

GEORGIA BAR
JOURNAL

From the Executive Director—Sen. Leroy Johnson: ‘A Jewel in Georgia’s Crown’

’Tis the Season: Giving by Mentoring

2020 Legislative Preview

The Power of One



THE LEGAL

Not So Fast! Enforcing Accelerated Rent Clauses in Commercial Lease Agreements

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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (19th ed. 2010). Please address unsolicited articles to: Kristin Poland, State Bar of Georgia, Communications Department, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Authors will be notified of the Editorial Board's decision regarding publication.

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

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The December Issue

Thank you for reading our December edition of the *Georgia Bar Journal*. I hope you will enjoy the content brought to you this month.

With their informative article “Not So Fast! Enforcing Accelerated Rent Clauses in Commercial Lease Agreements,” Brian P. Watt and Alexandra “Allie” Apple walk us through the law surrounding the enforcement of clauses for accelerated rent in the event of breach in commercial leases. The authors included helpful hints on drafting such clauses so as to maximize the odds that they will be upheld in court.

In his President’s Page, Darrell Sutton invites our members to weigh in on the issue of mandatory professional liability insurance. After more than a year of study and debate, and substantial feedback from members, the members of the Professional Liability Insurance Committee are taking another look at the issue. There are now four options for discussion, and I hope you will consider sharing your thoughts on this important topic.

In this month’s Attorney Wellness section, Amna Shirazi shares her personal story of juggling her career while having children and struggling with postpartum issues of anxiety and insomnia. As a busy attorney and mother myself, Amna’s story moved me, and I am so thankful for her openness and honesty about this difficult topic. I hope her story will help others experiencing similar issues to seek the help they need and deserve, and

to keep in mind the valuable resources available to assist our members.

In anticipation of what promises to be a busy legislative session beginning on Jan. 13, 2020, we are featuring a preview of important legislation that will be up for debate. Study committees have been active this fall on a wide variety of legislative issues. Some proposed legislation of particular note to our members include revisions to Title 53 involving trusts and estates, adoption of the Uniform Mediation Act and several lawsuit reform bills including setting caps for damages, allowing admission of evidence regarding seat belt use in relation to assumption of risk and apportionment of fault, and several revisions to the Georgia Civil Practice Act.

As mentioned in our legislative feature, and as I am sure you all know, Sen. Johnny Isakson is retiring at the end of the year after serving Georgia for the last 15 years in the U.S. Senate. I would like to thank Sen. Isakson for his dedication to our great state and wish him well in his retirement.

On the topic of service, with approximately 1,000 new lawyers being sworn in to our organization each year, the need for qualified and engaged mentors is great. I hope you will consider “Giving by Mentoring” as encouraged by our TILPP director. Her article contains a great deal of information for anyone considering serving as a mentor, as I hope you all will.

Happy Holidays! •



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DARRELL SUTTON

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Mandatory Professional Liability Insurance? Let Us Hear from You

For more than a year now, the leadership and staff of the State Bar of Georgia have been studying the issue of mandatory professional liability insurance. Specifically, we are considering a requirement—as some other state bars have—for our members who are active in private practice to carry such insurance, or at least to disclose whether they are covered.

As we continue seeking the appropriate balance between protecting both the public and the profession, we are seeking the opinions of Bar members from around the state. There are many questions that have to be asked and answered before proceeding. We are providing a number of ways to collect feedback from Bar members. Before getting to those though, an update on the options being considered.

Our Professional Liability Insurance (PLI) Committee, chaired by Chris Twyman of Rome, is taking a fresh look at the issue of mandatory insurance coverage. After taking into consideration the substantial feedback received from Bar members during the past Bar year, the committee has modified the draft rule that was presented to the Board of Governors last spring, and is also presenting three additional options for discussion.

Option One would require all lawyers in private practice to disclose on their license fee statement whether they are covered by a malpractice insurance policy. The information would be published in each member's listing in the online Member Directory. Lawyers in private practice who fail to disclose would go out of good standing on Sept. 1 of the Bar year, which is the same date that members who do not pay their license fees cease to be in good standing. To return to good standing, the member would need to make the insurance disclosure to the Membership Department of the Bar. Lawyers who have coverage would not be required to provide information about the insurance company, policy number or policy limits.

Bar members exempted from disclosure under Option One include inactive members, government lawyers, in-house counsel and arbitrators/mediators. The online Member Directory would also include a disclaimer about the PLI disclosure, similar to the one used by the Colorado Bar: "This information is intended to present a general overview of legal malpractice insurance and is for illustrative purposes only. It is not intended to represent the actual terms and conditions of

any particular malpractice policy. Please remember that only the relevant insurance policy can provide the actual terms, coverage, amounts, conditions and exclusions. You should not hesitate to discuss the issue of malpractice coverage with your lawyer.”

Each member with professional liability insurance would be required to maintain documentation showing the name of her or his professional liability insurer, the policy number, term and coverage limits so that it could be produced at the request of the Bar. Finally, members would be required to notify the State Bar within 30 days if their insurance policy lapses, terminates or is no longer in effect for any reason.

Option Two would include all of the provisions of Option One, with an additional provision encouraging lawyers who are not covered by a PLI policy to take a free voluntary online self-assessment course provided by the Bar and designed to evaluate the lawyer’s practice for the risk of malpractice. The assessment would be modeled on one used in Colorado. Members could receive CLE credit upon completion of the course. The assessment results would be confidential, and members would receive information about resources to help reduce the risk of a malpractice claim.

The risk assessment program would generate information tailored to the lawyer’s needs to reduce the risk of a malpractice claim. For example, Colorado’s voluntary risk assessment course includes 10 self-assessment tests, including developing competent practices; communicating in an effective, timely, professional manner; ensuring that confidentiality requirements are met; avoiding conflicts of interest, file management, security and retention; managing the law firm or legal entity and staff appropriately; charging appropriate fees and making appropriate disbursements; ensuring that reliable trust account practices are in use; access to justice and client development; and wellness and inclusivity.

Option Three would include all of the provisions of Options One and Two, but with two changes: (1) the disclosure of PLI information would not be pub-

OFFICERS’ BLOCK

In this issue of the Georgia Bar Journal, we asked our State Bar of Georgia officers, “What’s the best gift you’ve ever received? What is your favorite gift you have ever given?”



DARRELL SUTTON

President

Identifying the best gift you have given is much like identifying your best quality (my boyish good looks). But because I was asked I will tell you: tickets to Hamilton. As for the best gift I have been given, it is bow ties, of course!



DAWN M. JONES

President-Elect

The best gift received? A Holly Hobbie doll that I absolutely loved to tatters! The best gift given? A fax machine I bought with one of my first nursing paychecks for my Dad to use at his auto repair shop business in D.C. He fussed about the expense but LOVED IT!



ELIZABETH L. FITE

Treasurer

My dog, Betty White, is among the best gifts I’ve ever received. Please ask to see a picture. My absolute favorite gift to give is flying my parents (and now that my father is deceased, my mother) to be with family at Christmas.



SARAH B. “SALLY” AKINS

Secretary

The best was a book of poetry from my grandfather when I was a young girl. It came with the promise of 25 cents for every poem I memorized and could recite. I hope the best gift I’ve ever given to my family, friends and colleagues is time. Time to laugh, time to be together and time to listen.



HON. KENNETH B. HODGES III

Immediate Past President

The best given was Christmas 2003. It was an engagement ring to Melissa, after giving her another gift to throw her off from thinking the ring was coming. The best received was, yes, the two children, Margaret and Jack, that followed, and the 15 (and counting!) wonderful years since.

lished on the Bar's website or otherwise be shared with the Office of the General Counsel, but (2) the self-assessment course for those lawyers not covered would be mandatory. If the lawyer failed to make the disclosure or, if not covered, failed to either complete the assessment or obtain coverage within one year of the required disclosure date, she or he would go out of good standing on July 1 of the following Bar year. Also, the Bar would be authorized to report self-assessment data publicly in the aggregate.

Option Four is the proposal that requires lawyers in private practice to be covered by a PLI policy with limits of no less than \$100,000 per occurrence and \$300,000 in the aggregate. The provision that required coverage to be non-eroding would now apply to only policies with minimal limits. This option also would require lawyers to obtain or be covered by a PLI policy and to report that to the Bar on the license fee statement. Members who do not comply would go out of good standing as of Sept. 1 of the Bar year.

Under Option Four, whether a lawyer carries professional liability insurance would be public. Each lawyer's insurance status would appear in the State Bar Member Director as either "yes," "no" or "exempt." Government lawyers, in-house

counsel, arbitrators/mediators and inactive Bar members would still be exempt from the mandatory insurance requirement.

The State Bar will not proceed with any of these options without first ensuring that all Bar members who wish to offer their opinion have been heard and all questions have been asked and answered. So that every Bar member who wishes to do so, the PLI committee will be hosting town hall style meetings across the state. The first of these was held in October in conjunction with the Fall Board of Governors Meeting in Savannah. Bar members were encouraged to share thoughts and ask questions about the current proposal and other options. Several Bar members took the opportunity to ask questions and express their views in a healthy exchange with committee members that lasted about 1 1/2 hours.

A second town hall was held Nov. 21 in Rome; a third will take place from 3:30 to 5 p.m. on Jan. 10, 2020, at The Georgian Terrace hotel in Atlanta; and a fourth will occur in March in conjunction with the Spring Board of Governors Meeting at Chateau Elan in Braselton. Additional town halls are being scheduled for other parts of the state. Watch your email inboxes and the Bar's social media channels for dates and times.

In the meantime, the PLI Committee and I want to hear from you. Email me at president@gabar.org with your thoughts and opinions. Or, contact any of the PLI committee's members: Chris Twyman, Rome; Sally Akins and Kimberly Butler, Savannah; Christy Childers, Macon; Stephanie Cooper, Birmingham, Alabama; Hamilton Garner, Moultrie; Brandon Goldberg, College Park; Warren Hinds, Roswell; Hon. Ken Hodges, Albany; Linley Jones, Toronda Silas, Gary Spencer, Shannon Sprinkle and Meredith Sutton, Atlanta; Maddox Kilgore, Marietta; David Lefkowitz, Athens; Daniel O'Connor, Vidalia; Dennis Sanders, Thomson; and David Lipscomb, Lawrenceville.

This is your opportunity to make the Bar better by helping us solve a complicated but important issue. Seize it. We're listening! ●

This is your opportunity to make the Bar better by helping us solve a complicated but important issue. Seize it. We're listening!

The State Bar of Georgia
announces its annual



Fiction Writing COMPETITION

Deadline: Jan. 10, 2020

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



WILL DAVIS

YLD President
State Bar of Georgia
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2020 Signature Fundraiser to Support Georgia Legal Services Program

The Young Lawyers Division will hold our 2020 Signature Fundraiser on March 21 with a St. Patrick's Day theme. Over the years, our Signature Fundraiser has been highly successful in providing an evening of fun for Bar members and guests, in addition to the primary purpose of generating significant financial support for a worthy Georgia nonprofit organization selected by the YLD Board of Directors.

This year's beneficiary of the YLD Signature Fundraiser is the Georgia Legal Services Program (GLSP), which for almost 50 years now has provided civil legal services to low-income residents in the 154 Georgia counties outside the immediate metro-Atlanta area. GLSP is a most appropriate choice as our 2020 beneficiary, as it was actually the brainchild of a group of visionary members of the YLD (then known as the Younger Lawyers Section) in the late 1960s and early 1970s, and it also happens to be where I began my career as a young lawyer a decade ago in Albany.

In 1968, Georgia young lawyers initiated a study of the pressing need for low-income Georgians to have access to legal representation. That study concluded

there was a distressing disproportion between the actual need for legal services by those who could not afford them and the present supply of legal services available to them. In addition, the study found that lawyers tended to concentrate in urban areas, whereas many of the "indigent" lived in rural areas where legal help was less available.

This first step was followed the next year by another extensive report aimed at promoting "provision of legal services to indigent persons to the fullest extent possible," including a draft of Articles of Incorporation of Georgia Indigents Legal Services, Inc. It was through the efforts of Georgia's young lawyers that the Georgia Legal Services Program was created in 1971.

All Georgians have a right to high-quality legal services regardless of their ability to pay. Our state's population growth and economic prosperity has not and will not close the justice gap. As we get ready to turn the calendar from 2019 to 2020, the need for GLSP—whose mission is to provide civil legal services for persons with low incomes, creating equal access to justice and opportunities out of poverty—is as great, if not greater, than it was a half-century ago.

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, "What's the best gift you've ever received? What is your favorite gift you have ever given?"

According to a 2007-08 Georgia Civil Legal Needs Study conducted by Kennesaw State University, more than 60 percent of low- and moderate-income households in Georgia experience one or more civil legal needs per year.

Currently, 70 percent of all Georgia attorneys practice in five metro-Atlanta counties: Fulton, DeKalb, Cobb, Gwinnett and Clayton, which are covered by Atlanta Legal Aid. That leaves only 30 percent of all Georgia attorneys to cover the other 154 counties outside the immediate metro area. GLSP is thus an invaluable resource for residents in the vast majority of our state who need but cannot afford legal services. When I worked for GLSP in Albany, our office housed six lawyers that served clients in nearly 30 counties across Southwest Georgia, including many counties where zero lawyers maintained an office.

GLSP attorneys and advocates provide free, civil legal services for low-income Georgians whose earnings do not exceed 200 percent of the federal poverty line or are 60 and older. In terms of practice areas, available legal services vary across the state. Some of GLSP's most experienced practice areas include family law and domestic violence cases, consumer law, education law, farm workers' rights, housing law and public benefits.

Headquartered at the Bar Center building in downtown Atlanta, GLSP operates nine field offices in Albany, Augusta, Athens, Brunswick, Columbus, Dalton, Gainesville, Macon and Savannah—enabling GLSP attorneys to represent people in civil cases right where they live. In 2017, GLSP staff helped a total of 125,672 people through legal proceedings across the state.



WILL DAVIS | YLD President

Jared and I traveled to New York City to celebrate his birthday, which I think is the favorite gift I've given! I received a gift from my grandfather that allowed me to study abroad in Spain for a semester in undergrad, and those memories are irreplaceable.



BERT HUMMEL | YLD President-Elect

The best gift I've given is actually the same as the best gift I've received. My daughter, Mary Olivia, "MO," is the best gift I've given the world and the best I've ever received.



ELISSA B. HAYNES | YLD Treasurer

One of the best gifts I received was my mother funding my study abroad program in college (and her forgiving me for staying in 5-star hotels instead of hostels). A favorite gift that I've gifted is a hand-calligraphed (by me) Hillary Clinton quote for a law school friend's daughter.



RON DANIELS | YLD Secretary

When I was four years old I got The Real Ghostbusters Proton Pack. I remember playing with it for years. The best gift I've ever given was a new blender to my grandmother. The one she was using was older than me. She's going to kill me for writing this.



RIZZA O'CONNOR | YLD Immediate Past President

My favorite gift received was my Nintendo game system that I received in 1990 at the age of 5. My favorite gift given was an early present to my kids last year, where we surprised them with a trip to New York City to see the real Santa at Macy's.



ASHLEY AKINS | YLD Newsletter Co-Editor

I enjoy giving and receiving experience-type gifts. Fun trips, concerts and plays with family and friends are my favorite memories.



AUDREY B. BERGESON | YLD Newsletter Co-Editor

It's cliché, but true: my daughter is the best gift I've ever received. I was so grateful to become a mom this past year. I'm looking forward to the holiday season and getting to pick out Christmas gifts for her!



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When GLSP headquarters moved to the Bar Center in 2003, the program achieved greater visibility among the private bar and began to foster expanded opportunities for volunteer work and other collaborations. The conference center has proven to be a valuable resource for training and meetings of all varieties. GLSP also expanded its outreach to Latino communities and clients in response to the growth in the populations of new immigrants around the state, especially in north Georgia.

In 1982, the State Bar collaborated with GLSP to create the Pro Bono Project, which assists local bar associations, individual private attorneys and communities in developing pro bono private attorney/bar involvement programs in their areas for the delivery of legal services to the poor. The project also receives support from the Chief Justice's Commission on Professionalism and the Georgia Bar Foundation.

Phyllis Holmen, who worked for GLSP throughout her 43-year career in the legal profession and who served as the program's executive director for 28 of those years, retired in 2017. The GLSP board honored Phyllis as a Champion of Justice that year, one of a multitude of awards she earned over the course of her leadership of GLSP.

Rick Rufolo is the new executive director of GLSP, and he is supported by General Counsel/Deputy Director Ira Foster and a tremendous team of department directors, specialist attorneys, managing attorneys, regional operations managers, senior staff attorneys, supervising attorneys and staff attorneys. The State Bar of Georgia Board of Governors appoints six members of the 35-member board of GLSP.

GLSP employs many young lawyers, sometimes for a few years. The experience is invaluable to these young lawyers, some of whom make their careers in public service. I am proud of the fact that my first job was with GLSP's Albany office.

Within two weeks of joining GLSP as a staff attorney, I began representing clients in TPO and dispossessory actions where I gained incomparable courtroom

experience as a very green 25-year-old attorney. As part of my work, I provided outreach to limited-English proficient individuals, primarily those that spoke Spanish. I grew up in a middle class family in Cobb County, and it was incredibly eye opening to meet with clients at DFCS offices, libraries, health clinics or in their homes (often seemingly located in the middle of nowhere). In 2009, phone-based GPS technology was not really a thing, and on any given day, I was driving from Albany to Bainbridge to Valdosta trying to keep up with what seemed to be a never-ending stream of clients in need.

Each local GLSP office partners with local private law firms to encourage pro bono involvement with the organization. GLSP could not succeed without the continued involvement of its pro bono volunteers. GLSP truly makes a statewide impact that all members of the State Bar should be proud of, and I hope that, in choosing GLSP as this year's fundraiser beneficiary, we can achieve statewide support in the form of sponsorships and tickets sold.

GLSP was also the beneficiary of the inaugural YLD Signature Fundraiser in 2011, which raised more than \$45,000 in support of GLSP's tireless dedication to serving citizens in the most underserved areas of Georgia with needs that would not otherwise be addressed effectively. What is especially great about supporting GLSP is the broad breadth of the program's impact across the state. Likewise, we are counting on Bar members from all parts of the state to participate in the Signature Fundraiser and donate to this worthy cause. The money raised will benefit all GLSP offices and their efforts to expand access to justice in their regions.

At the time of this writing, only the date of March 21 has been confirmed for the 2020 YLD Signature Fundraiser but more details will be presented at the Mid-year Meeting. In January, we will present various levels of sponsorship opportunities, so please stay tuned for details on the event's location, hours and ticket availability. We hope to see you there! ●

“And Justice for All” State Bar Campaign for the Georgia Legal Services Program® (GLSP)



You Can Help Close the Justice Gap in Georgia.

Ms. Mason, a family violence survivor, faced serious breast cancer without medical insurance, including Medicaid. The state agency denied her application for Medicaid claiming that she was not eligible because of a federal waiting period created as part of Welfare Reform in the mid-1990's. GLSP attorneys filed an appeal of the denial, represented the client at an administrative hearing, filed and won a petition in a Georgia superior court, and successfully represented the client in the Georgia Court of Appeals. Because of the favorable Court of appeals decision, the state agency approved our client's application for Medicaid. With Medicaid, our client obtained life-saving medical care.

This case is one of first impression in Georgia and first in the nation to hold that a legal permanent resident who entered the U.S. before the waiting period went into effect in 1996 and remained physically present was not subject to the five-year waiting period for Medicaid eligibility imposed as part of federal Welfare Reform. Because of GLSP's advocacy, the state agency and the Office of the Attorney General are on notice about the legal application of the five-year waiting period.

**Give to the Georgia Legal Services Program at www.glsp.org.
Thank you for your generosity and support!**



**2019 “And Justice for All” State Bar Campaign
for the Georgia Legal Services Program®**



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 does not necessarily represent the actual client.

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



JEFF DAVIS

Executive Director
State Bar of Georgia
jeffd@gabar.org

This is the ninth in a series of articles highlighting the heroic and vital contributions lawyers and judges have made to the American Civil Rights Movement.

Sen. Leroy Johnson: 'A Jewel in Georgia's Crown'

The passing of former Georgia State Sen. Leroy Johnson on Oct. 24 at the age of 91 was mourned throughout the state's civil rights community, under the gold dome of the State Capitol and among his colleagues in the legal profession.

