



Georgia Bar Journal

December 2015 ■ Volume 21 ■ Number 4



When Wrong is Right:
Stare Decisis in the Supreme Court of Georgia



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Headquarters

104 Marietta St. NW, Suite 100, Atlanta, GA 30303
800-334-6865, 404-527-8700, FAX 404-527-8717
Visit us on the Web at www.gabar.org.
Coastal Georgia Office
18 E. Bay St., Savannah, GA 31401-1225
877-239-9910, 912-239-9910, FAX 912-239-9970
South Georgia Office
244 E. Second St. (31794) P.O. Box 1390
Tifton, GA 31793-1390
800-330-0446, 229-387-0446, FAX 229-382-7435

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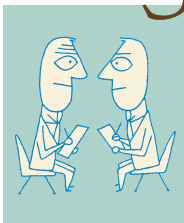
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Photo by Zach Porter Photography

by Robert J. "Bob" Kauffman

Seeking a More Efficient Disciplinary Process

The establishment of a reliable system for lawyer discipline was the No. 1 reason our predecessors in Bar leadership worked so hard for unification of the State Bar from the 1920s into the 1960s. It has been at least 15 years since the last thorough review of the disciplinary process has taken place, and we owe it to the legal profession in our state to ensure our rules and procedures are sufficient to meet the needs of our members and our fellow citizens who depend on us.

As one of my initiatives this year, I asked the Disciplinary Rules & Procedures Committee to conduct an in-depth review of our entire disciplinary process.

According to State Bar General Counsel Paula J. Frederick, there were 3,224 requests for grievance forms during the 2014-15 Bar year, and the number of grievances actually submitted to the Office of the General Counsel was 1,997, a slight increase over the 1,857 received the previous year. Additionally, the

Consumer Assistance Program (CAP) fields thousands of inquiries each year, about 80 percent of which are resolved without having to file a grievance under the disciplinary procedure.

A wide range of questions, issues, complaints and problems between clients and attorneys can be resolved by working with the Consumer Assistance Program, which seeks to improve lawyer-client communications and resolve

conflicts through informal methods. CAP does not investigate allegations of serious misconduct. When appropriate, CAP requests the Office of the General Counsel to send grievance forms to persons with those types of complaints.

As most Bar members are aware, the power to investigate and discipline those authorized to practice law in Georgia for violations of the Georgia Rules of Professional Conduct is vested in the State Disciplinary

"This review will examine a number of areas to make our disciplinary process more efficient."

Board, which consists of two panels: the Investigative Panel and the Review Panel.

When grievances are filed with the Office of the General Counsel (OGC), an initial review determines whether a grievance should be forwarded to the Investigative Panel. The accused attorney is served written notice of the grievance and notice of the opening of an investigation, after which the attorney has 14 days to respond to the grievance.

The number of cases sent to the Investigative Panel last year was 207 (10.4 percent of filed grievances), an increase over the previous year's 188 (10.1 percent of filed grievances).

The Investigative Panel is empowered to receive and evaluate written grievances against Bar members, or to initiate grievances on its own. When the panel receives the grievance, the lawyer is served with a Notice of Investigation letting him or her know the case is proceeding to a formal investigation, in addition to the previous written notice from the OGC screening process. The lawyer has 30 days to respond to the panel's Notice of Investigation.

The panel is authorized to conduct probable cause investigations, collect relative evidence and information, and issue subpoenas as provided in the rules.

When the panel's primary investigation establishes probable cause to believe a violation has occurred, the panel may issue a letter of admonition, an Investigative Panel Reprimand or a Notice of Discipline, or direct the OGC to file a formal complaint in the Supreme Court of Georgia for a hearing by a special master, who is a qualified lawyer.

The panel may also refer cases to the Fee Arbitration Committee or the Lawyer Assistance Program, or dismiss and reject grievances it determines to be unjustified, frivolous or patently unfounded.

If the Bar or the respondent is not satisfied with the resolution pro-

posed by the special master, they may request review by the Review Panel of the State Disciplinary Board. The Review Panel receives reports from special masters and recommends to the Supreme Court the imposition of any punishment or discipline it deems appropriate as a result of the hearing conducted by the special master and the report and recommendation filed by him or her. When violations are found to have been committed, any of the following levels of discipline may be imposed: disbarment or suspension by the Supreme Court, public reprimand in Superior Court, Review Panel reprimand, Investigative Panel reprimand or formal letter of admonition.

Disciplinary Rules & Procedures Committee Chair John G. Haubenreich of Seacrest, Karesh, Tate & Bicknese LLP in Atlanta presented a report to the Board of Governors during its Fall Meeting in October. The committee's 23 lawyer members and two lay members are meeting every month, and they have initiated an intensive review of the entire disciplinary process.

Discussing the basis for the review, John reported, "In some cases, grievances have languished for many months and even approaching two years without being considered by the Investigative Panel. For that reason, the committee has been tasked with examining the entire disciplinary process from the initiation of a grievance through the investigation and reporting of that griev-

ance, onto filing of a formal complaint with the Supreme Court, a hearing before a special master, and ultimately decision of the case by the Supreme Court."

The fruit of the committee's efforts, John said, will be the development of concrete proposals for revisions to our disciplinary procedures, for consideration by the Board of Governors and ultimately the Supreme Court.

"Rest assured," he said, "we are not going to end up proposing some radical departure from our longstanding process of self-discipline. I don't believe anyone on the committee has an interest in taking away from members of the Bar initial responsibility for enforcement of the Rules of Professional Conduct. However, there are, in many people's opinion, inherent inefficiencies and delay in the present system that result in a perception that we are not good at disciplining bad lawyers, and those things need to be fixed."

John concluded, "As proposals for revisions to the process and the rules are formulated, we will certainly look forward to input from the Board and the membership at large, and I believe we will ultimately come up with some proposals that are well received by the Board, and ultimately the Court, that will improve the process for the benefit of all concerned."

This review will examine a number of areas to make our disciplinary process more efficient. The volunteers on the Investigative

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The Signature Fundraiser is a black-tie gala hosted by the State Bar of Georgia's Young Lawyers Division and is attended by members of the Bar, judiciary and community. This year's event will raise money for Camp Lakeside.

The Family YMCA of Greater Augusta and Children's Hospital of Georgia at GRU are collaborating to ensure that children of all abilities have access to

life-changing outdoor recreation and therapeutic programs. The renovated camp will be transformed from its limited, rustic condition to serve children with disabilities or serious and chronic health conditions in a medically safe environment, along with able-bodied children from around the region.

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Panel by and large do a good job. However, they are volunteers and don't always provide the same level of investigation because of natural human tendencies. Some are very aggressive, while others take a more passive approach. Some of the panel members are laymen, and others are lawyers.

We appreciate all of the work provided by these panel members. But with approximately 20 volunteer members on the panel and with one member conducting each investigation, inconsistencies in the levels of investigatory diligence from panel member to panel member are to be expected. As previously mentioned, there have been cases that have rested in an Investigative Panel member's hands for up to two years.

The same is true with special masters, the attorneys who are appointed to serve as hearing officers—again on a non-paid basis—when probable cause is found in disciplinary cases. Like the rest of us, these lawyers are busy people with demanding schedules. Some matters, therefore, are disposed of in what can be considered a timely manner, while others drag out over a long period of time. Perhaps we should consider providing additional staff support and/or compensation for Investigative Panel members and special masters to reduce the chance that cases before them get put on the back burner.

"When I joined the General Counsel's office, our membership was about 16,000, and the current setup may have been fine back then," says Paula Frederick. "But now with 47,000 members, it is not appropriate to rely on volunteers to do this job. We could use paid staff or pay the Bar members who are devoting dozens of hours to serve as special masters and hearing officers, and at least reimburse people on the Disciplinary Board for their expenses. It's one way we could get things done faster."

As part of the review, the committee has also been asked to


examine the beginning of the process and consider changes as to how grievances are initiated. Presently, we have to rely on a member of the public or a member of the Bar filling out a form and sending it to the General Counsel's office. As a result, we have actually had cases of lawyers who were indicted and facing trial for serious criminal offenses, which grew out of alleged conduct involving violation of the disciplinary rules, still being members of the Bar in good standing because the General Counsel's office had not been made aware of the criminal case against the lawyer, nor the case's underlying facts.

Some states require prosecutors to report criminal charges against Bar members, which is something we will consider during this process. We might also consider posting the grievance form on the Bar's website to speed up the submission process to the Office of the General Counsel.

Other areas of concern that will be addressed by the committee during this review of the disciplinary process include:

- The length of time that some cases are considered by the Review Panel. Should the rules be tweaked to include the enforcement of time limitations for the resolution of disciplinary matters?
- A need for rules dealing with lawyers who have age-related memory loss or substance abuse issues. We are seeing problems that can be avoided, but the rules are not currently equipped to address those issues.
- Frustration over the secrecy of the process. It is often unclear to Bar members and the public whether proper actions are being taken, because Disciplinary Board members and Bar staff are prohibited from commenting on the status of a case unless it proceeds and is docketed in the Supreme

Court, at which time the case becomes public.

I want to thank Paula, John and all of the Disciplinary Rules & Procedures Committee members for their ongoing work to address these and other issues and recommend the changes that need to be made for a more effective and efficient disciplinary process that, most important of all, is fair to everyone involved. 

Robert J. "Bob" Kauffman is president of the State Bar of Georgia and can be reached at president@gabar.org.

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by John R. B. "Jack" Long

'Tis the Season for Giving . . . and What Was Our Mission?

The holiday season is upon us. As most of you read this issue of the *Georgia Bar Journal*, you will undoubtedly be wrapped up in the end of year crunch, whether it be scheduling client matters to be heard before the new year, getting the last few billable hours logged in for the year or fighting holiday traffic to find that last minute gift. For me, this time of year is always a flurry; however, sometimes one must step back and remember what it is we as lawyers are really tasked with doing.

You are all probably aware by now that the Bar is in the process of developing a strategic plan to guide its future leadership in reaching consistent, measurable progress for clear, defined goals. For those of us serving on the strategic planning committee, it has been an arduous but worthwhile task—we have really

been forced through this process to examine and assess where the Bar as an organization is today, and where it should really place its focus in the future. It's been a long journey so far, and I've learned a lot about our organization and our membership along the way. One thing that surprised me, however, is that during the strategic planning process, when a group of very engaged bar members were asked what the mission of the State Bar of Georgia was, few could immediately recall it without looking it up or asking each other.

"In this busy time, will you seize these opportunities to foster the principles of duty and service to the public?"

Our current mission was bestowed upon us by the Supreme Court of Georgia more than 50 years ago when the State Bar of Georgia was created as a unified bar association. "The purposes of the State Bar of Georgia are to foster among the members of the bar of this state the principles of duty and service to the public, to improve the administration of justice, and to advance the science of law." It is the first tenet of our mission that is most important to emphasize, particularly this time of year.

For many, "principles of duty and service to the public" come naturally. Some of us serve the public through providing pro bono legal services or volunteering time for various nonprofits, civic groups or religious organizations. Others give their time and talent back to the public by seeking elected office.

Yet still, some dedicate their entire careers to helping indigent citizens with legal troubles, working with Atlanta Legal Aid, the Georgia Legal Services Program, the Atlanta Volunteer Lawyers Foundation and other similar worthy causes. Nonetheless, our profession is often plagued by unfavorable public perception—one only needs to hear one of the incessant lawyer jokes come up in cocktail conversation as a reminder. Do we as lawyers generally not foster the principles of duty and service to the public, or do we just get busy and sometimes fall short in the PR department? I'd like to think it's more of the latter, and hope that we can all strive for improvement.


The Young Lawyers Division has always been known as the service arm of the bar, and for this reason I am extremely proud to be a part of it. My predecessor Darrell Sutton often compared bar admission to a proverbial gate of opportunity for service, encouraging our members that in order to be a great lawyer, we must seize that opportunity to serve others. Whether it's by preparing a free will for a fireman at one of our wills clinics, helping a victim of domestic violence find the security they need through seeking a pro bono protective order or wrapping Christmas toys for needy children at one of our meetings, opportunities to serve the public are regularly presented to YLD members. Two of our signature efforts to serve the public this year, however, will be ensured success only with the help of the Bar at large.

The first, our 10th annual Signature Fundraiser, provides us all with an opportunity to serve children and others in Georgia. Held on Jan. 23, 2016, the YLD Signature Fundraiser will benefit the ongoing construction of Camp Lakeside, a place where all children, regardless of their abilities, 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, cancer, or other serious and chronic health conditions to experience summer camp in an environment compatible with their medical needs, alongside able-bodied children from around the region. It will also serve adults who are in need of using the camp's unique facilities. Camp Lakeside 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. The YLD has set an ambitious fundraising goal of \$100,000 for this cause, and we need your support. More information about sponsorships and ticket sales can be found in this issue of the *Georgia Bar Journal* on page 6, or by visiting our website, www.georgiayld.org.

Second, the fifth annual Legal Food Frenzy will be held in the spring of 2016. A partnership between the YLD, the Office of the Attorney General and the Georgia Food Bank Association, the objective of the Legal Food Frenzy is for lawyers across Georgia to compete to raise donations of food and money to support Georgia's eight regional food banks. More than 60 percent of Georgia's public school children qualify for free or reduced lunch, but less than 15 percent have access to a lunch program in the summer. More than 28 percent of children in Georgia don't know where their next meal is coming from, or if it ever will. Typically, donations to food banks slow in the spring and summer just as demand peaks. The Legal Food Frenzy raises resources prior to the summer months when children are out of school and do not have access to free or reduced-cost meals. Our goal this year is to raise approximately 1.3 million

pounds of food—making a cumulative total of 5 million pounds of food in the first five years of the program. Signup will begin in a few weeks, and attorney-to-attorney marketing is the competition's best chance of succeeding. Challenge your friends, colleagues, local bar association, YLD and State Bar Sections, and attorneys you want to defeat! Donate money, raise food or both; you all have an opportunity to participate in the 2016 Legal Food Frenzy.

Many of you reading this article will be lucky enough to have never had a child afflicted with cancer who could have benefited by having a facility like Camp Lakeside nearby. Most all of us have never experienced what it is like to truly be hungry as a child, and depend on the stores of one of Georgia's regional food banks for sustenance. We each now have an opportunity to help those that are in these situations. In this busy time, will you seize these opportunities to foster the principles of duty and service to the public? Can you think of a better cure for all those lawyer jokes? 


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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When Wrong is Right: Stare Decisis in the Supreme Court of Georgia

by John K. Larkins Jr.

The doctrine of *stare decisis* (“let the decision stand”) may at first blush seem at odds with the idea that the sacred vocation of a court is to administer *justice*. Why, and when, should a court adhere to precedent that it believes was wrongly decided? Obviously, the answer to this question is important to appellate advocates. The nature and scope of the stare decisis doctrine is also of critical importance for a court of last resort, such as the Supreme Court of Georgia. In a very real sense, stare decisis often determines what the law is and what it will be.

This article explores the history of the stare decisis doctrine in the Supreme Court of Georgia and recent efforts of that court to use a more systematic analysis to determine the doctrine’s applicability.

The Historic Facets of Stare Decisis

The stare decisis doctrine is well known and has been applied frequently since the early days of the Supreme Court of Georgia. It is difficult to craft a

comprehensive definition of the doctrine.¹ Generally, the doctrine says that where a judicial decision is rendered on an issue, that decision becomes precedent, i.e., legal authority, that will not be overruled except in extraordinary circumstances. It is a type of legal inertia or presumption favoring the existing state of the law, based on practical policy considerations.

The cases seem to agree that the stare decisis doctrine primarily exists to promote uniformity and stability in judicial decisions (or at least the perception thereof).² It is viewed as being critical to public confidence in “the stability and the certainty of the decisions of the court.”³ Thus, the virtues of stability and certainty may be preferred over the issue of whether the decision in question was decided rightly or wrongly. “[E]ven in doubtful cases, it is of infinitely greater importance to public as well as private interests that the law should be definitely settled, affording a fixed rule of conduct, than that it be settled in a particular way.”⁴

The stare decisis doctrine is “practical” and has been characterized as an essential part of a “well-ordered system of jurisprudence”:

The application of the doctrine of stare decisis is essential to the performance of a well-ordered system of jurisprudence. In most instances, it is of more practical utility to have the law settled and to let it remain so, than to open it up to new constructions, as the personnel of the court may change, even though grave doubt may arise as to the correctness of the interpretation originally given to it.⁵

A court should apply “known principles and previously disclosed courses of reasoning” in its decision-making process; otherwise, the process could lead to unpredictable results⁶ and “become the most intolerable kind of *ex post facto* judicial law-making.”⁷

Stare decisis appears to be grounded, in part, on the recognition that many legal issues are “doubtful” and thus can reasonably be decided in differing ways.⁸ Under *stare decisis*, a properly analyzed legal decision, once made, is presumed to express the law authoritatively. “[W]here a precedent is well reasoned and supported by a logically correct application of true legal principles, it becomes authority, and, clothed in its new dignity, it is, and should be, respected as law.”⁹ It is binding on lower courts and enjoys the presumption of being legal precedent and authority within its own judicial tier. Therefore, assuming that the court believes that a proposed new decision contradicts an earlier decision (otherwise, *stare decisis* is not implicated in the first place), there is a *prima facie* presumption in favor of the earlier decision.

Obviously, *stare decisis* does not make it impossible to overrule prior decisions.¹⁰ It has been frequently said that *stare decisis* “is a matter of judicial policy rather than judicial power.”¹¹ In other words, the court has the power to overrule any of its precedents that it pleases, but limits that power by the *stare decisis* doctrine, for policy reasons.

Historically, the Supreme Court of Georgia has had difficulty defining the circumstances under which a prior decision will be overruled as being wrongly decided. Many cases have stated that “*stare decisis* should not be applied to the extent that an error in the law is perpetuated,” but have nonetheless invoked *stare decisis*.¹² Some cases seem to suggest that the degree of “wrongness,” the magnitude of the error, could determine or affect the analysis of whether the prior decision should be overruled. It seems

that doubt, even “grave doubt,” as to the correctness of a prior decision is insufficient to overrule it.¹³ Justice Bleckley defined the error necessary to overrule a prior decision as “a great and glaring error affecting the current administration of justice in all courts of original jurisdiction.”¹⁴ Other cases suggest that precedent may be corrected if the court determines that the prior decision is “clear and palpable error,” or “clearly erroneous.”¹⁵

The actual, practical effect of the doubtful precedent, the “reliance interest,” is of critical importance. In one case it was said that in order to overrule a prior rule of decision, the court first “should be satisfied by the most convincing logic that the principle is itself unsound, and as well vicious in its effect.”¹⁶ More often, the effect of precedent is to foster a reliance interest by citizens who have, for example, entered into business transactions in reliance on the court’s decision.¹⁷ Consequently, a court would apply *stare decisis* “where large numbers of transactions covering a long period of years would probably be disturbed or vitiated, and the rights of those who had followed the law as authoritatively expounded would be adversely affected or destroyed by a different exposition.”¹⁸

Stare decisis traditionally recognizes the separation of powers doctrine. In theory, if the court has erred in a decision, the people of the state, acting through their representatives in the General Assembly, can correct the error.¹⁹ Likewise, in cases involving the interpretation of a statute, the court’s interpretation is considered to become an “integral” part of the statute.²⁰ Thus, “[a] reinterpretation of a statute after the General Assembly’s implicit acceptance of the original interpretation would constitute a judicial usurpation of the legislative function.”²¹ The longer a judicial decision interpreting a statute exists without legislative correction, the greater the presumption that the decision is correct and the less likely that the decision will be over-

ruled, even if it is later determined to be erroneous.²²

The “Full Bench Rule” and Its Strange Demise

The factors of “stability, uniformity and separation of powers” manifested themselves in Georgia’s “full bench rule,” first enacted by the Legislature in the 19th century, which codified a strict and unusual form of *stare decisis*.

In an 1852 opinion of the Supreme Court of Georgia, Justice Lumpkin stated that when a question is decided by the court, the decision is “considered as the law of the land, and respected and carried into full effect as such, the same as a Statute of the State.”²³ Justice Lumpkin went on to say that the decision may only be re-examined by the court in “extreme cases,” after obtaining leave of court to raise the issue. Justice Lumpkin left no doubt that “[t]he doctrine of *stare-decisis*, is right, both upon policy and principle.”²⁴

In 1858, the Georgia Legislature, perhaps influenced by Justice Lumpkin’s formulation of *stare decisis*, especially his equating a court decision with a statute, enacted a statute providing that any decision of the Supreme Court concurred in by all three justices²⁵ could only be reversed, overruled or changed by the General Assembly, since the decision was the equivalent of a legislative enactment.²⁶ In 1861, with the implementation of the first Georgia Code, this “full bench rule” was modified to provide that decisions in which all three justices had concurred could only be overruled or materially changed by a subsequent full bench decision “after argument had, in which the decision by permission of the court is expressly questioned and reviewed, and after such argument the Court in its decision shall state distinctly whether it affirms, reverses or changes such decision.”²⁷ (This section was amended in 1896 to take the increase in members of the court into account.)²⁸



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The practical effect of the full bench rule was that while a lawyer in a jurisdiction other than Georgia would view the most *recent* decision of the state's highest appellate court as authoritative, Georgia lawyers and judges would search for a unanimous decision of the Supreme Court of Georgia, the *older* the better.

