a Dawson lawyer who redefined what it means to assist the Foundation. He also served as Foundation president for multiple terms.

The Georgia Bar Foundation is a 501 (c)(3) charity named by the Supreme Court of Georgia to receive interest on lawyer trust accounts. The largest legal charity in Georgia, it provides legal assistance to law-related organizations throughout the state.

Len Horton is the executive director of the Georgia Bar Foundation. He can be reached at hortonl@bellsouth.net.

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Kudos

Patrick Poff, a shareholder of **Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A.**, with offices in Tampa, Fla., was named **chairman** of the **American Bar Association Forum on the Construction Industry's Division on Insurance, Surety & Liens**. His two-year term began in September. Poff is board certified in construction law in Florida and is a member of the State Bar of Georgia and The Florida Bar.

Daniel Weede, a real estate lawyer practicing in **Carlton Fields'** Atlanta office, was selected to participate in the **Urban Land Institute (ULI) Center for Leadership Class of 2013**. ULI's Center for Leadership provides Atlanta's emerging leaders in the real estate and land use industries with a powerful local resource to help guide the responsible development of the Atlanta region. The nine-month program features presentations, panel discussions, property tours, small group activities and the opportunity to provide leadership on a critical Atlanta regional issue through ULI's mini Technical Assistance Panel.


Scibilia


Sweeney


Alexander


Levitas

Kilpatrick Townsend & Stockton LLP announced that partner **Joe Scibilia** was selected to serve on the **Board of Directors of Action Ministries** for a three-year term. Action Ministries leads communities and volunteers in serving their neighbors in need throughout Georgia by providing hunger, housing and education solutions.

Partner **Neal Sweeney** announced the release of the ***2012 Construction Law Update*** which chronicles the important developments and trends that impact construction law practitioners and industry decision makers. The 2012 edition marks his 21st year as editor of this highly regarded resource on important legal impacts on the construction industry.

Partner **Miles Alexander** and of counsel **Elliott Levitas** received the prestigious **Emory Medal**, the highest university honor presented exclusively to alumni and awarded each year by the Emory Alumni Association. Honorees are selected by the Emory Alumni Board and are recognized for their accomplishments in at least one of the following areas: distinguished service to Emory, the Emory Alumni Association or a constituent alumni association; distinguished community or public service; or distinguished achievement in business, the arts, the professions, government or education. Alexander was honored for his passionate leadership, impartial and objective wisdom in legal matters and continued commitment to serving the greater good of his community. Levitas was honored for his commitment to civic service and his unrelenting defense of justice for our nation's underserved populations.

Daniel R. "Trey" Tompkins III, president of **Admin America, Inc.**, was installed as the 2012-13 **president** of the **Georgia Associations of Health Underwriters (GAHU)**. GAHU is the state chapter of the National Association of Health Underwriters, a voluntary association comprised of approximately 20,000 health insurance professionals including agents, brokers, carrier representatives and administrators.


Sheffey


Van Balen

Rita A. Sheffey, a partner at **Hunton & Williams LLP**, was named **president-elect** for a two-year term with **The Lamar American Inn of Court for the Emory School of Law**. After serving as president-elect, Sheffey will serve as president for two years. Sheffey was also recently re-elected for a two-year term on the **Metropolitan Bar Caucasus Executive Committee**, a sub-group of the National Conference of Bar Presidents.

Brandon A. Van Balen, an associate at the firm, was elected to a three-year term on the **Wake Forest Law School Young Alumni Board**. He was also elected to a four-year term on the **Gettysburg College Alumni Board of Directors**.

Brian D. Burgoon was re-elected as one of the **out-of-state members** of **The Florida Bar Board of Governors**, and was appointed to the **Executive Committee.** Burgoon was also re-elected to the **Board of Directors of the University of Florida Alumni Association**. Burgoon is a sole practitioner with The Burgoon Law Firm, LLC, in Atlanta, and focuses his practice on civil and commercial litigation.

Jonathan Goins, a partner with **Gonzalez, Saggio & Harlan LLP**, was nominated into membership with the **Atlanta Intellectual Property American Inn of Court**. Established in 2010, the Atlanta IP Inn promotes professionalism, civility, ethics and

legal excellence in the Atlanta IP legal community. The Atlanta IP Inn is comprised of more than 100 attorneys with companies, law firms, the judiciary and academia devoted to continuing to develop and advance intellectual property law.

> 

Taylor English Duma LLP announced that member **Amy Burton Loggins** was selected to **The University of Georgia Alumni Association's second annual 40 under 40 recognition list**. The alumni selected have made an impact in business, leadership, community, educational and/or philanthropic endeavors; demonstrated a commitment to maintaining a lifelong relationship with the University of Georgia; and aspired to uphold the principles manifested in the three Pillars of the Arch, which are wisdom, justice and moderation.

> 

FordHarrison LLP announced that **Patricia G. Griffith**, an Atlanta-based partner, was honored as one of the **"2012 Most Powerful & Influential Women of Georgia"** at the third annual **Georgia Diversity and Leadership Conference** in September. Organized in 2008, the Georgia Diversity Council (GADC) is committed to fostering a learning environment for organizations to grow and leverage their knowledge of diversity. The GADC is a great opportunity for professionals, students and organizations to learn diversity best practices from the top corporate leaders.

> 

Tucker, Everitt, Long, Brewton & Lanier partner **Jon E. Ingram** was elected **president** of the **Augusta Bar Association**. The Augusta Bar Association is one of Georgia's oldest local bars. It is a voluntary membership organization of attorneys and judges, currently with more than 340 members. The bar association strives to provide information and programs to its members to enable them to continue to provide the highest level of competent and ethical representation to members of the public.

> 

The Association of Catholic Lawyers honored **Hull Barrett, PC,** attorney **Patrick J. Rice** at the annual Red Mass with the **St. Thomas More Award**. The award is presented annually to judges or lawyers to recognize specific actions showing a commitment to the principles of justice and humanity, especially in difficult circumstances. This award is given without regard to the recipients' political or religious affiliations.

> 

Miller & Martin PLLC announced that the **National Bar Association** presented **Curtis J. Martin II** with the **2012 Presidential Award** for his exemplary service to the legal profession. Founded in 1925, the National Bar Association is the nation's oldest and largest association of African-American lawyers and judges.

> 

Avarita L. Hanson, executive director of the **Chief Justice's Commission on Professionalism**, received the **Alumni of the Year Award** from **Outstanding Atlanta** (OA). OA was founded in 1968 to recognize the noteworthy accomplishments of young professionals between the ages of 21 and 36 in the city of Atlanta. Each year and for more than 40 years, OA has acknowledged 10 young people who have dedicated their careers to leadership, civic engagement and community service.

> 

Jeff Styres was re-appointed to a second three-year term as a **board member** of the **Mississippi Board of Bar Admissions** by Mississippi Supreme Court Chief Justice William L. Waller Jr. Styres serves as senior counsel for Southern Farm Bureau Life Insurance Company in Jackson, Miss.

> **Seyfarth Shaw LLP** has just flipped the switch on a new Energy and Clean Technologies Practice group. Seyfarth's Clean Tech Group provides the firm's broad client base a cross-disciplinary team largely focused on transactional and regulatory work across the entire energy landscape. Seyfarth attorneys work with energy and clean tech clients nationally, including conventional oil and gas companies, renewable power and fuel producers, waste-to-energy project developers and innovative startups.

On the Move

In Atlanta

> 

Justin S. Daniels joined **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, as a **shareholder**. Daniels provides corporate and commercial real estate advice to fast growing privately held entrepreneurial businesses. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

Taylor English Duma LLP announced that **Amy Burton Loggins** joined the firm's employment, labor and immigration practice group as **counsel**. Loggins has extensive experience advising and counseling senior-level business clients and human resources team members on day-to-day employee issues. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.


Stroud


Fredericks


Hamby


Mitchell


Rothstein


Kobrin

Nelson Mullins Riley & Scarborough LLP welcomed six new attorneys to its Atlanta office. **Holly Elizabeth Stroud** is **of counsel** to the firm. Her practice focuses in the areas of mergers and acquisitions, private equity and venture capital and securities. **Katelyn Fredericks** joined the firm as an **associate**. She practices in the areas of corporate law, mergers and acquisitions and private equity and venture capital. **Anne Tyler Hamby** joined the firm as an **associate** and practices in the area of employee benefits and executive compensation. **Roger Mitchell** joined the firm as an **associate**. He practices in the areas of corporate, finance, mergers and acquisitions, private equity and venture capital and securities. **Paul Rothstein** joined the firm as an **associate**. He practices in the areas of corporate law. **Joshua A. Kobrin** joined as an **associate** focusing his practice on commercial litigation, alternative dispute resolution, business torts and contract disputes. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.


Jones


Perez


Garrison


Beaton

Kilpatrick Townsend & Stockton LLP announced that **Alicia Grahn Jones** and **Adria Perez** were elected to **partnership**. Jones is a member of the trademark and copyright team. Perez is a member of the complex business litigation team. **Edwin Garrison** joined the firm as an **associate** on the capital markets team in the corporate, finance and real estate department. **Theresa Beaton** joined the firm as an **associate** on the complex business, class action, appellate and product liability team in the litigation department. The firm is located at 1100 Peachtree St., Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.