Known primarily for being the first African-American elected to the Georgia Senate since Reconstruction, Johnson was an accomplished attorney in Atlanta during the Civil Rights Movement and was still practicing law more than 50 years after his admission to the Georgia Bar.

According to his New Georgia Encyclopedia biography written by the late Tom Crawford, Leroy Reginald Johnson was born on July 28, 1928, in Atlanta. In 1945, he graduated from Booker T. Washington High School and attended Morehouse College, where he earned a bachelor's degree in 1949, and Atlanta University (now Clark Atlanta University), receiving a master's degree in 1951. He married Cleopatra Whittington in 1948, and they had one son, Michael Vince.

Johnson taught social science in the Atlanta public schools from 1950 to 1954

before entering law school. Unable to study law at the then-segregated University of Georgia, he attended North Carolina Central University, where he earned his law degree in 1957.

As the first African-American hired by the Fulton County Solicitor General's Office (now District Attorney's Office), Johnson worked as a criminal investigator from 1957 to 1962. During the same period, Johnson was an adviser—along with business leader Jesse Hill and educator Whitney Young—to the black college students carrying out Atlanta's first civil rights demonstrations.

Those demonstrations included mass sit-ins at the lunch counters of Rich's department stores in Atlanta. Among the students Johnson advised was Julian Bond, himself a future Georgia legislator and nationally prominent civil rights leader.

Johnson's political career began when, as Crawford explained, "Georgia's county unit system of allocating seats in the General Assembly was overturned in a historic 'one man, one vote' court decision in 1962. The ruling resulted in the creation

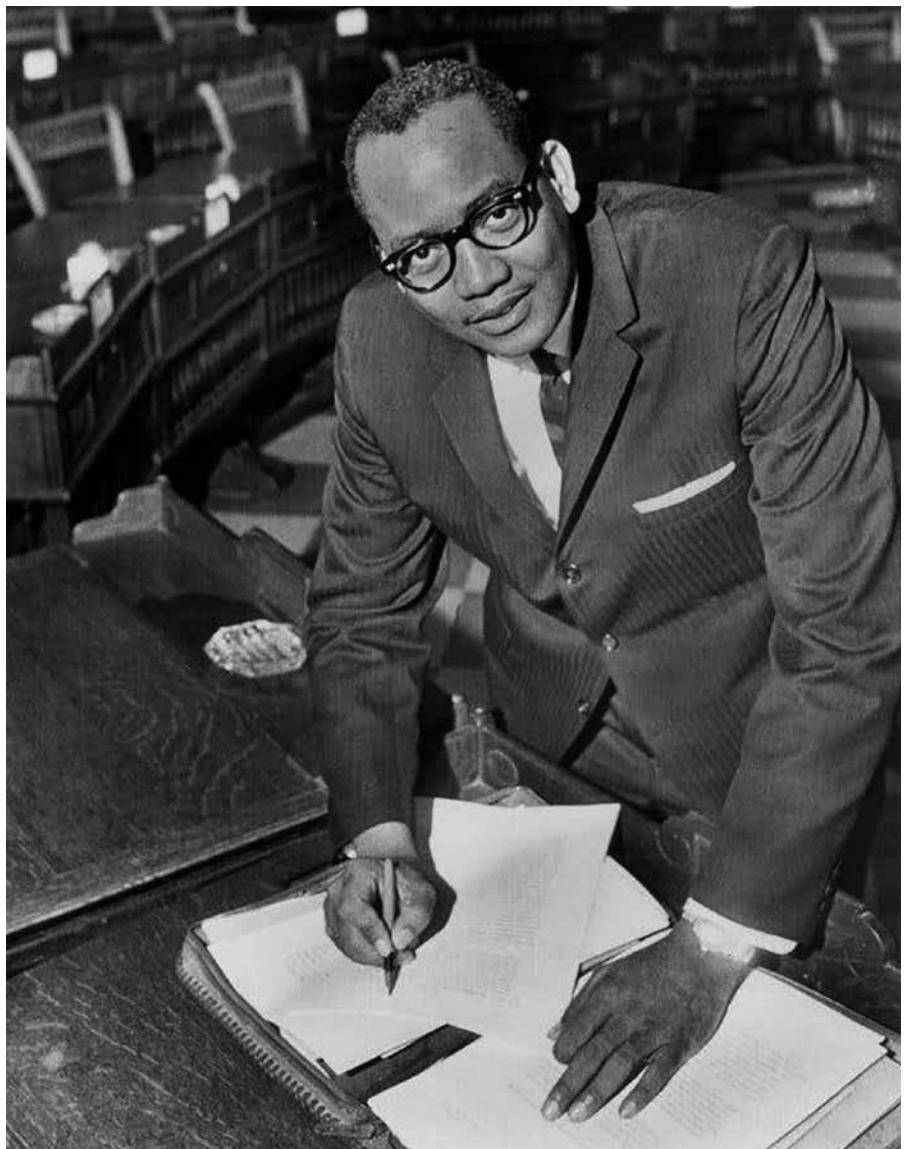
of a predominantly black Senate district in Fulton County, and Johnson won the seat in 1962 —making him the first African-American to serve in the Legislature since 1907.” Johnson defeated three white opponents with 70 percent of the vote in the 38th District.

When he took his historic oath of office in January 1963, Johnson joined a particularly noteworthy freshman class in the Senate. Also taking his seat that year was a peanut farmer from Plains named Jimmy Carter, who would later be elected as governor and as the 39th president of the United States.

“Employees in the segregated state cafeteria balked at serving food to Johnson during that first year,” Crawford wrote, “but he persevered and became an influential lawmaker, rising to the position of chairman of the powerful Judiciary Committee.”

In 1965, 11 African-Americans were elected to the Georgia House of Representatives after the Civil Rights Act of 1964 and Voting Rights Act of 1965 were approved by Congress and signed into law by President Lyndon B. Johnson. One of those newly elected legislators was the aforementioned Julian Bond. But in January 1966, a motion was made in the Georgia House not to seat Bond because of his outspoken opposition to the Vietnam War and support for those who avoided the military draft.

Testifying on behalf of Bond in a House hearing on the motion was none other



Sen. Leroy Johnson, 1928-2019

PHOTO CREDIT: NEW YORK TIMES

“Johnson devoted his life to making change. It can be easy to forget that we stand upon the shoulders of those who blazed the trails we are now on. He is truly a jewel in Georgia’s crown.” —State Sen. Gloria Butler

than Sen. Leroy Johnson. The House still voted overwhelmingly against seating Bond, but the U.S. Supreme Court ruled that Bond’s freedom of speech had been violated and ordered the House to seat him.

Four years later, Johnson was credited with leading the effort to enable Muhammad Ali, whose boxing license had been suspended earlier over his opposition and refusal to serve in Vietnam, to restart his legendary career with a fight in Atlanta, at a time when other cities were refusing to do so. Johnson was instrumental in staging Ali’s match against Jerry Quarry at the old Municipal Auditorium, according to Crawford, who wrote, “The bout with Quarry attracted national attention and helped pave the way for Ali to eventually reclaim the heavyweight crown.”

Johnson served in the Senate through 1975, having made an unsuccessful bid for mayor of Atlanta in 1973. For several years in the 1980s, Johnson was executive director of the Atlanta-Fulton County Recreation Authority, and he remained active in the practice of law at least through 2008, often working pro bono for those who needed legal representation but were unable to afford an attorney.

Derrick Alexander Pope, managing director of the Arc of Justice Institute, said of Johnson, “He had an unwavering love for the law and its power to be a useful tool in changing people’s lives. He was especially proud of the work he did for his clients. He would speak passionately about his role in being their advocate, especially those cases where an imbalance of power was present.”

In 1996, Johnson’s portrait was placed on the third floor of the State Capitol, near the Senate chamber. The Senate voted unanimously during its 2000 session to rename a portion of Fulton Industrial Boulevard as Leroy Johnson-Fulton Industrial Boulevard.

In 2017, the State Bar of Georgia’s Committee to Promote Inclusion in the Profession honored Sen. Johnson with the Randolph Thrower Lifetime Achievement Award, which recognizes an outstanding individual who has dedicated his or her career to providing opportunities that foster a more diverse legal profession for members of underrepresented groups in Georgia.

“I read a quote once that said, ‘When you do your best, help will come from unexpected places,’” Johnson said upon receiving the award. “And that’s what I did. It’s been a very moving experience for me to be able to help others.”

The *Atlanta Journal-Constitution* reported following his death, “Johnson can be credited with working to quietly desegregate the Georgia Capitol. Johnson in 2008 told the story as part of an oral history project organized by then-Senate President Pro Tem Eric Johnson. On Johnson’s first day in office, the restrooms, drinking fountains and chamber galleries were labeled ‘white’ and ‘colored,’ he said. And all the pages who delivered messages to lawmakers were white.

“I carried my pages into restrooms that said white instead of colored. And when we got to the water fountain, I had them drink from the water fountain that had the sign that said white instead

of colored,’ Johnson said in 2008. ‘None of this was done with a news camera pointed to capture the fact.’ Shortly after, then-Gov. Carl Sanders removed the signs from Capitol.”

In the days following Johnson’s death, Gov. Brian Kemp signed an executive order allowing for the former senator’s body to lie in state in the Capitol Rotunda, a rarely bestowed honor. Additionally, the governor ordered flags across the state to be flown at half-staff on the day of Johnson’s funeral at Ebenezer Baptist Church in Atlanta, where he had served as chairman of the board.

“Leroy Johnson was as grand and dynamic a figure in the law as there ever was. His public life was committed to what he called ‘changing the impression’ of the capabilities of excluded people. The great and lasting impact of his more than half-century devotion to that principle is a lesson in not only how to get things done, but why,” said Pope.

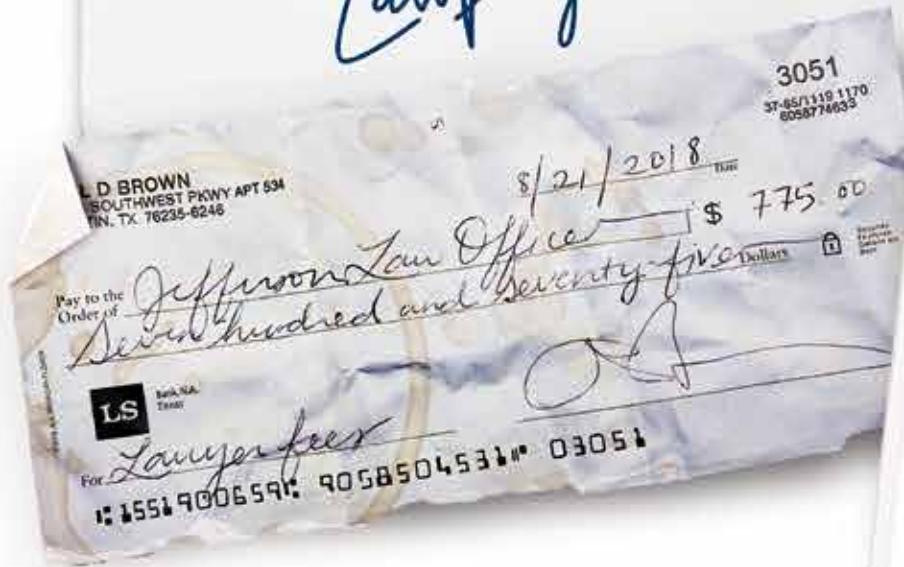
Many accolades from state leaders were reported following Johnson’s death, including one from state Sen. Gloria Butler, who told the *AJC* that Johnson devoted his life to “making change. It can be easy to forget that we stand upon the shoulders of those who blazed the trails we are now on. He is truly a jewel in Georgia’s crown.” •

Thanks to Linton Johnson, media consultant to the Bar, for his assistance in researching and drafting this article. These articles are in support of the Arc of Justice Institute and its Hidden Legal Figures project. For more information, visit onthearc.net.

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Not So Fast! Enforcing Accelerated Rent Clauses in Commercial Lease Agreements

This article explains the three key criteria for enforcing accelerated rent provisions in commercial leases, as well as the method for calculating accelerated rent, and offers practical tips for drafting accelerated rent provisions governed by Georgia law.

BY BRIAN P. WATT AND
ALEXANDRA "ALLIE" APPLE

The typical commercial lease agreement affords the landlord a plethora of remedies when a tenant defaults. One commonly included remedy allows the landlord to accelerate future rent payments for the remainder of the lease term as damages for the tenant's breach. Lease provisions providing this type of remedy are known as accelerated rent provisions. While these provisions are common in commercial leases, the language used (or not used) in the provisions often runs afoul of Georgia's strict criteria for enforcement.

Accelerated Rent Provisions Generally

As a threshold matter, acceleration of rent due to tenant default must be a remedy expressly provided for in the lease; if the lease does not contain a clause allowing for the collection of future-accruing rent, the landlord is typically entitled to collect rent from the tenant only

as rent becomes due for the remainder of the term, plus whatever other damages might have accrued at the time of the tenant's default.¹ Moreover, in the absence of an accelerated rent provision or language expressly permitting the recovery of rent that accrues after a tenant is dispossessed, an eviction of the tenant usually terminates the lease and cuts off the landlord's right to collect rent after the eviction is carried out.² As with most contract terms, however, merely having an accelerated rent provision in the lease does not guarantee the landlord's recovery under such a provision.

In Georgia, accelerated rent provisions are scrutinized by the courts as liquidated damages provisions.³ Under a typical liquidated damages clause, the contracting parties agree on a specific amount of damages to be recovered by the non-breaching party upon the other's breach of the contract.⁴ Accelerated rent provisions in commercial leases essentially do the same thing: the parties to the lease agree on a sum of money (or a formula for arriving at a sum of money) to be payable to the landlord as damages upon an event of default by the tenant.

Georgia courts utilize a strict three-part test to determine whether an accelerated rent provision is valid as a liquidated damages provision or invalid as an unenforceable penalty.⁵ "First, the injury caused by the breach must be difficult or impossible of accurate estimation; second, the parties must intend to

provide for damages rather than for a penalty; and, third, the sum stipulated must be a reasonable pre-estimate of the probable loss."⁶ The enforceability of accelerated rent provisions is a question of law for the court.⁷ If the clause at issue fails to meet any one of the three parts of the test, then the accelerated rent provision will be found unenforceable and invalid.⁸ Because of Georgia's strict interpretation of accelerated rent provisions, it is critical that both tenants and landlords alike pay close attention to the language of these clauses during the lease drafting process.

This article explains the three key criteria for enforcing accelerated rent provisions in commercial leases, as well as the method for calculating accelerated rent. Based on this three-pronged analysis, this article also offers practical tips for drafting accelerated rent provisions governed by Georgia law.

Criteria for Enforcing Accelerated Rent Provisions

As set forth by the Supreme Court of Georgia in *Southeastern Land Fund, Inc. v. Real Estate World, Inc.*,⁹ a liquidated damages provision will be enforced if the following three factors are satisfied: (1) the injury caused by the breach is difficult or impossible to accurately determine at the time of contracting; (2) the parties intend to provide for damages rather than a penalty; and (3) the sum is a reasonable pre-estimate of the probable loss. An accelerated rent provision that meets all three criteria will be upheld as a valid and enforceable liquidated damages clause.¹⁰ "If these requirements are not met, then the accelerated rent provision 'fails as a penalty'" and will likely be found by a Georgia court to be unenforceable.¹¹

The injury caused by the tenant's breach of the lease must be difficult or impossible of accurate estimation at the time of contracting.

The first prong of Georgia's test for enforcing accelerated rent provisions—that is, *that* the damages must be difficult or impossible to estimate when the lease is executed—is usually fairly easy to satisfy.

Because of Georgia's strict interpretation of accelerated rent provisions, it is critical that both tenants and landlords alike pay close attention to the language of these clauses during the lease drafting process.

Although the amount of damage for a breach of the lease is easily stated in theory, and easily applied when damages are sought at the end of the lease term, a concrete estimation of damage is not always easily made when the action seeks to collect immediate lump sum damages in the form of accelerated rent on a lease breached with a substantial amount of time remaining in the term.¹²

The measure of accelerated rent damages, or “the difference between what the tenant would have had to pay in rent for the balance of the term, and the fair rental value of the premises for the balance of the term,”¹³ may be difficult to estimate accurately.

Because calculating the damages owed under an accelerated rent provision depends on a determination of the fair market value of the balance of the lease term, this calculation “may require a difficult assessment of future market conditions to calculate the future rental value of the premises, and the probability of reletting for the full remaining term.”¹⁴ Although the outcome may vary depending on the length of the remaining lease term and the facts of the situation, calculating accelerated rent owed under such a provision is typically difficult or impossible of accurate estimation.¹⁵ This is especially true because the relevant point in time to determine the enforceability of an accelerated rent provision is the time of execution of the lease.¹⁶ The speculative nature of prospectively calculating accelerated rent damages will likely result in a finding of enforceability under the first prong of Georgia’s test.

The parties intend to provide for damages rather than for a penalty.

If the parties intend the accelerated rent provision to act as a penalty or punitive deterrent, then the provision will be found unenforceable and the landlord’s recovery of future rent will be prohibited.¹⁷ In *Jones v. Clark*, the Court of Appeals of Georgia concluded that an accelerated rent provision was unenforceable, in part because the “lease does not refer to th[e] provision as one for liquidated damages,

nor does it otherwise manifest an intent to treat it as a provision for liquidated damages.”¹⁸ Similarly, if the lease explicitly states the accelerated rent damages provided for in the lease are not liquidated damages, then a court is more likely to find the accelerated rent provision to be a penalty, and therefore invalid.¹⁹

Many accelerated rent provisions explicitly state that the contemplated damages are “liquidated damages” and/or “are not a penalty.” Courts have relied on such descriptors as indicative of the contracting parties’ intent to treat accelerated rent as liquidated damages.²⁰ However, such references in and of themselves do not ensure the enforceability of the provision under Georgia law.²¹ Courts may instead look beyond the language used in the lease to determine whether the parties intended to provide for liquidated damages or a penalty.²² Furthermore, courts will take into account the actual result of computing such damages.²³ If awarding the accelerated rent damages would result in a windfall to the landlord, then courts will likely find the provision to be a penalty, and therefore invalid and unenforceable.²⁴

The sum stipulated must be a reasonable pre-estimate of the probable loss.

The third prong of Georgia’s accelerated rent/liquidated damages analysis often presents the most problems to enforcement of an accelerated rent provision. “To qualify as enforceable liquidated damages, the sums sought as accelerated rent under the lease must be a reasonable estimate of actual damages.”²⁵ Unless the accelerated rent clause is properly drafted, a landlord will likely have difficulty meeting the third prong of the test.

The landlord’s ability to relet the premises for the remainder of the lease term is an important consideration for determining the landlord’s probable loss.²⁶ If the landlord is able to lease the premises at rental rates comparable to or higher than those in the original lease, the landlord may be unable to show that the tenant’s breach resulted in a loss of rental income to the landlord. Georgia law prescribes the measure of loss of rental in-

come damages as “the difference between what the tenant would have had to pay in rent for the balance of the term, and the fair rental value of the premises for the balance of the term.”²⁷ In this context, “accelerated rent” is something of a misnomer. Georgia law does not permit the recovery in advance of all rental amounts that would come due for the balance of the lease term. Rather, enforcing an accelerated rent provision allows a landlord to recover the remaining rent due under the lease *less* the future rental value of the premises, while also accounting for the probability of reletting the premises.²⁸

If the lease does not impose an obligation on the landlord to relet the premises in the event of a tenant default, or if the reletting of the premises resides solely within the landlord’s discretion, then a court may deem the accelerated rent provision to be an unenforceable penalty.²⁹ In *Peterson v. P.C. Towers, L.P.*,³⁰ the Court of Appeals of Georgia noted:

both possession of the premises and a present lump sum award of future rent without any calculation of damages based on the future rental value of the premises, and the likelihood of reletting, provides [the landlord] with payment potentially bearing no reasonable relation to actual damages. . . . Accordingly, in order to make a reasonable estimate of the difference between the rent due in the lease and the actual rental value of the premises for the remaining term, this calculation must be conditioned on an assessment of future market conditions for the premises to account for future rental value, and the probability of reletting the premises for all or part of the remaining term.³¹

Satisfying the third prong also requires that the amount of accelerated rent be reduced to present value.³² Reduction to present value, however, is not enough on its own to ensure enforceability of an accelerated rent provision.³³ The calculation of the damages, to be a reasonable estimate of probable loss, “must be conditioned on an assessment of future market conditions for the premises to account for future rental value, and the probability of

reletting the premises for all or part of the remaining term.”³⁴

Finally, the length of the remaining lease term should also be considered. The longer the period of time for which recovery is sought, the harder it will be to prove that accelerated rent represents a reasonable pre-estimate of the landlord’s probable loss.³⁵

Practical Tips for Drafting Enforceable Accelerated Rent Provisions Under Georgia Law

Drafters should be careful to ensure that the lease language conditions accelerated rent on present value calculations, future market conditions and the probability of reletting the premises so that the resulting damages do not constitute a penalty against the tenant. Drafters should also consider including an express statement that the accelerated rent damages are liquidated damages and are not a penalty. Although including this language is not a guarantee that the provision will be enforceable, it does give a little more support to the argument in favor of enforceability.