In 1967, the Supreme Court of Georgia decided *Ward v. Big Apple Super Markets of Bolton Road, Inc.*²⁹ In that case, the court declined to overrule a "full bench decision," since all seven members of the court did not concur.³⁰ On motion for rehearing, the appellant argued that the full bench rule had no legal existence after the adoption of the 1945 Georgia Constitution, "because Art. VI, Sec. II, Par. VII of that Constitution . . . expressly withdrew the power from the General Assembly to enact regulations governing the manner in which this court could hear and determine cases . . ."³¹

The Supreme Court agreed that the *statutory* full bench rule violated the new Georgia Constitution, but held that the rule was *court-made* and continued to exist: "This Court since its creation in 1845 has considered itself bound by its unanimous decisions and will respect and follow such decisions, overruling them only by a unanimous Court [,] which can be done without legislative authority."³² The court implied that its holding was itself simply an application of the *stare decisis* doctrine.³³

Then, in 1976, the Supreme Court of Georgia decided *Hall v. Hopper*,³⁴ arguably the most significant jurisprudential case ever decided by the court. *Hall* was a habeas corpus case in which one of the issues concerned whether the defendant had been properly advised of his appeal rights. The court found itself confronted with two of its prior opinions, one decided in 1972 and the other decided in 1974, which reached opposite conclusions. The earlier case was a full bench decision that

had not been overruled by the later decision. Therefore, under the traditional full bench rule, the earlier case was *prima facie* binding. After discussing the history of the rule, the court held that the full bench rule would be replaced by a new rule that the latest decision of the court will control, whether unanimous or not: "[A] majority vote of the members of this Court controls the ruling and judgment in each case. Where the majority of this Court, in the case before it, votes not to follow [a prior decision], . . . then that becomes the ruling of the Court. Thereafter, that later ruling will be followed . . ."³⁵

In *Hall*, the court observed that the *stare decisis* doctrine, which values "stability and certainty in law . . . is a valid and compelling basis of argument."³⁶ Nevertheless, "[i]t is not possible . . . to achieve unanimity in every case which reaches this Court. When a majority of this Court determines that stability must give way to justice . . . then justice prevails. The 'full bench rule' has been repealed."³⁷ As for *when* the repeal occurred, the court stated: "That repeal occurred some time ago. The effective date of repeal is immaterial."³⁸

Hall ushered in a new paradigm in Georgia jurisprudence: a majority of the members of the court, in the name of justice and at any given time, could overturn any precedent, full bench or not. The latest ruling of the Supreme Court on any issue was controlling.

The "Factors" Analysis

The years following *Hall* seemed to witness more frequent invocation by the court of the *stare decisis* doctrine in both majority opinions and (especially) dissenting opinions – and increasing disputes as to its applicability or usefulness. To some, the doctrine seemed at best subjective, and at worst disingenuous. Thus, in one case, a dissenting justice stated:

Unfortunately, "stare decisis" is often a mere facade to cover

the Court's preference for the rule under consideration. If the Court likes the precedent, *stare decisis* is invoked with loud incantations; if it dislikes the precedent, the Court dons the mantle of "justice" and charges forth with the rhetoric of a knight errant.³⁹

In another case, a dissenting justice lamented, "[T]imes change, judges change, and the doctrine of *stare decisis* seems to be less viable year by year."⁴⁰

A new or revised analytical framework for dealing with *stare decisis* issues emerged in 2010, in *Smith v. Baptiste*,⁴¹ which involved a constitutional issue. Justice Nahmias, in a concurring opinion, relied on language of the U.S. Supreme Court to promote an analysis of the applicability of *stare decisis*, based on "factors" that were historically associated with the doctrine.

Quoting the U.S. Supreme Court, Justice Nahmias acknowledged that *stare decisis* is the "preferred course": "*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."⁴² On the other hand, *stare decisis* "is neither an inexorable command nor a mechanical formula."⁴³ Rather, when confronted with a *stare decisis* issue, the court engages in a balancing test: "[In] considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions *decided* against the importance of having them *decided right*."⁴⁴


Continuing to quote the U.S. Supreme Court, Justice Nahmias listed four factors to be considered by the court on the "balancing" test: "For these reasons, *stare decisis* in the constitutional context requires more careful consideration of factors such as the age of the precedent, the reliance issues at stake,

the workability of the decision, and, most importantly, the soundness of its reasoning.”⁴⁵ Accordingly, Justice Nahmias advised that the majority in the case “should focus on such careful analysis rather than simply quoting exhortations about the importance of stare decisis.”⁴⁶

At the court’s next term, Justice Nahmias had an opportunity to apply the “factor analysis” that he had espoused in *Baptiste*, by authoring the majority opinion in *State v. Jackson*.⁴⁷ *Jackson*, unlike *Baptiste*, did not present a constitutional question; instead, it concerned the continued viability of a prior case (and its progeny) that the court was now satisfied had misinterpreted a statute. Justice Nahmias, as the author of the majority opinion, invoked the stare decisis “factors” listed in *Baptiste* (e.g., the age of the precedent, reliance issues, the workability of the decision, and the soundness of its reasoning) and, as he had advised in *Baptiste*, proceeded to analyze carefully the applicability and weight afforded the factors.⁴⁸ The factor analysis thus jumped to non-constitutional cases.

The “factor analysis” seems now to be the Supreme Court of Georgia’s preferred analytical model to analyze the applicability of stare decisis, as shown by at least seven decisions since *State v. Jackson*.⁴⁹ Thus far, this analytical model is a significant advance in the decision-making process of the court when it confronts a stare decisis issue. The “factors” themselves are not new, but the disciplined analysis and review are.⁵⁰

The fundamental purpose of stare decisis is to promote the uniformity and stability of judicial decisions. It is undoubtedly an imperfect and inexact doctrine that, like many legal issues, ultimately requires the exercise of sound judicial discretion. Considering the historical underpinnings of the stare decisis doctrine, however, the “factors analysis” is a reasonable, systematic methodology to analyze stare decisis issues. Ironically, the factors analysis itself brings a level

of stability and uniformity to the evaluation of stare decisis. 



John K. Larkins Jr. is a partner in the Atlanta firm of Chilivis Cochran Larkins & Bever LLP. He is a graduate of the University of Georgia School of Law (1976), and is the author of numerous publications, including “Georgia Contracts: Law & Litigation (2nd Ed.),” published by West.

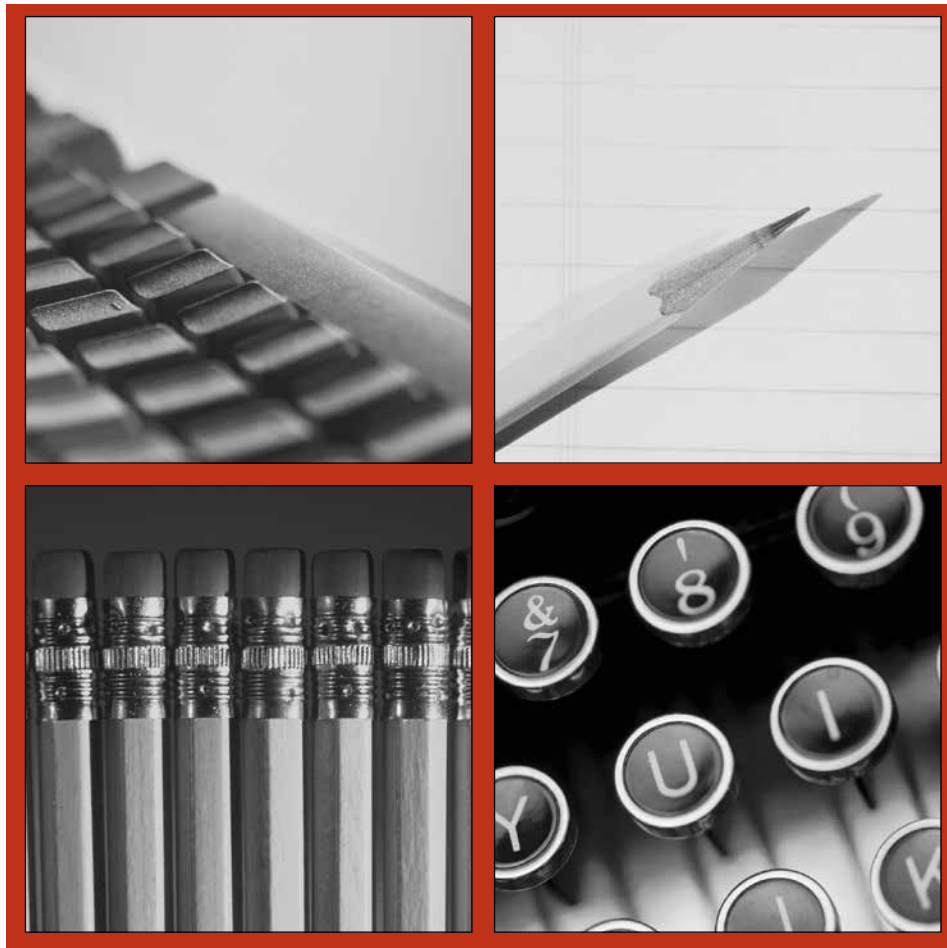
Endnotes

1. For a general definition, see *Humthlett v. Reeves*, 211 Ga. 210, 215, 85 S.E.2d 25, 30 (1954).
2. Uniformity and stability in the law were of particular concern in Georgia, which until 1845 did not have an appellate court. The creation of the Supreme Court was to attain uniformity in the law. *Atlanta & W. Point R.R. v. Hemmings*, 192 Ga. 724, 726-27, 16 S.E.2d 537, 538 (1941).
3. *Bracewell v. S. Ry.*, 134 Ga. 537, 540, 68 S.E. 98, 100 (1910).
4. *Almand v. Almand*, 95 Ga. 204, 207, 22 S.E. 213, 214 (1894).
5. *Cobb v. State*, 187 Ga. 448, 452, 200 S.E. 796, 798 (1939).
6. *See Houston Gen. Ins. Co. v. Brock Constr. Co.*, 241 Ga. 460, 463, 246 S.E.2d 316, 318 (1978) (“[T]he prior decisions of this court do not settle this issue as a matter of stare decisis, and we certainly cannot be bound by inferences from prior cases in which the issue has not been given any reasoned consideration.”).
7. *Davis v. Penn Mut. Life Ins. Co.*, 198 Ga. 550, 564, 32 S.E.2d 180, 187 (1944) (quoting a paper read by Justice Robert H. Jackson of the U.S. Supreme Court to a meeting of the American Law Institute).
8. *Etkind v. Suarez*, 271 Ga. 352, 353-54, 519 S.E.2d 210, 212 (1999).
9. *Almand*, 95 Ga. at 207, 22 S.E. at 214.
10. *See Capers v. Ball*, 211 Ga. 502, 506, 87 S.E.2d 85, 89 (1955) (“If it is to be argued that cases can not be overruled because of stare decisis, then no case would ever be overruled. Certainly, this is not a sound position.”).

11. *Walker v. Walker*, 122 Ga. App. 545, 546, 178 S.E.2d 46, 46 (1970) (physical precedent only).
12. *E.g.*, *City of Atlanta v. First Presbyterian Church*, 86 Ga. 730, 732-33, 13 S.E. 252, 253 (1891) (“The rule of *stare decisis* is a wholesome one, but should not be used to sanctify and perpetuate error [I]t has never been the doctrine of any court of last resort that the law is to be a refuge and safe asylum for all the errors that creep into it.”).
13. *E.g.*, *Cobb v. State*, 187 Ga. 448, 452, 200 S.E. 796, 798 (1939); *Bracewell v. S. Ry.*, 134 Ga. 537, 540, 68 S.E. 98, 99 (1910) (“The very purpose of making decisions is to solve questions of doubt.”).
14. *Ellison v. Georgia R.R.*, 87 Ga. 691, 696, 13 S.E. 809, 810 (1891). The famed jurist also stated, “Minor errors, even if quite obvious, or important errors if their existence be fairly doubtful, may be adhered to, and repeated indefinitely” *Id.*, 13 S.E. at 810.
15. *E.g.*, *Bracewell*, 134 Ga. at 539-40, 68 S.E. at 99. But in *Humthlett v. Reeves*, 211 Ga. 210, 85 S.E.2d 25 (1954), the court simply declared that “the doctrine of stare decisis should not be followed to the extent that error may be perpetuated.” *Id.* at 215, 85 S.E.2d at 30.
16. *Almand v. Almand*, 95 Ga. 204, 207, 22 S.E. 213, 214 (1894).
17. *See Bracewell*, 134 Ga. at 540, 68 S.E. at 100.
18. *Hartley v. Nash*, 157 Ga. 402, 405, 121 S.E. 295, 296-97 (1924); *accord*, e.g., *Scott v. Stewart*, 84 Ga. 772, 773, 11 S.E. 897, 897 (1890). On the other hand, stare decisis was held not to apply where a case so conflicted with precedent “that no one could have been led to rely on it as permanently fixing the law and been misled by it to his hurt and injury.” *Humthlett*, 211 Ga. at 216, 85 S.E.2d at 30.
19. *See Etkind v. Suarez*, 271 Ga. 352, 353-54, 519 S.E.2d 210, 212 (1999).
20. *Mitchell v. State*, 239 Ga. 3, 6, 235 S.E.2d 509, 512 (1977).
21. *Abernathy v. City of Albany*, 269 Ga. 88, 90, 495 S.E.2d 13, 16 (1998).
22. Notably, the principles concerning statutory interpretation do not apply with the same weight to the court’s interpretation of a constitutional

- provision. The reason for this difference is that it is much more difficult for the people to amend the Constitution. *See* Ga. Dep't of Nat. Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 601, 755 S.E.2d 184, 191 (2014). Also, there has been some issue as to whether legislative inaction truly indicates acceptance of a court's interpretation of a statute. *See* Savage v. State, 297 Ga. 627, 774 S.E.2d 624, 636 (2015).
23. Thornton v. Lane, 11 Ga. 459, 490 (1852).
 24. *Id.*
 25. At the time, the Supreme Court of Georgia had only three members. Note that a special concurrence was sufficient to prevent a decision from being binding precedent. *See* S. Ry. v. Parker, 194 Ga. 94, 102, 21 S.E.2d 94, 99 (1942).
 26. Act of Dec. 9, 1858, No. 62, 1858 Ga. Laws 74. The rule was last codified at the Code of 1933, § 6-1611.
 27. Code of Georgia § 210 (1861); *see, e.g.*, Ga. Penitentiary Co. v. Nelms, 65 Ga. 499, 501 (1880) (quoting the full bench rule as codified at Irwin's Code § 217 (1873)).
 28. *See* Hall v. Hopper, 234 Ga. 625, 630, 216 S.E.2d 839, 843 (1975).
 29. 223 Ga. 756, 158 S.E.2d 396 (1967) (*per curiam*).
 30. *Id.* at 757, 158 S.E.2d at 398.
 31. *Id.* at 764, 158 S.E.2d at 402. The constitutional difficulty had been alluded to in *Capers v. Ball*, 211 Ga. 502, 507, 87 S.E.2d 85, 89 (1955).
 32. 223 Ga. at 764, 158 S.E.2d at 402. In *Sharpe v. Dep't of Transp.*, 267 Ga. 267, 272, 476 S.E. 2d 722, 725-26 (1996), Justice Carley (dissenting) stated: "This Court always has been and should continue to be reluctant to overrule its prior unanimous decisions."
 33. 223 Ga. at 764, 158 S.E.2d at 402. *But see* Crumbley v. Solomon, 243 Ga. 343, 349, 254 S.E.2d 330, 335 (1979) (Bowles, J., dissenting). In a dissent in *Atlanta Coca Cola Bottling Co. v. Gates*, 225 Ga. 824, 842-43, 171 S.E.2d 723, 734 (1969), Justice Felton advocated a rule that a "majority opinion" case should only be overruled by a full bench, stating that "[w]ithout such a rule . . . the courts which are bound by majority opinion cases are as a ship without a rudder, never knowing when another majority opinion will upset the previous majority opinion judgments."
 34. 234 Ga. 625, 216 S.E.2d 839 (1975).
 35. *Id.* at 631, 216 S.E.2d at 843; *accord* *Houston v. Lowes of Savannah, Inc.*, 235 Ga. 201, 203, 219 S.E.2d 115, 116 (1975).
 36. 234 Ga. at 631, 216 S.E.2d at 843.
 37. *Id.* at 632, 216 S.E.2d at 843. The Court of Appeals of Georgia subsequently held, "To clear up any misapprehension, although our Supreme Court has abolished the compulsive aspect of stare decisis for its decisions . . . it still remains as a persuasive force." *Starks v. Robinson*, 189 Ga. App. 168, 172, 375 S.E.2d 86, 90 (1988). The Court of Appeals of Georgia is nominally subject to a governing statute that, *inter alia*, contains a version of a full-bench rule. O.C.G.A. § 15-3-1(d) ("A decision concurred in by all the Judges shall not be overruled or materially modified except with the concurrence of all the Judges."). The Court of Appeals of Georgia frequently considers stare decisis issues, but as an intermediate appellate court it is bound by decisions of the Supreme Court of Georgia. GA. CONST. art. VI, § VI, ¶ 6 ("The decisions of the Supreme Court shall bind all other courts as precedents."); *Whorton v. State*, 321 Ga. App. 335, 339 n.21, 741 S.E.2d 653, 658 n.21 (2013).
 38. 234 Ga. at 632, 216 S.E.2d at 843.
 39. *Bickford v. Nolen*, 240 Ga. 255, 259, 240 S.E.2d 24, 27 (1977) (Hall, J., dissenting).
 40. *Crumbley v. Solomon*, 243 Ga. 343, 349, 254 S.E.2d 330, 335 (1979); *see also* *Grissom v. Gleason*, 262 Ga. 374, 378, 418 S.E.2d 27, 30 (1992) (Benham, J., concurring) (quoting *Crumbley*, 243 Ga. At 349, 254 S.E.2d at 335 (Bowles, J. dissenting)).
 41. 287 Ga. 23, 694 S.E.2d 83 (2010).
 42. *Id.* at 31, 694 S.E.2d at 89 (Nahmias, J., dissenting) (quoting *Citizens United v. FEC*, 558 U.S. 310, 377 (2010) (Roberts, C.J., concurring)).
 43. *Id.*, 694 S.E.2d at 89.
 44. *Id.* at 32, 694 S.E.2d at 89 (emphasis in original).
 45. *Id.*, 694 S.E.2d at 90. A similar methodology was employed in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), one of the most famous (or infamous) stare decisis cases: "[W]hen this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law . . ." *Id.* at 854 (plurality opinion).
 46. 287 Ga. at 32, 694 S.E.2d at 90.
 47. 287 Ga. 646, 697 S.E.2d 757 (2010).
 48. *Id.* at 658-60, 697 S.E.2d at 766-67.
 49. The following cases from the Supreme Court of Georgia have thus far used the "factors" analysis in the majority opinion: *State v. Springer*, 297 Ga. 376, 382, 774 S.E.2d 106, 111 (2015); *Woodard v. State*, 296 Ga. 803, 812, 771 S.E.2d 362, 369 (2015); *Lejeune v. McLaughlin*, 296 Ga. 291, 298, 766 S.E.2d 803, 808-09 (2014); *Smith v. State*, 295 Ga. 120, 122, 757 S.E.2d 865, 867 (2014); Ga. Dep't of Nat. Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 601, 755 S.E.2d 184, 191 (2014); *State v. Hudson*, 293 Ga. 656, 661, 748 S.E.2d 910, 913 (2013); *Sosniak v. State*, 292 Ga. 35, 48-49, 734 S.E.2d 362, 373 (2012). Justice Nahmias applied the "factor analysis" in his special concurrence in *Brown v. Crawford*, 289 Ga. 722, 725-26, 715 S.E.2d 132, 135 (2011), finding that the prior case should not be overruled.
 50. It will be noted that the list of factors is open-ended. In *Lejune v. McLaughlin*, a factor, correctly, was added: "We also consider the ease with which the People and their elected representatives might overrule our precedents, if they think them incorrect." 296 Ga. at 298, 766 S.E.2d at 809. Additionally, as to the weight of the factors, in *Savage v. State*, the court stated that "stare decisis is especially important where judicial decisions create substantial reliance issues, as is most common with rulings involving contract and property rights." 297 Ga. 627, 363, 774 S.E.2d at 624 (2015). This accords with *Payne v. Tennessee*, 501 U.S. 808, 828 (1991), where it was stated that "[c]onsiderations in favor of stare decisis are at their acme in cases involving property and contract rights, where reliance interests are involved."

