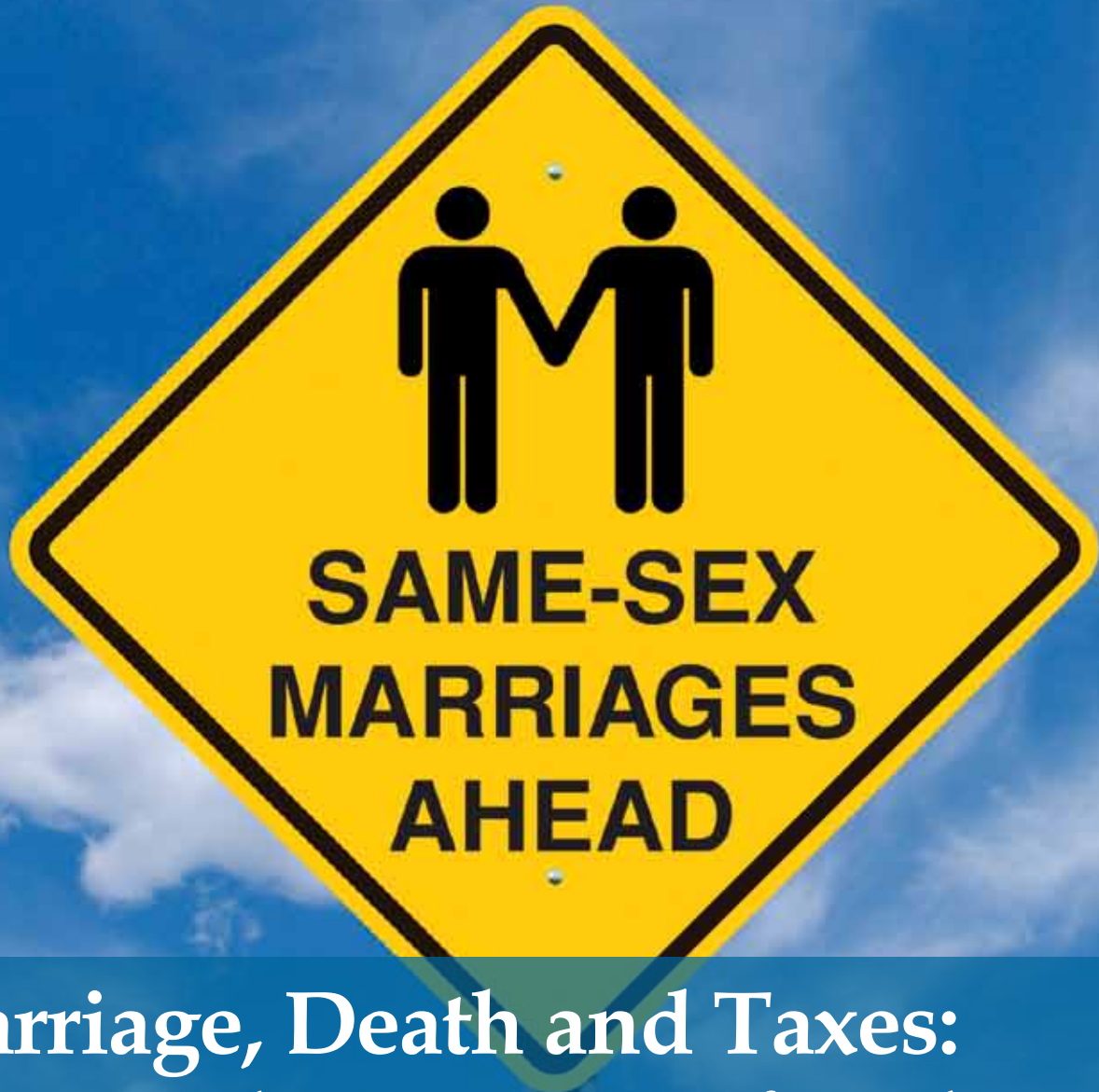


Georgia Bar Journal

October 2015 ■ Volume 21 ■ Number 2



**Marriage, Death and Taxes:
The Estate Planning Impact of *Windsor*
and *Obergefell* on Georgia's Same-Sex Spouses**

Trial By Jury: What's the Big Deal?

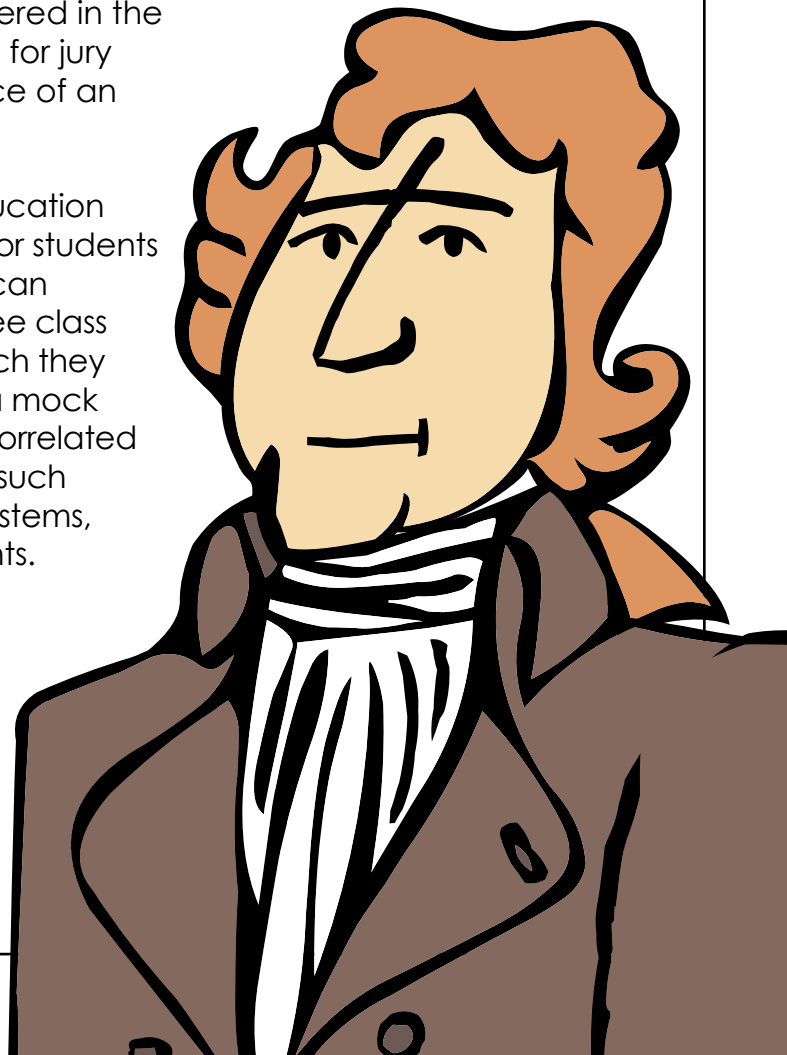


"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics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

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

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

You may view "Trial By Jury: What's the Big Deal?" at www.gabar.org/forthepublic/forteachersstudents/lre/teacherresources. For a free DVD copy, email laurenf@gabar.org or call 404-527-8736. For more information on the LRE Program, contact Deborah Craytor at deborahcc@gabar.org or 404-527-8785.





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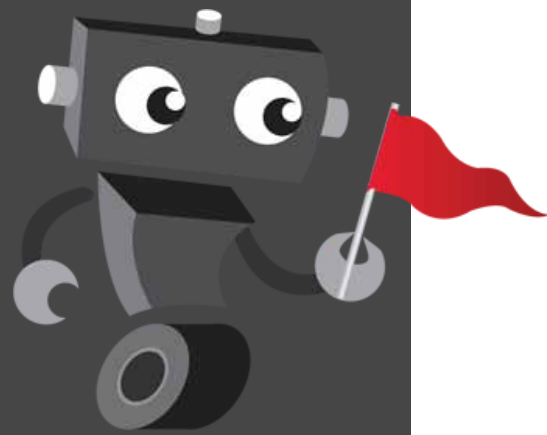
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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; phone: 404-527-8791; sarahc@gabar.org.

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Photo by Zach Porter Photography

by Robert J. "Bob" Kauffman

Shaping the Bar's Future: A Progress Report

If you read the August edition of the *Georgia Bar Journal*, or if you recall an email I sent you that same month, you are aware that the State

Bar of Georgia has embarked on a strategic planning process to help shape our existing and future programs. I am now pleased to report on the progress that has already been made on our strategic plan.

As I told the Board of Governors upon taking office, the State Bar of Georgia has throughout its history provided excellent service to the public and the justice system in our state. But our world is much different from the way it was in 1964, and now is the time for us to comprehensively review where we are today and how our State Bar should operate in the future.

As management consultant Peter Drucker has said, "People in any organization are always attached to the obsolete—the things that should have worked but did not, the things that once were productive and no longer are." One objective of strategic planning is ensuring that we are never "attached to the obsolete." If any Bar program or service is no longer productive or helpful to our cause, it needs to be eliminated, upgraded or replaced with something else.

In the email you received in mid-August, I enlisted the assistance of all Bar members to get this process off to a successful start by completing an online survey of the priorities you believe are important for the State Bar to best serve the profession and the public, now and in the future.

Before we could move forward, we needed to know:

"As you can see, the development of a strategic plan for the State Bar of Georgia is a major undertaking. It is also one we expect will have significant benefits as we identify priorities for the future."

- Are you being adequately served as a member of the State Bar of Georgia?
- Is the State Bar effectively serving the public?
- How can we improve our service to Bar members and the public?

Specifically, we identified more than 30 Bar services and programs and asked you to rate each of them based on how valuable they are to you and whether they are appropriate to be offered and provided by a mandatory Bar. We also asked you to rate the effectiveness of our governing bodies, the Executive Committee and the Board of Governors, as well as your satisfaction with the responsiveness of the State Bar staff and the overall quality of the Bar's services and programs.

If you completed the survey, the members of our Long Range Planning Committee and Executive Committee thank you. The responses you submitted are essential to this review and planning process. I hope you will agree that the time you took to answer our questions was well invested for the future of our profession and the justice system.

Our strategic planning process was actually initiated more than a year ago, resulting from a discussion of long-range planning issues at our Executive Committee Retreat in September 2014. My predecessor, Patrise Perkins-Hooker, formed a Strategic Planning Committee, which conducted a search for a strategic planning consulting firm to help coordinate our efforts. In March of this year, we entered into an agreement with Leadership Strategies to serve as our consultant to facilitate the development of our strategic plan.

Our planning team—consisting of President-Elect Rita Sheffey, Treasurer Pat O'Connor, Secretary Buck Rogers, YLD President Jack Long, YLD President-Elect Jennifer Mock, Executive Director Jeff Davis, General Counsel Paula Frederick and myself—held two extensive meetings with Leadership Strategies in July. We discussed the overall process, including the selection of various stakeholders to be interviewed, the number of surveys to be conducted and the questions to be asked, and schedule

strategic planning meetings of the Executive Committee and Long Range Planning Committee.


I asked Jeff Davis and Rita Sheffey to coordinate with the Planning Team and the consultant regarding logistical details, interviews, surveys and meetings. I appreciate their time and effort to help get us to this point of the process.

After consulting with and receiving input from the Planning Team, we identified these stakeholders who were to be interviewed by our consultant: the justices of the Supreme Court of Georgia; representatives from the Institute of Continuing Legal Education, Georgia Legal Services Program, Atlanta Legal Aid Society and Fastcase; key members of the Georgia General Assembly and our legislative advocacy team; and selected local news reporters and editors. Leadership Strategies reports that all interviewees have thus far been very thoughtful and provided useful feedback on their perception of the Bar's programs and services.

Also in August and September, the Board of Governors received a briefing via webinar, and the Executive Committee and key staff began a situation assessment of strengths, weaknesses, opportunities and threats based on survey results, stakeholder interviews and other baseline feedback.

This month, the Executive Committee and Long Range Planning Committee will hold an extensive strategic planning session. A review and input session with the Board of Governors will be part of the Board's Fall Meeting agenda in Savannah. The State Bar staff will also play a vital role in the plan's direction, with key personnel involved in the planning meetings and all employees providing input through an online staff survey.

In January 2016, during the Midyear Meeting at Lake Lanier Islands, the final strategic plan will be presented to the Board of Governors for its approval.

As you can see, the development of a strategic plan for the State Bar of Georgia is a major undertaking. It is also one we expect will have significant benefits as we identify priorities for the future. The fruits of this labor will help the State Bar move forward in a way that ensures that everything toward which we devote our energy and financial resources is directly related to what we do every day, all week long, which is the practice of law—so that we can better serve our justice system and our fellow Georgians. 

Robert J. "Bob" Kauffman is president of the State Bar of Georgia and can be reached at rkauffman@hrflegal.com.



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by John R. B. "Jack" Long

We Are Setting New Records, But We Still Need YOU!

A group as large and diverse as the YLD can sometimes leave our members wondering how to get involved or even debating if they should. I'd like to take this opportunity to let you know about some of the great things we are doing, and invite you to participate and become engaged in our committees, meetings and programs. Looking at the great work your YLD is already doing this year, you have good reason to be proud. I know I am.

Our Law School Outreach Program received a complete overhaul and the result has been extremely successful. During the month of September, outreach events were held at each of Georgia's law schools educating the future members of our Bar about the vast range of services, programs and opportunities we

offer. We answered countless questions about topics ranging from taking the Bar Exam to participating in a YLD committee. The events attracted attendance and participation by law students and Bar member volunteers alike, resulting in a record number of new law school affiliate members. We are continuing the Law School Fellows Program started by YLD Past President Darrell Sutton, and have already accepted new 2L fellows into the program from each of the law schools.

The YLD Family Law Committee is hard at work planning their annual Supreme Cork fundraiser to benefit the Guardian ad Litem and Domestic Violence Units of the Atlanta Volunteer Lawyers Foundation. The event will be held Oct. 22, and more details will be shared in the weeks ahead. Preparation for the 11th annual Leadership Academy

is underway and applications for the 2016 academy will be available on the website in the next few weeks. The Estate and Elder Law Committee is working diligently to re-write and publish its Senior Citizen's Handbook, as well as restart its Wills Clinic Program, a pro bono effort that has provided hundreds of first responders and their families with basic estate planning documents.

Your YLD is gaining national recognition for the work of these and our many other important committees.

"Regardless of where your interests lie, the YLD has a place for you. So, join a YLD committee, or register for one of our upcoming meetings."

Under the leadership of Immediate Past President Sharri Edenfield, the Georgia YLD won first place in four out of five award categories at the ABA YLD Annual Meeting: Service to the Bar, Service to the Public, Newsletter and Comprehensive. In the fifth category (Diversity), we received special recognition for a CLE presented at our Spring Meeting in New Orleans on the decision in the Supreme Court case of *Plessy v. Ferguson*, which included a presentation from local law professors as well as the descendants from both parties in that landmark decision. In addition, we received the Outstanding Public Service Project Award from the American Bar Endowment for the military support initiatives started by Edenfield. Never before has Georgia's Young Lawyers Division received this volume of such high accolades at the national level.

In keeping with the spirit of creating nationally-recognized programs, we will host our first ever YLD Regional Summit, a program inspired by YLD leaders in Georgia and its neighboring states as part of an ABA initiative to share leadership strategies and develop new programs. This convention will be held in June 2016 in Atlanta, and will be a combined effort of the YLD with our partners in Florida, Alabama, South Carolina, North Carolina and Tennessee. In the spirit of collaborating with other states on individual projects, our YLD Family Law Committee is working with the Texas Young Lawyers Association to draft a guide addressing the unique issues raised by divorcing military spouses. These types of partnerships are the key to refining and growing our already excellent curriculum of successful programs.


The YLD Summer Meeting was held Aug. 20-23, in Greensboro, Ga., and boasted a record attendance over any YLD Summer Meeting held over the last five years. In addition to the usual networking and fellowship opportunities, attendees heard from a panel of judges from rural areas

who dispensed practical tips and candid advice in an informative and engaging CLE. Registration for our Fall Meeting at the Greenbrier just opened and a great turnout is expected. If you've never attended a YLD meeting, ask yourself: Why not? Great opportunities await you, whether for public service, professional development or both.

Planning for our 10th annual Signature Fundraiser is underway. I am pleased to announce that the beneficiary selected for the 2016 YLD Signature Fundraiser is Camp Lakeside, a place where all children, regardless of ability or health status, can enjoy the adventure, fun and friendships of summer camp. Situated on the shores of Lake Thurmond in Lincoln County, Camp Lakeside will be the second of its kind in Georgia. Once completed, it will be a haven for children with disabilities or serious and chronic health conditions, allowing them to experience summer camp in a medically safe environment, along with able-bodied children from around the region. It is being built as part of a dynamic partnership between the Family YMCA and Children's Hospital of Georgia, and will allow children of all abilities across our state (particularly in the Augusta, Savannah and Macon metropolitan areas) to have access to life-changing outdoor recreation and therapeutic programs. Plan now to attend the Signature Fundraiser, Jan. 23, 2016, at The Biltmore in Atlanta. Tickets and sponsorship packages will be available for purchase on our website at www.georgiayld.org.

Our mission of public service will not end with the conclusion of our Signature Fundraiser. Next spring, we will host the fifth annual Georgia Legal Food Frenzy in partnership with the Georgia Food Bank Association and the Office of the Attorney General. In an effort to sustain Georgia's eight regional food banks, lawyers across our state compete against each other to collect food and monetary donations. This program helps feed those who

would otherwise go without food, many of whom are children. Our goal is to raise a cumulative total of five million pounds of food since the program's inception, bringing our average to one million pounds of food per year.

These are just some of the many YLD programs that are in progress. On the back cover of this issue of the *Georgia Bar Journal*, there is a brief summary of the opportunities the YLD offers its members. Join your fellow young lawyers; there are ways for everyone to participate. We have projects that require help from people in different geographic regions and practice areas. We have opportunities for people who are outgoing and those who are more introverted. There are programs tailored for trial attorneys, appellate attorneys and even judges. Regardless of where your interests lie, the YLD has a place for you. So, join a YLD committee, or register for one of our upcoming meetings. Volunteer your time for one of our many pro bono or other public service events, or share your talents in organizing a CLE or other member outreach program. The YLD needs *you!* 

John R. B. "Jack" Long is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at jlongattorney@aol.com.

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**SAME-SEX
MARRIAGES
AHEAD**

Marriage, Death and Taxes:

The Estate Planning Impact of *Windsor* and *Obergefell* on Georgia's Same-Sex Spouses

by Kimberly E. Civins and Tiffany N. McKenzie

The institution of marriage in Georgia has been in a process of constant evolution. The basic concept of marriage and the laws regarding those who could enter into a legal marriage in Georgia have changed considerably over the years. For instance, in 1979, Georgia repealed its anti-miscegenation laws, permitting white persons to marry persons of other races.¹ In 1983, women no longer were deemed to be the property of their husbands under coverture laws.² Starting in 1997, common law marriage no longer was permitted in Georgia.³

The most recent change to Georgia's definition of marriage occurred on June 26, 2015 when the United States Supreme Court changed the marriage landscape across the country with its 5-4 decision in *Obergefell v. Hodges*.⁴ In that decision, the Court held that same-sex

marriages must be recognized by all fifty states, striking down every state ban, including Georgia's,⁵ as well as Section 2 of the Defense of Marriage Act (DOMA)⁶, as unconstitutional.⁷

For more than 200 years, no state in the United States recognized same-sex marriage. In 2004, however, Massachusetts became the first state to begin issuing marriage licenses to same-sex couples. From 2008 to 2012, one to two additional states per year recognized same-sex marriage either judicially or by statute. In 2013 alone, eight states legalized same-sex marriages. Then, 19 more began recognizing same-sex marriage in 2014. This trend brought many same-sex marriage issues to the nation's attention, including the effect of same-sex marriage laws on tax and estate planning.

Rights for same-sex couples have been a critical issue in Georgia. An estimated 3.5 percent of the adult population in Georgia identifies as lesbian, gay, bisexual, or transgender (LGBT),⁸ and Georgia ranks an estimated eighth in number of LGBT-identifying residents.⁹ Atlanta is the ninth largest city in the nation for LGBT-identifying residents¹⁰ and is fifth in percentage of same-sex couple households for cities with populations over 250,000.¹¹ Estate and tax planning is a crucial piece of an overall financial plan for LGBT individuals because incomes for same-sex cou-

ples tend to be higher (approximately \$94,000) than for opposite-sex couples (approximately \$86,000).¹² Higher incomes may be explained by higher education levels for individuals who are part of a same-sex couple (46 percent with a college degree) as compared to their heterosexual counterparts (32 percent with a college degree) as well as some concentration of same-sex couple residence in states with higher median incomes such as New York and California.¹³

DOMA and *Windsor*

DOMA was signed into law by President Bill Clinton in 1996. In effect, DOMA barred same-sex married couples from being recognized as “spouses” for federal laws or federal programs. Specifically, Section 3 of DOMA enacted 1 U.S.C. § 7, defining “marriage” as only a legal union between one male and one female, as husband and wife, and defining “spouse” as referring only to a person of the opposite sex who is a husband or a wife.¹⁴

Section 2 of DOMA¹⁵ created an exception to the Full Faith and Credit Clause of the Constitution, by leaving marriage and divorce laws up to the states and not requiring states to recognize each other’s same-sex marriages. Therefore, DOMA did not prevent individual states from recognizing same-sex marriage, but it imposed constraints on the benefits received by all legally married same-sex couples.

DOMA had very serious practical effects. DOMA prohibited same-sex couples from using federal estate, gift and income tax marital privileges, obtaining government health care benefits otherwise received by heterosexual couples, obtaining Bankruptcy Code protections, taking leave under the Family Medical Leave Act (FMLA) to care for a sick spouse, and even burying same-sex couples together in veterans’ cemeteries. For those same-sex married couples who resided in

a state like Georgia that did not recognize their marriage, DOMA also denied them the ability to avail themselves of state law marital benefits.

Section 3 of DOMA was brought to the forefront of the same-sex marriage discussion through *United States v. Windsor*.¹⁶ This landmark decision not only was a pivotal case for same-sex couples, but it also served as a major reformation to estate planning techniques available to them. In 2007, Edie Windsor and Thea Spyer married in Canada after having been together for more than 40 years. They lived in New York where they resided in 2009 when Thea died.¹⁷ Although New York did not allow same-sex marriage at the time, the state did recognize legally performed same-sex marriages from other jurisdictions.¹⁸ Upon Thea’s death, she left her assets to Edie and named Edie as the Executor of her estate.¹⁹ Because of DOMA, no federal marital estate tax deduction was allowed, and Thea’s estate paid approximately \$363,000 in estate tax.²⁰ In 2010, Edie filed suit seeking a refund in the Southern District of New York.²¹ In the midst of the suit, in February of 2011, Attorney General Eric Holder, on the Obama Administration’s behalf, stated that DOMA was unconstitutional and that the Department of Justice no longer would defend the constitutionality of Section 3.²² In April 2011, however, the Bipartisan Legal Advisory Group of the House of Representatives stepped in to defend DOMA’s Section 3 constitutionality.²³

In June 2012, the District Court found Section 3 of DOMA unconstitutional and was affirmed by the Second Circuit in October 2012.²⁴ The Supreme Court ultimately ruled that Section 3 was unconstitutional based on equal protection grounds.²⁵ This decision did not address the constitutionality of same-sex marriages,

nor did it decide whether Section 2 of DOMA was constitutional. In other words, the federal government had to recognize state-sanctioned same-sex marriages, but not all states would have to allow same-sex marriages, nor even recognize same-sex marriages that originated in other states. Instead, after the *Windsor* decision, the matter remained entirely a state-by-state issue.

Additionally, in the post-*Windsor* era, there remained a question as to whether federal agencies would recognize the legality of same-sex marriages based on the couples’ “State of Residence” or the couples’ “State of Ceremony” (i.e., where the couple was married). When an agency recognized same-sex couples based on a “State of Ceremony” standard, more couples were encompassed, and entitled to the rights afforded by that agency because the state of residence did not matter, only whether the couple was legally married in any jurisdiction. Conversely, the “State of Residence” standard was considerably more restrictive because it limited recognition of married same-sex couples to those who not only were legally married, but also lived in a state which recognized their marriage.

Certain federal agencies, including the State Department, Department of Defense, Department of Education, Department of Health and Human Services, and, eventually, the Internal Revenue Service (IRS)²⁶ recognized same-sex marriages based on the broader “State of Ceremony” standard. Other agencies, such as the Social Security Administration and the Department of Veterans Affairs, recognized same-sex marriage strictly based on the narrow “State of Residence” standard. Even within one federal agency, the Department of Labor, both standards were used in different contexts. Until March of 2015, the Department of Labor used the “State of Ceremony” stan-

dard in the context of employee benefit plans, but limited its recognition in the context of FMLA to the “State of Residence” standard.²⁷ This inconsistency was one of the many areas relating to same-sex marriage that remained unsettled following the *Windsor* decision.

Georgia Spouses Post-*Windsor*

Post-*Windsor*, Georgia same-sex partners could not marry in state and their out-of-state marriage, although recognized for federal purposes, remained unrecognized for state purposes because of the amendment to the Georgia constitution that made it unconstitutional for the state to recognize or perform same-sex marriages or civil unions.²⁸ Because *Windsor* only applied to *federal* recognition of same-sex marriage, many issues were left open. For instance, many estate-related privileges available to Georgia spouses were not

available to same-sex Georgia spouses, including:

- Marriage;
- Divorce;
- Spousal inheritance rights under intestacy;²⁹
- Spousal preference to be named as personal representative;³⁰
- Dual spousal adoption;³¹
- Spousal ability to receive year’s support;³²
- Spousal right to claim spouse’s remains and direct disposition of spouse’s remains;³³
- Spousal preference to be named as guardian or conservator of spouse;³⁴
- Spousal rights to make health-care decisions on behalf of spouse;³⁵ and
- The ability to file joint Georgia income tax returns.³⁶

Most of these could be ameliorated with proper planning. Therefore, although *Windsor* was a positive decision for same-sex couples, there were many financial,

tax and estate planning issues left to be considered.

