



# Georgia Bar Journal

April 2016 ■ Volume 21 ■ Number 6



# 2016 ANNUAL MEETING

*Amelia Island, FL | June 16-19*



STATE BAR OF GEORGIA

# Member BENEFITS

*We're here for you.*

## CONFERENCE CENTER

Bar Center conference rooms can be reserved at no charge for law-related meetings from 8 a.m. to 5 p.m. The Lawyers Lounge offers a place to enjoy free coffee, the daily newspaper or check phone or email messages on Internet-connected computer stations.

## FASTCASE LEGAL RESEARCH

A comprehensive national law library on your computer/tablet/smartphone, with online access to cases, statutes, regulations, court rules and Bar publications. Apps and mobile sync aid mobility in regard to legal research.

## LAW PRACTICE MANAGEMENT PROGRAM

Provides business management assistance; technical and general consultations; software advice and training; sample forms; start-up resources; a solo/small firm discussion board and video resources.

## MEMBER BENEFITS, INC.

Recommended broker of the State Bar of Georgia for health, dental, vision, disability and long term care plans.

## MEMBERSHIP DEPARTMENT

For help with getting a new Bar card or logging in to your account.

## ONLINE VENDOR DIRECTORY

A directory of practice-related products and services, sometimes with discounts.

## PARKING DECK

Open Monday through Friday from 6:30 a.m. to 10 p.m. Bar card required for free parking on nights and weekends.

## RESOURCE LIBRARY

Selection of books, videotapes, audiotapes and CD-ROMs on a variety of topics related to law office management and technology. Two-week checkout with shipping options available at cost.

## SATELLITE OFFICES

Free legal-related meeting space is available at the Coastal Georgia and South Georgia Bar locations by reservation.

WON'T YOU JOIN US?



 State Bar  
of Georgia

LEARN MORE AT [WWW.GABAR.ORG](http://WWW.GABAR.ORG)



Access next-generation legal research as a free benefit of your membership with the State Bar of Georgia.

Login at [gabar.org](http://gabar.org)



### Your Member Benefit Includes:

- U.S. Supreme Court
- All Federal Circuit Courts
- U.S. District Courts
- Appellate Decisions for all 50 States
- Nationwide Statutes



### Plus Access to Innovative Tools:

- Forecite
- Interactive Timeline
- Authority Check
- Advanced sorting
- Bad Law Bot



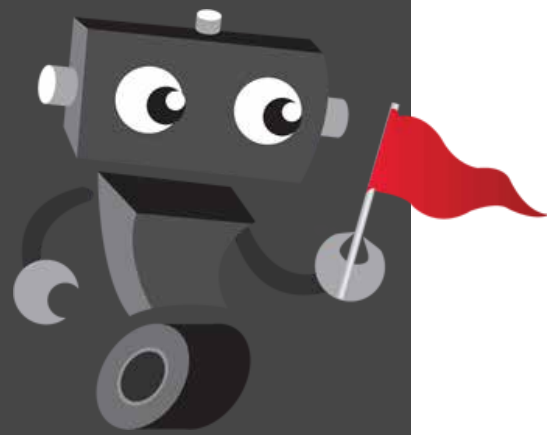
### Mobile Legal Research

According to the ABA, Fastcase is the most popular legal research app among lawyers. The mobile app is free to download for iOS and Android.

Use Mobile-Sync to easily share documents between your desktop and mobile accounts.

For more information about Fastcase and smarter legal research, visit us at [fastcase.com](http://fastcase.com).

Featuring  
**Bad Law Bot**



## Quick Dial

Attorney Discipline	800-334-6865 ext. 720 404-527-8720
Consumer Assistance Program	404-527-8759
Conference Room Reservations	404-419-0155
Fee Arbitration	404-527-8750
CLE Transcripts	404-527-8710
Diversity Program	404-527-8754
ETHICS Helpline	800-682-9806 404-527-8741
Georgia Bar Foundation/IOLTA	404-588-2240
Georgia Bar Journal	404-527-8791
Governmental Affairs	404-526-8608
Lawyer Assistance Program	800-327-9631
Law Practice Management	404-527-8773
Law-Related Education	404-527-8785
Membership Records	404-527-8777
Meetings Information	404-527-8790
Pro Bono Project	404-527-8763
Professionalism	404-225-5040
Sections	404-527-8774
Transition Into Law Practice	404-527-8704
Unlicensed Practice of Law	404-527-8743
Young Lawyers Division	404-527-8778

## Manuscript Submissions

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

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

## Disabilities

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

## Headquarters

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

## Publisher's Statement

The *Georgia Bar Journal* (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) with a special issue in November by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, Georgia 30303. Copyright State Bar of Georgia 2015. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia and additional mailing offices. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMASTER: Send address changes to same address.

## Editorial Board

### Editor-in-Chief

Timothy Jerome Colletti

### Members

Julia Anderson	Lynn Gavin
Donald P. Boyle Jr.	Chad Henderson
Jacqueline F. Bunn	Michelle J. Hirsch
John Clay Bush	Eric Hooper
David Gan-wing Cheng	Kristin M.S. Poland
James William Cobb	Addison Johnson Schreck
Jacob Edward Daly	Mark W. Wortham
Bridgette E. Eckerson	Pamela Y. White-Colbert
James Evans	

### Editors Emeritus

Bridgette E. Eckerson, 12-15	Stephanie B. Manis, 93-95
Robert R. Stubbs, 10-12	William L. Bost Jr., 91-93
Donald P. Boyle Jr., 07-10	Charles R. Adams III, 89-91
Marcus D. Liner, 04-07	L. Dale Owens, 87-89
Rebecca Ann Hoelting, 02-04	Donna G. Barwick, 86-87
Marisa Anne Pagnattaro, 01-02	James C. Gaulden Jr., 85-86
D. Scott Murray, 00-01	Jerry B. Blackstock, 84-85
William Wall Sapp, 99-00	Steven M. Collins, 82-84
Theodore H. Davis Jr., 97-99	Walter M. Grant, 79-82
L. Brett Lockwood, 95-97	Stephen E. Raville, 77-79

## Officers of the State Bar of Georgia

Robert J. "Bob" Kauffman	President
Patrick T. O'Connor	President-Elect/Treasurer
Patrise M. Perkins-Hooker	Immediate Past President
Brian D. "Buck" Rogers	Secretary
John R. B. Long	YLD President
Jennifer Campbell Mock	YLD President-Elect
Sharri Edenfield	YLD Immediate Past President

## Communications Committee

Peter C. Canfield	Co-Chair
Sonjui L. Kumar	Co-Chair

## Communications Staff

Sarah I. Coole	Director
Jennifer R. Mason	Assistant Director
Stephanie J. Wilson	Communications Coordinator
Lauren M. Foster	Administrative Assistant

The opinions expressed in the *Georgia Bar Journal* are those of the authors. The views expressed herein are not necessarily those of the State Bar of Georgia, its Board of Governors or its Executive Committee.

# Georgia Bar Journal

April 2016 ■ Volume 21 ■ Number 6

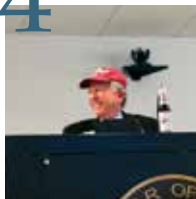


## GBJ Legal

12

Reducing Cyber-Anxiety:  
Insurance Coverage for  
Cyber Risks  
*by John L. Watkins*

24



## GBJ Features

24

The 25th Annual Georgia Bar  
Media & Judiciary Conference  
*by Stephanie J. Wilson*

56



30

2015 Georgia Corporation  
and Business Organization  
Case Law Developments  
*by Michael P. Carey*

60



38

Georgia Legal Services Program  
"And Justice for All"  
Honor Roll of Contributors

66



## Departments

4 From the President

8 From the YLD President

44 Bench & Bar

50 Office of the General  
Counsel

52 Lawyer Discipline

56 Law Practice Management

58 South Georgia Office

60 Pro Bono

62 Section News

64 Member Benefits

66 Writing Matters

68 Professionalism Page

72 In Memoriam

74 CLE Calendar

76 Notices

87 Classified Resources

88 Advertisers Index

See details on the 2016  
Annual Meeting on the  
back cover of this issue.





Photo by Zach Porter Photography

by Robert J. "Bob" Kauffman

# Strategic Plan Focuses on Bar's Present and Future Priorities

**A**t our Midyear Meeting in January, the Board of Governors of the State Bar of Georgia voted to give final approval to what is believed to be the first strategic plan since the unified State Bar was created in 1964. As I reported early in the process, the development of a strategic plan is largely a recognition that, like the rest of the world, our profession has seen many changes over the past 52 years, necessitating a comprehensive review of where we are today and a vision of how the State Bar should operate in the future.

**"The resulting strategic plan for 2016-2018 is focused on five major areas identified as our positioning statements, which describe how the Bar will respond to key trends impacting our success as an organization."**

After the Executive Committee decided during the 2014-15 Bar year that we needed to engage in strategic planning, we enlisted the assistance of all Bar members by asking you to complete an online survey related to the priorities you believe are most important for the State Bar to continue effective service to the legal profession, the justice system and the public. Your responses were vital to steering our planning team toward those priorities at the outset of the process.

The plan was then developed by countless hours of effort on the part of the Bar's leadership, staff and Long Range Planning Committee members—along with our outside consulting firm, Leadership Strategies. It was shaped into final form with valuable contributions from a diverse collection of stakeholder groups, including members of the judiciary, providers of legal services, lawyer-members of the General Assembly, representatives of the news media and Bar members from throughout the state.

As one of our top initiatives for the Bar's current fiscal year, the strategic planning process went into high gear

last August with an initial briefing to the Executive Committee, Board of Governors, Long Range Planning Committee and key staff members. In September and October, those groups reconvened to assess the current situation related to the Bar's programs and services, discuss specific strategies to be included in the plan and review the plan with input from the Board of Governors.

In November, the Executive Committee met once more to make final adjustments to the strategic plan, resulting in the version presented to the Board of Governors for adoption in January.

The resulting strategic plan for 2016-2018 is focused on five major areas identified as our positioning statements, which describe how the Bar will respond to key trends impacting our success as an organization.

## Regulation of Practice

An effective disciplinary process is important to both the legal profession and the public. We will

strive to improve and promote our system of professional discipline and provide the funding support and other resources needed to make those improvements. Additionally, we will develop a non-disciplinary system for intervention with respect to mentally impaired lawyers.

Specific objectives for this strategy include shortening the time period between the filing of a grievance and the resolution of that grievance, decreasing the overall number of grievances filed each year and limiting the unlicensed practice of law (UPL) as measured by the number of UPL cases filed annually. Priority strategies include:

- Supporting the Disciplinary Rules Committee in its efforts to revise rules in order to streamline the process and address transparency and implement appropriate recommendations.
- Publicizing the outcome of successful UPL cases to inform the public and increase public awareness of UPL.

## Access to Justice

We have an obligation to provide and promote access to justice throughout Georgia for those with unmet legal service needs. We will explore private and public funding options and encourage Bar members to provide criminal and civil pro bono services and contribute to legal services organizations.

Our plan seeks, over a three-year period, a 10 percent increase in public funding for access programs, a 20 percent increase in member funding for those programs and doubling the percentage of members who contribute to access programs from the current 8 percent to 16 percent. Priority strategies include:

- Promoting increased state and federal funding for criminal and civil legal access programs.
- Encouraging the incorporation of access to justice as part of CLE in general.
- Promoting and developing additional access to justice initiatives in addition to the rec-



Fastest smartest malpractice insurance. Period.

800.906.9654  
GilsbarPRO.com

ommendations of the Civil Legal Services Task Force.

## Lawyer Wellness

Too many lawyers are experiencing high levels of stress and are unhealthy and unhappy, adversely affecting their professional and personal lives. We will expand our promotion of health and wellness among our members and staff, including the development of work/life balance CLE programs, and increase awareness of existing Bar programs that deal with such issues.

A key objective for the lawyer wellness strategy will be an overall increase in the percentage of members who, in survey responses, indicate that State Bar resources have enhanced their professional and/or personal lives. We also want this effort to result in a higher number of Bar members who participate in the Law Practice Management program, CLEs, Lawyer Assistance Program and the new wellness initiative over the next three years. Priority strategies include:

- Developing recommended programs and services to better enhance members' professional and personal lives.
- Educating members about services and resources that can enhance their law practice.

## Integrating New Delivery Methods

The delivery of legal services is changing, and more people are relying on self-help services. We will inform the public of the benefits of using lawyers and the risks of some alternatives, while embracing and integrating the effective use of technology.

Improving and awarding CLE credit for technology training is a key part of a comprehensive goal to provide effective practice tools and educational resources to enhance lawyer competency and ensure continued competence. Priority strategies include:

- Recommending an approach for adapting to changes in the delivery of legal services.
- Working with the Bar sections to increase awareness, visibility and value of Section CLEs.

## The Importance of Our Role

We need to promote the importance of a unified Bar and its programs to the public and our members. We will make the public aware of the State Bar and what we do. We will also review all of our programs to make sure we are providing services that are appropriate and relevant to meeting our members' needs, while eliminating those that are not.


We will conduct surveys to measure and seek increases in the percentage of the public having a positive view of the legal system and the percentage of Georgia lawyers who have a positive view of the State Bar. The priority strategy here is to improve communications with the public about the disciplinary system and its outcomes.

Those of us in Bar leadership are looking forward to focusing on each of the priorities set forth in the plan. Each priority strategy task has been assigned to one or more specified Bar officers, committee members, staff department or Bar section to oversee and conduct.

We will be monitoring the success of the plan at each Executive Committee meeting to determine if we are indeed doing what we said we would do. On a quarterly basis, we will review whether we are getting the results we want to get. At each Annual Meeting, the plan will be updated and possibly adjusted to ensure that we reach our targets in each priority area, and an annual report will be presented.

This plan shows that Georgia lawyers are committed to the purposes of the Bar: to foster among the members of the Bar of this state the principles of duty and

service to the public; to improve the administration of justice; and to advance the science of law.

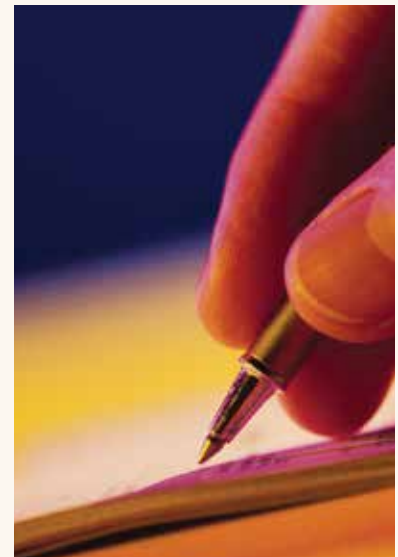
I invite you to review the plan on the Bar's website and send me your feedback on any ideas you have to help address these priority areas and meet our goals. The plan can be found at [www.gabar.org/upload/StateBarStrategicPlan\\_final.pdf](http://www.gabar.org/upload/StateBarStrategicPlan_final.pdf). 

**Robert J. "Bob" Kauffman** is president of the State Bar of Georgia and can be reached at [president@gabar.org](mailto:president@gabar.org).

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

**Submit articles to:**  
Timothy Colletti  
*Georgia Bar Journal*  
104 Marietta St. NW  
Suite 100  
Atlanta, GA 30303

Contact [sarahc@gabar.org](mailto:sarahc@gabar.org) for more information or visit the Bar's website, [www.gabar.org](http://www.gabar.org).







visit [www.gabar.org](http://www.gabar.org)

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



State Bar  
of Georgia



by John R. B. "Jack" Long

# Thoughts on Civility and Professionalism Amongst Lawyers

**A** few weeks ago, at the end of several long days in court, a lawyer and I shook hands and congratulated each other on a case well tried. It was the end of much contested litigation, where both sides brought complex, well thought and compelling legal arguments to the court. One party left disappointed; the other reveling in victory. But at the end of the day, two lawyers stood in a courtroom, both exhausted from that week's fight, packing up boxes of now disorganized case files, and each perfectly ready to still acknowledge the other as a friend and colleague before heading home for the weekend for a much needed break.

Perhaps this is just the standard way of practice in smaller legal communities like Augusta. I'd like to think it is the case more often than not in a state which has many of the best and brightest lawyers in the country.

So what exactly is civility and professionalism? We teach it in all of Georgia's law schools. My alma mater

has been at the forefront of conveying the subject; all Mercer students have been required to take a course dedicated to promoting the principles of professionalism and rules of ethics since before I started my 1L year. The subject of ethics in the practice of law in Georgia is, to a large extent, guided by our rules of professional conduct. But professionalism and civility have always been something folks have a hard time specifically defining—it's more or

less a basic application of the proverbial Golden Rule. We have our Lawyer's Creed which gives an overview of how we should act. "Just Be Nice" is probably too unsophisticated; I suppose you just have to know civility when you see it. Some states like our neighbors in South Carolina have gone so far as to develop standards of professionalism, articulating basic tenets of civility such as "[a] lawyer should accede to all reasonable requests for scheduling, rescheduling, cancel-

*"It's time for us as a profession to re-examine what professionalism and civility really mean, and how we can better instill their fundamental principles in our membership."*

lations, extensions and postponements that do not prejudice the client's opportunity for full and fair consideration and adjudication of the client's claim or defense."<sup>1</sup>

When I passed the bar exam nearly a decade ago and decided to dive head first into solo practice, my father and other local lawyers who had given me advice and counsel gave stern warnings about what they grimly referred to as "The 'Lanta Lawyer." The grave, Southern drawl with which the phrase rolled off the tongue automatically gave a negative connotation. The loosely defined term for opposing counsel generally meant someone who would be a nightmare to work with: the lawyer who would send reams of letters to your office without the basic courtesy of a phone call, engage in petty disputes over discovery or administrative matters; in summary, someone who simply could not be trusted. More often than not, these folks hailed from the direction west of Augusta up Interstate 20.

Now, I realize that probably 60 percent of those of you reading this column are from the metro-Atlanta area, and by no means am I suggesting that members of our Bar who live in the big city demonstrate the principles of civility and professionalism any less as a whole than those who practice elsewhere. But basic math tells you that if most Georgia lawyers live in or around Atlanta and a certain percentage of all lawyers are "bad apples" so to speak, that a far greater concentration of uncivil lawyers will be in the metro area than elsewhere. Hence, the phrase "Lanta Lawyers" has stuck here locally for lawyers who aren't civil to each other; it's a phrase which those of us in Augusta (and probably also Macon, Savannah, Valdosta and other smaller communities) know all too well.

Not long after starting my practice I encountered my first one. I was representing a woman in an employment dispute, the defense

## The Georgia High School Mock Trial Program would like to express our sincerest gratitude to the Georgia legal community for their support during the 2016 season.

*More than 500 Georgia attorneys and judges gave a tremendous amount of their time serving local schools as attorney coaches for one of the 134 teams who registered for the season.*

*Nineteen attorneys and judges (and their staffs) spent numerous hours preparing for and conducting the regional and district competitions this past spring. We thank not only them for their time, but their firms (and families) as well, for giving them this time to make these competitions happen.*

*Lastly, we thank the hundreds of attorneys and judges across the state that served as evaluators or presiding judges for our competitions. During the season, we had to find enough volunteers from the legal community to fill 334 courtrooms for all levels of the competition.*

*The result is that more than 1,770 high school students had the opportunity to compete in one of the most public programs of the State Bar of Georgia. Without your support, they would not have had this opportunity.*

## The 2016 State Champion Team is from Jonesboro High School in Jonesboro.

*The State Champion Team will represent Georgia at the National High School Mock Trial Championship in Bosje, ID, May 13-14.*

For more information about the program or to make a donation to the state champion team to support their participation at nationals, please contact the mock trial office:

404-527-8779 or toll free 800-334-6865 ext. 779;

Email: [mocktrial@gabar.org](mailto:mocktrial@gabar.org)





of which found its way to a large Atlanta firm, which I will not name here. Almost immediately, I was sent no less than a dozen letters griping about petty issues which could have been easily resolved over the phone, and even threatened with a baseless motion for sanctions. Though it was a mere litigation tactic for opposing counsel to put pressure on early settlement of a case, as a young lawyer, it was extremely stressful for me. The lesson I learned from the experience was a valuable one although not new or complicated: simply put, some lawyers are just bullies. The bully lawyer is just like the kid on the grammar school playground—they only listen to one thing and that is the people who will stand up to them. Sometimes, you have to draw a line in the sand and be prepared to deliver the consequences promised if and when it is crossed.


I'm not sure why some lawyers feel the need to play the part of the bully. Perhaps it is a combination of personal insecurity, lack of an understanding of the law on a particular matter and a reluctance to do the job in a manner our profession commands. Maybe it's just a total failure on the intimidating lawyer's part to have the maturity to develop civil relationships with opposing counsel which ultimately result in better, cost efficient resolutions for clients. This conduct

disproportionately targets young lawyers who are perceived as a threat to an older, less technologically savvy generation. The important lesson is that our responses not engage on the bully's level.

It still happens from time to time. Most recently, an obnoxious "Lanta Lawyer" objected to a leave of court I filed. I had sought the leave not for some great family vacation I have yet found the time to take, but primarily to ensure I didn't have a conflict with the many upcoming State Bar Board of Governors, YLD or Executive Committee events I was scheduled to be at over the past year. Fortunately, the leave was granted by a judge who was supportive of my work with the Bar, but only after demanding opposing counsel appear in person at a hearing to articulate his objections. A certain judicial assistant has since explained to me that such matters are best scheduled for 8 a.m. or 5 p.m., when the sun is unbearable during the two hour drive on I-20.

For the most part here locally our lawyers are civil and congenial with one another. We police bad conduct amongst ourselves, and generally have amicable relationships. I find myself excited to receive a notice of appearance from some lawyers, who I know I can trust and will probably be able to resolve a matter over the phone or

at lunch. In the larger geographic scope of practice, however, I recognize that this is not always the case.

To my friends and colleagues who have been patient with me this year as I have been inundated with Bar-related travel to Atlanta and elsewhere, I thank you for being so accommodating. To the few who haven't and have played the part of the bully or "Lanta Lawyer," you're missing out on cultivating the relationships that are so meaningful in this profession. However, I thank you both for inspiring me to write this column on this important subject. It's time for us as a profession to re-examine what professionalism and civility really mean, and how we can better instill their fundamental principles in our membership. Here's food for thought: is it now time that Georgia consider adopting formal standards of civility and professionalism like those of our neighbors in South Carolina and elsewhere? 

## Endnote

1. S.C. Bar Standards of Professionalism 7.5.

**John R. B. "Jack" Long** is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at [jlongattorney@aol.com](mailto:jlongattorney@aol.com).



FIND US ANYWHERE  
online and in the cloud.