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2016 State Bar Legislative Preview

by W. Thomas Worthy and Russell N. “Rusty” Sewell

The 2016 Regular Session of the Georgia General Assembly will convene for day one of its 40-day session on Jan. 11, 2016. It will be a very quick session as General Assembly members will want to finish legislative business in time to return home to their districts to campaign for re-election. We expect debates on whether to expand gambling in Georgia to include casinos and certificate of need laws for health care services to be the big-ticket items of the session. We also anticipate ongoing discussions about how to maximize efficiencies and buttress resources for the appellate courts of Georgia.

The State Bar of Georgia enjoyed a successful 2015 session that once again demonstrated the effectiveness of the Bar’s Legislative Program. Bar involvement helped secure the passage of the judicial compensation package, a bill that creates private cause of action for those harmed by the unauthorized practice of law in residential real estate transactions and a fourth installment of criminal justice reform and reinvestment initiatives. There are, however, a handful of bills on the Bar

agenda that hold over from last year and await legislative action when the General Assembly reconvenes. Those bills include:

- **SB 206**, sponsored by Sen. William Ligon (R-Brunswick), contains a proposal by the Real Property Law Section that requires the filing of municipal water liens with the clerk of court. It has been introduced in the Senate and awaits a hearing before the Senate Judiciary Committee.
- **HB 405**, sponsored by Rep. Regina Quick (R-Athens), contains a proposal by the Family Law Section that changes provisions for the attestation of execution of ante nuptial agreements. It was introduced in the House and passed the House Judiciary Committee but failed to pass the House Rules Committee for a floor vote. As a result, the bill has been recommitted to the House Judiciary Committee for committee action this year.
- **HB 531**, sponsored by Rep. Ronnie Mabra (D-Fayetteville), contains a proposal by the General Practice and Trial Law Section that codifies the long-arm jurisdiction standard from the *International Shoe* case and expands Georgia’s extraterritorial jurisdiction to the maximum amount allowable by the Due Process Clause. The bill passed the full House and the Senate Judiciary Committee but failed to pass the Senate Rules Committee for a floor vote. As a result, the bill has been recommitted to the Senate Judiciary Committee for committee action this year.
- **SB 128**, sponsored by Sen. John Kennedy (R-Macon), contains a proposal by the Business Law Section to update Georgia’s corporate codes. The bill

has passed both Houses, but is awaiting a Senate vote to agree to a House amendment. If passed, it will go to the governor's desk for signature as it passed the House last year.

- **HB 236**, sponsored by Rep. Alex Atwood (R-St. Simons Island), contains a proposal by the Access to Justice Committee that incentivizes lawyers to live and practice in underserved areas by providing state grants to make student loan payments. The bill awaits a hearing before the House Appropriations Committee.

The State Bar Advisory Committee on Legislation (ACL) held its first meeting on Sept. 15. The committee approved three additional agenda items to add to the State Bar legislative agenda next year. The Board of Governors then adopted all three items at its Fall Meeting in Savannah. The new agenda items include:

- A request by the Committee to Promote Inclusion in the Profession to increase the appropriations made for grants for legal representation of victims of domestic violence;
- A request by the Family Law Section to formally support SB 64 which repeals administrative legitimation via the execution of voluntary acknowledgements of legitimation; and
- A joint request by the Georgia Public Defenders Council and the Prosecuting Attorneys Council to provide pay equity for assistant district attorneys and assistant public defenders along with an update of statutory step pay increases.


The ACL convened again for its final meeting of the year on Dec. 8. Items approved at this meeting will be presented to the Board of Governors at its Midyear Meeting on Jan. 9, 2016, at Lake Lanier Islands. We anticipate a significant number of proposals to be considered including a revision of



the Civil Practice Act to develop rules for e-discovery presented by the Electronically Stored Information Committee.

As the Session approaches, we encourage you to avail yourself of the litany of resources provided to you by the State Bar's Legislative and Grassroots Program. You may sign up for the State Bar Action Network, an online portal that provides real-time monitoring of not only State Bar agenda items but all bills that affect the practice of law and facilitates easy communication with your elected officials. As in previous years, the State Bar website will include weekly legislative updates that will also be delivered to you by email. Finally, we encourage you to join us, either with your local or voluntary bar associations or individually for a "Lobby Day" at the Capitol. Legislators find it meaningful and productive to hear from professionals in their communities and we would welcome your attendance.

As you can tell, 2016 is shaping up to be an exciting year for the State Bar and the legal profession with many important items

to advocate for and even more to closely monitor and with which to potentially engage. The Legislative and Grassroots Program is one of the most important and valuable services provided by the Bar to our members, but it is funded entirely through voluntary contributions. If you did not contribute upon renewal of your Bar dues, please consider making a contribution of any amount to help ensure that we keep a strong and unified voice for the profession under the Gold Dome. 



W. Thomas Worthy is the director of Governmental Affairs for the State Bar of Georgia and team leader for the State Bar's lobbying team.



Russell N. "Rusty" Sewell is the president of Capitol Partners Public Affairs Group and has represented the Bar under the Gold Dome for more than 20 years.

Volunteer Attorneys Assist Homeless Veterans

by Angie Thompson

Georgia attorneys and law students were among scores of volunteers who assisted hundreds of veterans at the Homeless Veterans Stand Down held at Ft. McPherson in October. Stand Downs for homeless veterans are held throughout the United States. Ft. McPherson, a long-time military installation in Eastman, recently closed. Buildings there were renovated for Veterans Affairs to use. The line of homeless veterans waiting on services at the event stretched half of the length of a city block at one point.

“Georgia has a high concentration of veterans,” said Katie Dod, director of Military Support for the Young Lawyers Division (YLD) of the State Bar of Georgia. “There is so much work young lawyers can do for them.”

Dod said veterans face challenges, both physical and mental, that are a direct result of their military service.

The Stand Down provided veterans access to resources they needed to secure housing and employment. Also available were medical, mental health



Photos by Angie Thompson

(Left to right) YLD member Mandy Moyer and volunteer David Dod gave each veteran who did not qualify for VA services a camo backpack at a station during the Stand Down at Ft. McPherson.

and substance abuse screenings, and referrals for veterans who needed additional care. Clothing, hygiene items, haircuts and other essentials were also provided, as well as a hot meal and a DJ playing music from the 60s and 70s.

YLD members, students of Emory Law School's Clinic, and representatives of the Bar's Military Legal Assistance Program and Military/Veterans Law Section volunteered their Saturday for service. Some worked at stations where beverages and food were being served. Others handed camouflage backpacks stuffed with blankets to veterans deemed ineligible to receive VA services. Others assisted veterans as they progressed through registration and on to their medical screenings.

Dod assisted a homeless, 61-year-old wheelchair-bound veteran through the entire line of services. He told Dod he was a U.S. Marine who served from 1972-76. He said he avoided the Vietnam battlefield and was stationed in Japan because he scored high on an examination following basic training.

"God has recently blessed me with an apartment," the veteran said.

He said he has lived in housing provided by two prison ministries, but both of those closed and he was left homeless. He said his work with both of the ministries was fulfilling.

"I have been able to see nearly 500 incarcerated men make a decision to accept Christ," he said.

He said he is taking online college classes and plans to graduate in April with a B.A. in Criminal Justice. He hopes to use his degree to work with young people.

Dod's father, Robert Sullivan, first peaked her interest in working with veterans. "He just retired as an administrative judge for the VA and now I'm accredited to practice in front of judges like him."

Dod said the YLD's Military Support Committee won awards for its work with veterans in every category possible from the



(Left to right) Jared Parrish, Will Davis, Patrick McShane, Andrew Becker and Katie Kiinhl were several YLD members who assisted veterans with legal issues in the Stand Down's court.



A volunteer attorney assists a homeless U.S. Marine veteran through the line of services offered to him at Stand Down.

American Bar Association last year. "We would really like to expand the work this committee can do, but the only way we can do that is if we have young lawyers willing to get involved."

Because the work is so rewarding, Dod is confident no one who gets involved will regret it.

Cary King, chair of the Military/Veterans Law Section of the Bar, is a combat veteran of Vietnam. King

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State Bar Campaign for the Georgia Legal Services Program® (GLSP)



Justice could not come fast enough for Ms. Green, who is 82 years old and was swindled out of her home by her son. Her son executed a fraudulent deed and forged his mother’s signature on the document to transfer her home to him. Ms. Green, who has been in poor health for a while, was living in her home at the time, but she had no knowledge of her son’s scheme. Her son had talked to her several times about transferring her home to him, and each time she adamantly refused.

Ms. Green’s daughter saw that her mother’s poor health was getting worse, so she and her husband moved Ms. Green into their house in another town, temporarily, to take care of her until they could find a suitable facility for her to get the long-term professional medical care she needs. Seven months later, Ms. Green’s daughter found out about the fraudulent deed transfer of her mother’s home that was executed by her brother, when she tried to obtain nursing home Medicaid assistance for her mother. She was told by the nursing home that her mother was not eligible, because of the transfer of her home to her son. In order to be eligible for Medicaid, a person cannot have recently transferred assets.

Ms. Green and her daughter contacted Georgia Legal Services for help and a GLSP lawyer filed an action to set aside the fraudulent deed. The judge ruled in favor of Ms. Green, and the GLSP lawyer filed the order to set aside the deed that afternoon. Ms. Green took out a criminal warrant against her son, who has yet to be found.

The mission of Georgia Legal Services is to provide civil legal services for persons with low incomes, creating equal access to justice and opportunities out of poverty.

Give today at www.glsp.org (Click on Donate Now)!



State Bar of Georgia Georgia Legal Services Program



Thank you for your generosity and support!

The Georgia Legal Services Program (GLSP) is a 501(c)(3) nonprofit law firm. Gifts to GLSP are tax-deductible to the fullest extent allowed by law. The client story is used with permission. The name and photo do not represent the actual client.

Ten (10) GLSP offices outside metro Atlanta serve 154 of Georgia’s 159 counties. Your gift makes a difference!

is the founder of the pro bono clinic at the VA Medical Center. The clinic provides legal assistance to hundreds of service members and veterans on a variety of civil and criminal law matters. He also works with the Bar's Military Legal Assistance Program. Norman Zoller, the program's director, said that in the six years of the program's operation, 850 volunteer attorneys have assisted approximately 1,500 military service members.

King briefed YLD volunteers and the Emory law clinic student volunteers prior to the opening of "court" at the Stand Down. Attorneys assisted veterans in the areas of family law, landlord/tenant issues, debtor/creditor issues, bankruptcy, VA benefits and claim denials, wills, guardianships, probate issues, VA military pension issues and minor criminal issues.

"We just want them to know there is a solution," King said. "They know what the problem is, but they aren't quite sure how they got here. Some veterans can't get a driver's license. We discover that they might have traffic tickets outstanding or that they lost their licenses because of failure to pay child support."

Katie Willett, a member of YLD's Service Projects Committee, partnered with Dod to plan the YLD's participation in Stand Down. She was one of the volunteer attorneys who assisted veterans in the court. She said her biggest surprise was the large number of homeless veterans in attendance at the event.

"I still cringe when I put 'homeless' and 'veteran' together in a sentence," she said. "It broke my heart to see hundreds of veterans at the event. While I was proud to volunteer, I came away from the Stand Down knowing there is much more work to do for our country's veterans."


Other volunteers who worked at Stand Down include young lawyers Alla Raykin, Jarred Parrish, Will Davis, Patrick McShane, Katie Kiihnl, Mandy Moyer, Helen Peters, Jatreaan Sanders, Mariel Sivley, Andrew Becker



A homeless veteran who sat down for a break displayed her artwork on chairs nearby.



(Left to right) Cary King, chair of the Bar's Military/Veterans Law Section, discusses how veterans' issues would be addressed in Stand Down court with Katie Dod, director of Military Support for the YLD.

and Nicole Lee. Dod's husband, David, also volunteered. Attorney Drew Early, a professor at Emory University School of Law, coordinated student volunteers from the school's clinic who volunteered at Stand Down's court. 



Angie Thompson is the office assistant at the State Bar's South Georgia office and a freelance writer. You can reach her at angiet@gabar.org.



(Left to right) YLD Members Andrew Becker and Katie Willett discuss how to resolve an issue for one of the veterans who sought help during Stand Down's court.

23rd Annual Diversity CLE and Luncheon:

Exploring Gender Differences in Business Development, Communication and Leadership

by Marian Cover Dockery

The State Bar of Georgia Diversity Program (GDP) presented its 23rd annual Diversity CLE and Luncheon at the Bar Center on Wednesday, Sept. 30. The event was preceded by the annual welcome reception for GDP members, speakers and sponsors, hosted this year by Arnall Golden Gregory LLP. The well-attended event brought together a diverse group of professionals that were challenged to take the information back to their firms and offices and create environments that would bridge the gap of gender differences in the workplace.

Featured Speaker

Arin Reeves, J.D., Ph.D, president and founder of Nextions, and author of the best-selling book "The Next IQ: The Next Generation of Intelligence for 21st Century Leaders," headlined the 2015 CLE. Reeves shared her research on how gender makes a difference in how you develop business, communicate and lead. She discussed findings from her "Yellow Papers Series," including gender differences in communication styles and the impact of gender differences in leadership styles and business development. One research subject



Photos by Don Morgan Photography

Arin Reeves, J.D., Ph.D, presents to the CLE attendees on the topic of "Exploring Gender Differences in Business Development, Leadership and Communication."

from the series addressed performance self-evaluations and how they differ from men to women. While men wrote long evaluations advocating their strengths and attributes using the pronouns "I" and "me," evaluations written by women were less verbose with

the pronoun “we” being used when speaking of accomplishments, giving more credit to their team than to individual benchmarks. An “Interruptions Study” explored how communications of men differ from women, finding that they: interrupt women both intentionally and unintentionally; may repeat an idea that a woman originally introduced in a business setting while not crediting the original source; and interrupt women to explain something that the women actually know more about than they do.

These were just some of the findings disclosed during Reeves’ presentation. For more information regarding her research, visit www.nextions.com.

Break-Out Session

Following the CLE presentation, the audience broke into four workshop groups to discuss the following topics: Business Development Success Stories, Business Development Challenges, Business Development: Next Steps for Men and Women and Business Development: Next Steps for Organizations. The groups were led by GDP Chair Charles Huddleston, of counsel, Nelson Mullins Riley & Scarborough LLP, and GDP Steering Committee members Lyonnette M. Davis, shareholder, Byrne, Davis and Hicks P.C.; Anandhi Rajan, partner, Swift, Currie, McGhee & Hiers LLP; and David J. Marmins, partner, Arnall Golden Gregory LLP.

Following the break-out groups, each group leader shared the group’s findings and conclusions. The session concluded with a wrap-up by Reeves followed by a question and answer session.

Roundtable Discussion

The final session of the morning was a roundtable discussion on the topic of “Exploring Gender Differences: Communicating in the Workplace and the Courtroom.” The panel was moderated by Hon. Kimberly Esmond Adams, judge, Fulton County Superior Court, and



“Exploring Gender Differences: Communicating in the Workplace and the Courtroom” panelists include (left to right) Kali Beyah, assistant general counsel, Delta Air Lines; Neil Wasser, chair, executive committee, Constangy, Brooks, Smith, & Prophete LLP; Angela Payne James, partner, Alston & Bird LLP; Hon. Herbert E. Phipps, presiding judge, Court of Appeals of Georgia; and moderator, Hon. Kimberly Esmond Adams, Fulton County Superior Court.



Georgia Diversity Program Vice Chair Clyde Mize (standing) poses with members of Morris, Manning & Martin, one of the platinum sponsors of the luncheon.

included Hon. Herbert E. Phipps, presiding judge, Court of Appeals of Georgia; Angela Payne James, partner, Alston & Bird LLP; Kali Beyah, assistant general counsel, Delta Air Lines; and Neil H. Wasser, chair, executive committee, Constangy, Brooks, Smith & Prophete LLP. Topics addressed included how women should give voice to their concerns as men are more inclined to speak up when they are unhappy about work assignments, compensation or support staff. Women often forget to advocate for themselves; they should practice their presentations and be prepared for pushback. Gender differences in communication styles also tend to differ according to age. Senior women are more comfortable in communicating their needs whereas

younger women are less comfortable doing so. Coaching should be required for law firm leaders on listening, understanding and eliminating “tone deafness” to help resolve this problem. Another point made by the panel is that it is important to know your value to the organization and to be able to list your accomplishments. If there are concerns, don’t complain but present them in the right way to the individual who can provide a resolution to the problem. The panel’s cumulative advice was that timing and context, credibility and proving your value are all key in communicating and leading in the workplace.

Luncheon

Lunch began with a welcome from Jeff Davis, executive direc-




Marian Cover Dockery introduces members of the roundtable on "Exploring Gender Differences: Communicating in the Workplace and the Courtroom."



Teresa Wynn Roseborough, executive vice president, general counsel and corporate secretary, The Home Depot Corporation, delivers the keynote address.

tor of the State Bar of Georgia, followed by the keynote address. Teresa Wynn Roseborough, executive vice president, general counsel and secretary of The Home Depot Corporation spoke to the participants, sharing her personal journey from the University of North Carolina School of Law, where she graduated third in her class and was editor-in-chief of the *North Carolina Law Review*, to her current position as a high-level executive.

We are deeply grateful to our law firm and corporate sponsors, listed GDP planning committee members, steering committee members and volunteers whose contributions made our program a huge success. 



Marian Cover Dockery is an attorney with a background in employment discrimination and the executive director of

the State Bar of Georgia Diversity Program. For more information on the Diversity Program, visit www.gabar.org.

THANK YOU

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DIVERSITY PROGRAM

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Three hours of your time is all we need for a
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No high school mock trial prerequisite for judging
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Current attorney coaches are not eligible.

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At least one round of HSMT judging panel experience or
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at the district level.

Feb. 27 in the following cities:

Atlanta, Cartersville, Cumming, Douglasville, Jonesboro, Macon
and Valdosta; Feb. 25 and 28 in Decatur

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At least two rounds of HSMT judging panel experience or
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at the state level.

Lawrenceville, March 19

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Contact the Mock Trial Office with questions:

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The Franklin County Courthouse at Carnesville

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

The second and third decades of the 19th century saw brick courthouses sprout all across the Georgia Piedmont. With its external staircase beneath a classical portico supported by four Doric columns, the 1826 Franklin County Courthouse was typical of these sturdy brick vernacular buildings. Here was a building inspired by the Greek Revival creations of Robert Mills in South Carolina. This simple style defied change until after the Civil War. Created in 1784, the enormous expanses of the original Franklin County were whittled away over the years. Nine new counties in Georgia were carved from Franklin. Many of these “offspring” counties would build similar court buildings. As late as 1864, Banks County completed an extremely similar building which still stands today at Homer, one of the few remaining standing examples of this once pervasive style.

The history of Franklin County’s first court buildings is sketchy. It appears that a log courthouse was built near the present site of Carnesville in 1793. The exact date of the settlement of Carnesville is not known, but county officials authorized the erection of a new courthouse there in 1805. The building was completed the



Franklin County Courthouse at Carnesville. Built in 1826, demolished in 1906.

Photo credit: Georgia Department of Archives and History

next year, and Carnesville was incorporated in 1807. No description of the 1806 courthouse survives. It was replaced by this 1826 brick structure, which would faithfully stand on the square in Carnesville for 80 years.

Carnesville experienced seemingly endless frustration as early railroads passed the town by. The 1880s began a long period of railroad scheming in Carnesville, which would see the town’s railroad dreams appear to materialize again and again only to vaporize in a series of agonizing failures. Meanwhile, only 10 miles away on the Elberton Airline, the railroad town of Lavonia experienced meteoric growth. A modest village of 283 in 1890, the place became a hot bed of New South passion by 1910, boasting more than 1,700 residents. Only 30 years after her birth, Lavonia had a flour mill grinding 90 barrels a day, a cotton mill with almost 5,000 spindles, a brick yard capable of firing 50,000 bricks a day, a prosperous cotton seed oil mill, two hotels and a bank. Here was a shining example of the railroad’s power to bestow the blessing of the new age in rural areas. Although these gifts would prove temporary, in 1910, Lavonia was everything Carnesville was not. Carnesville’s population remained static. The town listed 275 residents in

1890, and in 1910 the village could count only 322.