Accelerated rent must be a “reasonable estimate of the difference between the rent due under the lease and the actual rental value of the premises for the remaining term”; otherwise, the clause will be found unenforceable as a penalty.³⁶ Rent acceleration provisions should be clear that the amount to be recovered is not the full amount of the rent and other charges coming due for the remainder of the lease, but rather that full amount of rent less the “fair rental value” of the premises for the balance of the term, reduced to its net present value.³⁷ This approach provides assurance that the landlord will not receive a windfall by reletting the premises while still getting the full rental from the defaulting tenant for the balance of the term.

Keeping these guidelines in mind, a suggested approach is to include accelerated rent language similar to the following to address each prong of Georgia’s three-part test:

Prong 1: The provision expressly acknowledges the landlord’s injury to be difficult or impossible to estimate accurately at the time of contracting:

- “Tenant and Landlord acknowledge and agree that it is impossible to estimate these accelerated rent damages accurately [*or* “more precisely”]; *or*
- “Tenant and Landlord acknowledge and agree that Landlord’s damages caused by a Tenant breach of this lease would be difficult or impossible to estimate accurately.”

Prong 2: The contracting parties intend to provide for liquidated damages and not a penalty as a result of a default:

- “Payment of accelerated rent under this provision is intended not as a penalty but as liquidated damages”; *or*
- “Landlord may recover from Tenant, as full liquidated damages for Tenant’s breach, the accelerated rent damages.”

Prong 3: The stipulated damages are a reasonable pre-estimate of the probable loss to be suffered by the landlord:

- “Upon breach by Tenant, Tenant shall be liable to Landlord for accelerated rent damages, which damages shall be limited to (a) the amounts due and owing prior to such termination, plus (b) the cost of repossessing the Premises, plus (c) Landlord’s Reasonable Attorney’s Fees, plus (d) a sum which, at the date of such termination, equals the present value (discounted at eight percent (8 percent) per annum [*or some other reasonable discount rate*])³⁸ of (i) the Rent and all other sums which would have been due and payable by Tenant hereunder for the remainder of the Term *less* (ii) the aggregate reasonable, fair market rental value of the Premises for the same period, accounting for the cost, time, and other factors necessary to relet the Premises and future market conditions bearing on reletting, all of which amounts shall be immediately due and payable”; *or*

- “As a result of Tenant’s breach of this Lease, Landlord shall be indemnified for loss of rent by lump sum payment representing the difference between the amount of rent which would have been paid in accordance with this Lease for the remainder of the Lease Term (using the base rent which would have been paid in accordance with this Lease plus all taxes, insurance, and other expenses required to be paid by Tenant hereunder) and the aggregate fair market rent of the leased property for the remainder of the Lease Term, estimated as of the date of termination, both of which amounts shall be discounted using a discount rate equal to Treasury Securities with maturity date approximately equal to the remaining term of the Lease.”³⁹

Assuming the remaining contents of the lease do not contradict the effect of the accelerated rent provision, and the provision follows these guidelines, the accelerated rent provision will likely be enforceable under Georgia law. •



Brian P. Watt is a partner in the business litigation group at Troutman Sanders LLP, where he specializes in commercial real estate litigation. Watt has experience litigating various commercial and business disputes including lease and easement disputes, breach of contract actions, fraud claims, tortious interference claims and other statutory disputes.



Alexandra “Allie” Apple is an associate in the real estate and construction groups at Troutman Sanders LLP, where she focuses on commercial real estate transactions, including acquisition, leasing and development of commercial land and buildings, and complex construction matters such as commercial contract interpretation and negotiations, project delay, breach of contract, surety bond claims and lien claims.

Endnotes

1. See *Kasum Communications, Inc. v. CPI N. Druid Co.*, 135 Ga. App. 314, 314, 217 S.E.2d 492, 492-93 (1975); *Bentley-Kessinger, Inc. v. Jones*, 186 Ga. App. 466, 468, 367 S.E.2d 317, 318 (1988) (holding that, absent an express lease provision showing clear intent to the contrary, landlord could not collect future rent from tenant after eviction); *Am. Med. Transp. Group, Inc. v. Glo-An, Inc.*, 235 Ga. App. 464, 465-66, 509 S.E.2d 738, 740 (1998) (noting that no statutory or public policy exists that “limit[s] a lessee’s right to enter into a lease in which both parties agree that the lessee shall be liable for rent for the entire term, less that amount received if the premises are re-let”); *Int’l Biochemical Indus., Inc. v. Jamestown Mgmt. Corp.*, 262 Ga. App. 770, 773, 586 S.E.2d 442, 445 (2003) (“Although the general rule is that when a landlord evicts a tenant and takes possession of the premises, the lease is terminated and the right to claim rent which accrues after eviction is extinguished, the parties to a lease may contract to hold the lessee liable for post-eviction rent.”); *Fuel Mktg., Inc. v. Petroleum Realty Inv. Partners*, 267 Ga. App. 780, 782, 601 S.E.2d 125, 127-28 (2004) (vacating award of future rent to landlord when the lease did not contain valid provisions that would allow for such recovery); *Lowenberg v. Ford & Assocs., Inc.*, 165 Ga. App. 753, 753, 302 S.E.2d 433, 434 (1983) (noting that, in event of tenant default of a lease, landlord may be entitled to damages for nonpayment of rent in the amount already due, as well as collecting agreed rent each month as the rent becomes due, to the extent the premises remain vacant); *Crolley v. Crow-Childress-Mobley # 2*, 190 Ga. App. 496, 496, 379 S.E.2d 202, 203-04 (1989) (noting that landlord remedies for tenant default include: “(1) terminating the lease, (2) obtaining another tenant while holding the original tenant liable for any deficiency that may occur, or (3) permitting the premises to remain vacant while collecting the agreed-upon rent from the original tenant”).
2. *Rucker v. Wynn*, 212 Ga. App. 69, 71, 441 S.E.2d 417, 420 (1994), *overruled on other grounds* by *George v. Hercules Real Estate Servs., Inc.*, 339 Ga. App. 843, 851, 795 S.E.2d 81, 89 (2016); *Peterson v. P.C. Towers, L.P.*, 206 Ga. App. 591, 591-92, 426 S.E.2d 243, 245 (1992); *Johnson v. Ashkouti*, 193 Ga. App. 810, 811, 389 S.E.2d 27, 29 (1989).
3. *Peterson*, 206 Ga. App. at 592-93, 426 S.E.2d at 245-46 (noting that the accelerated rent provision at issue “either qualifies as an enforceable liquidated damages provision, or it fails as a penalty”). See also *Jones v. Clark*, 147 Ga. App. 657, 659, 249 S.E.2d 619, 620-21 (1978) (finding accelerated rent to be a

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- penalty rather than liquidated damages); *Glen Oak v. Henderson*, 258 Ga. 455, 458-59, 369 S.E.2d 736, 739 (1988) (acceleration clause in lease would be void as a penalty if it fails to meet any of the criteria for qualification as liquidated damages).
4. *See, e.g.*, O.C.G.A. § 13-6-7 (2019).
 5. *Caincare, Inc. v. Ellison*, 272 Ga. App. 190, 192, 612 S.E.2d 47, 50 (2005); *Peterson*, 206 Ga. App. at 593, 426 S.E.2d at 246; *Nobles v. Jiffy Mkt. Food Store Corp.*, 260 Ga. App. 18, 20, 579 S.E.2d 63, 65 (2003); *Bostick v. CMM Props., Inc.*, 337 Ga. App. 853, 855-56, 789 S.E.2d 211, 213-14 (2016).
 6. *Southeastern Land Fund, Inc. v. Real Estate World, Inc.*, 237 Ga. 227, 230, 227 S.E.2d 340, 343 (1976); *accord Nobles*, 260 Ga. App. at 20, 579 S.E.2d at 65; *Jones*, 147 Ga. App. at 659, 249 S.E.2d at 620-21.
 7. *Peterson*, 206 Ga. App. at 592-93, 426 S.E.2d at 246; *Carter v. Tokai Fin. Servs., Inc.*, 231 Ga. App. 755, 758, 500 S.E.2d 638, 641 (1998).
 8. *Caincare*, 272 Ga. App. at 192, 612 S.E.2d at 50.
 9. *Southeastern Land Fund*, 237 Ga. at 230, 227 S.E.2d at 343.
 10. *See, e.g.*, *Daniels v. Johnson*, 191 Ga. App. 70, 71, 381 S.E.2d 87, 89 (1989) (applying the enforceability of liquidated damages test and noting, “[t]he provision in a contract will be treated as enforceable liquidated damages rather than an unenforceable penalty only if all three of the factors are present”).
 11. *Nobles*, 260 Ga. App. at 20, 579 S.E.2d at 65 (quoting *Peterson*, 260 Ga. App. at 592, 426 S.E.2d at 246).
 12. *Peterson*, 206 Ga. App. at 593, 426 S.E.2d at 246.
 13. *Id.*
 14. *Id.*
 15. *See Cherry Farms, LLC v. Saulat Enters., Inc.*, No. 409cv043, 2009 WL 2848855, at *3 (S.D. Ga. Sept. 2, 2009).
 16. *Joyce’s Submarine Sandwiches, Inc. v. Cal. Pub. Employees’ Retirement Sys.*, 195 Ga. App. 748, 750, 395 S.E.2d 257, 259 (1990) (“[T]he relevant period for consideration was when the lease was executed by the parties, not at trial”).
 17. *See, e.g.*, *Nobles v. Jiffy Mkt. Food Store Corp.*, 260 Ga. App. 18, 21-22, 579 S.E.2d 63, 66-67 (2003).
 18. *Jones v. Clark*, 147 Ga. App. 657, 659, 249 S.E.2d 619, 620-21 (1978).
 19. *See, e.g.*, *Reames Rd., LLC v. Creative Bus Sales, Inc.*, No. 17-CV-01615-CC, 2017 WL 10410654, at *3 (N.D. Ga. July 27, 2017) (finding accelerated rent provision invalid under this second prong, in part because the provision “expressly provides that the provision ‘shall not be deemed liquidated damages’”).
 20. *Caincare, Inc. v. Ellison*, 272 Ga. App. 190, 192, 612 S.E.2d 47, 50 (2005) (concluding that the parties intended to provide for damages rather than a penalty because the “agreement explicitly states the \$10,000 sum and ‘additional charge’ of \$100 per day represent ‘liquidated damages’”); *Nat’l Emergency Servs., Inc. v. Wetherby*, 217 Ga. App. 42, 44, 456 S.E.2d 639, 641 (1995) (citing “the language of the contract itself,” which used the term “liquidated damages” to describe the accelerated rent, as evidence of the parties’ intent).
 21. *See, e.g.*, *Lager’s, LLC v. Palace Laundry, Inc.*, 247 Ga. App. 260, 266, 543 S.E.2d 773, 778 (2000) (“The labels and forms of words used in a contract do not determine whether the provision is enforceable as liquidated damages”).
 22. *See, e.g.*, *Daniels v. Johnson*, 191 Ga. App. 70, 71, 381 S.E.2d 87, 89 (1989) (“Where a designated sum is inserted into a contract for the purpose of deterring one or both of the parties from breaching it, it is a penalty.”); *Cherry Farms, LLC v. Saulat Enters., Inc.*, No. 409cv043, 2009 WL 2848855, at *3 (S.D. Ga. Sept. 2, 2009) (noting that the parties’ intent to make an accelerated rent provision one for liquidated damages does not need to be expressly stated, and that the parties may “otherwise manifest an intent to treat the provision as a provision for liquidated damages” (quoting *Jones v. Clark*, 147 Ga. App. 657, 659, 249 S.E.2d 619, 620-21 (1978))).
 23. *See Lager’s*, 247 Ga. App. at 266, 543 S.E.2d at 778 (finding clause unenforceable when, “[w]hat is clear . . . is that the contract’s formula for computing liquidated damages does not yield a reasonable pre-estimate of probable loss”).
 24. *See, e.g.*, *Cherry Farms*, 2009 WL 2848855, at *4 (citing *Peterson v. P.C. Towers, L.P.*, 206 Ga. App. 591, 592, 426 S.E.2d 243, 245-46 (1992)).
 25. *Peterson v. P. C. Towers, L.P.*, 206 Ga. App. at 593, 426 S.E.2d at 246.
 26. *Nobles v. Jiffy Mkt. Food Store Corp.*, 260 Ga. App. 18, 21, 579 S.E.2d 63, 65-66 (2003) (finding clause unenforceable, in part, because “the lease did not require that [the landlord] try to relet the premises in the event of [tenant]’s default”).
 27. *Peterson*, 206 Ga. App. at 593, 426 S.E.2d at 246 (citing *Szabo Assocs., Inc. v. Peachtree-Piedmont Assocs.*, 141 Ga. App. 654, 654-55, 234 S.E.2d 119, 120 (1977)).
 28. *See Cherry Farms*, 2009 WL 2848855, at *4 (describing the recoverable amount as “the ‘extra’ rent (the amount in excess of the fair market value) that [the tenant] committed itself to under the terms of the lease agreement”).
 29. *Nobles*, 260 Ga. App. at 21, 579 S.E.2d at 66. *See also Peterson*, 206 Ga. App. at 593, 426 S.E.2d at 246-47.
 30. *Peterson*, 206 Ga. App. 591, 426 S.E.2d 243 (1992).
 31. *Id.* at 593.
 32. *Peterson*, 206 Ga. App. at 593, 426 S.E.2d at 246 (finding that “[r]eduction of the accelerated rent to present value is a factor tending to establish that the accelerated rent sum is a reasonable estimate of probable loss”).
 33. *E.g.*, *Reames Rd., LLC v. Creative Bus Sales, Inc.*, No. 17-CV-01615-CC, 2017 WL 10410654, at *4 (N.D. Ga. July 27, 2017) (“The fact that [the accelerated rent provision] discounts the value of all future rent to present value does not transform the unenforceable penalty into a damages clause.”).
 34. *Peterson*, 206 Ga. App. at 593, 426 S.E.2d at 247.
 35. *See Nobles v. Jiffy Mkt. Food Store Corp.*, 260 Ga. App. 18, 21, 579 S.E.2d 63, 66 (2003) (declining to enforce an accelerated rent provision seeking 18 years of unaccrued rent as “neither the lease nor any evidence cited to this court attempted to determine whether these up-front payments would bear any reasonable relationship to [landlord]’s actual future damages, and it is difficult to infer such a relationship given the lengthy lease period”).
 36. *Bostick v. CMM Props., Inc.*, 337 Ga. App. 853, 856, 789 S.E.2d 211, 214 (2016).
 37. *Peterson*, 206 Ga. App. at 593, 426 S.E.2d at 246.
 38. *See, e.g.*, *Peterson*, 206 Ga. App. at 592, 426 S.E.2d at 245.
 39. *Cherry Farms, LLC v. Saulat Enters., Inc.*, No. 409cv043, 2009 WL 2848855, at *1 (S.D. Ga. Sept. 2, 2009).

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'Tis the Season: Giving by Mentoring

As you consider ending this year with more giving, or as you look toward resolutions you wish to make in the coming year, commit to adding “be a mentor” to your list. TILPP can help you fulfill that commitment.

BY KELLYN O. MCGEE

We are entering the time of year that is symbolized by giving. We donate our money to enable organizations to continue the work we believe is making a difference. We volunteer our time to lend a helping hand in support of others. We give presents. We host parties for our friends, or we attend them and give gestures of appreciation to our hosts. Giving freely is a synergistic proposition. It lifts the spirits of the giver; it is beneficial for the receiver.



Service is the greatest form of giving, and lawyering is an act of service. Even if we are not working in roles labeled as “public” service, we still serve. Showing up as a lawyer is to provide service to our clients, our communities and our profession. One way to serve our profession is to become a mentor. In October, 844 people received positive Georgia bar exam results. Most¹ of those people will become members of the State Bar. With every group of new members comes an opportunity for more experienced lawyers to serve by offering their time and their experience in order to help newer lawyers navigate the path of the legal profession.

Newly admitted lawyers in Georgia are required to enroll in the Transition Into Law Practice Program (TILPP), the mentoring and continuing legal education program authorized by the Supreme Court of Georgia,² unless they qualify for an exemption or deferment.³ In order to complete the mentoring component, each new lawyer must choose one of three types of mentoring: Inside (for new lawyers who join a firm or legal organization), Outside (for lawyers who are in solo practice) or Group (for lawyers who are employed part-time or in a non-legal setting, or who are seeking employment). Lawyers who agree to be Inside or Outside mentors provide one-on-one mentorship.

As of July 1, 2019, 4,944 Georgia lawyers have served as mentors since the inception of the program in 2006. Approximately a quarter of those have served at least two terms. As of Oct. 31, 13,420 lawyers have enrolled in the program. With nearly 1,000 lawyers joining the Bar every year, the need for mentors is great.

Being a mentor in the program is unique because it requires an appointment from the Supreme Court of Geor-

gia. A lawyer interested in being a mentor must meet these minimum qualifications:

- Be an active member of the State Bar of Georgia in good standing;
- Have been admitted for at least five years;
- Has maintained a professional reputation of competence, ethical and professional conduct in the legal community;
- Has never been disbarred or suspended from the practice of law in any jurisdiction and has not, in the 10 years preceding the nomination as mentor, been otherwise sanctioned in any jurisdiction;
- Has not been the subject of a written order that prohibits or otherwise limits the prospective mentor from appearing before that court in the 10 years preceding the nomination as mentor; and
- Is covered under a professional liability insurance policy with minimum limits of \$250,000/\$500,000 or the equivalent of such coverage through the legal status of his or her employer.

During the one-year commitment, dedicated mentors agree to help create a mentoring plan⁴ and ensure it is completed as well as spend meaningful time with the new lawyer.

TILPP provides resources to mentors. In the fall of even-numbered years, we offer a mentor orientation, which is live in Atlanta and simulcast to the Bar’s satellite offices in Savannah and Tifton. The orientation is optional and provides three hours of CLE credit at no cost to the mentors. In odd-numbered years, mentors may view the webcast of the orientation. There are also summaries of the program and manuals available on the Bar’s website.

If you decide this is not the right time to be a mentor through TILPP, there are other ways you can serve: participate in lunches during the Beginning Lawyer CLE or Group Mentoring program; take a call from a new lawyer who’s just starting out in your practice area; contact TILPP to express your interest in presenting during one of our programs.

As you consider ending this year with more giving, or as you look toward resolutions you wish to make in the coming year, commit to adding “be a mentor” to your list. TILPP can help you fulfill that commitment. Please contact me if you would like to volunteer. I am also available to visit your local bar, committee or section to explain the program in more detail. •



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Endnotes

1. Annually, a small number of people who passed the bar exam or whose motion for admission has been approved decline to enroll as members. They are ineligible to practice law in the state.
2. *See, generally*, Bar Rule 8-104.
3. Lawyers who have been admitted on motion or who have practiced in another jurisdiction during the two years immediately preceding their admission to Georgia are exempted from the program. Lawyers who have chosen Inactive Status or who are not residents of Georgia and are not representing Georgia clients or are judicial clerks are deferred from the program until their status changes.
4. A Model Mentoring Plan is part of the documents TILPP provides to new lawyers and mentors.

2020 Legislative Preview

BY CHRISTINE BUTCHER HAYES

January 13 marks the start of the 40-day legislative session here in Georgia. As we barrel forward in an election year, the 2020 legislative session promises to be an eventful one. For those attorneys unfamiliar with the legislative process in Georgia, 2020 is year two of this biennial cycle, so any bill that was filed in 2019 but did not pass will remain active in 2020.