Littler Mendelson, P.C., announced that **Avani Patel** joined the firm as **counsel**. Her practice focuses on business immigration law. The firm is located at 3344 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-233-0330; Fax 404-233-2361; www.littler.com.

McKenna Long & Aldridge LLP announced that **Christina Braisted Rogers** joined the firm as a **partner** in its real estate practice. Rogers' practice focuses on the representation of institutional real estate investors, including pension fund advisors, real estate investment trusts, and permanent and construction lenders and borrowers. The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.mckennalong.com.


Watson


Schley Ritchie

Barnes & Thornburg LLP announced that **Aaron Watson** joined the firm's Atlanta office as **of counsel** in the governmental services and finance department. Watson focuses his practice on government relations and business issues that intersect directly with social and public interest matters, including public education, municipal governance and finance, and public pensions. **Georgia Schley Ritchie** joined the firm as **of counsel** in the firm's litigation department. Her practice primarily focuses in the areas of business litigation and insurance coverage advice and litigation on behalf of policyholders. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; www.btlaw.com.

Jeffrey W. Melcher joined the law firm of **Gordon & Rees LLP** as a **partner** in the firm's Atlanta office. His practice areas include commercial litigation, employment law, professional liability defense, and bankruptcy, restructuring and creditors' rights. The firm is located at 3455 Peachtree Road, Suite 1500, Atlanta, GA 30326; 404-869-9054; Fax 678-389-8475; www.gordonrees.com.

Bovis, Kyle & Burch, LLC, announced that **Erin Stone** joined the firm as a **partner**. Stone, formerly a partner at Schulten Ward & Turner, practices in the areas of family law and litigation. The firm is located at 200 Ashford Center N, Suite 500, Atlanta, GA 30338; 770-391-9100; Fax 770-668-0878; www.boviskyle.com.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announced that **Jennifer Klos** joined the firm as a **member** of the financial institutions group. She defends clients in a variety of business disputes, such as breach of contract and trade secret matters. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

Burr & Forman LLP announced that **Robert H. G. Lockwood** joined the firm as a **partner** in the intellectual property practice. He was previously a member at Miller & Martin PLLC in Atlanta. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.

Butler, Wooten & Fryhofer, LLP, announced that **Anna W. Howard** joined the firm as an **associate**. Howard's practice areas include False Claims Act/Whistleblower cases and complex plaintiffs' litigation. The firm is located at 2719 Buford Highway, Atlanta, GA 30324; 404-321-1700; www.butlerwooten.com.

Hackett

Wine

Carrie Hackett and **Ashley Wine** announced the formation of **Hackett & Wine, LLC**. The firm's practice focuses on criminal defense and family law. The firm is located at Two Ravinia Drive, Suite 500, Atlanta, GA 30346; 678-855-7165; www.hackettandwine.com.

Jones Day announced that **Frank Layson** and **Erik Belenky** joined the firm as **partners** in the mergers and acquisitions practice. Both were formerly partners in Paul Hastings LLP's Atlanta office. Layson's primary area of practice is mergers, acquisitions, joint ventures and strategic alliances. Belenky's practice is focused on mergers and acquisitions, where he represents public and private companies, special committees and financial advisors in the full range of domestic and cross-border acquisitions, divestitures, strategic alliances and corporate restructurings. The firm is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; www.jonesday.com.

Cordon

Fleming

Friedman

Morris, Manning & Martin, LLP, elected **Jason K. Cordon**, **Rusty A. Fleming** and **Heather T. Friedman** to the firm's **partnership**, effective January 2013. Cordon is a member of the corporate, funds and alternative investments, real estate capital markets and tax practices. Fleming, a part of the firm's commercial finance practice, represents major commercial banks and lenders in a variety of single-asset and multi-asset loans, credit facilities and other debt arrangements. Friedman works in the firm's environmental, construction, hospitality and sustainability practices. She focuses on transactions and acquisitions of properties throughout the United States. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; www.mmmlaw.com.

Carlock, Copeland & Stair announced that **William P. Jones** was selected to serve as the firm's **general counsel**. Jones will be responsible for the overall management of legal concerns and services for the firm. Specifically, he has primary responsibility for management of the firm's professional liability processes and risk management and will advise the firm on a wide variety of issues. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; www.carlockcopeland.com.

Warner, Bates, McGough & McGinnis announced that **Kate Cornwell** joined the firm as an **associate**. Cornwell practices exclusively in the areas of family law and domestic litigation. The firm is located at 3350 Riverwood Parkway, Riverwood 100 Building, Suite 2300, Atlanta, GA 30339; 770-951-2700 Fax 770-951-2200; www.wbmfamilylaw.com.


Sharbaugh


Howard

Carlton Fields announced that **Charles T. Sharbaugh** joined the firm as a **shareholder**, and **Jason W. Howard** joined the firm as an **associate**. Both are members of the firm's real estate and finance practice group. Sharbaugh's practice focuses on the representation of private equity funds in acquisitions, dispositions and joint venture arrangements with respect to real estate assets. Howard concentrates his practice in the real estate and finance industries. The office is located at One Atlantic Center, 1201 W. Peachtree St. NW, Suite 3000, Atlanta, GA 30309; 404-815-3400 Fax 404-815-3415; www.carltonfields.com.

In Alpharetta

Diane Weinberg joined **Morgan and DiSalvo, P.C.**, as **of counsel** with a focus on elder law. She brings an informed perspective to such issues as special needs trusts, guardianships and conservatorships, public benefits for long-term planning (Medicaid and veterans benefits) and general advocacy for seniors including situations of financial abuse. The firm is located at 5755 Northpoint Parkway, Suite 17, Alpharetta, GA 30022; 678-720-0750; www.morgandisalvo.com.

In Cartersville

Cole Law announced the formation of **Law Mediation & Arbitration, LLC**. Law continues to actively practice in the areas of social security disability, personal injury, probate and civil litigation. The firm is located at 11 E. Main St., Suite 208, Cartersville, GA 30120; 770-382-6000; Fax 770-382-4044; www.lawmediationandarbitration.com.

In Columbus

Butler, Wooten & Fryhofer, LLP, announced that **Morgan Duncan** joined the firm as an **associate**. Duncan's practice areas include False Claims Act/Whistleblower cases and complex plaintiffs' litigation. The firm is located at 105 13th St., Columbus, GA 31901; 706-322-1990; www.butlerwooten.com.

Barry Debrow Jr. joined the office of the **Federal Defenders of the Middle District of Georgia, Inc.**, (FDMDGA) as an **assistant federal defender** in the Columbus office. Debrow formerly served in the DeKalb County Public Defenders Office. FDMDGA is a nonprofit corporation funded by the Administrative Office of the U.S. Courts. Assistant federal defenders represent those charged with criminal offenses and in ancillary matters in the U.S. District Court, the U.S. Court of Appeals for the 11th Circuit and the U.S. Supreme Court who are financially unable to retain counsel. The office is located at 233 12th St., Suite 400, Columbus, GA 31901; 706-358-0030; Fax 706-358-0029; www.fd.org.

In Savannah


Bowen


Young

HunterMaclean welcomed **Shayna A. Bowen** to the firm's **health care group** as **counsel**. With a focus in health care law, Bowen advises clients on a range of federal and state regulatory, compliance and operational issues specific to the health care industry. **Ruth H. Young** rejoined the firm as **counsel** after serving as an assistant U.S. attorney with the U.S. Attorney's Office for the Southern District of Georgia for more than 20 years. Young is part of the health care practice group. The firm is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

W. Brooks Stillwell III was named **Savannah city attorney**. Stillwell, previously a partner at HunterMaclean, maintains a limited private practice at Brooks Stillwell, LLC. The firm is located at 200 E. Saint Julian St., Suite 500, Savannah, GA 31401; 912-944-1637; www.brooksstillwell.com.

Bouhan, Williams & Levy and **Inglesby, Falligant, Horne, Courington & Chisholm** announced plans to **merge** in January 2013, forming **Bouhan+Falligant**. Bouhan, Williams & Levy managing partner Lea Holliday will serve as the managing partner. As one of Savannah's largest law firms, Bouhan+Falligant will offer general corporate representation, trust and estate planning as well as excellence in real estate, admiralty, banking, education, intellectual property, employment, bankruptcy, professional malpractice, workers' compensation, environmental, immigration, products liability, transportation, construction and family law. The firm will be located at 447 Bull St., Savannah, GA 31402.

In Chattanooga, Tenn.

Evans Harrison Hackett PLLC announced that **Timothy L. Mickel** joined the firm as a **member**. He practices in the areas of general business litigation, appellate, construction and design, health care litigation, insurance litigation and labor and employment. The firm is located at One Central Plaza, Suite 800, 835 Georgia Ave., Chattanooga, TN 37402; 423-648-7890; www.ehhlaw.com.

