Georgia Bar Journal
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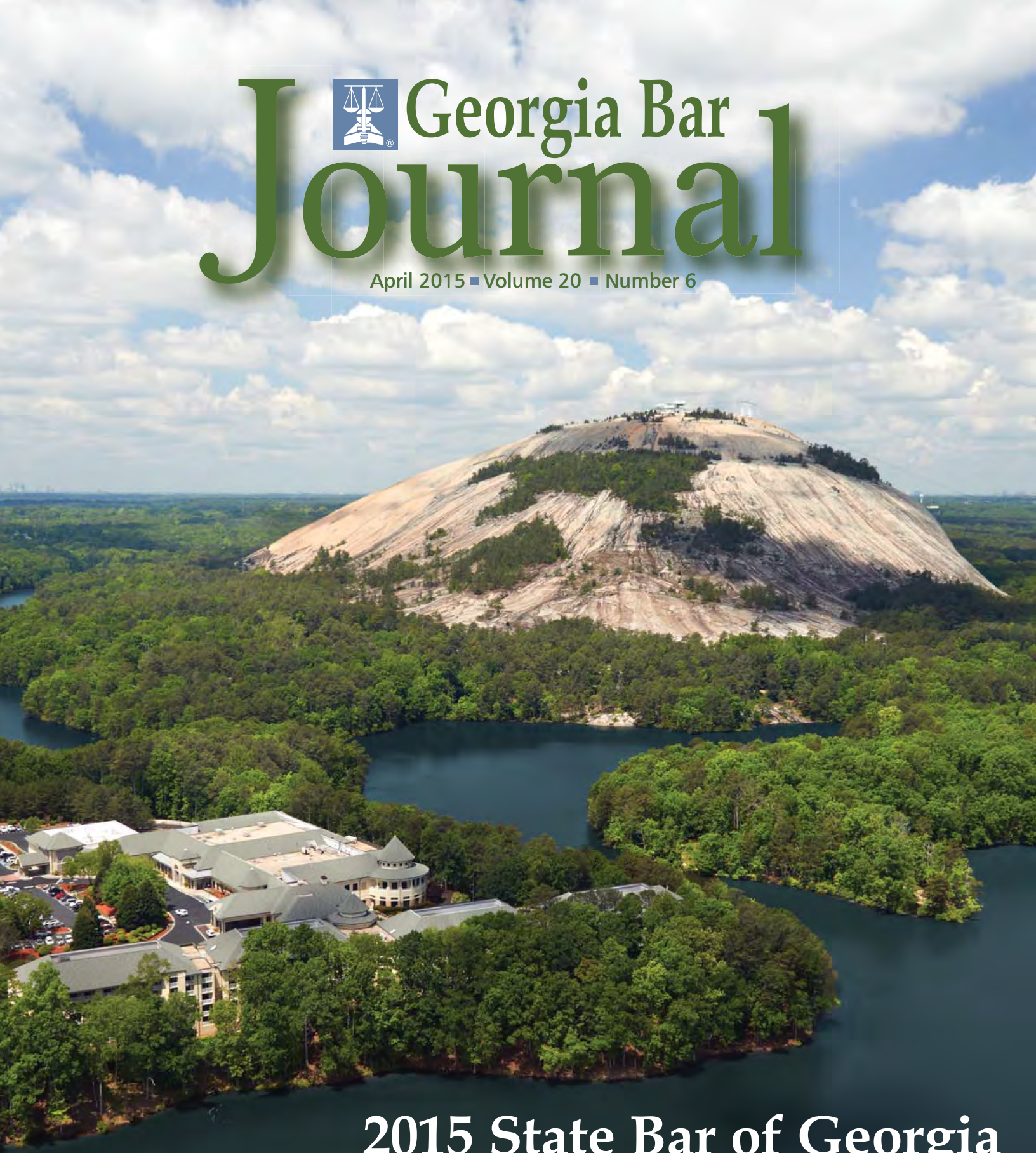

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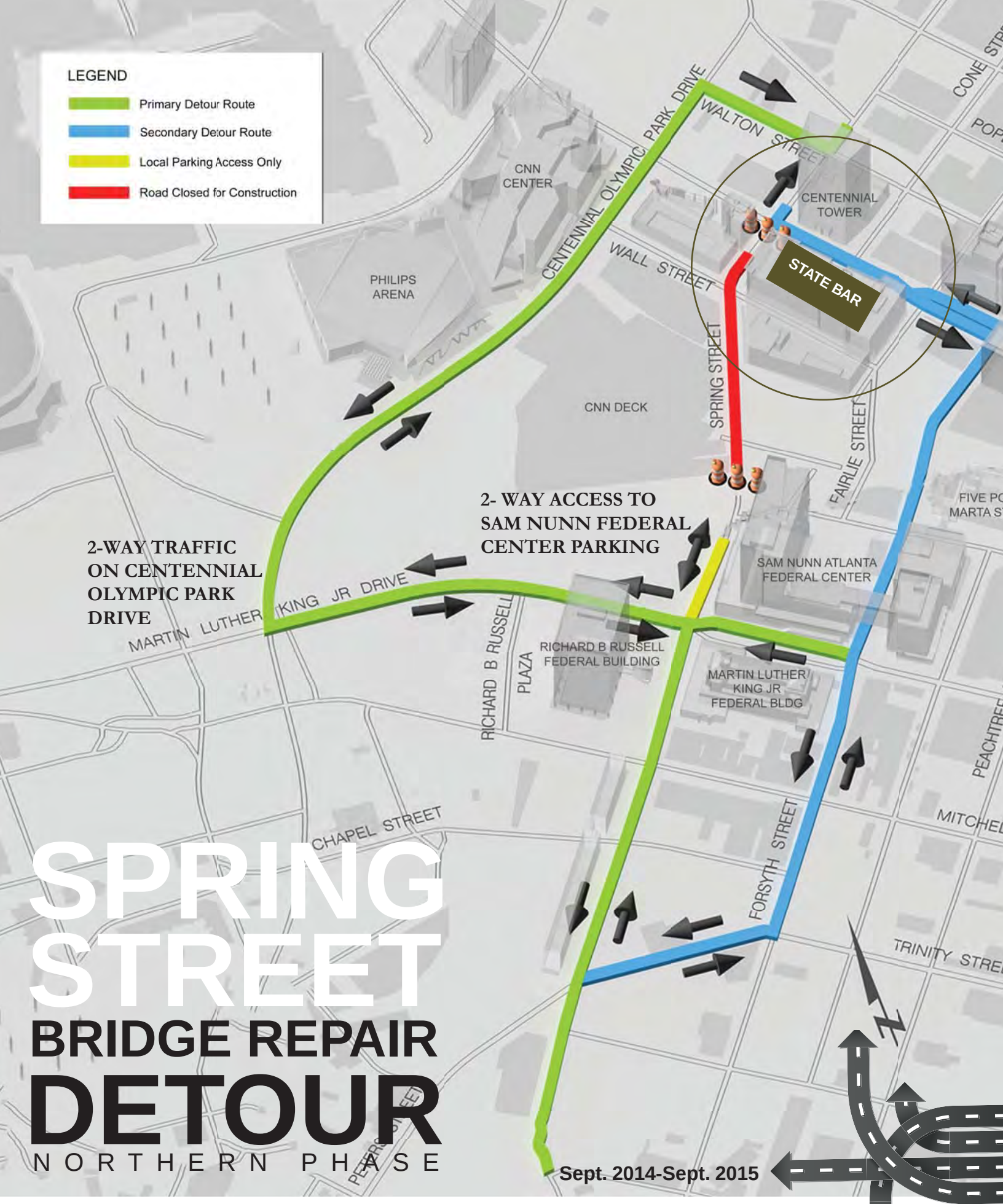

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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole,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

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Headquarters

104 Marietta St. NW, Suite 100, Atlanta, GA 30303
800-334-6865, 404-527-8700, FAX 404-527-8717
Visit us on the Web at www.gabar.org.

Coastal Georgia Office
18 E. Bay St., Savannah, GA 31401-1225
877-239-9910, 912-239-9910, FAX 912-239-9970

South Georgia Office
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800-330-0446, 229-387-0446, FAX 229-382-7435

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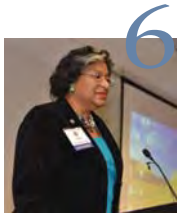


GBJ Legal

GBJ Features

Departments

by Patrise M. Perkins-Hooker

The Internationalization of the Practice of Law

We have heard a lot of discussion over the years about the internationalization of the practice of law as a part of globalization. Businesses and industries in the United States and in countries around the world are eager to exchange goods and services with anyone, anywhere who can afford to purchase their merchandise. Movements like this resulted in the passage of the North American Free Trade Act (NAFTA) decades ago and influenced the passage of the General Agreement on Trade in Services (GATS).

Many of us did not notice the impact that NAFTA had on the free movement of goods throughout the world. And although our U.S. economy has sometimes suffered tremendously from the fallout of the closure of local businesses and industries which arguably have taken jobs to other countries, we also have benefitted from the lower cost of goods that are produced in places where the wage rate is much lower than that of the United States. The reality is that we are a global society, and there are implications for our profession as applicable business protocols are established in this "new world order."

> "In addition to leading the way with regulatory issues regarding foreign attorneys, we have also developed alliances (both formal and informal) with bar associations in several countries."

The same companies that are seeking ways to import or export goods also want to use their own attorneys from the countries in which they are located. Often, however, attorneys from other countries are not licensed to practice in any state in the United States. Several jurisdictions have turned a blind eye to this situation and have virtually ignored the ramifications of international lawyers practicing in their states. The state bars in these jurisdictions have not focused on the reality that this is the beginning of the new world order and the need to adapt to protect the integrity of the practice of law in their states.

Years ago, Bill Smith, our former general counsel, began monitoring, tracking and informing the State Bar of Georgia about this dynamic of foreign attorneys practicing law, often in ways that were not what we would consider "best practice." He warned us to be proactive in addressing the challenges and threats to our standards

of practicing law. As a result of his efforts, the State Bar of Georgia is one of just four states which have created a way for foreign lawyers to handle transactions under the control and oversight of a regulatory agency. Bill, on behalf of the State Bar of Georgia, also submitted written comments in opposition to the broad provisions of GATS which attempted to include legal services as a type of good or services which would be governed by a federal treaty. Through the efforts of Bill and others like him, they succeeded in having legal services removed from inclusion in GATS. However, this has not stopped foreign lawyers from providing legal services to their clients without adherence to the standards imposed by state regulatory agencies like our State Bar.

Over the years, I frankly had not paid much attention to how progressive our State Bar-approved initiatives were until I had to make a presentation in January at the ABA meeting in Houston about our state's best practices. Who knew that we were leading the nation in finding ways to allow foreign licensed attorneys to practice law in a way that protected Georgia citizens and our notions of reciprocity and accommodations? I was so impressed that I felt that I must share this good news with you as members of our State Bar.

Four states—Indiana, Virginia, Georgia and Pennsylvania—have adopted rules or regulations which allow foreign lawyers to:

- Use a process to obtain approval to be admitted on a pro hac vice basis for a particular case.
- Represent a corporate client for which they work. (Foreign Legal Counsel Rule)
- Follow a process to obtain authorization to practice law in Georgia using the certifications for certain European countries that have a disciplinary process in place for regulation of attorneys.
- Participate in firms where non-lawyers shareholders or partners share in fees or profits of the firm.

Regulating these processes has positioned Georgia as a progressive, foreign investment friendly state and our economy is better off for our proactive regulation. Georgia was one of 11 states in 2013 that exported more than $36.7 million in goods and services to other countries. These exchanges would not have been possible or conducted as smoothly if we were not perceived as open for business and willing to allow those businesses to utilize their attorney to handle import and export transactions.

In addition to leading the way with regulatory issues regarding foreign attorneys, we have continued to develop alliances (both formal and informal) with bar associations in several countries. In November, we hosted a group of judges from Brazil at the Bar Center. This year, at the urging of members of the International Law Section and its leader James C. Nobels Jr., the State Bar Executive Committee entered into a partnership association with the Barcelona Bar Association. The agreement was executed in Barcelona on Jan. 31. Elizabeth H. Eason, a member of the International Law Section's Executive Committee represented the State Bar at the execution. In late February and early March, a delegation of attorneys from Georgia traveled to Brazil and Argentina to meet with lawyers and judges in these countries to begin to understand the differences in the practice of law in these areas. One interesting fact that we learned during our visit to Buenos Aires, Argentina, was that the Constitution of Argentina was formed based upon the Constitution of the United States of America. They have the same three branches of government that we have!

I hope that you are as proud of the work that the State Bar has done and continues to do in this area as I am. Please give Bill Smith a pat on the back and congratulate him for his steadfast commitment to following up on this area of the law for our State Bar and placing the State Bar of Georgia on the world map! GBJ

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

by Sharri Edenfield

Meeting the Succession Plan Challenge

Writing in the May/June 2011 edition of *Law Practice* magazine, Marcia Pennington Shannon reported that an estimated 65 percent of equity partners in U.S. law firms would be reaching retirement age over the next decade.

That was four years ago. Thus we are now in the midst of a period in which significant numbers of lawyers are facing the challenge of how and when to transition their clients and practices to the next generation—if a next generation even exists in their firms.

According to Shannon, "Essentially, the challenge is twofold. The firm must identify and support younger partners as they grow into their roles of running a practice, and it must prepare and support the senior partners who will be transitioning away from their full-time client responsibilities."

"Are you ready to take the first step toward a succession plan for your practice? Attorneys interested in participating in the program may download an application form at www.georgiayld.org."

For solo practitioners or firms where there are no younger partners ready to step forward, the questions can be more difficult:

- What will I do with my practice when I retire?
- How do I work on a plan to phase out of my practice or reduce my hours without leaving my clients in a lurch?
- How can I continue the legacy of outstanding legal services in my community that I have built over the years?

As I wrote in the Winter 2014 edition of *The YLD Review*, Georgia is not immune to the "grey wave" descending on the legal profession. Attorneys in the baby boom generation have begun to retire or slow down in large numbers, which is especially worrisome in our small towns and rural areas. There are six Georgia counties with no lawyers at all and 60 counties with 10 or fewer lawyers. And in seven of those counties, all of the existing attorneys will be at least 65 years old within 10 years.

Older lawyers in these rural areas are often reluctant to fully retire because of the lack of younger lawyers who can succeed them. At the same time,

new attorneys are understandably hesitant to hang their shingle in a small, rural town where their ability to make a living is uncertain at best. But if attorneys wishing to enjoy their golden years away from the office could somehow be matched with younger counterparts seeking to step into a successful practice, these challenges could be turned into opportunities on both ends.

That is why I am excited to report that the YLD has launched an effort to assist the growing number of lawyers in our state who are seeking solutions to the challenge of succession planning. We have joined forces with the law schools in Georgia on a Succession Planning Pilot Program to link new and recent graduates with seasoned attorneys who are working on succession plans. The program is based on a successful Texas model.

To begin the process, we have created a brief form for interested attorneys to complete, stating the characteristics sought in a candidate. Your plan could be to attract a law student who would act as a clerk until he or she graduates and then transfers to your practice. Or you may be ready to act sooner and seek a recent graduate considering solo practice and looking to pair with a seasoned attorney for referral work. Or it could be to hire an associate who could eventually take over the practice. The law schools in Georgia and the YLD stand ready to help you through the transition process.

I have already received positive feedback on the new program after *The YLD Review* article was published. A young lawyer in southwest Georgia wrote to say she wants to practice in a small town or rural area and is interested in the Succession Plan Program. She said she would be willing to commute up to an hour to practice in a county that is in need of rural services.

Surely there are many more like her out there: ready, willing and able to step in, learn the ropes from an experienced attorney, work hard and, when the time comes, successfully assume leadership of the practice. I look forward to witnessing the results of this program as it starts to bear fruit.

Are you ready to take the first step toward a succession plan for your practice? Attorneys interested in participating in the program may download an application form at www.georgiayld.org. If you have questions, please contact Stephanie Powell, Assistant Dean for Career Services at Mercer University's Walter F. George School of Law, at careerservices@law.mercer.edu or 478-301-2615. She will be happy to discuss your individual needs and coordinate communication with all Georgia law schools. GBJ

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

Georgia's Public Whistleblower Statute

by Christopher A. McGraw

For more than 20 years a Georgia statute has prohibited government employers from retaliating against their "whistleblowing" employees. For most of that time the statute went largely unused by Georgia lawyers, but in recent years litigation under the state public whistleblower statute—O.C.G.A. § 45-1-4—has increased dramatically. It is now a law that Georgia lawyers who represent public employees or employers need to understand.

When first enacted in 1993, the Public Whistleblower Statute was rarely the subject of lawsuits presumably because it was of limited scope[1] and the only remedy it provided to an aggrieved whistleblower was reinstatement to his pre-retaliation employment position.[2] In 2005, however, the General Assembly expanded the statute by applying it to more employers and employees and by increasing the available remedies to include various forms of damages.[3] Litigation based on the statute has increased substantially in the years since. In fact, an online search of reported appellate decisions that have ruled on or substantively cited to the Public Whistleblower Statute revealed only three cases in the 12-year period between 1993 and 2005, but 11 cases in the 10-year period since then with nine of those issued in the last five years.

As they deal with this increase in whistleblower lawsuits, Georgia's courts are still grappling with how these claims should be analyzed, particularly at the summary judgment stage. As discussed later in this article, the Court of Appeals of Georgia has lately analyzed these cases in a format similar to the

burden-shifting paradigm created by federal courts for analyzing employment discrimination and retaliation claims.

The Scope of O.C.G.A. § 45-1-4

Of course, to understand litigation involving the Public Whistleblower Statute, one must first understand the statute itself. It is critical to know that the statute's prohibitions and protections only apply to "public employers" and "public employees," respectively, as those terms are specifically defined in the first subsection of the statute. A "public employer" is defined to include all parts of the state government or a local or regional governmental entity that receives funds from the state or any of its agencies.[4] A "public employee" is likewise defined as anyone employed by such a public entity.[5] The statute does not apply to whistleblowers in the private sector.

In regulating interactions beween public employers and whistleblowing employees, the Public Whistleblower Statute includes two distinct parts that the Supreme Court of Georgia has held are to be read separately.[6] One allows public employers to investigate complaints from employees about fraud, waste and abuse in certain areas, and generally prohibits them from disclosing the whistleblower's identity. The other prohibits public employers from retaliating against employees who disclose violations of or noncompliance with a law, rule or regulation.

The Statute's Non-Disclosure Provision

O.C.G.A. § 45-1-4(b) authorizes public employers to "receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations under the jurisdiction of such public employer."[7] Any public employer who receives such a complaint is prohibited from "disclos[ing] the identity of the public employee without the written consent of such public employee, unless the public employer determines such disclosure is necessary and unavoidable during the course of the investigation."[8] In such an event, the employer is required to notify the employee in writing at least seven days before the disclosure.[9] To date, there have been no court decisions—at least none that resulted in published opinions—to clarify what constitutes a situation in which it is "necessary and unavoidable" for an employer to disclose a whistleblower's identity during its investigation.

The non-disclosure provision, found in subsection (c) of the statute, applies only to allegations of "fraud, waste, and abuse" and not to "violation[s] of or noncompliance with a law, rule, or regulation."[10] Although there may be overlap between the scenarios that would fit within those two phrases, a public employee's allegations must fit within the former description—"the possible existence of fraud, waste, and abuse"—in order to ensure that the statute required that his employer keep his identity confidential. The non-disclosure provision also applies only to allegations involving "state programs and operations under the jurisdiction of [the] public employer."[11]

The Statute's Prohibition on Retaliation

O.C.G.A. § 45-1-4(d) contains the anti-retaliation provision of the Public Whistleblower Statute. It is this provision that has been the subject of the increasing amount of litigation in recent years. This subsection provides that "[n]o public employer shall make, adopt, or enforce any policy or practice preventing a public employee from disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency."[12]

Perhaps more significantly, a public employer also shall not:

> retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity[13] [or]
>
> retaliate against a public employee for objecting to, or refusing to participate in, any activity, policy or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule or regulation.[14]

The statute unfortunately does not define what it means for an employee "to disclose" something. It does explain, though, that when an employee does disclose a violation of or noncompliance with a "law, rule, or regulation," that may include "any federal, state, or local statute or ordinance or any rule or regulation adopted according to any federal, state, or local statute or ordinance."[15] The Court of Appeals of Georgia has held that an employee must identify a specific law, rule or regulation that he believes has been violated or not complied with. Reports of more general concerns about improper behavior will not suffice.[16]

Finally, even though a covered "public employer" must receive funding from the state, the Supreme Court of Georgia has explained that the alleged violation or noncompliance need not have taken place within a state program or operation. That requirement is contained only in the confidentiality provision, not in the prohibition on retaliation.[17]

There are two stated exceptions to the anti-retaliation protections. First, the statute does not protect purported whistleblowers who make disclosures despite knowing that their claims are false or with reckless disregard for whether they are false, are not protected.[18] Second, the statute does not cover public employees who violate "privilege or confidentiality obligations recognized by constitutional, statutory, or common law."[19]

Retaliation Lawsuits Under O.C.G.A. § 45-1-4

O.C.G.A. § 45-1-4 authorizes a public employee who believes his public employer has retaliated against him to bring a civil action in superior court "within one year after discovering the retaliation or within three years after the retaliation, whichever is earlier."[20] Although the statute does not make clear precisely what it means to "discover[] the retaliation," two courts have concluded that public employees were on notice of the (alleged) retaliation sufficiently to begin the running of the one-year limitations period on the date that they first learned of adverse employment actions that their employers took against them. This was despite an argument that an employee was not aware of his employer's true motivation at that time.[21]

The statute now provides the following potential remedies to a successful whistleblower-plaintiff: injunctive relief; reinstatement to his previous position or an equivalent position; reinstatement of fringe benefits and seniority rights; compensation for lost wages, benefits and other damages; and reasonable attorney's fees, court costs and expenses.[22] The Supreme Court of Georgia has held that the General Assembly successfully waived the sovereign immunity of applicable public employers via the monetary damages provision although the legislature did not expressly state its intention to do so.[23] Because the statute defines public employers solely in terms of governmental entities,[24] there is no cause of action or remedy against individual supervisors.[25]

Although Georgia's appellate courts have not yet definitively instructed how the Public Whistleblower Statute retaliation claims are to be analyzed, there is a consensus forming in the case law. In a decision that is persuasive authority, but not binding on other panels of the Court of Appeals,[26] the majority in *Forrester v. Ga. Dep't of Human Servs.* held that Georgia courts should use the *McDonnell Douglas*[27] burden-shifting paradigm federal courts utilized in retaliation claims brought under Title VII of the Civil Rights Act of 1964 and similar statutes.[28] It explained that, for purposes of

reviewing summary judgment motions in cases based on circumstantial evidence, it would "apply the following analytical framework to claims brought under O.C.G.A. § 45-1-4 (d)(2):

> (1) the plaintiff must establish a prima facie case of retaliation by a preponderance of the evidence; (2) if a prima facie case is established by the plaintiff, the employer must, nevertheless, articulate a legitimate, non-retaliatory reason for the adverse employment action taken; and (3) when such a reason is given by the employer, the plaintiff must demonstrate that the stated reason for the employer's adverse action is pretextual.[29]

It then went on to explain that in order to meet the first element and establish a *prima facie* case of retaliation, the plaintiff-employee must have evidence that (1) his employer was a "public employer" as defined by the statute; (2) he disclosed a "violation of or noncompliance with a law, rule or regulation to either a supervisor or government agency;" (3) he suffered an adverse employment action; and (4) there "is some causal relation between" the disclosure and the adverse action.[30]

In subsequent decisions the Court of Appeals has neither expressly adopted nor disavowed the *Forrester* panel's use of the *McDonnell Douglas* paradigm. Since then, however, the Court of Appeals has continued to rely extensively on federal employment discrimination and retaliation case law to analyze a Public Whistleblower Statute claim in one case, and in others has utilized its various elements as they were set forth in *Forrester*.

In *Freeman v. Smith*, the Court of Appeals of Georgia cited numerous federal decisions when it analyzed the causal connection and adverse employment action elements of the plaintiff's case.[31] It

quoted federal Title VII decisions to hold that a plaintiff only has to prove that her protected activity and adverse action were "not completely unrelated" and that that standard can be satisfied via "sufficient evidence of knowledge of the protected expression" on the part of the employer's decision-maker and "a close temporal proximity between this awareness and the adverse action."[32] It similarly adopted federal case law holding that "temporal proximity must be 'very close,'" and that a three-month gap of time in the interim will usually be too long without other evidence of causation.[33] The Court then borrowed from federal law to hold that in order to establish an adverse employment action, a "plaintiff must show that a reasonable employee would have found the challenged action materially adverse, meaning that it might well have dissuaded a reasonable employee from making [the statutorily-protected disclosure]. The actionable employer conduct must be 'significant,' rather than 'trivial.'"[34]

In other Public Whistleblower Statute cases, the Court of Appeals of Georgia has not directly relied on federal case law but still has relied on analogous evidentiary concepts. In a recent case, the majority in *Albers v. Board of Regents of the Univ. Sys. of Ga.* set forth the elements of a *prima facie* case to be established by a plaintiff-employee that is substantively the same as that explained by the *Forrester* panel.[35] The Court went on to analyze the defendant-employer's asserted reason for the challenged action and whether there was evidence based on which a jury could conclude that the plaintiff's protected activity rather than the defendant's asserted reason was the defendant's true motivation. In *Caldon v. Board of Regents of the Univ. Sys. of Ga.*, the Court of Appeals required the plaintiff-employee "to present evidence to establish the existence of a fact issue, which could establish that [the employer-defendant's] stated legal reason was merely pretext for dismissing her based on her whistleblowing activity."[36] Without citing to federal law, these constructs still closely resemble the three steps of the federal *McDonnell Douglas* burden-shifting paradigm.[37]

Therefore, regardless of whether the court analyzing the claim decides to utilize federal retaliation case law expressly, a plaintiff pursuing a claim for retaliation under § 45-1-4 will have to present evidence to show that he suffered an adverse employment action that was somehow related to protected whistle-blowing activity and that his employer's stated non-retaliatory reasons for the action are pretextual.

Conclusion

Georgia's public whistleblower anti-retaliation statute, O.C.G.A. § 45-1-4, has taken on increasing significance in recent years after the General Assembly substantially amended it. Members of the State Bar of Georgia who practice employment law on behalf of either public employees or government employers would be wise to become familiar with it and to track future developments as Georgia's appellate courts continue to address and clarify it.

Christopher A. McGraw serves as a senior assistant attorney general for the state of Georgia, practicing employment law in federal and state courts. He previously litigated employment and public accommodations cases in private practice and served as a judicial law clerk to a federal magistrate judge at the U.S. District Court for the Northern District of Georgia. He has also taught legal research and writing on an adjunct basis at Emory University School of Law and at Georgia Tech. McGraw earned his bachelor's degree in political science, *cum laude*, from Vanderbilt University and his law degree, *magna cum laude*, from the University of Georgia School of Law.