Elections, Appointments, Odds and Ends

In recent years we've seen a number of House and Senate members vacate their seat mid-term to accept an appointment or run for statewide office—but this was not the case in 2019. Two members of the House resigned for personal or health-related reasons, and there were no seats vacated in the Georgia Senate. House District 71 elected Rep. Phillip Singleton (R-Sharpsburg) in October to fill Rep. David Stover's vacated seat and House District 132 in Leesburg will hold a runoff election between Jim Quinn and Bill Yearta to fill Rep. Ed Rynder's vacated seat. Also deserving of belated recognition, the House swore-in Rep. James Burchett (R-Waycross) during the 2019 legislative session following his victory in a March special election. Burchett practices law in Waycross. This brings the total number of attorneys in the Georgia House to 24 out of 180 members. Of the Senate's 56 members, 10 are Georgia attorneys.

While the State Bar typically highlights legislative activity at the state level, we would be remiss not to recognize the retirement of U.S. Sen. Johnny Isakson, who has tirelessly represented Georgians in Washington, D.C., for 15 years. During his time in the U.S. Senate, he has been a dependable ally of federal funding for the

Legal Services Corporation of America and a fierce advocate for the Homeless Veterans Prevention Act, which would permit the Department of Veterans Affairs to enter into private-public partnerships to provide legal services for homeless and at-risk veterans. We are grateful for Sen. Isakson's service and statesmanship, and wish him the best as he returns home to focus on his health.

Gov. Brian Kemp is expected to name a replacement for Sen. Isakson before he steps down on Dec. 31. Pursuant to the U.S. Constitution and O.C.G.A. § 21-2-542, Isakson's replacement will face two statewide elections in the next three years: the first in November 2020 and the second in November 2022 at the completion of that seat's six-year term.

Study Committees and What Lies Ahead

Georgia House and Senate members have been studious since they adjourned on April 2, 2019. Both chambers have actively convened study committees throughout the fall to examine specific policy issues that did not come to fruition last session. Some of these 2019 study committees provide a glimpse of the 2020 legislative battles to come.

Of particular interest to Georgia litigators, the Senate Study Committee on Reducing Georgia's Cost of Doing Business has focused on a recent string of high dollar verdicts in Georgia negligence cases. The study committee comes on the heels of a number of lawsuit reform bills filed in 2019: HR 256, sponsored by Rep. Kasey Carpenter (R-Dalton), amending the state constitution so that the General Assembly may set damage caps by law; SB 148, sponsored by Sen. Randy Robertson

(R-Cataula), allowing a court to admit evidence that a person failed to use a seatbelt to prove a party's assumption of risk, negligence and apportionment of fault, among other things; SB 155, sponsored by Sen. Bill Cowsert (R-Athens), limiting health care damages recovered by a claimant to the amount actually paid by the claimant and the amount necessary to satisfy unpaid charges that the claimant has a legal obligation to pay; and SB 203, sponsored by Sen. John Kennedy (R-Macon), which makes several revisions to the Georgia Civil Practice Act, including a provision that sets a proportionality standard for the scope of discovery.

Given the work of this study committee, which is still ongoing, it is likely that a few of these pending lawsuit reform bills will be taken up by House and Senate judiciary committees in January and February. We plan to keep members up-to-date on this legislation through the State Bar's weekly legislative email and encourage members to reach out to the Bar's legislative team with any questions.

The Legislature and the Governor's Office are also likely to continue their focus on economic development and access

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to health care. A House study committee focused on economic growth has looked at opening up the state to casino gaming. While casinos have been a topic of legislative conversation for several years, certain members have taken a renewed interest in gaming because of the potential revenue it can bring to programs like the HOPE scholarship. Legislation addressing price transparency and lowering health care costs will also be hot topics headed into an election year.

State Bar Legislation

What's ahead for the State Bar during the 2020 legislative session? Here's a glimpse of the Bar's 2020 legislative package.

Revisions to Title 53 of the Georgia Code dealing with wills, trusts and administration of estates.

The State Bar's Fiduciary Law Section has actively put forth legislation for the last several years that successfully updated Georgia's power of attorney statute, revised the guardianship code and modernized the trust code. These proposed Title 53 revisions are intended to conform existing law

to the probate code, trust code and guardianship code changes that have been made over the past eight years. Other proposed changes arise out of court decisions and issues that have arisen through practice.

Adoption of the Uniform Mediation Act in Georgia.

This proposal is a carryover from the 2019 legislative session. It seeks to adopt the Uniform Mediation Act in order to facilitate the resolution of international business disputes more effectively. The proposal provides that each mediation participant holds a privilege with respect to his or her communications and may prevent those communications from being disclosed or used in a subsequent formal proceeding. The proposal would also require voluntary private mediators to disclose conflicts of interest. The Uniform Mediation Act has been adopted in 11 states and introduced in New York, Massachusetts, Connecticut and Minnesota.

Our second ACL meeting took place Dec. 5. A few additional proposals for the committee will be considered for final approval at the Board of Governor's meeting in Atlanta on Jan. 11, 2020.

This coming year will be another important one for the State Bar under the Gold Dome. The Legislative and Grassroots Program not only advocates and defends changes that affect the practice of law, but also issues affecting the judiciary, public safety, youth and a host of other areas that attorneys regularly encounter. We encourage you to join us, either with your local bar associations or individually, for a "Lobby Day" at the Capitol. Lawyers are important and productive members of our communities, and legislators find it meaningful to hear from their engaged, concerned constituents. We are grateful to those who donate to the Legislative and Grassroots Program, which is funded entirely through voluntary contributions upon renewal of your Bar license fees, or by visiting www.gabar.org/LEG. We appreciate your continued support as we continue to ensure a strong and unified voice for the profession under the Gold Dome. ●



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PHOTO BY SARAH I. COOLE

A Conversation with Rex D. Smith, Hon. M. Gino Brogdon Sr. and Tami McDowell Ayres

In this installment of the Georgia Lawyer Spotlight, Editorial Board Member Jacob E. Daly interviews mediators Rex D. Smith, Miles Mediation & Arbitration, Atlanta; Hon. M. Gino Brogdon Sr., Henning Mediation, Atlanta; and Tami McDowell Ayres, BAY Mediation & Arbitration Services, Atlanta.

BY JACOB E. DALY

How was mediation viewed when you all started your respective careers?

AYRES: I started practicing in 1985, and I do not remember cases being mediated. They were either settled or tried. But at some point Ed Henning came to my firm and talked about mediation. Having known Ed as a litigator, we all thought it sounded good. Obviously he was way ahead of his time.

BROGDON: I got out of law school in 1986, and I don't think it was unanimously accepted then. I started practicing in Atlanta in 1987 with a midsize insurance defense firm, and there were folks there who thought mediation would never work be-

cause it was not necessary. Why would we hire somebody to do something we can do over the phone? There were people who were threatened by mediators because they were about to upset the apple cart.

SMITH: John Miles tells this story that I think is really interesting. He was telling a judge about mediation and hoping the judge would order some cases for mediation. He said the judge thought about it for a while and said, "Son, I don't need to be doing any meditation."

So were you trying cases more frequently back then, or were they just settling without mediation?

BROGDON: There were a lot more trials, particularly in insurance defense. As a young associate, you could be trying 10 State Farm cases in two months. But back in the mid-1980s, things like bad-faith claims weren't as popular, and so you could get a lot of cases settled because there weren't factors that would affect the normal value of a claim.

SMITH: When I started out, I was trying a case about every month. Just one right after another after another. You were either trying or preparing to try, and I would still say we settled most cases, but the proverbial courthouse steps is where they settled.

AYRES: I recall that the insurance adjuster, the attorneys and the clients were rarely together in one room, even at trial. I remember being in trial in front of Judge Jerry Baxter, and he was listening to the plaintiff's presentation of the case. He took a break, sent the jury out and looked at the defense lawyer and said, "I want you to go call your client right now, the adjuster, and you tell them that if they are not going to resolve this case, then they need to come down here and listen to what I'm listening to." It was a curious thing, but the concept of everyone being in the same room and working toward the same end just didn't really exist.

Was there a particular moment or event that caused you to leave the practice of law and become a full-time mediator?

BROGDON: My decision really was a pragmatic one. When I made the decision to be a full-time mediator, I was at a point when I had to balance quality of life. I had a good income as a lawyer, but looking at my bank account didn't make me happy. I realized when I did a mediation on Monday and a deposition on Tuesday, I was really happy on Monday, but on Tuesday I was miserable. As I got more popular as a mediator, I said, let me ride this wave, because it was more fun and the money from practicing law did not justify the stress. Becoming a full-time neutral is one of the few smart things I've ever done. I made the decision and never looked back. I don't have one regret.

AYRES: I loved my practice and my partners, so I had a great situation, but after 25 years of a very demanding litigation practice, I wanted an opportunity to enjoy more time with my children while I could. At some point after I resigned my equity partnership and became "of counsel" with my firm, I thought I'd take a mediation course. That's when Rex first talked to me and said I should think about becoming a mediator. I contemplated it but, frankly, was enjoying my free time. I was subsequently approached by some of the principals at BAY, and they asked

"Becoming a full-time neutral is one of the few smart things I've ever done. I made the decision and never looked back. I don't have one regret." —Hon. M. Gino Brogdon Sr.

me if I'd be interested in joining its panel of mediators. I told them I'd like an opportunity to vet myself, and so I met with Rex again and Gino, and then I probably went out with five or six defense attorneys who had worked against me over the years. I asked them if they thought I'd be any good at it and if they would hire me, and the response was positive. The experience has been one I enjoy so much that I regret waiting so long to jump in.

SMITH: I had a very specific moment, and it's a sad story to start. I had just started mediating and for the first time I had three mediations in a row on the Monday, Tuesday and Wednesday before Thanksgiving. I was sitting in my office when another attorney came in and said, "Rex, I am in serious trouble. I have a big case on trial next Monday and I have done nothing." I said, "What do you mean?" The sad part is this was a wonderful person who had worked for about 25 years as hard as he could, and he basically was having a nervous breakdown. I feel very sorry that I didn't realize it, because he was the kind of person who would go into his office, close his door and just work. He had answered the suit and that was it. It was on trial on Monday, and so Walter McClelland and I decided that Walter would

try to get the case continued and that if it had to be tried on Monday, I would try it. After I worked late into the evening, I was driving home to tell my lovely bride Mary that I wasn't going to be at Thanksgiving dinner, which was going to be at our house, when Walter called and said, "I got it continued." I was sitting at the red light in front of the Wesley Chapel Methodist Church, and I looked over at that church and said, "I'm going to go another way." I call it the Wesley Chapel Methodist Church moment, and that's the moment I decided to be a full-time mediator.

BROGDON: One thing that made the choice easier for me was some honesty about what my skills were. I was a very competent lawyer, but I wasn't a great lawyer. I'm a better mediator than I was a lawyer, and being a mediator appeals to all the things I like with none of the bad stuff. I like being in the middle of some tragic, complex, high-emotion, high-stakes case, but I didn't like preparing for trial in those cases or having the stakes being on my back. I like all the moving parts, and it pays well, but I don't take any of the stress home. Of all my legal jobs, being a mediator is the least stressful job I've ever had because I don't take myself too seriously, and I let the process do what it does.

“It is a blessing to get to do what we do, and I love the people that are participants; I love the professionals; I love the people that are having the problem, the plaintiffs and defendants. It is an extraordinarily enjoyable and rewarding way to contribute and make a living.” —Rex D. Smith

SMITH: I cannot tell you how much I enjoy mediating. It truly is a labor of love, and we basically get to hang out with our friends and talk about things that are very interesting to us. It makes my day when the lawyers come in and we sit down and start analyzing the problem, and I say people who tell lawyer jokes don't know lawyers. They are some of the most honest, ethical, kind, considerate, intelligent people, and I get to be with them all the time. It is a blessing to get to do what we do, and I love the people that are participants; I love the professionals; I love the people that are having the problem, the plaintiffs and defendants. It is an extraordinarily enjoyable and rewarding way to contribute and make a living.

AYRES: It's an incredible opportunity to have an impact and bring out good things in circumstances where people's lives have been decimated. That's the kind of practice I had for a long time, so I was used to dealing with people who were broken and were trying to get their lives back together. It was gratifying to work on their behalf in the hopes that I'd bring about a good resolution. As a mediator, I get to do that on a daily basis instead of three years to trial.

BROGDON: One of the benefits of mediation that I'm always reminded of is that most of my days I'm dealing with people who would trade places with me. I worry about my health and my weight, what people think of me, my finances and all these things, but I'm doing better than most of the people that are the subject of the cases in front of me. So most days when I finish a mediation, I drive home really grateful because I got to do

something that helped a process resolve and helped something good come out of a tragedy.

What makes a good mediator?

BROGDON: Being a good listener and a person who can stay in his or her lane. Mediators don't settle cases; money and conditions settle cases. We take the credit, but the parties settle the case. I think a good mediator knows when to hit the throttle and when to hit the brakes. To be effective, a mediator has to have a certain amount of toughness and willingness to make people mad or uncomfortable. Also, a mediator has to be courageous and creative and needs to know when to shut up and get out of the way and not be invested in settling a case. Just being the grease in the machine.

SMITH: I think you have to have a lot of patience. Also, people need to be heard, and I would totally agree with Gino on listening, which is a lost art in America. You have to be creative. I try to make sure that I have thrown every idea I possibly can at people in terms of how we might approach this, so you need to be thinking outside the box; you need to be thinking non-traditionally about other avenues that might work, other suggestions. A lot of time I talk about high-lows. You have to be persistent. If you're easily discouraged, you shouldn't be a mediator because people are going to react negatively to ideas in the beginning. A number of my cases don't settle the day of mediation, but they settle in the next 30 days.

AYRES: To be a good mediator, you have to really like people. Getting to know other people and cultivating relationships are

some of the things I always enjoyed in my practice and in my life. When you do that, you can hear the subtleties that are coming through in the words these people are speaking. They need to be heard, and they need to know they've been heard. I think it's about cultivating a relationship within that room and building trust.

What is the most important factor that attorneys should consider when selecting a mediator?

BROGDON: A mediator has to fit the case and the parties. If you don't have a good fit, the mediation can often be wasted. My style is not for everyone. I don't really change depending on the mediation in terms of my style. It's an evaluative, sometimes aggressive, sometimes playful and friendly kind of hugging style. And that's not for everybody, so it's very personality driven.

AYRES: You have to think of your client and what they need to hear and how they need to hear it and who might be the best person to deliver that message. I've been retained in some cases because I'm a woman and the attorneys thought that I, as a female, might be able to relate to the plaintiff in a way that would help all parties get the case resolved. That being said, in my 30 years of practice, I never had a female mediator, but our cases generally were resolved at mediation. That's a testament to the fact that good mediators can work with anyone effectively.

SMITH: I like the key words from both of my colleagues here: fit and relatability. I tell people when I speak on this from time to time that a very important decision for you as an advocate or as a litigator is who

you choose as your mediator. What do you need? Do you need help with your client? Are there complex issues so that you need subject-matter expertise? Are there personality considerations? You need to give as much thought to selecting the mediator as you do in terms of selecting the case if you're on the plaintiff's side or to selecting the defense counsel if you're going to be hiring defense counsel or retaining an expert. There are different qualities that different people bring. Do you need a former judge? Do you need somebody who can do some handholding, can make someone feel comfortable, can "feel their pain" and know that they've been hurt? As a litigator, you have to think through these things and decide who is the person that fits best?

Is there a type of case that you particularly enjoy mediating?

SMITH: I want the most complex, difficult, hardest case I can get my hands on. I like the complexity. I like multi-party cases. I'm happy to do anything someone will hire me to do, but what I really want is the case that cannot be settled.

AYRES: As former litigators, we all want the good cases, the hard cases, the complicated cases, the cases that are challenges, because they afford us an opportunity to bring our skillset to the forefront and work hard like we've done all our professional lives. We talked earlier about how gratifying it is to bring about resolution, and it's all the more gratifying in a case where you're having to work extra hard and pull together multiple factions and at the very end, you can tie it up in a bow and say, "It's done." My law practice focused on catastrophic personal injury and death cases, so I feel like I have broad experience from a subject-matter standpoint. Having said this, I like mediating medical malpractice cases. As a plaintiff's lawyer, I handled more than my fair share of them, and my husband is a physician, so I have a real understanding of the dynamics and interests on both sides.

BROGDON: This may sound bizarre, but I want the high-emotion, high-stakes cases. I want the ones where I have to pull people away from the cliff, high octane kind of stuff. They are usually fairly

simple, but the task of getting them down and distilling them is just Herculean to me, and so I get pumped when it's something really juicy. The downside of being a mediator is seeing that these are real dilemmas—these are really bad things that happen to people. But the so-called sex appeal, the compelling nature of the cases, the high human drama, you can't get a job that's better than being a mediator.

Tell us about a mediation tactic by a lawyer that worked particularly well.

SMITH: I'll compliment Rob Katz. Rob had a very difficult case, and he knew there were going to be multiple decision makers, so he put together a 20-minute video and gave it to the defendants ahead of time so that when they round-tabled the case they heard his very diplomatic presentation with cuts from the depositions. He knew that the people making the decision didn't have a lot of time, so he made it very succinct, and it was a key factor in getting the case settled. I thought that was an effective technique from the plaintiff's point of view of communicating difficult information to the ultimate decision makers.

AYRES: I was recently involved in a discussion about whether preparing for mediation by the attorney is a wise investment, including whether mediation statements are effective. It was a curious discussion for me because I always prepared for a mediation and provided a mediation statement to my mediator so they had some sense for what the case

was about and what the issues to be addressed. But there were times when we would send packets to the defense lawyers in advance so that they and their clients would have an opportunity to see and hear our positions in advance, as well. At mediation, it is really about educating the clients on both sides of the case as to the relative positions. While I was confident I could do that for my client, I wanted to make it easy for the other side to do it for their client. So I think just doing your homework and being prepared, having your client prepared, and, to the extent you can, preparing opposing counsel are things that should happen in all cases.

BROGDON: I say the same thing but a little differently. A lawyer who is effective in submitting his or her cases to mediation is effective because they've managed expectations. Their own client's expectations as well as the other side's expectations. Good lawyers see the evidence and the issues pretty much the same, so mediations fail most times in my experience when expectations have not been managed.

What is something that attorneys do not do during mediations that you think they should do?

SMITH: I would never voluntarily not take the opportunity to give an opening presentation. I know people who don't want to do them or think they are counterproductive. They are not counterproductive if you do them diplomatically. A diplomat is someone who can communi-

“As former litigators, we all want the good cases, the hard cases, the complicated cases, the cases that are challenges, because they afford us an opportunity to bring our skillset to the forefront and work hard like we've done all our professional lives.” —Tami McDowell Ayres

cate difficult, hard information to other people and not alienate them. If I have the opportunity to speak to the plaintiff or the defendant or the decision makers, I am not going to voluntarily forego that unless there is a compelling reason.

AYRES: I talked about the importance of establishing relationships, and if you are not speaking, you are not working toward establishing a relationship. For example, the defense should express regret that the incident happened. The defense does not have to say, "I'm sorry we did this." Just say, "I know that this has been a very difficult time for you and we regret that this happened. We are here to see what we can do to get it resolved." You haven't promised anything, but you've invited a conversation, which is a starting point, and all of a sudden the plaintiff doesn't see you as these faceless people on the other side of the paperwork she's been getting.

Should that come from the attorney or directly from the defendant?

AYRES: It should come from everyone, if practicable. And then, if the plaintiff wants to speak, he or she should do so. As a plaintiff's attorney, I rarely had clients that wanted to speak, but there were some who just needed to have their story told, and just by getting it off their chest, it allowed them to move forward. I think that's on each individual lawyer to know what the client's needs are in that regard, but it humanizes the whole process when people in the room are speaking and engaging with each other.

SMITH: If the client is going to open his or her mouth, the attorney needs to know what's going to come out. It does very much humanize the process, but the attorney needs to make sure the client is ready to do that.

BROGDON: I used to be red hot on openings thinking all these same things, but I've become cynical about them. Not because they don't work, but because people do them either clumsily or with an insult or in a trial mode or a movie production or something that is harmful even to their own clients. There are a lot of lawyers who don't really think about what they

are trained to accomplish in an opening, and so they misuse the opportunity to settle the case, which requires the mediator to put the case back together for the next two hours. So I think it's a case-by-case deal. All those things about the opportunity to apologize are very important, but I get less and less enthusiastic about the big production, dog-and-pony shows.

Besides the amount of money that each side is willing to either accept or pay, what one thing do you think is most important in determining whether mediation will be successful?

