

The background of the cover is a collage of photography-related items. A vintage SLR camera with a black leather-like texture and silver metal parts is the central focus, angled towards the bottom right. Above it, a black lens cap with a silver ring is visible. To the right, a strip of film with several frames is shown. The overall color palette is warm, with yellows, oranges, and browns.

Georgia  
Bar

# Journal

December 2004 ■ Volume 10 ■ Number 4

**Understanding and Challenging  
Photographic Evidence:  
What the Camera Never Saw**

# Do you know what it feels like to shake your insurance agent's hand?

Oh my, don't tell me you've never actually shaken his hand.

Or looked him in the eye. Why, don't you think it's important to know the man who may one day come to your defense

in the case of a malpractice claim? **Aubrey Smith**,

president of Georgia Lawyers Insurance Company,

thinks so. He believes that you can't build trust through e-mails and voice mails.

He believes that a handshake and a human connection are the only real signs that someone understands your needs and is willing to

stand behind you all the way. He believes that if you ever have a problem, question

or concern, you should have not just a

phone number, but a person to call. Because

he believes that if you ever did face a malpractice claim, you ought to know the person who holds your career in his hands.

If you're ready for a different kind of insurance experience and a free policy review, or a "Quick Quote," call **Aubrey Smith** or any member of the Georgia Lawyers team at: **770-486-3435** or toll-free, **866-372-3435**.

Visit us online at: [www.GaLawIC.com](http://www.GaLawIC.com).

GEORGIA  
LAWYERS  
INSURANCE  
COMPANY





State Bar of Georgia  
2005 Midyear  
Meeting & Dedication  
of the Bar Center

Jan. 13-15, 2005

Omni Hotel at CNN Center  
Atlanta, Georgia

Early-bird registration ends Friday, Dec. 10, 2004 > Hotel deadline is Friday, Dec. 10, 2004 > Final registration ends Friday, Dec. 31, 2004





#### On the Cover

*Understanding and Challenging Photographic Evidence: What the Camera Never Saw*, By Timothy W. Wolfe, page 20.

## Departments

- 4 From the President
- 6 From the Executive Director
- 10 From the YLD President
- 40 Bench & Bar
- 44 Office of the General Counsel
- 46 Lawyer Discipline
- 50 Law Practice Management
- 54 South Georgia Office
- 55 Section News
- 57 Professionalism Page
- 69 In Memoriam
- 70 CLE Calendar
- 74 Notices
- 83 Classified Resources
- 84 Advertisers Index

# Georgia Bar Journal

December 2004 ■ Volume 10 ■ Number 4

## Legals

- 12 Use and Misuse of O.C.G.A. § 9-11-30(b)(6)  
By Walter H. Bush Jr. and Matthew T. Covell
- 20 Understanding and Challenging Photographic Evidence: What the Camera Never Saw  
By Timothy W. Wolfe

## Features

- 26 Georgia Bar Foundation Awards \$2,075,000 at Annual Grants Meeting  
By Len Horton
- 30 The Jefferson County Courthouse at Louisville: The Grand Old Courthouses of Georgia  
By Wilber W. Caldwell
- 32 Judicial Independence as a Campaign Platform  
By Chief Justice Shirley S. Abrahamson
- 36 Federal Practice in the Northern District of Georgia: Times Are Changing  
By James N. Hatten

**Annual Fiction Writing  
Competition Deadline is Jan.  
21, 2005. See page 8 for the  
complete details.**

## Editorial Board

**Marcus D. Liner**

**Editor-in-Chief**

Scott Fain Bertschi	Sarah Howard Lamar
Bill Bost	E. Peyton Nunez
Donald P. Boyle Jr.	Stephanie Ann Paulk
Erin Reynolds Chance	Cynthia B. Smith
Charles Madden Cork III	Robert R. Stubbs
Lynda Carney Crum	Kristin H. West
Bridgette Elizabeth Eckerson	Pamela Y. White-Colbert
John Michael Gross	Scott Wright
Jennifer Carpenter Kane	

## Advisors

Theodore Harris Davis Jr.  
Rebecca Ann Hoelting  
D. Scott Murray  
Marisa Anne Pagnattaro

## Editors Emeritus

Rebecca Ann Hoelting, 02-04	Charles R. Adams III, 89-91
Marisa Anne Pagnattaro, 01-02	L. Dale Owens, 87-89
D. Scott Murray, 00-01	Donna G. Barwick, 86-87
William Wall Sapp, 99-00	James C. Gaulden Jr., 85-86
Theodore H. Davis Jr., 97-99	Jerry B. Blackstock, 84-85
L. Brett Lockwood, 95-97	Steven M. Collins, 82-84
Stephanie B. Manis, 93-95	Walter M. Grant, 79-82
William L. Bost Jr., 91-93	Stephen E. Raville, 77-79

## Officers of the State Bar of Georgia

Rob Reinhardt	President
Robert D. Ingram	President-elect
Gerald M. Edenfield	Secretary
J. Vincent Cook	Treasurer
William D. Barwick	Immediate Past President
Laurel Payne Landon	YLD President
Damon E. Elmore	YLD President-elect
Andrew W. Jones	YLD Past President

## Communications Committee

S. Kendall Butterworth	Chairperson
Aasia Mustakeem	Vice-Chairperson

## Communications Staff

C. Tyler Jones	Director
Sarah I. Bartleson	Assistant Director
Daniel L. Maguire	Administrative Assistant

## 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. © State Bar of Georgia 2004. 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

## Quick Dial

Attorney Discipline	(800) 334-6865 ext. 720 (404) 527-8720
Consumer Assistance Program	(404) 527-8759
Conference Room Reservations	(404) 527-8712
Fee Arbitration	(404) 527-8750
CLE Transcripts	(404) 527-8710
Diversity Program	(404) 527-8754
ETHICS Hotline	(800) 682-9806 (404) 527-8741
Georgia Bar Foundation/IOLTA	(404) 588-2240
Georgia Bar Journal	(404) 527-8736
Lawyer Assistance Program	(800) 327-9631
Lawyers Foundation of Georgia	(404) 659-6867
Law Practice Management	(404) 527-8772
Membership Records	(404) 527-8777
Meetings Information	(404) 527-8790
Pro Bono Project	(404) 527-8763
Professionalism	(404) 225-5040
Sections	(404) 527-8774
Unauthorized Practice of Law	(404) 526-8603
Young Lawyers Division	(404) 527-8778

## Manuscript Submissions

The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (17th ed. 2000). Please address unsolicited articles to: Marcus David Liner, State Bar of Georgia, Communications Department, 104 Marietta St. NW, Suite 100, Atlanta, Ga., 30303. Authors will be notified of the Editorial Board's decision regarding publication.

The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: C. Tyler Jones, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, Georgia 30303; phone: (404) 527-8736; tyler@gabar.org.

## Disabilities

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

## Headquarters

104 Marietta St. NW, Suite 100  
Atlanta, GA 30303  
(800) 334-6865 (404) 527-8700 FAX (404) 527-8717  
Visit us on the Internet at [www.gabar.org](http://www.gabar.org).

South Georgia Office  
244 E. Second St. (31794) P.O. Box 1390  
Tifton, GA 31793-1390  
(800) 330-0446 (229) 387-0446  
FAX (229) 382-7435



# Georgia Lawyers are Well Served by Our Board of Governors

By Rob Reinhardt

**P**ress deadlines require that this article leave Tifton in early November to allow publication in the December issue of our *Bar Journal*. So while you may read this article as the holidays approach, I am writing it immediately following our Fall Board of Governors meeting held at Callaway Gardens on Friday past (Nov. 5, 2004).

When Gene Talmadge proclaimed our great state as spanning "from Tybee Island to Rabun Gap," he was describing all the grand and varied regions served by Georgia lawyers. Four to five times a year, our comrades throughout the state, chosen by their colleagues in all Georgia's judicial circuits, put aside personal and professional priorities to assemble on your behalf and bring the perspective of all Georgia lawyers to issues facing our profession.

Last weekend this group traveled to Callaway for the 199th meeting of the Board of Governors of the State Bar of Georgia. Spectacular weather, a new conference center, a challenging agenda, and the Steeplechase at Callaway all contributed to a successful meeting, and I returned to

my country law practice with a renewed appreciation of the magnificent job our Board of Governors does in addressing the business of the State Bar.

The collective horsepower of your Board of Governors is formidable, and it is brought to bear on questions mundane and controversial. The agenda for the Fall Board Meeting included a review of the program the State Bar will sponsor at next year's legislative session. The Board endorsed the creation of a Georgia Equal Justice Commission to coordinate and improve the delivery of civil pro bono services. A pilot program for the creation of a Business Case Division (suggested by our Corporate Counsel Section) was recommended to our Supreme Court.

Longtime friend of the State Bar and experienced legislator Mary Margaret Oliver reported on her work to promote cooperative negotiation between stakeholders interested in tort reform. Your representatives ratified important appointments to the Disciplinary Board and Judicial Qualifications Commission.

Spirited debate was triggered by a recommendation from our Professional Liability Insurance Committee for a disciplinary rule change requiring lawyers who elect not to carry malpractice insurance to disclose that fact to clients. There are many dimensions to this issue,

"When Gene Talmadge proclaimed our great state as spanning 'from Tybee Island to Rabun Gap,' he was describing all the grand and varied regions served by Georgia lawyers."



and they were all smoked out and examined in a free-wheeling discussion. The committee's recommendation was directed to the Disciplinary Rules and Procedures Committee for further study in light of the many and varied perspectives brought to the floor by Board members. The recommendation will receive reasoned consideration and study and will be reported back to the Board in a form that accommodates consumer protection with the legitimate interests of practicing lawyers. Experience makes me confident that the focus we will bring to bear on the problem will improve our service to the public.

This anecdotal report is characteristic of the heavy lifting your Board of Governors tackles at least every calendar quarter. Your elected representatives encourage comments from lawyers practicing in your circuits, and they bring these comments to the Board. They then report to you on issues before an action taken by the Board. They are the State Bar's first line of contact with its members, and by virtue of holding a position on the Board, are subject to being called upon to participate in our Judicial District Professionalism Program or as a special master, to ensure that privileged information is not improperly disclosed should a search warrant be issued targeting a lawyer's office. Moreover, service on the Board is often a small part of the effort and energy these committed lawyers contribute to the program of work of our State Bar as well as local bar associations.

Board members undertake this service to Georgia lawyers at considerable personal and financial cost. By taking time from their practices and devoting it to the

programs of and issues before the State Bar, these lawyers invest in the advancement of our profession. Their personal commitment often goes unremarked and underappreciated. Time out of the office and away from family is itself a substantial contribution, but note also that their out-of-pocket expenses incidental to attendance at, and participation in, Board meetings are not insignificant.

When your representatives on the Board of Governors ask for your help, please give it. When you receive a report outlining action taken by the Board, please study it. This communication is the lifeline of our professional organization and keeps us informed on important issues that affect each of us in our daily practice.


The next time you see your Board representatives, thank them for the hundreds of miles they travel to represent your interests. Thank them for the hours and energy they contribute by engaging on any number of crucial issues that demand the attention of the profession. I have watched this crowd in action for many years, and I state to you unequivocally that they do a noble job on our behalf.

As the year draws to a close, I want to issue two reminders and sound an alarm.

First, the Bar Center—our “home for Georgia lawyers”—is nearing completion. Dedication will be in January, and I encourage you to take advantage of the excellent facilities available for your use.

Second, Casemaker is on track for implementation beginning Jan. 1, 2005. The Bar is adding support staff to enhance transition and training. Factor that into your time budget in early 2005.

Finally, the interesting political season promises an energetic legislative session. Many issues of vital importance to our profession will receive attention at the state capitol. We are grateful to those of our brethren who serve in the General Assembly, and I earnestly ask all of you to stand at attention as the legislative session nears. The State Bar's Legislative Program is always one of the most ambitious to come before our lawmakers, and we will be communicating developments, which impact our system of justice. Georgia lawyers contribute great wisdom and diversity of thought valuable in crafting laws and your help can provide a powerful incentive to insure that these ideas receive consideration.

Please accept my best personal wishes for a terrific holiday season and success in the new year beyond your wildest expectations. 

**The  
winning edge  
for Georgia  
attorneys  
since  
1969**

**NLRG**  
National Legal Research Group

*Put us to work helping you win today.*  
1-800-727-6574 or [research@nlrg.com](mailto:research@nlrg.com)

*Fast, Affordable, Specialized  
Research, Writing and Analysis*

For more information, and to see what your peers are saying about us: [www.nlrg.com](http://www.nlrg.com)



# Young Lawyers Division — Making a Difference in Our Community

By Cliff Brashier

**P**rior to 1946, the Constitution of Georgia and the State Bar rules prohibited anyone under the age of 40 from practicing law. Thankfully, this is no longer the case, and the Bar and the public are better for it.

Today, all members of the State Bar of Georgia who have been admitted to practice in their first bar within the past five years, or are less than 36 years old, are automatically members of the Young Lawyers Division. Among the YLD's goals are service to the profession, service to the public and service to the Bar. These goals are achieved through the educational, public service, and community programs which are produced by the 27 statewide committees. The YLD also serves a valuable social and networking role in introducing young lawyers to each other and assisting them in their transition into the Georgia legal practice.

Throughout the years, the Bar's young lawyers have distinguished themselves as the "service arm of the Bar" by volunteering and participating in various community service and pro bono projects. The

YLD has even gained national recognition by winning many American Bar Association awards for its projects and publications.

William Ide of Atlanta, who served as the YLD president (1974-75) and later served as president of the American Bar Association (1993-94), said, "Serving in the YLD is the port of entry into greater involvement in the Bar. It also provides fantastic opportunities to meet other lawyers and gain better perspective on the practice of law."

Current YLD President Laurel Payne Landon said, "I feel privileged to serve our profession through the YLD and I am especially appreciative of the opportunity to meet, get to know and work alongside many of the finest lawyers in our state." Landon encourages every young lawyer in the state to participate in YLD activities.

Following is a list of some of the YLD's hard-working committees:

## Advocates for Students with Disabilities

This committee was formed because many school districts are not providing the education required by the Americans With Disabilities Act. The committee recruits lawyers willing to represent these children in due process hearings and in court cases.

"Throughout the years, the Bar's young lawyers have distinguished themselves as the 'service arm of the Bar' by volunteering and participating in various community service and pro bono projects."





Kendall Butterworth,  
senior litigation counsel  
with BellSouth Corp.



Laurel Payne Landon, a  
partner with Kilpatrick  
Stockton in Augusta



Jonathan Pope, a partner  
with Hasty Pope and Ball



Antavius M. Weems, a  
child advocate lawyer  
with the Fulton County  
Juvenile Court

## Young Lawyers Division Leaders Distinguish Themselves in the Community

The *Atlanta Business Chronicle*, *Georgia Trend Magazine* and the *Fulton County Daily Report* discovered what members of the State Bar of Georgia have known for years—that the leaders of the Young Lawyers Division are hard-working, dedicated professionals who distinguish themselves in everything they do. The *Atlanta Business Chronicle* named YLD Past President and current Board of Governors member Kendall Butterworth, senior litigation counsel with BellSouth Corp., as one of Atlanta's most promising young leaders. *Georgia Trend Magazine* named YLD President Laurel Payne Landon, a partner with Kilpatrick Stockton in Augusta, and YLD Treasurer Jonathan Pope, a partner with Hasty Pope and Ball, to its prestigious "40 Under 40" list of the best and brightest young Georgians. The *Fulton County Daily Report* named YLD Board Member and Co-chair of the Judicial Liaison Committee and the Aspiring Youth Committee Antavius M. Weems, a child advocate lawyer with the Fulton County Juvenile Court, to its "21 to Watch" list recognizing young (under 40) achievers on the rise in Georgia's legal community.

## Aspiring Youth Program

This committee assists at-risk middle school students by increasing their aspirations to graduate from high school and college by demonstrating the importance of education, hard work and commitment. All program activities take place during the "latch-key" hours, when youths are most often unsupervised. Younger lawyers serve as positive role models while developing mentoring relationships with the students.

## Community Service Projects

This committee focuses on opportunities for younger lawyers to participate as a group in support of local, state or national service

projects that are not necessarily law-related, such as literacy, homelessness, drug abuse prevention or environmental programs. The committee also organizes the annual "Great Day of Service" project where all members of the Bar are asked to join together in a statewide effort of public service.

## Elder Law

This committee is involved in the delivery of legal services to the elderly, monitoring legislation and other legal developments affecting the elderly community, and providing general information to older Georgians.

## High School Mock Trial

This committee provides educational litigation experience to hundreds of high school students by

sponsoring a statewide mock trial competition, sending a team to the national competition, and holding a summer law camp. Young lawyers, judges and teachers throughout Georgia get involved in all levels of the competition as coaches, judges and committee members.

Supreme Court of Georgia Justice George H. Carley said, "The YLD should be proud of its sponsorship of the High School Mock Trial Competition. The program teaches our teenagers about the rule of law and lawyers, and in return, we learn that these leaders of tomorrow are very bright, perceptive, honest and dedicated."

## Juvenile Law

This committee is responsible for studying and recommending changes in the area of juvenile



## Annual Fiction Writing Competition Deadline is Jan. 21, 2005

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 C. Tyler Jones, Director of Communications, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; (404) 527-8736.

### Rules for Annual Fiction Writing Competition

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

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgement 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: Fiction Writing Competition, C. Tyler Jones, Director of Communications, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. The author assumes all risks of delivery by mail. Or submit by e-mail to [tyler@gabar.org](mailto:tyler@gabar.org)
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.

laws, juvenile facilities, and rehabilitation.

## Law-Related Education/Law Awareness for Youth

This committee supports and encourages the growth of law-related education in the state, particularly through the inclusion of law-related curriculum in schools. These efforts include preparing an Introduction to Law textbook and hosting an annual teachers' workshop.

## Truancy Intervention


This committee serves children and their families who enter the juvenile justice system after violating Georgia's compulsory school attendance laws.

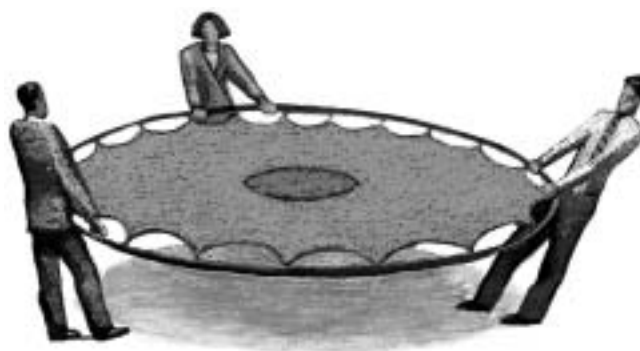
## Get Involved

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

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

For more information on how to get involved with YLD committees, or for future meeting information, call YLD Director Deidra Sanderson at (404) 527-8778.

As always, your thoughts and suggestions are always welcome. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 (fax) and (770) 988-8080 (home). 



## HOW TO FIND MALPRACTICE INSURANCE THAT WON'T LET YOU DOWN.

For protection that will be there when you need it most, look to Lawyers Direct. It's the program created by lawyers, for lawyers, and backed by a highly rated insurance company with an established record throughout the country. Lawyers Direct offers small firms (one to five attorneys) fast, friendly service—and coverage that won't fall through. To learn more, call 800-409-3663 or visit [LawyersDirectInsurance.com](http://LawyersDirectInsurance.com).



Lawyers Direct is underwritten by Professionals Direct Insurance Company, a licensed and admitted carrier rated A- (Excellent) by A.M. Best.





"We have all developed an image of what a lawyer should be. How does that image compare to the lawyer you are today?"

# Do You Enjoy Practicing Law?

By Laurel Payne Landon

I am very troubled by the fact that some of Georgia's best and brightest young lawyers are not enjoying the practice of law. We all have our ups and downs, but I am talking about an all-too-common feeling that *"There must be a better way to make a living"* and *"I went to school for this?"* In my opinion, this issue is one of the most serious issues facing the profession today. It needs to be addressed, or we run the risk of losing talented young people to other professions and endeavors.

I have spent some time reflecting on things that I believe make the practice of law more enjoyable. You may not agree with all of these and you may have other, better ideas. I hope

that this article will motivate you to take some time to reflect on what you would say to a young lawyer who asked you how the practice of law could be more enjoyable. The future of our profession may depend on it.

## Be the Kind of Lawyer You Always Wanted To Be

At one point or another, we all made the decision to become a lawyer. Some of us decided in kindergarten and some of us decided the day before we started law school! Many of you had family members who were lawyers. I did not, but I had two wonderful lawyers as Sunday school teachers when I was young. Even today, when I think about what a lawyer is, I think of them first.

We have all developed an image of what a lawyer should be. How does that image compare to the lawyer you are today? I am not just talking about the specific type of law



you practice, but do you fit your image of what a lawyer should be as a professional? If not, start taking small steps toward that goal. I believe that you will find the practice of law more enjoyable.

## Have a Mentor

I am a firm believer that all young lawyers, and even not so young lawyers, need mentors from whom they can learn how to practice law. It is great to have someone to talk to about complicated legal issues, but we all need someone to talk with about the intangibles of law practice as well. I have been fortunate to have mentors in my career and I cannot imagine where I would be without their guidance. If you do not have a mentor, look around. There are great older lawyers—in your firm or in your community—who have lots of advice to share. Make the effort to find (or be) a mentor today.

## Be Nice to Each Other

This may sound silly to you, but what factor most determines whether your litigation or transaction is going to be a pleasant experience or a terrible experience? Most of the time that factor is what other lawyers are involved. When everyone in a matter is cordial, respectful and pleasant, you enjoy that matter much more than when everyone is adversarial, unprofessional and disrespectful.

I am not saying that you have to agree with other lawyers all the time or that you should be a doormat. But we should all strive to treat other lawyers like we want to be treated rather than treating them as if they are an enemy we have to defeat in order to maintain our own professional standing. If we all strived to be courteous to our fellow lawyers,

wouldn't the practice of law be much more enjoyable?

## Socialize with Other Lawyers

I certainly don't mean to imply that we should be some kind of exclusive club, but I think socializing with lawyers makes the practice of law so much more enjoyable. As a rule, lawyers are intelligent, interesting people with whom you have a lot in common. If lawyers are your friends, it is much easier and much more enjoyable to work with them. Get to know your fellow lawyers.

## Don't Take Yourself Too Seriously

As lawyers, we have serious responsibilities and many pressures, but that doesn't mean we should always take ourselves too seriously. Nothing relieves stress better than a good laugh! If good humor can cure cancer (as has been claimed), surely it can cure a lot of what ails our profession.

## Have a Passion Outside the Law

Tennis is my passion. Please don't misunderstand—I am not a good tennis player. But on that rare occasion when my serve is popping, my ground strokes are deep and my volleys are crisp (and my partner doesn't mess all this up!), it is a joy that I cannot describe. I know many of you feel the same way about golf, photography, gardening, etc. Our profession tends to lend itself to overwork, but do whatever you can to make time for your passion. It will improve the quality of your law practice over time and it will certainly make practicing law more enjoyable.


## Serve

One of the most enjoyable things that I do is my Bar work because I feel like I am providing a service to other lawyers and to the community. Many of you serve your church, your communities and your profession in a variety of ways. It is important to make time for these efforts. Your law practice will be that much more enriched for engaging in these activities, and you will be more fulfilled.

## Spend Time with Your Family and Friends

We need to spend time with people we love. Your spouse, your children, your family and your friends need to spend time with you as well. The best gift anyone can give is their time and their presence. On your deathbed, I don't think you'll be thinking about the brief you wrote or the deal you negotiated. You'll want to know that you were there for the people you love.

## Every Once in a While, Get Off the Treadmill

I don't know many of you but I bet that almost all of you have one thing in common—your life is overscheduled. You have too many things to do and not enough time to do them. You go from appointment to appointment, deadline to deadline, and challenge to challenge, barely stopping to breathe. I, for one, like to be busy, and I don't find anything intrinsically wrong with this lifestyle for awhile—but we all need time to unwind and decompress. Do something to get away, whether it be for an hour, a day, a weekend or a week. Get away from your cell phone, voice mail, e-mail and PDA. Enjoy life. And enjoy the practice of law. 



## A Look at the Law

# Use and Misuse of O.C.G.A. § 9-11-30(b)(6)

By Walter H. Bush Jr. and Matthew T. Covell

**T**he authors of Rule 30(b)(6) of the Federal Rules of Civil Procedure originally envisioned that it would be utilized in situations when it is unclear what role each of the individual employees played in a dispute involving a corporate party. Rule 30(b)(6) is intended to “curb the ‘bandying’ by which officers or managing agents of a corporation are deposed in turn but each disclaims knowledge of facts that are clearly known to persons in the organization and thereby to it.”<sup>1</sup>

For example, suppose that after exchanging written discovery, it is apparent that key individuals involved in the transaction at issue no longer work for the corporate party. Or, suppose that the documents produced during discovery reveal that numerous individuals are involved, and it is unclear what each of their respective roles was in the underlying transaction. In these situations, a Rule 30(b)(6) deposition allows the examining party the option of simply designating the subject matters about which it is interested in eliciting testimony, and the corporate party is then tasked with identifying the proper individuals within the corporation to testify as to those matters. Essentially, a Rule 30(b)(6) deposition is meant to take the guesswork out of the deposition-designation process.<sup>2</sup>



In recent years, proponents of Rule 30(b)(6)<sup>3</sup> have touted the use of this procedure to dramatically streamline the discovery process when corporate parties are involved. Moreover, they have encouraged lawyers to use the rule as an offensive weapon to force the opponent to create and prepare a "super" witness who possesses all of the corporate party's relevant knowledge. Through this one witness, an examining party can discover all of the facts supporting its opponent's contentions and pin its opponent down with binding admissions obtained from the deposition. Practically speaking, however, the rule does not always streamline discovery as much as supporters had hoped, and, in some situations, it is misused for strategic reasons.<sup>4</sup>

There is no uniform standard regarding the obligations on a corporate party to prepare its Rule 30(b)(6) witness or witnesses. For example, some courts hold that the organization has an affirmative obligation to prepare a witness with knowledge of all the facts known by anyone in the organization that are relevant to matters designated in the Rule 30(b)(6) notice.<sup>5</sup> The difficulty with such a standard is that a Rule 30(b)(6) deposition of the specially prepared "super" witness can then be employed to obtain binding admissions against the organization for use on a motion for summary judgment.<sup>6</sup>

Other courts recognize that no one "super" witness can fairly be expected to articulate all knowledge of the corporate party. The examining party during a deposition usually attempts to discover its opponent's factual knowledge with respect to the matters designated. Any information gained is

simply another form of evidence. It may be used to bolster supporting evidence or undermine contradictory evidence. As one court explained, "[i]t is true that a corporation is 'bound' by its Rule 30(b)(6) testimony in the same sense that any individual deposed under Rule 30(b)(1) would be 'bound' by his or her testimony. All this means is that the witness has committed to a position at a particular point in time. It does not mean that the witness has made a judicial admission that formally and finally decides the issue."<sup>7</sup>

While some courts hold that the deponent must be both knowledgeable about a given area and prepared to give complete and binding answers on behalf of the organization,<sup>8</sup> other courts recognize that Rule 30(b)(6) is not intended to be a memory contest. One court commented that "[i]t is not reasonable to expect any individual to remember every fact in a [corporate] investigative file."<sup>9</sup> Another court acknowledged that there are limits on what a single human being may be capable of remembering, characterizing the obligation to be an effort to testify "to the extent that [the witness] is able."<sup>10</sup>

### **Strategic Misuse of Rule 30(b)(6) Depositions**

One increasingly common strategic misuse of Rule 30(b)(6) is for opposing counsel to mount a pre-emptive strike by noticing a Rule 30(b)(6) deposition regarding all facts in support of a corporation's contentions and affirmative defenses at the beginning of discovery, before the corporation has had an opportunity to investigate its position and is ready to be bound by its answer.<sup>11</sup>

To appreciate this potential misuse, assume that a corporate party has been noticed for a deposition under the Rule. Suppose that the events giving rise to the claims are complex and involve the actions of several people over a course of time. Assume further that the events in question happened long ago, and that many of the people who were employees of the corporate party are no longer under its control. Other participants in the underlying transaction may be dead or unavailable. Furthermore, other potential witnesses are third parties who are not under the control of the organization. The documents that bear upon the underlying transaction are voluminous, scattered and ambiguous. Counsel for the corporate party is now faced with the task of helping the client select and prepare one or more

## **Business Valuations**

Divorces • Estate/Gifts • ESOPs  
Disputes • Fairness Opinions  
Family Limited Partnerships

**Mitchell Kaye, CFA, ASA**

(770) 998-4642 • (800) 888-KAYE

American Society of Appraisers  
Past President, Atlanta Chapter

Chartered Financial Analyst

Affirmed by Court of Appeals

**Court Testimony  
and  
I.R.S. Experience**

*serving appraisal clients since 1981*

designees to testify on its behalf on what is “known or reasonably available” about the subjects which have been identified in a Rule 30(b)(6) notice.<sup>12</sup>

Under such a scenario, the party that noticed the Rule 30(b)(6) deposition is really attempting to use it as a mechanism to obtain insight into opposing counsel’s mental impressions and strategy. This is an improper intrusion into the attorney-client privilege and work product doctrine. Commentators have noted that Rule 30(b)(6) depositions have “been increasingly misused in recent years. Aggressive litigants and a few shortsighted courts have bent this device into a form of ‘contention discovery’ in which an entity may be required to respond in impromptu oral examination to questions that require its designated witness to ‘state all support and theories’ for a myriad of contentions in a complex case. A growing misuse of this basic deposition tool creates unfair, unworkable burdens on the responding parties and risks imposition of inappropriate sanctions, including preclusion of proof.”<sup>13</sup>

For example, a typical 30(b)(6) deposition notice might require the defendant to designate a corporate representative who is knowledgeable of facts supporting:

- (1) any denial by defendant of any allegation in the complaint;
- (2) any denial by defendant of plaintiff’s first request for admissions; and
- (3) any affirmative defense in defendant’s answer to the complaint.

Additionally, such notices typically command a defendant “to produce at the deposition any and all documents and tangible things which provide evidence of facts

supporting those topics identified above.” This is clearly an attempt to secure discovery of opposing counsel’s work product and mental impressions, which is inconsistent with the intent behind Rule 30(b)(6).

## THE WORK PRODUCT DOCTRINE

The work product doctrine prohibits one’s adversary from accessing opposing counsel’s trial preparations or mental impressions during discovery.<sup>14</sup> The doctrine protects documents and intangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative.<sup>15</sup> Special concern is directed to disclosures that are calculated to reveal the mental processes of counsel.<sup>16</sup>

For example, in *American National Red Cross v. Travelers Indemnity Co. of Rhode Island*,<sup>17</sup> the court ordered broad protection under the work product doctrine and the attorney-client privilege based upon counsel’s review of documents and facts relevant to the defendants’ affirmative defenses. In *American National*, defendant Travelers had insured the plaintiff for over 50 years, but it subsequently refused to pay certain HIV-related claims. Plaintiff sued under the insurance policies, seeking punitive damages, and moved for partial summary judgment after Travelers’ witness, designated to represent the company at a Rule 30(b)(6) deposition, refused to answer certain questions regarding Travelers’ affirmative defenses on the grounds of attorney-client privilege and the work product doctrine. The plaintiff argued that this refusal to

answer relevant questions by the deponent rendered the affirmative defenses unprovable.