Endnotes

1. For instance, its original version applied to most of the executive branch of state government but not to the Governor's Office or the judicial or legislative branches of state government or to local governments at all. 1993 Ga. Laws p. 564, § 1. In the original version of the statute, *public employee* and *public employer* were the only defined terms. *Id.* Currently, the statute contains six definitions. O.C.G.A. § 45-1-4(a).
2. The only remedy that the 1993 version of the statute provided was to "give the public employee a right to have [the retaliatory personnel] action set aside in a proceeding instituted in the superior court." 1993 Ga. Laws p. 564, § 1. *See also* Hughes v. Ga. Dep't of Corrections, 267 Ga. App. 440, 441, 600 S.E.2d 383, 385 (2004).
3. 2005 Ga. Laws p. 899. The General Assembly did not make the 2005 amendments to the statute retroactive, so any claims that accrued prior to the effective date of the amendments were governed by the pre-2005 provisions. Pattee v. Ga. Ports Auth., 477 F. Supp. 2d 1253, 1270 (S.D. Ga. 2006). The statute was further amended in more minor ways in 2007, 2009, and 2012. 2007 Ga. Laws p. 298; 2009 Ga. Laws p. 745; 2012 Ga. Laws p. 446.
4. O.C.G.A. § 45-1-4(a)(4).
5. O.C.G.A. § 45-1-4(a)(3).
6. Colon v. Fulton County¸ 294 Ga. 93, 96-100, 751 S.E. 2d 307, 310-13 (2013). *See also* Forrester v. Ga. Dep't of Human Servs., 308 Ga. App. 716, 723 n.25, 708 S.E.2d 660, 666 n.25 (2011) (physical precedent only) *See* fn. 26.
7. O.C.G.A. § 45-1-4(b).
8. O.C.G.A. § 45-1-4(c).
9. *Id.*
10. *Cf.* O.C.G.A. § 45-1-4(b) *with* O.C.G.A. § 45-1-4(d).
11. O.C.G.A. § 45-1-4(b).
12. O.C.G.A. § 45-1-4(d)(1).
13. O.C.G.A. § 45-1-4(d)(2).

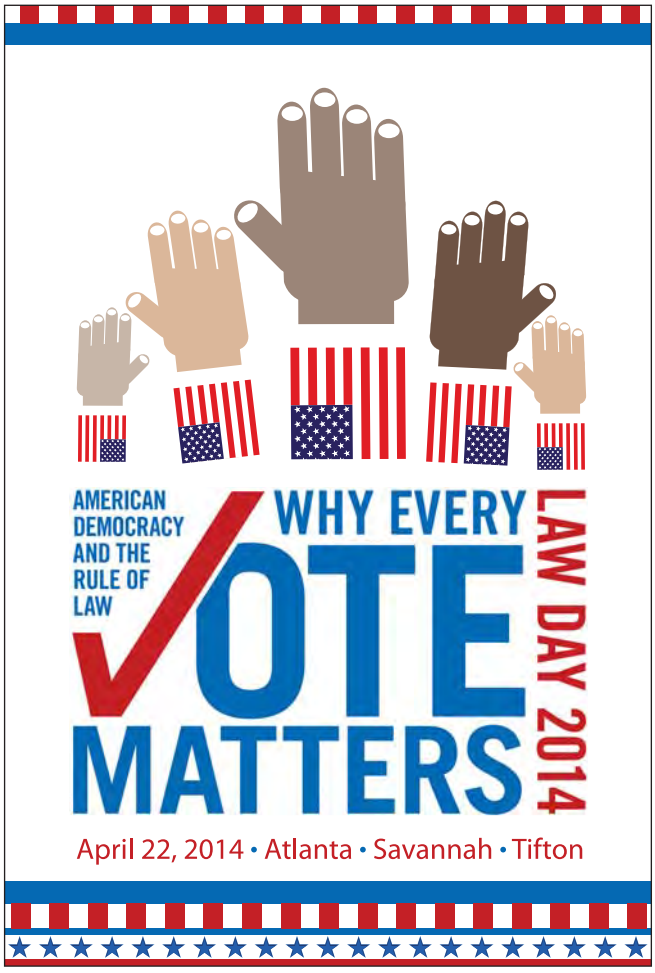
14. O.C.G.A. § 45-1-4(d)(3).
15. O.C.G.A. § 45-1-4(a)(2).
16. Edmonds v. Board of Regents of the Univ. Sys. of Ga., 302 Ga. App. 1, 6-7, 689 S.E.2d 352, 357 (2009); Brathwaite v. Fulton-DeKalb Hosp. Auth., 317 Ga. App. 111, 114-15, 729 S.E.2d 625, 628-29 (2012) (physical precedent only).
17. Colon v. Fulton County, 294 Ga. 93, 96-100, 751 S.E.2d 307, 310-13 (2013).
18. O.C.G.A. § 45-1-4(d)(2).
19. O.C.G.A. § 45-1-4(d)(4).
20. O.C.G.A. § 45-1-4(e)(1). The statute originally provided no specific limitations period during which aggrieved plaintiffs had to bring claims. *See* 1993 Ga. Laws p. 564.
21. Tuttle v. Bd. of Regents of the Univ. Sys. of Ga., 326 Ga. App. 350, 353, 756 S.E.2d 585, 587-88 (2014) (physical precedent only); Stokes v. Savannah State Univ., 291 Fed. App'x 931 (11th Cir. 2008).
22. O.C.G.A. § 45-1-4(e)(2) and (f).
23. *Colon*, 294 Ga. at 95-96, 751 S.E.2d at 310. The Court held that "implied waivers of governmental immunity should not be favored." *Id.* at 95, 751 S.E. 2d at 310 (quoting City of Atlanta v. Gilmere, 252 Ga. 406, 409, 314 S.E.2d 204, 206 (1984)). "This does not mean, however, that the Legislature must use specific 'magic words' such as 'sovereign immunity is hereby waived' in order to create a specific statutory waiver of sovereign immunity." *Id.* (citing Sawnee Elec. Membership Corp. v. Georgia Dep't of Revenue, 279 Ga. 22, 25, 608 S.E.2d 611, 614 (2005); and City of Atlanta v. Barnes, 276 Ga. 449, 452, 578 S.E.2d 110, 113 (2003)).
24. O.C.G.A. § 45-1-4(a)(4).
25. The Court of Appeals of Georgia held that there was no individual liability under the original version of the statute based on the lack of any remedy other than reinstatement to the plaintiff's previous job position. Jones v. Board of Regents of the Univ. Sys. of Ga., 262 Ga. App. 75, 82, 585 S.E.2d 138, 144 (2003). The United States District Court for the Southern District of Georgia reaffirmed that there is no individual liability under the current version because it "only prohibits retaliation by public employers," the definition of which does not include individuals. Skolweck v. Garden City, Ga., No. 4:12-CV-227, 2012 U.S. Dist. LEXIS 171236, at *5-6 (S.D. Ga. Dec. 3, 2012).
26. Court of Appeals of Georgia Rule 33(a) provides, in pertinent part: "If an appeal is decided by a Division, a judgment in which all three judges fully concur is a binding precedent; provided, however, an opinion is physical precedent only with respect to any Division of the opinion for which there is a concurrence in the judgment only or a special concurrence without a statement of agreement with all that is said." One of the three judges on the panel in Forrester "concur[red] in judgment only." 308 Ga. App. at 731, 708 S.E.2d at 672.
27. *See also* Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142-50 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-07 (1973).
28. 308 Ga. App. at 721-29, 708 S.E.2d at 655-70. Title VII is codified at 42 U.S.C. § 2000e, *et seq.*
29. 308 Ga. App. at 722, 708 S.E.2d at 666 (citing McDonnell Douglas, 411 U.S. at 802-06, and Bailey v. Stonecrest Condo. Ass'n, Inc., 304 Ga. App. 484, 488, 696 S.E.2d 462, 466-67 (2010)).
30. *Id.* (quoting O.C.G.A. § 45-1-4(a)(4), (2), and (5) and citing Pennington v. City of Huntsville, 261 F.3d 1262, 1266 (11th Cir. 2001)).
31. 324 Ga. App. 426, 430-33, 750 S.E.2d 739, 743-45 (2013), *cert. denied*, Smith v. Board of Regents of the Univ. Sys. of Ga., 2014 Ga. LEXIS 139 (2014).
32. 324 Ga. App. at 431, 750 S.E.2d at 743 (quoting Pennington, 261 F.3d at 1266, and Higdon v. Jackson, 393 F.3d 1211, 1220 (11th Cir. 2004)).
33. 324 Ga. App. at 431, 750 S.E.2d at 743 (quoting Clark County School Dist. v. Breeden, 532 U. S. 268, 273 (2001); Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007); Higdon, 393 F.3d at 1220; O'Neal v. Ferguson Constr. Co., 237 F.3d 1248, 1253 (10th Cir. 2001); and citing Richmond v. ONEOK, Inc., 120 F.3d 205, 209 (10th Cir. 1997)).
34. 324 Ga. App. at 432, 750 S.E.2d at 744 (quoting Cobb v. City of Roswell, 533 Fed. App'x 888, 896 (11th Cir. 2013)(per curiam); and Burlington N. & Santa Fe R. Co. v. White, 548 U. S. 53, 67-68 (2006)) (brackets in original).
35. 330 Ga. App. 58, 61, ___ S.E.2d ___ (2014) *cert. denied* (Feb. 16, 2015) (citing O.C.G.A. § 45-1-4(d) and Forrester, 308 Ga. App. at 722; 708 S.E.2d at 666). Division 1 of the Albers decision analyzing the merits of the § 45-1-4 claim is binding precedent. Division 2, which deals with the statute of limitations, is physical precedent only. *See* Ga. Ct. App. Rule 33(a).
36. 311 Ga. App. 155, 159, 715 S.E. 2d 487, 490 (2011). *See also* Jones, 262 Ga. App. at 81-82, 585 S.E.2d at 144.
37. In a number of cases, federal courts have consequently cited to the Court of Appeals' decisions in Forrester and/or Freeman to conclude that Georgia courts analyze § 45-1-4 claims under the McDonnell Douglas framework. Those courts have determined that plaintiffs' state whistleblower claims therefore should be reviewed in similar fashion to their federal retaliation claims under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; and the Rehabilitation Act, 29 U.S.C. § 701 *et seq. See e.g.* Cobb, 533 Fed. App'x at 897-98 (11th Cir. 2013) (citing Forrester, 308 Ga. App. at 721, 708 S.E.2d at 665-66); Chaney v. Taylor County Sch. Dist., No. 4:11-CV-142 (CDL), 2014 U.S. Dist. LEXIS 284, at *6-9 (M.D. Ga. Jan. 2, 2014) (citing Forrester, 308 Ga. App. at 722, 708 S.E.2d at 666); Powell v. Valdosta City Sch. Dist., No. 7:13-CV-53 (HL), 2014 U.S. Dist. LEXIS 157158, at *30-31 (M.D. Ga. Nov. 6, 2014) (citing Forrester, 308 Ga. App. at 722, 708 S.E.2d at 666; and Freeman, 324 Ga. App. at 428-31, 750 S.E.2d at 741-43).

Law Day Collaboration Repeats as National Award Winner for Law Day

by Rita A. Sheffey

For the second consecutive year, the American Bar Association has recognized a unique collaboration of organizations from Georgia with an Outstanding Law Day Activity Award for excellence in programming and effectively conveying the Law Day theme. On Friday, Feb. 6, 2015, at a joint luncheon of the National Association of Bar Executives and the National Conference of Bar Presidents, 2014 Dream Team Law Day Co-Chairs Patrise M. Perkins-Hooker and Rita A. Sheffey accepted the award, supported by a number of their Georgia colleagues.

Law Day, May 1, is a national day set aside to celebrate the rule of law. Law Day underscores how law and the legal profession contribute to the freedoms that all Americans share. Law Day also presents an opportunity to recognize the role of the courts in this democracy and the importance of jury service to maintaining the integrity of the courts. May 1 is the official Law Day designated by Congress in 1961, but many state and local bar associations celebrate before or after that date. The Dream Team celebrated Law Day in 2014 on April 22.



The 2014 Law Day theme was "American Democracy and the Rule of Law: Why Every Vote Matters." It

Photo by Laura Burlton, D Jones Photography

(Left to right) State Bar President Patrise M. Perkins-Hooker, 2015 National Law Day Chair, American Bar Association, Stephen J. Curley and State Bar Treasurer Rita A. Sheffey. The 2014 Law Day co-chairs accept the Outstanding Law Day Activity Award at a joint luncheon of the National Association of Bar Executives and the National Conference of Bar Presidents on Feb. 6, 2015.

afforded an opportunity to reflect on the importance of a citizen's right to vote and the challenges we still face in ensuring that all Americans have the opportunity to participate in our democracy. It was particularly appropriate on the eve of the 50th anniversaries of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Speaking on the Voting Rights Act, then-President Lyndon B. Johnson observed, "Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right." When an eligible voter is deprived of his or her opportunity to cast a ballot, harm results to that voter as well as to our government which Abraham Lincoln proclaimed to be a "government of the people, by the people, for the people." The right to vote is the very foundation of government by the people.

This unique collaboration of organizations, the "Dream Team," included: the Atlanta Bar Association; the Atlanta Public Schools; the Chief Justice's Commission on Professionalism; the Fulton County Superior Court; the Gate City Bar Association; the Georgia Association for Women Lawyers; the Georgia Association of Black Women Attorneys; the Georgia Asian Pacific American Bar Association; the Georgia Hispanic Bar Association; the Multi-Bar Leadership Council; the National Center for Civil and Human Rights; the South Asian Bar Association of Georgia; the State Bar of Georgia; and the Stonewall Bar Association.

The award-winning program connected with high school students in Atlanta, Savannah and Tifton, as well as lawyers, judges and the public in Atlanta. The morning was focused exclusively on the students and was interactive, engaging and informative. Civil Rights Activist, Artist and Educator Dr. Doris Derby spoke about her experiences in the Civil Rights Movement, including as one of the organizers of the 1963 March on Washington. She shared numerous photographs she had taken depicting the lives of struggling Americans who defied the post-emancipation status quo brought about by political, economic, social and cultural domination and exploitation.

The students then explored the importance of the right to vote through the history of voting rights and challenges facing tomorrow's voters with a video by Rock the Vote, an interactive exercise demonstrating when various groups of individuals first obtained the right to vote, and a trivia contest. They heard from students involved in the Voter Empowerment Collaborative, and faced the challenge of early literacy tests. Finally, during lunch, they had an opportunity to use the same voting machines that voters use during elections, and eligible students registered to vote in the upcoming November election. It was exciting to all of us to facilitate the registration of new voters!

The afternoon sessions featured renowned speakers on the history of voting rights and the challenges of maintaining a democracy.

Photo by Don Morgan, Don Morgan Photography & Video

(Left to right) Speakers for a program on the "History of Voting Rights in the United States and Recent Decisions" included Georgia State University College of Law Professor Eric Segall, Democratic Party of Georgia General Counsel Michael Jablonski and Republican Party of Georgia General Counsel Anne Lewis.

Elisabeth MacNamara, the president of the League of Women Voters of the United States, moderated a panel discussion exploring the history of voting rights in the United States and recent court decisions regarding topics such as voter ID laws and felon disenfranchisement. Panelists were Michael Jablonski, general counsel of the Georgia Democratic Party; Anne Lewis, general counsel of the Georgia Republican Party; and Eric Segall, the Kathy and Lawrence Ashe Professor of Law with Georgia State University College of Law.

The National Education Coordinator of the U.S. Human Rights Network, Dr. Yolande Tomlinson, moderated a panel discussion on challenges nations around the world face in maintaining a democracy: fair and open elections; freedom of press; and recognition of human rights. Participants included: Sarah Johnson, assistant director, Democracy Program, The Carter Center; Michael O'Reilly, deputy executive director for International Coordination and Member Advocacy, Amnesty International; Cynthia Tucker, visiting professor, Charlayne Hunter-Gault Distinguished Writer-in-Residence, University of Georgia; and David Vigilante, senior vice president legal, CNN, and senior vice president and associate general counsel for Turner Broadcasting System, Inc.

Following a reception and viewing of Dr. Derby's documentary photography, Deborah Richardson, executive vice president of the National Center for Civil and Human Rights, spoke about the Center's mission and imminent opening. Award-Winning Atlanta Journalist Maria Saporta then facilitated a fascinating conversation on perspectives on voting rights and enforcement. The distinguished panelists were Georgia Secretary of State Brian P. Kemp; U.S. Attorney for the Northern District of Georgia Sally Quillian Yates; and the Rev. Dr. C.T. Vivian, dean, Urban Institute at the Interdenominational Theological Center and a recent Presidential Medal of Freedom recipient.

The program met the ABA's six criteria for an Outstanding Law Day Activity Award:

- Expanding the public's awareness of the rule of law;
- Highlighting the Law Day theme;
- Engaging the target audience;
- Forging partnerships with community groups, schools and the legal community;
- Quality and innovation of the program; and
- Impact extending beyond Law Day.

With two award-winning programs behind them, the Dream Team organizations are collaborating once again for 2015. The theme is "Magna Carta: Symbol of Freedom Under Law," and this year's Dream Team Committee is

chaired by Melody Richardson. The program, which will be held April 21, will focus on Chapter 39 of the Magna Carta: "No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers and the law of the land." Students will learn that the Magna Carta influenced our Founding Fathers and that the right to a trial by jury that was incorporated into the Sixth Amendment of the U.S. Constitution was a concept that originated in 1215.

Students from Therrell High School in Atlanta will perform a mock trial for the other high school participants in Atlanta, Tifton and Savannah, who will be placed on jury panels and asked to render a verdict. The jurors will be asked to explain the reason for their verdicts, and hopefully gain a better understanding of the Magna Carta's influence on criminal law.

Congratulations to all of the Dream Team organizations and thanks to everyone who made the 2013 and 2014 programs such a success. GBJ

Rita A. Sheffey, is the assistant dean for public service at the Emory University School of Law. Prior to joining Emory in January 2015, she was a partner with Hunton & Williams LLP, where her practice focused on complex litigation, primarily environmental, toxic tort, product liability, trademark infringement, and patent infringement litigation. Sheffey has served in numerous leadership positions both in law-related and community nonprofit organizations, including co-chair of the 2014 Law Day Dream Team. Sheffey currently serves as treasurer of the State Bar of Georgia.

Photo by Don Morgan, Don Morgan Photography & Video

Student participants use the voting machines to cast their votes during the 2014 Law Day Program.

Photo by Don Morgan, Don Morgan Photography & Video

(Left to right) Program volunteers included Nefertari Kirkman-Bey, consultant, and Lula S. Dawit, attorney, Thomas Kennedy Sampson & Tompkins.

2015 Law Day | April 21

Magna Carta:
Symbol of Freedom Under Law

Atlanta Legal Aid: New Headquarters in Historic Building

by Paula Lawton Bevington

The gates to justice, literally and figuratively, have opened wide at 54 Ellis St. in downtown Atlanta. Dedicated to the memory of Margaret and Randolph Thrower, the recently restored wrought iron gates welcome the Atlanta Legal Aid Society's clients at the main entrance of its new headquarters.

Randolph was a staunch supporter of Atlanta Legal Aid (Legal Aid) serving as board president in 1953, chairman of the first-ever Annual Campaign in 1983 and honorary chair of the Endowment Campaign in 2008-09. Along with many other generous donors in greater Atlanta's legal community (individuals and firms), numerous Atlanta foundations and major metro corporations, the Throwers, their children, grandchildren and even great-grandchildren made significant gifts to the capital campaign. That diverse response permitted Legal Aid to buy the historic building. Shortly after the first day of spring this year, Legal Aid moved in and immediately began receiving the clients who account for the approximately 24,000 cases opened annually.

Founded in 1924, Atlanta Legal Aid has made its home in many locations, spending its first 55 years somewhat nomadically, including for a time in space provided by Fulton County. In 1979, its principal office—the "downtown" office—moved to 151 Spring St. into a structure dating from the 1920s. Only the first floor was completely built out, so Legal Aid built offices on the second and third floors as well as the basement level. By early 2008, the aches and pains of

Photo provided by Elks Lodge #78, Atlanta-Northlake

Undated photo from Elks era. Note Elk head, center top at base of flag pole.

the aging edifice began to nag at its occupants. Embarrassingly, the building did not comply with the Americans with Disabilities Act, nor did it meet fire safety standards. The mechanical equipment was past ready for replacement. A building committee headed by J. D. Humphries III (then with Stites & Harbison, PLLC, now with Smith, Gambrell & Russell, LLP) thoroughly investigated renovation, only to find that the cost of upgrading could exceed the building value after renovation. Further, renovation of existing space would not solve the need for more room, an increasing concern as new programs, like services to veterans, developed. Despite these drawbacks, the committee concluded that renovation was preferable to the purchase of a different building.

Then serendipity intervened. A realtor's ad landed on Executive Director Steve Gottlieb's desk. Intrigued, he gave Dawn Anderson, facilities and operations manager, the advertisement announcing the availability of 54 Ellis. They both inspected the building; both were smitten. A cadre of real estate professionals, Legal Aid staff and volunteers formed to negotiate with the Florida development group that had bought the property in 2007, just before the real estate implosion. The downward slide in the real estate market made the building attractive for reasons beyond its grace. Josh Kamin and his diligent team at King & Spalding provided many hours of pro bono legal advice. Efforts to acquire only 54 Ellis, leaving two other buildings on the lot, failed. The two other buildings were a house at 70 Ellis, occupied by Southern Ferro Concrete and then by Beers Construction; and 62 Ellis, the home of Curtis Printing.

Another hunt for alternative space ensued; at least 30 possibilities were examined. The appeal of 54 Ellis remained, and the daunting but rewarding decision was

Photo by Nick Sakas

Blue skies and a blooming Bradford Pear; spring at Atlanta Legal Aid's new headquarters.

Atlanta Legal Aid Society Capital Campaign Team

Co-Chairs

Phil Holladay, *King & Spalding*
Mark Wasserman,
Sutherland Asbill & Brennan LLP

Executive Committee

Matt Calvert, *Hunton & Williams LLP*
Bill Kitchens, *Arnall Golden Gregory LLP*
Shayla Rumely, *Community Volunteer*
Laura Thatcher, *Alston & Bird LLP*

Campaign Committee

Gov. Roy Barnes, *Barnes Law Group*
Jeff Bramlett,
Bondurant Mixson & Elmore LLP
Janine Brown, *Alston & Bird LLP*
Steve Clay,
Kilpatrick Townsend & Stockton LLP
Steve Forte,
Smith Gambrell & Russell, LLP
Lash Harrison, *Ford & Harrison LLP*
Judge William B. Hill Jr., *Polsinelli*
Randy Hughes, *Bryan Cave*
J. D. Humphries III, *Stites & Harbison PLLC*
Charles S. Johnson III, *Holland & Knight LLP*
Weyman T. Johnson Jr., *Paul Hastings LLP*
Walter E. Jospin,
U.S. Securities and Exchange Commission
Ken Klatt, *Delta*
Linda Klein,
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Elisa Kodish,
Nelson Mullins Riley & Scarborough LLP
Charlie Lester,
Sutherland Asbill & Brennan LLP
Teri McClure, *United Parcel Service*
Frank McGaughey, *Bryan Cave*
Mike Nations, *Nations & Toman LLP*
Joel M. Neuman, *The Coca-Cola Company*
Teresa Wynn Roseborough,
The Home Depot
William Parker Sanders,
Smith Gambrell & Russell, LLP
Frank Strickland,
Strickland Brockington Lewis LLP
John Wallace, *Wallace Morrison & Casteel*
Ryan Walsh,
Robbins Geller Rudman & Dowd LLP

Staff

Amanda B. Styles, *Atlanta Legal Aid*

Photo by Nick Sakas

Debris mounts as surplus buildings are razed.

Photo by Nick Sakas

Terrace under construction at building rear, replacing damaged section of building.

made to bid for the entire lot. Atlanta Legal Aid closed on the property on May 17, 2013, and design began immediately.

The committee, board and Atlanta Legal Aid senior staff had asked all the questions. They satisfied themselves that they had acquired property with intrinsic value that was likely to increase, would meet current and foreseeable future space needs and would provide an environment of respect and efficiency for clients, staff, board and visitors. Another dynamic was also at work: the building's history.

In 1910, the Benevolent and Protective Order of Elks broke ground at 54 Ellis St. for a building designed by J. R. MacEachron in what was described by a later owner as "high Victorian style with Tudor arches." The Elks used the building as their club, holding civic receptions and banquets there. Among the celebrities who visited were Gen. John J. "Black Jack" Pershing and opera star Enrico Caruso. In 1927, the Salvation Army bought the building, designating it the Southern Territorial Headquarters. Union Mission purchased the building in 1956, occupying the space until the mid-1980s. The property was briefly occupied by a developer who rented office space in the building to lawyers before Beers acquired it. Bruce Harvey was among those building tenants. During his student days, Jeff Davis, current executive director of the State Bar of Georgia, worked as a law clerk for Harvey. Much of the building remained vacant until Beers' acquisition.

Beers leadership—first Lawrence L. Gellerstedt Jr. and then from 1986-98, Lawrence L. Gellerstedt III—maintained their offices in the house at 70 Ellis. They believed that doing so sent a message to employees: top management wanted their blue collar workers to feel comfortable talking to the boss in that home-like space.

Skanska acquired Beers in 1996, occupying the buildings on the property until the 2007 sale to the development group already mentioned.

Those successive occupants of 54 Ellis had a commitment to community service in common. The Elks sponsor programs to "help children grow up healthy and drug-free" and they work to honor "the service and sacrifice" of veterans. The Salvation Army carries out a wide array of social programs to assist those in need. Union Mission likewise extends a helping hand, with special emphasis on helping people who are homeless. Beers Construction was led by people with well-tuned social consciences. That history burnishes the beauty of the building.

And the building is indeed beautiful, inside and out. Its 36,000 square feet embrace four floors and a mezzanine. The other buildings on the property have been razed, making possible a landscaped parking lot that accom-

modates 60 vehicles. The border of the property stretching to the east next to the city sidewalk is fenced, with brick columns accentuating the fence every few yards. Trees Atlanta is partnering with Atlanta Legal Aid to provide trees on site. Short term, Trees Atlanta will help with tree maintenance, especially important as the trees will be fairly mature.

Extensive interior work has transformed 54 Ellis from bottom to top. Anderson has overseen that intensive effort, in addition to managing renovations at two of Legal Aid's satellite offices and responding to innumerable fix-it-now emergencies. She brought a wealth of big league experience to her multi-faceted assignments. In the late 1990s, Anderson had significant responsibilities coordinating the construction design and development phases of New York's Museum of Jewish Heritage (working with Pritzker Prize winning architect Kevin Roche) and the museum's subsequent expansion. Shortly prior to joining Legal Aid, she had senior project management responsibility for the construction of Chattahoochee Nature Center's Discovery Museum and Events Pavilion. She approached the 54 Ellis project with an appreciation for the building's storied past and a realistic grasp of the challenges its renovation might—and did—hold.

A tour of 54 Ellis would impress any visitor. The lower level features a mock courtroom. The Spring Street Café—the staff breakroom named with a tip of the hat to the long time offices at 151 Spring—a training room big enough to accommodate 30 people and several office spaces take up the rest of the lower level.

Visitors arriving on foot will enter the lobby and reception area on the main level, first going through the elegantly classic gates to justice. Those arriving by car will park in the entrance plaza to the east of the building. The health law unit and operations offices occupy the remainder of the main level. In addition, office space on the main level as well as elsewhere is available for interns, volunteers and other short-term colleagues.

Administrative offices, including that of the executive director, are on the second level along with offices for the general law unit and family law units. The third level is home to the Senior Citizens Law Project, the Georgia Senior Hotline and the Ombudsman offices. Those units have previously operated from three different locations, assisting a similar client base from several perspectives. Working adjacent to one another will enhance opportunities for problem-solving together, a synergy not possible until the move to 54 Ellis.

The fourth floor, whose 22-foot ceilings permit the inclusion of a mezzanine, will serve as Atlanta Legal Aid's first-ever conference center and event hall, where the board, various groups within Legal Aid such as practice managers, and others will meet. The mezzanine houses the law library. Every floor includes coffee/snack rooms and collaborative spaces suitable for small group discussions.

Renovating 54 Ellis has shone a spotlight on the building's many attractive aspects. Some of those features were a surprise: the pressed tin ceiling on the fourth floor and the columns and pillars on the main level. The cherubs atop the columns in the event hall were known all along and were a selling point. Every effort has been made to save and to highlight the historic elements of the building.