Financial and Income Tax Considerations

Tax Returns

For federal income tax purposes, Georgia same-sex couples’ marriages are recognized. LGBT spouses now are *required* to file as “married” on federal tax returns.³⁷ The IRS stated that such spouses, may, but need not amend previous tax returns filed before the *Windsor* decision. Yet, post-*Windsor*, Georgia spouses faced an interesting problem—federal law now insisted that they file as “married,” yet the state of Georgia, which did not recognize same-sex marriage, required that individuals file state income taxes using the same marital status as they used for federal purposes. Fortunately, prior to individual tax filings being due for tax year 2013, the Georgia Department of Revenue published guidance providing that same-sex

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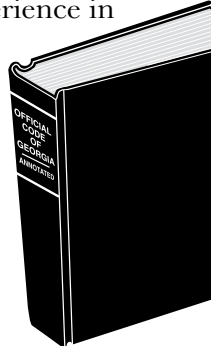


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couples should file as single individuals, recomputing their adjusted gross income and deductions as if they were single, even though they were filing as “married” for federal purposes.³⁸

Treating same-sex couples as married for federal tax purposes has substantial implications. Same-sex spouses now can take income tax deductions for health insurance premiums paid for their spouse on their federal tax returns.³⁹ Same-sex spouses now succumb to the “marriage penalty” which refers to the higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same incomes. Additionally, stock ownership attribution rules (where a spouse is considered to own the stock of the other spouse) are now applied to same-sex couples and may affect key employee status, controlled group status and the status of S-corporation shareholders.⁴⁰ Further, upon division of property at divorce, there are favorable income tax rules, including the deductibility of alimony payments and the availability of Qualified Domestic Relations Orders for dividing retirement accounts.⁴¹

Retirement Planning

In addition, LGBT couples now can plan for the benefits of tax deferral using spousal rollovers of retirement plans, where a surviving spouse beneficiary can defer income taxation on retirement benefits just as his or her deceased spouse would have. No authority or guidance has been published yet for a same-sex spouse who, prior to *Windsor* already lost that opportunity and took a same-sex deceased spouse’s retirement account as an inherited account (potentially requiring more frequent and greater taxable distributions) rather than the more optimal spousal rollover where distributions may be stretched out to be taxable over a longer period of time or perhaps deferred completely. There may be some ability for the surviving

spouse, in that situation, to recast the receipt of such retirement proceeds as a spousal rollover (which likely entails returning previously withdrawn amounts to the retirement account and amending prior years’ tax returns).

Social Security

Post-*Windsor*, married same-sex couples in recognition states could apply for spousal Social Security benefits. Social Security spousal benefits allows married couples more flexibility in planning for retirement in a number of ways. For example, at full retirement age, lower-earning spouses can collect a benefit based on their own record or half of their higher-earning spouse’s benefit, whichever is larger. Additionally, divorced same-sex couples in recognition states were eligible for divorced spouse’s benefits as well as survivor benefits. However, the Social Security Administration based spousal benefits on the “State of Residence” standard, therefore these benefits were not eligible for same-sex couples in Georgia or for divorced same-sex spouses living in Georgia.

Estate Tax Considerations

Unlimited Marital Deduction

For federal estate tax purposes, the most important impact of *Windsor* is the availability of the federal estate tax, gift and marital deductions, allowing same-sex U.S. citizen spouses to transfer an unlimited amount of assets to one another, without tax consequence.⁴² Because Section 2 of DOMA was found unconstitutional, it is void as of its enactment in 1996. If a surviving LGBT spouse had been eligible for the estate tax marital deduction, but was not able to claim the deduction because of the status of the law before the *Windsor* decision, consideration should be made as to whether an amended estate tax return should be filed, and a refund claimed. There has not yet been authority as to whether such a refund

would be issued when the statute of limitations for estate tax return adjustments has passed, but a good case can be made for attempting the refund regardless. In addition, for federal gift tax returns, LGBT spouses should consider whether amended returns for past years should be filed to take advantage of the gift tax marital deduction or gift-splitting opportunities.

Beneficiary Designations

From an estate planning perspective, for ERISA plans, such as 401(k) plans, if an employee wishes to name someone other than his or her spouse as primary beneficiary, spousal consent is required. For instance, charities frequently are named as beneficiaries instead of spouses because of the remarkably tax-efficient consequence of satisfying charitable gifts with such assets. If spousal sign-off is not obtained, the beneficiary designation is invalid and the spouse is deemed to be the beneficiary. Post-*Windsor*, same-sex couples should double-check such beneficiary designations to verify that spousal consent was in fact obtained in instances where the spouse is not named beneficiary so as not to obviate the desired beneficiary designation in favor of the spouse.

Grantor Trusts

In addition to these tax advantages, same-sex spouses now need to double-check their prior estate planning documents. Irrevocable trusts that include the spouse as a beneficiary or grant to a spouse certain powers are treated as grantor trusts for income tax purposes, with the result that the grantor is legally responsible for the income tax consequences of the trust. The grantor’s payment of taxes is a tax-free gift, as trust assets are not diminished by income taxes, nor are the beneficiaries burdened by the tax. Now, non-grantor trusts need to be examined to ensure that the powers or benefits given to the same-sex spouse have not caused such trusts to become

grantor trusts, an outcome that can have unexpected income tax consequences. In addition, one technique occasionally used for same-sex estate planning before the legalization of same-sex marriage was the creation of Grantor Retained Income Trusts (GRITs). GRITs allow individuals to transfer appreciated assets at a reduced gift tax cost to non-family members and were previously a useful estate planning device for same-sex couples to transfer wealth. Post-*Windsor*, same-sex spouses are considered family members and therefore no longer may be able to effectively use GRITs. All GRITs should be examined to determine if these trusts now pose a federal gift tax problem for the grantor, and whether any relief is possible.

Other Techniques

There are additional federal estate tax planning techniques now available to same-sex spouses post-*Windsor*, including the advantages of portability of unused estate tax exemptions between spouses, generation-skipping transfer tax use of exemptions (such as the common “reverse-QTIP” strategy) and disclaimer planning. An exhaustive discussion of these highly impactful estate tax planning techniques is beyond the scope of this article,

but these commonly used tax-reduction techniques that heterosexual spouses long have enjoyed now are available for all married couples.

Obergefell and the Decision’s Impact

The inconsistencies with marriage laws across the country eventually led to the historic Supreme Court decision, *Obergefell v. Hodges*. The *Obergefell* decision affirmed a constitutional right to same-sex marriage in all 50 states, opening up tax, estate planning and retirement planning opportunities for couples in previous non-recognition states, such as Georgia. As discussed above, same-sex couples in Georgia were operating in a state of limbo. If they married out-of-state, they could obtain many of the federal benefits of marriage, but Georgia continued to deny them the benefits of marriage under state law. In the wake of the Supreme Court’s *Obergefell* decision, proactive estate planning now essentially mirrors planning for opposite-sex married couples.

Obergefell was brought because Jim Obergefell and his partner, John Arthur, sought to enter a legal marriage. Obergefell and Arthur were residents of Ohio. Because

Arthur was terminally ill, the couple traveled to Maryland to be legally married on the Baltimore airport tarmac and returned to Ohio as a married couple. Shortly after, when Arthur died, the state of Ohio issued a death certificate that did not recognize Obergefell as Arthur’s surviving spouse. Obergefell sued the state of Ohio seeking to have himself listed as Arthur’s surviving spouse, and named Hodges, the director of the Ohio Department of Health, as the defendant.⁴³ Obergefell argued that Ohio’s state ban on same-sex marriage was unconstitutional, including the non-recognition of marriages solemnized in other states because such a law violates the 14th Amendment’s equal protection clause.⁴⁴

On June 26, 2015, the Supreme Court held that the 14th Amendment requires states to issue same-sex marriage licenses, as well as to recognize same-sex marriages legally performed in other states.⁴⁵ This decision changed the landscape for same-sex couples, allowing them now to enjoy all state tax benefits and all the other spousal benefits opposite-sex couples enjoy. These benefits include, but are not limited to: adoption, child custody, divorce, marital property, Social Security spousal death ben-

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efits, inheritance through intestacy, priority rights in guardianship proceedings, and other preferences. State sanctioned legal same-sex marriage allows same-sex couples to obtain a plethora of potential benefits and consequences that they previously were denied, many of which were discussed above.

In the wake of the Supreme Court's *Obergefell* decision abolishing any state bans on same-sex marriages, and affording same-sex couples all rights and benefits associated with marriage, proactive estate planning now essentially will resemble the traditional planning that has been conducted for opposite-sex married couples for years. In the wake of both *Windsor* and *Obergefell*, here are some planning opportunities for Georgia's same-sex couples:

- **Take advantage of the unlimited federal, estate and gift tax marital deduction.** Federal and state recognition of marriages of same-sex couples leads to the availability of the unlimited marital deduction from federal estate tax and gift tax for transfers between same-sex couples.
- **Review current estate planning documents.** Existing estate planning documents may have been drafted with the assumption that same-sex marriage was not federally recognized or not recognized within the state of residence.
- **Review beneficiary designations and joint and survivor annuity elections.** The spouse of a participant in retirement plans subject to ERISA automatically may now be a beneficiary of such plan. Also, if a participant in a defined benefit retirement plan previously made an election to waive joint and survivor annuity benefits after the date of the marriage due to non-recognition in the state of residence, the participant may be able to make a new election. Similarly, state employment benefits previously denied to


same-sex spouses now may be available.

- **Consider replacing individual life insurance policies with survivor policies.** Married same-sex couples can consider whether to maintain or replace individual policies with second-to-die policies.
- **Understand the Georgia default spousal laws.** If the default rules result in something other than what is desired, same-sex couples will need an estate plan crafted to fit their circumstances, concerns and objectives.
- **Consider prenuptial and post-nuptial agreements.** Many Georgia same-sex couples created domestic agreements as a form of contract to assist in dissolving the relationship and disposing of assets as necessary during separation. Now that marriage is available to those couples, individuals who entered into these agreements should consider invalidating those agreements and forming either a prenuptial agreement (for same-sex couples who are not yet legally married) or a postnuptial agreement (for same-sex couples who were legally married prior to *Obergefell*).
- **Consider amending previously filed federal and state tax returns.** Couples should consider amending previous years' federal and state returns to obtain refunds for any overpayments due to their prior single status and/or the inability to claim the unlimited marital deduction for previous returns.

The Remaining Georgia Question

Obergefell likely represents the "final word" on same-sex marriage, elevating same-sex relationships to equal standing with opposite-sex marriages.⁴⁶ While same-sex married couples now are entitled to equal protection under the laws

of every state, Georgia same-sex couples and families always should take control of their estate planning and leave as little as possible to state law interpretation.

The remaining issue outstanding for Georgia's same-sex spouses is the interpretation of trust documents. Trust interpretation is governed by state law. Many Georgia trusts contain language such as: "this trust benefits my lineal descendants *and their spouses*." After *Obergefell*, does the use of the term "spouse" in a trust document include same-sex spouses? Does it matter whether the Georgia trust was created before or after the *Obergefell* decision? How does the intent of the settlor come into play? Can or should Georgia lawyers look to the evolution of similar trust law issues seen in the context of adopted children or out-of-wedlock children and their status as beneficiaries under trusts? Likely, this issue will be litigated through the Georgia court system, and there is a chance we could see a Georgia case or a similar case from another state represent yet another chance for the U.S. Supreme Court to weigh in on the rights and benefits of same-sex spouses. 



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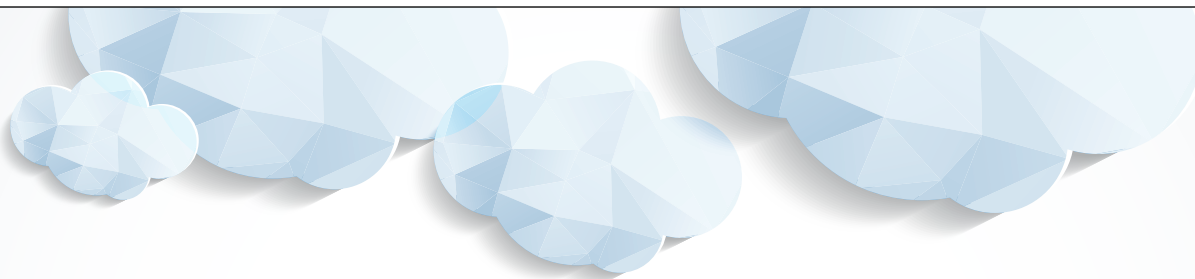


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planning and administration, family wealth transfer tax planning, succession planning and fiduciary litigation. She can be reached at tiffany.mckenzie@bryancave.com.

Endnotes

1. See Act of Apr. 13, 1979, No. 543, § 2, 1979 Ga. Laws 948, 949 (repealing former Ga. Code. Ann. § 53-106).
2. See Act of Mar. 29, 1983, No. 516, § 1, 1983 Ga. Laws 1309, 1309 (striking former O.C.G.A. § 19-3-8 in its entirety and replacing with the predecessor to current O.C.G.A. §19-3-8).
3. See O.C.G.A. § 19-3-1.1 (2015) (prohibiting the creation of common law marriage beginning on January 1, 1997, but continuing to recognize those marriages entered into before that date).
4. 135 S. Ct. 2584 (June 26, 2015) (“Obergefell”).
5. See Ga. Const. art. I, § 4.
6. Pub. L. 104-199, § 3(a), 110 Stat. 2419 (codified at 1 U.S.C. § 7 (2012)).
7. See Obergefell, 135 S. Ct. at 2604-05, 2607-08.
8. Gary J. Gates and Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP (Feb. 15, 2013), <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.
9. Gary J. Gates, *Same-sex Couples and the Gay, Lesbian, Bisexual Population*, WILLIAMS INSTITUTE 6 (October 2006), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Same-Sex-Couples-GLB-Pop-ACS-Oct-2006.pdf>.
10. *Id.* at 7.
11. *United States Census Snapshot: 2010*, WILLIAMS INSTITUTE 7, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf> (last visited Sept. 16, 2015).
12. Gary J. Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, WILLIAMS INSTITUTE 4, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf> (last visited Sept. 16, 2015) (based on 2010 US Census data).
13. See *id.* at 3-4.
14. Defense of Marriage Act § 3(a).
15. Pub. L. 104-199, § 2(a), 110 Stat. 2419 (codified at 28 U.S.C. § 1738C (2012)).
16. 133 S. Ct. 2675 (2013) (“Windsor”).
17. *Id.* at 2682
18. *Id.* at 2683, 2689.
19. *Id.* at 2683.
20. *Id.*
21. *Id.*
22. *Id.*
23. See *id.* at 2682.
24. See *Windsor v. United States*, 833 F. Supp. 2d 394 (S.D.N.Y. 2012); *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012).
25. *Windsor*, 133 S. Ct. at 2695-96.
26. See Rev. Rul. 2013-17, 2013-38 I.R.B. 201.
27. Effective March 27, 2015, the Department of Labor switched its position and adopted a State of Ceremony Standard for FMLA purposes. See Definition of Spouse Under Family and Medical Leave Act, 80 Fed. Reg. 9989, 10,000 (Feb. 25, 2015) (to be codified at 29 C.F.R. § 825.102).
28. Ga. Const. art. I, § 4.
29. O.C.G.A. § 53-2-1 (2011).
30. O.C.G.A. § 53-6-20 (2011).
31. O.C.G.A. § 19-8-3 (2015).
32. O.C.G.A. § 53-3-1 (2011).
33. O.C.G.A. § 31-21-7 (2012).
34. O.C.G.A. § 29-4-3 (Supp. 2015); O.C.G.A. § 29-5-3 (Supp. 2015).
35. O.C.G.A. § 31-9-2 (2012); O.C.G.A. § 31-36A-6(a) (2012).
36. Ga. Dep’t Rev., Informational Bulletin IT-2013-10-25, Oct. 25, 2013.
37. Rev. Rul. 2013-17, 2013-38 I.R.B. 201.
38. Ga. Dep’t Rev., Informational Bulletin IT-2013-10-25.
39. R-News Rel. 2013-72, Aug. 29, 2013.
40. 26 U.S.C. § 1361(c)(1) (2012).
41. 26 U.S.C. § 215 (2012); 29 U.S.C.A. §1056 (West 2009 & Supp. 2015).
42. 26 U.S.C. § 2056 (2012); 26 U.S.C. § 2523 (2012).
43. See Obergefell, 135 S. Ct. at 2694-95.
44. See *id.* at 2693-2708.
45. *Id.* at 2604-05, 2607-08.
46. Matthew T. McClintock, *Estate Planning for same-sex couples after Obergefell v. Hodges*, LEGAL EDUCATION BLOG (June 26, 2015, 9:09 AM), <http://info.wealthcounsel.com/blog/estate-planning-for-same-sex-couples-after-obergefell-v.-hodges>.



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Office of State Administrative Hearings:

20 Years of Continuous Progress in Becoming One of the Leading Administrative Courts in the Nation

by Hon. Michael Malihi

“The fundamental requisite of due process of law is the opportunity to be heard.”
Justice Mahlon Pitney in *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)

The U.S. Supreme Court quoted Justice Pitney’s edict decades later in *Goldberg v. Kelly*,¹ a decision that vastly expanded the rights of individuals aggrieved by adverse government action and acknowledged that an impartial decision maker is an essential element of due process.² Recognizing that most aggrieved parties would never subscribe to the idea that a hearing officer beholden to the very government agency that took adverse action against them could be “neutral,” the Georgia General Assembly created the Office of State Administrative Hearings (OSAH) to adjudicate the myriad of disputes that arise over state agency action. OSAH was established after Rep. Denmark Groover, who championed OSAH’s enabling legislation, represented a client before an internal agency review panel and questioned the ability of any state agency to review its own decisions in an unbiased manner.

After the General Assembly passed OSAH’s enabling legislation in 1994, Gov. Zell Miller appointed Hon. Mark Cohen to serve as OSAH’s first chief judge. Cohen, now a U.S. District Court judge, was the natural choice for the position because he assisted Rep. Groover with drafting OSAH’s enabling legislation while working in the Office of the Attorney General. Cohen’s first act was to create a structural and physical separation between agency decision makers and OSAH. Cohen then assembled a committee to formulate what would become OSAH’s procedural rules. Because OSAH had inherited the responsibility of providing due process hearings on behalf of dozens of state agencies and licensing entities, each of which had its own unique procedural requirements, developing uniform rules proved no small task. On April 1, 1995, OSAH began operations and assumed its role as Georgia’s central panel in downtown Atlanta. From its inception nearly 20 years ago, as envisioned by Cohen, OSAH has been located in a building that is separate from other state agencies and government buildings. The use of a neutral site fosters the perception of impartiality and avoids the appearance of bias.

Increasing Efficiency

With a renewed emphasis on service to the citizens of Georgia and a clearly stated mission “to resolve disputes between the public and state agencies in a timely, impartial, courteous and professional manner,” and with a focus on generalization, timeliness and cost reduction, OSAH has become the most efficient and cost-effective central panel in the country.

Beginning in 1997, OSAH began a gradual shift away from specialization toward generalization. Rather

than being assigned cases based on each judge's specialty, judges were asked to hear multiple case types. Although this new practice required judges to enter unfamiliar territory, it allowed for increased flexibility in case assignment and enabled OSAH to operate with a streamlined judicial staff. A routine schedule of mass calendar calls replaced the ad hoc case assignment system. Each judge was assigned several hearing locations in a particular geographic area. These mass calendar calls, which were placed on a recurring schedule, permitted judges to address a large number of pending appeals in one sitting. This method allowed for the more efficient adjudication of hearing requests and significantly diminished travel time and costs. While judges formerly might have been assigned to 30 cases a month, the new method allowed judges to preside more than 200 or more cases in one day. Prior to this shift, cases would typically close up to a year after referral. Today, the average turnaround is 34 days for most cases.

Another significant cost-saving measure is OSAH's reliance on partnerships with 49 local courthouses that generously provide courtroom space to OSAH's judges at no additional cost to taxpayers. OSAH, therefore, only pays for courtroom and office space in its Atlanta headquarters. This is in stark contrast to other central panels in the nation, which often maintain multiple courtroom and office spaces in the states that they serve. OSAH's partnership with local courthouses eases the cost and burden of travel on citizens and allows OSAH to reach citizens in all 159 counties across the state.

The foregoing changes resulted in a clear and measurable increase in efficiency. In 2000, OSAH adjudicated 19,000 cases with 67 judges and a total staff of more than 90 people. Today, OSAH is on track to adjudicate more than 62,000 cases with the



Photo by Michie Turpin

OSAH judges and staff attorneys. (Front row, left to right) Laurin McDonald, staff attorney; Judge Stephanie Howells; Judge Ronit Walker; Judge Michael Malihi; Judge Amanda Baxter; Judge Patrick Woodard; (middle row, left to right) Judge Kimberly Schroer; Judge Barbara Brown; Judge Lois Oakley; Judge David Langston; (back row, left to right) Dominic Capraro, staff attorney; Shoshana Elon, staff attorney; Judge Ana Kennedy; Judge Steve Teate; Judge Kristin Miller; Judge Carol Walker-Russell; and Judge Chuck Beaudrot.

help of only nine full-time and five part-time judges and a total staff of 34. Last year, OSAH judges adjudicated an average of 5,428 cases each—by far the highest adjudication rate in the country.³ Moreover, OSAH's cost-saving measures resulted in Georgia's having the lowest cost per case in the nation, at only \$74 per case.⁴

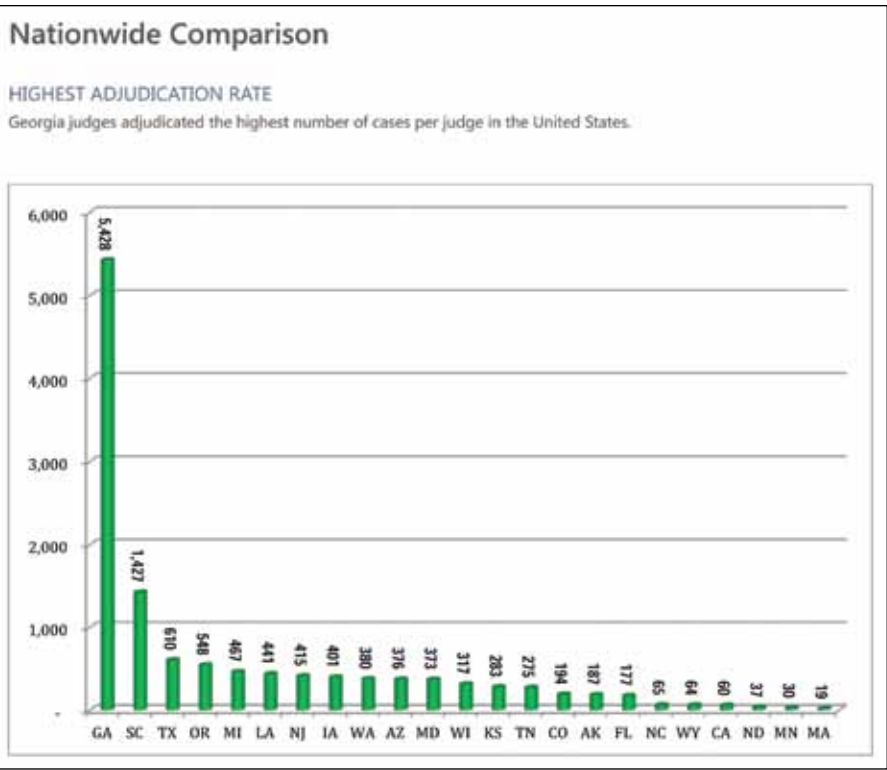
Based on its undeniable efficiency, state agencies refer more and more cases to OSAH each year. As a result, in the years since its establishment, OSAH has come to rely less on state funds. In fiscal year 2014, OSAH received only \$2.6 million of its \$4.5 million operating budget directly from the state. The remaining \$1.9 million was derived from mostly federal funds for the adjudication services that OSAH provides. OSAH's direct billing for adjudication services is included in the Statewide Cost Allocation Plan submitted to the federal government for reimbursement of costs incurred in administering federal programs.

OSAH Today

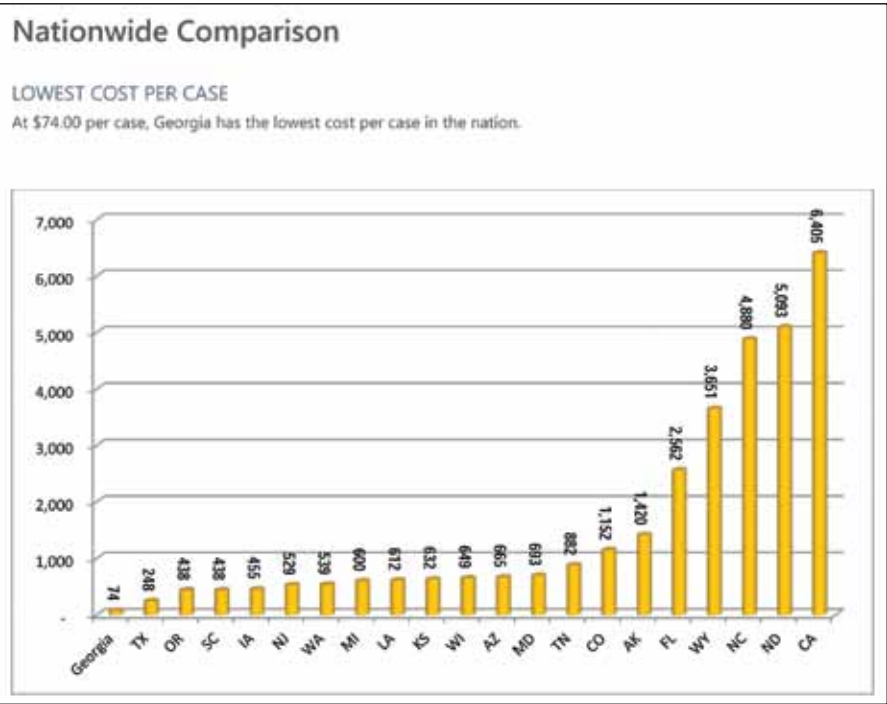
Over the past few years, OSAH has accelerated its efforts to remain one of the most effective central panels in the nation. OSAH has broadened its reach through the introduction of the Georgia Tax Tribunal and increased its internal efficiency by adding staff attorneys. Moreover, OSAH has sought to enhance access to justice by creating the *Administrative Law Report*, which has provided unprecedented access to OSAH's decisions. OSAH has also teamed with Atlanta Legal Aid and Emory Law School to create the Public Benefits Project.

The Georgia Tax Tribunal

In 2012, the Georgia General Assembly created the Georgia Tax Tribunal in an effort to increase predictability and fairness in the tax dispute resolution system. In creating the Tax Tribunal, the Legislature sought to improve access to the court process and enhance public confidence in the state tax system.⁵



At an average rate of 5,428 cases per year, OSAH judges adjudicate the highest number of cases in the country.



Georgia has the lowest cost per case in the nation due to its high case volume and cost-saving measures.

With an eye toward affording equal access to justice, the General Assembly abolished the requirement that taxpayers post bond prior to hearings and made decisions unreviewable by the Department of Revenue.⁶ Additionally, the Small Claims Division, applying to cases

in which the amount in controversy falls below a certain threshold, allows for less formal hearings.⁷

The General Assembly sought to increase public confidence in the resolution system by requiring that all judges practice tax law for at least eight years prior to

their appointment.⁸ Judges who are well-versed in tax law build consistency and reduce the time-frame for issuing decisions.