During the Rule 30(b)(6) deposition, the deponent declined to respond to inquiries concerning certain facts and documents cited by Travelers in support of its affirmative defenses. Specifically, counsel asked the deponent to describe all of the facts which Travelers contended supported its 12th affirmative defense to the complaint. Travelers objected to the question on grounds that it was overbroad, and that it violated the work product doctrine and the attorney-client privilege. The witness then responded that the affirmative defense was drafted by counsel and the information supporting it was protected by the attorney-client privilege. A series of similar questions regarding other affirmative defenses drew the same response.<sup>18</sup>

The court recognized that what plaintiff was really seeking in its Rule 30(b)(6) deposition improperly imposed on Travelers’ documents and its attorneys’ mental impressions which should be protected by the work product doctrine. The court noted that plaintiff and Travelers had exchanged thousands of documents, deposed dozens of witnesses, and exchanged hundreds of interrogatories. Travelers’ attorneys spent significant time culling through hundreds of thousands of documents, transcripts, and interrogatory responses in an effort to compile the facts and documents relevant to each separate affirmative defense. In effect, Travelers’ attorneys worked to “marshal the evidence” in support of each of Travelers’ contentions. The court held that these activities are pro-

tected from discovery by the work product doctrine.<sup>19</sup>

Plaintiff's deposition questions regarding the facts and documents in support of Travelers' affirmative defenses "intruded upon protected work product; in effect, what [plaintiff] was requesting was insight into Travelers' defense plan."<sup>20</sup> Having found the refusal to respond to be appropriate, the court rejected plaintiff's argument that Travelers was precluded from presenting evidence on the particular affirmative defenses in question. The court reached this decision because plaintiff was not contending that the Rule 30(b)(6) deponent withheld discoverable documents or data. Instead, the information sought related to the defense strategy—"which documents or data Travelers would seek to use to prove its points." The court held such material to be work product that Travelers did not have to reveal.<sup>21</sup>

The United States Bankruptcy Court reached a similar result in *In re Bilzerian*.<sup>22</sup> In *Bilzerian*, the Securities and Exchange Commission moved to dismiss a debtor's Chapter 7 case. The debtor noticed a 30(b)(6) deposition in an attempt to discover all persons most knowledgeable of the facts supporting the allegations contained in the SEC's motion to dismiss. The SEC then sought a protective order which the court upheld to avoid potentially unwarranted inquiries into the mental impressions of the SEC's lead counsel in violation of the work product doctrine.

The debtor argued that he never requested the deposition of opposing counsel. Rather, the SEC was free to choose its designee, and the SEC chose its counsel. Thus, the

debtor contended that the SEC injected the issue of privilege into the discovery question.<sup>23</sup> The court rejected this argument, holding that "since the investigation was conducted by the SEC attorneys, preparation of the witnesses would include disclosure of the SEC attorneys legal and factual theories as regards . . . their opinion as to the significance of documents, credibility of witnesses, and other matters constituting attorney work product."<sup>24</sup>

The court further held that when the disclosure of facts effectively reveals the mental impressions of an attorney, those facts must be protected from disclosure pursuant to the work product doctrine.<sup>25</sup> It is not an appropriate use of Rule 30(b)(6) to use the deposition of a party representative as a means to depose the party's counsel or someone with knowledge gained exclusively from the party's counsel. The court concluded that if this type of deposition were permitted, it would infringe upon the work product of the party's primary lawyer while producing no non-privileged information relevant to defend against the motion at issue.<sup>26</sup>

As explained by the Second Circuit, a touchstone of the work product inquiry is whether the discovery demand is made "with the precise goal of learning what the opposing attorney is thinking or [what his] strategy may be."<sup>27</sup> Attorney work product includes an attorney's legal strategy, his intended lines of proof, his evaluation of the strengths and weaknesses of his case, and the inferences he draws from witness interviews. Any slight factual content that such items may have is generally outweighed by the advisory system's interest in maintaining the privacy

## NEW HOME CONSTRUCTION COMPLAINTS

Residential Construction  
& Development Expert

- Code & Inspection Compliance
- Cost/Quality Analysis
- Materials & Labor Evaluation



770-922-4411

[www.danielturnerbuilders.com](http://www.danielturnerbuilders.com)

## SENTENCING CONSULTATION & APPEALS

WHEN IT'S TIME FOR A  
CHANGE

Georgia and All Federal Circuits  
**FEDERAL CRIMINAL LAW  
CENTER**

Voice: 404-633-3797

Fax: 404-633-7980

[www.MSheinLaw.com](http://www.MSheinLaw.com)

[Marcia@MSheinLaw.com](mailto:Marcia@MSheinLaw.com)

## A-A-A ATTORNEY REFERRAL SERVICE

Is your phone ringing like it  
used to? Last month we  
referred over 17,000 callers to  
our attorneys. Are you ready to  
start getting referrals?  
Call us today!

(800) 733-5342

24-hour paging:

(888) 669-4345

Earn up to 6 CLE credits for  
authoring legal articles and  
having them published.

Submit articles to:

Marcus David Liner

Georgia Bar Journal

104 Marietta St. NW, Suite 100

Atlanta, GA 30303

Contact [journal@gabar.org](mailto:journal@gabar.org) for  
more information or visit the Bar's Web site,  
[www.gabar.org/gbjsub.asp](http://www.gabar.org/gbjsub.asp).



Just as depositions of opposing counsel are shunned, a Rule 30(b)(6) deposition that effectively discloses counsel's views on the preparation of the case for trial is inappropriate. ... A party who receives a Rule 30(b)(6) deposition notice that seeks the mental impressions of that party's attorney should seek a protective order.

of an attorney's thought processes. This ensures that each side relies on its own wit in preparing its respective case.<sup>28</sup> Thus, to the extent that a Rule 30(b)(6) deposition is calculated to disclose what counsel has advised a client, this type of disclosure should remain privileged. Just as depositions of opposing counsel are shunned, a Rule 30(b)(6) deposition that effectively discloses counsel's views on the preparation of the case for trial is inappropriate.<sup>29</sup>

More recently, courts are carefully considering the facts of these situations to determine whether the legitimate information needs of a party preparing for trial are going unmet. One key factor is whether the witness has at least some knowledge based on personal participation in the events.<sup>30</sup> Another consideration is whether the disclosing party can testify that it has already produced all of the underlying information that its deposition witness reviewed. When a party demonstrates that all relevant non-privileged evidence has been disclosed to the defendants, a proposed Rule 30(b)(6) deposition seeking synthesis of the supporting facts constitutes an impermissible attempt by the examining party to inquire into the mental

impressions and strategies of the corporate party.<sup>31</sup>

A notice calling for a corporate witness to testify about facts supporting a large number of paragraphs in the party's denials and affirmative defenses also poses work product doctrine concerns. A corporate entity "is not required to have counsel marshal all of its factual proof and prepare a witness to be able to testify on a given defense or counterclaim."<sup>32</sup>

Similarly, requiring a party to provide a response to an "all of the facts" form of rule 30(b)(6) designation, in effect, calls upon a party to compile all of its proof and then provide it to the deponent so that he or she can respond to what are essentially a form of contention interrogatories.<sup>33</sup> If this procedure were permissible, one might ask why a party opponent would ever need to call for more than one deposition. In essence, the corporate party would already be bound by the all-encompassing Rule 30(b)(6) deposition. Even putting aside any issues of privilege, this situation is problematic because the time and effort required to prepare a corporate party's Rule 30(b)(6) designee is too burdensome.<sup>34</sup>

A party who receives a Rule 30(b)(6) deposition notice that seeks the mental impressions of that party's attorney should seek a protective order. Under the Federal Rules of Civil Procedure, an attorney is not permitted to instruct a witness not to answer questions in a Rule 30(b)(6) deposition except on the ground of privilege, to enforce a limitation on evidence directed by the court, or to present a motion for protective order.<sup>35</sup> Instead, counsel should seek to delay the deposition by agreement while gathering more complete and accurate information. Alternatively, counsel should seek a protective order delaying the taking of the deposition.<sup>36</sup> If an agreement cannot be reached and the court refuses to protect the corporate party from a premature deposition, counsel may designate additional representatives to provide further answers as discovery progresses and the case matures.<sup>37</sup>

## ALTERNATIVE DISCOVERY MECHANISMS TO DETERMINE A PARTY'S CONTENTIONS


Prior to trial, a party has a recognized right to learn what the contentions of its adversary will be. Courts, however, do impose certain restrictions on the discovery of contentions and the expected evidentiary support for specific averments.<sup>38</sup> Accordingly, rather than using a Rule 30(b)(6) deposition to learn about the contentions of one's adversary, two other devices to uncover this information include contention interrogatories and the pretrial order.

Federal Rule of Civil Procedure 33 expressly permits interrogatories asking for a statement of a party's opinion or contention that relates to fact or the application of law to fact.<sup>39</sup> Generally, contention interrogatories are utilized toward the end of fact discovery as a mechanism to understand the opposing party's theory of the case. Interrogatories that involve mixed questions of law and fact may create disputes between the parties that are best resolved after other discovery is completed. In such a situation, the court is expressly authorized to defer an answer to contention interrogatories. Similarly, the court may delay determination of one's contentions until the pretrial conference if the court believes that the dispute is best resolved in the presence of a judge.<sup>40</sup>

The pretrial order is another device that can provide an understanding of an adversary's contentions.<sup>41</sup> Prior to trial, attorneys are required to "make a full and fair disclosure of their views as to what the real issues of the trial will be."<sup>42</sup> The effect of the pretrial order is further strengthened by Rule 26(a)(3), which imposes an obligation on parties to identify documents and deposition testimony in its final pretrial disclosures. In addition, Rule 37(c)(1) states that the failure to make such identification will render the items unusable as evidence, unless the omission was harmless.<sup>43</sup> Thus, the Federal Rules of Civil Procedure provide several mechanisms for a party to understand an opposing party's contentions in a case without resort to a Rule 30(b)(6) deposition.

## CONCLUSION

"Rule 30(b)(6) was never intended to be a culminating stage at which a party's entire proof

would be synthesized for the benefit of the other side, organized, then restated orally by one omniscient witness' integration."<sup>44</sup> Nonetheless, attorneys commonly misuse this procedure by setting forth topic specifications that call for a complete summary of all proof and support of each paragraph of a claim or defense. Similarly, counsel may call for testimony about any averment in the discovering party's pleadings that the adversary denied. In these situations, a party's reliance on a Rule 30(b)(6) deposition may raise concerns that what the party is really seeking is the opposing party's counsel's work product and mental impressions. A party receiving a Rule 30(b)(6) deposition notice that imposes upon counsel's work product and mental impressions should seek a protective order immediately. 



**Walter H. Bush Jr.** is a partner with Arnall Golden Gregory LLP and is the leader of its Business Litigation Team. He has served as lead counsel in numerous complex litigation matters at the trial and appellate levels. He earned a J.D. degree from the University of Georgia School of Law in 1975.



**Matthew T. Covell** is an associate with Arnall Golden Gregory LLP and is a member of its Business Litigation Team. He earned a J.D. degree from the University of North Carolina at Chapel Hill School of Law in 1999 and a B.A. degree from the University of North Carolina at Chapel Hill in 1996.

## Endnotes

1. FED. R. CIV. P. 30(b)(6) advisory committee's note.
2. See Jack I. Samet and Andre Y. Bates, *Rule for Streamlining Discovery is No Panacea; Companies Find Rule 30(b)(6) Depositions Don't Always Speed Things Better Than Other Means*, 22 NAT'L L.J. B16 (2000).
3. There are only a handful of Georgia cases that reference the Georgia statute for deposing a corporate representative, O.C.G.A. § 9-11-30(b)(6) (2000). Nevertheless,

**partnerships  
services  
solutions**



*RMT partners with industry and its environmental counsel to improve our clients' competitive advantage by providing innovative environmental solutions to enhance productivity and risk management.*

- Air Pollution Control Systems
- Environmental Permitting
- Hazardous and Solid Waste Management
- Innovative Treatment Technologies
- Site Investigation & Remediation Solutions
- Wastewater Treatment
- Environmental, Health & Safety Management Systems
- EHS Compliance Audits
- ISO 14001 Implementation
- Acquisition/Divestiture Due Diligence



**In Atlanta, 770/641-9756**

- "[b]ecause Georgia's Civil Practice Act is modeled on the Federal Rules of Civil Procedure, decisions of the federal courts interpreting the federal rules are persuasive authority." McKesson HBOC, Inc. v. Adler, 254 Ga. App. 500, 503 n.4, 562 S.E.2d 809 (2002).
4. See Samet and Bates, *supra* note 2.
  5. See United States v. Taylor, 166 F.R.D. 356, 362 (M.D.N.C. 1996); SEC v. Morelli, 143 F.R.D. 42, 45 (S.D.N.Y. 1992).
  6. Jerold Solovy and Robert Byman, *Discovery: Invoking Rule 30(b)(6)*, 21 NAT'L L.J. B13 (1998).
  7. W.R. Grace & Co. v. Viskase Corp., No. 90-5383, 1991 WL 211647, at \*2 (N.D. Ill. Oct. 15, 1991).
  8. See Bank of N.Y. v. Meridien BIAO Bank Tanz., Ltd., 171 F.R.D. 135, 150 (S.D.N.Y. 1997); FDIC v. Butcher, 116 F.R.D. 196, 201 (E.D. Tenn. 1986).
  9. EEOC v. American Int'l Group, Inc., No. 93 CIV 6390, 1994 WL 376052, at \*3 (S.D.N.Y. Jul. 18, 1994).
  10. Protective Nat'l Ins. Co. of Omaha v. Commonwealth Ins. Co., 137 F.R.D. 267, 283 (D. Neb. 1989).
  11. See James C. Winton, *Corporate Representative Depositions In Texas - Often Used But Rarely Appreciated*, 55 BAYLOR L. REV. 651, 733 (2003).
  12. Kent Sinclair and Roger P. Fendrich, *Discovering Corporate Knowledge In Contentions: Rethinking Rule 30(b)(6) and Alternative Mechanisms*, 50 ALA. L. REV. 651, 699 n. 259 (1999).
  13. *Id.* at 651-52.
  14. See Shields v. Sturm, Ruger & Co., 864 F.2d 379, 382 (5th Cir. 1989).
  15. See Blockbuster Entertainment Corp. v. McComb Video, Inc., 145 F.R.D. 402, 403 (M.D. La. 1992).
  16. See FED. R. CIV. P. 26(b)(3).
  17. 896 F. Supp. 8 (D.D.C. 1995).
  18. *Id.* at 13-14.
  19. *Id.*
  20. *Id.*
  21. *Id.*
  22. 258 B.R. 846 (Bankr. M.D. Fla. 2001).
  23. *Id.* at 848.
  24. *Id.* (internal quotation omitted).
  25. See *id.* at 849.
  26. See *id.*
  27. SEC v. Morelli, 143 F.R.D. 42, 46-47 (S.D.N.Y. 1992).
  28. See *id.* at 47.
  29. See *id.*
  30. See United States v. District Council of New York City, No. 90-Civ-5722, 1992 WL 208284, at \*15 (S.D.N.Y. Aug. 18, 1992).
  31. See *Morelli*, 143 F.R.D. at 47.
  32. *In re Independent Serv. Orgs. Antitrust Litigation*, 168 F.R.D. 651, 654 (D. Kan. 1996) (internal quotes omitted).
  33. District Council of New York City, 1992 WL 208284, at \*15.
  34. See *id.*
  35. See Detoy v. City and County of San Francisco, 196 F.R.D. 362, 366-67 (N.D. Cal. 2000).
  36. The Court's discretion in overseeing discovery is exceptionally broad. See Henson v. American Family Corp., 171 Ga. App. 724, 732, 321 S.E.2d 205 (1984). Pursuant to O.C.G.A. § 9-11-26(c) (2000):  
Upon motion by a party ... and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:  
(1) That the discovery not be had;  
...  
(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;  
(4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;
  37. See Winton, *supra* note 11, at 733.
  38. See Protective Nat'l Ins. Co. v. Commonwealth Ins. Co., 137 F.R.D. 267, 281 (D. Neb. 1989).
  39. FED. R. CIV. P. 33(c).
  40. See Proposed Amendments to the Federal Rules of Civil Procedure, 48 F.R.D. 487, 524 (1970).
  41. See FED. R. CIV. P. 16(e) ("After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.").
  42. Erff v. MarkHorn Indus., Inc., 781 F.2d 613, 617 (7th Cir. 1986).
  43. Sinclair and Fendrich, *supra* note 12, at 712 (*citing* FED. R. CIV. P. 26(a)(3)).
  44. *Id.* at 699.



*"And Justice for All"*



2004 State Bar Campaign for the Georgia Legal Services Program, Inc. (GLSP)

## When you give to the Georgia Legal Services Program... you make good things happen!



Your contribution helps GLSP provide critical legal assistance to thousands of low-income families who cannot afford a private attorney. Give to our State Bar's only campaign for justice for low-income Georgians. Use the coupon below and mail your gift today!

**YES**, I would like to support the State Bar of Georgia Campaign for the Georgia Legal Services Program. I understand my tax-deductible gift will provide legal assistance to low-income Georgians.

Please include me in the following giving circle:

- |                                       |   |
|---------------------------------------|---|
| > Benefactor's Circle \$2,500 or more | > Sustainer's Circle \$250-\$499            |
| > President's Circle \$1,500-\$2,499  | > Donor's Circle \$150-\$249                |
| > Executive's Circle \$750-\$1,499    | > or, I'd like to be billed on (date) _____ |
| > Leadership Circle \$500-\$749       | for a pledge of \$_____                     |

Pledge payments are due by December 31st. Pledges of \$500 or more may be paid in installments with the final installment fulfilling the pledge to be paid by December 31st. Gifts of \$125 or more will be included in the Honor Roll of Contributors in the *Georgia Bar Journal*.

#### Donor Information

Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

Please check one: > Personal gift > Firm gift

GLSP is a non-profit law firm recognized as a 501(c) (3) by the IRS.

#### Please mail your check to:

State Bar of Georgia Campaign for Georgia Legal Services, P.O. Box 999, Atlanta, Georgia 30301

*Every Gift Counts!*



Georgia Legal Services Program (GLSP)

Thank you for your generosity!



# Understanding and Challenging Photographic Evidence: What the Camera Never Saw

*Plaintiff's Counsel:* "Your honor, I hereby tender plaintiff's exhibits 1-5, photographs of the accident scene."

*Court:* "Any objections, counselor?"

*Defense Counsel* (who saw the original photographs for the first time at the calendar call): "No objection."

*Court:* "Plaintiff's Exhibits 1-5 are admitted without objection."

**T**his scene plays out repeatedly in trials, as photographic evidence is rarely challenged, and often the original photographs, negatives or computer files are not inspected or questioned during the discovery period. This article describes the potential distortions inherent in photographic evidence, clarifies the standards for admission of photographic evidence at trial, and provides some pointers for discovering and countering photographic distortions.

## POTENTIAL FOR DISTORTION

Until about 10 years ago, photography was predicated upon the use of film and the chemical development of the latent image created by exposing film to light. Digital photography has revolutionized the field by utilizing electronic sensors and computer chips in lieu of film, allowing limitless and facile alterations of images, and conferring the ability to edit and print photographs on a personal computer. There is also a hybrid utilization of traditional film and digital in which a negative, slide or print can be scanned and then converted to a digital image. Even in traditional photography, the image that the lens and camera render is not the same as what the human eye sees. Many distortions can occur; digital photography has made distortion (intentional and unintentional) just that much easier. The use of video cameras and elaborate computer reenactments have also created new issues.

The type of lens a photographer uses can greatly alter the appearance of the scene depicted in the photograph. Perhaps you have heard photographers mention

the use of a 200 millimeter (mm) telephoto lens, a 28 mm wide angle lens, or a normal lens. The millimeter designation of a lens (or focal length) refers to the distance between the film inside the camera and the end of the lens. A so-called “normal” lens is approximately 50 mm and is denoted normal because it duplicates human vision—*i.e.*, it renders objects in the field of vision the same as the human eye. The focal length of a wide angle lens is in the neighborhood of 28 to 35 mm, and the focal length for a telephoto lens is considered to be 100 mm and above. A wide angle lens can distort a scene by making objects appear to be farther away from the photographer and increasing the peripheral vision of the scene. On the other hand, a telephoto lens will compress the space in the scene, make objects appear closer to the photographer and closer together, and eliminate much of the peripheral view. These principles all apply to both traditional film cameras and digital cameras.

By example, all three of the images were taken of the same scene, approximately a quarter mile from an intersection with a traffic light near a convenience store. They were taken with the camera in the same position, with the same composition, and under similar lighting conditions. The only variable was the focal length of the lens. Image A was taken with a normal 50 mm lens; this is virtually how the human eye would view that intersection. Image B was taken with a 28 mm wide-angle lens and appears to show a longer distance between the camera and the intersection. Image C was taken with a 200 mm telephoto lens and has compressed the scene.



Image A, taken with a 50 mm lens



Image B, taken with a 28 mm lens



Image C, taken with a 200 mm lens

The practical significance of these different images in a personal injury case would be, for example, the jury's perception of how much time the driver headed toward the traffic light had to stop. Image B seems to show that the traffic light is relatively far away, aiding the notion that the driver had a longer time to stop, while Image C seems to show the light as much closer, and therefore that the driver had less time to stop. The focal length of lenses could also distort how a human body would look, which would be relevant in documenting injuries such as facial scars.

Another element of photography is "depth of field," a term that refers to the extent of sharpness of focus in a scene from foreground to background. There are several variables that control depth of field: lens focal length, distance of the photographer from the subject, and the size of the opening (or "aperture") of the lens. Thus, if depth of field is shallow, there may be important areas of the scene that look out of focus or hazy. If these areas are germane to your case or might mislead the jury, this should be brought out on cross-examination and argument, or through your own sharper photographs. For instance, in a premises liability case, the area surrounding the haz-

ard at issue may be important in terms of a distraction or the visibility of the hazard and could be either emphasized or deemphasized, depending on the depth of field of the photograph.

Traditional photography has also always had the capacity to crop a scene—cut out parts of the original photograph—in the darkroom, but this has been greatly simplified by widespread use of image-editing software. Through cropping, portions of a scene that may be relevant to your case could be eliminated or the information could be altered to be misleading.<sup>1</sup>

## ADMISSION OF PHOTOGRAPHS

### Procedural Basics

Before being admitted into evidence, photographs must be identified and authenticated by a witness. The time-honored test in Georgia for authentication is that the photograph must be "a fair and accurate representation of the scene depicted."<sup>2</sup> Any witness familiar with the scene in the photograph may authenticate it; it is not necessary that the witness be the actual photographer or be present at the scene when photographed.<sup>3</sup> Photographs are not

subject to the "best evidence rule," and a faxed copy of a photograph has been held admissible.<sup>4</sup> The procedure and standards for the admission of photographs are not changed by the use of a digital camera.<sup>5</sup> The admission standards are the same for both civil and criminal cases.

In 1996, the Legislature created a method for authenticating photographs, motion pictures and videotapes when the necessary witness is unavailable.<sup>6</sup> Subject to other valid objection, authenticity can be proven "when the court determines, based on competent evidence presented to the court, that such items tend to show reliably the fact or facts for which the items are offered."<sup>7</sup> Strict criteria must be met to show a witness is unavailable.<sup>8</sup> The statute also provides a method for authenticating photographs, motion pictures and videos that were taken with remotely operated cameras.<sup>9</sup> This has particular practical application to surveillance films in commercial establishments. Significantly, the statute is not deemed to be the exclusive method of introduction of photographic evidence and "shall be supplementary to any other statutes and lawful methods existing in this state."<sup>10</sup>

### Applications of the Standards

Georgia has long followed a "liberal"<sup>11</sup> policy in admitting photographs, and a trial court's decision will only be overturned upon an abuse of discretion<sup>12</sup> or manifest abuse.<sup>13</sup> For example, courts generally accord wide latitude to photographs taken at a later time that show immaterial changes in the scene, such as difference in the time of day.<sup>14</sup> In *Bradshaw v. State*,<sup>15</sup> the

**D. Jeff DeLancey, CPA, PC**

Certified Public Accountant/Certified Fraud Examiner

Forensic Accounting, Financial Investigations  
&  
Litigation Support

Suite 250, 9 Lumpkin Street, Lawrenceville, GA 30045  
770-339-9556, 404-358-1060  
www.jeffdelanceycpa.com DeLanceyJ@aol.com



defendant objected to photographs of a burglarized office on the grounds that they were not accurate depictions of the day of the incident. The court, however, admitted the photograph, finding that the changes (a window that had been boarded up, a closed tool box lid, and a different location for the tool box) were immaterial and were explained by the witness. However, in *Glennville Wood Preserving Co. v. Riddlespur*,<sup>16</sup> the trial court properly denied admission of four photographs of an accident site that depicted "steam being emitted skyward from appellant's equipment on a bright sunny day" in contradiction to the actual inclement conditions on the date of the accident. The fact that foggy conditions were alleged as a cause of the collision made this condition material. In *CFUS Properties, Inc. v. Thornton*,<sup>17</sup> a slip and fall case, the court upheld admission of photographs of a pothole taken several

weeks after the incident, even though the plaintiff admitted that she had not seen the pothole on the day of her injury but remembered the location of the pothole.

In *Lockhart v. State*,<sup>18</sup> the court held that enlargements of a photograph are admissible as long as there is no distortion of the objects in the photograph. Furthermore, when photographs are admitted, the trial judge will generally give a cautionary instruction as to their weight or use. Appellate courts have used this cautionary instruction as additional justification for the admission of photographs with conflicting evidence.<sup>19</sup>

## Videotapes and reenactments

Videotapes ostensibly follow the same standards for admission as photographs set out above.<sup>20</sup> When photographs or videotapes are "posed" or reenactments, the

courts have created an additional test: admission will be denied if the depictions in the videotapes are "substantially different from the facts of the case, and which because of the differences might well be prejudicial and misleading to the jury."<sup>21</sup> However, there is some authority that videotapes will be given more scrutiny than still photographs if they are posed.<sup>22</sup>

An extensive discussion of the admission of video reenactments is contained in *Pickren v. State*.<sup>23</sup> There, the Supreme Court of Georgia held that the state should not have been allowed to show a videotaped reenactment as illustrative evidence, where the lighting conditions substantially varied and the tape depicted "all critical facts as they will be contended for by the state."<sup>24</sup> The court held that movies which are posed and are substantially different from the facts (especially prejudicial differences) will



"Minnesota Lawyers Mutual  
is my choice for malpractice insurance."

When I began practicing law and needed to purchase malpractice insurance I asked a number of my colleagues where to look. Their responses were invariably Minnesota Lawyers Mutual.

I took their advice and have never regretted it. MLM has always been there for me. When I was starting out their knowledgeable staff was helpful with advice in setting up my practice. The new online purchase option makes renewing my policy quick and easy. The annual dividend checks I have received prove I am receiving the best value for my money. Minnesota Lawyers Mutual has earned my loyalty.

Now whenever I am asked to recommend a legal liability insurance company, I always suggest Minnesota Lawyers Mutual. It comes as no surprise to me that other lawyers feel the same way.



**MINNESOTA LAWYERS MUTUAL**

THE PROLEGIA<sup>®</sup> PROGRAM

www.mlmins.com 770.576.1948 800.422.1370



not be admitted. This is even more operative if the oral testimony was sufficient and the scene was “simple.”<sup>25</sup> The court was concerned that the video would become an “extra witness,” overemphasize the state’s rendition of the facts, and unduly benefit a party with the funds to create an elaborate video. The standards above were held to apply to both illustrative evidence

*Pickren* case by stating that this illustrative evidence requires only “minimal authentication.”<sup>30</sup>

In *Cleveland*, the court simply distinguished *Pickren* by reasoning that the video of the collision (which was actually admitted into evidence) was similar enough to the confluence of other evidence to pass muster.<sup>31</sup> Although evidentiary standards are apparently the

**While it may be difficult to prevent photographs from reaching the jury, significant and material changes from either the original scene or the original photographic image may be fruitful grounds for objection.**

(evidence merely shown to the jury to illustrate testimony) and demonstrative evidence (shown to the jury, admitted, and sent to the jury room for potential additional viewing).<sup>26</sup>

However, two subsequent cases distinguishing the *Pickren* case, *Cleveland V. Bryant*<sup>27</sup> and *J.B. Hunt Transport, Inc. v. Brown*,<sup>28</sup> allowed videotapes into evidence and as illustrative to testimony, respectively. Both of these cases apparently hinged (at least partially) on the fact that they involved computer-generated videos which illustrated an expert witness’s testimony. In the *J.B. Hunt* case, the court specifically declined to follow the evidentiary rule of *Pickren* of showing that it is “a [true] and accurate representation of the events sought to be depicted.”<sup>29</sup> The court analogized the digital video to a “model” illustrating a witness’s testimony as opposed to a video reenactment of the accident. The court appeared to contradict the

same for criminal and civil cases, it is possible that stricter scrutiny was applied in *Pickren* because it was a criminal case (a capital felony), while the other two cases involved civil personal injury cases.


## Practice Pointers

While it may be difficult to prevent photographs from reaching the jury, significant and material changes from either the original scene or the original photographic image may be fruitful grounds for objection. Further, even if admitted, their value can be impeached by cross-examination or admission of your own photographs that may be more accurate. Knowing whether and how a photographic image was altered will assist you in your cross-examination and closing argument.

b In your interrogatories, in addition to standard questions to identify the existence and subject matter of photographs, ques-

tions should be asked to obtain the following information, which may also be elicited for video images:

- b Name and address of the photographer;
- b Whether the images were from film, digital based, or a combination of the two;
- b Date and time of day the images were taken and the exact location;
- b How the images were processed and whether alterations were deliberately made from the original negative or digital file;
- b The custodian of the original images, negatives or digital files.
- b Use an agreement with opposing counsel or a request for production of documents to inspect the original images—do not rely on photocopies that are mailed to you. It is helpful to inspect the original computer image in digital photography or the original negative or slide in traditional photography to see if any changes have been made in subsequent images.
- b Do not stipulate to the authenticity of photographs in the pre-trial order unless conditioned upon reviewing the actual photograph that will be tendered into evidence. Looking at a small snapshot of a scene could be radically different than the large blowup that will be tendered at trial.
- b Obtain your own photographs if the conditions are similar enough to gain admission into evidence and they can be authenticated.
- b Inspect the relevant scene yourself in person, whether it is an intersection or roadway, a piece of equipment, a static condition or something else.