One building asset that promises to become a favorite of everyone is the fourth floor terrace to the north of the event hall. After acquiring the building, Legal Aid discovered that a section that had been added to the rear of the building had suffered water damage. That portion of the added-on structure was dismantled, leaving an area now converted into an open-air terrace.

Amanda Styles in resource development has kept a calm and efficient hand on the Capital Campaign tiller. Phil Holladay and Mark Wasserman co-chaired that ambitious $6 million-plus effort. A roster of the energetic, imaginative and relentless Capital Campaign committee can be found on page 19.

Atlanta Legal Aid looks forward with special pleasure to hosting the May meeting of the Executive Committee of the State Bar of Georgia at its new home. In many respects, Legal Aid regards 54 Ellis as an asset for the Bar in general, and the community to enjoy. Most of all, Atlanta Legal Aid is determined that the headquarters will invite the confidence of the clients that equality before the law is a reality, a reality secured through well-prepared, concerned, compassionate representation.

Paula Lawton Bevington, a Yale Law School graduate, spent most of her professional life with an energy engineering firm, Servidyne. She is currently a part-timer at Atlanta Legal Aid, assisting in resource development.

24th Annual Georgia Bar Media & Judiciary Conference

by Jennifer R. Mason

For the first time in its history, the Georgia Bar Media & Judiciary Conference was held on a Friday instead of a Saturday and the response was overwhelming. The largest number of registrants, approximately 200 of Georgia's attorneys, judges and journalists, attended the annual event that brings together panelists and speakers who discuss recurring and emerging issues and the law as it relates to the first amendment. The conference was once again hosted by the Institute of Continuing Legal Education in Georgia and offered 6 CLE hours, including 1 ethics hour and 1 professionalism hour.

Citizens, Journalists and the Police

The first panel of the day, "Citizens, Journalists and the Police," provided a look at how social media and technology has changed and will change the interface between reporting and policing. Moderated by Bill Nigut, senior executive producer, Georgia Public Broadcasting, Atlanta, the panel included Sen. Vincent Fort, Atlanta; Thomas M. Clyde, Kilpatrick Townsend & Stockton LLP, Atlanta; Amber A. Robinson, assistant city attorney, City of Atlanta; and Joseph Spillane, deputy chief, Atlanta Police Department.

Photos by Jennifer R. Mason

Washington Post Editor Josh White presents the keynote address, "Watch Dogging the Media: The Turmoil at UVA."

The panelists discussed how the world has changed radically in regards to the interaction between the police and the public, and the reporting of said interaction by seasoned media and citizen journalists with the advent of social media. Specifically mentioned was how video can be used by the news media to fan the flames of discontent between the two groups.

Recent recorded events around the country have contributed to the notion that police/law enforce-

ment should wear body cameras to provide video documentation of events. Why? Because there is a movement throughout the country to transform how people and the community deal with police and the onset of social media helped bring about this change. When a private citizen records an event, it shows the action from their point-of-view, and in the case of multiple videos from different sources, it could potentially show conflicting viewpoints left subject to interpretation. Body cameras would show the incident from the officers' point-of-view, which when taken and viewed along with other recorded sources, may provide a more complete picture.

Sen. Fort informed the audience that he has introduced a bill that would require Georgia law enforcement to wear body cameras in an effort to bring people and police together and the city of Atlanta is working on developing a policy that would address potential privacy concerns that come with the use of body cameras.

Sports and the Law

The second panel, "Sports and the Law—Double Jeopardy: Who has Authority Over Athletes? The Courts, the Commissioners or Both?" addressed another timely topic: highly visible sports figures across all leagues who have recently been, or are currently dealing with, legal issues brought about by violating league policy, the law or both. The panel was moderated by Ron Thomas, director, Journalism and Sports Program, Morehouse College, Atlanta; and Jonathan Ringel, managing editor, *Daily Report*, Atlanta. Panelists included William Davis Cornwell St., Barnes & Thornburg, Atlanta; D. Orlando Ledbetter, member, Wisconsin Bar, Atlanta Falcons beat writer, *Atlanta Journal-Constitution*, Atlanta; and Brian Jordan, former player, Atlanta Falcons and Atlanta Braves, current Fox Sports analyst, Atlanta.

The panelists reviewed current and past situations, gave an overview of the NBA, NFL and MLB league commissioners and unions and their roles in handling legal issues that become public overnight. Cornwall, who has represented athletes in these types of situations, stated that an attorney's job is to manage the league, manage the PR and manage themselves, which requires a delicate balance of understanding issues and objectives for that particular athlete. He also spoke to the leadership roles of the commissioners.

Jordan's take on whether to listen to an attorney or a commissioner when faced with a legal issue was that he would absolutely follow the advice of the attorney first then worry about the commissioner. The athlete's first priority is to get back on the field as soon as possible and in order to do that, the athlete should do whatever it

Panelists for "Don't Take My Child," *(left to right)* Valerie Rogers, social worker, Roswell High School; Dr. Stephen A. Mesner, MD, Children's Healthcare of Atlanta; Sharon L. Hill, policy studies, Georgia State University; Ashley Willcott, director, Office of the Child Advocate; Diana Rugh Johnson, Diana Rugh Johnson, P.C.; and Hon. Bradley Boyd, chief judge, Fulton County Juvenile Court, walk attendees through the Fred-Friendly discussion led by Richard T. Griffiths, editorial director, CNN.

(Left to right) Hon. Carol W. Hunstein, justice, Supreme Court of Georgia; Hon. James G. Bodiford, senior judge, Cobb County Superior Court; and Hon. Susan Edlein, judge, State Court of Fulton County, speak on the breakout panel "Between Us—A Candid Conversation About Communication Between Journalists, Judges and Lawyers."

takes to resolve the legal issue and move on. Jordan also opined that each professional sport should be responsible for implementing programs where they expose their athletes to lawyers the same way they provide financial guidance and other resources. He feels that by providing access to attorneys, who in turn can share background on the legal consequences that come with certain decisions, the percentage of athletes who make poor decisions resulting in legal issues would decrease.

Breakout Sessions

Following the morning panels, attendees had the opportunity to choose from three breakout sessions. Track One, "Between Us—A Candid Conversation About Communication Between Journalists, Judges and Lawyers" was led by Hon. Carol W. Hunstein, justice, Supreme Court of Georgia, Atlanta; Hon. James G. Bodiford, senior judge, Cobb County Superior Court, Marietta; Hon. Susan Edlein, judge, State Court of Fulton County, Atlanta; and Don Plummer, president, Social Media Matters, LLC, Powder Springs. The main focus of the session was a discussion of rules and best practices of communicating information with those who have been there. The court and judges need to educate the public about how things work, improving the understanding of the judiciary and how it operates. The judges agreed that if a reporter would read up on a case and get informed before they write or report, it would go a long way towards ensuring not only appropriate information is disseminated, but that there is less room for error, confusion or misinformation about a case.

Track Two, "Open Government—Tools for Public Access and How to Most Effectively Use Them," provided an interactive and vigorous discussion of how the open records and meetings laws in Georgia work. Panelists David Armstrong, project director, Georgia News Lab, Georgia State University, Atlanta; Kelly E. Campanella, Georgia Department of Law, Atlanta; Corey Johnson, The Marshall Project, Atlanta; Holly G. Manheimer, executive director, Stuckey & Manheimer Inc., Decatur; and James Salzer, capitol investigative reporter, *Atlanta Journal-Constitution*, Atlanta, discussed pointers on how to navigate trouble spots and snafoos in the laws and what one can do when the laws don't work like they are supposed to.

Track Three, "Scrubbing History or Protecting Privacy," led by moderator Shawn McIntosh, deputy managing editor/investigations and enterprise, *Atlanta Journal-Constitution*, Atlanta, asked the question, "Should information and public records live forever, even when they reflect unfavorably on an individual?" Panelists Doug Ammar, executive director, Georgia Justice Project, Atlanta; Dawn Diedrich, director, Office of Privacy and Compliance, Georgia Bureau of Investigations, Decatur; Robert M. Williams Jr., editor and publisher, *The Blackshear Times*, Blackshear; Lee Rivera Williams, assistant general counsel, CNN, Atlanta; and Jay Neal, executive director, Governor's Office of Transition, Support and Re-entry, Atlanta, discussed Georgia's now broad expansion of expungement law. How far should Georgia go in order to balance the right to true information versus privacy interest? Also addressed was the "Right to be Forgotten" law in Europe, which requires that search engines such as Google, Yahoo and Bing scrub their sites and remove links to people and events upon request in certain circumstances.

Watch Dogging the Media: The Turmoil at UVA

Lunch featured the keynote address, given by *Washington Post* Editor Josh White, who revealed how *Post* reporters unraveled an explosive *Rolling Stone* article on sexual violence at the University of Virginia and exposed major reporting flaws in the story. White spoke to why the *Post* covered the story after it broke, citing a gut reaction that things didn't seem right and that the *Post* felt the story needed to be investigated further. According to White, "The *Washington Post* believes it [sexual assault] is a serious issue that warrants careful coverage."

White shared the timeline of events with conference attendees, beginning with the Rolling Stone story, how the *Post* featured it on their website, and then how a series of events led the *Post* staff to review the initial story, research deeper and write their own. He ended by sharing why thorough and careful reporting matters:

- There are real people involved, on all sides of every story;
- Potentially millions of people will read these accounts;
- Being correct and responsible is better than being fast; and
- The best stories don't need to be embellished.

The salient point is that news media and reporters need to be more responsible, not less. Facebook, Twitter and the Internet are important, but not without research and fact checking.

Georgia Civil Rights Cold Cases Project

Moderator Hank Klibanoff, Emory University, Atlanta, and his panel of current and former Emory University students gave a compelling presentation on Emory University's "Georgia Civil Rights Cold Cases Project" and website that examines unsolved and unpunished racially motivated murders from the modern civil rights era in Georgia. The focus of the project is less on the who-done-it and more on the often-disturbing roles that law enforcement, the bar, the judiciary and the medical establishment played in enabling

and supporting white supremacy in Georgia during the Jim Crow period. The panelists included: Brett Gadsden, professor, African-American Studies and History, Emory University, Atlanta; Mary Claire Kelly, former student; Erica Sterling, student; Ross Merlin, student; and Nathaniel Mayersohn, student. Klibanoff began the presentation with an overview of the project. Then each student, guided by questions from Klibanoff and Gadsden, reviewed their part in the project and shared what they learned personally throughout the process. The project can be viewed at coldcases.emory.edu.

Don't Take My Child!

The process of investigating allegations of child abuse and the steps the state must take before a child can be taken away from his or her family was the topic of this year's Fred-Friendly style panel, lead once again by Interlocutor Richard T. Griffiths, editorial director, CNN, Atlanta. Two fictional scenarios were presented and worked through by the panelists: Hon. Bradley Boyd, chief judge, Fulton County Juvenile Court, Atlanta; Valerie Rogers, social worker, Roswell High School, Roswell; Sharon L. Hill, policy studies, Georgia State University, Atlanta; Diana Rugh Johnson, Diana Rugh Johnson, P.C., Atlanta; Ashley Willcott, director, Office of the Child Advocate, Atlanta; and Dr. Stephen A. Mesner, MD, Children's Healthcare of Atlanta. Scenario one was set in the city of Lizard Lick in Frog County, Ga., where the teacher of a 9-year-old male student notices that he is acting unlike himself and has bruises on his neck and when questioned, states that his arm hurts. The student is then questioned by the school social worker, who reviews his record and finds evidence of past reports of bruising. As the story continued to develop, with pieces of information being supplied by Griffiths, the audience was taken through the process of reporting suspected child abuse from the teacher, social worker, doctor, DFACS, the assigned investigator, agency attorney and the judge, who ultimately has to make the request for shelter care for the child and any other children in the home. In this scenario, the judge ultimately decides not to remove the child from the home, and the end result some time later was that the child died. Questions were then addressed as to what should be released about the process to the public and what responsibility should the state bear?

The second scenario, a 13-month-old, 16 lb. female is taken to the doctor by her 19-year-old parents who are concerned by her lack of interest in eating and fever. The doctor, having noticed that the mother has a black eye herself, determines that reporting to a social worker is necessary, and the audience is once again taken on a hypothetical ride with all the parties who have to make determinations on whether or not to further the case down the line.

Drones!

The final panel of the day focused on the use and regulation of the use of drones as a reporting tool. Led by moderator Lauren Linder, director, Business and Legal Affairs, The Weather Channel, Atlanta, the session opened with a video showing various "do's and dont's" of drone use. Panelists Michael K. Wilson, aviation safety inspector, unmanned aircraft program manager, Federal Aviation Administration, Atlanta; Ben Rowland, owner, Yonder Blue Films, Atlanta; and David Vigilante, senior vice president, legal, CNN, Atlanta, were then introduced and spoke about their experience with the use of drones and to the future of drone use in Georgia and across the country.

On Feb. 15, the FAA released its proposed rules for drone usage in the states, which will apply to drones weighing fewer than 55 lbs., for comment. Some of the parameters included in the rules are:

- No pilot's license needed to operate, but a certificate will be required every two years
- Must fly at 500 feet or lower
- Daylight hours only
- Must report accidents within 10 days

Vigilante spoke about CNN's partnership with Georgia Tech to explore the media's usage of drones in U.S. airspace, specifically with live, breaking news. Rowland, who uses drones in his business, hopes they get safer and safer over time as it's easier for consumers to get involved with drones and use them now than it has been in the past. Wilson is currently writing a certificate for public/government use of drones and is helping Washington write policy for drone usage. Attendees were left with the knowledge that drones and the laws governing their usage will be a hot topic, and hotly-contested topic, for the foreseeable future.

Conclusion

The 2015 Bar Media and Judiciary Conference once again provided quality programming covering a wide-range of timely and interesting topics that informed, entertained and educated the attendees. To the moderators and panelists who shared their time and knowledge, thank you. And congratulations to Peter Canfield and the many others who planned and executed this well-attended, informative and entertaining annual event. GBJ

Jennifer R. Mason is the assistant director of communications for the State Bar of Georgia and can be reached at jenniferm@gabar.org.

2014 Georgia Corporation and Business Organization Case Law Developments

by Thomas S. Richey and Michael P. Carey

This article presents an overview from a survey of Georgia corporate and business organization case law developments in 2014. The full version of the survey, which can be downloaded or printed at http://www.bryancave.com/2014-ga-survey/, contains a more in-depth discussion and analysis of each case. This article is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed in this article are those of the authors only and not Bryan Cave LLP.

This article catalogs case law developments dealing with Georgia corporate and business organization law issues handed down to date during 2014 by Georgia state and federal courts. Several of 2014's decisions have significant precedential value. Others address less momentous questions of law as to which there is little settled authority. Even those cases in which the courts applied well-settled principles are instructive for the types of claims and issues that are currently being litigated in corporate and business organization disputes and how the courts are dealing with them.

In 2014, the Supreme Court of Georgia issued a significant decision of first impression expounding on the business judgment rule and its relationship to the standard of care for directors and officers of Georgia banks and corporations. Other rulings handed down in 2014 involved the interpretation of buy-sell clauses in shareholder agreements and the valuation of corporate stock as a marital asset; the transfer of assets by operation of law in corporate mergers; the interpretation and enforcement of corporate bylaws and LLC operating agreements; and decisions on partnership formation and judicial dissolution. There were multiple decisions concerning the rights and liabilities of corporate officers and directors, partners, and LLC managers and members throughout the year. The 11th Circuit Court of Appeals addressed the enforceability of the insured-versus-insured exclusion in director and officer liability insurance policies. Other decisions in the litigation context concerned the effect of a failure to observe corporate formalities on a nonprofit corporation's capacity to sue; the close corporation exception to derivative action requirements; the rule against reverse piercing of the corporate veil; the determination of insider status for purposes of the Uniform Fraudulent Transfer Act; the nondischargeability of claims for misappropriation of business opportunities; the fiduciary shield doctrine; the business records exception to the hearsay rule; corporate receiverships—and much more. The article also covers several 2014 decisions from the Fulton County Business Court ruling on some of these same issues.

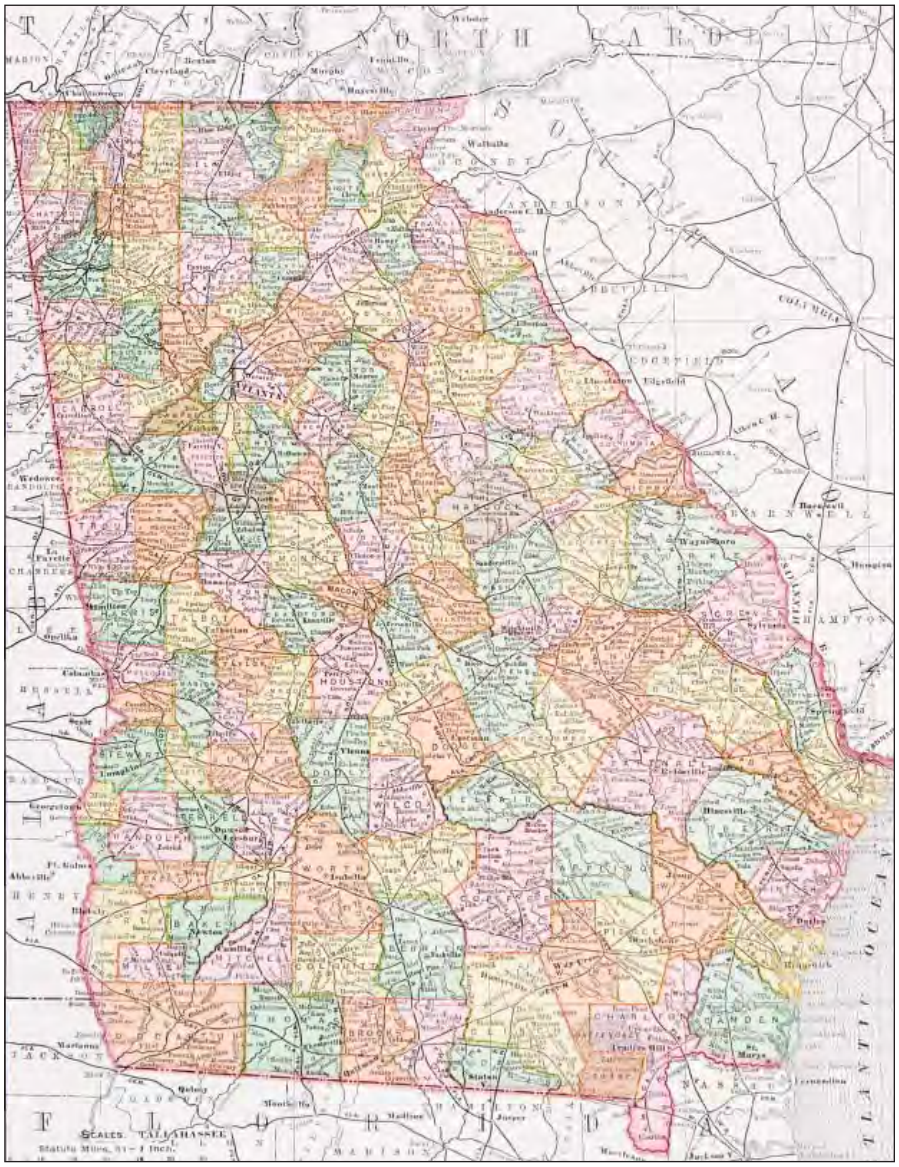
The decisions are organized first by entity type—those specific to business corporations, nonprofit

corporations, limited liability companies and partnerships. The remaining sections of the article deal with (1) transactional issues potentially applicable to all forms of business organizations, and (2) litigation issues, including secondary liability, jurisdiction and venue, evidence questions and insurance issues.

Duties and Liabilities of Corporate Directors, Officers and Employees

The year 2014 brought a landmark decision by the Supreme Court of Georgia recognizing the business judgment rule and explaining its impact on ordinary negligence claims against directors and officers that are premised on alleged violations of statutory standards of care. In *FDIC v. Loudermilk*, 295 Ga. 579, 761 S.E.2d 332 (2014), a unanimous Supreme Court held that the business judgment rule exists in Georgia and protects good faith decisions made by directors and officers from later challenges to the wisdom of those decisions. The Court explained, however, that the business judgment rule does not necessarily insulate directors and officers from liability for ordinary negligence where a lack of due care in the decision-making process is alleged. Shortly after *Loudermilk* was decided, the Court reiterated its holding, once again unanimously, in *FDIC v. Skow*, 295 Ga. 747, 763 S.E.2d 879 (2014). In light of *Loudermilk* and *Skow*, it is now clear that claims alleging a lack of due care in the decision-making process may overcome the business judgment rule even if they sound in ordinary negligence, while claims that do nothing more than challenge the wisdom of a corporate decision or act can only overcome the business judgment rule upon a showing of fraud, bad faith or an abuse of discretion.

Both *Loudermilk* and *Skow* came to the Supreme Court on certified questions: *Loudermilk* from the



Northern District of Georgia and *Skow* from the 11th Circuit. They are both cases brought by the FDIC as receiver for banks that failed during the financial crisis. The FDIC alleges that the defendants, who are former directors and officers of the failed banks, were negligent and grossly negligent and breached fiduciary duties to the banks. Specifically, the FDIC alleges that the defendants negligently approved loans that violated principles of sound lending as well as the bank's internal loan policies, in furtherance of an unsustainable aggressive growth strategy. The FDIC's ordinary negligence claims are based on a section of the Financial Institutions Code of Georgia, O.C.G.A. § 7-1-490, which provides that bank directors "shall discharge their duties in good faith and with that diligence, care, and skill which ordinarily prudent men would exercise under similar circumstances in like positions." Section 7-1-490 is substantially similar to the Georgia Business Corporations Code's standards of care applicable to directors and officers (O.C.G.A. §§ 14-2-830 and 14-2-842), as well as the standards applicable to Georgia nonprofit corporations and limited liability companies. Recognizing this, the Supreme Court made it clear that its holding applied broadly to claims involving corporate fiduciaries and was not confined to the banking context.

The Court did not decide whether the specific claims before it—i.e., the FDIC's allegations that the

defendants negligently approved loans or that they sought to grow the banks too aggressively—could be brought as ordinary negligence claims. It will be up to lower courts to determine what sorts of negligence allegations are sufficiently process-oriented to be viable.

In another major decision dealing with a standard of care question, the Supreme Court decided in *Rollins v. Rollins*, 294 Ga. 711, 755 S.E.2d 727 (2014), that when trustees also serve as directors or managers of business entities in which the trusts hold minority interests, their conduct as corporate fiduciaries should be evaluated under corporate law principles rather than trust law principles. This suggests that persons acting in the dual role of trustee of a trust and director of a corporation can avail themselves of the business judgment rule when acting on behalf of the corporation. The *Rollins* case returned to the Court of Appeals, which then determined that it was unclear from the record whether the defendants' acts were undertaken as trustees or as managing partners of the family partnerships. *See Rollins v. Rollins*, 329 Ga. App. 768, 766 S.E.2d 162 (2014). Notably, since certain of the business entities were partnerships rather than corporations, the Court of Appeals briefly considered whether the principles that had just been announced by the Supreme Court in *Loudermilk* were applicable to managing partners in a partnership. The Court ultimately did not answer the question but instead remanded the case to the trial court to resolve the remaining questions of fact.

The courts heard a variety of other cases dealing with the conduct and liabilities of corporate directors and officers in 2014. In *Georgia Department of Revenue v. Moore*, 328 Ga. App. 350, 762 S.E.2d 184 (2014), the court addressed the nature of an officer's liability for the corporation's unpaid sales and use taxes as a "responsible person" under O.C.G.A. § 48-2-52, holding that liability was joint and several and that the Department of Revenue could therefore proceed against the officer for the entire unpaid amount. In another case involving tax liability, *In re Shaw*, 2014 WL 1401871 (Bankr. N.D. Ga. Apr. 2, 2014), the bankruptcy court held that a local branch manager who claimed not to be an officer of the corporation could nonetheless be individually liable for unpaid unemployment taxes under § 34-8-167(e), given evidence showing that the defendant was the person at the company who was responsible for filing returns and paying taxes.

There were multiple cases involving signatures of contracts by corporate representatives, and their meaning and effect. In *Buffa v. Yellowbook Sales & Distributing Co., Inc.*, 327 Ga. App. 639, 760 S.E.2d 644 (2014), the Court found that the defendant became personally obligated under a contract he claimed to have signed in his corporate capacity only, because the signature block under his signature read "Authorized Signature individually and for the Company." In *Progressive Electrical Services v. Task Force Construction*, 327 Ga. App. 608, 760 S.E.2d 621 (2014), the signature block did not indicate that the signer was bound individually, but the defendant was nonetheless held to be personally bound due to language in the agreement stating that every person signing the agreement on behalf of the corporation was also signing the agreement "in his or her personal and individual capacity." In *Patel v. Patel*, 327 Ga. App. 733, 761 S.E.2d 129 (2014), the Court of Appeals found that there was a question of fact as to whether the corporate officer signed an agreement in his individual or corporate capacity, since the document itself lacked a clear statement of his capacity, and in light of the general rule that a single signature may be in either an individual or representative capacity, but not both. In *Courtland Hotel, LLC d/b/a Sheraton Atlanta Hotel v. Salzer*, 330 Ga. App. 264, 767 S.E.2d 750 (2014), the Court of Appeals held that an agent sufficiently identified his corporate principal even though he used an acronym rather than the full corporate name, since under the circumstances, the acronym was a mere misnomer and did not substantially vary from the corporation's actual name. In *Del Lago Ventures, Inc. v. QuikTrip Corp.*, 330 Ga. App. 138, 764 S.E.2d 595 (2014), the fact that a corporation's sole owner signed his deceased mother's name to certain contracts did not void the contract because the owner subsequently ratified the contracts and clearly had authority to do so.

Finally, in *Hanover Insurance Co. v. Hermosa Construction Group, LLC*, ___ F. Supp. 3d ___, 2014 WL 5486602 (N.D. Ga. May 1, 2014), the district court applied the well-settled principle that an officer who personally participates in a tort may be personally liable to injured third parties without regard to alter ego principles.

Corporate Stock and Debt—Contracts and Valuation

In *Callaway v. Garner*, 327 Ga. App. 67, 755 S.E.2d 526 (2014), the Court of Appeals of Georgia affirmed an order granting specific performance of an oral stock purchase agreement, holding that a separate agreement allowing the purchaser time to sell off real estate to obtain funds for the purchase was an accommodation and not a condition precedent. The Court also held that the defendants had waived their right to enforce the notice provisions of the operative shareholders' agreement, and therefore could not void the sale on the grounds that it violated the agreement. In *Sullivan v. Sullivan*, 295 Ga. 24, 757 S.E.2d 129 (2014), the Supreme Court of Georgia addressed questions of proof of the market value of stock in a closely-held corporation, holding that stock was not a marital asset because the party seeking an equitable division of its appreciation had failed to establish the value of the stock at the date of marriage or the amount of appreciation thereafter.

Nonprofit Organization Decisions

There were two notable decisions involving nonprofit corporations in 2014. In *Thunderbolt Harbour Phase II Condominium Assoc., Inc. v. Ryan*, 326 Ga. App. 580, 757 S.E.2d 189 (2014), the Court of Appeals held that a homeowners' association's sole director and officer owed fiduciary duties to the association and its members. In *Rigby v. Flue-Cured Tobacco Cooperative Stabilization Corp.*, 327 Ga. App. 29, 755 S.E.2d 915 (2014), the Court of Appeals held that the bylaws of a North Carolina tobacco cooperative permitted the cooperative to purge its members from time to time without the need for a hearing. The Court, in ruling on a law choice issue, noted that under North Carolina law corporations owe fiduciary duties to their shareholders while in Georgia they do not.

