

Georgia Bar Journal

December 2014 ■ Volume 20 ■ Number 4



**Georgia's New Patent Law: Bad Faith Threats
of Infringement Create New Liabilities**

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Publisher's Statement

The *Georgia Bar Journal* (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) with a special issue in November by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, Georgia 30303. Copyright State Bar of Georgia 2014. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia and additional mailing offices. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMASTER: Send address changes to same address.

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by Patrise M. Perkins-Hooker

Our Duty to Ensure That Justice is Accessible to All

The purposes of the State Bar were codified more than 52 years ago in our State Bar Rule 1-103 as follows:

- a. to foster among the members of the bar of this State the principles of duty and service to the public;
- b. to improve the administration of justice; and
- c. to advance the science of law.

The first purpose for which the Bar was created imposes upon us a duty as lawyers to serve the public. As a part of this duty, we have an obligation to ensure that our system of justice is accessible to all who need it. As I mentioned in my initial speech to the members of the Board of Governors, "Could you imagine someone in your family needing to get out of a violent relationship, needing to probate a will, needing to obtain a guardianship for an older family member, needing a divorce or needing to collect child support to meet the day-to-day needs of a child, without anyone to turn to for the legal assistance needed to understand the process and their rights?"

The nature of the legal issues associated with these matters require a lawyer's assistance to first explain the options available and the consequences of each one of those options. Once the client has received counsel and made the choice, the next step would be to have someone prepare and file legal documents to obtain

an order from a court granting the relief that was requested. For example, if a person comes into a court and desires only to be separated from a spouse, but files instead for divorce, that is not the same as filing for a legal separation. Lawyers understand the difference and the consequences of selecting one option over the other, but many citizens do not. Lawyers know how to properly advise a client regarding the legal consequences of filing a divorce action, which ultimately dissolves a marriage, versus filing for a separation, which preserves a marriage.

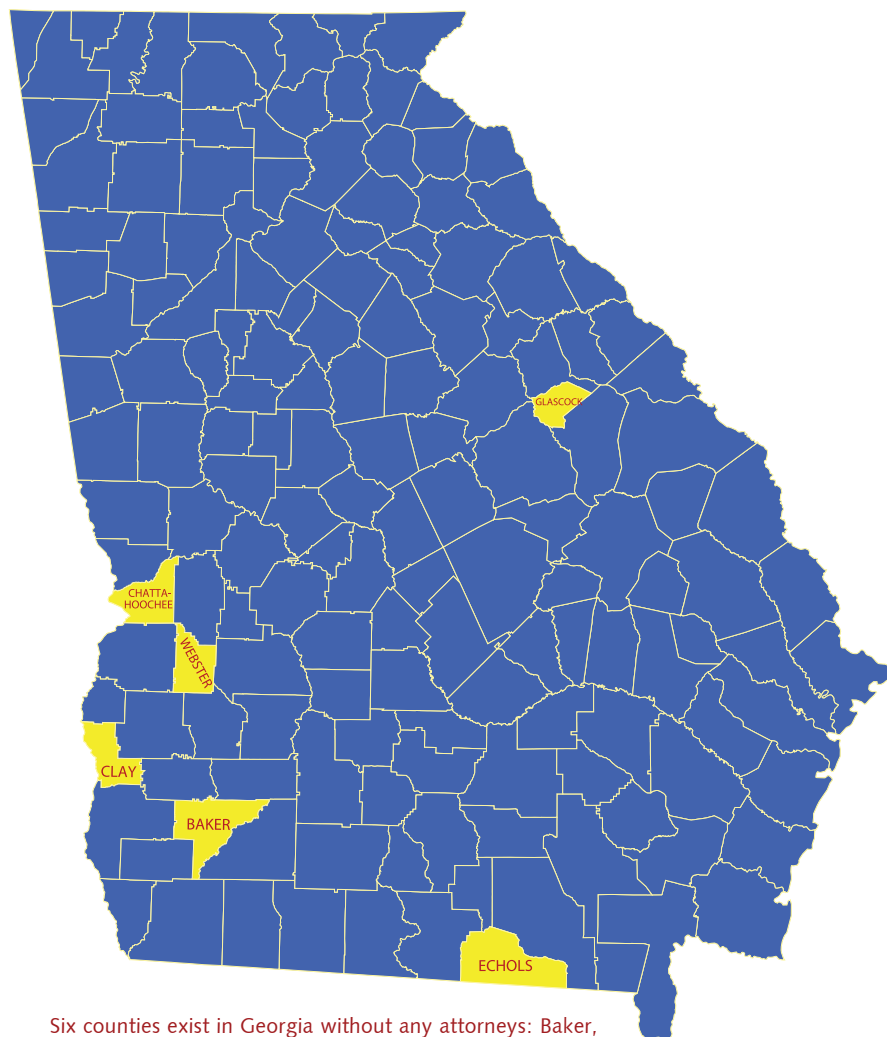
"As a part of the State Bar's emphasis on access to justice for all citizens regardless of one's ability to pay, we are working to develop a program to place attorneys in all underrepresented counties."

For those who have the means to hire an attorney, competent legal services can be obtained. However, more than 1 million Georgians, who live below the poverty level of around \$30,000 for a family of four, do not have the wherewithal to pay for legal services. Several of these Georgians live in counties outside of

the metro-Atlanta area. In these counties, the rights of these citizens are not being protected and not having an attorney when needed is impairing their access to our justice system. Oftentimes, individuals try to represent themselves on a pro se basis without adequate training and experience. As a result, the justice system is being slowed down significantly while judges and lawyers for the opposing parties work through the legal process with only one side being represented by counsel. If the opposing side has an attorney, it would appear that they have an edge, which could be perceived that justice might not be administered fairly to the person representing himself or herself without a lawyer. As a result, our entire system fails the very people that we have pledged, as lawyers, to serve. Everyone needs access to a lawyer when they have to seek justice from the courts. Those without the financial ability to pay for an attorney should be provided one on a pro bono basis.

Unfortunately, there are not enough resources available from agencies like the Georgia Legal Services Program or the Atlanta Legal Aid Society to cover the demands of citizens throughout the state. In addition, the types of civil cases that legal service agencies are allowed to intake are limited by federal statutes. Some of the needs for legal representation in these civil cases have been filled by local attorneys who voluntarily have handled such cases on a pro bono basis. Regardless of the demographic region, legal problems of urban and rural low-income residents are similar. Residents of rural areas have less knowledge of available legal resources and even less access to and success in using technology tools to assist them with their problems. Wide availability of pro bono legal services will ensure that all Georgia residents have access to fair representation in the legal system.

Access to an attorney by persons in every county is need-




Six counties exist in Georgia without any attorneys: Baker, Chattahoochee, Clay, Echols, Glascock and Webster.

ed in order to fulfill the legal needs of indigent and marginally employed citizens in our state. Unfortunately, six counties exist in Georgia without any attorneys: Baker, Chattahoochee, Clay, Echols, Glascock and Webster. These counties do not have the population or the resources to adequately support a lawyer without assistance from other entities and the state of Georgia.

As a part of the State Bar's emphasis on access to justice for all citizens regardless of one's ability to pay, we are working to develop a program to place attorneys in all underrepresented counties. Our focus for 2014-15 is based on the desperate need of citizens in those counties without any lawyers.

We plan to ask the state to offer incentives to attorneys who are willing to reside and open a law

practice in an underserved county as a way of ensuring that there will be an attorney available to all citizens. With such an initiative, it is our intent to begin to address the lack of access to legal services in areas where there are no lawyers and thus continue efforts to fulfill our duty to serve the public. Be sure to watch for more exciting information in the immediate future on the Rural Lawyer Assistance Program. Join us as we continue to increase the number of attorneys working across the entire state to ensure that every Georgia resident has access to the legal representation that he or she deserves. 

Patrise M. Perkins-Hooker is the president of the State Bar of Georgia and can be reached at president@gabar.org.



by Sharri Edenfield

YLD Military Support Initiative an Opportunity to Give Back

On Nov. 11, our nation paused for Veterans Day, which has been a legal holiday since it was first proclaimed by President Woodrow Wilson (then as Armistice Day) in 1919, on the first anniversary of the end of World War I, which was referred to at the time as “the war to end all wars.”

As we are all aware, that would not be the case. Over the past century, the U.S. military has been called into action time and time again—for World War II, the Korean War, the Vietnam War and actions in Iraq in the 1990s and the first decade of this century. And since October 2001, in response to the Sept. 11 attacks on our homeland, the U.S. has been fighting a war on terrorism in Afghanistan.

If and when the planned final exit for U.S. troops takes place in 2016, the war in Afghanistan will be by far the longest in our nation’s history—longer than the

Vietnam War (1965-75) and longer than World War I, World War II and the Korean War combined.

As Adam Taylor of *The Washington Post* wrote earlier this year, “It’s truly remarkable when you think about it. The Vietnam War may have defined 1960s America, but it lasted 10 years by the most widely accepted metric (and, officially, it was never a war at all). And while World War I and II may have killed far more American

troops, the fighting didn’t linger for a decade and a half.”

Another way to look at it is that when I became a lawyer 10 years ago, our military had already been fully engaged in Afghanistan for three years. When we consider the sacrifices our veterans and active-duty service members and their families have made and continue to make on our behalf for the common good, we must also ask what we can do to try to repay them.

Here in Georgia, there are bases for four of the five military branches, including five

active Army bases, three active Air Force bases, a Navy base and Marine base. Currently, there are nearly 775,000 veterans living in Georgia. Many Georgia lawyers have served in the military, and far more of us—including me—have had family members who have

“I challenge all YLD members, and State Bar members as a whole, to please take advantage of these opportunities to give back to those who have given so much for the freedoms we enjoy as Americans.”

served in the military. As I've gotten older, the sacrifice that military service members and their families make for our country have become much more real to me.

When the Veterans Administration Hospital scandal broke earlier this year, revealing how many of our veterans were waiting years for medical treatment, and when I learned how long it was taking veterans to obtain the benefits that they were guaranteed when they joined the military, I knew that I wanted a significant part of my term as president of the YLD to be devoted to supporting our military veterans. The military support effort is two-pronged: First, I want to educate YLD members about the issues that veterans and their family members are facing. Secondly, using this information, I want YLD members to get involved in supporting veterans and their families through several different opportunities already available through the State Bar.

I am pleased to report that this initiative and the work of a newly formed YLD Military Support Committee is well underway. Under the leadership of YLD leaders Kristie Piasta, Ed Piasta, Quentin Marlin and Katie Dod, the YLD is in the process of implementing a state-wide plan to provide legal assistance to our military veterans utilizing the existing framework of the State Bar of Georgia's Military/Veterans Law Section and Military Legal Assistance Program. Here is how the YLD plans to complement these efforts.

Veterans Legal Assistance Clinics

Through a Memorandum of Understanding between Counsel for the V.A. and the State Bar's Military/Veterans Law Section, volunteer Georgia lawyers are currently staffing pro bono legal clinics at V.A. Medical Centers/Clinics in Decatur, Augusta, Carrollton and Ft. McPherson, with the potential for expanding into other cities in the future. These clinics are generally limited to lawyers providing pro bono assistance to veterans in a variety of civil practice areas, like family law, consumer issues and estate planning. I think this is an excellent opportunity to support veterans and I would like to get YLD members involved in staffing these clinics. Training through the State Bar's Pro Bono Partnership will be offered to volunteers on an as-needed basis on the most common issues that arise.

The legal clinic initiative was formally introduced during the YLD Fall Meeting on Jekyll Island. Norman Zoller, Mike Monahan, Drew Early, Cary King and Eric Ballinger of the State Bar's Military/Veterans Law Section and Military Legal Assistance Program led a CLE session, including information on the V.A. Legal Clinics operations and background on the resources available to YLD members to aid in providing legal assistance. These resources are now available online. Information to the online links may be accessed through www.gabar.org, "Public Service Opportunities," and then either "Volunteer/Pro Bono", or "Military Legal Assistance Program," or from Norman Zoller at normanz@gabar.org, or 404-



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527-8765. It is my hope that based on the success of these clinics, the YLD can help to expand these clinics into other cities like Dublin and potentially Savannah.

Training for Veterans Issues

The U.S. Department of Veterans Affairs handles three major categories for America's veterans: medical care, benefits and burials/memorials. That is why, in addition to providing general pro bono legal work through the V.A. clinics, we will also be providing separate opportunities for young lawyers to assist veterans in completing applications for veterans benefits as well as for those young lawyers to become certified to represent veterans on V.A. appeals. This will require a specific three-hour course. Committee Chair Katie Dod, along with Quentin Marlin, who already handles these appeals, previewed this training at the Fall Meeting and, along with the rest of the YLD Military Support team leadership and State Bar Military/Veterans Law Section leadership, will be putting on a V.A. Accreditation CLE at the Midyear Meeting.

Further, additional speakers have volunteered their time to help educate YLD members at the Midyear Meeting regarding various ways we can support our military service members and veterans. For example, a psychiatrist who serves on the Post Traumatic Stress Disorder Team at the Atlanta V.A. Medical Center has agreed to speak on traumatic brain injury, PTSD, re-integration and other issues that military veterans face.

Support to Law School Mentoring Programs

Katie Dod is spearheading the effort to recruit YLD member volunteers to act as mentors for the law students who work in the existing Veterans Law Clinics at Emory University and Georgia State University law schools.

Supporting the JAG Corps

Every young lawyer in the Judge Advocate General (JAG) Corps stationed in Georgia needs to know that the YLD welcomes their attendance and involvement at all of our YLD events. Therefore, in conjunction with the local YLD affiliates, we will reach out to each of the military bases around our state and invite the JAG Corps members there who are also YLD members to attend and/or get involved with their nearest affiliate and also the State Bar YLD, regardless of whether the young lawyer is licensed to practice in Georgia.

Signature Fundraiser


The Augusta Warrior Project (AWP) will be the recipient of proceeds from this year's YLD Signature Fundraiser. AWP is a 501(c)(3) nonprofit with a mission to connect warriors with resources that improve their lives. Importantly, the mission includes advocacy for veterans and connecting them to V.A.-related benefits, which is one of the goals we have identified in our Military Support Program. According to the AWP website, the AWP "has created a replicable model for the delivery of services to warriors. In the Aiken, S.C., and Augusta, Ga., communities, this has resulted in very low veteran homelessness, success for veterans with employment, greater access to benefits and higher use of the G.I. Bill for education."

It is important to note, however, that the AWP is not affiliated with the Wounded Warrior Project, which is limited to assisting post- 9/11 veterans. Indeed, the AWP assists veterans and their families regardless of when the veteran served and regardless of whether the veteran was injured. Further, AWP provides services to veterans across 13 different counties, and also collaborates with veterans' services offered at Ft. Benning in Columbus and Ft. Stewart in Hinesville.

AWP has a fantastic financial model. According to its website,

"92 percent of our operating funds are committed to programs, with 8 percent to overhead. However, 100 percent of the overhead is funded by the Augusta Warrior Project Board of Directors." Further, AWP will keep all of the money the YLD raises in our state and region and won't send it to a national headquarters to be distributed around the country.

I hope you will support this worthy cause by attending the YLD Signature Fundraiser on Saturday, Feb. 28, 2015, at Terminal West, located at 887 W. Marietta St. NW in Atlanta. Please check out the YLD website, www.georgiayld.org, for more information on how to become a sponsor and/or how to purchase tickets to attend.

On March 4, 1865, approximately one month before his assassination, President Abraham Lincoln stated in his second inaugural address, "With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow, and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." In 1959, President Lincoln's phrase from that speech, "To care for him who shall have borne the battle and for his widow, and his orphan," became the official motto for the Veterans Administration; however, I think this motto is also a good challenge for us all, not just the V.A., to undertake. I challenge all YLD members, and State Bar members as a whole, to please take advantage of these opportunities to give back to those who have given so much for the freedoms we enjoy as Americans. 

Sharri Edenfield is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at sharri@ecbcpc.com.



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Georgia's New Patent Law:

Bad Faith Threats of Infringement Create New Liabilities

by Jeffrey R. Kuester and Michael A. Cicero

On July 1, 2014, a new Georgia law took effect, particularly targeting how “non-practicing entities” communicate patent infringement threats and placing a potent weapon in the hands of Georgia businesses on the receiving end of such threats. Georgia’s law represents one of the most recent actions by states to address concerns about such threats. Although primarily aimed at non-practicing entities, the law more broadly prohibits any “bad faith assertion of patent infringement,” identifying evidentiary factors and providing remedies for those targeted by such assertions, including treble damages and attorneys’ fees. Consequently, practitioners should give serious consideration to this new law when sending or receiving patent infringement threats.

A non-practicing entity (NPE) “is an entity that ‘enforces patent rights against accused infringers in an attempt to collect licensing fees, but does not

manufacture products or supply services based upon the patents in question.”¹ In the patent arena, the more “colloquial”² term for such an NPE is “patent troll,” which conjures images of the mythical brute lurking beneath a bridge, waiting to accost travelers and impede their progress across the bridge unless the traveler renders a fee unto the troll. Interesting commentaries and litigation stories surround this colorful metaphor, including an attorney’s claim that labeling his client as a “patent troll” constituted a hate crime under Ninth Circuit law;³ a judge’s suggestion that “Gollum” may be a more accurate term for a patent claimant who “seeks to remain invisible while simultaneously proclaiming possession of a precious ‘Silver Bullet;’”⁴ a court’s denial of a motion to strike the term “patent troll” from an amended complaint because the term “is not so extreme or salacious that it warrants an exercise of the Court’s discretion under [Rule 12(f)];”⁵ and a court’s exclusion of any utterance of “patent troll” during an upcoming trial because it was a “derogatory characterization.”⁶

However one may characterize an NPE, they have become increasingly well known by not only legions of businesses confronted by their lawsuits but also by the judiciary. In an op-ed piece titled “Make Patent Trolls Pay in Court,” a federal appellate judge and his two prominent co-authors presented sobering problems resulting from NPEs’ litigation activities:

The onslaught of litigation brought by ‘patent trolls’ – who typically buy up a slew of patents, then sue anyone and everyone who might be using the claimed inventions—has slowed the development

of new products, increased costs for businesses and consumers, and clogged our judicial system. Their business plan is simple: trolls . . . make money by threatening companies with expensive lawsuits and then using that cudgel, rather than the merits of a case, to extract a financial settlement. In the apt summary of President Obama, who on Tuesday announced plans to stave off frivolous patent litigation, trolls just want to “hijack somebody else’s idea and see if they can extort some money.”