[gabar.org](http://gabar.org) • [georgiaid.org](http://georgiaid.org) • [georgiamocktrial.org](http://georgiamocktrial.org) • [facebook.com/statebarofgeorgia](https://facebook.com/statebarofgeorgia) • [flickr.com/gabar](https://flickr.com/gabar) •  
[youtube.com/statebarofgeorgia](https://youtube.com/statebarofgeorgia) • [twitter.com/statebarofga](https://twitter.com/statebarofga)

*The 2016*  
**LOCAL & VOLUNTARY  
BAR ACTIVITIES  
AWARDS**

*Deadline to enter:*  
**Friday, May 13**

Award of Merit

Law Day Award

Best New Entry Award

Newsletter Award

Website Award

Thomas R. Burnside Jr.  
Excellence in Bar  
Leadership Award

The President's Cup

*For more information, please visit*  
[www.gabar.org](http://www.gabar.org)



SEARCH

DATA BREACH

AUTHENTICATION

EXPOSED RECORDS

SECURITY

SENSITIVE INFORMATION

COMPLIANCE CLASSIFICATION

RISK PROTECTION

ANONYMOUS

CYBER



# Reducing Cyber-Anxiety: Insurance Coverage for Cyber Risks

by John L. Watkins

**O**n Nov. 10, 2015, prosecutors in New York and Atlanta unsealed indictments accusing three men and hundreds of accomplices of stealing data on more than 100 million people from a national bank and other companies and a host of related crimes.<sup>1</sup> Unfortunately, such announcements have become routine, with a national retailer reporting in 2013 that 40 million debit and credit cards were compromised in a breach.<sup>2</sup> Even the federal government cannot keep the most sensitive data secure, and it recently announced a breach affecting the information of 21.5 million persons contained in security clearance files maintained by the Office of Personnel Management.<sup>3</sup>

As huge cyber breaches become routine, many businesses and organizations believe—with a false sense of security—they are not big

or interesting enough for cyber threats, or that they do not possess the type of information sought by cyber criminals. However, an insurance industry expert recently reported that 50 percent of businesses reported being the victim of a cyber attack, and that 60 percent of recent attacks struck small and medium-sized businesses.<sup>4</sup> Although the specific statistics may be debatable, it is beyond dispute that small and medium-sized businesses also face cyber risks.

## Typical Cyber Risks

Although a comprehensive catalog of cyber risks is beyond the scope of this article, the most common ones include the following:

- theft or exposure of personally identifiable information (PII) of customers, users or employees;<sup>5</sup>
- denial of, or limiting access to, computer resources;
- exposure of a business' own confidential information or trade secrets;
- exposure of a third party's confidential information or trade secrets;
- risks posed by viruses, Trojans or malware; and
- ransomware.<sup>6</sup>

## Resulting Losses and Claims

Cyber risks can result in substantial losses directly to a business (first-party loss) as well as liability claims by others (third-par-

ty claims). Some of the potential losses and claims include the following.

### First-Party Losses

A data breach or other cyber event likely will cause a business to incur substantial costs. These costs may include fees of computer forensic experts to determine the extent and source of the breach; fees of computer experts to restore data and electronic files; legal fees for determining legal obligations and strategies; costs of notifying potentially affected persons (required by many statutory provisions); costs of establishing and maintaining call centers to answer inquiries from affected persons; costs of third-party credit monitoring and related services; costs of hiring media and public relations consultants; costs of repairing or replacing computers, drives and other hardware; and costs of ransom payments.

In addition to these potentially significant costs, a cyber event may well put a company out of business for a significant period of time. The resulting loss of business income may be substantial. Further, a company may incur unplanned extra expenses in attempting to resume business.

### Third-Party Claims

Many potential third-party claims may result from cyber events. For example, if a cyber attack results in unauthorized access to a person's bank account or credit card, there may be direct monetary loss. If a virus damages a customer's computer or server, there may be a claim for replacing tangible property. If a third party's confidential information and trade secrets are disclosed as a result of a cyber event, the third party has a potentially substantial claim for the resulting damages. Such a claim might be based on breach of a non-disclosure agreement, negligence or trade secret statutes. If a customer relies on access to the affected party's computer system or information maintained

on that system to operate, lack of access may result in a claim for lost income or profit. A customer's own customers may be affected and demand refunds or compensation, all of which may in turn be passed on as additional claims. Statutes may provide separate or overlapping statutory remedies.

The scope of the risk of third-party claims depends in large part on the nature of the business and the number of potentially affected persons. Businesses handling large amounts of consumer or health information are naturally at greater risk. Large businesses with PII for many persons can expect a plethora of individual claims as well as potential class action litigation by affected users<sup>7</sup> and other affected parties.<sup>8</sup> Publicly traded companies face additional risks, as a data breach not only exposes a company to the aforementioned liabilities, but may also expose the company to shareholder lawsuits.

### Other Potential Liabilities

Breaches often attract the interest of regulators and other governmental authorities. At a minimum, a business may need to respond to subpoenas and other requests for information, which can be costly. Governmental actors may seek to require the business to undertake responsive action and may also impose fines and penalties.

## Coverage Under Traditional Business Policies

A business facing a cyber-based first-party loss or a third-party claim should immediately evaluate possible coverage under all of its existing business policies. These will generally include a commercial general liability (CGL) policy and a commercial property insurance policy. Businesses and their counsel should remember that insurers frequently attempt to deny claims—particularly in Georgia—for late notice, and should thus act diligently.<sup>9</sup>

Whether a cyber-related claim will be covered under a traditional business policy depends on many factors, including the basis of the claim and the policy language. As a general matter, however, it may be difficult to find coverage under traditional policies. The insurance industry is moving quickly to adopt new policy endorsements aiming to curtail or eliminate such coverage.

## Coverage Under CGL Policies

Traditional CGL policies are usually written on forms prepared by the Insurance Services Office (ISO), an organization that prepares form policy language used by the insurance industry. CGL policies have two primary grants of coverage: Coverage A and Coverage B. Coverage A provides coverage for damages the insured is legally obligated to pay "because of 'bodily injury' or 'property damage.'"<sup>10</sup> Coverage B provides coverage for damages the insured is legally obligated to pay for "personal and advertising injury."<sup>11</sup> These coverages are discussed in more detail below.

### Coverage A

#### Damages Because of "Bodily Injury"

"Bodily injury" is defined to mean "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time."<sup>12</sup> Most cyber claims to date have not involved physical injury, but it is certainly possible that a plaintiff could allege suffering severe emotional distress as a result of disclosure of sensitive PII. However, Georgia case law indicates that purely emotional harm does not constitute "bodily injury" under a CGL policy.<sup>13</sup>

There is growing concern, however, about cyber attacks affecting not only information, but the operation of machinery, equipment and vehicles. *Wired* magazine recently reported that hackers were able to gain remote control of a late-model

Jeep Cherokee, even to the point of disabling the car's transmission and brakes.<sup>14</sup> There are also concerns about cyber attacks affecting, for example, utilities and the power grid. If such incidents occur, they will likely lead to claims for bodily injury. In such instances, coverage for damages because of bodily injury, subject to possible exclusions, would come into play.

### Damages Because of "Property Damage"

"Property damage" is generally defined in CGL policies to mean (a) "Physical injury to tangible property, including all resulting loss of use of that property," or (b) "Loss of use of tangible property that is not physically injured."<sup>15</sup> Further, "for the purposes of this insurance, electronic data is not tangible property," with electronic data including "information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard and floppy disks, CD-ROMs, tapes, drives . . . or any other media which are used with electronically controlled equipment."<sup>16</sup>

Despite the "electronic data" limitation in the definition of "property damage," insureds have had some success in seeking coverage. The Eighth Circuit recently found coverage in a case alleging the defendant's web-based advertising services had caused the claimant's computer to be "taken over and could not operate," to freeze up and to "stop running or operate so slowly" that it would, in essence, become inoperable.<sup>17</sup> The court found that there was no damage to the computer itself, but that there was coverage under the second part of the policy definition for "loss of use of tangible property that is not physically injured."<sup>18</sup>

There is, however, little indication in the case law that many cyber-related claims are being covered under CGL policies as property damage. Currently, most damages regarding reported cyber

losses appear to be economic. In other contexts, the Georgia courts have ruled that purely economic loss is not property damage.<sup>19</sup> As noted, however, there are growing concerns about cyber attacks causing physical damage, so it is certainly possible there will be more cyber claims involving damages to tangible property.

### Coverage B

Coverage B typically provides that the insurer "will pay those sums that the insured becomes legally obligated to pay because of 'personal and advertising injury' to which this insurance applies."<sup>20</sup> "Personal and advertising injury" is then defined to mean injury, including consequential bodily injury, arising out of certain enumerated "offenses." In the cyber context, the most important "offense" has been: "e. Oral or written publication, in any manner, of material that violates a person's right of privacy."<sup>21</sup>

Insureds have sometimes obtained coverage under Coverage B for the violation of a "right of privacy" offense for data breaches<sup>22</sup> and for claims involving the unwanted receipt of electronic communications, including unsolicited faxes, telephone calls and spam email.<sup>23</sup> Some courts have distinguished between violations of privacy involving the disclosure of private information, or secrecy, such as in a data breach, and violations involving intrusion upon seclusion (or the right to be left alone), such as claims involving unsolicited communications. Some courts have accepted that the "right of privacy" offense is limited to violations involving secrecy and not seclusion.<sup>24</sup> Other courts have rejected this distinction, in part because "privacy" has at least these two meanings and is not defined in CGL policy forms.<sup>25</sup>

Insurers have tried to avoid coverage by arguing that there was no "publication" of material violating a person's right of privacy. Courts have been divided on whether

"publication" requires disclosure to a third party. Some courts have found no such requirement, ruling, in essence, that "publication" can reasonably mean transmittal, such as the transmission of an unwanted message to the claimant, and that no third-party disclosure is required.<sup>26</sup> Other courts have found the publication requirement not satisfied in other contexts.<sup>27</sup>

One of the most closely watched recent cases finding no publication is *Recall Total Info. Mgmt. v. Fed. Ins. Co.*,<sup>28</sup> in which IBM had contracted with Recall to store computer tapes containing PII of IBM employees. Recall subcontracted with a transportation company to transport the tapes to its facility. As further explained by the court, "During transport, a cart containing the tapes fell out of the back of the van near a highway exit ramp. The parties agree that approximately 130 of the tapes were removed from the roadside by an unknown person and never recovered. The lost tapes contained employment-related data for some 500,000 past and present IBM employees including social security numbers, birthdates and contact information."<sup>29</sup>

IBM immediately took steps to notify the affected employees. IBM also established a call center, and provided credit monitoring services for those affected. IBM spent more than \$6 million on these efforts, and charged the amount back to Recall. Recall settled with the transportation company, which assigned its rights under its insurance policies to Recall.<sup>30</sup> Recall then sought to recover under the policies, specifically seeking coverage for personal and advertising injury based on the "right of privacy" offense.<sup>31</sup> However, because there was no evidence that the information on the tapes had been accessed or disseminated, the court denied coverage because of failure to establish "publication."<sup>32</sup> As the court explained, "The plaintiffs contend that the mere loss of the tapes constitutes a publication, and has alleged that the information



was published to a thief. The plaintiffs have failed to cite any evidence that the information was published and thereby failed to take their allegation beyond the realm of speculation. . . . As the complaint and affidavits are entirely devoid of facts suggesting that the personal information actually was accessed, there has been no publication.”<sup>33</sup> The opinion was recently affirmed and adopted by the Supreme Court of Connecticut.<sup>34</sup> Whether this analysis—which could be disputed based on other case law—will be accepted in Georgia or other states remains to be seen.

## ISO Acts to Restrict CGL Coverage

Having previously issued more limited endorsements, ISO began in 2012 to publish endorsements seeking to limit drastically or completely eliminate any cyber coverage under CGL policies. An endorsement is an amendment to the policy that can either expand, or, as in this case, restrict or eliminate coverage.<sup>35</sup> Insurance companies may or may not choose to add endorsements to their policies.

A form endorsement issued in 2012 simply eliminated the “privacy” offense from the personal and advertising definition.<sup>36</sup> In 2013, ISO issued an endorsement form eliminating coverage under Coverage A and Coverage B for damages arising from “any access to or disclosure of any person’s or organization’s confidential information or personal information, including . . . [specific examples] or any other type of non-public information,” or the “loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data,” with a limited exception for “bodily injury.”<sup>37</sup> An alternative form eliminates even the bodily injury exception.<sup>38</sup> It is unclear whether these provisions would exclude coverage for damages for bodily injury or property damage caused by attacks on life safety systems or vehicle controls, but they certainly raise concerns.

## Summary Regarding Potential CGL Coverage

CGL policies may provide coverage for certain types of cyber-related claims although the result is far from certain and may depend upon whether the insurer has adopted one of the newer endorsements specifically designed to restrict or eliminate CGL coverage for cyber risks. If there is potential CGL coverage, it is well worth pursuing, if only for the defense obligation, meaning that the insurer is obligated to appoint and pay for counsel to defend any claim that may be covered.<sup>39</sup> Under most CGL policies (as opposed to many other policies), defense costs do not reduce policy limits available to pay judgments or settlements.<sup>40</sup> Thus, potential CGL coverage can be very valuable in responding to a cyber-related claim. There is little doubt, however, that the industry is acting to restrict CGL coverage.

## Coverage Under Other Traditional Policies

Insureds facing a cyber-related claim may find coverage under other traditional types of commercial coverage. The results, however, are not uniform, and businesses should not assume that such coverage will necessarily respond.

### Property Insurance

Insureds have had some success seeking coverage for first-party cyber-related losses under commercial property insurance. Under a policy insuring against “[a]ll Risks of direct physical loss or damage from any cause,” an Arizona federal district court concluded that the temporary loss of functionality of computers resulting from a loss of custom settings due to a power outage was covered. The court found that “physical damage” “is not restricted to the physical destruction or harm of computer circuitry but includes loss of access, loss of use, and loss of functionality.”<sup>41</sup> This reasoning

was, however, rejected by another district court in a different context and there is other authority to the contrary.<sup>42</sup>

### Other Potential Coverages

Insureds facing cyber-related claims will also want to consider possible coverage under other policies they may have purchased. Again, coverage will vary depending upon the nature of the claim and the policy language. Insureds may, however, find coverage under professional liability (E&O) policies,<sup>43</sup> directors and officers liability (D&O) policies,<sup>44</sup> or crime and fidelity policies.<sup>45</sup>

## Specific Cyber Coverage

### Background

There is no doubt that the insurance industry is trying to restrict coverage for cyber losses under traditional business insurance policies and to require insureds to purchase separate cyber coverage. Although the additional cost of purchasing cyber coverage is bad news for insureds, the good news is that this separate coverage is currently widely available for most businesses. A leading industry consultant reporting as of mid-2015 surveyed more than 30 insurers offering cyber coverage, including well-known carriers such as Zurich, ACE, Chubb, AIG, Hartford and Travelers.<sup>46</sup> The consultant reported that, although rates are rising for larger insureds, particularly retail and health care companies, the market is attractive for small and medium-sized companies, with policies available at competitive rates.<sup>47</sup>

There is no standard cyber policy. Many cyber offerings are sold as a package combining first-party and third-party coverages, which may be attractive to many insureds. Cyber coverage may also be sold in conjunction with other coverages, such as professional liability coverage, media tech coverage or D&O coverage. The policy wording differs among carriers, which

can make it difficult to compare coverage and make purchasing cyber insurance difficult. There are, however, some general guidelines that can be helpful.

First, as a prospective purchaser of cyber insurance, a business needs to analyze its potential risks thoroughly. At a minimum, this will entail a detailed review of the company's IT systems (or those maintained by third parties such as cloud providers), use of portable devices and media and security procedures. The company will also need to conduct an analysis of the particular cyber threats most likely to affect its particular line of business, which may require a review of other systems that are electronically controlled, such as payment, security, HVAC, manufacturing, etc.

To this end, a business may use its internal personnel or engage counsel or consultants. Engaging counsel to coordinate the analysis (and, if necessary, to engage consulting experts) may help preserve potential legal privileg-

es. Conducting the analysis may expose vulnerabilities that can be reduced or eliminated. The analysis should also assist in determining what coverages are "must have," "nice to have" or optional.

Second, the business needs to engage an agent or broker with experience in its industry and with experience in placing cyber coverage. Although this need is stated as a second step, in practice the agent may be engaged before the risk analysis or while the risk analysis is being performed. Experienced agents may have resources that can be brought to the table during the risk analysis.

Third, the business needs to follow the application process. Agents advise that the application process can range from a relatively short questionnaire for a small or medium-sized business seeking to place a cyber policy with low policy limits (\$1 million to \$2 million) to an extensive, intrusive and detailed process for companies in high-risk industries seeking to place coverage with large

limits. Again, although listed as a third step, the application process may also be viewed as part of the company's risk assessment. The application process can itself be helpful in identifying risks and reducing them.<sup>48</sup>

### Example of a Specific Cyber Policy

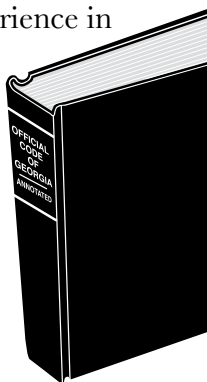
Although cyber policy forms vary in their wording and scope, analysis of an offering by a prominent insurer helps illustrate with greater specificity what is available in the market. The ACE DigiTech® Digital Technology & Professional Liability Insurance Policy (the "ACE Specimen Policy") provides a package of cyber-related coverages, some for third-party liabilities and others for first-party losses.<sup>49</sup> As is the case with some other cyber insurance forms, the insuring agreements are facially simple and fairly broad but require referring back to defined terms, with some defined terms relying on other defined terms. Reviewing the coverage thus can become a somewhat complicated exercise.

## You Try Cases – We Appeal Them

State and Federal Criminal Appellate and Post-Conviction Representation

Over thirty years combined experience in Successful State and Federal:

- Motions for New Trial
- Appeals
- Habeas Corpus
- Parole Petitions
- Responsible and Respectful Ineffective Assistance of Counsel Claims



~ ~ ~

*When It's Time for a Change, Contact*

**LAW FIRM OF  
SHEIN & BRANDENBURG**

2392 N. Decatur Road, Decatur, Georgia 30033



**QUINTAIROS, PRIETO, WOOD & BOYER, P.A.**  
Attorneys at Law

A multi-office national law firm is seeking **ATTORNEYS** for its Atlanta Office. Recruiting Attorneys for Litigation, Default and Corporate Law Departments.

**For Litigation Department:** Attorneys with experience in the following practice areas: professional liability defense, general liability defense, insurance defense, commercial litigation, and workers' compensation defense. Portable book of business a plus.

**For Default Law:** Contested and Uncontested Attorneys with previous experience in a Default Law Firm. Portable book of business a plus.

**For Corporate Law Department:** Attorneys with experience handling securities and broker dealer matters, international and domestic taxation, bankruptcy, real estate, intellectual property, international law, corporate structure, asset protection, land use, and mergers and acquisitions. Portable book of business a plus.

Also seeking 1-3 year associates.

Email resume to [RESUME@QPWBLAW.COM](mailto:RESUME@QPWBLAW.COM)

The ACE Specimen Policy has two cyber-related third-party liability coverages of particular interest. First, Coverage C provides:

### C. Network Security Liability

The **Insurer** will pay **Damages** and **Claims Expenses** by reason of a **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to Section VII, Notice, for any **Wrongful Acts** taking place after the **Retroactive Date** and prior to the end of the **Policy Period**.<sup>50</sup>

The bolded terms are defined in the Definitions section. That section takes up six of the 18 pages of the policy form and contains 42 defined terms.<sup>51</sup> To break down this coverage, “Damages” include compensatory damages, but generally do not include taxes, fines, penalties, sanctions, disgorgement of profits, costs of complying with injunctive relief and liquidated damages, along with other limitations.<sup>52</sup> “Claims Expenses” generally include reasonable attorney’s fees and expert witness fees.<sup>53</sup> A “Claim” generally means a written demand for monetary or non-monetary damages, a civil proceeding or an arbitration proceeding.<sup>54</sup>

“Wrongful Acts” are defined separately for different coverages provided in the policy. For Coverage C, they include any error, misstatement, misleading statement, act, omission or breach of duty resulting in a “failure of Network Security.”<sup>55</sup> “Network Security” means activities performed by the insured, or others on its behalf “to protect against unauthorized access to, unauthorized use of, a denial of service attack directed against, or transmission of unauthorized software code to, the Insured’s Computer System.”<sup>56</sup> The “Insured’s Computer System” includes those owned, leased or operated by the insured, or operated for the benefit of the insured by a third-party service provider under written contract.<sup>57</sup>

Another important coverage in the ACE Specimen Policy is Coverage D, which provides:

### D. Privacy Liability

The **Insurer** will pay **Damages** and **Claims Expenses** by reason of a **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to Section VIII, Notice, for any **Wrongful Acts** taking place after the **Retroactive Date** and prior to the end of the **Policy Period**.<sup>58</sup>

For this coverage, a “Wrongful Act” is defined to mean the failure of the insured, or an independent contractor for whom the insured is legally responsible to properly “handle, manage, store, destroy, or otherwise control . . . Personal Information.”<sup>59</sup> A “Wrongful Act” for this coverage also includes an “unintentional violation of the Insured’s privacy policy” that results in a violation of a “Privacy Regulation.” “Personal Information” includes information that would identify an individual, health care data, credit or debit card information, and other information, including non-public personal information defined in “Privacy Regulations,” but not including information lawfully available to the general public.<sup>60</sup> “Privacy Regulations” include a number of specifically identified statutes, including HIPPA, Gramm-Leach-Bliley, other acts and “other similar state, federal, and foreign identity theft and privacy protection legislation. . . .”<sup>61</sup> Wrongful Acts also include improper handling or management of third-party corporate information specifically identified as confidential and protected under a non-disclosure agreement.<sup>62</sup>

As can be seen from this summary, the ACE Specimen Policy should provide broad protection for third-party liability claims for a wide variety of breaches and privacy violations. The protection for disclosure of business information

protected under a non-disclosure agreement is of great potential value to many businesses.

In addition, the ACE policy includes additional coverages for errors and omissions in providing technology services or technology products to others,<sup>63</sup> for media liability for certain claims arising from the insured’s electronic content (such as product disparagement, trade libel, plagiarism, piracy and certain intellectual property violations),<sup>64</sup> and for extortion threat.<sup>65</sup> The policy also provides first-party coverage for “Data Breach Expenses,” including computer forensics, consumer notification expenses, the cost of engaging a public relations or crisis management firm, and credit monitoring services,<sup>66</sup> as well as other coverage.

Other carriers offer similar policies, although the specific provisions and wording vary, including Zurich,<sup>67</sup> AIG<sup>68</sup> and Chubb.<sup>69</sup> As in the ACE Specimen Policy, cyber coverage is often provided in various “coverage parts.” The particular coverage parts purchased will affect the scope of coverage. Further, products may be withdrawn or amended, or may be marketed only to companies of a particular size. Some carriers may not write coverage for all industries.

## Potential Problems and Pitfalls in Cyber Policies

Insureds should be aware of potential problems and pitfalls in cyber policies. This section will provide a non-exhaustive list of key issues to consider carefully. In considering these pitfalls, it is important to remember that cyber coverage is largely negotiable and that a good broker or agent may be able to secure more favorable terms.

### “Claims Made” Coverage Limitations

Cyber coverage tends to be written on “claims made” policy forms. “Occurrence” based policies, such as most CGL policies, provide coverage based on events happening



during the policy period regardless of when the claim is asserted, even if years later. "Claims made" policies generally cover only claims first made during the policy period (or, if applicable, the extended reporting period). Claims made policies also typically have a "retroactive date," or "retro date," and provide that, if a claim is based on acts or omissions occurring before the retro date, there is no coverage even if the claim is made during the policy period. Accordingly, the retro date limits coverage for liabilities arising from acts occurring before that date, and the general nature of claims made policies limit coverage for claims made after the policy period or extended reporting period.