- b If necessary and if the case justifies it, depose or subpoena the photographer and processor of the images. You may also want to consult with a professional photographer or videographer to assist you in analyzing the evidence. 



**Timothy W. Wolfe** is a graduate of Emory University Law School. He was a trial lawyer in private practice for 22 years, litigating both civil and criminal cases. Currently, he is an Associate Judge in the Smyrna Municipal Court, an adjunct professor at Clayton College & State University in the paralegal school, and a mediator. He has been a serious amateur photographer since high school.

## Endnotes

1. For an excellent discussion of how digital imaging software can be used to alter photographs, see David Beckman & David Hirsch, *Developing Evidence*, 89 A.B.A.J. 62 (2003).
2. *Pless v. State*, 247 Ga. App. 786, 787, 545 S.E.2d 340, 342 (2001).
3. *Id.*
4. *Gibbs v. Abiose*, 235 Ga. App. 214, 218, 508 S.E.2d 690, 694-95 (1998).
5. *Almond v. State*, 274 Ga. 348, 349, 553 S.E.2d 803, 805 (2001).
6. *Id.* § 24-4-48.
7. *Id.* § 24-4-48(b).
8. *Id.* § 24-4-48(a).
9. *Id.* § 24-4-48(c).
10. *Id.* § 24-4-48(d).
11. *Cagle Poultry & Egg Co. v. Busick*, 110 Ga. App. 551, 552, 139 S.E.2d 461, 463 (1964).
12. *Pless v. State*, 247 Ga. App. 786, 787, 545 S.E.2d 340, 342 (2001).
13. *Evans v. Harvey*, 183 Ga. App. 284, 286, 358 S.E.2d 668, 670 (1987).
14. See, e.g., *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 881-82, 311 S.E.2d 193, 203 (1983). In that case, the defendant objected to photographs showing that trees and bushes had been cut down subsequent to the accident date.

However, the court held that testimony by a deputy sheriff that the view was not changed by the foliage and a cautionary instruction from the trial judge rendered the admission proper. For a discussion of variances in photographs produced at discovery and at trial, see *Cullers v. State*, 277 Ga. 717, 718-19, 594 S.E.2d 631, 634-35 (2004). There, the court allowed admission for the state of a photograph given to the defense at jury selection, that was cropped differently than the one produced through discovery. The original photograph had cropped a baseball cap out of the scene but the subsequent print contained the hat (which was relevant for identification). The court found no prejudice and noted, among other things, that the cropping was inadvertent, not at the direction of the state, and the change was communicated to defense counsel shortly after being discovered.

15. 172 Ga. App. 330, 330-31323 S.E.2d 253, 253-54 (1984).
16. 156 Ga. App. 578, 582, 276 S.E.2d 248, 252 (1980).
17. 246 Ga. App. 75, 78, 539 S.E.2d 571, 575 (2000).
18. 172 Ga. App. 170, 171, 322 S.E.2d 503, 504 (1984).
19. E.g., *CFUS Properties, Inc.*, 246 Ga. App. at 78, 539 S.E.2d at 575.
20. *Ray v. State*, 266 Ga. 896, 897, 471 S.E.2d 887, 888 (1996) (stating "videotapes are generally admissible with the same limitations and on the same grounds as photographs").
21. *Eiland v. State*, 130 Ga. App. 428, 429, 203 S.E.2d 619, 621 (1973).
22. *Id.*
23. 269 Ga. 453, 500 S.E.2d 566 (1999).
24. *Pickren*, 269 Ga. at 456, 500 S.E.2d at 569-70; see also *Eiland*, 130 Ga. App. at 429, 203 S.E.2d at 621 (denying admission of video in which a marked police car and lighting conditions differed from the original scene, and the scene was "simple").
25. *Pickren*, 269 Ga. at 456, 500 S.E.2d at 569-70.
26. *Id.*
27. 236 Ga. App. 459, 512 S.E.2d 360 (1999).
28. 236 Ga. App. 634, 512 S.E.2d 34 (1999).
29. *Id.* at 636, 512 S.E.2d at 37.
30. *Id.* at 635, 512 S.E.2d at 37.
31. *Cleveland*, 236 Ga. App. at 460, 512 S.E.2d at 362.

# Did you Know?

- ( The State Bar of Georgia is the ninth largest bar in the United States.
- ( There are 8,350 out-of-state members.
- ( 26% of the Bar is under age 35
- ( 32% of the Bar is female.
- ( More than 18,650 members reside in metro Atlanta.
- ( Anticipated growth of 1,300 new members each year.
- ( There are 23,380 section members with 17,070 individual members who belong to one or more sections.
- ( 62% overall growth from 1990 to 2004.
- ( There are 35,438 members in good standing.
- ( Bar members cover a wide age range from those born in 1902 and admitted in 1925 to those born in 1979 and admitted in 2002.
- ( 66% of our members list an e-mail address.
- ( 113 members reside outside the United States in 26 foreign countries.
- ( 789 members have been admitted to practice for 50 years or more.
- ( The State Bar has members resident in all 50 states.
- ( 2004-05 State Bar budget: \$7.2 million
- ( Full-time employees: 60
- ( Part-time employees: 1

# Georgia Bar Foundation Awards \$2,075,000 at Annual Grants Meeting

By Len Horton

**T**he difference between what the board of trustees could do and what it wanted to do posed a major challenge in the annual grants meeting of the Georgia Bar Foundation. With revenues reduced by more than \$1 million for the meeting because of low interest rates on Interest On Lawyer Trust Accounts, and because of a weakened Georgia economy, the board faced some difficult choices at its Sept. 10 meeting.

A total of \$2,075,000 was awarded to 40 applicants throughout the state. While virtually every recipient was forced to scale back its plans supported by IOLTA money, the Georgia Bar Foundation was able to provide enough funding to make a significant difference for all grantees.

"I was pleased with the way the board responded to our financial challenge," said Hon. Louisa Abbot, president of the Georgia Bar Foundation. "After significant deliberation, we came up with an allocation of available IOLTA revenues consistent with our mission. These awards assisted these law-related organizations in helping thousands of Georgians. All Georgia lawyers and bankers should be proud."

To minimize the impact of reduced IOLTA revenues, The Georgia Bar Foundation Board of Trustees utilized a significant part of funds set aside from previous years. The result was an awards total that was only \$225,000 less than last year's total, even though annual revenues fell by more than \$1 million.

Nationally, IOLTA was created for the purpose of replacing dwindling federal funding for civil legal services for those who cannot afford an attorney. Since its inception, IOLTA has supported a number of other law-related programs in addition to civil legal services,

but legal services has always been the primary focus. By order of the Supreme Court of Georgia, in an agreement with the Georgia Legislature more than a decade ago, 40 percent of net IOLTA revenues funds the criminal indigent defense system in this state. At present, Georgia is the only state to use IOLTA funding to support the state system created to provide legal representation to indigent persons charged with crimes.

This year Georgia Legal Services and Atlanta Legal Aid received grant awards totaling \$1,379,550. Other legal services organizations receiving awards included the Georgia Pro Bono Project (\$55,000) and the Georgia Law Center for the Homeless (\$20,000). Mike Monahan runs the Pro Bono Project and is a nationally recognized expert on pro bono. The Georgia Law Center for the Homeless was created by Eric Kocher to assist the homeless through civil legal representation. His innovative organization is ably managed by Sherry Siclair.

The Detention Project of Catholic Social Services received \$20,000 to

represent and educate refugees and immigrants, who have been detained and who are potential citizens of the United States.

Even though the Georgia Bar Foundation, by order of the Supreme Court of Georgia, provides 40 percent of its net revenues to the Georgia Public Defender Standards Council, which is responsible for setting up and managing Georgia's new criminal indigent defense system, it supports several organizations providing innovative services—including, for some of them, legal assistance to criminals or to people charged with crimes.

The Athens Justice Project is one of those organizations. Born in response to a request from the Georgia Bar Foundation to Doug Ammar, executive director of the Georgia Justice Project, to try to interest other communities in creating organizations like GJP, the AJP is managed by Amy Gellins and supported by a board including Bill Harvard of Evert & Weathersby and Alex Scherr of the University of Georgia Law School. AJP applies a multi-faceted approach, including legal assistance to rescue people in trouble in the criminal justice system. AJP received \$15,000.

The Southern Center for Human Rights, the brainchild of Steve Bright, has been a major advocate for the new statewide criminal justice system for indigents and a fierce fighter for the constitutional rights of prisoners. His organization received \$10,000.

The Georgia Association of Black Women Attorneys was awarded \$15,000 for its program to



Len Horton, executive director, and Hon. Louisa Abbott, president of the Georgia Bar Foundation, at the annual grants meeting.

assist mothers in prison, where the normally challenging problems of custody, divorce and other family law matters can become almost insurmountable without legal representation, which is not usually available.

Another innovative organization seeks to discover and free wrongly convicted felons in the Georgia prison system. Using DNA testing where appropriate evidence samples may still be available, this program recently reported several successful cases. It received \$5,000.

One of the most respected programs to help prisoners is the BASICS program. Awarded almost \$700,000 in grants from the Georgia Bar Foundation since 1986, this program has a proven record of educating soon-to-be-released prisoners about how to earn a living and stay out of trouble once back in society. This program has been led by Ed Menifee for 28 years and is widely known as the Department of Corrections most effective program to reduce recidivism in Georgia. Its grant award was \$80,000.

The Georgia Bar Foundation has become a significant force in efforts throughout Georgia to help children. Macon's Adopt-A-Role-Model Program focuses on mentoring children through the assistance of several volunteers. Affectionately managed by Alex Habersham and Tina Dennard, it received \$20,000.

Ash Tree Organization in Savannah received \$20,000 to help turn around the lives of more than 100 juvenile offenders referred to it by juvenile court.

Morris Brown combines mentoring, golfing skills and powerful leadership to nudge these youngsters back onto the right path. His program has become a model for rescuing children at risk.

The Atlanta Volunteer Lawyers Foundation in Atlanta, the Chatham County Domestic Relations Initiative in Savannah and Four Points in Rossville received grants totaling \$45,000 for their *guardian ad litem* programs. Our House in Columbus and the Golden Isles Children's Center in Brunswick together received grant awards amounting to \$15,000.

The Northeast Georgia and Walton County Project Healthy Grandparents received \$2,500 to help fund lawyers to handle adoption, custody and guardianship cases in which grandparents are raising their grandchildren without parents present.

Kids in Need of Dreams, also known as the Truancy Intervention Project, has been in operation in Fulton County since 1991. After seeing the effects of the program in Fulton County (a total of 72 percent



By working together, Georgia's lawyers and bankers have made a significant contribution to our state. On behalf of the board of trustees of the Georgia Bar Foundation, we thank you.

of the youth in the program have not had any court charges after participating), the Georgia Bar Foundation Board of Trustees has asked KIND to expand its program throughout the state. A total of \$55,000 was awarded.

Educating Georgia's youth received a high priority. The Youth Judicial Program of the State YMCA introduces 11th and 12th graders to the judicial system by having them debate both sides of an issue before a panel of lawyers and judges. The recipient of \$10,000 this year, it is a very popular and highly praised program supported by the foundation annually since 1986.

Also, the YLD High School Mock Trial Committee, which has received grant awards from IOLTA money annually since 1986, received \$55,000. Under the guidance of Justice George Carley and under the conscientious management of Stacy Rieke, Mock Trial has become an effective and popular part of a comprehensive law-related educational curriculum in many Georgia schools.

Another major educational effort targeting Georgia's school children is the Georgia Law-Related Education Consortium of the Carl Vinson Institute of Government at the University of Georgia. This year's grant award of \$70,000 ensures that the consortium will help provide civics education to children from kindergarten through 12th grade. The Bar Foundation has awarded this program more than \$1.1 million since 1987. Executive Director Anna

Boling has managed this program for many years.

A number of organizations received funding for their efforts to assist abused women and children. Safe Haven, based in Statesboro, received \$2,500 to help with providing legal assistance to domestic violence victims. Exchange Club Family Resource Center in Rome received \$10,000 to supervise parent visitation with children where the relationship between the mother and the father has degenerated seriously.

Halcyon Home for Battered Women in Thomasville received \$3,750, the Liberty House in Albany received \$5,000, and Hospitality House for Women in Rome received \$2,500 to fund legal assistance for victims of domestic violence. The aid includes obtaining restraining orders along with some divorce and custody work.

The Northeast Georgia Council of Domestic Violence received \$15,000 to be shared among five different shelters covering Habersham, Stephens, White, Lumpkin, Dawson, Union, Towns, Rabun, Hart, Elbert and Franklin counties. The money will be used to employ contract attorneys to provide legal assistance to domestic violence victims.

A model program in Savannah providing legal assistance to victims of domestic violence is the Savannah Area Family Emergency Shelter. Executive Director Gail Reese-Wheeler effectively manages this shelter that recruits and contracts with a number of attorneys to provide legal assistance to victims. SAFE received \$7,500.

Unfortunately, because of limited resources, most efforts to deal with domestic violence do not seek to assist or educate the abuser or potential abusers. A new program by Caminar Latino is trying to deal with domestic abuse by educating potential abusers. Designed for the growing Latino community in Atlanta, at-risk men are recruited to attend a course that teaches non-violent responses to frustrating situations in life. The board awarded \$5,000 to help this innovative effort to reduce domestic violence.

The State Bar of Georgia received four grant awards totaling \$80,000 for several projects. The Bench and Bar Committee received \$7,500 to produce video and written materials to educate Bar members about the Judicial District Professional Program. The goal is to promote professionalism within the legal profession through increased communication, education and local peer influence to improve the profession, which will bolster public confidence in the profession.

The State Bar of Georgia Court Futures Project received \$7,500 to continue its study regarding how to select and retain Georgia's state judiciary. This effort will also tackle campaign financing, appointment and retention of judges.

The State Bar of Georgia YLD Juvenile Law Committee was awarded \$40,000 to fund one researcher and two experts to rewrite the Georgia juvenile code and to support legislative passage of the rewritten code.

In recent years, the Legal Services Corporation has encouraged states to create a meaningful plan for providing civil legal services for those who cannot afford to pay. With last year's development of a new criminal indigent defense system for Georgia came questions about when a similar effort would be made for the civil justice system. These two factors combined to energize efforts to find a way to bring civil legal assistance to those who cannot afford representation. The Supreme Court of Georgia has expressed interest in creating an Equal Justice Commission to take on the tasks associated with converting wishes into the reality of no citizen left out of the civil justice system. The State Bar's Access To Justice Committee, under the leadership of Bucky Askew, is working to create the commission and to develop a statewide plan for providing civil legal assistance to the poor. To assist the Access To Justice Committee, the board of trustees of the Georgia Bar Foundation provided \$25,000 in a grant award.

Also of great interest to the Supreme Court of Georgia is finding a way to help counties pull demographically representative jury pools. To fund an expert demographer to develop a statistically sound approach for creating an automated, comprehensive and inclusive master jury box for Georgia, the board of trustees awarded a grant of \$20,000.


A number of other innovative programs received grant awards. The Disability Law and Policy Center of Georgia received \$15,000 to expand its Building Access Project. The brainchild of Pat Puckett, DLPC has become a major force, not only in opening difficult to reach doors, but also in educating

communities about how to comply with disability law when constructing public buildings.

The Georgia First Amendment Foundation received \$5,000 to fund workshops on open government targeting media regarding the First Amendment. This program has become well known and respected under the leadership of Hon. Hollie Manheimer.

The Patriot Act is an important new federal law that affects all Americans. The board of trustees awarded \$2,500 for one town hall meeting to educate citizens about their rights as Americans and the possible impact of that law on their rights.

The Georgia Center for Law in the Public Interest received \$5,000 to provide legal services to a low-income Taliaferro County minority community threatened by a regional landfill.

Because of the IOLTA partnership of lawyers and bankers under the direction of the Supreme Court of Georgia, the Georgia Bar Foundation has become Georgia's major charitable organization devoted to helping solve some of the most important and challenging law-related problems of the state. By working together, Georgia's lawyers and bankers have made a significant contribution to our state. On behalf of the board of trustees of the Georgia Bar Foundation, we thank you. 

**Len Horton** is the executive director of the Georgia Bar Foundation.

## Georgia Bar Foundation Grant Awards for 2004-05

ACLU Of Georgia .....	2,500
Adopt-A-Role-Model Program .....	20,000
Ash Tree Organization, Inc. ....	20,000
Athens Community Council on Aging .....	4,200
Athens Justice Project .....	15,000
Atlanta Legal Aid Society .....	386,274
Atlanta Volunteer Lawyers Foundation .....	20,000
BASICS Program, State Bar of Ga. ....	80,000
Caminar Latino .....	5,000
Catholic Social Services Detention Project .....	20,000
Chatham County Domestic Relations Initiative .....	15,000
Disability Law and Policy Center of Ga. ....	15,000
Exchange Club Family Resource Center .....	10,000
Four Points, Inc. ....	10,000
Ga. Assn. Black Women Attys Civil Pro Bono .....	15,000
Ga. Center for Law in the Public Interest .....	5,000
Ga. First Amendment Foundation, Inc. ....	5,000
Ga. Innocence Project .....	5,000
Ga. Law Center for the Homeless .....	20,000
Ga. Legal Services .....	993,276
Ga. Law-Related Ed. Consortium, UGA .....	70,000
Ga. Supreme Court Jury Composition Committee .....	20,000
Golden Isles Children's Center .....	5,000
Halcyon Home, Inc. ....	3,750
Hospitality House For Women .....	2,500
Kids in Need of Dreams/Truancy Intervention .....	55,000
Liberty House of Albany .....	5,000
Northeast Ga. Project Healthy Grandparents .....	2,500
Northeast Ga. Council on Domestic Violence .....	15,000
Our House .....	10,000
Pro Bono Project, State Bar & GLS .....	55,000
Safe Haven .....	2,500
Savannah Area Family Emergency Shelter .....	7,500
Southern Center for Human Rights .....	10,000
State Bar Access To Justice Committee .....	25,000
State Bar Bench & Bar Committee .....	7,500
State Bar Court Futures Project .....	7,500
State Bar YLD Juvenile Law Committee .....	40,000
State YMCA of Ga. ....	10,000
YLD High School Mock Trial Committee .....	55,000

**Total \$2,075,000**

## The Jefferson County Courthouse at Louisville:

### The Grand Old Courthouses of Georgia

By Wilber W. Caldwell

In 1904, Louisville erected this grand monument to her emerging New South aspirations on the site of Georgia's old capitol building. The old capitol building at Louisville was the first government building to be erected by the state of Georgia. After the revolution, the state conducted its business in rented buildings, first at Savannah and later at Augusta.

By 1796, the General Assembly had legislated the new capital city of Louisville into existence and built the simple government building in the center of the newly-laid-out town. Jefferson County was created in that same year. Although the first capitol building would stand on the square at Louisville for over 50 years, we know little of its nature except that it was a 50' x 50' two-story brick structure with three



Photo by Wilber W. Caldwell

Built in 1903-04, Willis Denny, architect.

rooms on each floor. Following the decision to move the state capital to Milledgeville in 1804, the old building served as an arsenal until 1812, as the Jefferson County Courthouse from 1813 to 1816, and later as a Masonic lodge. In 1816, Jefferson County erected its first court building, a simple frame structure that served until 1824 when the old state house was again employed as the county courthouse. In 1847, Georgia's first capitol building was demolished to make way for the 1848 Jefferson

County Courthouse, a two-story brick vernacular court building built in part from material salvaged from the old state house.

Louisville's hold on the state capital had seemed shaky from the very beginning. Although the town briefly flourished as a tobacco market, its swampy site immediately proved unhealthy, and its location at the head of navigation on the Ogeechee River offered limited commercial possibilities. Efforts to clear the Ogeechee began as early as 1796


and continued well into the 19th century, but proved too little. Perhaps the most crippling blow to Louisville's hold on the state capital was struck almost before the town was laid out. By the closing years of the 18th century, the discovery of the cotton gin had created enormous demand for the cotton-growing lands to the west, and by 1800, Louisville was far to the east of Georgia's growing population center.

After the Civil War, Louisville experienced a sizable boom, but despite the emergence of a considerable cotton trade, the town again stagnated. Nonetheless, as the new century dawned, Louisville began once again to stir. Aspiring to end her isolation at the end of a tiny railroad spur, Louisville entertained turn-of-the-century railroad promoters in surprising numbers. In this highly charged atmosphere, a movement for a new courthouse quickly materialized. Beginning in November of 1902, successive grand juries found the old 1848 court building first "in bad condition," and later "unsafe and dangerous." By June of the following year, the voters of Jefferson County had approved bonds to fund a new building by the incredible majority of 456 for and 20 against.

In 1903, the choice of Atlanta architect and Jefferson County native Willis Denny was probably a foregone conclusion. Although Denny was only 30 years old when he drew the plans for the Jefferson County Courthouse, his work in Atlanta was fast earning him a place among that city's best architectural talent. One of a rising new generation of home-trained American architects, Denny had studied at Cornell

University and apprenticed in the office of Atlanta's preeminent architectural firm, Bruce and Morgan. Denny opened his own office in 1897, and by 1903, he had already designed several stunning churches in Atlanta along with a number of hotels, including the elaborate Majestic Hotel and his masterpiece, the A. G. Rhodes House, one of Atlanta's architectural treasures.

In Louisville, Denny created one of a growing number of courthouses in Georgia to wear the clothing of the blossoming "American Renaissance." The South had been slow to accept the new Classicism, owing to its associations with the vast urban centers in the North and its national association with American industrial and financial might. But by 1904, 13 new neoclassical courthouses stood on Georgia squares, and a new and uniquely Southern symbolism was emerging to drape these grand structures simultaneously in the mythology of both the Old and the New South. Although Willis Denny was careful to follow the lead of James Golucke and Frank Milburn, adorning a fundamental rectangular mass with the familiar paristyle portico of the earlier

age, he was quick to add skillful hints of the rising tide of Beaux-Arts Classicism in America. Windows framed by grand Renaissance pediments and delicate classical pilasters, bold carouches and graceful roundels decorate multifaceted elevations that project the three-dimensional plasticity of modern Parisian forms. Willis Denny was obviously comfortable with both the vocabulary and the symbolism of the new American Classicism. Sadly, only a year after the cornerstone of his grand Jefferson County Courthouse was laid, Denny died suddenly at the age of 31. 

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](http://www.mupress.org), or call the Mercer Press at (800) 342-0841 inside Georgia or (800) 637-2378.

# ARTHUR T. ANTHONY

## Certified Forensic Handwriting and Document Examiner

### (770) 338-1938

Diplomate-American Board of Forensic Document Examiners  
American Society of Questioned Document Examiners  
American Academy of Forensic Sciences

P.O. Box 620420  
Atlanta, Georgia 30362

Practice Limited to Civil Matters



## Judicial Independence as a Campaign Platform

By Chief Justice Shirley S. Abrahamson

“**G**ood judging is good politics....the public will support judges whom they perceive as independent even if they do not agree with particular decisions. But judges have to talk about judicial independence and make it a campaign issue. Over the past 25 years, and in each of my elections, the concept of judicial independence has played a prominent role in my discussions with the public.”<sup>1</sup>

### The Current State of Judicial Campaign Speech

Candidates campaign for public office by stating views and opinions on the hot issues of the moment. Nationally, 87 percent of all state judges face an election within 39 states.<sup>2</sup> Judicial elections, however,

are different from executive or legislative branch elections because judges are different from other elected officials: judges base their decisions on the facts and law presented in each individual case, not on their personal viewpoints on policy issues. Unlike other candidates, judges cannot campaign by making promises about how they will decide issues. Constraints are placed upon judicial candidates in all states by canons of judicial conduct, and limits are placed on a judge’s ability to sit on a case if the judge “decides” the case during a campaign. State codes of judicial conduct in states with judicial elections also limit the political activities of judges.<sup>3</sup>

Restrictions on judicial campaign speech were designed to maintain judicial impartiality and the perception of that impartiality. The traditional view is that if a judge comments on a pending or impending case, the comments will reduce the litigants’ and the public’s confidence in the impartiality and fairness of our courts.

In *Republican Party of Minnesota v. White*, decided on June 27, 2002, the United States Supreme Court held

that the portion of Canon 5(A)(3)(d)(i) (2000) of the Minnesota Code of Judicial Conduct, providing that a “candidate for a judicial office, including an incumbent judge” shall not “announce his or her views on disputed legal or political issues,” violates the First Amendment. In response to the U.S. Supreme Court decision in *White*, the American Bar Association amended its Model Code of Judicial Conduct.

Since the *White* decision, judicial candidates have been receiving more questionnaires than ever before from special interest groups asking them to reveal their views on a variety of issues. Samples questions include, “Have you ever cast a public vote relating to reproductive rights?” and “Do you support the death penalty?”

Many judicial candidates are choosing not to exercise their First Amendment rights fully because they are concerned that they may tarnish the public’s perception of fairness and impartiality and may disqualify themselves from sitting on cases. But that reasoning does not require a judicial candidate to

be silent during an election. Judges and judicial candidates can and *should* speak on the issue of judicial independence.

## Free to Speak on Judicial Independence

Judges and candidates are legally and ethically free to speak about the critical importance of judicial independence. In any judicial selection system, the best way to ensure judicial independence is to develop the public's understanding of, and respect for, the concept of judicial independence.<sup>4</sup> Lawyers and judges must educate the public on judicial roles and duties. Educational efforts should not be restricted to elections or times of crisis. Judges and lawyers must be community educators using a variety of tools to reach the public, the media, and the executive and leg-

islative branches of government. Public outreach efforts promote judicial independence because they enable citizens to evaluate critical attacks on judges and to value judicial independence.<sup>5</sup>

The points that should be addressed in this education effort are:

- b What is judicial independence?
- b Why is judicial independence important to you, the citizen?
- b What are the threats to judicial independence?
- b How can judicial independence be protected?

### *What is judicial independence?*


"The law makes a promise—neutrality. If the promise gets broken, the law as we know it ceases to exist."

- Supreme Court Justice  
Anthony M. Kennedy<sup>6</sup>


Judicial independence means that judges decide cases fairly and impartially, relying only on the facts and the law. Individual judges and the judicial branch as a whole should work free of ideological influence. Although all judges do not reason alike or necessarily reach the same decision, decisions should be based on determinations of the evidence and the law, not on public opinion polls, personal whim, prejudice or fear, or interference from the legislative or the executive branches or private citizens or groups.

There are two types of judicial independence: decisional independence and institutional independence (sometimes called branch independence). Decisional independence refers to a judge's ability to render decisions free from political or popular influence; decisions should be based solely on the facts


Slow and steady won yesterday's race...



fast and smart wins today's.




The story of the Tortoise and the Hare teaches a great lesson to those who stay the course. Slow and steady won that race. Great general idea, but this probably isn't true for your business. In today's fast-paced world, every minute counts. Getting the job done right the first time, before your competition, means you win. Closing real estate transactions faster means you can concentrate on that next piece of business. Run fast and finish first with SoftPro's ProForm.



So, who would you rather be - the tortoise, the hare or the fast cat?

Try SoftPro today... **FREE for 30 days!** If you don't beat the tortoise and the hare we'll give you your money back. Call SoftPro Sales at 1-800-848-0143 or visit us on the web at [www.softprocorp.com](http://www.softprocorp.com).



333 EAST SIX FORKS ROAD / RALEIGH, NC 27609-7865  
800-848-0143 / [WWW.SOFTPROCORP.COM](http://WWW.SOFTPROCORP.COM)

ADP/USA

of the individual case and the applicable law. Institutional independence describes the judicial branch as a separate and co-equal branch of government with the executive and legislative branches.<sup>7</sup>

Any discussion of judicial independence needs, however, to be joined with a discussion of accountability. As Roger Warren, president emeritus of the National Center for State Courts, stated, “the rule of law itself is a two-edged sword” because it not only ensures the protection of rights, but also enforces responsibilities.<sup>8</sup> The rule of law holds government officials accountable to those in whose name they govern to prevent abuse of power, and the judiciary is not exempt from accountability. Judges are accountable to the public to work hard, keep their dockets current, educate themselves about changes in the law and treat each person with respect and dignity. Judges are accountable to represent the judicial branch before the public and other branches of government and to advocate for court reform.

### ***Why is judicial independence important to you, the citizen?***

Judicial independence is a means to an end—the end is due process, a fair trial according to law. Judicial independence thus protects the litigants in court and all the people of the nation.

### ***What are the threats to judicial independence?***

Historically, threats to judicial independence have come from the legislative and executive branches. Executive and legislative leaders have at times tried to influence judicial outcomes. Today, issues that have triggered such attempts include reapportionment, school funding, reproduction rights, gun

control, tort reform, and affirmative action.<sup>9</sup> Other governmental threats to an independent judiciary are:

- b poor inter-branch relationships between the judiciary, the legislature, and the executive, marked by a lack of communication;
- b legislative limits on or curtailment of judicial jurisdiction;
- b legislative refusal to increase judicial salaries; and
- b chronic under-funding of the judicial branch and increasing workload.

More recently, non-governmental groups have threatened judicial independence using political, social, and economic resources to influence the selection and retention of judges.<sup>10</sup> The danger is that when individuals or groups are highly organized, ideologically driven, and well funded, their self-interest in winning cases overcomes their interest in an independent judiciary.<sup>11</sup>

More specific threats to judicial independence by non-governmental groups include:


- b inappropriate threats of impeachment prompted by particular judicial decisions;
- b political threats intended to influence a judge’s decision in an individual case; and
- b misleading criticism of individual decisions.

The best judges are those who resist threats to judicial independence and actively advocate judicial independence. The basic, underlying safeguard for judicial independence is popular support of the concept.<sup>12</sup>

### ***How can judicial independence be protected?***

Public education efforts about judicial independence and judicial selection face a number of challenges, including limited public knowledge of courts and judges

and limited resources to reach a broad public audience. Fortunately, experience has shown that the public is receptive to messages concerning the impartiality of the judiciary and that lawyers and judges are effective messengers, especially when partnering with non-lawyer membership organizations, like the League of Women Voters.<sup>13</sup>

If judges include judicial independence as a campaign issue in their election and retention campaigns, the public will respond with an eagerness to learn more. The public’s appreciation of and respect for judicial independence is the best way to ensure that the judiciary will remain independent.<sup>14</sup> Campaigning on judicial independence can educate both judges and the electorate on the importance of protecting fair and impartial courts. 



**Shirley S. Abrahamson**, Chief Justice of Wisconsin, is Chair of the Board of Directors of the National Center

for State Courts and President of the Conference of Chief Justices. Chief Justice Abrahamson is recognized as a national leader in state courts issues, such as protecting judicial independence, improving inter-branch relations, and expanding outreach to the public.

The National Center for State Courts, headquartered in Williamsburg, Va., is a non-profit court reform organization dedicated to improving the administration of justice by providing leadership and service to the state courts. The National Center held the first-ever National Summit on Improving Judicial Selection and issued its “Call to Action” as a blueprint for judicial election



reform. For more information on judicial independence and judicial elections, please visit the National Center for State Courts' Web site at [www.ncsconline.org](http://www.ncsconline.org).