* * *

In the meantime, vexatious patent litigation continues to grind through our already crowded courts, costing defendants and taxpayers tens of billions of dollars each year and delaying justice for those who legitimately need a fair hearing of their claims. Trolls, in fact, filed the majority of the roughly 4,700 patent suits in 2012—and many of these were against small companies and start-ups that often can’t afford to fight back.⁷

According to a study cited by PricewaterhouseCoopers, NPEs filed 67 percent of all U.S. patent cases in 2013, up from just 28 percent in 2009.⁸ In its “2014 Patent Litigation Study,” PricewaterhouseCoopers observes:

These statistics, along with some notorious examples of aggressive NPE tactics, not only caught the attention of practicing entities, but also instigated multiple political responses. As widely reported in the media and discussed by numerous commentators, these responses include strong anti-NPE comments by President Obama, several executive actions aimed at tightening patent ownership disclosures and narrowing patent claims, a formal probe of NPE litigation activity initiated by the Federal Trade Commission (FTC) and

a myriad of legislative proposals and state Attorneys General actions that generally seek to rein in NPE litigation.⁹

Distaste for NPEs, however, is not as one-sided as one might conclude. While their overall success rate lags behind that of practicing entities (25 percent to 35 percent, respectively), their jury trial success rate exceeds that of their practicing counterparts (79 percent to 76 percent).¹⁰ Furthermore, a recent report by the U.S. Government Accounting Office remarks that “the focus on the identity of the litigant—rather than the type of patent—may be misplaced,” as software-related patents “accounted for about 89 percent of the increase in defendants between 2007 and 2011, and most of the suits brought by [NPEs] involved software-related patents.”¹¹

Regardless of where one stands in the NPE debate (and this article does not purport to take sides or resolve it), there is no doubt that NPEs have made their presence felt here in Georgia. A guest column remarks: “Atlanta entrepreneurs have recently begun experiencing the scourge of patent trolls, just like their industry colleagues in Silicon Valley and New York.”¹² Tino Mantella, the president of the Technology Association of Georgia, likewise refers to “a growing number of cases in Georgia,” and exhorts the federal government to “take the lead against the patent troll epidemic for the sake of innovation and good of our nation’s entrepreneurs.”¹³

Vermont Leads the Charge; Other States Soon Follow

In a manner reminiscent of the first battle of the Revolutionary War, when Vermonter Ethan Allen led his Green Mountain Boys in a surprise dawn attack on Fort Ticonderoga in 1775,¹⁴ Vermont fired the opening salvo against NPEs, inspiring an imposing array

of other states, including Georgia, to join the fray.

Vermont’s Lead

In May 2013, Vermont launched its attack on two fronts: enacting “bad-faith assertion” legislation and taking unprecedented legal action against one of the most aggressive trolls:

The first shot in the battle over trolls was fired in Vermont, as the Green Mountain state, which actually has the highest per capita number of inventors, passed a law enabling courts to require a bad-faith patent plaintiff to post a bond to cover the cost and to permit a right of action for bad faith demand letters asserting patent infringement with punitive damages of up to \$50,000. The day the law went into effect, the state’s attorney general filed the first lawsuit under the new law against MPHJ Technology Investments, a notorious patent troll that had sent hundreds of demand letters to small businesses seeking \$1,000 per employee for their claimed patent on the process for scanning documents into an email.¹⁵

“Both developments were prompted by lobbying by an ad-hoc collection of Vermont businesses,” whose attorney explained: “Vermont has a history of political activism by companies.”¹⁶

Now codified in 9 V.S.A. §§ 4195 to 4199, Vermont’s law took effect on May 23, 2013. The opening section sets forth legislative findings and the purpose statements, including: “Not only do bad faith patent infringement claims impose a significant burden on individual Vermont businesses, they also undermine Vermont’s efforts to attract and nurture small- and medium-size IT and other knowledge-based companies.”¹⁷ The act defines a “target” of a threat to include not only the actual business or person who received the

threat, but also someone whose customers have received a demand letter containing a patent infringement accusation.¹⁸ Another section prohibits bad-faith assertions of patent infringement and sets forth an open-ended list of factors a court may consider in determining whether a given assertion was made in bad faith, including whether a demand letter omitted specifics concerning the alleged infringement, namely, the patent number, the identity of the patent owner and allegations as to how the target's products are covered by the patent's claims.¹⁹ Other examples of such factors include whether the sender sets an unreasonably short time for a response or payment of a license fee, or knows a claim of infringement to be meritless.²⁰ The statute then recites a similarly open-ended list of factors a court may consider in deciding that the infringement assertion was not in bad faith, such as a demand letter containing the specifics referred to above, the supplying of such information within a reasonable period of time follow-

ing a request from the target, and a good-faith effort to determine that the target infringed the patent.²¹

The Vermont statute both confirms its attorney general's powers to enforce it, including bringing litigation, and provides for a private right of action. Regarding private remedies, the target can file a motion with the court to require the sender to post a bond. If the target establishes a "reasonable likelihood" that the infringement assertion was made in bad faith, the court will order the sender to post a bond, not to exceed \$250,000, equal to "a good faith estimate" of: (i) the target's costs to litigate the claim; and (ii) "amounts reasonably likely to be recovered" under the Vermont statute.²² Furthermore, if the demand recipient ultimately proves that the sender did threaten the recipient in bad faith, the court can award: (i) injunctive relief; (ii) damages; (iii) costs and attorneys' fees; and (iv) punitive ("exemplary") damages of \$50,000, or three times the sum of damages, costs and attorney's fees, whichever is greater.²³

Other States Respond by Enacting Their Own Anti-Troll Laws

As of July 2014, states that enacted bad-faith assertion laws include not only Vermont and Georgia, but also Idaho, Maine, Maryland, Missouri, Oregon, South Dakota, Tennessee, Utah, Virginia and Wisconsin.²⁴ Additionally, Opensource.com reports that bills in Alabama, Illinois and New Hampshire "await their governors' signatures, and 10 other states have introduced or are considering similar legislation—Connecticut, Kansas, Kentucky, Louisiana, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island and South Carolina."²⁵ Thus, as of Aug. 1, 2014, a total of 25 states either already enacted laws to curb bad-faith infringement assertions, or have at least introduced such legislation. Not all of these states' efforts trace Vermont's law, however. "[S]ome (Virginia, for example), merely strengthen the existing powers of the Attorney General to bring an action on



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behalf of state citizens as opposed to creating a new right of action for private persons or companies.”²⁶

Georgia’s New Law: O.C.G.A §§ 10-1-770 to 10-1-774

On April 24, 2014, Gov. Nathan Deal signed House Bill 809²⁷ into law, which took effect on July 1, 2014.²⁸ The bill received bipartisan and almost unanimous support, garnering only one “no” vote.²⁹

Georgia’s statute generally tracks Vermont’s law. For instance, it defines “target” identically as does Vermont’s law;³⁰ recites identical bad-faith assertion factors and good-faith assertion factors;³¹ and provides for the same amount of treble damages in a private action.³² Despite the Georgia statute’s overall resemblance to Vermont’s law, certain differences exist.

No Statement of Legislative Purpose

Georgia’s law omits any section resembling the “legislative findings

and statement of purpose” recited in the first section of Vermont’s law. Instead, the first section of Georgia’s law recites definitions.³³

Additional Definition

Georgia’s statute contains a definition not present in Vermont’s version, namely: “‘Claims in the patent’ means the extent of protection conferred by a patent.”³⁴ The statute did not simply use a definition of “claims” that tracks a Patent Act provision.³⁵ Moreover, “the extent of protection conferred by a patent” is a matter of patent claim interpretation.³⁶

Protective Order

The first sentence of the section regarding bonds differs from its Vermont counterpart, in that the Georgia statute mentions a protective order: “If proceedings are initiated in a court of competent jurisdiction by the author of a demand letter . . . a target may . . . request that a protective order be issued as described in this Code section.” Substantively, however,

the provisions are similar because each requires the posting of a bond equaling “a good faith estimate of the target’s expenses of litigation,” including attorneys’ fees, but not exceeding \$250,000.³⁷

Georgia Fair Business Practices Act (FBPA)

The section concerning Georgia’s enforcement of the act differs from Vermont’s, so as to make the act enforceable through existing Georgia law. Specifically, under O.C.G.A. § 10-1-773(a):

(a) A violation of this article shall constitute an unfair and deceptive act or practice in the conduct of consumer transactions under Part 2 of Article 15 of this chapter, the “Fair Business Practices Act,” and the enforcement against any such violation shall be by public enforcement by the administrator and shall be enforceable through private action.³⁸

Enforcement of the new statute thus takes two forms: (1) a private

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action; and (2) “public enforcement” by an FBPA “administrator.” The private action aspect represents an expansion of the FBPA. Previously, only natural persons could maintain a private action under the FBPA, and then only in their capacity as consumers, not as competitors.³⁹ Now, any person injured by a violation of the new statute may bring a private action under the FBPA.⁴⁰

Despite the differing statutory framework for bringing private actions, the Georgia *private* action remedies specified in O.C.G.A. § 10-1-773(c) mirror those available in the Vermont law discussed above,⁴¹ with the Georgia statute adding: “other relief as the court deems just and equitable.”⁴² Regarding the Georgia-specific *public* enforcement remedies, the FBPA administrator may act with or without a court action, the latter occurring if it appears to the administrator that “proceedings would be in the public interest[.]”⁴³ Upon a successful showing of liability in a court action, “the court may enter or grant any or all of the relief provided for in Code Section 10-1-397,”⁴⁴ including but not limited to restitution and a maximum of \$5,000 per FBPA violation.⁴⁵

Exclusions

The Georgia act includes a section not present in the Vermont version, i.e., “A demand letter or civil action that includes a claim for relief arising under 35 U.S.C. Section 271(e)(2) or 42 U.S.C. Section 262 shall not be subject to the provisions of this article.”⁴⁶ Actions under 35 U.S.C. § 271(e)(2) are specialized cases, created by the Hatch-Waxman Act, involving brand-name drug manufacturers alleging patent infringement by a generic drug manufacturer who files an Abbreviated New Drug Application (ANDA) with the U.S. Food and Drug Administration (FDA) that contains a “Paragraph IV certification.” Meanwhile, Section 262 is concerned with federal licensing and regulation of

biological products proposed to be sold in interstate commerce.

Is the Charge All for Naught? Pre-emption Threat Looming from Federal “TROL Act” and Pending Litigation

In May 2014, Sen. Patrick Leahy (D-Vt.), the sponsor of a Senate bill titled the Patent Transparency and Improvements Act, announced that he was removing the bill from the Congressional agenda because he had insufficient support. His withdrawal of that bill seemingly made unlikely the passage of patent reform legislation for the rest of 2014.⁴⁷ However, another proposed bill soon emerged.

In the first week of July 2014, U.S. Rep. Lee Terry (R-Neb.) introduced a bill titled the “Targeting Rogue and Opaque Letters Act,” or “TROL Act.”⁴⁸ On July 10, 2014, the House Subcommittee on Commerce, Manufacturing, and Trade voted to send the bill out of committee. As of the time of the writing of this article, its next step is to be presented for a vote before the full Energy and Commerce Committee.

The TROL Act, like the analogous state laws, seeks to prohibit the sending of bad-faith patent infringement assertions, but it gives the Federal Trade Commission the authority to enforce the TROL Act through the provisions of the Federal Trade Commission Act.⁴⁹ It allows state attorneys general to file suit for damages under the TROL Act in federal court on behalf of state residents; however, unlike the Vermont-styled state laws, the TROL Act contains no provision for private rights of action.⁵⁰ In what was a point of contention for some House subcommittee members who voted against the bill, the TROL Act contains a pre-emption clause stating:

(1) IN GENERAL. — This Act pre-empts any law, rule, regulation,

requirement, standard, or other provision having the force and effect of law of any State, or political subdivision of a State, expressly relating to the transmission or contents of communications relating to assertion of patent rights.⁵¹

Although the TROL Act received some industry support, it also received industry opposition, with one group calling it “well-intentioned, but dangerous,” and expressing concern that it would impede the efforts of states addressing the issue of infringement threats.⁵² Curiously enough, on July 23, 2014, Intellectual Ventures, which is a well-known NPE with an extensive patent portfolio,⁵³ wrote a letter to lawmakers endorsing the TROL Act.⁵⁴

The future of the TROL Act in this or the next Congress looks far from certain. Even were the TROL Act to suffer the fate of its predecessors, however, the pre-emption question lingers and may yet threaten states’ actions. In the lawsuit brought by Vermont, MPHJ filed a motion for

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sanctions in a federal district court, arguing that Vermont's lawsuit "was preempted by MPHJ's right to enforce its patents."⁵⁵ However, that federal court remanded the case back to the Vermont state court in which it was originally filed, ruling that Vermont's action did not "arise under" federal law, and that consequently, the federal court lacked subject matter jurisdiction.⁵⁶ In so doing, it remanded MPHJ's sanctions motion to the state court.⁵⁷ MPHJ appealed the remand order, but in an Aug. 11, 2014 decision, the Federal Circuit granted Vermont's motion to dismiss the appeal, ruling that a federal statute (28 U.S.C. § 1447(d)) precluded appellate review of the remand order.⁵⁸ Thus, at the time of the writing of this article, MPHJ's pre-emption argument remains to be substantively considered by the Vermont state court. In the meantime, a couple of commentators took opposing positions as to that argument.⁵⁹

Conclusion

Given the nascent stage of the recently enacted "bad-faith assertion" laws, their impact has yet to be gauged through reported case law. New developments in this area continue to arise at a rapid pace, and anyone affected by NPEs' activities should closely monitor these developments, particularly whether the preemption doctrine—as contained in the TROL Act bill or raised in a litigant's challenge—succeeds in curbing states' activities against NPEs. In the meantime, NPEs may discover that Georgia can prove a hazardous forum in which to level less-than-credible patent threats. 



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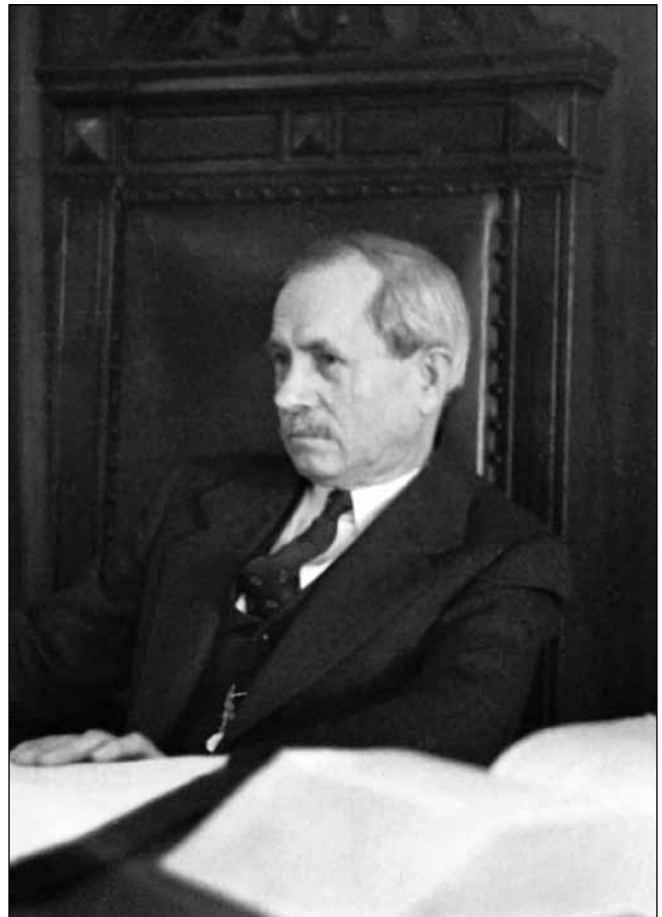


Judicial Selection and *Hooper v. Almand*

by Hon. Todd Markle

Georgia has experimented with numerous methods of judicial selection in its nearly 240-year existence, some of which are quite different from the manner in which judges are chosen today. For example, the Constitution of 1789 provided for election of judges by the Legislature. The Constitution of 1861, on the other hand, required gubernatorial appointment of Superior Court judges with the advice and consent of two-thirds of the Senate.

The Constitution of 1865 established popular elections for judges by the electors of their respective circuits. The Constitution of 1877 returned the power of judicial appointment to the Legislature. This provision was amended in 1898 to provide for the popular election of Superior Court judges by general election by the electors of the entire state. Only the Democratic Party nominee was selected by vote of the qualified electors within a circuit. Thus, after winning the Democratic nomination, a circuit's judicial nominee would stand



Judge John David Humphries at the bench, 1937.

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for election statewide in the general election. It was not until the Constitution of 1983 that Georgia discontinued the practice of the partisan election of judges.

Georgia's unique method of judicial selection led to an unfortunate situation that ensnared the Superior Court of Fulton County in 1942. At that time, a total of seven judges sat on the Fulton bench: Edgar Erastus Pomeroy, Virlyn Moore, Paul Etheridge, Hugh Dorsey, Walter Hendrix, Anton Etheridge and John David Humphries. Humphries was the court's senior member.

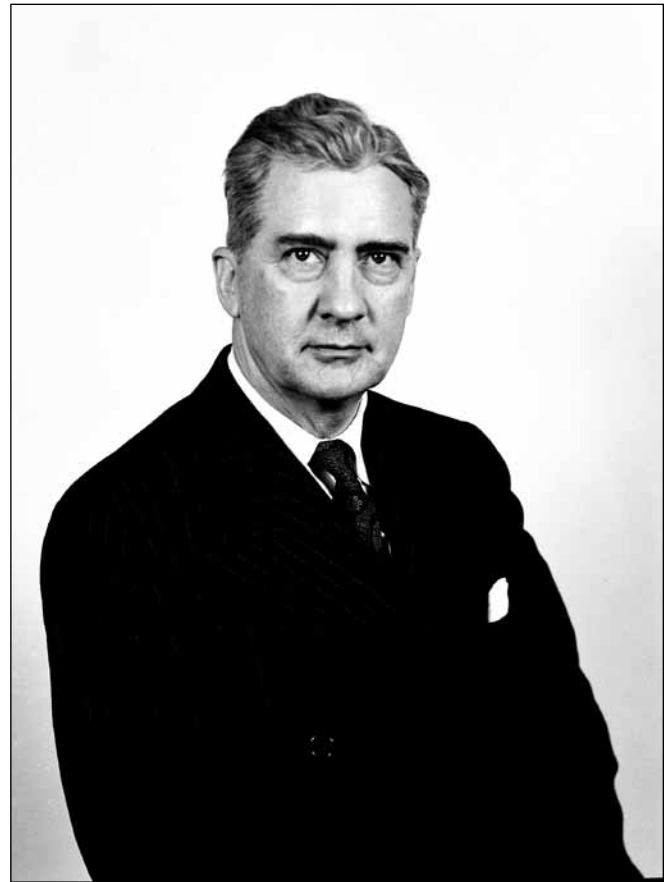
Humphries had been elected to the court in 1918 when he achieved the rare feat of defeating an incumbent judge. In that contest, Humphries bested Judge Benjamin Harvey Hill III, who had previously served on the Court of Appeals of Georgia before his appointment to the Fulton trial bench. Humphries was no stranger to Fulton County politics: he served as mayor of Hapeville before seeking election to the court. In 1930 and 1934, Humphries was himself challenged, but each time he was re-elected by wide margins. In 1938, Humphries drew no opposition and was re-elected to a new term which would expire at the end of 1942. As the end of that term approached, Humphries qualified for re-election in the 1942 Democratic primary and drew no opposition. It appeared a certainty that he would be elected to a new four-year term.

The Democratic primary took place on Sept. 9, 1942. With no opponent, Humphries was inevitably selected by the voters of the Atlanta Judicial Circuit as the party's nominee. On Oct. 22, 1942, before the election cycle was complete, however, Humphries died.