In 2015, Gov. Nathan Deal appointed former House Majority Leader Larry O'Neal as the Tax Tribunal's chief judge. Judge O'Neal seeks to enhance the tribunal's efficiency and effectiveness in the years to come.

Staff Attorneys

In 2007, OSAH added staff attorneys to its employee roster to address OSAH's burgeoning caseload. Comparable to judicial law clerks, staff attorneys assist the judges in courtroom proceedings, review pleadings, conduct legal research, draft orders and decisions, and interact with court personnel, litigants and the public. OSAH currently employs three highly qualified staff attorneys, each of whom is assigned to several judges. OSAH also instituted an internship program for law students from Emory University and Georgia State University. The interns assist with legal research projects and draft orders and decisions under the supervision of OSAH's staff attorneys.

Throughout the years, OSAH's staff attorneys and interns have proven to be an invaluable asset to OSAH's judges.

The Administrative Law Report

Prior to the creation of the Administrative Law Report (ALR), finding administrative decisions was prohibitively difficult. A majority of OSAH's decisions were previously inaccessible on the Internet because they are not picked up by case reporters like LexisNexis or Westlaw. Although agencies maintained a publicly available file of decisions, the public could only obtain copies of OSAH decisions through an Open Records Act request. As one might imagine, this presented a significant obstacle for private citizens and gave attor-

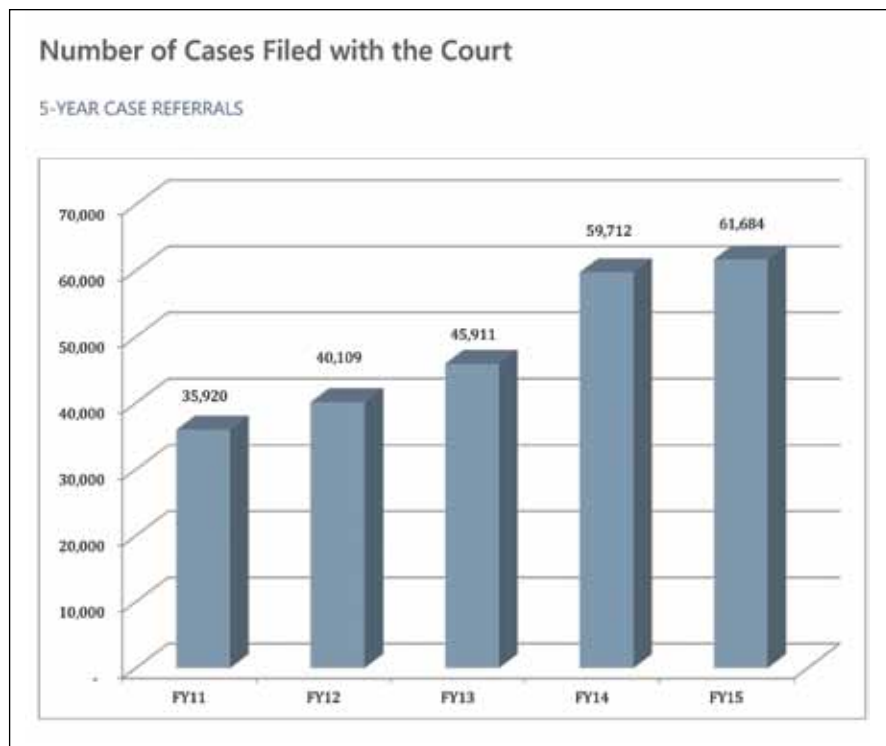
neys and agency representatives an upper hand. In an effort to resolve these inequalities, OSAH created the ALR.

The ALR provides equal access and opportunity because it is free, conveniently located on the Internet and OSAH's website and easily searchable. The ALR provides an easy-to-read synopsis of cases as well as a copy of full decisions. Additionally, the cases on the ALR may be accessed through outside search engines. Hailed by lawyers and litigants alike as a convenient and valuable tool, the ALR has significantly enhanced OSAH's transparency and accessibility.

The Public Benefits Project

OSAH, in partnership with Emory University School of Law and Atlanta Legal Aid Society, launched the Public Benefits Project in 2014. The Public Benefits Project allows Emory Law students, under the supervision of attorneys from Atlanta Legal Aid, to provide free legal advice and representation to indigent litigants. OSAH, Atlanta Legal Aid and Emory Law joined forces to create this project with the dual goals of helping indigent litigants negotiate the administrative hearings process, while also giving law students invaluable experience assisting needy clients and an opportunity to improve litigation skills. The project hopes to expedite the fair resolution of cases to the benefit of pro se litigants, the state and OSAH.


The Public Benefits Project reaches potential clients by including informational fliers in Fulton County Food Stamp hearing notices. The fliers describe the project and direct citizens to call a specially designated phone number, housed at Atlanta Legal Aid's DeKalb office, for free legal assistance. Volunteer students screen potential clients for inclusion in the project. Students discuss the merits of each case



OSAH has experienced a more than 70 percent case increase since 2011.

with their supervising attorneys before making critical decisions. Most clients receive service in the form of advice or an email to an agency worker on their behalf. When appropriate, a student may represent a client at a hearing. OSAH hopes to expand the project to include additional counties and case types. The Public Benefits Project has proven to be an important building block in ensuring that OSAH's litigants are able to access justice.

Fulfilling its Mission

In 1994, the Georgia General Assembly created a mechanism to provide Georgia citizens with confidence in the integrity of state government. Keeping that vision in mind, OSAH has worked to exceed expectations and become one of the pre-eminent central panels in the nation in terms of quality, efficiency and cost-effectiveness. In the future, OSAH expects to continue to improve its adjudication of disputes between state citizens and state agencies by expanding its reach, increasing accessibility and maintaining a distinguished workforce. 

OSAH's Staff Attorneys Laurin McDonald, Dominic Capraro and Jennifer Williams provided significant assistance with this article.



Hon. Michael Malihi was appointed in 1995. He has served as the deputy chief state administrative law judge since 1999. He

is a graduate of Boston University School of Law.

Endnotes

1. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).
2. Larry J. Craddock, *Final Decision Authority and the Central Panel ALJ*, 33 J. NAT'L ASS'N ADMIN. L. JUDICIARY 471, 476 n.13 (2013).
3. 2014 Comparison of States with Centralized Administrative Hearings Tribunals, available at <http://www.adminlaw.state.la.us/docs/2014%20Central%20Panel%20States%20Comparison%20Chart.pdf>.
4. *Id.*
5. O.C.G.A. § 50-13A-2 (2015).
6. *Id.* §§ 50-13A-9(d), -16.
7. *Id.* § 50-13A-16.
8. *Id.* § 50-13A-6(a).

The Greene County Courthouse at Greeneville

The Grand Old Courthouses of Georgia:

by Wilber W. Caldwell

Greene County's first courthouse stood near the square, and was reportedly destroyed by Native Americans in 1787.

A "more substantial" replacement was burned by a "Negro prisoner" jailed in the building in 1807, and the third Greene County Courthouse was erected in that same year. The two-story, frame building was built at the same time as the stone jail, which still stands, on the rear of the square. The Georgia Railroad was completed to Greensboro by 1839, and the 83 long miles to Augusta were transformed into the astonishingly brief journey of only seven hours. Ten years later, this fine brick Greek Revival courthouse rose on the square in Greensboro. The Greensboro Cotton Factory was built in the same year. The first steam-powered cotton mill in Georgia, it complemented Greene County's two earlier water-powered textile mills.

Greensboro was a healthy town of 600 by 1850, and no doubt its citizenry was attuned to notions of economic progress. This courthouse is surely an echo of that intonation, but it also echoes more fundamental historical symbols.

In the North, the popularity of the Greek Revival hinged on patriotic as well as romantic symbols. By the early 1820s, Americans were much in sympathy with the Greek War for Independence waged against the Turks, a sentiment made all the more heartfelt by the poetry of Lord Byron and later by his death in Greece in 1824. This struggle, it was felt, had much in common with our own revolution, and added a topical fervor to the image of American democracy and the "Temple of Justice." It may be that these images were even more alluring to Southerners owing to the region's emotionally romantic tradition, and perhaps to a sectional identification with Thomas Jefferson's early Classical American architecture, despite the fact that Jefferson's influences were not Greek but Roman.

By the 1830s, the political philosophy of the cotton producing South had moved a long distance indeed from any recognizably Jeffersonian ideal. Although North and South may have begun as American states on the road to a common destiny, by mid-19th century they had drifted so far apart as to share little more than a common language. The North rushed to the Industrial Revolution and espoused a growing Federalism, while the South clung to its individualistic, agrarian ways and followed the lure of cotton, espousing local political prerogatives. Foremost among these prerogatives was, of course, cotton's handmaiden, slavery. As the century wore on, the Greek Revival in the South was to be embraced with such fervor as to be an almost pervasive style. The South was to become so architecturally immersed in the Greek that the style was to lose some of its appeal in the North.

The reasons for the Southern celebration of the Greek Revival are fundamentally symbolic. When John C. Calhoun and other Southern leaders looked at the historical ideal of the Greek democracy, they saw a loose confederation of city-states ruled by a wise gentry which prospered on the labor of slaves. That Southern



Photo by Wilber W. Caldwell

The Greene County Courthouse at Greenville, built in 1849, Atharates Atkinson and David Demarest architects/builders.

politicians could so adroitly drape this Classical metaphor about the shoulders of the Southern electorate is not surprising considering the relentlessly expanding need for slaves in cotton's kingdom. By 1840, the South had transformed the ideal of the Greek democracy into a theory of ethical and political balderdash which held that one portion of any community always lived upon the labor of another, and that the "wage slave" systems of industrial Europe and the North were not only less humane than bondage slavery, they were politically unstable. So it was that the Greek Revival became a symbol for Greek democracy and thus for slavery in the antebellum South. So it is that beyond the columns of the Greene County Courthouse lies a myth—an impossible dream created and perpetuated by the same driving force that propelled almost everything else in the antebellum South: cotton.

The simplicity of the brick mass of this building is reminiscent of vernacular buildings of the era, but the Greek portico with its massive columns suggests disciplined influence. Two men are recorded as "architect / builders," Atharates Atkinson of Madison and David Demarest of Athens. Demarest was an accomplished builder with an undeniably fine eye for design. Perhaps he alone served as architect, for the architectural credentials of Atharates Atkinson are more obscure. We know that both men came to Georgia in the 1830s, Demarest from New Jersey and Atkinson from New England. Both men prospered as builders and Atkinson quarried granite near Madison and marble in north Georgia. He also enjoyed the economic blessings of cotton as a planter.

Except for a few brick churches, the first substantial public buildings in these rural places were

usually the courthouse and the Masonic lodge. An odd alliance between these two structures was often forged. Many county histories tell of Masonic halls used for county functions after the all too frequent fires that were the ruin of so many early courthouses. Owing to mysterious fraternal bonds that transcended even Sherman's fiery resolve, Masonic halls again and again escaped destruction during the war. Many served as temporary courthouses during Reconstruction. A long-standing example of the courthouse-Masonic lodge alliance occurs at Greensboro. Local tradition has it that the 1849 structure was originally to be a two-story structure, and that the local Masonic lodge proposed the addition of the third story for its own use. We find similar scenarios in both the 1851 Lincoln County Courthouse at Lincolnton and the 1856 Catoosa County Courthouse at Ringgold.

NEED HELP?

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WHAT IS THE CONSUMER ASSISTANCE PROGRAM?

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

Does CAP assist attorneys as well as consumers?

Yes. CAP helps lawyers by providing courtesy calls, faxes or letters when dissatisfied clients contact the program. Most problems with clients can be prevented by returning calls promptly, keeping clients informed about the status of their cases, explaining billing practices, meeting deadlines, and managing a caseload efficiently.

What doesn't CAP do?

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

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

- 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;
- Where the caller files a grievance and the lawyer involved wants CAP to share some information with the Office of the General Counsel; or
- A court compels the production of the information.

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




www.gabar.org/cap

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

As with the earlier Federal Style, practical handbooks of the day aided unsophisticated local builders in their quest for Hellenic symmetry and proportion. The Greek orders were geometrically detailed for popular consumption in builder's guides published by Asher Benjamin, "The American Builder's Companion," 1827, and "The Practical House Carpenter," 1830; and by Minard Lefever, "The Beauties of Modern Architecture," 1835.

Nonetheless, as is more often the case with these rural places, the true root of a thing grows close to home. Only a few miles from Greensboro one can still find what is left of the old Mercer Institute with its lovely chapel. Mercer Institute is the parent of Mercer University in Macon, and Jesse Mercer, one of its founders, commissioned "architect David Demarest of New England" to build this chapel in 1833. Even today the power and simplicity of the Greek Revival speaks fluently from the middle of a lonely field

in the tiny, forgotten hamlet of Penfield. Although the history of Mercer University credits Demarest with being an architect, we find no mention of this title in Athens, Demarest's home. Rather he is referenced as a "carpenter" from New Jersey, and as the "builder" of several fine homes. In fact his work on the Thomas Wray House in Athens was held up as the standard for workmanship for later Athenian construction. Most probably David Demarest was one of those builders of the era who, although lacking formal architectural training, had a discerning eye and a gift for design. The heavy vernacular look and detail of the portico of the 1830 Phi Kappa Hall on the University of Georgia campus, whose architect is not known, are so similar to Demarest's Greene County Courthouse of 1849 that one cannot help but speculate. Perhaps Demarest designed that famous University structure, or perhaps he copied it in Greene County.

Whatever the case, it is easy to see why Greene County chose Demarest to design their temple of justice. Surely his work in Athens and in Penfield is the inspiration for the columns of the Greene County Courthouse. It is the pure music of the Old South. 

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 and from Mercer University Press at www.mupress.org or call the Mercer Press at 800-342-0841 inside Georgia or 800-637-2378 outside Georgia.



THE EDITORIAL BOARD OF THE *GEORGIA BAR JOURNAL* PRESENTS THE ANNUAL

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"DOUBTING THOMAS"	GERALD CARTY (2005)

DEADLINE: JANUARY 15, 2016
For more information, see the inside back cover

Notice of Expiring BOG Terms

Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2016. These incumbents and those interested in running for a specific post should refer to the election schedule (posted below) for important dates.

Alapaha Circuit, Post 2 Clayton Alan Tomlinson, Homerville
 Alcovy Circuit, Post 2 Michael R. Jones Sr., Loganville
 Atlanta Circuit, Post 2 Kent Edward Altom, Johns Creek
 Atlanta Circuit, Post 4 Jeffrey Ray Kuester, Atlanta
 Atlanta Circuit, Post 6 Dwight L. Thomas, Atlanta
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 Atlanta Circuit, Post 10 Scott Dewitt Delius, Atlanta
 Atlanta Circuit, Post 12 Elena Kaplan, Atlanta
 Atlanta Circuit, Post 14 Edward B. Krugman, Atlanta
 Atlanta Circuit, Post 16 Dawn M. Jones, Atlanta
 Atlanta Circuit, Post 18 Foy R. Devine, Atlanta
 Atlanta Circuit, Post 20 William V. Custer IV, Atlanta
 Atlanta Circuit, Post 22 Frank B. Strickland, Atlanta
 Atlanta Circuit, Post 24 Joseph Anthony Roseborough, Atlanta
 Atlanta Circuit, Post 26 Anthony B. Askew, Atlanta
 Atlanta Circuit, Post 28 J. Henry Walker IV, Atlanta
 Atlanta Circuit, Post 31 Michael Brian Terry, Atlanta
 Atlanta Circuit, Post 33 S. Kendall Butterworth, Alpharetta
 Atlanta Circuit, Post 35 Terrence Lee Croft, Atlanta
 Atlanta Circuit, Post 37 Samuel M. Matchett, Atlanta
 Atlanta Circuit, Post 38 Michael Dickinson Hobbs Jr., Atlanta
 Atlanta Circuit, Post 40 Carol V. Clark, Atlanta
 Atlantic Circuit, Post 1 H. Craig Stafford, Hinesville
 Augusta Circuit, Post 2 William James Keogh III, Augusta
 Augusta Circuit, Post 4 William R. McCracken, Augusta
 Bell Forsyth Circuit Philip C. Smith, Cumming
 Blue Ridge Circuit, Post 1 David Lee Cannon Jr., Canton
 Brunswick Circuit, Post 2 Jeffrey S. Ward, Brunswick
 Chattahoochee Circuit, Post 1 Gwyn P. Newsom, Columbus
 Chattahoochee Circuit, Post 3 Thomas Frederick Gristina, Columbus
 Cherokee Circuit, Post 1 Randall H. Davis, Cartersville
 Clayton Circuit, Post 2 Harold B. Watts, Jonesboro
 Cobb Circuit, Post 1 Dennis C. O'Brien, Marietta
 Cobb Circuit, Post 3 David P. Darden, Marietta
 Cobb Circuit, Post 5 Dawn Renee Levine, Marietta
 Cobb Circuit, Post 7 William C. Gentry, Marietta
 Conasauga Circuit, Post 1 Terry Leighton Miller, Dalton
 Coweta Circuit, Post 1 Gerald P. Word, Carrollton
 Dougherty Circuit, Post 1 Joseph W. Dent, Albany

Douglas Circuit Kenneth Ray Bernard Jr., Douglasville
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 Flint Circuit, Post 2 John Philip Webb, Stockbridge
 Griffin Circuit, Post 1 Janice Marie Wallace, Griffin
 Gwinnett Circuit, Post 2 Judy C. King, Lawrenceville
 Gwinnett Circuit, Post 4 Gerald Davidson Jr., Lawrenceville
 Houston Circuit Carl A. Veline Jr., Warner Robins
 Lookout Mountain Circuit, Post 1 Archibald A. Farrar Jr., Summerville
 Lookout Mountain Circuit, Post 3 Lawrence Alan Stagg, Ringgold
 Macon Circuit, Post 2 Thomas W. Herman, Macon
 Member-at-Large, Post 3* Virgil Louis Adams, Macon
 Middle Circuit, Post 1 John Kendall Gross, Metter
 Northeastern Circuit, Post 1 Mark William Alexander, Gainesville
 Northern Circuit, Post 2 R. Chris Phelps, Elberton
 Ocmulgee Circuit, Post 1 Green Berry Moore III, Gray
 Ocmulgee Circuit, Post 3 Christopher Donald Huskins, Eatonton
 Oconee Circuit, Post 1 Ashley Wedrell McLaughlin, Eastman
 Ogeechee Circuit, Post 1 Daniel Brent Snipes, Statesboro
 Out-of-State, Post 2 Kimberly Cooper Davis, Ridgeland, MS
 Paulding Circuit Martin Enrique Valbuena, Dallas
 Rockdale Circuit William Gilmore Gainer, Conyers
 Rome Circuit, Post 2 J. Anderson Davis, Rome
 South Georgia Circuit, Post 1 Lawton Chad Heard Jr., Camilla
 Southern Circuit, Post 1 James E. Hardy, Thomasville
 Southern Circuit, Post 3 H. Burke Sherwood, Valdosta
 Stone Mountain Circuit, Post 1 Katherine K. Wood, Atlanta
 Stone Mountain Circuit, Post 3 J. Antonio DelCampo, Atlanta
 Stone Mountain Circuit, Post 5 Amy Viera Howell, Atlanta
 Stone Mountain Circuit, Post 7 John G. Haubenreich, Atlanta
 Stone Mountain Circuit, Post 9 Sherry Boston, Decatur
 Tallapoosa Circuit, Post 2 Brad Joseph McFall, Cedartown
 Tifton Circuit Render Max Heard Jr., Tifton
 Waycross Circuit, Post 1 Douglass Kirk Farrar, Douglas
 Western Circuit, Post 2 Edward Donald Tolley, Athens

**Post to be appointed by president-elect*

State Bar of Georgia 2016 Election Schedule

OCT Official Election Notice, October Issue *Georgia Bar Journal*
DEC 1 Nominating petition package mailed to incumbent Board of Governors members and other members who request a package
JAN 7-9 Nomination of officers at Midyear Meeting, Legacy Lodge at Lake Lanier Islands, Buford, GA
JAN 29 Deadline for receipt of nominating petitions for incumbent Board members including incumbent nonresident (out-of-state) members
FEB 26 Deadline for receipt of nominating petitions for new Board members including new nonresident (out-of-state) members

MAR 11 Deadline for write-in candidates for officer to file a written statement (not less than 10 days prior to mailing of ballots (Article VII, Section 1 (c))
MAR 11 Deadline for write-in candidates for Board of Governors to file a written statement (not less than 10 days prior to mailing of ballots (Article VII, Section 2 (c))
MAR 28 Ballots mailed
APR 29 11:59 p.m. Deadline for ballots to be cast in order to be valid
MAY 5 Election service submits results to the Elections Committee
MAY 12 Election results reported and made available



MAKE SURE YOU'RE COVERED

2016 OPEN ENROLLMENT

Shop for your 2016 Health Insurance plan through the **State Bar of Georgia Members Health Insurance Exchange**

This online exchange was designed for members, their staff, and dependents, to compare and purchase products from leading insurance providers. The exchange is available for individuals or employer groups and offers a variety of insurance products. If you or your staff can't decide what coverage is best for you, take advantage of the interactive decision support tools or live chat. If a more personalized approach is preferred, a licensed Benefits Counselor is just a phone call away.


IMPORTANT DATES*

- November 1, 2015**.....First day you can shop in the exchange for 2016 coverage.
- December 15, 2015**.....Enroll by this date for coverage that starts on January 1, 2016.
- January 1, 2016**.....First available effective date for 2016.
- January 31, 2016**.....2016 Open Enrollment ends.



Start shopping for Health Insurance now at
www.memberbenefits.com/gabar or call **1-800-282-8626**

Products sold and serviced by the State Bar of Georgia's recommended broker, Member Benefits. The State Bar of Georgia is not a licensed insurance entity and does not sell insurance.
*Dates are subject to change.


Kudos


>  Duke Law School Senior Lecturing Fellow **Daniel S. Bowling III** was awarded the **2015 Distinguished Teaching Award**. This is Duke Law's highest teaching award, and it is rare for a non-tenure track professor to be recognized. Bowling teaches labor and employment law in addition to a course he designed on lawyers and personal well-being, and he also leads seminar courses exploring the connection between happiness, legal professionalism and work satisfaction. During his 25-year career with Coca-Cola Enterprises, Bowling held many roles, including senior vice president of human resources.


> **Baker Donelson** was named a **Beacon of Justice Award** winner by the **National Legal Aid & Defender Association** for the second consecutive year. The 2015 Beacon of Justice Awards recognize law firms whose pro bono accomplishments have expanded opportunities for the underserved in areas such as education, health care, housing and legal services. Baker Donelson was recognized for its extensive pro bono work with the homeless. The firm was instrumental in expanding the Homeless Experience Legal Protection program, which operates recurring legal clinics at homeless shelters in about 20 cities nationwide.

>   **HunterMaclean** announced that senior partner **John M. Tatum** received the **Judge Frank Cheatham Professionalism Award** from the Savannah Bar Association. The award is presented to the attorney within the legal community who best exemplifies professionalism in how he or she engages clients and members of the community as a whole. The award acknowledges individuals who pursue work on behalf of clients and the community as public servants, promoting justice and the public good.

Partner **Colin A. B. McRae** was installed as **president** of the **Savannah Bar Association (SBA)**. The SBA has a long and storied history of serving its members, the Savannah community and the legal system. Numerous committees and sections provide members with multiple opportunities to participate in educational, community and social activities.

>  **Tina Shadix Roddenbery** of **Holland Roddenbery LLC** was named the recipient of the **2015 Joseph T. Tuggle Award**. Given by the Family Law Section of the State Bar of Georgia, Roddenbery has been deemed to have best exemplified the aspirational qualities of professionalism in her practice as a lawyer. Roddenbery was presented with this prestigious award at the annual Family Law Institute in Amelia Island, Fla., in May.

>  **Lauren Fernandez** of the **Fernandez Law Group** was named **2015 Woman of the Year** by the **Leukemia & Lymphoma Society® Georgia Chapter** for her efforts in raising \$93,691 of the more than \$1 million in contributions during this most recent campaign. Each dollar raised counted as one vote for the seven female competitors. The Leukemia & Lymphoma Society® (LLS) is the world's largest voluntary health agency dedicated to blood cancer. LLS funds lifesaving blood cancer research around the world and provides free information and support services. Currently, the Georgia Chapter funds \$2.14 million toward research grants in multi-year agreements with Emory Winship Cancer Institute.

>  **Larry Kunin**, a partner in technology and corporate litigation practice and chair of the data security and breach practice at **Morris, Manning & Martin, LLP**, was sworn in as president-elect of The Florida Bar's Out-of-State Practitioner Division. The division has more than 14,000 members. It is open to non-Florida attorneys interested in issues of importance to The Florida Bar.

>  **Holland & Knight** announced that partner **Joshua Bosin** was elected **president** of the **Georgia Lawyers for the Arts' board of directors**. Bosin has been a member of the board for nine years and previously served as its vice president. Georgia Lawyers for the Arts exists to serve the legal needs of artists and arts organizations, to promote closer contact and understanding among members of the legal profession and the arts community and to educate artists about their legal rights and responsibilities.



> **Sutherland Asbill & Brennan LLP** announced that associate **Evie M. Hightower** was selected as one of **The National Black Lawyers Top 40 Under 40**. She joins an elite group of attorneys from Georgia and across the country as

members of this honorary organization that recognizes outstanding black attorneys under the age of 40 who exemplify superior leadership and achievements in the legal industry and within their communities. The National Black Lawyers Top 40 Under 40 is an invitation-only professional honorary organization composed of 40 leading black lawyers under the age of 40 from each state who provide legal services to individuals, families and businesses.



> **Randall H. Richardson**, assistant regional conflict counsel for the 5th District of Florida, was appointed to represent the 7th Circuit on **The Florida Bar's Young Lawyers Division (YLD) Board of Governors**. The purpose of

the YLD is to stimulate and encourage the interest and participation of division members in the purposes of The Florida Bar. The YLD provides a full and complete program of activities and projects designed to be of interest and assistance to members, and to engage in such activities as shall tend to further the best interests of the legal profession.



> **David Neal Stern** received the **Broward County Bar President's Award for Section Excellence** for his work as chairperson of the Bankruptcy Section of the Broward County Bar Association. The Broward County Bar Association was

founded in 1925 to foster courtesy, ethics and professionalism among Broward County lawyers, to educate the citizens of Broward County on their legal rights and to provide necessary legal services to Broward County's residents. Stern is based in the Boca Raton, Fla., office of Frank, Weinberg & Black, P.L.