In this context, it is not surprising that in 1903 Lavonia, despite her location on the very western edge of Franklin County, made an all-out effort to capture the county seat. In her effort to steal away the county seat, Lavonia offered to build a new courthouse at no cost to the taxpayers. Additionally, Lavonia charged that Carnesville simply advocated continued use of the old 1826 building in order to save the expense of a new building, and that, after the election, county officials in Carnesville would dynamite the aging building in order to get a new courthouse in Carnesville built at taxpayer's expense. It was a foul charge, but by all appearances county leaders in Clarkesville had done exactly that in 1898, after a notable battle with Toccoa over the Habersham County seat of justice. Leaders in Carnesville were incensed by the charge calling it "false, slanderous and contemptuous." They doubled their arguments against Lavonia on geographical grounds, citing its peripheral location. Lavonia lost her bid for the Franklin County seat, and Carnesville began plans to construct a new courthouse to cement her victory.


In 1904, the Franklin County *Advance* ran an article about the great Louisiana Purchase Exposition then underway in St. Louis. The paper included a picture of New York architect Cass Gilbert's Palace of Fine Arts, a building literally dripping with the Baroque excesses of Beaux-Arts Classicism. Although a long distance, indeed, from the wild exuberance of the 1904 St. Louis World's Fair, Walter Chamberlain's 1906 Franklin County Courthouse at Carnesville reveals the influence of American Beaux-Arts Classicism which was then dominating the nation's public architecture in the North. Here, as in Hazlehurst the year before, Chamberlain employed the modern material of solid concrete block. At Carnesville, he fashioned four equal porticos, one facing each



Photo by Wilber W. Caldwell

The Franklin County Courthouse at Carnesville, built in 1906, Walter Chamberlain architect.

side of the town's ample square, each supported by paired columns flanked by massive block piers in the Beaux-Arts mode.

This building is another product of the Falls City Construction Company of Louisville, Ky. With its imposing lantern, the concrete block and yellow brick walls of Chamberlain's 1906 Franklin County Courthouse represent what is arguably this architect's best work in Georgia. Still, like most of Fall City's work in the state, the building evokes little flamboyance and even less purely Southern imagery. It is thus a far cry from the many uniquely appropriate dual Neoclassical symbols designed by J. W. Golucke and Frank Milburn. 

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


CORRECTION




In the October issue of the *Journal*, the Greene County Courthouse at Greensboro was incorrectly identified as the Greene County Courthouse at Greenville. We apologize for this error.


Kudos

> **Kutak Rock LLP** celebrated its **50th anniversary** in September, hosting an open house for clients and friends at the National Center for Civil and Human Rights. Kutak Rock was founded in 1965 in Omaha, Neb., and became one of the first national law firms after opening offices in Atlanta, Denver and Washington, D.C., in 1977 as a result of the vision of its now deceased co-founder, Robert J. Kutak, to challenge the notion that clients had to engage firms in New York City to handle sophisticated legal work.


>  The **St. Thomas More Society, Inc.**, honored Supreme Court of Georgia Presiding Justice **P. Harris Hines** with the **St. Thomas More Award** for his commitment to justice for youth and his leadership on the Supreme Court Commission on Justice for Children. The award was presented during the Red Mass and Awards Luncheon in October. The St. Thomas More Society, Inc., is a nonprofit society formed in 1993 to provide a means of fostering the spiritual, intellectual and professional growth of its members, while also providing service to the Roman Catholic Church of Georgia.


>  **Morgan Clemons**, a regulatory compliance attorney with **Aldridge Pite LLP**, was recognized as a **Leading Lady – “Emerging Leader”** (35 years old and under) in the housing and mortgage industries at the Women in Housing Leadership Forum in Dallas, Texas, in September. More than 40 women were recognized as leading ladies in politics, banking and beyond who are influencing the mortgage industry.


> Attorney **Flavia J. Tuzza** announced the launch of her new website, **legaleatscookbook.com**, for her previously published cookbook, **“LegalEats, A Lawyer’s Lite Cookbook.”** The cookbook, written by a lawyer for lawyers (and other lean and mean legal types), is organized in a tongue-in-cheek fashion using a take-off of “legalese” to describe the recipes.

>  **Bouhan Falligant** Partner **Dennis Keene** presented at the seminar **“Investigating and Litigating the Commercial Motor Vehicle Accident,”** during a motor vehicle workshop sponsored by the Georgia Motor Trucking Association in September at the Historic Jekyll Island Club. The seminar provided motor carrier

owners, directors and safety managers with the necessary knowledge to ensure accidents are properly investigated and documented. Keene discussed the legal aspects of managing an accident scene and pretrial issues.

>  **Long & Holder, LLP**, announced that **Tom Holder** was elected **secretary** of the **Worker’s Injury Law & Advocacy Group (WILG)**. WILG is a national organization dedicated to the protection of injured workers and their families.

>  **Culley C. Carson IV, The Carson Law Firm PLLC**, was appointed to a two-year term on the **UNC-TV Board of Trustees** by North Carolina Speaker of the House Tim Moore. UNC-TV provides people of all ages with enriching, life-changing television through its distinctive array of programs and services.

>  Georgia attorneys **Chris Carpenter**, partner at **Garrett, McNatt, Hennesy and Carpenter 360; Jennifer Rippner**, executive director of **Education Policy and Partnerships** for the University System of Georgia and coordinator for the **Georgia Alliance of Education Agency Heads; Don Waters**, chairman, president and chief executive officer of **Brasseler, USA;** and **Brad Bryant**, the vice president of **REACH**, were recently approved by the Georgia Student Finance Authority to serve on the **REACH Georgia Foundation**. This foundation supports the Realizing Educational Achievement Can Happen (REACH) Program, a need-based scholarship and mentoring program designed to prepare students to access and complete college.

>  **Nelson Mullins** announced that partner **Jeong-Hwa Lee “June” Towery** was appointed to the **University of Georgia School of Law’s Law School Association Council** for a three-year term. The Law School Association Council is the leadership board of the University of Georgia School of Law’s alumni association, the Law School Association (LSA). The LSA seeks to foster a permanent affiliation and fellowship among all lawyers who attended the University of Georgia or its School of Law, to promote the interests of the University of Georgia School of Law and the cause of legal education, and to strive for the improvement of the administration of justice.



Dial



Murphy



Meyer



Davis



Jett



Deal



Ganz



Faris

Kilpatrick Townsend & Stockton announced that partners **Audra Dial** and **George Murphy**, and associate **Bill Meyer** were honored with the inaugural **Tapestri Legal Team of the Year Award** for their work to bring a civil case on behalf of a victim of human trafficking. The award is given to a team of attorneys who have given back to the community in a meaningful way by helping human trafficking victims and their families rebuild their lives.

Associate **Kimberlynn Davis** was named to the **Atlanta Intellectual Property Inn of Court**. Established in 2010, the Atlanta IP Inn of Court serves as a forum for advancing professionalism, civility, ethics and legal excellence in the Atlanta IP legal community.

Associate **John Jett** was appointed to the **University of Georgia School of Law's Law School Alumni Association Council**. The Law School Association Council is the leadership board of the University of Georgia School of Law's alumni association, the Law School Association (LSA). The LSA seeks to foster a permanent affiliation and fellowship among all lawyers who attended the University of Georgia or its School of Law, to promote the interests of the University of Georgia School of Law and the cause of legal education, and to strive for the improvement of the administration of justice.

Associate **Jennifer Fairbairn Deal** has been named as a **Barrister** to the **Logan E. Bleckley Inn of Court**, a chapter of the American Inns of Court comprised of Atlanta area trial lawyers and judges committed to the promotion and study of professionalism, ethics, civility, and legal skills. Members of the Bleckley Inn meet regularly to participate in and present programs on matters related to ethics and professionalism in the legal field and other current litigation topics.

Associate **Josh Ganz** was appointed to the **Board of Directors** of the **Atlanta Community ToolBank**, an inventory of tools for lending to charitable orga-

nizations to increase the impact of their mission-related efforts in the community.

Associate **James Faris** was appointed to the **Board of Directors** of the **Georgia Law Center for the Homeless (GLCH)**. Formed more than 30 years ago, the GLCH plays a critical role in the continuum of care for homeless individuals and families in Georgia.



The **Georgia Trial Lawyers Association** announced attorney **Andrew J. Conn** of **Savage, Turner & Pinckney**, was selected for the **2015-16 Leadership Education & Advanced Direction Program (LEAD)**. Now entering its third year,

the widely acclaimed LEAD Program serves to train and equip GTLA members who have been identified as potential leaders in the association with the necessary tools to take the next steps in their legal careers, both in and out of the courtroom.



The **American Bar Association** announced that Georgia Regents University Senior Legal Adviser **Laverne Gaskins** was appointed **representative** to the **United Nations Economic and Social Council** for a one-

year term commencing with the adjournment of the 2015 Annual Meeting. The ABA serves to address issues of great importance to the profession, the association and the public.




FordHarrison LLP announced that partner **C. Lash Harrison** was awarded **Emory University School of Law's 2015 Distinguished Alumni Award**.

The award is given to an alumna or alumnus who embodies the values of the school and has demonstrated extraordinary achievement in the legal profession and in service to society.



Holland & Knight LLP announced that partner **Joshua Bosin** was selected as one of the nation's "**Best LGBT Lawyers Under 40**" for 2015 by the National LGBT Bar Association. Each year, the LGBT Bar recognizes approximately 40


lesbian, gay, bisexual or transgender legal professionals less than 40 years old who have distinguished themselves in their field and demonstrated a profound commitment to LGBT equality.

>  **Davis, Matthews & Quigley, P.C.**, announced that associate **Jenny Leigh Evans** was elected to the **Board of Directors** of the **State YMCA of Georgia, Inc.** Evans practices in the domestic relations and family law practice group.




Hunton & Williams honored partner **Lawrence J. Bracken II**; associates **Clare Ellis**, **Andrew A. Stulce**, **Laura Thayer Wagner** and **James D. Humphries IV**; and Hunton & Williams alumni **Audrey B. Bergeson**, **Bradley W. Grout** and **Rita A. Sheffey** with the **E. Randolph Williams Award**. Recipients of the annual award, named after one of the firm's founders, each contributed more than 100 hours of pro bono legal services to indigent clients and nonprofit organizations during the firm's fiscal year ending March 31.


>  **Lewis Brisbois LLP** announced that partner **Jonathan Goins** was elected to the **Board** of the **National Bar Association's Commercial Law Section (NBA-CLS)**. The NBA-CLS is one of 21 sections of the NBA and is focused on bringing its members together with corporate legal departments for innovative programming, client development opportunities and on-going advancement of corporate diversity initiatives.


>  The **Georgia Justice Project** announced that **Norman M. Brothers Jr.**, UPS legal department manager, is the new **board chair** for fiscal year 2016. The Georgia Justice Project provides pro-bono legal services combined with social services and employment support for people accused of a crime.


On the Move


In Atlanta

>  **Hoffman & Associates** announced the addition of **Cassandra Ceron** as an **associate**. Ceron specializes in the areas of wills, trusts, estate administration and probate, and guardianship/conservatorship of incapacitated adults. The firm is located at 6100 Lake Forrest Drive, Suite 300, Atlanta, GA 30328; 404-255-7400; Fax 404-255-7480; hoffmanestatelaw.com.

>  **Holland & Knight** announced the addition of **Ethan Cohen** as a **partner**. Cohen handles complex commercial disputes across the country, with a focus on representing wealth management and financial services industry participants. The firm is located at 1180 West Peachtree St., Suite 1800, Atlanta, GA 30309; 404-817-8500; Fax: 404-881-0470; www.hklaw.com.

>  **Lee & Hayes, PLLC**, announced the addition of **Robert Madayag III** as a **partner**. Madayag focuses on intellectual property law, working with both established and emerging companies. The firm is located at 1175 Peachtree St. NE, 100 Colony Square, Suite 2000, Atlanta, GA 30361; 404-815-1900; Fax 404-815-1700; www.leehayes.com.

>  **Duane Morris LLP** announced the addition of **Cynthia Counts** as a **partner**. Counts focuses her practice on media and First Amendment law, including issues dealing with libel, copyright and privacy. The firm is located at 1075 Peachtree St. NE, Suite 2000, Atlanta, GA 30309; 404-253-6900; Fax 404-253-6901; www.duanemorris.com.

>  **Taylor English Duma LLP** announced the addition of **Alisa Cleek** as an **attorney**. Cleek's practice centers on defending employers in employment-related litigation and representing employers in traditional labor matters, including class and collective actions, restrictive covenants, discrimination, harassment and arbitration and collective bargaining. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.

>



Bradford



Jacobson

Chamberlain, Hrdlicka, White, Williams & Aughtry announced the addition of **Cassandra Bradford** and **Gregg Jacobson** as **associates**. Bradford focuses on

serving clients faced with tax controversy and litigation matters before federal, state and local taxing authorities, and in all federal and state courts in which tax disputes are litigated. Jacobson brings his litigation experience to bear for his clients, counseling them in matters related to large industrial and power projects. The firm is located at 191 Peachtree St. NE, 34th Floor, Atlanta, GA 30303; 404-659-1410; Fax 404-659-1852; www.chamberlainlaw.com.

> **Long & Holder, LLP**, announced it has changed locations. The firm is now located at 260 Peachtree St. NW, Suite 1401, Atlanta, GA 30303; 404-523-61001; Fax 404-688-0500; www.longandholder.com.

>



Butler Wooten Cheeley & Peak LLP announced the addition of **Rory A. Weeks** as an **associate**. Weeks' practice areas include business torts, products liability and personal injury. The firm is located at 2719 Buford Highway, Atlanta, GA 30324; 404-321-1700; Fax 404-321-1713; www.butlerwooten.com.

>



Levine Smith Snider & Wilson, LLC, announced the addition of **Melissa Davis Strickland** as an **associate**. Strickland handles a full range of domestic relations matters including divorce, prenuptial and postnuptial agreements, child custody, child support, alimony, contempt actions, paternity and legitimation. The firm is located at One Securities Centre, 3490 Piedmont Road NE, Suite 1150, Atlanta, GA 30305; 404-237-5700; Fax 404-237-5757; lsswlaw.com.

> **Jamie Miller** announced the formation of **JamieMiller Law, LLC**, specializing in employment law. The firm is located at One Securities Centre, 3490 Piedmont Road NE, Suite 1200, Atlanta, GA 30305; 404-841-9400; Fax 404-869-0238; www.jamiemillerlaw.com.

> **Burr & Forman** announced the addition of **G. Wilson "Rocky" Horde III** as a **partner** and **Nathan Gruber** as an **associate**. Horde focuses his practice on serving clients in commercial real estate acquisition, finance, leasing, development, operation and disposition. Gruber's practice concentrates on numerous transactions and contracts including asset purchase agreements, franchise agreements, stock and restricted stock purchasing agreements, promissory notes, real estate sales contracts, cease and desist letters and shareholder agreements. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.

WANT TO SEE YOUR NAME IN PRINT?

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.



Farmer

Conger

Kilpatrick Townsend & Stockton announced the addition of **Sarah Jurkiewicz** as **counsel** and **Meghan Farmer, Brittany Summers** and **Ava Conger** as **associates**. Jurkiewicz concentrates

her practice in real estate and finance transactions. She has experience in all aspects of commercial real estate, including acquisitions, dispositions, development, leasing and operations of office, retail, multifamily and hotel properties. Farmer specializes in privacy and data protection and has extensive experience developing and implementing privacy and data protection programs in large commercial and government organizations. Summers concentrates her practice in corporate and banking transactions, payments law and regulatory law. Conger joins the complex commercial litigation team in the firm's litigation department. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



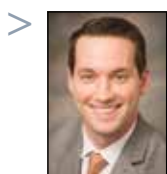
Stites & Harbison, PLLC, announced the addition of **Harold E. Gill Jr.** as a **partner**. Gill's real estate practice includes concentrations in lending, development, condominiums and hospitality. He represents many local, regional

and national banks throughout Georgia and the Southeast in closing loans secured by commercial real estate. The firm is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

In Augusta

> **Crowder Stewart LLP** announced that **Edmund A. Booth Jr.** joined the firm as **of counsel**. Booth practices in the areas of federal criminal law and complex civil litigation, including appeals. The firm is located at 540 James Brown Blvd., Augusta, GA 30901; 706-434-8799; Fax 706-922-7874; www.crowderstewart.com.

In Buford



Chandler, Britt & Jay, LLC, announced the addition of **John A. Mays Jr.** as **of counsel** to the personal injury, workers compensation and civil litigation sections. The firm is located at 4350 S. Lee St., Buford, GA 30518; 770-271-2991; Fax

770-271-9641; www.cbjblawfirm.com.

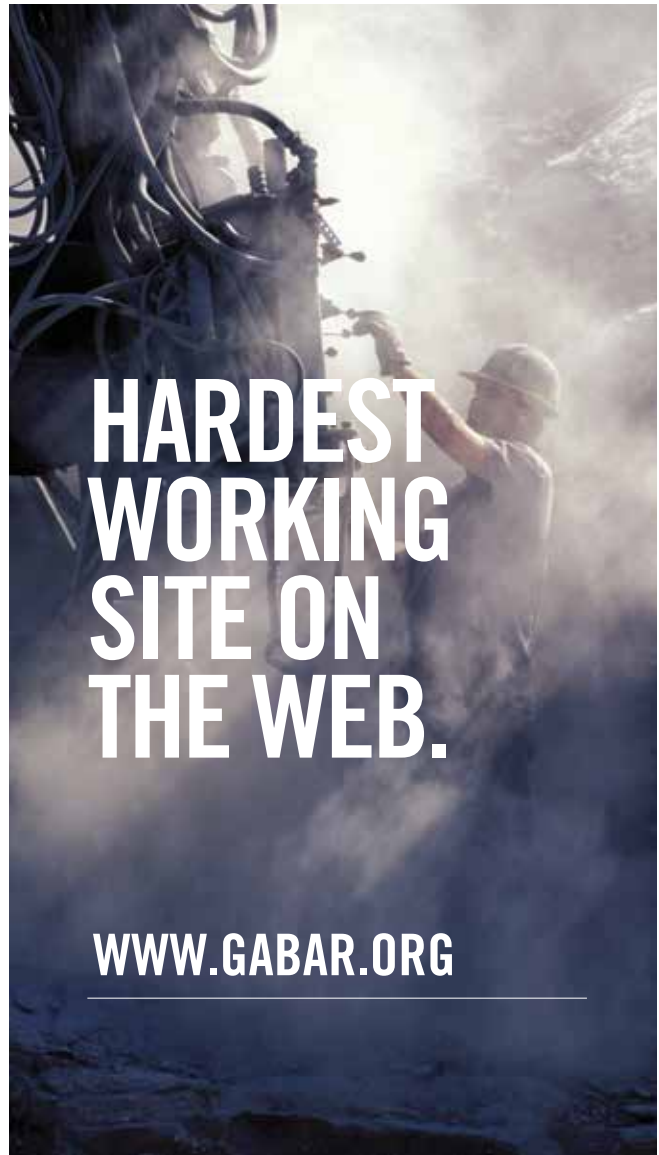
In Savannah



HunterMaclean announced the addition of **David Burkoff** as a **partner**. Burkoff's practice includes disputes related to banking, educational institutions, health care, employment matters, insurance, antitrust, nonprofit organizations, fiduciary relationships, and the hospitality and entertainment industries. The firm is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

In Birmingham, Ala.

> **Swift, Currie, McGhee & Hiers, LLP**, announced its expansion into Alabama with the opening of a new office in Birmingham. The firm is located at 2 N. 20th St., Suite 1405, Birmingham, AL 35203; 404-874-8800; www.swiftcurrie.com.



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For more information, see the inside back cover

Show Me My Money

by Paula Frederick

Nice article in the *Legal Reporter*,” your buddy Glenn says as you answer the phone. “I didn’t know you settled the Thompson case.”

“Sure did!” you acknowledge happily. “And I’ve been meaning to call you. I want to buy you dinner for referring the Thompsons to me!”

“Dinner would be good,” Glenn admits. “But a share of your fee would be even better.”

“My fee?” you ask, confused.

“Look—you got a \$150,000 fee, right? I figure 10 percent is fair for my share. After all, you just admitted you wouldn’t have gotten the case without me . . .”

“But . . . isn’t that fee splitting?” you sputter. “That’s unethical!”

Is it?


Georgia Rule of Professional Conduct 1.5(e) allows lawyers who are not in the same firm to divide a fee under two circumstances—where the division is based upon the proportion of work each lawyer has done, *or* where each lawyer assumes joint responsibility for the representation.

What exactly is “joint responsibility?” The comments to the Rule clarify that if a lawyer who has only referred a case and done no other work on it expects a share of the fee, she must agree to be “financially and ethically responsible for the representation.” (Comment 7, Rule 1.5). Malpractice liability is the biggest risk for a referring lawyer, but the hope is that lawyers will only refer cases to people who they know to be diligent and ethical.