Limited Liability Company Developments

In *Gwinnett Community Bank v. Arlington Capital, LLC*, 326 Ga. App. 710, 757 S.E.2d 239 (2014), the Court of Appeals held that evidence of a limited liability company's negative net worth, without more, was insufficient to show that the LLC was insolvent for purposes of determining whether its principal owed a fiduciary duty to creditors. In *Arnsdorff v. Papermill Plaza, LLC*, 326 Ga. App. 438, 756 S.E.2d 668 (2014), the Court of Appeals ruled that an LLC member was not entitled to commissions resulting from a lease entered into by the LLC, holding that the operative LLC agreement required the member to formulate a development plan as a condition to receiving payment and that this condition had never been satisfied.

There was the usual variety of decisions concerning individual liabilities of LLC members. In *Uhlig v. Darby Bank & Trust Co.*, 565 Fed. Appx. 883 (11th Cir. 2014), the 11th Circuit entered a *per curium* order affirming a 2013 trial court decision which held that LLC members were not liable for their alleged misrepresentations to a purchaser of a condominium unit because they were acting on behalf of the LLC. In a subsequent related decision, *Osborne v. Drayprop, LLC*, 2014 WL 4926284 (S.D. Ga. Sep. 30, 2014), the district court held that two individuals who were alleged to have been personally involved in the creation and distribution of sales materials for the condominium were not personally liable, again because they were acting on behalf of the entities they served. For reasons that are not explained, the courts did not address the well-established principle of Georgia law that a business entity insider who personally participates in an alleged fraud may be personally liable without regard to alter ego principles, *see, Hanover Insurance Co. v. Hermosa Construction Group, LLC, supra*.

In *Inland Atlantic Old National Phase I, LLC v. 6425 Old National, LLC*, 329 Ga. App. 671, 766 S.E.2d 86 (2014), the Court of Appeals held that an LLC member could owe fiduciary duties based on its management of the venture's affairs, even if the operating agreement expressly designated a different member as the managing member.

Partnership Law Developments

The Court of Appeals in *Maree v. ROMAR Joint Venture*, 329 Ga. App. 282, 763 S.E.2d 899 (2014) held that judicial dissolution of a joint venture pursuant to O.C.G.A. § 14-8-32 was appropriate in light of evidence showing a long history of stalemate and deadlock between the joint venturers. In *First Benefits, Inc. v. Amalgamated Life Ins. Co.*, 2014 WL 6956693 (M.D. Ga. Dec. 8, 2014), the district court held that there was sufficient evidence to create a jury question as to whether a partnership was formed, in the absence of a written partnership agreement, based on testimony that the parties had agreed to specific terms regarding the division of responsibilities and sharing of profits among them. In *Godwin v. Mizpah Farms, LLLP*, 330 Ga. App. 31, 766 S.E.2d 497 (2014), the Court of Appeals held that a partner's claim that he was fraudulently deprived of his interest in the limited partnership was barred by the statute of limitations; the documents that the plaintiff signed—which he had a duty to read—placed him on notice of the transfer of his interest. The Court applied a six-year statute of limitations for written agreements to both contract and tort claims. The Court also found that there was a question of fact as to whether the plaintiff remained a general partner, which would entitle him to file an application for dissolution.

Transactional Cases

A divided seven-judge *en banc* Court of Appeals held in *Legacy Academy v. Mamilove, LLC*, 328 Ga. App. 775, 761 S.E.2d 880 (2014) that

parties to a franchise agreement were entitled to rescind the agreement based on fraudulent oral misrepresentations that induced them to enter into the contract, even though the contract contained a specific disclaimer that the plaintiffs had not received any such representations, as well as containing a merger clause. The majority found that there was sufficient evidence that the plaintiffs were prevented from reading the contract. In *Roca Properties, LLC v. Dance Hotlanta, Inc.*, 327 Ga. App. 700, 761 S.E.2d 105 (2014), the Court of Appeals held that a factual dispute existed regarding whether the plaintiffs were fraudulently induced into purchasing a dance competition's assets. The Court resorted to parol evidence to resolve an issue regarding which assets were transferred.

There also were several cases addressing the transfer of assets, rights and liabilities by operation of law under O.C.G.A. § 14-2-1106 following a merger. This issue has seen a significant amount of litigation in recent years due to the rise in foreclosures as well as the many bank failures and consolidations that occurred during the financial crisis. This year's decisions did not break any new ground; the settled rule under § 14-2-1106 is that the successor entity has the authority to foreclose on a property without the need for a formal assignment from the original holder of the security deed. *See Clark v. PNC Bank, N.A.*, 2014 WL 359932 (N.D. Ga. Feb. 3, 2014); *Jackson v. Bank of America, NA*, 578 Fed. Appx. 856 (11th Cir. 2014); *Wang v. Bank of America, N.A.*, 2014 WL 2883501 (N.D. Ga. June 24, 2014); *Duncan v. Citimortgage, Inc.*, 2014 WL 172228 (N.D. Ga. Jan. 15, 2014).

Litigation Issues

Standing and Capacity to Sue

In *Patel v. Patel*, 2014 WL 5025821 (S.D. Ga. Oct. 7, 2014) (unrelated to the *Patel v. Patel* case discussed earlier), the district court held that a 50-percent shareholder's claims against the company's former CEO and other shareholders were derivative and could not have been brought by the plaintiff directly. Two cases discussed a corporation's capacity to sue. In *East Cobb Fastpitch, Inc. v. East Cobb Bullets Fastpitch, Inc.*, 2014 WL 3749216 (N.D. Ga. July 29, 2014), the district court rejected a defendant's challenge to the plaintiff's standing based on alter ego principles, holding that a non-profit corporation's power to sue under O.C.G.A. § 14-3-302(1) is not lost by its failure to adopt bylaws or appoint a board of directors. In *Powder Springs Holdings, LLC v. RL BB ACQ II-GA PSH, LLC*, 325 Ga. App. 694, 754 S.E.2d 655 (2014), the Court of Appeals held that a foreign LLC was entitled to institute legal proceedings in a Georgia court without a certificate of authority to do business in Georgia, noting that foreign companies that do not transact any business in Georgia are exempt from the requirements of O.C.G.A. § 14-11-711(a).

The Supreme Court of Georgia held in *Department of Transportation v. McMeans*, 294 Ga. 436, 754 S.E.2d 61 (2014) that where a corporation owned a business operated on property subject to a condemnation action, the corporation, and not its sole shareholder, was the proper party to assert a claim for business losses resulting from the condemnation. Finally, in *Georgia Casualty & Surety Company v. Excalibur Reinsurance Corp.*, 4 F. Supp. 3d 1362 (N.D. Ga. 2014), the district court addressed a dispute over the location of a corporation's principal office, holding that it was the office where the corporation performs its executive functions for choice of law purposes.

Fraudulent Transfer Liability of Corporate Insiders, Alter Ego, Piercing the Corporate Veil and Other Forms of Secondary Liability

In *Smith v. Georgia Energy USA, LLC*, 2014 WL 5643919 (S.D. Ga. Nov. 4, 2014), a class action involving claims of fraud and violations of the Uniform Deceptive Trade Practices Act, the court rejected the plaintiffs' attempt to pierce the corporate veil as to the two shareholders of the family-run businesses alleged to have engaged in the wrongful acts, holding that while the businesses may have been run informally and sloppily, there was no evidence that the defendants abused the corporate form. A pair of cases dealt with the definition of an "insider" for purposes of the Uniform Fraudulent Transfer Act. In *Target Corp. v. Amerson*, 327 Ga. App. 110, 755 S.E.2d 556 (2014), the Court of Appeals held that a mid-level employee of a Fortune 500 corporation was not an insider under O.C.G.A. § 18-2-71(7)(A) because she was not a "director, officer, or person in control" of the corporation. In *In re Southern Home & Ranch Supply, Inc.*, 2014 WL 4071901 (Bankr. N.D. Ga. Aug. 11, 2014), the bankruptcy court held that a company wholly owned by a director and 20-percent owner of the debtor was an "affiliate" of the debtor and therefore an insider under O.C.G.A. § 18-2-71(7)(D).

The rule against "reverse veil piercing," in which creditors seek to reach a corporation's assets in order to satisfy the debts of a corporate insider, was reaffirmed in *In re Bilbo*, 2014 WL 689097 (Bankr. N.D. Ga. Feb. 5, 2014) and *In re Geer*, 522 B.R. 365 (Bankr. N.D. Ga. 2014). Finally, in *Functional Products Trading, S.A. v. JITC, LLC*, 2014 WL 3749213 (N.D. Ga. July 29, 2014), the district court allowed the plaintiff to pierce the veil on the basis of its allegations in the complaint, in a case where the defendants defaulted as a sanction for their failure to comply with discovery orders.

Jurisdiction and Service of Process

In *Drumm Corp. v. Wright*, 326 Ga. App. 41, 755 S.E.2d 850 (2014), the Court of Appeals held that an out-of-state company that indirectly owns a Georgia business and pays taxes on its behalf does not

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"conduct business" in Georgia for purposes of Georgia's long-arm statute, O.C.G.A. § 9-10-91. In three cases, the courts rejected arguments based on the "fiduciary shield" doctrine, which has no application in Georgia. In *Meyn America, LLC v. Tarheel Distributors, Inc.* 36 F. Supp. 3d 1395 (M.D. Ga. 2014), the district court held that an officer of a foreign LLC was subject to personal jurisdiction in Georgia due to his alleged personal involvement in the decisions to misappropriate trade secrets belonging to a Georgia LLC. In *Ralls Corporation v. Huerfano River Wind, LLC*, 27 F. Supp. 3d 1303 (N.D. Ga. 2014), the district court found that the plaintiff's complaint alleged sufficient facts to support the exercise of personal jurisdiction over out-of-state defendants based on their travel to Georgia to conduct business with the plaintiff. In *Websters Chalk Paint Powder, LLC v. Annie Sloan Interiors, Ltd.*, 2014 WL 4093669 (N.D. Ga. Aug. 18, 2014), the district court again rejected an argument invoking the fiduciary shield doctrine, but nonetheless concluded that the out-of-state corporate representative had not personally participated in any conduct in Georgia that could subject her to personal jurisdiction, nor did veil-piercing principles support jurisdiction.

There also were multiple cases, all involving foreclosures, in which the courts considered the rules for service of process on a corporation. In *Simms v. Deutsche Bank National Trust Co.*, 2014 WL 273236 (N.D. Ga. Jan. 22, 2014), the district court held that a plaintiff's attempt to serve a summons and complaint on a corporation by certified mail, without obtaining a waiver of personal service, is insufficient under Federal Rule 4 and O.C.G.A. § 9-11-4. In *Fitzpatrick v. Bank of New York Mellon*, 580 Fed. Appx. 690 (11th Cir. 2014), the 11th Circuit held that the plaintiff's attempt to obtain a waiver of personal service from a law firm was insufficient because it was sent to the firm itself rather than its agent, and because only one copy of the waiver form was provided. In *Stone v. Bank of New York Mellon*, 2014 WL 61480 (N.D. Ga. Jan. 8, 2014), the court held that service of process against a foreign corporation was insufficient; the plaintiff had served a copy of the summons and complaint on the Georgia Secretary of State, but did not deliver a copy to an officer of the defendant as directed in O.C.G.A. § 14-2-1520(b)-(c).

Evidence, Business Records Act

There were some interesting decisions in 2014 addressing whether a bank had satisfied its burden to show that it was the holder of a note it sought to enforce. All of these cases involved promissory notes originally held by banks that failed during the financial crisis. In *Greenstein v. Bank of the Ozarks*, 326 Ga. App. 648, 757 S.E.2d 254 (2014), a divided Court of Appeals, sitting *en banc,* held that the plaintiff bank failed to show sufficient evidence that it was the holder of a note it claimed to have obtained through a purchase and assumption agreement with the FDIC. The problem was that prior to its closure, the original holder of the note changed its name and merged into the bank that was eventually closed. While the plaintiff's evidence was sufficient to show that it had obtained the note from the FDIC, it was not sufficient to establish these earlier developments. The dissenting judges took the view that the plaintiff had succeeded in interest to the business records of the failed bank, and therefore should not have been required to produce a witness with personal knowledge of the name change and merger. In *Ware v. Multibank 2009-1 RES-ADC Venture, LLC*, 327 Ga. App. 245, 758 S.E.2d 145 (2014), a panel of the Court of Appeals held that the plaintiff's business records were sufficiently authenticated and that they demonstrated that the plaintiff had received the notes in question from the FDIC as receiver for the original holder. Finally, in *Thomas v. State Bank & Trust Company*, 330 Ga. App. 274, 765 S.E.2d 443 (2014), another Court of Appeals panel followed *Greenstein* in holding that the plaintiff failed to prove that assets of the failed bank were transferred to the plaintiff. In *Thomas*, the plaintiff sought to show that the notes were transferred via its purchase and assumption agreement with the FDIC, but the court held that this agreement specified that the actual transfer of the notes would be accomplished through a deed or bill of sale (and no such deed or bill had been produced).

In a final notable case involving the introduction of business records as evidence, the Court of Appeals in *Hayek v. Chastain Park Condominium Association, Inc.*, 329 Ga. App. 164, 764 S.E.2d 183 (2014) discussed the admissibility of an account ledger submitted by a property manager in a case to recover unpaid condominium association fees. The property manager's affidavit failed to comply with the requirements of either the old or new evidence code. While the court criticized the introduction of the ledger as failing to meet the requirements of O.C.G.A. § 24-8-803(6), it went on to consider the ledger in its review on the merits.

Director and Officer Liability Insurance Decisions

The 11th Circuit issued a significant opinion concerning the application of an "insured vs. insured" exclusion to a lawsuit brought by the FDIC as receiver for a failed bank. In *St. Paul Mercury Ins. Co. v. FDIC*, 774 F.3d 702 (11th Cir. 2014), the 11th Circuit held that a policy exclusion for claims "brought or maintained by or on behalf of any Insured or Company" was ambiguous when applied to the FDIC as receiver, and reversed a 2013 Northern District of Georgia opinion which held that the FDIC's claims fell within the exclusion. The decision resolves a conflict between the district court's opinion and an earlier Northern District decision

which had found nearly identical language to be ambiguous in the context of another suit brought by the FDIC as receiver for another failed bank. In fact, the 11th Circuit found the conflict between the two district court decisions to be compelling evidence that the language was ambiguous.

In other decisions involving D&O liability insurance, the Northern District of Georgia in *In re Gafford*, 2014 WL 689074 (N.D. Ga. Feb. 4, 2014), lifted a bankruptcy stay to allow the FDIC to pursue claims against a former officer of a failed bank where the sole source of recovery would be the applicable D&O policy. And in *Onebeacon Midwest Ins. Co. v. FDIC*, 2014 WL 869286 (N.D. Ga. Mar. 5, 2014), the district court denied a motion to reconsider its earlier order dismissing an insurance carrier's declaratory judgment action against the FDIC on the grounds that the action was barred by FIRREA's anti-injunction provision.

Non-dischargeability of Breach of Fiduciary Duty Claims

In *In re Pervis*, 512 B.R. 348 (Bankr. N.D. Ga. 2014), the bankruptcy court held, following a trial, that a debtor's liability for misappropriation of corporate opportunities was non-dischargeable in bankruptcy. The opinion contained a detailed analysis and application of the rules governing corporate opportunity disputes. The court also ruled that a non-compete provision in the shareholders' agreement for the debtor's business was unenforceable under Georgia law.

Professional Liability

In *Hays v. Page Perry, LLC*, 26 F. Supp. 3d 1131 (N.D. Ga. 2014), the district court held that a corporation's outside law firm did not have a duty to report the client's wrongdoing to regulators, and that the firm's principals were not liable to the corporation for alleged malpractice absent any evidence that they directly provided services to the corporation or that they supervised any of the work that was done.

Corporate Receiverships

In *Considine v. Murphy*, 327 Ga. App. 110, 755 S.E.2d 556 (2014), a shareholder challenged the appointment of a corporation as a receiver, contending that under O.C.G.A. § 9-8-1, corporations may not serve as receivers and that O.C.G.A. § 14-2-1432 did not apply because she had not sought dissolution of the corporation. The court did not decide these issues because it found that the shareholder had waived her challenge when she previously had agreed to the appointment in a consent order. In *SEC v. Quest Energy Management Group, Inc.*, 768 F.3d 1106 (11th Cir. 2014), the 11th Circuit held, in a case of first impression, that corporate officers enjoined from acting on behalf of a corporation could not appeal the injunction in the corporation's name without leave of court or a stay of

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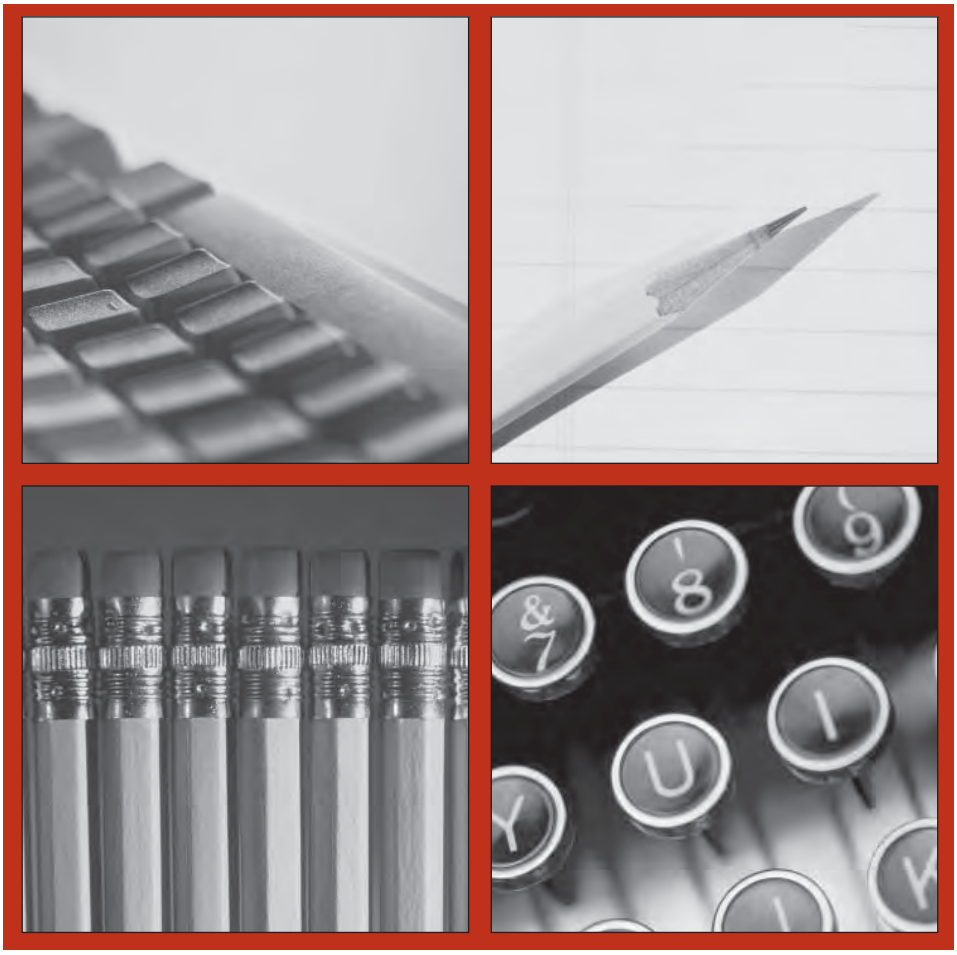

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the injunction, since the appeal itself violated the injunction.

Superior Court of Fulton County Business Court Decisions

In *Frazier v. Liotta*, No. 2014-cv-244363 (Ga. Sup. Ct. Fulton Co. Aug. 28, 2014), the court held that breach of fiduciary duty, misappropriation of corporate opportunity and other claims brought by a member of an LLC against the only other member could be brought directly rather than derivatively, since all interested parties were before the court and the reasons for the general rule requiring a derivative suit did not apply. The court dismissed claims for breach of the LLC's operating agreement given the broad discretion it granted to defendants as manager and majority owner. In *Sullivan v. Torchia*, No. 2013-cv-229283 (Ga. Sup. Ct. Fulton Co. Jul. 24, 2014), the court denied a motion for summary judgment asserting that a corporation's chief executive officer had no ownership interest in the subject corporation; the court held that the absence of any stock certificates was not dispositive and that there was evidence that the plaintiff had formed a partnership with the defendants which entitled him to a share of the corporate profits. In *Fouse v. Dow*, No. 2014-cv-242868 (Ga. Sup. Ct. Fulton Co. June 4, 2014), the court addressed a dispute between the two shareholders of corporate entities over the method of valuation to be used in a buyout following the termination of one of the shareholders. The court interpreted the shareholders' agreement to require the value of the departing shareholder's shares to be calculated according to an agreed-to formula based on annual net earnings, over the departing shareholder's objections that the formula did not apply to the sale of shares on termination of a shareholder's employment and that the shares were worth far more than that. Finally, in *Homeland Self Storage Management, LLC v. Pine Mountain Capital Partners, LLC*, No. 2014-cv-246999 (Ga. Sup. Ct. Fulton Co. Nov. 21, 2014), the court denied a motion to dismiss fraud and breach of fiduciary duty claims brought against a former chief financial officer of an LLC. Notably, the court held that the plaintiffs' allegations were sufficient to overcome the business judgment rule under the recent *Loudermilk* decision because the allegations could support a finding of bad faith or a breach of the duties of care and loyalty. GBJ

Thomas S. Richey has concentrated his practice in corporate, securities, banking and financial litigation, and insurance coverage at Bryan Cave LLP. He serves on the State Bar of Georgia's Corporate Code Revision Committee. Richey is co-author of a chapter on "Director and Officer Liability" in a book published in 2013, Georgia Business Litigation (*Daily Report* 2013). He has also published annual surveys of Georgia corporate and business organization case law developments for the years 2005-2013, copies of which are available on request to tom.richey@bryancave.com.

Michael P. Carey practices corporate, securities and other complex litigation at Bryan Cave LLP, with a focus on director and officer liability issues. Carey is co-author of a chapter on "Director and Officer Liability" in a book published in 2013, Georgia Business Litigation (*Daily Report* 2013). He can be reached at michael.carey@bryancave.com.




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Kudos

> **Chamberlain, Hrdlicka, White, Williams & Aughtry** announced the release of the **second edition** of **"Georgia Construction Law."** Chamberlain Hrdlicka's Atlanta-based construction law team, including shareholders **Michael P. Davis, Nicholas S. Papleacos, Seth R. Price** and **Gina M. Vitiello**, and Senior Counsel **Jill R. Johnson**, served as authors for the book, published by HLK Global Communications, Inc. The guide serves as a construction law handbook for industry leaders with projects in Georgia.

> 
Graham


Deal

Kilpatrick Townsend & Stockton LLP announced that partner **Jamie Graham** was selected as a member of the **2015 Class of Fellows** to participate in a landmark program created by the **Leadership Council on Legal Diversity** (LCLD) to identify, train and advance the next generation of leaders in the legal profession. The LCLD Fellows Program offers participants "an extraordinarily rich year of relationship-building, virtual and in-person training, peer-group projects, and extensive contact with LCLD's top leadership."

Associate **Jennifer Fairbairn Deal** was named to the **Atlanta Volunteer Lawyers Foundation's (AVLF) Junior Board**. AVLF was created in 1979 through the joint efforts of the Atlanta Legal Aid Society, the Atlanta Bar Association, the Atlanta Council of Younger Lawyers and the Gate City Bar Association to offer lawyers an opportunity to provide civil legal representation for the poor. AVLF develops and coordinates programs that provide legal representation, education and advocacy for at-risk, low-income individuals by tapping the enthusiasm and commitment of volunteer legal professionals to address the unmet civil legal needs in the Atlanta community.

> 

At its 2015 annual meeting in Athens, the **Council of Superior Court Judges** awarded **Hon. Lawton E. Stephens** the fourth annual **Emory Findley Award** for **"Outstanding Judicial Service."** Stephens has served as a Western Judicial Circuit superior court judge for more than 23 years. The award is named for the late Atlantic Judicial Circuit superior court Judge Emory Findley, who served in that role from 1976-1994. Findley died in 2004, still serving as a senior judge. The annual award is given to honor a judge who exemplifies Judge Findley's virtues of visionary leadership, resolve and dedication.

> 

Nelson Mullins Riley & Scarborough LLP announced that partner **Richard Herzog** was elected to the membership of **The American Law Institute** (ALI). Candidates for membership must demonstrate excellence in the law, high character, be willing to contribute to the work of the institute, and committed to clarifying and improving the law. The ALI drafts, discusses, revises and publishes Restatements of the Law, model statutes and principles of law that are influential in the courts and legislatures as well as in legal scholarship and education.

> 

DLA Piper announced that partner **M. Maxine Hicks** was re-elected to a two-year term as **secretary** of the **Buckhead Coalition**. The Buckhead Coalition is an influential nonprofit civic association, much like a chamber of commerce, for this affluent northern quadrant of the city of Atlanta. Its membership is limited to 100 CEOs of major area firms, by invitation. Its mission is to "nurture the quality of life and help coordinate an orderly growth."

> 

Rita A. Sheffey, assistant dean for public service at Emory University School of Law and current State Bar of Georgia treasurer, was chosen as the recipient of the **2015 Ben F. Johnson Jr. Public Service Award**. The award is presented annually by Georgia State University's College of Law to a Georgia attorney whose overall accomplishments reflect the high tradition of selfless public service that founding dean, Ben F. Johnson Jr., exemplified during his career and life.

On the Move

Atlanta

> **Burr & Forman LLP** announced that **Bryan T. Glover, Erin Richardson Ward** and **Patrick B. Webb** were elevated to **partnership**. Glover is a member of the firm's creditors' rights and bankruptcy practice group. Ward advises lending institutions, real estate developers and investors in various aspects of commercial real estate transactions. Webb practices in the firm's banking and real estate group. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.

Morris, Manning & Martin, LLP, announced that **Charles Beaudrot Jr.** returned to the firm as a **senior partner** in the tax and real estate capital markets practice groups. Beaudrot helped build the tax aspect of the firm's real estate investment trust practice (REIT), which grew to handle some of the largest REIT transactions in the nation. In 2012, he was appointed chief judge of the Georgia Tax Tribunal, the state's first tax court. 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.


Ghosh


Obeidin


Wilcox


Sherman


McKee


Effiong

Nelson Mullins Riley & Scarborough LLP announced that **Sanjay Ghosh, Kinan Obeidin** and **Suzann Wilcox** were elected to the **partnership, Scott N. Sherman** joined the firm as a **partner, Elizabeth "Beth" McKee** was promoted to **of counsel** and **Nkoyo-Ene Effiong** joined the firm as an **associate**. Ghosh focuses his practice in the areas of product liability litigation, pharmaceutical and medical device litigation, and commercial litigation. Obeidin practices in the areas of corporate law, financial institutions and real estate. Wilcox focuses her practice in the area of education law. Sherman focuses his practice in complex business and securities litigation. McKee focuses her practice in the area of immigration law. Effiong focuses her practice on education law. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.


Entwistle


Davey

Stites & Harbison, PLLC, announced that **Walker Entwistle** was elected to **membership**, and **Melissa J. Davey** was promoted to **of counsel**. Both Entwistle and Davey are members of the firm's creditors' rights & bankruptcy service group. The firm is located at 2800 SunTrust Plaza, 303 Peachtree St. NE, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

Emory University School of Law announced that **Rita Sheffey**, a veteran litigator with a career-long commitment to public service and current treasurer of the State Bar of Georgia, was named **assistant dean for public service**. In the newly created position, Sheffey will build upon the law school's well-established public service programs. Sheffey will advise the Emory Public Interest Committee, oversee the law school's Pro Bono Program, increase post-graduate placement opportunities in federal and state clerkships, and advise students with career interests in government or with public interest organizations. Emory University School of Law is located at 1301 Clifton Road NE, Atlanta, GA 30322; 404-727-6816; www.law.emory.edu.