> **Drew Eckl & Farnham** announced that **Julie Y. John** joined the **State Bar of Georgia's Workers' Compensation Law Section Executive Committee**. The section seeks to keep its members fully informed in the area of workers' compensation, and works closely with the State Board of Workers' Compensation to convey information regarding new rules changes and statutes to its members. It actively participates in and supports workers' compensation seminars and continuing legal education.

> **The National Asian Pacific American Bar Association (NAPABA)** has selected the **Georgia Asian Pacific American Bar Association (GAPABA)** as its **2015 Affiliate of the Year**. This award recognizes outstanding NAPABA affiliates for their best practices and accomplishments in their respective communities. The 2015 Affiliate of the Year Award will be presented on Nov. 7 during the 2015 NAPABA Convention in New Orleans, La. NAPABA is the national association of Asian Pacific American attorneys, judges, law professors and law students. GAPABA is one of almost 75 national, state and local bar associations that are affiliated with NAPABA.



> **Kilpatrick Townsend & Stockton LLP** announced that partner **Ty Lord** was elected to the **Board of Directors** of the **Georgia Justice Project (GJP)**. The GJP strengthens the community by demonstrating a better way to represent and

support individuals in the criminal justice system and reduce barriers to reentry. GJP promotes innovative change through direct legal representation, policy advocacy, education and coalition building.



> **Douglas Ashworth**, director of programs for the **Institute of Continuing Legal Education of Georgia (ICLE)** was elected to a two-year term on the **Executive Committee** of the **Association for Continuing Legal Education**


(ACLEA). ACLEA, composed of CLE professionals located in the United States, Canada and several international countries, is devoted to the discussion and exchange of information among CLE providers pertaining to the organization, administration and operation of their programs and activities. He has also served a two-year term as co-chair of ACLEA's State and Provincial Bar Committee. Prior to joining ICLE's staff, Ashworth was the director of the Transition Into Law Practice Program for the State Bar of Georgia.




> **Supreme Court of Georgia Chief Justice Hugh P. Thompson** was elected to the **Board of Directors** of the **Conference of Chief Justices**, the national organization that represents the highest judicial officers from every

state in the country, as well as from the District of Columbia and U.S. territories. The 11-member board is the governing body for the Conference of Chief Justices. The purpose of the Conference is to provide an opportunity for consultation among the




nation's highest judicial officers on matters regarding the administration of justice.

>  Army National Guard 1st Lt. **Titus T. Nichols** graduated from the **Judge Advocate General Officer Basic Course** at the Judge Advocate General's School in Charlottesville, Va. Nichols is a judge advocate general assigned to the 560th Battlefield Surveillance Brigade, Cumming Regional Readiness Center. He has served in the military for one year. The course is a 17-week introduction to the practice of military law, with the first six weeks of the course being taught at Fort Benning in Columbus, Ga. In his civilian capacity, Nichols serves as an assistant district attorney for the Augusta Judicial Circuit District Attorney's Office in Augusta, Ga.

>  **Claud "Tex" McIver**, a partner in the Atlanta office of **Fisher & Phillips LLP** and a decorated Vietnam veteran, accepted U.S. Rep. Jody Hice's appointment to serve on the **2015 Military Academy Selection Board**. The board is responsible for nominating outstanding young men and women from Georgia's 10th Congressional District to the nation's military service academies.


On the Move

In Atlanta

>    **Lewis Brisbois Bisgaard & Smith LLP** welcomed **Frank Brannen** as a **partner** in the firm's products liability practice; **Terry P. Finnerty** as a **partner** in the firm's employment and labor practice; and **Andrew King** as an **associate** in the firm's health care practice. Brannen, previously a partner with King & Spalding LLP, has defended manufacturers in complex product liability lawsuits for almost two decades. Finnerty practices in the area of litigation, with a focus on defending companies in commercial and employment disputes before federal and state courts and agencies. Prior to joining Lewis Brisbois, King worked as a plaintiffs' attorney for Bird Law Group, P.C., where he focused on medical malpractice and general liability claims. The firm is located at 1180 Peachtree St. NE, Suite 2900, Atlanta, GA 30309; 404-348-8585; Fax 404-467-8845; lewisbrisbois.com.

> **Dentons US** announced a merger between the firm and **McKenna Long & Aldridge**, creating the new **Dentons US LLP**. Dentons is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.dentons.com.

>   **Drew Eckl & Farnham** welcomed **Christine S. Lee** and **Jatrea Sanders** as **associates**. Lee's practice focuses on workers' compensation defense, serving insurers and self-insurers before the Georgia State Board of Workers' Compensation and state courts throughout Georgia. Sanders' practice focuses in areas such as premises liability, personal injury defense, products liability and commercial litigation. The firm is located at 880 W. Peachtree St., Atlanta, GA 30309; 404-885-1400; Fax 404-876-0992; www.deflaw.com.

>  **Hunton & Williams LLP** announced that **Eric Jon Taylor** rejoined the firm as a **partner** in its national financial services litigation practice. Taylor's practice focuses on class action defense and related litigation, including trial work, in all aspects of the financial services industry. The firm is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.

>   **Nelson Mullins Riley & Scarborough LLP** announced that labor and employment attorney **Mark Keenan** and health care attorney **Adrienne Marting** joined the firm as **partners**. Keenan advises employers on complex labor and employment issues with particular emphasis on assisting employers in lawfully responding to union organizing efforts. Marting focuses her practice on regulatory and litigation matters, routinely representing hospitals, behavioral health providers, ambulatory surgery centers, home health agencies, rehabilitation centers, physician practice groups and other health care facilities and providers. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.



> **Bryan Cave LLP** announced that **Rick White** rejoined the firm as a **partner** in the real estate capital markets team. White's practice focuses on structured finance and servicing matters relating to commercial and residential mortgage-backed securities. The firm is located at One Atlantic Center, 14th Floor, 1201 W. Peachtree St. NW, Atlanta, GA, 30309; 404 572 6600; Fax 404-572-6999; www.bryancave.com.



> **Freeman Mathis & Gary, LLP**, announced that partner **Dana K. Maine** was named **chair** of the firm's **Government Law Practice Section** and will become a member of the firm's Executive Committee. Maine also continues to lead the firm's miscellaneous professional liability practice group. The firm is located at 100 Galleria Parkway, Suite 1600, Atlanta, GA 30339; 770-818-0000; www.fmgllaw.com.



> **Barnes & Thornburg LLP** announced that **Elizabeth B. Davis** joined the firm's environmental law department as a **partner** in the Atlanta office. Davis focuses her practice on environmental and product liability matters. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; www.btlaw.com.



> **The Law Office of Shannan S. Collier, P.C.**, announced the location of its new office. Collier's practice is primarily limited to tax and estate planning and business and franchise law. The firm is located at 100 Galleria Parkway, Suite 1010, Atlanta, GA 30339; 404-419-7113; Fax 866-550-2234; www.sscollier.com.



Cartee



Gibson

> **Kilpatrick Townsend & Stockton LLP** announced the addition of **S. Joel Cartee** as a **partner** and **Alisha Gibson** as an **associate** in the firm's Atlanta office. Cartee is a member of the firm's mergers & acquisitions and securities team. He represents public and private companies as well as private equity investors and government agencies in a broad range of corporate transactions. Gibson focuses her practice on corporate law. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



> **Taylor English Duma LLP** announced that **Kean J. DeCarlo** joined the firm's intellectual property practice. DeCarlo was previously a partner at Ballard Spahr LLP. DeCarlo is a leader in both the mechanical and medical technology sectors and actively counsels clients on patent, trademark, trade dress, licensing, unfair competition, copyright, trade secret and Internet matters. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.



Alley



LeVorse



Hawkins

> **Hawkins Parnell Thackston & Young LLP** announced that **Todd C. Alley**, **Debra**

E. LeVorse and **Eric T. Hawkins** were elected to **partner**. Alley's practice focuses primarily on toxic tort and environmental as well as business litigation. LeVorse actively represents defendants in civil litigation matters. Hawkins focuses his practice on product liability, toxic tort, environmental litigation and related specialties. The firm is located at 303 Peachtree St. NE, Suite 4000, Atlanta, GA 30308; 404-614-7400; Fax 404-614-7500; www.hptylaw.com.



> **McManamy McLeod Heller LLC**, a professional title and closing firm, named **Charlie Pollard** a **partner**. Pollard was previously with Partnership Title Company, LLC, a real estate closing and title company in Atlanta. Previous to this he was a software implementation consultant for Manhattan Associates, a supply chain commerce solutions provider. The firm is located at 3520 Piedmont Road, Suite 110, Atlanta, GA 30305; 404-442-6600; Fax 770-351-0940; www.mmhfirm.com.



Bailey



Kirk

> **Baker Donelson** announced the arrival of **Teresa Bailey** and **Teah Glenn Kirk** to the firm's consumer financial litigation and compliance group. Both attorneys join as **of counsel** in Baker Donelson's Atlanta office. Bailey has more than 29 years of experience in real property law and litigation. Kirk defends national financial institutions and wholesale lenders in state and federal litigation involving consumer protection laws. The firm is located at 3414 Peachtree Road NE, Suite 1600,

Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

>  **McGuireWoods LLP** announced that **Angela Spivey** was appointed the firm's new **managing partner** in charge of its Atlanta office. Spivey is an accomplished food and beverage lawyer whose varied practice focuses on high exposure class action claims. The firm is located at 1230 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.




Donihue


Cox


Crochet

Gowder


>  **Hall Booth Smith, P.C.**, welcomed **Ryan M. Donihue** as **of counsel** and **Sean Cox, Sam Crochet, Ashley Gowder** and **Steve Harkins** as **associates** to its Atlanta office. Donihue focuses his practice on the defense of dentists, podiatrists, physicians, hospitals and laboratories in medical malpractice and other health care issues. Cox works with the transportation practice group. Crochet's practice includes the representation of clients in general and professional liability litigation. His focus area is in the defense of doctors, nurses and health care facilities. Gowder's practice areas include general liability, insurance coverage, property/SIU and transportation. Harkins focuses his practice on professional negligence and medical malpractice. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; hallboothsmith.com.


Harkins

>  **Burr & Forman LLP** announced the addition of Atlanta-based **associate Louis G. Fiorilla** to the firm's financial services litigation practice group. Fiorilla's practice focuses on wrongful foreclosure defense, FDCPA defense, RESPA defense and contract disputes. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.

>  **Chamberlain, Hrdlicka, White, Williams & Aughtry** announced the additions of **Samuel H. Grier** and **Joan M. McCallum** as Atlanta-based **associates**. Grier joins the firm's tax practice, and McCallum boosts the labor & employment practice. The firm is located at 191 Peachtree St. NE, 34th Floor, Atlanta, GA 30303; 404-659-1410; Fax 404-659-1852; www.chamberlainlaw.com.

Grier


>  **Little Mendelson P.C.** announced the addition of **Leslie A. Dent** as a **shareholder**. Dent, an experienced trial lawyer who has successfully tried cases ranging from individual discrimination matters to complex wage and hour class actions, represents employers in class and collective actions. The firm is located at 3344 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-233-0330; Fax 404-233-2361; www.littler.com.

>  **Rogers & Hardin LLP** announced that **Jennifer L. Dowell** was promoted to **of counsel** with the firm. Dowell's practice focuses on mergers and acquisitions, private equity, corporate governance, securities regulation and general corporate matters. The firm is located at 2700 International Tower, 229 Peachtree St. NE, Atlanta, GA 30303; 404-522-4700; Fax 404-525-2224; www.rh-law.com.

In Alpharetta

>  **McManamy McLeod Heller LLC**, a professional title and closing firm specializing in residential and commercial purchases and sale closings, announced a **merger** with **Rachel K. Iverson, P.C.** In line with the announcement, **Rachel K. Iverson** was named a **partner** of McManamy McLeod Heller. She will continue to manage an office located at 5780 Windward Parkway, Suite 225, Alpharetta, GA 30005; 770-781-3000; Fax 888-998-7373; www.mmhfirm.com.

In Augusta

>  **Hull Barrett, P.C.**, announced that **Aimee Pickett Sanders** joined the firm as an **associate**. Sanders practices in the areas of commercial law and civil litigation, including general corporate, employment and bankruptcy. The firm is located at 801 Broad St., Seventh Floor, Augusta, GA 30901; 706-722-4481; Fax 706-722-9779; www.hullbarrett.com.



> **Hamil Little PC** announced the addition of **Eric J. Garber** as **of counsel**. In addition to bolstering the firm's focus on regulatory and business challenges unique to health care providers, Garber specializes in family law matters, including divorce, custody and modification proceedings. The firm's office is located at 1450 Greene St., Suite 3600, Augusta, GA 30901; 706-722-7886; www.hamillittle.com.

In Buford

> **Carothers & Mitchell, LLC**, announced that **Amy Bryant Cowan** and **Angela C. Couch** joined the firm as **partners**. Cowan focuses her practice in the areas of civil litigation, eminent domain, civil rights, municipal law and insurance defense. Couch's practice areas include eminent domain, civil litigation, insurance defense and government law. The firm is located at 1809 Buford Highway, Buford, GA 30518; 770-932-3552; Fax 770-932-6348; www.carmitch.com.

In Columbus

> **Waldrep, Mullin & Callahan, LLC**, announced the addition of **David C. Rayfield** as **partner** and the elevation of **David R. Helmick** to **partner**. Rayfield specializes in civil litigation with a focus on commercial litigation, coverage disputes and personal injury and wrongful death. Helmick maintains a diverse practice focusing on commercial litigation and plaintiff's personal injury. The firm is located at 105 13th St., Suite B, Columbus, GA 31901; 706-320-0600; Fax 706-320-0622; www.waldrepmullin.com.

In Macon



> **James-Bates-Brannan-Groover-LLP** announced that **Mary Beth Hand** joined the firm as **of counsel**. Hand's practice focuses on general civil litigation, insurance litigation, eminent domain and governmental representation. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; jamesbatesllp.com.

> **Spivey, Pope, Green & Greer, LLC**, announced that **Dean C. Copelan** joined the firm as **of counsel**. Copelan, previously an assistant general counsel with Bank of America, practices in the areas of wealth management and probate and estate administration. The firm is located at 4875 Riverside Drive, Suite 200, Macon, GA 31210; 478-254-8866; Fax 478-254-8980; www.spgglaw.com.

In Savannah



> **Morris, Manning & Martin, LLP**, announced that health care attorney **Shayna Ansley Bowen** joined the Savannah office of as **of counsel**. Bowen provides an additional experienced resource for health care providers in dealing with complex corporate, regulatory and compliance issues. The firm is located at 24 Drayton St., Suite 712, Savannah, GA 31401; 912-232-7182; Fax 912-232-7184; www.mmmlaw.com.

> The law firms of **Cole Clark & Gore PC** and **Mahoney & Mahoney PC** announced the opening of **Mahoney Cole Clark & Gore PC**. The firm provides representation in general practice, business, bankruptcy, construction law, corporations, criminal defense, wills, estates and probates, litigation in all courts, maritime, homeowners' associations, personal injury, divorce, social security disability/SSI, and residential and commercial real estate closings. The firm is located at 337 Commercial Drive, Suite 500, Savannah, GA 31406; 912-354-2653; Fax 912-354-8559.

In New York City, N.Y.

> **Nelson Mullins Riley & Scarborough LLP** announced the opening of a new office in New York City. The office is located at 415 Madison Ave., 14th Floor, New York, NY 10017; 646-428-2600; Fax 646-428-2610; www.nelsonmullins.com.

CORRECTION

In the August issue of the *Journal*, Taylor English attorney Hal Meeks was listed as Roy Meeks. We apologize for the error.

WANT TO SEE YOUR NAME IN PRINT?

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

For more information, please contact Lauren Foster, 404-527-8736 or laurenf@gabar.org.

Whose Story Is It, Anyway?

by Paula Frederick

Why am I getting a déjà vu feeling?" your associate whispers as the star witness begins his testimony.

"Because we've seen this performance before," you reply. "Where's the deposition transcript? I swear he's using the exact same words. . . ."

"Unbelievable!" your associate answers as he scans the depo testimony. "This is just how he described the accident during his deposition . . . verbatim! If he's following the script, any second now he's going to get choked up and ask for a drink of water."

As if on cue, the witness bursts into tears. "I'm sorry," he apologizes, "this is just so difficult for me to talk about May I have a drink of water?"

"Holy Cow!" your associate exclaims. "Can you say *rehearsed testimony*?"

"Yep," you agree. "Opposing counsel will have to answer to the Bar on this one."

Will she?

A competent lawyer must prepare her client and witnesses to be deposed or to testify at trial. Of course the preparation should include a discussion of the questions you will ask, and questions you expect will come on cross examination. But when does witness preparation cross the line?

It's fine to conduct a "mock trial" to run the witness through her story. Many lawyers videotape these sessions and provide a critique to the witness afterwards, pointing out how the witness might have better handled certain questions. "Restatement of the Law Third: The Law Governing Lawyers" puts it this way: "Witness preparation may include rehearsal of testimony. A lawyer may suggest choice of words that might be employed to make the witness's meaning clear. However, a lawyer may not assist the witness to testify falsely as to a material fact."¹

So while you do not cross the line by rehearsing a witness, feeding him the "correct" answers or instructions on how to answer certain questions could get you into trouble. You can ethically ask a witness to reconsider his memory in light of other testimony that



you expect to be offered, and even discuss how the law will apply to his testimony.² You may not, however, ask the witness to change his testimony or "counsel or assist a witness to testify falsely."³

If you provide a witness with sample answers to possible cross examination questions, be sure that you are not substituting your own version of events for those of the witness.

And above all, counsel the witness to tell the truth. 

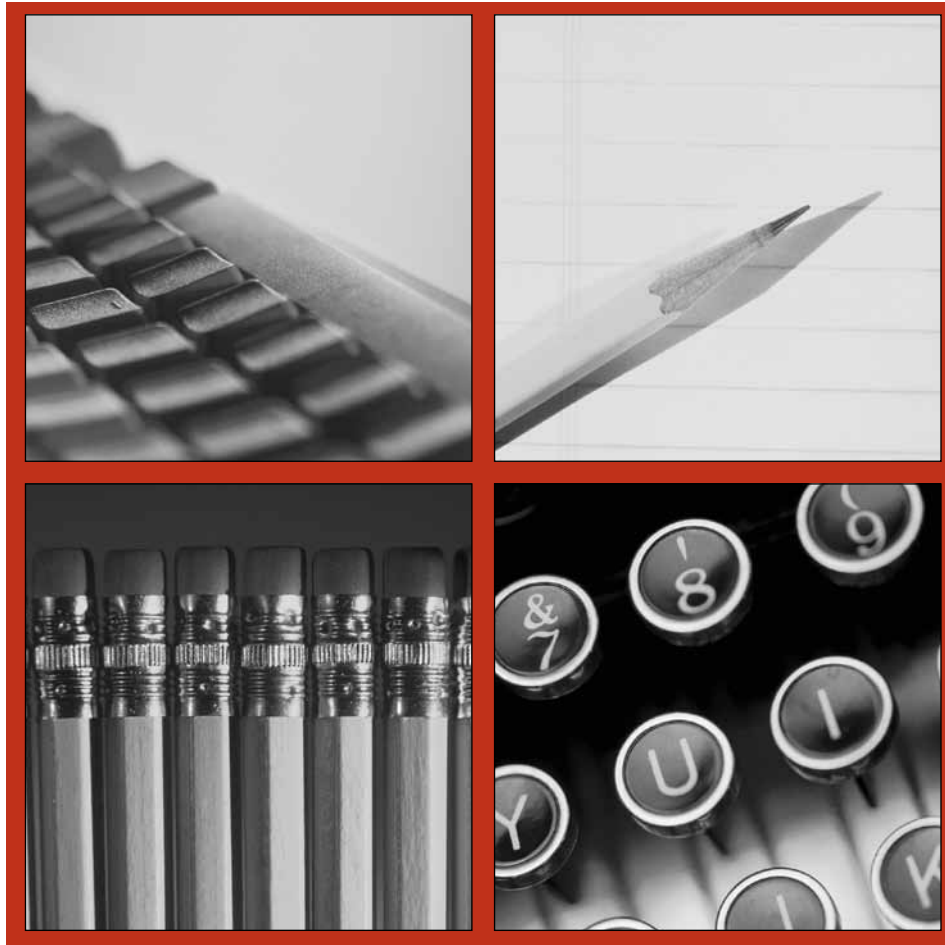


Paula Frederick is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.

Endnotes

1. Restatement 3rd, The Law Governing Lawyers §116 Comment (b).
2. *Id.*
3. Georgia Rule of Professional Conduct 3.4(b).

GET PUBLISHED



EARN CLE CREDIT

The Editorial Board of the Georgia Bar Journal is in regular need of scholarly legal articles to print in the Journal.

Earn CLE credit, see your name in print and help the legal community by submitting an article today!*

Submit articles to Sarah I. Coole, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303 or sarahc@gabar.org. If you have additional questions, you may call 404-527-8791.

*Not all submitted articles are deemed appropriate for the Journal. The Editorial Board will review all submissions and decide on publication.

Attorney Discipline Summaries

(July 1, 2015 through August 21, 2015)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Russ Floyd Barnes

Americus, Ga.

Admitted to Bar 1990

On July 5, 2015, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Russ Floyd Barnes (State Bar No. 039015). Barnes withdrew approximately \$275,000 from his law firm's trust account for his personal use, although the funds he took were not earned fees. Barnes asserted that he replaced the funds, but there is no documentation to support that assertion. The special master found that clients were harmed even if all funds were returned or the clients have not complained to the State Bar.

Wayne Peter Merisotis

Ellenwood, Ga.

Admitted to Bar 1993

On July 6, 2015, the Supreme Court of Georgia disbarred attorney Wayne Peter Merisotis (State Bar No. 502510). The following facts are admitted by default. Merisotis was retained by two clients to represent them in separate criminal matters. Merisotis provided untruthful and misleading information to the clients regarding the representation that he would provide. He also failed to act with reasonable diligence and promptness, to reasonably consult with his clients, to inform his clients of the status of their cases, to comply with the clients' reasonable requests for information, to

withdraw from the representations and to respond to either Notice of Investigation. Additionally, Merisotis failed to appear at hearings in one case, and although he did respond to the Office of the General Counsel during its informal investigation into one client's grievance, he provided untruthful and misleading information regarding the amount of his communications with that client. Merisotis failed to file sworn, written responses to the Notices of Investigation. The Investigative Panel considered as an aggravating factor multiple offenses and a pattern of misconduct.

Tanya Yvette Brockington

Homewood, Ill.

Admitted to Bar 2010

On July 27, 2015, the Supreme Court of Georgia disbarred attorney Tanya Yvette Brockington (State Bar No. 259587). The following facts are admitted by default. Brockington was retained to represent three clients in immigration matters and was paid a retainer in each case. Brockington did minimal work for each client before abandoning the legal matters entrusted to her. Thereafter she failed to respond to her clients' telephone calls and failed to refund any portion of the unearned fees. She also failed to respond to the Notices of Investigation. In aggravation of discipline, the Court noted that Brockington received a prior disciplinary sanction and that she was under an interim suspension since Oct. 6, 2014.

Review Panel Reprimand

S. Carlton Rouse


Snellville, Ga.

Admitted to Bar 2004

On July 6, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney S. Carlton Rouse (State Bar No. 003583) for a Review Panel reprimand. Rouse was retained to represent a client and took the case on a contingency basis with the agreement that out-of-pocket expenses would be billed separately. The client was unable to pay the fees and costs Rouse incurred in filing pleadings, paying court reporters, etc. The client eventually asked Rouse to return his file and withdraw as counsel. Rouse did not do so until two months later. He stated that the client never reimbursed him for the fees and costs, and he subsequently sued the client in Magistrate Court, obtained a judgment, but never took steps to collect

on the judgment. Rouse could have handled the matter more effectively by returning his file immediately and filing a withdrawal. Rouse had no prior discipline and displayed a cooperative attitude.

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 July 1, 2015, three lawyers have been suspended for violating this Rule and one has been reinstated. 



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

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

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For the most up-to-date information on lawyer discipline, visit the Bar's website at www.gabar.org/forthepublic/recent-discipline.

Revisiting the Law Practice Management Program's Resource Library

by Natalie R. Kelly

We hear it all the time. "I didn't know the Bar had this service. This is great!" So, in an effort to let you in on one of your special State Bar member services – one being used by more than 1,600 member patrons – here is everything you need to know about the Law Practice Management Program's Resource Library.

Location(s)

Bar Center—Atlanta

The Resource Library is located on the first floor of the Bar Center in the Law Practice Management Program's department (LPM). You can access the main part of the library as you visit the LPM department at the Bar Center. The setup of the library allows members to peruse the shelves of books, audiotapes, DVDs and periodicals at their leisure, and arrangements can be made with the staff for extended services like making copies and requesting personal book orders. The library boasts more than 1,400 individual items.

State Bar Satellite Offices—Tifton and Savannah

There are "mini-libraries" in the State Bar's Tifton and Savannah offices, too. Members visiting those offices may check out materials from the Bar staff in

those locations, and request additional items from the main library at the Bar Center.

Online via State Bar Website

The State Bar's website, www.gabar.org, is home to the online interface of the Resource Library. Navigate to Resource Library from the Law Practice Management Program page found under Attorney Resources/Practice Management. From this area of the webpage you can view all of the library items and request circulation services, but you have to have a password assigned by the department's staff first as this feature of the library does not correspond to Bar numbers. Call Kim Henry, LPM administrative assistant, at 404-527-8772, or Pam Myers, LPM resource advisor, at 404-526-8621, to get your online library password. They will also be able to assist you with using the system's Circulation App on your mobile devices.

Library Use Policies and Procedures

To get your hands on the materials right away, take note of our Checkout Policy:

1. Only three items may be checked out at a time so that everyone has an opportunity to use our resources.
2. All materials must be returned to the library in two weeks so that others may take advantage of the same services you have received.
3. You must leave a telephone number where you can be reached in the unlikely event it is necessary to contact you concerning the status of the resource item.

4. Because we realize how long things may take to get to us in the mail, there is a five-day grace period for the return of all resource materials.
5. These materials are intended as general educational resources. While they are from reputable sources, they have not been reviewed for compliance with all applicable Georgia canons of ethics. Call the State Bar's Ethics Helpline, 800-682-9806, if you need additional information.
6. Materials may be checked out by all Bar members and their staff as well as law students.
7. Those traveling to the library will be able to check out materials in person. The department will also ship materials. There is a \$5 charge for the first item and \$2.50 charge for each additional item; you can pay the shipping online through your member account when you place the order.