In New Orleans, La.

Blaine W. Lindsey announced the launch of **Capra Health**, a comprehensive health care/life sciences reimbursement, regulatory and compliance consulting firm with offices in New Orleans, La., and Atlanta, Ga. Capra Health partners with attorneys to serve hospitals, high-volume practices and other health care industry participants across the country. Contact them at 504-982-0379, or www.caprahealth.com.

In New York, N.Y.

Alston & Bird LLP announced the addition of veteran compliance and regulatory authority **Kamal Jafarnia** as **counsel** in the firm's financial services and products group. The firm is located at 90 Park Ave., 12th Floor, New York, NY 10016; 212-210-9400; Fax 212-210-9444; www.alston.com.

In Tampa, Fla.

Burr & Forman LLP announced that it combined with Tampa law firm **Williams Schifino Mangione & Steady, P.A**. The firm is located at 201 N. Franklin St., Suite 3200, Tampa, FL 33602; 813-221-2626; Fax 813-221-7335; www.burr.com.

WANT TO SEE YOUR NAME IN PRINT?

If you are a member of the State Bar of Georgia and you have moved, been promoted, hired an associate, taken on a partner or received a promotion or award, we would like to hear from you.

For more information, please contact Stephanie Wilson, 404-527-8792 or stephaniew@gabar.org.

Please support the **7th Annual YLD Signature Fundraiser** benefitting

CASA
Court Appointed Special Advocates
FOR CHILDREN
GEORGIA
Celebrating 25 Years of Service

Saturday, March 2, 2013
8 p.m.
Capital City Country Club—Brookhaven

The Masquerade Ball will feature music by **Yacht Rock Schooner**, Live and Silent Auctions, Raffle, Buffet Dinner, Open Bar & More

General Admission $125 door/$100 advance
Host Committee $150 includes 1-hour VIP pre-event

For tickets or sponsorship packages, please visit www.gacasa.org/yld_fundraiser.php

Have questions or need more information? Contact **Mary McAfee** at marym@gabar.org or **Jessica Odom** at odomj@gtlaw.com.

Finders Keepers, Losers Weepers

by Paula Frederick

"Where's that flash drive I loaned you last week?" your partner asks.

"I loaded the PowerPoint I did for that Bar CLE. I haven't seen it since," you admit, searching your desk drawer and briefcase. "We ran it on a laptop that I think the hotel provided—maybe it belonged to one of the other presenters. I probably forgot to get the flash drive back. What do I owe you? Five bucks?"

"Umm, a little more than that," your partner gasps. "All my notes from the McKlesky case were on there! If that falls into the wrong hands. . ."

Your IT guy is not impressed. "So you lost a flash drive with a bunch of confidential information on it," he recounts. "Please tell me it was encrypted. . . ."

"Huh?" you and your partner respond in unison. "You can encrypt a flash drive?"

What are a lawyer's obligations when electronically stored information goes missing?

Of course Georgia Rule of Professional Conduct 1.6 requires a lawyer to keep client confidences and secrets. All of us know we can't blab about our cases, and we are accustomed to securing paper files. But what about information stored on laptops, smartphones, tablets and flash drives?

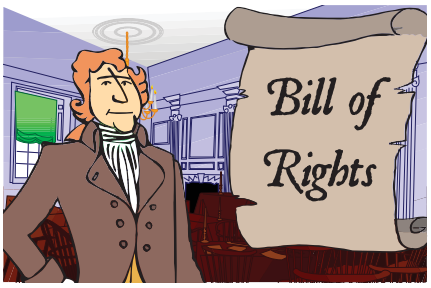
The American Bar Association recently revised Rule 1.6 to add a requirement that a lawyer "make *reasonable efforts* to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information related to the representation of a client." The change was one of several revisions that the ABA is making to the Model Rules to deal with changes in technology.

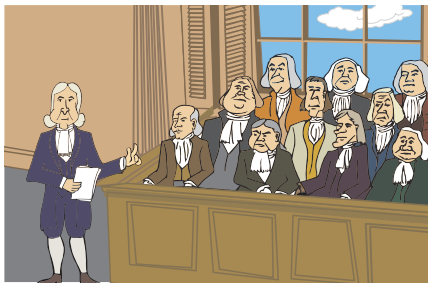
New language in Comment 18 lists factors to help determine what is "reasonable." The obligation varies depending upon the sensitivity of the information, how likely disclosure is, the cost of employing additional safeguards and the hassle involved in implementing extra security. A client may require the lawyer to use special safeguards; on the other hand, a client may agree to forego them.

The Office of the General Counsel frequently hears from lawyers whose mobile devices have been lost or stolen. Although we have not yet adopted the ABA's revisions to Rule 1.6, we do expect that a prudent lawyer will at the very least have password protection for any mobile device that she uses for work. GBJ

Paula Frederick is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.

Trial By Jury: What's the Big Deal?





"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics and Government performance standards.

This animated presentation reviews the history and importance of trial by jury through a discussion of the Magna Carta, the Star Chamber, the trial of William Penn, the Constitutional Convention in 1787, the Constitution and the Bill of Rights. Also covered in the presentation are how citizens are selected for jury duty, the role of a juror, and the importance of an impartial and diverse jury.

The State Bar of Georgia's Law-Related Education Program offers several other opportunities for students and teachers to explore the law. Students can participate in Journey Through Justice, a free class tour program at the Bar Center, during which they learn a law lesson and then participate in a mock trial. Teachers can attend free workshops correlated to the Georgia Performance Standards on such topics as the juvenile and criminal justice systems, federal and state courts, and the Bill of Rights. The LRE program also produces the textbook *An Introduction to Law in Georgia* for use in middle and high school classrooms.

You may view "Trial By Jury: What's the Big Deal?" at www.gabar.org/cornerstones_of_freedom/civics_video/. For a free DVD copy, e-mail stephaniew@gabar.org or call 404-527-8792. For more information on the LRE Program, contact Deborah Craytor at deborahcc@gabar.org or 404-527-8785.

State Bar of Georgia

Discipline Summaries

Aug. 11, 2012 through Oct.19, 2012

by Connie P. Henry

Voluntary Surrender/Disbarments

Wendel Lawrence Bowie
Marietta, Ga.
Admitted to Bar in 1995

On Oct. 1, 2012, the Supreme Court of Georgia disbarred attorney Wendel Lawrence Bowie (State Bar No. 071763). The following facts are deemed admitted by default: Bowie received $300,000 as the closing attorney in a refinancing of a home mortgage, but failed to disburse the funds and failed to account for the funds. In a second matter, he obtained $4,462.45 in settlement funds, and again failed to disburse the funds or account for them. In a third matter, Bowie was the closing attorney in two separate real estate transactions, but failed to record the deeds transferring ownership of the properties. In aggravation of discipline, the Court found Bowie had failed to respond, was not cooperative in the disciplinary proceedings and had multiple disciplinary cases pending.

Lisa M. Cummings
Atlanta, Ga.
Admitted to Bar in 1996

On Oct. 1, 2012, the Supreme Court of Georgia disbarred attorney Lisa M. Cummings (State Bar No. 201865). The following facts are deemed admitted by default: Cummings sought and received payment for work she did not perform by falsifying invoices while working as a contract attorney with the Office of the Public Defender. Her contract was terminated and grievances were filed with the State Bar. In her unsworn response she made false allegations of improper conduct against city officials, including the interim director of the public defender's office and the chief judge.

Two weeks after she was terminated, Cummings was retained to file suit against the university at which her client was enrolled. The client paid Cummings $5,000 with two personal checks. The client subsequently provided certified funds to replace one of the checks. Cummings assured the client she would destroy the previous check but instead attempted to cash it. Cummings failed to take any other action on the client's behalf and lied about her communications with the university. Cummings failed to comply with the requests for payment receipts and for copies of her written communications with the university. Cummings withdrew from representation and failed to return the client's documents or unearned fee and failed to provide an itemized statement. After the client filed a grievance, Cummings responded by making false allegations against the client. Cummings' deceit, the abandonment of her client's case and her prior disciplinary history were factors in the Court's order.

Arthur L. Gibson Jr.
Savannah, Ga.
Admitted to Bar in 1976

On Oct. 1, 2012, the Supreme Court of Georgia disbarred attorney Arthur L. Gibson Jr. (State Bar No. 292750). Gibson was convicted on one count of violating 18 U.S.C. § 473 (dealing in counterfeit obligations or securities).

Wayne Andrew Williams
Snellville, Ga.
Admitted to Bar in 1994

On Oct. 1, 2012, the Supreme Court of Georgia disbarred attorney Wayne Andrew Williams (State Bar

No. 765615). Williams entered a plea of guilty in Fulton County to 21 counts of theft by taking and 19 counts of forgery.

Romin Vincent Alavi
Marietta, Ga.
Admitted to Bar in 2001

On Oct. 1, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Romin Vincent Alavi (State Bar No. 007182). Alavi received $20,000 from a third party on a client's behalf. He failed to deposit those funds into a trust account, told his client the funds had not been received and failed to deliver the funds to his client.