Carter


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Prout

Bondurant Mixson & Elmore LLP announced that **Jason J. Carter, Christoper T. Giovinazzo** and **Alison B. Prout** were named **partners** with the firm. Carter represents clients in high stakes trial and appellate business litigation. Giovinazzo and Prout represent plaintiffs and defendants in complex litigation and business disputes. The firm is located at 1201 W. Peachtree St. NW, Suite 3900, Atlanta, GA 30309; 404-881-4100; Fax 404-881-4111; www.bmelaw.com.


Cochenour


Williams

Hall Booth Smith, P.C., announced the election **Duane Cochenour** and **Michael Williams** to **partner**. Cochenour is a litigator specializing in the representation of medical professionals and is the leader of the firm's insurance coverage practice group. Williams represents clients in complex, high-damage litigation matters, with a particular emphasis in defending catastrophic loss claims. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.

Levine Smith Snider & Wilson, LLC, announced that **David A. Garfinkel** joined the firm as **of counsel**. Garfinkel specializes in complex divorces, high-asset property division, alimony and child-custody and support issues. The

"And Justice for All"

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

On Your 2015 Bar Dues Notice,

Give to GLSP on Line D and Change Lives!

James is 18 years old and has a severe disability from a progressive disease. He relies on a breathing tube and a feeding tube, which make it impossible for him to communicate. GLSP 's legal assistance changed his life.

James is monitored constantly so that his breathing tube does not come out or clog. His mother cares for him at home, often monitoring him all night. She also works to support herself and two other children. She received notice that the state planned to reduce the hours of nursing care that James receives through the Medicaid program. She contacted GLSP for help. We took action to keep the services going while we gathered more medical evidence. After months of negotiation, the Medicaid agency finally agreed to maintain the hours of nursing care that James needs, enabling him to stay at home with his family.

— Phyllis J. Holmen, GLSP Executive Director

Please complete your Bar Dues Notice with a gift or pledge to GLSP on Line D!

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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!

firm is located at One Securities Centre, 3490 Piedmont Road NE, Suite 1150, Atlanta, GA 30305; 404-237-5700; Fax 404-237-5757; www.lsswlaw.com.


Hooker


Stupar


Swaja

Kilpatrick Townsend & Stockton LLP announced that **Charles Hooker, Bob Stupar** and **Daniel Swaja** were elected to **partnership**. Hooker is a member of the firm's trademark and copyright team. Stupar is a member of the firm's real estate finance and capital markets team. Swaja is a member of the firm's construction and infrastructure team. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.


Pound


Pardue


Simcoe


Myles

Owen, Gleaton, Egan, Jones & Sweeney, LLP, announced the addition of **Theodore E.G. Pound** as a **partner**, **David Pardue** as **of counsel** and **Kathleen W. Simcoe** and **Joshua Myles** as **associates**. Pound's practice focuses on civil litigation and trial practice, including defense of health care providers in professional liability litigation and representation of plaintiffs and in a wide range of other personal injury cases. Pardue's practice focuses on business, intellectual property and real estate litigation. Simcoe's practice focuses on medical malpractice defense, health care law and corporate matters. Myles' practice includes employment litigation, business litigation, intellectual property litigation, professional liability, insurance coverage, governmental liability matters and general civil litigation. The firm is located at 1180 Peachtree St. NE, Suite 3000; Atlanta, GA 30309; 404-688-2600; Fax 404-525-4347; www.og-law.com.


Berry


Markham


Vinson

McKenna Long & Aldridge LLP announced that **Jeremy Berry, Wendy Markham** and **Ben Vinson** were elected to **partnership**. Berry focuses on government and public policy litigation, public contract and procurement issues, political law, and governmental and regulatory affairs matters. Markham focuses her practice on commercial real estate. Vinson's practice concentrates primarily on state and local issues, particularly campaign and election law, economic development and legislative action. The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.mckennalong.com.


Broach


Joiner


Lee

Swift, Currie, McGhee & Hiers, LLP, announced that **Ashley W. Broach, Ann M. Joiner** and **Pamela N. Lee** were named to the firm's **partnership**. Broach is a civil litigator, whose practice focuses primarily on product liability, premises liability and mass tort defense. Joiner practices primarily in the area of workers' compensation defense. Lee practices in the firm's litigation section. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; www.swiftcurrie.com.

Hoffman & Associates announced that **Kim Hoipkemier** became a **partner** of the firm. She currently specializes in the areas of wills, trusts, estate administration and probate. The firm is located at 6100 Lake Forrest Drive, Suite 300, Atlanta, GA 30328; 404-255-7400; Fax 404-255-7480; hoffmanestatelaw.com.

Carlock, Copeland & Stair, LLP, announced that **Erica L. Parsons** was elected as **partner**. She practices in the areas of general liability defense, insurance coverage and bad faith across the Southeast. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; carlockcopeland.com.


Turner


Barbaree


Moeller


Zeldin

Littler Mendelson added **Daniel E. Turner, Tracey T. Barbaree, Beth A. Moeller** and **Lauren H. Zeldin** as **shareholders**. The group, which joined

Littler from the Atlanta office of Ogletree Deakins, brings decades of employment law experience and a strong reputation in Atlanta and nationally for successfully resolving numerous employment litigation matters. The firm is located at 3344 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-233-0330; Fax 404-233-2361; www.littler.com.

Flynn + Peeler + Phillips, LLC, announced that **Kenneth B. Hodges III** joined the firm as **of counsel**, opening their new Atlanta office near Buckhead. Hodges specializes in business and commercial, as well as personal injury and criminal law. He also currently serves on the Executive Committee of the State Bar of Georgia. The firm is located at 2719 Buford Highway, Atlanta, GA 30324; 800-646-8799; Fax 229-446-4884; www.fpplaw.com.

Duane Morris LLP announced that **Alison Haddock Hutton** was promoted to **partnership**. She practices in the area of intellectual property law with an emphasis on patent litigation. The firm is located at 1075 Peachtree St. NE, Suite 2000, Atlanta, GA 30309; 404-253-6900; Fax 404-253-6901; www.duanemorris.com.

Taylor English Duma LLP announced the addition of **Katherine M. Koops** to the firm's corporate and business practice. Formerly with Bryan Cave LLP, Koops brings more than 25 years of experience representing financial institutions and other businesses in banking, corporate and securities matters. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.

Hamilton, Westby, Antonowich & Anderson, LLC, announced that **Holly J. Portier** became a **partner** with the firm. Her practice primarily focuses on insurance defense (including workers' compensation and liability defense) and commercial litigation. The firm is located at 600 W. Peachtree St. NW, 17th Floor, Atlanta, GA 30308; 404-872-3500; Fax 404-872-1822; www.hwaalaw.com.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., announced that **Greg Hare** was selected as the **managing shareholder** of the firm's Atlanta office. Hare will continue his varied labor and employment practice, assisting employers with human resources and employment-related litigation matters, including wrongful termination claims, sexual harassment, employment discrimination, employment contracts and non-compete agreements. The firm is located at 191 Peachtree St. NE, Suite 4800, Atlanta, GA 30303; 404-881-1300; Fax 404-870-1732; www.ogletreedeakins.com.

Boyd

Drakulich

Kazi

Hitt

Fish & Richardson named **Brian Boyd, Corrin Drakulich** and **Aamir Kazi** as **principals** in the firm's intellectual property litigation group and **Tracy Hitt** as a **principal** in its patent group. Boyd continues his patent litigation practice across a wide range of high-tech and telecommunications industries. Drakulich represents plaintiffs and defendants in cases spanning a wide range of technologies, including medical devices, life sciences, health care and manufacturing. Kazi continues to focus his litigation practice on patent, trademark and trade secret litigation, high-tech commercial litigation, due diligence, licensing and intellectual property counseling. Hitt focuses his practice on client counseling, patent prosecution, due diligence, patent post-grant proceedings and patent-related opinions. The firm is located at 1180 Peachtree St. NE, 21st Floor, Atlanta, GA 30309; 404-892-5005; www.fr.com.

MendenFreiman announced that **Jeffrey J. Meek** joined the firm as a **senior associate**. As a member of the firm's business, estate planning, and trust and estate administration practice areas, Jeff will provide comprehensive business, tax and estate planning counsel to high-net-worth individuals and families, as well as privately held businesses. The firm is located at Two Ravinia Drive, Suite 1200, Atlanta, GA 30346; 770-379-1450; Fax 770-379-1455; www.mendenfreiman.com.

Polsinelli welcomed **Brian F. McEvoy** to the firm as a **shareholder**. He is a member of the firm's government investigations and compliance-civil and criminal practice. McEvoy is a former federal prosecutor who works on white collar criminal defense and health care fraud matters. The firm is located at 1355 Peachtree St. NE, Suite 500, South Tower, Atlanta, GA 30309; 404-253-6000; www.polsinelli.com.


LeGault


McCart

Hall, Arbery, Gilligan, Roberts & Shanlever LLP announced that **Michelle LeGault** joined the firm as **counsel** and **Wes McCart** joined the firm as an **associate**. LeGault focuses her practice on restrictive covenant and trade secret litigation and defending employers against claims of discrimination. McCart's practice focuses on labor and employment matters and commercial litigation. The firm is located at Tower Place 100, Suite 1900, 3340 Peachtree Road NE, Atlanta, GA 30326; 404-442-8776; Fax 404-537-5555; www.hagllp.com.

In Dalton

Robert A. Cowan was appointed as the new **judge** of the **Dalton Municipal Court.** He officially took the bench in January. The Dalton Municipal Court is located at 535 N. Elm St., Dalton, GA 30721; 706-278-1913; Fax 706-275-8946.

In Jonesboro

Christie Cross Barnes was appointed **chief staff attorney** of Clayton County by the **Clayton County Board of Commissioners**. The staff attorney's office serves as legal counsel to the board of commissioners, county departments, certain boards and authorities, constitutional officers and employees in the scope of their employment. Barnes is the first woman to hold this position. The office is located at 112 Smith St., Jonesboro, GA 30236; 770-477-3207; Fax 770-473-5969; www.claytoncountyga.gov.

In Macon

Harris & James, LLP, announced that **Taylor S. Brown** joined the firm as an **associate**. His practice areas include eminent domain and business litigation. The firm is located at 3573 Vineville Ave., Macon, GA; 478-745-9661; Fax 478-745-9824; www.harrisjames.com.

In Waynesboro

Jackson E. Cox was appointed **judge** of **Burke County State Court** by **Gov. Nathan Deal** in November 2014, to fill the vacancy left by the passing of Hon. Jerry Daniel in January. Cox was sworn-in December 2014 and immediately took office. He had served as solicitor-general of Burke County since 2001. The state court is located at 602 N. Liberty St., Waynesboro, GA 30830; 706-554-3460; Fax 706-554-3462.

Matthew W. Franklin was sworn-in as the new **solicitor general** for **Burke County State Court** in December 2014, and took office Jan. 1. Franklin practices law at Matthew W. Franklin, LLC, in Waynesboro. The solicitor general's office is located at 195 Court St., Waynesboro, GA 30830; 706-437-0464.

In Savannah

HunterMaclean announced that **Rebecca F. Clarkson** joined as an **associate** in the firm's corporate practice group. Clarkson's legal background is in financial services, creditors' rights and real estate. The firm is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

In Charlotte, N.C.

Nelson Mullins Riley & Scarborough LLP announced that **Thomas Farnen** joined the firm as a **partner** in its Charlotte office. He focuses his practice in environmental law. The firm is located at 100 N. Tryon St., 42nd Floor, Charlotte, NC 28202; 704-417-3000; Fax 704-377-4814; www.nelsonmullins.com.

In Washington, D.C.

Tully Rinckey PLLC announced that **Larry D. Youngner** was named **managing partner** of the firm's Washington, D.C., office. Youngner's practice focuses on military law and national security clearance representation. The firm is located at 815 Connecticut Ave. NW, Suite 720, Washington, DC 20006; 202-787-1900; Fax 202-640-2059; www.tullylegal.com.

That's Not Fair!

by Paula Frederick

"Look what popped up when I did a web search on the firm name!" your assistant groans as she enters your office. "Somebody has blasted your work on their criminal case!"

You literally feel the hair on the back of your neck stand up as you read. "Mr. Smith did not return my phone calls and he lost my case. Now I'm in prison for something I didn't do.—angry@reidsville.com"

"That almost *has* to be Joe Doakes! He's the only criminal case I've had for months," you realize.

"And *you* didn't lose his case," your assistant points out. "You gave that trial everything you had, but the evidence against him was overwhelming!"

"*Didn't return phone calls,*" you grouse. "How was I supposed to call him back—he was in prison!"

"There goes our online marketing," your assistant laments. "This is the first thing that pops up when you do a search on the firm name."

Most people don't hire a lawyer without doing an internet search, so your online reputation is more important than ever. What's a lawyer to do when hit with a negative online review?

Before you do anything, think about doing nothing. Decide whether the negative review is really going to harm your business. Does the reviewer come across as malicious, unreasonable or unstable? People are accustomed to online venting by sore losers, so potential clients may ignore an isolated negative review. You might even call more attention to it by responding to it.

If you feel the need to respond you might think it best to post a detailed denial of the review. The ethics rules make that tricky, but there is an exception to the confidentiality rule[1] which allows a lawyer to reveal otherwise confidential information "to establish a . . . defense on behalf of the lawyer in a controversy between the lawyer and the client . . ." based upon the lawyer's reasonable belief that the revelation is necessary.

Unfortunately, reasonable minds can differ on how much information a lawyer may reveal under the exception. Lawyers can get themselves into disciplinary trouble when they fight back against a negative review with information that identifies the client and reveals embarrassing details about the case.

On the other hand, you do not violate the rules by posting a response that provides a general denial with language like "We are unable to respond to *angry@reidsville* without revealing confidential information about his case. We at Smith & Smith return client telephone calls within 24 hours." Review the tone of your response carefully to be sure you do not sound angry or defensive.

If a post contains information that you can prove is untrue, you may be able to persuade the host site to remove it.

Some experts suggest fighting a negative review by creating your own positive content on websites that will supersede a negative review when a potential client does an internet search. The theory is that with more and newer content the negative review gets bumped lower and lower in the search results so that it is less likely anyone will see it.

If all else fails seek professional help. There are companies that can help "fix" your online reputation for a fee if the problem becomes serious. GBJ

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

Endnote

1. Please remember that Georgia's Rule 1.6 is different from the ABA Model Rule, so the advice could be different in other jurisdictions.

Attorney Discipline Summaries

(Dec. 19, 2014 through March 18, 2015)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Rand Jason Csehy
Roswell, Ga.
Admitted to Bar 1997

On Feb. 2, 2015, the Supreme Court of Georgia disbarred attorney Rand Jason Csehy Jr. (State Bar No. 199756). In April 2014, Csehy pled nolo contendere to two counts of possession of a controlled substance and one count of possession of a firearm during the commission of a crime. He was sentenced as a first offender. Csehy filed a petition for voluntary discipline seeking a one-to-two-year suspension. The State Bar objected to Csehy's petition. The Court denied the petition and subsequently disbarred Csehy for his violation of Georgia Rule of Professional Conduct 8.4(a)(2).

Robert T. Thompson Jr.
Atlanta, Ga.
Admitted to Bar 1975

On Feb. 2, 2015, the Supreme Court of Georgia disbarred attorney Robert T. Thompson Jr. (State Bar No. 709750). The following facts are deemed admitted by default: In March 2012, a client hired Thompson to file an action on her behalf against JP Morgan Chase Bank. The client paid Thompson a flat fee of $5,000. In April 2012, the Superior Court granted a temporary restraining order against the foreclosure of the client's house and required the client to pay $1,000 into the registry of the court. Thompson paid the money into the court's registry, and the client reimbursed him. JP Morgan removed the case to federal court, and the client paid an additional $5,000 flat fee. Thompson instructed the client to pay $1,000 monthly into his trust account in order "to show good faith." The client made $15,000 in payments to Thompson's trust account. In February 2013, the federal district court granted JP Morgan's motion to dismiss. In the meantime, the client negotiated a loan modification with JP Morgan. The client asked that Thompson return her $15,000, but he refused. Thompson did not keep the client's funds in his attorney trust account and falsely claimed that the $15,000 was payment for additional legal services.

Douglas Grant Exley
Springfield, Ga.
Admitted to Bar 2003

On Feb. 16, 2015, the Supreme Court of Georgia disbarred attorney Douglas Grant Exley (State Bar No. 253555). The following facts are admitted by default: Exley accepted $500 to represent a client in a divorce action. Exley then failed to communicate with the client or to take any action on his behalf. Exley was served by publication and mail with a Notice of Investigation, but he failed to file a timely sworn response and was suspended by the Supreme Court on April 14, 2014.

In another matter Exley accepted $1,000 to represent a client in a divorce action. Exley initially failed to communicate with or to take any action on her behalf. The client asked a friend to call Exley and pose as a new client, and he returned the call from the client's friend. When the client asked Exley why he had not been in communication, he stated that he was preparing to file her divorce action. Although Exley mailed the documents to the client's husband, he delayed in sending the documents to the client, despite repeated requests, and failed to file the signed documents with the Superior Court. Exley then failed again to communicate with the client, abandoned representation of her and failed to refund any of the fee. Exley again was served by publication and mail with a Notice of Investigation, but he failed to file a timely sworn response.

Rodd Walton
Atlanta, Ga.
Admitted to Bar 2001

On Feb. 16, 2015, the Supreme Court of Georgia disbarred attorney Rodd Walton (State Bar No. 736490).

The following facts are admitted by default: A client retained Walton in 2012 for representation regarding the investigation of a second mortgage on property awarded to the client's ex-wife in a divorce. The client paid Walton $1,000. Walton failed to provide any documentation to indicate that he performed the work. Nevertheless, in July and August 2012, the client paid Walton additional fees of $11,600. Those fees were for representation regarding a contempt action against the client, except that $5,000 was to be placed in escrow for use in hiring an attorney in North Carolina, if necessary, on a probate matter. No funds were paid to the North Carolina attorney as his services were not needed. In November 2012, the client provided a cashier's check in the amount of $24,000 to Walton that was to be used as follows: $15,000 was to be paid to an opposing party to obtain the release of an automobile that was in dispute in civil litigation; $7,000 was to be paid to the client's ex-wife to resolve contempt issues; and $2,000 was for additional attorney fees to Walton. Walton did not appear for the final contempt hearing, and the client was incarcerated for failing to pay the $15,000 per a prior consent order. Walton failed to account for the funds that were to be paid to other parties, converted those funds to his own use, and abandoned his law practice.

In another matter a client retained Walton in 2010 to represent her regarding a June 2010 automobile accident in which she suffered injuries. Walton sent a demand letter to the insurer in May 2011, itemizing special damages in the amount of $97,086.26 and demanding settlement in the amount of $320,384.06. In July 2011 the client signed a limited release for settlement in the amount of $25,000, but she had no further substantive communication from Walton despite repeated efforts to contact him. Walton did not provide the client with any information as to his receipt of the settlement proceeds or disbursement and he did not communicate

with her regarding the status of his efforts to seek compensation under her underinsured motorist coverage. The client has not received any settlement proceeds, and her medical bills have not been paid.

Joseph Citron
Atlanta, Ga.
Admitted to Bar 1997

On March 2, 2015, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Joseph Citron (State Bar No. 126289). Citron pled nolo contendere in Pennsylvania to nine felony violations of perjury, eight misdemeanor violations of perjury and one misdemeanor violation of unsworn falsification. Citron made false statements about his professional background to bolster his credibility as a testifying expert witness.

Suspensions

Lyle Vincent Anderson
Dalton, Ga.
Admitted to Bar 2001

On Feb. 16, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Lyle Vincent Anderson (State Bar No. 017722) and imposed a suspension pending the appeal of his felony conviction for forgery in the first degree, and further order of the Supreme Court.

Wesley Kent Hill
Atlanta, Ga.
Admitted to Bar 2008

On Feb. 16, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Wesley Kent Hill (State Bar No. 211062) and imposed a suspension of no less than six months with conditions for reinstatement. A couple paid Hill a $3,000 retainer and agreed to pay $300 a month during the course of the proceedings regarding the foreclosure of their home. Hill filed a complaint for injunctive relief to set aside the foreclosure, represented the clients in a dispossessory proceeding and attempted to negotiate a resolution that would allow them to remain in their home. The bank removed the case to federal court and filed a motion to dismiss. Hill concluded that the case would not survive the motion to dismiss, but he did not respond to the motions or tell his clients that the case had been removed; instead, he led them to believe the case was still in state court and that he was taking actions to protect their interests. The family eventually was evicted. Hill also failed to respond to a fee arbitration dispute, and an award was entered in favor of the clients in the amount of $4,700. Hill stated that he suffers from mental health issues and that he ceased practicing law in May 2013, and moved to South Carolina to focus on his health. Hill is remorseful, has satisfied the arbitration award and has no prior discipline. Prior to reinstatement, Hill must submit a psychological evaluation indicating that he no longer suffers from an impairment that affects his ability to practice law.

Melissa Jill Starling
Ocilla, Ga.
Admitted to Bar 1989

Pursuant to a Petition for Emergency Suspension filed by the State Bar, the Supreme Court of Georgia suspended attorney Melissa Jill Starling (State Bar No. 676630) on Feb. 18, 2015, until further order of the Court.

Public Reprimands

Jeffrey L. Sakas
Atlanta, Ga.
Admitted to Bar 1973

On March 2, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Jeffrey L. Sakas (State Bar No. 622250), and ordered the imposition of a Public Reprimand for his neglect of matters involving four clients. Sakas agreed to represent a client in connection with a personal injury claim, but did not take action on behalf of the client and did not properly terminate the representation.

In another matter Sakas was retained to seek additional compensation for unpaid special damages in connection with an automobile accident after the client had already received a settlement from the at-fault driver. Sakas filed suit against the client's insurer, but failed to answer discovery, and the suit was dismissed.

In a third matter Sakas was retained to pursue a negligence action against two defendants. Sakas filed suit in Clayton County, but was unable to perfect service on the defendants. Sakas subsequently became aware that the defendants were located in DeKalb County, so he dismissed the Clayton action and re-filed in DeKalb. He made exhaustive attempts to serve the defendants, but was unable to do so, and the trial court dismissed the action.

In another case Sakas failed to respond to discovery on behalf of a client, and the client was sanctioned $750 by the trial court.

The record shows the following in mitigation: At the time Sakas was suffering a disability caused by a combination of factors. Since receiving treatment and resolving his personal conflicts, he is now able to function as a practicing attorney. The record also reflects that Sakas is deeply remorseful; that he has taken the initiative of having his cases monitored by experienced legal staff to insure that he will avoid the mistakes he has made; that his medical issues are under control and well-treated; that at the time of these occurrences, he was a sole practitioner, but that since resolving his medical problems, he formed a partnership with two other lawyers and now benefits from both full- and part-time legal assistants and a fully-staffed office. Sakas has entered into financial settlements with the affected clients. He must notify the State Bar as he finalizes the financial settlements and completes the required payments.

Review Panel Reprimands

Tanya Yvette Brockington
Homewood, Ill.
Admitted to Bar 2010

On Jan. 20, 2015, the Supreme Court of Georgia ordered attorney Tanya Yvette Brockington (State Bar No. 259287) to receive a Review Panel reprimand. The following facts are admitted by default: A client hired Brockington to represent her in an immigration matter. The client paid Brockington a retainer and filing fee to prepare and file a "stand alone" I-601 waiver. Brockington did not realize that the waiver could not be filed as a "stand alone" and that an I-130 application must be filed as a companion to the I-601, which the immigration judge explained to Brockington at the November 2012 hearing. Brockington subsequently attempted to file the I-130, but neglected to include the filing fee so the U.S. Department of Immigration and Customs Service returned the proffered filing to her. The client called Brockington several times to inquire about the matter, but Brockington did not return the calls. Brockington did not appear at another hearing before the judge in March 2013, because of the dispute about the amount of attorney's fees required to handle the matter, thus causing further delay of the client's case. The client discharged Brockington and hired new counsel. Brockington had no prior discipline.

Maurice Brown
Marietta, Ga.
Admitted to Bar 1996

On Jan. 20, 2015, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Maurice Brown (State Bar No. 088853) and ordered that he receive a Review Panel Reprimand. Brown was appointed to represent a client in post-conviction matters in a criminal case; he filed a motion for new trial and an amended motion but did not advise his client of the appointment until 10 months after he was appointed; he only saw his client at the motion for new trial hearing; due to a new job, he filed a motion to withdraw before the motion for new trial was ruled on without discussing it with his client or serving the client with a copy of the motion to withdraw; he did not know whether the court granted the motion and did not have any further contact with his client nor provide him with a new address and telephone number or his file and transcripts; and he did not file a timely sworn response to the Notice of Investigation. Brown received an Investigative Panel reprimand in 2008 and an interim suspension in this matter in 2007 for failing to timely file a sworn answer to the Notice of Investigation.

In mitigation, the special master noted the absence of a selfish or dishonest motive. The special master found that Brown's failure to consult with his client and serve him a copy of the motion to withdraw was due to a misunderstanding of his professional responsibility and inattention. During this time Brown lost a significant portion of his practice due to changes in how Fulton County handled appointment of counsel for indigent defendants. Although he did not reply to the grievance in this matter, after the formal complaint was filed, Brown cooperated with disciplinary authorities and admitted the conduct. The special master also noted that Brown demonstrated a good reputation in the community and that he was remorseful for his conduct.

Reinstatements Granted

John B. Tucker
Newnan, Ga.
Admitted to Bar 1984

On Jan. 13, 2015, the Supreme Court of Georgia determined that attorney John B. Tucker (State Bar No. 717750) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law.

Murble Anita Wright
Jonesboro, Ga.
Admitted to Bar 1993

On March 16, 2015, the Supreme Court of Georgia determined that attorney Murble Anita Wright (State Bar No. 778525) had complied with all of the conditions for reinstatement following her suspension, and reinstated her to the practice of law.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Dec. 19, 2014, one lawyer has been suspended for violating this Rule and one has been reinstated.

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

Managing the Dreaded Technology Upgrade

by Natalie Robinson Kelly

Whether it's the inability to click on the button you were so accustomed to or being lost in your "shiny new" system, change can be hard when it comes to technology. Upgrading and keeping up seem to be the order of the day for maintaining working systems, and even social status. It's just how our society has evolved. We click and go quickly!

For the legal profession, upgrading technology can be much trickier. It may not be wise to simply upgrade every time something new is out. The viability of a law practice when technology is done wrong or something with technology goes wrong can be negatively affected. Upgrading can be painful and costly, hence the dread. Below are tips for dealing with the times you'll inevitably be told, "You have to upgrade."

Why Upgrade—Nothing's Broken

The dilemma always seems to be that there seems to be nothing wrong with your systems, yet the vendor or consultant recommends an upgrade. For hardware and software, there are some clear signs that indicate you must come to terms with an upgrade to a newer system. For instance:

- Hardware is breaking down or malfunctioning.
- Software is so outdated it is no longer being supported.
- Software is incompatible with or will not run on the hardware you just updated.

- Software is incompatible with or will not run with another software program you just updated.
- And just for fun—you can't find a company that sells your type or brand of typewriter ribbon!

It may be true that nothing is broken—yet. In larger firms, IT staffs are typically aware of the need to upgrade on a regular cycle, and the lawyers will never know about the shift until they are trained on the subtle changes that accompany the new system or software. For smaller firms and solos, the general rule of thumb is that it should be assumed that no new system will continue to run without problems of a software or hardware nature within three years. While this time frame is not scientific, the calls and inquires of the Law Practice Management Program suggests this timing is about right. Lawyers must be ready to upgrade within three years of a purchase in a worst-case scenario, and

with newer traditional software programs requiring annual maintenance and support plans, this time has been shortened to an almost all-inclusive purchase of these plans for an annual upgrade.