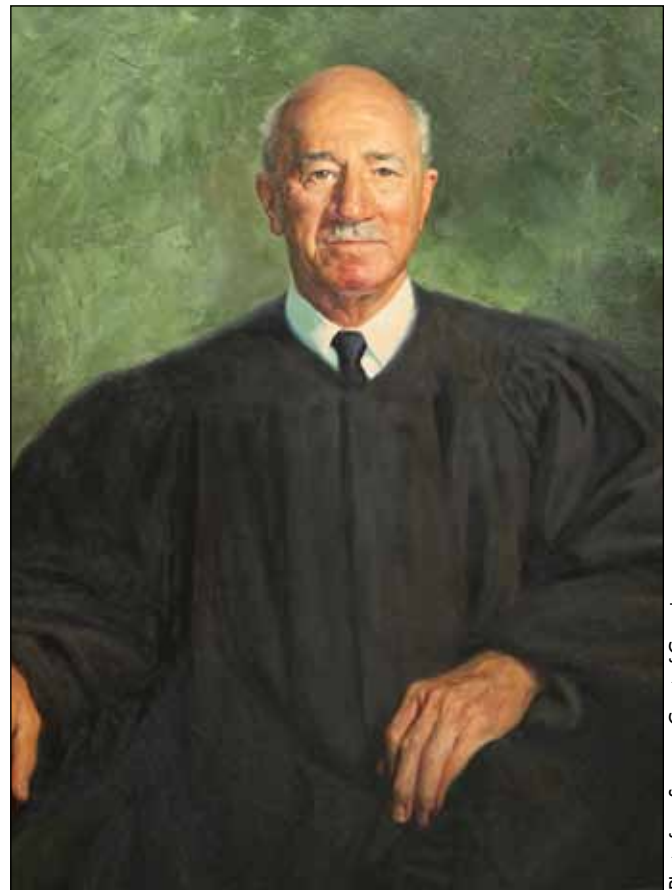
The Democratic primary had another very important race that year that would dramatically impact the selection of Humphries' replacement. Attorney General Ellis Arnall defeated incumbent Eugene Talmadge to become the Democratic Party nominee for governor. It was the first and only time Eugene Talmadge was defeated in his political career. With Georgia being a one-party state at the time, Arnall's election in the November vote was virtually assured. In fact, there was no Republican nominee on the ballot and only two independent candidates.

Now a lame duck, Gov. Talmadge wasted no time in naming Humphries' successor. On Oct. 24, two days after Humphries' death, Talmadge swore in Bond Almand to fill the vacancy on the court. To modern eyes familiar with current judicial selection methods, there is nothing that appears particularly unusual about Talmadge's actions. Nevertheless, it set off a firestorm that ultimately would have to be quelled by the Supreme Court of Georgia.

In response to Talmadge's appointment of Almand, the Democratic Party, through its executive committee now chaired by Arnall, nominated Frank Hooper as the candidate to appear as the Democratic nominee on the November election ballot. The fight over the Fulton judgeship was not simply between two admit-



Judge Frank Arthur Hooper Jr., 1952



Justice Bond Almand

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tedly well-qualified lawyers, but what amounted to a battle that had become quite personal between Talmadge and Arnall. The issue was further complicated by the fact that after the primary, Arnall supporters controlled the party's machinery and Arnall was the sitting attorney general.

Both would-be judges were certainly well qualified. Bond Almand was born in Lithonia on Jan. 18, 1894. He graduated from Emory in 1913 and studied law at Columbia University, graduating in 1916. He was active in the local bar. He served as president of the Atlanta Lawyers Club in 1922 and president of the Atlanta Bar Association in 1935. Almand served in the state house in 1935 and was the solicitor of the Fulton County Criminal Court from 1939 until his appointment.

Frank Arthur Hooper Jr. was born in Americus on April 21, 1895. Hooper graduated from Boys High School in Atlanta and then from Georgia Tech in 1915. He attended the Atlanta Law School and was admitted to the bar in 1916. Hooper worked as a clerk for Walter F. George for a year beginning in 1917 when George was on the Court of Appeals. In 1925, he was elected to the state house and served four years. While in the Legislature, he befriended Richard B. Russell. When Russell was elected governor, he appointed Hooper to the Court of Appeals in 1932. Hooper served out the term of Judge O.H.B. Bloodworth and left at its expiration. Hooper then worked as an instructor at Atlanta Law School for nine years, and as the Atlanta assistant city attorney from 1940 until 1943.

Under Talmadge's interpretation of his appointment powers, he was entitled to name Almand to serve out the vacant term and his appointee would not have to stand for election until 1944. Interestingly enough, this is essentially the current method used to fill vacancies. Arnall's view was that Hooper was the Democratic Party nominee to replace Humphries and, assum-

ing his victory in the general election, he would serve a new four-year term beginning Jan. 1, 1943. Under this analysis, the Georgia Constitution provided fixed four-year terms of definite lengths with Hooper, in the event he won the general election, being entitled to the office as of Jan. 1, 1943, the date the new term would begin. Talmadge relied instead upon a constitutional provision which provided that should an office become vacant within 30 days of a general election, the governor is entitled to fill it by appointment until a successor is elected in the next general election. In any event, the commission Talmadge issued to Almand upon his swearing-in provided that the right to claim title to the office from the date of the appointment until Jan. 1, 1945.

Even under the Arnall/Hooper interpretation, Almand was entitled to fill the vacancy until the end of the term, Dec. 31, 1942, but there was no doubt that litigation would ensue thereafter. On Hooper's accepting the party nomination, the battle lines were drawn. The *Atlanta Constitution* quoted Hooper as saying, "I don't think we're going to lose." He added, however, "I'd rather go down fighting with the right crowd than to win with the wrong crowd."

With Almand now the sitting judge as Humphries' replacement serving under a commission that allowed him to hold the office until Jan. 1, 1945, Talmadge and Arnall gave conflicting instructions to the county ordinaries as to how to handle the 1942 general election ballots. Secretary of State John B. Wilson wrote each ordinary a letter which read as follows:

I am advised by the Attorney General [Arnall] that it is my duty . . . to inform you . . . that the name of Frank A. Hooper, Jr., should be placed by you on the official ballot in the Democratic column as a Candidate for Judge of the Superior Court of the Atlanta Circuit to succeed

John D. Humphries, deceased, in the General Election to be held November 3, 1942.

Talmadge responded to Secretary Wilson's letter by notifying the ordinaries of the state "to follow the law . . . and not to amend the ballot, recognizing no nominee of the Democratic Party for the judge of the Superior Court of the Atlanta Judicial Circuit to succeed Judge John D. Humphries." Thus, Hooper's election was no certainty.

As it turned out, the ballots submitted to the voters in 85 counties included the name of Frank A. Hooper Jr. as the Democratic candidate for judge of the Superior Court of the Atlanta Judicial Circuit. In those counties, no votes were cast for anyone other than Frank A. Hooper Jr. In 50 counties, the ballots submitted to the voters included the name of John D. Humphries as the Democratic candidate for judge of the Superior Court of the Atlanta Judicial Circuit. In each of those counties, there were no votes cast for anyone other than John D. Humphries. In 19 counties, the ballots submitted to voters included both the name of John D. Humphries and Frank A. Hooper as contenders for the position. Moreover, two counties reported no votes for anyone for the judgeship. When the dust settled, and the votes finally tabulated, Hooper received 43,553 votes to 17,554 votes for the deceased Humphries with 47 write-in votes for the non-candidate Almand.

At this point, the plot thickened. Following the election, on Nov. 18, 1942, Hooper sought his commission from Talmadge. He did so again on Dec. 28, 1942. On both occasions, Talmadge refused to issue the commission. On Dec. 31, 1942, the clerk of the Superior Court of Fulton County administered the oath of office to Hooper for a term to begin Jan. 1, 1943. Then, on the first day of the alleged new term, Hooper made demand upon Judge Almand to

Given Georgia's subsequent constitutional changes, much of the Supreme Court's reasoning in *Hooper v. Almand* no longer applies. Nevertheless, it does provide insight into the various methods Georgia has used to select judges, many of which are now nearly forgotten. It also illustrates the high quality of the judges Georgia has been fortunate to have regardless of how they have ascended to the bench.

relinquish the post. The demand read as follows:

This is to make a formal demand that the office of Judge of the Superior Court of the Atlanta Judicial Circuit, heretofore occupied by you as an appointee, be vacated and that I be permitted to assume such office. In this connection I wish to advise that by action of the Georgia State Democratic Executive Committee my name was placed on the ballots and that on November 3, 1942 in the general election I received a majority of the votes cast. That such results have been certified by Honorable John B. Wilson, Secretary of State, to Honorable Eugene Talmadge, Governor of Georgia. That while I have demanded of the Governor a commission the same has been refused but I have taken and subscribed the oaths of office required by law and have filed the same in the Executive Office at the State Capital. Because of the foregoing my term of office commences on this date.

Almand did not relent, and the following day Hooper filed a quo warranto proceeding seeking the seat to which he believed he was lawfully elected and legally entitled.

The parties, through counsel, agreed to a three-judge panel consisting of Fulton Superior Court judges Pomeroy, Etheridge and Moore to hear the proceeding. At the end of January 1943, the panel unanimously concluded that their

colleague Almand was entitled to the post. Hooper appealed to the Supreme Court of Georgia.

On May 8, 1943, the Supreme Court voted 6 to 1 in favor of Hooper and Arnall's interpretation of the law and reversed the lower court's finding in favor of Almand. In *Hooper v. Almand*,¹ Justice Grice authored a lengthy opinion in which he analyzed and attempted to reconcile the various constitutional provisions relating to the election of judges in effect at that time. The Court began by noting that Section 3 of Article 6 of the 1877 Constitution provided that "there shall be at least one judge of the superior courts for each judicial circuit whose term of office shall be four years and until his successor is qualified."² This portion of the 1877 Constitution was amended in 1898 to read as follows: "The successors to the present and subsequent incumbents shall be elected by the electors entitled to vote for members of the General Assembly of the whole state, at the general election held for such members, next preceding the expiration of their respective terms: Provided that the successors for all incumbents whose terms expire on or before the first day of January 1899, shall be elected by the General Assembly at its session for 1898, for the full term of four years."³ The Court held that this language created fixed four-year terms. Because Hooper did not seek to fill any part of Humphries' term, but was elected to serve for the new

term beginning Jan. 1, 1943, he was entitled to the office.⁴

In reaching its conclusion, the Court rejected the position advanced by Almand regarding the interpretation of another constitutional provision that entitled the governor to fill any vacancy "occasioned by death, resignation, or other causes . . . until the first day of January after the general election held next after the expiration of 30 days from the time such vacancy occurs, at which election a successor for the unexpired term shall be elected."⁵ The Court found this provision did not alter the concept of fixed terms, but instead merely resulted in Judge Almand's entitlement to the office until the new term began on Jan. 1, 1943.⁶

Almand was gracious in defeat and accepted the Court's decision. He did not seek a rehearing on any of the legal issues. He gave up his post on May 13 and Hooper was sworn in on May 16.

Between Almand and Hooper, the dispute ultimately had a happy resolution, though Arnall and Talmadge would later duel again. Gov. Arnall named Almand to the Fulton bench on May 1, 1945, to replace Paul S. Etheridge upon the latter's death. Almand was then elevated to the Supreme Court of Georgia by Gov. Herman Talmadge in 1949. He would serve as an associate justice until 1969 and as chief justice from 1969 until his retirement in 1972. Ironically, Almand would pen the Supreme Court decision in the 1966 gubernatorial

election contest involving Arnall, Lester Maddox and Bo Callaway.

Hooper would serve as Almand's colleague until his appointment to the federal bench in 1949. He took office there on Oct. 27, 1949. Hooper was appointed by President Truman. He served during a tumultuous period in Atlanta's history. He ordered desegregation of the Atlanta public schools in 1961. He was also a member of a three-judge panel that ordered the admission of the first two black students to the University of Georgia.

Given Georgia's subsequent constitutional changes, much of the Supreme Court's reasoning in *Hooper v. Almand* no longer applies. Nevertheless, it does provide insight into the various methods Georgia has used to select judges, many of which are now nearly forgotten. It also illustrates the high quality of the judges Georgia has been fortunate to have regardless of how they have ascended to the bench. Both Hooper and Almand had long, distinguished careers as public servants of the judicial branch. (GBJ)



Hon. Todd Markle currently serves on the Superior Court of Fulton County. He was appointed to the bench in 2011 and

won election in 2012. Prior to his appointment, he served as executive counsel to Gov. Nathan Deal. Markle chaired the original Criminal Justice Reform Council in 2011. Markle practiced law in Atlanta for 21 years before entering public service.

Endnotes

1. 196 Ga. 52, 25 S.E.2d 778 (1943).
2. *Id.* at 57.
3. *Id.*
4. *Id.* at 58.
5. *Id.*
6. *Id.* at 59.

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2015 State Bar Legislative Preview

by Thomas Worthy and Rusty Sewell

On Jan. 12, 2015, the 153rd Georgia General Assembly will convene for the 2015 regular session, which is the first year of their two-year session. Since this is the first year of a new session, there are no carry-over bills. In addition, study committees from both chambers have been working on important issues throughout the summer and fall, and any bills originating from these committees will be formally introduced at the beginning of the session.

The session will begin with the inauguration of Gov. Nathan Deal for his second term as well as other statewide constitutional officers and new members of the General Assembly. Six attorneys were elected as new members of the General Assembly: Sen. Harold Jones (D-22), Sen. John Kennedy (R-18), Sen. Elena Parent (D-42), Rep. Beth Beskin (R-54), Rep. Bert Reeves (R-34) and Rep. Bob Trammell (D-132). Following the ceremonial commencement, we expect it to be a long session with transportation and education issues looming large over the proceedings.

The Bar's legislative team has begun formulating its legislative agenda. The Advisory Committee on Legislation (ACL) has already held one meeting where four legislative proposals were approved. These proposals were adopted by the Board of Governors at the Fall Meeting on Jekyll Island. They include:

- A funding request of \$2.5 million in the state's fiscal year 2016 budget to provide legal services for



victims of domestic violence. \$2.5 million is the pre-recession funding level. The Bar secured a \$387,000 increase in funding last year to reach \$2.12 million and this proposal seeks the remaining \$387,000 to achieve \$2.5 million.

- A continuation funding request of \$800,000 in the state's fiscal year 2016 budget for the Georgia Appellate Resource Center to provide post-conviction legal services in death penalty cases. The Center has continuously received State Bar support for its budget requests.
- A proposal by the Family Law Section to clarify the validity of and requirements for an antenuptial agreement.
- A proposal by the Real Property Law Section to create a private cause of action with damages for parties that were harmed by the unlicensed practice of law. This proposal was part of the Bar's legislative agenda last year but did not secure passage.

The ACL met again on Dec. 4, to hear additional proposals presented to them by State Bar sections and committees. Approved proposals will then be presented to the Board of Governors at the Midyear Meeting in January.

Proposals that will likely be presented to the ACL for its consideration include: e-discovery legislation, a funding request for judicial salary increases, the Uniform Deployed Parents Custody and Visitation Act, and legislation that would streamline the filing of water liens against real property. The Bar's legislative team will also vigilantly monitor the bills introduced in this new session to ensure that if issues the Bar has historically opposed are reintroduced, that the Board of Governors will have the opportunity to quickly take an official position opposing those bills. Bills in this category include: legislation that would immunize the providers of legal self-help services from unlicensed practice of


law lawsuits and legislation that sets up an administrative remedy for medical malpractice claims, denying the rights of victims to go to court.

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

- **Criminal Justice Reform.** This will be the fourth year of efforts by the Georgia Council on Criminal Justice Reform to recommend thoughtful changes to adult sentencing, juvenile justice and re-entry policies. The Council's work and Gov. Deal's leadership have been highly successful in reforming the criminal justice system. While the Council will likely propose legislation to further the reforms, its main focus will be perfecting previous reforms through oversight and data analysis.
- **Judicial Funding.** In addition to possible salary increases, the Bar will continue to work with the governor's office and legislators to ensure that the judiciary has adequate funding.
- **Other Issues.** As usual, other issues of interest to attorneys will arise during the session. We are excited to roll out the new State Bar Action Network — an online grassroots advocacy dashboard that enables us to communicate with you and you to communicate with your representative and senator with ease. Please take a few minutes to sign up for this great service

when you receive an invitation by email. As always, you can also visit the State Bar's website at www.gabar.org, where you will find summaries of the legislative proposals and the bills/resolutions that are supported or opposed by the State Bar as well as weekly video updates from the Capitol.

We encourage you to get involved in the process not only by joining the State Bar Action Network but also by encouraging your local or voluntary bar associations to join us for a day at the Capitol. These advocacy days, which were well-attended last year, include a legislative briefing, lunch with your representatives and participation in floor sessions and committee hearings.


If you have any questions about the Bar's legislative and grassroots program, do not hesitate to contact us at 404-526-8608 or at thomasw@gabar.org. 



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



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Individuals Recognized for their Devotion to Georgians in Need

by Damon E. Elmore

Ten individuals who personify the phrase “justice for all” were recently honored as Champions of Justice for their long and fruitful association with the Georgia Legal Services Program (GLSP) and their service to low-income Georgians in need of legal representation.

GLSP Champions of Justice are named by the board of directors each year to honor Georgians who have devoted substantial effort to making sure the protection of the legal system is not limited to the wealthy. They are lawyers and professionals who promote the mission of GLSP: access to justice and opportunities out of poverty.

“I’m pleased to help honor each of our Champions of Justice, for their truly extraordinary contributions and their unwavering commitment to this important cause,” said U.S. Attorney General Eric Holder, appearing via video. “Your distinguished leadership on behalf of underprivileged Georgians is inspiring. Each of you stands as a potent example to young lawyers and future leaders who must continue to ensure that justice is accessible to all Americans from every background and every circumstance. Your work reminds every individual in the legal field that this kind of assistance is nothing less than a professional responsibility, a moral obligation and a national duty. I’m awed by the difficult work that you do so well. I’m proud to count you as colleagues and partners.”

Alston & Bird generously hosted the reception sponsored by the State Bar of Georgia, Baker Donelson, King & Spalding, Bondurant Mixson & Elmore and the *Daily Report*. The event raised a total of \$43,150 for GLSP through sponsorships and ticket sales.

Patrise M. Perkins-Hooker, president of the State Bar of Georgia and a vocal advocate of pro bono service by lawyers, said, “The Champions of Justice Recognition Event was an incredible evening. The honorees are powerful examples of lawyers and community leaders who have been committed to making a difference for people in need. I applaud the recipients’ dedication and GLSP for recognizing these individuals who go beyond the call of duty to serve others. I was honored to be in the midst of such champions.”

Below are short biographies for each of the honorees.

Anne Ervin was recognized for her long and faithful service on the GLSP board of directors, as a client member representing the Columbus region appointed by the Muscogee County Foster Parents Association. During her many years of service, she was a dedicated supporter of the mission of GLSP and an active and faithful participant at board meetings. Ervin also faithfully contributed financially to GLSP.

Hon. Hardy Gregory, retired from the Supreme Court of Georgia, was recognized for his longstanding support for civil legal services and in particular his generous financial support of GLSP. Gregory has presented several generous gifts to GLSP which have supported services in rural areas of South Georgia. He is a 24-year donor to GLSP who has given 31 gifts.

Avarita L. Hanson, executive director of the Chief Justice’s Commission on Professionalism, was recognized for her longstanding support of GLSP. She is a



Photo by Don Morgan Photography & Video

GLSP Board President Damon Elmore and GLSP Executive Director Phyllis Holmen pictured with the Champions of Justice, (left to right): Anne W. Ervin; Cubbedge Snow Jr.; Linda Klein; Justice Carol Hunstein; Jack Webb; Avarita L. Hanson; and Patricia Barmeyer, accepting the award on behalf of her father, Randolph Thrower; with C. Ben Garren, immediate past president of GLSP's Board of Directors.

31-year donor and has used many of her professional positions as platforms from which to advocate for access to justice, especially for the needy. Most recently, as director of the CJCP, she dedicated all of the proceeds of the 25th anniversary gala to GLSP, a total of \$42,000.