Newest Additions to the Library


The library's newest acquisitions include the finance-based management titles: "Recruiting Lawyers: How to Hire the Best Talent, 2nd Ed.," "Compensation Plans for Law Firms, 6th Ed.," and "Results-Oriented Financial Management, 3rd Ed.: A Step-by-Step Guide to Law Firm Profitability." These books are just a few of the many ABA-produced books available through the Resource Library. You might also be interested in the newly acquired technology titles: "Worldox in One Hour for Lawyers, 2nd Ed.," or the Georgia-authored "The Lawyer's Guide to PCLaw Software" by Steve Best of Affinity Consulting Group, who is pulling double duty as the current chair of ABA TECHSHOW 2016. You can also check out a copy of "Women-at-Law, 2nd Ed.: Lessons Learned Along the Pathways to Success," or the latest edition of "How to Capture and Keep Clients: Marketing Strategies for Lawyers,"



A glimpse inside the Law Practice Management Resource Library.

Photo by Jennifer R. Mason

in which this author contributed the chapter, How to Make Your Bills a Rainmaking Tool. These new books, like others in the library, are representative of the major topic areas of practice management—management, marketing, technology and finance. General business management titles are also available.

The library has been in place since 1995 and continues to grow with business and practice management titles and material designed to help lawyers and related legal professionals with their practice needs. If you have suggestions for titles or topics, please let a member of the Law Practice Management Program staff know. 



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

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Local Bar Associations, How Do You #Probono?

by Michael Monahan

Every year around this time, legal aid programs solicit information from lawyers about civil legal needs in their communities so that legal aid programs can develop service plans for the coming year. We'd like to know your thoughts about pro bono services and about any initiatives of which you are aware in your local community that we might not know about, but we'd also like to ask, how does your voluntary bar association #probono?

Yes, pro bono is a verb. Public interest program staff often ask one another, "Can we pro bono this case?" So, you see, it's an action phrase, one we would like an organized group of lawyers to use.

We need improved two-way communication among legal aid programs and local voluntary bar associations. One of the themes I mention in every bar presentation I make is the necessity for communication among the courts, the organized bar and the public interest community. Each plays a role in ensuring access to justice, a critical issue in bolstering respect for the rule of law.

Working together, local bars, legal aid and pro bono programs can develop structured approaches to address critical poverty law needs in the community, reduce the stress on courts from ever-increasing numbers of pro se litigants, and improve the image and likeability of lawyers.

In your local community, here's how you can #probono.

- **Step 1:** Form a small pro bono committee within your local bar association. Your local bar pro bono committee will serve to improve commu-




nication among the bar, the courts and the legal aid program. The committee can also develop a pro bono plan for your local bar that includes periodic service projects. The plan can also assist the local legal aid program in recruiting volunteer lawyers and map out how your bar association will tell the story of how its lawyer-members serve the community. Additionally, your pro bono committee can develop resources and other support for volunteer lawyers like CLE programming and volunteer recognition events. Much of this work can and should be done in partnership with your local legal aid program. Check in with the local chief judge of your court for feedback.

- **Step 2:** Schedule a meeting for your committee members with the pro bono coordinator and managing attorney of your local legal aid or pro bono program. In this meeting, ask your legal aid program to summarize how it accepts and places cases, discuss how the local bar association might aid in recruiting volunteers and other partners and arrange for regular meetings or brown bag lunches to keep the lines of communication open. Your bar members should have a voice in addressing the legal needs of the poor in your community. For a complete list of legal aid and pro bono programs in Georgia, visit www.georgiaadvocates.org/oppsguide/. You'll find a directory of programs here, just sort by county. The local pro bono contact and email for the program will be listed.
- **Step 3:** Make sure your pro bono committee has a role at your regular local bar meetings—reporting on the good works of your members, soliciting volunteers for cases identified by the legal aid program, obtaining feedback from your membership and resource development networking for your legal aid program.

Local bar leadership changes every year, and so will your pro bono committee membership. Your local legal aid program partner can help keep the committee on track. In your local bar newsletter or website news, be sure to include information on the activities of your pro bono committee. A newsletter is a great way to record and track your progress, and sharing your pro bono activities will go a long way in developing and maintaining good community relations.

Whether your local bar association is small or large, scheduling time to sit down with representatives of your local pro bono or legal aid program will pay dividends. Get answers for your members' questions about pro bono and legal aid. Discover ways to collaborate and extend scarce legal resources. Make a #probono difference.

If your local bar would like technical assistance or advice on setting up a pro bono committee or planning a pro bono project, please feel free to contact me at probono@gabar.org. 



Michael Monahan is the director of the Pro Bono Project for the State Bar of Georgia and can be reached at mikem@gabar.org.

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Questions? Email Mike Monahan
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Sections Help You Get CLE!

by Derrick W. Stanley

State Bar Sections offer their members many opportunities to get together and network, often in a casual environment. But there are additional benefits that sections can offer, including providing an avenue to complete the yearly CLE requirement. Within the 48 specialized areas of practice represented in the sections of the State Bar, many have developed programming with the Institute of Continuing Legal Education in Georgia (ICLE). The availability and accessibility of CLEs through lunch and learns, institutes and other programming opportunities enables both section and non-section members to keep up with CLE requirements.

With the continuing legal education deadline approaching (Dec. 31), you can turn to sections to help you fulfill your requirement. From lunchtime programming to weekend institutes, there is no reason you should be short on hours.

The calendar on www.gabar.org lists lunch programs where you can stop in for an hour, eat lunch and leave with a CLE credit, all while staying abreast of specialized topics and current information. Some examples of CLE lunches include:



- News and Updates From the USPTO
- Tales of Brave Ulysses—Navigating the Copyright Issues of a Mobile App
- Lunch With Justice David E. Nahmias—Views From the Court
- International Movement of Goods: Treaties, Infrastructure and Data: Why These Matter
- Benefits and Risk Enhancement of Canadian Ruling for Franchisors—(A Dialogue on the Recent *Bertico v. Dunkin Donuts* Decision)
- Practical Tips and Guidance for Post Grant Proceedings at the USPTO

Sections also work with ICLE to create half-day programs, many of which take place at the Bar Center in Atlanta. The programs range from three to six hours and often contain the elusive Professionalism or Ethics hour. They are usually marketed first to section members and then the general population. Section leaders work to ensure the content is relevant to the practice of law in these special areas. Some examples of half-day programs are listed below. Several of these programs can be also be viewed at our Bar offices in Savannah and Tifton.


- Business Immigration Law
- Social Media and the Law: 5th Year Review
- Nuts and Bolts of Family Law
- Title Standards
- Third Annual Mercer Conference on Current Trends in International Trade
- Basic Fiduciary Practice
- Nuts and Bolts of Civil Appellate Practice

For those who want a one-stop shop, many sections offer institutes where you can earn all of your CLE for the entire year, usually over a long weekend. These intensive seminars offer invaluable information with great speakers and top-notch materials. They also bring a strong networking environment and usually a social component. Many attorneys choose to attend the institutes, not to just earn their CLE, but reconnect with old friends and make new acquaintances. This is a

way to increase the momentum of your practice or gain a primer on a new area of law. Some section institutes and the month they generally occur are listed below.

- Family Law Institute—May
- Real Property Law Institute—May
- Environmental Law Summer Seminar—July
- Institute for City and County Attorneys—September
- Intellectual Property Law Institute—September
- Business Law Institute—October
- Technology Law Institute—October
- Workers' Compensation Law Institute—October
- Consumer and Business Bankruptcy—November

Unfortunately, there are few institutes between press time of this issue and the CLE deadline, but the information will come in handy while you plan ahead for the next CLE year.

Section-sponsored CLE programs are always marketed to section members, but are open to all participants. You can always find a list of upcoming events by viewing the calendar at www.gabar.org, by visiting www.iclega.org or looking at the CLE calendar in the *Georgia Bar Journal*. 



Derrick W. Stanley is the Section Liaison for the State Bar of Georgia and can be reached at derrick@gabar.org.

27,776 Section Members

Administrative Law ★ Agriculture Law ★ Animal Law ★ Antitrust Law ★ Appellate Practice ★ Aviation Law ★ Bankruptcy Law ★ Business Law ★ Child Protection & Advocacy ★ Constitutional Law ★ Consumer Law ★ Corporate Counsel Law ★ Creditors' Rights ★ Criminal Law ★ Dispute Resolution ★ E-Discovery/Use of Technology ★ Economics and the Law ★ Elder Law ★ Eminent Domain Law ★ Employee Benefits Law ★ Entertainment and Sports Law ★ Environmental Law ★ Equine Law ★ Family Law ★ Fiduciary Law ★ Franchise and Distribution Law ★ General Practice and Trial Law ★ Government Attorneys ★ Health Law ★ Immigration Law ★ Individual Rights Law ★ Intellectual Property Law ★ International Law ★ Judicial ★ Labor and Employment Law ★ Legal Economics Law ★ Local Government Law ★ Military/Veterans Law ★ Nonprofit Law ★ Product Liability Law ★ Professional Liability Law ★ Real Property Law ★ School and College Law ★ Senior Lawyers ★ Taxation Law ★ Technology Law ★ Tort and Insurance Practice ★ Workers' Compensation Law

Legal Writing Using Fastcase Shortcuts

by Shelia Baldwin

Fastcase is famous for having smarter tools for doing legal research, but what about legal writing? Finding the perfect case, statute and law review article is only the beginning of the task. Consolidating legal research can be daunting, especially at the beginning of your project. Often you will find portions of cases that are relevant to your issue, but the majority of the opinion is unimportant for your purposes. Long fact sections, discussion of unrelated principles and judicial commentary can get in the way. Several shortcuts built into Fastcase ease the process of writing a brief. The Foresite algorithm finds cases you may have missed. Editorial tools such as Copy Document Text and Bookmark, and the ability to incorporate Static Links, are useful in organizing the data.

These shortcuts come in handy when working on a project where an insurance company contends it's not responsible to cover damages to an insured property contaminated by waste based on the definition of the term *sudden* used within insurance policy exclusions.

Running a search in Georgia using the query (*environmental* and (damage or contamination) and sudden*), 10 cases come up in our results screen. An additional three cases appear at the top of the results page folded under a pink ribbon entitled Forecite (see fig. 1). This patented sorting algorithm finds highly cited cases that don't show up in the results list because they don't contain the search terms or are outside of your jurisdiction. However, they are frequently cited by the other decisions in your search results and therefore, may be highly relevant to the topic

you are researching. Two of the three cases that show up in Forecite concern the definition of specific terms used in environmental cases and insurance policy contracts. While not the exact word we are looking for in our query, the legal principals may apply and be useful for our argument. Below the Forecite area we find the cases that fit our criteria within Georgia. The first case in the list contains a paragraph that speaks to our point, what is the meaning of the word *sudden* as used within insurance policy exclusions. Upon opening the case, one paragraph sums up my argument.

Using the Copy Document Text shortcut, it's easy to copy that portion into the document. To copy text with a citation simply click and drag to highlight the portion that interests you. Fastcase will automatically open a menu with two options: copy text and copy with citation. Select Copy with Citation (see fig. 2). This allows you to save small portions of cases and easily return to the source material at a later time if more context is needed.

Paste the portion of the case you want to remember into a Word document. The citation will automatically be generated following the text you pasted. When writing more complicated briefs and motions you may choose to outline specific elements of your argument (and anticipatory counter-arguments) and paste helpful quotes that back up your argument within the appropriate section of the outline. This can be done with little or no typing on your part, simply a matter of copy and paste. An example might look like this . . .

What is the meaning of the word "sudden" as it is used in the insurance policy?


Claussen argues that it means "unexpected"; Aetna asserts that the only possible meaning is "abrupt." This seemingly simple question has spawned a profusion of litigation. The majority of courts considering the issue have adopted the meaning asserted by Claussen. See *Developments—Toxic Waste Litigation*, 99 Harv. Law Rev. 1458, 1582 (1986). See also cases cited in *Claussen v. Aetna Casualty & Surety Co.*, 865 F.2d 1217, 1218 (11th Cir.1989). Other courts have decided that "sudden" cannot be defined without its temporal connotation. See, e.g. *Claussen v. Aetna Casualty & Surety Co.*, 676 F.Supp. 1571 (S.D.Ga.1987), and cases cited therein.

Claussen v. Aetna Cas. & Sur. Co., 380 S.E.2d 686, 259 Ga. 333 (Ga., 1989)

A series of quotes with citations can be organized in a document with a few simple clicks. To save more time, type the reporter page numbers you will need to cite later next to your quote (if they are not included within the body of the quote itself).

Fastcase static links create shortcuts within a document. This means you can create hyperlinks back to your cases and save them within your outline for easy access later. After you paste a quote with a citation into Word, go back to Fastcase in your Internet browser and copy the URL at the top of your case. Then return to Word, highlight the citation, right click and select hyperlink. Paste the URL into the box labeled Address at the bottom (see fig. 3). Now, to easily pull up a case you quoted, you can just log in to Fastcase and click the link within your outline.

Bookmarks come in handy as a way to save your list of results. Several methods of bookmarking exist within Fastcase. The 10 most recent searches are automatically saved on the home page. To save the list of results indefinitely, use the CTRL + D on the keyboard. When you want to save particular documents such as cases, statutes or articles, choose Add to My Favorites in the library where you can organize in folders and subfolders.

These tips exemplify the power of legal technology to assist lawyers in doing their work. Fastcase endeavors to create smarter, faster ways to do legal research. Hopefully you will make use of these shortcuts if you haven't already, and be on the lookout for even more developments with Fastcase 7. 



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

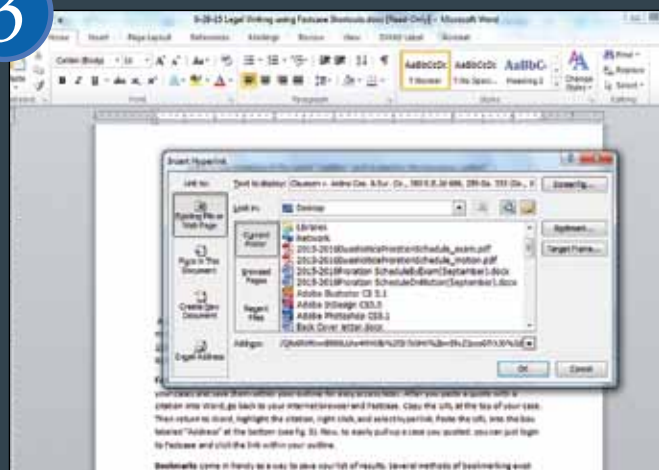
1



2



3



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Georgia Judges on iPads:

Brief-Writing for the Screen (Part Two)

by Jennifer Murphy Romig

Should Georgia lawyers change how they write and format briefs because some Georgia judges will read those briefs on iPads and other tablets? Part one of this series, published in April 2015, addressed typography and headings. This part addresses the use of photos and other visual elements, and hyperlinks.

Photos have always been powerful at focusing the reader's attention on a page, whether in hard copy or on screen. Hyperlinks, i.e., clickable links to other information inside or outside the brief, may make a brief more useful and credible, yet perhaps also more overloaded and distracting.

As background for this article, Supreme Court of Georgia Justice Keith Blackwell shared some thoughts on how he uses an iPad, what he sees as the limits of online reading and legal research, and what advice he would impart to Georgia legal writers. Justice Blackwell's comments reinforce what Judges Dillard and McMillian suggested in the April article: best practices for legal research and legal writing will take advantage of screen-reading possibilities while preserving the benefits of paper, especially since many Georgia judges still read case files on paper.



Photos, Charts and Other Visuals

"A picture is worth a thousand words."¹ Justice Blackwell invoked the old cliché but showed how it really works in one of his own opinions, *Kane v. Landscape Structures*, from 2011 when he sat on the Court of Appeals of Georgia.

Try pulling volume 309 of the Georgia Appeals Reports off the shelf and turning to page 15. Or pull up the case on a screen. What immediately grabs the eye—far more than any text on the page—is a photo of an “Infant Maze” playground structure:

This photograph depicts the structure as it appeared in Mountain Park on the day that Steven fell while standing atop one of the panels:



In the opinion, the Court of Appeals held that a 9-year-old assumed the risk of falling when he climbed a playground structure in a Gwinnett County park. Justice Blackwell said his first question when he started reading the parties’ briefs was “What does this playset look like?” He thought future readers of his opinion would have the same question and thus inserted a photo from the record directly into the opinion.

Showing how traditional legal-writing tactics can be adapted to imagery, Justice Blackwell introduced the photo with a complete sentence and colon. This is a popular and effective technique legal writers should already be using with block quotes. The complete sentence and colon before the quote help prepare the reader and “foreshadow[] what the reader should find significant” in the block quote.²

The photo in *Kane* served a “representative” function; that is, it showed the reader an object along with telling about it in words.³ Another type of visual is the “interpretive” visual such as a chart, graph or other diagram. Interpretive visuals “help learners

[i.e., readers] better understand difficult or ambiguous concepts.”

An informal review of briefs filed in the Georgia appellate courts found Georgia lawyers using photos and other images for both representative and interpretive purposes—not only to explain but more importantly to persuade.⁴ In a construction case, the brief might include a few different views of the allegedly defective workmanship. For briefs involving insurance policy language, a brief might include an image of the actual policy language or an image of the handwritten application for the policy. A brief arguing about the development of law or fact over time might include a chronological chart. A brief seeking to distinguish two bodies of case law might include a Venn diagram.

Before getting too creative with photos and other images, legal writers should consult the applicable rules. Supreme Court of Georgia Rule 71 and Court of Appeals of Georgia Rule 21 allow and encourage photos of physical evidence to be submitted in the record, but the rules are silent on whether and how to use photos and visuals in briefs:

The Court prescribes no particular arrangement for briefs, motions, applications for appeal, petitions for certiorari, or other papers. However, Rules specifying certain paper, size, and spacing must be complied with and page references to the

record (R-) and transcript (T-) are essential. The volume of cases necessarily requires that all matters be presented succinctly. Inclusion of extraneous facts and frivolous issues tends to obscure critical issues.”⁵

Federal Rule of Appellate Procedure 32(a)(1)(C) allows photographs, illustrations and tables. In the Northern District of Georgia, Appendix H to the Local Rules mandates black-and-white exhibits.⁶ Color documents can be filed separately on paper or uploaded separately to the ECF system. What the court rules all have in common, of course, is the necessity of adhering to the record.

Attorneys who want to embed photos in their briefs should also ensure they use best practices for creating PDFs, noted John Ruggeri, director of technical services for the Court of Appeals of Georgia. Generating searchable PDFs directly from a word-processing program should allow parties to include quite a bit of text and images without approaching courts’ maximum megabyte limitation for electronic filings.⁷

Hyperlinks

A hyperlink is simply “a reference to data that the reader can directly follow either by clicking or by hovering.”⁸ Hyperlinks can be internal—as with a hyperlinked Table of Contents or PDF bookmarks within a document—or external links to legal authorities,

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websites or other information.⁹ Hyperlinking can be as easy as copying and pasting a URL, but skillful legal writers will consider the benefits and risks of adding links into their briefs.

Internal hyperlinks are a powerful way to assist Georgia judges reading on iPads and other documents. Inserting a bookmark for each heading in a PDF generates a navigation panel showing the overall structure of the document on the left side—essentially, an interactive table of contents on the left side of the screen.¹⁰ This navigation panel can help the judicial reader explore different sections of the brief while maintaining overall context.

Adding external hyperlinks can make briefs more like regular online reading—that is to say, interactive: “External links can allow readers to get more details about law and facts, or to easily verify the validity of a writer’s arguments. Internal links can allow the reader to navigate easily within the document.”¹¹ Federal judges quoted on the website *Hyperlinking in Federal Court* cite the benefits of ease, convenience and “another level of persuasion.”¹²

But links also create distraction because they create a decision to click or not.¹³ Justice Blackwell suggested that Georgia legal writers should *not* place hyperlinks to every case they cite. “Briefs should be relatively self-contained,” he stated. However, hyperlinks could be useful on a more selective basis, especially where they reinforce what briefs should already be doing—such as emphasizing the language of a governing statute. “One of the biggest problems I see with brief-writing,” Justice Blackwell said, “is the failure to set out verbatim the language of the statute. It astonishes me that I don’t find it at all, or not until page 24.” Hyperlinking to the statute as well as quoting the key language in the body of the brief could reinforce that language’s importance to the case.

Hyperlinks to obscure or historical sources not found in typi-


cal legal databases could be useful as well, Justice Blackwell pointed out. Hyperlinking can also play a role in appropriate uses of judicial notice such as hyperlinked citations to the Census Bureau, he said.

Ultimately, hyperlinks to the record will be more useful than hyperlinks to legal authority, Justice Blackwell said. Currently Georgia courts’ technology does not support record hyperlinks, but with e-filing spreading to the Superior Courts, it may be on the horizon. In federal court, hyperlinks may be created to files in the CM/ECF system.¹⁴

The easiest hyperlink to create is simply inserting a URL into a word-processing document and tapping the return key to make it “live.” The hyperlink is clearly visible even if it looks long and unwieldy. Widely used citation practices already require the URL for certain sources but do not require or forbid it to be activated in a word-processing document viewed on screen.¹⁵

Hyperlinks can also be inserted without the cumbersome URLs by highlighting text and inserting a hyperlink with the applicable keystrokes (Command+K for Microsoft Word on Mac, for example.) Westlaw and Lexis also offer automated capabilities for adding links to legal authorities. Document services have arisen to format interactive e-briefs as well.¹⁶ Because of the Georgia court rules’ silence on hyperlinking, lawyers retain significant discretion on when to hyperlink, apart from complying with applicable citation rules.

Adding photos and hyperlinks can, in appropriate situations, make a brief more vivid and interactive, especially for a judge holding that brief in his or her hands on an iPad or other tablet. Regardless of how any particular judicial reader accesses the brief, however, the core principle of good legal writing does not change: “Keep the reader in mind.” Those are words of wisdom from Justice Blackwell, who further

noted: “That has always been the key to being a good brief-writer. But now the challenge is readers who read in different formats. I don’t know anyone who reads everything electronically, but that may be coming. We’re in a transition phase.” 

Many thanks are due to Emory Law librarian Chris Glon, who researched appellate briefs filed with the Supreme Court of Georgia and Court of Appeals for this article and Elizabeth Christian for her research assistance. Thanks also to Prof. Karen Sneddon of Mercer Law School for her thoughtful comments on an earlier draft. And special thanks are due to Justice Keith Blackwell for sharing thoughts and advice for this column, and to Judges Dillard, McMillian and Emerson for taking time to speak with the author and be quoted in this article.



Jennifer Murphy Romig teaches legal writing at Emory Law School.

Endnotes

1. See also Megan E. Boyd, *A Picture Is Worth a Thousand Words*, *Lady Legal Writer* (November 12, 2013), <http://ladylegalwriter.blogspot.com/2013/11/a-picture-is-worth-thousand-words.html> (“Photos can go a long way toward showing a judge what a litigant cannot effectively describe with words alone.”)
2. Anne Enquist, *To Quote or Not to Quote*, *Perspectives*, Fall 2005, at 19, <http://info.legalsolutions.thomsonreuters.com/pdf/perspec/2005-fall/2005-fall-5.pdf>
3. Steve Johansen and Ruth Anne Robbins, *Art-iculating the Analysis: Systematizing the Decision to Use Visuals as Legal Reasoning*, 20 *Legal Writing* 57 (2015), available at <http://www.legalwritingjournal.org/2015/07/05/art-iculating-the-analysis-systemizing-the-decision-to-use-visuals-as-legal-reasoning/#chapter2>
4. An informal survey of Georgia appellate briefs containing images can be recreated on Westlaw by searching Georgia appellate briefs for the term “not displayable.” Because Westlaw currently does

- not show images in the on-screen HTML version of the case, rather including language “tabular or graphic material set forth at this point is not displayable,” this search captures briefs with images, which can then be viewed in their original form in PDF on Westlaw.
5. Supreme Court of Georgia Rule 19 n. 1.
 6. United States District Court for the Northern District of Georgia Local Rules, Appendix H (Electronic Case Filing and Administrative Procedures (includes Standing Order 04-01), Rule IV.A.4.
 7. For example in the Northern District of Georgia, files are limited to a maximum size of 5 megabytes. See United States District Court for the Northern District of Georgia, Docketing FAQs, <http://www.gand.uscourts.gov/electronic-case-filing-information/docketing-faq> (last visited July 23, 2015).
 8. Wikipedia, *Hyperlink* (last updated June 28, 2015), <https://en.wikipedia.org/wiki/Hyperlink>
 9. Instructions for hyperlinked tables of contents and PDF bookmarks can be found at this how-to guide for hyperlinking to CM/ECF files: *Attorney Guide to Hyperlinking in the Federal District Courts* hosted by the U.S. District Court for the District of Nebraska, <http://federalcourthyperlinking.org/attorney-guide-to-hyperlinking/> (website maintained by “an Ad Hoc Working Group comprised of federal court judges and staff interested in promoting hyperlinks” including judges from Utah and Nebraska).
 10. Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 *Legal Communication & Rhetoric*: JALWD (forthcoming 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2573943
 11. Mary Beth Beazley, *Writing (and Reading) Appellate Briefs in the Digital Age*, 15 *J. App. Prac. & Process* 47, 64 (2015).
 12. *Attorney Guide to Hyperlinking in the Federal District Courts*, *supra* note ix.
 13. *Id.*
 14. The U.S. District Court for the District of Nebraska hosts this how-to guide for hyperlinking to CM/ECF files: *Attorney Guide to Hyperlinking in the Federal District Courts*, http://www.ned.uscourts.gov/internetDocs/cmecf/hyperlinking_attorneys_word.pdf (revised Feb. 19, 2015).
 15. *The Bluebook: A Uniform System of Citation* Rule 18 (Columbia Law Review Ass’n et al. eds., 20th ed. 2015); Association of Legal Writing Directors and Coleen Barger, *ALWD Guide to Legal Citation* Rules 30-32 (5th ed. 2014).
 16. Margolies, *supra* note x.

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Orienting Incoming Students to Professionalism at Georgia Law Schools

by Avarita L. Hanson

Students at all six Georgia law schools recently experienced a special part of their first-year orientation program—the Law School Orientation on Professionalism. For the 23rd year, volunteer judges, attorneys and law school staff have pointed incoming students in the right direction by engaging them in the Law School Orientation on Professionalism Program. Since 1993, this American Bar Association (ABA) award-winning program has been jointly sponsored by the State Bar’s Committee on Professionalism and the Chief Justice’s Commission on Professionalism (the Commission), in conjunction with Georgia’s ABA-accredited law schools.