AYRES: It starts with the mindset of the parties. Are they there to get the case resolved, or are they there because the court required mediation? When the parties come in good faith and try to get the case resolved, chances are it will happen because the money and the other contingencies can be worked out, especially when the alternative is to present your case to a jury of 12 strangers, with all the attendant costs and preparation and emotional stress that comes along with trial.

BROGDON: I often say, particularly if I sense tension and if people are being ugly in the beginning, that I can't be effective as a mediator if you are not candid with me when I really demand your candor. I won't demand it always because you have to bluff me, but when I really need it, will you give it me? I think the candor is the foundation of it.

How do you see the future of mediation?

AYRES: I think we're going to see it continue to evolve and become bigger than it already is. I'm seeing signs of people trying to resolve cases before they are even filed, and I think we'll see mediations earlier and earlier in the process. The first three mediations I had were with a lawyer whose practice is in trying to settle cases before suit is filed. This lawyer reaches out to potential defendants and says, let me take a swing at trying to get these cases resolved. It was interesting for me to come in because the parties have very limited information, but I remember remarking that this is a great idea because it serves both parties' interests by get-

ting ahead of a lawsuit. That was a new experience for me, but I think that's the wave of the future. I think we're going to find people working to get these things resolved sooner rather than later, and as quickly as possible, because it reduces the parties' investment, both emotionally and financially, and allows them to move on with their lives.

SMITH: I agree with that, and I think it is continuing to grow. I think more and more people are receptive to it, and more and more companies see the advantages to it. I had the pleasure of representing Delta Airlines for almost 20 years, and about five years in, I remember the gentleman who led their litigation and claims and risk management told me that as soon as a lawsuit came in, they wanted to gather as much information as possible, as quickly as possible, so we could depose the plaintiff and then mediate the case. He called it a decision point, and he wanted to get the cases to a decision point as quickly as possible. I think this view has spread throughout corporate America so that informed judgments can be made as quickly as possible and cases can be resolved before significant money is spent on experts and attorneys.

BROGDON: Regardless of the facts of the underlying event, ultimately it is a business decision.

SMITH: For both sides.

BROGDON: Mediation will become the norm with trial being the rare exception. ●



Jacob E. Daly is of counsel with Freeman Mathis & Gary, LLP, in Atlanta and a member of the Georgia Bar Journal Editorial Board. He represents private companies, government entities and their employees in personal injury litigation with a focus on defending property owners, management companies and security companies in premises liability lawsuits.

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Kudos



The Georgia Public Defender Council (GPDC) announced that Todd Martin was appointed Eastern Circuit Public Defender in September. A public defender for the past 14 years, Martin has served in the Eastern Circuit for more than a decade, and as deputy chief assistant for the past five years. GPDC awarded Martin with the role due to his career-long commitment to indigent defense, as well as his experience in the Eastern Circuit.



Parker Poe Adams & Bernstein LLP announced that Christian Torgrimson joined the advisory board of the Brigham-Kanner Property Rights Conference, where she will play a leading role in setting the strategy and planning for the national conference at William & Mary Law School in Williamsburg, Virginia. The Brigham-Kanner Property Rights Conference is a national platform that brings together members of the bench, bar and academia to explore recent developments in the law that affect property rights and is presented by the William & Mary Law School Property Rights Project. Torgrimson also participated in a law student-focused program as part of the conference. This program is in its third year and creates a space for lawyers and practitioners to engage with law students interested in pursuing property rights careers.

Harris Lowry Manton LLP partners Steve Lowry and Jed Manton presented the firm's second annual \$5,000 Civil Justice Scholarship to Georgia State University School of Law student Melissa Davies at the firm's Atlanta office. The Harris Lowry Manton LLP Civil Justice Scholarship is designed to support aspiring attorneys who have a strong commitment to justice.



Kilpatrick Townsend & Stockton LLP announced that partner Jamie Graham joined the American Cancer Society Southeast Region Georgia Community Leadership Board of Directors. In this role, Graham will support the society's core mission strategies of research, education, advocacy and patient services.

The firm also announced that it was selected as the recipient of the 2019 AT&T Legal Department Diversity and Inclusion Progress Award for its efforts in recruiting, retaining and promoting diverse attorneys throughout the firm and its attention to diversity and inclusion in staffing AT&T matters. Law firms in AT&T's Preferred Counsel Program were eligible for the award.



FRIST

Lisa Frist, formerly of Alston & Bird, LLP, was named a claims account executive in the financial services division of McGriff, Seibels & Williams of Georgia, Inc. Prior to joining McGriff, she served as a litigation and trial practice attorney with the Atlanta office of Alston & Bird.



THEODORE

Additionally, Philip A. Theodore was named a vice president of McGriff's mergers and acquisitions and transaction insurance practice, part of its financial services division. After practicing with King & Spalding LLP from 1981 to 2003, Theodore served as general counsel for three Atlanta public companies prior to joining McGriff.



Balch & Bingham LLP announced that partner Benjamin H. "Ben" Brewton was appointed chair of the Georgia State Committee of the American College of Trial Lawyers (ACTL) for the next year. ACTL maintains and seeks to improve the standards of trial practice, professionalism, ethics and the administration of justice through education and public statements on important legal issues relating to its mission.



RAMESY

The American Bar Association (ABA) announced the election of DeKalb County State Court Judge Ronald Ramsey as the ABA's chair-elect and Rockdale County Chief Magistrate Judge Phinia Aten as vice-chair of the ABA's National Conference of Specialized Court Judges of the Judicial Division. Ramsey and Aten, who were both elected unanimously, were elevated to top-ranking executive officers and are in the line of progression to chair this national judicial group. In their new roles, they will offer judicial training and membership support and shape national judicial policy.



ATEN

On the Move IN ATLANTA



The Wright Firm, LLC, announced that it has moved to a new location and the addition of Victoria Kealy as of counsel. Kealy focuses her practice on business, commercial and real estate litigation matters. The office is located at 1934 N. Druid Hills Road NE, Suite A, Atlanta, GA 30319; 470-361-2250; www.thewrightattorneys.net.



Barnes & Thornburg LLP announced the addition of Richard E. Glaze Jr. as partner. Glaze focuses his practice on environmental law, representing corporations and municipalities in enforcement and compliance matters. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; www.btlaw.com.



DENNIS



EDWARDS

Kilpatrick Townsend & Stockton LLP announced the addition of Desmond Dennis, Jacob Edwards and Jessica Truelove as associates. Dennis focuses his practice on labor and employment law. Edwards' practice focuses on construction litigation,



TRUELOVE

contract disputes and alternative dispute resolution. Truelove focuses her practice on intellectual property, and trademark, copyright and advertising. The firm is located at 1110 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6108; Fax 404-541-3343; www.kilpatricktownsend.com.



Freeman Mathis & Gary, LLP, announced the addition of Beth Beskin as partner. Beskin's practice focuses on litigation, transaction and regulatory matters. The firm is located at 100 Galleria Parkway, Suite 1600, Atlanta, GA 30339; 770-818-0000; www.fmgllaw.com.



FordHarrison announced the addition of Amber Arnette as an associate. Arnette's practice focuses on labor and employment law, including wrongful termination, retaliation, discrimination, failure to provide accommodations, harassment, and wage and hour violations. The firm is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.



Adams and Reese LLP announced the addition of Brian F. Hansen as partner. Hansen's practice focuses on litigation, real estate, construction, financial services litigation (commercial) and global trade, transportation and logistics. The firm is located at Monarch Tower, 3424 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 470-427-3700; www.adamsandree.com.



Greenberg Traurig, LLP, announced the addition of Jay Ruby as a shareholder. Ruby focuses his practice on a broad spectrum of immigration matters, including temporary and permanent work visa solutions, immigration-related corporate compliance and due diligence for mergers and acquisitions. The firm is located at Terminus 200, 3333 Piedmont Road NE, Suite 2500, Atlanta, GA 30305; 678-553-2100; www.gtllaw.com.



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GODFREY



MCNEELEY

Harris Lowry Manton LLP announced the promotion of Yvonne S. Godfrey and Madeline E. McNeeley to partner. Godfrey focuses her practice on product liability, personal injury, wrongful death and whistleblower litigation. Mc-

Neeley's practice focuses on product liability, wrongful death, catastrophic personal injury and appellate litigation. The firm is located at 1201 Peachtree St. NE, Suite 900, Atlanta, GA 30361; 404-961-7650; Fax 404-961-7651; www.hlmlawfirm.com.



HAGOOD



BURROWS

Swift, Currie, McGhee & Hiers, LLP, announced the addition of Janie Hagood as senior attorney and Brianna Burrows, Anelise Codrington, Amy Katz and Matthew Liverman as attorneys. Hagood focuses her practice on automobile litigation, catastrophic injury and wrongful death, commercial litigation, construction law, insurance coverage, professional liability, and trucking and transportation litigation. Burrows' practice focuses

on workers' compensation claims and employment law-related disputes. Codrington focuses her practice on automobile litigation, premises liability, insurance coverage and governmental liability. Katz's practice focuses on commercial litigation, construction law and insurance coverage disputes. Liverman focuses his practice on workers' compensation claims. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; www.swiftcurrie.com.



LIVERMAN

Squire Patton Boggs LLP announced the addition of G. Scott Rafshoon as partner. Rafshoon's practice focuses on various public-private (P3) transactions at the local, state and federal levels, and the privatization and financing of military base infrastructure. The firm is located at 1230 Peachtree St. NE, Suite 1700, Atlanta, GA 30309; 678-272-3200; www.squirepattonboggs.com.



KATZ

Mozley, Finlayson & Loggins, LLP, announced the addition of Andrew H. Meyer as partner. Meyer focuses his practice on real estate development, commercial real estate and lending, land use, leasing, business organizations, real estate title law and residential real estate. The firm is

located at 1050 Crown Pointe Parkway, Suite 1500, Atlanta, GA 30338; 404-256-0700; Fax 404-250-9355; www.mflaw.com.



HINSON



KENDALL

Morris, Manning & Martin, LLP, announced the addition of Elizabeth K. "Bess" Hinson, James Wyatt Kendall, Lee Ann Thompson Sapp, Ellenor Stone and Pelham Wilder IV as partners and Jason Watson as of counsel. Hinson's practice focuses on cybersecurity and privacy. Kendall focuses his practice on environmental and construction. Sapp's practice focuses on commercial real estate. Stone focuses her practice on labor and employment issues. Wilder's practice focuses on real estate. Watson focuses his practice on creditors' rights and bankruptcy, and litigation. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.



SAPP



STONE



WILDER



WATSON



Hawkins Parnell & Young, LLP, announced the addition of Garret Drogosch as an associate. Drogosch's practice focuses on transportation disputes, products liability and premises liability. The firm is located at 303 Peachtree St. NW, Suite 4000, Atlanta, GA 30308; 404-614-7400; www.hpylaw.com.

Tobin Injury Law announced the addition of Daesik Shin as an associate. Shin focuses his practice on plaintiff's personal injury litigation, transportation injuries and bad faith insurance litigation. The firm is located at 267 West Wieuca Road NE, Suite 204, Atlanta, GA 30342; 404-587-8423; www.tobininjurylaw.com.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announced the addition of Michelle Williams as shareholder. Williams focuses her practice on the regulatory and structuring aspects of hospital mergers, acquisitions and integrations. The firm is located at Monarch Plaza, 3414 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

The law firm of Gregory, Doyle, Calhoun & Rogers, LLC, and Moore & Reese, LLC, announced their merger. The firms will jointly operate under the name GDCR Attorneys at Law. The firm is located at 2951 Flowers Road S, Suite 220, Atlanta, GA 30341; 770-457-7000; www.gdcrlaw.com.

IN COLUMBUS



COLEMAN



JOHNSON

Page, Scrantom, Sprouse, Tucker & Ford, P.C., announced the promotion of Patrick A. Coleman and Julie D. Johnson to shareholder. Coleman focuses his practice on business and corporate law, commercial and residential real estate, estate planning and litigation. Johnson's practice focuses on labor and employment law, and litigation. The firm is located at 1111 Bay Ave., 3rd Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; www.psstf.com.

IN DECATUR



Peters, Rubin & Sheffield, P.A., announced the promotion of Foss G. Hodges to partner and a name change to Peters, Rubin, Sheffield & Hodges, P.A. Hodges' practice focuses on defending people accused of crimes against children, sexual offenses, and other serious crimes. The firm is located at 2786 N. Decatur Road, Suite 245, Decatur, GA 30033; 404-296-5300; Fax 404-294-0441; www.justiceingeorgia.com.

IN KENNESAW



Joel Williams Law, LLC, announced a change of name to Williams|Elleby with the addition of Chase Elleby as partner. Elleby's practice focuses on personal injury, including automobile and truck collisions, school bus accidents, medical malpractice, negligent security, wrongful death and day care injuries. The firm is located at 3900 Frey Road, Suite 104, Kennesaw, GA 30144; 404-389-1035; www.gatrialattorney.com.

IN MACON



ANDERSON



BRANTLEY



DUBBERLY

James-Bates-Brannan-Groover-LLP announced the addition of David B. Anderson, Campbell T. Brantley and Bruce D. Dubberly IV as associates. Anderson focuses his practice on all areas of banking and real estate law, with a focus on the representation of financial institutions regarding compliance and regulatory issues, including enforcement actions, collections, workouts, contract litigation and negotiation, bankruptcy, creditor's rights, commercial real estate and title disputes. Brantley's practice focuses on commercial real estate transactions, commercial lending and government-guaranteed lending. Dubberly focuses his practice on general civil litigation, including business litigation and tort litigation, as well as eminent domain, bankruptcy and probate law. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jamesbatesllp.com.

IN BLOOMFIELD, NEW JERSEY

Smith & Associates announced that its offices have moved to Bloomfield, New Jersey. The firm is located at 400 Broadacres Drive, Suite 260, Bloomfield, NJ 07003; 212-661-7010; Fax 866-882-7256; www.edslaw.net.

IN PROVIDENCE, RHODE ISLAND

Freeman Mathis & Gary, LLP, announced the opening of an office in Providence, Rhode Island. The firm is located at 10 Dorrance St., Suite 700, Providence, RI 02903; 401-519-3724; www.fmgllaw.com.

Announcement Submissions

The *Georgia Bar Journal* welcomes the submission of news about local and voluntary bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia.

Notices are printed at no cost, must be submitted in writing and are subject to editing. Some restrictions apply, and 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. Learn more at www.gabar.org/newsandpublications.

For more information or to submit an announcement, please contact Amber Rikard, amberr@gabar.org or 404-527-8736.

Thanks! You Shouldn't Have . . .

BY PAULA FREDERICK

"Thanks so much for sending your dad and me to that nice Mr. Smith to get our wills done," your mother gushes. "We've introduced him to three of our neighbors at Retirement Heaven, and he's doing their estate plans too."

"I'm glad you liked Joe," you respond. "He has a great reputation."

"He's so happy with all the referrals that he sent us tickets to the Peach



Bowl!" your mother adds. "Your father and I are trying to think of who else we can refer, if that's the kind of reward we'll get!"

"Mom," you warn, "Joe shouldn't have given you anything that expensive for referring your friends."

"But why not, dear?" your mother asks. "He got the business because of us, and he must be making a pretty penny. This is his way of saying thank you! He's just being polite."

"It may be polite, but I don't think it's ethical," you grouse.

What are the rules on sending thank-you gifts for referrals?

Georgia's Rule 7.3 (c) prohibits a lawyer from giving "anything of value" to a person or organization for making a referral that results in business for the lawyer.¹ It was intended to prevent lawyers from buying business and people outside the profession from "stirring up litigation," or channeling business without regard to which lawyer might provide the best service.

In the years since the rule was enacted there has been a lot of confusion about the boundaries of the prohibition on gift-giving. It is clear that a lawyer may not employ runners or other paid staff to solicit business, but what about sending a nice bottle of wine as a thank-you for a referral? Some jurisdictions have taken a hard line, forbidding even de minimus gifts. Others allow small gifts, but only after the fact and not as an inducement for a future referral.

The ABA recently amended its rules on this subject, and ABA Model Rule 7.2(b)(5) now allows "nominal gifts as an

As the holiday season approaches, it might be safest to thank your referral sources with a handwritten note or an invitation to the holiday party.

expression of appreciation" if they are not intended or expected to be a form of compensation for the recommendation.

We have not yet considered the new ABA rule for adoption in Georgia. As the holiday season approaches, it might be safest to thank your referral sources with a handwritten note or an invitation to the holiday party. •



Paula Frederick

General Counsel
State Bar of Georgia

paulaf@gabar.org


Endnote

1. The Rule has an exception for public advertising and lawyer referral services. It is sometimes confused with a different rule, (1.5(e)), which allows fee sharing between lawyers under certain circumstances.

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

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Attorney Discipline Summaries

Sept. 20, 2019 to Oct. 7, 2019

BY JESSICA OGLESBY

Disbarment

Sherri Jefferson
249 Derby Drive
Riverdale, GA 30274

On Oct. 7, 2019, the Supreme Court of Georgia disbarred attorney Sherri Jefferson (State Bar No. 387645) from the practice of law. The formal complaint upon which these disciplinary proceedings were based alleged that Jefferson violated Rules 3.3, 4.2, 8.1 and 8.4 of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of each of the relevant rules is disbarment.

Jefferson represented an individual from 2008 to 2010 in a custody modification action; during the representation, Jefferson and that individual were romantically involved. This relationship led to the filing of a disciplinary matter against Jefferson, but the matter was subsequently dismissed by the Court in 2014. During the pendency of that disciplinary matter, Jefferson's former client began dating another woman and, following the dismissal of that matter, Jefferson hired a private investigator to conduct an investigation including surreptitious surveillance of the former client, his son and the other woman. Additionally, Jefferson falsely disparaged the other woman to the woman's employer, including making false and misleading statements about the custody proceeding. Jefferson's actions led the former

client and the other woman to file applications for criminal warrants against Jefferson on charges of stalking and defamation in Houston County.

During the warrant proceedings initiated by the former client, Jefferson made false statements to the Magistrate Court of Houston County. During the warrant proceedings initiated by the other woman in the Magistrate Court of Fulton County, Jefferson submitted writings in response, some of them sworn, including baseless and disparaging statements about the former client and the other woman and false statements about her communications with them and others.

The special master concluded that Jefferson had violated Rules 3.3 (a) (1) (knowingly making false statements to a tribunal), 4.2 (a) (knowingly communicating with a person represented by counsel), and 8.4 (a) (4) (engaging in professional conduct involving dishonesty, fraud, deceit or misrepresentation). The special master also found that Jefferson had violated Rule 8.1 (a) (knowingly making false statements of material fact in connection with a disciplinary matter). The special master found aggravating factors as follows: the existence of prior discipline, specifically, Jefferson's receipt of an Investigative Panel Reprimand in two cases in 2006; a selfish and dishonest motive, as Jefferson made representations to multiple tribunals with the intent to deceive

and communicated with the other woman with the intent to intimidate her and otherwise affect the outcome of the relevant proceedings; a pattern of misconduct and the existence of multiple violations; bad faith obstruction of, and the submission of false statements in, the disciplinary proceedings; and the refusal to acknowledge the wrongful nature of her conduct. The only factor in mitigation recognized by the special master was the remoteness in time of Jefferson's prior disciplinary violations, and the special master excluded those prior violations from consideration in recommending sanctions.

Jefferson asked that the Review Board review the report and recommendation of the special master. The Review Board agreed with the special master that Jefferson violated Rules 3.3 (a) (1), 4.2 (a), and 8.4 (a) (4), but it disagreed with the special master that Jefferson had violated Rule 8.1. The Review Board recommended that Jefferson be disbarred from the practice of law. The Supreme Court agreed with the Review Board that disbarment was the appropriate sanction. •



Jessica Oglesby

Clerk, State Disciplinary Boards
State Bar of Georgia

jessicaog@gabar.org



Visit www.gabar.org for the most up-to-date information on committees, members, courts and rules.



State Bar
of Georgia

Legal Tech TIPS

BY NATALIE R. KELLY
AND MIKE MONAHAN

HOTSHOT



CloudLawyers®



1 Distracting Notifications?

Are you getting lots of notifications on your phone that distract you from your work? Tired of that Tinder notification popping up when you are sharing your screen with a friend or coworker? Manage your notifications. Use your phone's "Do Not Disturb" function or the "Manage Your Notifications" in your phone's settings. Turn off the notifications you don't want; enable the ones you do.