Justice Carol Hunstein of the Supreme Court of Georgia was recognized for her active and longstanding support of GLSP and other providers of civil legal services, and for using her role as chief justice from 2012-13 as a pulpit from which to promote the core values of access to justice and the rule of law. In 2013, Hunstein specifically urged the State Bar of Georgia to do more to support civil legal services for the poor, resulting in several rule changes and other initiatives to bring more resources to the cause.

Linda Klein, managing shareholder at Baker Donelson's Georgia offices, was recognized for her extraordinary work over several decades on behalf of the cause of justice for all. As president of the State Bar of Georgia, she conceived and implemented the plan to secure \$2 million from the Georgia General Assembly in 1995 for legal services to needy survivors of domestic violence. Since that date, more than \$35 million has been appropriated for this purpose.

Cubbedge Snow Jr., retired partner at Martin Snow in Macon,

was recognized for his many years of service to the cause of justice for all, beginning with his support of the early efforts of the young lawyers working to establish the Georgia Indigents Legal Services and GLSP in the early 1970s. Access to justice has been one of the abiding values of Snow's legal career, and his personal support for staff of GLSP has been invaluable.


Frank B. Strickland, of Strickland Brockington Lewis in Atlanta, was recognized for his longstanding dedication to the cause of equal justice. Strickland expended tremendous personal and political influence to advance the cause of justice, building a renewed bipartisan base of support for legal services in the U.S. Congress. He devoted countless uncompensated hours in meetings of the Legal Services Corporation board held across the United States and in other countries. Thousands of lives have been positively affected by his service.

Randolph Thrower was recognized posthumously for his longstanding support for civil legal services in Georgia. He was a 25-year donor to GLSP and was also a strong supporter of the Atlanta Legal Aid Society. Thrower was honored for his lifelong dedication to professionalism and the importance of access to justice for all.

Eva Washington was recognized for her activities as a tireless advocate on behalf of clients, the Georgia

Clients Council and GLSP. As a member of the GLSP board of directors, Washington brought client-centered insight to the needs of clients and the ways in which GLSP attorneys could be helpful in their communities. She rarely missed a statewide Georgia Client Council conference and used the conferences to both network with fellow members and learn as much as she could about legal issues affecting clients.

Jack Webb was recognized for his dedication to the cause of justice for all as demonstrated by his long tenure as the director of finance for GLSP. Webb served in that position from 1979-2011. He developed and implemented financial processes, budget planning and accounting oversight as GLSP grew into a multi-million dollar nonprofit law firm with multiple and ever-increasing funding sources, each with different reporting requirements, restrictions and deliverables, and grant terms.

A special thanks goes out to all these champions, and those before them and those who will surely come after them, who make a difference in the lives of Georgians. 



Damon E. Elmore is the president of GLSP's board of directors. He can be reached at damonelmore@outlook.com.

The Gordon County Courthouse at Calhoun:

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

At Tunnel Hill north of Dalton, The Western and Atlantic Railroad's only tunnel was finally completed in 1849, and Georgia's dream of a western rail connection was at last about to become a reality. The first train from Atlanta to Chattanooga made the journey in 1850. In the years following the road's completion, three new counties were created along the line. Gordon County was cut from Cass, Murray and Floyd Counties in 1850, Whitfield County from Murray in 1851, and Catoosa County from Murray and Walker in 1853.

Despite the impact of The Western and Atlantic, northwest Georgia was still a very wild place in 1850. Compelling evidence of this is found in the fact that in that year the newly created Gordon County contained virtually no towns. Two crude hamlets came to vie for the title of county seat. One of these, a place called Center or Big Spring, was a full eight miles from the railroad. The other, Oothcaloga Station, was selected, surveyed and laid out as the town of Calhoun. A brick courthouse was built the next year. By the end of 1850, the new county town had more than 150 residents. On March 15, 1888, the Gordon County grand jury found the original 1851 courthouse to be in good condition, recommending repairs to the roof and improvements to the privies. Five days later, a tornado touched down in Calhoun destroying a significant portion of the town. By most accounts, the courthouse was destroyed. A closer examination of the situation reveals that indeed the courthouse suffered damaged, but was not beyond repair. An initial survey

of the damage published in the Calhoun *Times* suggested a new courthouse, but went on to say that repairs to the old building would probably cost only "one or two thousand dollars." On April 12, the *Times* reported that an architect from Atlanta had been engaged to assess the damage and make recommendations. That architect was William Parkins. Parkins was not only arguably Atlanta's most noted architect, but in 1888 he was fresh from his association with perhaps the ablest New South promoter of all, the notorious Hannibal I. Kimball. There can be little doubt that Parkins, himself a Northerner, was an able and convincing spokesman for a New South brand of progress, and in Calhoun he must have found a receptive audience.

In 1888, with a population of only about 600, Calhoun lagged behind her sisters on The Western and Atlantic. Marietta, Cartersville and Dalton all were at least six times her size, and all had postbellum crossing rail lines. However, railroad schemes abounded in Gordon County in 1888, and surely the citizens of Calhoun were quick to seize on the hopes created by so many rumors and plans. Parkins' visit in April of that year surely stoked burning hopes for progress, and by May the fat was unquestionably in the fire as the *Times* held up the challenge of neighboring Pickens County with its plans for a new courthouse at nearby Jasper. "Pickens County let the contract to build a \$13,000 courthouse. If our mountain sister can build at that figure, Gordon can easily build one at \$20,000," the editor boasted. Here again we see evidence of the effect of buildings in neighboring counties. In this period, competitive interaction among counties often proved potent with regard to both the initial motivations to build new courthouses and the selection of architectural styles.

The name William Parkins is connected to a number of courthouses in Georgia, and often the connection came by way of association with other architects. A close look at the work of Alexander Bruce in Tennessee, where he practiced before joining Parkins in Atlanta, leads to the conclusion that the Parkins and Bruce's court buildings at Sparta (1882), and Atlanta

(1883) are primarily the work of Bruce, although Parkins probably had a hand in the Fulton County building. Similarly, with the firm Kimball, Wheeler and Parkins it appears that Parkins was part of the design team for the 1887 Oglethorpe County Courthouse at Lexington, but the firm's other Georgia court building, the 1886 Randolph County Courthouse at Cuthbert, appears to be primarily the work of Lorenzo Wheeler.

There is, however, a body of work which reflects the talent of William Parkins alone, including some of Atlanta's finest buildings of the period: The Church of the Immaculate Conception (1873); the Kimball Opera House (1869, later remodeled as the Capitol Building of the state of Georgia, burned 1893); the first Kimball House Hotel (1870, burned 1883); and the John James House (1869, later Atlanta's first Governor's Mansion, demolished 1924). Sadly, only The Church of the Immaculate Conception still stands today, and thus the 1960 demolition of Parkins' Gordon County Courthouse deprived the people of Georgia of one more of the precious few William Parkins buildings left. Fortunately, two excellent Parkins courthouses are still standing: the Dooly County Courthouse at Vienna (1890), and the wildly eclectic Terrell County Courthouse in Dawson (1892). Both of these buildings share numerous stylistic motifs with the Gordon County court building including stepped parapets and similar fenestration.

Parkins may not have been a great American Master, but his buildings symbolized The New South as he dreamed it, and he was one of a handful of architects in Georgia to design commercial buildings that unabashedly voiced the High Victorian styles of the day, incorporating imaginatively eclectic combinations and even elements of Gothic ornament into secular buildings. His Picturesque designs for courthouses were far more eclectic



The Gordon County Courthouse at Calhoun, built in 1889, demolished in 1960, William Parkins, architect.


Photo courtesy of the Georgia Department of Archives and History.

than those of his former junior partners Bruce and Morgan.

In Gordon County, Parkins' approach is primarily Romanesque. The obligatory tower rises above large arched entrances, and the central portion of the facade, with its arcade, echoes the arches of the tower above. The circular bay of a staircase and stair-stepped fenestration continue in the Romanesque Revival tradition as do the small paned windows beneath the arcade and in the second story of the tower. The side elevations of the building suggest the Queen Anne Style in silhouette with hints of Northern European Renaissance in the stepped parapets framed by high chimneys. This is a complicated building, which rambles a bit, although with considerable appeal.

The devastating cyclone of 1888 was no ill wind. It blew William Parkins to Gordon County and along with him a few of the bricks of the dream of New South prosperity. Here, as at Lexington, Cuthbert, Vienna, Cedartown and Dawson, Parkins brought the Picturesque to rural Georgia. Perhaps some believed that the modern, eclectic styling could lift a town up out of the economic doldrums of the

postbellum South, and anoint its inhabitants with the healing balms of the industrial revolution.

By 1910, the town had a cotton mill and had more than doubled its 1888 population. Still, crossing rails never came to Gordon County, and the progress of a handful of brick buildings and a cotton mill to exploit cheap labor was a far cry from the flamboyantly aggressive New South that William Parkins had ventured to dream. 

Excerpted by **Wilber W. Caldwell**, author of "The Courthouse and the Depot, The Architecture of Hope in an Age of Despair, A Narrative Guide to Railroad Expansion and its Impact on Public Architecture in Georgia, 1833-1910," (Macon: Mercer University Press, 2001). Hardback, 624 pages, 300 photos, 33 maps, 3 appendices, complete index. This book is available for \$50 from book sellers or for \$40 from the Mercer University Press at www.mupress.org or call the Mercer Press at 800-342-0841 inside Georgia or 800-637-2378 outside Georgia.

Kudos



Flinn

Harbin

Lester

VanderBroek

Georgia State University, along with the State Bar of Georgia and the Atlanta Bar Association, hosted the Intellectual Property Community Service Awards Luncheon on Oct. 21, to honor Patrick Flinn (Alston & Bird), John Harbin (King & Spalding), Elizabeth Lester (Sutherland Asbill & Brennan) and Mark VanderBroek (Nelson Mullins Riley & Scarborough) for their contributions to community service. Each of these award recipients has demonstrated a longstanding commitment to community service, encouraged others to participate in community service and achieved outstanding results for persons in need through their efforts.



Boyd

Goode

Alston & Bird LLP announced that Meaghan Boyd was re-elected as the 2014-15 co-chair of the environmental litigation committee of the ABA section of litigation. The

committee has more than 1,500 members nationwide, many of whom are at the forefront of environmental litigation. Its membership includes appellate and trial court judges, senior enforcement officials at the U.S. Department of Justice and U.S. Environmental Protection Agency, in-house counsel and private practitioners.

Partner Jason Goode was elected to the board of directors of the Atlanta Chapter of the Association for Corporate Growth (ACG). ACG comprises more than 14,500 members from corporations, private equity, finance and professional service firms representing Fortune 500, Fortune 1000, FTSE 100 and mid-market companies in 54 chapters in North America and Europe.



Hopkins

Hooker

Kilpatrick Townsend & Stockton LLP announced that Lindsay Hopkins was named to the Logan E. Bleckley Inn of Court. A chapter of the American Inns of Court, the Logan E.

Bleckley Inn of Court is an organization of Atlanta area trial lawyers and judges dedicated to the promotion of ethics and professionalism in trial prac-

tice. Established in 1990, the Bleckley Inn presents six programs for its members each year on current litigation topics and runs a mentoring program for its barristers and pupils.

Associate Charles Hooker was named to the board of directors of WonderRoot. Founded in 2004, WonderRoot is an Atlanta-based nonprofit arts and service organization with a mission to unite artists and community to inspire positive social change.

The firm was recognized by CHRIS Kids at the 14th Annual CHRISal Ball as the 2014 Corporate CHRISal Vision Honoree. CHRISal Vision honorees are recognized for their contributions and efforts to further the CHRIS Kids mission. Kilpatrick Townsend was recognized for assistance with legal restructuring, "adopting The Giving Tree," complaints, lawsuits, wage and hour issues and personnel and construction issues.

The Joseph I. Mulligan Jr. Distinguished Public Service Award was presented to Brad Cunningham at the International Municipal Lawyer's Association Annual Conference on Sept. 13, in Baltimore. The award recognizes a local government attorney for significant and surpassing achievements in the field of local government law occurring or culminating in the previous year.

The MacArthur Foundation named Gideon's Promise founder Jonathan Rapping a 2014 MacArthur fellow and a recipient of the MacArthur Genius Grant, a stipend of \$625,000. Each year MacArthur recognizes 21 exceptionally creative individuals with a track record of achievement and the potential for significant contributions in the future. Rapping's selection is based on his groundbreaking work in the criminal justice arena as his organization, Gideon's Promise, aims to train and support young public defenders in the Deep South.

The Supreme Court of Georgia approved Charles Bowen to register with the Georgia Commission on Dispute Resolution as both a general civil mediator and a domestic relations mediator. Bowen completed all civil and domestic training requirements in order to be approved and qualified to mediate almost all civil and domestic disputes. Georgia's mediation certification is accepted and respected by ADR professionals and organizations throughout the country.



> **Nelson Mullins Riley & Scarborough LLP** announced that partner **Erika Birg** was accepted by the **American Arbitration Association (AAA)** for its **National Roster of Arbitrators for Commercial Disputes**. The organiza-

tion provides former federal and state judges, attorneys and business owners trained by the AAA to manage the dispute resolution process with fairness and skill and an eye toward timeliness and cost efficiency. Birg focuses her practice on commercial litigation, alternative dispute resolution, business torts, contract disputes, trade secrets, computer fraud and non-compete matters.



> The **University of Florida College of Law** elected **Brian D. Burgoon** as the 2014-15 **president** of the **University of Florida College of Law Alumni Council**. The Council is one of the primary support and advisory boards for the law school.



> The **American College of Trial Lawyers** named **Jim Matthews** a **fellow** of their association. The induction ceremony took place during the recent 2014 Annual Meeting of the College in London, England. Fellowship in the college is extended by invitation only to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality.



> **Hunter Maclean** announced that partner **Andrew H. Ernst** was recognized by **Armstrong State University** with its **Distinguished Alumni Award** for excellence in professional, community or public service. Ernst represents clients on wetland issues and coastal development matters specifically related to various facets of Georgia's Marshlands Protection Act and Shore Protection Act.



> **FordHarrison LLP** elected partner **Ellen Ham** to the firm's **executive committee**. The executive committee consists of eight diverse firm partners who oversee every aspect of the firm's operation and development. They are responsible for the implementation of major firm decisions and policies and for overseeing the day to day management of the firm. Ham's election to the committee is notably significant, as she is the third woman to join the group.



> **David Neal Stern** was appointed **chairman** of the **bankruptcy section** of the **Broward County Bar Association**. Stern, who formerly practiced in Atlanta, focuses on bankruptcy and commercial litigation in the Boca Raton, Fla., office of Frank, Weinberg & Black, P.L.

On the Move

In Atlanta



Reddy

> **Kilpatrick Townsend & Stockton** announced the addition of **Gautam Reddy** as an **associate**. Reddy works on the construction and infrastructure development team in the firm's litigation department. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



> **Schiff Hardin LLP** promoted **Leah Ward Sears** to **coordinating partner**. Sears is the leader of the firm's appellate client service team, serving and consulting as appellate counsel for complex, high-profile trials and appeals.

Her experience as an appellate jurist positions her as an ideal adviser when complex issues are involved and a creative strategy is needed. The firm is located at One Atlantic Center, Suite 2300, 1201 West Peachtree St. NW, Atlanta, GA 30309; 404-437-7000; Fax 404-437-7100; www.schiffhardin.com.





> **Burr & Forman LLP** announced the addition of **Michelle L. Mersey** as an **associate**. Mersey advises clients on the negotiation and lender financing of merger acquisition transactions, lender portfolio sales, and structuring and documentation of commercial loan transactions that are both multi-jurisdictional and multi-lender syndicated. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.



> **Baker Donelson** announced the addition of **Daniel A. Cohen** to the firm's business litigation department. Cohen joins as a **shareholder** and **chair** of the firm's higher education group where he focuses his practice on representing colleges and universities in their legal affairs. His Title IX compliance work includes defending colleges and universities against Title IX investigations by

the Federal Office for Civil Rights, providing proactive Title IX audits and compliance reviews and developing litigation avoidance strategies. The firm is located at Monarch Plaza, 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

>  **McGuireWoods LLP** announced the addition of **Gerald V. Thomas II** as a **partner**. Thomas works in the tax and employee benefits department with significant experience in deals involving real estate investment trusts. The firm is located at 1230 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.

>  **Berman Fink Van Horn** announced the addition of **Lea C. Dearing** as **senior associate attorney**. Dearing assists businesses with a wide range of issues, including labor and employment matters, internal investigations, privacy law, general commercial litigation and contracting, products liability, construction disputes and e-Discovery management. The firm is located at 3475 Piedmont Road, Suite 1100, Atlanta, GA 30305; 404-261-7711; Fax 404-233-1943; www.bfvlaw.com.


>  **MendenFreiman** announced the addition of **Alden K. Corrigan** as an **associate**. Corrigan practices in business, tax, wills, trusts and estate planning practice groups. Her most recent experience includes advising business clients on compliance with federal, state and local laws that impact employee benefit plans, including ERISA, the IRC, HIPAA and the Affordable Care Act. The firm is located at Two Ravinia Drive, Suite 1200, Atlanta, GA 30346; 770-379-1450; Fax 770-379-1455; www.mendenfreiman.com.

>   **Nelson Mullins Riley & Scarborough LLP** announced the addition of **Andrew Mullen** and **Anita Bala** as **associates** to the Atlanta office. Mullen focuses his practice on commercial real estate. He has represented both national and local developers and real estate investment firms, as well as property owners associations, municipalities and quasi-governmental municipal development agencies. As a member of the educa-

tion team, Bala represents clients in matters involving civil litigation, special education and employment law. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonnullins.com.

>    **Levine Smith Snider & Wilson, LLC**, announced the addition of **Kelly K. Schiffer** as **partner** and **Lindsey M. Hacker** and **Brandon T. Guinn** as **associates**. The family law firm focuses on divorce, custody, modification, agreements and mediation. The firm is located at 3490 Piedmont Road NE, Suite 1150, Atlanta, GA 30305; 404-237-5700; Fax 404-237-5757; www.lsswlaw.com.

>   **FordHarrison LLP** announced the addition of **senior associate Patrick L. Ryan** and **associate Jessica L. Asbridge** to the firm's Atlanta office. Ryan focuses his practice on the representation of management in employment law matters and has extensive experience in handling litigation brought under the Fair Labor Standards Act and state wage and hour laws and regulations. Asbridge focuses her practice on the representation of management in labor and employment matters, including representing employers in claims of discrimination, harassment and retaliation, and violations of federal and state employment law regulations. The firm is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.

>  **Anne Tyler Hamby** announced the formation of **Hamby Benefits Law Office, LLC**. The firm specializes in providing comprehensive legal guidance to small and mid-size companies on retirement plans, health and welfare benefits, and executive compensation. The firm is located at 7 Piedmont Center, Suite 300, 3525 Piedmont Road NE, Atlanta, GA 30305; 470-223-3095; www.hambybenefitslawllc.com.

In Columbus



Hatcher, Stubbs, Land, Hollis & Rothschild, LLP, announced that **LaRae D. Moore** has joined the firm as partner in the litigation group after serving as a senior assistant district attorney in the Chattahoochee Judicial Circuit. Moore's

litigation practice includes DUI, fraud, white collar crime and public corruption criminal defense; employment litigation, medical malpractice defense and personal injury claims involving wrongful death, automobile accidents and injuries due to negligence of others. The firm is located at 233 12th St., Suite 500, Columbus, GA 31901; 706-324-0201; Fax 706-322-7747; www.hatcherstubbs.com.



Lee & Hayes PLLC announced that it acquired **Hope Baldauff, LLC**, an Atlanta patent law firm. The members and employees of Hope Baldauff officially joined Lee & Hayes on Oct. 1. The firm is located at 1175 Peachtree St. NE, 100 Colony Square, Suite 2000, Atlanta, GA 30361; 404-815-1900; Fax 404-815-1700; www.hbipfirm.com.