Gregory E. Stuhler
Alpharetta, Ga.
Admitted to Bar in 1973

On Oct. 1, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Gregory E. Stuhler (State Bar No. 690150). Stuhler commingled his personal funds with his attorney trust account funds and converted the money to his own use. He did not promptly deliver funds to a client, instead giving her a check drawn on insufficient funds. He did not maintain his attorney trust account records.

Dana Posey Gentry
Phenix City, Ala.
Admitted to Bar in 2000

On Oct. 15, 2012, the Supreme Court of Georgia disbarred attorney Dana Posey Gentry (State Bar No. 289810). The following facts are deemed admitted by default: Gentry represented clients in three divorce cases and, with respect to some or all of them, did not file appropriate documents, did not respond to his clients' attempts to contact him, failed to communicate with his clients, failed to appear in court and withdrew from a case without notifying his client. In aggravation of discipline the Court noted Gentry's multiple disciplinary matters.

Suspensions

Chima Earnest Okene
Marietta, Ga.
Admitted to Bar in 2001

On Oct. 1, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Chima Earnest Okene (State Bar No. 551121) and imposed a nine-month suspension. Okene overdrew his attorney trust account several times and presented a check against insufficient funds. He commingled his personal funds with his trust account funds. He also permitted fiduciary funds to be deposited into and administered from his operating accounts. In addition, he advanced money to two clients.

In mitigation of discipline, the Court found that Okene had no prior discipline, is remorseful, has suffered health concerns and did not misappropriate client funds. In aggravation, the Court found that he engaged in a pattern of misconduct, that there were multiple offenses and that he has substantial experience in the practice of law.

Barbara S. Arthur
Rossville, Ga.
Admitted to Bar in 1985

On Oct. 1, 2012, the Supreme Court of Georgia suspended attorney Barbara S. Arthur (State Bar No. 023845) for six months as reciprocal discipline for her suspension in Tennessee. Arthur continued to practice law in Tennessee after she had been administratively suspended for failing to pay Tennessee registration fees. Arthur is also under an administrative suspension in Georgia for failure to pay Bar dues.

Richard R. Buckley, Jr.
Tifton, Ga.
Admitted to Bar in 1985

On Oct. 1, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Richard R. Buckley Jr. (State Bar No. 092905) and imposed a four-month suspension. A client paid $750 to retain Buckley in a change of custody action regarding her 15-year-old son. Buckley performed some work, but expressed concerns to his client about initiating the action. Thereafter, Buckley would not return the client's phone calls. The client terminated Buckley's representation, but he did not return her file because he felt that he had earned his retainer and had a lien on her file. He eventually refunded the fee plus interest and returned the file.

In mitigation of discipline the Court found that Buckley was suffering with several health problems, which he has addressed through the State Bar's Lawyer Assistance Program. In aggravation the Court noted that Buckley had substantial experience in the practice of law and had three Formal Letters of Admonition based on similar conduct.

Lawrence Edward Madison
Savannah, Ga.
Admitted to Bar in 1993

On Oct. 1, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline

of attorney Lawrence Edward Madison (State Bar No. 465530) and imposed a suspension during the pendency of the appeal of his criminal convictions for child molestation and aggravated sexual battery.

Amjad Muhammad Ibrahim
Atlanta, Ga.
Admitted to Bar in 1994

On Oct. 15, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Amjad Muhammad Ibrahim (State Bar No. 382516) and imposed an 18-month suspension with conditions for reinstatement to resolve two grievances.

In one matter Ibrahim provided a chiropractor with blank copies of his firm's retention agreement to present to patients in need of legal representation. A person involved in an automobile accident signed the retainer agreement and Ibrahim began settlement discussions with the insurance company. In May 2008 he accepted $4,100 to settle the case and deposited a settlement check for $2,733.34 into his "escrow account." The client refused to sign the settlement documents because he was dissatisfied with his share of $1,000. Ibrahim closed the "escrow account" due to wire thefts and said he placed the $2,733.34 in his office safe. The client discharged Ibrahim and filed a grievance with the State Bar. Ibrahim held the funds for more than two years without suggesting a resolution and did not return the $4,200 to the insurance company until November 2010.

In another matter in June 2010, a man paid Ibrahim $2,730 for immigration filing fees for a petition for citizenship for him and his wife. Ibrahim deposited the money in a "filing fees account," which was not an IOLTA account and which contained client and firm funds. Ibrahim did not promptly file the petition for citizenship, and in May 2011, the clients retained new counsel. The following month, Ibrahim refunded the $2,730 fee.

On reinstatement, Ibrahim must: (1) within three months, consult with the State Bar's Law Practice Management Program, timely implement the program's suggestions concerning his practice and meet again with the program six months after his reinstatement to review the measures taken; (2) submit for one year, at his own expense, to quarterly audits of his office bank accounts by a certified public accountant; (3) waive confidentiality so that the Program and the accountant can submit to the Office of the General Counsel their reports; and (4) attend ethics school.

Christopher Todd Adams
Lawrenceville, Ga.
Admitted to Bar in 1992

On Oct. 15, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Christopher Todd Adams (State Bar No. 002715) and imposed an 18-month suspension. Adams was indicted on 17 counts of false statements under OCGA § 16-10-20, 17 counts of theft by taking under OCGA § 16-8-2 and one count of criminal solicitation under OCGA § 16-4-7. The charges arise out of his misrepresentation of the number of hours that he worked representing indigent clients and billed to the Gwinnett Judicial Circuit Indigent Defense Program from December 2005 to December 2006. Adams agreed to reimburse $10,605.70 to the county, accept a lifetime ban on representing any indigent defendant whose representation is paid through public funds, petition the Supreme Court for public voluntary discipline of not less than a six months' suspension from the practice of law and admit that he violated Rule 8.4 (a)(4). In exchange, the district attorney agreed to nolle pros the charges in the pending criminal case.

In aggravation of discipline, the Court noted that Adams received an Investigative Panel reprimand in 2002, he had a selfish and dishonest motive and his conduct involved multiple offenses. In mitigation, the Court recognized that Adams expressed remorse for his actions and attempted to make amends by representing indigent defense clients without pay.

Kathryn Jean Jaconetti
Fort Lauderdale, Fla.
Admitted to Bar in 2000

On Oct. 15, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Kathryn Jean Jaconetti (State Bar No. 388491) and imposed a three-year suspension. Jaconetti, over a period of several years, neglected civil and criminal matters involving eight clients, often with harm to the client; failed to communicate in a timely and effective way with her clients; and failed to account for fees received or to refund unearned fees. Prior to reinstatement Jaconetti must provide certification that she is fit to practice law and is mentally competent. She must also pay restitution to six clients.

Suspension Plus Public Reprimand

Clark Jones-Lewis
Atlanta, Ga.
Admitted to Bar in 1985

On Oct. 1, 2012, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Clark Jones-Lewis (State Bar No. 398595) and imposed a six-month suspension and a public reprimand. In the course of handling a domestic matter, Jones-Lewis received a wire transfer of $14,000 into her IOLTA account. The payment represented $10,000 in legal fees and $4,000 due her client for support. Jones-Lewis did not promptly deliver $4,000 to her client. Jones-Lewis eventually testified that she paid the client $2,156.90 before he filed the grievance and $5,000 afterward, though she offered contradictory statements about the payments at earlier stages of the disciplinary case.

The special master acknowledged Jones-Lewis's statement that

she had repaid the client more than he was owed but noted that she did not do so until her client hired new counsel and filed a grievance. He also considered her contradictory statements and her prior disciplinary history as aggravating factors.

Paul Troy Wright
Greenville, S.C.
Admitted to Bar in 1987

On Oct. 1, 2012, the Supreme Court of Georgia suspended Paul Troy Wright (State Bar No. 778585) for six months and ordered that he receive a public reprimand. Wright made demonstrably false statements to the Court of Appeals of Georgia. The Supreme Court found that Wright continued to assert that his statements were truthful, despite findings to the contrary by the Court of Appeals of Georgia and the special master in the disciplinary case. Wright's conduct was aggravated by his failure to accept any responsibility for his misstatements.

Public Reprimand

Jerry Wayne Moncus
Dalton, Ga.
Admitted to Bar in 1992

On Oct. 15, 2012, the Supreme Court of Georgia ordered that attorney Jerry Wayne Moncus (State Bar No. 515690) receive a Public Reprimand. The following facts are deemed admitted by default: Moncus served for several years as the chief judge of the Municipal Court of the city of Dalton, concluding his service in September 2010. The next month Moncus agreed to represent three individuals then serving probationary sentences that Moncus had imposed as a judge of the Municipal Court. Moncus filed motions in the Municipal Court to terminate their probationary sentences and filed motions to terminate their probation without the consent of the city of Dalton. In aggravation of discipline the Supreme Court found that Moncus refused to admit wrongdoing. The Court found no mitigating circumstances.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Aug. 10, 2012, two lawyers have been suspended for violating this Rule and two have been reinstated. GBJ

Connie P. Henry is the clerk of the State Disciplinary Board and can be reached at connieh@gabar.org.