Professionalism Committee Chair and Emory Law alumna, Elizabeth Fite, participated in Emory’s ori-



Photo by Prof. Patrick Longan

Keynote speaker Hon. Jeffrey B. Hanson, judge, State Court of Bibb County, Macon, administers the Law Student's Creed at Mercer University.

entation program. She noted that “it was a great success and, as usual, it was a great deal of fun.” She further says, “Every class is different, but I was impressed with how thoughtful this year’s crop of students were. They asked some insightful questions, and it was obvious they understood the importance of professionalism.”

Fite always starts her group discussions by explaining that the first day of law school marks the beginning of their professional careers. “It is critical that we teach law students the importance of professionalism from day one, and the law school orientation programs conducted throughout the state ensure that we are meeting our obligation. Practicing attorneys and judges are adding context to the important discussion about professionalism that each law school is already having.”

The opening act for all sessions is the keynote address from a prominent judge or attorney who defines professionalism in their own special way and gives the students valuable advice for starting their legal careers professionally. This year, all speakers touched on some aspect of the importance of one’s reputation. Keynote speaker at Atlanta’s John Marshall Law School, Christopher Ward, chief judge, Atlanta Municipal Court, gave valuable guidelines on being professional and establishing and guarding one’s reputation. Hon. Linda T. Walker, chief U.S. magistrate judge, Northern District of Georgia, spoke at her alma mater, the University of Georgia. A. Craig Cleland, partner, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., addressed the students at his alma mater, Georgia State. At Emory, Rita Sheffey, assistant dean for public service and president-elect of the State Bar of Georgia, spoke to the students while Supreme Court of Georgia Justice David Nahmias administered the Professionalism Oath. Savannah Law students heard from William K. Broker, managing attorney, Georgia Legal



Photo by Terie Latala

Prof. Nicole Iannarone leads a breakout group at Georgia State University College of Law.

Services Program, Savannah. At Mercer, students heard from Hon. Jeffrey B. Hanson, State Court of Bibb County.

More than 200 lawyers visited the campuses and nearly 1,000 incoming students benefitted from the program. Many visiting attorneys were professionalism orientation veterans who have participated in this program for many years. Attorneys, judges and law school personnel who served as group leaders facilitated discussions of contemporary hypothetical issues and dilemmas of ethics and professionalism relative to law students and practitioners. The volunteer attorneys’ comments reflect their experiences in the professionalism program:

- Judge Ward was an excellent choice to speak on professionalism because he practices what he preaches! (John Marshall)
- Always greatly enjoy the process and the exchange of ideas. (Mercer)
- Happy to continue hearing students expressing a strong desire to do the right thing. (University of Georgia)

- General format of pairing a practitioner or judge with an Emory Law person remains very solid and does a terrific job offering multiple viewpoints to the students. (Emory)
- I thought that the new hypothetical was a very useful starting point for the discussion. The section concerning a student with communication difficulty seemed to create a sense of community, and responsibility to take that student under the communal wing. There were three students from China, and one student explicitly acknowledged that English is a second language and that she could imagine that her speech might be difficult to understand (it wasn’t). In any event, I think it achieved its intended purpose and launched a fruitful discussion. (Emory)

Prof. Nicole Iannarone, Georgia State College of Law and Professionalism Committee vice chair added her assessment of this year’s orientation program:

2015 Law School Orientation on Professionalism Volunteers

Atlanta's John Marshall Law School

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Exploring what it means to be a professional during the earliest stages of a law school education helps our future lawyers understand the importance of their professional development. During our sessions, students discussed how important it is to think about themselves as professionals now and view their actions through the lens of the expectations they and the bars have of lawyers. Students were delighted to work with practicing lawyers and enjoyed the support of Bar leaders and prominent attorneys as they begin to develop their professional identities.


The panoply of comments from law student reviewers demonstrates the impact and effectiveness of the Law Student Orientation on Professionalism Programs, as follows:

- It was helpful to consider actual scenarios and how the honor code and professionalism might apply.
- It was enlightening to see hypotheticals of situations we might find ourselves in and how we might act or react.
- Very effective because I was actually able to speak with the very professional, practicing lawyers. I enjoyed the “real world” advice.
- I appreciated having an academic, judicial and private practice perspective on professionalism.
- Good distinction between ethics and professionalism as well as how to carry yourself on a daily basis.
- The concepts were clearly defined and the examples were helpful.
- It was very informative and prepared me for school. Judge Ward gave good tips as well.
- Excellent. Definitely impacted my mindset regarding my behavior as a law school student.

Law School	# of Students	# of Volunteers	Keynote Speaker(s)
Atlanta’s John Marshall	180	34	Hon. Christopher E. Ward, Chief Judge, Atlanta Municipal Court
Emory	229	59	Hon. David E. Nahmias, Justice, Supreme Court of Georgia Rita A. Sheffey, Assistant Dean for Public Service, Emory University School of Law
Georgia State	190	43	A. Craig Cleland, Partner, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Mercer	135	35	Hon. Jeffrey B. Handon, Judge, State Court of Bibb County
Savannah	62	13	William K. Broker, Managing Attorney, GLSP Savannah Office
University of Georgia	190	56	Hon. Linda T. Walker, Chief Magistrate Judge, U.S. District Court, Northern District of Georgia

Planning and executing six orientation programs occurring during one week in August with multiple programs on the same day poses lots of logistical challenges and administrative effort for the Commission staff as well as the law schools. Many thanks to Nneka Harris-Daniel, administrative assistant; Terie Latala, assistant director; and Avarita L. Hanson, executive director of the Commission, for their work in making this program possible. Thank you also to the judges and attorneys who fanned out all over the state volunteering their time and talents, personally engaging and demonstrating to our future colleagues both the meaning and importance of professionalism.

Any Georgia attorney interested in lending their time to the 2016 orientation programs should watch for the announcement seeking volunteers in the *Georgia Bar Journal* and on the Bar website at www.gabar.org in the spring and contact

Nneka Harris-Daniel at nneka@cjcpga.org. Not only is participation in this program a worthy and memorable experience, it qualifies for professionalism CLE credits! 



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

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Georgia Bar Journal
104 Marietta St. NW, Suite 100
Atlanta, GA 30303

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In Memoriam

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

A. Harris Adams

Marietta, Ga.
Mercer University Walter F.
George School of Law (1971)
Admitted 1971
Died August 2015

Robert Martin Addison

Chattanooga, Tenn.
Wake Forest University School
of Law (1998)
Admitted 2008
Died January 2015

Clyde L. Armour Jr.

Columbus, Ga.
Mercer University Walter F.
George School of Law (1952)
Admitted 1952
Died July 2015

Edward T. Brennan

Savannah, Ga.
University of Virginia School
of Law (1953)
Admitted 1953
Died August 2015

Sage Brown

Savannah, Ga.
Atlanta's John Marshall Law
School (1978)
Admitted 1978
Died August 2015

Lydia Lee Callender

Roswell, Ga.
Woodrow Wilson College of Law
(1978)
Admitted 1979
Died August 2015

Paul Parker Creech

Raleigh, N.C.
University of South Carolina
School of Law (1977)
Admitted 2007
Died July 2015

David Clay Cross

Fort Gordon, Ga.
Seton Hall University School of
Law (1969)
Admitted 1979
Died July 2015

Evan A. Douthit

Shawnee Mission, Kan.
Oklahoma City University School
of Law (1979)
Admitted 1982
Died July 2015

Mary Erickson

Atlanta, Ga.
Stanford Law School (1989)
Admitted 1989
Died July 2015

Robert R. Gunn II

Macon, Ga.
Mercer University Walter F.
George School of Law (1977)
Admitted 1977
Died August 2015

Morton A. Harris

Columbus, Ga.
Harvard Law School (1959)
Admitted 1959
Died August 2015

James Jeffries Hopkins

Carrollton, Ga.
Emory University School of Law
(1989)
Admitted 1989
Died September 2015

Michael J. Hopkins

Snellville, Ga.
Atlanta's John Marshall Law
School (1977)
Admitted 1977
Died May 2015

Joseph C. Kitchings

Ludowici, Ga.
Atlanta Law School (1976)
Admitted 1976
Died December 2014

Cathleen Mary Mahoney

Chevy Chase, Md.
Yale Law School (1985)
Admitted 1987
Died July 2015

William James Marcum

Augusta, Ga.
Atlanta Law School (1989)
Admitted 1991
Died August 2015

Michael V. Mattson

Jacksonville, Fla.
Emory University School of Law
(1974)
Admitted 1974
Died August 2015

Marilyn Gail McDowell

Savannah, Ga.
Southwestern Law School (1986)
Admitted 1999
Died July 2015

Philip F. Monte Jr.

Atlanta, Ga.
Tulane University Law School
(1962)
Admitted 1972
Died July 2015

Catharine M. Moscatelli
Alexandria, Va.
Emory University School of Law
(1988)
Admitted 1988
Died February 2015

Robert A. Moss
Atlanta, Ga.
Illinois Institute of Technology
Chicago-Kent College of Law
(1978)
Admitted 1978
Died August 2015

Harry A. Nix
Roswell, Ga.
Atlanta Law School (1950)
Admitted 1950
Died July 2015

Alon Hilton Price
Summerville, S.C.
University of Georgia School
of Law (1999)
Admitted 2000
Died August 2015

Gene Reeves Jr.
Lawrenceville, Ga.
Atlanta's John Marshall Law
School (1964)
Admitted 1964
Died July 2015

Frank J. Rhodes Jr.
Decatur, Ga.
Emory University School of Law
(1975)
Admitted 1975
Died March 2015

Savvas Philip Savopoulos
Washington, D.C.
American University Washington
College of Law (1994)
Admitted 1994
Died May 2015

Frank Robert Seigel
Atlanta, Ga.
Mercer University Walter F.
George School of Law (1980)
Admitted 1980
Died August 2015

Fred B. Sheats
Atlanta, Ga.
Woodrow Wilson College of Law
(1958)
Admitted 1958
Died March 2015

David L. Smith
Mableton, Ga.
Atlanta Law School (1993)
Admitted 1993
Died August 2015

Paul Andrew Stephens Jr.
Snellville, Ga.
Wake Forest University School
of Law (1975)
Admitted 1981
Died July 2015

William J. Thompson
Atlanta, Ga.
Georgetown University of Law
(1963)
Admitted 1964
Died August 2015

Peter Wheeler
Atlanta, Ga.
Atlanta Law School (1948)
Admitted 1949
Died April 2015


Chasta Nicole Adcock Williams
Atlanta, Ga.
University of Kentucky College
of Law (2002)
Admitted 2002
Died August 2015

Lynn Wilson
Barnesville, Ga.
Atlanta Law School (1975)
Admitted 1975
Died August 2015



Judge A. Harris Adams, of Marietta, died in August 2015. Born in Vidalia, Ga., in 1948, Adams attended Mercer University, receiving his B.A. degree with a major in Law in 1970 and his J. D. degree from Walter F. George School of Law in 1971.

Adams began his legal career as an assistant district attorney in the Cobb Judicial Circuit where he served until 1973. He left this position to enter private practice with the firm of Sams, Glover, Gentry and Adams and practiced law in Marietta for 14 years before becoming a judge.

From 1980 until 1983 he served as chief judge of the Municipal Court of Marietta. On Jan. 4, 1985, Adams was appointed by Gov. Joe Frank Harris to the State Court of Cobb County, and was re-elected to the Court in 1986, 1990, 1994, 1998 and 2002. He was elected by his fellow judges as chief judge and served in that capacity for six years, leaving this position after being appointed by Gov. Roy E. Barnes to the Court of Appeals of Georgia in 2002. Adams served on the Court of Appeals until his retirement in January 2013. 

Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. Memorial Contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW, Suite 610, 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. Unless otherwise directed by the donor, In Memoriam Contributions will be used for Fellows programs of the Georgia Bar Foundation.

October-December

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| OCT 8 | ICLE
<i>Zoning Law</i>
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6 CLE | OCT 16 | ICLE
<i>Basic Fiduciary Practice</i>
Macon, Ga.
See www.iclega.org for location
6 CLE |
| OCT 8 | ICLE
<i>International Trade Conference</i>
Atlanta, Ga.
See www.iclega.org for location
7 CLE | OCT 16 | ICLE
<i>Family Law Seminar</i>
Augusta, Ga.
See www.iclega.org for location
6 CLE |
| OCT 9 | ICLE
<i>Health Matters</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE | OCT 22 | ICLE
<i>Growth Companies</i>
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE |
| OCT 9 | ICLE
<i>Premises Liability</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE | OCT 22 | ICLE
<i>U.S. Supreme Court Update</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE |
| OCT 13 | ICLE
<i>Webinar: Nuts and Bolts of Adoption Law in Georgia</i>
See www.iclega.org
1 CLE | OCT 22-24 | ICLE
<i>Workers' Compensation Institute</i>
St. Simons Island, Ga.
See www.iclega.org for location
12 CLE |
| OCT 15 | ICLE
<i>Beginning Lawyers Program</i>
Statewide Satellite Rebroadcast
See www.iclega.org for location
6 CLE | OCT 23 | ICLE
<i>Technology Law Institute</i>
Via Web Streaming and Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE |
| OCT 15 | ICLE
<i>Great Adverse Depositions</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE | OCT 23 | ICLE
<i>GABWA's Family Law</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE |
| OCT 16 | ICLE
<i>Georgia Auto Insurance Claims Law</i>
Via Web Streaming and Atlanta, Ga.
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6 CLE | | |

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- OCT 23** ICLE
Securities Litigation
Atlanta, Ga.
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6 CLE
- OCT 27** ICLE
Webinar: Common Carrier Cases
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1 CLE
- OCT 28** ICLE
Nuts and Bolts of Appellate Practice
Atlanta, Ga.
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6 CLE
- OCT 28-29** ICLE
Business Law Institute
Atlanta, Ga.
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12 CLE
- OCT 29** ICLE
Nuts and Bolts of E-Discovery
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE
- OCT 30** ICLE
Expert Testimony in Georgia
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- OCT 30** ICLE
Solo/Small Firm Fall Seminar
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE
- OCT 30** ICLE
Trial Advocacy
Statewide Satellite Broadcast
See www.iclega.org for location
6 CLE
- OCT 30** ICLE
Advanced Health Care Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- OCT 30** ICLE
*Impeach Justice Douglas/
Civil Case Update (Rebroadcast)*
Jekyll Island, Ga.
See www.iclega.org for location
3 CLE
- OCT 31-NOV 7** ICLE
*Advanced Urgent Legal Matters
at Sea Cruise*
See www.iclega.org for location
12 CLE
- NOV 4** ICLE
Commercial Real Estate
Atlanta, Savannah and Tifton, Ga.
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6 CLE
- NOV 5** ICLE
VA Accreditation
Atlanta, Ga.
See www.iclega.org for location
6.5 CLE
- NOV 5** ICLE
Buying and Selling Private Businesses
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- NOV 5** ICLE
Trial Advocacy
Statewide Satellite Rebroadcast
See www.iclega.org for location
6 CLE

October-December

NOV 5-7 ICLE
Medical Malpractice Liability Institute
 Amelia Island, Fla.
 See www.iclega.org for location
 12 CLE

NOV 5-7 ICLE
Consumer and Business Bankruptcy
 Greensboro, Ga.
 See www.iclega.org for location
 12 CLE

NOV 6 ICLE
Child Welfare Attorney Training
 Atlanta, Savannah and Tifton, Ga.
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 7 CLE

NOV 6 ICLE
Real Property Law Foreclosure
 Statewide Satellite Broadcast
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 6 CLE

NOV 9 ICLE
Georgia Symposium on Ethics and Professionalism
 Atlanta, Ga.
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 6 CLE

NOV 10 ICLE
Webinar: Attorney Wellness
 See www.iclega.org
 1 CLE

NOV 12 ICLE
Litigation Under 42 Section 1983
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

NOV 12 ICLE
Real Property Law Foreclosure
 Statewide Satellite Rebroadcast
 See www.iclega.org for location
 6 CLE

NOV 13 ICLE
Keep it Short and Simple
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

NOV 13 ICLE
 RICO
 Atlanta, Ga.
 See www.iclega.org for location
 6.5 CLE

NOV 13 ICLE
Recent Developments in Georgia Law
 Statewide Satellite Broadcast
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 6 CLE

NOV 17 ICLE
Webinar: Social Security
 See www.iclega.org
 1 CLE

NOV 19 ICLE
Recent Developments in Georgia Law
 Statewide Satellite Rebroadcast
 See www.iclega.org for location
 6 CLE

NOV 20 ICLE
Advanced Adoption Law
 Statewide Satellite Broadcast
 See www.iclega.org for location
 6 CLE

DEC 3 ICLE
Talking with Pictures
 Atlanta, Ga.
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 6 CLE

DEC 3 ICLE
Advanced Adoption Law
 Statewide Satellite Rebroadcast
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 6 CLE

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DEC 3-4 ICLE
Defense of Drinking Drivers Institute
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 12.5 CLE

DEC 4 ICLE
Matrimonial Law
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

DEC 4 ICLE
Labor and Employment Law Institute
 Atlanta, Savannah and Tifton, Ga.
 See www.iclega.org for location
 6 CLE

DEC 8 ICLE
Webinar: Mediation in Family Law Cases
 See www.iclega.org
 1 CLE

DEC 8-9 ICLE
Selected Video Replays
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

DEC 8-9 ICLE
Roger Dodd Trial Skills Clinic
 Atlanta, Ga.
 See www.iclega.org for location
 12 CLE

DEC 10 ICLE
Recent Developments in Georgia Law
 Atlanta, Ga.
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 6 CLE

DEC 10 ICLE
Health Care Fraud
 Atlanta, Ga.
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 6 CLE

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October-December

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Corporate Counsel Institute
Atlanta, Ga.
See www.iclega.org for location
12 CLE
- DEC 11** ICLE
Professionalism, Ethics and Malpractice
Statewide Satellite Broadcast
See www.iclega.org for location
3 CLE
- DEC 11** ICLE
ADR Institute and Neutrals Conference
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- OCT 15** ICLE
Webinar: Premises Liability
1 CLE
- DEC 16** ICLE
Winning Numbers
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- DEC 16** ICLE
Georgia and the 2nd Amendment
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- DEC 17** ICLE
Tax Traps for Real Estate Practitioner
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- DEC 17** ICLE
Professionalism, Ethics and Malpractice
Statewide Satellite Rebroadcast
See www.iclega.org for location
3 CLE

- DEC 18** ICLE
Carlson on Evidence
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE
- DEC 18** ICLE
Finance for Lawyers
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- DEC 18** ICLE
Update on Georgia Law
Augusta, Ga.
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6 CLE



ETHICS DILEMMA?

Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Ethics Helpline at 404-527-8741, 800-682-9806 or log in to www.gabar.org and submit your question by email.

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Proposed Amendments to the Uniform Rules of Superior Court

At its business meeting on July 29, 2015, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 4, 6 and proposed new Rule 49. A copy of the proposed amendments may be found at the Council's website at <http://georgiasuperiorcourts.org>.

Should you have any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, Georgia 30334, or fax them to 404-651-8626. To be considered, comments must be received by Monday, Jan. 4, 2016.

First Publication of Proposed Redrafted Formal Advisory Opinion No. 03-2

FAO No. 03-2 was issued by the Formal Advisory Opinion Board on September 11, 2003, pursuant to Rule 4-403 (d). On November 3, 2011, the Georgia Rules of Professional Conduct were amended by order of the Supreme Court of Georgia. To determine what impact, if any, the amendments to the rules had on FAO No. 03-2, the Formal Advisory Opinion Board reviewed the opinion. Upon review, the Formal Advisory Opinion Board determined that the substance and/or the conclusion reached in the opinion has changed as a result of the amendment to the rules. Accordingly, the Formal Advisory Opinion Board has redrafted FAO No. 03-2. The proposed redrafted opinion interprets the amended rules in addressing the same issues presented in the original opinion.

The Formal Advisory Opinion Board has decided the proposed redrafted opinion should be treated like a new opinion. As such, pursuant to Rule 4-403 (c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the proposed redrafted FAO No. 03-2 should be issued. **State Bar members only**

are invited to file comments to this proposed redrafted opinion with the Formal Advisory Opinion Board at the following address:

State Bar of Georgia
104 Marietta St. NW
Suite 100
Atlanta, Georgia 30303
Attention: John J. Shiptenko

Any comment to the proposed redrafted opinion must be filed by November 30, 2015, in order for it to be considered by the Board. Any comment should make reference to the proposed redrafted opinion number. The Formal Advisory Opinion Board will make a final determination of whether the proposed redrafted opinion should be issued after considering the comments received from State Bar Members. If the Formal Advisory Opinion Board determines that the proposed redrafted opinion should be issued, final drafts of the redrafted opinion will be published, and filed with the Supreme Court of Georgia.

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Proposed Redrafted Formal Advisory Opinion NO. 03-2

Question Presented:

Does the obligation of confidentiality described in Rule 1.6, Confidentiality of Information, apply as between two jointly represented clients?

Summary Answer:

The obligation of confidentiality described in Rule 1.6, Confidentiality of Information, applies as between two jointly represented clients. An attorney must honor one client's request that information be kept confidential from the other jointly represented client. Honoring the client's request will, in almost all circumstances, require the attorney to withdraw from the joint representation.

Opinion:

Unlike the attorney-client privilege, jointly represented clients do not lose the protection of confidentiality described in Rule 1.6, Confidentiality of Information, as to each other by entering into the joint representation. See, e.g., D.C. Bar Legal Ethics Committee, Opinion No. 296 (2000) and Committee on Professional Ethics, New York State Bar Association, Opinion No. 555 (1984). Nor do jointly represented clients impliedly consent to a sharing of confidences with each other.

When one client in a joint representation requests that some information relevant to the representation be kept confidential from the other client, the attorney must honor the request and then determine if continuing with the representation while honoring the request will: a) be inconsistent with the lawyer's obligations to keep the other client informed under Rule 1.4, Communication; b) materially and adversely affect the representation of the other client under Rule 1.7, Conflict of Interest: General Rule; or c) both.

The lawyer has discretion to continue with the joint representation while not revealing the confidential information to the other client only to the extent that he or she can do so consistent with these rules. If maintaining the confidence will constitute a violation of Rule 1.4 or Rule 1.7, as it almost certainly will, the lawyer should maintain the confidence and discontinue the joint representation.¹

Consent to conflicting representations, of course, is permitted under Rule 1.7. Consent to continued joint representation in these circumstances, however, ordinarily would not be available either because it would be impossible to obtain the required informed consent

without disclosing the confidential information in question² or because consent is not permitted under Rule 1.7 in that the continued joint representation would "involve circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients." Rule 1.7(c)(3).

The potential problems that confidentiality can create between jointly represented clients make it especially important that clients understand the requirements of a joint representation prior to entering into one. When an attorney is considering a joint representation, informed consent of the clients, confirmed in writing, is required prior to the representation "if there is a significant risk that the lawyer's . . . duties to [either of the jointly represented clients] . . . will materially and adversely affect the representation of [the other] client." Rule 1.7. Whether or not informed consent is required, however, a prudent attorney will always discuss with clients wishing to be jointly represented the need for sharing confidences between them, obtain their consent to such sharing, and inform them of the consequences of either client's nevertheless insisting on confidentiality as to the other client and, in effect, revoking the consent.³ If it appears to the attorney that either client is uncomfortable with the required sharing of confidential information that joint representation requires, the attorney should reconsider whether joint representation is appropriate in the circumstances. If a putative jointly represented client indicates a need for confidentiality from another putative jointly represented client, then it is very likely that joint representation is inappropriate and the putative clients need individual representation by separate attorneys.

The above guidelines, derived from the requirements of the Georgia Rules of Professional Conduct and consistent with the primary advisory opinions from other jurisdictions, are general in nature. There is no doubt that their application in some specific contexts will create additional specific concerns seemingly unaddressed in the general ethical requirements. We are, however, without authority to depart from the Rules of Professional Conduct that are intended to be generally applicable to the profession. For example, there is no doubt that the application of these requirements to the joint representation of spouses in estate planning will sometimes place attorneys in the awkward position of having to withdraw from a joint representation of spouses because of a request by one spouse to keep relevant information confidential from the other and, by withdrawing, not only ending trusted lawyer-client relationships but also

essentially notifying the other client that an issue of confidentiality has arisen. See, e.g., Florida State Bar Opinion 95-4 (1997) (“The attorney may not reveal confidential information to the wife when the husband tells the attorney that he wishes to provide for a beneficiary that is unknown to the wife. The attorney must withdraw from the representation of both husband and wife because of the conflict presented when the attorney must maintain the husband’s separate confidences regarding the joint representation.”) A large number of highly varied recommendations have been made about how to deal with these specific concerns in this specific practice setting. See, e.g., Pearce, *Family Values and Legal Ethics: Competing Approaches to Conflicts in Representing Spouses*, 62 *Fordham L. Rev.* 1253 (1994); and, Collett, *And The Two Shall Become As One . . . Until The Lawyers Are Done*, 7 *Notre Dame J. L. Ethics & Public Policy* 101 (1993) for discussion of these recommendations. Which recommendations are followed, we believe, is best left to the practical wisdom of the good lawyers practicing in this field so long as the general ethical requirements of the Rules of Professional Conduct as described in this Opinion are met.

Endnotes

1. See ABA MODEL RULES OF PROF’L CONDUCT, R. 1.7, cmt. 31 (“As to the duty of confidentiality, continued common

representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation.”)

2. See GEORGIA RULES OF PROF’L CONDUCT, R. 1.0(h) (defining “informed consent” as “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct”); see also *id.*, cmt. 6 (“The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client’s or other person’s options and alternatives.”)
3. See ABA MODEL RULES OF PROF’L CONDUCT, R. 1.7, cmt. 31 (advising that “[a] lawyer should, at the outset of the common representation and as part of the process of obtaining each client’s informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other).

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First Publication of Proposed Redrafted Formal Advisory Opinion No. 10-2

FAO No. 10-2 was issued by the Formal Advisory Opinion Board on January 9, 2012, pursuant to Rule 4-403(d). On November 3, 2011, the Georgia Rules of Professional Conduct were amended by order of the Supreme Court of Georgia. To determine what impact, if any, the amendments to the rules had on FAO No. 10-2, the Formal Advisory Opinion Board reviewed the opinion. Upon review, the Formal Advisory Opinion Board determined that the substance and/or the conclusion reached in the opinion has changed as a result of the amendment to the rules. Accordingly, the Formal Advisory Opinion Board has redrafted FAO No. 10-2. The proposed redrafted opinion interprets the amended rules in addressing the same issues presented in the original opinion.