In Dunwoody



Nadler



Biernath

Solo practitioners **Heather D. Nadler** and **Mark E. Biernath** merged to become **Nadler Biernath LLC**. With more than 20 years of experience, the firm's practice areas include special needs

planning for people with disabilities and parents of children with disabilities, guardianship/conservatorship and estate planning (wills, living wills, durable powers of attorney). The firm is located at 4360 Chamblee Dunwoody Road, Suite 500, Atlanta, GA 30341; 770-445-0535; www.nadlerbiernath.com.

In Savannah



HunterMaclean announced that **Rachel Young Fields** has been named **partner**. Fields practices in the areas of business litigation, appellate practice and intellectual property. In addition to handling all aspects of litigation, she

counsels businesses and individuals on protecting and managing their intellectual property, including filing trademark and copyright applications. The firm is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

In DeKalb, Ill.



The Northern Illinois University College of Law announced that **Clanitra L. Stewart** joined the library faculty as a **reference and instructional services librarian and assistant professor**. In

her new role she provides legal reference assistance to faculty, students and other library users as well as teaches a legal research class at the school. The college is located at Swen Parson Hall, Northern Illinois University, DeKalb, IL 60115; 815-753-8595; Fax 815-753-5680; www.niu.edu/law.

In Washington, D.C.



Birchstone Moore LLC announced the addition of **Sarah Moore Johnson** as a **partner**. The firm offers estate planning, business succession, probate and trust administration services to clients. The firm is located at 5335 Wisconsin Ave.

NW, Suite 440, Washington, D.C. 20015; 202-686-4842; www.birchstonemoore.com.

In Raleigh, N.C.



Nelson Mullins Riley & Scarborough LLP expanded into North Carolina with the addition of **Donna Rascoe** as a **partner**. A former teacher and school administrator, Rascoe advises and litigates on behalf of public and private

schools in a variety of legal matters. She also handles employment and other civil litigation matters for school districts and other public entities. The firm is located at GlenLake One, Suite 200, 4140 Parklake Ave., Raleigh, NC 27612; 919-877-3800; Fax 919-877-3799; www.nelsonmullins.com.

How to Place an Announcement in the Bench & Bar column

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. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the *Georgia Bar Journal* will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, Chambers USA, Who's Who, etc.). Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not members in good standing of the State Bar of Georgia will not be printed. For more information, please contact Lauren Foster, 404-527-8736 or laurenf@gabar.org.

This is Your Wake-up Call

by Paula Frederick

What's up?" you ask your longtime mentor as you settle into his office chair. "Your message sounded urgent, so I made a special trip downtown."

"It's not urgent—at least I *hope* not," your mentor replies. "I'm trying to make arrangements for someone to close down my practice when I die. I'm hoping you'll agree to do the honors."

"Are you OK?" you ask with concern. "I thought you were going to practice for a few more years."

"I still plan to practice until I'm 75, and I hope to have plenty of time before then to wind things down," your mentor assures you. "But after what happened with Pete last summer, I'm not taking anything for granted."

"Pete's death was a wake-up call," you agree. "He went so fast! Then come to find out he didn't even have a will, much less a plan for closing down his practice . . ."

"The Bar really came through for him," your mentor reflects. "We all took a couple of his cases and didn't even get paid for finishing them up. But Pete wouldn't have wanted to inconvenience his clients that way! The whole thing made me realize that I'm being downright irresponsible if I don't start planning for my inevitable departure from practice."

"I'm honored you think I'm up to the job," you say. "What do I have to do?"

A Georgia solo considering retirement has some options. Rule 1.17 allows for sale of a practice to another lawyer or law firm.¹ Although the rule allows




the selling lawyer to simply walk away after the sale, many solos opt for a more gradual transition by bringing a younger lawyer into the practice, then gradually withdrawing as retirement nears. This option allows the experienced lawyer to provide any training or mentoring that the newer lawyer might need and ensures a smooth transition from the client's perspective.

Some states require a sole practitioner to designate an "assumption attorney"—a practitioner who has agreed to assume the practice when the solo dies or becomes incapacitated. Although Georgia does not require it, a prudent solo should consider making such a designation so that clients will not be harmed if the solo is suddenly unable to practice.

Even where there is no attorney who wants to take over the practice, a solo should designate someone to close down the practice. Closing the practice involves providing notice to all clients that the solo has left practice, and returning client files.

As a last resort the Bar has a rule on receiverships that can kick in when a solo dies, disappears or otherwise becomes unable to practice and there is no one to protect client interests. Rule 4-228 allows the Bar to petition the Supreme Court of Georgia for appointment of a receiver for the lawyer's files and records.

If you practice on your own and you don't have a transition plan, this is your wake-up call! 



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

Endnote

1. Note that Georgia's rule differs from the ABA Model, which allows a lawyer to sell just one area of practice—even if the lawyer continues to practice in other substantive law areas. In Georgia the practice must be sold in its entirety.

THE STATE BAR OF GEORGIA ANNOUNCES ITS ANNUAL

FICTION WRITING COMPETITION

PAST WINNERS INCLUDE:

"THE VIRGIN OF GUADALUPE"	GERALD CARTY (2014)
"WHITECLIFFE"	MARK ROY HENOWITZ (2013)
"A DEFENSE OF THE HEART"	LT. COL. LEONARD M. COHEN (2012)
"OLD FRIENDS"	GREG GROGAN (2011)
"OUT FROM SILENCE"	CYNTHIA LU TOLBERT (2010)
"DEATH TAX HOLIDAY"	LAWRENCE V. STARKEY JR. (2009)
"THE DARK PART OF THE ROAD"	LISA SMITH SIEGEL (2008)
"LIFE FOR SALE"	LISA SMITH SIEGEL (2007)
"TREASURE OF WALKER COUNTY"	THOMAS ELLIS JORDAN (2006)
"DOUBTING THOMAS"	GERALD CARTY (2005)



State Bar
of Georgia

DEADLINE: JANUARY 16, 2015

For more information, see the inside back cover

Attorney Discipline Summaries

(Aug. 30, 2014 through Oct. 17, 2014)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Ted Webster Wooten III

Fayetteville, Ga.

Admitted to Bar 2008

On Oct. 6, 2014, the Supreme Court of Georgia disbarred attorney Ted Webster Wooten III (State Bar No. 303708). The following facts are admitted by default: Wooten was retained in 2011 to represent clients in a personal injury matter. After settling the case for approximately \$100,000 in January 2012, Wooten told his clients that he would hold the funds in trust until subrogation and medical lien issues were resolved. He then withdrew what he deemed to be his fee without notifying his clients. Thereafter, he withdrew funds for his personal use until the funds were exhausted. During this time, he lied to his clients about his efforts to resolve the medical liens. In May 2013, Wooten told the clients that he used all their money. He has not reimbursed them. In addition, in February 2013, SunTrust Bank notified the State Bar of an overdraft of \$2,600 in Wooten's trust account.

The Investigative Panel found that Wooten acted willfully, that he failed to file a sworn, written response to the Notice of Investigation in regards to the overdraft, that he received a formal letter of admonition in 2012 and that he failed to keep the State Bar informed of his address.

Clark Jones-Lewis

Atlanta, Ga.

Admitted to Bar 1985

On Oct. 6, 2014, the Supreme Court of Georgia disbarred attorney Clark Jones-Lewis (State Bar No. 398595). The following facts are admitted by default: On Jan. 8, 2013, Jones-Lewis called a special assistant attorney general (SAAG) for the Fulton County

Department of Family and Children Services and told him that she had interviewed a biological mother and was interested in becoming involved in a case regarding a baby girl who had come into the department's temporary custody. On Jan. 9, Jones-Lewis asked the SAAG if he would agree to a pre-trial conference with the judge. Jones-Lewis told him that she had families that were interested in adopting the child and that she would contact the court for a conference. Jones-Lewis then spoke with the juvenile court judge's assistant and told her that she wanted to set up a pre-trial conference regarding the child and that she represented the child's grandparents. Jones-Lewis requested a continuance of the Jan. 10 hearing and called the SAAG on Jan. 10 to tell him that she was ill and would not attend the hearing. In fact, however, the Supreme Court had suspended Jones-Lewis from the practice of law for six months as of Oct. 1, 2012, so she was not allowed to practice law at that time. The Court determined that Jones-Lewis made false statements to a tribunal, practiced law without a license and made misrepresentations to the SAAG and the court.

The special master recited Jones-Lewis's disciplinary record, including the above-noted suspension and public reprimand in 2012; a Review Panel reprimand in 2010; and an Investigative Panel reprimand in 1997. The special master noted that a third or subsequent disciplinary infraction may, in and of itself, constitute grounds for disbarment. The special master also found that Jones-Lewis acted with a dishonest or selfish motive.

Robert Anthony McDonald

Douglasville, Ga.

Admitted to Bar 1995

On Oct. 6, 2014, the Supreme Court of Georgia disbarred attorney Robert Anthony McDonald (State Bar

No. 489579). The State Bar filed four Notices of Discipline with the Court. The following facts are admitted by default:

S14Y1413

A client retained McDonald in May 2010, to represent her regarding an automobile accident that occurred in May 2010, in which she suffered injuries. McDonald had minimal communication with the client during the following two years, but filed an action on her behalf in May 2012. Although the client made repeated efforts to communicate with McDonald, his phone was disconnected, his email inoperative and certified mail was returned as unclaimed. The client's case appeared on a default calendar in January 2013 but when McDonald did not appear, the case was dismissed for want of prosecution. In March the client sent McDonald a letter expressing her dissatisfaction with his failure to communicate and demanding information about her case. When McDonald failed to respond, the client filed a grievance. In April she accepted a settlement directly from the insurer.

S14Y1414

A client retained McDonald in 2007 to represent her regarding an automobile accident in which she suffered injuries. McDonald had minimal communication with the client during the next two years and in 2009, he advised her that the defendant was in active military service and that she could not proceed with her suit until he returned. In May 2009, McDonald told the client that he was filing her action since the statute of limitations would expire soon, but that he was unable to reach the defendant's commanding officer, and that the insurer would not return his calls. To assist in filing her complaint, the client provided McDonald with the original documents concerning all of her medical records and expenses. Later in 2009 and throughout 2010, the client repeatedly attempted to contact

McDonald. At the time, the client was suffering financial difficulties and needed to settle her case. The client had occasional contact with McDonald's wife, who was an acquaintance, and told the client that her case should be completed by September 2012. In October, McDonald responded to a text message, assuring the client that he would provide her case information to her bankruptcy attorney, but he failed to do so. In December, the client delivered a letter to McDonald's secretary expressing her dissatisfaction and requesting her complete file. After not receiving any response, the client checked the court's file in January 2013, and learned that McDonald had voluntarily dismissed her case in May 2010, and that the court had entered an order in October 2009, requiring her to pay \$550 in attorney fees as a sanction for McDonald's failure to respond to discovery. McDonald has still not returned the file.

S14Y1415

In July 2012, McDonald was retained to represent a defendant in a criminal matter. McDonald filed an entry of appearance and waiver of arraignment on behalf of the client but then had no communication with him despite the client's repeated efforts to contact him. McDonald did not file any further pleadings, and when the case appeared on the court's calendar he failed to appear. The client, who was present for the calendar call, informed the court of McDonald's failure to respond and the court issued an Order for Withdrawal of Attorney on June 3, 2013.

S14Y1416

In October 2009, a client retained McDonald to pursue a personal injury action involving injuries the client suffered in an automobile accident. The case was settled for \$9,000 and about March 1, 2013, McDonald sent the client a "Settlement Statement" reflecting that he was withholding \$2,323.67

for payment to medical providers and an insurer for subrogation. Although the client had already paid the medical providers, he waited for McDonald to negotiate the only remaining unpaid claim—a subrogation claim from Blue Cross Blue Shield in the amount of \$1,248.95—before requesting disbursement of the remaining funds. In August 2013, the client received a letter from Blue Cross regarding the subrogation claim. McDonald did not respond to the client's repeated attempts to contact him regarding payment of the subrogation claim and reimbursement for the other medical expenses and has not provided an accounting for the settlement funds.

Although McDonald has no prior disciplinary history, the Investigative Panel found that McDonald acted willfully and dishonestly in failing to communicate with his clients, in abandoning the legal matters entrusted to him, in misrepresenting to his client in S14Y1414 the status of her legal matter, in dismissing that client's matter without her knowledge, and

***"He who is his own lawyer
has a fool for a client."***



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in failing to account for and properly disburse the proceeds from the client's settlement in S14Y1416, and found that these matters demonstrate a pattern of misconduct.

Ashley A. Davis

Cartersville, Ga.

Admitted to Bar 2003

On Oct. 6, 2014, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Ashley A. Davis (State Bar No. 207475). On April 3, 2014, Davis, under her married name of Ashley Davis Grooms, pled guilty to and was convicted in the Superior Court of Bartow County of possession of methamphetamine and making a false statement. Davis was serving a 30-month suspension from the practice of law with conditions for reinstatement in Georgia based on an earlier drug conviction under the First Offender Act.

Michael B. Shankle

Greensboro, N.C.

Admitted to Bar 1982

On Oct. 6, 2014, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Michael B. Shankle (State Bar No. 637635). Shankle was disbarred in North Carolina for misappropriating client funds.

Lauren Gordon Garner

Lawrenceville, Ga.

Admitted to Bar 1999

On Oct. 6, 2014, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Lauren Gordon Garner (State Bar No. 285674). Garner entered guilty pleas on May 2, 2014, in the Superior Court of Gwinnett County to felony possession of a controlled substance and possession of a drug-related object.

Gregory Bartko

Yazoo City, Miss.

Admitted to Bar 1995

On Oct. 6, 2014, the Supreme Court of Georgia accepted the petition for voluntary surrender of

license following termination of the appeal of attorney Gregory Bartko (State Bar No. 040476). The Court had previously suspended Bartko pending the appeal of his 2010 felony convictions for conspiracy, mail fraud and sale of unregistered securities.

Suspensions

Amjad Muhammad Ibrahim

Atlanta, Ga.

Admitted to Bar 1994

On Sept. 14, 2014, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Amjad Muhammad Ibrahim (State Bar No. 382516) for six months suspension beyond the suspension already imposed, retroactive to April 14, 2014, with conditions for reinstatement. In October 2012, the Supreme Court suspended Ibrahim for 18 months with conditions on reinstatement. Thereafter, the State Bar filed a new formal complaint and he filed a petition for voluntary discipline for an extension of his suspension for new rules violations.

In April 2011, Ibrahim represented a couple in a personal injury claim. During that time, the couple had financial difficulties and asked Ibrahim for assistance. Ibrahim's paralegal contacted a financing company and arranged for the couple to receive pre-settlement, nonrecourse financing. The company sent funds to the couple periodically, ultimately providing \$2,950. Each time, a courier would deliver to Ibrahim's office a sealed envelope addressed to the couple containing the funds in cash and the paralegal would arrange for the couple to retrieve the money. The paralegal would have the couple sign a receipt and then give them the envelope containing the cash. The paralegal did not maintain a record of the money, nor was any of it deposited into and disbursed from Ibrahim's trust account. Ibrahim admitted that he failed to supervise his paralegal in her handling of the funds and failed to deposit the money into his trust account.

The Court noted Ibrahim's prior disciplinary history which includes his current suspension; a five-week suspension in October 2009 for failing to file a response to the Notice of Investigation in the case leading to Ibrahim's current suspension; two formal letters of admonition related to that case; and a formal letter of admonition in 2002.

William Slater Vincent

Marietta, Ga.

Admitted to Bar 1982

On Oct. 6, 2014, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney William Slater Vincent (State Bar No. 727801) for a 12-month suspension. In January 2007, Vincent was convicted of wire fraud upon a plea of guilty in the U.S. District Court for the District of South Carolina. Six years later, the State Bar became aware of his conviction and commenced disciplinary proceedings. Vincent then filed a petition for voluntary discipline.

In 2003, while employed as a teacher, Vincent offered to help a student find financing for a film project. Vincent learned of an investment program that involved medium-term, high-yield notes. He agreed to present the program to potential investors. As it turned out, the program was a scam, and the potential investors were agents of the Federal Bureau of Investigation. As a result of his presentation of the program, Vincent was charged with wire fraud. Vincent never notified the State Bar of his conviction and maintained his active membership in the State Bar.

The special master noted that Vincent has no other criminal record, that he has no prior discipline, that he did not have a dishonest or selfish motive in promoting the investment program, that no one was injured by his promotion of the program, that he cooperated with the FBI, that he cooperated with the State Bar after it learned of his conviction and that he is remorseful. The special master also found that Vincent appears to be "a man of veracity, integrity, loy-

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alty, and dedication to good work.” Although Vincent cooperated with the State Bar during the disciplinary proceedings, the Court found that he did nothing to advise the State Bar of his conviction, and he “cooperated” only after the State Bar learned of his conviction on its own.

LaXavier P. Reddick-Hood

Atlanta, Ga.

Admitted to Bar 1988

On Oct. 16, 2014, the Supreme Court of Georgia suspended attorney LaXavier P. Reddick-Hood (State Bar No. 597285) for three years, with conditions for reinstatement.

The following facts are deemed admitted by default: Reddick-Hood represented a client in a personal injury action and settled the case in May 2010. She deposited the check in her trust account, paid the client and paid herself. She, however, failed to pay four medical providers \$2,750 as the settlement required. In March 2011, Reddick-Hood falsely told her client that the providers had been paid. She told her client that she would forward to her copies of the letters and checks sent to the medical providers, however, she failed to communicate further with the client. After the client filed a grievance, Reddick-Hood falsely told the State Bar she had paid the medical providers. During the time that Reddick-Hood should have been holding \$2,750 to pay the medical providers, Reddick-Hood’s trust account balance was less than \$2,750. Reddick-Hood finally completed the payments to the providers more than a year after she had received the funds. In September, Reddick-Hood offered her client \$3,000 to withdraw the grievance.

The special master found that Reddick-Hood received two Investigative Panel reprimands in 2011, and noted that a finding of a third or subsequent disciplinary infraction shall, in and of itself, constitute discretionary grounds for suspension or disbarment.

As mitigating factors, the special master found that Reddick-Hood is remorseful and admitted her wrongdoings and has paid the medical providers in full, that the client has been made whole, that Reddick-Hood has taken steps to correctly handle her trust account through the Bar’s Law Practice Management Program, that personal and emotional factors may have contributed to Reddick-Hood’s behavior, that she sought and continues to receive counseling and that the events giving rise to the prior disciplinary sanctions arose during the period she was seeking counseling. The Court did not feel that Reddick-Hood’s community and Bar-related service outweighed the serious misconduct in this matter. Justices Benham and Melton dissented.

Public Reprimand

David P. Hartin

Marietta, Ga.

Admitted to Bar 1979

On Oct. 6, 2014, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney David P. Hartin (State Bar No. 333775) for a Public Reprimand. Prior to receiving the reprimand, Hartin must utilize the services of the State Bar’s Law Practice Management Program.