Technology Resources and Services of the Law Practice Management Program

by Natalie R. Kelly

More than 75 percent of the questions posed to the Law Practice Management Program over the last few months have related to technology. The program is constantly answering technology questions for lawyers, from "What computer or tablet should I buy?" to "What software is going to be the best fit for my practice?" If you've been wondering or want more information about the program's technology services, here is a short overview of the types of things we can help you with when looking for firm-wide systems and working with shiny new devices.

Technology consultations are conducted to train lawyers and their staff on how to properly set up, maintain and utilize the latest practice management, time billing and accounting software. While these services are most often used by smaller law firms, when working with firms of more than nine attorneys, the program can assist in orchestrating initial reviews and general feedback on products and services that are ideal solutions. Mid-size and large firms can also benefit from an objective assessment of the interactions between the firm and the legal software vendors through this service. Our program reviews general technology quotes firms receive and the RFPs firms generate as well.

In addition to software training, we also conduct technology consultations for auditing firms to help them understand where their deficiencies lie as it relates to their technology. We also assist with mapping out a plan for progress towards feasible and cost-sensitive technology solutions. This generally entails the creation or modification of a firm technology plan and firm technology budget.

Before technology consultations are conducted, many firms take advantage of software demonstrations

led by our program. We maintain a software library consisting of full working copies of software solutions in addition to demonstration copies that provide an overview of what these technology tools can do. In the event lawyers or staff cannot make a trip to the Bar Center, our program offers an online webinar review of software so firms can still get the benefit of a program-led demonstration without having to leave their offices.

One of the more fun aspects of working with legal technology for our program is being able to try out and keep up with the latest trends as they relate to technology tips, downloadable apps for various systems and devices, and the newest gadgets. Lawyers and staff can track our technology reviews and advice in several places on the Bar's website, www.gabar.org/programs/lpm. Check out the main Software Library listing; LPM Tidbits (replacing the Tip of the Week and Website of the Week); and the Georgia Practice Advisor blog (www.gapracticeadvisor.com) for some of the latest information on technology.

Another area of the Bar's website to keep an eye on is the Online Vendor Directory, which lists vendor product descriptions and discount programs for Bar members. In some instances, the program has negotiated discounts for technology products and services. After checking our Online Vendor Directory, you should always give us a call to see whether a product or service listed without a discount can be contacted by the program staff to set one up.

You will also see program staff at CLE events in Georgia and around the country, as we often give presentations dedicated to new technology. Look for us more often on agendas of Georgia local and specialty bars, but we will also appear prominently working at the ABA TECHSHOW, which is one of the world's leading legal technology conferences. (See www.techshow.com; also program director, Natalie Kelly is the incoming chair of the conference's planning board.)

Some of the latest tech presentations the program has given include:

- Technology and Business Development—Getting Clients
- Delivering Value and Efficiency with Technology
- Top Tips, Apps and Gadgets
- Technology Choices
- Fastcase for Georgia Lawyers
- Civility and New Technologies

If you didn't notice the session on Fastcase in this listing, be sure to note that the program provides hands-on and webinar training on this service, offering free online legal research for State Bar of Georgia members. Contact the program for help setting up a dedicated Fastcase training for you or your staff.

As you can see, our program loves technology; and even more beneficial is the ability of Bar members to take advantage of our confidential, free and low-cost consulting for the latest and more effective law office technology. Contact us using your technology today via Blog: www.gapracticeadvisor.com; Tweet: @NatalieRKelly; Mobile Text: text "LPM" to 99699; email: nataliek@gabar.org; or Phone: 404-527-8770 or 800-334-6865, ext. 770; or Fax: 404-287-5217. GBJ

Natalie R. Kelly is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at nataliek@gabar.org.

Helping Those in Need

by Derrick W. Stanley

On Oct. 26, the Creditors' Rights section, chaired by Harriet C. Isenberg and Janis L. Rosser, convened their annual Fall Luncheon at Maggiano's in Buckhead. With more than 50 members in attendance, the section conducted its annual business as well as having an educational and pro bono component.

Cicely Barber, State Court of Fulton County court administrator, provided informative details about the current situation at the court as well as setting expectations for 2013 (e.g., garnishments, e-filing, docket entry, scheduling and more). Michael Lucas, director of Housing and Consumer Programs at the Atlanta Volunteer Lawyers Foundation (AVLF), also provided information for attendees and established contacts for the AVLF network. Lucas recounts the work of the AVLF and the Creditors' Rights Section below.

In the Dec. 2011 issue of the *Georgia Bar Journal*, "Section News" featured a sidebar titled "Collecting Justice" that reported on the Creditors' Rights Section's partnership with the Atlanta Volunteer Lawyers Foundation (AVLF) and its Dollars for Judgments Program. Today, the section and AVLF are happy to report that through this partnership, they are still collecting justice for those who would struggle to ever obtain it.

Through the Dollars for Judgments Program, expert collections attorneys volunteer their time and expertise to complete the pursuit of justice on behalf of low-income AVLF clients who have obtained judgments through AVLF's long-running Saturday Lawyer Program. AVLF screens the cases and the section's volunteers accept them for representation. AVLF does everything possible to make volunteering easy. Interested volunteers occasionally receive no-pressure requests to take on a collection case that has already been screened by AVLF attorneys for errors in the judgment, the expiration of appeal rights and the like. All volunteer work is covered by AVLF's carrier; post-judgment-related garnishment, filing and service fees are waived by the courts, and AVLF has access to pro-bono private investigators, process servers and court-reporting services, as well as case-by-case access to a small litigation fund if there are other related costs.

When clients show up at AVLF's free legal clinic on Saturdays, they are often paralyzed by their circumstances; you can hear it in their voices. Through the work of AVLF's volunteers—now including members of the Creditors' Rights Section and other collections attorneys who are out there "collecting justice" on behalf of AVLF clients—we can change

(Left to right) Creditors' Rights Section Co-Chair Harriet C. Isenberg, Cicely Barber, court administrator of Fulton County State and Magistrate Court, and Co-Chair Janis L. Rosser at the annual Fall Luncheon.

Michael Lucas, director of Housing and Consumer Programs at the Atlanta Volunteer Lawyers Foundation speaks at the annual Fall Luncheon.

that. One volunteer recently reported that when she called her client after the successful collection on her judgment, she could hear the change in her client's voice, and, we all hoped, the start of a better future for her and her family.

As our volunteers continue collecting justice on behalf of our low-income clients, it is not just those individual voices and lives that can be changed for the better; this program has the potential to drastically change the quality of justice our low-income clients receive, and positively affect their faith in the justice system and our profession. But we need more volunteers to make that a reality. If you would like to be part of this effort, please contact Michael Lucas, director of Housing and Consumer Programs at AVLF at 678-681-6003 or mlucas@avlf.org for more information or to volunteer.

The Dollars for Judgments program is only one of the many good things lawyers do on a daily basis to help those in need. If you are not a member of a section and would like to participate in programs to give back to the community, there are many resources available to you. You can begin by joining a section. Simply log in to your account at gabar.org and click on the "Section Membership" tab. You can also visit websites like those of the Pro Bono Program of the State Bar. By going to georgiaadvocates.org, you can sign up and receive notifications of cases that need attorneys.

During this time of giving and creating resolutions, sections and other Bar programs can assist you in helping those who you have been specifically trained to assist. GBJ

Derrick W. Stanley is the section liaison for the State Bar of Georgia and can be reached at derricks@gabar.org.

RULE 6.1 VOLUNTARY PRO BONO PUBLIC SERVICE

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial portion of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means; or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

No reporting rules or requirements may be imposed without specific permission of the Supreme Court granted through amendments to these Rules.

Fastcase App for the Attorney on the Go

by Sheila Baldwin

Many attorneys are moving toward the conveniences offered by mobile devices. If you are a new user to iPhones or iPads, I suggest that you go to the app store on your device and download the AppStart. This app is a starter guide for using your iPhone or iPad and is full of great advice on how to use and manage apps.

Although Android devices don't have a comparable app, you can follow this link, androinica.com/category/tips/tutorials/, to a website that lists articles of interest for the Android newbie.

Both Google Play and iTunes are cloud-based which means users can view downloaded content on all mobile devices as well as their desktops. Enjoy your music, books and even legal research on Fastcase on any device at anytime. Fastcase has complete instructions on their website, www.fastcase.com, to download and sync the Fastcase app.

Once you have downloaded the app and synced your devices, try doing some research on your iPhone Fastcase app while you have your desktop open. See how quickly the results are mirrored on your desktop? Now when you are out of the office in a line for coffee or waiting for an appointment you can do a quick search on your phone or tablet knowing that when you get back to work, the results will be available on your computer. When this feature was first released, I synced my iPad, iPhone and my laptop and tested the sync feature on all of them at once. Amazingly, each search reflected on all devices immediately.