## Endnotes

1. Shirley S. Abrahamson, "Speech: The Ballot and the Bench," 76 N.Y.U.L. Rev. 973, 986 (2001).
2. Call to Action: Statement of the National Summit on Improving Judicial Selection, Expanded with Commentary, The National Center for State Courts 2002, [www.ncsconline.org/D\\_research](http://www.ncsconline.org/D_research).
3. Effective Judicial Campaign Conduct Committees: A How-to Handbook, National Ad Hoc Advisory Committee on Judicial Campaign Conduct (2004). See also, Republican Party of Minnesota v. White, 536 U.S. 765 (2002) (Ginsburg, J., Dissenting).
4. Shirley S. Abrahamson, "Speech: The Ballot and the Bench," 76 N.Y.U.L. Rev. 973, 977 (2001).
5. Shirley S. Abrahamson, "Speech: The Ballot and the Bench," 76 N.Y.U.L. Rev. 973, 993-4 (2001).
6. Address to the American Bar Assn Symposium, Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice, Dec. 4-5, 1998.
7. [http://www.ajs.org/cji/cji\\_what-isji.asp](http://www.ajs.org/cji/cji_what-isji.asp)
8. Warren, R. (2003) "The Importance of Judicial Independence and Accountability," Unpublished speech in China available on the National Center for State Courts' Website: [www.ncsconline.org/WC/Publications/KIS\\_JudIndSpeechScript.pdf](http://www.ncsconline.org/WC/Publications/KIS_JudIndSpeechScript.pdf).
9. Shirley S. Abrahamson, "Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence," 64 Ohio St. L.J. 3 (2003).
10. *Id.* at 9.
11. *Id.* at 9.
12. Shirley S. Abrahamson, "Speech: The Ballot and the Bench," 76 N.Y.U.L. Rev. 973, 990 (2001).
13. <http://www.justiceatstake.org/contentViewer.asp?breadCrumb=2>
14. Shirley S. Abrahamson, "Speech: The Ballot and the Bench," 76 N.Y.U.L. Rev. 973, 977 (2001).



# Let CAP Lend a Helping Hand!

## What is the Consumer Assistance Program?

The State Bar's Consumer Assistance Program 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, calling the lawyer, or suggesting various ways of dealing with the dispute. We send a grievance form when serious unethical conduct may be involved.

## Does CAP assist attorneys as well as consumers?

Yes. We help lawyers by courtesy calls, faxes or letters, when we hear from dissatisfied clients. We also give information and suggestions about effectively resolving conflicts in an ethical and professional manner.

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.

In some cases, we refer lawyers to the State Bar's Law Practice Management Program, Lawyer Assistance Program, or the Ethics Hotline, to get the information and help to better serve the public.

## 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. We do not get involved when a caller alleges serious unethical conduct, such as commingling of client funds. CAP cannot give legal advice, but we can tell consumers where to go for help. Some consumers may have a separate right of action in law or equity and need independent legal advice. We have an extensive list of government agencies, referral services, and nonprofit organizations that may provide services that meet callers' needs.

## Are CAP calls confidential?

To encourage open communication and resolve conflicts informally, 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 General Counsel; or
3. A court compels the production of the information.

Call the State Bar's Consumer Assistance Program at (404) 527-8759 or (800) 334-6865

## Federal Practice in the Northern District of Georgia: Times Are Changing

By James N. Hatten

**I**s Jan. 1, 2005 marked on your calendar? July 15, 2005? If not, maybe they should be. If you practice before the United States District Court for the Northern District of Georgia, these dates are very important to your practice. The dates represent milestones in a major technological evolution in the Northern District's operations. This article seeks to address some of the changes that have occurred and suggest what they may mean for you.

Members of the Bar will recall that it was not too long ago that obtaining a copy of a pleading meant a trip to the courthouse. That changed in the Northern District of Georgia in 2001, when the court began scanning its civil pleadings and making them available to the public electronically through its Public Access to Court Electronic

Records (PACER) service. Had this been the only change to occur in the court's practices, it would have been significant. No longer the last minute mad dashes to the courthouse hoping that by some miracle there would be no traffic accident (rare) or street repairs (never) to slow one's progress. Instead, there will be 24/7 access to court civil documents from the comfort of one's office. On Nov. 1, 2004, the court added electronic public access to criminal pleadings. These changes enabled individuals with PACER accounts to access, view, and print copies of court criminal as well as civil documents in the comfort of their home or office, wherever that may be. No couriers, and no lost time or effort, 24 hours a day, 7 days a week.

Recently the court transitioned to an entirely new case management system as well. Not only does this system continue to provide 24/7 electronic access to court documents through PACER, but it now also provides the opportunity for an attorney to create and electronically file those documents. This capability to send and receive pleadings

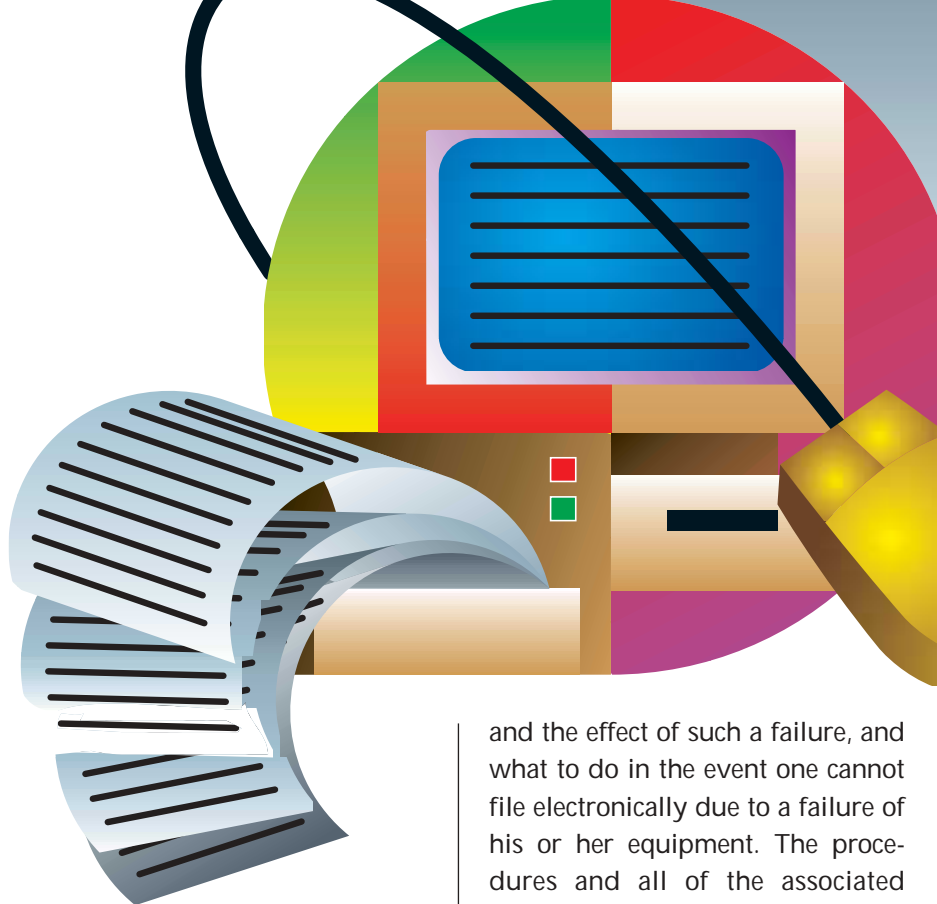
electronically was introduced in the Northern District of Georgia on July 15, 2004. **Beginning July 15, 2005**, after the system has been in place for a year, absent good cause shown, **attorneys appearing in the Northern District will be required to file pleadings electronically. The registration deadline for attorneys to receive electronic filing (CM/ECF) logins and passwords is Jan. 1, 2005.**

Electronic filing is already operating in the Northern and Middle Districts of Georgia, and the Southern District is currently in the process of implementing the system. The statewide and nationwide presence of the system provides an added incentive for Georgia attorneys to learn and use the system. A caveat is appropriate, however. Not all courts have implemented electronic filing in the same fashion or to the same extent. The decision on how and to what degree to implement electronic filing lies with the local court, so attorneys should always review the specific implementation for each court in which they appear.

The implementation policy adopted in the Northern District of Georgia is the broadest possible, permitting electronic filing of both civil and criminal documents. In addition to the change to the court's local rule 5.1A authorizing electronic filing, there are three documents related to electronic filing in the Northern District with which members of the Bar must become thoroughly familiar. Taken together these documents convey the history, full scope, and details of the court's implementation.

Standing Order 04-01, Electronic Case Filing and Administrative Procedures, June 1, 2004, conveys the court's implementation policy, adopts administrative procedures to govern electronic filing, and outlines critical aspects of electronic filing. The order notes, for example, that the official record of the court is the electronic file, that only attorneys are authorized to file electronically, and that filing deadlines are not affected by the fact that electronic rather than conventional/paper means are used. The order also notes an attorney's responsibility to safeguard his or her log-in name and password used for electronic filing and to prevent its unauthorized use.

Standing Order 04-02, Adopting a Policy on Sensitive Information and Public Access to Electronic Case Files, July 28, 2004, adopts the Judicial Conference Policy of the United States regarding sensitive information and public access to electronic files, and specifies an attorney's responsibility to redact certain personal information from all pleadings. The order specifically notes that review and redaction will not be performed by the clerk's office.



The administrative procedures for filing, signing, and verifying pleadings and papers by electronic means for both civil and criminal cases are contained at Appendix H to the court's local rules, as is Standing Order 04-01 referenced above. These procedures address in detail what may be filed electronically and what must be filed in paper. The procedures also address the form for signing, the effect of the various aspects of the filing, and matters such as what constitutes a technical failure of court equipment

and the effect of such a failure, and what to do in the event one cannot file electronically due to a failure of his or her equipment. The procedures and all of the associated orders as well as substantial additional information about electronic filing are contained on the court's website at [www.gand.uscourts.gov](http://www.gand.uscourts.gov).

The benefits to the Bar of these innovations are obvious, and include remote electronic filing, viewing, and accessing of documents 24 hours a day, 7 days a week; automatic e-mail notice of case activity; concurrent access to case files by multiple parties; docketing of pleadings immediately with filing; easier tracking of case activity; reduction in space required for record storage; and reduction of postage and couri-



## Language Barrier?

Experts available in any language for translation and interpretation services

**Tools for LiVing** from **JF&CS**  
Jewish Family & Career Services

For more information on these services, please call (770) 677-9461  
[www.jfcs-atlanta.org](http://www.jfcs-atlanta.org)

Aside from the hardware requirements, training on the system has proven to add a measure of success in quickly and correctly operating the system. Fortunately training is readily available, as is help for those occasions when the training does not answer all of the questions.

er expenses. To obtain these benefits one needs very little in the way of financial investment. Minimally required equipment includes only a personal computer with a Pentium processor with an operating speed of at least 100MHz, an Internet connection with a modem supporting a transfer rate of at least 56k, Netscape Navigator 4.7 or Microsoft Internet Explorer 5.5 or higher, a PDF-compatible word processor like WordPerfect or Microsoft Word, and Adobe Acrobat Reader software version 3.0 or higher. Enhanced operating speeds, and cable, DSL, or satellite Internet connections, can significantly enhance the speed of the electronic case filing process.


Two other requirements exist before an attorney can file electronically: a CM/ECF log-in and password issued by the court, and a PACER account and log-in. Applying for a CM/ECF log-in and password is as simple as going to the court's Web site and filling out and submitting an online application. Within a few days you will receive your unique log-in and password in the mail. To avoid any interference with the Bar's ability to meet the court's July 15 deadline for mandatory electronic filing, and, to provide the court the efficiency inherent in the electronic case filing system's ability to send electronic notices, the court has established a requirement that attorneys on pending cases or seeking to file cases must register to receive CM/ECF log-ins and passwords by Jan. 1, 2005.

Obtaining a PACER log-in is equally painless and equally free. One can simply register at the PACER Center's website at <http://pacer.uscourts.gov>. By filling out the registration form online, one can gain access to PACER within the hour.

Aside from the hardware requirements, training on the system has proven to add a measure of success in quickly and correctly operating the system. Training is readily available, as is help for those occasions when the training does not answer all of the questions. A beneficial first stop for training might be the court's Web site, which contains a tutorial on using the electronic case filing system. Training can also be obtained at the courthouse from court staff by calling (404) 215-1675. If you have more than 10 people who can be trained together, the court will even send a trainer to your firm and conduct the training onsite. court teams have already conducted many such training sessions in and around the Northern District of Georgia.

If, after training, an attorney experiences problems or difficulties in operating the system, the PACER Service Center can also offer extensive assistance. The PACER Service Center responds to hundreds of telephone calls and e-mails daily in response to questions ranging from general information about electronic filing to complex technical setup inquiries. The center can address

browser issues, troubleshoot connection issues, provide information on installing and using Adobe Acrobat, provide information on creating documents using Adobe Writer, help users navigate electronic filing sites, and help with other issues. The telephone number for the PACER Service Center is (800) 676-6856. Of course, clerk's office employees are also available to answer questions and assist with problems like correcting a docket entry.

Electronic filing and the other changes implemented by the court will have a profound and beneficial impact on the federal practice in the Northern District of Georgia. There remain a few documents that cannot be electronically filed, such as case initiating or sealed documents. Other documents may be too voluminous to make electronic filing viable. To a great extent, however, electronic case filing will meet an attorney's filing needs. We look forward to continuing the cooperation with the Bar that accompanied the implementation of the administrative procedures in realizing the maximum benefits electronic filing has to provide. 

**James N. Hatten** is the chief deputy clerk for the U.S. District Court for the Northern District of Georgia. He earned a J.D. in 1976 from the University of Alabama and is a member of the Alabama Bar.



# dangerous toys

Your child may be at risk!



A child dies every month from a toy caused injury



63% of these deaths are choking or swallowing related



60% of these children were under 6 years old

**Learn the 10 Most Dangerous Toys of This Year  
And Receive the Ten Point Safety Checklist  
at [www.KeenansKidsFoundation.com](http://www.KeenansKidsFoundation.com)  
Absolutely FREE**



*Thanks to the many  
Volunteers and Donors!*

Founder Don C. Keenan  
Child Advocate and Trial Lawyer

Oprah "Person of Courage Award"  
Emory University Lifetime Child Advocate Award  
Author of Childrens Safety Handbook

**To Donate, Volunteer, Or For More Information:**

404-223-KIDS (5437) [www.keenanskidsfoundation.com](http://www.keenanskidsfoundation.com) [info@keenanskidsfoundation.com](mailto:info@keenanskidsfoundation.com)

Member Assoc. of Small Foundations

## KUDOS



The Georgia Legal Services Program named **Sarah Lamar** of **Hunter Maclean** to its board of directors. Lamar is a member of the American Bar Association, the Savannah Bar Association, and the Georgia Association of Women Lawyers. She also serves on the Savannah Area Tourism Leadership Board of Directors. Hunter Maclean has 12 offices in Georgia. GLSP is a nonprofit organization dedicated to providing legal aid in civil cases to individuals and families in 154 counties.

**Page, Scrantom, Sprouse, Tucker & Ford, P.C.**, announced that the firm is celebrating its **100<sup>th</sup> anniversary** this year. The firm is the largest and one of the oldest in the Columbus area. It was originally a partnership known as Slade & Swift. In 1948, it became Swift, Pease, Davidson & Chapman, and in 1971 the firm incorporated under the name Page & Scrantom, P.C.

**Gov. Sonny Perdue** appointed **Matthew W. Nichols** to the Public Finance Options task force for the Commission for a New Georgia. Nichols is a partner at **Sutherland, Asbill & Brennan LLP**; he practices in the firm's corporate group. The task force was formed to examine Georgia's public sector finance options and make recommendations to improve the state's management.

**Kilpatrick Stockton** attorneys **Ben Barkley** and **Seth Cohen** were recognized as "**Up and Comers: Under 40 and Rising**" in the *Atlanta Business Chronicle*. Barkley is the firm's corporate practice group chairman; for the past three years, he has served as deputy managing partner. Cohen is a senior associate in the corporate practice group.

126 lawyers at **Holland & Knight LLP** were selected for "**The Best Lawyers in America 2005-2006.**" The selection process for the publication is conducted through a peer-review survey. Lawyers must be nominated by their peers, and no lawyer is listed in exchange for a fee. Seven lawyers from Holland & Knight's Atlanta office were included: **Alfred B. Adams III, Thomas Branch, Raymond P. Carpenter, Harold T. Daniel, Laurie Webb Daniel, Gregory Digel, and Mary Ann B. Oakley.**

## ON THE MOVE

### In Athens

**Rebecca H. White** was named permanent dean of the **University of Georgia School of Law**. She had served as interim dean since July 2003. White, who also holds the J. Alton Hosch Professorship at the law school, becomes the first female dean in UGA Law's 145-year history. White joined the law school faculty in 1989; prior to becoming dean, she was associate provost and associate vice president for academic affairs. Her office is located at the University of Georgia School of Law, Athens, GA 30602; (706) 542-5172; Fax (706) 542-5556; [www.law.uga.edu](http://www.law.uga.edu).

### In Atlanta

**Jack P. Turner** and **Nelson Goss Turner** announced the relocation of their offices. They will continue to practice in the area of family law in the Atlanta area. Jack P. Turner moved **Turner, Turner & Turner, P.C.** to a new suite within its existing building – the offices of G. William Thackston Jr. The new address is 6100 Lake Forrest Dr., Atlanta, GA 30328; (404) 250-0946; Fax (404) 806-7685. Nelson Goss Turner moved **The Turner Firm, P.C.** to the offices of D. Robert Autrey Jr. in Marietta's historic Cole Manor. The new address is 331 Washington Ave., Marietta, GA 30060; (770) 424-7500; Fax (770) 424-7509.



**Greenebaum Doll & McDonald PLLC** announced that **Stacey D. Kalberman** has joined the firm as of counsel in the health care and insurance practice group. Prior to joining Greenebaum, she was a member of Powell, Goldstein, Frazer & Murphy LLP's homeland security group. Kalberman is an associate member of the American Bankers Association and the Community Bankers Association of Georgia. She is also a member of the State Bar's Corporate Counsel Section, Legislation Liaison Committee, and Tort and Insurance Practice Section. Greenebaum Doll & McDonald's Atlanta office is located at 1175 Peachtree St. NE, 100 Colony Square, Suite 780, Atlanta, GA 30361; (404) 879-2170; Fax (404) 879-2180; [www.greenebaum.com](http://www.greenebaum.com).



**C. David Butler** joined **Shapiro Fussell Wedge Smotherman Martin & Price, LLP**, in the firm's bankruptcy and creditor's rights practice. Butler brings more than 30 years of bankruptcy case expertise and practice experience to the firm; he was the United

States Trustee of Region 21 for the past seven years. Butler is a fellow of the American College of Bankruptcy, a member of the American Bankruptcy Law Institute, and a member of the State Bar of Georgia and the Christian Legal Society. The firm is located at 1360 Peachtree St., Suite 1200, Atlanta, GA 30309; (404) 870-2200; Fax (404) 870-2222; [www.shapirofussell.com](http://www.shapirofussell.com).

**Daniel A. Ragland** and **Evan W. Jones** announced the formation of a new partnership, **Ragland & Jones LLP**. The firm will represent plaintiffs in the areas of medical malpractice, products and premises liability and auto accidents. The new office is located at Resurgens Plaza, Suite 2250, 945 E. Paces Ferry Road NE, Atlanta, GA 30326; (404) 842-7245; Fax (404) 842-7222.

**Needle & Rosenberg** announced that **Devon K. Grant** and **Dawn V. Stephens** joined the firm as associates. Both will practice in the electronics/software patent group, which prosecutes patent applications in all areas of software, Internet and electronics communication technology for a wide range of corporate, university and government clients. The firm is located at Suite 1000, 999 Peachtree St., Atlanta, GA 30309-3915; (678) 420-9300; Fax (678) 420-9301; [www.needlerosenberg.com](http://www.needlerosenberg.com).



**L. Clint Crosby** joined the law firm of **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, as an associate. Crosby practices in the areas of commercial litigation, intellectual property, and products liability. The firm's Atlanta office is located at 5 Concourse Parkway, Suite 900, Atlanta, GA 30328; (678) 406-8700; Fax (678) 406-8701; [www.bakerdonelson.com](http://www.bakerdonelson.com).

**Merchant & Gould** announced that **Michael Lukon** joined the firm as an associate in its Atlanta office. He previously worked with the firm of Luedeka, Neely & Graham, counseling clients in all aspects of intellectual property. Merchant & Gould's Atlanta office is located at 133 Peachtree St. NE, Suite 4900, Atlanta, GA 30303; (404) 954-5100; Fax (404) 954-5099; [www.merchant-gould.com](http://www.merchant-gould.com).



**Kilpatrick Stockton** announced that **Wayne Elowe** joined the firm's Atlanta office as a partner in the corporate practice group. His practice concentrates on international business transactions in the areas of mergers and acquisitions, private equity investments, joint ventures, multinational outsourcing projects and strategic alliances. Kilpatrick Stockton's Atlanta office is located at Suite 2800, 1100 Peachtree St.,

Atlanta, GA 30309-4530; (404) 815 6500; Fax (404) 815 6555; [www.kilpatrickstockton.com](http://www.kilpatrickstockton.com).

**Greenebaum Doll & McDonald PLLC** announced the expansion of its insurance practice in Atlanta and the opening of new office space in Colony Square. Attorneys in the health care and insurance group located in the Atlanta office are **Kevin M. Doherty**, **Stacey D. Kalberman** and **F. Maria Sheffield**. The firm's new office is located at 1175 Peachtree St. NE, 100 Colony Square, Suite 780, Atlanta, GA 30361; (404) 879-2170; Fax (404) 879-2180; [www.greenebaum.com](http://www.greenebaum.com).



**Curt A. Portzel** joined the Atlanta office of **McGuireWoods LLP** as an associate in the real estate and environmental department. His practice will focus on real estate transactions and leasing. Portzel was previously an associate general counsel for Mimms Enterprises, Inc. McGuireWoods' Atlanta office is located at The Proscenium, 1170 Peachtree St. NE, Suite 2100, Atlanta, GA 30309-7649; (404) 443-5500; Fax (404) 443-5599; [www.mcguirewoods.com](http://www.mcguirewoods.com).

## In Augusta

**Sam G. Nicholson** and **Harry D. Revell** announced the formation of **Nicholson Revell LLP**. The firm will represent plaintiffs in consumer class actions, business torts, auto accidents, and negligence and wrongful death cases. The office is located at 4 George C. Wilson Court, Suite A, Augusta, GA 30909; (706) 722-8784; Fax (706) 722-6495; [www.nicholsonrevell.com](http://www.nicholsonrevell.com).

## In Columbus

**Page, Scrantom, Sprouse, Tucker & Ford, P.C.**, announced that **Joshua R. McKoon** joined the firm as an associate. The office is located at Synovus Centre, Third Floor, 1111 Bay Ave., Columbus, GA 31901; (706) 324-0251; Fax (706) 323-7519; [www.columbusgalaw.com](http://www.columbusgalaw.com).

## In Macon

**Sell & Melton, L.L.P.**, announced the association of **Blake Edwin Lisenby** and **T. Joseph Boyd**. Lisenby, formerly of Arnall Golden Gregory, LLP, will practice in the areas of business litigation, corporate transactions, bankruptcy, commercial real estate, family law, and the representation of governmental and non-profit entities. Boyd will practice general civil litigation representing both plaintiffs and defendants. The firm is located at 577 Mulberry St., 14th Floor, Macon, GA 31201; (478) 464-5338; Fax (478) 745-6426; [www.sell-melton.com](http://www.sell-melton.com).



## In Savannah



**Robert R. Long** joined **Hunter Maclean** as an associate practicing business litigation. Long previously worked for Morrison & Foerster LLP in San Francisco, Calif., focusing on complex commercial and securities litigation.

The office is located at 200 E. Saint Julian St., P.O. Box 9848, Savannah, GA 31412; (912) 236-0261; Fax (912) 236-4936; [www.huntermaclean.com](http://www.huntermaclean.com).

## In Valdosta

**Trent L. Coggins, LLC**, announced that **Paul W. Hamilton** became an associate with the firm. He practices civil and criminal litigation. The firm is located at 706 N. Patterson St., Valdosta, GA 31601; (229) 259-0525; Fax (229) 259-0533.

## In Philadelphia, Pa.



**Cozen O'Connor** announced that **Ann Thornton Field** is the new chair of its 170-attorney national insurance litigation department. Field has served as a member of Cozen O'Connor's executive and management committees since 2000; she was appointed as the firm's aviation practice group chair in 1996. She also led the firm's women's initiative, served as a member of its strategic planning committee and sat on its hiring committee in previous years.

The office is located at 1900 Market St., Philadelphia, PA 19103; (215) 665-2000; Fax (215) 665-2013; [www.cozen.com](http://www.cozen.com).

# State Bar of Georgia Consumer Pamphlet Series



The State Bar of Georgia's Consumer Pamphlet Series is available at cost to Bar members, non-Bar members and organizations. Pamphlets are individually priced at 25 and 75 cents each plus shipping. Questions? Call (404) 527-8761.

**The following pamphlets are available:**  
Auto Accidents › Bankruptcy › Buying a Home › Divorce › How to Be a Good Witness › How to Choose a Lawyer › Juror's Manual › Lawyers and Legal Fees › Legal Careers › Legal Rights of Nursing Home Residents › Patents, Trademarks and Copyrights › Selecting a Nursing Home › Selecting a Personal Care Home › Wills

Visit [www.gabar.org/cps.htm](http://www.gabar.org/cps.htm) for an order form  
and more information or e-mail [daniel@gabar.org](mailto:daniel@gabar.org).



# WHAT ARE YOU LOOKING FOR in a 401(k) plan?



ALL DOORS LEAD TO THE...

## ABA MEMBERS Retirement Program

The ABA Members Retirement Program has been providing retirement plans, such as 401(k), profit sharing and defined benefit plans to law firms for 40 years. Whether you operate a solo practice or a large firm, the ABA Program can provide an effective plan for your firm. We provide firms with a full service solution that includes plan administration, investment flexibility and independent on-line investment advice from Financial Engines®. These services are bundled together in a value package designed specifically for law firms. Call one of our Plan Consultants today at (800) 826-8901 for a free evaluation and cost comparison. *Open the door and see the value inside.*

WWW.ABARETIREMENT.COM



**ABA MEMBERS  
RETIREMENT  
PROGRAM**



For a copy of the Prospectus with more complete information, including charges and expenses associated with the Program, or to speak with a Plan Consultant, call (800) 826-8901, visit [www.abaretirement.com](http://www.abaretirement.com) or write to ABA Members Retirement Program P.O.Box 2236 • Boston, MA 02107-9950 • [abaretirement@citistreetonline.com](mailto:abaretirement@citistreetonline.com). Financial Engines® is a registered trademark of Financial Engines, Inc. All advisory services are provided by Financial Engines Advisors, L.L.C., a federally-registered investment advisor. Be sure to read the Prospectus carefully before you invest or send money. The Program is available through the State Bar of Georgia as a member benefit. However, this does not constitute, and is in no way a recommendation with respect to any security that is available through the Program.

## Lawful or Unlawful: Tape-recording Phone Calls?

By Paula Frederick

**L**isten to this," you advise your partner as she walks into your office. Putting the phone on speaker mode, you replay the message that gave you an instant case of heartburn.

"Todd, this is Alan Josephson—you know, with the divorce case?" your client's jubilant voice rings out. "Boy, have I got the goods on my soon-to-be-ex-wife! I got her to admit that she is having an affair, and she even confirmed that she's been lying about the money her mother left her. She says she'll deny it if you ask her about it on the stand. What she doesn't know is that I tape-recorded the whole conversation! Now I've rigged up the telephone so I can catch her if she calls her boyfriend from home. That ought to make me look like the good guy when we get to court!"

"Good grief!" your partner hoots. "That guy is totally out of control! What are you going to tell him?"

"I definitely need to let him know that it's against the law for him to tap a telephone," you respond. "I'm just trying to figure out



whether I need to record my conversation with him to protect myself if he doesn't take my advice."

"Isn't it against the Bar Rules for a lawyer to tape-record a conversation?" your partner asks. "I thought there was something about it in the Bar Rules—the part that prohibits deceptive conduct."

A quick call to the Bar's ethics hotline clarifies things. O.C.G.A. Section 16-11-62 prohibits a person from intentionally overhearing, transmitting or recording the private conversation of another originating from any private place. A person who is a party to a conversation may record it, however, because Section 16-11-66 allows recording when one of the parties to the communication gives prior consent.

In other words, the tape recording your client made of his conversation with his wife was lawful.<sup>1</sup> His plan to eavesdrop and record conversations between his wife and her lover would violate the law. Pursuant to Bar Rule 1.2, Scope of Representation, you may not assist the client in conduct that you know is criminal, but you


may discuss the legal consequences of any proposed course of conduct with the client.

Now for your proposal to record your own conversation with the client—while it is certainly *lawful* pursuant to Section 16-11-66, is it *ethical*?

Most jurisdictions prohibit a lawyer from recording a conversation without the consent of *all parties* to the conversation. The American Bar Association has a formal advisory opinion discussing the issue in detail, and finding the conduct deceptive unless all parties to the conversation consent.<sup>2</sup>

Georgia differs from the majority and does not prosecute lawyers for lawfully recording conversations to which they are a party. Georgia lawyers engaged in practice outside the state should be

careful to comply with the rules in effect in the host jurisdiction.

Facing an ethics dilemma? Call the Ethics Hotline at (404) 527-8720 or (800) 334-6865 between 9 a.m. and 4:30 p.m. weekdays. 



Paula Frederick is the deputy general counsel for the State Bar of Georgia.

## Endnotes

1. This column does not address the admissibility of either recording.
2. American Bar Association Formal Opinion 337 prohibits a lawyer from recording a conversation without the prior knowledge and consent of all parties to the conversation. The opinion is not binding in Georgia.



Key your way to [www.gabar.org](http://www.gabar.org).

The one site you need for top-notch legal information and State Bar resources.

Thomas Edison

wasn't the first to invent  
the lightbulb, but  
his longer-lasting  
filament made history  
because he chose to

patent it!

Pat. No. 12,631

There's always room  
for improvement and  
your idea might be one  
for the record books.  
That's where our team  
of experienced patent  
lawyers and litigators  
can help turn your ideas  
into valuable assets and  
protect them.

Patterson, Thunte, Skaar  
& Christensen – a team of  
experience in patent law  
and litigation. Call us at  
1-800-331-4537 and protect  
your idea – before someone  
else does.

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.