A client hired Hartin to represent him in an uncontested divorce action. The client paid Hartin a flat fee of \$1,500 and a filing fee of \$207 for the preparation of the divorce papers, a Quitclaim Deed (QCD) for the client’s wife to relinquish interest in the client’s residence and a Qualified Domestic Relations Order (QDRO). Hartin prepared the divorce papers and QCD; the client signed the papers on April 15, 2011, and the wife signed on April 28. Around July 14, the client informed Hartin that the court clerk told him no case had been filed. Hartin found the paperwork and filed it on July 27. On Aug. 11, Hartin represented the client in a traffic matter for free to make amends for the delay in filing the divorce papers. On

Aug. 29, Hartin filed a motion for judgment on the pleadings in the divorce case and obtained a Final Decree, which he filed and provided to the parties. Around April 10, 2012, the client contacted Hartin because he discovered that the QCD had not been recorded. Hartin contacted the lender and closing attorney and sent the information to the attorney by Federal Express. Hartin drafted the QDRO and sent it to the retirement plan administrator in February 2012. In April and July 2012, Hartin told his client that he would take the QDRO to the judge to sign. He did not present it to the judge until Nov. 19, after the client filed a grievance. The State Bar asked Hartin if he would contact his client and apologize and refund a portion of the fee, which Hartin did, refunding \$500 with the agreement of his client.

In mitigation of discipline, the special master noted that Hartin had personal and emotional problems starting in 2009. Hartin also made restitution by handling the traffic matter at no charge and by partially refunding the fee; and he promptly responded to his client when questioned about the divorce case and promptly responded to disciplinary authorities. Hartin offered evidence of his good reputation, that he has been active in his community, that he is remorseful, and that he has taken action to prevent any further misconduct.

In aggravation of discipline, Hartin received two Investigative Panel reprimands while he was representing the client in this matter, arising from similar conduct.

Review Panel Reprimand

Daniel Jay Saxton

Atlanta, Ga.

Admitted to Bar 1977

On Sept. 14, 2014, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Daniel Jay Saxton (State Bar No. 628075) for a Review Panel

Reprimand. Saxton purchased a law firm that provides services to homeowners facing foreclosure in various states. In 2013, his firm sent solicitation letters to 12 individuals in Rhode Island whose homes had been noticed for foreclosure. The solicitation letters referenced a foreclosure sale "on the courthouse steps," which is not accurate in Rhode Island. The letters also referenced a local address that did not exist and a local phone number that connected to Saxton's Georgia office, without disclosing that fact. The letters did not provide the name of a Rhode Island licensed attorney. After Saxton was contacted by Rhode Island Bar authorities about the letter, he falsely stated that his office had contracted with a Rhode Island lawyer and had arranged for use of space at an office on the same street as the address given. When the State Bar of Georgia Investigative Panel initiated a grievance, Saxton provided the same misinformation.

Saxton's petition disclosed that he allowed a non-lawyer to manage the expansion of the firm to Rhode Island, that he did not monitor the employee's activities and that in responding to Bar authorities, he relied upon information provided by the employee. He did not obtain any clients from the solicitation letters.


The Court found that Saxton has no prior discipline, that he was experiencing some serious health problems at the time, that he is remorseful, that no clients were harmed and that he has since taken steps to ensure proper supervision of his employees. The Court also found that he cooperated with the Rhode Island Bar authorities, after recognizing that the information he had initially provided to them was incorrect.

Reinstatement Granted

Michael Rory Proctor
Gainesville, Ga.
Admitted to Bar 2004

On Oct. 6, 2014, the Supreme Court of Georgia determined that attorney Michael Rory Proctor (State Bar No. 588428) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law in Georgia.

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. 30, 2014, five lawyers have been suspended for violating this Rule and none have been reinstated. 



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



THE MAGNA CARTA IS COMING!

The State Bar of Georgia has joined the American Bar Association and the Library of Congress and its Law Library to present a special traveling exhibit commemorating the 800th anniversary of the sealing of the Magna Carta.

Look for upcoming information regarding the dates and times of the symposium and the Magna Carta exhibit.

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Supervising Legal Staff:

Management Tips to Help Steer Clear of Issues

by Natalie Robinson Kelly

They suffer from “sloppy work habits, excessive tardiness or absences, disorganization, destructive gossip, [having] a lousy attitude, [being] a poor team player, unprofessional dress, [being] a clock watcher, [being] resistant to change, play[ing] lawyer without a license, and [being] a consistent complainer.” According to the 1999 book, “Easy Self-Audits for the Busy Lawyer” by Nancy Byerly Jones, these are danger signals for unprofessional legal staff. While many legal staff—probably most—are professionals, there are a handful that will exhibit these danger signals during the course of their careers. So what should you do if you notice one of these danger signals coming from a member of your staff? In addition to looking closely at your management style and techniques, try out the following tips to help steer clear of some of the more common staffing issues in your office.



Make Sure Your Staff Understands Your Role as Supervisor

Describe how the legal profession and environment differs from most general businesses to highlight how important it is to serve clients' legal needs. Let the staff know how important it is to you personally to keep your license to practice law. Supervising staff is not always easy, but you can communicate that it is just as important to you as it is to them they have a job to come to everyday. Let them know you take their job just as seriously as you take yours.

Conduct Performance Evaluations

Whether it is at the beginning of the employer/employee relationship or it has been a while since the new hire date, it is extremely important to evaluate your employee's performance. Staff can only develop their work skills and meet your expectations if they are known, and evaluations are a great format for exchanging this information. Sample evaluation forms typically ask employees to explain their accomplishments. They may also provide an opportunity for the staff person to express any additional goals or opportunities they seek. This information is invaluable as it helps the lawyer understand how staff members view the reality of working at a law firm.

Set Goals for Your Staff

If you want your staff to be able to work wonders with a presentation or draft documents that are exceptional, communicating these desires in the form of goals should keep you all on the same page. During performance reviews or when giving feedback, let your employees know that it would be helpful if they could learn to do "X" or to work on getting better at "Y." Setting goals that accommodate a firm's needs will allow for the growth and progressive movement of its staff, and all to the benefit of the practice.

Discipline When Necessary

Addressing problems and concerns is not always easy, but it is absolutely necessary to deal with things immediately on the employer/employee front. While your employment lawyer can give you more detailed advice in this area, you should be able to:

- let your staff know what was expected;
- let your staff know what was or was not done in relation to meeting these defined goals or requirements;
- and c) let your staff know what can or must be done to rectify or remedy the work situation.

Again, many nuances should be explored before acting as the supervisor, but the general bottom line is to deal with concerns before they grow into even larger issues for you as an employer/supervisor.

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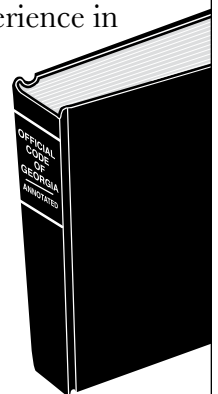
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2014 State Bar Campaign for the Georgia Legal Services Program, Inc.

"We couldn't afford a lawyer to help us obtain custody of Oliver. Our Georgia Legal Services Program lawyer knew the laws and assisted us every step of the way. It takes a village to raise a child, and it also takes a village to protect a child. Our GLSP lawyer told us she would always be there for us. She's a guardian angel!" – Mr. and Ms. Kinney

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Justice for three-year old Oliver couldn't come fast enough for his grandparents, Mr. and Ms. Kinney. Oliver and his older brother, D.J., had been abused by their father, a meth addict and alcoholic who is the Kinneys' only son. The boys had bottles thrown at them and suffered cigarette burns, bruises, and other injuries. Oliver was born with fetal alcohol syndrome. D.J. acts out in school as a result of the abuse. The Kinneys adopted D.J. when he was four weeks old. Oliver has been living with his grandparents since he was two months old.

Recently, the father assaulted D.J. during a visit at his parent's home. The Kinneys filed criminal charges against him, and he was later convicted of the charges. Despite all that, he wanted Oliver to live with him, but the Kinneys would not allow it. They wanted to protect Oliver from the abuse. Their caseworker referred them to the Georgia Legal Services Program (GLSP). A GLSP lawyer assisted the Kinneys to obtain a protective order, custody, and child support for Oliver.



State Bar of Georgia



**Georgia Legal Services
Program**

Thank you for your generosity and support.

The Georgia Legal Services Program (GLSP) is a 501(c)(3) nonprofit law firm. Gifts to GLSP are tax-deductible to the fullest extent allowed by law. (The client story and photo are used with permission.)

Praise When Deserved

Something that is more important than disciplining staff when necessary is giving praise when deserved. It may go without saying, but most people respond positively and will develop a sense of loyalty when they know they are respected and their work is genuinely appreciated. Tell your staff when they've done a good job, and do this more often if you haven't been doing it in the past.

Use Job Descriptions to Hold Staff Accountable

When firms outline the duties and tasks that must be completed by each staff person in the form of job descriptions, it helps the evaluation process operate more smoothly. In addition, each staff person is clear on what is expected from the start, which should help your office run more efficiently.

Manage for Skill Development and Loyalty Building

Having loyal staff is invaluable to a firm, and this is usually achieved through investment in that staff. Showing genuine concern for position development and offering honest feedback when working on setting goals can go a long way in ensuring everyone feels respected and appreciated.

Communicate Frequently

Typically the work of the firm will necessitate constant commu-

nication. But over time, situations and habits can handicap that communication. It is easy to send an email instead of walking over to a staff member's work area. It may be easier to call a staff person into your office instead of going to theirs. Regardless of how you meet, it is vitally important that you do so, and even more importantly, you need to clearly communicate what it is you need from staff.

Provide Opportunities for Staff Training

Frustration and annoyance can build quickly when there is no guidance. Invest in your staff by providing opportunities to receive adequate training on systems they are expected to use. This not only helps you get done what you need, but it builds on the firm's overall efficiency.


Protect Staff from Abuse

No one likes a bully, and this is true in law firms. Do not tolerate the exploitation or disrespect that can come from those working within your firm, or those outside of your firm as they interact with your staff. Use your best professional self to deal with situations that arise and address them sooner rather than later. Everyone in the workplace deserves respect. If a job is not being done appropriately or a staff member is lacking then it is best to assess the situation professionally to determine the proper course of action in deal-

ing with the situation. This is where the firm's policies and procedures manual can provide clear guidance for supervisors.

Supervise Temp Staff As You Do Permanent Staff

Whether you expect short-term results or have a temporary situation that may last a long time, it is important to give the same feedback and guidance to temp workers as you do your full-time staff. Many full-time employees start from temporary positions, and given the opportunity to develop further and remain with a firm permanently, it is highly advantageous to have afforded them the knowledge of your work expectations ahead of time.

While many of the staffing concerns require careful thought, and sometimes review by your employment lawyer, it is very important to work on current issues with staff so that your firm can grow positively from the inside out. If you need resources or assistance with supervising your staff, feel free to contact the State Bar's Law Practice Management Program. 



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

The State Bar is on Facebook.

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A Special Note on Georgia's Inventor Assistance Program

by Rivka D. Monheit

Since early 2013, the Intellectual Property Law (IP) Section of the State Bar of Georgia has been working with various attorneys and organizations, including the Georgia Lawyers for the Arts (GLA) and the IP Section of the Atlanta Bar, to create an America Invents Act (AIA) Inventor Assistance Program in Georgia. The AIA requires the formation of programs to help solo inventors and small businesses find patent agents and attorneys to file patents on a pro bono basis, and we want to make Georgia's program an example for all.

Launching a Patent Prosecution Program will require long-term financial commitments from the entire state. In September, Georgia's Inventor Assistance Program organizers met with Jennifer McDowell of the U.S. Patent and Trademark Office (USPTO), who provided valuable information regarding the organization process, and reminded the program organizers that time was of the essence if Georgia hoped to implement its AIA-mandated program by the end of the year, as called for by President Obama's Executive Action 7: Patent Pro Bono and Pro Se Assistance, which was announced on June 4, 2013 (http://www.uspto.gov/patents/init_events/executive_actions.jsp#heading-8). The program organizers also were advised that although the USPTO could provide funding to support Georgia's new program, such funding could only be maximized by secur-



ing matching contributions from local partners. To take full advantage of the opportunity for federal assistance, the program organizers would need to quickly secure pledges from Georgia's legal IP community.

Fortunately, the program organizers, including the IP Sections of the Atlanta Bar and State Bar, are no strangers to helping low-income Georgia residents find legal representation. This is particularly true for GLA, which since 1975 has focused on connecting artists and nonprofit arts organizations with volunteer attorneys for arts-related issues. As GLA Director of Operations and newly appointed Patent Administrator David Mayer has observed, "Patents are a logical extension

of GLA's current mission of fostering intellectual property growth in Georgia."

The organizers quickly initiated a campaign to raise matching funds from local sources, and we are extremely proud to report that, thanks to the generous assistance of local firms and practitioners, this campaign was successful. Together with the matching donation pledged by the USPTO, the outstanding financial commitment provided by Georgia's local IP community will provide the funding necessary to launch the Georgia PATENTS (Pro bono Assistance and Training for Entrepreneurs and New, Talented, Solo inventors) program before the end of the year, and maintain its operations through 2015. This new program joins several other Inventor Assistance Programs already implemented across the country, with a mission of providing free patent prosecution services to small start up businesses, and solo inventors with a household income of less than 300 percent of the poverty level.

We are incredibly fortunate to enjoy such strong financial support. But ultimately, the success of Georgia's Inventor Assistance Program will also depend upon the contributions of the individual attorneys and patent agents who are willing to commit their time and expertise to help deserving Georgia inventors secure patent protection for their inventions. The program organizers are hopeful that by the end of 2015, at least 60 percent of all Georgia-registered patent attorneys and agents will have signed up to volunteer with the program. Such a commitment will be crucial to sustaining a meaningful Inventor Assistance Program, because as Mayer has observed, "Unlike current GLA cases that can sometimes be handled in an afternoon, patent prosecution matters may linger for years. We don't know what the demand for this program will be, but we would rather have an overwhelming number of registered patent attorneys and agents

signed up to take cases than have a backlog of inventors needing patent prosecution assistance."

GLA plans to run seminars and special outreach programming to make sure inventors are aware of the steps necessary to secure patent rights. Such programs are meant to ensure that inventors enrolling in Georgia's Inventor Assistance Program possess a baseline understanding of the patenting process, which will streamline the process and allow for the most effective utilization of the time and efforts of our volunteer patent attorneys and agents.

Founding sponsorship opportunities are still available, and GLA will launch a portal for patent agents and attorneys to register soon. To learn more about the program, please visit <http://gapatents.org>. If you would like to become a sponsor or volunteer, please contact Meredith Ragains, GLA executive director, or David Mayer, patent administrator, at either gla@glarts.org or 404-873-3911; or Rivka Monheit, AIA pro bono chair of the IP Section of the State Bar of Georgia, at either rivka@pabstpatent.com or 404-879-2152. We hope that many of you will take the opportunity to participate in the

development and implementation of Georgia's first Pro Bono Inventor Assistance Program! 



Rivka D. Monheit is a founding partner of Pabst Patent Group LLP. Her practice focuses on patent prosecution, IP

management and strategy, and license agreements in the life sciences. She has served as the chair of the Intellectual Property Law Section's Patent Committee and the Special Events Committee. Currently, she chairs the AIA Pro Bono Project Committee, which is helping to create Georgia's Pro Bono Patent Program. Monheit is also actively involved in the Patent Legislation Committee of the Intellectual Property Law Section of the American Bar Association, and currently serves as the vice chair. She is a member of the American Bar Association, the State Bar of Georgia, the American Intellectual Property Law Association and the American Chemical Society.

Thank you to those who have contributed generously to make this program a reality:

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Technology Law Section of the State Bar of Georgia

Six Reasons to Shop for Individual Health Insurance on the State Bar of Georgia Private Exchange

by Nicklaus A. Trefry

Since the fall of 2009, Member Benefits, Inc. (formerly BPC Financial), has served as the State Bar of Georgia's recommended broker for members' health, dental and vision plans as well as providing help for members in search of disability and long term care plans. This relationship has been beneficial to many Georgia attorneys and their firms who have enjoyed the expert advice and access to special member group pricing through the services of Member Benefits, Inc. Following are six top reasons to take advantage of the member private exchange when shopping for coverage.

One Stop Shopping

No need to jump to multiple websites to compare plans. Members now have an easy way to evaluate every available plan from leading companies like Aetna, Blue Cross & Blue Shield of Georgia, Humana, United, Cigna and Coventry (see fig. 1). The private exchange includes more health plan choices than healthcare.gov. On renewal, you'll have the ability shop and compare your plan with the most up to date health plan options to ensure that you always have the most competitive coverage.

"Best Fit" Recommendation Engine Helps You Save Money

Is it possible to have more options and keep the decision process easy? Absolutely, this is where our private exchange thrives with the "Best Fit" tool (see fig. 2). "Best Fit" is much more than an interactive decision support tool. It's a whole new approach to insurance shopping, helping you make a more informed and personalized decision across a range of plans—all through an engaging experience. "Best Fit" guides you through the buying process by asking a few simple questions and then suggesting the plan that best fits your individual needs. Matching your requirements with the most suitable deductible, coinsurance, copays, prescription drug coverage and provider network can dramatically reduce your total out of pocket costs and save you money.

Personalized Customer Support from Licensed Benefits Counselors

We know time is money, especially with attorneys. From basic questions to in-depth consultations, it's important to have a live person awaiting your call when you need help. It's also important to work with an advisor that takes the time to develop specific knowledge about you and your family. Our dedicated team of benefits counselors are specially trained to work with attorneys and can provide you with expert advice about each health plan. They have already helped thousands of members with common inquiries like checking provider networks, making sure prescription drugs are covered and

explaining difficult to understand insurance jargon.

Concierge Level Advocacy Throughout the Year

If you've ever had an issue with your coverage and had to deal directly with your insurance carrier, you know how valuable it is to have an advocate on your side. Billing errors, lost ID cards, problems with claims and changes in your family status are all common occurrences that require time and effort. Instead of spending your valuable time waiting on hold, let us do the heavy lifting. Our service team has "premier" level access to insurance company service departments.

Sometimes you just have to get through to the right people to get your issues resolved and we are experts in that area.

Best Prices Available for Georgia Health Plans

The leading health insurance providers in the state of Georgia all participate on the exchange. All health insurance plans and rates are regulated by the Georgia Department of Insurance. You will not find better pricing with any of these providers, even if you purchase directly from the carrier. The private exchange can also help you determine if you're eligible for a government subsidy and assist you when applying.

Specially-Priced Supplemental Benefits

You also have access to special member group pricing on useful benefits such as dental, vision, life, long term disability, AD&D, ID theft, telemedicine, pet insurance and more (see fig. 3). Plans are offered by some of the best and well known providers in the United States, like MetLife, Guardian, Voya, Teladoc, Lifelock and VPI.



Nicklaus A. Trefry is the chief operating officer of Member Benefits, Inc., a proven innovator and thought leader in association insurance programs with an expertise in private health exchanges.

1

The screenshot displays the 'Select Your Benefits' page on the Georgia Health Plan Advisor website. It features three plan options: Humana Bronze \$300/National POS - Open Access, GA Aetna Bronze HSA Eligible OAMC PD, and Bronze HSA 100*. Each plan shows its premium cost per month and estimated out-of-pocket costs. The Humana plan has a premium of \$227.50 and an average out-of-pocket cost of \$240.00. The Aetna plan has a premium of \$233.14 and an average out-of-pocket cost of \$0.00. The Bronze HSA plan has a premium of \$286.69 and an average out-of-pocket cost of \$0.00.

2

The screenshot displays a cost comparison table on the Georgia Health Plan Advisor website. The table compares the 'Your Cost per month' (Best Case, Average, Worst Case) and 'Estimated out-of-pocket costs per month' (Best Case, Average, Worst Case) for five different plans. The plans are: Humana Silver \$650/National POS - Open Access, Humana Platinum 1000/1000 Premier (HMO), Humana Bronze \$300/1000 Premier (HMO), Humana Bronze \$300/National POS - Open Access, and Humana Platinum 1000/National POS - Open Access. The table shows that the Humana Silver plan has the highest costs, while the Humana Platinum 1000/1000 Premier (HMO) plan has the lowest costs.