If a claims made policy is renewed, typically the new renewal policy will cover claims going forward, but gaps can arise if the policy is not renewed or if the insured changes carriers. Accordingly, securing the most generous retro date possible is important. It is also important to manage liability for claims going forward either through a renewal or the purchase of an extended reporting period (sometimes referred to as "tail" coverage).<sup>70</sup>

### Exclusions

All insurance policies have exclusions, and it is important to consider exclusions that may drastically limit the scope of cyber coverage. Here is a non-exhaustive list of exclusions of concern:

- *Claims resulting from failure to follow "minimum practices."* Some, but not all, cyber policies contain exclusions for failure to follow "minimum practices" listed in the insured's application, or for failure to apply software patches or other security measures. One insurer recently filed suit against an insured based on such exclusions seeking to recoup payments the insurer had advanced to settle a breach.<sup>71</sup> This case is being closely watched.<sup>72</sup>

- *Claims for "bodily injury" or "property damage."* Most cyber policies exclude coverage for "bodily injury" or "property damage,"<sup>73</sup> probably on the assumption that such claims will be covered by the CGL policy. Although the CGL policy should respond, it may have been endorsed to eliminate cyber-related coverage for bodily injury or property damage.<sup>74</sup> The potential gap is significant, as there is growing concern about cyber attacks on automobiles, medical devices, generators or other devices that may result in bodily injury or property damage.<sup>75</sup>
- *Claims resulting from acts of war or terrorism by governmental or non-governmental entities.* Some cyber policies have adopted exclusions from general liability policies seeking to avoid coverage for claims or losses resulting from acts of war or terrorism.<sup>76</sup> Given that certain well-known cyber attacks were allegedly perpetrated by government actors,<sup>77</sup> businesses should seek cyber coverage without such exclusions.
- *Claims resulting from the insured's criminal or fraudulent acts.* Most policies have an exclusion for claims resulting from criminal or fraudulent acts.<sup>78</sup> Fortunately, many policies require an actual conviction or guilty plea before the exclusion applies. Policies may also contain "separation of insureds" provisions or other language protecting innocent insureds from losing coverage due to the bad acts of others. Businesses should seek the most generous provisions.
- *Other exclusions.* There are other exclusions that may be significant. Exclusions should be evaluated based on the insured's particular business risks. For example, one of the insurance industry's favorite exclusions is the "absolute pollution exclusion," which may

find its way into cyber policies.<sup>79</sup> If a cyber attack resulted in the failure of manufacturing, HVAC or other systems that resulted in the discharge of "pollutants," a carrier could use the pollution exclusion to try to avoid coverage. This possibility is particularly troubling for Georgia and other states which have applied the pollution exclusion to bar coverage for accidents that have nothing to do with environmental pollution, such as injuries resulting from the discharge of carbon monoxide from furnaces.<sup>80</sup>

### Other Issues Potentially Limiting Coverage

There are many other issues that insureds, their agents and brokers should consider in purchasing cyber coverage.


- *Limitations on "damages."* Although not stated to be an exclusion, cyber policies may define the "damages" they cover in a manner that limits coverage. For example, the ACE Specimen Policy defines "Damages" to mean "compensatory damages" (presumably not covering punitive damages), and provides that "Damages" do not include most taxes or fines, or "penalties of any nature . . . arising by contract."<sup>81</sup> Such a definition may limit coverage, for example, for private fines assessed after a breach pursuant to Payment Card Industry (PCI) standards.<sup>82</sup>
- *Sublimits.* It is increasingly common for insurers to write policies providing "additional coverages" for particular types of claims with low sublimits. Not only may low sublimits undermine the value of the "additional coverage," carriers may argue that the "additional coverage" demonstrates that the claim is *not* covered under other more general grants of coverage in the same policy with higher limits, even though such logic may be questionable.<sup>83</sup>

- *Coverage for contractors and cloud providers.* Many businesses outsource their information technology to contractors, including cloud providers. Ensuring that the cyber policy extends coverage to breaches caused by such parties when acting on behalf of the insured is important.
- *Unknowns.* In addition to concerns raised by policy language, there are many unknowns about cyber coverage. Because there have been relatively few claims under the new coverage forms, it is largely unknown how insurance company claims departments will, as a practical matter, handle cyber-related claims. Similarly, there has been almost no litigation involving the new policy forms, so it is uncertain how courts will respond to claims under these policies. Even when the deci-

sions begin to come—which they will shortly—uncertainty will continue for an extended period of time because of differences in policy language.

## Conclusion

Despite the seemingly unceasing reports of cyber breaches and attacks, most businesses—particularly small and medium-sized businesses—are only beginning to assess cyber risk management, including their insurance resources. The insurance industry is generally acting to limit coverage for cyber risks under traditional policies. At the same time, insurers have made cyber coverage available for several years in non-standard policies. Although such coverage is well worth considering, most businesses have little experience in the area. It is important to engage an experienced agent or broker and counsel if necessary. Exclusions and other

policy provisions need to be carefully considered and negotiated. Although there are unknowns regarding how carriers will treat cyber coverage claims and how courts will react, the high level of risk makes cyber coverage a must for many businesses. 



**John L. Watkins** is a partner in the Atlanta office of Thompson Hine LLP. He practices in the areas of commercial litigation

with a focus on insurance coverage and business law, including helping clients evaluate insurance coverage and manage risk. He also teaches the Insurance Law course as an adjunct professor at the University of Georgia School of Law, where he graduated *summa cum laude* in 1982.



State Bar  
of Georgia

STATE BAR OF GEORGIA

# SOLACE

## *Support of Lawyers/Legal Personnel—All Concern Encouraged*

Through this special committee, members of the legal community will be able to reach out in small, but meaningful and compassionate ways to judges, lawyers, court personnel, and law office staff that have a medical crisis in their family. Types of assistance range anywhere from a need for a place for a family to stay near a distant hospital during cancer treatment or a transplant, or help in getting an appointment with a medical specialist with a long waiting list.

Visit [www.gabar.org](http://www.gabar.org)

## Endnotes

1. See, e.g., Nicole Hong, *Massive Cybertheft Scheme Is Alleged*, WALL ST. J., Nov. 11, 2015, at A1.
2. See, e.g., Kelly Clay, *Forty Million Target Customers Affected By Data Breach*, FORBES (Dec. 18, 2013, 5:57 PM), <http://www.forbes.com/sites/kellyclay/2013/12/18/millions-of-target-customers-likely-affected-by-data-breach>.
3. See, e.g., Ellen Nakashima, *Hacks of OPM databases compromised 22.1 million people, federal authorities say*, WASH. POST (July 9, 2015), <https://www.washingtonpost.com/news/federal-eye/wp/2015/07/09/hack-of-security-clearance-system-affected-21-5-million-people-federal-authorities-say/>.
4. Patricia L. Harman, *50% of small businesses have been the target of a cyber attack*, PROPERTY CASUALTY 360° (Oct. 7, 2015), [http://www.propertycasualty360.com/2015/10/07/50-of-small-businesses-have-been-the-target-of-a-c?page=4&page\\_all=1](http://www.propertycasualty360.com/2015/10/07/50-of-small-businesses-have-been-the-target-of-a-c?page=4&page_all=1) (quoting Tim Francis, Enterprise Leader for Cyber Insurance at Travelers Insurance).
5. PII (used in the generic sense and not in reference to particular legislation or regulations) broadly includes information that can be used to identify or communicate with an individual, including (but not limited to) the following: full name, home address, passport number, email address, telephone number, driver's license number, social security number, credit card number, date of birth and birthplace.
6. "Ransomware" infects a computer and encrypts files so that they cannot be accessed unless the victim pays a fee (a ransom) for a decryption code. Ransomware appears to be a growing problem. One FBI agent recently made headlines after saying that the FBI often simply advises paying the ransom. See John Zorabedian, *Did the FBI really say "pay up" for ransomware? Here's what to do...*, NAKED SECURITY BY SOPHOS (Oct. 28, 2015), <https://nakedsecurity.sophos.com/2015/10/28/did-the-fbi-really-say-pay-up-for-ransomware-heres-what-to-do/> (quoting Joseph Bonavolonta, Assistant Special Agent in Charge of the Cyber and Counterintelligence Program in the FBI's Boston office).
7. See, e.g., Michael Fainberg et al., *Arent Fox LLP, Federal judge approves target's \$10 million settlement for consumer class action lawsuit over 2013 data breach*, LEXOLOGY (Mar. 30, 2015), <http://www.lexology.com/library/detail.aspx?g=fe17fdb8-d883-4208-87ce-0fa10c50f3b2> (discussing preliminary approval of consumer class action settlement with national retailer regarding large credit card breach).
8. See, e.g., Joseph Ax, *U.S. judge certifies class action over Target Corp data breach*, REUTERS (Sept. 15, 2015, 5:27 PM), <http://www.reuters.com/article/2015/09/15/us-target-lawsuit-databreach-idUSKCN0RF2GG20150915#K0PMYBeHxcfWL8O.97> (reporting on certification of class action by banks against national retailer related to large credit card breach).
9. John L. Watkins, *Insurance Law*, in GEORGIA BUSINESS LITIGATION 2016, 533, 537-538 (ALM 2015) (Robert C. Port ed.) (hereinafter cited as GEORGIA BUSINESS LITIGATION).
10. ISO Policy Form CG 00 01 04 13 at 1 (2012) (reprinted in K. ABRAHAM AND D. SCHWARCZ, INSURANCE LAW AND REGULATION 439 (2015)) (hereinafter cited by the form number).
11. ISO Form CG 01 04 13 at 6.
12. *Id.* at 13.
13. E.g., *Presidential Hotel v. Canal Ins. Co.*, 188 Ga. App. 609, 611, 373 S.E.2d 671, 672 (1988) ("Used in an insurance policy, the term 'bodily injury' means just that – 'bodily injury.' It pertains to physical injury to the body. It does not include non-physical, emotional or mental harm."); *Bates v. Guar. Nat'l Ins. Co.*, 223 Ga. App. 11, 13, 476 S.E.2d 797, 799 (1996); *Transp. Ins. Co. v. Selective Way Ins. Co.*, No. 1:11-cv-01383-RWS, 2012 U.S. Dist. LEXIS 163007, at \*27 n.5, \*28-29, 2012 WL 5605002, at \*10 n.5 (N.D. Ga. Nov. 13, 2012).
14. Andy Greenberg, *Hackers Remotely Kill a Jeep on the Highway – With Me In It*, WIRED (July 21, 2015, 6:00 AM), <http://www.wired.com/2015/07/hackers-remotely-kill-jeep-highway/>.
15. ISO Form CG 00 01 04 13 at 15.
16. *Id.* at 15-16. Notably, the policy definition of "electronic data" includes software, even though many lay persons would likely draw a distinction between data and software. See *id.* at 16.
17. *Eyeblaster, Inc. v. Fed. Ins. Co.*, 613 F.3d 797, 802 (8th Cir. 2010).
18. *Id.* at 801-02. The court concluded, "The plain meaning of tangible property includes computers, and the Sefton complaint alleges repeatedly the 'loss of use' of his computer. We conclude that the allegations are within the scope of the General Liability policy." *Id.* at 802 (citing *Am. Online, Inc. v. St. Paul Mercury Ins. Co.*, 207 F. Supp. 2d 459, 470 (E.D. Va. 2002) (finding loss of use of tangible property when complaint alleged that AOL caused loss of use of computers and computer functionality, but concluding no coverage existed because allegations were otherwise excluded), *aff'd*, 347 F.3d 89 (4th Cir. 2003); *State Auto Prop. & Cas. Ins. Co. v. Midwest Computers & More*, 147 F. Supp. 2d 1113, 1116 (W.D. Okla. 2001) ("Because a computer clearly is tangible property, an alleged loss of use of computers constitutes 'property damage' within the meaning of plaintiff's policy.")).
19. E.g., *Se. Color Lithographers v. Graphic Arts Mut. Ins. Co.*, 164 Ga. App. 70, 71, 296 S.E.2d 378, 380 (1982) (no coverage for damages resulting from alleged breach of employment contract); see also GEORGIA BUSINESS LITIGATION at 547-48.
20. ISO Form CG 00 01 04 13 at 6.
21. ISO Form CG 00 01 04 13 at 15.
22. E.g., *Travelers Indem. Co. of Am. v. Portal Healthcare Solutions, LLC*, 35 F. Supp. 3d 765, 771-72 (E.D. Va. 2014) (finding duty to defend under policies providing coverage for "electronic publication of material that ... gives unreasonable publicity to a person's private life" or "electronic publication of material that ... discloses information about a person's private life" when defendant allegedly provided access to underlying plaintiffs' medical records on the Internet; finding "publication" requirement satisfied by making records available to public); *Tamm v. Hartford Fire Ins. Co.*, No. 02-0541-BLS2, 2003 Mass. Super. LEXIS 214, at \*11, 2003 WL 21960374, at



- \*3, 4, 16 Mass. L. Rep. 535 (Mass. Super. Ct. July 9, 2003) (allegations that insured consultant accessed email accounts of former customer and its executives and sent them to former customer's outside counsel "satisfies both prongs under the invasion of privacy clause of the policy"; finding that transmission to former customer's own counsel satisfied "publication" requirement).
23. *E.g.*, *Hooters of Augusta, Inc. v. Am. Global Ins. Co.*, 272 F. Supp. 2d 1365, 1372-73 (S.D. Ga. 2003) (finding, in Telephone Consumer Protection Act ("TCPA") case, that right to privacy encompasses right to be left alone, including "being left alone at work by advertisers sending unsolicited faxes," and finding "that a TCPA violation may constitute an invasion of privacy within the meaning of [the] policy"), *aff'd*, 157 Fed. App'x 201 (11th Cir. 2005); *Valley Forge Ins. Co. v. Swiderski Elecs., Inc.*, 223 Ill. 2d 352, 369, 370-79, 860 N.E.2d 307, 312 (2006) (holding, in case involving unsolicited faxes under TCPA, that "[t]he language of the 'advertising injury' provision is sufficiently broad to encompass the conduct alleged in the complaint"; opinion includes extensive collection of cases); *Valley Forge Ins. Co. v. Swiderski Elecs., Inc.*, 259 Ill. App. 3d, 872, 880-883, 886-87, 834 N.E.2d 562, 569-572, 574-75 (2005) (intermediate appellate court decision in *Valley Forge*; collecting cases and noting that the majority of federal cases have found claims involving both secrecy and seclusion fall within definition of "privacy"; construing "privacy" to include violations of seclusion); *Sawyer v. West Bend Mut. Ins. Co.*, 343 Wis. 2d. 714, 729, 821 N.W.2d 250, 258 (2012) (right of privacy includes both seclusion and secrecy interests).
24. *E.g.*, *Auto-Owners Ins. Co. v. Websolv Computing, Inc.*, 580 F.3d 543, 550 (7th Cir. 2009) (Iowa law).
25. See *supra* cases cited in note 20.
26. *Valley Forge*, 259 Ill. App. at 885-86, 834 N.E.2d at 573-74 (collecting cases; "Thus, contrary to Insurers' assertion, there is no requirement that the scope of 'publication' be limited to material sent to a third party"; alternatively, finding term ambiguous and to be construed against insurer).
27. *E.g.*, *Creative Hospitality Ventures, Inc. v. U.S. Liab. Ins. Co.*, 444 Fed. App'x 370, 376 (11th Cir. 2011) (providing a receipt to credit card customer with impermissible personal information is not "publication"; "[t]he receipt is a contemporaneous record of a private transaction between ETL and the customer, and ETL neither broadcasted nor disseminated the receipt or the credit card information to the general public"); *Ticknor v. Rouse's Enters., LLC*, 2 F. Supp. 3d 882, 896 (E.D. La. 2014) (following *Creative Hospitality Ventures*, no "publication" for printing credit card receipt to customer); see *Travelers Prop. Cas. Co. of Am. v. Kan. City Landsmen, L.L.C.*, 592 Fed. App'x 876, 884-85 (11th Cir. 2015) (parties agreed "that the term 'publication' contemplates dissemination to at least someone other than the person who provided the card information").
28. *Recall Total Info. Mgmt. v. Fed. Ins. Co.*, 147 Conn. App. 450, 463-64, 83 A.3d 664, 672-73 (2014).
29. *Id.* at 453-54, 83 A.3d at 667-68.
30. *Id.* at 454, 83 A.3d at 668.
31. *Id.* at 461, 83 A.3d at 670.
32. *Id.* at 462, 83 A.3d at 672.
33. *Id.*
34. See *Recall Total Info. Mgmt. v. Fed. Ins. Co.*, 317 Conn. 46, 115 A.3d 458 (2015).
35. *Ross v. Stephens*, 269 Ga. 266, 269, 496 S.E.2d 705, 708 (1998).
36. ISO Form CG 24 13 04 13 (2012).
37. ISO Form CG 21 06 05 14 (2013).
38. ISO Form CG 21 07 05 14 (2013). Another endorsement applies only to Coverage B and excludes coverage for disclosure of a person's or organization's confidential or personal information. See ISO Form CG 21 08 05 14 (2013).
39. For a more detailed discussion of the defense obligation, see *GEORGIA BUSINESS LITIGATION* at 538-39, 564-70.
40. *GEORGIA BUSINESS LITIGATION* at 539.
41. *Am. Guar. & Liab. Ins. Co. v. Ingram Micro, Inc.*, No. 99-185-TUC-ACM, 2000 U.S. Dist. LEXIS 7299, at \*6, 2000 WL 726789, at \*2 (D. Ariz. Apr. 18, 2000); *accord NMS Servs. v. Hartford*, 62 Fed. App'x 511, 514 (4th Cir. 2003) (claim for business interruption coverage under property insurance when disgruntled employee installed hacking programs that allowed him to destroy the insured's data; stating there "is no question that NMS suffered damage to its property, specifically, damage to the computers it owned").
42. See *Am. Online, Inc. v. St. Paul Mercury Ins. Co.*, 207 F. Supp. 2d 459, 469-70 (E.D. Va. 2002) (CGL policy); *Ward Gen. Ins. Servs., Inc. v. Employers Fire Ins. Co.*, 114 Cal. App. 4th 548, 556-57, 7 Cal. Rptr. 3d 844, 851 (2003), *as modified on denial of reh'g* (Jan. 7, 2004) ("We conclude the loss of the database, with its consequent economic loss, but with no loss of or damage to tangible property, was not a 'direct physical loss of or damage to' covered property under the terms of the subject insurance policy, and, therefore, the loss is not covered.").
43. *Eyeblaster, Inc. v. Fed. Ins. Co.*, 613 F.3d 797, 804 (8th Cir. 2010) (finding duty to defend under technology errors and omissions policy); *St. Paul Fire & Marine Ins. Co. v. Compaq Comput. Corp.*, 539 F.3d 809, 816 (8th Cir. 2008) (same).
44. *First Bank of Del., Inc. v. Fid. & Deposit Co. of Md.*, No. N11C-08-221, 2013 Del. Super. LEXIS 465, at \*15, 2013 WL 5858794, at \*6 (Del. Super. Ct. Oct. 30, 2013) (finding coverage for losses from data breach under "Electronic Risk Liability" coverage part under D&O policy).
45. *E.g.*, *Retail Ventures, Inc. v. Nat'l Union Fire Ins. Co.*, 691 F.3d 821, 831-32, (6th Cir. 2012) (finding coverage for \$6.8 million in damages caused by a hacking incident under a computer fraud rider to a crime policy).
46. See RICHARD S. BETTERLEY, THE BETTERLEY REPORT: CYBER/PRIVACY INSURANCE MARKET SURVEY 2015 (hereinafter cited as "BETTERLEY"). This report, which contains summary information regarding policy provisions, is available for purchase at [www.irmi.com](http://www.irmi.com).
47. *Id.* at 8.
48. See Angela Stelmakowich, *Demand for cyber insurance on the rise, going through the due diligence process has great value*, CANADIAN UNDERWRITER (Sept. 30, 2015, 10:19 AM), <http://www.canadianunderwriter.ca/news/demand-for-cyber-insurance->

- on-the-rise-going-through-the-due-diligence-process-has-great-value/1003825184/?&er=NA (“You absolutely have to go through the due diligence process for your firm,” [AIG Canada President and CEO Lynn] Oldfield emphasized, suggesting that just completing the evaluation process brings with it value and information.”).
49. The ACE Specimen Policy is available at <http://www.acegroup.com/us-en/assets/ace-digitech-declaration-policy-specimen.pdf> (last visited Mar. 9, 2016).
  50. ACE Specimen Policy at 1 (emphasis in original).
  51. *See id.* at 1-7.
  52. *Id.* at 2-3.
  53. *Id.* at 2.
  54. *Id.*
  55. *Id.* at 7.
  56. *Id.* at 4.
  57. *Id.*
  58. *Id.* at 1.
  59. *Id.* at 7.
  60. *Id.* at 4-5.
  61. *Id.* at 5.
  62. *Id.* at 7.
  63. *See id.* at 1, 6 (Coverage A and definition of “Wrongful Act” for Coverage A).
  64. *See id.* at 1, 6-7 (Coverage B and definition of “Wrongful Act” for Coverage B).
  65. *See id.* at 1, 3, 7 (Coverage F, definitions of “Extortion Expenses” and “Network Extortion Threat, and definition of “Wrongful Act” for Coverage F).
  66. *See id.* at 1, 3 (Coverage E and definition of “Data Breach Expenses”).
  67. A specimen Zurich Security and Privacy Protection Policy is available at [https://www.zurichna.com/\\_/media/dbe/zna/docs/kh/sp/securityandprivacypolicysample.pdf](https://www.zurichna.com/_/media/dbe/zna/docs/kh/sp/securityandprivacypolicysample.pdf) (last visited Mar. 9, 2016).
  68. A specimen AIG Cyberedge Security and Privacy Liability Insurance Policy is available at [http://www.aig.com/Chartis/internet/US/en/SECURITY%20AND%20PRIVACY%20COVERAGE%20SECTION%20101024%20\(12-13\)%20SRP%20Coverage%20Parts\\_tcm3171-661710.pdf](http://www.aig.com/Chartis/internet/US/en/SECURITY%20AND%20PRIVACY%20COVERAGE%20SECTION%20101024%20(12-13)%20SRP%20Coverage%20Parts_tcm3171-661710.pdf) (last visited Mar. 9, 2016).
  69. A specimen Chubb Forefront Portfolio 3.0 CyberSecurity Coverage Part is available at <http://www.chubb.com/businesses/csi/chubb13765.pdf> (last visited Mar. 9, 2016).
  70. Professional liability (malpractice) coverage is almost always written on a claims made basis. Accordingly, professional liability coverage is also subject to these general concerns.
  71. *See* Complaint for Declaratory Judgment & Reimbursement of Defense & Settlement Payments, Columbia Cas. Co. v. Cottage Health Sys., No. 2:15-cv-03432-DDP-AGR (C.D. Ca. May 7, 2015), *ECF No. 1*.
  72. The ACE Specimen Policy has an exclusion based on the “lack of performance” of software programs “due to the expiration or withdrawal of technical support by the software vendor.” Ace Specimen Policy at 10 (Exclusion T). Although the scope of this particular exclusion is debatable, it is potentially significant. As of April 2015, one publication reported that as many as 250 million users were using the Windows XP operating system, which Microsoft ceased supporting in 2014. *See* Scott Bekker, *Windows XP Usage Still Strong at 250 Million Users*, REDMOND MAG. (Apr. 8, 2015) <https://redmondmag.com/articles/2015/04/08/windows-xp-usage.aspx>. Microsoft has warned that XP users are vulnerable and has urged them to switch to newer, supported systems. *See Support for Windows XP ended April 8th, 2014*, MICROSOFT, <https://www.microsoft.com/en-us/WindowsForBusiness/end-of-xp-support> (last visited Mar. 9, 2016).
  73. *E.g.*, ACE Specimen Policy at 8 (Exclusion B).
  74. *See* ISO Form CG 21 07 05 14 (2013).
  75. *See supra* note 13 regarding hack of Jeep Cherokee; *see also* Alexandra Ossola, *Hacked Medical Devices May Be the Biggest Cyber Security Threat in 2016*, POPULAR SCI. (Nov. 23, 2015) <http://www.popsci.com/hackers-could-soon-hold-your-life-ransom-by-hijacking-your-medical-devices>.
  76. *E.g.*, ACE Specimen Policy at 9 (Exclusion S) (“arising or attributable to acts of war”; “acts of foreign enemies”).
  77. Devlin Barrett, *FBI Says North Korea Behind Sony Hack*, WALL ST. J. (Dec. 19, 2014, 1:03 PM), <http://www.wsj.com/articles/fbi-says-north-korea-behind-sony-hack-1419008924?alg=y>.
  78. *See* ACE Specimen Policy at 8 (Exclusion A).
  79. *See* ACE Specimen Policy at 9 (Exclusion N).
  80. *See, e.g.*, Reed v. Auto-Owners Ins. Co., 284 Ga. 286, 667 S.E.2d 90 (2008).
  81. ACE Specimen Policy at 2-3 (Definition I).
  82. *See* PCI Noncompliant Consequences, FOCUS ON PCI, <http://www.focusonpci.com/site/index.php/pci-101/pci-noncompliant-consequences.html> (last visited Mar. 9, 2016).
  83. *E.g.*, CIMCO Commc’ns, Inc. v. Nat’l Fire Ins. of Hartford, 407 Ill. App. 3d 32, 37, 943 N.E.2d 276, 281 (2011) (additional coverage for “extended business income” read to limit coverage for more general coverage for “business income,” even though court conceded the insured’s interpretation of business income insuring agreement was reasonable).