Patent, Trademark, Copyright, Internet & Related Causes

400 One Security Center 3490 Piedmont Road NE Atlanta, GA 30305-4808

800-331-4537 404-949-5730 [www.ptslaw.com](http://www.ptslaw.com)

MINNEAPOLIS, MINNESOTA • ATLANTA, GEORGIA

## Discipline Notices

(Aug. 11, 2004 through Oct. 15, 2004)

### DISBARMENTS/VOLUNTARY SURRENDERS

**Thomas Marvin Alford**  
Augusta, Ga.

Thomas Marvin Alford (State Bar No. 009325) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 13, 2004. Alford twice failed to appear for calendar calls. The first time Alford said that his failure to appear was the result of "his severe alcohol dependency." After the second failure Alford could not be located.

**Kim Lavern King**  
Tucker, Ga.

Kim Lavern King (State Bar No. 734162) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 13, 2004. King was hired by two clients to represent them in the purchase of a business. The clients gave King \$20,000 to hold in trust. Later the clients directed King to terminate the purchase; however, King failed to draft the documents, failed to return calls from the clients, converted the funds to her own use, and only returned \$5,000.

In another case King was hired to represent a client in a personal injury matter. After settling the matter without the client's consent, King forged the client's signature on the settlement check and converted the funds to her own

use. She told the client that she had paid his medical providers when she had not done so.

**David T. Steckler**  
Fredericksburg, Va.

David T. Steckler (State Bar No. 677410) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 13, 2004. Steckler was licensed to practice law in Georgia and the Commonwealth of Virginia. He acted as a settlement agent for a client in Virginia in a home mortgage refinancing. He closed the loan and deposited the disbursement check into his trust account. He issued a check for \$96,830.41 from his trust account as payment of the loan but the check was not honored. Steckler failed to account for the funds and the State Bar of Virginia revoked his license to practice law.

**Ellis Ronald Garnett**  
Augusta, Ga.

Ellis Ronald Garnett (State Bar No. 286999) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 27, 2004. Garnett agreed to represent a client and the client paid Garnett \$3,500. The only action Garnett took was to write one letter. He never filed the lawsuit and never refunded the fee.

In another case Garnett was hired to represent a client in a medical negligence case. He took no action, causing the statute of limitations to expire.



A client paid Garnett \$3,500 to represent her in a civil case, but Garnett did not return her phone calls and did not perform any work on her behalf for over three years.

With regard to another case, Garnett was appointed to represent a client in a criminal appeal. Garnett filed the appeal, but never informed his client about the affirmation of his conviction and did not communicate with the client.

Garnett represented another client in a criminal trial and filed a notice of appeal. Garnett did not inform his client about the affirmation of his conviction, did not maintain adequate contact with the client, and did not update him on the status of the appeal.

Finally, Garnett was appointed to represent a client in a criminal action but refused his client's request to enter a guilty plea. Garnett failed to obtain a copy of the transcript from a previous conviction as requested, and over the period of almost a year, responded only once to his client's letters and telephone calls. Garnett failed to contact the client about his trial date or discuss his case with him prior to trial.

### **Melvyn James Williams**

Macon, Ga.

On Sept. 13, 2004, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Melvyn James Williams (State Bar No. 763275). Williams pled guilty in the United States District Court for the Middle District of Georgia to forging state securities.

### **Willie J. Linahan**

Valdosta, Ga.

On Sept. 13, 2004, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Willie J. Linahan (State Bar No.

452860). On Feb. 24, 2004, Linahan pled guilty to mail and bank fraud.

### **Roy Scott Mullman**

Atlanta, Ga.

On Sept. 13, 2004, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Roy Scott Mullman (State Bar No. 529277). The Court appointed receivers to take custody of Mullman's client files because he suffers from alcoholism and is not able to protect his client's interest. Mullman failed to properly account for funds received on behalf of clients, and two escrow checks were not honored.

### **James William Avant**

Macon, Ga.

On Sept. 27, 2004, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of James William Avant (State Bar No. 029160). Avant acted as the closing attorney for a real estate closing. He signed the HUD-1 settlement statement even though it did not reflect the actual agreement between the parties and contained false information.

In another case, he acted as the closing attorney for real estate closings on seven properties. He was not present at the closings, but signed the settlement statements in which he averred he had witnessed the closings and would disburse the funds. He received attorneys' fees from the closings even though he was not present. The settlement statements did not reflect the actual agreements between the parties, contained false information, and did not reflect the actual disbursements made after the closings. Avant's office assistant prepared the closing documents and conducted the closings in Avant's

absence with his knowledge and direction, and he signed the closing documents as the settlement agent after his assistant had actually conducted the closings.

## **SUSPENSIONS**

### **David G. Hammock**

Hinesville, Ga.

On Sept. 13, 2004, the Supreme Court of Georgia suspended David G. Hammock (State Bar No. 321655) for a period of two years. Hammock agreed to represent a client on a contempt motion for divorce. The trial court issued one order finding the client in contempt and ordering him to make certain payments, and another two months later ordering the client to pay half of his Army separation pay to his ex-wife. Hammock never told his client about the second order and the client re-enlisted with the Army. When the client received notice of another hearing, Hammock told him he did not need to appear because the hearing would be continued. The court denied the motion for continuance and found the client in contempt of the two previous orders.

In another case, Hammock agreed to obtain a name change for a client's minor son for a fee of \$450. Hammock never requested that the local paper publish the name change.

In a third case, Hammock was hired to represent a client in a personal injury matter. He took no action on the case and the statute of limitations expired. In the meantime, the client hired Hammock in another accident case, which he did file. He ignored a notice that the client had declined uninsured motorist coverage, however, and the court dismissed the case, awarding attorneys' fees against

# Unlock<sup>your</sup> Potential

*Sign up for the Women & Minorities in the Profession Committee's Speaker Clearinghouse*



## About the Clearinghouse

The Women and Minorities in the Profession Committee is committed to promoting equal participation of minorities and women in the legal profession. The Speaker Clearinghouse is designed specifically for, and contains detailed information about, minority and women lawyers who would like to be considered as faculty members in continuing legal education programs and provided with other speaking opportunities. For more information and to sign up, visit [www.gabar.org/speakerbarcheck.asp](http://www.gabar.org/speakerbarcheck.asp). To search the Speaker Clearinghouse, which provides contact information and information on the legal experience of minority and women lawyers participating in the program, visit [www.gabar.org/speakersearch.asp](http://www.gabar.org/speakersearch.asp).

the client. One of the individual defendants also moved to dismiss the case against her for lack of service, which the court granted.

### REVIEW PANEL REPRIMAND

**Jerry Boykin**  
Marietta, Ga.


On Sept. 10, 2004, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Jerry Boykin (State Bar No. 073250) and ordered the imposition of a Review Panel Reprimand. Boykin met with an individual regarding the possibility of representing her. He never prepared or signed any contracts of representation; however, he did send a letter to her medical provider seeking records stating that he represented her. He ultimately decided not to represent her, but he failed to notify her of this decision.

### REINSTATEMENT

**Sybol Patricia Williams**  
Milwaukee, Wis.

On Sept. 13, 2004, the Supreme Court of Georgia accepted the Petition for Reinstatement of Sybol Patricia Williams (State Bar No. 764280). On Feb. 8, 1999, the Court suspended Williams for a period of six months with conditions for reinstatement. Williams complied with all the conditions for reinstatement.

### 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. 11, 2004, one lawyer has been suspended for violating this Rule and one has been reinstated. 

**TIME IS MONEY.  
DON'T YOU AGREE?**



**We Think a Little Time May Save You Money.**

We know your time is valuable. Complete our online quick quote form to receive a comparison quote for your professional liability coverage.

**[www.gilsbar.com/quickquote](http://www.gilsbar.com/quickquote)**

Gilsbar is the exclusive administrator for the CNA Lawyers Professional Liability Program in the State of Georgia. This partnership provides excellent coverage and service.

**Visit us online and  
complete your  
quick quote form today.  
For more information  
please call  
1-800-445-7227 ext. 513.**



CNA is a registered service mark and trade name with the U.S. Patent and Trademark Office. The program referenced herein is underwritten by one or more of the CNA companies. This information is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the products and services offered. GBJ MK-04-1645

# Top LPM Requests for 2004

By Natalie R. Thornwell

**A**t least once a year, either you or someone from your law office should be contacting the State Bar of Georgia's Law Practice Management Program. This department is your ultimate member benefit, and we are always available to assist you with your law practice management and technology needs. Looking back over this year's service, here are some questions this department answered most.

## Where Do I Get Malpractice Insurance?

The Bar does not endorse any particular malpractice carrier. However, a list of carriers with contact and general coverage information is available on the Law Practice Management page at [www.gabar.org/insurancecarriers.asp](http://www.gabar.org/insurancecarriers.asp). This is a listing of carriers admitted to write insurance in Georgia. You can also have the list e-mailed, faxed or mailed to you.

## Does the Bar Provide Health Insurance for Members?

At this time, there is no Bar-sponsored health insurance benefit. However, a list of providers can be obtained from our department. This list is a starting place for employers and others looking for health insurance coverage. Contact us to have the listing e-mailed, faxed or mailed to you.



## What Software Should We Use for Case Management, Time and Billing and Accounting?

The consultants in our department are able to analyze the technical needs of your practice and recommend software application tools that are suitable for your firm. The recommended products are deemed "best of breed" and are chosen because of their quality, pricing and support. The department can also perform on-site evaluations via a technical consultation for a small attorney-based fee.



## How Long Am I Required to Keep Client Files?

The only record-keeping requirement in Georgia is that trust accounting records must be kept for a period of at least six years. In order to assist members, this department provides some sample file retention and destruction policies that can be adapted to the timeframes you determine. Additional assistance and guidance is provided through the Bar's Ethics Hotline at (800) 682-9806 or (404) 527-8741.

## How Do I Set Up My Trust Account?

The department provides a copy of *Trust Accounting for Attorneys in Georgia*. This booklet covers all aspects of setting up the account and methods for properly maintaining the account. The latest rules regarding trust accounting are also included in the booklet.

## As a New Lawyer, How Do I Go About Setting Up My Practice?

The department provides extensive one-on-one consulting for new

attorneys. The office visit is preceded by the department providing the new attorney with a copy of *A Guide to Starting Your Georgia Law Practice*. This departmental publication is updated annually and covers the practical information for starting new law practices. Included is information on deciding what form of practice to set up; an operational checklist for the first day; how to find office space; checklists and forms for managing client files; sample fee agreements and other pertinent financial management forms; the full text of the trust accounting booklet mentioned above; advertising and marketing information; and technology recommendations.

## How Can I Close Down (or Wind Down) My Practice?

The department will forward a *Closing Your Practice* checklist that includes the practical steps for shutting your doors. Help is also available on the Ethics Hotline, as the Office of General Counsel may become involved in some cases of practices that are shutting down or

already closed. Because law practices can be sold in Georgia, you can also receive law firm valuation information and referrals to financial resource personnel who can assist you with determining the value of your practice.

## What Fees Should I Charge For My Services?

The Bar is not able to assist you with any specific information on what to charge for your services. Instead, you should consult with colleagues and similarly situated firms for this information. The department does, however, provide access to articles that address strategies for pricing your services, alternative billing arrangements and charging flat fees.

## How Much Should I Pay a New Secretary Because Another One Just Quit?

The department can provide information on personnel management and compensation. Surveys provide regional compensation information for every law firm position, and the department's consult-

# SOUTH GEORGIA ADR SERVICE, LLC

**MEDIATION and ARBITRATION** of personal injury, wrongful death, commercial, real estate and other complex litigation cases. Visit our Web site ([www.southgeorgiaADR.com](http://www.southgeorgiaADR.com)) for fee schedules and biographies of our panel, comprised of experienced Middle and South Georgia trial lawyers.

**ROBERT R. GUNN, II, MANAGING PARTNER**  
Rachel D. McDaniel, Scheduling Coordinator  
240 THIRD STREET, MACON, GEORGIA 31201  
(800) 863-9873 or (478) 746-4524  
FAX (478) 743-4204  
[www.southgeorgiaADR.com](http://www.southgeorgiaADR.com)

JERRY A. BUCHANAN – Columbus  
JOHN A. DRAUGHON – Macon  
JAMES L. ELLIOTT – Valdosta  
BENJAMIN M. GARLAND – Macon  
ROBERT R. GUNN, II – Macon  
JANE M. JORDAN – Macon  
JEROME L. KAPLAN – Macon  
STANLEY KARSMAN – Savannah  
BERT KING – Gray  
MICHAEL S. MEYER VON BREMEN – Albany  
S. E. (TREY) MOODY, III – Perry  
PHILIP R. TAYLOR – St. Simons Island  
F. BRADFORD WILSON, JR. – Macon

ants can provide a range of salaries suitable for your locale. With turnover being another major personnel issue for law firms, you can also receive assistance with techniques for keeping staff happy.

## Can Someone from the Bar Come Out and Review My Practice for Efficiency or Help Me Set Up Some Acceptable Systems?

One of the main services of the Law Practice Management department is the low-cost, on-site consultations that cover general management concerns and/or technology implementation and training. An hourly fee is charged for the services based on the number of attorneys in the law firm. To set up an appoint-


ment with a consultant, please contact the department's administrative assistant, Pam Myers, at (404) 527-8772 or pam@gabar.org.

## What is Casemaker?

This new Bar member benefit is free online legal research! The program will begin in January 2005. The department's Casemaker Coordinator will be available for training and providing educational seminars on the new program. The listing for cases in Georgia's library can be found at [www.gabar.org/pdf/Casemaker\\_Library.pdf](http://www.gabar.org/pdf/Casemaker_Library.pdf)

## Where Can I Get Resources From Your Department?

The department has a resource library and software library. You

can visit the libraries at the Bar headquarters or order resources at the department's Web site, [www.gabar.org/lpm.asp](http://www.gabar.org/lpm.asp). The Web site includes downloadable forms, articles, a tip and Web site of the week, and much, much more! For more information on the department's resources, contact the Resource Advisor, Jennifer Benton, at (404) 526-8621 or [jennifer@gabar.org](mailto:jennifer@gabar.org), or the department's Director, Natalie R. Thornwell, at (404) 527-8770 or [natalie@gabar.org](mailto:natalie@gabar.org). 


Natalie R. Thornwell is the director of the State Bar of Georgia's Law Practice Management Program.

United States Postal Service

**Statement of Ownership, Management, and Circulation**

1. Publication Title <b>Georgia Bar Journal</b>	2. Publication Number <b>0217 ... 560</b>	3. Filing Date <b>August 31, 2004</b>
4. Issue Frequency <b>Bi-monthly</b>	5. Number of Issues Published Annually <b>6</b>	6. Annual Subscription Price <b>\$36</b>
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4) <b>State Bar of Georgia Communications Department 104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743</b>		Contact Person <b>C. Tyler Jones</b> Telephone <b>404-527-8736</b>
8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer) <b>State Bar of Georgia 104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743</b>		
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank) Publisher (Name and complete mailing address) <b>State Bar of Georgia 104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743</b> Editor (Name and complete mailing address) <b>Marcus D. Liner 10 Glenlake Parkway Atlanta, GA 30328</b> Managing Editor (Name and complete mailing address) <b>C. Tyler Jones State Bar of Georgia 104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743</b>		
10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)		
Full Name	Complete Mailing Address	
<b>State Bar of Georgia</b>	<b>104 Marietta St. NW, Ste. 100 Atlanta, GA 30303-2743</b>	
11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box <input checked="" type="checkbox"/> None		
Full Name	Complete Mailing Address	
12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one) The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes: <input type="checkbox"/> Has Not Changed During Preceding 12 Months <input type="checkbox"/> Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)		

PS Form 3526, October 1999 (See Instructions on Reverse)

13. Publication Title <b>Georgia Bar Journal</b>	14. Issue Date for Circulation Data Below <b>August 2004</b>	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months
a. Total Number of Copies (Net press run)		31,200
(1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (Include advertiser's proof and exchange copies)	30,124	31,673
b. Paid and/or Requested Circulation	0	0
(2) Paid In-County Subscriptions Stated on Form 3541 (Include advertiser's proof and exchange copies)	0	0
(3) Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	0	0
(4) Other Classes Mailed Through the USPS	0	0
c. Total Paid and/or Requested Circulation (Sum of 15b, (1), (2), (3), and (4))	30,124	30,259
d. Free Distribution by Mail (Samples, complimentary, and other free)	0	0
(1) Outside-County as Stated on Form 3541	0	0
(2) In-County as Stated on Form 3541	0	0
(3) Other Classes Mailed Through the USPS	80	83
e. Free Distribution Outside the Mail (Carriers or other means)	85	250
f. Total Free Distribution (Sum of 15d and 15e)	165	333
g. Total Distribution (Sum of 15c and 15f)	30,289	30,592
h. Copies not Distributed	911	1,081
i. Total (Sum of 15g and h.)	31,200	31,673
j. Percent Paid and/or Requested Circulation (15c divided by 15g times 100)	99.4	98.9
16. Publication of Statement of Ownership <input checked="" type="checkbox"/> Publication required. Will be printed in the <b>December 2004</b> issue of this publication. <input type="checkbox"/> Publication not required.		
17. Signature and Title of Editor, Publisher, Business Manager, or Owner  Managing Editor		Date <b>September 30, 2004</b>
I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).		
<b>Instructions to Publishers</b>		
1. Complete and file one copy of this form with your postmaster annually on or before October 1. Keep a copy of the completed form for your records.		
2. In cases where the stockholder or security holder is a trustee, include in items 10 and 11 the name of the person or corporation for whom the trustee is acting. Also include the names and addresses of individuals who are stockholders who own or hold 1 percent or more of the total amount of bonds, mortgages, or other securities of the publishing corporation. In item 11, if none, check the box. Use blank sheets if more space is required.		
3. Be sure to furnish all circulation information called for in item 15. Free circulation must be shown in items 15d, e, and f.		
4. Item 15h. Copies not Distributed, must include (1) newsstand copies originally stated on Form 3541, and returned to the publisher, (2) estimated returns from news agents, and (3) copies for office use, leftovers, spoiled, and all other copies not distributed.		
5. If the publication had Periodicals authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.		
6. In item 16, indicate the date of the issue in which this Statement of Ownership will be published.		
7. Item 17 must be signed.		
<b>Failure to file or publish a statement of ownership may lead to suspension of Periodicals authorization.</b>		

PS Form 3526, October 1999 (Reverse)



## **AFFORDABLE PROFESSIONAL LIABILITY INSURANCE IS JUST ONE CALL AWAY.**

**Mainstreet® is the Nation's Small Firm Expert. Solo Practitioners and Small Law Firms deserve special attention and get it from Mainstreet®. Most small firms are actually lower in risk than larger firms and should be paying lower premiums. Now you can make one call to compare service, policy features and price. We immediately qualify your firm and provide quotes. No long delays.**

*Insurance is written  
through PSIC/NCMIC  
Insurance Company  
Rated "A" Excellent  
by A.M. Best*

---

**800-817-6333 ext. #502**


**MAINSTREET INSURANCE PURCHASING GROUP**

1402 Third Avenue, Suite 520, Seattle WA 98101-2118  
[www.EZlawquote.com](http://www.EZlawquote.com)



# Satellite Office Helps Lawyers in South Ga

By Bonne Cella

The Satellite Office facilitated a program for the Valdosta Bar Association. New books from the State Bar's Law Practice Management department were available for members to check out. If your bar association would like help in planning a program, contact the Satellite Office at (800) 330-0446. 

Bonne Cella is the office administrator for the South Georgia office of the State Bar of Georgia.



Judge Gary McCorvey of the Tifton Judicial Circuit swears in newly admitted attorney Charles Dorminey while his parents stand at his side. The Tift County Courthouse was recently renovated and boasts state-of-the-art equipment to better serve attorneys and jurors.



The Child Advocacy Coalition committee meets at the Satellite Office in Tifton for training and board meetings. The Satellite Office also provides facilities for meetings and training for Ruth's Cottage, a shelter for abused women and children.



Georgia Legal Services held its Regional Housing Task Force meeting for their Albany, Valdosta and Waycross offices at the Satellite Office. Pictured left to right: Laura Weinstein, Gloria Johns, Jay Honeycutt, Lorie Williams, Carrie Hickman, and Aimec Jackson. Back Row: Susan Reif, Tina Haywood and Linda Graham.



## Section Activity Stays High

By Johanna B. Merrill

**O**n Sept. 29, the **Environmental Law Section** hosted a Brown Bag Luncheon series on the topic of "In-House Counsel: A Unique Perspective on Environmental Practice" at the offices of Alston & Bird LLP. The panel consisted of Ronald T. Allen, assistant general counsel-environmental for Georgia-Pacific Corporation; Seth D. Bruckner, corporate counsel for UPS, Inc.; and Anne H. Hicks, associate general counsel for Georgia Transmission Corporation.

Also on Sept. 29, the **Entertainment & Sports Law Section** hosted a lunchtime CLE event at The Food Studio in the King Plow Art Center in Atlanta, titled "Making Money the New-Fashioned Way." Noni Ellison of Turner Entertainment, Bernie Lawrence-Watkins of B. Lawrence-Watkins & Associates, PC, and Natasha Brison of 228 Management & Consulting, LLC, spoke on the topic of alternative income streams for music clients. The luncheon kicked off the section's first in a quarterly series of lunch-and-learn CLE events. On Oct. 22, the section held their annual Entertainment Law Basics Boot Camp at the Omni Hotel at CNN Center. Uwonda S. Carter and J. Martin Lett, both on the section's executive committee, were the program co-chairs for the event. Attendees earned three CLE credit hours.

The **Intellectual Property Law Section** hosted a series of roundtable discussions during the fall, the first of which was held Sept. 30 at the Bar Center in Atlanta. The Patent Committee, chaired by N. Andrew Crain, sponsored the roundtable, titled "How Should Patent Claims Be Construed?" The speakers were Mitchell G. Stockwell, Kilpatrick Stockton LLP; Jeffrey J. Toney,

### The following sections are hosting events at the 2005 Midyear Meeting:

Thursday, Jan 13

- Government Attorneys Section Breakfast
- Appellate Practice Section Luncheon
- Criminal Law Section Luncheon
- Environmental Law Section Luncheon
- Labor & Employment Law Section Luncheon

Friday, Jan. 14

- Aviation Law Section Luncheon
- Bankruptcy Law Section Luncheon, CLE and reception
- Entertainment & Sports Law Luncheon
- Family Law Section Reception
- Fiduciary Law Section Luncheon
- General Practice & Trial Section Luncheon
- Health Law Luncheon
- International Law Section Luncheon
- Taxation Law Luncheon
- School & College Law Luncheon
- Workers' Compensation Law Section Reception

Sutherland, Asbill & Brennan LLP; and Holmes J. Hawkins III, King & Spalding LLP. Dan R. Gresham of Thomas, Kayden, Horstemeyer and Risley LLP moderated.

The IP Licensing Committee, chaired by Steven Wigmore, hosted a corporate perspective and panel discussion on "Stick" Licensing on Oct. 26 at the Bar Center. Bill Hartselle (BellSouth Intellectual Property Marketing Corp.) Leo Cook (GE) and Hugh Barnhardt (Scientific-Atlanta) were the featured speakers.

On Nov. 1, the IP section's litigation committee, chaired by Arthur A. Gardner, hosted a roundtable to discuss "The New Local Patent Rules: A Roundtable Discussion with the Drafters." The panelists were Bruce W. Baber of King & Spalding LLP; Anthony B. Askew

of Kilpatrick Stockton LLP; and Patrick J. Flinn of Alston & Bird LLP. A. Shane Nichols of King & Spalding LLP moderated the discussion.

The IP Patent Committee hosted another roundtable discussion on Nov. 4 at the offices of Needle & Rosenberg in Atlanta. The topic "Effect of *Knorr-Bresme* Ruling on Advice of Counsel" was discussed by three panelists: Dale Lischer of Smith, Gambrell & Russell; Sumner Rosenberg of Needle & Rosenberg; and James Ewing of Kilpatrick Stockton, and was moderated by Tina McKeon of Needle & Rosenberg.

On Nov. 5, the **Creditors' Rights Section** held a well-attended CLE luncheon on "Avoiding Bar Complaints" at Maggiano's Little Italy Restaurant at Perimeter Mall

in Atlanta. Jonathan Hewett, senior assistant general counsel at the Bar, spoke and attendees earned one credit hour, including one ethics hour.

Plans for the Bar's 2005 Midyear Meeting are under way, and a brochure and registration form have been mailed to all Bar members. You may register for the meeting and the various section events by returning the brochure you received in the mail, or by logging onto [www.gabar.org](http://www.gabar.org) and downloading a PDF of the registration form. The 2005 Midyear Meeting is being held at the Omni Hotel at CNN Center in Atlanta, Jan. 12-15. 

**Johanna B. Merrill** is the section liaison of the State Bar of Georgia.



## Judges and Evaluators needed for Regional Competitions

### 2005 Regional Competition Cities and Dates:

Macon (2/26), Canton (2/26), Brunswick (2/19), Marietta (2/26), Decatur (2/26), Atlanta (2/19 & 2/26), Lawrenceville (2/18-19), Dalton (2/18-19), Athens (2/19), Rome (2/26), Savannah (2/25-6), Jonesboro (2/18-19), Albany (2/19), Columbus (2/26) and Douglasville (2/26)

## Judges and Evaluators With Prior High School Mock Trial Experience Needed for State Finals

Gwinnett Justice Center, Lawrenceville, March 12 & 13

### Contact the mock trial office to volunteer!

(404) 527-8779 or toll free (800) 334-6865 ext. 779  
or e-mail [mocktrial@gabar.org](mailto:mocktrial@gabar.org)

# Professionalism in the New Millennium

By W. Ray Persons

**T**he purpose of these materials is to call upon you, as members of the Bar, to recapture the values of professionalism. In the 21st century, we in the legal profession serve a public disaffected with lawyers—a public largely convinced that we have drifted away from high aims and broad visions. Critics decry the greed and selfishness they see in the practice of law. Practitioners complain about a reduction in job satisfaction. Clients complain that their lawyers give less service, while charging more. Courts accuse lawyers of being unprepared and uncivil. Most of these issues are symptoms of a greater problem: a lack of “professionalism.”

As a lawyer, you have a choice about how to deal with these issues. One choice is to ignore the call to action and wait for change to happen around you. Another, better, choice is to join the call to action. We are the heirs of a long tradition of professionalism—an inheritance that conveys responsibilities as well as honor. The challenge of reclaiming our common values is an urgent mandate for us all.

## WHAT IS PROFESSIONALISM?

Professionalism is a lofty ideal to which all lawyers should aspire, but what does it

mean? Professionalism is not comprised of a single trait or attribute, but is instead a combination of elements. These elements include: (1) ethics and integrity; (2) competence combined with independence; (3) meaningful continued learning; (4) civility; (5) obligations to the justice system; and (6) pro bono service.<sup>1</sup> Based on these elements, the following definition of professionalism is appropriate: Professionalism is an approach to the practice of law that minimizes conflict which is unnecessary for the effective representation of clients and maximizes the quality of service that the judicial system is able to provide.<sup>2</sup>

This definition suggests that conduct is not simply professional or unprofessional; rather, it is more accurately evaluated along a continuum. On the extreme left of the continuum is conduct that causes unnecessary conflict and reduces the quality of service. Such conduct is unprofessional. On the extreme right of the continuum is conduct that minimizes unnecessary conflict and maximizes the quality of service. Such conduct is the most professional. All behavior that is between these two extremes is professional to some degree. Lawyers should strive to move toward the right side of the continuum. The further to the right that one is able to move, the more his or her conduct reduces unnecessary conflict and maximizes the quality of service.<sup>3</sup>

In addition, professionalism is also what we ought to expect and demand of ourselves as lawyers. Although one's background, values, and experiences in the world may differ, one's definition of professionalism should also include a commitment to serve something larger than ourselves—justice. Because we are a profession, not merely an occupation, we should not shrink from espousing values so long as we focus on the elements of professionalism set forth above and do not



# State Bar of Georgia

*We're here for you!*

help is only a  
*call,*  
*click* or  
*e-mail*  
away.

## Law Practice Management Program

The Law Practice Management Program is a member service to help all Georgia lawyers and their employees put together the pieces of the office management puzzle. Whether you need advice on new computers or copiers, personnel issues, compensation, workflow, file organization, tickler systems, library materials or software, we have the resources and training to assist you. Feel free to browse our online forms and article collections, check out a book or videotape from our library, or learn more about our on-site management consultations and training sessions.

## Consumer Assistance Program

The Consumer Assistance Program has a dual purpose: assistance to the public and attorneys. CAP responds to inquiries from the public regarding State Bar members and assists the public through informal methods to resolve inquiries which may involve minor violations of disciplinary standards by attorneys. Assistance to attorneys is of equal importance: CAP assists attorneys as much as possible with referrals, educational materials, suggestions, solutions, advice and preventive information to help the attorney with consumer matters. The program pledges its best efforts to assist attorneys in making the practice of law more efficient, ethical and professional in nature.

## Lawyer Assistance Program

This free program provides confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems and mental or emotional impairment.

## Fee Arbitration

The Fee Arbitration program is a service to the general public and lawyers of Georgia. It provides a convenient mechanism for the resolution of fee disputes between attorneys and clients. The actual arbitration is a hearing conducted by two experienced attorneys and one non-lawyer citizen. Like judges, they hear the arguments on both sides and decide the outcome of the dispute. Arbitration is impartial and usually less expensive than going to court.

404.527.8700 › 800.334.6865 › [www.gabar.org](http://www.gabar.org)



become self-righteous or attempt to prescribe wholly private conduct.<sup>4</sup>

We, as lawyers, must also back up what we say with what we do. We are being watched. Our actions convey our values to each other and to members of the general public, who logically believe our profession is entitled to no greater respect than we ourselves show it.<sup>5</sup> Our task must be to speak up when a fellow lawyer brings core values into disrepute. By doing so, and by incorporating the elements of professionalism into our daily lives, we can rekindle the embers of professionalism in the new millennium.

## WHAT HAS CAUSED THE EROSION OF PROFESSIONALISM?

Most of us are proud and honored to be lawyers. However, we must still be concerned with how lawyers act and how the public perceives us as a group. Anti-lawyer attitudes have existed since biblical days, "Woe unto you also, ye lawyers! For ye lade men with burdens grievous to be borne. . . ."<sup>6</sup> In addition, Shakespeare secured his immortality jeering lawyers' conduct: "First thing we do, let's kill all the lawyers."<sup>7</sup>

What has created this displeasure with the legal profession? The short answer is that there is a deficit or flaw of positive moral values in our profession. This deficit undermines the practice of law as a learned profession and, if not eliminated, may put our services in the category of not better than commercial "consulting."<sup>8</sup>

The deficit of positive moral values has grown over time for many reasons. First, many lawyers have erroneously presumed absolute and perpetual security in their

right to practice law as an exclusive group.<sup>9</sup> This presumption has cultivated a climate of complacency where negative forces and attitudes have become more common. Those negative forces and attitudes translate into incivility and a lack of respect by lawyers in their dealings with each other, the legal system, and the public.