2 Make a Smart Home with Smart Plugs

Not interested in an expensive upgrade of your whole home to a "smart home?" For a simpler, less expensive approach, buy indoor and outdoor "smart plugs." You can use smart plugs for older appliances, TVs and lighting. Some of the smart plugs also include timers. The smart plugs are accessible via Wi-Fi and an app on your devices.

3 PackPoint www.packpnt.com

Lawyers are frequently on the road. There's an app to help you remember what you need to take with you—PackPoint. While it isn't free, PackPoint is an inexpensive app available in iOS and Android. PackPoint will organize what you need to pack based on length of travel,

weather at your destination and any activities planned during your trip.

4 Wearable Technology

Check out personal, wearable technology like FitBit or an Apple Watch. These devices can help you not only manage your tasks; they can also help you manage your lifestyle. If you don't already have one, it's a great gift idea for the holidays. Use personal technology for your best you. #lawyerslivingwell

5 Microsoft Office Lens

<https://bit.ly/32IV86K>

Is your phone image library full of photos of documents or PowerPoint images projected on a large screen? Download Microsoft Office Lens from the Google Play Store. You can turn your smartphone into a whiteboard and document scanner. Save the output as images, PDFs or Word documents.

6 CloudLawyers Enhanced Directory

www.gabar.org/CloudLawyers

Consumers mainly look for lawyers online, and Georgia lawyers can be found via their CloudLawyers profile from the State Bar's main page under the Need a Lawyer? link. To update your basic

CloudLawyers membership profile, log in to your State Bar account and select “Edit CloudLawyers Profile” to add your picture, basic firm information and three areas of practice to your profile. The searches conducted via the Need a Lawyer? link produce a list of lawyers ordered by best match and geolocation. More than 300,000 searches for Georgia lawyers have been conducted using this service since its inception. The service is a member benefit of the State Bar and is free at its basic level. Members can also upgrade their profiles further via an Enhanced Listing option from CloudLawyers for \$8 a month.

7 ID Ransomware

id-ransomware.alwarehunterteam.com

You must know about this service if you’ve been a victim of a ransomware attack or if you want to prevent one. As its FAQ says, this “service is strictly for identifying what ransomware may have encrypted your files. It will attempt to point you in the right direction, and let you know if there is a known way of decrypting your files.”

8 VirusTotal and HybridAnalysis

www.virustotal.com
www.hybrid-analysis.com

These free scanning sites are also data protection tools, but they do more than just identify what may be lurking behind a ransomware or virus attack on your data. These programs allow you to upload your suspicious or in-

Testimonial



Alexandra Eichenbaum
Attorney
Georgia Legal Services Program

Wearable Technology

I use the Apple Watch to help keep my healthy habits on track during the workday. It reminds me to stand if I have been sitting too long, get more steps in if I am behind my daily goal and it will even trigger a reminder to take deep breaths if my heart rate gets too high—which I find is a very useful tool in our field!

fect files. As with any sensitive data matter, be careful when using these tools, and be sure you are backing up data appropriately.

9 Successful Innovation Outcomes in Law: A Practical Guide for Law Firms, Law Departments and Other Legal Organizations

So while not directly a tech tool, this law firm innovation book, by innovation leader and instructor Dennis Kennedy, is hot off the presses and can play an important role in helping firms and legal departments foster innovation in their operations. He shares his tips, tricks and examples of innovation de-

sign projects that have proven successful for firms. Copies of the book will be available for checkout from the Law Practice Management Program Resource Library soon.

10 Digital Learning Portal

Hotshotlegal.com
Hotshot is a digital learning portal for lawyers. With a library of videos focused on legal and business skills, this service can be a great start to improving your lawyering. The service features interactive quizzes, exercises and outlines on topics from accounting and finance to the basics of civil litigation. Solo practitioners and one-person law departments have access to all program topics for \$500 per year.



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Committing to Your 2020 Vision

At the end of 2019, you should be looking forward to increasing efficiency, productivity, profitability, and overall firm and personal well-being. Use the following tips to tackle your 2020 goals and increase the likelihood of realizing your firm's vision.

BY NATALIE R. KELLY

No, this column is not about your eyesight. Each year we typically reserve the December Law Practice Management Program column for a year-end practice management checklist reviewing the main areas of practice management—marketing, finance, technology and management. This year is really not any different. However, we thought we would share a different approach to checking off what you've accomplished this past year, and what you plan to do in the coming year.



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Begin with a commitment to refocus your practice in each of the core practice management areas to help reach your firm's business goals. Take a long hard look at what you've accomplished this year in each category, and then align your achievements with the goals you have set for yourself in 2020. And, if you have failed to create a strategic plan for the coming year, it's not too late. Take a look at these quick tips—three for each practice management area—to help draft a plan and set up actionable steps for your firm's 2020.

Marketing Tips

- Take a look at your marketing pieces and campaigns for this year and determine their rate of return. Compare returns to what you budgeted and plan to continue or change course as needed based on your results.
- Review completed client satisfaction surveys and group them from worst to best ratings. Create a shortlist of ways to improve in the area of client communication and satisfaction based on what you find. Bonus: If you've bought into the NPS (Net Promoter Score) craze for online marketing, then use those star ratings to do the same work with your communications and satisfaction goals in the new year. Shoot for four stars and higher.
- Use a three-step approach to attacking and streamlining your plan for any of your 2020 marketing campaigns. List the three new ways you will integrate your website into your overall marketing; the three ways you will better approach and use social media chan-

nels to market your firm's services; and three new contacts to reach out to in the new year with the goal of increasing business.

Finance Tips

- Review all of the policies and procedures for bookkeeping and accounting in your firm. Make sure that you have a clear grasp and total financial control over required accounts for your practice.
- Assess whether your billing process is being managed as smoothly as possible through emailed invoices and direct online payment options for clients.
- Gather all of the necessary information and documents to get to your accountant ready to prepare for your year-end bookkeeping and tax needs. Follow suit to make 2020 year-end accounting easier, too.

Technology Tips

- Review all of your firm's technology. Plan to either better utilize or to replace or upgrade systems you have allowed to gather dust.
- Create a bank of tips and tricks that are helpful to you and store them in a document made accessible to everyone in the firm, or create short videos to add to a YouTube channel just for your practice.
- Make plans to attend legal technology CLE programs that focus on your practice needs and offer an opportunity to network and grow alongside practitioners like you who may also be looking for technology solutions.

Management Tips

- Make sure you review policies and procedures, then update (or create) the manual for you and everyone in your firm.
- Have staff review and update their job duties, and provide feedback on ways to improve workflow in the practice.
- Use the same three-step system to identify a list of individuals in the firm who can help with expanding the reach of the practice by championing the firm's mission. Set up train-the-trainer sessions for various employment and personnel needs, and conduct firm events to boost work esteem and build firm loyalty.

At the end of this year, you should be looking forward to increasing efficiency, productivity, profitability, and overall firm and personal well-being. Use the tips above to tackle your 2020 goals and increase the likelihood of realizing your firm's vision.

For additional resources and assistance, you can always reach out to the Law Practice Management Program staff for free, confidential in-person, telephone and email advice, and low-cost, onsite consulting: Natalie Kelly, director, 404-527-8770 or nataliek@gabar.org; Kim Henry, resource advisor, 404-526-8621 or kimh@gabar.org; Sheila Baldwin, member benefits coordinator, 404-526-8618 or sheilab@gabar.org; and Latashia Hughes, administrative assistant, 404-527-8772 or latashiah@gabar.org. •



Natalie R. Kelly

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State Bar of Georgia

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The Power of One

Regardless of practice area, each and every one of us has the ability to simply be there for pro bono clients. And that often is the most powerful and impactful aspect of our representation.

BY SARAH BABCOCK

Sometimes the most important part of pro bono representation is simply being there.

Do you remember a teacher who inspired you? An educator who made you excited to learn, whose class you never wanted to miss? Can you recall another adult in your life who emphasized the importance of education? Maybe a grandparent who saved money for your college education or a parent who told you that going to school was your job?

Chances are, if you are reading the *Georgia Bar Journal*, the answer to at least one of the above questions is yes. Many of us were fortunate enough to have adults in our lives who made sure we received an education. And for most attorneys, the education they received is directly related to their later career success. Sadly, we know that the inverse is also true: children who do not complete high school are ineligible for 90 percent of jobs in the United States,¹ and will earn \$200,000 less than high school graduates over their lifetime.² Approximately 75

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PRO BONO STAR STORY

JANELLE JOHNSON

BY RHUDINE NELSON "DINA" DORSEY



Janelle Johnson
Attorney
Johnson & Johnson Law LLC

percent of crimes are committed by high school dropouts.³ Meanwhile, in addition to greater career success, high school graduates have better health and a longer life expectancy, and are also more likely to vote.⁴

Students can't graduate from high school if they aren't attending school regularly, though. The impact of chronic absenteeism starts early; a national study found that students who do not read proficiently by third grade are four times more likely to drop out of high school.⁵ And elementary school students are more likely to struggle with reading proficiency if they are not attending school regularly. Regular school attendance in every grade is therefore essential.

The Truancy Intervention Project Georgia, Inc. (TIP), works with students who are not regularly attending school, and therefore are in danger of not receiving an education. Students are referred to TIP when their unexcused school absences or repeated tardies indicate a pattern of increasing non-attendance. Seeking to correct this potential pattern before it develops into a habit of chronic absenteeism, TIP pairs referred students with trained volunteers. These volunteers, who are attorneys or other professionals, work with the child and their family to discover the underlying causes of the child's school absences.

As often occurs in pro bono cases, the legal problem that leads a family to seek assistance from a legal services organization is ultimately caused by a life problem. Attorneys who have worked on eviction defense cases know that the legal problem of eviction is often caused by the life problem of chronic underemployment and the resulting lack of adequate income. Similarly, the life problem of unreliable transportation can often lead to the legal problem of having government benefits cut off due to a missed renewal appointment. In the instance of chronic absenteeism, students (and their families) can become involved with the Juvenile Court

Janelle Johnson, a graduate of Stetson University College of Law, practices in the Troup and Harris County area. Her law practice focuses on child advocacy, criminal defense and family law.

Johnson's passion to serve financially challenged clients is very important to her. In 2006, she was awarded the Pro Bono Service Award from Stetson University College of Law for her service to the community in providing legal assistance to indigent citizens. In west Georgia, Johnson provides pro bono legal services to several clients each year for the Georgia Legal Services Program (GLSP). She also offers pro bono service to people who make a point to give

back to the community as well. She does this to encourage and reward people for sharing their talents with the world. Johnson's commitment to serving the low-income community encourages other attorneys in her area to follow her lead and also sign up as pro bono volunteers. The Columbus office of GLSP recently held an Ask-A-Lawyer Day Clinic in LaGrange. Johnson was one of the first private attorneys to step up and volunteer. She met with nine clients that day, providing advice on family law matters and probate issues that included wills, advanced directives for health care and powers of attorney. She's a fantastic volunteer lawyer. •

if the students' unexcused absences exceed 10. But the legal problem of a potential educational neglect or truancy charge will never be resolved until the underlying life problem causing the student's absenteeism is resolved.

This is where TIP volunteers come in. Partnering with TIP staff, school social workers and community organizations, TIP volunteers work to uncover and address the issues leading to the student's absenteeism. In some cases, the cause is

related to the family's situation: housing instability, parental distrust of the school, unreliable transportation or substance abuse. In other cases, usually with middle and high school students, the issue lies with the student: depression and/or substance abuse, bullying at school, exploitation or a need for special education services.

The majority of families TIP serves are committed to their children's education. But when parents, guardians or students

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Indeed, it is this role of listener, confidante and trusted advisor that is often the most important aspect of any pro bono representation.

themselves are struggling with the above issues, getting a child to school on time every day can be difficult. TIP volunteers help by serving as an adult wholly committed to ensuring that the child gets his or her education. This can take the form of regularly texting parents or guardians to ensure the child wakes up in time for the bus each morning. Or making sure that a family gets to their counseling appointments so that they can access needed therapy. Or alerting the school when a child is being bullied on the bus or in a particular class. In short, being the adult in the child's life who constantly and consistently emphasizes the importance of education, and is available to help the family problem-solve when challenges threatening the child's ability to attend school arise.

Indeed, it is this role of listener, confidante and trusted advisor that is often the most important aspect of any pro bono representation. Legal services clients are often exhausted by the chronic scarcity that characterizes their lives. Between long hours at minimum wage jobs, unreliable transportation, untreated health conditions and/or poor housing conditions, pro bono clients can be utterly overwhelmed. A committed attorney can ease that burden by simply standing alongside the client. Listening to the client's concerns and offering to take something off of his or her plate. Ensuring that the client knows they don't have to face all of their challenges alone.

Sometimes this sympathetic space is the most transformative aspect of client representation. In a recent TIP case, a family was referred by the school due to the child's excessive absences. When the school social worker and TIP staff sat down with the parent, they learned that she had recently lost the child's father and her long-term partner in an act of sense-

less violence. Understandably devastated by the tragedy, the parent had barely been able to get out of bed each day. By creating sympathetic space for the parent and her loss, the school social worker and TIP staffer were able to learn what was causing the child's absenteeism, and connect the parent with grief counseling and other community support. That was all the parent needed to get her child's attendance back on track.

Regardless of practice area, each and every one of us has the ability to simply be there for pro bono clients. And that often is the most powerful and impactful aspect of our representation. ●



Sarah Babcock is passionate about ensuring that all children receive the resources they need to build healthy and productive lives.

As deputy director of the Truancy Intervention Project, Babcock supports both staff and volunteers in serving TIP clients and their families. A graduate of Emory University School of Law, she joined TIP after six years as a litigation associate at Alston & Bird and three years as senior staff at Lawyers for Equal Justice, an incubator program for newer solo attorneys.

Endnotes

1. <https://www.dosomething.org/us/facts/11-facts-about-dropping-out>.
2. <https://www.dosomething.org/us/facts/11-facts-about-high-school-dropout-rates>.
3. *Id.*
4. <https://www.americaspromise.org/high-school-graduation-facts-ending-dropout-crisis>.
5. <https://gradelevelreading.net/uncategorized/study-links-3rd-grade-reading-poverty-and-hs-graduation>.

STATE BAR OF GEORGIA

PRO BONO

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The New Cannabis and Hemp Law Section

In October, the State Bar of Georgia's Board of Governors approved the creation of the Cannabis and Hemp Law Section. Chair Jennifer Dianne Thomas reviews the need for and goals of this new section.

BY JENNIFER DIANNE THOMAS

The legal landscape surrounding cannabis and hemp cultivation in Georgia is shifting. Within the past year, the Georgia Legislature has passed two new laws addressing cannabis and hemp cultivation and distribution in our state. On April 2, 2019, Georgia became the 34th U.S. state to legalize cannabis for medicinal use when the Georgia Legislature passed HB 324, which permits patients registered with the Department of Public Health to possess up to 20 fluid ounces of low THC oil. This measure took effect on July 1. Further, on May 10, 2019, Gov. Kemp signed HB 213, allowing hemp crops, which can be used to make CBD oil, rope and other items. As a result of the new hemp bill, licensed Georgia farmers may grow hemp and licensed processors may produce CBD oils.

Creation of the Cannabis and Hemp Law Section

As the cannabis and hemp industry transitions from a subversive underground culture to a legitimate industry, attorneys practicing in this area need support and educational resources. Attorneys advising clients operating in the Georgia medical cannabis industry

face unprecedented ethics challenges, which may differ significantly from the hurdles faced by attorneys in other more established areas of the law. Jennifer Dianne Thomas, the section's founder, has worked for several years advising hemp and cannabis companies outside of the state. Thomas believes that Georgia lawyers who are considering working with clients operating businesses in the state's medical cannabis and hemp industry should have access to more resources, and she has worked to create a section that would address these issues. The Board of Governors voted to approve the creation of the Cannabis and Hemp Law Section at the Fall Meeting on Oct. 19, with Thomas as chair.

Need for a Cannabis and Hemp Law Section

The section will work to assist lawyers in navigating this developing area of state law because advising clients in this area is complicated and risky. Consider for example that cannabis and hemp businesses have many of the same legal needs as any other enterprise, from setting up agreements among partners, creating the business framework, navigating local land-use laws

and staying in compliance with state laws on everything from a pesticide application to product packaging. But even though the new state medical cannabis and hemp laws are falling into place, medical cannabis is still illegal at the federal level, and several federal agencies have conflicting rules concerning hemp laws.

The Food and Drug Administration, Alcohol and Tobacco Tax and Trade Bureau, and Department of Agriculture all have written guidance on the application of hemp rules for their agency, and the guidelines often leave room for interpretation or directly conflict. The 2018 Farm Bill goes a long way in legalizing hemp cultivation, but one of the biggest questions that remains unclear is the legality of the transportation of hemp and its derivatives through states that don't have or don't want hemp programs.

Section Member Kevin Adamson said, "I'm glad Georgia has recognized the need to help people navigate the legal issues that go along with this new area."

"With the passing of the Hemp Farming Act, I think it's an exciting time for would-be hemp growers and hemp processors across the state of Georgia," said Section Member D. Sam Roberson. "The resurgence of the hemp industry

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presents an opportunity for farmers to pursue a new cash crop that is environmentally beneficial. I look forward to the innovation that Georgians will bring to this industry.”

Cannabis and Hemp Law Section Goals

As Georgia implements its new low THC and CBD laws, the section has several lofty goals. Namely, it endeavors to help those who need to advise clients to feel more familiar with the host of legal topics and challenges (including conflicts with federal law and interstate commerce issues). Thomas expects these challenges will no doubt plague those clients who choose to take part in this growing industry. The section will also strive to create a legal community in our state that are thought-leaders in the new industry.

Ongoing Challenges for State Bar Members

The current State Bar of Georgia Rules of Professional Conduct are quite specific and may greatly limit what attorneys in the state can do. In fact, Rule 1.2 (d) states:

“A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning or application of the law.”

Attorneys have to proceed with the knowledge that Rule 1.2 (d) does not provide any safe harbor for attorneys. The maximum penalty for a violation of Rule 1.2 (d) is disbarment.

In addition to Rule 1.2 considerations, attorneys interested in working with clients in this area should know that in other U.S. states, attorneys have faced consequences in connection with client representation. For example, the prosecution of a San Diego attorney is raising significant concerns in the legal community about attorney-client privilege. The attorney (who represented several clients who are involved with cannabis) is facing multiple felony charges related to one of her cannabis clients. The attorney is accused of going to a production facility and making sure that her clients removed

evidence of the manufacturing and possession of concentrated cannabis before the facility was inspected.

Cases like the one in San Diego are exactly why the new Cannabis and Hemp Law Section of the State Bar of Georgia is necessary. Attorneys will need help navigating the rules of ethics and how to accurately advise clients. If found in violation of a federal law (as a business owner in this industry), the State Bar has made it clear that disbarment could be a resulting consequence, just as it does for any lawyer convicted of a felony.

If you are interested in joining this new section, visit www.gabar.org/sections. •



Jennifer Dianne Thomas, chief legal officer and co-founder of Province Brands based out of Canada, is a corporate transaction

specialist with 10 years of experience advising emerging growth and start-up companies in commercial transactions, corporate governance, corporate intellectual property matters and regulatory compliance. She has particular expertise in international/emerging markets, M&A and complex commercial contracts.

Explore Your Bar Benefits: State Bar Conference Center and Parking Deck

Contact Sheila Baldwin at sheilab@gabar or 404-526-8618 to learn more about these or other Bar benefits.

BY SHEILA BALDWIN



Each month, a specific Bar benefit will be highlighted and communicated to our members. You can view them by going to www.gabar.org/benefits. My article will focus on the Conference Center and the Parking Deck.

Conference Center

In March of 2002, the State Bar of Georgia made its home in what was originally the Federal Reserve Bank of Atlanta. Over the years it has become the home of the lawyers and judges of Georgia as they come to the Conference Center for Bar meetings, continuing legal education courses and law-related activities. This is your building, and we encourage you to enjoy the attractive amenities of this valuable membership benefit as much as you like.

Licensed Georgia attorneys may reserve any of the Bar Center's conference rooms on a first-come, first-served basis. Rooms are located on the third floor and in the sub-basement. There is no charge for law-related meetings (soft drinks and coffee are extra and are not provided for groups larger than 20). Conference Center hours are 8 a.m. to 5 p.m. Depending on individual needs, the third floor can accommodate up to 200 people. Members wishing to host

events after hours will incur charges to include cleaning, security, AV and heat/air. For room reservation inquiries, contact Faye First, fayef@gabar.org.