In addition to the circumstances mentioned above, Rule 1.5(e) requires lawyers who are dividing a fee to tell the client what share each lawyer will receive. If the client objects the lawyers may not share the fee.



Glenn’s demand for money does not comply with the Rule. He did not do any work on the case, and he did not agree to joint responsibility for the case at the outset. There was no notice to the Thompsons and no opportunity for them to object to a fee division.

Looks like Glenn is going to have to settle for dinner. 



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



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State Bar
of Georgia

Attorney Discipline Summaries

(Aug. 22, 2015 through Oct. 9, 2015)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Steven Salcedo

Decatur, Ga.

Admitted to Bar 2001

On Sept. 14, 2015, the Supreme Court of Georgia disbarred attorney Steven Salcedo (State Bar No. 382035). The following facts are admitted by default. Salcedo represented a client in two medical malpractice actions regarding complications from an allergy shot and laser ablation. Salcedo filed suit regarding the allergy shot but failed to appear at a status conference and the suit was dismissed. Salcedo failed to file suit regarding the laser ablation. Salcedo did not respond to the client's attempts to contact him and failed to return her files.

In aggravation of discipline, the Investigative Panel found that Salcedo abandoned two claims, suggesting a pattern of misconduct and that he failed to respond to the Notice of Discipline.

Tesha Nicole Clemmons

Decatur, Ga.

Admitted to Bar 2006

On Sept. 14, 2015, the Supreme Court of Georgia disbarred attorney Tesha Nicole Clemmons (State Bar No. 110306). The following facts are admitted by default. Clemmons was retained in February 2014 to recover \$6,365 in medical expenses the client incurred after an automobile accident. Clemmons failed to respond to the client's efforts to contact her. In July, without the client's knowledge, Clemmons settled the claim for \$1,500, endorsed the settlement check and deposited it in her trust account. She failed to disburse any proceeds to the client and failed to maintain the proceeds in her trust account.

Clemmons made false statements regarding her communications with the client.

In aggravation, the Investigative Panel found that Clemmons acted willfully and dishonestly and that six formal complaints were pending against her. Clemmons previously received an Investigative Panel reprimand and a letter of admonition.

Jin Choi

Norcross, Ga.

Admitted to Bar 1984

On Oct. 5, 2015, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Jin Choi (State Bar No. 124972). Choi failed to properly manage funds entrusted to him in a fiduciary capacity in three matters, two of which involved business ventures and one of which involved his law practice. Choi previously received an Investigative Panel reprimand.

John R. Thompson

Swainsboro, Ga.

Admitted to Bar 1966

On Oct. 5, 2015, the Supreme Court of Georgia disbarred attorney John R. Thompson (State Bar No. 708600) following the unsuccessful appeal of his felony convictions for conspiracy under 18 USC § 371, bank fraud, wire fraud and mail fraud.

William Charles Lea

Atlanta, Ga.

Admitted to Bar 2001

On Oct. 5, 2015, the Supreme Court of Georgia disbarred attorney William Charles Lea (State Bar No. 442006). The following facts from three cases are admit-

ted by default. Lea was paid to represent a client in two DUI cases. Lea attended arraignments and filed motions but failed to communicate with the client. When the client received a notice to appear in court, Lea told him he need not appear because Lea would appear for him. Lea did not appear and the client was arrested on a bench warrant. The client dismissed Lea and demanded a partial refund of the fee, but Lea did not respond. In a second case, a client paid Lea to file a habeas corpus action, but Lea failed to file the action, failed to respond to the client's efforts to contact him and failed to refund any part of the fee. In the third case, a client paid Lea to represent him in a matter but Lea did no work on the case, failed to respond to his client's attempts to contact him and failed to refund the fee.

In aggravation the special master found prior discipline, including a current three-year suspension, a letter of admonition and

an Investigative Panel reprimand; dishonest or selfish motive; pattern of misconduct; multiple offenses; obstruction of the disciplinary process; failure to acknowledge the wrongful nature of his conduct; vulnerability of the victims; and indifference to making restitution.

Joel David Myers

Marietta, Ga.

Admitted to Bar 1998

On Oct. 5, 2015, the Supreme Court of Georgia disbarred attorney Joel David Myers (State Bar No. 533147). The following facts are admitted by default. Myers was retained by a client to represent him in a civil case. Myers did not adequately communicate with his client and did not respond to his client's inquiries about the case. Myers did not file pleadings, did not file for summary judgment and did not respond to discovery. Myers misrepresented to his client the work he had completed and the justification for his fees.

The client undertook to represent himself pro se and allowed Myers to withdraw. Myers refused to refund the fees he had not earned. Myers failed to respond to the Notice of Investigation.

In another matter, a client hired Myers to represent him to file design and patent applications with the U.S. Patent and Trademark Office. He paid Myers for the work plus additional sums to hold in trust for filing fees. Myers told his client that he had filed all the applications and declarations and had paid the fees, but he had not done so, causing the applications to be deficient and subject to being declared abandoned. The client discovered that Myers had billed him twice for the same work. In addition, Myers convinced his client to lend him \$600 without the required consultation or consent necessary to enter into a business transaction with a client. When the client learned that Myers had not paid the filing fee or submitted the declarations to support the patent



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applications, he discharged Myers and hired new counsel, causing him to pay additional fees. Myers failed to respond to the Notice of Investigation.

In aggravation, the Investigative Panel cited Myers' deceptive conduct and false statements to his clients.

Dennis S. Childers

Atlanta, Ga.

Admitted to Bar 1983

On Oct. 5, 2015, the Supreme Court of Georgia disbarred attorney Dennis S. Childers (State Bar No. 124408). Childers pled guilty in the State Court of Cherokee County to one count of theft by receiving stolen property.

In aggravation the special master considered Childers' disciplinary history, which included a six-month suspension and a letter of admonition; the commission of a crime involving dishonesty; and a failure to comply with disciplinary proceedings. In mitigation Childers presumably accepted some responsibility for his actions by entering the guilty plea.

Paul R. Koehler

Atlanta, Ga.

Admitted to Bar 1963

On Oct. 5, 2015, the Supreme Court of Georgia disbarred attorney Paul R. Koehler (State Bar No. 427600). Koehler represented a woman in a civil action against the grievant and his son, who had been married to the plaintiff and who the complaint alleged had engaged in a fraudulent transfer of real property to shield assets. Summary judgment was granted against the plaintiff and, while the appeal was pending, the plaintiff died. The Court of Appeals remanded the case to the superior court in May 2009 for the substitution of a proper party, but no motion to substitute was filed, and, in March 2011, the court granted the defendants' motion to dismiss, which Koehler appealed. While the appeal was pending, the probate court appointed a conservator and

administrator of the deceased client's estate, who engaged Koehler to continue the superior court litigation, but nothing more. Koehler moved to substitute the administrator as the party plaintiff in the superior court, but the motion was denied for lack of jurisdiction and the Court of Appeals later dismissed the appeal. The Supreme Court denied Koehler's petition for writ of certiorari and motions for reconsideration, which fully and finally decided the substitution issue against Koehler and made the appellate court decisions binding as to future proceedings. Nevertheless, Koehler thereafter filed numerous frivolous motions and other pleadings and appeals attempting to contest the issues already adversely adjudicated. Without the administrator's knowledge or consent, Koehler also named the administrator as plaintiff in a federal civil complaint against the superior court defendants and trial judge, in which he alleged a conspiracy to prevent the estate from asserting its rightful claims and made deceitful and misleading statements. The administrator required Koehler to dismiss that action, and to dismiss two cases in the Court of Appeals in which the Court nonetheless imposed frivolous appeals sanctions against the administrator. The administrator discharged Koehler and directed him to file nothing more for the estate, but he continued to file frivolous motions and to hold himself out as the attorney for the estate.

Suspensions

Peggy Ruth Goodnight

Atlanta, Ga.

Admitted to Bar 1987

On Sept. 14, 2015, the Supreme Court of Georgia suspended attorney Peggy Ruth Goodnight (State Bar No. 301445) until such time as she appears for the administration of a Review Panel reprimand. On May 19, 2014, the Court ordered Goodnight to receive a Review Panel reprimand. Although she

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has a fool for a client."*

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was notified on three separate occasions to appear for the reprimand, she failed to appear and failed to ask to be excused.

Clifford E. Hardwick IV

McDonough, Ga.

Admitted to Bar 1976

On Sept. 14, 2015, the Supreme Court of Georgia suspended attorney Clifford E. Hardwick IV (State Bar No. 325662) for 90 days. On April 13, 2012, Hardwick entered into a \$2,000 retainer agreement with an individual to file a motion for expedited bond on behalf of a third party. On April 20, the individual paid \$1,000 of the retainer fee, and Hardwick advised her that he would begin work on the bond matter. On May 14, the individual who had retained Hardwick told him that she had discovered that the motion had not been filed. Although Hardwick told the individual that the motion had been filed, the motion was not filed until the following day via courier. Hardwick informed the individual that he had given the motion to the courier service on May 14, and that he assumed it would be delivered for filing that day, but he later acknowledged that he did not check on the status of the motion before stating that it had been filed. On May 21, Hardwick notified the individual that a hearing date had been set, but she dismissed him from the case.

In mitigation the special master found that there was insufficient evidence to support a finding that the misrepresentation had been intentional, but, in aggravation, it was clear that the misrepresentation was made as to a material and significant fact. Also in aggravation, the special master noted that Hardwick had received two letters of admonition and had been suspended in 2010 for six months.

W. Burrell Ellis Jr.

Stone Mountain, Ga.

Admitted to Bar 1985

On Oct. 5, 2015, the Supreme Court of Georgia accepted the

petition for voluntary discipline of W. Burrell Ellis Jr. (State Bar No. 246085) for suspension of his license to practice law pending the termination of the appeal of his felony convictions in the Superior Court of DeKalb County.

Tony L. Axam

Atlanta, Ga.

Admitted to Bar 1974

On Oct. 5, 2015, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Tony L. Axam (State Bar No. 029725). In 2010 Axam agreed to act as a “paymaster” for a client, and was paid \$5,000 for each transaction. Another individual—at the direction of the client—directed a wire transfer of \$100,000 to what he believed was Axam’s trust account. Axam did not maintain a trust account, and he used his operating account to handle his business and personal funds. After Axam received the funds, he disbursed them according to the instructions of his client, retaining \$5,000 for his fee. Although the individual who had directed the transfer to Axam requested that he be notified of the disbursement, Axam failed to notify him. That individual repeatedly requested documentation of the disbursement, but Axam failed to provide an accounting until the individual filed a grievance. Axam admitted that he did not read the terms of the contract in which he was serving as “paymaster,” that he did not know the nature of the business dealings between his client and the other individual, and that he asked no questions about the transaction.

Tony Curtis Jones

Albany, Ga.

Admitted to Bar 1984

On Oct. 5, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of Tony Curtis Jones (State Bar No. 403935) for an additional one-year suspension to run concurrent with

an existing suspension with conditions for reinstatement. Jones was under suspension pursuant to two Court orders. One suspension was for 18 months with reinstatement conditioned on him repaying his client the full judgment entered against him. The second suspension was for an additional six months with conditions to resolve three additional grievances.

Docket No. 6484—In January 2011, Jones was paid \$4,000 to defend a client against criminal charges. When Jones was suspended in October 2011, he told the client that he could no longer represent him. Jones offered to refund unearned fees, but the client had already filed a grievance. Jones failed to timely respond to the Notice of Investigation. Jones subsequently resolved the refund matter with his client.

Docket No. 6485—In December 2009, a client retained Jones to defend him against charges of sexual assault and failure to register as a sex offender, along with a probation revocation action based on the new criminal charges. The client’s probation was revoked, and he entered a plea on the new charges. Jones said that he told his client that his representation ended with the plea, and that he would need new counsel for any appeal. After the plea, the client wrote Jones three letters regarding an appeal, but Jones claims that he never received them. Jones failed to timely respond to the Notice of Investigation.

Docket No. 6486—In June 2009, a client’s family retained him to defend the client against armed robbery charges. After the client’s first trial ended in a mistrial, he was indicted on additional armed robbery charges. On the day of the new trial, when Jones was not in good standing with the State Bar for failure to pay dues, Jones appeared on the client’s behalf and the client agreed to plead guilty to all charges. The agreement called for a 20-year sentence, with credit for time served. The

client was sentenced to 20 years, with no credit for time served. Jones told the family that he would look into correcting the sentence or withdrawing the plea, but he took no action and the time for withdrawing the plea expired. Jones failed to respond to the Notice of Investigation.

The Court noted in aggravation that Jones' disciplinary history evidenced a pattern of misconduct; that the petition covered multiple offenses; and that Jones had substantial experience in the practice of law. In mitigation, all of the grievances arose from conduct that occurred between 2009 and 2011, during which time Jones was struggling with personal problems and mental health issues and that these same problems led to his earlier suspensions. The Court noted that Jones lacked a dishonest or selfish motive; that he accepts responsibility for his errors and is remorseful; and that once he became engaged in the disciplinary proceedings, he exhibited a cooperative attitude.

Jones must refund \$2,000 to the mother of the client in Docket 6486; and must submit to binding fee arbitration in Docket 6486, if the client's mother requests such arbitration.

Suspension and Public Reprimand

Hugh O. Nowell

Douglasville, Ga.

Admitted to Bar 1979

On Oct. 5, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of Hugh O. Nowell (State Bar No. 547375) for a two-month suspension and a public reprimand. In May 2012 and January 2013, Nowell testified falsely in two depositions in a civil suit filed against a corporate entity and several testamentary trusts; Nowell was general counsel and/or an officer of the corporate entity and was trustee of the trusts. The false testimony was material to

the merits of the litigation, and Nowell gave the testimony knowing it was false because truthful answers would help the plaintiff and would hurt the defendants with whom he was affiliated. In April 2013, Nowell confessed to his false testimony to the court and opposing counsel, and later gave a truthful deposition. In May 2013, Nowell reported his misconduct to the State Bar. The litigation was ultimately decided against the plaintiff, on grounds unrelated to Nowell's false testimony. But for his voluntary disclosure, Nowell's misconduct could have remained undiscovered.

In aggravation, the special master concluded that Nowell acted with a dishonest motive. In mitigation Nowell had no prior discipline; he made a good faith effort to rectify the consequences of his misconduct; he made a full and free disclosure and was cooperative in the disciplinary proceedings; he has a good reputation; and he demonstrated genuine remorse for his conduct.

Review Panel Reprimand

Thomas James Ford III

Roswell, Ga.

Admitted to Bar 1996

On Oct. 5, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of Thomas J. Ford III (State Bar No. 268235) for a Review Panel reprimand. Ford represented a woman and her daughter who were charged with murder. The woman and her daughter had retained another lawyer to represent them, but, after paying the lawyer, the lawyer was removed because of a conflict. The retained lawyer did not return the fee, which resulted in Ford taking the woman's case for a reduced fee and with no money for experts. Ford relied on the daughter's court-appointed counsel to obtain the services of a forensic pathologist. When he found that an expert had not been

retained, Ford should have moved for a continuance. Ford was not prepared for trial, which resulted in a guilty verdict against his client—although her motion for new trial, presented by new counsel, has been granted. Ford received an Investigative Panel reprimand in 2014.

In mitigation Ford stated that during the time of his representation, he was in the midst of a divorce and that he also pled guilty to a DUI.

Interim Suspensions


Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Aug. 22, 2015, one lawyer has been suspended for violating this Rule and one has been reinstated.

Reinstatement Granted

William Slater Vincent

Marietta, Ga.

Admitted to Bar 1982

On Oct. 6, 2015, the Supreme Court of Georgia reinstated attorney William Slater Vincent (State Bar No. 727801) to the practice of law in Georgia. 



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



Top Law Practice Management Program Requests in 2015

by Natalie R. Kelly

In 2004, this column revealed the, “Top 10+ LPM Requests for 2004,” highlighting the most frequently asked questions of the Law Practice Management Program during that year. To see how far we’ve come—or maybe not—here are the questions asked of the Law Practice Management Program back in 2004 along with questions from 2015.

The No. 1 question in 2004 was “Where do I get malpractice insurance?” The answer then, as well as today, is that the State Bar of Georgia does not endorse any particular malpractice carrier. However, a list of carriers with general contact and coverage information is available on the State Bar’s website and by request from the Law Practice Management Program. The listing consists of carriers admitted to write insurance in Georgia, and like in 2004, the information can be emailed, mailed or faxed to members. Interestingly enough, while the program can still fax the information, requests for this and any other information to be faxed was almost non-existent this year. So, the real death of the fax and the advent of email is just one of the observations that can be drawn from the differences in service requests in 2004 and 2015.

The No. 2 question was “Does the State Bar provide health insurance for members?” Back then the answer was no, but the program could send members a generic list of providers. While the list is still available, the State Bar now has a recommended insurance broker, Member Benefits, Inc. Members can access brokerage services for medical insurance and related coverage via the private insurance exchange set up just for State Bar of Georgia members, their employees and families.

We are still getting asked the No. 3 question: “What software should we use for case management, time and billing, and accounting?” The Law Practice




Management Program has consultants in the department who continue to analyze the technical needs of your practice and recommend software application tools that are suitable for your firm. The recommended products are ‘best of breed’ and are chosen because of their quality, pricing and support. The program also continues to perform confidential, onsite evaluations via a technical consultation for a discounted consulting fee based on the number of attorneys in the firm. The major change since 2004 has been the growth and importance of the Internet in law practice. Cloud-based product and service options are now a standard consideration for firms, and the data and security issues of today have led to more discussions about cloud-based data storage and backup. There has also been increased concern with data encryption.

“How long am I required to keep closed client files?” The program continues to advise members that the ethics rules do not require lawyers in Georgia

to keep closed client files for any particular length of time. However, Bar Rules do require members to maintain trust accounting records for at least six years. Also, due to the possibility of a two-year tolling of the four-year period in which a complaint can be filed against a lawyer, it is generally recommended that lawyers set up their file retention policies so that they are keeping closed client files for seven years.

Speaking of seven years and file retention, a question that has been frequently asked this year is, "What is a good service to use for backing up my files online?" The website Backup Review, www.backupreview.info, is one of the best places to help find an answer to this question. Along a similar line of thought, lawyers want to know whether they can continue to use Dropbox for managing documents. If the information being stored or shared in Dropbox or related services is of a highly sensitive nature, then using a service like Viivo (www.viivo.com) or some other encryption technology would be in order.

While 2004 preceded the economic downturn and the period where many lawyers were unemployed, there were still a growing number of lawyers looking to go out on their own or start out in their own practice. So the question, "As a new lawyer, how do I go about setting up my practice?" remains common. The Law Practice Management Program provides extensive one-on-one consulting for new attorneys. The office visit for setting up a practice is preceded by the department providing the new attorney with a copy of "A Guide to Starting Your Georgia Law Practice." This departmental publication is updated annually and covers the practical information for starting new law practices. Included is information on deciding what form of practice to setup; operational checklist for the first day; how to find office space; checklists and forms for managing client files; sample fee agreements and other pertinent financial management forms; the full text of the trust accounting booklet mentioned above; advertising and marketing information; and technology recommendations.

Much has changed since 2004, but many of the basic practice management concerns in office management, finance, marketing and technology have remained consistent. For assistance with these concerns, please contact the law practice management staff, two of whom have not changed since 2004: Natalie Kelly, director, and Pam Myers, resource advisor. You may also contact Sheila Baldwin, member benefits coordinator, or Kim Henry, administrative assistant. We are here to provide you with answers to your practice management questions. 



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.

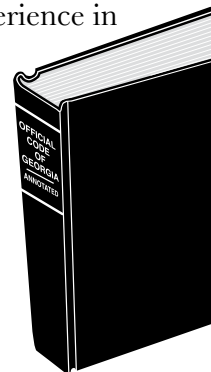
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Constitution Day Duly Noted and Friends Remembered

by Bonne Davis Cella

The Tifton Circuit Bar Association celebrated the 228th anniversary of the signing of the U.S. Constitution at a most appropriate location – Abraham Baldwin Agricultural College (ABAC), named for Georgia’s signer on that momentous day of Sept. 17, 1787, in Philadelphia.

Tifton Bar President Tamara Branch opened the meeting introducing guest speaker Dr. Hal Henderson, a retired professor of political science at ABAC and author of two books: “The Politics of Change in Georgia: A Political Biography of Ellis Arnall” (1991) and “Ernest Vandiver, Governor of Georgia” (2000). He also co-edited “Georgia Governors in an Age of Change: From Ellis Arnall to George Busbee” (1988) with Gary L. Roberts. Henderson reviewed the history of the Articles of Confederation, the Great Compromise and the Electoral College while revealing interesting and little known facts about the 39 signers of the Constitution. He cited Catherine Drinker Bowen’s book: “Miracle At Philadelphia: The Story of the Constitutional Convention.” Henderson agreed that it was indeed a miracle that the representatives ultimately came together and created a document to preserve the union of states.