As a group, lawyers have become preoccupied with the commercial, profit-related aspects of legal practice. Many lawyers have forgotten that our duty is to protect and foster the rule of law and, above all, to be of service within the bounds of the law.<sup>10</sup> Because of and in reaction to this forgetfulness, the great majority of citizens of this country do not respect lawyers. Our services are generally too expensive for the "rank and file."<sup>11</sup> Even lawyers have been heard to say that they could not afford to hire their own law firms.

Another reason for the deficit of positive moral values in the legal profession results from a lawyer putting the client's interest ahead of his or her own commitment to the law and public responsibilities.<sup>12</sup> Lawyers, as members of a profession, have an obligation to serve both clients and the community as a whole. Commercialization of law practice, however, has introduced an element of competitiveness that has caused many lawyers to shun their public responsibilities in favor of appealing to the self-interest of paying clients.

Regrettably, many lawyers have lost sight of the law as a public calling. For example, we have all encountered negative experiences with members of our profession who continue to engage in a "win at all costs" approach. In a litigation context, they are the ones who

fail to act in a civil manner in granting reasonable extensions, who aggressively pursue intellectually dishonest arguments or who set forth theories of the case in their pleadings which are, from the outset, not supported by the facts or by any present or reasonable extension of the law. In the transactional context, these lawyers take unreasonable positions in negotiations and utilize drafting chicanery to create an unfair document, which may not accurately reflect the transaction negotiated and understood by the other parties.

There are other causes for the current lack of professionalism, including, but not limited to, the electronic age—television, facsimiles, and e-mail. Consider the impact of the electronic age on our daily lives and in the practice of law. If we did not have television, would the public be so painfully aware of the lengths to which some lawyers go to conceal the truth, mislead their opponents, and manipulate the system? If we did not have e-mail and facsimiles, would we be expected to make instant decisions and provide instantaneous responses to queries and demands from clients and other lawyers, oftentimes without giving the issues due consideration and judgment? Only 10 years ago, there was no e-mail and the facsimile was not widely used. Yet, both are now "weapons" in the arsenal of the unprofessional lawyer.

So, what is to be done? The ideas and proposals set out in these materials are not novel. Simply put, we need to reweave the fiber of morality and service into the foundation of every lawyer's mission in the practice of law. This must be done through education of law students and lawyers, mentoring, and by

peer pressure which insists on respect for other lawyers, clients, the judicial system, and the public.

## HOW IS LEGAL ETHICS DIFFERENT FROM PROFESSIONALISM?

The basic distinction between the rules of ethics and professionalism is that ethics tells us what we *must* do and professionalism teaches us what we *should* do. Stated another way, professionalism can be described as living by the “Golden Rule” or what we should have learned in kindergarten.

Traditionally, the definition of legal ethics included what is currently defined as “professionalism.”<sup>13</sup> For example, many scholars believed that legal ethics should encompass more than just adherence to the original Canons of Professional Ethics, which were adopted by the American Bar Association (ABA) in 1908.<sup>14</sup> They believed that we must aspire to a higher, less easily defined standard: “To maintain the position to which our traditions, our training, and our duties and responsibilities entitle us, we lawyers must live and act in the way which we know is right, irrespective of statutes, court decisions, canons of ethics, and disbarment proceedings.”<sup>15</sup>

The original ABA Model Canons of Ethics were later modified into the ABA Model Code of Professional Responsibility in 1969.<sup>16</sup> The Model Code was comprised of three distinct sections, specifically: (1) the canons of ethics, which were general standards of conduct; (2) ethical considerations, which were aspirational in nature; and (3) disciplinary rules, which were mandatory.<sup>17</sup> Thus, the 1969

Model Code included aspirational tenets such as E.C. 9-6, which stated that one:

owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; . . . to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar . . . ; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public. . . .<sup>18</sup>

Unfortunately, these aspirational ethical considerations were deleted in 1983 when the ABA adopted the Model Rules of Professional Conduct.<sup>19</sup> The current Model Rules of Professional Conduct include some aspirational provisions, but generally set standards for invoking lawyer discipline.<sup>20</sup> As a result, many lawyers appear to rely exclusively on disciplinary standards in charting their course of conduct. They fail to consider whether their conduct, albeit ethical, aspires to a higher standard and embodies elements of professionalism.

The problem that has evolved with the current rules is that they seemingly create minimum standards that have come to be regarded as the maximum statement of the prevailing ethical level. For example, the rules are often viewed in the way that some people view the Internal Revenue Service, that is, how far can I push the envelope without actually violating a regulation? This viewpoint does not enhance a strong, professional commitment to ethics.<sup>21</sup>

In response to concerns about the erosion of professionalism, the

ABA adopted a Lawyer’s Creed of Professionalism (Model Creed) in 1988.<sup>22</sup> Its purpose is to provide a format for professional conduct in all aspects of a lawyer’s life. The Model Creed does not state new rules and contains nothing difficult to understand, agree with, or emulate. Rather, it focuses on the lawyer’s varying duties to clients, other parties and lawyers, courts, and the public.

In 1989, the Georgia Supreme Court launched the Chief Justice’s Commission on Professionalism and developed its own Lawyer’s Creed and Aspirational Statement on Professionalism.<sup>23</sup> Like the Model Creed, the Georgia Lawyer’s Creed sets forth the professional conduct expected of lawyers. Although neither creed is mandatory and violation cannot give rise to disciplinary sanctions, lawyers must strive to meet the aspirational goals of each if we are to resurrect professionalism in the new millennium. Strict adherence to rules alone, without considering what is right and just, simply misses the mark of professionalism.

## CHARTING A COURSE FOR PROFESSIONALISM

It is axiomatic that the first step in charting a course for professionalism begins with self-examination. By recognizing possible deficiencies in our own professional conduct, we can prepare to rectify the same.

### Do you have a problem with professionalism?

So, how do you know if you act unprofessionally? How do you change? You must start by understanding yourself. Have you lis-

# A Lawyer's Creed

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will 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.

## Aspirational Statement

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar's efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court's hope that Georgia's lawyers, judges, and legal educators will use the following aspirational ideals to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools, with each group working independently, but also jointly in that effort.

## General Aspirational Ideals

As a lawyer, I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before selfish interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.
- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.
- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- (i) To practice law not as a business, but as a calling in the spirit of public service.

## Specific Aspirational Ideals

As to clients, I will aspire:

- (a) To expeditious and economical achievement of all client objectives.
- (b) To fully informed client decision-making. As a professional, I should:
  - (1) Counsel clients about all forms of dispute resolution;
  - (2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
  - (3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
  - (4) Communicate promptly and clearly with clients; and,
  - (5) Reach clear agreements with clients concerning the nature of the representation.
- (c) To fair and equitable fee agreements. As a professional, I should:
  - (1) Discuss alternative methods of charging fees with all clients;
  - (2) Offer fee arrangements that reflect the true value of the services rendered;
  - (3) Reach agreements with clients as early in the relationship as possible;
  - (4) Determine the amount of fees by consideration of many factors and not just time spent by the attorney;
  - (5) Provide written agreements as to all fee arrangements; and
  - (6) Resolve all fee disputes through the arbitration methods provided by the State Bar of Georgia.

- (d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients that is the purpose of these obligations.

As to opposing parties and their counsel, I will aspire:

- (a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:
  - (1) Notify opposing counsel in a timely fashion of any cancelled appearance;
  - (2) Grant reasonable requests for extensions or scheduling changes; and,
  - (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.
- (b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:
  - (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
  - (2) Be courteous and civil in all communications;
  - (3) Respond promptly to all requests by opposing counsel;
  - (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
  - (5) Prepare documents that accurately reflect the agreement of all parties; and
  - (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

As to the courts, other tribunals, and to those who assist them, I will aspire:

- (a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:
  - (1) Avoid non-essential litigation and non-essential pleading in litigation;
  - (2) Explore the possibilities of settlement of all litigated matters;
  - (3) Seek non-coerced agreement between the parties on procedural and discovery matters;
  - (4) Avoid all delays not dictated by a competent presentation of a client's claims;
  - (5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
  - (6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.
- (b) To model for others the respect due to our courts. As a professional I should:
  - (1) Act with complete honesty;
  - (2) Know court rules and procedures;
  - (3) Give appropriate deference to court rulings;
  - (4) Avoid undue familiarity with members of the judiciary;

- (5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
- (6) Show respect by attire and demeanor;
- (7) Assist the judiciary in determining the applicable law; and,
- (8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

As to my colleagues in the practice of law, I will aspire:

- (a) To recognize and to develop our interdependence;
- (b) To respect the needs of others, especially the need to develop as a whole person; and,
- (c) To assist my colleagues become better people in the practice of law and to accept their assistance offered to me.

As to our profession, I will aspire:

- (a) To improve the practice of law. As a professional, I should:
  - (1) Assist in continuing legal education efforts;
  - (2) Assist in organized bar activities; and,
  - (3) Assist law schools in the education of our future lawyers.
- (b) To protect the public from incompetent or other wrongful lawyering. As a professional, I should:
  - (1) Assist in bar admissions activities;
  - (2) Report violations of ethical regulations by fellow lawyers; and,
  - (3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

As to the public and our systems of justice, I will aspire:

- (a) To counsel clients about the moral and social consequences of their conduct.
- (b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.
- (c) To provide the pro bono representation that is necessary to make our system of justice available to all.
- (d) To support organizations that provide pro bono representation to indigent clients.
- (e) To improve our laws and legal system by, for example:
  - (1) Serving as a public official;
  - (2) Assisting in the education of the public concerning our laws and legal system;
  - (3) Commenting publicly upon our laws; and,
  - (4) Using other appropriate methods of effecting positive change in our laws and legal system.



tened to your voice recently? Others do all day long. How does it sound to them? How do you treat others—your friends, family, associates, professional assistants, clients, and others with whom you come in contact? Do you talk down to them? Are you impatient? Do you listen? Are you responsive? Do you treat others as you would have them treat you? List what you believe to be your strengths and weaknesses and then seek comments from others. If you “know thyself,” you can build on your strengths while working to change your weaknesses.

## The Six Elements of Professionalism

To rebuild professionalism, lawyers must implement six elements of professionalism consistently and holistically in their daily lives. These calls for adherence to high standards of professionalism are not new. Such calls have been ritualistically invoked as staples of bar rhetoric. However, in this highly commercialized, bottom-line-oriented age, rhetoric is not enough. We must take professionalism seriously and act to make it a constant presence in practice.

### *Ethics and Integrity*

The first element is ethics and integrity. This area is both the most fundamental tenet of professionalism and the most challenging. Lawyers must adhere to ethical principles in order to preserve the legal practice as a profession, and not merely a business. The premier ethical principle is honesty. This principle includes accuracy in advocacy in court and elsewhere, when interpreting precedent and when relaying factual information. An inextricable corollary is that a

lawyer must decline all invitations or excuses to violate the rule of honesty. Remember, you have only one chance to make a good first impression. Your reputation for veracity and truthfulness can be your greatest quality.

Related moral concepts, such as enlargement of autonomy, good faith in dealings, truth seeking, full disclosure, reasonable limits on adversarial conduct, and adherence to public interest are not static concepts but are a part of an evolutionary process that measure our profession's moral growth. In a recent exercise by the ABA Section of Litigation, a varied group of lawyers studied a series of real cases in some of the nation's most profitable and prestigious law firms. Largely, the conduct of the lawyers involved could not be said to have violated the relevant ethical codes. However, when viewed as part of a broader landscape, beyond the strict rules, the lawyers' conduct often tended toward counter-ethical modes such as suppression of truth, hyper-aggression, incivility, and sharp practice.<sup>24</sup>

Such conduct was blamed on: (a) the adversary norm; (b) fierce competition and resulting insecurities; (c) a firm culture of transient loyalties and weak leadership; and (d) a reward system that diminishes the counseling function, disfavors sensitivity to ethics and invokes pragmatism as a rationale to bypass morality.<sup>25</sup> Whatever the rationale, the actions are disturbing. Lawyers must face these professional failings forthrightly. What is needed is dedication to an ethical mode of practice and to a view of professional values that encompasses not only how a lawyer *must* practice, but also how a professional *should* practice.

## *The Need to Be Competent*

The second element of professionalism is competence, which must include independence in judgment and advice. Competence goes beyond developing and honing skills in particular practice areas. It should also involve an efficient allocation of resources. It is fair to characterize the present state of the new millennium as one where there is a shortage of resources and an enlargement of demands to satisfy individual, public, and social interests.<sup>26</sup> Therefore, a difficult quest for professionalism is the efficient management of resources without compromise of fundamental standards.<sup>27</sup> Despite this difficult task, lawyers must strive to achieve both.

Yet another aspect of professional competence is practical wisdom. Such wisdom is a virtue that can be shaped by training and education. In addition, practical wisdom calls for a broad comprehension of values that society cherishes, an understanding of human beings, and a mature perspective. Personal relationships lie at the heart of the work that lawyers do. Despite our vast technological advances, the human dimension remains constant. Not surprisingly, “[i]t is usually the well-rounded, culturally attuned, broad-gauged professional who earns client confidence . . . because that lawyer provides practical wisdom.”<sup>28</sup>

Competence also includes rendering independent judgment and advice. Many lawyers, however, act zealously to gain or retain a client and allow the desire for economic gain and the culture of the marketplace to override their independent judgment. “The lawyer who uses his relationship with a client to act within the spirit of the law, and not

just within its technical letter, is a professional. The lawyer who assists a client to achieve a socially undesirable result, while staying within the letter of the law, is nothing more than a hired gun.”<sup>29</sup> Lawyers should cringe at the notion of being a “hired gun,” as it is inconsistent with professionalism.

Of course, it is not always easy to render independent advice. It is a task that involves a constant struggle with the relentless natural forces of economic self-interest. Nonetheless, lawyers must not allow the value of a particular fee to exceed the value of independent judgment if we are to rebuild professionalism in the new millennium.

### ***Meaningful Continued Learning***

The third element of professionalism is meaningful continued learning. The theory is that by requiring lawyers to attend authorized courses for a specified number of hours each year, we will be informed of recent developments in the law and reminded of the principles of ethics and professionalism. Indeed, the Georgia Supreme Court entered an order effective Jan. 1, 1990, requiring each active, non-exempt member of the State Bar of Georgia to attend at least one hour per year of continuing legal education (CLE) on the topic of professionalism. This mandatory CLE professionalism requirement was the first of its kind in the nation.<sup>30</sup> The Georgia Supreme Court must be commended for its promotion of professionalism. However, the one-hour CLE requirement has failed to assuage complaints regarding lawyers’ lack of professionalism.

The good news is that organizations exist which have as their primary goal the mentoring of young

lawyers and the fostering of professionalism. For example, the American Inns of Court provide the opportunity for new and experienced lawyers to enhance their practical education about practicing law. In addition, less experienced lawyers are mentored by experienced lawyers and judges regarding civility, professionalism, and proficiency. This educational process, whether derived from an organized setting or not, must continue throughout a lawyer’s life in order to reestablish professionalism as the standard rather than the exception.

### ***Civility***

The fourth element of professionalism is civility. Although this term is defined in many ways, it means respect for your opponent, your client, the court, and others. It has been said that a nation’s laws are an expression of its people’s highest ideals.<sup>31</sup> Regrettably, the conduct of our nation’s lawyers has sometimes been an expression of the lowest. Increasingly, lawyers complain of a growing incivility in the profession and a professional environment in which hostility, selfishness, and a win-at-all-costs mentality are prevalent.

#### ***Lawyers’ Duties to Other Counsel***

When lawyers themselves generate conflict, rather than addressing the dispute between the parties they represent, it undermines our adversarial system and erodes the public’s confidence in the justice system.<sup>32</sup> One might argue that we have lost sight of a fundamental attribute of our profession, one that Shakespeare described in *The Taming of the Shrew*. Adversaries in law, he wrote, “strive mightily, but eat and drink as friends.”<sup>33</sup> However, in the new millennium, we tend to speak of our dealings

with other lawyers as war and, too often, act accordingly. Consider the language that lawyers use often to describe their everyday experiences:

- b “I attacked every weak point in their argument.”
- b “I demolished his/her position.”
- b “I shot down each of their contentions.”

One need not envision litigation as war, argument as battle, or trial as siege. Indeed, ranting and raving do little to convince. A more persuasive technique is to present yourself as a reasonable person who wants to see justice done.

The most common objection to incivility is that acting courteously will somehow diminish zealous advocacy for the client. To the contrary, zeal does not require rudeness. In reality, incivility is a disservice to the client because it wastes time and energy—time that is billed at hundreds of dollars an hour and energy that is better spent working on the client’s case than working over the opponent. It is enough for the ideas and contentions of the parties to clash; it is wasteful and self-defeating for the lawyers to do so as well.<sup>34</sup>

#### ***Lawyers’ Duties to Clients***

Each year, thousands of people call the State Bar to complain about lawyers. Many complaints stem from a lawyer’s relationship with the client and have nothing to do with disciplinary violations. Clients complain that their lawyers don’t return telephone calls, don’t keep them informed about their case, or don’t involve them in key decisions. In short, the relationship between lawyer and client has become a significant source of aggravation for both and the basis of public dissatisfaction with lawyers.

Like medicine, law is a service profession. Our clients must feel

# A Lawyer's Creed of Professionalism of the ABA Tort Trial & Insurance Practice Section

## A. With respect to my client:

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;
2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;
3. In appropriate cases, I will counsel my client with respect to mediation, arbitration and other alternative methods of resolving disputes;
4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended to delay resolution of the matter or to harass or drain the financial resources of the opposing party;
5. I will advise my client that civility and courtesy are not to be equated with weakness;
6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

## B. With respect to opposing parties and their counsel:

1. I will endeavor to be courteous and civil, both in oral and in written communications;
2. I will not knowingly make statements of fact or of law that are untrue;
3. In litigation proceedings I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before re-scheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;
5. I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;
6. I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;
7. I will refrain from utilizing delaying tactics;
8. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;
9. I will not serve motions and pleadings on the other party, or his counsel, at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;
10. In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;
11. I will clearly identify, for other counsel or parties, all changes that I have made in documents submitted to me for review.

## C. With respect to the courts and other tribunals:

1. I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;
2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;
3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit or are superfluous;
4. I will refrain from filing frivolous motions;
5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;
6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and, if appropriate, the court (or other tribunal) as early as possible;
8. Before dates for hearings or trials are set -- or, if that is not feasible, immediately after such dates have been set -- I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;
9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;
10. I will endeavor to be punctual in attending court hearings, conferences and depositions;
11. I will at all times be candid with the court.

## D. With respect to the public and to our system of justice:

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
2. I will endeavor to keep myself current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;
3. I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers of any disciplinary rule;
4. I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and contents of advertising;
5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

that they are a part of the process, not extraneous to it. They must feel that their needs and desires are being heard and understood. When their requests are unreasonable, they must be told why. Fundamentally, it is a bottom-line issue: Lawyers who deliver better service will have more satisfied clients, get more business, and have a more successful practice.

To improve civility toward clients, establish a policy that you will return every phone call within 24 hours. If you are in trial or out of the office, make certain that someone on your staff who is familiar with the case returns the client's call within 24 hours. You should also return the call as soon as you return to the office. Remember that to each client, his or her case is the most important case in your office. In addition, be firm in advising what is in the client's best interest, and do not be influenced by the client's ability or willingness to pay.

#### *Lawyers' Duties to the Court*

More often than not, a lawyer who maintains professional standards at all times can avoid conflict and incivility toward nearly any judge. Lawyers can build a cooperative and professional relationship with the court by adhering to the following list of 10 "dos and don'ts."<sup>35</sup>

##### 1) Learn about your judge

You should learn everything that you appropriately can about the judge assigned to your case. Most of the information you gather about a judge will assist you in fashioning a litigation strategy, selecting points to emphasize, and determining what should be left to the court's previous experience and knowledge. In turn, this will assist you in getting along with the judge, who will appreciate your

preparedness. Learning all you can about a judge serves the dual purpose of advancing your client's interests while reducing the risk that you may inadvertently cause some difficulty with the judge.

##### 2) Don't recuse—you may lose

After investigating your judge, you may conclude that you would be better off if opposing counsel were deciding the case. If so, your first instinct may be to remove the judge from the case. Because disqualification is usually not readily available, consider the impact on your case if you attempt to remove the judge and fail. While most judges realize that there may be sound reasons for seeking removal, others may view the attempt to remove as a comment on their qualifications and abilities.

##### 3) Don't blow it by misstating the facts or the law

This is one of the easiest ways to cross a judge. Remember that you are an officer of the court and owe it a duty of candor. Keep this truth in mind, and never stray from it. Nothing is more difficult to acquire than a reputation for competence, and nothing is easier to lose.

##### 4) Don't assume this is the last time you will see this judge

It is a small world. A lawyer's reputation, good or bad, will arrive in court first, more often than you might expect. The same judge may try your future cases or hear future cases on appeal. Word gets around. A mistake before one judge, particularly a misstatement of fact or law, may precede you before other judges.

##### 5) Do listen, listen, listen

Many judges give hints about their concerns or leanings regarding the issues during oral arguments or conferences. From these comments, you can deduce the judge's thought process and determine how to proceed.

##### 6) Don't rattle your saber at the artillery

It is always a misguided tactic to mention the possibility of appeal or a collateral, preemptive suit in a not-very-subtle effort to bully a judge into a favorable ruling. Saber rattling only strengthens the resolve of the judge and usually guarantees the very result that the lawyer hopes to avoid.

##### 7) Do preserve your record

While threatening the judge with an appeal is misguided and ineffective, lawyers owe their clients a duty to act reasonably in protection of the record in the event an appeal becomes necessary. Protecting the record need not offend. Handle issues routinely and politely. For example, if a court sustains an objection to documentary evidence, simply say, "Thank you, Your Honor." After displaying such courtesy and confidence, retain the original copy of the exhibit bearing the official identification marking. Later during the trial, ask the court, out of the presence of the jury, to receive the document as a court exhibit. In the event that the admissibility of the document arises in a post-trial motion or on appeal, you have preserved the record.

##### 8) Don't let it get to you

An adverse ruling is not a comment on you or your client. Don't let an unfavorable ruling provoke an angry response. If you react emotionally to an adverse ruling, as though it were directed at you personally, you may invite a similar response from the court. In your anger, you may think the court is being difficult. In reality, you will be asking for it. Reacting to a judge's ruling as a personal attack is counterproductive with the court, can be fatal with a jury, and



is not conducive to your being able to move on with resourcefulness and ingenuity to advance your client's interests.

9) Don't check your sense of humor at the door

No one expects a lawsuit to be fun, but there is no reason to get so at odds with the court or other counsel that you cannot derive enjoyment and satisfaction from your chosen profession. Consider this example: A judge was concerned that the relative skill of counsel, rather than the merits of the case, was going to determine the outcome of the trial. Therefore, the judge began questioning the less experienced lawyer's witness from the bench and said to the inexperienced lawyer, "I hope you don't mind, counsel, if I get involved this way?" The inexperienced counsel replied, "Oh, I don't mind if you help me try my case, Your Honor. It's that you might lose it for me that is my concern!" This kind of light-hearted approach to what might have become a difficult situation between judge and lawyer can go a long way toward getting along with the court.

10) Don't let your conduct provoke a difficult situation

This final rule brings together all the others. Despite the simplicity of these "dos and don'ts," many lawyers invite unnecessary difficulty with the court by simply ignoring them. By following these common-sense principles, a lawyer can reduce, if not eliminate, difficulties in getting along with the court.

*Lawyers' Duties toward Others*

Your law degree and law license establish that you have the right to practice law. They do not establish that you are better than anyone else or that you are due any more

respect than others. Be humble with the fact that you have been able to join the legal profession, but always remember that people who work in your law office, in the clerk of court's office, and throughout the community deserve your utmost respect and courtesy. Always remember that your attitude and the way you treat people can have a great impact on your career. In short, the people who work for and with you can "make you or break you."

Lawyers, as officers of the court, should be problem-solvers, harmonizers, and peacemakers—the healers, not the promoters, of conflict.<sup>36</sup> Therefore, the next time you are faced with incivility, I challenge you to take the high road and maintain the most professional manner you can. When judges, juries, and clients observe civility in response to incivility, civility wins every time.

***Obligations to the Justice System***

The fifth element of professionalism is a commitment to justice and the rule of law. Justice protects liberty and human rights; it advances equality, fairness, and a civil society.<sup>37</sup> Justice is the fundamental end of a democratic society. Lawyers, as custodians of the justice system, must be committed to the principle of equal access to justice. We all know that access to a lawyer can make the difference between some measure of justice and no justice at all.

The truth is that most poor people have no access to our system of justice. For millions of Americans, this is a country where citizens are entitled to all the justice money can buy—no money, no justice. When vast numbers of citizens are

excluded from our legal system, the quality of justice can only be assessed as unacceptably low. This conclusion cannot be avoided by pointing to how well we deliver services to our paying clients.

So, what can lawyers do to equalize access to the legal system? First, we must contribute financially to our state or local legal services office. If broad-based contribution were achieved, only a modest contribution by individual lawyers would be necessary. Funding would continue to come primarily from Congress through the Legal Services Corporation and from local sources of funding such as a percentage of interest accrued on lawyers' trust accounts.

Second, lawyers must participate in pro bono service. Many individuals do not qualify for free legal service from state or local legal services offices because their income exceeds ceilings imposed by those organizations. These individuals are often caught between a rock and a hard place because they make too much money to qualify for free legal services, yet they cannot afford to hire a lawyer. Lawyers must intervene out of concern for equal justice to all and devote their time to servicing such pro bono clients. This topic is discussed more fully below.

***Pro Bono Service***

The sixth element of professionalism is pro bono service. Lawyers should not distinguish the responsibility to serve the public from other professional responsibilities. We should accept it as an integral part of being a lawyer. Certainly, life as a lawyer in the new millennium is more complex than it was a century ago. The ever-increasing pressures of the legal marketplace,

the need to bill hours, to market clients, and to attend to the bottom line have made fulfilling the responsibilities of community service quite difficult. However, lawyers must be mindful that the law is a “public calling,” which entails a duty to serve the good of the community as a whole and not simply one’s own clients.<sup>38</sup>


Why, then, do some lawyers shun pro bono service? The most obvious reason is the pursuit of economic success. When lawyers accept additional fee-paying clients, it necessarily means that he or she will have less time to devote to other fee-paying clients. Nonetheless, we will accept as many additional fee-paying clients as we can competently serve. We do not consider each additional paying client to be an imposition on other paying clients, yet we view the non-paying client as a great imposition. Despite the possibility that pro bono service compromises profits, we must accept—and expect—that ethical duties may have this effect.

Author Harper Lee, in her famous novel, *To Kill a Mockingbird*, gave us Atticus Finch as a shining example of professionalism and pro bono service. Atticus accepted the appointment to represent Tom Robinson, a poor man who was wrongly accused of raping a woman in rural Alabama in the 1930s. The acceptance of this criminal case was a very unpopular decision among many of Atticus’ friends and fellow citizens. Atticus’ pro bono service was the right thing to do in 1935 in Maycomb County, Ala., just as pro bono service is the right thing to do in the new millennium.

Lawyers should devote time to pro bono work not only because it is our public duty, but also because

servicing pro bono clients is memorable and satisfying. Servicing pro bono clients will make you a better lawyer—one with heart who takes responsibility for “[e]nsuring that there is, indeed, ‘equal justice under the law’—not just for the wealthy, but for the poor, the disadvantaged, and the disenfranchised. . . .”<sup>39</sup> In addition, you will find that “doing good while doing well” will bring meaning and joy to your professional life.

## Conclusion

There is no single solution for lack of professionalism in the new millennium. The problem is complex and long-standing, having developed over many years and resulting in part from societal change extraneous to the practice of law. It will take the combined effort of the organized bar and the judiciary to restore the honor, integrity, and respect that were once the hallmark of our most noble profession. Each of you will be a part of the solution or the problem. The decision is yours. Which will it be? 



**W. Ray Persons** is a partner at King & Spalding in Atlanta and a graduate of The Ohio State University School of Law. This paper was presented at a meeting of the American Board of Trial Advocates.

## Endnotes

1. Jerome J. Shestack, *Taking Professionalism Seriously*, A.B.A. J., Aug. 1998, at 70.
2. Hon. David A. Demers, *The Continuum of Professionalism*, 28 Stetson L. Rev. 319, 319 (1998).
3. *Id.*
4. Donald L. Burnett, Jr., *Professionalism: Restoring the Flame*, 42 Sep. 1999, at 10.

5. *Id.*
6. Luke 11:46.
7. William Shakespeare, *The Second Part of King Henry the Sixth*, act 4, sc. 2.
8. Douglas S. Lang, *Professionalism and Civility: Is it Time For a Different Approach?*, 63 Tex. B.J. 552, 552 (2000).
9. *Id.* at 553.
10. *Id.*
11. *Id.*
12. Roger C. Cramton, *On Giving Meaning to A Professionalism*, in *Teaching and Learning Professionalism* 7, 24 (1997).
13. See generally Henry S. Drinker, *Legal Ethics* (1953).
14. See *Id.* at 3.
15. *Id.* at 4.
16. See Model Code of Professional Responsibility EC 9-6 (1969).
17. See Drinker, *supra* note 13, at 72.
18. Model Code of Professional Responsibility E.C. 9-6 (1969).
19. See Model Rules of Professional Conduct (1983).
20. *Id.*
21. Shestack, *supra* note 1, at 72.
22. See Appendix A.
23. See Appendix B.
24. Shestack, *supra* note 1, at 72.
25. *Id.*
26. *Id.* at 73.
27. *Id.*
28. *Id.*
29. *Id.*
30. See [www.gabar.org](http://www.gabar.org).
31. Hon. Sandra Day O'Connor, *Professionalism*, 78 Or. L. Rev. 385, 387 (1999).
32. *Id.* at 386.
33. William Shakespeare, *The Taming of the Shrew*, act V, sc 2.
34. O'Connor, *supra* note 34, at 389.
35. See James S. Simonson, *Don't Make it Fun to Rule Against You*, published in *Litigation*, Vol. 23, No. 1, Fall 1996.
36. Hon. Warren E. Burger, *The Decline of Professionalism*, 63 Fordham L. Rev. 949, 953 (1995).
37. Jerome J. Shestack, *Pursuit of the Good Life in Professionalism*, 28 Stetson L. Rev. 271, 272 (1998).
38. See Anthony T. Kronman, *Professionalism*, 2 J. Inst. for Study Legal Ethics 89, 90 (1999).
39. *Id.*

# In Memoriam

**T**he Lawyers Foundation Inc. of Georgia sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 104 Marietta St. NW, Suite 630, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible.