Video conferencing solutions available at the conference center utilize dedicated Lifesize and Aver IP-based video conferencing systems to offer a large array of diverse conferencing services at the Bar Center in Atlanta, as well as each of the satellite offices in Savannah and Tifton.

Tucked in the center of the conference floor is the Museum of Law commemorating America's mesmerizing legal past. Through educational and interactive displays, you can learn more about the Bill of Rights; Freedom's Call: the March for Civil Rights; Cruel and Unusual Punishment; Checks and Balances: the Role of the American Judiciary; and Famous Georgia and U.S. Trials.

Don't miss the little theater in the back of the museum. "Reel Justice" is a 12-minute compilation of 75 Hollywood films depicting a variety of law-related courtroom scenes and cases including "To Kill a Mockingbird," "My Cousin Vinny" and "Eight Men Out."

The Bar Center's Lawyers Lounge provides an attractive environment for attorneys who may have occasion to be downtown and need a place to relax between meetings. Such visitors may help themselves to a fresh cup of coffee, enjoy the daily newspaper or check phone or email messages.

Parking Deck

The Conference Center is accessible from the sixth floor of the parking deck. Free parking is available for Bar events and for access to other local venues and locations. The State Bar is located in the central business district of downtown Atlanta and is one block from CNN Center, the World Congress Center, State Farm Arena and Mercedes-Benz Stadium. Gov-



ernmental agencies in the vicinity include the State Capitol, the Supreme Court of Georgia, the Court of Appeals of Georgia, the Fulton County Courthouse, the 11th Circuit Court of Appeals and the Richard B. Russell Federal Building.

Please note the following guidelines which are listed on the Bar's website at www.gabar.org/parking:

- Parking is available during business hours for members visiting and using the Bar Center. Please bring your ticket to the meeting you will be attending for validation.
- Because there are a limited number of parking spaces, free daily parking cannot be provided for lawyers who work in other downtown buildings.
- Parking is available on nights and weekends when the deck is open for events by showing your Bar card to the deck attendant.
- Bar members may also park at the Bar Center when the parking deck is closed. Press the button on the kiosk to page Bar Security, give them your

Bar number, and they will give you access into the deck.

- Bar members can leave their car in the parking deck overnight. Go to the first floor security station and show your Bar card to receive validation and let them know your car will be there overnight.

If you haven't been to the Bar Center recently, you will be happy to see new developments in the Centennial Olympic Park District. It is now a more walkable, safe, vibrant neighborhood with world-class attractions and a host of entertainment options and dining choices. It's also the center of Atlanta's numerous sports arenas and event venues, making it the perfect spot to park. Contact Sheila Baldwin at sheilab@gabar.org or 404-526-8618 to learn more about these or other Bar benefits. •



Sheila Baldwin

Member Benefits Coordinator
State Bar of Georgia

sheilab@gabar.org

My Story: Postpartum Issues, Resources and Recovery

I hope my story helps even one person find recovery in identifying and recovering from postpartum issues. I have shared this to show that there is no stigma surrounding your struggles that is too great to prevent you from seeking good care. Here's to wellness!

BY AMNA R. SHIRAZI

Starting a family can be a daunting task for many lawyers. It is a huge decision and comes with many repercussions for both work and life balance. Whether you go the traditional route with a partner, or, as other attorneys I know, move forward on your own with the help of IVF, having children is a major lifestyle change, and women who work in the very stressful field of law often find it difficult to adjust.

Being a lawyer is hard. Many of us work long, demanding hours, billing as much as we can to make it to partner status at our firms, and many women own and run their own law firms, which brings its own unique challenges. No matter what your reality is as a lawyer, the hormonal changes one undergoes during pregnancy and the lack of sleep that comes from having a newborn (especially if you're nursing) can take a toll on many women. The stress that comes



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from representing clients and having a baby can sometimes trigger the dreaded postpartum diagnosis. However, if you receive such a diagnosis from a medical professional, it is not the end of the world. If you seek the proper care and give yourself time, you can find help and healing. The following outlines my personal experience with postpartum issues over the past four years, where I share my own opinions and advice for how to cope with this diagnosis based on my own research, life experiences and conversations with my doctor. This is not intended to serve as medical advice. Please seek the assistance of a physician if you feel you're in trouble and need help.

Many women have what is called "the baby blues" after their child is born, but postpartum issues can become a persistent condition that does not improve after the first several weeks after giving birth. Many people think postpartum issues are associated with depression, but I learned that they can manifest in many different forms, including crippling postpartum anxiety, postpartum depressive disorder and postpartum psychosis, which is considered a medical emergency. Symptoms of postpartum issues start developing over the course of the first month after giving birth and can persist for many months or more. One sign of postpartum issues is a hypersensitivity about caring for your child, thinking no one can handle your baby better than you or obsessing over small details, such as which socks to put on your baby that day. Other signs of postpartum issues include feelings of worthlessness, a lack of confidence in parenting, anger, significant sleeplessness (insomnia in addition to caring for the baby), feelings of guilt and sadness, decreased concentration and extensive anxiety.

Furthermore, I learned that if a mother begins to have abnormal feelings such as thoughts of death, suicidal ideations,

For All the Moms: The State Bar of Georgia Lactation Room



PHOTO BY SARAH J. COOLE

Did you know that the Bar Center has a lactation room? Whether you're attending a meeting or CLE, if you're looking for a private, quiet space to pump, the lactation room meets that need. Complete with a comfy armchair, mini refrigerator and sink, this room has everything you might need to help you relax. It's clean and quiet, and you'll find a box of extra supplies in case you forgot something. Visit the third floor security desk to obtain the code for the door, and take a moment for you. ●

a desire to hurt her baby, hallucinations or a belief that her baby is evil, this could indicate postpartum psychosis and is considered a medical emergency. In this situation, one should immediately be taken to the emergency room for care. While this case is more severe, the previously listed symptoms can be treated with the help of a good psychiatrist who works specifically with women who have postpartum issues, and who can prescribe medications as needed based on a woman's particular circumstances.

In my own experience, I found it is critical to see a psychiatrist who works specifically and exclusively with postpartum women, as they have been trained to make a specific diagnosis given a woman's

symptoms. They can assist in making a decision about a course of treatment and, if needed, can prescribe medication that will allow a mother to still be present, functional and able to nurse if necessary. They can also work quickly to get the mother the care she needs, which is vital. I would not recommend going to a general practitioner for help with suspected postpartum issues, mainly because, due to lack of specialized training, they can often give a wrong diagnosis or prescribe the wrong medication. This results in a delay in getting needed care and may even exacerbate a woman's condition. The quicker a mother gets the care she needs, the better it is for her, the baby and all involved in their care.

RESOURCES & TOOLS

Lawyers Assistance Program (LAP)

LAP offers Bar members a 24-hour assistance and crisis counseling hotline (800-327-9631); six pre-paid clinical counseling sessions per calendar year (Use Your Six); and a Work/Life Program for help with childcare, elder care and finances. All services are strictly confidential and provided by CorpCare Associates, a national counseling agency. Visit www.gabar.org/LAP for more information.

Lawyers Helping Lawyers (LHL)

LHL is a confidential peer-to-peer volunteer program that offers collegial support for stress, addiction, depression or other personal issues. Any Bar member in good standing can volunteer after completing a mandatory 2.5 hour (2 CLE hours) training. Visit www.georgiaLHL.org for more information.

SOLACE Program

SOLACE (Support of Lawyers/Legal Personnel—All Concern Encouraged) offers assistance for any member of the State Bar of Georgia who suffers serious loss due to a sudden catastrophic event, injury or illness. Learn more at www.gabar.org/SOLACE.

In talking with my physician, I learned that risk factors for postpartum depression include a previous psychiatric history, a lack of a strong support group, lifestyle dissatisfaction (e.g., disliking your job or marital discord) or stressful life events while caring for your child, like a death in the family, being a single parent or having an unplanned pregnancy. Another common cause of postpartum psychiatric issues comes from having a traumatic birth experience. Abnormal trauma during birth—uterine rupture, an ineffective epidural during a C-section or the threat of harm to the baby during labor and delivery—may result in post-traumatic stress disorder, which can contribute to a postpartum diagnosis.

In my case, I run a very busy immigration practice and own my own law

firm. After both my children were born, I needed to care for my staff, which made maternity leave very stressful for me. Because I was away from my practice, I retained fewer clients, and it significantly impacted my income. But I needed to ensure my clients were still being taken care of and that my staff and business expenses were paid, even if I was not present in the office. Plus, I had two children in four years, so I felt that I was either pregnant, caring for a newborn or on maternity leave for almost five years. These circumstances hit me very hard. Not being able to completely step away from work while on leave only heightened my stress. Luckily, I have a very supportive husband, and we were able to secure childcare, but I was still diagnosed after both births as being on the postpartum spectrum.

For me, postpartum issues came in the form of extreme anxiety and insomnia. I was not in good shape at all, but continued to have to handle my cases from home, make payroll and pay other business expenses during my absence. I took steps to seek professional medical care, and, both times, I gave it over to God and just let go—and it somehow worked out in the end. I got through my maternity leave, kept up with my cases and managed to pay my expenses while dealing with a diminished income. I always share with my friends that many seemingly insurmountable situations usually resolve themselves with commitment, confidence and focus. I compare it to a rollercoaster—you just have to hold on, and eventually you will make it to the end. I know this is easier said than done; however, with the care of the proper physician and the sup-

Suicide Awareness Campaign

This campaign assists members of the Bar who are suffering from anxiety and depression and may be at risk for suicide. This program also provides resources to help Bar members recognize warning signs and seek help for themselves or others. Call the confidential LAP hotline at 800-327-9631 for information or visit www.gabar.org/suicideawareness.

Lawyers Living Well

The Lawyers Living Well website features articles and resources on mental, physical and social well-being; a calendar of events; and a directory of wellness providers and special offers. Visit www.lawyerslivingwell.org.

Attorney Wellness Committee

The Attorney Wellness Committee of the State Bar of Georgia is made up of several subcommittees, including the Mental Well-Being Subcommittee, the Social Well-Being Subcommittee and the Physical Well-Being Subcommittee, amongst others. To contact a member of the committee, view a list at www.lawyerslivingwell.org.

port of my husband, I am finally making it through. My daughter is almost two years old now, and I feel I am finally out of the woods. Of course, postpartum issues rarely resolve themselves overnight, and in many cases, it can take years to recover, especially if you have back-to-back pregnancies and if you were on the spectrum after the first time you gave birth.

My advice to women who are suffering is, "Don't lose hope!" There are many resources available to you if you need assistance, even if you don't have a solid support system in place. You can choose to see a therapist if medication is not the route you want to take, or you can see a specialized psychiatrist to assist you with specific issues. I also recommend reaching out to friends and family. Ask for help. So many people suffer in silence,

and that only makes things worse. You might be surprised by how many people will step up to help if you only ask. You should not suffer in silence or be afraid of a perceived stigma surrounding mental health issues. A large percentage of lawyers deal with mental health issues, including suicide, given the high stress level of our profession. As a group, we need to end the stigma surrounding mental health issues and speak openly about them. Often, we are all going through something in our lives that may expose us to health issues. Being open about them is critical to recovery. There is no shame in asking for help.

The State Bar of Georgia has made a huge commitment to serving its members in almost all aspects of any mental health, crisis or addiction issue. So many people do not realize the wealth of re-

sources the Bar offers for lawyers who need assistance. As a member of the Bar's Mental Well-Being Subcommittee (of the Attorney Wellness Committee), I encourage any and all members to utilize these valuable tools.

I hope my story helps even one person find recovery in identifying and recovering from postpartum issues. I have shared this to show that there is no stigma surrounding your struggles that is too great to prevent you from seeking good care. Here's to wellness! •



Amna Shirazi is an award-winning immigration attorney in Atlanta. She works in immigration litigation, family based immigration and federal immigration appeals.

Tackling Block Quotes

Whether the purpose of the text is to persuade, to inform, or both, long quotations are sometimes appropriate. When that is so, remember to keep the reader engaged by following these strategies.

BY DAVID HRICIK AND KAREN J. SNEDDON

A lawyer once said that if you want to ensure something won't be read, put it in a block quote. There is some truth to that. This installment of "Writing Matters" shares some suggestions on how to tackle block quotes in a way that ensures the quotes will be read—and be understood.

A quotation from a legal source or a factual source is sometimes critical to the purpose of the text. For example, a witness's exact testimony or a contract's provision may need to be quoted at length, as might be the case with a provision of a will, statute or patent. However, the use of block quotes, that is quotes of more than 50 words, should be the exception, not the rule. Block quotes should be reserved for not only when the exact language is critical, but an extensive amount of text is critical to the writer's purpose.

Even when a block quote is needed, consider if it can be shortened by using ellipses. This helps the reader focus on the key language. If you have a block quote and find that you have italicized portions of it, this may be a sign that ellipses could be helpful. Or, consider if the text introducing the block quote can define some of the phrases in it, and thereby shorten



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the quote by using brackets. Further, if a block quote is needed, then summarize the key language after the block quote to ensure that the reader has grasped the quote's importance.

If a block quote is truly necessary, in leading into the extensive quote, be sure to explain why the language is critical. Block quotes may be skipped by readers, but if you explain in the lead why the long quote is so important, then the reader may re-think that approach and think, "Well, I'd better read this."

Consider the Georgia apportionment statute as an example. Imagine a car wreck case where the plaintiff has sued a single defendant for running a red light. The defendant wants to have the jury apportion fault to non-parties, including the manufacturer of plaintiff's car (for failing to have good airbags), and the city (for poorly designing the intersection). The plaintiff wants to argue that the statute does not permit a single defendant to apportion fault on non-parties. (That very issue is currently on appeal in Georgia, by the way.)

Suppose the plaintiff's argument consists of the following:

The plain text of Georgia's apportionment statute does not permit a jury in a single defendant case to apportion damages to non-parties:

(a) Where an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault.

(b) Where an action is brought against more than one person for injury to person or property, the trier of fact, in its determination of the total

amount of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the persons who are liable according to the percentage of fault of each person. Damages apportioned by the trier of fact as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.

O.C.G.A. § 51-12-33(a)-(b).

Did you even read the statute? At what point did you start to skim the statute? Did you spot the key language suggesting that a jury in a single-defendant case may not apportion fault of a party other than the plaintiffs?

Now consider this approach to the argument:

Under the plain text of the apportionment statute, a jury in a single defendant case cannot apportion fault to non-parties. The statute permits the plaintiff's fault to always be raised—in a suit against "one or more" defendants—but fault of others is permitted only if suit is against "more than one" defendant. Specifically, the statute states:

(a) Where an action is brought against *one or more persons* . . .

(b) Where an action is brought against *more than one person* . . .

(The block quote in this example would contain the full statutory text, but we omit it here for brevity.)

The use of the lead-in orients the reader to the issue and states why the plain text supports the plaintiff's position. Then, the use of the italicized language points the reader to the key text.

Now consider whether the block quote could be shortened. Using the same lead

above, consider whether the following would effectively shorten the block quote but leave the key text:

(a) Where an action is brought against *one or more persons* . . . the trier of fact . . . shall determine the percentage of fault of the plaintiff. . .

(b) Where an action is brought against *more than one person* . . . the trier of fact . . . shall after a reduction of damages pursuant to subsection (a). . . apportion its award of damages among the persons who are liable according to the percentage of fault of each person. . . .

This revision reduced the number of words in the block quote from 197 words to 69—nearly 66 percent fewer words. The revision does not lose any meaning. In fact, the revision presents the text with greater clarity.

Finally, after every block quote, make sure to "close" the point. So, for example, after the shortened block quote above, the next sentence might state, "Because the plain text allows reduction of fault only in suits against 'more than one person,' this court should not permit apportionment for the fault of anyone besides the plaintiff."

Accuracy is one goal of legal writing. Whether the purpose of the text is to persuade, to inform or both, long quotations are sometimes appropriate. When that is so, remember to keep the reader engaged by following these strategies. •



David Hricik, a professor of law at Mercer University School of Law, has written a number of books and articles. The Legal Writing Program at Mercer is among the best in the nation.



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

Law School and Professional Identity Formation

This article is adapted from our book, “The Formation of Professional Identity: the Path from Student to Lawyer,” and reviews the concept of professional identity, something that practicing lawyers of any age may find useful as they reflect on their own roles in the profession.

BY PROF. PATRICK E. LONGAN, PROF. DAISY HURST FLOYD AND PROF. TIMOTHY W. FLOYD

Law school is a transformative process. Students learn things that lawyers need to know and learn how to do some of the things that lawyers do. But that is not all. Beyond knowledge and skill, law students absorb lessons about the professional values that are supposed to guide the deployment of their newfound knowledge and skill.

We’ve spent many years teaching and writing about ethics and professionalism, and collectively we have practiced in a variety of settings. Those experiences have led us to conclude that the best way to help our students understand and commit to the values of the profession is to focus on the development of “professional identity.” The concept of a “professional identity” may be unfamiliar to most lawyers, and it may sound like academic gobbledygook. It is actually simple and intuitive. An identity is just a deep sense of self in a particular role. We all form multiple identities as we go through life—for example, as a friend, as a spouse or as a person of faith. Professional identity is a piece of this evolving sense of self for law students and lawyers. A sense of your professional identity would enable you to complete the sentence, “I am the kind of

lawyer who ____.” The professional identity we strive to promote for our students is one that internalizes the traditional values of the profession and disposes the students to act in accordance with them.

We have recently written a book that we will be using in that process: “The Formation of Professional Identity: the Path from Student to Lawyer” (Routledge Press 2019). A focus on professional identity formation is not new or original with us. But in our book we offer our own specifics about the components of the right kind of professional identity for lawyers and, based upon our experience in teaching legal ethics and professionalism, how best to begin the process of professional identity formation among law students. Practicing lawyers of any age may also find the book and the concept of professional identity useful as they reflect on their own roles in the profession.

Our book discusses in depth the six virtues that should be part of the professional identity of every lawyer: professional excellence, fidelity to the client, fidelity to the law, public service, civility and practical wisdom. We make the case why students and lawyers should seek to acquire and cultivate these virtues—be-



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cause doing so will help them to make a meaningful difference in the lives of others and to flourish as individuals in the profession. We explore, as to each virtue, the details of what it means and why it matters. We identify the reasons why a lawyer might find it difficult in particular situations to deploy each virtue, and we give recommendations for how to overcome those obstacles.

We focus on professional identity in part because law school historically has not been as good about transmitting the values of the profession as it has been about teaching knowledge and skill. For decades, no training in ethics or professionalism was required. Since the post-Watergate era began, all law schools have been required to teach all students a course on professional responsibility, which almost always focuses on the Model Rules of Professional Conduct. Study of the Model Rules provides some guidance to students about the values of the profession and motivates conduct that lives up to these values primarily by the fear of discipline such as disbarment.

As a way of transmitting the values of the legal profession and motivating students to live up to them, the professional responsibility course is important but incomplete. Not all of the values of the profession are reflected in the rules. For example, civility is a core value of the legal profession, yet there is no “civility rule” in the Model Rules. Furthermore, many kinds of misconduct are difficult to detect and therefore difficult to punish. And deploying the values of the profession in complex circumstances requires much more than knowledge of the “do’s and don’ts.” Often the value-laden decision for lawyers is about what they should do, among multiple permissible actions. Knowing the rules of conduct and the possible consequences of violating them is important, but it is not enough.

More recently, some law schools have exhorted students to “aim higher” than the rules and aspire to act with “professionalism.” Mercer Law School has been teaching such a course since 2004. The

notion of professionalism broadens the conception of a lawyer’s professional responsibilities in important ways. One of the early proponents of professionalism, Chief Justice Harold Clarke of the Supreme Court of Georgia, once famously wrote that “ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers.”¹ Such an expectation does not fit comfortably into a regulatory framework but can find useful expression in an aspirational statement on professionalism. The modern professionalism movement has spawned dozens of such statements, including Georgia’s “A Lawyer’s Creed” and “Aspirational Statement on Professionalism.”²

We believe in teaching professionalism to law students but have come to recognize the shortcomings of such instruction. One is motivation. The underlying theme of the professionalism movement is to inspire students and lawyers, to convince them that they should conduct themselves in particular ways, even at cost to themselves, when no rule requires them to do so and they need not fear any punishment. That is not enough for some students. Part of the problem is that, frankly, professionalism teaching can sound a little preachy. Our experience has been that many law students do not respond well to preaching. They are in the midst of rigorous training to be critical thinkers and are understandably skeptical of received wisdom.