Other standard wear and tear realities also abound in law offices. Firms are often guilty of not keeping up with required updates and service release patches, not performing maintenance on a regular basis, or keeping track of errors or other things that go wrong with the systems. This can make for disastrous results, e.g., lost data!

I'm In the Cloud—I Don't Worry About Upgrading

Upgrades are usually invisible to cloud users, but that doesn't mean it's a good thing. While cloud users are not responsible for conducting the upgrades, they will have to live with the results. Sometimes this could mean an inadvertent shift in where things are input or having to live through multiple bug fixes. So, while the overall landscape for upgrades to cloud systems rarely have an in-your-face result until they're done, cloud users must be vigilant about making sure they know of what's been added or taken away during the upgrade process.

Support—We Don't Need No Stinkin' Support

Trust us. You need support. The good news is that support options are available in many formats. Now that companies can easily remote into networks using the Internet, remote access support for upgrades can be completed relatively easily. Legal software vendors and local computer companies will now log into your network to upgrade software applications and perform other related maintenance. While this access is straightforward, some upgrades will necessitate a visit from a consultant or other expert. Remember when working with these individuals face-to-face is that they may not always speak your language. Ask for the lay version of what they are doing to your systems. Avoid those whom you can't understand. Also, always ask for references of any other law firm clients they may have. Upgrades are not always straightforward, but every upgrade should start with a backup of your system and knowing where to get support in the process as needed.

You Mean We Have To Do This Again

Nothing lasts forever, and this is definitely true for the intersection of technology and law office operations. Despite the valiant efforts of many lawyers to hang onto the tried and true copies of older software, the time comes when the upgrade must happen—again. To soften the blow, a lawyer can make plans by creating a reasonable budget and timeline for managing technology upgrades. Yes, there will be a time in the not so distant future when an upgrade will be needed, and with proper planning your firm will be more than ready for it.

Use this quick checklist to keep the IT upgrade process manageable in your practice.

- Review the firm's IT budget for software and equipment upgrades and training.
- Make sure the firm's backup and restore routine is in place and works properly.
- Read all installation guides and related technical documentation before proceeding with the upgrade.
- Verify the hardware and software requirements for the upgrade.
- Check for the required number of licenses and formats of the systems to purchase.
- Download all required installation files and information.
- Notify everyone in the firm of the upcoming upgrade.
- Have access to all system passwords during the upgrade.
- Get/make list of times when computer use may need to be restricted or forbidden during the upgrade process.
- Have key phone numbers of the personnel to be involved in the upgrade.
- Know who to call for support during the upgrade process.
- Document each step in the upgrade process and make this information available for future upgrades.

For additional assistance with getting through an upgrade of your technology, contact us. Even if it's just to complain about how awful it was. We will listen and help with resources to make it more bearable in the future! GBJ

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

What's New with Fastcase

by Sheila Baldwin

With any app or software, keeping things updated is important. As of early February, Fastcase Version 3.0 for iOS 8 is now available in the App Store! You don't need to do anything new—just download the update when you see it on your smartphone or device, or in the iTunes store. Why should you update? Fastcase Blog Team at www.fastcase.com/blog/ explains why in this recent post:

> Apple's iOS 7 release interfered with the Fastcase iPad app login, and iOS 8 broke Fastcase's app altogether. This update makes Fastcase for iPhone and iPad compatible with iOS 7 and 8. Additionally, it squashes some known bugs.
>
> Here's the changelog for Version 3.0:

- Compatible with iOS 8 (100% less crashy!)
- Do you like entering your username and password each time you log in? We don't. We've fixed this by enabling keychain access.
- Added retina display graphics and icons—more pixels, same low price.
- Fixed iPad login crash bug—now clicking "Login" logs you in!
- Time-outs are great for sports, but terrible for apps. We've optimized network responsiveness issues—results should time-out much less frequently now.
- Thanks, but no thanks. We turned off auto-correct so it doesn't interfere with Boolean searches.
- Fixed logout bug. Clicking "Logout" now logs you out! (We've also changed the logout button color to a less offensive shade of red.)
- Fixed scrolling to most relevant paragraph.
- Footnotes are now clickable, although still sometimes inscrutable, but that's not really our fault.

You can update the app on your iPhone or iPad through the App Store, or you can update in the iTunes store (see fig. 1).

Using Chrome as Your Browser

If you use Chrome as your browser, you will notice advanced features that appear within Fastcase. If you are new to Chrome, take a minute to learn how to customize the features by going to the upper right hand corner (look for the three horizontal lines) and open "About Google Chrome." If you misspell a word, Chrome will point it out with red squiggly lines and if you right click on the misspelled word, the correct spellings is offered along with an option to add it to your dictionary, ask for suggestions or automatically correct the spelling (see fig. 2). To make use of the advanced spell check features, open "settings" and enable spell checking and custom spell checking dictionary. Another great feature is using "Control + F" to enable a search within the page you are viewing (see fig. 3).

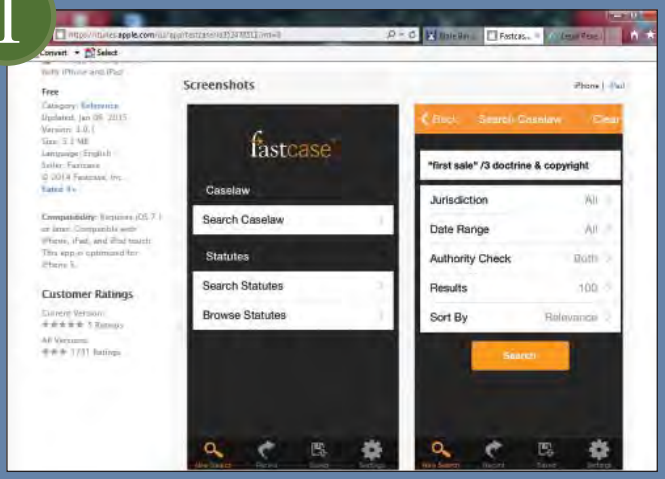
Folders Organize Your Favorite Documents

By popular demand, Fastcase now gives you the option to sort your favorite documents into different research folders. Simply open up your Favorite Documents (My Library >> Go to Favorite Documents) and begin organizing your search results into folders labeled by Client or Case names, Topics, Type or however you would like. After adding new cases, statutes or journal articles to your favorites, you will be able to sort them into the folders with a simple click, drag and drop. Select "New Folder" to create a new place for these documents, or highlight an existing folder before clicking "New Folder" to create new subfolders (see fig. 4).

The folks at Fastcase hope you like the improved Favorites page, one of many enhancements with more on the way. Keep your eye on the Fastcase blog or Facebook page to learn about new features as they are added. Please call or contact me at sheilab@gabar.org or 404-526-8618 with any questions or for help with your research. GBJ

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

1



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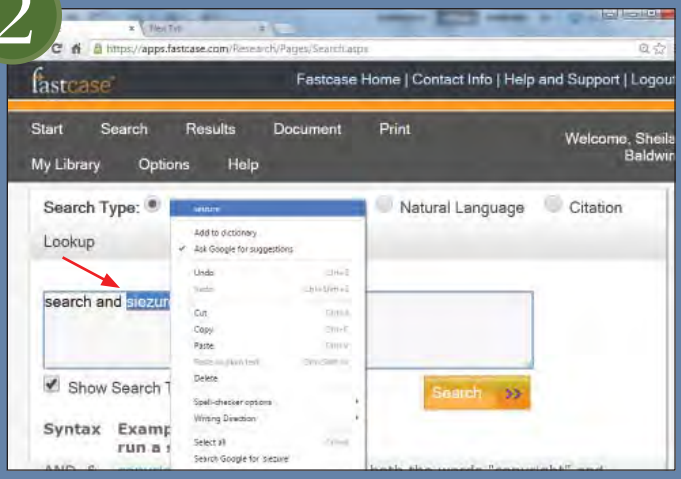

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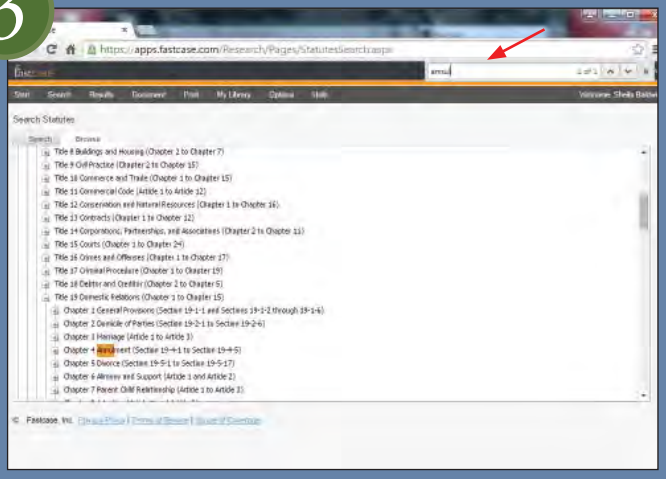

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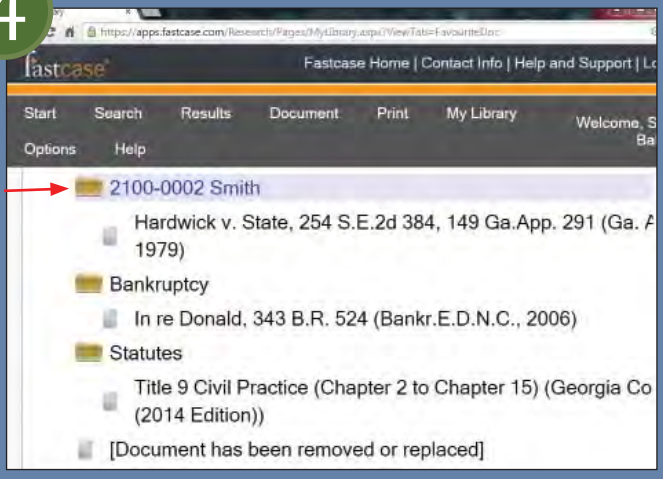


Fastcase training classes are offered four times a month at the State Bar of Georgia in Atlanta for Bar members and their staff. Training is available at other locations and in various formats and will be listed on the calendar at www.gabar.org. Please call 404-526-8618 to request onsite classes for local and specialty bar associations.

Georgia Judges on iPads:

Brief-Writing for the Screen (Part One)

by Jennifer Murphy Romig

The e-filing revolution continues to spread across Georgia, with a ripple effect on the way Georgia judges are able to access and read parties' briefs. The era of the accordion folder is giving way to the era of the searchable PDF viewed on an iPad or other tablet. Georgia lawyers now should consider whether they should do anything differently: is a brief just a brief whether it's printed and bound or opened on a PDF reader on the judge's tablet? "Writing Matters" will explore this question in two parts. This installment addresses e-filing news in Georgia and the implications of screen reading on typography and headings. The next installment will address the use of images, citations and links.

E-Filing Spreads Across Georgia

The first step toward the proliferation of judges on iPads is, of course, e-filing. July 2015 will mark 10 years since mandatory e-filing made its first appearance in Georgia, when the U.S. District Court for the Northern District of Georgia implemented the first e-filing mandate within state borders.[1] The Supreme Court of Georgia has mandated e-filing for attorneys since 2013, and as of Jan. 1, 2015, the Court of Appeals of Georgia mandates e-filing for attorneys as well.[2]

The Superior Courts are moving on a circuit-by-circuit basis toward e-filing of PDFs and online case management as well, according to Douglas County Superior Court Judge David Emerson, vice-chair of the Statewide Judicial Civil E-filing Committee. The Senate Unified Court Technology Study Committee will recommend a market-based solution so that state judicial circuits may select providers from a competitive bidding process, according to Emerson. A formal step toward this process was the Judicial Council of Georgia's adoption, in September 2014, of Statewide Minimum Standards for Electronic Filing.[3]

Whatever the provider, courts and clerks from across Georgia and nationally agree on the need for secure, accessible systems:

> Judicial tools should be intuitive and get judges quickly to their information with touch screen technology and/or a minimum of clicks or navigation. Software is needed that is device independent and will work on computers, laptops, tablets, and smartphones without difficult setup and costly overhead.[4]

It is safe to say that Georgia courts will see more technology investments allowing more Georgia judges to access case materials on screens.

What Does This Mean for Legal Writers?

Georgia legal blogger Scott Key recognized this question back in 2010, as he phrased it in his headline: "Should Appeals Lawyers Write for the Screen

or Page?"[5] It may be tempting to reject the question as a false choice. "In some ways, digital reading is just like paper reading: We are reading the same alphabet, and our eyes are moving from left to right as we read the words."[6]

However, reading on a screen can be more difficult because the device provides no physical cues such as pages to turn. Reading on screen may also be more distracting because of links within the text as well as other apps and activities enabled by the device itself.[7]

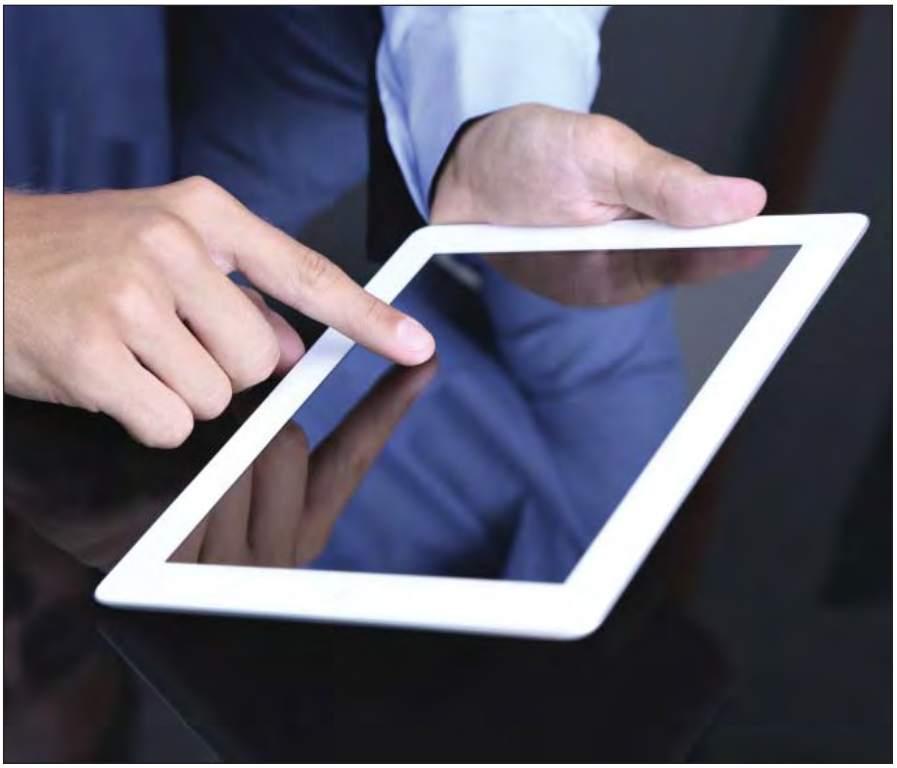
But reading on a tablet brings advantages as well. Most obviously, documents become paperless and therefore more easily portable. Judges Stephen Dillard and Carla McMillian of the Court of Appeals of Georgia both mentioned portability as a key advantage of e-filed documents. Judge Dillard usually uses his iPad to read briefs before oral arguments. Judge McMillian uses her iPad to access briefs when away from chambers. (She mentioned that other judges use types of tablets other than iPads.)

The other advantage is the opportunity to enlarge, annotate, bookmark and otherwise interact with the document on screen. Searchable PDFs allow the judge to search the text for a particular word, phrase, citation or anything else. Judge Dillard uses an app called PDF Expert to do all of these things. Similar apps proliferate including Goodreader, iAnnotate, Adobe Reader and others.

The bottom line is that more courts will use e-filing and more judges will have the opportunity to read briefs on screens. Thus writers should try to seize the advantages and minimize the potential disadvantages. The rest of the article focuses on Georgia legal writers' decisions about the text, including headings.

Follow the Applicable Court Rules

"The No. 1 priority is that lawyers absolutely need to follow the rules," advised Judge Dillard.



This means adhering to mandatory practices that are ideal for the printed page, such as double spacing. But Georgia court rules increasingly allow for some screen-friendly practices. The Supreme Court of Georgia and Court of Appeals allow single spacing of block-quotes and footnotes.[8] Federal rules allow single-spaced headings as well.

Court rules generally require e-filed briefs to take the form of a searchable PDF. Thus attorneys should not print, sign and scan hard copies to create an image-based PDF. Directly converting a word-processing document to a PDF using the court's applicable rules for electronic signatures will better comply with court rules and create a more useful document.

Lawyers should learn the best way to convert documents to PDFs for e-filing, Judge McMillian advised. Court of Appeals of Georgia Director of Technical Services John Ruggeri seconded this advice. And, according to Judge Dillard, "If lawyers are unsure about the rules, they should call the clerk. This is one mistake a lot of advocates make, in not calling the clerk."

Observe Traditions from Paper-Based Writing

Lawyers often don't know how a particular judge prefers to read. Some will continue to print and read even when the most powerful screen-based tools are available. And some, such as Judges Dillard and McMillian, use a "hybrid" of screen reading and hard-copy reading depending on the situation.

The good news is that much advice about legal writing generally applies equally if not even more so when writing to a potential screen reader. For example, writers should give a quick persuasive roadmap of each point before providing detailed support.[9] Whether the judge is reading on a tablet or on paper, it is just common courtesy for legal writers to summarize their key points concisely before supporting them with detail.

Using legal terms consistently is critical for effective legal writing. Writers should avoid "elegant variation," which means using different words to mean the same thing in the hope of sounding more elegant or interesting.[10] Elegant variation is even more problem-

atic in digital writing because PDF searching allows a judge to type in a term and find every instance where it appears—but only if it appears exactly the same as the search term.[11] Judge McMillian recalled instances of using the search function in just this way, retrieving all mentions of a key term or particular case name.

Thus writers should also continue to observe the useful formatting conventions of paper-based writing. Legal writers should know to avoid "widows and orphans," a phrase referring to headings stranded at the bottom of page, away from the accompanying text on the next page as well as awkwardly stranded half-lines at the top of a page. Widows and orphans may persist as a problem for digital readers as well: any judge who reads on an app that arranges pages horizontally from left to right (rather than vertically) will still see the bottom of the page as an important spatial cue.[12]

Structure and Format Headings to Emphasize Them

Headings are critically important in briefs regardless of medium. Headings are "essential markers" that "reduc[e] the mental workload required of the reader."[13] These markers are absolutely crucial for screen readers. They should continue to be structured with care to emphasize the logic and persuasive theme of the argument.

Writers may be tempted to think more is better with headings, especially for judges who read on screens. However, Judge McMillian warned that too many headings break up the flow of a brief. "It's hard to get into the flow of the argument when you're interrupted by another heading," she said. Judge McMillian suggested that writers focus at least as much on writing effective transitions. She also reinforced the value of using numerical signposts in the text ("First, . . .", "second, . . ." and "third, . . .").

Once a writer has settled on logical, persuasive headings, those headings should be formatted for visual impact within the document such as through bold type. If possible under the court rules, they should be single-spaced. Particularly for briefs that may be read on a tablet, writers should align headings to the left and never center them.[14] Left-aligned headings help the reader skim the text more efficiently than centered headings do.

It may be tempting to resort to older brief-writing conventions such as ALL CAPS or underlining or "Initial Caps for Most Words in the Headings Except Articles and Prepositions." These conventions are not viewed as the most modern approach to typographic design, either for print or screen, because they impair readability.[15]

Federal Rule of Appellate Procedure 32(a)(5)(A) allows headings to be set in a sans serif font such as **Arial (shown here)** or **Helvetica (shown here)**. "Mixing fonts" may seem unconventional, but sans serif fonts are widespread in web design. Any judge who surfs the web would have read web material in a sans serif font, likely much smaller than 14 point.

Choose Modern Typography

Parallel with the e-filing movement, court rules have been moving away from ancient typography. Courier fonts have certain advocates but make briefs look like they were produced on a "last-century Smith Corona," as Linda Berger wrote in "Document Design for Lawyers: The End of the Typewriter Era," published here in February 2011.[16] Our brothers and sisters at the bar in Alabama are among the last in the country to be required to use Courier.[17]

Thus, where the rules permit, writers should choose a font that is attractive both in print and on screen. In the Supreme Court of Georgia and Court of Appeals of Georgia, lawyers have two choices: Courier or Times New Roman.[18] Judge McMillian has spoken publicly on her preference for Times New Roman, and sees it almost exclusively in the Court of Appeals now, even in government briefs. "Everyone uses Times New Roman," she said. Judge Dillard noted that the Court of Appeals' Rules Committee may expand the list of acceptable fonts in a future rule change.

In the Northern District of Georgia, writers may choose from a list of several acceptable fonts for electronic documents.[19] In the 11th Circuit, briefs must be formatted in a "plain roman font" of 14 point or larger, which opens the door to Times New Roman and a number of roman equivalents such as New Century Schoolbook or Garamond.[20]

Conclusion

Writing thoughtfully, thoroughly and empathetically for the judicial reader is the essential rule of thumb. Writers can achieve this goal in part by following court rules and anticipating both types of readers (print and screen). They should also use effective headings, summarize points clearly, use terms consistently and select screen-friendly typography. Writing with the needs of the judicial reader in mind will lead to more effective briefs regardless of which judges are assigned to the case and what technology they may bring—or not bring—to the process. GBJ

Part two of this series will examine additional issues with legal writing to judges on tablets, with a focus on the use of images and hyperlinks.

Jennifer Murphy Romig teaches legal writing at Emory Law School. She would like to thank Elizabeth Christian for research assistance. Also she is grateful to Judges Dillard, McMillian and Emerson for

taking time to speak with her and be quoted in this article.

Endnotes

1. *In re Electronic Case Filing Standing Order No. 04-01 and Administrative Procedures* (June 1, 20014), http://www.gand.uscourts.gov/pdf/NDGARulesAppH_Updated.pdf
2. Order of the Georgia Supreme Court Order (June 12, 2013) available at http://www.gasupreme.us/rules/amended_rules/ORDER_Rule13_15_27_MANDATORY_FINAL.wpd.pdf; Georgia Court of Appeals Rule 46, effective January 1, 2015, available at http://www.gaappeals.us/announce2.php?title=Electronic%20Filing%20of%20Documents%20effective%20January%201,%202015.
3. Judicial Council of Georgia, Statewide Minimum Standards for E-filing (September 25, 2014), https://georgiacourts.gov/files/RFI%20Statewide/Statewide%20Minimum%20Standards%20for%20E-filing%209.25.2014.pdf
4. National Center for State Courts, Joint Technology Committee, *Making the Case for Judicial Tools* 8 http://www.ncsc.org/~/media/Files/PDF/About%20Us/Committees/JTC/Judicial%20Tools%2010.ashx. The Administrative Office of the Courts of Georgia discussed this report and other technology-related issues at its December 2014 meeting as noted in the meeting minutes available at http://w2.georgiacourts.gov/journal/index.php/component/content/article/58-january-2015/310-report-from-the-director.
5. Scott Key, *Should Appeals Lawyers Write for the Screen or the Page?*, Georgia Criminal Appellate Law Blog (December 31, 2010), http://www.georgiacriminalappellatelawblog.com/writing/should-appeals-lawyers-write-for-the-screen-or-the-page/.
6. Mary Beth Beazley, *Writing (and Reading) Appellate Briefs in the Digital Age*, 15 J. App. Prac. & Process 47 (2014). Professor Beazley's article is just one of many recent articles and blog posts exploring the implications of proliferating digital reading for judges and lawyers. *See, e.g.*, Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-first Century*, Legal Communication & Rhetoric: J. ALWD (forthcoming 2015) ("[J]Judges from the Second, Third, Fifth and Ninth Circuit Courts of Appeals report that they primarily use iPads for reading briefs.").
7. *Id.* at 52.
8. Georgia Supreme Court Rule 16; Georgia Court of Appeals Rule 1(c).
9. See Beazley, *supra* note 6, at 66.
10. Richard Wydick, Plain English for Lawyers 69 (5th ed. 2005).
11. *See* Beazley, supra note 6 at 62.
12. According to the author's unscientific experiment with her iPad, GoodReader is one popular app that shows PDFs in a left-to-right fashion. The iPad's own PDF viewing capabilities (such as opening a PDF out of the standard Mail app) shows PDF pages in a vertical scroll, as does the app iAnnotate.
13. Linda Berger, *Document Design for Lawyers: The End of the Typewriter Era*, 16 Ga. Bar. J. 62, 64 (Feb. 2011).
14. Wayne Scheiss, *Writing for Screen Readers*, Legible: A Blog from Legalwriting.net by Wayne Scheiss (December 27, 2012), http://sites.utexas.edu/legalwriting/2012/12/27/writing-for-screen-readers/.
15. Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 Leg. Communc'n & Rhetoric: J. ALWD 108, 118 (2004).
16. Berger, *supra* note 13, at 64.
17. John Ruch, *Modern Typefaces v. The Massachusetts Court System*, Boston Globe (November 2, 2014), http://www.bostonglobe.com/ideas/2014/11/01/modern-typefaces-massachusetts-court-system/PEx8IKSWOINdAUnf5fv1OJ/story.html.
18. Georgia Supreme Court Rule 16.
19. Times New Roman (at least 14 point); Courier New (at least 12 point); Century Schoolbook (at least 13 point); or Book Antiqua (at least 13 point).
20. Matthew Butterick, *Typography for Lawyers: Essential Tools for Polished & Persuasive Documents* (2010).

Hundreds Brave the Weather to Salute Legal Community Servants

by Avarita L. Hanson

For the 16th year, the State Bar of Georgia joined forces with the Chief Justice's Commission on Professionalism (the Commission) to honor judges and lawyers for service to their communities with the Justice Robert Benham Awards for Community Service. On a cold Feb. 17, more than 200 well-wishers ventured out in the wintry weather to come to the Bar Center in Atlanta to salute our community servants. Spotted in the crowd of notables were baseball legend and community leader Hank Aaron, U.S. District Court Judge Steve Jones, Court of Appeals Chief Judge Herbert Phipps and former U.S. Senator and 2013 Lifetime Achievement Award recipient David Gambrell.

The evening began with a welcome from Chief Justice Hugh P. Thompson and a Call to Professionalism by State Bar President Patrise M. Perkins-Hooker. WXIA-TV Business Editor and Help Desk Manager William J. "Bill" Liss introduced Justice Benham through a mock interview where Justice Benham shared stories relating his life experiences, which for him shaped the meaning of and credo for community service.

Photos by Don Morgan, Don Morgan Photography and Video

State Bar of Georgia President Patrise M. Perkins-Hooker welcomes attendees to the Justice Robert Benham Awards for Community Service.

The Justice Robert Benham Awards for Community Service are given each year to focus attention on the professionalism ideals of community and public service. These awards recognize the commitment of Georgia lawyers to volunteerism, encourage all lawyers to become involved in community service, improve the quality of lawyers' lives through the satisfaction they derive from helping others and raise the public image of lawyers.

Lifetime Achievement Award

For the first time, there were three recipients of the Lifetime Achievement Award, the highest award for community service given by the State Bar and the Commission.

John S. Lewis, attorney, Cartersville, has long been involved in civic and public organizations promoting redevelopment, history, art and other causes. Most notably, he has made Cartersville one of the leading small towns in America. Now semi-retired from his law practice, he is not finished contributing to his community. Organizations benefitting his engagement include the Lions Club, Bartow County Heart Fund, Pumphouse Players, Chamber of Commerce and the Bartow County Historical Society.