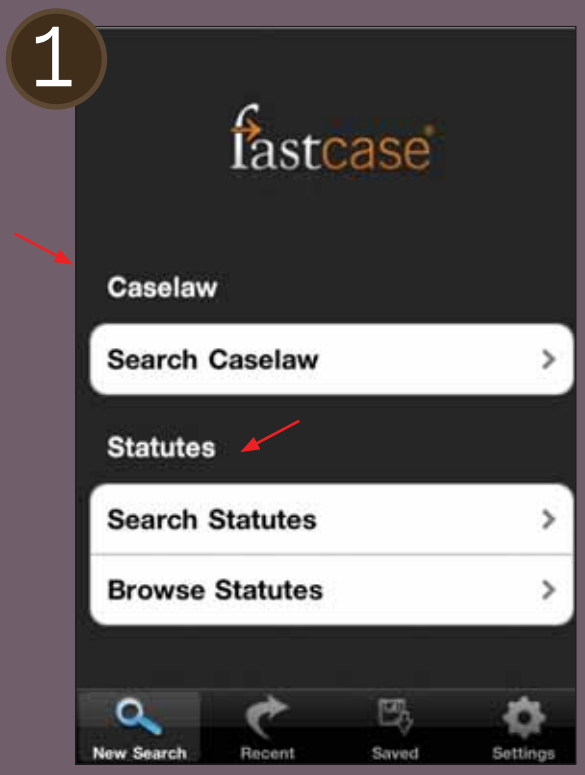
The Fastcase app searches case law as well as statues (see fig. 1). Like all apps, it's designed to make searching easier. On the first "page" of the Fastcase app, you will see the box where search terms are entered with the filters displayed below which include; jurisdiction, date range, authority check, results and sort by (see fig. 2). The flexibility of the design allows multiple jurisdiction searching and very specific choices on date and the sorting options such as relevance, decision date and how cited. Boolean terms, natural language or citations may be used in constructing searches. Tap the "recent" button to see your most recent searches and tap "save" to view later on your desktop. One of my favorite tools the app has that is missing from the desktop version is a spell check feature (see fig. 3).

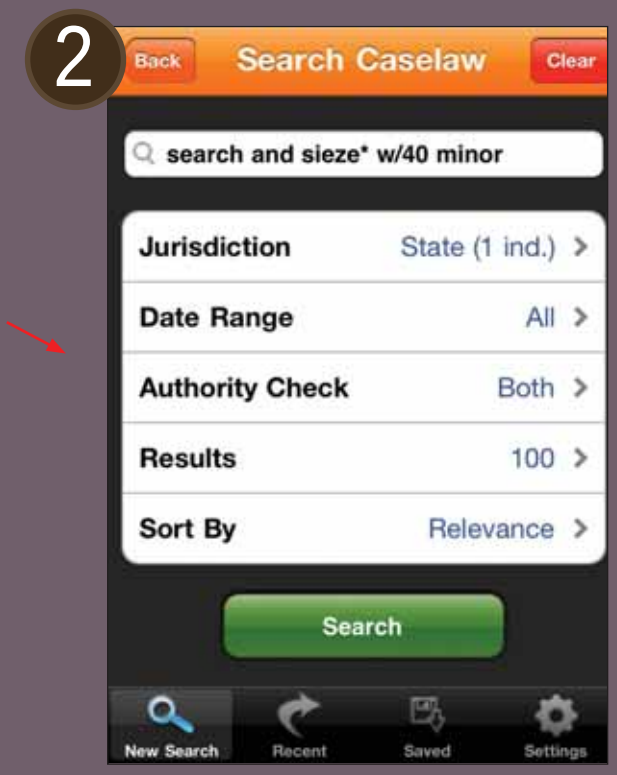
The fastcase app is especially good for searching state statutes. Choose to search by key words or by browsing. Within the keyword search you will find options for type, source and results. Under browse, look for the state and which edition of the code or acts you are interested in and then select the appropriate title.

For further information or help with the Fastcase app, attend a Fastcase CLE training session. Check the calendar on the State Bar website, www.gabar.org, to see the schedule and training options. Paralegals or staff members are welcome to attend.

As always, contact me at sheilab@gabar.org or 404-526-8618 for Fastcase help. GBJ

Sheila Baldwin is the member benefits coordinator of the State Bar of Georgia and can be reached at sheilab@gabar.org.





Fastcase training classes are offered four times a month at the State Bar of Georgia in Atlanta for Bar members and their staff. Training is available at other locations and in various formats and will be listed on the calendar at www.gabar.org. Please call 404-526-8618 to request onsite classes for local and specialty bar associations.

Improving Routine Documents Part 2: Memo to File

by Karen Sneddon and David Hricik

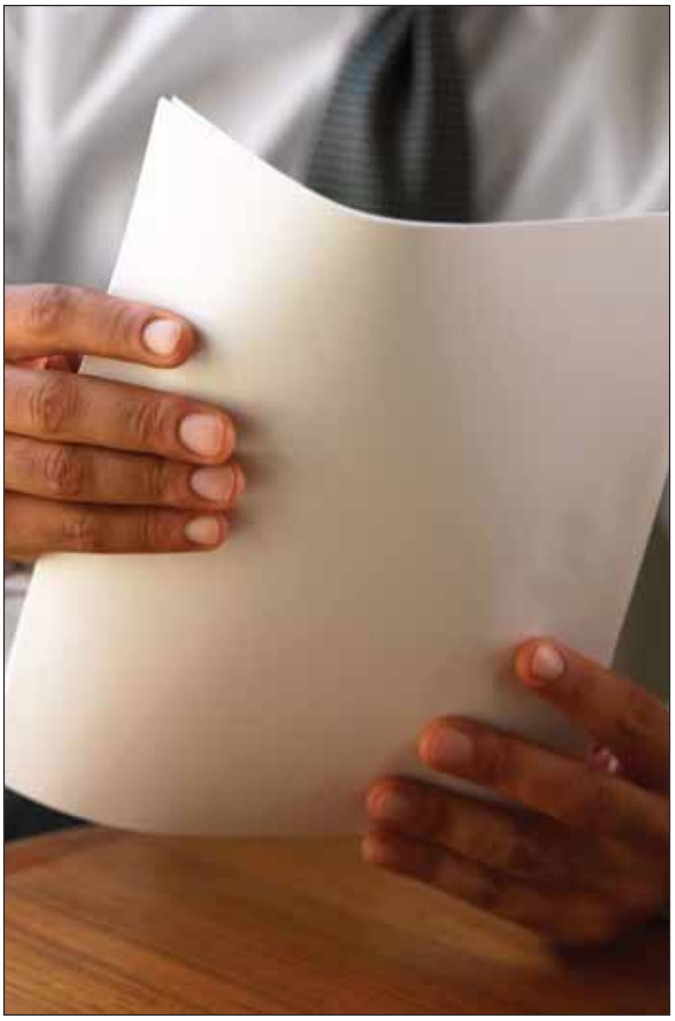
This installment of *Writing Matters* continues to provide tips on improving those documents that a lawyer may write every day that may have become so routine that the documents do not receive the critical eye they may need. Part 1 of the series addressed engagement letters; this installment tackles memos to file, sometimes called notes to file.

Within the course of most days, lawyers conduct research, hold telephone conferences with clients or opposing counsel, compose documents, meet with clients and collaborate with colleagues. Sometimes it is important to document the event, such as when the client gives the lawyer authority to settle a particular matter.

A contemporaneous, brief memo to file is often the best means to memorialize these events. When writing the memo to file, consider the following.

The Function of the Memo Dictates its Basic Structure

The purpose of a memo to file is to more formally document a specific interaction, such as a client telephone request to change provisions in a draft will or to forego filing a lawsuit. As a result, its purpose may be to memorialize a decision to protect the lawyer against later mistaken recollections, to serve as a reminder to the lawyer to take an action in the file at a later time or to provide instructions to some other person in the firm to later take action. For example, other attorneys who work on the matter may later read the memo to file to identify what work has been done, and assess what work still needs to be completed.



These basic purposes suggest two things. First, a memo to file should be written as soon as practicable after the interaction or other event. This helps ensure that details are recorded, and are recorded accurately.

A lawyer who waits to prepare the memo to file may forget to do so or may forget the details.

Second, although it may be terse and less structured than a formal memorandum, because of its purpose, the memo to file should identify its author, the date of its creation and client-matter number, or other identifying information tying the document to a specific matter. A memo that cannot be tied to a specific author or client may not serve the purpose of documenting the event for later action or understanding.

Determine What Should be Memorialized

The content may include a recitation of pertinent facts, a cross-reference to other material in the file and reflection on the next steps.

As to the facts, the memo should describe the interaction or event in as much detail as necessary to ensure that it serves its purpose. If the purpose is to memorialize instructions from a client, for example, it may include the form of the interaction, whether it be a phone call, email exchange, an in-person meeting, any information shared by the lawyer with the client to inform its decision and the specific instruction received from the client.

The memo to file may need to end with specific instructions as to what work needs to be done next. This may be a communication to the author himself, in which case less information may be needed than if the memo to file is to another colleague who is also working on the case.