Another shortcoming of professionalism teaching is that it does not provide any guidance on how to turn noble aspirations into action in particular situations. Being able to recite professionalism guidelines does not enable law students to solve complex real-world problems in which more than one professional value is in play. It is like telling a pianist about all the beautiful notes but providing no guidance about which notes to play in which order. The beautiful notes are no practical good at concert time.

Courses and programs on professionalism have been an important step in the

right direction of a more comprehensive process of introducing law students into the values of the profession. However, now that the shortcomings of such training are clear, another approach is needed.

That is where “professional identity” and our new book come in. We hope that students and members of the Bar find it useful. We invite you to read it and see for yourselves, and we welcome your feedback. ●



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Prof. Daisy Hurst Floyd is University Professor of Law and Ethical Formation at Mercer University School of Law, where she formerly served as dean. She is a

graduate of Emory University and the University of Georgia School of Law.



Prof. Timothy W. Floyd holds the Tommy Malone Distinguished Chair in Trial Advocacy and serves as Director of Experiential

Education at Mercer University School of Law.

This article is adapted from “The Formation of Professional Identity: The Path from Student to Lawyer” (Routledge Press 2019).

Endnotes

1. Harold G. Clarke, *Professionalism: Repaying the Debt*, 25 *GEORGIA STATE BAR JOURNAL* 170, 173 (1989).
2. A copy of *A Lawyer’s Creed and the Aspirational Statement on Professionalism* is available on the website of the Chief Justice’s Commission on Professionalism at www.cjcpga.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.

**LENDON JAMES
ALEXANDER**

Washington, D.C.
The George Washington
University Law School
(2017)
Admitted 2017
Died April 2019

DAVID S. BAKER

Atlanta, Georgia
Harvard Law School (1961)
Admitted 1966
Died October 2019

STEPHEN K. BARNETT

Green Cove Springs,
Florida
Georgia State University
College of Law (2003)
Admitted 2003
Died May 2019

EMORY B. BAZEMORE

Tybee Island, Georgia
Atlanta's John Marshall
Law School (1968)
Admitted 1970
Died September 2019

FRED D. BENTLEY SR.

Marietta, Georgia
Emory University School
of Law (1948)
Admitted 1948
Died October 2019

HARRY BEXLEY

Atlanta, Georgia
Woodrow Wilson College
of Law (1947)
Admitted 1948
Died October 2019

FRANCIS M. BIRD JR.

Atlanta, Georgia
Emory University School
of Law (1964)
Admitted 1964
Died September 2019

SCOTT FRANCE BISHOP

Saint Petersburg, Florida
Valparaiso University
School of Law (1993)
Admitted 1997
Died April 2019

BENJAMIN P. BRINSON

Claxton, Georgia
University of Georgia
School of Law (1979)
Admitted 1979
Died October 2019

JOHN DUDLEY CARTLEDGE

Columbus, Georgia
Emory University School
of Law (1961)
Admitted 1960
Died September 2019

JOHN D. COMER

Macon, Georgia
University of Georgia
School of Law (1949)
Admitted 1958
Died April 2019

AVARY DIMMOCK JR.

Ellijay, Georgia
University of Georgia
School of Law (1949)
Admitted 1949
Died March 2019

TOM A. EDENFIELD

Savannah, Georgia
Mercer University Walter
F. George School of Law
(1963)
Admitted 1962
Died October 2019

ALAN M. GERLACH JR.

Orlando, Florida
University of Florida Levin
College of Law (1975)
Admitted 1979
Died February 2019

JOHN S. HARRISON

Grayson, Georgia
Mercer University Walter
F. George School of Law
(1955)
Admitted 1958
Died October 2019

MORRIS DOUGLAS HODGES

Smithville, Tennessee
University of Kentucky
College of Law (1949)
Admitted 1965
Died April 2019

CYNTHIA LYNNE HORTON

Tucker, Georgia
Atlanta's John Marshall
Law School (1980)
Admitted 1980
Died October 2019

AMY LEIGH JETT

Marietta, Georgia
Georgia State University
College of Law (2006)
Admitted 2006
Died October 2019

LEROY R. JOHNSON

Atlanta, Georgia
North Carolina Central
University School of Law
(1957)
Admitted 1959
Died October 2019

WILLIAM BOYD KIRKSEY

Jackson, Mississippi
Mississippi College
School of Law (1975)
Admitted 2010
Died May 2019

W. DONALD KNIGHT JR.

Atlanta, Georgia
University of Virginia
School of Law (1967)
Admitted 1967
Died September 2019

**THEODORE HAROLD
LAMBERT**

Bainbridge, Georgia
University of Georgia
School of Law (1959)
Admitted 1959
Died October 2019

JOSEPH E. LOGGINS

Summerville, Georgia
Woodrow Wilson College
of Law (1955)
Admitted 1955
Died July 2019

**THOMAS WILLIAM
MALONE**

Atlanta, Georgia
Mercer University Walter
F. George School of Law
(1966)
Admitted 1965
Died October 2019

SAM J. MCFADYEN JR.

Hudson, Florida
University of South
Carolina School of Law
(1958)
Admitted 1958
Died July 2019

JULIE FEGLEY MCINTYRE

Columbia, South Carolina
Emory University School
of Law (1982)
Admitted 1982
Died February 2019

THOMAS R. MORAN

Moreland, Georgia
University of Georgia
School of Law (1969)
Admitted 1969
Died August 2019

PATRICK J. MULLIGAN

Dallas, Texas
Southern Methodist
University Dedman
School of Law (1989)
Admitted 2004
Died May 2019

MATTHEW M. MYERS

Macon, Georgia
Mercer University Walter
F. George School of Law
(2003)
Admitted 2003
Died September 2019

T. DAVID PRICE

Austin, Texas
University of Louisville
Louis D. Brandeis School
of Law (1978)
Admitted 1983
Died December 2018

JEFFREY STANTON PURVIS

Cumming, Georgia
Western Michigan
University Thomas M.
Cooley Law School (1995)
Admitted 1997
Died October 2019

SCOTT A. RAY

Atlanta, Georgia
Emory University School
of Law (1956)
Admitted 1957
Died May 2019

WILLIAM L. RONNING

Savannah, Georgia
Samford University
Cumberland School of
Law (2001)
Admitted 2001
Died October 2019

ELIZABETH GLENN STOW

Atlanta, Georgia
Emory University School
of Law (1981)
Admitted 1981
Died May 2019

SCOTT WALTERS JR.

East Point, Georgia
Mercer University Walter
F. George School of Law
(1950)
Admitted 1950
Died February 2019

WILLIAM BYRD WARLICK

Augusta, Georgia
University of Georgia
School of Law (1965)
Admitted 1965
Died September 2019

**ROGER HARLESTON
WASHINGTON**

Stone Mountain, Georgia
Atlanta Law School (1984)
Admitted 1996
Died February 2019

E. MULLINS WHISNANT

Columbus, Georgia
Mercer University Walter
F. George School of Law
(1950)
Admitted 1950
Died October 2019

JOHN W. WILCOX JR.

Atlanta, Georgia
University of Georgia
School of Law (1951)
Admitted 1951
Died September 2019

OBITUARIES



Sen. Leroy R. Johnson, 91, passed away in October.

Johnson was born in Atlanta on July 28, 1928, to Leroy I. Johnson and Elizabeth Heard Johnson and had one sibling, the late Lillian Earlene Johnson Mitchell.

Growing up in the heart of Atlanta, Johnson attended Walker Street Elementary School and earned his high school diploma from the historic Booker T. Washington High School. After graduating, Johnson earned a bachelor's degree from Morehouse College in 1949, and a master's degree from Atlanta University (now known as Clark Atlanta University). He served as a history teacher at his high school alma mater before attending North Carolina Central University School of Law.

After receiving his law degree, Johnson became the first African-American to be hired by the Fulton County Solicitor General's Office (now known as the Fulton County District Attorney's Office). He served as a criminal investigator for the office from 1957-62.

In 1962, Johnson became the first elected African-American senator in the state of Georgia, and in the south since Reconstruction. Just a year later, President Lyndon B. Johnson appointed Johnson as the Special Ambassador to Zanzibar, Africa. Johnson accompanied all of the special dignitaries on Air Force One to the Zanzibar Independence Ceremonies that same year. In 1968, Johnson was appointed to the Senate Judiciary Committee, and by 1970, Johnson managed to do what was considered impossible in both the legal world and the world of sports: Johnson represented the internationally-known boxing phenomenon, Muhammad Ali, and helped him regain his boxing license. The fight was held in Atlanta on Oct. 26, 1970. ●

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.

OBITUARIES



Theodore Harold Lambert, 84, of Bainbridge, passed away in October. A native of southwest Georgia, he grew up on a farm near Climax, Georgia. He graduated from Climax High School, attended Florida State University where he was a member of Delta Tau Delta, serving as president, and graduated in 1957 with a degree in political science. Lambert attended the University of Georgia School of Law, where he received his LLB degree. He was editor of the *University of Georgia Bar Journal* and member of Phi Delta Phi legal fraternity. He became a member of the State Bar of Georgia in 1959 and returned to Bainbridge and Decatur County to practice law, taking with him a lifelong love for the Bulldogs.

In 1960, he began his practice of law with Judge Vance Custer and Charles Kirbo in Bainbridge. He grew his own law firm, Lambert, Floyd & Conger with George C. Floyd Sr., B. Thomas Conger, Cathy Cox and Wayne W. Lambert Jr.

Lambert was past president of the Bainbridge-Decatur County Bar Association, past president of the Bainbridge Rotary Club and a Paul Harris fellow. He served several terms in the Georgia House of Representatives and was county attorney for many years. He has been recognized and remembered for the many generous contributions he made in support of local charitable and fund-raising activities.

Lambert loved God, country and family. He was an active member of the First Baptist Church of Bainbridge from 1960 until his death. One of the highest honors of his life and what he felt was one of his highest achievements was to have had the class he taught for more than 30 years named the Penny-Lambert Sunday School Class. •



Thomas William "Tommy" Malone Sr., 76, passed away in October. Malone was born on Nov. 2, 1942, in Albany, Georgia, to Judge Rosser Adams Malone and Petrona "Toni" Underwood Malone. He completed his education in the Dougherty County public schools and attended the University of Georgia in 1960-63. He went on to attend Mercer University Walter F. George School of Law and was admitted to the State Bar of Georgia in 1965, a year before he graduated with his law degree. After law school, Malone returned to his hometown of Albany to begin his legal career as a trial lawyer by joining his father in law practice. Within a few years, Malone founded Malone Law. This was the beginning of his career as a tenacious legal pioneer, as he was one of very few willing to represent regular people against the rich and powerful establishment, which resulted in many losses at trial. Through one of these losses, he formed a friendship with the famed "King of Torts," Melvin Belli, who told Malone he was the best lawyer he had ever seen in the courtroom. Malone went on to launch a career of obtaining record-setting recoveries for the families of those severely injured or killed in preventable disasters occurring in hospitals, on the highways and the airways. Throughout his 50-year legal career, Malone was considered a giant in the legal arena by his peers.

Additionally, he was a leader in numerous state, national and international legal organizations. He was a past president of the American Board of Professional Liability Attorneys, the Southern Trial Lawyers Association, the Melvin M. Belli Society and the Georgia Trial Lawyers Association. He was also included as a fellow in the International Academy of Trial Lawyers and the International Society of Barristers, which are reserved and limited to the 500 most elite trial lawyers in the United States and abroad. Among his many professional awards and honors, Malone was most proud of receiving the War Horse Award and an award named in his honor, the Tommy Malone Great American Eagle Award, both from the Southern Trial Lawyers Association. Malone also served with the Carter Center Board of Councilors, Shepherd Center Foundation Board of Trustees and the Mercer University Board of Trustees. He served as chairman of the Board of Trustees at Mercer in 2015-17 and was an ardent supporter of Mercer University Walter F. George School of Law, endowing the Tommy Malone Distinguished Chair in Trial Advocacy at the law school. •

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Martinez, Ga. | 6 CLE
- 5 Health Care Fraud Institute**
Atlanta, Ga. | 7.5 CLE
- 5 What Every Practitioner Should Know About the New Tax Laws**
Atlanta, Ga. | 6 CLE
- 5-6 Defense of Drinking Drivers Institute**
Atlanta, Ga. | 12 CLE
- 6 Labor and Employment Law Institute**
Atlanta, Ga. | 6 CLE
- 6 Professionalism, Ethics and Malpractice**
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- 10 Powerful Witness Preparation**
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- 10 Winning Numbers: Accounting and Finance for Lawyers**
Atlanta, Ga. | 6 CLE
- 11 Personal Injury Clinic 1**
Atlanta, Ga. | 4 CLE
- 11 Recent Developments—Rebroadcast**
Atlanta, Savannah and Tifton, Ga. | 6 CLE
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Greensboro, Ga. | 7 CLE
- 12-13 Corporate Counsel Institute**
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- 13 ADR Institute & Neutrals' Conference**
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- 13 Chief Justice's Convocation on Professionalism**
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- 13 AAML Family Law Seminar**
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- 17 Not Your Typical CLE—Rebroadcast**
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- 18 Georgia and the Second Amendment**
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- 20 Jury Trial—Rebroadcast**
Atlanta, Savannah and Tifton, Ga. | 6 CLE
- 30 ADR Institute and Neutral's Conference—Rebroadcast**
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JANUARY

- 8 Personal Injury Law Clinic II**
Atlanta, Ga. | 4 CLE
- 9 Defense of a Personal Injury Case**
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- 10 Restrictive Covenants and Trade Secrets in Georgia**
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- 17 Deposition Control**
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17 Georgia Auto Insurance Claims Law
Atlanta, Ga. | 6 CLE

22 Speaking to Win
Atlanta, Ga. | 6 CLE

23 Hazing Seminar
Atlanta, Ga. | 6 CLE

29 Not Your Everyday Custody Case
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30 Basic Securities Law
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30 Child Protection Seminar
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31 Construction Law for the GP
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31 White Collar Crime
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31 Small Firm Bootcamp
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FEBRUARY

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5 Handling Big Cases
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5 Whistleblower Law Symposium
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Tifton, Ga. | 6 CLE

7 Eminent Domain
Atlanta, Ga., and live broadcast to Albany,
Athens, Columbus, Griffin, Macon, Savannah
and Tifton, Ga. | 6 CLE

7-8 Estate Planning Institute
Atlanta, Ga. | 6 CLE

12 Women in the Legal Profession
Atlanta, Ga. | 6 CLE

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Atlanta, Ga. | 4 CLE

13 Ancient Foundation and Modern Equivalents
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**13 John C. Mayoué's Convocation
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13-14 Social Security Law Institute
Atlanta, Ga. | 12 CLE

14 Administrative Law for Attorneys
Atlanta, Ga. | 6 CLE

19 Nuts and Bolt of Local Government Law
Atlanta, Ga. | 6 CLE

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21 Product Liability
Atlanta, Ga., and live broadcast to Albany,
Athens, Columbus, Griffin, Macon, Savannah
and Tifton, Ga. | 6 CLE

25 Beginning Lawyers Program
Atlanta, Ga., and live broadcast to
Savannah and Tifton, Ga. | 6 CLE

26 Attorney's First Aid Kit
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Note: ICLE courses listed here are subject to change and availability. For the most up-to-date ICLE course details, including location and CLE information, please visit www.gabar.org/ICLEcourses. For questions and concerns regarding course postings, please call ICLE at 678-529-6688.

- 27 Zoning Law**
Atlanta, Ga. | 6 CLE
- 27 Banking Law**
Atlanta, Ga., and live broadcast to Albany, Athens, Columbus, Griffin, Savannah and Tifton | 6 CLE
- 28 Criminal Practice**
Kennesaw, Ga. | 6 CLE
- 28 Plaintiff's Personal Injury**
Atlanta, Ga. | 6 CLE
- 28 Georgia Bar Media & Judiciary Conference**
Atlanta, Ga., and live broadcast to Albany, Athens, Columbus, Griffin, Macon, Savannah and Tifton, Ga. | 6 CLE

MARCH

- 3 Litigation: Soup to Nuts**
Atlanta, Ga. | 6 CLE
- 4 Nonprofit Law Seminar**
Atlanta, Ga. | 6 CLE
- 5 Secured Lending**
Atlanta, Ga. | 6 CLE
- 6 Milich on Georgia Evidence**
Atlanta, Ga. | 6 CLE
- 10 Group Mentoring**
Atlanta, Ga., and live broadcast to Savannah and Tifton, Ga. | 0 CLE
- 11 Handling Slip and Falls and Settlement Issues in All Types of Cases**
Atlanta, Ga. | 6 CLE
- 11 Negotiation Strategies for Lawyers**
Atlanta, Ga. | 6 CLE
- 12 Post Judgment Collections**
Atlanta, Ga., and live broadcast to Albany, Athens, Columbus, Gainesville, Griffin, Macon, Savannah and Tifton, Ga. | 6 CLE

- 12-14 General Practice and Trial Law Institute**
Amelia Island, Fla. | 12 CLE
- 13 Advanced Topics in Franchising and Distribution**
Atlanta, Ga. | 6 CLE
- 13 Trial and Error**
Atlanta, Ga., and live broadcast to Albany, Athens, Columbus, Gainesville, Griffin, Macon, Savannah and Tifton, Ga. | 6 CLE
- 17 Family Law Issues for the Modern Family**
Atlanta, Ga. | 6 CLE
- 17 Business Litigation**
Atlanta, Ga., and live broadcast to Albany, Athens, Columbus, Griffin and Tifton, Ga. | 6 CLE
- 18 Arbitration Institute**
Atlanta, Ga. | 6 CLE
- 18 ADR in the Workers' Compensation Arena**
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- 19 Professional and Ethical Dilemmas in Litigation**
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- 19 Toxic and Mass Torts**
Atlanta, Ga. | 6 CLE
- 20 Agriculture Law**
Macon, Ga. | 6 CLE
- 20 Bootcamp for Trial Lawyers**
Atlanta, Ga. | 6 CLE
- 20 Proving Damages**
Atlanta, Ga., and live broadcast to Albany, Athens, Columbus, Gainesville, Griffin, Macon, Savannah and Tifton, Ga. | 6 CLE
- 20 Winning Settlement Strategies**
Atlanta, Ga. | 6 CLE
- 24 Anatomy for Lawyers**
Atlanta, Ga. | 6 CLE

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

No earlier than Dec. 1, 2019, 30 days after the publication date of this Notice, the State Bar of Georgia will file Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia (Motion 2020-1) pursuant to the order of the Supreme Court of Georgia dated Dec. 6, 1963 (219 Ga. 873) and amended by subsequent orders, and published in the State Bar of Georgia Handbook.

The exact text of the proposed amendments can be found on the State Bar of Georgia's website at www.gabar.org/2020-1. Any member of the State Bar of Georgia who wishes to obtain a printed copy of these proposed amendments may do so by sending such request to the following address:

Betty Derrickson
Office of the General Counsel
State Bar of Georgia
104 Marietta St. NW, Suite 100
Atlanta, GA 30303

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 in good standing of the State Bar of Georgia who desires to object to part or all of these proposed amendments to the rules is reminded that he or she may only do so in the manner provided by Rule 5-102 (www.gabar.org/barrules/). This statement and the verbatim text of the proposed amendments are intended to comply with the notice requirements of Rule 5-101 (www.gabar.org/barrules/).

Jeffrey R. Davis
Executive Director
State Bar of Georgia

Notice of and Opportunity for Comment on Amendments to the Rules of the United States 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 United States Court of Appeals for the Eleventh Circuit. The public comment period is from Dec. 4, 2019 to Jan. 3, 2020.

A copy of the proposed amendments may be obtained on and after Dec. 4, 2019, from the court's website at <http://www.ca11.uscourts.gov/rules/proposed-revisions>. A copy may also



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Town Hall Meeting on Professional Liability Insurance | Nov

Announcement Detail

Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia | 2020-1

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Betty Derrickson

be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, GA 30303 (phone: 404-335-6100).

Comments on the proposed amendments may be submitted in writing to the Clerk at the above address, or electronically at <http://www.ca11.uscourts.gov/rules/proposed-revisions>, by 5 p.m. Eastern Time on Jan. 3, 2020.

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The State Bar of Georgia values wellness in the legal profession, and we offer a variety of resources to help lawyers in their lives and practices. Visit lawyerslivingwell.org to read articles on wellness and access discounts to gym memberships and classes. Plus, learn about the following programs:

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