For the most up-to-date  
information on lawyer  
discipline, visit

[www.gabar.org/forthepublic/  
recent-discipline.cfm](http://www.gabar.org/forthepublic/recent-discipline.cfm)



State Bar  
of Georgia

# The 25th Annual Georgia Bar Media & Judiciary Conference

by Stephanie J. Wilson

**O**n Friday, Feb. 26, attorneys, media professionals and judges met at the State Bar of Georgia for the 25th annual Georgia Bar Media & Judiciary Conference. Just as in years past, the 2016 conference proved to be an exciting day full of sessions covering timely topics impacting the First Amendment. Many thanks to CNN and all the sponsors for their support of this annual symposium. For a complete list of sponsors, see page 27.

## Uncovering and Covering Georgia Police Shootings

### Moderator

- Ken Foskett, Senior Editor for Investigations, *Atlanta Journal-Constitution*

### Panelists

- Jeff Ernsthansen, Data Specialist, *Atlanta Journal-Constitution*
- Jodie Fleischer, Investigative Reporter, WSB-TV
- Jennifer Peebles, Data Specialist, *Atlanta Journal-Constitution*
- Brad Schrade, Investigative Reporter, *Atlanta Journal-Constitution*



Photo by Stephanie J. Wilson

"The Story of a College Football Fix" moderator (and Alabama fan) Hank Klibanoff displays a commemorative Bear Bryant Coca-Cola bottle while sporting his Crimson Tide hat.

The conference kicked off with a look behind the scenes with the investigative team that reported "Over the Line." Last year, the team—made up of data specialists and journalists from the *Atlanta Journal-Constitution* and WSB-TV—built an online database of the 184 police shootings that have occurred in Georgia since 2010. This comprehensive compilation is the first of its kind, and the resulting data provides an alarming glimpse into the ever-rising tension between police and the public they are sworn to serve and protect.



The most compelling images the audience witnessed were from dash cam footage of the police shooting of Caroline Small. In June 2010, the Brunswick mother of two was shot by Glynn County Police Sgt. Robert C. Sasser and Officer Michael T. Simpson after her car was pinned between a Georgia State Patrol car, a Glynn County Police car and a utility pole following a four-mile, low-speed chase. The officers, who claimed to fear for their lives, fired seven shots through the windshield of Small's Buick. Small was unarmed. She never regained consciousness and died one week later. A grand jury cleared the officers of any wrongdoing. Neither officer was ever disciplined.

*Atlanta Journal-Constitution* investigative reporter Brad Schrade and WSB-TV investigative reporter Jodie Fleischer reviewed "thousands of pages of court records, police files and GBI documents associated with the shooting death of Caroline Small" and conducted multiple interviews. To read more about Caroline Small's story and the 183 other Georgia police shootings, please visit <http://investigations.myajc.com/overtheline>.

## The View from the Street of the Cop on the Beat

### Moderator

- Ed Bean, Senior Vice President and Editor, Poston Communications

### Panelists

- Ken Allen, President, Local 623, International Brotherhood of Police Officers
- Steve Gaynor, President, Lodge #13, Fraternal Order of Police
- Dan Grossman, Law Office of Daniel J. Grossman
- Ted Jackson, Sheriff, Fulton County
- Lance J. LoRusso, LoRusso Law Firm

Eric Garner. Michael Brown. Tamir Rice. Walter Scott. Freddie



Crime Scene Photo

Caroline Small's Buick was pinned between a Georgia State Patrol car, a Glynn County Police car and a utility pole. Glynn County Police Sgt. Robert C. Sasser and Officer Michael T. Simpson fired seven shots through the windshield. Small died one week later, having never regained consciousness. Neither officer was ever disciplined.

Gray. Sandra Bland. These are just a few names of those whose deaths came at the hands of law enforcement or while in police custody. Police morale is at an all-time low, and tension between peace officers and citizens is rising steadily. The second panel of the conference focused on how that tension is changing the way police approach and views their jobs.

There are approximately 800,000 sworn police officers in the United States. They work to protect citizens against the violence that terrorizes some communities. Some are armed with body cameras. Atlanta Police detective Ken Allen believes that peace officers should have body cams. Fulton County Sheriff Ted Jackson is in agreement. He stated that roughly one-third of Fulton County deputies have body cameras—the funds for which come not from citizens, but from inmates. He said that body cams can "de-escalate an incident and lead to increased professionalism."

When asked how officers feel about members of the public photographing or filming them, the panelists said it all depends on how they have been trained to react. Pictures and videos can be important tools for accountability,

as well as citizen review panels. Unfortunately, most citizens lack an understanding of the specific aspects of law enforcement work. The panel agreed that citizen review panels should be completely independent of police departments. They should be made up of professionals who understand how policing is done—trained people with expertise.

## 21st Century Public Housing?: Covering the Continuing Construction of Atlanta's Sports Stadiums

### Moderators

- Jonathan Ringel, Managing Editor, *Daily Report*
- Ron Thomas, Director, Journalism and Sports Program, Morehouse College

### Panelists

- Lisa Cupid, Commissioner, Cobb County
- Dan Klepal, Reporter, *Atlanta Journal-Constitution*
- Bruce Seaman, Associate Professor of Economics, Andrew Young School of Policy Studies, Georgia State University



Frog County Superior Court Judge “Lawless Stevens” (played by Western Circuit Superior Court Judge Lawton Stephens) puts an empty chair on trial when the defendant failed to appear during the “Judging the Judges” session.



Bill Nigut (wearing headphones), host of Georgia Public Broadcasting’s radio show “Political Rewind,” gestures to panelists (left to right) DuBose Porter, Todd Rehm and Jim Galloway during their live broadcast.

- Han Choi, Managing Partner, Ballard Spahr, LLP

Every sports team needs a home, and plenty of jurisdictions want to attract a sports team. What better way than with a brand new stadium? Two state-of-the-art stadiums are currently under construction in metro-Atlanta. Mercedes-Benz Stadium, scheduled to open in 2017, will be the home of the Atlanta

Falcons and Atlanta United. The Atlanta Braves will be moving to Cobb County when SunTrust Park is completed.

SunTrust Park has brought the most public scrutiny. The plan for the new stadium was made public a mere two weeks prior to the vote by the Cobb Commission. District 4 Commissioner Lisa Cupid was the only member to vote against a preliminary agreement between Cobb

County and the Braves. Cupid, one of the panelists, said, “I don’t make my decisions on whether or not they will be controversial.” Unbeknownst to the rest of the commission, Chairman Tim Lee had Seyfarth Shaw partner Dan McRae working and negotiating with the Braves on behalf of the county. This fact was news to County Attorney Deborah Dance as well. In her role as county attorney, Dance has the responsibility for hiring outside legal counsel. Following these revelations, a pall was cast over all the stadium dealings. Soon after *Atlanta Journal-Constitution* reporter Dan Klepal began covering the SunTrust Park stadium deal, Chairman Lee quickly stopped returning his phone calls.

## The Story of a College Football Fix: A Look Back at Georgia’s Contribution to the Law of Libel in the World of Bear Bryant

### Moderator

- Hank Klibanoff, Professor of Journalism, Emory University

### Panelists

- Emmet Bondurant, Partner, Bondurant, Mixon & Elmore LLP
- David Sumner, Professor Emeritus of Journalism, Ball State University

Following his (forced) resignation in 1960 as University of Georgia head football coach, Wally Butts was allowed to stay on as the university’s athletic director. Several years later, dissatisfied with his lot in life and bitter toward his successor, Butts called the coaches of several football teams that Georgia would be facing that season. He shared critical information about the Bulldogs’ team strategy and their plays. The most notable of those coaches contacted by Butts was Bear Bryant of the University

of Alabama. Due to a “technical glitch” the phone call between Butts and Bryant was overheard by an Atlanta insurance salesman, who then told university officials what he heard. When approached about the phone call, Butts resigned as athletic director. Soon after, *The Saturday Evening Post* ran “The Story of a College Football Fix.” Butts subsequently sued for libel. *Curtis Publishing Co. v. Butts*, a landmark case heard by the U.S. Supreme Court, established the standard of First Amendment protection against defamation claims brought by private individuals.

In 1963, Emmet Bondurant was a young associate in the firm that defended the *Post*. Bondurant was present at the conference to share his memories about this notorious event. On the panel with Bondurant, was Ball State University Professor Emeritus David Sumner. Sumner is completing his book “Million Dollar Fumble: The Untold Story of the Bear Bryant-Wally Butts Football Scandal.” In May 2015, Sumner traveled to Atlanta to interview Bondurant for his book. “Million Dollar Fumble” is due to be published this fall.

## Judging the Judges

### Organizer/Interlocutor

- Richard T. Griffiths, Editorial Director, CNN

### Panelists

- Josh Belinfante, Partner, Robbins Ross Alloy Belinfante Littlefield, LLC
- Robin McDonald, Reporter, *Daily Report*
- Hon. Lawton Stephens, Superior Court Judge, Western Judicial Circuit
- S. Lester Tate III, Chair, Judicial Qualifications Commission; Partner, Akin & Tate, P.C.

CNN Editorial Director Richard Griffiths led the panelists and the audience into fictional Frog County for three different hypothetical scenarios involving judicial miscon-

duct. In three different situations posed by Griffiths, Frog County Superior Court Judge “Lawless Stevens”—played by Western Circuit Superior Court Judge Lawton Stephens—is accused of escalating degrees of transgressions. Attorney Josh Belinfante, reporter Robin McDonald and current Judicial Qualifications Commission Chairman Lester Tate each played their respective roles with great skill. As the drama unfolded, Belinfante, McDonald and Tate all responded to Griffiths’ questions as they would in real life.

This Fred Friendly-style panel is a highlight of the conference each year.

## Countdown to SEC Tuesday

### Host

- Bill Nigut, “Political Rewind,” Georgia Public Broadcasting

### Panelists

- Jackie Gingrich Cushman, Columnist, Creators Syndicate
- Tharon Johnson, Director, Greenburg Traurig
- DuBose Porter, Chairman, Democratic Party of Georgia
- Todd Rehm, Editor, GaPundit.com

Just prior to SEC Tuesday, Atlanta media icon Bill Nigut treated conference attendees to the

opportunity to serve as the audience for a live broadcast of Georgia Public Broadcasting’s radio show “Political Rewind.” Nigut hosts the twice weekly program with a cast of regulars and guests.

The panel tackled topics covering the presidential election, including the Republican debate that had just aired on CNN the night before, and pending legislation in the Georgia House and Senate. Go to <http://gpbnews.org/programs/political-rewind> to listen to past episodes.

## Georgia and the Death Penalty: Changing Perspectives?

### Moderator

- Jason Cater, Partner, Bondurant, Mixon & Elmore, LLP

### Panelists

- Hon. Norman Fletcher, Chief Justice (retired), Supreme Court of Georgia
- Danny Porter, District Attorney, Gwinnett County

In the final panel of the day, former Georgia senator and 2014 Democratic gubernatorial candidate Jason Carter sat down with Supreme Court of Georgia Chief Justice (retired) Norman Fletcher and Gwinnett County District

## The 2016 Georgia Bar Media & Judiciary Conference was graciously sponsored by

- CNN
- ACLU of Georgia
- *Atlanta Journal-Constitution*
- Bryan Cave LLP
- Council of State Court Judges
- Council of Superior Court Judges
- *Daily Report*
- Duane Morris LLP
- Georgia First Amendment Foundation
- Georgia State University Department of Communication
- Institute of Continuing Judicial Education of Georgia
- Jones Day
- Judicial Council of Georgia/ Administrative Office of the Courts
- Kennesaw State University School of Communication & Media
- Kilpatrick Townsend & Stockton LLP
- Morehouse College
- State Bar of Georgia




Attorney Danny Porter to discuss their views on the death penalty.

Prior to his time on the Supreme Court of Georgia, Justice Fletcher hadn't given his opinion on the death penalty much thought. During his tenure on the Court, that all began to change, and by the time he retired in 2005 his opposition to the death penalty was secure. Fletcher cites his Christian beliefs as being the catalyst for his change of heart.

Gwinnett County District Attorney Danny Porter's opinion lies on the opposite end of the spectrum. Porter, Georgia's longest serving dis-

trict attorney, has sought and secured the death penalty in six cases. He has also witnessed three executions, including that of Kelly Gissendaner by lethal injection on Sept. 30, 2015. Porter quoted "American Sniper" Chris Kyle by saying, "I'm ready to meet my maker and account for every shot I've taken."

Attendees listened with rapt attention as Carter, Fletcher and Porter discussed this very polarizing subject. A few people may have even walked away from the conference having their personal views on the death penalty swayed in a new direction.

After the conclusion of the 2016 Bar Media & Judiciary Conference, attorneys, judges and journalists gathered for a reception outside the auditorium. Conversations among attendees and panelists flowed abundantly. Once again, this annual Institute of Continuing Legal Education in Georgia event was a great success. 



**Stephanie J. Wilson** is the communications coordinator in the Bar's communications department and a contributing writer for the *Georgia Bar Journal*.



## ETHICS DILEMMA?

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



# DON'T ROLL THE DICE ...



## WHEN IT COMES TO A DISABILITY

**You can't count on avoiding a disability, but you can help preserve your family's way of life with Long-Term Disability Insurance.**

It is no secret that your ability to work is a key element to your financial well-being. In the unforeseen event that you become disabled, you'd want to have solid disability income protection. That's why as a member of the State Bar of Georgia, you have access to a group plan with specially negotiated rates that can help meet your needs.

UP TO  
**\$10,000**  
OF MONTHLY  
DISABILITY  
COVERAGE<sup>1</sup>

OWN  
OCCUPATION  
COVERAGE

SPECIAL  
GROUP RATES  
FOR MEMBERS

Get an **instant online quote** for Long-Term Disability Insurance at  
[www.memberbenefits.com/gabar](http://www.memberbenefits.com/gabar) or call **1-800-282-8626**

# 2015 Georgia Corporation and Business Organization Case Law Developments

by Michael P. Carey

*This article presents an overview from a survey of Georgia corporate and business organization case law developments in 2015. The full version of the survey, which can be downloaded or printed at <https://ruby.bryancave.com/preview/images/content/8/2/v2/82173/2015-Georgia-Corporation-and-Business-Organization-Case-Law-Deve.pdf>, 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 author only and not Bryan Cave LLP.*

**T**his article catalogs decisions handed down during 2015 by Georgia state and federal courts addressing questions of Georgia corporate and business organization law. It includes both decisions with significant presidential value and others dealing with less momentous questions of law as to which there is little settled authority. Even those cases in which the courts applied well-settled principles serve as a useful indication of 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.

The year saw a number of noteworthy decisions spanning a wide variety of corporate and business law issues. There were two significant decisions involving directors of corporations who simultaneously serve as trustees for trusts who hold a minority interest in

the corporation—one dealing with liability issues, the other an insurance coverage dispute. Elsewhere, the Supreme Court of Georgia issued an important opinion reaffirming the duty to read transactional documents and clarifying the circumstances under which that duty can be excused. The Supreme Court also addressed the availability of prejudgment interest in an action for specific performance of a stock purchase agreement, and the remedy of equitable partition in the context of a joint venture agreement. The Court of Appeals of Georgia addressed two issues of first impression: the first dealing with a judgment creditor's right to a charging order against an LLC member, the other dealing with an LLC's right to recover for discomfort and annoyance in a nuisance action. The courts also dealt with interesting questions of jurisdiction and venue over corporate entities, including whether a foreign corporation or LLC with its corporate headquarters outside of Georgia can remove a tort action from the county in which it is filed to the county where its largest Georgia office is located.

The decisions are organized first by entity type—those specific to business corporations, limited liability companies and partnerships. The remaining sections of the survey deal with (1) transactional issues potentially applicable to all forms of business organizations, and (2) litigation issues that are common to all business forms, including secondary liability, jurisdiction and venue, evidence questions and insurance issues.





## Duties and Liabilities of Corporate Directors, Officers and Employees

One of the most significant and interesting Georgia corporate law cases in recent years, *Rollins v. Rollins*, returned to the Supreme Court of Georgia in 2015. In a previous appeal, the Supreme Court held that corporate directors who simultaneously serve as trustees of trusts holding minority interests in the corporation are subject to the corporate standard of care, and not a more stringent trust standard, when acting in a corporate capacity. The case returned to the Supreme Court after the Court of Appeals of Georgia ruled that it was unable to determine as a matter of law whether the defendants were acting in a corporate capacity or a trust capacity when they voted their trusts' interests in favor of amending a partnership agreement to make themselves managing partners, and also when they modified the partnership's distribution scheme. A unanimous Supreme Court held, without

deciding any ultimate question of liability, that the capacity in which the defendants acted was ascertainable from the trial court's summary judgment record and could be determined as a matter of law. *Rollins v. Rollins*, 298 Ga. 161, 780 S.E.2d 328 (2015). In so holding, the Court explained that when a particular action can only have been performed in one capacity—such as voting a trust's shares of stock, which can only be done by a trustee—there can be no confusion as to what standard of care to apply, and therefore, no need for a jury to determine that issue.

There were two noteworthy decisions involving claims of misappropriation of corporate opportunities. In *Sewell v. Cancel*, 331 Ga. App. 687, 771 S.E.2d 388 (2015), the shareholders of an anesthesiology group structured as a professional corporation voted to dissolve the corporation and later, certain director/shareholders formed a new corporation, excluding other directors and shareholders of the previous corporation. The new corporation obtained a contract with

the same hospital served by the previous corporation. Evaluating a motion for summary judgment by the defendants, the Court of Appeals held that no usurpation of a corporate opportunity or fraud occurred as a matter of law. Two facts weighed heavily in the court's decision. First, the dissolution of the initial corporation was brought about by factors beyond its control; namely, the hospital's unilateral decision to terminate its contract with the previous corporation and restructure its anesthesiology department. Second, the dissolution was unanimously approved, including by the plaintiffs, who showed no evidence that they were defrauded into voting in favor. In the second case, *BST AG Solutions Inc. v. PWB AG Consulting LLC*, No. 1:15-cv-88(LJA), 2015 WL 4067569 (M.D. Ga. July 2, 2015), the Middle District of Georgia held that the evidence was insufficient to show that an exclusive distribution right was a corporate opportunity belonging to the plaintiff. While the defendant, a former director of the corporation, had previously

assigned the distribution right to the corporation, it was clear to the court that the assignment was for a limited time period which expired before the defendant left.

Two other cases addressed questions of individual liability of corporate directors, officers and shareholders. In *Houston v. Elan Financial Services*, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 5634626 (S.D. Ga. Sept. 24, 2015), the Southern District of Georgia held that the owner of a corporation bound himself personally to the terms of the corporation's credit card agreement, and therefore was liable for charges made to the account. The court found that the agreement plainly bound the owner through terms such as "the business owner is individually liable and jointly liable with the business for all charges made to the account." In *Caplan v. Weis*, No. 1:14-cv-01321-RWS, 2015 WL 630441 (N.D. Ga. Feb. 11, 2015), the Northern District of Georgia held that a landlord's principal could be individually liable under the federal Lead-Based Paint Hazard Reduction Act of 1992 and for negligence under Georgia law, on the basis of allegations that the principal dealt personally with the plaintiff tenants but did not warn them about the dangers of lead-based paint on the premises.

## Corporate Stock and Debt—Contracts and Valuation

In *Estate of Callaway v. Garner*, 297 Ga. 52, 772 S.E.2d 668 (2015), the Supreme Court of Georgia held that a seller obtaining specific performance of a stock purchase agreement was not entitled to prejudgment interest under O.C.G.A. § 13-6-13, holding that the award of prejudgment interest was inconsistent with the nature of specific performance as an equitable remedy. The Court nonetheless noted that an award of interest might be available under O.C.G.A. § 7-4-15, which provides for an award of interest on

"[a]ll liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain." In *Hall v. Prosero, Inc.*, 333 Ga. App. 454, 774 S.E.2d 216 (2015), the Court of Appeals affirmed a trial court decision holding that there was no failure of consideration, either partial or full, when a corporation's chief executive officer executed a promissory note to exercise stock options. The court explained that because even stock valued at the nominal sum of \$0.01 per share, as argued by the defendant, has some positive value, there cannot have been a complete failure of consideration. The court also found that the defendant's partial failure of consideration defense amounted to a claim that the stock's value was inadequate, which does not support a defense absent a showing of fraud.