The Formal Advisory Opinion Board has decided the proposed redrafted opinion should be treated like a new opinion. As such, pursuant to Rule 4-403 (c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the proposed redrafted FAO No. 10-2 should be issued. **State Bar members** only

are invited to file comments to this proposed redrafted opinion with the Formal Advisory Opinion Board at the following address:

State Bar of Georgia
104 Marietta St. NW
Suite 100
Atlanta, Georgia 30303
Attention: John J. Shiptenko

Any comment to the proposed redrafted opinion must be filed by November 30, 2015, in order for it to be considered by the Board. Any comment should make reference to the proposed redrafted opinion number. The Formal Advisory Opinion Board will make a final determination of whether the proposed redrafted opinion should be issued after considering the comments received from State Bar Members. If the Formal Advisory Opinion Board determines that the proposed redrafted opinion should be issued, final drafts of the redrafted opinion will be published, and filed with the Supreme Court of Georgia.

Proposed Redrafted Formal Advisory Opinion No. 10-2

Question Presented:

May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child's objection?

Summary Answer:

When it becomes clear that there is an irreconcilable conflict between the child's wishes and the attorney's considered opinion of the child's best interests, the attorney must withdraw from his or her role as the child's guardian ad litem.

Opinion:

Relevant Rules

This question squarely implicates several of Georgia's Rules of Professional Conduct, particularly, Rule 1.14. Rule 1.14, dealing with an attorney's ethical duties towards a child or other client with a disability, provides that "the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with

the client." Comment 1 to Rule 1.14 goes on to note that "children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."¹

This question also involves Rule 1.2, Scope of Representation, and Rule 1.7, governing conflicts of interest.² Comment 4 to Rule 1.7 indicates that "[l]oyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client."³

This situation also implicates Rule 3.7, the lawyer as a witness, to the extent that the guardian ad litem must testify and may need to advise the court of the conflict between the child's expressed wishes and what he deems the best interests of the child. Finally, Rule 1.6, Confidentiality of Information, may also be violated if the attorney presents the disagreement to the Court.

Statutory Background

Georgia law requires the appointment of an attorney for a child as the child's counsel in a termination of parental rights proceeding.⁴ The statute also provides that the court may additionally appoint a guardian ad litem for the child, and that the child's counsel is eligible to serve as the guardian ad litem.⁵ In addition to the child's statutory right to counsel, a child in a termination of parental rights proceedings also has a federal constitutional right to counsel.⁶

In Georgia, a guardian ad litem's role is "to protect the interests of the child and to investigate and present evidence to the court on the child's behalf."⁷ The best interests of the child standard is paramount in considering changes or termination of parental custody. *See, e.g., Scott v. Scott*, 276 Ga. 372, 377 (2003) ("[t]he paramount concern in any change of custody must be the best interests and welfare of the minor child"). The Georgia Court of Appeals held in *In re A.P.* based on the facts of that case that the attorney-guardian ad litem dual representation provided for under O.C.G.A. § 15-11-98(a) does not result in an inherent conflict of interest, given that "the fundamental duty of both a guardian ad litem and an attorney is to act in the best interests of the [child]."⁸

This advisory opinion is necessarily limited to the ethical obligations of an attorney once a conflict of interest in the representation has *already arisen*. Therefore, we need not address whether or not the dual representation provided for under O.C.G.A. § 15-11-98(a) results in an inherent conflict of interest.⁹

Discussion

The child's attorney's first responsibility is to his or her client.¹⁰ Rule 1.2 makes clear that an attorney in a normal attorney-client relationship is bound to defer to a client's wishes regarding the ultimate objectives of the representation.¹¹ Rule 1.14 requires the attorney to maintain, "as far as reasonably possible . . . a normal client-lawyer relationship with the [child]."¹² An attorney who "reasonably believes that the client cannot adequately act in the client's own interest" may seek the appointment of a guardian or take other protective action.¹³ Importantly, the Rule does not simply direct the attorney to act in the client's best interests, as determined solely by the attorney. At the point that the attorney concludes that the child's wishes and best interests are in conflict, the attorney must petition the court for removal as the child's guardian ad litem. The attorney must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney's view of the child's best interests and the child's view of his or her own interests

is severe, the attorney may seek to withdraw entirely under Rule 1.16(b)(3).¹⁴

The attorney may not withdraw as the child's counsel and then seek appointment as the child's guardian ad litem, as the child would then be a former client to whom the former attorney/guardian ad litem would be adverse.¹⁵

This conclusion is in accord with many other states.¹⁶ For instance, Ohio permits an attorney to be appointed both as a child's counsel and as the child's guardian ad litem.¹⁷ Ohio ethics rules prohibit continued service in the dual roles when there is a conflict between the attorney's determination of best interests and the child's express wishes.¹⁸ Court rules and applicable statutes require the court to appoint another person as guardian ad litem for the child.¹⁹ An attorney who perceives a conflict between his role as counsel and as guardian ad litem is expressly instructed to notify the court of the conflict and seek withdrawal as guardian ad litem.²⁰ This solution (withdrawal from the guardian ad litem role once it conflicts with the role as counsel) is in accord with an attorney's duty to the client.²¹

Connecticut's Bar Association provided similar advice to its attorneys, and Connecticut's legislature subsequently codified that position into law.²² Similarly, in Massachusetts, an attorney representing a child must represent the child's expressed preferences, assuming that the child is reasonably able to make "an adequately considered decision . . . even if the attorney believes the child's position to be unwise or not in the child's best interest."²³ Even if a child is unable to make an adequately considered decision, the attorney still has the duty to represent the child's expressed preferences unless doing so would "place the child at risk of substantial harm."²⁴ In New Jersey, a court-appointed attorney needs to be "a zealous advocate for the wishes of the client . . . unless the decisions are patently absurd or pose an undue risk of harm."²⁵ New Jersey's Supreme Court was skeptical that an attorney's duty of advocacy could be successfully reconciled with concern for the client's best interests.²⁶

In contrast, other states have developed a "hybrid" model for attorneys in child custody cases serving simultaneously as counsel for the child and as their guardian ad litem.²⁷ This "hybrid" approach "necessitates a modified application of the Rules of Professional Conduct."²⁸ That is, the states following the hybrid model, acknowledge the "'hybrid' nature of the role of attorney/guardian ad litem which necessitates a modified application of the Rules of Professional Conduct," excusing strict adherence to those rules.²⁹ The attorney under this approach is bound by the client's best inter-

ests, not the client's expressed interests.³⁰ The attorney must present the child's wishes and the reasons the attorney disagrees to the court.³¹

Although acknowledging that this approach has practical benefits, we conclude that strict adherence to the Rules of Professional Conduct is the sounder approach.

Conclusion

At the point that the attorney concludes that the child's wishes and best interests are in conflict, the attorney must petition the court for removal as the child's guardian ad litem and must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney's view of the child's best interests and the child's view of his or her own interests is severe, the attorney may seek to withdraw entirely following Rule 1.16(b)(3).

Endnotes

1. Georgia Rules of Professional Conduct, Rule 1.14, Comment 1.
2. Georgia Rules of Professional Conduct, Rules 1.2, 1.7.
3. Georgia Rules of Professional Conduct, Rule 1.7, Comment 4.
4. O.C.G.A. § 15-11-98(a) ("In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court *shall* appoint an attorney to represent the child as the child's counsel and *may* appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child's counsel") (emphasis added).
5. *Id.*
6. *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1359-61 (N.D. Ga. 2005), *rev'd on other grounds*, 2010 WL 1558980 (U.S. Apr. 21, 2010).
7. *See Padilla v. Melendez*, 228 Ga. App. 460, 462 (1997).
8. *In re A.P.*, 291 Ga. App. 690, 691 (2008).
9. *See, e.g., Wis. Ethics Op. E-89-13* (finding no inherent conflict of interest with the dual representation of an attorney and guardian but concluding that if a conflict does arise based on specific facts, the attorney's ethical responsibility is to resign as the guardian).
10. Georgia Rules of Professional Conduct, Rule 1.2.
11. Georgia Rules of Professional Conduct, Rule 1.2, Comment 1.
12. Georgia Rules of Professional Conduct, Rule 1.14.
13. *Id.*
14. Rule 1.16 (b) (3) of the Georgia Rules of Professional Conduct provides that a lawyer may seek to withdraw if "the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent."
15. *See* Rule 1.9 of the Georgia Rules of Professional Conduct.
16. *See, e.g., Wis. Ethics Op. E-89-13, Conflicts of Interests; Guardians* (1989) (providing that dual representation as counsel and guardian ad litem is permitted until conflict between the roles occurs, and then the attorney must petition the court for a new guardian ad litem); *Ariz. Ethics Op. 86-13, Juvenile Proceedings; Guardians* (1986) (providing that a "lawyer may serve as counsel and guardian ad litem for a minor child in a dependency proceeding so long as there is no conflict between the child's wishes and the best interests of the child").
17. *Ohio Board of Comm'rs. on Griev. and Discipline, Op. 2006-5*, 2006 WL 2000108, at*1 (2006).
18. *Id.* at *2.
19. *Id.*
20. *Id.*, quoting *In re Baby Girl Baxter*, 17 Ohio St. 3d 229, 479 N.E.2d 257 (1985) (superseded by statute on other grounds).
21. *Id.* *See also* *Baxter*, 17 Ohio St. 3d at 232 ("[w]hen an attorney is appointed to represent a person and is also appointed guardian ad litem for that person, his first and highest duty is to zealously represent his client within the bounds of the law and to champion his client's cause").
22. *See Conn. Bar Ass'n Comm. on Prof. Ethics, CT Eth. Op. 94-29*, 1994 WL 780846, at *3 (1994); *In re Tayquon*, 821 A.2d 796, 803-04 (Conn. App. 2003) (discussing revisions to Conn. Gen. Stat. § 46b-129a).
23. *See Mass Comm. For Public Counsel Servs., Performance Standards, Standard 1.6(b)*, at 8-10, available at http://www.publiccounsel.net/private_counsel_manual/private_counsel_manual_pdf/chapters/chapter_4_sections/civil/trial_panel_standards.pdf; *See also In re Georgette*, 785 N.E.2d 356, 368 (Mass. 2003).
24. *Mass Comm. For Public Counsel Servs., Performance Standards, Standard 1.6(d)* at 11.
25. *In re Mason*, 701 A.2d 979, 982 (N.J. Super. Ct. Ch. Div. 1997) (internal citations omitted).
26. *See In re M.R.*, 638 A.2d 1274, 1285 (N.J. 1994).
27. *See Clark v. Alexander*, 953 P.2d 145, 153-54 (Wyo. 1998); *In re Marriage of Rolfe*, 216 Mont. 39, 51-53, 699 P.2d 79, 86-87 (Mont. 1985); *In re Christina W.*, 639 S.E.2d at 777 (requiring the guardian to give the child's opinions consideration "where the child has demonstrated an adequate level of competency [but] there is no requirement that the child's wishes govern."); *see also Veazey v. Veazey*, 560 P.2d 382, 390 (Alaska 1977) ("[I]t is equally plain that the guardian is not required to advocate whatever placement might seem preferable to a client of tender years.") (superseded by statute on other grounds); *Alaska Bar Assn Ethics Committee Op. 85-4* (November 8, 1985) (concluding that duty of confidentiality is modified in order to effectuate the child's best interests); *Utah State Bar Ethics Advisory Opinion Committee Op. No. 07-02* (June 7, 2007) (noting that Utah statute requires a guardian ad litem to notify the Court if the minor's wishes differ from the attorney's determination of best interests).
28. *Clark*, 953 P.2d at 153.
29. *Id.*
30. *Id.*
31. *Id.* at 153-54; *Rolfe*, 699 P.2d at 87.

Notice of Non-substantive Amendment to Formal Advisory Opinion No. 11-1

On April 14, 2011, the Formal Advisory Opinion Board issued FAO No. 11-1 pursuant to Rule 4-403. In accordance with Rule 4-403 (d), this opinion is binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

At its April 30, 2015 meeting, at the request of the Office of the General Counsel, the Formal Advisory Opinion Board considered whether the heading for the second topic in the Opinion portion of FAO No. 11-1 contained a typographical error. After careful consideration, the Board decided that in the interest of clarity,

the heading should be revised. This opinion remains an opinion of the Formal Advisory Opinion Board pursuant to Rule 4-403(d).

A redlined version of the revised heading is as follows:

2. A Third-Party Offers to Retain a Lawyer/~~or~~ Law Firm to Handle an Indeterminate Amount of Legal Work of a Particular Type for a Fixed Fee for Those Whom the Third-Party ~~Payor~~ is Contractually Obligated to Defend and Indemnify, Indemnity Who Will Be the Clients of the Lawyer/~~or~~ Law Firm.

Supreme Court Approves Amendments to the Rules and Regulations for the Organization and Governance of the State Bar of Georgia

The Supreme Court of Georgia, having considered Motion 2015-1 to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, issued an order approving amendments to the following rules effective July 9, 2015:

Rule 1.6. CONFIDENTIALITY OF INFORMATION.

(a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the court.

(b)

(1) A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:

(i) to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;

(ii) to prevent serious injury or death not otherwise covered by subparagraph (i) above;

(iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(iv) to secure legal advice about the lawyer's compliance with these Rules.

(2) In a situation described in paragraph (b) (1), if the client has acted at the time the lawyer learns of the threat of harm or loss to a victim, use or disclosure is permissible only if the harm or loss has not yet occurred.

(3) Before using or disclosing information pursuant to paragraph (b) (1) (i) or (ii), if feasible, the lawyer must make a good faith effort to persuade the client either not to act or, if the client has already acted, to warn the victim.

(c) The lawyer may, where the law does not otherwise require, reveal information to which the duty

of confidentiality does not apply under paragraph (b) without being subjected to disciplinary proceedings.

(d) The lawyer shall reveal information under paragraph (b) as the applicable law requires.

(e) The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

The maximum penalty for a violation of this Rule is disbarment.

Rule 3.5. IMPARTIALITY AND DECORUM OF THE TRIBUNAL.

A lawyer shall not, without regard to whether the lawyer represents a client in the matter:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment.

(d) engage in conduct intended to disrupt a tribunal.

The maximum penalty for a violation of paragraph (a) or paragraph (c) of this Rule is disbarment. The maximum penalty for a violation of paragraph (b) or paragraph (d) of this Rule is a public reprimand.

Comment

[1] Many forms of improper influence upon the tribunal are proscribed by criminal law. All of those are specified in the Georgia Code of Judicial Conduct with which an advocate should be familiar. Attention is also directed to Rule 8.4. Misconduct., which governs other instances of improper conduct by a lawyer/candidate.

[2] If we are to maintain the integrity of the judicial process, it is imperative that an advocate's function be limited to the presentation of evidence and argument, to allow a cause to be decided according to law. The exertion of improper influence is detrimental to that process. Regardless of an advocate's innocent inten-

tion, actions which give the appearance of tampering with judicial impartiality are to be avoided. The activity proscribed by this Rule should be observed by the advocate in such a careful manner that there is no appearance of impropriety.

[3A] The Rule with respect to ex parte communications limits direct communications except as may be permitted by law. Thus, court rules or case law must be referred to in order to determine whether certain ex parte communications are legitimate. Ex parte communications may be permitted by statutory authorization.

[3B] A lawyer who obtains a judge's signature on a decree in the absence of the opposing lawyer where certain aspects of the decree are still in dispute may have violated Rule 3.5. Impartiality and Decorum of the Tribunal., regardless of the lawyer's good intentions or good faith.

[4] A lawyer may communicate as to the merits of the cause with a judge in the course of official proceedings in the case, in writing if the lawyer simultaneously delivers a copy of the writing to opposing counsel or to the adverse party if the party is not represented by a lawyer, or orally upon adequate notice to opposing counsel or to the adverse party if the party is not represented by a lawyer.

[5] If the lawyer knowingly instigates or causes another to instigate a communication proscribed by Rule 3.5. Impartiality and Decorum of the Tribunal., a violation may occur.

[6] Direct or indirect communication with a juror during the trial is clearly prohibited. A lawyer may not avoid the proscription of Rule 3.5. Impartiality and Decorum of the Tribunal., by using agents to communicate improperly with jurors. A lawyer may be held responsible if the lawyer was aware of the client's desire to establish contact with jurors and assisted the client in doing so.

[7] A lawyer may on occasion want to communicate with a juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[8] While a lawyer may stand firm against abuse by a judge, the lawyer's actions should avoid reciprocation. Fairness and impartiality of the trial process is strengthened by the lawyer's protection of the record for subsequent review and this preserves the professional integrity of the legal profession by patient firmness.

Rule 7.3. DIRECT CONTACT WITH PROSPECTIVE CLIENTS.

(a) A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, lawyer's partner, associate or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

- (1) it has been made known to the lawyer that a person does not desire to receive communications from the lawyer;
- (2) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;
- (3) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication; or
- (4) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

(b) Written communications to a prospective client, other than a close friend, relative, former client or one whom the lawyer reasonably believes is a former client, for the purpose of obtaining professional employment shall be plainly marked "Advertisement" on the face of the envelope and on the top of each page of the written communication in type size no smaller than the largest type size used in the body of the letter.

(c) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client; except that the lawyer may pay for public communications permitted by Rule 7.1 and except as follows:

- (1) A lawyer may pay the usual and reasonable fees or dues charged by a lawyer referral service, if the service:
 - (i) does not engage in conduct that would violate these Rules if engaged in by a lawyer;
 - (ii) provides an explanation to the prospective client regarding how the lawyers are selected

by the service to participate in the service; and

(iii) discloses to the prospective client how many lawyers are participating in the service and that those lawyers have paid the service a fee to participate in the service.

(2) A lawyer may pay the usual and reasonable fees or dues charged by a bar-operated non-profit lawyer referral service, including a fee which is calculated as a percentage of the legal fees earned by the lawyer to whom the service has referred a matter, provided such bar-operated non-profit lawyer referral service meets the following criteria:

(i) the lawyer referral service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies that can provide the assistance the clients need. Such organization shall file annually with the State Disciplinary Board a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

(ii) the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;

(iii) the combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and

(iv) a lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than \$100,000 per occurrence and \$300,000 in the aggregate.

(3) A lawyer may pay the usual and reasonable fees to a qualified legal services plan or insurer providing legal services insurance as authorized by law to promote the use of the lawyer's services, the lawyer's partner or associates services so long as the communications of the organization are not false, fraudulent, deceptive or misleading;

(4) A lawyer may pay for a law practice in accordance with Rule 1.17.

(d) A lawyer shall not solicit professional employment as a private practitioner for the lawyer, a partner or associate through direct personal contact or through live telephone contact, with a nonlawyer who has not sought advice regarding employment of a lawyer.

(e) A lawyer shall not accept employment when the lawyer knows or reasonably should know that the person who seeks to employ the lawyer does so as a result of conduct by any person or organization that would violate these Rules if engaged in by a lawyer.

The maximum penalty for a violation of this Rule is disbarment.

Comment

Direct Personal Contact

[1] There is a potential for abuse inherent in solicitation through direct personal contact by a lawyer of prospective clients known to need legal services. It subjects the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services, and may have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

[2] The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. The potential for abuse inherent in solicitation of prospective clients through personal contact justifies its prohibition, particularly since the direct written contact permitted under paragraph (b) of this Rule offers an alternative means of communicating necessary information to those who may be in need of legal services. Also included in the prohibited types of personal contact are direct, personal contacts through an intermediary and live contact by telephone.

Direct Written Solicitation

[3] Subject to the requirements of Rule 7.1 and paragraphs (b) and (c) of this Rule, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of informing. So long as this

stream of information flows cleanly, it will be permitted to flow freely.

[4] Certain narrowly-drawn restrictions on this type of communication are justified by a substantial state interest in facilitating the public's intelligent selection of counsel, including the restrictions of paragraphs (a) (3) and (a) (4) which proscribe direct mailings to persons such as an injured and hospitalized accident victim or the bereaved family of a deceased.

[5] In order to make it clear that the communication is commercial in nature, paragraph (b) requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the traditional exception for contact with close friends, relatives and former clients is recognized and permits elimination of the disclaimer in direct written contact with these persons.

[6] This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[7] A lawyer is allowed to pay for communications permitted by these Rules, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal insurance organization may pay to advertise legal services provided under its auspices.

Rule 8.4. MISCONDUCT.

(a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:

- (1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) be convicted of a felony;
- (3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;
- (4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;

- (6)
 - (i) state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law;
 - (ii) state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
 - (iii) achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
- (7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio, the commission of such act.

(b)

(1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed:

- (i) a guilty plea;
- (ii) a plea of nolo contendere;
- (iii) a verdict of guilty; or
- (iv) a verdict of guilty but mentally ill.

(2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of nolo contendere, a verdict of guilty or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.

(c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in paragraphs (a) (1), (a) (2) and (a) (3) above.

(d) Rule 8.4 (a) (1) does not apply to any of the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.

The maximum penalty for a violation of Rule 8.4 (a) (1) is the maximum penalty for the specific Rule vio-

lated. The maximum penalty for a violation of Rule 8.4 (a) (2) through (c) is disbarment.

Rule 4-104. Mental Incapacity and Substance Abuse.

(a) Want of a sound mind, senility, habitual intoxication or drug addiction, to the extent of impairing competency as an attorney, when found to exist under the procedure outlined in Part IV, Chapter 2 of these Rules, shall constitute grounds for removing the attorney from the practice of law. Notice of final judgment taking such action shall be given by the Review Panel as provided in Rule 4-220 (a).

(b) Upon a finding by either panel of the State Disciplinary Board that an attorney may be impaired or incapacitated to practice law due to mental incapacity or substance abuse, that panel may, in its sole discretion, make a confidential referral of the matter to the Lawyer Assistance Program for the purposes of confrontation and referral of the attorney to treatment centers and peer support groups. Either panel may, in its discretion, defer disciplinary findings and proceedings based upon the impairment or incapacitation of an attorney pending attempts by the Lawyer Assistance Program to afford the attorney an opportunity to begin recovery. In such situations the Program shall report to the referring panel and Office of the General Counsel concerning the attorney's progress toward recovery.

(c) In the event of a finding by the Supreme Court of Georgia that a lawyer is impaired or incapacitated, the Court may refer the matter to the Lawyer Assistance Program, before or after its entry of judgment under Rules 4-219 or 4-220 (a), so that rehabilitative aid may be provided to the impaired or incapacitated attorney. In such situations the Program shall be authorized to report to the Court, either panel of the State Disciplinary Board and Office of the General Counsel concerning the attorney's progress toward recovery.

Rule 4-106. Conviction of a Crime; Suspension and Disbarment.

(a) Upon receipt of information or evidence that an attorney has been convicted of any felony or misdemeanor involving moral turpitude, whether by verdict, plea of guilty, plea of nolo contendere or imposition of first offender probation, the Office of the General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Supreme Court of Georgia for the appointment of a Special Master to conduct a show cause hearing.

(b) The petition shall show the date of the verdict or plea and the court in which the respondent was convicted, and shall be served upon the respondent pursuant to Rule 4-203.1.

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

(d) The Coordinating Special Master as provided in Rule 4-209.3 will appoint a Special Master, pursuant to Rule 4-209 (b).

(e) The show cause hearing should be held within 15 days after service of the Petition for Appointment of Special Master upon the respondent or appointment of a Special Master, whichever is later. Within 30 days of the hearing, the Special Master shall file a recommendation with the Supreme Court of Georgia, which shall be empowered to order such discipline as deemed appropriate.

(f) If the Supreme Court of Georgia orders the respondent suspended pending the appeal, upon the termination of the appeal the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended respondent should:

(1) be disbarred under Rule 8.4; or

(2) be reinstated; or

(3) remain suspended pending retrial as a protection to the public; or

(4) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these Rules.

The Report of the Special Master shall be filed with the Review Panel or the Supreme Court of Georgia as provided hereinafter in Rule 4-217.

(g) For purposes of this Rule, a certified copy of a conviction in any jurisdiction based upon a verdict, plea of guilty or plea of nolo contendere or the imposition of first offender treatment shall be prima facie evidence of an infraction of Rule 8.4 of Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

Rule 4-110. Definitions.

(a) Respondent: A person whose conduct is the subject of any disciplinary investigation or proceeding.

(b) Confidential Proceedings: Any proceeding

under these Rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) Public Proceedings: Any proceeding under these Rules which has been filed with the Supreme Court of Georgia.

(d) Grievance/Memorandum of Grievance: An allegation of unethical conduct filed against an attorney.

(e) Probable Cause: A finding by the Investigative Panel that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the Bar Rules.

(f) Petition for Voluntary Surrender of License: A Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this State. A voluntary surrender of license is tantamount to disbarment.

(g) He, Him or His: Generic pronouns including both male and female.

(h) Attorney: A member of the State Bar of Georgia or one authorized by law to practice law in the State of Georgia.

(i) Notice of Discipline: A Notice by the Investigative Panel that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

Rule 4-111. Audit for Cause.

Upon receipt of sufficient evidence that a lawyer who practices law in this State poses a threat of harm to his clients or the public, the State Disciplinary Board may conduct an Audit for Cause with the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia. Before approval can be granted, the lawyer shall be given notice that approval is being sought and be given an opportunity to appear and be heard. The sufficiency of the notice and opportunity to be heard shall be left to the sole discretion of the persons giving the approval. The State Disciplinary Board must inform the person being audited that the audit is an Audit for Cause.

Rule 4-204. Preliminary Investigation by Investigative Panel – Generally.

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia

shall be referred in accordance with Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee of the Investigative Panel for investigation and disposition in accordance with its rules. The Investigative Panel shall appoint one of its members to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist in the investigation. If the investigation of the Panel establishes probable cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these Rules, it shall:

- (1) issue a letter of admonition;
- (2) issue an Investigative Panel Reprimand;
- (3) issue a Notice of Discipline; or
- (4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided.

All other cases may be either dismissed by the Investigative Panel or referred to the Fee Arbitration Committee or the Lawyer Assistance Program.

(b) The primary investigation shall be conducted by the staff investigators, the staff lawyers of the Office of the General Counsel, and the member of the Investigative Panel responsible for the investigation. The Board of Governors of the State Bar of Georgia shall fund the Office of the General Counsel so that the Office of the General Counsel will be able to adequately investigate and prosecute all cases.

Rule 4-204.1. Notice of Investigation.

(a) Upon completion of its screening of a grievance under Rule 4-202, the Office of the General Counsel shall forward those grievances which appear to invoke the disciplinary jurisdiction of the State Bar of Georgia to the Investigative Panel, or subcommittee of the Investigative Panel by serving a Notice of Investigation upon the respondent.

(b) The Notice of Investigation shall accord the respondent reasonable notice of the charges against him and a reasonable opportunity to respond to the charges in writing and shall contain:

- (1) a statement that the grievance is being transmitted to the Investigative Panel, or subcommittee of the Investigative Panel;
- (2) a copy of the grievance;

(3) a list of the Rules which appear to have been violated;

(4) the name and address of the Panel member assigned to investigate the grievance and a list of the Panel or subcommittee of the Panel, members;

(5) a statement of respondent's right to challenge the competency, qualifications or objectivity of any Panel member;

(c) The form for the Notice of Investigation shall be approved by the Investigative Panel.