Presiding Judge John J. Ellington of the Court of Appeals of Georgia and alumnus of ABAC was present



(Left to right) ABAC President Dr. David Bridges and Court of Appeals of Georgia Presiding Judge John J. Ellington prior to Ellington’s address to the ABAC student body.

Photos by Bonne Davis Cella


at the celebration and addressed the ABAC student body after lunch. Ellington graduated in 1980 with degrees in business and political science. He served as president of the Student Government Association and received the George P. Donaldson Award as the outstanding graduate in his class.

Honoring and Remembering Friends

John “Sandy” Sims is the oldest member of the Tifton Judicial Circuit Bar and received his 50-year certificate from the State

Bar of Georgia in 2012. He began his law practice in 1962 and continues his active career at Sims and Fleming. In honor of his recent 79th birthday, the Tifton Circuit Bar presented him with a birthday cake decorated in the colors of his beloved Florida Gators. A Georgia Bulldog also graced the dessert table to keep the peace.

Each year, Sandy and several friends from Tifton, Ocilla and Cordele participate in the J. Harvey Davis Memorial Golf Tournament. Judge Davis was a popular and well-liked attorney and superior court judge from Ocilla who died

in 2005. He and Sandy shared a 30-year association in law and both enjoyed playing golf. The tournament is held at various locations and at the beginning of the event participants share fond memories of Judge Davis—a friend they will never forget. 



Bonne Davis Cella is the office administrator at the State Bar of Georgia’s South Georgia Office in Tifton and can be reached at bonnec@gabar.org.



President Dr. David Bridges welcomes the Tifton Bar to ABAC for their luncheon.



The 2015 Harvey Davis Memorial Golf Tournament at Jekyll Island.



Sandy Sims with his Florida Gators birthday cake.



Dr. Hal Henderson addresses the Tifton Circuit Bar.



(Left to right) Attorney Emily Vowell and Tifton Bar President Tamara Branch at a Tifton Bar meeting.

Lawyering at the Intersection of Poor and Frustrated: A Clinic Approach

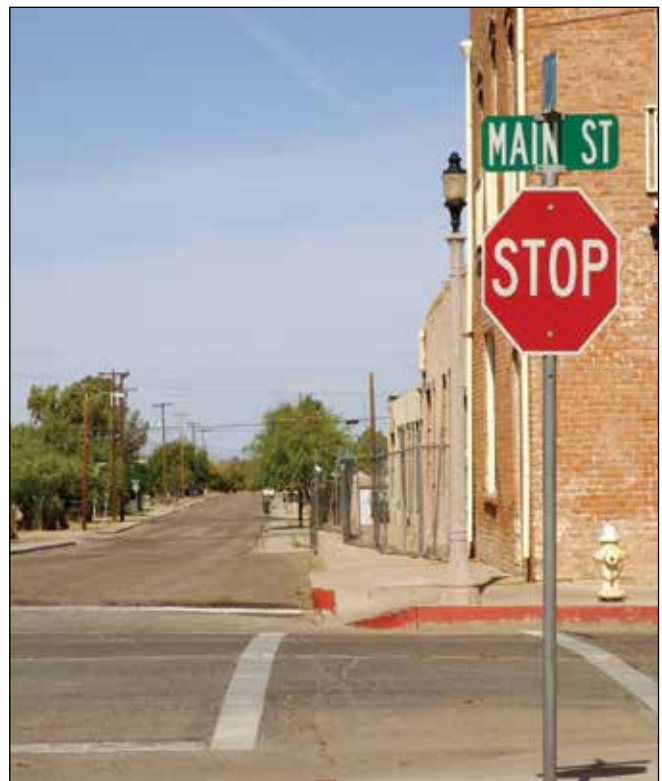
by Michael Monahan

Poverty does not mean you don't have legal needs to the same extent as the middle and upper class; in fact, according to a legal needs study issued in 2009 by the Committee on Civil Justice of the Supreme Court of Georgia Equal Justice Commission, low-income households in Georgia experience an average of three civil legal needs a year, totaling more than 2 million civil legal needs per year. These 2 million legal needs fall primarily in the areas of consumer, housing, family, health and education. And poverty always puts a spin on things.

In the last week of October, the State Bar's General Practice and Trial Law Section and Georgia Legal Services worked together to stage a statewide (as statewide as possible) Ask-a-Lawyer Day. It has become an annual event, mostly in recognition of the great need for access to legal assistance, and also because there's much to be learned by sitting down with poor people who have legal problems.

The Ask-a-Lawyer event is always held in conjunction with the American Bar Association's annual Pro Bono Celebration during the last week of October. Lawyers across the country participate in similar clinics or other events to highlight the need to support pro bono services.

The General Practice and Trial Law Section event served close to 300 people around the state in 22 locations—in places like Summersville, Claxton, Augusta



and Nashville. The legal issues covered a broad spectrum—from family violence to probate, student loans to Social Security benefits. We served a young lady with Aspergers Syndrome who had questions about getting help to manage her financial affairs. We helped a battered woman who, over 25 years, was never allowed by her husband to work or learn anything about the household's finances, learn about divorce, protective orders and support issues. We met people with not just one legal problem, but a constellation of problems.

In the process we also saw the frustration poor people have in dealing with access to the courthouse. We have but two federally funded civil legal services programs covering 159 counties with fewer than 100 staff

attorneys between them. We have many counties in Georgia with high poverty populations and low lawyer populations. We have Georgians who don't understand how the legal system works.

At the end of October, we had more than 100 volunteer lawyers stationed across the state who took the time to provide counsel and advice, validate the concerns of those they counseled and provide next steps and critical resources to people who would never have sought help except for the fact that a door was opened to them. The clinics provide a place to educate citizens on how the justice system works and to get feedback on how it may not work.

"It was a privilege to participate in Ask-A-Lawyer Day," said Linda Klein, American Bar Association president-elect. "The people I met during my day in Douglasville desperately needed help and it was so easy to make a big difference for them. I brought along a new member of our bar. He was surprised that he could help so many people even though he had little experience beyond law school. Next year when you participate in pro bono week, please bring young lawyers. The experience will assure they will be anxious to do pro bono work for the rest of their careers."

Trey Underwood, chair, General Practice and Trial Law Section added, "Members of the General Practice and Trial Law Section are proud to work with Georgia Legal Services each year to host this event. Most attorneys in the state are in the Atlanta area, and there are many low-income families in rural Georgia who don't have access to legal services. This event increases access to justice for those families. I am grateful to the General Practice and Trial Law Section members and Georgia Legal Services representatives who make Ask a Lawyer Day a success each year."

There are a variety of ways in which lawyers can participate in pro bono services. Volunteering at a legal clinic similar to the October clinic is a great way to contribute to increasing access to justice for low-income Georgians. It's also a wonderful way to connect as a lawyer with your local community – to get to know and understand what's happening to people who have legal problems and what the barriers are like.

Legal clinics are the perfect pro bono activity for local voluntary bar associations, too. Participating lawyers like the idea of a fixed and limited time commitment these clinics provide as well as the opportunity to get out of the office and into the community.

If you would like to learn more about staging or volunteering for a civil legal clinic in your area, 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.



ABA President-Elect Linda Klein counsels a client at the State Bar of Georgia General Practice and Trial Law Section legal clinic in Douglasville. The section event was a part of the annual American Bar Association National Pro Bono Celebration in the last week of October.



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Questions? Email Mike Monahan
probono@gabar.org.

Fastcase Integrated Citation Analysis

by Sheila Baldwin

Finding the seminal case is one of the most important tasks in legal research, and Fastcase’s integrated citation analysis tools are a powerful way to find the seminal case in any kind of research. Considering the vast amount of information contained on the site, it’s understandable that the website design requires a great deal of versatility. Factors such as relevancy, decision date and how often a case is cited are all necessary components in research. This article covers a few techniques that will be helpful in using these features to find the most relevant highly cited cases.

Advanced Caselaw Search is the starting point to find cases in Fastcase. From there you can perform three different types of searches: Keyword Search, Natural Language Search or Citation Lookup with Keyword being the recommended choice. The resulting cases are filtered by relevance, decision date, case name, entire database or these results. The default is

always relevance. Did you ever wonder how the relevancy is scored? Fastcase determines relevance using an algorithm that examines the following:


- Numerosity – the number of times the search terms appear in the case;
- Proximity – the closeness of search terms to one another;
- Diversity – the balance of the various terms to appear in the case. For example, a case will receive a higher diversity score if each search term appears 15 times as opposed to if one search term appeared 15 times and the other appeared only once; and
- Density – the number of search terms appearances in relation to the length of the document.

Fastcase’s search technology assigns a relevance score (0–100%) to each document in your search results based on the search terms used in the query. The score is displayed in the far left-hand column on the results page under the heading Relevance. The purpose of the Fastcase Relevance score is to tell you which documents on your list of search results are more likely to contain a substantive discussion of the search terms you entered. Keep in mind that the lists of results produced are the most relevant cases according to the search terms the user has entered. If the search terms are not well chosen, the resulting cases will not be on point.

Doing a search with the query *((testimon* or marital) /3 privileg*) and (compel* or requir*) and (spous* or husband or wife)* in Georgia yields 94 cases. The most

relevant case appears at the top of the list. When you select to show the number of times the cases in your results list have been cited by the other cases in this list, you can re-sort the list to bring up the most frequently cited cases by clicking on this number (see fig. 1). Using the interactive timeline view, you can sort your list of results by relevancy and frequently cited cases. When you re-sort the list in this way, you are bringing to the top not only the case that is relevant to the topic being searched but also that has been frequently referenced. In this case, the settings show the top 10 cases in terms of “cited in these results” with the relevancy score showing on the vertical axis and the timeline showing on the horizontal axis. From here it’s easy to see that *White v. State* is highly relevant and frequently cited (see fig. 2).

It’s possible to take your research one step further by selecting Explore Case Relationships in the yellow box that appears when you hover over the case in the interactive timeline (see fig. 3). In this view you can see all the cases to which *White v. State* cite and all the cases that cite to it. The case is displayed on a timeline with a dotted line that indicates past and present cases.

One last helpful tool is the Add Alert feature. At the top of the results page you can select Add Alert and you will be notified of any future new cases within the same jurisdiction that also include your search terms. You will be asked to set up the notices by supplying your email address and choosing how often you would like to be notified the first time you use the feature; going forward you can just select Add Alert. 



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

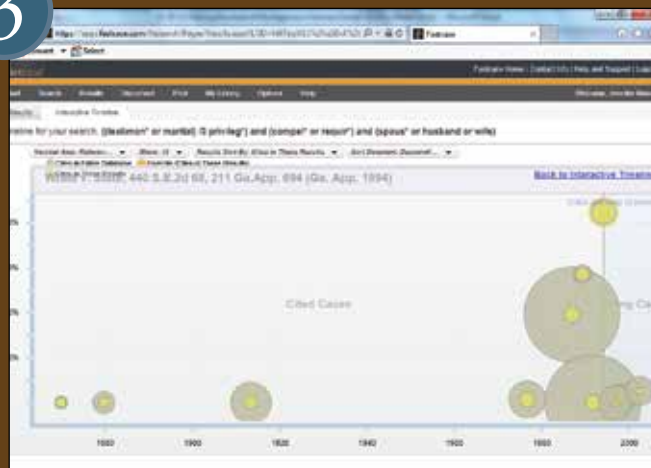
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Fastcase training classes are offered three times a month at the State Bar of Georgia in Atlanta for Bar members and their staff.

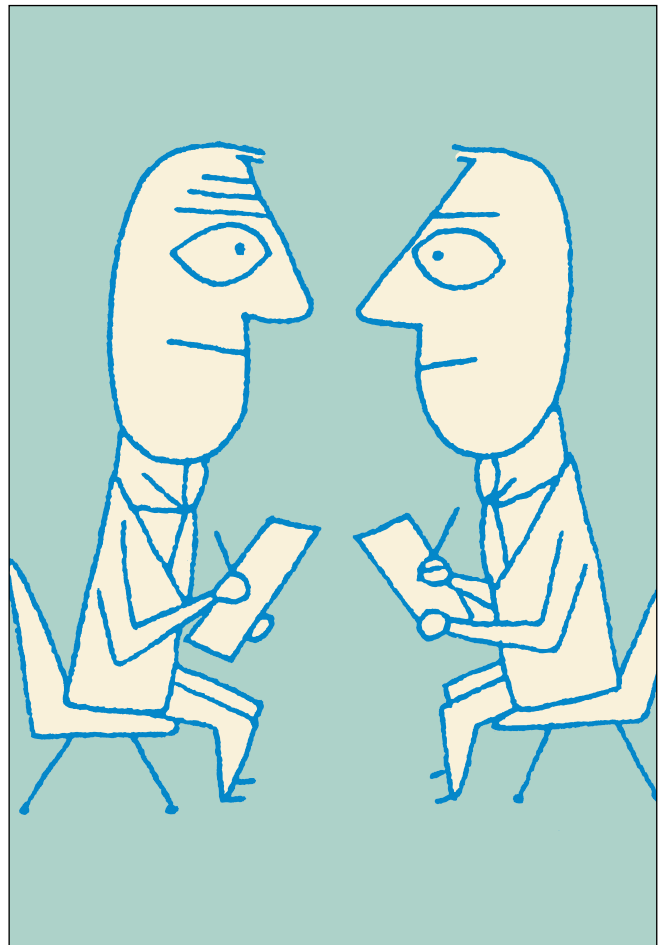
Training is available at other locations and in various formats and will be listed on the calendar at www.gabar.org. Please call 404-526-8618 to request on site classes for local and specialty bar associations.

You're Stupid and Wrong!

by Karen J. Sneddon and David Hricik

Persuasion is critical in many aspects of legal writing. Motions and briefs are obviously designed to persuade a court—which in the context of writing means a human being—to rule a particular way. Negotiation likewise includes persuading the other side to shift positions or at least to look at a problem from a different perspective and to examine possible alternative positions. Many litigation documents have the same purpose, by, for example, seeking to persuade an opposing party to withdraw an objection to a discovery request without the need for seeking a judge to rule on a motion to compel.

Persuasive legal writing texts are constructed using a variety of techniques. Those techniques include using direct, supported assertions, maximizing points of emphasis, relying on words with strong connotations and denotations, intentionally using active voice or passive voice, and including



(or avoiding) or pronouns. This installment of “Writing Matters” focuses on some techniques that do not work.

In our experience, presenting well-reasoned arguments, especially when tied to objective measures or criteria, is a powerful persuasive writing technique. What is usually woefully ineffective is vindictive name-calling. Name-calling makes people dig in. Likewise name-calling in the form of characterizing a position as unsupportable or simply wrong will not make the usual opposing counsel accept that as true and suddenly cave in. “You’re stupid and wrong,” generally doesn’t make the other side concede either point.

But it is not just our own experience that led us to this conclusion. Many judges have actually already warned lawyers that briefs that characterize the other side’s position as “frivolous,” “ridiculous” and the like are at best unhelpful, and at worst counterproductive. For example, one court stated that there was a “near-certainty that overstatement will only push the reader away (especially when, as here, the hyperbole begins on page one of the brief).”¹

Similarly, arguing in a motion to overturn a magistrate’s order, or for reconsideration of one by a judge, likely will not be well-received if it essentially says, “the result is stupid, so rule for me.” One court, facing an extreme example, made the lack of effectiveness of this approach clear:

More troubling is that plaintiff’s arguments are also riddled with vituperative language leveled against the trial judge, . . . such as that “the court systematically eviscerated plaintiff’s case” or that “the judge created absurdity and injustice.” . . . [P]laintiff was similarly highly disrespectful in his briefs to the trial court, as well. Such pre-planned advocacy by an attorney never arouses sympathy for his client.²

Instead of this failing approach, judges themselves have told us that persuasive legal writing in all contexts leads the reader to reach her own conclusions about the lack of strength of an argument, or the unreasonableness of a position when measured against objective criteria. As one court recently put it, “the better practice is usually to lay out the facts and let the court reach its own conclusions.”³ The fact that even today courts remind lawyers of the ineffectiveness of vindictive writing means that lawyers continue to work against their client’s own interests.

What should you do to make your writing more persuasive?


Foremost, only use the words “frivolous,” “misleading” and the like when no reasonable person could conclude otherwise. Instead, of relying on these loaded words, articulate your reasoning. “Every case cited in Plaintiff’s motion actually denied the very relief sought here.” This direct statement is more persuasive than a glib characterization that an argument is “frivolous.” If the other side relies upon a case that has been overruled or limited, point that out – do not say opposing counsel attempted to mislead the court or presented a shoddy argument. Let the judge reach that conclusion. Persuade through objective facts and supported legal arguments not subjective characterizations.

The same principle is true in negotiation. Name-calling isn’t persuasive. Statements based on objective facts and authority will be persuasive. Suppose parties are negotiating over the sales price of a parcel of land. An email that reads “no one in their right mind would pay what you are asking” is not likely to make the other side budge. Instead of saying “The price you are asking is exorbitant, what do you take us for, fools?,” point out that similar sales in the area have been at half the asking price, and explaining that you do not see what makes this parcel any different. Perhaps the other

side does not know these facts. Regardless, in all events human nature is such that telling someone he or she is stupid will not likely make the person believe that is so.

As one reasonably good lawyer, Abraham Lincoln, said in 1842:

When the conduct of men is designed to be influenced, persuasion, kind, unassuming persuasion, should ever be adopted. It is an old and a true maxim, that a ‘drop of honey catches more flies than a gallon of gall.’

Likewise, a sentence of facts showing an argument or position is weak will go much further at persuading the reader that it is so rather than a brief or email simply calling it so. Rely upon persuasive writing techniques to construct the text. Forget the name-calling. 



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



David Hricik is a professor at Mercer University School of Law who has written several books and more than a dozen articles. The Legal Writing Program at Mercer continues to be recognized as one of the nation’s top legal writing programs.

Endnotes

1. *Bennett v. St. Farm Mut. Auto. Ins. Co.*, 731 F.3d 584, 584 (6th Cir. 2013). The court gave another reason to avoid calling an argument frivolous: the argument that the brief “derides as ridiculous is instead correct.” *Id.* at 584.
2. *Grabs v. Safeway, Inc.*, 2013 WL 3964353 (Ct. App. Ill. July 30, 2013).
3. *Big Dipper Entm’t, L.L.C. v. City of Warren*, 641 F.3d 715, 719 (6th Cir. 2011).

A Life Worth Living and A Gift Worth Giving: Becoming the Professional You Aspire to Be

by Kent E. Altom

Who is a professional? Historically, and I am talking with regards to pre-U.S. history until the early 1900s, society generally thought of only three groups as being “professionals”: doctors, attorneys and the clergy. Why? Right or wrong, these three groups, more often than not, were the only people formally educated beyond grade school among the townspeople. Doctors, attorneys and the clergy were also the only workers who were self-governed; that is, they were held to higher standards by themselves.

Following their relatively extensive and specialized education, doctors, attorneys and the clergy had to become licensed by passing a medical board exam or bar exam or standing for ordination and satisfying other criteria demonstrating their fitness to effectively perform the duties of their chosen profession. Then, for specified and generalized malfeasance, they could be stripped of their license by a self-governing board consisting of others belonging to their respective professions.

Now, everybody wants—and even expects—to be thought of as being a “professional.” It started with engineers and architects, followed quickly by dentists and accountants and now extends to what were once thought of as occupations as opposed to professions: nurses, paralegals, dental hygienists, teachers, social workers, financial planners, electricians, realtors, barbers, plumbers, massage therapists, human resources directors, physician’s assistants, physical therapists, personal trainers, actuaries, appraisers, surveyors,¹ life coaches and countless others. The list seems to



grow with each passing year and it is potentially endless. More and more groups of workers have licensing requirements including initial, and for some continuous, training requirements. But being a “professional” must mean more than merely specialized training and holding a license.

Could it be that so many others believe they, too, should be thought of as professionals because the behavior (shortcomings and outright failings) of the three groups of traditional “professionals” has lowered the bar with respect to what is expected of a “professional”? In other words, doctors, attorneys and the clergy did not do a good job at being above reproach thereby allowing everyone to think they, too, can and should be considered by others as being “professionals.”

Let me be clear: I advocate for more, not fewer, people thinking of themselves as “professionals” because, after all, professionals are most often society’s leaders, and

we all know we need more leaders among us. That said, we should expect more, not less, from our leaders, which must mean, in certain instances, one failing and you're done—you lose your license and join the ranks of non-professionals.