**Joe Callaway Crumbley**

Jonesboro, Ga.  
Admitted 1963  
Died October 2004

**James E. Findley**

Collins, Ga.  
Admitted 1951  
Died May 2004

**James Eugene Greene**

Cartersville, Ga.  
Admitted 1975  
Died December 2003

**Fred M. Hasty**

Macon, Ga.  
Admitted 1958  
Died May 2004

**Paulette C. Reilly**

Palm Beach Gardens, Fla.  
Admitted 1979  
Died September 2004

**P. Allen Schwartz**

Marietta, Ga.  
Admitted 1978  
Died October 2004

**Bernadette M. Smith**

Atlanta, Ga.  
Admitted 1974  
Died October 2004

**Kenneth Stone**

Roswell, Ga.  
Admitted 1997  
Died January 2004

**Monique Suzanne Young**

Atlanta, Ga.  
Admitted 1995  
Died July 2004



**Lawyers Foundation  
of Georgia Inc.**

104 Marietta St. NW  
Suite 630  
Atlanta, GA 30303

P: (404) 659-6867  
F: (404) 225-5041

**Memorial Gifts**

The Lawyers Foundation of Georgia furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia.

A meaningful way to honor a loved one or to commemorate a special occasion is through a tribute and memorial gift to the Lawyers Foundation of Georgia. An expression of sympathy or a celebration of a family event that takes the form of a gift to the Lawyers Foundation of Georgia provides a lasting remembrance. Once a gift is received, a written acknowledgement is sent to the contributor, the surviving spouse or other family member, and the *Georgia Bar Journal*.

**Information**

For information regarding the placement of a memorial, please contact the Lawyers Foundation of Georgia at (404) 659-6867 or 104 Marietta St. NW, Suite 630, Atlanta, GA 30303.

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.

## December 2004

1

LORMAN BUSINESS CENTER, INC.  
*Employment Law From A to Z*  
Atlanta, Ga.  
6.7 CLE

2

ICLE  
*Recent Developments*  
GPTV Video Replay  
6 CLE

ICLE  
*White-Collar Crime*  
Atlanta, Ga.  
6 CLE

NBI, INC.  
*Basic Bankruptcy Litigation in Georgia*  
Atlanta, Ga.  
6 CLE including 0.5 Ethics and 6.0 Trial

LORMAN BUSINESS CENTER  
*Judgment Enforcement*  
Atlanta, Ga.  
6 CLE

2-3

ICLE  
*Corporate Counsel Institute*  
Atlanta, Ga.  
12 CLE

3

ICLE  
*Landlord and Tenant Law*  
Atlanta, Ga.  
6 CLE

ICLE  
*Trial Advocacy*  
Atlanta and GPTV Statewide  
6 CLE

ICLE  
*Section 1983 Litigation*  
Atlanta, Ga.  
6 CLE

NBI, INC.  
*Handling Medical Negligence Cases in Georgia*  
Atlanta, Ga.  
6 CLE with 0.5 Ethics

SOUTH CAROLINA TRIAL LAWYERS ASSOCIATION  
*SCTLA 2004 Tort XXVII Seminar*  
Atlanta, Ga.  
10.0 CLE with 2.0 Ethics

6

NBI, INC.  
*Georgia Land Use: Current Issues in Subdivision, Annexation and Zoning*  
Atlanta, Ga.  
6 CLE

9

ICLE  
*Trial Advocacy*  
GPTV Replay  
6 CLE

ICLE  
*Laying Evidentiary Foundations*  
Atlanta, Ga.  
6 CLE

ICLE  
*Taxation and the Georgia DOR*  
Atlanta, Ga.  
6 CLE

PROSECUTING ATTORNEYS' COUNCIL OF GA  
*New DA and SG Workshop*  
Atlanta, Ga.  
14.8 CLE with 2.5 Trial

NBI, Inc.  
*Handling Georgia Divorce Cases from Start to Finish*  
Atlanta, Ga.  
6 CLE with 0.5 Ethics

LORMAN BUSINESS CENTER, INC.  
*Bankruptcy: A Creditor's Perspective*  
Atlanta, Ga.  
6.7 CLE

LORMAN BUSINESS CENTER, INC.  
*Advanced Partnerships, LLCs and LLPs*  
Atlanta, Ga.  
6.7 CLE

LORMAN BUSINESS CENTER, INC.  
*New Rules and Issues Affecting Georgia Construction Litigation*  
Atlanta, Ga.  
6.7 CLE with 0.5 Ethics

10

ICLE  
*Georgia Tort Law*  
Atlanta, Ga.  
6 CLE



ICLE

*Taking Expert Depositions*

Atlanta, Ga.

6 CLE

ICLE

*Basic Fiduciary Practice*

Atlanta and GPTV Statewide

6 CLE

PRACTISING LAW INSTITUTE

*Drafting Corporate Agreements*

Atlanta, Ga.

6.3 CLE with 1 Ethics

NBI, Inc.

*Limited Liability Company Updates in Georgia*

Atlanta, Ga.

6.7 CLE with 0.5 Ethics

NBI, Inc.

*Strategies for Overcoming Property Tax Law Challenges in Georgia*

Atlanta, Ga.

3 CLE

AMERICAN ARBITRATION ASSOCIATION

*ACE-Arbitrator Ethics & Disclosures*

Atlanta, Ga.

2.5 CLE

LORMAN BUSINESS CENTER, INC.

*Document Retention and Destruction*

Athens, Ga.

6.7 CLE

LORMAN BUSINESS CENTER, INC.

*Basic Worker's Compensation*

Atlanta, Ga.

6 CLE

13

NBI, INC.

*An Advanced Look at Georgia Real Estate Law*

Atlanta, Ga.

6.7 CLE with 0.5 Ethics

14

NBI, INC.

*Georgia Estate Planning and Drafting Fundamentals*

Atlanta, Ga.

6 CLE with 0.5 Ethics

LORMAN BUSINESS CENTER, INC.

*The Nuts and Bolts of IRAs, Roth IRAs and Other Retirement Accounts*

Atlanta, Ga.

6.7 CLE

14-15

ICLE

*Selected Video Replays*

Atlanta, Ga.

CLE

16

ICLE

*A Day on Trial*

Atlanta, Ga.

6 CLE

ICLE

*Basic Fiduciary Practice*

GPTV Video Replay

6 CLE

ICLE

*Matrimonial Law Practice Workshop*

Atlanta, Ga.

6 CLE

NBI, INC.

*Admissibility of Evidence and Expert Testimony in Georgia*

Atlanta, Ga.

6 CLE including 0.5 Ethics and 6 Trial

16-17

ICLE

*Defense of Drinking Drivers Institute*

Atlanta, Ga.

12 CLE

17

ICLE

*Recent Developments*

Atlanta, Ga.

6 CLE

ICLE

*Labor and Employment Law*

Atlanta, Ga.

6 CLE

LORMAN BUSINESS CENTER, INC.

*State Laws and HIPAA Standards*

Atlanta, Ga.

6 CLE

20

NBI, INC.

*The Probate Process from Start to Finish in Georgia*

Macon, Ga.

6.7 CLE with 0.5 Ethics

21

NBI, INC.

*Georgia Real Estate Title Law: Solutions of the Most Common Problem*

Atlanta, Ga.

6 CLE with 1 Ethics

## January 2005

5

LORMAN BUSINESS CENTER, INC.

*Insurance Bad Faith Claims*

Atlanta, Ga.

6 CLE with 0.5 Ethics

6

ICLE

*Advanced Legal Writing*

Atlanta, Ga.

6 CLE

ICLE

*Common Carrier Liability*

Atlanta, Ga.

6 CLE

ICLE

*Winning Settlement Demand Packages*

Atlanta, Ga.

6 CLE

7

ICLE

*The Heart of the Case*

Atlanta, Ga.

6 CLE

ICLE

*So Little Time...So Much Paper*

Atlanta, Ga.

3 CLE

NBI, INC.

*The Art of Settlement in Georgia: How to*

*Get the Results You Want*

Atlanta, Ga.

6 CLE with 0.5 Ethics

13-14

ICLE

*Midyear Bar Meeting CLE Seminars*

Atlanta, Ga.

CLE

13

ICLE

*Negotiated Corporate Acquisitions*

Atlanta, Ga.

6 CLE

14

ICLE

*Trial Advocacy (Video Replay)*

Atlanta and GPTV Statewide

6 CLE

LORMAN BUSINESS CENTER, INC.

*Construction Lien Law*

Atlanta, Ga.

6.7 CLE

19

ICLE

*Employment Law*

Atlanta, Ga.

6 CLE

20

ICLE

*Art of Effective Speaking*

Atlanta, Ga.

6 CLE

21

ICLE

*Plaintiff's Personal Injury*

Atlanta, Ga.

6 CLE

ICLE

*Eminent Domain Trial Practice*

Atlanta, Ga.

6 CLE

ICLE

*10 Rules of Jury Selection*

Atlanta and GPTV Statewide

6 CLE

21

NBI, INC.

*How to Draft Wills and Trusts in Georgia*

Savannah, Ga.

6 CLE with 0.5 Ethics

25-26

ICLE

*Selected Video Replays*

Atlanta, Ga.

CLE

27

ICLE

*10 Rules of Jury Selection*

GPTV Video Replay

6 CLE

ICLE

*Alliances, Joint Ventures and Partnerships*

Atlanta, Ga.

6 CLE

28

ICLE

*From Trial Theory to Verdict*

Atlanta, Ga.

6 CLE

ICLE  
*Family Law Convocation on Professionalism*  
 Atlanta, Ga.  
 3 CLE

ICLE  
*Complex Civil Litigation*  
 Atlanta, Ga.  
 6 CLE

29

ICLE  
*Bar-Media*  
 Atlanta, Ga.  
 6 CLE

31

ICLE  
*Recent Developments (Video Replay)*  
 Atlanta and GPTV Statewide  
 6 CLE

## February 2005

3

ICLE  
*Meet the Judges*  
 Atlanta, Ga.  
 3 CLE

ICLE  
*Emerging Issues in Debt Collection*  
 Atlanta, Ga.  
 6 CLE

NBI, INC.  
*The Fundamentals of Successful Office and Retail Leasing in Georgia*  
 Atlanta, Ga.  
 6 CLE with 0.5 Ethics

4

ICLE  
*Antitrust Law Basics*  
 Atlanta, Ga.  
 6 CLE

ICLE  
*Residential Real Estate*  
 Atlanta and GPTV Statewide  
 6 CLE

ICLE  
*Georgia Foundations and Objections*  
 Atlanta, Ga.  
 6 CLE

5-12

ICLE  
*Update on Georgia Law*  
 Park City, Utah  
 12 CLE

9-13

ICLE  
*Caribbean Seminar*  
 Puerto Vallarta, Mexico  
 12 CLE

9

NBI, INC.  
*Domestic Law in Georgia*  
 Atlanta, Ga.  
 6 CLE with 0.5 Ethics

10

ICLE  
*Abusive Litigation*  
 Atlanta, Ga.  
 6 CLE

ICLE  
*Zoning*  
 Columbus, Ga.  
 6 CLE

ICLE  
*Residential Real Estate*  
 GPTV Video Replay  
 6 CLE

11

ICLE  
*Georgia Automobile Insurance Law*  
 Columbus, Ga.  
 6 CLE

ICLE  
*Art Law*  
 Atlanta, Ga.  
 6 CLE

ICLE  
*Plaintiff's Medical Malpractice*  
 Atlanta, Ga.  
 6 CLE

17

ICLE  
*Elder Law*  
 Atlanta, Ga.  
 6 CLE

ICLE  
*ADR in Worker's Compensation Cases*  
 Atlanta, Ga.  
 6 CLE

ICLE  
*Handling License Revocations and Suspensions*  
 Atlanta, Ga.  
 6 CLE

ICLE  
*Georgia Automobile Insurance Law*  
 Atlanta, Ga.  
 6 CLE

# Notice of Public Meeting

Pursuant to Bar Rule 14-9.1, the Standing Committee on the Unlicensed Practice of Law has received a request for an advisory opinion as to whether certain activity constitutes the unlicensed practice of law. The particular situation presented is as follows:

Does a nonlawyer engage in the unlicensed practice of law when he prepares, for another and for remuneration, articles of incorporation, bylaws or other documents relating to the establishment of a corporation?

In accordance with Bar Rule 14-9.1(f), notice is hereby given that a public meeting concerning this matter will be held at 10:00 a.m. on February 4, 2005, at the State Bar of Georgia, Third Floor, 104 Marietta Street, NW, Atlanta, Georgia. Prior to the meeting, individuals are invited to submit any written comments regarding this issue to UPL Advisory Opinions, State Bar of Georgia, Suite 100, 104 Marietta Street, NW, Atlanta, Georgia 30303.

## STATE BAR OF GEORGIA Board of Governors, Aug. 19, 2004

### RESOLUTION

This resolution authorizes the Committee on the Standards of the Profession to carry into effect the Implementation Plan for a Mandatory Transition Into Law Practice Program dated August 19, 2004. The Implementation Plan calls for the establishment of a mandatory Transition Into Law Practice Program to provide professional guidance and counsel for beginning lawyers through continuing legal education and mentoring by experienced lawyers. The purpose of this Program will be to assist beginning lawyers who are newly admitted to the State Bar of Georgia in acquiring the practical skills, judgment and professional values necessary to practice law in a highly competent manner.

**WHEREAS**, on June 13, 1997, the Board of Governors authorized the Committee on the Standards of the Profession (the "Committee") to conduct a pilot project to test and develop a program of professional guidance for beginning lawyers through continuing legal education and counseling by experienced lawyers who would serve as their mentors, advisors and teachers;

**WHEREAS**, the Committee completed its pilot project and evaluation thereof and reported its recommendations for a mandatory Transition Into Law Practice Program to the Board of Governors at its meeting on April 5, 2003;

**WHEREAS**, on November 8, 2003, the Board of Governors accepted the Committee's Report and Recommendations, approved the concept of a mandatory Transition Into Law Practice Program, and authorized the Committee, on behalf of the State Bar of Georgia, to petition the Supreme Court of Georgia for approval of the

concept of a mandatory Transition Into Law Practice Program;

**WHEREAS**, on November 8, 2003, the Board of Governors further authorized the Committee, in the event the Supreme Court of Georgia approved the concept of a mandatory Transition Into Law Practice Program, to prepare and present to the Board of Governors a detailed plan for establishment of a mandatory Transition Into Law Practice Program;

**WHEREAS**, on January 7, 2004, the Supreme Court of Georgia accepted the Committee's Report and Recommendations and approved the concept of a mandatory Transition Into Law Practice Program;

### **THEREFORE, BE IT RESOLVED THAT:**

The Board of Governors hereby accepts the attached Implementation Plan for a Mandatory Transition Into Law Practice Program ("Implementation Plan"); and

The Board of Governors hereby authorizes the Committee, on behalf of the State Bar of Georgia, to petition the Supreme Court of Georgia for approval of the Implementation Plan; and

If the Supreme Court of Georgia approves the Implementation Plan, the Board of Governors hereby authorizes the Committee, under the auspices of the Commission on Continuing Lawyer Competency, to carry out the Implementation Plan for a Mandatory Transition Into Law Practice Program. The Program will be funded by an increase in State Bar of Georgia membership dues equal to ten dollars (\$10.00) per member, effective for the Bar year beginning on July 1, 2005.

Approved this 19th day of August, 2004, by the Board of Governors of the State Bar of Georgia.



# Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, *2003-2004 State Bar of Georgia Directory and Handbook*, p. H-6 to H-7 (hereinafter referred to as "*Handbook*").

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to the proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-6.

This Statement, and the following verbatim text, are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-6.

Cliff Brashier  
Executive Director  
State Bar of Georgia

## IN THE SUPREME COURT STATE OF GEORGIA

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

MOTION TO AMEND 2005-1

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in regular meetings held on August 19, 2004, and upon the concurrence of its Executive Committee, presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, *2003-2004 State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I.

### Proposed Amendments to Part VIII, Continuing Lawyer Competency, of the Rules of the State Bar of Georgia

It is proposed that Rules 8-103 and 8-104 of Part VIII of the Rules of the State Bar of Georgia regarding continuing legal education requirements be amended as follows:

### Rule 8-103. Commission on Continuing Lawyer Competency.

(A) Membership, Appointment and Terms:

~~There is established a permanent commission of the State Bar of Georgia known as the Commission on Continuing Lawyer Competency. The Commission shall consist of twelve (12) members, six (6) of whom shall be appointed by the Supreme Court of Georgia and six (6) by the Board of Governors of the State Bar of Georgia. Members shall be members of the State Bar of Georgia, and shall be appointed for staggered three (3) year terms and until their successors are appointed, except that the initial Commission shall consist of four (4) members appointed for a term of one (1) year, four (4) members appointed for a term of two (2) years, and four (4) members appointed for a term of three (3) years. The members of the initial Commission and of each class annually thereafter shall be appointed half by the Supreme Court and half by the Board of Governors of the State Bar of Georgia. No person may serve more than two (2) consecutive terms as a member of the Commission, and no person may be reappointed otherwise to the Commission until he has been inactive as a Commission member for three (3) consecutive years.~~

~~The Commission shall designate each year one of its members to serve as Chairperson. A member of the Executive Committee of the State Bar of Georgia appointed by the President, the Executive Director of the State Bar of Georgia, the Executive Director of the Institute of Continuing Legal Education of Georgia, Chairman of the Board of Trustees of the Institute of Continuing Legal Education in Georgia, and the Executive Director of the Commission shall serve as ex-officio members of the Commission, but shall have no vote. The Executive Director of the Commission shall serve as Secretary of the Commission.~~

There is established a permanent commission of the State Bar of Georgia known as the Commission on Continuing Lawyer Competency. The Commission shall consist of sixteen (16) members, six (6) of whom shall be appointed by the Supreme Court of Georgia and six (6) by the Board of Governors of the State Bar of Georgia, one (1) shall be designated by the Executive Committee of the State Bar of Georgia, one (1) shall be the chair of the Board of Trustees of the Institute of Continuing Legal Education in Georgia or his or her designee, one (1) shall be designated by the Chief Justice's Commission on Professionalism, and one (1) shall be designated by the President of the Young Lawyers Division of the State Bar of Georgia. Members shall be members of the State Bar of Georgia. Members of the Commission appointed by the Supreme Court of Georgia and by the Board of

Governors of the State Bar shall be appointed for staggered three (3) year terms and until their successors are appointed, except that the initial appointed members of the Commission shall consist of four (4) members appointed for a term of one (1) year, four (4) members appointed for a term of two (2) years, and four (4) members appointed for a term of three (3) years. The appointed members of the initial Commission shall be appointed half by the Supreme Court and half by the Board of Governors of the State Bar of Georgia. No member appointed by the Supreme Court or the Board of Governors may serve more than two (2) consecutive terms as a member of the Commission, and no such member may be reappointed otherwise to the Commission until he or she has been inactive as a Commission member for three (3) consecutive years. Members of the Commission designated by the Executive Committee, the chair of the Board of Trustees of the Institute of Continuing Legal Education, the Chief Justice's Commission on Professionalism, and the President of the Young Lawyers Division shall each serve for a term of one (1) year. No person so designated to the Commission may serve more than three (3) consecutive terms as a member of the Commission, and no such member may be redesignated otherwise to the Commission until he or she has been inactive as a Commission member for three (3) consecutive years.

The Commission shall designate each year one of its members to serve as Chairperson. The Executive Director of the State Bar of Georgia, the Executive Director of the Institute of Continuing Legal Education of Georgia, the Executive Director of the Chief Justice's Commission on Professionalism, and the Executive Director of the Commission shall serve as ex-officio members of the Commission, but shall have no vote. The Executive Director of the Commission shall serve as Secretary of the Commission.

### **Regulations<sup>1</sup>**

(1) **Quorum.** ~~Six~~ **Eight** voting members shall constitute a quorum of the CCLC.

(2) **Chair.** The Chair of the CCLC shall be elected by majority vote during the first meeting of CCLC in each calendar year.

(3) **Vice Chair.** The CCLC shall elect a Vice Chair by majority vote during the first meeting of the CCLC in each calendar year.

(4) **Executive Committee.** The Executive Committee of the CCLC shall be comprised of the Chairperson, Vice Chairperson, and a voting member to be appointed by the Chairperson. Its purpose is to conduct all necessary business of the CCLC that may arise between meetings of the full Commission. In such matters it shall have complete authority to act for the CCLC.

(5) **Standards of the Profession Committee.** The Chair of the CCLC shall appoint a chair of the Standards of the Profession Committee which shall devise and recommend policy to the Commission for the operation of the Transition Into Law Practice Program. The Standards

of the Profession Committee shall be composed of the designee of the Executive Committee of the State Bar of Georgia, the chair of the Board of Trustees of the Institute of Continuing Legal Education in Georgia or his or her designee, the designee of the Chief Justice's Commission on Professionalism, the designee of the President of the Young Lawyers Division of the State Bar of Georgia, and any other member of the State Bar of Georgia appointed to the Standards of the Profession Committee by the Chairperson of the Commission. In addition, the Standards of the Profession Committee of the Commission shall initially be composed of the members of the Standards of the Profession Committee of the State Bar of Georgia, who shall serve at the pleasure of the Chair of the Commission.

~~(5)~~ (6) **Other Committees.** The Chairperson may appoint from time to time any committees deemed advisable.

~~(6)~~ (7) **Vacancy.** A vacancy on the CCLC, in its officers, or on its committees, occurring for whatever reason, shall be filled as soon as practical in the same manner as the original holder of the position was selected.

(B) Powers and Duties of the Board:

(1) The Commission shall have general supervisory authority to administer these Rules.

(2) The Commission shall have specific duties and responsibilities:

(a) To approve all or portions of individual courses and programs of a sponsor which satisfy the educational requirements of Rule 8106;

(b) To determine the number of credit hours allowed for each course or educational activity;

(c) To encourage courses and programs by established organizations, whether offered within or without the State;

(d) To educate the public about the legal profession;

(e) To adopt rules and regulations not inconsistent with these Rules;

(f) To establish an office or offices and to employ such persons as the Commission deems necessary for the proper administration of these Rules and to delegate to them appropriate authority, subject to the review of the Commission;

(g) To report at least annually to the State Bar and to the Supreme Court the activities and recommendations of the Commission and the effectiveness of the enforcement of these Rules;

(h) To report promptly to the Supreme Court any violation of these Rules.

### **Regulations**

(1) **Appeals.** The CCLC is the final authority on all matters entrusted to it under these rules. Therefore, any decision made by a committee of the CCLC pursuant to a delegation of authority may be appealed to the full CCLC. A decision made by the staff of the CCLC pursuant to a delegation of authority may also be reviewed by the full CCLC, but should first be appealed to the Committee of the CCLC having jurisdiction on the subject involved. All appeals shall be in writing. The

CCLC has the discretion to, but is not obligated to, grant a hearing in connection with any appeal.

(2) **Amendments.** The CCLC may on its own motion, or on the motion of any interested party, amend, delete, or add to the foregoing Regulations. All motions in this regard should (1) be typed, (2) describe the amendment, (3) explain the reasons for the amendment, and (4) include a draft of the suggested new regulation.

(3) All parties are welcomed to appear before the Commission in writing. If the Commission determines that further information is needed, the parties may be invited to present their position or appeal in person or by telephone conference call.

(C) Finances:

(1) Purpose. The Commission should be adequately funded to enable it to perform its duties in a financially independent manner.

(2) Sources. All costs of administration of the Commission shall be derived **from charges to members of the State Bar for continuing legal education activities, as follows:**

~~(a) Initial funding shall be provided by a one-time special assessment in the amount of ten dollars (\$10.00). It shall be collected from each active member of the State Bar concurrently with the annual dues due on July 1, 1984, but shall not be a portion of those dues.~~

~~(b) All subsequent funding shall be borne by the continuing legal education activities.~~

~~(i)~~ (a) Sponsors of CLE programs to be held within the State of Georgia shall, as a condition of accreditation, agree to remit a list of Georgia attendees and to pay a fee for each active State Bar member who attends the program. This sponsor's fee shall be based on each day of attendance, with a proportional fee for programs lasting less than a whole day. The rate shall be set by the Commission.

~~(ii)~~ (b) The Commission shall fix a reasonably comparable fee to be paid by individual attorneys who either (a) attend approved CLE programs outside the State of Georgia or (b) attend un-approved CLE programs within the State of Georgia that would have been approved for credit except for the failure of the sponsor to pay the fee described in the preceding paragraph. Such fee shall accompany the attorney's annual affidavit.

(3) Uses. Funds may be expended for the proper administration of the Commission. However, the members of the Commission shall serve on a voluntary basis without expense reimbursement or compensation.

### Regulations

(1) **Sponsor Fee.** The Sponsor fee, a charge paid directly by the sponsor, is required for all approved programs held within Georgia. It is optional for approved programs held elsewhere. Sponsors shall remit the fee, together with a list in

alphabetical order showing the names and Georgia Bar membership numbers of all Georgia attendees, within thirty (30) days after the program is held. The amount of the fee is set at \$5.00 per approved CLE hour per active State Bar of Georgia member in attendance. It is computed as shown in the following formula and example:

	<b>Formula</b>	<b>Example</b>
Fee	\$5.00	\$5.00
Multiplied by total approved CLE hours	$\times ?$	$\times 5.4$
Multiplied by number of Georgia attendees	$\times ?$	$\times 129$
Equals the total sponsor fee	$\$ ?$	\$3483.00

(2) **Attendee Fee.** The attendee fee is paid by the Georgia attorney who requests credit for a program for which no sponsor fee was paid. Attorneys should remit the fee along with their affidavit before January 31st following the calendar year for which the report is being submitted. The amount of the fee is set at \$5.00 per approved CLE hour for which the attorney claims credit. It is computed as shown in the following formula and example:

	<b>Formula</b>	<b>Example</b>
Fee	\$5.00	\$5.00
Multiplied by the total approved CLE hours for which the attorney seeks credit but for which no sponsor fee was paid.	$\times ?$	$\times 3.3$
Equals the total attendee fee	$\$ ?$	\$16.50

(3) **Fee Review.** The Commission will review the level of the fee at least annually and adjust it as necessary to maintain adequate finances for prudent operation of the Commission in a nonprofit manner.

(4) **Uniform Application.** The fee shall be applied uniformly without exceptions or other preferential treatment for any sponsor or attendee.

### **Rule 8-104. Education Requirements and Exemptions.**

(A) Minimum Continuing Legal Education Requirement.

Each active member shall complete a minimum of twelve (12) hours of actual instruction in an approved continuing legal education activity during each year ~~after January 1, 1984~~. If a member completes more than twelve (12) hours in a year ~~after January 1, 1984~~, the excess credit may be carried forward and applied to the education requirement for the succeeding year only. ~~Any continuing legal education activity completed between July 1, 1983, and December 31, 1983, shall be credited as if completed in 1984.~~

(B) Basic Legal Skills Requirement.

~~(1) Any newly admitted active member must attend the Bridge the Gap program of the Institute of Continuing Legal Education in the year of his or her~~



~~admission, or in the next calendar year, and such attendance shall satisfy the mandatory continuing legal education requirements for such newly admitted member for both the year of admission and the next succeeding year.~~

(1) Except as set out in subsections (a) and (b) below, any newly admitted active member admitted after June 30, 2005, must complete in the year of his or her admission or in the next calendar year the State Bar of Georgia Transition Into Law Practice Program, and such completion of the Transition Into Law Practice Program shall satisfy the mandatory continuing legal education requirements for such newly admitted active member for both the year of admission and the next succeeding year.

(a) Any newly admitted active member, who has practiced law in another United States jurisdiction other than Georgia for two or more years immediately prior to admission to practice in this state, may be exempted from completing the Transition Into Law Practice Program upon the submission, within three months of admission, of an affidavit to the Commission on Continuing Lawyer Competency. The affidavit shall provide the date or dates of admission in every other state in which the member is admitted to practice and a declaration that the newly admitted member has been actively engaged in the practice of law for two or more years immediately prior to admission in this state. Upon submission of a satisfactory affidavit, the newly admitted active member shall be required to complete the annual twelve hours of instruction in approved continuing legal education activity beginning at the start of the first full calendar year after the date of admission. Any newly admitted active member, who has practiced law in another United State jurisdiction other than Georgia for two or more years immediately prior to admission to practice in this state and who does not timely file the required affidavit, shall be required to complete the Transition Into Law Practice Program as set out above.

(b) Any newly admitted active member, who is a judicial law clerk or who begins a clerkship within three months of admission, shall not be subject to the requirement of completing the Transition Into Law Practice Program during the period of the judicial clerkship. Within thirty days of admission to the State Bar or within thirty days of the beginning of the clerkship if said clerkship begins within three months after admission, the member shall provide written notice to the Commission on Continuing Lawyer Competency of the date of entry into the clerkship position. Judicial law clerks are required to complete the annual twelve hours of regular instruction in approved continuing legal education courses beginning at the start of the first full calendar year after the date of admis-

sion. Within thirty days of the completion of the clerkship, the member shall provide written notice to the Commission on Continuing Lawyer Competency of the date of such completion. The member must complete, in the year the clerkship was concluded, or the next calendar year, the Georgia Transition Into Law Practice Program. Such completion of the Transition Into Law Practice Program shall satisfy the mandatory continuing legal education requirements for such member for both the year of completion of the clerkship and the next succeeding calendar year.

(2) Each active member, ~~except newly admitted members~~ **those participating in the Georgia Transition Into Law Practice Program**, shall complete a minimum of one (1) hour of continuing legal education during each year in the area of ethics. This hour is to be included in, and not in addition to, the twelve-hour (12) requirement. If a member completes more than one (1) hour in ethics during the calendar year, the excess ethics credit may be carried forward up to a maximum of two (2) hours and applied to the ethics requirement for succeeding years.

(3) Each active member, ~~except newly admitted members~~ **those participating in the Georgia Transition Into Law Practice Program**, shall complete a minimum of one (1) hour of continuing legal education during each year in an activity of any sponsor approved by the Chief Justice's Commission on Professionalism in the area of professionalism. This hour is to be included in, and not in addition to, the twelve-hour (12) requirement. If a member completes more than one (1) hour in professionalism during the calendar year, the excess professionalism credit may be carried forward up to a maximum of two (2) hours and applied to the professionalism requirement for succeeding years.

~~(4) Each active member, except newly admitted members, shall complete a one time mandatory three (3) hours of continuing legal education in Alternative Dispute Resolution by March 31, 1996. Lawyers are deemed to have satisfied this requirement by attending any of the following: (1) a law school class primarily devoted to the study of ADR; (2) a training session to be a neutral that was approved for CLE credit or would now be eligible for CLE credit; or (3) an approved CLE seminar devoted to ADR. Lawyers admitted to the bar after July 31, 1995, may satisfy this requirement by attending the Bridge the Gap seminar CLE component of the Transition Into Law Practice Program conducted by the Institute of Continuing Legal Education in Georgia. The Georgia Commission of Dispute Resolution will review requests for exemption from the CLE requirement based on law school course work.~~

## **Regulations**

### **(1) Definitions.**

(a) *Newly Admitted Active Member.* A "newly admitted active member" is one who becomes an active member of the State Bar of Georgia for the first time.