Rule 4-208.3. Rejection of Notice of Discipline.

(a) In order to reject the Notice of Discipline the respondent or the Office of the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within 30 days following service of the Notice of Discipline.

(b) Any Notice of Rejection by the respondent shall be served by the respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the respondent. No rejection by the respondent shall be considered valid unless the respondent files a written response as required by Rule 4-204.3 at or before the filing of the rejection. The respondent must also file a copy of such written response with the Clerk of the Supreme Court of Georgia at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the Coordinating Special Master to appoint a Special Master and the matter shall thereafter proceed pursuant to Rules 4-209 through 4-225.

Rule 4-213. Evidentiary Hearing.

(a) Within 90 days after the filing of respondent's answer to the formal complaint or the time for filing of the answer, whichever is later, the Special Master shall proceed to hear the case. The evidentiary hearing shall be reported and transcribed at the expense of the State Bar of Georgia. When the hearing is complete, the Special Master shall proceed to make findings of fact, conclusions of law and a recommendation of discipline and file a report with the Review Panel or the Supreme Court of Georgia as hereinafter provided. Alleged errors in the trial may be reviewed by the Supreme Court of Georgia when the findings and recommendations of discipline of the Review Panel are filed with the Court. There shall be no direct appeal from such proceedings of the Special Master.

(b) Upon respondent's showing of necessity and financial inability to pay for a copy of the transcript, the Special Master shall order the State Bar of Georgia to purchase a copy of the transcript for respondent.

Rule 4-217. Report of the Special Master to the Review Panel.

(a) Within 30 days from receipt of the transcript of the evidentiary hearing, the Special Master shall prepare a report which shall contain the following:

- (1) findings of fact on the issues raised by the formal complaint; and
- (2) conclusions of law on the issues raised by the pleadings of the parties; and
- (3) a recommendation of discipline.

(b) The Special Master shall file his or her original report and recommendation with the Clerk of the State Disciplinary Board and shall serve a copy on the respondent and counsel for the State Bar of Georgia pursuant to Rule 4-203.1.

(c) Thirty days after the Special Master's report and recommendation is filed, the Clerk of the State Disciplinary Board shall file the original record in the case directly with the Supreme Court of Georgia unless either party requests review by the Review Panel as provided in paragraph (d) of this Rule. In the event neither party requests review by the Review Panel and the matter goes directly to the Supreme Court of Georgia, both parties shall be deemed to have waived any right they may have under the Rules to file exceptions with or make request for oral argument to the Supreme Court of Georgia. Any review undertaken by the Supreme Court of Georgia shall be solely on the original record.

(d) Upon receipt of the Special Master's report and recommendation, either party may request review by the Review Panel as provided in Rule 4-218. Such party shall file the request and exceptions with the Clerk of the State Disciplinary Board in accordance with Rule 4-221 (f) and serve them on the opposing party within 30 days after the Special Master's report is filed with the Clerk of the State Disciplinary Board. Upon receipt of a timely written request and exceptions, the Clerk of the State Disciplinary Board shall prepare and file the record and report with the Review Panel. The responding party shall have 30 days after service of the exceptions within which to respond.

Rule 4-219. Judgments and Protective Orders.

(a) After either the Review Panel's report or the Special Master's report is filed with the Supreme Court

of Georgia, the respondent and the State Bar of Georgia may file with the Court any written exceptions, supported by written argument, each may have to the report subject to the provisions of Rule 4-217 (c). All such exceptions shall be filed with the Court within 30 days of the date that the report is filed with the Court and a copy served upon the opposing party. The responding party shall have an additional 30 days to file its response with the Court. The Court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The Court will promptly consider the report of the Review Panel or the Special Master, any exceptions, and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the Court's judgment shall be transmitted to the State Bar of Georgia and the respondent by the Court.

(b) In cases in which the Supreme Court of Georgia orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar of Georgia website, notice of the discipline, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(c)

- (1) After a final judgment of disbarment or suspension, including a disbarment or suspension on a Notice of Discipline, the respondent shall immediately cease the practice of law in Georgia and shall, within 30 days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within 45 days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court of Georgia, upon its own motion or upon motion of the Office of the General Counsel, and after ten days notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interests. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

(2) After a final judgment of disbarment or suspension under Part IV of these Rules, includ-

ing a disbarment or suspension on a Notice of Discipline, the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not:

- (i) have any contact with the clients of the office either in person, by telephone or in writing; or
- (ii) have any contact with persons who have legal dealings with the office either in person, by telephone or in writing.

Rule 4-221. Procedures.

(a) Oaths. Before entering upon his duties as herein provided, each member of the State Disciplinary Board and each Special Master shall subscribe to an oath to be administered by any person authorized to administer oaths under the laws of this State, such oath to be in writing and filed with the Executive Director of the State Bar of Georgia. The form of such oath shall be:

“I do solemnly swear that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as a member of the State Disciplinary Board of the State Bar of Georgia/Special Master according to the best of my ability and understanding and agreeable to the laws and Constitution of this State and the Constitution of the United States so help me God.”

(b) Witnesses and Evidence; Contempt.

(1) The respondent and the State Bar of Georgia shall have the right to require the issuance of subpoenas for the attendance of witnesses to testify or to produce books and papers. The State Disciplinary Board or a Special Master shall have power to compel the attendance of witnesses and the production of books, papers, and documents, relevant to the matter under investigation, by subpoena, and as further provided by law in civil cases under the laws of Georgia.

(2) The following shall subject a person to rule for contempt of the Special Master or Panel:

- (i) disregard, in any manner whatever, of a subpoena issued pursuant to Rule 4-221 (b) (1);
- (ii) refusal to answer any pertinent or proper question of a Special Master or Board member; or

- (iii) willful or flagrant violation of a lawful directive of a Special Master or Board member.

It shall be the duty of the chairperson of the affected Panel or Special Master to report the fact to the Chief Judge of the superior court in and for the county in which said investigation, trial or hearing is being held. The superior court shall have jurisdiction of the matter and shall follow the procedures for contempt as are applicable in the case of a witness subpoenaed to appear and give evidence on the trial of a civil case before the superior court under the laws in Georgia.

(3) Any member of the State Disciplinary Board and any Special Master shall have power to administer oaths and affirmations and to issue any subpoena herein provided for.

(4) Depositions may be taken by the respondent or the State Bar of Georgia in the same manner and under the same provisions as may be done in civil cases under the laws of Georgia, and such depositions may be used upon the trial or an investigation or hearing in the same manner as such depositions are admissible in evidence in civil cases under the laws of Georgia.

(5) All witnesses attending any hearing provided for under these Rules shall be entitled to the same fees as now are allowed by law to witnesses attending trials in civil cases in the superior courts of this State under subpoena, and said fees shall be assessed against the parties to the proceedings under the rule of law applicable to civil suits in the superior courts of this State.

(6) Whenever the deposition of any person is to be taken in this State pursuant to the laws of another state, territory, province or commonwealth, or of the United States or of another country for use in attorney discipline, fitness or disability proceedings there, the chairperson of the Investigative Panel, or his or her designee upon petition, may issue a summons or subpoena as provided in this Rule to compel the attendance of witnesses and production of documents at such deposition.

(c) Venue of Hearings.

(1) The hearings on all complaints and charges against resident respondents shall be held in the county of residence of the respondent unless he otherwise agrees.

(2) Where the respondent is a nonresident of the State of Georgia and the complaint arose in the

State of Georgia, the hearing shall be held in the county where the complaint arose.

(3) When the respondent is a nonresident of the State of Georgia and the offense occurs outside the State, the hearing may be held in the county of the State Bar of Georgia headquarters.

(d) Confidentiality of Investigations and Proceedings.

(1) The State Bar of Georgia shall maintain as confidential all disciplinary investigations and proceedings pending at the screening or investigative stage, unless otherwise provided by these Rules.

(2) After a proceeding under these Rules is filed with the Supreme Court of Georgia, all evidentiary and motions hearings shall be open to the public and all reports rendered shall be public documents.

(3) Nothing in these Rules shall prohibit the complainant, respondent or third party from disclosing information regarding a disciplinary proceeding, unless otherwise ordered by the Supreme Court of Georgia or a Special Master in proceedings under these Rules.

(4) The Office of the General Counsel of the State Bar of Georgia or the Investigative Panel of the State Disciplinary Board may reveal or authorize disclosure of information which would otherwise be confidential under this Rule under the following circumstances:

(i) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board or any person who is otherwise connected with the disciplinary proceeding in any way, either Panel of the Board or its chairperson or his or her designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against such charge.

(ii) In the event the Office of the General Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.

(iii) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.

(iv) A complainant or lawyer representing the complainant may be notified of the status or disposition of the complaint.

(v) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.

(5) The Office of the General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties:

(i) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;

(ii) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;

(iii) The Judicial Nominating Commission or the comparable body in other jurisdictions;

(iv) The Lawyer Assistance Program or the comparable body in other jurisdictions;

(v) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;

(vi) The Judicial Qualifications Commission or the comparable body in other jurisdictions;

(vii) The Executive Committee with the specific approval of the following representatives of the Investigative Panel of the State Disciplinary Board: the chairperson, the vice-chairperson and a third representative designated by the chairperson;

(viii) The Formal Advisory Opinion Board;

(ix) The Consumer Assistance Program;

(x) The General Counsel Overview Committee;

(xi) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and

(xii) The Unlicensed Practice of Law Department.

(6) Any information used by the Office of the General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a receiver to administer the files of a member of the State Bar of Georgia, shall not be confidential under this Rule.

(7) The Office of the General Counsel may reveal confidential information when required by law or court order.

(8) The authority or discretion to reveal confidential information under this Rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar of Georgia or the State Disciplinary Board under the Bar Rules or applicable law.

(9) Nothing in this Rule shall prohibit the Office of the General Counsel or the Investigative Panel from interviewing potential witnesses or placing the Notice of Investigation out for service by sheriff or other authorized person.

(10) Members of the Office of the General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent or third parties but are otherwise confidential under these Rules by acknowledging the existence and status of the proceeding.

(11) The State Bar of Georgia shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court Rules that was confidential when imposed, unless authorized to do so by said prior rules.

(e) Burden of Proof; Evidence.

(1) In all proceedings under this chapter, the burden of proof shall be on the State Bar of Georgia except for proceedings under Rule 4-106.

(2) In all proceedings under this chapter occurring after a finding of probable cause as described in Rule 4-204.4, the procedures and rules of evidence applicable in civil cases under the laws of Georgia shall apply, except that the quantum of proof required of the State Bar of Georgia shall be clear and convincing evidence.

(f) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. Depositions and other original discovery shall be retained by counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

(g) Pleadings and Communications Privileged. Pleadings and oral and written statements of members of the State Disciplinary Board, members and designees of the Lawyer Assistance Program, Special Masters, Bar counsel and investigators, complainants, witnesses, and respondents and their counsel made to one another or filed in the record during any investigation, intervention, hearing or other disciplinary proceeding under this Part IV, and pertinent to the disciplinary proceeding, are made in performance of a legal and public duty, are absolutely privileged, and under no circumstances form the basis for a right of action.

Rule 4-227. Petitions for Voluntary Discipline.

(a) A petition for voluntary discipline shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline.

(b) Prior to the issuance of a formal complaint, a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these Rules.

(1) Those petitions seeking private discipline shall be filed with the Office of the General Counsel and assigned to a member of the Investigative Panel. The Investigative Panel of the State Disciplinary Board shall conduct an investigation and determine whether to accept or reject the petition as outlined at Rule 4-203 (a) (9).

(2) Those petitions seeking public discipline shall be filed directly with the Clerk of the Supreme Court. The Office of the General Counsel shall have 30 days within which to file a response. The Court shall issue an appropriate order.

(c) After the issuance of a formal complaint a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these Rules.

(1) The petition shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. The Special Master shall allow Bar counsel 30 days within which to respond. The Office of the General Counsel may assent to the petition or may file a response, stating objections and giving the reasons therefor. The Office of the General Counsel shall serve a copy of its response upon the respondent.

(2) The Special Master shall consider the petition, the State Bar of Georgia's response, and the record as it then exists and may accept or reject the petition for voluntary discipline.

(3) The Special Master may reject a petition for such cause or causes as seem appropriate to the Special Master. Such causes may include but are not limited to a finding that:

- (i) the petition fails to contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline;
- (ii) the petition fails to request appropriate discipline;
- (iii) the petition fails to contain sufficient information concerning the admissions of fact and the admissions of conduct;
- (iv) the record in the proceeding does not contain sufficient information upon which to base a decision to accept or reject.

(4) The Special Master's decision to reject a petition for voluntary discipline does not preclude the filing of a subsequent petition and is not subject to review by either the Review Panel or the Supreme Court of Georgia. If the Special Master rejects a petition for voluntary discipline, the disciplinary case shall proceed as provided by these Rules.

(5) If the Special Master accepts the petition for voluntary discipline, he or she shall enter a report making findings of fact and conclusions of law and deliver same to the Clerk of the State Disciplinary Board. The Clerk of the State Disciplinary Board shall file the report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court of Georgia. A copy of the Special Master's report shall be served upon the respondent. The Supreme Court of Georgia shall issue an appropriate order.

(6) Pursuant to Rule 4-210 (5), the Special Master may, in his or her discretion, extend any of the time limits in these Rules in order to adequately consider a petition for voluntary discipline.

Rule 4-403. Formal Advisory Opinions.

(a) The Formal Advisory Opinion Board shall be authorized to draft Proposed Formal Advisory Opinions concerning a proper interpretation of the Georgia Rules of Professional Conduct or any of the grounds for disciplinary action as applied to a given state of facts. The Proposed Formal Advisory Opinion should address prospective conduct and may respond to a request for a review of an Informal Advisory Opinion or respond to a direct request for a Formal Advisory Opinion.

(b) When a Formal Advisory Opinion is requested, the Formal Advisory Opinion Board should review the request and make a preliminary determination whether a Proposed Formal Advisory Opinion should be drafted. Factors to be considered by the Formal Advisory Opinion Board include whether the issue is of general interest to the members of the State Bar of Georgia, whether a genuine ethical issue is presented, the existence of opinions on the subject from other jurisdictions, and the nature of the prospective conduct.

(c) When the Formal Advisory Opinion Board makes a preliminary determination that a Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal Advisory Opinion either in an official publication of the State Bar of Georgia or on the website of the State Bar of Georgia, and solicit comments from the members of the State Bar of Georgia. If the Proposed Formal Advisory Opinion is published on the State Bar of Georgia website only, the State Bar of Georgia will send advance notification by e-mail to the entire membership that have provided the State Bar of Georgia with an e-mail address, that the proposed opinion will be published on the State Bar of Georgia website. Following a reasonable period of time for receipt of comments from the members of the State Bar of Georgia, the Formal Advisory Opinion Board shall then make a final determination to either file the Proposed Formal Advisory Opinion as drafted or modified, or reconsider its decision and decline to draft and file the Proposed Formal Advisory Opinion.

(d) After the Formal Advisory Opinion Board makes a final determination that the Proposed Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then be filed with the Supreme Court of Georgia and republished either in an official publication of the State Bar of Georgia or on the website of the State Bar of Georgia. If the Proposed Formal Advisory Opinion is to be republished on the State Bar of Georgia website only, the State Bar of Georgia will send advance notification by e-mail to the entire membership that have provided the State Bar of Georgia with an e-mail address, that the proposed opinion will be republished on the State Bar of Georgia website. Unless the Supreme Court of Georgia grants review as provided hereinafter, the opinion shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only. Within 20 days of the filing of the Formal Advisory Opinion or the date the official publication is mailed to the members of the State Bar of Georgia (if the opinion is published in an official publication of the State Bar of Georgia), or first appears on the website of the State Bar of Georgia (if the opinion is published on the website), whichever is later, the State Bar of Georgia or the person who requested the opin-

ion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court of Georgia grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the State Bar of Georgia. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court of Georgia Rule 10, counting from the date of the order granting review. The final determination may be either by written opinion or by order of the Supreme Court of Georgia and shall state whether the Formal Advisory Opinion is approved, modified or disapproved, or shall provide for such other final disposition as is appropriate.

(e) If the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only. If the Supreme Court of Georgia grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court of Georgia approves or modifies the opinion, it shall be binding on all members of the State Bar of Georgia and shall be published in the official Georgia Reports. The Supreme Court of Georgia shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

(f) The Formal Advisory Opinion Board may call upon the Office of the General Counsel for staff support in researching and drafting Proposed Formal Advisory Opinions.

(g) The name of a lawyer requesting an Informal Advisory Opinion or Formal Advisory Opinion will be held confidential unless the lawyer elects otherwise.

Rule 12-107. Confidentiality of Proceedings.

(a) All investigations and proceedings provided for herein shall be confidential unless the respondent otherwise elects or as hereinafter provided in this Rule and Part IV of the Bar Rules.

(b) Except as expressly permitted by these Rules, no person connected with the Consumer Assistance Program shall disclose information concerning or comment on any proceeding under Part XII of these Rules.

(1) Nothing in the Rules shall prohibit truthful and accurate public statements of fact about a proceeding under Part XII of these Rules, provided however, that in the event of such statement any other person involved in the proceeding may make truthful and accurate public statements of fact regarding the proceeding, including information otherwise confidential under the provisions of Rule 4-102 (d), Rule 1.6, as may be reasonably necessary to defend that person's reputation;

(2) Willful and malicious false statements of fact made by any person connected with a proceeding under Part XII of these Rules may subject such person to rule for contempt by the Supreme Court of Georgia.

(c) In the event the conduct of the attorney appears to violate one or more of the Georgia Rules of Professional Conduct set forth in Part IV of the Bar Rules, and Consumer Assistance staff in its sole discretion makes a determination under Rule 12-106 that the matter cannot be resolved informally, then the Consumer Assistance staff shall inform callers of their option to file a grievance and shall advise the Office of the General Counsel to send the appropriate forms to the callers.

(d) The Consumer Assistance Committee and staff may reveal confidential information when required by law or court order.

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

No earlier than 30 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, *2014-2015 State Bar of Georgia Directory and Handbook*, p. 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 these proposed amendments to the Rules is reminded that he or she must do so in the manner provided by Rule 5-102, *Handbook*, p. H-7.

This Statement and the following verbatim text are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-7.

William D. NeSmith III
Deputy General Counsel
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 2015-2

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization of its Board of Governors at its regularly-called meeting on June 20, 2015, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as originally set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), and as amended by subsequent Orders, published at *2014-2015 State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.* The State Bar respectfully moves that the Rules and Regulation of the State Bar of Georgia be amended in the following respect:

I.

Proposed Amendments to Part IV, Georgia Rules of Professional Conduct; Chapter 1, Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102. Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct; Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

It is proposed that Georgia Rule of Professional Conduct 5.5 of Part IV; Chapter 1, Rule 4-102 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

Rule 5.5. Unauthorized Practice Of Law; Multijurisdictional Practice Of Law.

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)_ (2) or (c)_ (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a

COMMITTEE TO PROMOTE
Inclusion in the Professionalism's

Speaker Clearinghouse



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The Committee to Promote Inclusion in the Professionalism 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. 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.

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Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of the grants of authority found in (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which

are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision Of Legal Services Following Determination Of Major Disaster, may provide legal services in this state to the extent allowed by said Rule.

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice Rule, may provide legal services in this state to the extent allowed by said Rule.

The maximum penalty for a violation of this Rule is disbarment.

If the proposed amendments to the Rule are adopted, the amended Georgia Rule of Professional Conduct 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law would read as follows:

Rule 5.5. Unauthorized Practice Of Law; Multijurisdictional Practice Of Law.

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is autho-

rized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c) (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services

arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of the grants of authority found in (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, *Provision Of Legal Services Following Determination Of Major Disaster*, may provide legal services in this state to the extent allowed by said Rule.

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, *Student Practice Rule*, may provide legal services in this state to the extent allowed by said Rule.

The maximum penalty for a violation of this Rule is disbarment.

II.

Proposed Amendments to Part VII, Lawyer Assistance Program; Chapter 3, Procedures; Rule 7-303. Confidentiality

It is proposed that Rule 7-303 of Part VII; Chapter 3 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

Rule 7-303. Confidentiality.

Except as provided in this Rule and in Bar-Rule 4-104 (b), Bar-Rule 4-104 (c), Rule 7-203 and Bar Rule 4-108, and Bar Rule 7-2037-305, all proceedings and records of the Committee, its members, staff, consultants (including without limitation its contractor for clinical services) and other designees, including any information provided to any of them, shall be confidential unless the attorney who ~~is the subject of the proceedings and records otherwise elects~~ has provided the information or caused the record to be created otherwise elects, except that any such person may reveal (i) to police or emergency responders, or any person in imminent danger, information needed to avoid or prevent death or substantial bodily harm, and (ii) information:

_____ (a) _____ which is mandated by statute to be reported;

_____ (b) _____ to respond in any proceeding to allegations of misfeasance concerning the assistance he or she has provided to an impaired attorney as part of a volunteer network established pursuant to Rule 7-202; and

_____ (c) _____ to secure legal advice about his or her compliance with these Rules.

If the proposed amendments to the Rule are adopted, the amended Rule 7-303. Confidentiality would read as follows:

Rule 7-303. Confidentiality.

Except as provided in this Rule and in Rule 4-104 (b), Rule 4-104 (c), Rule 7-203 and Rule 7-305, all proceedings and records of the Committee, its members, staff, consultants (including without limitation its contractor for clinical services) and other designees, including any information provided to any of them, shall be confidential unless the attorney who has provided the information or caused the record to be created otherwise elects, except that any such person may reveal (i) to police

or emergency responders, or any person in imminent danger, information needed to avoid or prevent death or substantial bodily harm, and (ii) information:

(a) which is mandated by statute to be reported;

(b) to respond in any proceeding to allegations of misfeasance concerning the assistance he or she has provided to an impaired attorney as part of a volunteer network established pursuant to Rule 7-202; and

(c) to secure legal advice about his or her compliance with these Rules.

III.

Proposed Amendments to Part VII, Lawyer Assistance Program; Chapter 3, Procedures; Rule 7-305. Confidentiality

It is proposed that Rule 7-305 of Part VII; Chapter 3 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

Rule 7-305. Emergency Suspension.

Upon receipt of sufficient evidence demonstrating that an impaired attorney's conduct poses a substantial threat of immediate or irreparable harm to the attorney's clients or the public, or if an impaired attorney refuses to cooperate with the Committee after an authorized intervention or referral, or refuses to take action recommended by the Committee, and said impaired attorney poses a substantial threat to the attorney, the attorney's clients, or the public, the Committee may request that the Office of the General Counsel petition the Supreme Court of Georgia for the suspension of the attorney pursuant to ~~Bar-Rule~~ 4-108. All proceedings under this part which occur prior to the filing of a petition in the Supreme Court of Georgia pursuant to this ~~R~~Rule shall remain confidential and shall not be admissible against the attorney before the State Disciplinary Board of the State Bar of Georgia. Information from a designee of the Committee acting as a member of a volunteer network established pursuant to Rule 7-202 shall not constitute "evidence" within the meaning of the Rule.

If the proposed amendments to the Rule are adopted, the amended Rule 7-305. Confidentiality would read as follows:

Rule 7-305. Emergency Suspension.

Upon receipt of sufficient evidence demonstrating that an impaired attorney's conduct poses a substantial threat of immediate or irreparable harm to

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the attorney's clients or the public, or if an impaired attorney refuses to cooperate with the Committee after an authorized intervention or referral, or refuses to take action recommended by the Committee, and said impaired attorney poses a substantial threat to the attorney, the attorney's clients, or the public, the Committee may request that the Office of the General Counsel petition the Supreme Court of Georgia for the suspension of the attorney pursuant to Rule 4-108. All proceedings under this part which occur prior to the filing of a petition in the Supreme Court of Georgia pursuant to this Rule shall remain confidential and shall not be admissible against the attorney before the State Disciplinary Board of the State Bar of Georgia. Information from a designee of the Committee acting as a member of a volunteer network established pursuant to Rule 7-202 shall not constitute "evidence" within the meaning of the Rule.

IV.

Proposed Amendments to Part X, Clients' Security Fund; Rule 10-103. Funding

It is proposed that Rule 10-103. Funding of Part X of the Rules and Regulations of the State Bar of Georgia be

amended by deleting the struck-through sections and inserting the underlined sections as follows:

Rule 10-103. Funding.

(a) The State Bar of Georgia shall provide funding for the payment of claims and the costs of administering the Fund. In any year following a year in which the gross aggregate balance of the Fund falls below \$1,000,000, the State Bar of Georgia shall assess and collect from each dues-paying member a pro rata share of the difference between the actual Fund balance and \$1 million, provided that such assessments shall not exceed \$25 in any single year. The aggregate amount paid to claimants from the Fund in any year shall not exceed ~~\$350,000.00~~\$500,000. The Board of Governors may from time to time adjust the Fund's minimum aggregate balance, maximum annual payout, or maximum annual assessment to advance the purposes of the Fund or to preserve the fiscal integrity of the Fund.

(b) All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.

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How to Place an Announcement in the Bench & Bar column

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

(c) No disbursements shall be made from the Fund except by the Board of Trustees.

If the proposed amendments to the Rule are adopted, the amended Rule 10-103. Funding would read as follows:

Rule 10-103. Funding.

(a) The State Bar of Georgia shall provide funding for the payment of claims and the costs of administering the Fund. In any year following a year in which the gross aggregate balance of the Fund falls below \$1,000,000, the State Bar of Georgia shall assess and collect from each dues-paying member a pro rata share of the difference between the actual Fund balance and \$1 million, provided that such

assessments shall not exceed \$25 in any single year. The aggregate amount paid to claimants from the Fund in any year shall not exceed \$500,000. The Board of Governors may from time to time adjust the Fund's minimum aggregate balance, maximum annual payout, or maximum annual assessment to advance the purposes of the Fund or to preserve the fiscal integrity of the Fund.

(b) All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.

(c) No disbursements shall be made from the Fund except by the Board of Trustees.

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FICTION WRITING COMPETITION

DEADLINE: JANUARY 15, 2016



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

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgment of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.
3. All articles submitted to the competition become the property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental and that the article has not been previously published.
4. Articles should not be more than 7,500 words in length and should be submitted electronically.
5. Articles will be judged without knowledge of the author's identity. The author's name and State Bar ID number should be placed on a separate cover sheet with the name of the story.
6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on a date specified by the Board. Submissions received after that date and time will not be considered. Please direct all submissions to: Sarah I. Coole, Director of Communications, by email to sarahc@gabar.org. If you do not receive confirmation that your entry has been received, please call 404-527-8791.
7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.
8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality.



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