Revered and Reviled

Perhaps as much as or even more than any other professionals, attorneys are revered and reviled, and sometimes both at the same moment. We are revered when others need us and reviled when they don't. A casual read of almost any daily newspaper reveals that our legal profession generally (and certain of its members in particular) could stand to uphold its own standards to a greater extent.

Some of those who follow corruption by attorneys and other professionals in the headlines do not blame the professionals themselves. For example, some observers, for decades, have contended that corporations are to blame for ethical lapses and failures because they continually "create [pressures] on good, ordinary people . . . to violate their own conscience . . . and maybe even break the law."² Still others blame the professionals themselves, saying they lack integrity.³

As a Fordham University educated Boston College philosophy professor once stated:

. . . I do not think we are necessarily more wicked than our ancestors, overall. True, we are less courageous, less honest with ourselves, less self-disciplined, and obviously less chaste than they were. But they were more cruel, intolerant, snobbish, and inhumane than we are. They were better at the hard virtues; we are better at the soft virtues. The balance is fairly even, I think.

But though we are not weaker in morality, we are weaker in the *knowledge* of morality. We are stronger in the knowledge of nature, but weaker in the knowledge of goodness. We know more about what is less than ourselves but less about what is more than ourselves. When we act morally, we are better than our philosophy. Our ancestors were worse than theirs. Their problem was not living up to their principles. Ours is not having any.⁴

How might this generational comparison speak to the legal profession as a whole and its individual members? Either a casual observation or a formal survey of the current state of the legal profession would show that attorneys today claim to be—and, from all

appearances, are—more tolerant of differences. And yet, they are less civil toward one another. In practical ways, they will acknowledge differences, and even accept them. Nevertheless, actually taking the step to show civility toward others poses a real problem for many in the legal profession.

Too Often Offensive and Too Easily Offended

More and more, our society is made up of some who are too often offensive and others who are too easily offended. Risking oversimplification, on the one hand, those who are too often offensive function upon a belief that they are somehow superior to others, or they are compensating for their own perceived weaknesses. On the other hand, those who are too easily offended are quick to assume anything done to them that is negative must be intentional, leaving no possibility that it could be accidental.

Our society has substituted tolerance, which is a passive characteristic, for civility, which is an active one. Our legal profession is not immune from this substitution of tolerance for civility. We, as attorneys, like our society generally, are more tolerant yet less civil. Civility is the antidote to our society's offensive and offended mentality.

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Are the shortcomings of attorneys more attributable to the legal profession itself for creating undue vocational pressures that its members cannot effectively handle? Or, are attorneys themselves to blame for their inability to honor an individual sense of right and wrong? New or renewed standards alone will not guarantee that attorneys will be able to meet the standards that are set for them. What is needed is a renewed commitment to professionalism and, in particular, to showing civility toward others, which will assist us in our efforts to meet the standards that we set for ourselves.

Politeness or Tolerance vs. Civility


What does a standard look like? And where do we start? Here's one idea: being polite—in the sense of being nice or even sweet—to one another is a personality trait or characteristic, not a professional standard. There are too many interpretations of what it means to be polite, and too many variations, degrees and exceptions. Even Al Capone realized this: "Don't mistake my kindness for weakness, I am kind to everyone, but when someone is unkind to me, weak is not what you are going to remember about me!"

Similarly, just as politeness is not a suitable professional standard, neither is tolerance.⁵ Tolerance, although an admirable quality, is passive because it does not require anything of us. To claim we are accepting of others whose race, nationality, religion, ethnicity, sexual preference or gender identification differs from ours, or whose positions, views or opinions differ from our own, does not require any action of us.

However, if the conversation were to turn to the requirement or aspiration that professionals should be courteous, in the sense that they should show civility in all their dealings with one another and the public, then what we aspire to be starts to look more like

a standard for all of us.⁶ Unlike politeness, civility is not perfunctory. Unlike tolerance, with civility, there is no equivocation. Civility requires a consciousness of action. Civility requires you to be affable even when others are not reciprocating the civility you show toward them. In this sense, your demonstration of civility is not for the sake of the other person, but for its own sake—or at least something greater, for example, the reputation of the legal profession in the eyes of the public.

Asked another way: What is the gift that attorneys can give to the legal profession, which has given each of us so much? Call me Pollyanna but I dare to say: The greatest gift of gratitude attorneys can give to the legal profession has less to do with the degree of skill and passion with which they advocate for their clients or pursue individual recognitions, or the degree to which they expand their firm's list of clients or its bottom line, and more to do with the degree of civility that attorneys demonstrate toward one another. Perhaps you have heard it said, "It is always the right time to do the right thing" or, as my father taught me, "It's always right to do right just because it's right."

So, here's to attorneys always setting even higher standards, modeling professionalism to others, doing what is right and becoming the professionals we have always aspired to be. Like all great undertakings, each of these aspirations begins with one sure step: showing civility toward others. Now, that seems like a New Year's resolution for 2016—and beyond. 

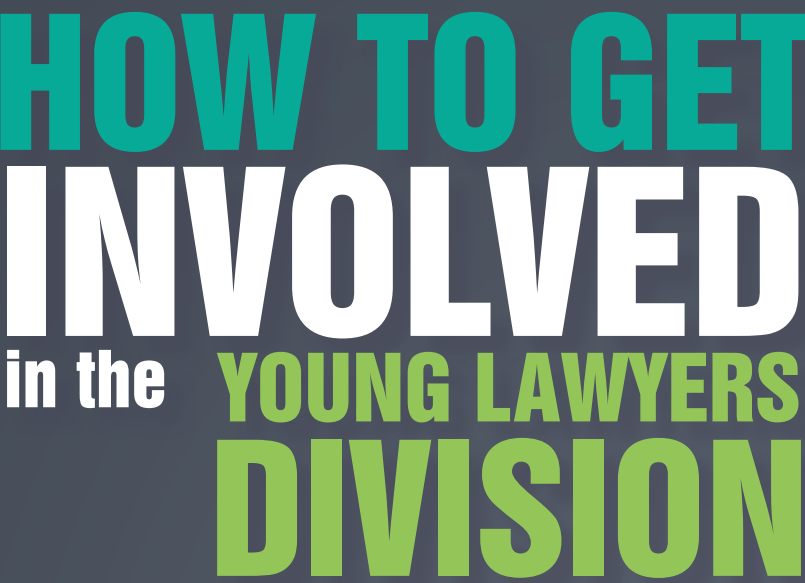


Kent E. Altom, a member of the State Bar of Georgia's Board of Governors, is of counsel with the law firm of Gilroy

Bailey Trumble LLC in Alpharetta and can be reached at kent.altom@gilroyfirm.com.


Endnotes

1. A keen observer will note that some contend that surveying was the first occupation to reach professional status in America insofar as it was the first to have a licensing requirement. Interestingly, three of the four presidents whose images comprise Mount Rushmore were surveyors.
2. Stanley J. Modic, Corporate Ethics: From Commandments to Commitment, *Industry Week* at 36 (Dec. 14, 1987).
3. *Id.* at 33.
4. Peter Kreeft, *Back to Virtue* at 25 (San Francisco: Ignatius, 1992).
5. It could be said that tolerance occupies one end of the spectrum and politeness occupies the other. Much has been written about linear versus circular thought processes, with linear thought being associated with most Westerners and circular thought being associated with most Easterners. It may be helpful to think of both tolerance and politeness (at least in the sense that neither really requires any substantial effort on one's part) as abutting one another along a curved line comprising a circle, not at opposite ends of a straight line.
6. There seems to be a national movement afoot toward a renewed commitment to the fostering of a greater sense of civility among attorneys. For example, the American Board of Trial Advocates (ABOTA) is espousing "Principles of Civility, Integrity and Professionalism," including a Code of Professionalism, with its Civility Matters® campaign, which is sponsored by the ABOTA Foundation and the JAMS Foundation and endorsed by the American Inns of Court. Also, in recent years, certain state bar associations have adopted new standards of professionalism and civility, for example, the Utah Supreme Court has approved "Utah Standards of Professionalism and Civility," with the stated purpose "[t]o enhance the daily experience of lawyers and the reputation of the Bar as a whole." Many bar associations have adopted or adapted The Lawyer's Creed and Aspirational Statement of Professionalism crafted in 1989 by Georgia's Chief Justice's Commission on Professionalism.



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WANT MORE INFO?

Contact YLD Director Mary McAfee at marym@gabar.org or visit www.georgiayld.org for more information.

www.georgiayld.org

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.

Tom M. Allen

Chattanooga, Tenn.
University of Georgia School
of Law (1953)
Admitted 1953
Died September 2015

Gary Alfred Bacon

Kingsland, Ga.
Atlanta's John Marshall Law
School (1981)
Admitted 1982
Died October 2015

E. Jo Baker

Stone Mountain, Ga.
Atlanta Law School (1948)
Admitted 1948
Died September 2015

Ralph E. Carlisle

Athens, Ga.
Atlanta Law School (1960)
Admitted 1960
Died November 2015

Thomas Hal Clarke Sr.

Atlanta, Ga.
Washington & Lee University
School of Law (1938)
Admitted 1939
Died November 2015

Charles Bragaw Collier

Douglasville, Ga.
Woodrow Wilson College of Law
(1976)
Admitted 1976
Died July 2015

James M. Collier

Dawson, Ga.
University of Georgia School
of Law (1960)
Admitted 1960
Died November 2015

Philip B. Cordes

Atlanta, Ga.
Emory University School of Law
(1950)
Admitted 1950
Died September 2015

Michael Joseph Davis Jr.

Atlanta, Ga.
University of Georgia School
of Law (1981)
Admitted 1981
Died September 2015

Jaimie Briggs DeLoach

Columbus, Ga.
University of Georgia School
of Law (1991)
Admitted 1991
Died September 2015

Bettie Willerson Driver

Atlanta, Ga.
University of Texas School of Law
(1971)
Admitted 1971
Died November 2015

Colette Dusthimer-Hamby

Decatur, Ga.
Atlanta's John Marshall Law
School (1952)
Admitted 1952
Died October 2015

W. Howard Fowler

Atlanta, Ga.
Emory University School of Law
(1950)
Admitted 1950
Died October 2015

Charles N. Giles

Boone, Ga.
Woodrow Wilson College of Law
(1976)
Admitted 1976
Died August 2015

Robert A. Harris

Roswell, Ga.
Woodrow Wilson College of Law
(1958)
Admitted 1964
Died September 2015

James Jeffries Hopkins

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

Taylor W. Jones

Blue Ridge, Ga.
Emory University School of Law
(1963)
Admitted 1962
Died September 2015

George E. Kehoe

Hendersonville, N.C.
Emory University School of Law
(1949)
Admitted 1953
Died July 2015

Bruce A. Kling
Dalton, Ga.
Emory University School of Law
(1985)
Admitted 1985
Died July 2015

James C. Lee
Chattanooga, Tenn.
Washington & Lee University
School of Law (1951)
Admitted 1968
Died July 2015

Michael R. Lewis
Roswell, Ga.
Atlanta Law School (1975)
Admitted 1975
Died September 2015

Jack Edward Mallard
Cumming, Ga.
Woodrow Wilson College of Law
(1964)
Admitted 1966
Died November 2015

John William Malone
Newnan, Ga.
Harvard Law School (1960)
Admitted 1960
Died June 2015

James E. Mathews
Colorado Springs, Colo.
Atlanta Law School (1940)
Admitted 1940
Died August 2015

Othniel W. McGehee
Macon, Ga.
Emory University School of Law
(1952)
Admitted 1951
Died July 2015

Clifford W. Milam
Fayetteville, Ga.
Atlanta Law School (1950)
Admitted 1950
Died October 2015

Freeman Mitchell
Comer, Ga.
Atlanta's John Marshall Law
School (1948)
Admitted 1948
Died September 2015

William Grady Morris
Panama City Beach, Fla.
Emory University School of Law
(1962)
Admitted 1962
Died September 2015

James Tillman Payne Jr.
Marietta, Ga.
Woodrow Wilson College of Law
(1980)
Admitted 1980
Died June 2015

William C. Peters
Moultrie, Ga.
University of Georgia School
of Law (1950)
Admitted 1951
Died September 2015

Shirley Pharr Raynor
Bonaire, Ga.
Mercer University Walter F.
George School of Law (1987)
Admitted 1987
Died October 2015

Charles B. Rice
Homerville, Ga.
University of Georgia School
of Law (1973)
Admitted 1973
Died September 2015

John W. Roberts Jr.
Damascus, Md.
University of Georgia School
of Law (1950)
Admitted 1949
Died September 2015

Joe W. Rowland
Wrightsville, Ga.
Mercer University Walter F.
George School of Law (1952)
Admitted 1952
Died September 2015

Leslie N. Shade Jr.
Clearwater, Fla.
Emory University School of Law
(1972)
Admitted 1972
Died September 2015

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.

James M. Sibley
Atlanta, Ga.
Harvard Law School
Admitted 1942
Died September 2015

Al J. Smith Jr.
Locust Grove, Ga.
Atlanta Law School (1976)
Admitted 1979
Died October 2015

Archer D. Smith III
Clarksville, Ga.
University of Georgia School
of Law (1966)
Admitted 1966
Died September 2015

Stefan M. Tiessen
Atlanta, Ga.
University of Illinois College
of Law (1985)
Admitted 1986
Died June 2015

Allen Matthews Trapp Jr.
Carrollton, Ga.
Georgia State University College
of Law (1987)
Admitted 1987
Died September 2015

Hugh Emmett Wright
Atlanta, Ga.
Vanderbilt University Law School
(1949)
Admitted 1949
Died August 2015



James M. "Jim" Collier, 81, of Dawson, passed away in November. He was born in Dawson on Oct. 4, 1934, to Raymond Ross Collier and Everlyn Marlin Collier. He attended Terrell High School and graduated from Marion Military Institute. Collier served in the U.S. Army for two years and was honorably discharged as a 1st. Lt. He received his B.S. degree from Auburn University in 1956 and his LLB from the University of Georgia

School of Law in 1960. He opened a private law practice that same year. He retired in 2010 after 50 years of practice. During this time, he served as city attorney for the city of Dawson and county attorney for Terrell County. Collier also served as a long-time vice chairman of the Bank of Dawson. He was a former mayor of the city of Dawson and was largely responsible for the construction of Dawson Municipal Airport.

Collier served in the Georgia House of Representatives and for many years as chairman of the Terrell County Airport Authority, and as president of the Dawson Rotary Club. He was a Paul Harris fellow. He was the name-sake of the James M. Collier Award which is given annually to a member of the Georgia Bar Foundation for extraordinary achievement on behalf of the organization. Collier enjoyed flying and was a long-time member of the Dawson County Club, where he spent many enjoyable hours playing golf. GBJ



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NEED HELP?

Let CAP lend you a hand.

WHAT IS THE CONSUMER ASSISTANCE PROGRAM?

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

Does CAP assist attorneys as well as consumers?

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

What doesn't CAP do?

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

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

- 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**

December-March

DEC 10 ICLE
Recent Developments in Georgia Law
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

DEC 10 ICLE
Health Care Fraud
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

DEC 10-11 ICLE
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
2015 Neutrals' Conference
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE

DEC 15 ICLE
Webinar: Premises Liability
 See www.iclega.org
 1 CLE

DEC 16 ICLE
Talking with Pictures
 Atlanta, Ga.
 (Also available via web stream)
 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 Practitioners
 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.
 See www.iclega.org for location
 6 CLE

JAN 7 ICLE
State Bar Midyear Meeting:
Aging in the Law
 Buford, Ga.
 See www.gabar.org for location
 3 CLE

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



- JAN 7** ICLE
*State Bar Midyear Meeting:
 Unbundled Services*
 Buford, Ga.
 See www.gabar.org for location
 3 CLE
- JAN 8** ICLE
*State Bar Midyear Meeting:
 Are You Fit to Practice?*
 Buford, Ga.
 See www.gabar.org for location
 3 CLE
- JAN 8** ICLE
*State Bar Midyear Meeting:
 Georgia's Journey to Marriage Equality*
 Buford, Ga.
 See www.gabar.org for location
 3 CLE
- JAN 12** ICLE
Webinar: Closing Argument
 See www.iclega.org
 1 CLE
- JAN 14** ICLE
Family Immigration Law
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE
- JAN 14** ICLE
Restrictive Covenants and Trade Secrets
 Atlanta, Savannah and Tifton, Ga.
 See www.iclega.org for location
 6 CLE
- JAN 15** ICLE
General Practice for New Lawyers
 Atlanta, Ga.
 (Also available via web stream)
 See www.iclega.org for location
 6 CLE
- JAN 15** ICLE
Speaking to Win
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE
- JAN 15** ICLE
Jury Trial
 Statewide Satellite Broadcast
 See www.iclega.org for location
 6 CLE
- JAN 21** ICLE
Superstar/Best Verdicts
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE
- JAN 21** ICLE
ADR in Workers' Compensation Arena
 Atlanta, Ga.
 (Also available via web stream)
 See www.iclega.org for location
 6 CLE
- JAN 21** ICLE
Jury Trial
 Statewide Satellite Rebroadcast
 See www.iclega.org for location
 6 CLE
- JAN 22** ICLE
Landlord and Tenant
 Atlanta, Ga.
 See www.iclega.org for location
 6 CLE
- JAN 22** ICLE
Defense of Personal Injury Case
 Statewide Satellite Broadcast
 See www.iclega.org for location
 6 CLE

December-March

- | | | | |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| JAN 26 | ICLE
<i>Webinar: Military and Veterans Law</i>
See www.iclega.org
1 CLE | FEB 4 | ICLE
<i>Internet Legal Research</i>
Statewide Satellite Rebroadcast
See www.iclega.org for location
6 CLE |
| JAN 28 | ICLE
<i>Child Protection Seminar</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE | FEB 5 | ICLE
<i>Banking Law</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE |
| JAN 28 | ICLE
<i>Intersection of Human Rights and Business Practices</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE | FEB 5 | ICLE
<i>Abusive Litigation</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE |
| JAN 28 | ICLE
<i>Defense of Personal Injury Case</i>
Statewide Satellite Rebroadcast
See www.iclega.org for location
6 CLE | FEB 5 | ICLE
<i>Residential Real Estate</i>
Statewide Satellite Broadcast
See www.iclega.org for location
6 CLE |
| JAN 29 | ICLE
<i>Advanced Negotiation Strategies</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE | FEB 5 | ICLE
<i>Georgia Insurance Claims Law</i>
Savannah, Ga.
See www.iclega.org for location
6 CLE |
| JAN 29 | ICLE
<i>Internet Legal Research</i>
Statewide Satellite Broadcast
See www.iclega.org for location
6 CLE | FEB 7-10 | ICLE
<i>Update on Georgia Law</i>
Steamboat Springs, Colo.
See www.iclega.org for location
12 CLE |
| FEB 4 | ICLE
<i>Georgia Foundations/Objections Update</i>
Atlanta, Ga.
(Also available via web stream)
See www.iclega.org for location
6 CLE | FEB 9 | ICLE
<i>Webinar: Jury Voir Dire</i>
See www.iclega.org
1 CLE |
| FEB 4 | ICLE
<i>Secured Lending</i>
Atlanta, Ga.
See www.iclega.org for location
6 CLE | FEB 10 | ICLE
<i>Special Needs Trusts</i>
Atlanta and Tifton, Ga.
See www.iclega.org for location
6 CLE |

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



- FEB 10** ICLE
*Ancient Foundations
and Modern Equivalents*
Atlanta, Ga.
See www.iclega.org for location
3 CLE
- FEB 11** ICLE
Advanced Debt Collection
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- FEB 11** ICLE
*Communication Essentials
and Ethical Practice*
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- FEB 11** ICLE
Residential Real Estate
Statewide Satellite Rebroadcast
See www.iclega.org for location
6 CLE
- FEB 11-12** ICLE
61st Annual Estate Planning Institute
Athens, Ga.
See www.iclega.org for location
10 CLE
- FEB 11-13** ICLE
Tropical Seminar
Paradise Island, Bahamas
See www.iclega.org for location
12 CLE
- FEB 12** ICLE
Georgia Divorce Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- FEB 12** ICLE
White Collar Crime
Atlanta, Ga.
See www.iclega.org for location
6.5 CLE
- FEB 12** ICLE
Solo Small Firm Boot Camp
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE
- FEB 17** ICLE
Basic Securities Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- FEB 18-19** ICLE
Social Security Institute
Atlanta, Ga.
See www.iclega.org for location
10.5 CLE
- FEB 18** ICLE
Georgia Appellate Practice
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- FEB 19** ICLE
Attorney First Aid Kit
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- FEB 19** ICLE
Elder Law
Statewide Satellite Broadcast
See www.iclega.org for location
6 CLE
- FEB 22** ICLE
Beginning Lawyers Program
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE

December-March

FEB 23	ICLE <i>Webinar: E-Discovery</i> See www.iclega.org 1 CLE	FEB 26	ICLE <i>23rd Annual Criminal Practice Seminar</i> Kennesaw, Ga. See www.iclega.org for location 6 CLE
FEB 24	ICLE <i>24th Annual Product Liability Seminar</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	MAR 2	ICLE <i>Not Your Typical Malpractice Seminar</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 25	ICLE <i>Negotiated Corporate Acquisitions</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	MAR 2	ICLE <i>Advanced Topics in Franchising and Distribution</i> Atlanta, Ga. See www.iclega.org for location 3 CLE
FEB 25	ICLE <i>Eminent Domain Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	MAR 3	ICLE <i>Handling Fall Cases Professionally</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 25	ICLE <i>Elder Law</i> Statewide Satellite Rebroadcast See www.iclega.org for location 6 CLE	MAR 3	ICLE <i>Plaintiff's Personal Injury</i> Statewide Satellite Rebroadcast See www.iclega.org for location 6 CLE
FEB 26	ICLE <i>Georgia Insurance Claims Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	MAR 4	ICLE <i>Nuts and Bolts of Local Government Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
FEB 26	ICLE <i>25th Annual Georgia Bar Media and Judiciary Conference</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	MAR 4	ICLE <i>Truck Wreck Cases</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
\FEB 26	ICLE <i>Plaintiff's Personal Injury</i> Statewide Satellite Broadcast See www.iclega.org for location 6 CLE		

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



- MAR 4** ICLE
Professionalism and Ethics Update
Statewide Satellite Broadcast
See www.iclega.org for location
3 CLE
- MAR 8** ICLE
Webinar: Demonstrative Evidence at Trial
See www.iclega.org
1 CLE
- MAR 9** ICLE
Post Judgment Collection
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- MAR 10** ICLE
13th Annual Nonprofit Law Seminar
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- MAR 10** ICLE
Entertainment Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- MAR 10** ICLE
Professionalism and Ethics Update
Statewide Satellite Rebroadcast
See www.iclega.org for location
3 CLE
- MAR 11** ICLE
Milich on Evidence
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- MAR 11** ICLE
Fundamentals of Health Care Law
Atlanta, Ga.
See www.iclega.org for location
7 CLE
- MAR 11** ICLE
Trial and Error
Statewide Satellite Broadcast
See www.iclega.org for location
6 CLE
- MAR 16** ICLE
Georgia's False Claim Act/Whistleblower
Atlanta, Ga.
See www.iclega.org for location
7 CLE
- MAR 16** ICLE
Proving Damages
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- MAR 17** ICLE
5th Annual Same Sex Legal Issues
Atlanta, Ga.
See www.iclega.org for location
6 CLE
- MAR 17** ICLE
Trial and Error
Statewide Satellite Rebroadcast
See www.iclega.org for location
6 CLE
- MAR 17-19** ICLE
*15th Annual General Practice
and Trial Law Institute*
St. Simons Island, Ga.
See www.iclega.org for location
12 CLE

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 the proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-7.