3

The screenshot displays the 'Special Enrollment' section on the Georgia Health Plan Advisor website. It shows a 'Getting Started with Your Enrollment is Easy' message and a list of supplemental benefits: Medical (Humana Bronze \$300/1000 Premier (HMO)), Dental (\$0.00), Vision (\$0.00), and LifeLock® Identity Theft Protection (\$0.00). The total estimated cost for the enrollment is \$481.21.

Traps for the Unwary Writer in the Georgia Appellate Briefing Rules

by Andy Clark

Rules about writing matter. Courts' writing rules, no less than the rules of grammar and punctuation, assist writers in making their words more persuasive. The Court of Appeals of Georgia has said its writing rules "aid parties in presenting their arguments in a manner most likely to be fully and efficiently comprehended by this Court."¹ This installment of "Writing Matters" highlights briefing rules of the Supreme Court and Court of Appeals of Georgia that may catch writers off guard.

Unlike a misplaced semicolon, violating a court's writing rule may result in sanctions. Although the more common sanction is striking or refusing to consider the offending part of the brief, potential consequences include a fine, return of the brief to the writer with an order to correct, revocation of license to practice in the court and even dismissal.²

Statement of Method of Preserving Error

Code Section 5-6-40, requiring an enumeration of errors, states, "The enumeration shall be concise and need not set out or refer to portions of the record on appeal." An appellant who reads only the statute might think the brief need not cite the record showing objections to errors.

Not so. Court of Appeals Rule 25(a)(1) requires appellants to include "a statement of the method by



which each enumeration of error was preserved for consideration." Failure to cite the record page showing an objection may result in waiver of the issue.³

Separation of Errors

Court of Appeals Rule 25(c)(1) states, "The sequence of arguments in the briefs shall follow the order of the enumeration of errors, and shall be numbered accordingly." The court looks unkindly on even small deviations from this rule. In *Birchby v. Carboy*, Birchby "enumerate[d] seven separate errors, but he group[ed] enumerations

1, 2, and 3 in one argument, 4 and 5 in another, and 6 and 7 in a third argument.”⁴ Birchby’s brief violated Rule 25(c)(1):

Rule 25(c)(1) is more than a mere formality. It is a requirement which this Court imposes to ensure that all enumerations of error are addressed and to facilitate review of each enumeration. By failing to comply with the rule, [Birchby] has hindered the Court’s review of his assertions and has risked the possibility that certain enumerations will not be addressed.⁵

Record Appendices

Historically, Georgia appellate rules did not provide for party-filed record appendices. Only the trial court clerk prepared the record.⁶

In 2010, the appellate record preparation fee increased from \$1.50 to \$10 per page. The Supreme Court responded by amending its Rules 67 and 69 to allow parties to submit appendices, in lieu of spending \$10 per page in fees. The Court of Appeals also accepted record appendices, temporarily.

The General Assembly undid the fee increase. Now \$1 per page, the fee is lower than before.⁷ Although the Supreme Court still accepts appendices, the Court of Appeals deleted its appendix rule after the fee decrease.⁸

Parties must use caution and follow the correct record rules. In *McAlister v. Abam-Samson*, the appellant stated in his notice of appeal that he would file a record appendix, but did not within the required time, apparently due to confusion whether the appellant or the clerk would transmit the record.⁹ The Court of Appeals affirmed dismissal of the appeal for delay.¹⁰

Replies and Supplemental Briefs

Court of Appeals Rule 23(c) explicitly allows an appellant to file a reply. The Supreme Court’s rules do not mention replies. Does

this mean Supreme Court litigants are limited to a single brief? No.


Supreme Court Rule 24 allows “[s]upplemental briefs.” Either party may file one, without leave, “at any time before decision.” Supplemental briefs can function like a reply. There is no specific page limit on them, if they do not “serve only to circumvent the limitation on pages for civil cases,” and parties can even write more than one. Although the Court strikes supplemental briefs only infrequently, long or repetitive supplemental briefs are neither strategic nor respectful of the Court’s time.

Attachments to Briefs

Court of Appeals Rule 24(g) states, “Documents attached to an appellate brief, which have not been certified by the clerk of the trial court as a part of the appellate record and forwarded to this Court, shall not be considered on appeal.” The rule is strict.¹¹ The Court of Appeals even refused to consider an affidavit by the trial court clerk where it was attached to a brief rather than forwarded as part of the appellate record.¹² The Supreme Court also refuses to consider attachments outside the appellate record.¹³

What should a party do if evidence not in the appellate record must be presented? One option: move for remand to the trial court for the limited purpose of considering the new evidence.¹⁴

Final Thoughts

Violation of the Georgia appellate briefing rules does not always result in sanctions. In the “liberal[]” spirit of the Appellate Practice Act, Georgia appeals courts interpret their briefing rules “so as to bring about a decision on the merits of every case appealed and to avoid dismissal of any case or refusal to consider any points raised therein.”¹⁵ But complying with the court’s writing rules produces a brief that the Court will better comprehend and increases your chances of success on appeal. 



Andy Clark is a sole practitioner in Atlanta who focuses on appeals. He taught legal research and writing as a Forrester

fellow at Tulane Law School, and was an associate at Greenberg Traurig and Seyfarth Shaw. He earned his J.D. in 2001 from the University of Chicago, where he was a member of the *Law Review*.

Endnotes

1. *Aldalassi v. Drummond*, 223 Ga. App. 192, 192 (477 SE2d 372) (1996).
2. See Supreme Court Rule 7; Court of Appeals Rules 1(c), 7.
3. See *Sheppard v. State*, 294 Ga. App. 270, 272 n.1 (669 SE2d 152) (2008) (holding appellant waived review where brief provided no record citations showing objections).
4. 311 Ga. App. 538, 539-40 (716 SE2d 592) (2011).
5. *Id.* at 540 (quoting *Barnett v. Fullard*, 306 Ga. App. 148, 149-50 (701 SE2d 608) (2010)).
6. See O.C.G.A. § 5-6-43.
7. O.C.G.A. § 15-6-77(g)(12).
8. http://www.gaappeals.us/termination_of_record.pdf
9. 318 Ga. App. 1, 1-2 (733 SE2d 58) (2013).
10. *Id.* at 8.
11. See, e.g., *Morgan v. Fordham*, No. A14A0609 (Ga. App. July 11, 2014) (refusing to consider notarized statement attached to appellate brief); *Rome v. Polyidus Partners LP*, 322 Ga. App. 175, 176 n.1 (744 SE2d 363) (2013) (granting motion to strike attorney’s affidavit attached to appellate brief).
12. *Dowels v. State*, 289 Ga. App. 369, 372 n.2 (657 SE2d 279) (2008).
13. See *Brown v. Fokes Props. 2002, Inc.*, 283 Ga. 231, 232 (657 SE2d 820) (2008) (refusing to consider exhibit attached to appellate brief).
14. See *Agnew v. State*, 309 Ga. App. 163, 164 (709 SE2d 567) (2011) (discussing remand “for the limited purpose of deciding ... whether to include in the record on appeal the document ... attached to the state’s brief as ‘Exhibit 1’”).
15. O.C.G.A. § 5-6-30.

Working Toward Justice for All:

Spotlight on Lisa J. Krisher

by Avarita L. Hanson

Lawyers display their adherence to the tenets of professionalism in many ways in the course of their lives and practice environments. Supreme Court of Georgia Chief Justice Hugh P. Thompson said in his 2014 State of the Judiciary Address, “As Georgia continues to grow in population and diversity, access to justice is a challenge requiring the commitment and hard work of us all.” State Bar President Patrise M. Perkins-Hooker has also made access to justice a primary focus of her administration and, among other things, is orchestrating a plan to steer lawyers to those Georgia counties without any.

I served as the Pro Bono Project director for the State Bar of Georgia and Georgia Legal Services Program (GLSP)¹ in the late 1980s and that’s when I met Lisa J. Krisher, a staff attorney for GLSP at the time. Since graduating from law school in 1978, Krisher has worked in many positions for GLSP, including staff attorney, consulting attorney to paralegals, acting supervising attorney, public benefits specialist attorney, senior staff attorney and, now, director of litigation, a position she has held since 1990. Krisher demonstrates the commitment and hard work described by Chief Justice Thompson. I wanted to know how and why she made GLSP her only career choice, so I spent some time with her this past year and learned how she has dedicated her entire career to working for justice for all as an attorney with the Georgia Legal Services Program.



(Left to right) Lisa J. Krisher and Avarita L. Hanson at GLSP’s Champions of Justice ceremony on Oct. 4.

AH: Both Chief Justice Hugh Thompson and State Bar President Patrise M. Perkins-Hooker have made access to justice a priority of their administration. What do you think about how Georgia lawyers support access to justice outside of Atlanta where your work is focused?

LK: With leadership from the chief justice and this year’s Bar president, we expect to build on support around the state. “Injustice anywhere is a threat to justice everywhere,” said Dr. Martin Luther

King Jr. Despite much work since Dr. King wrote this more than 50 years ago in his “Letter from Birmingham City Jail,” injustice persists.² From my 36 years working in rural Georgia with the Georgia Legal Services Program, I can tell you that the need for lawyers for the poor is great. Poor people there don’t have other resources typically available in larger cities—not just the small number of pro bono lawyers, but few private lawyers or vital services—making GLSP lawyers our clients’ last chance for justice.

AH: Why did you become a lawyer?

LK: I might not have become a lawyer had I not moved to Charleston, S.C., in the late 1960s during a time of racial and political strife. Of course, those were challenging times around the country, but as a teen seeing many injustices for the first time, I was concerned about how things could change for the better. I asked myself, how could we achieve the idea of “justice for all” found in Magna Carta, the U.S. Constitution and the Pledge of Allegiance? Experiencing and witnessing discrimination and unfairness made me think about a career in law to help make things fair for all. I always have been interested in American history and the role of government, and I kept seeing that lawyers were instrumental in founding and in leading our country. As a college political science major with a history minor, I considered teaching and I taught civics to high school students as part of a course. I also worked on political campaigns that reinforced the idea of law as a career because lawyers are the ones who can draft laws, provide clients with a full range of advocacy options, including in court and work to achieve justice for all—not just the few. So it was law for me.



Photo by Sarah I. Coole

Lisa J. Krisher at the Atlanta office of the Georgia Legal Services Program.

AH: How did you choose a law school and what was your law school experience like?

LK: While looking for possible law schools, I found a catalog for Antioch School of Law in Washington, D.C. It was a new and non-traditional law school with a strong clinical component and a commitment to training lawyers to represent poor people. It was the only place to which I applied. We spent the first two weeks of law school living with a low-income family, called “Live-in,” while taking an intensive legal research course. The idea was to give us a better understanding of the lives of people we might represent in one of the in-house clinics at Antioch. I spent my two weeks with a family headed by a woman who was an advocate for affordable healthy food for residents of the less affluent parts of the District of Columbia. My Live-in mother and her family were African-American, as were all of her neighbors. Other than for short periods, this was the first time when I was in the racial minority. During Live-in, we also were required to spend a shift with

a District police officer, go to a police lineup, visit a welfare office and go to other places our future clients might go. These were all new experiences to me, the first of many. Traditional law school classes started after Live-in and we had the chance to be in the first of many clinics and work for real clients. I had a variety of very educational experiences, but two stand out. First, I had the opportunity to work on discovery in a class action challenging the conditions at the District’s institution for developmentally disabled persons. Our clinic later favorably settled the case for our clients and the class, resulting in community placements. Second, in our Tenants’ Rights Clinic, I represented numerous tenants to stop evictions, including a group of elderly Spanish-speaking tenants whose lawyer-landlord persuaded them to give up their legal rights in a document written in English, although the lawyer-landlord knew our legal clinic represented those tenants. I successfully tried the eviction brought by the lawyer-landlord when the tenants did not move. *U.S.*

As our “Lawyer’s Creed” states, we should “strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.”

Law Week published the trial court’s decision finding that even when acting in another capacity, such as a landlord, a lawyer is always a lawyer and thus in an unequal bargaining position. These are words I never forgot.

AH: How did your law school experiences prepare you for your career with legal aid?

LK: My law school experiences shaped me as a lawyer and cemented my desire to represent poor people in furtherance of justice for all. I came to Georgia right out of law school to work in Augusta for GLSP because of its reputation and for the challenge. Five of my classmates moved to Georgia when we graduated, three of us working for legal services. The other, whom I married, Jack Batson, has been a civil rights lawyer and fellow advocate for justice for all.

AH: What significant experiences have you had in your work with Georgia Legal Services?

LK: In my positions with GLSP, I’ve had a chance to represent clients in all sorts of critical legal problems in a wide variety of forums. These clients include: community-based organizations challenging local government’s racially discriminatory spending of federal funds; tenants challenging illegal lease terms; children and adults seeking to be released from institutions; mothers challenging the state’s unconstitutional taking of their children’s child support; parents facing termination of their parental rights;

students facing disparate discipline; adults unable to speak English well enough to protect their legal rights; and domestic violence survivors seeking freedom and protection. My clients have been the powerless and often unpopular. That’s part of what makes my practice fulfilling. Much of our work involves trying to get the opposing party to follow the law. Without meaningful adherence to the rule of law for all, our country experiences even more challenging problems. I’ve also had a chance to train lawyers and to serve as co-counsel on appeals and more complex cases with many of our less-experienced lawyers. This enables me to share my experiences to help guide them to be professional, ethical lawyers.

AH: How does your work relate to professionalism?

LK: I’ve been a lawyer long enough to have practiced before Georgia’s professionalism movement of the late 1980s. Although I’ve been fortunate to know and litigate against many lawyers who are true professionals, I’m deeply troubled by what I hear from younger lawyers who are female or of color about unprofessional treatment they receive from some lawyers. Perhaps part of this problem is the political discourse taking place nationally, but I really expected that we would not treat other lawyers in sexist or racist ways in 2014. I’m also seeing unprofessional conduct toward attorneys who represent immigrants, such as

assumptions that the lawyer representing the immigrant is related to her client or that the client married her husband to obtain legal status in the United States. Where you are from and where you practice shouldn’t turn into a challenge to your citizenship or your religion. We need to continue to work to make our Bar members be the professionals we aspire to be. Lawyers are the people who can use the law to create a more just society. Others may be concerned with justice, but only lawyers can file lawsuits to challenge injustices. Especially in these times of widening wealth disparities, we must do more to seek justice for all, not the few, and seek to enforce our laws for the poor. I’ve been fortunate to work for a firm with a mission of providing access to justice and opportunities out of poverty, so professionalism and ethics ideals are a major part of my work.

AH: Are there ways to support access to justice other than dedicating your entire career to a legal aid program?


LK: I chose to be a legal services lawyer for my career, but there are many ways to contribute to the eradication of injustices in the civil context. GLSP has too few staff to cover the 154 counties outside of the five metro-Atlanta counties to represent all of the 2 million eligible people who need civil representation. Other lawyers can contribute time, money or offer other support and resources, like space and equipment. Attorneys can vol-

unteer to do pro bono work through GLSP and the Pro Bono Project to confirm that the client has a low income and the attorney will likely get support on the legal issues.³ Attorneys can serve as a CLE speaker, work with less-experienced attorneys as a trial coach or co-counsel, assist with research on policies that impact low-income people and provide space for GLSP attorneys and volunteers. In addition to all of that, at the very least, attorneys can contribute financially to a legal aid nonprofit program.

AH: Has your career been satisfying?

LK: Absolutely, yes. As lawyers, we have the ability to identify injustices and take action to remedy them. That's why I remain glad that I became a lawyer and have spent my career with GLSP. I agree with Dr. King that "[i]njustice anywhere is a threat to justice everywhere." I continue to ask: "What can I do today to eliminate at least one injustice for poor people in the legal context?" I encourage my fellow Georgia lawyers to do so, too, in your own way.

The Last Word

The season for giving and sharing is upon us, but for lawyers the season for justice is year-long. We applaud Lisa Krisher for her dedication to the law, her practice, her clients and for living out the professional ideals of the law in her more than three decades as an attorney with the Georgia Legal Services Program. Chief Justice Thompson and President Perkins-Hooker have asked all members of the State Bar of Georgia to just do something—anything—to show your commitment to access to justice. So I'll end as I usually do with saying, ultimately, what counts is not what we do for a living, it's what we do for the living. Let's do what we do, keeping in mind that justice must be for all. 



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



Lisa J. Krisher is the director of litigation at the Georgia Legal Services Program. She was admitted to the State Bar of Georgia in 1978. She received her B.A. in political science with high honors from Clemson University in 1974 and her J.D. from Antioch School of Law in 1978. She received the State Bar of Georgia Access to Justice Committee Dan Bradley Legal Services Award in 1997 and the 2013 Kutak-Dodds Award—Civil, from the National Legal Aid and Defender Association.

Endnotes

1. Georgia Legal Services Program is a nonprofit law firm serving rural and small town Georgia. It offers free legal services in civil cases to people who cannot afford to hire a lawyer and has 11 offices around the state to serve people where they live. Its clients have "high stakes" problems, such as domestic violence, eviction or foreclosure, denial of hard-earned benefits such as unemployment, inability to get critically needed health care or food aid, and many more. Its work is to assure that low income people have access to justice and opportunities out of poverty.

When problems occur, GLSP helps clients secure the support they need to get back on their feet with dignity. When rights are denied, GLSP helps clients seek redress and have those rights assured. In 1968, the State Bar of Georgia Younger Lawyers Section conducted a study that showed that the volunteer efforts of local private attorneys were not enough to meet the critical legal needs of impoverished Georgians living outside metro-Atlanta. The YLS was instrumental in the creation of

Georgia Indigents Legal Services Program in 1970, the first staffed nonprofit law firm serving low-income Georgians that was the predecessor of Georgia Legal Services. A year later, Georgia Legal Services was incorporated as a nonprofit law firm to take advantage of new sources of funding available from state and federal government agencies. Georgia Legal Services Program was founded by the State Bar of Georgia's Younger Lawyers Section in 1970, whose leaders included: Nancy Cheves, John Cromartie, Jim Elliott, Phil Heiner, Bill Ide, Betty Kehrer, John Myers, Betsy Neely, Jim Parham and Herschel Saucier. For more information about the Georgia Legal Services Program, go to www.glsp.org.

2. Martin Luther King Jr., *Letter from Birmingham City Jail*, (April 12, 1963) at: <http://www.thekingcenter.org/archive/document/letter-birmingham-city-jail-0>
3. <http://www.glsp.org>. To join the growing community of volunteer lawyers and public interest advocates and for information regarding pro bono opportunities and support, contact Mike Monahan at the State Bar of Georgia Pro Bono Project. The State Bar of Georgia Pro Bono Project manages a nationally recognized website to support volunteer lawyers and public interest lawyers in Georgia—georgiaadvocates.org. It names a volunteer lawyer of the month, maintains a listing of available pro bono cases and a sign up for pro bono case alerts, assists attorneys with incorporating pro bono into their practice. The website also provides search tools for a pro bono or legal aid program for volunteer opportunities by county and subject area, getting involved in pro bono, and free or reduced-cost training and other benefits for the pro bono lawyer. The State Bar of Georgia encourages lawyers to provide at least 50 hours of pro bono services each year and contribute financially to legal aid and pro bono programs. Volunteer lawyers across the state make a difference for people who otherwise cannot afford representation to resolve a critical legal problem. Georgia Bar Rule 6.1 provides information on hours and service types that are considered pro bono activities.