Memos to File Should Have a Professional Tone

The memo to file is a written communication that should be viewed as a formal document. The client may read the memo some day, as may a senior colleague or co-worker. While there is no need for a memo to file to have the formal structure of a legal memorandum, it should convey information clearly, with sufficient detail, and include enough information or references to other information in the file to make sense if it is read weeks or months later, and by someone not as intimately familiar with the file as is its author.

Particularly if the communication memorialized is from the client, a memo to file should never be written in anger. As with emails and other communications, the tone should be professional.

Finally, memos to file should follow grammar and punctuation conventions, and the number of pronouns used should be limited. For example, a memo to file that says "he called and told me to go no higher than $10,000" is not as helpful as one that states, "Mr. Smith called and authorized me to go up to $10,000."

* * *

A memo to file is perhaps one of the most routine documents lawyers regularly write. We hope this installment serves a reminder of how useful a well-drafted memo to file can be. GBJ

Karen J. Sneddon is an associate professor of law at Mercer University School of Law.

David Hricik is currently on leave from Mercer University School of Law, serving as law clerk to Chief Judge Randall R. Rader of the U.S. Court of Appeals for the Federal Circuit during 2012-13. He will return to Mercer in 2013. The legal writing program at Mercer University continues to be recognized as one of the nation's top legal writing programs.

The Power of One—Dr. James T. Laney and His Vision for Professionalism

by Avarita L. Hanson

We often find that there is much to do and so few to do what needs to be done. You're probably familiar with the phrase, "If you want something done, ask a busy person." But it is not just that person who is busy we should ask. Sometimes we need to ask someone outside of our circle to get a different opinion and insights on tackling issues and challenges. Sometimes we need a new voice to get a new vision.

In the spring of 1988, then Georgia Chief Justice Thomas O. Marshall invited a select diverse group of prominent lawyers to a meeting hosted by Emory University's then president, Dr. James T. Laney. This meeting, known as "A Consultation on Professionalism and the Practice of Law," was held on March 31, 1988, at Houston Mill House on Emory University's campus.[1] What happened there, after words from Chief Justice Marshall, Dr. Laney and discussion, lead to the formation of the Chief Justice's Commission on Professionalism.[2]

Who is Dr. James T. Laney?[3] Laney, now Emory president emeritus, is also a former U.S. Ambassador to Korea. He was educated at Yale (B.A. '50, BD '54, Ph.D. '66, L.H.D. Hon. '93) and is an ordained United Methodist minister. He taught at Yonsei University in Korea from 1959 to 1964, and later at Vanderbilt before becoming dean of Candler School of Theology at Emory (1969-77). In 1974 he was a visiting professor at Harvard. He was named president of Emory in 1977 and served for 16 years. He was appointed ambassador to South Korea in 1993 by President Bill Clinton and was instrumental in helping defuse the nuclear crisis with North Korea in 1994. He returned to the United States in 1997 and served for two years as special presidential envoy in Asia.

Photo by Ann Borden of Emory Photographic Services

Dr. James T. Laney

He has chaired the Harvard Board of Overseers Committee for the Divinity School and has served on the executive committee of the University Council at Yale. He is a trustee of the Henry Luce Foundation in New York and co-chair, with Andrew Young, of Faith and the City in Atlanta. He is a past director of The Coca-Cola Company and SunTrust Georgia. From 1997-2003, he co-chaired the Council on Foreign Relations Task Force on Korea.

His articles have appeared in *Foreign Affairs*, the *New York Times*, the *Washington Post* and numerous other publications. He is the recipient of 22 honorary degrees from colleges and universities in the United States, Great Britain, Japan, Korea and Africa. He has received medals for distinguished service from the United States and Korea, the Wilbur Cross Medal from Yale, the Emory medal and the General James A. Van Fleet award from the Korea Society.

At the 1988 Consultation, Laney encouraged the group gathered to prepare the way to exercise the legal profession's moral authority by focusing on our resources. There was a lot to do to refocus the profession's attention on professionalism and serving the public. He advocated focusing on moral possibility, not the profitability of the legal profession. He focused the group on doing what was right, not just legal rights and the business of law. And that is reflected in how the Chief Justice's Commission on Professionalism started and developed into what it is today, and its potential for the future remains great.

In a 1986 speech titled "Moral Authority in the Professions," Laney addressed the legal and medical professions from the vantage point of how society views the professions and from his observations and reflections.[4] He made three propositions:

- That the "professions have long enjoyed a large measure of moral authority, as evidenced by the respect and confidence in which they have traditionally been held."
- This "moral authority has been declining for a number of years, with serious implications for the professions and for professional education."
- The "loss of moral authority in the professions is as serious a consequence for society at large as it is for the professions themselves."[5]

On the first point, Laney pointed out that the professions' authority derives from their service to society, high qualifications, rigorous training, long apprenticeship, discipline and dedication required of which the public is aware. He said:

> Professionals are not only representatives, they are also witnesses. They present an ongoing testimony to the way life could be and maybe should be. They witness to a society that should be well ordered and civil, to a society that should be healthy and whole.[6]

Law-Related Education Program

The Law-Related Education Program of the State Bar of Georgia wishes to recognize the Mitchell & Mitchell, P.C., and McCamy Phillips Tuggle & Fordham LLP law firms for their support of Pleasant Grove and Tunnel Hill Elementary Schools' Journey Through Justice on Sept. 24, 2012.

On the second point, Laney focused on the "widespread evidence of the decline of moral authority of the professions and a related decline in the esteem in which they are held."[7] He noted the significant changes in the economics of the profession as opposed to the social good it would serve. Said Laney, "We have, in short, a market mentality wherein contingent fees and profit are somehow rationalized as consistent with the clients' . . . best interests. The cost of all of this has been an erosion of the representative character of the profession."[8]

On the last point, Laney says that: "the loss of moral authority impoverishes not only the professions, but society as a whole. Society needs the presence of significant groups whose authority is not determined simply by the market, and whose understanding of the public good is not simply the aggregate of self interest."[9] He encouraged seeking a balance in the profession of the business aspects and the professions' donative nature. He encouraged the professions to work to reclaim those "attributes and qualities that for so long enticed young people into their ranks."[10] This would require a partnership with the institutions of higher learning to "begin to ensure that the students who enter the professions do so with a finer sensitivity to the realm of our common life together."[11]

What has happened in the legal profession in Georgia since Laney's important commentary? Several leaders of the bar banded together to form the Chief Justice's Commission on Professionalism which was officially founded in 1989. Its membership includes judges, lawyers and lay members and has grown to 22 members. Georgia attorneys annually engage in mandatory continuing legal education programs and activities to address multifaceted professionalism ideals. The Commission's long-term signature programs continue to be successful. The Law School Orientation Program, co-sponsored with the State Bar's Committee on Professionalism, just celebrated its 20th year; the Justice Benham Community Service Awards Program will recognize judges and lawyers for outstanding community and public service for the 14th year on Feb. 26, 2013; and the 2012 Convocation on Professionalism addressed the topic: "The Future of Legal Education—Will It Produce Practice-Ready Lawyers?" These programs are enhanced by partnerships with the State Bar of Georgia and the state's law schools, as well as many other local, national and international public and private entities that work together to spread the gospel of legal professionalism.

Laney gave the legal profession in Georgia an important vision: When you assume moral authority and follow its will, you open the door to many positive possibilities.

Ultimately, it is not what we do for a living that counts; it is what we do for the living. That is the vision of professionalism, so well represented by the teachings of Dr. James T. Laney, whose words still ring true:

> The learned professions of law, the clergy, medicine and education represent the need of society for special skills, to be sure. But they also represent the need for commitment to the larger good of the whole—not just to the client or to the parishioner or to the patient or to the student.[12]

Georgia legal professionals and citizens owe a debt of gratitude and a future of inspired service to him.

Avarita L. Hanson is the executive director of the Chief Justice's Commission on Professionalism and can be reached at ahanson@cjcpga.org.