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

Jeffrey R. Davis
Executive Director
State Bar of Georgia

**IN THE SUPREME COURT
STATE OF GEORGIA**

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

MOTION TO AMEND 2015-3

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors at its regularly-called meeting on October

24, 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*, p. H-1, *et seq.* The State Bar of Georgia respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respect:

I.

Proposed Amendments to Part I, Creation and Organization; Chapter 2, Membership; Rule 1-204. Good Standing.

It is proposed that Rule 1-204. Good Standing. of Part I, Chapter 2 of the Rules and Regulations of the State Bar of Georgia be amended as shown below by deleting the struck-through portions of the Rule and inserting the underlined portions as follow:

Rule 1-204. Good Standing.

No ~~person~~lawyer shall be deemed a member in good standing:

(a) while delinquent after September 1 of any year for nonpayment of the annual license fee ~~and any costs or fees of any type as~~ prescribed in Chapter 5, Rule 1-501 (a)-(c) hereof;

(b) while suspended for disciplinary reasons;

(c) while disbarred;

(d) while suspended for failure to comply with continuing legal education requirements; ~~or~~

(e) while in violation of ~~Bar~~ Rule 1-209 for failure to pay child support obligations.

If the proposed amendments to the Rules are adopted, the amended Rule 1-204. Good Standing, would read as follows:

Rule 1-204. Good Standing.

No lawyer shall be deemed a member in good standing:

(a) while delinquent after September 1 of any year for nonpayment of the annual license fee and any costs or fees of any type as prescribed in Chapter 5, Rule 1-501 (a)-(c) hereof;

(b) while suspended for disciplinary reasons;

(c) while disbarred;

(d) while suspended for failure to comply with continuing legal education requirements;

(e) while in violation of Rule 1-209 for failure to pay child support obligations.

II.

Proposed Amendment to Part 1, Creation and Organization; Chapter 5, Finance; Rule 1-501. License Fees.

It is proposed that Rule 1-501. License Fees. of Part I, Chapter 5 of the Rules and Regulations of the State Bar of Georgia be amended as shown below by deleting the struck-through portions of the Rule and inserting the underlined portions as follows:

Rule 1-501. License Fees.

(a) Annual license fees for membership in the State Bar of Georgia shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees, including any late fees, costs, charges or penalties incurred by the State Bar of Georgia as the result of a cancelled or dishonored payment of any type or kind for the current and prior years have been paid in full, the member shall automatically be reinstated to the status of member in good standing, except as provided in section (b) of this Rule.

(b) In the event a member of the State Bar of Georgia is delinquent in the payment of any license fee, late fee, assessment, reinstatement fee, or cost, charge or penalty incurred by the State Bar of Georgia

as the result of a cancelled or dishonored payment of any type or kind or penalty and of any nature for a period of one ~~(1)~~ year, the member shall be automatically suspended, and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

~~(1i.)~~ payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

~~(2ii.)~~ provide the membership section of the State Bar the following:

~~(iA.)~~ a certificate from the Office of the General Counsel of the State Bar of Georgia that the suspended member is not presently subject to any disciplinary procedure;

~~(iiB.)~~ a certificate from the Commission on Continuing Lawyer Competency that the suspended member is current on all requirements for continuing legal education;

~~(iiiC.)~~ a determination of fitness from the Board to Determine Fitness of Bar Applicants;

~~(3iii.)~~ payment to the State Bar of Georgia of a non-waivable reinstatement fee as follows:

~~(iA.)~~ \$150.00 for the first reinstatement paid within the first year of suspension, plus \$150.00 for each year of suspension thereafter up to a total of five years;

~~(iiB.)~~ \$250.00 for the second reinstatement paid within the first year of suspension, plus \$250.00 for each year of suspension thereafter up to a total of five years;

~~(iiiC.)~~ \$500.00 for the third reinstatement paid within the first year of suspension, plus 500.00 for each year of suspension thereafter up to a total of five years; or

~~(ivD.)~~ \$750.00 for each subsequent reinstatement paid within the first year of suspension, plus \$750.00 for each year of suspension thereafter up to a total of five years.

The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated for any fraction of the fiscal year in which it is actually paid.

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar of Georgia. The terminated member shall not be entitled to a hearing as set out in section (d) below. The terminated member shall be required to apply for membership to the Office of Bar Admissions for readmission to the State Bar of Georgia. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b) ~~(3iii)~~ above plus an additional \$750.00 as a readmission fee to the State Bar of Georgia.

(d) Prior to suspending a member under subsection (b) above, the State Bar of Georgia shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership records. It shall specify the years for which the license fee is delinquent and state that either the fee and all penalties related thereto are paid within ~~sixty (60)~~ days or a hearing to establish reasonable cause is requested within ~~sixty (60)~~ days, the membership shall be suspended.

If a hearing is requested, it shall be held at State Bar of Georgia Headquarters within ~~ninety (90)~~ days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten ~~(10)~~ days in advance. The party cited may be represented by counsel. Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it and a copy thereof shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee shall (1) make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation of this Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship short of adjudicated bankruptcy shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was reasonable cause therefor, the matter shall be deferred for one ~~(1)~~ year at which time the matter will be reconsidered. If it is determined that delinquency

has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar of Georgia. Alleged errors of law in the proceedings or findings of the Executive Committee or its delegate shall be reviewed by the Supreme Court of Georgia. The Executive Committee may delegate to a special master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the special master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the Respondent attorney. The Respondent attorney may file with the Court any written exceptions (supported by the written argument) said Respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court of Georgia and served on the Executive Committee by service on the General Counsel within ~~twenty (20)~~ days of the date that the findings were served on the Respondent attorney. Upon the filing of exceptions by the Respondent attorney, the Executive Committee shall within ~~twenty (20)~~ days of said filing, file a report of its findings and the complete record and transcript of evidence with the Clerk of the Supreme Court of Georgia. The Court may grant extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Court may grant oral argument on any exception filed with it upon application for such argument by the Respondent attorney or the Executive Committee. The Court shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgment. A copy of the Court's judgment shall be transmitted to the Executive Committee and to the Respondent attorney by the Court.

Within ~~thirty (30)~~ days after a final judgment which suspends membership, the suspended member shall, under the supervision of the Supreme Court of Georgia, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court of Georgia, upon its motion, or upon the motion of the State Bar of Georgia, and after ten ~~(10)~~ days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar of

Georgia take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member of the State Bar of Georgia appointed by the Supreme Court of Georgia to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the eCourt.

If the proposed amendments to the Rules are adopted, the amended Rule 1-501. License Fees. would read as follows:

Rule 1-501. License Fees.

(a) Annual license fees for membership in the State Bar of Georgia shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees, including any late fees, costs, charges or penalties incurred by the State Bar of Georgia as the result of a cancelled or dishonored payment of any type or kind for the current and prior years have been paid in full, the member shall automatically be reinstated to the status of member in good standing, except as provided in section (b) of this Rule.

(b) In the event a member of the State Bar of Georgia is delinquent in the payment of any license fee, late fee, assessment, reinstatement fee, or cost, charge or penalty incurred by the State Bar of Georgia as the result of a cancelled or dishonored payment of any type or kind and of any nature for a period of one year, the member shall be automatically suspended, and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

(1) payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

(2) provide the membership section of the State Bar the following:

(i) a certificate from the Office of the General Counsel of the State Bar of Georgia that the suspended member is not presently subject to any disciplinary procedure;

(ii) a certificate from the Commission on Continuing Lawyer Competency that the sus-

pended member is current on all requirements for continuing legal education;

(iii) a determination of fitness from the Board to Determine Fitness of Bar Applicants;

(3) payment to the State Bar of Georgia of a non-waivable reinstatement fee as follows:

(i) \$150.00 for the first reinstatement paid within the first year of suspension, plus \$150.00 for each year of suspension thereafter up to a total of five years;

(ii) \$250.00 for the second reinstatement paid within the first year of suspension, plus \$250.00 for each year of suspension thereafter up to a total of five years;

(iii) \$500.00 for the third reinstatement paid within the first year of suspension, plus 500.00 for each year of suspension thereafter up to a total of five years; or

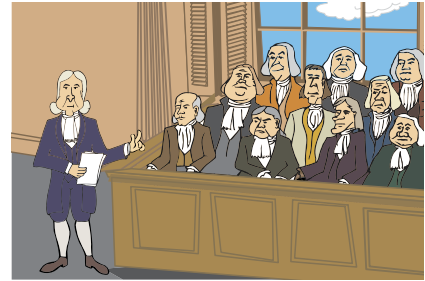
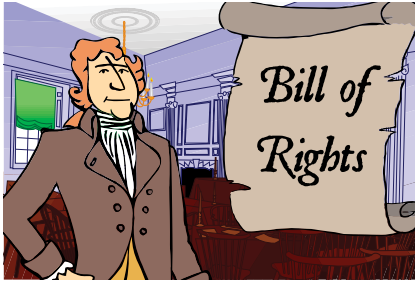
(iv) \$750.00 for each subsequent reinstatement paid within the first year of suspension, plus \$750.00 for each year of suspension thereafter up to a total of five years.

The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated for any fraction of the fiscal year in which it is actually paid.

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar of Georgia. The terminated member shall not be entitled to a hearing as set out in section (d) below. The terminated member shall be required to apply for membership to the Office of Bar Admissions for readmission to the State Bar of Georgia. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b) (3) above plus an additional \$750.00 as a readmission fee to the State Bar of Georgia.

(d) Prior to suspending a member under subsection (b) above, the State Bar of Georgia shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership records. It shall specify the years for which the license fee is delinquent and state that either the fee and all penalties related thereto are paid within 60 days or a hearing to establish reasonable cause is requested within 60 days, the membership shall be suspended.

Trial By Jury: What's the Big Deal?

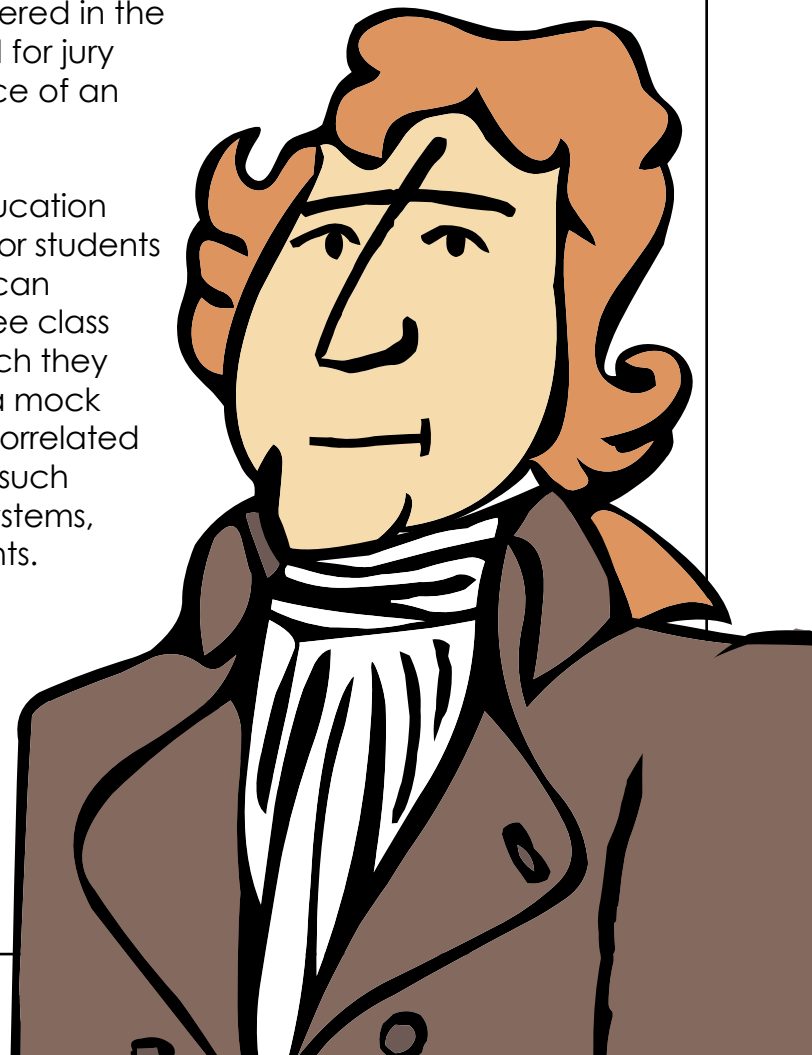


"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics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



If a hearing is requested, it shall be held at State Bar of Georgia Headquarters within 90 days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten days in advance. The party cited may be represented by counsel. Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it and a copy thereof shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee shall (1) make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation of this Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship short of adjudicated bankruptcy shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was reasonable cause therefor, the matter shall be deferred for one year at which time the matter will be reconsidered. If it is determined that delinquency has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar of Georgia. Alleged errors of law in the proceedings or findings of the Executive Committee or its delegate shall be reviewed by the Supreme Court of Georgia. The Executive Committee may delegate to a special master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the special master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the respondent attorney. The respondent attorney may file with the Court any written exceptions (supported by the written argument) said respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court of Georgia and served on the Executive Committee by service on the General Counsel within 20 days of the date that the findings were served on the respondent attorney. Upon the filing of exceptions by the respondent attorney, the Executive Committee shall within 20 days of said filing, file a report of its findings and the complete record and tran-

script of evidence with the Clerk of the Supreme Court of Georgia. The Court may grant extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Court may grant oral argument on any exception filed with it upon application for such argument by the respondent attorney or the Executive Committee. The Court shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgment. A copy of the Court's judgment shall be transmitted to the Executive Committee and to the respondent attorney by the Court.

Within 30 days after a final judgment which suspends membership, the suspended member shall, under the supervision of the Supreme Court of Georgia, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court of Georgia, upon its motion, or upon the motion of the State Bar of Georgia, and after ten days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar of Georgia take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member of the State Bar of Georgia appointed by the Supreme Court of Georgia to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Court.

III.

Proposed Amendment to Part 7, Lawyer Assistance Program; Chapter 2, Guidelines for Operation; Rule 7-202. Volunteers.

It is proposed that Rule 7-202. Volunteers. of Part VII, Chapter 2 of the Rules and Regulations of the State Bar of Georgia be amended as shown below by deleting the struck-through portions of the Rule and inserting the underlined portions as follows:

Rule 7-202. Volunteers

The Committee may establish a network of attorneys and lay persons throughout the state of Georgia; who are experienced or trained in impairment counseling, treatment or rehabilitation, who can conduct education and awareness programs and assist in

counseling and intervention programs and services. The Committee may also establish a network of peer-support volunteers who are members of the State Bar of Georgia who are not trained in impairment counseling, treatment or rehabilitation, who can provide support to impaired or potentially impaired attorneys by sharing their life experiences in dealing with (a) mental or emotional health problems, (b) substance abuse problems or (c) other similar problems that can adversely affect the quality of attorneys' lives and their ability to function effectively as lawyers.

If the proposed amendments to Rule is adopted, the amended Rule 7-202. Volunteers. would read as follows:

Rule 7-202. Volunteers.

The Committee may establish a network of attorneys and lay persons throughout the state of Georgia who are experienced or trained in impairment counseling, treatment or rehabilitation, who can conduct education and awareness programs and assist in counseling and intervention programs and services. The Committee may also establish a network of peer-support volunteers who are members of the State Bar of Georgia who are not trained in impairment counseling, treatment or rehabilitation, who can provide support to impaired or potentially impaired attorneys by sharing their life experiences in dealing with (a) mental or emotional health problems, (b) substance abuse problems or (c) other similar problems that can adversely affect the quality of attorneys' lives and their ability to function effectively as lawyers.

IV.

Proposed Amendment to Part 7, Lawyer Assistance Program; Chapter 3, Procedures; Rule 7-301. Contacts Generally.

It is proposed that Rule 7-301. Contacts Generally. of Part 7, Chapter 3 of the Rules and Regulations of the State Bar of Georgia be amended as shown below by

deleting the struck-through portions of the Rule and inserting the underlined portions as follows:

Rule 7-301. Contacts Generally.

The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired or potentially impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-~~12~~202, or by any other procedure through which appropriate counseling or assistance to an impaired such attorneys may be provided.

If the proposed amendments to the Rule is adopted, the amended Rule 7-301. Contacts Generally. would read as follows:

Rule 7-301. Contacts Generally.

The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired or potentially impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-202, or by any other procedure through which appropriate counseling or assistance to such attorneys may be provided.

SO MOVED, this ____ day of _____, 2015.

Counsel for the State Bar of Georgia

William D. NeSmith, III
Deputy General Counsel

OFFICE OF THE GENERAL COUNSEL
State Bar of Georgia
104 Marietta St. NE, Suite 100
Atlanta, Georgia 30303
(404) 527-8720

Notice of and Opportunity for Comment on Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after December 4, 2015, from the

court's website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by January 8, 2016.



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Sandy Springs Law Building for Sale. Beautifully furnished 6579 square foot law building for sale including: two beautiful and spacious conference rooms; law library; two private entrances and reception areas; abundant free parking; two file/work rooms; storage room; break room adjacent to kitchen; security system. This brick law building overlooks a pond and is in a great location directly across the street from the North Springs MARTA Station; easy access to I-285 and GA 400; and close to Perimeter Mall, hotels, restaurants, hospitals, etc. Call 770-396-3200 x24 for more information.

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Buckhead Office Space. Two private offices with reception area. Free parking at the door. Call 404-522-9358 ext. 2. Easy access from 400 at Lenox Rd. Total for three spaces \$1950 per month. Single office available for \$550 per month. Includes utilities and access to kitchen and conference room.

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PI Junior Associate Attorney (Jacksonville, FL) – Law firm of military veterans is seeking veterans for their growing law firm. PI Jr associate attorneys (0-3 years’ experience and recent grads). Salary commensurate with experience. Please send cover letter and resume with references to Ron@youthurtwefight.com.

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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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