## Limited Liability Company Developments

There were a number of interesting cases from 2015 involving limited liability companies. Two cases involved the construction of operating agreement language dealing with the death of members. In *Davis v. VCP South*, 297 Ga. 616, 774 S.E.2d 606 (2015), the Supreme Court of Georgia held that a special master properly construed the provisions of an LLC operating agreement regarding the purchase of a deceased member's interest when it established a cutoff date for the estate of the deceased member's right to receive distributions that preceded the actual sale of the interest by over two years. The Court reasoned that the operating agreement had provided for a streamlined valuation and sale process, and that once the valuation occurred shortly after the litigation commenced, it was reasonable for the trial court to cut off any future right to distributions so as to prevent the estate from unfairly benefiting from dragging out the process through litigation. In *Myers v. Myers*, 297 Ga. 490, 775 S.E.2d 145 (2015), the Supreme Court held

that an executor of a deceased LLC member's estate became a member of the LLC by operation of O.C.G.A. § 14-11-506, but that this fact did not give the executor an unfettered right to continue managing the LLC as a going concern. Instead, the executor was bound by the terms of the LLC operating agreement, which expressly limited his powers to bringing about the dissolution of the LLC.

There were two decisions, both issued by the same panel of the Court of Appeals, which appear to be the first Georgia appellate decisions interpreting the LLC Act's provisions regarding charging orders, O.C.G.A. § 14-11-504(a). In *Mahalo Investments III, LLC v. First Citizens Bank & Trust Co.*, 330 Ga. App. 737, 769 S.E.2d 154 (2015), the Court held that a judgment creditor seeking a charging order was not required to bring an independent action against the LLC. The Court further held that a trial court may enter a charging order without first establishing that jurisdiction and venue are proper against the LLC. It reasoned that because a judgment creditor is not entitled to interfere in the internal affairs of the LLC, but instead holds only the rights of an assignee of the member's interest, the LLC has no right or interest in need of protection in proceedings to obtain a charging order. This was further illustrated in the second case, *Gaslowitz v. Stabilis JE-102 Fund I, LP*, 331 Ga. App. 152, 770 S.E.2d 245 (2015). In *Gaslowitz*, the court affirmed the trial court's entry of a charging order and rejected arguments that the order was too unspecific as to the amount due and the method by which distributions should be made to the judgment creditor. At the same time, however, the Court of Appeals reversed the trial court's order insofar as it ordered an accounting of the LLC.

In *Evanston Insurance Company v. Mellors*, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 5786745 (S.D. Ga. Sep. 28, 2015), the Southern District of Georgia addressed the definition of a man-



ager under O.C.G.A. § 14-11-304 in determining whether an individual was an insured person under the LLC's insurance policy. Despite the fact that the individual was not a member of the LLC and held no formal title, he was deemed to be a manager because the LLC's sole owner, who was the individual's wife, designated him in writing to "handle all business matters" for the LLC. A similar question was addressed in *In re Reynolds*, No. 11-87131-BEM, 2015 WL 6520157 (Bankr. N.D. Ga. Sept. 18, 2015), in which a bankruptcy trustee sought revocation of a debtor's discharge on the grounds that she failed to disclose her involvement in an LLC on whose behalf she routinely executed leases, contracts and other documents. The bankruptcy court held that disclosure was not required, citing the fact that the debtor was not a member and had no apparent financial interest in the LLC, as well as evidence showing that all of her acts performed on behalf of the LLC were done at the direction of its sole member and under his control. In *Crumpton v. Vick's Mobile Homes, LLC*, 335 Ga. App. 155, 779 S.E.2d 136 (2015), the Court of Appeals held that a member's petition for dissolution of an LLC does not cause the petitioner's membership to cease. Interpreting O.C.G.A. § 14-11-601(b)(4)(D), which lists "dissolution" as one of several conditions that can cause one's membership in an LLC to cease, the court explained that this provision refers to dissolution of the member and not dissolution of the LLC.

Finally, in *STL Management Consultants v. Manhattan Leasing Enters. Ltd.*, 333 Ga. App. 309, 775 S.E.2d 758 (2015), the Court of Appeals addressed a novel question regarding the time at which the resignation of an LLC's registered agent becomes effective. Under O.C.G.A. § 14-11-209(a)(2), a registered agent's resignation becomes effective 31 days after its statement of registration is "filed" with the Secretary of State. Here, in a dispute concerning whether service on

an LLC through a registered agent who had resigned was effective, the agent's statement of registration was stamped as received by the Secretary of State's office in February 2013, then stamped again with the Secretary's name in May 2013. The Court, unable to discern any reason for the later stamp, concluded that the resignation was effective 31 days after it was initially stamped as received by the Secretary's office. It relied heavily on O.C.G.A. § 14-11-206, which it interpreted as giving the Secretary's office a purely ministerial role in filing documents, and also analogized the situation to the filing of pleadings with the clerk of court.

## Partnership Law Developments

One of the most interesting decisions of 2015 dealt with an equitable partition of joint venture property. In *Bagwell v. Trammel*, 297 Ga. 873, 778 S.E.2d 173 (2015), the parties set up a joint venture to hold certain real estate which was intended to be sold. The operative agreement provided for a 70/30 distribution of sale proceeds in favor of the plaintiff. After most of the property had been sold and the proceeds from those sales completed, the plaintiff sued for specific performance of the distribution formula for future sales, and alternatively for equitable partition of the joint venture property consistent with the 70/30 formula. The trial court denied the request for specific performance and granted the request for equitable partition, but divided the property 50/50 instead. The Supreme Court affirmed the decision in all respects. It found that the request for specific performance was not ripe (even though the trial court had ruled on different grounds), because at the time of the action, the property had not been sold and there were no proceeds to distribute. It further upheld the trial court's decision to partition the property using a different formula from that agreed

## Tax Court Accepts Kaye Valuation

Affirmed by  
US Court of Appeals

Mitchell Kaye, CFA, ASA  
(770) 998-4642

## Business Valuations

Divorces • Estates • Gifts  
ESOPs • FLPs  
Intangible Assets • Disputes

Court Testimony and IRS Experience

*serving appraisal clients since 1981*

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

to by the parties, noting that in a equitable proceeding, trial courts have broad discretion to consider facts and circumstances beyond the terms of the parties' agreement.

Another case dealing with a real estate venture was *Abdulla v. Chaudhary*, No. CV 114-008, 2015 WL 4477824 (S.D. Ga. July 21, 2015), in which the Southern District of Georgia held that no claim could be brought for breach of a partnership agreement, or for breach of fiduciary duties arising from a partnership, where the parties abandoned the partnership by failing to purchase properties through an LLC they had agreed to create for that purpose, and purchasing the properties in their own names instead. In *McElvaney v. Roumelco*, 331 Ga. App. 729, 771 S.E.2d 419 (2015), the Court of Appeals held that a joint venturer produced sufficient evidence of an oral stock transfer agreement giving him a 47 percent interest in an LLC to entitle him to a jury trial of his claims against the LLC and its majority owner. Reversing the trial court's grant of summary judgment to the defendants, the



Court pointed to evidence that the defendants held the plaintiff out to be a 47 percent owner in communications with the defendant and a third party. Finally, in *Smith v. Williams*, 333 Ga. App. 167, 775 S.E.2d 639 (2015), the Court of Appeals held that a question of fact existed as to when a law firm partnership terminated, thus precluding summary judgment in a dispute over the disposition of certain fees. While the plaintiff contended that the partnership terminated the moment her partner packed up and left the office, the Court found evidence that the parties continued to split fees for some time thereafter, and noted that dissolution does not immediately terminate a partnership; instead, its existence continues until the winding up of its affairs is completed.

## Transactional Cases

The Supreme Court of Georgia rendered a noteworthy decision on the duty to read transaction documents in *Legacy Academy, Inc. v. Mamilove, LLC*, 297 Ga. 15, 771 S.E.2d 868 (2015). Reversing a 4-3 *en banc* Court of Appeals ruling from 2014, a unanimous Court held that the fact that a party was rushed into signing a document, without more, does not excuse a party from the well-established duty to read and be familiar with the document's contents. Instead, for a signatory to set up a fraud claim that is contradicted by the plain terms of the document being signed, the signatory must show that he or she was prevented from reading the document. The implications of this rule can be quite significant, as evidenced by the case before the Court. The plaintiffs had prevailed at trial and obtained a verdict of more than \$1 million, which the Court of Appeals narrowly affirmed. But because they were not actually prevented from reading the transaction documents, which contained non-reliance provisions and a merg-

er clause that contradicted their fraud claim, the Supreme Court held that a directed verdict should have been entered in favor of the defendants.

Another investor's fraud in the inducement claim was permitted to go forward, however, in *Stafford v. Gareleck*, 330 Ga. App. 757, 769 S.E.2d 169 (2015). Here, the Court of Appeals held that the trial court should not have dismissed fraud claims alleging that the plaintiff agreed to sell his interest in reliance on the defendant's misrepresentations about its fair value, combined with allegations that the defendant owed him a fiduciary duty. The court also found that the plaintiff was not required to make a tender of the shares in order to obtain rescission, because he alleged that the defendant had already acknowledged his demand to rescind the transaction and agreed to pay him more money. In *Kreiger v. Bonds*, 333 Ga. App. 19, 775 S.E.2d 264 (2015), the Court of Appeals held that issues of fact precluded summary judgment in an action for specific performance of a buy-sell agreement, noting that there were numerous questions as to whether various conditions in the buy-sell agreement and the corporation's bylaws had been satisfied by either party.

Finally, there were multiple decisions involving the transfer of assets, rights and liabilities as a result of bank mergers, none of which established any new legal principles. In *Stoudemire v. HSBC Bank USA*, 333 Ga. App. 374, 776 S.E.2d 483 (2015), the Court of Appeals affirmed the dismissal of a wrongful foreclosure action which was premised in part on allegations that the assignment of the plaintiffs' security deed was invalid under O.C.G.A. § 14-5-7 because it was not signed by a secretary, assistant secretary, cashier or assistant cashier of the transferor bank. In *Shibley v. JPMorgan Chase Bank, N.A.*, No. 1:14-cv-1728-WSD, 2015 WL 576592 (N.D. Ga. Feb. 11, 2015), the Northern District of Georgia

held that the lack of any record of transfer of the original lender's interest in the county deed records provides no basis for enjoining a foreclosure sale, because its interest was transferred by operation of law. And in *McDonald-Forte v. Merrill Lynch Mortgage Investors Trust, Series MLCC 2004-D*, No. 1:14-cv-1660-WSD, 2015 WL 4928715 (N.D. Ga. Aug. 18, 2015), the Northern District dismissed a wrongful foreclosure claim against a securitized trust which had transferred the plaintiffs' mortgage, holding that the trust owed no duty to the plaintiffs.

## Litigation Issues

### Standing and Capacity to Sue

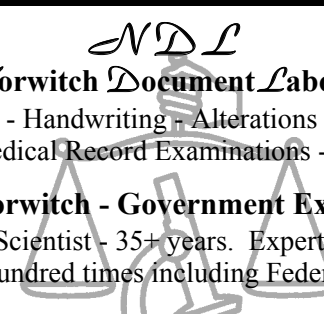
In *Oglethorpe Power Corp. v. Estate of Forrister*, 332 Ga. App. 693, 774 S.E.2d 755 (2015), the Court of Appeals addressed what it considered to be a question of first impression regarding the right of an LLC to recover nuisance damages for "discomfort and annoyance," holding that an LLC is entitled to recover such damages, even if it did not reside in Georgia. The Court found support from an 1883 U.S. Supreme Court case which recognized a religious corporation's right to sue for annoyance and discomfort suffered by its members in their use of the corporation's property. In *In re Mohr*, 538 B.R. 882 (Bankr. S.D. Ga. Sept. 24, 2015), the bankruptcy court held that a creditor that was a foreign LLC was not transacting business in Georgia by seeking relief in court, and therefore did not need to obtain a certificate of authority from the Secretary of State. And in *AAA Restoration Co, Inc. v. Peek*, 333 Ga. App. 152, 775 S.E.2d 627 (2015), the Court of Appeals addressed the remedies available when an arbitration agreement contains a misnomer as to the identity of the arbitration provider. The court held that absent evidence of mutual mistake, there was no basis for reformation of the agreement to change the name.

## Secondary Liability

There were a number of federal decisions, all involving related facts, in which the courts rejected attempts to hold individual owners and managers of a developer and building manager individually liable for torts allegedly committed by the companies under an alter ego theory. *Lokey v. FDIC*, 608 Fed. Appx. 736 (11th Cir. 2015); *Harris Baking Company v. Drayprop LLC*, No. CV411-171, 2015 WL 5786743 (S.D. Ga. Sept. 30, 2015); *Hunt v. Drayprop, LLC*, No. CV411-172, 2015 WL 5786744 (S.D. Ga. Sept. 30, 2015); *Reinke v. Drayprop, LLC*, No. CV411-144, 2015 WL 5786742 (S.D. Ga. Sept. 30, 2015). The Eleventh Circuit and the Southern District of Georgia held that the plaintiffs' evidence, which largely consisted of allegations that the individual defendants drafted and signed particular documents, and/or guaranteed certain loans, fell short of the showing needed to invoke the alter ego doctrine.

In *Dezauche v. Bryce*, No. CV311-71, 2015 WL 5923581 (S.D. Ga. Oct. 9, 2015), the Southern District addressed—and ultimately found inapplicable—several theories of secondary liability: alter ego, partnership, joint venture and successor liability. The plaintiff had alleged that the defendants actually controlled a company that was one of its customers. The court found no evidence that the defendants ever failed to respect the customer's separate identity. It further found that claims that the defendants and its customers had formed a partnership, or that the defendants had acquired the customer, were rebutted by testimony from the customer's principals that they did not desire such a relationship.

Finally, in *CHIS LLC v. Liberty Mutual Holding Co Inc.*, No. 5:14-cv-277, 2015 WL 4249358 (M.D. Ga. July 13, 2015), the Middle District of Georgia held that a policyholder's claims against its insurer's parent company and two affiliates, which relied on alter ego, agency and joint venture principles, were



**NDL**  
**Norwich Document Laboratory**  
Forgeries - Handwriting - Alterations - Typewriting  
Ink Exams - Medical Record Examinations - "Xerox" Forgeries

**F. Harley Norwich - Government Examiner, Retired**  
Court Qualified Scientist - 35+ years. Expert testimony given in excess of five hundred times including Federal and Offshore

Offices in West Palm Beach and Augusta  
[www.QuestionedDocuments.com](http://www.QuestionedDocuments.com)  
Telephone: (561) 333-7804 Facsimile: (561) 795-3692

insufficiently pled. The plaintiff alleged that the various companies shared common officers and directors, shared office space, commingled financial resources, and used common intellectual property. The court acknowledged that allegations of this type can support an alter ego theory, but nonetheless held that the complaint failed to state a claim, noting that the Supreme Court of Georgia has not recognized veil-piercing in the parent-subsidary context without a showing that the subsidiary is insolvent or undercapitalized.

## Jurisdiction, Venue and Service of Process

In *Kingdom Retail Group, LLP v. Pandora Franchising, LLC*, 334 Ga. App. 812, 780 S.E.2d 459 (2015), the Court of Appeals addressed an interesting and potentially significant question concerning the venue for tort suits against a foreign corporation or LLC: can a corporation (or LLC) whose primary corporate headquarters is somewhere outside of Georgia avail itself of the removal remedy provided in O.C.G.A. § 14-2-510(b)(4)? In a tort action in which venue is only proper in the forum county because the cause of action originated there, the corporation has the right under § 14-2-510(b)(4) to remove the action to the county in which it maintains its principal place of business. Because the parallel statute in the LLC Act simply refers to § 14-2-510, the rule is equally applicable to LLCs. In this case, a defendant whose head-

quarters was in Maryland was permitted to remove an action brought in Thomas County, where it has no office, to Gwinnett County, where it maintains its registered office. The Court of Appeals reversed, holding that the operative statutory language—"where the defendant maintains its principal place of business," was intended to refer to a single place in the world, not to the corporation's main office within Georgia. This would seem to suggest that corporations whose main office is outside of Georgia will be treated differently from those whose main office is within Georgia. Because one of the three justices on the panel concurred in the judgment only, this decision stands as physical precedent only. However, a petition for writ of certiorari has been filed in the Supreme Court of Georgia. In another interesting decision involving the corporate venue statute, *Ross v. Waters*, 332 Ga. App. 623, 774 S.E.2d 195 (2015), the Court of Appeals held that venue in a tort action against a dissolved corporation lies in the county where it maintained its last registered office, not its last principal office. Notably, the opinion preceded *Kingdom Retail* by several months and did not address the potential impact of O.C.G.A. § 14-2-510(b)(4).

There were also the usual cases discussing personal jurisdiction of directors, officers and parent companies of corporations doing business in Georgia. In *Stubblefield v. Stubblefield*, 296 Ga. 481, 769 S.E.2d

78 (2015), the Supreme Court of Georgia held that two shareholders and directors of a Georgia corporation and two Mississippi corporations were subject to personal jurisdiction under the Long Arm Statute, O.C.G.A. § 9-10-91(1), based on their personal participation in removing corporate funds from banks located in Georgia and terminating the companies' Georgia-based accounting firm. In *Williamson v. Walmart Stores Inc.*, No. 3:14-cv-97, 2015 WL 1565474 (M.D. Ga. Apr. 8, 2015), the Middle District of Georgia held that a products liability plaintiff sufficiently alleged a basis for the exercise of long arm jurisdiction over a foreign parent company and its affiliates under an alter ego theory. The court's ruling was based on allegations that the parent and affiliates rendered the seller of the defective product to be undercapitalized, controlled its board of directors, and otherwise sought to insulate the subsidiary from liability.

Finally, there were two cases addressing the citizenship of business entities for purposes of federal diversity jurisdiction. In *Lawson v. Ocwen Loan Servicing LLC*, No. 1:14-cv-1301-WSD, 2015 WL 881252 (N.D. Ga. Mar. 2, 2015), the Northern District of Georgia held that a foreign corporation does not become a citizen of Georgia merely by maintaining a registered office

within the state. In *Blocker Farms of Florida Inc v. Buurma Properties LLC*, Nos. CV 613-068, 613-067, 2015 WL 2409031 (S.D. Ga. May 19, 2015), the Southern District of Georgia applied the rule that a limited liability company is a citizen of any state in which one of its members is a citizen.

### Evidence, Business Records Act

In 2015, Georgia state courts continued to address evidentiary challenges to business records obtained as a result of mergers and acquisitions. This year's decisions illustrate the impact of Georgia's revised evidence code, which largely conforms to the Federal Rules of Evidence. In *Ciras, LLC v. Hydrajet Technology, LLC*, 333 Ga. App. 498, 773 S.E.2d 800 (2015), the Court of Appeals of Georgia reversed a trial court decision excluding bank records of a predecessor bank, which the successor bank sought to introduce through the testimony of one of its own officers. The Court cited and followed federal decisions applying Federal Rule of Evidence 803 which hold that employees of successor entities can authenticate business records of their predecessor entities that pass to them by virtue of merger, which had been the case here. Similarly, in *Triple T-Bar, LLC v. DDR Southeast Springfield*, 330 Ga. App. 847, 769 S.E.2d 586 (2015), the Court of Appeals held (this

time affirming the trial court) that business records were properly authenticated by a representative of a successor company.

### Director and Officer Liability Insurance Decisions

There were two noteworthy decisions involving D&O insurance policies issued to Georgia corporations. In *Langdale Co v National Union Fire Ins. Co. of Pittsburgh*, 609 Fed. Appx. 578 (11th Cir. 2015), the Eleventh Circuit, applying Georgia law, held that coverage was excluded for claims arising from the alleged conduct of two directors of a closely held corporation who simultaneously served as trustees of family trusts that were shareholders of the corporation. The court held that the policy's "insured capacity" exclusion, which generally excluded coverage for claims relating to acts committed outside of a director or officer's corporate capacity, applied to bar coverage in connection with litigation brought by the trust's beneficiaries, holding that the claims would not have existed but for allegations of wrongdoing committed by the individuals in their uninsured capacity as trustees.

In *OneBeacon Midwest Ins Co v Ariail*, No. 2:14-cv-00007-RWS, 2015 WL 1412661 (N.D. Ga. Mar. 27, 2015), the Northern District of Georgia held that an insurer's declaratory judgment action

The State Bar is on Facebook.

[www.facebook.com/statebarofgeorgia](http://www.facebook.com/statebarofgeorgia)

Come join us!



against the FDIC as receiver for a failed bank that was a policyholder was barred by the insurer's failure to initiate the FDIC's administrative claims process in a timely fashion. The court held that instead of filing a lawsuit seeking a declaration that coverage for claims against the bank's former directors and officers was excluded, the insurer should have filed a proof of claim upon receiving notice of the FDIC's appointment as receiver.

### Professional Liability

In *Befekadu v. Addis International Money Transfer*, 332 Ga. App. 103, 772 S.E.2d 785 (2015), the Court of Appeals held that the trial erred in disqualifying an attorney representing an LLC member in litigation brought by the LLC, without first considering whether the conflict had been waived by the LLC's failure to promptly raise the issue, and without determining whether the attorney's prior work in setting up the LLC was substantially related to the litigation. In *Hays v. Page Perry LLC*, 92 F. Supp. 3d 1315 (N.D. Ga. 2015), the Northern District of Georgia, on a motion for reconsideration, reaffirmed its prior holding that an LLC's outside counsel had no duty to report potential securities violations to the SEC.


### Corporate Receiverships

In *Considine v. Murphy*, 297 Ga. 164, 773 S.E.2d 176 (2015), the Supreme Court of Georgia held that a lawsuit brought against a receiver for a corporation should have been dismissed because the plaintiff failed to obtain leave of court from the court appointing the receiver. The Court applied the *Barton* doctrine, named after an 1881 U.S. Supreme Court decision, which it interpreted to operate as a jurisdictional bar to suits against receivers brought without leave from the appointing court. While the Court's decision had the effect of affirming an earlier Court of Appeals ruling, the Court

vacated the Court of Appeals' opinion because it rested on a different ground, official immunity, that the Court found it was without jurisdiction to consider under the *Barton* doctrine.

## Fulton County Business Court Decisions

In a case styled *Rollins v. Rollins* that is related to the litigation that was before the Supreme Court of Georgia in 2015, the Business Court held that the trustees of a marital trust which held a minority interest in one of the Rollins family corporations could assert mismanagement and breach of fiduciary duty claims against two directors in a direct shareholder action. *Rollins v. Rollins*, No. 2014-cv-249480 (Feb. 04, 2015) (Order on Defendants' Motion to Dismiss and for Judgment on the Pleadings). Following a long line of Georgia appellate decisions, the court found that the rule normally requiring breach of fiduciary duty claims to be brought derivatively on behalf of the corporation did not apply, because the reasons for requiring a derivative suit were not present—there were no interested creditors, and all of the corporation's shareholders were either parties to the suit or had acquiesced in the defendants' conduct. In *Bronner v. Hardy*, No. 2014-cv-248023 (Apr. 14, 2015) (Order on Defendants' Motion to Dismiss and For Judgment on the Pleadings), the court dismissed a minority shareholder's oppression claim, holding that Georgia law recognizes no cause of action for oppression outside of the statutory close corporation context, and this case did not involve a statutory close corporation. In the same order, the court permitted fraud and breach of fiduciary duty claims to go forward, holding that they were adequately pled and did not need to be brought derivatively because they involved alleged rights unique to the plaintiff.