(b) ~~Bridge-the-Gap. "Bridge—the—Gap" is a program. This requirement is satisfied by completing ICLE's program as it is organized and defined by ICLE.~~ Currently, the Bridge-the-Gap program consists of two days of instruction: the first day being a seminar called Bridge-the-Gap and the second day being any other approved six hour seminar to be selected by each lawyer. ~~This program will be replaced by the Transition Into Law Practice Program after October 1, 2005.~~

(c) **Transition Into Law Practice Program.** "Transition Into Law Practice Program" is a program organized and defined by the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency. Currently, the Transition Into Law Practice Program consists of two components:

(i) Attendance at either the Enhanced Bridge-the-Gap program or the Fundamentals of Law Practice Program of the Institute of Continuing Legal Education; and

(ii) Completion of a Mentoring Plan of Activities and Experiences.

(d) **Enhanced Bridge-the-Gap.** "Enhanced Bridge-the-Gap," is the continuing legal education program of the Transition Into Law Practice Program that is delivered by the Institute of Continuing Legal Education in large group settings. Enhanced Bridge-the-Gap consists of two consecutive days of course work that inform and facilitate further discussion in the mentoring context.

(e) **Fundamentals of Law Practice.** "Fundamentals of Law Practice" is the continuing legal education program of the Transition Into Law Practice Program that is delivered by the Institute of Continuing Legal Education in small group settings to foster close interaction between newly admitted active lawyers and instructors. Fundamentals of Law Practice consists of two consecutive days of course work that inform and facilitate further discussion in the mentoring context.

(f) **Mentoring Plan of Activities and Experiences.** The "Mentoring Plan of Activities and Experiences" is the plan that structures and guides the mentoring component of the Transition Into Law Practice Program. The Plan shall be submitted to the Program in the year of admission or early in the next calendar year by the newly admitted active member and his or her mentor. The Plan must be completed in the year of admission or the next calendar year.

(2) **Transition Application.** Except as set out in Sections (B)(1)(a) and (B)(1)(b) above, the Transition Into Law Practice Program shall be required of all newly admitted active members admitted after June 30, 2005. The ICLE Bridge-the-Gap program shall be required of all newly admitted active members who are admitted in 1984 prior to July 1, 2005. ~~or subsequent years. An attorney admitted in 1983 or a previous year must comply with the normal 12 CLE hour requirement beginning in 1984.~~

(3) **Legal Ethics.** Legal ethics includes instruction on professional responsibility and malpractice. It does not include such topics as attorney fees, client development, law office economics, and practice systems except to the extent that professional responsibility is directly discussed in connection with these topics.

~~(4) **Professionalism.** Professionalism is knowledge and skill in the law faithfully employed in the service of client and public good. It includes, but is not limited to, courses on (a) the duties of attorneys to the judicial system, courts, public, clients, and other attorneys, (b) competency, (c) pro bono, (d) the concept of a profession, (e) history of the legal profession, (f) comparison of the legal profession in different nation's systems of advocacy, and (g) jurisprudence of philosophy of law. Ethics sets forth the standards of professional conduct required of a lawyer; professionalism includes what is more broadly expected. The professionalism CLE requirement is distinct from, and in addition to, the ethics CLE requirement. Therefore, the one hour professionalism requirement is only satisfied by attending an activity of any sponsor approved by the Chief Justice's Commission on Professionalism in the area of professionalism.~~

(4) **Professionalism.** The professionalism CLE requirement is distinct from, and in addition to, the ethics CLE requirement. The one-hour professionalism requirement is satisfied only by attending an activity of any sponsor approved by the Chief Justice's Commission on Professionalism in the area of professionalism. Legal ethics sets forth the minimal standards of professional conduct required of a lawyer; professionalism encompasses what is more broadly expected of lawyers to serve both client and public good. Professionalism refers to the intersecting values of competence, civility, integrity, and commitment to the rule of law, justice, and the public good. The general goal of the professionalism CLE requirement is to create a forum in which lawyers, judges, and legal educators can explore and reflect upon the meaning and goals of professionalism in contemporary legal practice. The professionalism CLE sessions should encourage lawyers toward conduct that preserves and strengthens the dignity, honor, and integrity of the legal profession. Professionalism CLE includes, but is not limited to, courses on (a) the duties of lawyers to the systems of justice, courts, public, clients, other lawyers, and the profession, (b) the roles of lawyers as advocates, counselors, negotiators, problem solvers, and consensus builders, (c) various forms of dispute resolution, (d) pro bono service, (e) the concept of a profession, (f) history of the legal profession, (g) comparison of the legal profession in different nations' systems of advocacy, and (h) jurisprudence or philosophy of law.

(5) **Deadlines.** The normal MCLE deadlines (December 31 and approved deficiency plan extensions) are applicable to the Transition Into Law Practice Program.

(C) **Exemptions.**

(1) An inactive member shall be exempt from the continuing legal education and the reporting requirements of this Rule.

(2) The Commission may exempt an active member from the continuing legal education, but not the reporting, requirements of this rule for a period of not more than one (1) year upon a finding by the Commission of special circumstances unique to that member constituting undue hardship.

(3) Any active member over the age of seventy (70) shall be exempt, ~~upon written application to the Commission,~~ from the continuing legal education requirements of this rule, including the reporting requirements, **unless the member notifies the Commission in writing that the member wishes to continue to be covered by the continuing legal education requirements of this rule.**

(4) Any active member residing outside of Georgia who neither practices in Georgia nor represents Georgia clients shall be exempt, upon written application to the Commission, from the continuing legal education, but not the reporting, requirements of this rule during the year for which the written application is made. This application shall be filed with the annual reporting affidavit.

(5) Any active member of the Board of Bar Examiners shall be exempt from the continuing legal education but not the reporting requirement of this Rule.

### **Regulations**

(1) **Inactive.** ~~To be fully exempt, the member must be inactive during the entire year. An active attorney who changes to inactive status is not exempt during the year in which the status change occurs. An inactive attorney who changes to active status must comply with the full 12 CLE hour requirement.~~

(2) **Undue Hardship.** ~~Requests for undue hardship exemptions on physical disability or other grounds may be granted. The CCLC shall review and approve or disapprove such requests on an individual basis.~~

(3) **Age.** ~~An attorney attaining age 70 at any time during a calendar year may, if he so elects in writing, be exempt from the full CLE requirements of that year and all subsequent years. The written application may be filed prior to or after attaining age 70, and may be applied retroactively.~~

(4) **Professionalism.** ~~Since professionalism, unlike any other CLE, may be obtained only from sponsors approved by the Chief Justice's Commission on Professionalism, it is recognized that a hardship will be imposed on some non-exempt, out of state attorneys who would have significant travel time and expense to attend this one hour of CLE in Georgia. Therefore, any attorney who meets all of the following hardship criteria may substitute an ICLE video tape on professionalism as an in-house, self study program with the "five attorney rule" waived when the attorney: resides more than 50 miles from Georgia, requests no more than three substitute hours per year, has less than one professionalism hour from other ICLE seminars and carry over, and complies with all ICLE policies and procedures including the payment of video rental, course materials, and administrative fees established by ICLE.~~

(5) **ADR.** ~~By Order of the Supreme Court of Georgia, dated~~

~~March 9, 1993, an alternative dispute resolution (ADR) CLE requirement was enacted. This regulation incorporates that rule into the MCLE program for informational purposes.~~

~~Each active member shall complete a three hour course of continuing legal education in the area of alternative dispute resolution (ADR). This three hours will be credited toward satisfaction of the 12 hour CLE requirement under Rule 8-104(A) for the year in which the course is taken and will also be credited toward satisfaction of the trial MCLE requirement under Rule 8-104(D)(2) for the same year.~~

~~The three hour ADR course requirement shall be completed before December 30, 1995. Lawyers admitted to the bar after that date shall complete the requirement in the calendar year of admission or during the following calendar year.~~

~~A lawyer is deemed to have satisfied the ADR course requirement if he or she:~~

~~1. While a student at an accredited law school, completed a course which was substantially devoted to the study of ADR;~~

~~2. Has completed in the past a course of training as a neutral which was approved for at least 3 hours of CLE credit; or~~

~~3. Completed a course of training as a neutral which would now be approved for at least 3 hours of CLE credit.~~

~~The Georgia Commission on Dispute Resolution will review requests for exemption from the ADR CLE requirement on the basis of law school coursework.~~

~~Ethics CLE credit may be approved for the portion of an ADR course dealing directly with EG 7-5 or other ethical rules.~~

~~Professionalism CLE credit may be approved subject to a review by the Chief Justice's Commission on Professionalism of the specific course content.~~

~~Seminars designed to satisfy the ADR requirement under the Rule, and their sponsors, must be approved by both the CCLC and the Georgia Commission on Dispute Resolution.~~

—  
(D) Requirements for Participation in Litigation.

(1) Prior to appearing as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case, any participant in the Transition Into Law Practice Program admitted to practice after June 30, 2005, shall complete the mandatory Advocacy Experiences of the Transition Into Law Practice Program set forth in Regulation (5) hereunder. The mandatory Advocacy Experiences shall be completed as part of the Mentoring Plan of Activities and Experiences, except that up to three (3) of the five (5) mandatory Advocacy Experiences may be obtained after completion of 60% of the credit hours required for law school graduation and prior to admission to practice. At least two (2) of the mandatory Advocacy Experiences must be completed as part of the Mentoring Plan of Activities and Experiences.

(2) Each active member who appears as sole or lead counsel in the Superior or State Courts of Georgia in

any contested civil case or in the trial of a criminal case ~~in 1990 or in any subsequent calendar year~~, shall complete for such year a minimum of three (3) hours of continuing legal education activity in the area of trial practice. A trial practice CLE activity is one exclusively limited to one or more of the following subjects: evidence, civil practice and procedure, criminal practice and procedure, ethics and professionalism in litigation, or trial advocacy. These hours are to be included in, and not in addition to, the 12-hour (twelve) requirement. If a member completes more than three (3) trial practice hours, the excess trial practice credit may be carried forward and applied to the trial practice requirement for the succeeding year only.

## Regulations

### Trial MCLE

(1) *Lead Counsel is defined as the attorney who has primary responsibility for making all professional decisions in the handling of the case.*

(2) *The trial MCLE rule applies to all members who appear as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case. As a segment of the 12-hour (twelve) total MCLE requirement, the MCLE exemptions are applicable to the trial MCLE rule. Likewise, the normal MCLE deadlines (December 31st and approved deficiency plan extensions) are applicable to the trial MCLE rule. ~~Also, due to the carry over rule, trial CLE taken in 1989 will be applied to 1990 and, therefore, count toward meeting the trial CLE requirement.~~*

(3) *Due to the "exclusively limited" requirement, trial CLE must be (a) clearly segregated and identified (b) a minimum of one (1) hour in length, and (c) limited to one or more of the five (5) listed subjects in order to receive trial CLE credit. The "exclusively limited" requirement does not prohibit credit for a seminar that deals with one or more of the subjects stated in the Rule in the context of a particular field of trial practice, such as medical malpractice, personal injury defense, criminal cases, construction law, etc.*

(4) *MCLE transcripts will reflect trial CLE in addition to ethics and total CLE. However, the certification of compliance is made by the members when they make the court appearance described in the Rules. The sanctions for false certification or other non-compliance lie with the Court in which the lawyer appeared and with the State Disciplinary Board of the State Bar of Georgia. If the Commission receives allegations or evidence of a false certification or other non-compliance, a report thereof shall be forwarded to the State Disciplinary Board for any action it deems necessary.*

(5) *For participants in the Transition Into Law Practice Program who wish to appear as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case, the mandatory Advocacy Experiences are as defined by the Transition Into Law Practice Program. Currently, the mandatory Advocacy Experiences are defined as:*

*(i) An actual or simulated deposition of a witness or adverse party in a civil action;*

*(ii) An actual or simulated jury trial in a civil or criminal case in either a state or federal court;*

*(iii) An actual or simulated nonjury trial or evidentiary hearing in a state or federal court;*

*(iv) An actual or webcast of an appellate argument in the Supreme Court of Georgia, the Court of Appeals of Georgia, or a United States Circuit Court of Appeals; and*

*(v) An actual or simulated mediation.*

## II.

### TECHNICAL AMENDMENT TO RULE 5.5 OF THE GEORGIA RULES OF PROFESSIONAL CONDUCT

When the State Bar filed its Motion to Amend 2004-1 regarding multijurisdictional practice, it inadvertently omitted the penalty provisions of Rule 5.5, Unauthorized Practice of Law; Multijurisdictional Practice of Law. At the end of the Rule, and before the comments section, the phrase "The maximum penalty for a violation of this Rule is disbarment" should have been included. When the Court issued its Order of June 8, 2004, adopting the amendments to Rule 5.5, the phrase was therefore not included. The State Bar requests that this Court amend Rule 5.5, nunc pro tunc for June 8, 2004, by reinserting the omitted phrase at the end of the Rule.

SO MOVED, this \_\_\_\_ day of \_\_\_\_\_, 2004

Counsel for the State Bar of Georgia

\_\_\_\_\_  
William P. Smith, III  
General Counsel  
State Bar No. 665000

\_\_\_\_\_  
Robert E. McCormack  
Deputy General Counsel  
State Bar No. 485375

### OFFICE OF THE GENERAL COUNSEL

State Bar of Georgia  
104 Marietta Street, NW – Suite 100  
Atlanta, Georgia 30303  
(404) 527-8720

## Endnotes

1. The Regulations associated with Rules 8-103 and 8-104 are not before this Court for approval. Such Regulations are promulgated by the Commission on Continuing Lawyer Competency under Rule 8-103(B)(2)(e) which provides that the Commission may "adopt rules and regulations not inconsistent with these Rules." The Regulations, and proposed amendments to the Regulations, are included herein to allow the Court to better understand the functioning of the proposed Rules amendments creating the Mentoring Program.



# Notice of and Opportunity for Comment on Amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit.

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after December 3, 2004, from the Eleventh Circuit's Internet Web site at

[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303 [phone: (404) 335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by January 4, 2005.

## Proposed Uniform Superior Court Rule Rule 25.4. Procedure upon a motion for disqualification (First reading July 27, 2004)

### Rule 25.4. Procedure upon a motion for disqualification.

The motion shall be assigned for hearing to another judge, who shall be selected in the following manner:

(A) If within a single judge circuit, the district administrative judge shall select the judge;

(B) If within a two judge circuit, the other judge, unless disqualified, shall hear the motion;

(C) If within a multi judge circuit, composed of three (3) or more judges, selection shall be made by use of the circuits existing random, impartial case assignment method. If the circuit does not have random, impartial case assignment rules, then assignment shall be made as follows:

(1) The chief judge of the circuit shall select a judge within the circuit to hear the motion, unless the chief judge is the one against whom the motion is filed; or

(2) In the event the chief judge is the one against whom the motion is filed, the assignment shall be made by the judge of the circuit who is most senior in terms of service other than the chief judge and who is not also a judge against whom the motion is filed; or

(3) When the motion pertains to all active judges in the circuit, the district administrative judge shall select a judge outside the circuit to hear the motion.

(D) If the district administrative judge is the one against whom the motion is filed, the available judge within the district senior in time of service (or next senior in time of service, if the administrative judge is the one senior in the time of service) shall serve in this selection process instead of the district administrative judge.

If the motion is sustained, the selection of another judge to hear the case shall follow the same procedure as outlined above.

(E) If all judges within a judicial administrative district are disqualified, including the administrative judge, the matter shall be referred by the disqualified administrative judge to the administrative judge of an adjacent district for the appointment of a judge who is not a member of the district to preside over the motion or case.

At its business meeting on July 27, 2004, the Council of Superior Court Judges tentatively proposed the following amendments to the Uniform Superior Court Rules. The amendments are to Rule 24.9: Appointment, Qualification and Role of a Guardian Ad Litem and Rule 25: Recusal; Procedure upon a motion for disqualification.

Pursuant to O.C.G.A. Section 19-13-53, the Council also proposed new Mutual/Respondent Protective Order Forms; amended the time limits in existing orders to comport with statutory changes to O.C.G.A. Section 19-13-4(c); approved nonsubstantive recommendations from Georgia Bureau of Investigation. The proposed mutual/respondent protective order forms and the guardian ad litem proposal are posted at [www.cscj.org](http://www.cscj.org).

Comments and questions can be submitted to Michael J. Cuccaro, Staff Attorney of the Council of Superior Court Judges, at [cuccarom@superior.courts.state.ga.us](mailto:cuccarom@superior.courts.state.ga.us) or at (404) 651-7087. Written correspondence may be mailed to: Council of Superior Court Judges is located at 18 Capitol Square, Suite 108, Atlanta, Georgia 30334.



## Books/Office Furniture & Equipment

**The Lawbook Exchange, Ltd.** Buys, sells and appraises all major lawbook sets. Also antiquarian, scholarly. Reprints of legal classics. Catalogues issued in print and online. Mastercard, Visa, AmEx. (800) 422-6686; fax (732) 382-1887; [www.lawbookexchange.com](http://www.lawbookexchange.com).

**Beautiful looking professional office furniture at great prices!** We have a large selection of antique style desks, credenzas, bookcases, desk chairs etc. all hand crafted in England in various wood types and leather colors. English Classics, 1442 Chattahoochee Ave., Atlanta, GA 30318, 404-351-2252, Web: <http://stores.ebay.com/Antique-Furniture-Mall>

## For Sale

**Law Practice-Consulting Firm** Federal courts work in post sentencing matters: plea agreements, sentencing, appeals. Consulting is with other firms and defense attorneys. Clientele is national in scope and this company could be relocated anywhere in the USA. Billings range from 500K to 1.0M annually. TBH (770) 534-6630

**For Sale**—domain name [www.atlantatech-law.com](http://www.atlantatech-law.com). \$1,200 OBO. Call (404) 314-6913.

## Vacation Rental

Sawgrass Country Club, Ponte Vedra Beach, Florida – Two Bedroom, 2.5 bath condominium. Newly renovated and furnished, fully equipped. Access to beautiful beach, golf, tennis, fitness and pool. Porch, balconies, lovely water and golf views. \$2,200 per month or \$1,200 weekly. Call Bob Crowley @ (207) 967-2073 or [crowleys@adelphia.net](mailto:crowleys@adelphia.net).

## Law Practice Wanted

**Looking to follow your dreams?** Sell me your practice and get started. Help me and help yourself. Or if you are looking to expand your practice/firm and are looking for marketing expertise, capital, and an experienced attorney. Call Greg Solsrud (770) 986-3690 or [gregor-yarthur@go.com](mailto:gregor-yarthur@go.com). Full confidentiality assured.

## Law Office Space

**Local Sandy Springs CPA firm has office space available for immediate lease by professional.** Access to copier and fax. Staffed reception area. Free walk-in parking next to building. Convenient Perimeter Mall area location in professional complex. Please call Tom at (404) 252-3246 for additional information.

## Practice Assistance

**APPEALS, BRIEFS – MOTIONS. APPELLATE & TRIAL COURTS.** Georgia Brief Writer & Researcher. 30+ years experience. Reasonable rates. Curtis R. Richardson, Attorney (404) 377-7760 or (404) 932-0655. E-mail [curtisr1660@earthlink.net](mailto:curtisr1660@earthlink.net). References upon request.

**Mining Engineering Experts** Extensive expert witness experience in all areas of mining—surface and underground mines, quarries etc. Accident investigation, injuries, wrongful death, mine construction, haulage/trucking/rail, agreement disputes, product liability, mineral property management, asset and mineral appraisals for estate and tax purposes. Joyce Associates (540) 989-5727.

**Handwriting Expert/Forensic Document Examiner** Certified by the American Board of Forensic Document Examiners. Former Chief, Questioned Documents, U.S. Army Crime Laboratory. Member, American Society of Questioned Document Examiners and American Academy of Forensic Sciences. Farrell Shiver, Shiver & Nelson Document Investigation Laboratory, 1903 Lilac Ridge Drive, Woodstock, GA 30189, (770) 517-6008.

**Must sue or defend in Chicago?** Emory '76 litigator is available to act as local counsel in state, district, and bankruptcy courts. Contact John Graettinger, Gardiner, Koch & Weisberg, 53 West Jackson Boulevard, Suite 950, Chicago, Illinois 60604; (312) 408-0320.

**QDRO Problems?** QDRO drafting for ERISA, military, Federal and State govern-

ment pensions. Fixed fee of \$535 (billable to your client as a disbursement) includes all correspondence with plan and revisions. Pension valuations and expert testimony for divorce and malpractice cases. All work done by experienced QDRO attorney. Full background at [www.qdrosolutions.net](http://www.qdrosolutions.net). **QDRO Solutions, Inc., 2916 Professional Parkway, Augusta, GA (706) 650-7028.**

**2,000 medical malpractice expert witnesses**, all specialties. Flat rate referrals. We'll send you to an expert you're happy with, or we'll send your money back—GUARANTEED. Or choose a powerful in-house case analysis by veteran MD specialists, for a low flat rate. Med-mal EXPERTS, Inc.; [www.medmalEXPERTS.com](http://www.medmalEXPERTS.com); (888) 521-3601.

**New York and New Jersey Actions.** Georgia Bar member practicing in Manhattan, also with New Jersey office, can help you with your corporate transactions and litigation in both state and federal courts. Contact E. David Smith, 551 Fifth Avenue, Suite 1601, New York, New York 10176; (212) 697-9500, ext. 150.

**Insurance Expert Witness.** Former Insurance Commissioner and CEO, NCCI. Expertise includes malpractice, agent liability, applications, bad faith, custom and practice, coverage, claims, duty of care, damages, liability, CGL, WC, auto, HO, disability, health, life, annuities, liquidations, regulation, reinsurance, surplus lines, vanishing premiums. Bill Hager, Insurance Metrics Corp, (561) 995-7429. Visit [www.expertinsurancewitness.com](http://www.expertinsurancewitness.com)

## Positions

**National insurance company seeks local subrogation attorneys.** Respond to: United Subrogation Services, 980 N. Michigan Ave., #1400, Chicago, IL 60611.

**AV rated Middle Georgia litigation firm** with a statewide practice is seeking two attorneys for the following positions: (1) Workers' Compensation Claimant & Defense and (2) Professional Negligence Defense. Two to four years experience desired. Reply to

Communications Department, Attn: Middle Georgia Litigation Firm, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303.

**AV Rated Mid-Size Law Firm in North Fulton seeks Family Law Associate** with a minimum two years experience, competitive salary and benefits. Fax resume to: Firm Administrator at (770) 667-1690.

## Copy of Will Needed

**Would any lawyer who may have acted in the 1990s for Mrs. C. W. Saul** (Dorothy Elizabeth Shanahan Saul) in the drawing up of her will, or assisted her executrix, the late Mrs. F.D. (Peggy) Missildine, both of Glynn County, please contact the principal heir. The balance of her estate can be neither accessed nor distributed without a certified copy of the will. Miss Tinka Shanahan, c/o Crown Law Office – Criminal, Ministry of the Attorney General, 1000 – 720 Bay Street, Toronto, ON M5G 2K1, Canada; Fax: 416-326-4656; Vox: 416-326-4617.

## Advertisers Index

AAA Attorney Referral Service .....	15
ABA Members Retirement Program .....	43
Arthur Anthony .....	31
D. Jeff DeLancey, CPA, PC.....	21
Daniel Turner Builders, Inc. ....	15
Georgia Lawyers Insurance Co. ....	IFC
Gilsbar, Inc. ....	49
Insurance Specialists, Inc. ....	IBC
Jewish Family & Career Services .....	37
Keenan's Kids Foundation .....	39
Lawyers Direct .....	9
Mainstreet .....	53
Marcia G. Shein .....	15
Minnesota Lawyers Mutual .....	23
Mitchell Kaye Valuation .....	13
National Legal Research Group, Inc.....	5
Patterson, Thuente, Skaar & Christensen ..	45
RMT, Inc. ....	17
SoftPro Corporation .....	33
South Georgia ADR .....	51
West .....	BC

G=AD@: =98'EI =7? 'EI CH9': CF '@5K M@FG'DFC: 9GG=CB5@@@56=@HM

: ffa'BUa Y	7cbHUMdYfgcb
5XXfYgg'fGhYfYz7JhZGRUHzNjd'7cXYz7ci bml.	
D\cbY	: U
	9!a Uj

: FA'GFJ9M

%"Bi a VYf'cZUhcfbYng'jb'hY'Ufa .

&"Bi a VYf'cZUJa g#bVXYbIg'UYX'

···Uj UjbghUfa 'Xi fjb| 'hY'dUgh) nYUfg

: jYX	DYbXjb	HtU'DUjX	HtU'FYgYfj YX
-------	--------	----------	---------------

' "'Bi a VYf'cZ8cWYh7cblfc'GngHVa g.

5fY'hYmW'a di Hfj'nYX3' ☐ M'g' ☐ Bc

('< Ug'UbniUhcfbYmK jh'hY'Ufa 'Yj Yf'VYb XlgWd'jbYXcf'XYb|YX'hY'fj| \hlc'dfUMjW3' ☐ M'g' ☐ Bc

DF57H79GFJ9M

-bXjWUH'hY'dYfWbHj| Y'cZUfa 'jbW'a Y'XYfj YX'Zca 'YUW'cZhY'UfYUg'cZdfUMjW'jghX'VY'ck" 'HtU'a i gh1 '%SSi "'  
fbHUM'GYdUfUY'G\YYh|ZB YWggUfml.

5fYU	DYfWbHj  Y
5fYU	DYfWbHj  Y
5fYU	DYfWbHj  Y
5fYU	DYfWbHj  Y
5fYU	DYfWbHj  Y

5fYUg'cZDFUMjW'.5VghUMj| ' #HhYz5X'JUcfYa 'HJz5Xa jUhm! 'D'Ujb|ZZ5Xa jUhm! '8YZbXUblz5bljfi gh #HUXY'FY| i Uhcjbz6Ub\_j| z  
6Ub\_fi dHw6cbXgZ7j| j'F|| \lgZ7c'YmjbZ7ca a YfVU'@H! 'D'Ujb|ZZ7ca a YfVU'@H! '8YZbXUblz7ca a i b|Uhcjb'fi 77Ez7cdm|j| \h#DUYbhi#  
HUXYa Uf\_z7cfdefUY'5Xa jbgHjUj Y'@UkZ7cfdefUY': cfa UhcjbZ7cfdefUY'A Yf| Yfg/ '5Wd| jghcbZ7cfdefUY': YbYfUz7fja jbuZ8ca YghWUbx  
: Ua jmfYUhcjbZ9bhYfUjba Yblz9bj jfba YbUz9glUY'DUbb|j| z9glUY' #DfcVUY' #Hf| ghZ9F'G5Z: jbuVU'DUbb|j| / 'b| Ygla Ybh7ci bgY|b| z  
: cfYWc'gi fY' #FYdcggYggcbz <YUhz <ci g|b| '7ci flz -a a || fUhcjbz -bgi fUbW' 7c"'! '8YZbXUblz -b|YfUhcjbUz >i j Yb|Y' DfcWYX|b| gZ @Ucf'! '  
A UbUj Ya Yblz @Ucf'! I b|cbz @a jhX'DUfYf'g\ jgZ A YX|Uhcjb' #5fV|HjUhcjbz A i b|UfU'fBc' bch|jW XY' 6cbX'DfUMjW'! F YUfW6cbXg' j' 6cbX  
WY|j cfmZC'j' UbX: UgZDYf'gcbU' -b1 fmi! 'D'Ujb|ZZDYf'gcbU' -b1 fmi! '8YZbXUblzD'Ujb|ZZ7 UgZ5Wjcb'fA UgZ'HfHt| jWfHtZDi VjW| H|HjYgZFYU'  
9glUY'! 7ca a YfVUzFYU'9glUY'! FYg|Xyb|UzGcWU'GYWf|Hm5Xa jbzHJ Uhcjb' -bXj jX UzhJ Uhcjb'! 7cfdefUYZK UHY'@UkZK j'g UbXHh ghZ  
K cf\_Yfg'7ca d"! 'D'Ujb|ZZK cf\_Yfg'7ca d"! '8YZbXUblzC'hYfZ: YXyfu'9I Ya d|hcjbZ: YXyfu'G97Zdfj UY'DUW'a YblzGRUy'G97ZGnbXjUhcjb

71 FF9BH7CJ9F5; 9

71 fFYbh7UfYf	71 fFYbh@a jlg8YXj WjVY
5bbi U'DfYa j  a	Dc'jWt9  d Uhcjb'8UY
8Yg fYX8YXj WjVY	F Yf'cUMj  Y'cfDf'cf5Wjg'8UY

5HCFB9MQ FJ9M

FYUhcjb'lc: jfa '7cXy' fC7LCZ7ci bgY' fDLDFHbYf' fCLGc'c' fDL9a d'cmYX5hcfbYmif7L-bXYdYbXYbh7cbHUMif

@ghicZ5hcfbYng'6mBUa Y' fbHUM'GYdUfUY'G\YYh ZB YWggUfml.	MUF5Xa jhYX' lc'6UF	MUF'>c bYX' : jfa	FYUhcjb'lc: jfa fl gYUvcj Y'WXYgl.	DYfWbHj  Y'cZhJa YK cf_ b  : cf: jfa fC7'Cbml.

H-G: CFA 'G: CF'9GHA5H9DI FDC9GCB@M

DYUgY'UHUM'U'WdmcZUfa 'YHYf'YUX'UbX'U'WdmcZdc'jWihXYWUhcjb'g'dUj YfZUj UjUVYE'7cj YfUj Y'a UmVY'Vci bX'cbmi dcb'  
gi Va jgg|cb UbX'UWdHUbW'cZU'Z 'K YgldcfhUdd'jWjcbZK Ygldcfh|gU: 9'7ca a YfVU'7ca dUbn!

HCF979J95: I @E -7? 'EI CH9D@5G7CAD@H89J57-Z5B8F9HFBH-GF9E 9GHIC'

-bgi fUbW'GdYVUj|ghZ-bWj' DfcZYgg|cbU'@|Uv|jhm8YdHj' D'C"'6cl '& &+ j' BcfWcggZ: 5" SS- %& &+ j: U| '(S(!, %(!- S%(''  
cf'WbHUMi-G5@9G'8-F97HUh%, , , !-G+%) - 'cf'(S(!, %(!S& &Z9I H: ' ' &

@5K M@FG'DFC: 9GG=CB5@@@56=@HM



# the New blue

## **Largest collection of criminal records on Westlaw.**

Westlaw® Litigator delivers complete coverage of criminal records to your desktop, and lets you search all jurisdictions and record types simultaneously. With a single query you can search millions of federal, state and county records, sex offender records, corrections records and more. Now that's coverage!

**For more information, call 1-800-733-2889  
or go to [westlawlitigator.com](http://westlawlitigator.com)**

Westlaw® Litigator

© 2004 West, a Thomson business L-309615/10-04

Blue and You

THOMSON  
WEST