Endnotes

1. Consultation on Professionalism and the Practice of Law participants included: Frank Alexander, Hon. Griffin B. Bell, Chief Judge A.W. Birdsong Jr., Gary B. Blasingame, Henry L. Bowden, L. Travis Brannon Jr., Robert M. Brinson, Marva Jones Brooks, Thomas R. Burnside Jr., George E. Butler II, Susan A. Cahoon, Presiding Justice Harold G. Clarke, A.G. Cleveland, L. Paul Cobb Jr., Bobby Lee Cook, Overton A. Currie, A. James Elliott, Dean David Epstein, Dr. Michael L. Goldberg, J. Littleton Glover, Jack J. Helms Sr., Hon. G. Conley Ingram, Dr. James T. Laney, Kirk M. McAlpin, Chief Justice Thomas O. Marshall, E. Wycliffe Orr, H. Holcolmbe Perry, Jr., Will Ed Smith, Cubbedge Snow Jr., Hon. A. Blenn Taylor Jr., Felker W. Ward Jr., Ben L. Weinberg, Justice Charles L. Weltner, Edd D. Wheeler and Frank B. Wilensky.
2. The Chief Justice's Commission on Professionalism was officially founded by the Supreme Court of Georgia on March 15, 1989, Part IX Professionalism of the Rules and Regulations for the Organization and Government of the State Bar of Georgia, establishing Rule 9-102. Its co-founders include: Hon. Harold G. Clarke, A. James Elliott, Dr. James T. Laney, Hon. Thomas O. Marshall and Hon. Charles L. Weltner.
3. F. Stuart Gulley, *The Academic President as Moral Leader, James T. Laney at Emory University, 1977-1993*, (Macon: Mercer University Press, 2001).
4. "Moral Authority in the Professions," (The Robert Tyre Jones, Jr. Memorial Lecture on Legal Ethics, Atlanta, Georgia, March 1986), in *The Education of the Heart: Selected Speeches of James T. Laney* (Atlanta: Emory University, 1994) at 33-40.
5. *Id.* at 33.
6. *Id.* at 34.
7. *Id.* at 36.
8. *Id.* at 37.
9. *Id.* at 38-39.
10. *Id.* at 40.
11. *Id.* at 40.
12. "The Law: A Moral Aristocracy," (American Trial Lawyers Meeting, Orlando, Florida, March 1993), in *The Education of the Heart: Selected Speeches of James T. Laney* (Atlanta: Emory University, 1994) at 51.

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In Memoriam honors those members of the State Bar of Georgia who have passed away. As we reflect upon the memory of these members, we are mindful of the contributions they made to the Bar. Each generation of lawyers is indebted to the one that precedes it. Each of us is the recipient of the benefits of the learning, dedication, zeal and standard of professional responsibility that those who have gone before us have contributed to the practice of law. We are saddened that they are no longer in our midst, but privileged to have known them and to have shared their friendship over the years.

Clifton Boone
Sparta, Ga.
Boston College Law School (1984)
Admitted 1987
Died August 2012

Michael T. Breen
San Antonio, Fla.
Suffolk University Law School (1961)
Admitted 1970
Died September 2012

Clyde W. Carver
Atlanta, Ga.
Emory University School of Law (1958)
Admitted 1956
Died October 2012

Alexander Cocalis
Tallahassee, Fla.
Emory University School of Law (1966)
Admitted 1965
Died August 2012

William J. Cooney
Augusta, Ga.
Georgetown University Law Center (1955)
Admitted 1963
Died September 2012

Edith M. Edwards
Saint Simons Island, Ga.
Woodrow Wilson College of Law (1981)
Admitted 1982
Died May 2012

Charles V. Gandy Jr.
Smyrna, Ga.
Atlanta's John Marshall Law School (1978)
Admitted 1978
Died October 2012

Clarence H. Glover Jr.
Roswell, Ga.
University of South Carolina School of Law (1977)
Admitted 1978
Died September 2012

Edward R. Golden
Decatur, Ga.
Emory University School of Law (1967)
Admitted 1967
Died September 2012

Edward L. Greenblatt
Blacklick, Ohio
Emory University School of Law (1964)
Admitted 1963
Died October 2012

James Darrington Hamlett
Montgomery, Ala.
University of Alabama School of Law (1992)
Admitted 1993
Died October 2012

Henry C. Head
Carrollton, Ga.
University of Georgia School of Law (1951)
Admitted 1951
Died August 2012

Robert H. Herndon
Milledgeville, Ga.
University of Georgia School of Law (1952)
Admitted 1952
Died September 2012

Tamsen Douglass Love
Atlanta, Ga.
Vanderbilt Law School (1997)
Admitted 2003
Died June 2012

Donald M. Maciejewski
Jacksonville, Fla.
University of Baltimore School of Law (1989)
Admitted 1993
Died July 2012

Bernard J. Mulherin Sr.
Augusta, Ga.
University of Georgia School of Law (1958)
Admitted 1958
Died September 2012

John F. T. Murray
Marietta, Ga.
Harvard Law School (1951)
Admitted 1965
Died August 2012

Michael W. Rushing
Atlanta, Ga.
University of Georgia School of Law (1971)
Admitted 1971
Died November 2012

Sonja L. Salo
Atlanta, Ga.
Columbia Southern University School of Law (1979)
Admitted 1979
Died May 2012

James E. Sherrill
Peachtree City, Ga.
Woodrow Wilson College of Law (1973)
Admitted 1974
Died September 2012

R. Everett Thompson
Alpharetta, Ga.
Woodrow Wilson College of Law (1964)
Admitted 1965
Died October 2012

James Daniel Thurmond
Smyrna, Ga.
Atlanta Law School (1950)
Admitted 1950
Died September 2012

Kimberly Warden
Atlanta, Ga.
Woodrow Wilson College of Law (1981)
Admitted 1981
Died September 2012

Ben T. Wiggins
Decatur, Ga.
Atlanta Law School (1943)
Admitted 1943
Died October 2012

Matthew David Williamson
Atlanta, Ga.
Georgia State University College of Law (2004)
Admitted 2006
Died August 2012

U.S. Army (Ret.) Col. **John F. T. Murray** died in August 2012. He was born in 1918 to John and Catherine Hagan Murray of Elmhurst, N.Y., the oldest of six children. Murray was a 1941 graduate of the U.S. Military Academy, West Point, N.Y., and a 1951 graduate of Harvard Law School.

He served his country in WWII in Gen. Patton's Third Army, G2, 87th Division, in France, Luxemburg, Belgium and Czechoslovakia, including the infamous Battle of the Bulge. He received various medals for his service to his country including the Bronze Star, two French Croix de Guerre Medals, the Legion of Merit with Cluster and the American Defense Award presented by President Franklin D. Roosevelt. Subsequently he traveled with his family to an assignment in Seoul, Korea, prior to the Korean War.

Upon graduation from Harvard in 1951, he was transferred to the Judge Advocate Generals Corps and assigned to the Pentagon where he served as the senior military assistant to the civilian attorney during the Army/McCarthy Hearings. After his time at the Pentagon, Murray traveled with his family and served in Salzburg, Austria, and both Livorno and Verona Italy. Upon returning to the United States in 1958, he was assigned to Fort Benning, Ga. After his term there, the family moved to Pennsylvania where he attended the Army War College in Carlisle. In 1961 he was appointed commandant of the Judge Advocate Generals School in Charlottesville, Va. He remained there until retiring from the Army in December 1964.

During his civilian years Murray was a professor of international law at the University of Georgia and was appointed associate dean in 1966. In 1976 he was appointed dean of the St. Louis University School of Law. He retired from his civilian life and his second career in 1979 and returned to Georgia to be closer to friends and family. Murray spent his retirement visiting family and friends, attending class reunions at West Point and sharing time between homes in the mountains of Georgia and North Carolina and the beaches of Florida. He visited all the lower 48 states in motor homes, sailed to Alaska and flew to Hawaii. GBJ

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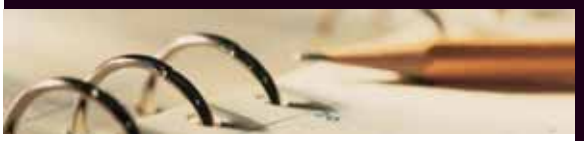

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JAN 18
ICLE
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ICLE
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ICLE
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12 CLE

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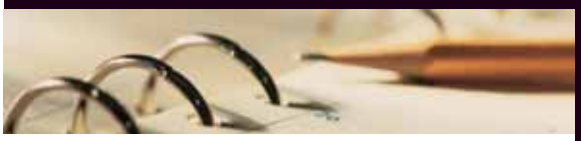

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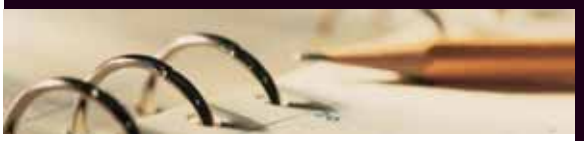

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Annual Fiction Writing Competition

Deadline January 18, 2013

The editorial board of the Georgia Bar Journal is pleased to announce that it will sponsor its Annual Fiction Writing Contest in accordance with the rules set forth below. The purposes of this competition are to enhance interest in the Journal, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. For further information, contact Sarah I. Coole, Director of Communications, State Bar of Georgia, 404-527-8791 or sarahc@gabar.org.

Rules for Annual Fiction Writing Competition

The following rules will govern the Annual Fiction Writing Competition sponsored by the Editorial Board of the Georgia Bar Journal:

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the Journal; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgment of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.
3. All articles submitted to the competition become the property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental and that the article has not been previously published.
4. Articles should not be more than 7,500 words in length and should be submitted electronically.
5. Articles will be judged without knowledge of the author's identity. The author's name and State Bar ID number should be placed on a separate cover sheet with the name of the story.
6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on a date specified by the Board. Submissions received after that date and time will not be considered. Please direct all submissions to: Sarah I. Coole, Director of Communications, by email to sarahc@gabar.org. If you do not receive confirmation that your entry has been received, please call 404-827-8791.
7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.
8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality.

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