In *Ordan v. Keen*, No. 2014-cv-240975 (Jan. 8, 2015) (Order on Defendants' Motion for Summary Judgment), the court denied the defendants' summary judgment motion as to claims for breach of an oral agreement to transfer a 25 percent LLC interest to the plaintiff, holding that there was sufficient evidence of the existence of the oral contract to create a genuine issue for the jury. In *Robinson v. Wellshire Fin. Svcs., LLC*, No. 2015-cv-259408 (June 1, 2015) (Order on Application for Protective Order), the court had the opportunity to consider the "apex doctrine," a rule employed by some jurisdictions that imposes certain requirements on parties that seek to take the deposition of C-level executives. Noting that no Georgia appellate opinion has recognized the apex doctrine, the court declined to recognize it as a basis for entering a protective order in favor of the applicant, a former officer of a Texas company who was subpoenaed to give testimony in a Texas lawsuit. Finally, in *Drummond Financial Services, LLC v. TMX Finance Holdings, Inc.*, No. 2014-cv-253677 (Feb. 26, 2015) (Order on Motion to Strike Affidavit and to Disqualify Counsel), the court disqualified counsel for the defendants in a commercial dispute between competitors, finding that the firm was conflicted due to its representation of affiliates of the plaintiffs in other matters. 



**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 annually by the *Daily Report*, "Georgia Business Litigation" (*Daily Report* 2013). He can be reached at michael.carey@bryancave.com.



# Honor Roll of Contributors

2015 "And Justice for All"

State Bar Campaign for the

Georgia Legal Services Program®

*A Salute to our Supporters!*

The following donors contributed \$150 or more to the campaign from 4/1/2015 – 2/12/2016. Thank you for your generosity and support.

## VISIONARIES CIRCLE (\$10,000 & Up)

The Coca-Cola Company  
The Legal Division of the  
Coca-Cola Company  
Cy Pres Award, Immucor  
Securities Litigation (N.D.Ga.)  
Georgia Bar Foundation, Inc.

Philip C. Henry  
Sutherland  
Tift County Law Library  
The Wilson Family  
Foundation

## PATRON'S CIRCLE (\$5,000 - \$9,999)

John T. Batson  
Patrick J. Flinn  
Marguerite Salinas Trust  
Weissman, Nowack,  
Curry & Wilco, P.C.

## BENEFACTOR'S CIRCLE (\$2,500 - \$4,999)

Anonymous  
Peyton Anderson Foundation  
Walter E. Jospin and  
Hon. Wendy L. Shoob  
Long County  
Law Library Fund  
Middle District of Georgia  
Bankruptcy Law Institute, Inc.  
Willis L. Miller III

Nordson Corporation  
Foundation  
Benet O'Reilly  
Savannah Bar Association  
Nancy Terrill  
and Camp Bacon

## PRESIDENT'S CIRCLE (\$1,500 - \$2,499)

Georgia Association  
for Women Lawyers  
Foundation (GAWL)  
Hatcher, Stubbs, Land, Hollis  
& Rothschild, LLP

Stanley S. Jones Jr. and  
Barbara T. (Bobbi) Cleveland  
Michael N. Loebl  
Richard C. Mitchell  
and Susan Kupferberg  
Andrew M. Scherffius III  
Strickland Brockington  
Lewis LLP

David F. Walbert  
Weiner, Shearouse, Weitz,  
Greenberg & Shawe, LLP

## EXECUTIVE CIRCLE (\$750 - \$1,499)

Anonymous  
AT&T  
Hon. Lanier and  
Nancy Anderson

Anderson, Walker  
& Reichert, LLP  
W. David Arnold  
Joel S. Arogeti  
Patricia T. Barmeyer  
Ansley B. Barton  
Bibb County District  
Attorney's Office  
Elizabeth B. and  
James W. Boswell III  
Bouhan Falligant LLP  
Phillip A. Bradley  
Jamie M. Brownlee  
and David G. Russell  
Robert D. Brussack  
Leslie L. Cadle  
and Ivy N. Cadle  
Central GA Council  
on Family Violence  
Chambless Higdon  
Richardson Katz  
& Griggs LLP  
James A. "Jock" Clark  
and Mary Jane Robertson  
Clark & Smith Law Firm, LLC  
Hon. Susan S. Cole  
Community Foundation  
of Central Georgia, Inc.  
Charles M. Cork III  
Harold T. Daniel Jr.  
Richard H. Deane Jr.  
Dellacona Law Firm  
David H. Gambrell

M. Ayres Gardner  
and William J. Cobb  
Karen Geiger  
Hon. Hardy Gregory Jr.  
and Toni Gregory  
Harris Penn Lowry LLP  
Rachael Henderson  
Hodac, Inc.  
Camille L. Hope and  
Hon. James C. Marshall  
Hon. and Mrs. Willis B. Hunt Jr.  
HunterMaclean  
James-Bates-Brannan-  
Groover-LLP  
Hon. Sallie R. Jocoy  
Mark P. Jones  
Paul Kilpatrick Jr.  
Linda A. Klein and  
Michael S. Neuren  
Lisa J. Krisher and  
John P. Batson  
Hon. John T. Laney III  
Lawler Green Prinz, LLC  
Macon Bar Association  
Martin Snow, LLP  
McArthur Law Firm  
Randy and Jane Merrill  
Jenny K. Mittelman and  
William C. Thompson  
Hon. Margaret H. Murphy  
Oliver Maner LLP  
Kimberly J. Prior  
Annette T. Quinn

Jack and Ruth Raisner  
Reynolds, Horne & Survant  
Teresa W. Roseborough  
Savannah Law School  
Savannah Technical College  
Sell & Melton, L.L.P.  
Tonia C. Sellers and  
Seth G. Weissman  
Ethelyn N. Simpson  
William A. Trotter III  
Hon. Charles H. Weigle  
Westmoreland, Patterson,  
Moseley & Hinson, LLP  
Carl J. Wilson Jr.  
Norman E. Zoller

## LEADERSHIP CIRCLE (\$500 - \$749)

Brian P. Adams  
Adams, Jordan  
& Herrington, P.C.  
Hon. William P. Adams  
Addleton Ltd. Co.  
Akin, Webster & Matson, P.C.  
Alpha Georgia  
Education Foundation  
Paul H. Anderson Jr.  
Stephen Andrews and  
Hon. Doris L. Downs  
Anthony B. Askew  
The Augusta National Golf Club  
Employee Giving Program  
Ryan W. Babcock

The Barnes Law Group, LLC  
Lamont A. Belk  
Hon. Joshua C. Bell  
Beth Boone  
Eric S. Broome  
Sheryl L. Burke  
Maureen A. Cahill  
John A. Chandler  
Cohen & Caproni, LLC  
K. David Cooke Jr.  
Tom Crites & Associates  
International, Inc.  
Christine M. Cruse  
Gregory J. Digel  
R. Jeffrey Field  
Thomas M. Finn  
Daisy H. and  
Timothy W. Floyd  
Joseph B. Foltz  
Fort Valley State University  
Franzen & Salzano, P.C.  
Robert L. Goldstucker  
Emmett L. Goodman Jr.  
William S. Goodman  
Patricia A. Gorham  
Kristi Graunke  
Earline L. Ham  
Jack Hardin  
Sally Haskins  
Hogue & Hogue, LLP  
Phyllis J. Holmen  
Paul A. Howell Jr.  
R. William Ide III  
Kimberly Jager  
Forrest B. Johnson  
John G. Kennedy  
Foundation, Inc.  
Hon. Patricia M. Killingsworth  
King & Spalding LLP  
Edward B. Krugman  
Allegra J. Lawrence-Hardy  
Charlie Lester Jr.  
Tennell Lockett  
Ellen K. Lundergan-Linker  
Macon Housing Authority  
Macon Younger  
Lawyers Division  
Jennifer R. Mason  
Marie E. Massey  
Lesly G. Murray  
Gretchen E. Nagy  
Melissa K. Orme  
Harry A. Osborne  
Parker MacIntyre  
Patrise M. Perkins-Hooker  
Timothy S. Pollock  
Tera L. Reese-Beisbier  
John D. Reeves  
Hon. Robert A. B. Reichert  
Robert B. Remar

Alan F. Rothschild Jr.  
Sacred Heart Catholic Church  
Ryan A. Schneider  
J. Ben Shapiro Jr.  
Kenneth L. Shigley  
Fiame M. Simpson  
John I. Spangler III  
Charles W. Surasky  
Thomas W. Talbot  
Evelyn Y. Teague  
Kathryn Ann Terrill-Torrez  
United Way of Toombs/  
Montgomery/Wheeler Counties  
The Wade Law Firm  
Patrick F. Walsh  
Claudia N. Whitmire  
Leigh M. Wilco  
L. Matt Wilson  
Timothy W. Wolfe  
Tamera M. Woodard  
Jerome A. Zivan

#### **SUSTAINER'S CIRCLE**

**(\$250 - \$499)**

Anonymous (5)  
Warren K. Abel  
Alfred B. and  
Joanna M. Adams  
Hon. Gregory A. Adams  
Tara L. Adyanthaya  
James E. Albertelli  
Douglas W. Alexander  
Robert L. Allgood  
Janet M. Ansorge  
Thomas J. Anthony  
Arthur S. Archibald  
Margaret L. Argent  
William H. Arroyo  
Richard J. Azar  
Bacon County Law Library  
Board of Trustees  
Bridget B. Bagley  
Hon. Jeffrey S. Bagley  
Emily C. Bagwell  
Jennifer Baker  
David Balsler  
W. Leon Barfield  
Sharon Chester Barnes  
Steven M. Barnett  
Hubert J. Barnhardt III  
William D. Barwick  
Hon. James F. Bass Jr.  
Rhonda L. Bass  
Tina G. Battle  
Henry R. Bauer Jr.  
Sandra M. Baumwald  
Hon. Dorothy Toth Beasley  
David H. Bedingfield  
Jacob Beil  
Richard W. Bell

Kevin E. Belle Isle  
Frank J. Beltran  
Mary T. Benton  
Yahn William Bernier  
Joseph J. Berrigan  
Hon. James G. Blanchard Jr.  
Charles and Lisa Bliss  
Phil Bond  
Thomas A. Bowman  
Hon. William T. Boyett  
Noble L. Boykin Jr.  
David G. Brackett  
Joshua W. Branch  
Mark D. Brandenburg  
Sam L. Brannen Jr.  
James J. Breen  
Brent M. Bremer  
Deborah A. Brian  
John M. Briski  
Alex M. Brown  
Kristine E. Orr Brown  
Callie D. Bryan  
Robert C. Buck  
Christine P. Bump  
Sandra S. Burgess  
Thomas R. Burnside III  
Bryon S. Burton  
Katharine S. Butler  
Susan A. Cahoon  
Elizabeth C. Calhoun  
Margaret Ann and  
George Carswell  
Robert P. Catlin III  
Fred L. Cavalli  
Lisa E. Chang and  
William W. Buzbee  
Socheat Chea  
John P. Cheeley  
John D. Christy  
Thomas H. Clarke Jr.  
John L. Coalson Jr.  
David H. Cofrin  
Katherine M. Cohen  
Peter M. Cohen  
Robert Cohen  
Arlene L. Coleman  
Thomas M. Cook  
Steven A. Cornelison  
Arturo Corso  
Jason L. Crawford  
George C. Creal Jr.  
Dick and Elise Creswell  
Crisis Line & Safe House  
of Central Georgia, Inc.  
Terrence L. Croft  
Delia T. Crouch  
Lynda M. Crouse  
Raymond L. Crowell  
Hon. and Mrs.  
Marion Cummings

Thomas W. Curvin  
Neal K. Daniel  
Tomieka R. Daniel  
Peter S. Dardi  
Hugh M. Davenport  
Melissa J. Davey  
A. Kimbrough Davis  
Cedric B. Davis  
Randall H. Davis  
Ryan C. Davis  
Peter H. Dean  
William D. DeGolian  
Scott D. Delius  
Foy R. Devine  
William D. Dillon  
Carolyn B. Dobbins  
Sally Ann Dorn  
Sharon E. Dougherty  
Dozier Law Firm, LLC  
William M. Dreyer  
Diane Durgin  
Willis A. Duvall  
W. Randy Eaddy  
R. M. Edmonds  
William A. Edmundson  
Edwards & Bullard, LLP  
Margaret P. Eisenhauer  
Susan S. Elder  
A. James Elliott  
Damon E. Elmore  
Anne S. Emanuel  
Dale S. Erickson  
Benjamin P. Ertlitz  
Hon. Philip F. Etheridge  
Stacey G. Evans  
Eric R. Fenichel  
Michael E. Fincher  
Ira L. Foster  
Benjamin E. Fox  
Peter A. Fozzard  
Murray A. Galin  
Timothy J. Gardner  
E. Reid Garrett  
Jarome E. Gautreaux  
William C. Gentry  
Michael G. Geoffroy  
Cynthia Gibson  
James B. Gilbert Jr.  
John R. Gilliland  
Neil J. Ginn  
Richard G. Goerss  
Bruce D. Goldstein  
The Gordon Law Firm  
Ronda K. Graham  
Christine B. Green  
Gina G. Greenwood  
John W. Greer III  
Karlise Yvette Grier  
Daniel P. Griffin  
Richard S. Griffin

Charles C. Grile  
Rebecca H. Grist  
Divida Gude  
John T. Gunn  
Stephen H. Hagler  
Stacey A. Haire  
Andrew C. Hall  
Wilbur G. Hamlin Jr.  
Ernest V. Harris  
Matthew G. Hawk  
Franklin D. Hayes  
Kathryn N. Hedden  
Carlton M. Henson  
Kenneth M. Henson Jr.  
Robert E. Herndon  
Caroline Whitehead Herrington  
Jonathan W. Hewett  
Hon. Sharon N. Hill  
Megan J. Hilley  
Thomas H. Hinson II  
Daniel M. Hirsh  
Frederick S. Hitchcock  
Kenneth B. Hodges III  
Rebecca A. Hoelting  
David L. Hoffman  
John V. Hogan V  
L. Lynn Hogue  
Richard B. Holcomb  
Philip E. Holladay Jr.  
Keith W. Holman  
Catherine A. Hora Anderson  
Melissa R. Hourihan  
Charles T. Huddleston  
William H. Hughes Jr.  
Howard O. Hunter III  
Charles D. Hurt Jr.  
James W. Hurt  
Jennifer N. Ide  
Terry D. Jackson  
J. Scott and Tanya Jacobson  
Mary B. James  
Christopher B. Jarrard  
Frederick W. Johnson  
Todd M. Johnson  
Theodore C. Jonas  
Dawn M. Jones  
Pamela M. Jones  
Donald J. Jordan  
William H. Jordan  
Robert N. Katz  
Marcus G. Keegan  
Kirk W. Keene  
Michael B. Keene  
Carol B. Kiersky  
Daniel M. King Jr.  
Jason M. King  
Karen A. King  
Kevin W. King  
William R. King  
Dow N. Kirkpatrick II



Mr. and Mrs.  
Lawrence P. Klamon  
Rhonda L. Klein  
Paul M. Knott  
Stanley E. Kreimer Jr.  
Sonjui L. Kumar  
Mr. and Ms.  
Steven J. Labovitz  
Kipler S. Lamar  
Eleanor A. Lane  
Lanford, Smith & Kapiloff  
Allen R. Lang  
Eleanor C. Lanier  
Neil Larson  
John L. Latham  
David N. Lefkowitz  
Michael E. Lemon, LLC  
Guy E. Lescault  
Keith D. Leshine  
Ralph B. Levy  
Keith L. Lindsay  
Stephanie R. Lindsey  
David S. Lipscomb  
Lipscomb, Johnson, Sleister,  
Dailey & Smith, LLP  
Jack Long  
Mary B. Long  
Sarajane N. Love  
John R. Lovell  
Charles W. Lykins  
Jonathan R. Macey  
Leonard T. Marcinko  
Hon. Beverly B. Martin  
Hope L. Martin  
Yolvondra Martin-Brown  
Hon. Johnny W. Mason Jr.  
Suzanne G. Mason  
Jackson R. Massey  
James B. Matthews III  
James L. McDaniel  
Julian B. McDonnell Jr.  
Brad J. McFall  
James R. McGibbon  
Anne Gray McGlamry  
McGoff Law Firm, LLC  
Barry B. McGough  
Marc W. McKenna  
Rod G. Meadows  
C. Robert Melton  
Sandra L. Michaels  
Terry L. Miller  
James H. Morawetz  
Kristin W. Murnahan  
Roger E. Murray  
Mari Myer  
Jeffrey D. Nakrin  
Gwyn P. Newsom  
Todd C. Newsom  
Matthew W. Nichols  
Nicholson Revell LLP

John A. Nix  
Elizabeth J. Norman  
Shirley F. Norris  
David C. Nutter  
Mark D. Oldenburg  
Bernadette Olmos  
Outten & Golden LLP  
Paul W. Painter III  
Jon and Kimberly Pannell  
Susan Papadopulos  
Dianne P. Parker  
W. Henry Parkman  
John P. Partin  
Sonya Y. Pass  
Lars-Uwe Pera  
W. Ray Persons  
Milton L. Petersen  
Jerry G. Peterson  
Hon. Guy D. Pfeiffer  
Charles E. Phillips Jr.  
Therese C. Piazza  
Steven L. Polk  
Elizabeth A. Price  
Alison B. Prout  
Hon. Jill A. Pryor  
Diane Pye-Tucker  
Mary F. Radford  
J. Lynn Rainey P.C.  
Marie T. Ransley  
Kimberly A. Reddy  
Joan S. Redmond  
Michael S. Reeves  
Michael G. Regas II  
Mr. and Mrs. Albert P.  
Reichert Jr.  
Stephen A. Reichert  
Jaimi A. Reisz  
Melody Z. Richardson  
Joycia C. Ricks  
Timothy D. Roberts  
Richard B. Roesel  
Gail E. Ronan  
Michael Rosenbloum  
Robert G. Rubin  
Charles L. Ruffin  
Charles W. Ruffin  
M. Shayla Rumely  
Michael J. Rust  
Hon. W. Louis Sands  
Robert A. Schapiro  
Steven R. Schefstad  
Robert W. Scholz  
David M. Schwartz  
Haley A. Schwartz  
Hon. William J. Self II  
Neeli Gandhi Shah  
Shapiro Pendergast  
& Hasty, LLP  
H. Burke Sherwood Sr.  
Edward M. Shoemaker

S. Andrew Shuping Jr.  
Arnold B. Sidman  
Hon. Howard and  
Dee Simms  
Donald W. Singleton  
Claude M. Sitton  
Ellen Wansley Smith  
Fred O. Smith Jr.  
Margaret R. Smith  
Matthew T. Smith  
Putnam C. Smith  
Brian G. Smooke  
Edyth and Cubbedge Snow Jr.  
Edward B. Sobel  
Kevin S. Sobel  
Roy M. Sobelson  
Lawrence S. Sorgen  
Rita C. Spalding  
Steven L. Sparger  
John H. Spillman Jr.  
John T. Stamps III  
E. Dunn Stapleton  
John D. Steel  
David J. Stewart  
J. Douglas Stewart  
Daniel D. Stier  
A. Thomas Stubbs  
Terrance C. Sullivan  
Hon. David R. Sweat  
Mike Tafelski  
Elizabeth V. Tanis  
John A. Tanner Jr.  
Gilbert M. Taylor  
John E. Taylor  
Harry R. Tear III  
Timothy P. Terrell  
Elizabeth F. Thompson  
Laura B. Traylor  
Thomas W. Tucker  
John T. Van Gessel  
Carl R. Varnedoe  
Nicki N. Vaughan  
Rex R. Veal  
Willard R. Via Jr.  
Hon. Robert L. Vining Jr.  
Rose Marie Wade  
Homer J. Walker III  
Hon. Ronit Z. Walker  
Walker, Hulbert, Gray  
& Moore, LLP  
Phillip J. Walsh  
Bryan M. Ward  
Thomas H. Warren  
Janet G. Watts  
Joseph D. Weathers  
Jack M. Webb  
John P. Webb  
David A. Webster  
Neal Weinberg  
Steven K. Weiner

Robert G. Wellon  
Ellene Welsh  
Anna McDanal Wetzel  
Benjamin T. White  
Sarah E. White  
Mary J. Wilkes  
David S. Wilkin  
George W. Williams Jr.  
Connie L. Williford  
John T. Wilson  
Deborah J. Winegard  
Reginald C. Wisenbaker Jr.  
Bruce A. Wobeck  
Carol M. Wood  
Christopher A. Wray  
W. Scott Wright  
Jeff Z. Xie  
Helen G. Zalik  
Hon. Gordon R. Zeese  
Kathryn M. Zickert  
Alex L. Zipperer

**DONOR'S CIRCLE**  
**(\$150 - \$249)**  
Anonymous (6)  
Thomas Affleck III  
Gary M. Alembik  
Benjamin Allen  
James G. Anderson  
Wanda Andrews  
Lash S. Askew  
Larry A. Auerbach  
Joseph R. Bankoff  
E. Noreen Banks-Ware  
Robin N. Bargerone  
Hon. Patricia D. Barron  
Hon. William and  
Emily Bartles  
Marshall B. Barton  
Thomas A. Bauer  
Hon. Thomas H. Baxley  
William G. Bell Jr.  
John C. Bennett  
Richard H. Bennett  
Peter M. Birnbaum  
Richard H. Bishoff  
Evan J. Black  
Peter M. Blackford  
Sheri L. Bocher  
Leslie F. Bond  
John P. Booth  
Sandra K. Bowen  
Belinda A. Brady  
Nancy F. Bramlett  
Wendy C. Breinig  
Walter A. Brill  
Eugene C. Brooks IV  
Stuart L. Brown  
William E. Bubsey  
Burnette Law, P.C.