Rep. Mary Margaret Oliver, attorney, Decatur, has been a relentless champion for the under-served, minorities, women and children for more than 40 years. She was one of the first women lawyers to represent indigent clients in South Georgia. From there, she saw the need to advocate for women and children through public service in the Georgia Legislature and her private law practice. She supplemented her work through educating law students at Emory's Barton Clinic which she founded, church activities and supporting legal aid programs. She remains actively engaged with many community organizations, including All Saints Episcopal Church, BOND Community Credit Union, Callanwold, Georgia Legal Services Program, Goals for DeKalb, Leadership Atlanta, Prevent Child Abuse Georgia, Senior Citizens Services Corporation, CHARLEE Homes and the Decatur Rotary Club.

Allan J. Tanenbaum, of counsel, Taylor English Duma, LLP, Atlanta, is well-known for his leadership and work with bar associations at the national, state and local levels. Over the course of his 43 years at the Bar, Tanenbaum has also dedicated much of his time, talents, treasure and leadership to significant community, civic and social service organizations. He has been particularly dedicated to organizations that enable and uplift underprivileged children, indigents and minorities to lead meaningful, successful and productive lives. He has advanced indigent Georgians through the Georgia Legal Services Program and others through the American Bar Association Foundation for Justice and Education, the Atlanta Bar Foundation, the Hank Aaron Chasing the Dream Foundation, the Truancy Intervention Project, Camp Kudzu, the Kids in Need Foundation and the Children's Museum of Atlanta.

(Left to right) Lifetime Achievement Award recipient Allan J. Tanenbaum, Justice Robert Benham, community leader and baseball legend Hank Aaron and Chief Justice Hugh P. Thompson.

Community Service Awards

Rep. Christian A. Coomer, Christian A. Coomer, Attorney at Law, LLC; major, Air Force Reserve; and judge advocate general, National Guard, Cartersville, serves veterans, his church and many local civic organizations in Bartow County. His community service includes service to the Cartersville/Bartow County Chamber of Commerce, Civitans Club, Exchange Club, Advance Adairsville, Georgia Veterans Association and the Good Neighbor Shelter. A member of the Adairsville Church of God, he serves as a director of the Church of God Benefits Board. A member of the Georgia House of Representatives since 2011, Coomer serves as the Senior Administrative Floor Leader for Gov. Nathan Deal and on the Retirement, Judiciary Non-Civil, Banks and Banking, and Juvenile Justice committees. He also serves on the Joint Fiscal Affairs Subcommittee, Legislative Oversight Committee for the Public Defender Standards Council and chairs the Study Committee to revise the Georgia Code of Military Justice.

Christopher K. Middleton, public defender, Eastern Judicial Circuit Public Defender's Office, Savannah, gives back to his community through youth, civic, bar association and fraternal activities. He positively touches lives of those he serves professionally and in the community through his work with All Walks of Life, Inc., Blessings in a Bag, Inc., Chatham-Savannah Citizens Advocacy Association, Alpha Gamma Chapter of the Omega Psi Phi Fraternity, Inc., 100 Black of Savannah, Port City Bar Association and the Citizens Advisory Board of the Metropolitan Planning Commission.

Vannessa I. Hickey-Gales, attorney, adjunct professor, Brown Mackie College, Atlanta, has been

Honorees, special guests and emcees. *(Front row, left to right)* Nora L. Polk, Vannessa I. Hickey-Gales, Nicki Noel Vaughan, Chief Justice Hugh P. Thompson, Justice Robert Benham, Avarita L. Hanson and Nancy Terrill. *(Back row, left to right)* Allan J. Tanenbaum, Hon. Lawton E. Stephens, John S. Lewis, Philip E. Holladay, Lt. Col. J. Randall Hicks, Rep. Christian A. Coomer, Rep. Mary Margaret Oliver, Ernest L. Greer and Christopher K. Middleton.

committed to public and community service throughout her career. She has created innovative solutions to recidivism, forged community relationships to leverage resources to serve the underserved and has uplifted women and children in her native Atlanta community. Hickey-Gales was a founding member of the Georgia Association of Black Women Attorneys, and served on the Fulton County Family Violence Task Force, Family Court Task Force, Speakers Bureau of the Georgia Indigent Defense Council, mentor with YES (Atlanta Youth Experiencing Success) and the Nu Lamda Chapter of Alpha Kappa Alpha Sorority, Inc. She serves on the board of the Restorative Center Foundation, the organization she founded to transform the justice system by supporting interventions that reduce recidivism, improve pro-social living and bring the community and courts together to focus on repairing harm and rehabilitating offenders.

Ernest LaMont Greer, vice president and Atlanta managing shareholder, Greenberg Traurig LLP, is a leader of many Georgia and Atlanta civic, social service, historical and fraternal organizations, including: the Woodruff Arts Center Board of Trustees, Center for Civil & Human Rights Board, Buckhead Coalition, Sigma Pi Phi Fraternity (Kappa Boule), National Association of Guardsmen, Alpha Kappa Psi Fraternity, Inc., and Rotary Club of Atlanta. He is the first attorney to serve as president of the Georgia Chamber of Commerce, and has lead other organizations that serve Georgia's underserved and underprivileged communities including the 100 Black Men of Atlanta, Trinity School Parents Association, Boys & Girls Club of Metro Atlanta Board, Emory University Board of Visitors, Atlanta Historical Society Board of Trustees and co-chaired fundraisers for Families First and the American Jewish Committee's National Human Relations Dinner.

Lt. Col. John Randall Hicks, attorney, J. Randall Hicks, P.C., Valdosta; judge advocate general, Georgia Air National Guard, Savannah, gives countless hours in service to veterans, the Boy Scouts and other community organizations including the Easter Seals Board, Valdosta Chamber of Commerce (formerly serving on its Military Affairs Committee) and the Red Carpet Committee that welcomes new members to the Moody Air Force Base and the American Legion. As an attorney, Hicks represents many service members pro bono or at a reduced rate and is a resource to other local attorneys in cases involving military matters. During the last 10 years, he has helped hundreds of members of the Georgia Air National Guard for the 165th Airlift Wing in Savannah with their legal needs prior to deployment.

Philip E. Holladay Jr., partner, King & Spalding LLP, Atlanta, is a long-time supporter and leader of the Georgia Justice Project, serving as its board president and chair. On the civil side, Holladay served as president and on the board of Atlanta Legal Aid Society, Inc., and now chairs its new building capital campaign. He has devoted more than 150 pro bono hours representing low-income tenants in Fulton county eviction proceedings, given more than 150 pro bono hours representing a Somali man through the Georgia Asylum & Immigration Network and serves on the Georgia State University College of Law Board of Visitors.

Nora L. Polk, attorney, Ashby & Polk; associate magistrate judge,

DeKalb County Magistrate Court, Decatur, advocates for the rights of low-income citizens, women and children in her DeKalb County community through church, local bar associations, and organizations serving women and children. She is a board member of the Georgia Association of Black Women Attorneys (GABWA) Foundation and executive director of GABWA's Wills Project, as well as a founding member of the State Bar of Georgia's YLD Leadership Academy. She is also a member of the 2013 Class of Leadership DeKalb, Decatur Alumnae Chapter of Delta Sigma Theta Sorority and serves on its Social Action Committee, and is first vice president of the Stone Mountain Chapter of Jack & Jill of America, Inc. Polk is a member and leader of the Wesley Chapel United Methodist Church and the Nominating Committee of The Living Room, a nonprofit assisting people living with HIV/AIDS after serving on its board for six years.

Hon. Lawton E. Stephens, chief judge, Superior Court, Western Judicial Circuit, Athens, has contributed considerably to the Athens community as a public official serving in the Georgia Legislature, his church, the Northeast Council of the Boy Scouts of America, and other civic and educational organizations. Stephens is an active member and Sunday school teacher who has served as a deacon and elder in the First Presbyterian Church of Athens. Stephens represented Clarke County in the Georgia Legislature as State Representative for the 68th House District from 1969-74. He currently represents the Western Circuit on the State Bar Board of Governors and serves on the Advisory Committee on Legislation and Bench and Bar Committee. He is member of the Gridiron Society, Omicron Delta Honorary Leadership Organization and past president of the Oconee County Rotary Club. He also serves on the boards of the Athens Technical College and the Frances Wood Wilson Foundation.

Nancy Terrill, attorney, Macon, has contributed much time and leadership to public service, voting rights and ensuring access to justice for needy Georgians. Now a member of the Democratic Executive Committee of Bibb County, vice-president of the Democratic Women of Bibb County and the League of Women Voters of Bibb County, she started her civic involvement in 1970 as a representative of the state of Virginia at the National Conference on Juvenile Delinquency in Chicago and a panel participant at the Republican Governors Conference in Virginia. She is former member of the board of directors of Kids Voting Georgia, Inc., and Policy Council of the Macon-Bibb County Headstart. She was president and co-founder of the Women's Political Organization of Macon, a member of the Mayor's Committee on Annexation and a Rolling Reader at Tinsley School. Deeply committed to access to justice, since 2000, Terrill has served on the board of the Georgia Legal Services Program and leads its Macon fundraising campaign.

Nicki Noel Vaughan, chief assistant public defender, Northeastern Circuit, Gainesville, has devoted her professional and personal time to improving lives of juveniles, indigents and families. Notably, Vaughan is credited for founding two major organizations serving troubled children: Chris Kids, Inc. (formerly Georgia's Menninger Group Homes/CHARLEE), followed by what is now the Georgia Court-Appointed Special Advocates Program (CASA), which trains community volunteers to advocate for children in Juvenile Court proceedings for abused and neglected children. She is currently a lifetime member of the CASA board and serves on the boards of the Boys & Girls Club of Gainesville-Hall County, Gainesville Adolescent Project, Georgia Mountains Food Bank and Georgia Legal Services Program.

Acknowledgments

Many thanks to the Benham Awards Selection Committee: Janet G. Watts, chair; Lisa E. Chang; Mawuli Davis; Elizabeth L. Fite; Laverne Lewis Gaskins; Michael Hobbs Jr.; W. Seaborn Jones; Chung Lee; William "Bill" Liss; and Brenda C. Youmas. We are thankful the support from our Young Lawyers Division, Sharri Edenfield, president, and the ethics and professionalism committee volunteers: Shiriki Cavitt, Courtney Dean, Derek Krebs and Kevin Patrick; and our community volunteers: Bre'Anna Brown, Tene Davis, Abi Oyengun, Kimberly Walker and Faith Warren.

We cannot present this special program without the work of Commission and Bar staff. Thank you to Assistant Director Terie Latala and Administrative Assistant Nneka Harris-Daniel. Special thanks to State Bar staff Joyce Javis, Rudy Ross and Mark Brayfield. We also extend appreciation to Don Morgan, Don Morgan Photography; Vince "the Voice" Bailey, videographer, Vince Bailey Productions; and Eric Thomas, entertainer, Elevate the Quest.

The next time you see a Georgia lawyer working hard in your community, please say "thank you." Then, consider nominating him or her for a Community Service Award. Watch for the announcement in the August *Georgia Bar Journal*. Contact Nneka Harris-Daniel for more information at nneka@cjcpga.org or 404-225-5040. Our communities, Georgia and our country are all better for what our volunteer attorneys contribute and do.

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

In Memoriam

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

James H. Bradford
Roswell, Ga.
Woodrow Wilson College of Law (1979)
Admitted 1979
Died December 2014

William F. Bryant
Suwanee, Ga.
University of Georgia School of Law (1975)
Admitted 1975
Died March 2015

John W. Childers
Woodstock, Ga.
John Marshall Law School (1983)
Admitted 1983
Died March 2015

Ginny Yung-Ai Chung
Potomac, Md.
Emory University School of Law (1996)
Admitted 1997
Died November 2014

Suellen Fleming
Carrollton, Ga.
University of Missouri School of Law (1988)
Admitted 1989
Died December 2014

Whitfield R. Forrester
Cordele, Ga.
University of Georgia School of Law (1948)
Admitted 1948
Died January 2015

David W. Gunn
Doraville, Ga.
Woodrow Wilson College of Law (1974)
Admitted 1974
Died January 2015

Eden Sara Hersh
Alpharetta, Ga.
Georgia State University College of Law (1990)
Admitted 1991
Died March 2014

Wensley Hobby
Reidsville, Ga.
Cumberland School of Law at Samford University (1961)
Admitted 1961
Died January 2015

Sheryl L. Hudson
Augusta, Ga.
University of Georgia School of Law (1985)
Admitted 1985
Died August 2014

B. Michele Kaufman
East Boothbay, Maine
University of Houston Law Center (1976)
Admitted 1978
Died September 2014

Robert L. Kraselsky
Panama City, Fla.
University of Georgia School of Law (1970)
Admitted 1970
Died March 2014

M. Alvin Levy
Atlanta, Ga.
Emory University School of Law (1952)
Admitted 1951
Died February 2015

Jerry L. Lifsey
Chatsworth, Ga.
Mercer University Walter F. George School of Law (1971)
Admitted 1972
Died December 2014

H. Ed Martin Jr.
Nevada City, Calif.
John Marshall Law School (1975)
Admitted 1975
Died January 2015

Walter L. McVey
Olathe, Kan.
University of Kansas School of Law (1948)
Admitted 1965
Died September 2014

David Alan Mobley
Atlanta, Ga.
University of Alabama School of Law (2002)
Admitted 2004
Died January 2015

Douglas Merlin Nelson
Augusta, Ga.
John Marshall Law School (1995)
Admitted 1996
Died October 2014

Eugene G. Partain
Highlands, N.C.
Duke University School of Law (1958)
Admitted 1961
Died March 2015

William B. Paul Jr.
Atlanta, Ga.
Emory University School of Law (1948)
Admitted 1949
Died January 2015

James B. Pilcher
Atlanta, Ga.
Emory University School of Law (1955)
Admitted 1955
Died February 2015

Robert Daniel Pope
Acworth, Ga.
John Marshall Law School (1980)
Admitted 1981
Died December 2014

Michelle Rena Reid
Gaithersburg, Md.
Howard University School of Law (1999)
Admitted 2000
Died June 2014

Carson B. Shafer
Powder Springs, Ga.
Atlanta Law School (1949)
Admitted 1949
Died February 2015

Mary L. Skene
Tallahassee, Fla.
Mercer University Walter F. George School of Law (1977)
Admitted 1978
Died March 2015

Frank E. Specht
Atlanta, Ga.
University of Virginia School of Law (1957)
Admitted 1958
Died February 2015

Guerry R. Thornton
Greenville, S.C.
Emory University School of Law (1949)
Admitted 1950
Died September 2014

Daniel Upton White
Athens, Ga.
University of Cincinnati College of Law (1984)
Admitted 1989
Died March 2015

Daniel Upton White

by Steve Harper

On March 5, 2015, Georgia's legal community lost Daniel Upton White, and the Institute of Continung Legal Education in Georgia lost a senior partner and dear colleague.

Dan was born and raised in Louisville, Ky. He received a Bachelor of Arts in English from the University of Louisville and a Master of Arts in English from Cornell University. Dan earned a Ph.D. in English from the University of Kentucky. He was an English professor at Eastern Kentucky University before attending the University of Cincinnati College of Law, where he was editor-in-chief of the *Law Review*. Dan practiced law in Cincinnati and Athens before joining ICLE in 1997. He was married to Rebecca Hanner White, who served as dean of the University of Georgia School of Law for 11 years until she returned to teaching in 2015. They have a son, Brendan, and a daughter, Maren.

As the director of production, Dan was responsible for ICLE's entire editing and publishing operation. In addition to the production of almost 200 seminar and institute books, Dan charted the course for the expansion of ICLE's publishing efforts. Under his leadership, ICLE now offers leading reference books, including a treatise, a trilogy of desk books and the first editions of many new "How-To" manuals for Georgia attorneys. But Dan's primary focus was working closely with the great Georgia attorneys who chaired and spoke at the hundreds of seminars that he organized. The outpouring of sympathy at his passing and praise for his work by his friends at the State Bar of Georgia, many of Dan's chairs and speakers, the Athens and University of Georgia community and his colleagues at ICLE is a testament to his character and to the truly outstanding legacy and foundation for the future of high quality of continuing legal education in Georgia that he leaves to all.

Those with whom he worked closest have described Dan White as a completely devoted husband and father, a deep thinker, a great listener, a true gentleman, a class act, a humble man, a helper, a perfectionist, an unequalled editor, a voracious reader, a brave and uncomplaining man, a source of calm and many more signs of praise. Dan will be missed greatly by his ICLE colleagues, the many fine Georgia attorneys who served as seminar and institute chairs and speakers with whom he worked over the past 18 years and by all who knew him.

Fiscal Year 2014-2015
In Memoriam Contributions to the *Georgia Bar Foundation**

In Memory of Kirk M. McAlpin
Joseph Bankoff
Lola and Charlie Battle
Brandon Bridges
Robert and Maggie Brinson
Cushing, Morris, Armbruster & Montgomery
Richard and Claudia de Mayo
Jimmy and Fay Foy Franklin
Jon and Bonnie Harris Jr.
Kenneth and Susan Henson
Telside and Harry Howard
Paul Kilpatrick Jr.
Phyllis A. Kravitch
Frank Love, Jr.
Palmour (Pope) McIntire
James and Mary Pardo Jr.
Mr. and Mrs. Charles M. Shaffer Jr.
Strickland, Brockington, Lewis LLP

In Memory of Carl Sanders
Jimmy and Fay Foy Franklin

In Memory of Harvey Weitz
Edenfield, Cox, Bruce & Classens
Jimmy and Fay Foy Franklin

In Memory of Marvin H. Zion
Robert and Maggie Brinson

**Unless otherwise directed by the donor, In Memoriam Contributions will be used for the Fellows program of the Georgia Bar Foundation.*

April-July

APR 10
ICLE
Child Welfare Attorney Training
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
7 CLE

APR 17
ICLE
School and College Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE

APR 23
ICLE
Building Professional Presence
Atlanta, Ga.
See www.iclega.org for location
6 CLE

APR 23
ICLE
New Tax Laws
Atlanta, Savannah and Tifton, Ga.
See www.iclega.org for location
6 CLE

APR 24
ICLE
Construction Law for the General Practitioner
Atlanta, Ga.
See www.iclega.org for location
6 CLE

APR 24
ICLE
Discipline, Documentation and Discharge
Atlanta, Ga.
See www.iclega.org for location
6 CLE

MAY 1
ICLE
Dispute Resolution for Trial and Non-Trial Lawyers
Augusta, Ga.
See www.iclega.org for location
6 CLE

MAY 5
ICLE
Annual Sports Law Seminar
Atlanta, Ga.
See www.iclega.org for location
3 CLE

MAY 7
ICLE
Fulton Superior Court: Family Division Basics Boot Camp (TENTATIVE)
Atlanta, Ga.
See www.iclega.org for location
7 CLE

MAY 7-9
ICLE
37th Real Property Law Institute
Miramar Beach, Fla.
See www.iclega.org for location
12 CLE

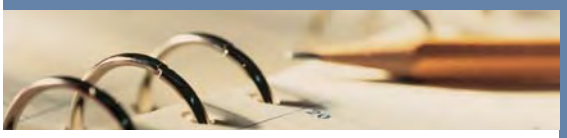
MAY 8
ICLE
Georgia DUI Update
Atlanta, Ga.
See www.iclega.org for location
6 CLE

MAY 12
ICLE
May Group Mentoring
Atlanta, Ga.
See www.iclega.org for location
No CLE

MAY 15
ICLE
Landlord and Tenant
Atlanta, Ga.
See www.iclega.org for location
6 CLE

MAY 21-23
ICLE
33rd Family Law Institute
Amelia Island, Fla.
See www.iclega.org for location
12 CLE

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



JUN 12
ICLE
Advocacy for the Ages
Atlanta, Ga.
See www.iclega.org for location
6 CLE

JUN 18-19
ICLE
State Bar of Georgia Annual Meeting
Stone Mountain, Ga.
See www.iclega.org for location
3 CLE

JUN 25-28
ICLE
Gary Christy Memorial Georgia Trial Skills Clinic
Athens, Ga.
See www.iclega.org for location
24 CLE

JUN 25-27
ICLE
Southeastern Admiralty Law Institute (SEALI)
Point Clear, Ala.
See www.iclega.org for location
10 CLE

JUN 29-30
ICLE
Selected Video Replays
Atlanta, Ga.
See www.iclega.org for location
6 CLE

JUL 9-11
ICLE
2015 Fiduciary Law Institute
St. Simons Island, Ga.
See www.iclega.org for location
12 CLE

JUL 17-18
ICLE
Solo Small Firm Institute
Atlanta, Ga.
See www.iclega.org for location
12 CLE

JUL 24-25
ICLE
Environmental Law Section Seminar
St. Simons Island, Ga.
See www.iclega.org for location
8 CLE

2015 STATE BAR OF GEORGIA

ANNUAL MEETING

CLE SCHEDULE

JUNE 18 - 21, 2015
Atlanta Evergreen Marriott • Stone Mountain, GA

Thursday, June 18

9 a.m. – 12 p.m.
Eureka Moments – Pro Bono Attorneys Tell All
3 CLE hours, including 1 professionalism credit*

9 a.m. – 12 p.m.
Trial Techniques and Tips
3 CLE hours, including 3 trial practice credits

1 – 5 p.m.
Next Step Institute
4 CLE hours, including 1 professionalism credit*

2 – 5 p.m.
Tools for Effectively Navigating the "New Normal"
3 CLE hours, including 1 ethics credit

2 – 5 p.m.
War Stories XV, Plus Georgia Evidence Update
3 CLE hours with 1 ethics credit, 1 professionalism credit* and 3 trial practice credits

Friday, June 19

2 - 4 p.m.
Ethics, Malpractice and Professionalism
2 CLE hours with 1 professionalism credit* and 1 ethics credit

2 – 5 p.m.
50th Anniversary of the Voting Rights Act of 1965
3 CLE hours

*(*Professionalism credit is self-reporting, using the optional self-report form)*

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

No earlier than 30 days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, *2014-2015 State Bar of Georgia Directory and Handbook,* p. H-7 (hereinafter referred to as "*Handbook*").

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia, and includes non-substantive, stylistic changes to provide consistency with the existing Bar Rules. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is reminded that he or she must do so in the manner provided by Rule 5-102, *Handbook*, p. H-7.

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

Jeff Davis
Executive Director
State Bar of Georgia

IN THE SUPREME COURT
STATE OF GEORGIA

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

MOTION TO AMEND 2015-1

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization of its Board of Governors at its regularly-called meeting held on January 10, 2015, and presents to this court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as originally set forth in an Order of this court dated December 6, 1963 (219 Ga. 873), and as amended by subsequent Orders, published at 2014-2015 State Bar of Georgia Directory and Handbook, pp. 1-H, et seq. The State Bar of Georgia respectfully moves that Rule 4-104, Rule 4-106(f)(2), Rule 4-110, Rule 4-111, Rule 4-204, Rule 4-204.1, Rule 4-208.3, Rule 4-213, Rule 4-217, Rule 4-219, Rule 4-221, Rule 4-227, Rule 4-403(c) and (d), Rule 12-107, Rule 1.6, Rule 3.5, Rule 5.4, Rule 7.3 and Rule 8.4(d) of the Georgia Rules of Professional Conduct be amended as set out herein below.

I.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-104. Mental Incapacity and Substance Abuse.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-104. Mental Incapacity and Substance Abuse. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

> Rule 4-104. Mental Incapacity and Substance Abuse.
> **…**
> (b) Upon a finding by either panel of the State Disciplinary Board that an attorney may be impaired or incapacitated to practice law due to mental incapacity or substance abuse, that panel may, in its sole discretion, make a confidential referral of the matter to the ~~Committee on Lawyer Impairment~~ **Lawyer Assistance Program** for the purposes of confrontation and referral of the attorney to treatment centers and peer support groups. Either panel may, in its discretion, defer disciplinary findings and proceedings based upon the impairment or incapacitation of an attorney

pending attempts by the ~~Committee on Lawyer Impairment~~ **Lawyer Assistance Program** to afford the attorney an opportunity to begin recovery. In such situations the **Program** shall report to the referring panel and Bar counsel concerning the attorney's progress toward recovery.

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

If the proposed amendments to the Rule are adopted by the court, the amended – Rule 4-104. Mental Incapacity and Substance Abuse. – would read as follows:

Rule 4-104. Mental Incapacity and Substance Abuse.

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

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

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

II.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-106(f)(2). Conviction of a Crime; Suspension and Disbarment.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-106(f)(2). Conviction of a Crime; Suspension and Disbarment. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

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

…

(f)

~~(1)~~ If the Supreme Court of Georgia orders the respondent suspended pending the appeal, upon the termination of the appeal the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended respondent should:

(~~i~~**1**) be disbarred under Rule 8.4, or

(~~ii~~**2**) be reinstated, or

(~~iii~~**3**) remain suspended pending retrial as a protection to the public, or

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

~~(2)~~ **The** ~~R~~reports of the Special Master shall be filed with the Review Panel **or the Supreme Court of Georgia** as provided hereafter in Bar Rule 4-217. ~~The Review Panel shall make its findings and recommendation as provided hereafter in Bar Rule 4-218.~~

…

If the proposed amendments to the Rule are adopted, the amended – Rule 4-106. Conviction of a Crime; Suspension and Disbarment. – would read as follows:

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

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

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

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

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

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

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

(1) be disbarred under Rule 8.4; or

(2) be reinstated; or

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

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

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

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

III.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-110. Definitions.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-110. Definitions. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-110. Definitions.

...

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

If the proposed amendment to the Rule is adopted, the amended – Rule 4-110. Definitions – would read as follow:

Rule 4-110. Definitions.

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

(b) Confidential proceedings: Any proceeding under these rules which occurs prior to a filing in the Supreme Court of Georgia.

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

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

(e) Probable cause: A finding by the Investigative Panel that there is sufficient evidence to believe

that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the Bar Rules.

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

(g) He, him or his: Generic pronouns including both male and female.

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

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

IV.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-111. Audit for Cause.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-111. Audit for Cause. – be amended by deleting the struck-through portions as set out below:

Rule 4-111. Audit for Cause.

Upon receipt of sufficient evidence that a lawyer who practices law in this State poses a threat of harm to his clients or the public, the State Disciplinary Board may conduct an Audit for Cause with the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia. Before approval can be granted, the lawyer shall be given notice that approval is being sought and be given an opportunity to appear and be heard. The sufficiency of the notice and opportunity to be heard shall be left to the sole discretion of the persons giving the approval. The State Disciplinary Board must inform the person being audited that the audit is an Audit for Cause. ~~The failure of a lawyer to submit to an Audit for Cause shall be grounds for discipline pursuant to Standard 65.5~~.

If the proposed amendment to the Rule is adopted, the amended – Rule 4-111. Audit for Cause. – would read as follows:

Rule 4-111. Audit for Cause.

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

V.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2, Disciplinary Proceedings; Rule 4-204. Preliminary Investigation by Investigative Panel - Generally.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-204. Preliminary Investigation by Investigative Panel - Generally. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

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

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee of the Investigative Panel for investigation and disposition in accordance with its rules. The Investigative Panel shall appoint one of its members to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist in the investigation. If the investigation of the Panel establishes probable cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these rules, it shall:

(1) issue a letter of admonition;

(2) issue an Investigative Panel Reprimand;

(3) issue a Notice of Discipline; or

(4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and

file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided.

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

...

If the proposed amendment to the Rule is adopted, the amended – Rule 4-204. Preliminary Investigation by Investigative Panel – Generally would read as follows:

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

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee of the Investigative Panel for investigation and disposition in accordance with its rules. The Investigative Panel shall appoint one of its members to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist in the investigation. If the investigation of the Panel establishes probable cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these rules, it shall:

(1) issue a letter of admonition;

(2) issue an Investigative Panel Reprimand;

(3) issue a Notice of Discipline; or

(4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided.

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

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

VI.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-204.1. Notice of Investigation.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-204.1. Notice of Investigation. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-204.1. Notice of Investigation.

...

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

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

(2) a copy of the grievance;

(3) a list of the ~~Standards of Conduct~~ **Rules** which appear to have been violated;

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

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

...