In Memoriam

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.

John O. Adams Jr.

Tucker, Ga.
Emory University School of Law
(1965)
Admitted 1965
Died October 2014

Alan M. Alexander Jr.

Athens, Ga.
University of Georgia School
of Law (1969)
Admitted 1969
Died November 2014

Thomas Duncan Allen

Atlanta, Ga.
Wayne State University Law
School (1983)
Admitted 2003
Died September 2014

Carl V. Dendy

Newnan, Ga.
Atlanta Law School (1951)
Admitted 1951
Died October 2014

Robert Lee Doss Jr.

Tisbury, Mass.
Loyola Marymount University
Law School (1973)
Admitted 1974
Died September 2014

John E. Dougherty

Atlanta, Ga.
Emory University School of Law
(1950)
Admitted 1949
Died November 2014

Robert Gerwig

Atlanta, Ga.
Atlanta's John Marshall Law
School (1949)
Admitted 1949
Died October 2014

Fred T. Hanzelik

Chattanooga, Tenn.
Emory University School of Law
(1976)
Admitted 1976
Died October 2014

John Everett King Jr.

Savannah, Ga.
Atlanta's John Marshall Law
School (2003)
Admitted 2004
Died October 2014

Robert Joseph Kiser

Loganville, Ga.
Georgia State University College
of Law (1996)
Admitted 1996
Died November 2014

Hugo M. Martin

Cornelia, Ga.
Atlanta's John Marshall Law
School (1968)
Admitted 1969
Died October 2014

Edward R. Mashek III

Atlanta, Ga.
Loyola Marymount University
Law School (1999)
Admitted 2000
Died November 2014

Ronald Allen McDaniel

Greenville, Ga.
University of the Pacific
McGeorge School of Law (1977)
Admitted 1987
Died September 2014

John B. Miller

Savannah, Ga.
Mercer University Walter F.
George School of Law (1948)
Admitted 1947
Died November 2014

Hubert F. Owens

Big Canoe, Ga.
Emory University School of Law
(1960)
Admitted 1960
Died October 2014

Charles E. Phillips Sr.

College Park, Ga.
Woodrow Wilson College of Law
(1983)
Admitted 1983
Died November 2014

Karen F. Rohrer

Tucker, Ga.
Georgia State University College
of Law (1987)
Admitted 1987
Died October 2014

Richard Darryl Rowan

Atlanta, Ga.
Georgia State University College
of Law (1992)
Admitted 1992
Died August 2014

Vernon Leroy Slaughter Jr.

Cashion, Ariz.
Whittier College Law School (1990)
Admitted 1992
Died April 2014

William Thomas Whatley

Vidalia, Ga.
Mercer University Walter F.
George School of Law (1951)
Admitted 1950
Died September 2014



Let CAP Lend a Helping Hand!

What is the Consumer Assistance Program?

The State Bar's Consumer Assistance Program (CAP) helps people with questions or problems with Georgia lawyers. When someone contacts the State Bar with a problem or complaint, a member of the Consumer Assistance Program staff responds to the inquiry and attempts to identify the problem. Most problems can be resolved by providing information or referrals, calling the lawyer, or suggesting various ways of dealing with the dispute. A grievance form is sent out when serious unethical conduct may be involved.

Does CAP assist attorneys as well as consumers?

Yes. CAP helps lawyers by providing courtesy calls, faxes or letters when dissatisfied clients contact the program.

Most problems with clients can be prevented by returning calls promptly, keeping clients informed about the status of their cases, explaining billing practices, meeting deadlines, and managing a caseload efficiently.

What doesn't CAP do?

CAP deals with problems that can be solved without resorting to the disciplinary procedures of the State Bar, that is, filing a grievance. CAP does not get involved when someone alleges serious unethical conduct. CAP cannot give legal advice, but can provide referrals that meet the consumer's need utilizing its extensive lists of government agencies, referral services and nonprofit organizations.

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

1. Where the information clearly shows that the lawyer has misappropriated funds, engaged in criminal conduct, or intends to engage in criminal conduct in the future;
2. Where the caller files a grievance and the lawyer involved wants CAP to share some information with the Office of the General Counsel; or
3. A court compels the production of the information.

The purpose of the confidentiality rule is to encourage open communication and resolve conflicts informally.

**Call the State Bar's Consumer Assistance Program
at 404-527-8759 or 800-334-6865 or visit www.gabar.org**

December-March

DEC 10	ICLE <i>Selected Video Replays: Urgent Trial Matters</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	DEC 17	ICLE <i>Georgia and the 2nd Amendment</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
DEC 10	ICLE <i>Selected Video Replays: Professionalism and Ethics Update</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	DEC 17	ICLE <i>Powerful Witness Preparation</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE
DEC 11	ICLE <i>Recent Developments in Georgia Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	DEC 18	ICLE <i>Tax Traps for the Corporate Practitioner</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE
DEC 11	ICLE <i>Health Care Fraud Institute</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	DEC 19	ICLE <i>Finance for Lawyers</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
DEC 11	ICLE <i>31st Annual Professionalism, Ethics and Malpractice</i> Statewide Satellite Rebroadcast See www.iclega.org for location 3 CLE	DEC 19	ICLE <i>Update on Georgia Law</i> Augusta, Ga. See www.iclega.org for location 6 CLE
DEC 11-12	ICLE <i>Corporate Counsel Institute</i> Atlanta, Ga. See www.iclega.org for location 12 CLE	DEC 19	ICLE <i>Expert Testimony</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE
DEC 12	ICLE <i>ADR Institute and Neutrals Conference</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE	JAN 8	ICLE <i>State Bar Midyear Meeting: Law Practice Management</i> Atlanta, Ga. See www.iclega.org for location 3 CLE

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



JAN 9	ICLE <i>State Bar Midyear Meeting: IP Section</i> Atlanta, Ga. See www.iclega.org for location 3 CLE	JAN 22	ICLE <i>Jury Trial</i> Statewide Satellite Rebroadcast See www.iclega.org for location 6 CLE
JAN 9	ICLE <i>State Bar Midyear Meeting: Thurgood Marshall's Coming</i> Atlanta, Ga. See www.iclega.org for location 3 CLE	JAN 23	ICLE <i>Defense of Personal Injury Case</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
JAN 9	ICLE <i>State Bar Midyear Meeting: Pro Bono</i> Atlanta, Ga. See www.iclega.org for location 2 CLE	JAN 23	ICLE <i>Time Management for Lawyers</i> Atlanta, Ga. See www.iclega.org for location 3 CLE
JAN 16	ICLE <i>General Practice for New Lawyers</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	JAN 23	ICLE <i>Family Immigration Law</i> Statewide Satellite Broadcast See www.iclega.org for location 6 CLE
JAN 16	ICLE <i>Speaking to Win</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	JAN 28	ICLE <i>Carlson on Evidence</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE
JAN 16	ICLE <i>Jury Trial</i> Statewide Satellite Broadcast See www.iclega.org for location 6 CLE	JAN 29	ICLE <i>Child Protection Seminar</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
JAN 22	ICLE <i>ADR in Workers Compensation Arena</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	JAN 29	ICLE <i>The Anatomy Lab Road Show</i> Atlanta, Ga. See www.iclega.org for location 6 CLE

December-March

JAN 29	ICLE <i>Family Immigration Law</i> Statewide Satellite Rebroadcast See www.iclega.org for location 6 CLE	FEB 5	ICLE <i>Internet Legal Research</i> Statewide Satellite Rebroadcast See www.iclega.org for location 6 CLE
JAN 30	ICLE <i>Advanced Negotiation Strategies</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	FEB 6	ICLE <i>Banking Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
JAN 30	ICLE <i>Internet Legal Research</i> Statewide Satellite Broadcast See www.iclega.org for location 6 CLE	FEB 6	ICLE <i>Power of Non-Verbal Communication</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
JAN 30	ICLE <i>White Collar Crime</i> Atlanta, Ga. See www.iclega.org for location 6.5 CLE	FEB 6	ICLE <i>Residential Real Estate</i> Statewide Satellite Broadcast See www.iclega.org for location 6 CLE
FEB 1-4	ICLE <i>Update on Georgia Law</i> Steamboat Springs, Colo. See www.iclega.org for location 12 CLE	FEB 6-7	ICLE <i>Estate Planning Institute</i> Athens, Ga. See www.iclega.org for location 10 CLE
FEB 4	ICLE <i>Abusive Litigation</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE	FEB 11	ICLE <i>Business, Law and Ethics</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 5	ICLE <i>Georgia Foundations/Objections Update</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	FEB 11	ICLE <i>Special Needs Trusts</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 5	ICLE <i>Secured Lending</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	FEB 12	ICLE <i>Advanced Debt Collection</i> Atlanta, Ga. See www.iclega.org for location 6 CLE

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



FEB 12	ICLE <i>Landlord and Tenant</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	FEB 20	ICLE <i>Georgia Appellate Practice</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 12-14	ICLE <i>25th Annual Tropical Seminar</i> Cancun, Mexico See www.iclega.org for location 12 CLE	FEB 20	ICLE <i>Elder Law</i> Statewide Satellite Broadcast See www.iclega.org for location 6 CLE
FEB 12	ICLE <i>Residential Real Estate</i> Statewide Satellite Rebroadcast See www.iclega.org for location 6 CLE	FEB 23	ICLE <i>Beginning Lawyer Program</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE
FEB 13	ICLE <i>Solo Small Firm Winter Seminar</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE	FEB 25	ICLE <i>Product Liability Seminar</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 13	ICLE <i>Georgia Insurance Claims Law</i> Savannah, Ga. See www.iclega.org for location 6 CLE	FEB 25	ICLE <i>Advanced Topics in Franchising and Distribution</i> Atlanta, Ga. See www.iclega.org for location 3 CLE
FEB 18	ICLE <i>Lawyer Assistance Program</i> Atlanta, Savannah and Tifton, Ga. See www.iclega.org for location 6 CLE	FEB 26	ICLE <i>Negotiated Corporate Acquisitions</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 19	ICLE <i>Advanced Securities Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	FEB 26	ICLE <i>Eminent Domain Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 19-20	ICLE <i>Social Security Institute</i> Atlanta, Ga. See www.iclega.org for location 10.5 CLE		

December-March

FEB 26

ICLE
Elder Law
 Statewide Satellite Rebroadcast
 See www.iclega.org for location
 6 CLE

FEB 27

ICLE
Georgia Insurance Claims Law
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

FEB 27

ICLE
Bar Media & Judiciary Conference
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

FEB 27

ICLE
Plaintiff's Personal Injury
 Statewide Satellite Broadcast
 See www.iclega.org for location
 6 CLE

FEB 27

ICLE
Criminal Practice Seminar
 Kennesaw, Ga.
 See www.iclega.org for location
 6 CLE

MAR 4

ICLE
Nuts & Bolts of Local Government Law
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

MAR 4

ICLE
*Persuasive Presentation
 and Storytelling Skills*
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

MAR 5

ICLE
Handling Fall Cases Professionally
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

MAR 5

ICLE
Plaintiff's Personal Injury
 Statewide Satellite Rebroadcast
 See www.iclega.org for location
 6 CLE

MAR 6

ICLE
Catastrophic Commercial Vehicle Cases
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

MAR 6

ICLE
Professionalism and Ethics Update
 Statewide Satellite Broadcast
 See www.iclega.org for location
 2 CLE

MAR 10

ICLE
March Group Mentoring
 Atlanta, Savannah and Tifton, Ga.
 See www.iclega.org for location
 No CLE

MAR 11

ICLE
Post Judgment Collection
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

MAR 11

ICLE
Leadership Literacy/Negotiation
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

MAR 12

ICLE
12th Annual Nonprofit Law Seminar
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

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FORMAL ADVISORY OPINION ISSUED PURSUANT TO RULE 4-403(d)

The second publication of this opinion appeared in the December 2013 issue of the *Georgia Bar Journal*, which was mailed to the members of the State Bar of Georgia on or about December 19, 2013. The opinion was filed with the Supreme Court of Georgia on Jan. 21, 2014. The State Bar of Georgia filed a Petition for Discretionary Review with the Supreme Court of Georgia pursuant to Rule 4-403(d), which the Supreme Court granted on May 19, 2014. On September 22, 2014, the Supreme Court of Georgia issued an Order approving Formal Advisory Opinion No. 13-1. Following is the full text of the opinion. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

FORMAL ADVISORY OPINION NO. 13-1
Approved and Issued On September 22, 2014
Pursuant To Bar Rule 4-403
By Order Of The Supreme Court Of Georgia
Supreme Court Docket No. S14U0705

QUESTIONS PRESENTED

1. Does a Lawyer¹ violate the Georgia Rules of Professional Conduct when he/she conducts a “witness only” real estate closing?
2. Can a Lawyer who is closing a real estate transaction meet his/her obligations under the Georgia Rules of Professional Conduct by reviewing, revising as necessary, and adopting documents sent from a lender or from other sources?

3. Must all funds received by a Lawyer in a real estate closing be deposited into and disbursed from the Lawyer’s trust account?

SUMMARY ANSWER

1. A Lawyer may not ethically conduct a “witness only” closing. Unless parties to a transaction are handling it pursuant to Georgia’s *pro se* exemption, Georgia law requires that a Lawyer handle a real estate closing (see O.C.G.A § 15-19-50, UPL Advisory Opinion No. 2003-2 and Formal Advisory Opinion No. 86-5).² When handling a real estate closing in Georgia a Lawyer does not absolve himself/herself from violations of the Georgia Rules of Professional Conduct by claiming that he/she has acted only as a witness and not as an attorney. (See UPL Advisory Opinion No. 2003-2 and Formal Advisory Opinion No. 04-1).
2. The closing Lawyer must review all documents to be used in the transaction, resolve any errors in the paperwork, detect and resolve ambiguities in title or title defects, and otherwise act with competence. A Lawyer conducting a real estate closing may use documents prepared by others after ensuring their accuracy, making necessary revisions, and adopting the work.
3. A Lawyer who receives funds in connection with a real estate closing must deposit them into and disburse them from his/her trust account or the trust account of another Lawyer. (See Georgia Rule of Professional Conduct 1.15(II) and Formal Advisory Opinion No. 04-1).

OPINION

A “witness only” closing occurs when an individual presides over the execution of deeds of conveyance and other closing documents but purports to do so merely as a witness and notary, not as someone who is practicing law. (UPL Advisory Opinion No. 2003-2). In order to protect the public from those not properly trained or qualified to render these services, Lawyers are required to “be in control of the closing process from beginning to end.” (Formal Advisory Opinion No. 00-3). A Lawyer who purports to handle a closing in the limited role of a witness violates the Georgia Rules of Professional Conduct.

In recent years many out-of-state lenders, including some of the largest banking institutions in the country, have changed the way they manage the real estate transactions they fund. The following practices of these lenders have been reported. These national lenders hire attorneys who agree to serve the limited role of presiding over the execution of the documents (i.e., “witness only” closings). In advance of a “witness only” closing an attorney typically receives “signing instructions” and a packet of documents prepared by the lender or at the lender’s direction. The instructions specifically warn the attorney NOT to review the documents or give legal advice to any of the parties to the transaction. The “witness only” attorney obtains the appropriate signatures on the documents, notarizes them, and returns them by mail to the lender or to a third party entity.

The Lawyer’s failure to review closing documents can facilitate foreclosure fraud, problems with title, and other errors that may not be detected until years later when the owner of a property attempts to refinance, sell or convey it.

A Lawyer must provide competent representation and must exercise independent professional judgment in rendering advice. (Rules 1.1 and 2.1, Georgia Rules of Professional Conduct). When a Lawyer agrees to serve as a mere figurehead, so that it appears there is a Lawyer “handling” a closing, the Lawyer violates his/her obligations under the Georgia Rules of Professional Conduct (Rule 8.4). The Lawyer’s acceptance of the closing documents or signature on the closing statement is the imprimatur of a successful transaction. Because UPL Advisory Opinion No. 2003-2 and the Supreme Court Order adopting it require (subject to the *pro se* exception) that only a Lawyer can close a real estate transaction, the Lawyer signing the closing statement or accepting the closing documents would be found to be doing so in his or her capacity as a Lawyer. Therefore, when a closing Lawyer purports to act merely as a witness, this is a misrepresentation of the Lawyer’s role in the transaction. Georgia Rule

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of Professional Conduct 8.4(a)(4) provides that it is professional misconduct for an attorney to engage in “conduct involving...misrepresentation.”

The Georgia Rules of Professional Conduct allow Lawyers to outsource both legal and nonlegal work. (See ABA Formal Advisory Opinion 08-451.) A Lawyer does not violate the Georgia Rules of Professional Conduct by receiving documents from the client or elsewhere for use in a closing transaction, even though the Lawyer has not supervised the preparation of the documents. However, the Lawyer is responsible for utilizing these documents in compliance with the Georgia Rules of Professional Conduct, and must review and adopt work used in a closing. Georgia law allows a title insurance company or other persons to examine records of title to real property, prepare abstracts of title, and issue related insurance. (O.C.G.A. § 15-19-53). Other persons may provide attorneys with paralegal and clerical services, so long as “at all times the attorney receiving the information or services shall maintain full professional and direct responsibility to his clients for the information and services received.” (O.C.G.A. § 15-19-54; also see UPL Advisory Opinion No. 2003-2 and Rules 5.3 and 5.5, Georgia Rules of Professional Conduct).

The obligation to review, revise, approve and adopt documents used in a real estate closing applies to the entire series of events that comprise a closing. (Formal Advisory Opinions No. 86-5 and 00-3, and UPL Advisory Opinion No. 2003-2). While the Supreme Court has not explicitly enumerated what all of those events are, they may include, but not be limited to: (i) rendering an opinion as to title and the resolution of any defects in marketable title; (ii) preparation of deeds of conveyance, including warranty deeds, quitclaim

deeds, deeds to secure debt, and mortgage deeds; (iii) overseeing and participating in the execution of instruments conveying title; (iv) supervising the recordation of documents conveying title; and (v) in those situations where the Lawyer receives funds, depositing and disbursing those funds in accordance with Rule 1.15(II). Even if some of these steps are performed elsewhere, the Lawyer maintains full professional and direct responsibility for the entire transaction and for the services rendered to the client.

Finally, as in any transaction in which a Lawyer receives client funds, a Lawyer must comply with Georgia Rule of Professional Conduct 1.15(II) when handling a real estate closing. If the Lawyer receives funds on behalf of a client or in any other fiduciary capacity he/she must deposit the funds into, and administer them from, a trust account in accordance with Rule 1.15(II). (Formal Advisory Opinion No. 04-1). It should be noted that Georgia law also allows the lender to disburse funds. (O.C.G.A. § 44-14-13(a)(10)). A Lawyer violates the Georgia Rules of Professional Conduct when he/she delivers closing proceeds to a title company or to a third party settlement company for disbursement instead of depositing them into and disbursing them from an attorney escrow account.

Endnotes

1. Bar Rule 1.0(j) provides that “Lawyer” denotes a person authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia, including persons admitted to practice in this state *pro hac vice*.
2. The result is to exclude Nonlawyers as defined by Bar Rule 1.0(k), Domestic Lawyers as defined by Bar Rule 1.0(d), and Foreign Lawyers as defined by Bar Rule 1.0(f), from the real estate closing process.

**The State Bar of Georgia Handbook
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THE STATE BAR OF GEORGIA ANNOUNCES ITS ANNUAL

FICTION WRITING COMPETITION

DEADLINE: JANUARY 16, 2015

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.

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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