David M. Burns Jr.  
Jeffrey W. Burris  
Jeanette Burroughs  
Joel R. Callaway  
Callaway, Braun, Riddle  
& Hughes, P.C.  
Jefferson C. Callier  
Fern D. Carty  
Bryan M. Cavan  
Adam P. Cerbone  
Zebulon K. Chandler  
Julie Childs  
Thomas H. Clarke Sr.  
Elouise Clinch  
Marissa G. Connors  
Robert P. Constantine Jr.  
Leslie F. Corbitt  
Stacey W. Cotton  
Daniel M. Covino  
Susan W. Cox  
J. Michael Cranford  
Kenneth B. Crawford  
Deryl D. Dantzler  
Caleb Davies IV  
Michael T. DeHaven  
Amy Griffith Dever  
Bertis E. Downs IV  
Maria P. Drinkard  
Mitchell D. Durham  
Julie I. Edelson  
Donald P. Edwards  
David O. Eldridge  
J. Daniel Falligant  
Thomas L. Fitzgerald  
Bill and Sandy Flatau  
James C. Fleming  
Richard L. Ford Jr.  
Joseph H. Fowler  
Douglas N. Fox  
J. Randall Frost  
Fulcher Hagler LLP  
Brenda L. Gardner  
J. Michael and  
D. Anne Garner  
Stephen E. Garner  
Jerry L. Gentry  
Jodi Brenner Ginsberg  
Wendy Glasbrenner  
Shona B. Glink  
Alan B. Gordon  
Lawrence R. Gordon  
John L. Gornall Jr.  
Joan C. Grafstein  
Stephanie P. Graham  
James M. Griffin  
Keith C. Groen  
Elizabeth L. Guerra  
Hon. Carolyn Coberly Hall  
Rebecca A. Haltzel-Haas  
Tanisha Latrice Harding

Robert K. Harris  
Stanley E. Harris Jr.  
Walter B. Harvey  
Dewey N. Hayes Jr.  
William C. Head  
Jeffrey F. Hetsko  
Hon. P. Harris Hines  
Donna Stanaland Hix  
Eva Holland  
David S. Hollingsworth  
David L. Hudgins  
Mr. and Mrs. David E. Hudson  
Gary S. Hulsey  
Jimmy Hwang  
John M. Hyatt  
William R. Jenkins  
Thomas E. Jerrell  
George M. Johnson  
Ken Jones  
D. Wesley Jordan  
Sarah O'Beirne Jorgensen  
Edward W. Kallal Jr.  
Lise S. Kaplan  
Daniel S. Karen  
Mary and Rick Katz  
Robert J. Kauffman  
Gary M. Kazin  
William W. Keith III  
F. Carlton King Jr.  
Seth D. Kirschenbaum  
Jonathan I. Klein  
Nancy Mahan Klembus  
Lynn S. Koch  
Sid M. Kresses  
Jennifer A. Kurle  
Hon. Jean Miller Kutner  
Patricia W. Lamar  
John Lamberski  
Gregory G. Lawton  
J. Alvin Leaphart  
David M. Leonard  
Harold S. Lewis Jr.  
Risa L. Lieberwitz  
Joel I. Liss  
George W. Little III  
Robert K. Long  
Rebecca Mullin Lough  
Hubert C. Lovein Jr.  
L. Joseph Loveland Jr.  
Peter C. Lown  
John F. Lyndon  
Hon. James E. Massey  
Todd K. Maziar  
C. James McCallar Jr.  
Susan G. McCathran  
M. Faye McCord  
Angus N. McFadden  
Angela K. McGowan  
Hon. T. Penn McWhorter  
Lester M. Miller

John T. Mitchell Jr.  
Rivka D. Monheit  
Green B. Moore III  
Carol E. Morgan  
Lee P. Morgan  
Mr. and Mrs. M. Lane Morrison  
Neil S. Morrisroe  
Elizabeth E. Neely  
Scott P. Newland  
Christopher G. Nicholson  
Mary Ann B. Oakley  
Patrick T. O'Connor  
Michael O'Leary  
Marnique Oliver, LLC  
Leonard J. Panzitta  
Shalamar J. Parham  
Linda Parker  
W. Russell Patterson Jr.  
Rita L. Payne  
Debbie C. Pelerose  
Hon. Michael A. Penn  
Nicholas J. Pieschel  
W. Warren Plowden Jr.  
Keri Nicholas Powell  
Amy M. Power  
Nancy Prager  
Gail S. Pursel  
David A. Rabin  
Norman J. Radow  
Vance O. Rankin III  
Michelle B. Rapoport  
Thomas E. Ray  
Steven M. Reilly  
Reynolds & Reynolds  
Financial Partners  
Jeffrey P. Richards  
Robert E. Ridgway Jr.  
Brian D. Rogers  
Walter P. Rowe  
Cornelia S. Russell  
Carmel W. Sanders  
Kimberly K. Saunders  
C. Murray Saylor  
Jacquelyn H. Saylor  
Claude F. Scott Jr.  
Leslie A. Shad  
Stanton J. Shapiro  
Lois D. Shingler  
Ann A. Shuler  
Dennis E. Siegel  
Beverlee E. Silva  
Janice Singer-Capek  
Patience R. Singleton  
Hon. Lamar W. Sizemore Jr.  
Edward K. Smith  
George B. Smith III  
George B. Smith IV  
John H. Smith  
Jon P. Smith  
Robert B. Smith

Robert H. Snyder Jr.  
Susan V. Sommers  
John D. Sours  
Robert M. Souther  
LeRoy P. Spell Jr.  
Charles T. Staples  
Don E. Stephens  
Mary J. Stewart  
Hon. Michael B. Stoddard  
Stone & Driggers, LLC  
Anne V. Summerlin  
Jonathan E. Sureck  
Erica T. Taylor  
Michael B. Terry  
Torin D. Togut  
David R. Toraya  
Hon. Amy Mil Totenberg  
William L. Tucker  
Stanley J. Turner  
Michael S. Wakefield  
J. Henry Walker IV  
John R. Walker IV  
Susan M. Walls  
W. Frank Ward  
Jeffrey S. Warncke  
Dan Wehrenberg  
Rachel I. Weiss  
Jonathan E. Wells  
Richard A. White  
Robert J. Wilder  
Frank B. Wilensky  
Chandra Wilson  
Carla E. Young  
Leslie Zacks

**PAST STATE BAR  
PRESIDENT'S CIRCLE**

William D. Barwick  
Richard Y. Bradley  
Bryan M. Cavan  
Harold T. Daniel Jr.  
Benjamin F. Easterlin IV  
A. James Elliott  
David H. Gambrell  
W. Stell Huie  
Paul Kilpatrick Jr.  
Linda A. Klein  
Charlie Lester Jr.  
Patrise M. Perkins-Hooker  
Charles L. Ruffin  
Kenneth L. Shigley  
Cubbedge Snow Jr.  
J. Douglas Stewart

**PAST YLD  
PRESIDENT'S CIRCLE**

William D. Barwick  
Hon. Joshua C. Bell  
Thomas E. Dennard Jr.  
Joseph W. Dent

V. Sharon Edenfield  
A. James Elliott  
Damon E. Elmore  
Michael G. Geoffroy  
Amy V. Howell  
R. William Ide III  
Andrew W. Jones  
Elena Kaplan  
Charlie Lester Jr.  
Jonathan B. Pannell  
Darrell L. Sutton  
J. Henry Walker IV

**HONORARIUM GIFTS**

Hon. William P. Adams  
in honor of Phil Bond  
Jennifer Baker in honor of "all  
of those who haven't been  
able to afford the legal help  
that they need"  
John T. Batson in honor  
of Lisa Krisher  
Robert Cohen in honor of Linda  
Warren and Kate Hausmann  
Kristine DeJoseph in honor  
of Steven J. DeJoseph  
Hon. Edgar W. Ennis Jr.  
in honor of Phil Bond  
Barbara A. Fischer  
in honor of Phil Bond  
Peter Followill in honor of  
Hon. Kenneth B. Followill  
Earline L. Ham in honor  
of Nancy Terrill  
L. Lynn Hogue in honor  
of Atticus Finch/GSU  
Dallas P. Jankowski in honor  
of David Patterson  
Ann R. Johnson in honor  
of Albert J. Reichert Jr.  
Katherine McAulay Kalish  
in honor of Phil Bond  
Lanford, Smith & Kapiloff  
in honor of Phil Bond  
Marcia F. McCune in  
honor of Dina's marriage  
Felix A. Montanez  
in honor of Heidi Behnke  
Susan Papadopulos in honor  
of Michael Lascala  
Rachael B. Schell  
in honor of Phil Bond  
Ryan A. Schneider  
in honor of Bob Webb  
E. Dunn Stapleton in honor  
of Norman Spence  
Susan Pearce Tate in honor  
of Phyllis Holmen  
Neal Weinberg in honor  
of Nancy Terrill

Hon. Melvin K. Westmoreland  
in honor of John Cromartie  
Bob and Lynda Wilsonin  
honor of Roy Barnes

**MEMORIAL GIFTS**

John Larry and Brenda D. Battu  
in memory of Kenny Williams  
C. Walker Beeson II in  
memory of Kenny Williams  
Bourdage family in memory  
of Lydia Lee Callender  
Fern D. Carty in memory  
of Malcolm and Jewel Carty  
Victoria M. Collins in memory  
of John W. Collins  
Hon. and Mrs. Marion  
Cummings in memory  
of John Strain  
David W. Dawson Jr.  
in memory of Kenny Williams  
Natalie Deriso in memory  
of Kenny Williams  
Damon E. Elmore in memory  
of Norman B. Elmore  
Gainesville Northeastern  
Georgia Bar Association  
in memory of Joe Sartain  
Mary A. Gephart in memory  
of Kenny Williams  
Thomas S. Gray Jr. in  
memory of Kenny Williams  
Kimberly Jager in memory  
of Lydia Lee Callender  
Mr. and Mrs. Wolfgang Jager in  
memory of Lydia Lee Callender  
Paul Kilpatrick Jr. in memory  
of Hon. Harold Clarke  
Linda S. Lowe in memory  
of Kay Young  
Caren Lynch in memory  
of Lydia Lee Callender  
Michael S. and Peggy Meyer  
Von Bremen in memory  
of Rusty Gunn  
Mr. and Mrs. M. Lane  
Morrison in memory of  
Hon. B. Avant Edenfield  
A. M. Christina Petrig in  
memory of Lydia Lee Callender  
Robert and Donna Pollet in  
memory of Andrew Duncan Lee  
Lois M. Schmidt and  
John W. Schmidt in memory  
of Lydia Lee Callender  
Kenneth L. Shigley in  
memory of Cliff Brasher  
John D. Sours in memory  
of Rep. Harry Geisinger

Isabelle Thacker in memory of Lydia Lee Callender  
Ashlee Harrison Vaught in memory of Peter Johnson

#### IN-KIND GIFTS

Rachael Henderson  
Joshua M. Peltier

#### 2015 ASSOCIATES' CAMPAIGN FOR LEGAL SERVICES

Ryan W. Babcock  
Robert Beard  
Elizabeth Helmer  
King & Spalding LLP  
Ben Alan McJunkin

#### VENDORS

Barracuda Networks  
ACC Business  
CDW  
Cisco Networks  
Colotraq  
Digital Concierge at She's Wired  
FastNeuron Inc.  
Frazier Marketing & Design  
Hewlett Packard  
InfoExpress  
Microsoft  
PSTI  
Peachtree Benefits Group  
PrintTime  
RGI  
StormWood  
Techbridge  
Unidesk  
Vmware

#### 2015 CAMPAIGN COMMITTEE

Robert J. "Bob" Kauffman  
*President, State Bar of Georgia*  
Patrise M. Perkins-Hooker  
*Immediate Past President State Bar of Georgia*  
Jeff Davis  
*Executive Director State Bar of Georgia*  
Brinda Lovvorn  
*Director of Membership State Bar of Georgia*  
Judy Hill  
*Assistant Director of Membership State Bar of Georgia*  
Georgia Legal Services  
Board of Directors  
State Bar of Georgia

#### Georgia Legal Services Foundation

The Georgia Legal Services Foundation is an independent 501(c)(3) nonprofit organization with a mission to build an endowment to sustain the work of the Georgia Legal Services Program for generations to come.

#### Building a Foundation for Justice

The following individuals and law firms are contributors to the "Building a Foundation for Justice Campaign" launched in 2001 by the Georgia Legal Services Foundation.

#### JUSTICE BUILDERS (\$1,000 & Up)

Anonymous (4)  
Robert L. Allgood  
Joel S. Arogeti  
Mr. and Mrs. R. Lawrence Ashe Jr.  
Alice H. Ball  
Joseph R. Bankoff  
Patricia T. Barmeyer  
The Barnes Law Group, LLC  
Ansley B. Barton  
James L. Bentley III  
Jean Bergmark  
Lynne Borsuk and Robert Smulian  
James W. Boswell III  
Bouhan Falligant LLP  
Bouhan, Williams & Levy, LLP  
Phil Bradley and Cathy Harper  
Jeffrey and Nancy Bramlett  
James J. Breen  
William A. Brown  
Mr. and Mrs. Aaron L. Buchsbaum  
Sheryl L. Burke  
Business Law Section of the State Bar of Georgia  
Thalia and Michael C. Carlos Foundation, Inc.  
John A. Chandler  
James A. "Jock" Clark and Mary Jane Robertson  
David H. Cofrin  
Steven M. Collins  
Harold T. Daniel Jr.  
Benjamin S. Eichholz, P.C.  
J. Melvin England  
James C. Fleming

John P. Fry  
David H. Gambrell  
Ben and Michele Garren Jr.  
Jack Hardin  
Harris & Liken, LLP  
Phyllis J. Holmen  
Hunter, Maclean, Exley & Dunn, P.C.  
Inglesby, Falligant, Horne, Courington & Chisholm, P.C.  
Mary B. James  
D. Wesley Jordan  
Paul Kilpatrick Jr.  
Mr. and Mrs. Lawrence P. Klamon

Linda A. Klein and Michael S. Neuren  
Catherine E. Long  
Willis L. Miller III  
Roger E. Murray  
Gretchen E. Nagy  
Charles L. Newton II  
Kenneth S. Nugent, P.C.  
Lynne R. O'Brien  
Patrick T. O'Connor  
Thomas E. Prior  
Hon. Mae C. Reeves  
Robbins Geller Rudman & Dowd LLP  
Mr. Alan F. Rothschild Jr.  
Sanford Salzinger  
J. Ben Shapiro Jr.  
Silver & Archibald, LLP  
Ethelyn N. Simpson  
Hon. Philip C. Smith  
Charles W. Surasky  
Darrell L. Sutton  
Sutton Law Group, LLC  
Michael H. Terry  
Randolph W. Thrower  
William A. Trotter III  
Thomas W. Tucker  
Weissman, Nowack, Curry & Wilco, P.C.  
William F. Welch  
Derek J. White  
Diane S. White  
Timothy W. Wolfe

#### JUSTICE PARTNERS (\$500 - \$999)

Anonymous (2)  
Renee C. Atkinson  
JWP Barnes  
Paul R. Bennett  
Wendy C. Breinig  
Mary Jane Cardwell  
Randall A. Constantine  
John H. Fleming  
Kevin B. Getzendanner

R. William Ide III  
Forrest B. Johnson  
Mary and Rick Katz  
Paul S. Kish  
William H. Kitchens  
Leslie and Judy Klemperer  
Rita J. Kummer  
John F. Lyndon  
Celeste McCollough  
Jane and Randy Merrill  
Caitlin Miller  
Jenny K. Mittelman and William C. Thompson  
The Oldenburg Law Firm  
Carl S. Pedigo Jr.  
Hon. George and Anne Peagler  
J. Robert Persons  
Steven L. Pottle  
Jill A. Pryor  
Robert B. Remar  
Udai V. Singh  
Lynn Smith  
J. Lindsay Stradley Jr.  
UNUM Group  
Patrick F. Walsh  
David D. and Melody Wilder Wilson

#### OTHER DONORS

Anonymous (9)  
Anthony H. Abbott  
Bettye E. Ackerman  
Aaron I. and Judith M. Alembik  
Evan M. Altman  
Peter J. Anderson  
Wanda Andrews  
Janet M. Ansoorge  
Anthony B. Askew  
Cathy and Bucky Askew  
Bruce and Lisa Aydt  
S. C. Baird  
Michelle R. Barclay  
Robert A. Barnes  
Charles H. Battle Jr.  
Henry R. Bauer Jr.  
Hon. T. Jackson Bedford Jr.  
Lamont A. Belk  
Hubert J. Bell Jr.  
William G. Bell Jr.  
Kevin E. Belle Isle  
William T. Bennett III  
Bentley, Bentley & Bentley  
Harvey G. Berss  
Paula L. Bevington  
Terry C. Bird  
Martin J. Blank  
David J. Blevins  
Mr. and Mrs. Charles R. Bliss

Marcia W. Borowski  
Edward E. Boshears  
Rosemary M. Bowen  
Thomas A. Bowman  
Barbara S. Boyer  
John H. Bradley  
Daryl Braham  
Thomas B. Branch III  
Dianne Brannen  
Bill Broker  
Brooks Law Firm  
The Brown Firm, LLC  
George E. Butler II  
John D. Carey  
John R. Carlisle  
Thomas D. Carr  
Hon. Edward E. Carriere Jr.  
Nickolas P. Chilivis  
Edward B. Claxton III  
James H. Coil III  
Arlene L. Coleman  
Mary C. Cooney  
Hon. Lawrence A. Cooper  
Philip B. Cordes  
Hon. John D. Crosby  
Robert M. Cunningham  
John D. Dalbey  
Dalton Regional Office of the Georgia Legal Services Program  
Hugh M. Davenport  
Thomas C. Dempsey  
Joseph W. Dent  
Mary Irene Dickerson  
Gregory J. Digel  
Robert N. Dokson  
John L. Douglas  
J. Michael Dover  
Lester Z. Dozier Jr.  
Dozier Law Firm, LLC  
DuBose Law Group LLC  
Terri H. Duda  
Kathryn Durham, J.D., P.C.  
Randy J. Ebersbach  
Robert G. Edge  
William A. Erwin  
Roslyn S. Falk  
William H. Ferguson  
Karen J. Fillipp  
Thomas M. Finn  
Daisy H. Floyd  
Ira L. Foster  
Samuel A. Fowler Jr.  
Paula J. Frederick  
Christine A. Freeman  
Gregory L. Fullerton  
Peter B. Glass  
Susan H. Glatt  
Hon. Martha K. Glaze  
Judy Glenn  
Yvonne K. Gloster



Morton J. Gold Jr.  
Alan B. Gordon  
Kevin R. Gough  
Mark P. Grant  
Thomas S. Gray Jr.  
Gary G. Grindler  
Divida Gude  
Cheryl L. Haas  
Stephen H. Hagler  
Nedom A. Haley  
J. Edward Hall  
Warren R. Hall Jr.  
Christopher Harrigan  
Deborah H. Harris  
Kirk E. Harris, Esq.  
Jeanne D. Harrison  
Alexsander H. Hart  
James A. Hatcher  
Karen G. Hazzah  
Gregory K. Hecht  
Philip C. Henry  
Kenneth M. Henson Jr.  
Mr. and Mrs. Andrew M.  
Hepburn Jr.  
Sharon B. Hermann  
Chris Hester  
Jeffrey F. Hetsko  
Charles F. Hicks  
Jon E. Holmen  
Matthew A. Horvath  
Edward M. Hughes  
Hon. Carol W. Hunstein  
Cindy Ingram  
Initial Public Offering  
Securities Litigation  
Hon. James T. Irvin  
Hon. Phillip Jackson  
Cathy Jacobson  
J. Scott and Tanya Jacobson  
Jackson & Schiavone  
Jaurene K. Janik  
W. Jan Jankowski  
Weyman T. Johnson Jr.  
Howard H. Johnston  
Jones & Swanson  
Jane M. Jordan  
Lise S. Kaplan  
Melinda M. Katz  
Robert N. Katz  
Lisa Kennedy  
Robbman S. Kiker  
Vicky Kimbrell  
Jeff S. Klein  
Jonathan I. Klein  
Simone V. Kraus  
Hon. Phyllis A. Kravitch  
Alex Kritz  
Edward B. Krugman  
Harry S. Kuniansky  
Steven J. Labovitz

L. Robert Lake  
Kipler S. Lamar  
Clifford S. Lancey  
Eleanor C. Lanier  
Joseph Lannucci  
Allegra J. Lawrence-Hardy  
Gregory G. Lawton  
Hon. Kelly A. Lee  
Stanley M. Lefco  
Esther and Kristian Leibfarth  
Zane P. Leiden  
R. O. Lerer  
Lightmas & Delk  
Jack N. Lincoln  
J. Rodgers Lunsford III  
Herman O. Lyle  
Dennis J. Manganiello  
Edwin Marger  
Andrew H. Marshall  
H. Fielder Martin  
Raymond S. Martin  
F. P. Maxson  
James McBee  
Elizabeth L. McBreaty  
Mary F. McCord  
Robert L. McCorkle III  
James T. McDonald Jr.  
Jane S. McElreath  
Christopher J. McFadden  
James B. McGinnis  
McKenney & Jordan  
Hon. Jack M. McLaughlin  
Merrill & Stone, LLC  
Metropolitan Regional  
Information Sysytem Inc.  
Michael S. and  
Peggy Meyer Von Bremen  
Garna D. Miller  
Martha A. Miller  
Simon A. Miller  
Terry L. Miller  
C. Wingate Mims  
John T. Minor III  
R. Carlisle Minter  
Mitchell & Shapiro, LLP  
Jay D. Mitchell  
Ann Moceyunas  
H. Bradford Morris Jr.  
William A. Morrison  
Diane M. Mosley  
James B. Muhlbach  
Jerold L. Murray  
The National Association  
of Realtors  
NAR Legal Affairs  
James A. Neuberger  
Amber L. Nickell  
William S. Ortwein  
Linda Ann Pace  
Rakesh N. Parekh, PC

A. Sidney Parker  
Mr. and Mrs. Dianne P. Parker  
John P. Partin  
G. Cleveland Payne III, PC  
Cathy Peterson  
Hon. Albert M. Pickett  
Loretta L. Pinkston  
John L. Plotkin  
Linda L. Holmen Polka  
Jeffrey N. Powers  
Thompson T. Rawls II  
Michael S. Reeves  
Clinton D. Richardson  
Ritter Law Firm, LLC  
Timothy D. Roberts  
Richard B. Roesel  
Carmen Rojas Rafter  
James H. Rollins  
Charles L. Ruffin  
David A. Runnion  
Dorothy W. Russell  
Phillip B. Sartain  
Christopher G. Sawyer  
Otis L. Scarbary  
Cathy L. Scarver  
S. Alan Schlact  
Bryan D. Scott  
Claude F. Scott Jr.  
Janet C. Scott  
Martin J. Sendek  
Mark A. Shaffer  
Hon. Marvin H. ShooB  
Ann A. Shuler  
Viveca Sibley  
Silvis, Ambrose  
& Lindquist, P.C.  
Douglas K. Silvis  
John E. Simpson  
George B. Smith  
Jay I. Solomon  
David N. Soloway  
John D. Sours  
Thomas A. Spillman  
State Bar of Georgia  
Mason W. Stephenson  
Michael P. Stevens  
Hon. Michael B. Stoddard  
Joseph F. Strength  
C. Deen Strickland  
Jay L. Strongwater  
David R. Sweat  
Robert E. Talley  
Jeffrey D. Talmadge  
Susan C. Tarnower  
Jackie Taylor  
William M. Tetrick Jr.  
G. William Thackston  
Daniel R. Tompkins III  
William L. Tucker  
Leslie W. Uddin

Frederick D. Underwood  
Joseph M. Ventrone  
and Jeanne Broyhill  
Jennifer B. Victor  
Rose Marie Wade  
Christopher A. Wagner  
Hon. Ronit Z. Walker  
Walker Wilcox Matousek LLP  
Ellene Welsh  
Brian W. Wertheim  
Brian K. Wilcox  
Mark Wilcox  
Robert J. Wilder  
Frank B. Wilensky  
Paul C. Wilgus  
Kathryn B. Wilson  
Norman D. Wilson  
Bob and Lynda Wilson  
William N. Withrow Jr.  
Leigh M. Wilco and  
Carolyn C. Wood  
Hugh M. Worsham Jr.  
Brian D. Wright  
Hon. Lawrence D. Young  
Daniel D. Zegura  
Norman E. Zoller

#### 2015 HONORARIUM GIFTS

DuBose Law Group LLC  
in honor of R. William Ide  
Bob and Lynda Wilson in honor  
of Michael J. Bowers, Esq.  
Brian D. Wright in honor  
of Richard Wright

#### 2015 MEMORIAL GIFTS

Judith M. Alembik in memory  
of Aaron I. Alembik  
James C. Fleming in memory  
of Gov. Carl E. Sanders  
Hon. Jack M. McLaughlin  
in memory of Hon. Ralph  
Ewell Carlisle  
Lynn Smith in memory  
of Lydia Lee Callender

#### Georgia Legal Services Foundation

**Board of Directors**  
Joseph R. Bankoff  
Patricia T. Barmeyer  
Lynn Y. Borsuk  
James W. Boswell III  
Phillip A. Bradley  
Paul T. Carroll III  
James A. "Jock" Clark  
Harold T. "Hal" Daniel Jr.  
C. Ben Garren Jr.  
Jack Hardin  
Kathleen Horne

Mary Mendel Katz  
Allegra J. Lawrence-Hardy  
John R. B. Long  
Evelyn Y. Teague  
Thomas W. "Tommy" Tucker

We appreciate our donors and  
take great care in compiling  
the Honor Roll of Contributors.