If the proposed amendment to the Rule is adopted, the amended – Rule 4-204.1. Notice of Investigation. – would read as follows:

Rule 4-204.1. Notice of Investigation.

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

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

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

(2) a copy of the grievance;

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

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

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

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

VII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-208.3. Rejection of Notice of Discipline.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-208.3. Rejection of Notice of Discipline. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-208.3. Rejection of Notice of Discipline.

…

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

…

If the proposed amendment to the Rule is adopted, the amended – Rule 4-208.3. Rejection of Notice of Discipline. – would read as follows:

Rule 4-208.3. Rejection of Notice of Discipline.

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

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

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

VIII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-213. Evidentiary Hearing.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-213. Evidentiary Hearing. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-213. Evidentiary Hearing.

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

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

If the proposed amendments to the Rule are adopted, the amended – Rule 4-213. Evidentiary Hearing. – would read as follows:

Rule 4-213. Evidentiary Hearing.

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

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

IX.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-217. Report of the Special Master to the Review Panel.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-217. Report of the Special Master to the Review Panel. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

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

…

(d) Upon receipt of the Special Master's report and recommendation, either party may request review by the Review Panel as provided in Rule 4-218. Such party shall file the request and exceptions with the Clerk of the State Disciplinary Board in accordance with Bar Rule 4-221(f) and serve them on the opposing party within 30 days after the Special Master's report is filed with the Clerk of the State Disciplinary Board. Upon receipt of a timely written request and exceptions, the Clerk of the State Disciplinary Board shall prepare and file the record and report with the Review Panel. The responding party shall have ~~ten (10) days~~ **30 days** after service of the exceptions within which to respond.

If the proposed amendments to the Rule are adopted, the amended – Rule 4-217. Report of the Special Master to the Review Panel. – would read as follows:

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

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

(1) findings of fact on the issues raised by the formal complaint; and

(2) conclusions of law on the issues raised by the pleadings of the parties; and

(3) a recommendation of discipline.

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

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

(d) Upon receipt of the Special Master's report and recommendation, either party may request review by the Review Panel as provided in Rule 4-218. Such party shall file the request and exceptions with the Clerk of the State Disciplinary Board

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

X.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-219. Judgments and Protective Orders.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-219. Judgments and Protective Orders. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-219. Judgments and Protective Orders.

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

...

If the proposed amendments to the Rule are adopted, the amended – Rule 4-219. Judgments and Protective Orders – would read as follows:

Rule 4-219. Judgments and Protective Orders.

(a) After either the Review Panel's report or the Special Master's report is filed with the Supreme Court of Georgia, the respondent and the State

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

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

(c)

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

(2) After a final judgment of disbarment or suspension under Part IV of these Rules, including a disbarment or suspension on a Notice of Discipline, the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not:

(i) have any contact with the clients of the office either in person, by telephone, or in writing; or

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

XI.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-221. Procedures.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-221. Procedures. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-221. Procedures.

...

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

If the proposed amendments to the Rule are adopted, the amended – Rule 4-221. Procedures – would read as follows:

Rule 4-221. Procedures.

(a) Oaths. Before entering upon his duties as herein provided each member of the State Disciplinary Board and each Special Master shall subscribe to an oath to be administered by any person authorized to administer oaths under the laws of this

State, such oath to be in writing and filed with the Executive Director of the State Bar of Georgia. The form of such oath shall be:

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

(b) Witnesses and Evidence; Contempt.

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

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

(i) disregard, in any manner whatever, of a subpoena issued pursuant to Rule 4-221(b) (1);

(ii) refusal to answer any pertinent or proper question of a Special Master or Board member; or

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

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

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

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

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

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

(c) Venue of Hearings.

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

(2) Where the respondent is a nonresident of the State of Georgia and the complaint arose in the State of Georgia, the hearing shall be held in the county where the complaint arose.

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

(d) Confidentiality of Investigations and Proceedings.

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

(2) After a proceeding under these rules is filed with the Supreme Court of Georgia, all eviden-

tiary and motions hearings shall be open to the public and all reports rendered shall be public documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) The Formal Advisory Opinion Board;

(ix) The Consumer Assistance Program;

(x) The General Counsel Overview Committee;

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

(xii) The Unlicensed Practice of Law Department.

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

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

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

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

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

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

(e) Burden of Proof; Evidence.

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

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

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

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

XII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-227. Petitions for Voluntary Discipline.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-227. Petitions for Voluntary Discipline – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-227. Petitions for Voluntary Discipline.

...

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

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

...

If the proposed amendments to the Rule are adopted, the amended – Rule 4-227. Petitions for Voluntary Discipline – would read as follows:

Rule 4-227. Petitions for Voluntary Discipline.

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

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

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

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

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

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

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

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

(i) the petition fails to contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these rules sufficient to authorize the imposition of discipline;

(ii) the petition fails to request appropriate discipline;

(iii) the petition fails to contain sufficient information concerning the admissions of fact and the admissions of conduct;

(iv) the record in the proceeding does not contain sufficient information upon which to base a decision to accept or reject.

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

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

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

XIII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 4 Advisory Opinions; Rule 4-403. Formal Advisory Opinions.

The Board of Governors of the State Bar of Georgia proposes that – Rule 4-403. Formal Advisory Opinions. – be amended by adding the language in bold underlined text as set out below:

Rule 4-403. Formal Advisory Opinions.

...

(c) When the Formal Advisory Opinion Board makes a preliminary determination that a Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal Advisory Opinion **either** in an official publication of the State Bar of Georgia **or on the State Bar of Georgia's website,** and solicit comments from the members of the State Bar of Georgia. Following a reasonable period of time for receipt of comments from the members of the State Bar of Georgia, the Formal Advisory Opinion Board shall then make a final determination to either file the Proposed Formal Advisory Opinion as drafted or modified, or reconsider its decision and decline to draft and file the Proposed Formal Advisory Opinion.

(d) After the Formal Advisory Opinion Board makes a final determination that the Proposed Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then be filed with the Supreme Court of Georgia and republished **either** in an official publication of the State Bar of Georgia **or on the State Bar of Georgia's website**. Unless the Supreme Court of Georgia grants review as provided hereinafter, the opinion shall be binding only on the State Bar of

Georgia and the person who requested the opinion, and not on the Supreme Court or Georgia, which shall treat the opinion as persuasive authority only. Within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the State Bar of Georgia **(if the opinion is published in an official publication of the State Bar of Georgia), or first appears on the State Bar of Georgia's website (if the opinion is published on the website)**, whichever is later, the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court of Georgia grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the State Bar of Georgia. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court of Georgia Rule 10, counting from the date of the order granting review. The final determination may be either by written opinion or by order of the Supreme Court of Georgia and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

...

If the proposed amendments to the Rule are adopted, the amended – Rule 4-403. Formal Advisory Opinions. – would read as follows:

Rule 4-403. Formal Advisory Opinions.

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

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

(c) When the Formal Advisory Opinion Board makes a preliminary determination that a Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal Advisory Opinion in an official publication of the State Bar of Georgia and solicit comments from the members of the State Bar of Georgia. Following a reasonable period of time for receipt of comments from the members of the State Bar of Georgia, the Formal Advisory Opinion Board shall then make a final determination to either file the Proposed Formal Advisory Opinion as drafted or modified, or reconsider its decision and decline to draft and file the Proposed Formal Advisory Opinion.

(d) After the Formal Advisory Opinion Board makes a final determination that the Proposed Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then be filed with the Supreme Court of Georgia and republished in an official publication of the State Bar of Georgia. Unless the Supreme Court of Georgia grants review as provided hereinafter, the opinion shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only. Within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the State Bar of Georgia, whichever is later, the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court of Georgia grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the State Bar of Georgia. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in the Rules of the Supreme Court of Georgia, Rule 10, counting from the date of the order granting review. The final determination may be either by written opinion or by order of the Supreme Court of Georgia and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

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

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

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

XIV.

Proposed Amendment to Part XII Consumer Assistance Program; Rule 12-107. Confidentiality of Proceedings.

The Board of Governors of the State Bar of Georgia proposes that – Rule 12-107. Confidentiality of Proceedings. – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 12-107. Confidentiality of Proceedings.

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

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

(1) Nothing in the rules shall prohibit truthful and accurate public statements of fact about a proceeding under Part XII of these rules, provided however, that in the event of such statement any other person involved in the proceeding may make truthful and accurate public statements of fact regarding the proceeding, including information otherwise confidential under the provisions of Rule 4-102(d), ~~Standard 28~~ **Rule 1.6**, as may be reasonably necessary to defend that person's reputation;

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

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

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

If the proposed amendments to the Rule are adopted, the amended – Rule 12-107. Confidentiality of Proceedings. – would read as follows:

Rule 12-107. Confidentiality of Proceedings.

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

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

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

(2) Willful and malicious false statements of fact made by any person connected with a

proceeding under Part XII of these rules may subject such person to rule for contempt by the Supreme Court of Georgia.

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

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

XV.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part One Client-Lawyer Relationship; Rule 1.6. Confidentiality of Information.

The Board of Governors of the State Bar of Georgia proposes that – Rule 1.6. Confidentiality of Information. – be amended by adding the language in bold underlined text as set out below:

Rule 1.6. Confidentiality of Information.

…

(b)

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

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

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

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

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

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

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

…

If the proposed amendments to the Rule are adopted, the amended – Rule 1.6. Confidentiality of Information. – would read as follows:

Rule 1.6. Confidentiality of Information.

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

(b)

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

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

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

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

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

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

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

(c) The lawyer may, where the law does not otherwise require, reveal information to which the duty of confidentiality does not apply under paragraph (b) without being subjected to disciplinary proceedings.

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

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

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

XVI.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part Three Advocate; Rule 3.5. Impartiality and Decorum of the Tribunal. and Comment [7] of Rule 3.5.

The Board of Governors of the State Bar of Georgia proposes that – Rule 3.5. Impartiality and Decorum of the Tribunal., and Comment [7] of Rule 3.5 – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 3.5. Impartiality and Decorum of the Tribunal.

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

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

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

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

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

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

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

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

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

Comment

...

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

...

If the proposed amendments to the Rule are adopted, the amended – Rule 3.5. Impartiality and Decorum of the Tribunal., and Comment [7] of Rule 3.5 – would read as follows:

Rule 3.5. Impartiality and Decorum of the Tribunal.

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

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

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

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

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

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

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

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

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

Comment

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

[2] If we are to maintain the integrity of the judicial process, it is imperative that an advocate's function be limited to the presentation of evidence and argument, to allow a cause to be decided according to law. The exertion of improper influence is detrimental to that process. Regardless of an advocate's innocent intention, actions which give the appearance of tampering with judicial impartiality are to be avoided. The activity proscribed by this rule should be observed by the advocate in such a careful manner that there is no appearance of impropriety.

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

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

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

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

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

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

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

XVII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part Five Law Firms and Associations; Rule 5.4. Professional Independence of a Lawyer.

The Board of Governors of the State Bar of Georgia proposes that – Rule 5.4. Professional Independence of a Lawyer. – be amended by adding the language in bold underlined text as set out below:

Rule 5.4. Professional Independence of a Lawyer.

…

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Notwithstanding the provisions of paragraph (d) above, but subject to (3) below, a lawyer may:

(1) Provide legal services to clients while working in association with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, including any such rules that permit non-lawyers to participate in the management of such firms, have equity ownership in such firms, or share in legal fees generated by such firms, and

(2) Share legal fees arising from such legal services with such other lawyers or law firms to the same extent as the sharing of legal fees is permitted under applicable Georgia Rules of Professional Conduct.

(3) The activities permitted under the preceding portion of this paragraph (e) are subject to the following:

(i) The association shall not compromise or interfere with the lawyer's independence of professional judgment, the client-lawyer relationship between the lawyer and the client, or the lawyer's compliance with these rules; and

(ii) Nothing in this paragraph (e) is intended to affect the lawyer's obligation to comply with other applicable rules of professional ethics, or to alter the forms in which a lawyer is permitted to practice.

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

If the proposed amendments to the Rule are adopted, the amended – Rule 5.4. Professional Independence of a Lawyer. – would read as follows:

Rule 5.4. Professional Independence of a Lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer or law firm who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer who undertakes to complete unfinished business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(5) a lawyer may pay a referral fee to a bar-operated non-profit lawyer referral service where such fee is calculated as a percentage of legal fees earned by the lawyer to whom the service has referred a matter pursuant to Rule 7.3. Direct Contact with Prospective Clients.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Notwithstanding the provisions of paragraph (d) above, but subject to (3) below, a lawyer may:

(1) Provide legal services to clients while working in association with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, including any such rules that permit non-lawyers to participate in the management of such firms, have equity ownership in such firms, or share in legal fees generated by such firms, and

(2) Share legal fees arising from such legal

services with such other lawyers or law firms to the same extent as the sharing of legal fees is permitted under applicable Georgia Rules of Professional Conduct.

(3) The activities permitted under the preceding portion of this paragraph (e) are subject to the following:

(i) The association shall not compromise or interfere with the lawyer's independence of professional judgment, the client-lawyer relationship between the lawyer and the client, or the lawyer's compliance with these rules; and

(ii) Nothing in this paragraph (e) is intended to affect the lawyer's obligation to comply with other applicable rules of professional ethics, or to alter the forms in which a lawyer is permitted to practice.

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

XVIII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part Seven Information About Legal Services; Rule 7.3. Direct Contact with Prospective Clients., and Comments 3, 7 and 8, of Rule 7.3.

The Board of Governors of the State Bar of Georgia proposes that – Rule 7.3. Direct Contact with Prospective Clients., and Comments 3, 7 and 8 of Rule 7.3 – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 7.3. Direct Contact with Prospective Clients.

…

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

(1) A lawyer may pay the usual and reasonable fees or dues charged by a ~~bona fide~~ lawyer referral **service, if the service:** ~~service operated by an organization authorized by law and qualified to do business in this state; provided, however, such organization has filed with the State Disciplinary Board, at least annually, a report showing its terms, its subscription charges, agreements with counsel, the number of lawyers participating, and the names and addresses of lawyers participating in the service;~~

(i) does not engage in conduct that would violate these rules if engaged in by a lawyer;

(ii) provides an explanation to the prospective client regarding how the lawyers are selected by the service to participate in the service; and

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

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

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

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

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

(iv) A lawyer who is a member of the qualified lawyer referral service must maintain in

force a policy of errors and omissions insurance in an amount no less than $100,000 per occurrence and $300,000 in the aggregate.

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

(4) ~~A lawyer may pay the usual and reasonable fees charged by a lay public relations or marketing organization provided the activities of such organization on behalf of the lawyer are otherwise in accordance with these Rules.~~

~~(5)~~ A lawyer may pay for a law practice in accordance with Rule 1.17~~: Sale of Law Practice~~.

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

(e) A lawyer shall not accept employment when the lawyer knows ~~or it is obvious~~ **or reasonably should know** that the person who seeks to employ the lawyer does so as a result of conduct by any person or organization **that would violate these Rules if engaged in by a lawyer.** ~~prohibited under Rules 7.3(c)(1), 7.3(c)(2) or 7.3(d): Direct Contact with Prospective Clients.~~

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

Comment

Direct Personal Contact

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

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

*Direct ~~Mail~~ **Written** Solicitation*

[3] Subject to the requirements of Rule 7.1~~: Communications Concerning a Lawyer's Services~~ and paragraphs (b) and (c) of this Rule 7.3~~: Direct Contact with Prospective Clients~~, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

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

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

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

Paying Others to Recommend a Lawyer

[7] A lawyer is allowed to pay for communications permitted by these rules, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an

organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal insurance organization may pay to advertise legal services provided under its auspices. ~~Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs, provided the programs are in compliance with the registration requirements of sub-paragraph (c)(1) or (c)(2)of this Rule 7.3: Direct Contact with Prospective Clients and the communications and practices of the organization are not deceptive or misleading.~~

~~[8] A lawyer may not indirectly engage in promotional activities through a lay public relations or marketing firm if such activities would be prohibited by these Rules if engaged in directly by the lawyer.~~

If the proposed amendments to the Rule are adopted, the amended Rule 7.3. Direct Contact With Prospective Clients - would read as follows:

Rule 7.3. Direct Contact With Prospective Clients.

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

(1) it has been made known to the lawyer that a person does not desire to receive communications from the lawyer;

(2) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;

(3) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication; or

(4) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

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

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

(1) A lawyer may pay the usual and reasonable fees or dues charged by a lawyer referral service, if the service:

(i) does not engage in conduct that would violate these rules if engaged in by a lawyer;

(ii) provides an explanation to the prospective client regarding how the lawyers are selected by the service to participate in the service; and

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

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

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

(ii) the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state

who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;

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

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

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

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

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

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

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

Comment

Direct Personal Contact

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

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

Written Solicitation

[3] Subject to the requirements of Rule 7.1 and paragraphs (b) and (c) of this Rule 7.3, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

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

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

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

Paying Others to Recommend a Lawyer

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

XIX.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4.102; Part Eight Maintaining the Integrity of the Profession; Rule 8.4. Misconduct.

The Board of Governors of the State Bar of Georgia proposes that – Rule 8.4. Misconduct – be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 8.4. Misconduct.

...

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

The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4(a)(2) through Rule 8.4(c) is disbarment.

If the proposed amendment to the Rule is adopted, the amended – Rule 8.4. Misconduct. – would read as follows:

Rule 8.4. Misconduct.

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

(1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) be convicted of a felony;

(3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;

(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

(5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;

(6)

(i) state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law;

(ii) state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law;

(iii) achieve results by means that violate the Georgia Rules of Professional Conduct or other law;

(7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio, the commission of such act

(b)

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

(i) a guilty plea;

(ii) a plea of nolo contendere;

(iii) a verdict of guilty; or

(iv) a verdict of guilty but mentally ill.

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

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

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

The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific rule violated. The maximum penalty for a violation of Rule 8.4(a)(2) through Rule 8.4(c) is disbarment.

SO MOVED, this _____ day of _____, 2015.

Counsel for the State Bar of Georgia
William D. NeSmith III
Deputy General Counsel
State Bar Number 535792

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

Proposed Amendments to Uniform Superior Court Rules 28 and 33, and Proposed New Rule 48

At its business meeting on Jan. 22, 2015, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 28 and 33, and proposed new Rule 48. A copy of the proposed amendments may be found at the Council's website at http://georgiasuperiorcourts.org.

Should you have any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, GA 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, July 6, 2015.

Property/Rentals/Office Space

Sandy Springs Commerce Building, 333 Sandy Springs Cir. NE, Atlanta, GA 30328. Contact Ron Winston—(w) 404-256-3871; (email) rnwlaw@gmail.com; Full service, high-quality tenants (including many small law practices), great location, well-maintained. Misc. small office suites available; Rental and term negotiable.

Office Space—Class A office space for one or two attorneys, window offices with two other lawyers in Park Central building, 2970 Clairmont Road, near I-85. Includes conference room, phone/internet, copy/fax/scan, secretarial space, $1,000 to $1,300 per month. Call Salu Kunnatha at 404-633-4200 or email: skk@kunnathalaw.com.

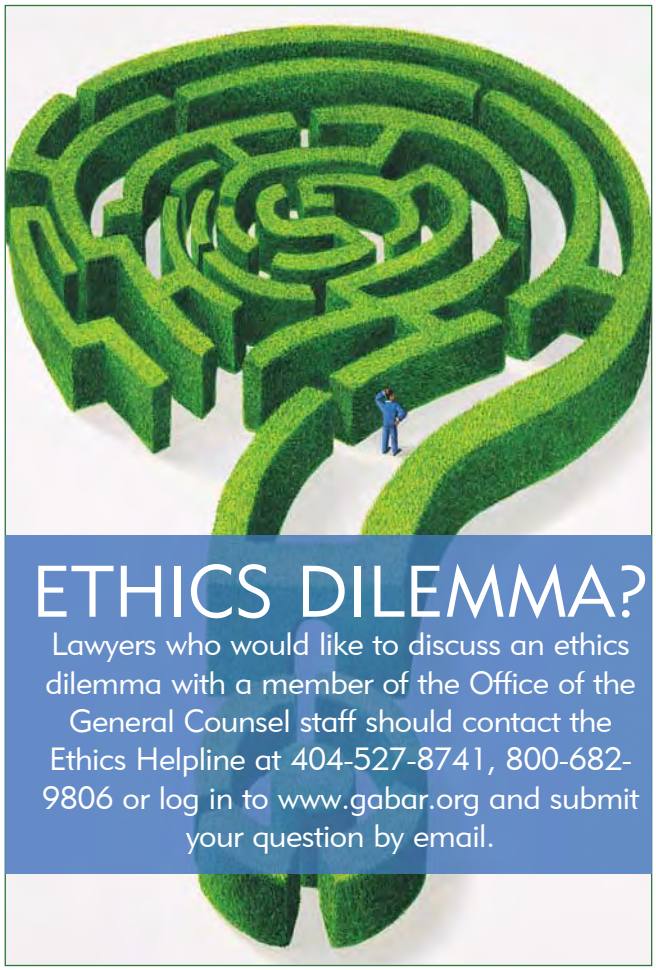
Prime Buckhead Peachtree Offices for Rent—Brand new, award-winning, high tech Class A offices on glass in new Peachtree Tower. Client wow factor Peachtree views. Concierge service, valet parking, three restaurants, across from Phipps Plaza. Support staff. Share with other former big firm lawyers. Referral work opportunities. Contact: rlmoss@mossgilmorelaw.com.

Two Executive Offices available in established law firm—Lawrenceville. 200 sf corner window office—$1,150 month. 140 sf window office—$750 month. Walking distance to Gwinnett Courts; ideal for attorney. Includes receptionist, utilities, copier, breakroom, meeting rooms, high speed internet/fax, phone. Potential referrals. Call Barbara Gordon at Hughes & Associates, 770-469-8887.

Practice Assistance

Handwriting Expert/Forensic Document Examiner. Certified by the American Board of Forensic Document Examiners. Former Chief, Questioned Documents, U.S. Army Crime Laboratory. Member, American Society of Questioned Document Examiners and American Academy of Forensic Sciences. Farrell Shiver, Shiver & Nelson Document Investigation Laboratory, 1903 Lilac Ridge Drive, Woodstock, GA 30189, 770-517-6008.

New York & New Jersey Transactions and Litigation. Georgia bar member practicing in Manhattan and New Jersey can help you with your corporate transactions and litigation in state and federal courts. Contact E. David Smith, Esq., 570 Lexington Ave., 23rd Floor, New York, NY 10022; 212-661-7010; edsmith@edslaw.net.



Position Wanted

Personal Injury Attorney—Well-established, successful Atlanta plaintiff's firm seeking personal injury attorney. Excellent financial opportunity. Collegial, professional environment. Great support. Send resume to: GBJ at spshns@me.com.

PI & Criminal—Trial and Pre-Litigation Attorneys (Jacksonville, FL)
Law Firm of Military Veterans is seeking veterans for their growing law firm. In addition to criminal defense attorney, seeking PI Jr. associates (0-3 years'

experience and recent grads), and an experienced PI trial attorney with actual first or second chair experience through verdict. Please include detailed information regarding ex. Salary commensurate with experience. Please send cover letter and resume with references to ron@youhurtwefight.com.

Finance/Banking/Regulatory Compliance— Louisville, KY—SEMINAR SPEAKER— Major financial services consulting and educational company has opportunity for an individual with banking and/or financial regulatory background and experience for its Education Division. Candidate should have a degree with 5-10 years banking or regulatory experience and should have demonstrated interpersonal, presentation and communication skills, as well as a strong knowledge of bank statutory and regulatory requirements. Will provide presentations on compliance and regulatory topics throughout the country. Position requires extensive travel, as well as the ability to maintain superior rapport with attendees. Compensation commensurate with experience and credentials. Company has excellent benefits, including 401K plan. Submit resume to: Human Resource Manager, Professional Bank Services, Inc., 6200 Dutchman's Lane, Suite 305, Louisville, KY 40205; Email to: hr@probank.com. An Equal Opportunity Company M/F/H.

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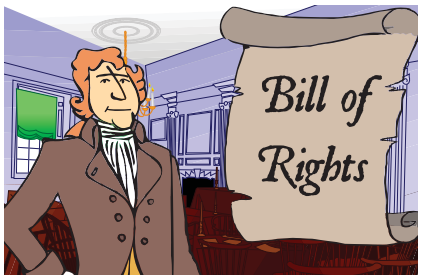
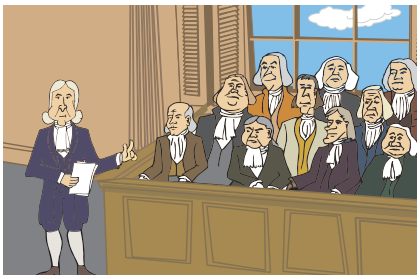
Trial By Jury: What's the Big Deal?



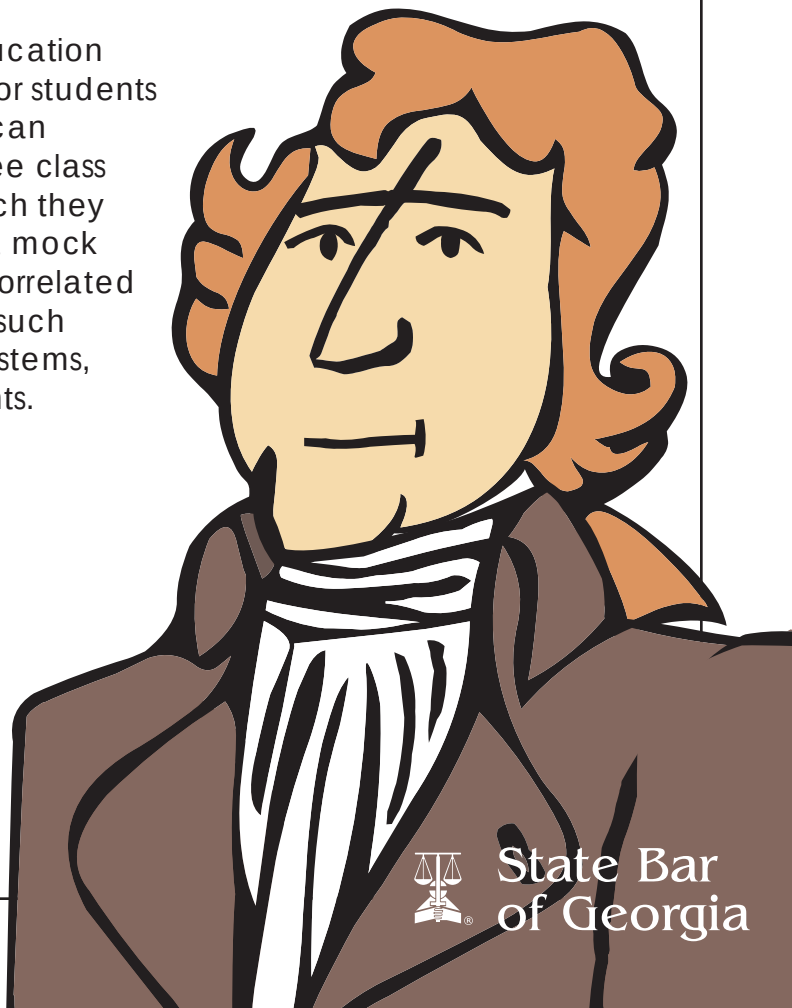



"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics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

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

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

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



State Bar of Georgia

State Bar of Georgia

2015 STATE BAR OF GEORGIA

ANNUAL MEETING

JUNE 18 - 20, 2015 Evergreen Conference Center • Stone Mountain, GA

Early Bird Cut-off Date: May 15 • Hotel Cut-off Date: May 15 • Final Cut-off Date: June 5

MEETING HIGHLIGHTS INCLUDE: Opening Night Festival, CLE Opportunities, Presidential Inaugural Dinner, Social Events, Family Activities, Exhibits