If we have inadvertently  
omitted your name, or if  
your name is incorrect in the  
records, we apologize and  
encourage you to contact  
the Development Office at  
404-206-5175, so that we  
can correct our records and  
acknowledge you properly in  
the future. Some donors have  
requested anonymity.

The Georgia Legal Services  
Program is a non-profit  
law firm recognized as a  
501(c)(3) organization by  
the IRS. Gifts to GLSP are  
tax-deductible to the fullest  
extent allowed by law.




The Georgia Legal Services  
(GLS) Foundation is  
recognized as a 501(c)(3)  
nonprofit organization by  
the IRS. Gifts to the GLS  
Foundation are tax-deductible  
to the fullest extent allowed  
by law.




To make a contribution  
Go online at [www.glsp.org](http://www.glsp.org), or  
mail your gift to Georgia Legal  
Services, Development Office,  
104 Marietta St., Suite 250,  
Atlanta, GA 30303.



Thank you for your support.

Kudos

- >  **Berman Fink Van Horn Ranks** announced that shareholder **Jeffrey N. Berman** received the **2016 Chair's Award** in recognition for his leadership and contributions to **The William Breman Jewish Home**. The William Breman Jewish Home provides high quality health care and wellness services to older adults throughout all stages of aging as well as education and support to their families and the community, in an engaging, caring and dignified manner consistent with Jewish heritage and values.
- >  **Chaiken Klorfein LLC** announced that attorney **Stephen R. Klorfein** was selected to serve on the **board of directors** for the **Georgia Chapter of the Exit Planning Institute**. The institute is a national organization for professionals who specialize in estate planning for individuals and their businesses.
- > **Mills Paskert Divers P.C.** announced that **P. Keith Lichtman** has become a **registered mediator and arbitrator** through the **Georgia Commission on Dispute Resolution**. In addition to continuing to represent clients in litigation, he has begun serving as a mediator and arbitrator in select cases, focused largely on the construction, surety, fidelity and insurance coverage practice areas.
- >  **Burgoon Law Firm, LLC**, announced that attorney **Brian D. Burgoon** was re-elected as an **out-of-state representative on The Florida Bar Board of Governors**. The board sets policy for the more than 102,000 member bar and oversees lawyer regulation, discipline and ethics.
- >  The **Van Dora Law Firm** announced that attorney **Jeremiah T. Van Dora** was installed as **president** of the **Northern Judicial Circuit Bar Association**. The Northern Circuit includes Elbert, Franklin, Hart, Madison and Oglethorpe counties.
- >  **The Council of Superior Court Judges** named **Hon. A. Wallace Cato** as the recipient of the **Emory Findley Award** during the 2016 annual meeting for his outstanding judicial service. The award is given to honor a judge who exemplifies Judge Findley's virtues of visionary leadership, resolve and dedication.

- >  **Duane Morris LLP** announced that partner **Rebecca Lamberth** was elected **co-head of the commercial, securities and antitrust litigation division**. Lamberth practices in the area of securities and complex commercial litigation, representing public and private companies, including REITs, and has extensive experience in complex business and securities litigation, securities disclosure and corporate governance.
- >  **McKenney and Froelich** announced that **Jerome J. Froelich Jr.** was elected **president of the American Board of Criminal Lawyers**. The American Board of Criminal Lawyers was founded as an exclusive national legal honorary society for outstanding criminal trial lawyers.
- >  **Moore Ingram Johnson & Steele, LLP**, announced that associate **Christopher D. Troutman** was co-awarded the **2015 Attorney of the Year** by **Georgia Lawyers for the Arts** for providing the most pro bono services to artists and arts organizations during the year. Georgia Lawyers for the Arts is a nonprofit organization that provides legal assistance and educational programming to artists and arts organizations.

On the Move

In Atlanta

- >    **FordHarrison LLP** announced the addition of **Joy White** as **counsel** and **David R. Anderson** and **Chelsey M. Lewis** as **associates**. White's practice focuses on employment law, complex commercial litigation and class action defense. Anderson's practice focuses on the representation of clients in disputes related to labor and employment law. Lewis represents employers in claims relating to labor and employment law. The firm is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; [www.fordharrison.com](http://www.fordharrison.com).
- > **Stanton Law LLC** announced the addition of **Alex Barfield** as an **associate**. Barfield's practice includes litigation related to employment contracts and the Fair Credit Reporting Act, as well as FLSA collec-

tive actions at the pre-certification and de-certification stage. The firm is located at 410 Plasters Ave. NE, Suite 200, Atlanta, GA 30324; 404-881-1288; www.stantonlawllc.com.



Florence

Carroll

Binns

**Parker Poe Adams & Bernstein LLP** announced the opening of its **Atlanta office** along with the

addition of **Robert Florence** as **partner** and **Karen Carroll** and **Micheal Binns** as **counsel**. Florence represents the pharmaceutical industry. Carroll focuses her practice on complex intellectual property litigation and counseling with a specific emphasis on pharmaceutical and biotechnology-related patent matters, including Hatch-Waxman litigation. Binns practices primarily in the area of intellectual property patent litigation. The firm is located at 3355 Lenox Road, Suite 750, Atlanta, GA 30326; 678-690-5750; Fax 404-869-6972; www.parkerpoe.com.



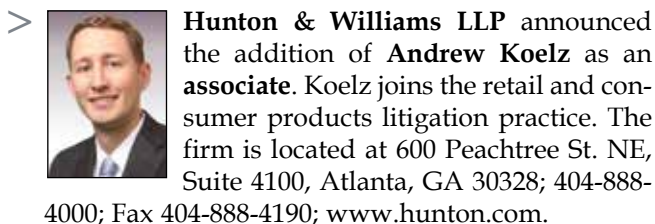
Bryant

Sebastian

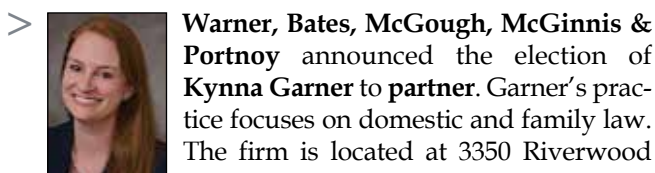
Weeks

**Smith, Gambrell & Russell, LLP**, announced the addition of **Eugene D. Bryant, Julie**

**Sebastian** and **John F. Weeks IV** as **partners**. Bryant's practice focuses on transactional real estate, representing lenders and developers in commercial real estate transactions, general real estate and special assets. Sebastian focuses on corporate law, including mergers and acquisitions and corporate finance with publicly and privately held companies. Weeks focuses on commercial litigation. The firm is located at 1230 Peachtree St. NE, Suite 3100, Atlanta, GA 30309; 404-815-3500; Fax 404-815-3509; www.sgrlaw.com.

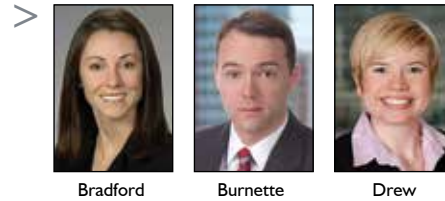


**Hunton & Williams LLP** announced the addition of **Andrew Koelz** as an **associate**. Koelz joins the retail and consumer products litigation practice. The firm is located at 600 Peachtree St. NE, Suite 4100, Atlanta, GA 30328; 404-888-4000; Fax 404-888-4190; www.hunton.com.



**Warner, Bates, McGough, McGinnis & Portnoy** announced the election of **Kynna Garner** to **partner**. Garner's practice focuses on domestic and family law. The firm is located at 3350 Riverwood

Parkway, Suite 2300, Atlanta, GA 30339; 770-951-2700; Fax 770-951-2200; www.wbmfamilylaw.com.



Bradford

Burnette

Drew

**Jones Day** announced the election of **Casey F. Bradford, Jason T. Burnette** and **Kendel Drew** to

**partner**. Bradford's practice focuses on critical environmental matters across the United States. Burnette's practice focuses on state and federal appeals and complex trial litigation. Drew's practice focuses on advising clients in connection with a wide range of commercial finance transactions, including syndicated and single bank credit facilities, consisting of cash flow loans, asset-based loans, acquisition financings, real estate based loans and cross-border transactions. The firm is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; www.jonesday.com.



McNatt

Peterson

**Balch & Bingham LLP** announced the addition of **Hugh B. McNatt** and **Hugh Peterson III** as **partners**. McNatt concentrates his practice on trucking litigation, products litigation,

electrical utility litigation and aircraft litigation. Peterson specializes in litigation relating to personal injury, banking and business issues. The firm is located at 30 Ivan Allen Jr. Blvd. NW, Suite 700, Atlanta, GA 30308; 404-261-6020; Fax 404-261-3656; www.balch.com.



**Dentons** announced the addition of **Jennifer R. Williams** as **partner**. Williams joins the firm's corporate group, providing a comprehensive package of legal services to private equity portfolio companies and similar companies. The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.dentons.com.

**Greenberg Traurig, LLP**, announced the addition of **Mark E. Grantham** as **commercial litigation practice co-chair** and **Ann M. Byrd** as **of counsel**. Grantham's practice experience focuses on trial and appellate work, in both state and federal courts, and complex arbitration matters in domestic and international arbitration forums. Byrd's practice focuses on complex commercial litigation and product



liability. The firm is located at 3333 Piedmont Road NE, Suite 2500, Atlanta, GA 30305; 678-553-2100; Fax 678-553-2212; www.gtlaw.com.



**Alston & Bird** has announced the election of **Dane A. Baltich, David S. Frist, Lauren P. Giles, Brian D. Harvel, Elizabeth Helmer, Donald Houser, W. Scott Kitchens** and **Clifford S. Stanford** to partner. Baltich concentrates his practice on patent solicitation in electrical and computer-related technologies, in addition to counseling clients on patent portfolio management, intellectual property licensing and patent infringement, validity and enforceability. Frist focuses on patent litigation and enforcement. Giles advises payments industry clients on transaction, regulatory and strategic matters, including negotiating card issuance and acceptance programs, developing new payment products and establishing joint ventures. Harvel focuses his practice on complex tax structuring and planning for domestic and international businesses, assisting clients with investments and operations. Helmer represents plaintiffs and defendants in complex commercial litigation, including unfair competition, antitrust, intellectual property and trade secrets and contractual disputes, in such industries as technology, insurance, manufacturing, consumer products and media. Houser represents clients in federal and state courts in privacy and antitrust litigation in such industries as health care, technology and consumer products. Kitchens represents public and private companies in a variety of corporate transactions, including mergers and acquisitions, outsourcing and technology transactions, privacy matters, joint ventures and corporate governance. Stanford counsels U.S. and foreign banks and nonbank financial services companies on a broad range of regulatory concerns affecting the banking, financial services and payments industries. The firm is located at 1201 W. Peachtree St., Suite 4900, Atlanta, GA 30309; 404-881-7000; Fax 404-881-7777; www.alston.com.



**BakerHostetler** announced the election of **Lisa N. Collins** and **Kristen Woodrum** to partner. Collins is a member of the intellectual property group, supervisor of the firm's IP indemnification recovery team and a seasoned litigator who helps companies defend their products and intellectual property. Woodrum is a member of the business group who concentrates her practice in the area of health care law, advising health care systems, providers and companies in regulatory and compliance matters. The firm is located at 1170 Peachtree St. NE, Suite 2400, Atlanta, GA 30309; 404-459-0050; Fax 404-459-5734; www.bakerlaw.com.



**Kilpatrick Townsend & Stockton** announced the election of **Josh Ganz, John Jett, Thomas Kesler, Renae Wainwright** and **Tiffany Williams** to partner. The firm also announced the addition of **Anil Patel** as counsel and **Courtney Dabbieri, Forrest Flemming, Elizabeth Spivey, Jason Huff** and **Anthony Guebert** as associates. Ganz focuses his practice on outsourcing, strategic alliances, technology licensing, IT procurement projects and other complex commercial transactions. Jett represents retail and technology clients in litigation and arbitration. Kesler focuses his practice on mergers and acquisitions, joint ventures and general corporate representations. Wainwright concentrates her practice on counseling clients on intellectual property strategy, including worldwide patent portfolio prosecution and management. Williams focuses her practice on counseling public and private companies in areas of domestic and foreign patent portfolio management, intellectual property evaluation and licensing, and patent litigation. Patel joins the intellectual property

department and patent litigation team. Dabbiere joins the patent litigation team in the intellectual property department. Flemming joins the firm's trademark and copyright team in the intellectual property department. Spivey focuses her practice on the representation of national cellular companies in the leasing of ground, tower, rooftop and in-building space for communications facilities. Huff joins the firm's chemistry and life sciences team in the intellectual property department. Guebert joins the mechanical and medical device team in the intellectual property department. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



Bain



Lowndes



Scarbrough



Henner



Sweeney



Theriot

**Jones Walker LLP** announced the addition of **Karen E. Bain, Jennifer S. Lowndes and Tyler P. Scarbrough** as **special counsel** and **Joseph P. Henner, Neal J. Sweeney**

and **Chad V. Theriot** as **partners**. Bain focuses her practice on construction and infrastructure projects and construction litigation. Lowndes focuses her practice on complex commercial construction projects in various industries, working closely with construction managers, general contractors, subcontractors and developers as well as owners in the public and private sectors. Scarbrough focuses on construction and infrastructure projects, construction litigation, government contracting and alternative dispute resolution. Henner represents clients in the construction industry working closely with public and private owners, developers, large general contractors, specialty government subcontractors and sureties. Sweeney focuses exclusively on construction law and government contracts for major infrastructure projects such as transit, airports, highways, wastewater treatment and tunnels. Theriot focuses his practice on major public and commercial construction and infrastructure projects representing both domestic and international clients across a broad spectrum of construction, contracting and procurement activities. The firm is located at 1360 Peachtree St. NE, Suite 1030, Atlanta, GA 30309; 404-870-7500; Fax 404-870-7501; www.joneswalker.com.



Parham



Stewart

**Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced the addition of **Bryan Busch** and **Matthew Norton** as **shareholders**, **Brian D. Pierce** as **of counsel** and **Phil Parham III, David Stewart** and **Laura Mirmelli** as **associates**.

Busch represents corporate clients in all types of business disputes, including breach of contract, fraud, breach of fiduciary duties, securities litigation and business torts. Norton focuses his practice on real estate-related matters and secured transactions collateralized by both real estate and other property. Pierce concentrates his practice in transactional law, which includes both commercial and residential real estate. Parham and Stewart both join the new litigator group. Mirmelli's practice is primarily concentrated on the representation of financial institutions in connection with distressed real estate and commercial loans. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.



Baltich



Christopherson



Garavaglia



Lewis



Westby



Akers



Case



Giesen



Jones



Ray

**Nelson Mullins Riley & Scarborough LLP** announced the election of **Branden W. Baltich, Yasamine J. Christopherson, Anne Marie Garavaglia, Katherine M. Lewis, and Lucas A.**

**Westby** to **partner**. The firm also announced the addition of **George F. Akers, Jennifer G. Case, Jonathan G. Giesen, Christina M. Jones** and **George S. Ray** as **associates**. Baltich's practice focuses in the areas of corporate governance, financial institutions, corporate law, mergers and acquisitions, private equity and venture capital, and securities. Christopherson focuses her practice on commercial real estate finance matters including master repurchase agreements and CMBS lending. Garavaglia

focuses her practice on commercial transactions, commercial real estate, leasing and structured finance, corporate law and real estate financial services. Lewis focuses her practice on commercial real estate, representing investors and sponsors on purchases, sales and development of commercial properties while also working with both lenders and borrowers on a variety of real estate finance matters. Westby focuses on commercial litigation, products liability litigation and false advertising litigation. Akers focuses his practice in the areas of corporate law, emerging growth and venture capital, and mergers and acquisitions. Case focuses her practice on employment law and business litigation. Giesen focuses his practice on corporate law, assisting clients in the drafting of merger/purchase agreements and related ancillary agreements, resolutions and due diligence documents. Jones focuses her practice in the areas of mergers and acquisitions, securities and corporate law. Ray focuses his practice on litigation. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.



Kaisani Evans

**Thompson Hine LLP** announced the addition of **Fareed Kaisani** and **Jake Evans** as **associates**. Kaisani joins the business restructuring, creditors' rights and bankruptcy practice group.

Evans joins the business litigation practice group. The firm is located at 3560 Lenox Road, Suite 1600, Atlanta, GA 30326; 404-541-2900; Fax 404-541-2905; www.thompsonhine.com.

> **Scroggins & Williamson, P.C.**, has relocated. The firm continues to focus on business bankruptcy, out of court workouts, restructuring debtors' and creditors' rights and commercial litigation. The firm is now located at 440 Northside Parkway, Suite 450, Atlanta, GA 30327; 404-893-3880; Fax 404-893-3886; www.swlawfirm.com.

## In Augusta



> **Kilpatrick Townsend & Stockton** announced the election of **Mark Reeves** to **partner**. Reeves focuses his practice on litigation, devoting a majority of his time to the representation of Indian tribes. The firm is located at 1450 Greene St., Suite 230, Augusta, GA 30901; 706-724-2622; Fax 706-823-4204; www.kilpatricktownsend.com.



Usry Bray

> **Durham Law Firm, P.C.**, announced the addition of **Grant K. Usry** and **Melissa C. Bray** as **associates**. Both Usry and Bray are trial attorneys who focus on personal injury, specifically truck and auto collision as well as criminal defense. The firm is located at 2350 Washington Road, Augusta, GA 30904; 706-738-7111; Fax 706-738-8010; www.durhamlawfirm.net.

## In Columbus



Mize Pound Rothschild Moore

> **Page, Scrantom, Sprouse, Tucker and Ford, P.C.**, announced the addition of **George W. Mize Jr.**, **William C. Pound** and **Alan F. Rothschild Jr.** as **shareholders** and **LaRae D. Moore** as an **attorney**. Pound's practice areas include commercial loan transactions, commercial and residential real estate transactions, property tax appeals, and business and corporate law. Mize's areas of concentration include real estate, commercial lending, business, corporate and franchise law. Rothschild's practice focuses on estate planning, taxation and general business law. Moore concentrates her practice in the area of general civil litigation. The firm is located at 1111 Bay Ave., Third Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; www.columbusgalaw.com.

## In Cordele



> **Rainwater, Gibbs and Wright LLP** announced the addition of **Benjamin L. Wright Jr.** as a **partner**. Wright's practice focuses on all aspects of civil litigation with an emphasis on domestic practice, personal injury litigation and real estate. The firm is located at 109 E. 14th Ave., Cordele, GA 31015; 229-273-5202; Fax 229-273-1175; www.swgalaw.com.

## In Decatur



> **Michael S. Webb** announced the return of **Webb & Webb Attorneys at Law** as a general trial practice firm. Webb focuses on criminal defense and personal injury law with plans to expand the practice to include communication law and regulation. The firm is located at 160




Clairemont Ave., Suite 340, Decatur, GA 30030; 404-458-3119; Fax 404-377-0106.


### In Macon

> **WatsonMcCallum** changed its name to **Watson Legal Group**. Watson Legal Group continues to focus on providing business, transaction law, litigation and bankruptcy expertise to its clients. The firm is located at 111 Arkwright Landing, Suite D, Macon, GA 31210; 478-254-6033; Fax 478-254-6031; www.mswatsonlegal.com.

### In Marietta

>  **The Crosson Law Group** announced the addition of **Ali J. Awad** as an **associate**. Awad's practice areas include personal injury and business litigation, with particular focus on non-English speaking clients. The firm is located at 3417 Canton Road, Suite 502, Marietta, GA 30066; 678-909-0770; Fax 678-439-1825; www.crossonlawgroup.com.

### In Norcross

>  **Thompson, O'Brien, Kemp & Nasuti, P.C.**, announced the addition of former Superior Court Judge **Michael C. Clark** as **of counsel**. Clark's practice focuses in the areas of trial practice, personal injury and wrongful death, constitutional rights, business litigation and alternative dispute resolution. The firm is located at 40 Technology Parkway S, Suite 300, Norcross, GA 30092; 770-925-0111; Fax 770-925-8597; www.token.com.

### In Savannah


>   **Hall, Arbery, Gilligan, Roberts & Shanlever LLP** announced the addition of **Kristen Goodman** and **Maury Bowen** as **partners**. Goodman handles a variety of business and litigation matters with a special emphasis on employment law, formation of and risk allocation for businesses, trade secrets and health care law. Bowen advises and defends corporate clients on a wide variety of issues including lawsuits, arbitrations, administrative charges, employment decisions of all types, collective bargaining issues and multi-employer benefit plan management. The firm is located at 100 Commercial Court, Suite D, Savannah, GA 31406; 912-777-6636; Fax 912-417-2031; www.hagllp.com.

>  **Bouhan Falligant** announced the election of **Benjamin Karpf** to **partner**. Karpf's practice focuses on intellectual property law and commercial transactions, including drafting and negotiating commercial contracts, corporate matters and intellectual property litigation. The firm is located at 447 Bull St., Savannah, GA 31401; 912-232-7000; Fax 912-233-0811; www.bouhan.com.


### In Valdosta

> **Langdale Vallotton, LLP**, announced the addition of **James R. Miller** as **partner** and **Christina L. Folsom** and **Katherine A. Gonos** as **of counsel**. Miller handles a variety of civil litigation matters and also maintains a general transactional practice. Folsom focuses on civil litigation, including the representation of creditors in bankruptcy and educators in disciplinary and employment actions. Gonos primarily handles criminal and domestic matters. The firm is located at 1007 N. Patterson St., Valdosta, GA 31601; 229-244-5400; Fax 229-244-0453; www.langdalevallotton.com.


### In Whigham

>  **The Law Office of Joshua C. Bell, LLC**, announced the addition of **Tabitha Payne** as an **associate**. Payne will concentrate in all areas of general practice law. The firm is located at 102 W. Broad Ave., Whigham, GA 39897; 229-762-4000; Fax 229-762-4010; www.joshuabell.net.

### In Birmingham, Ala.

>  **Balch & Bingham LLP** announced the election of **M. Stanford "Stan" Blanton** to **managing partner** and **chair of the executive committee**. Blanton's practice focuses on representation of the owners, operators and purchasers of electric generating facilities with special emphasis on commercial nuclear development, regulation and policy. The firm is located at 1901 Sixth Ave. N, Suite 1500, Birmingham, AL 35203; 205-251-8100; Fax 205-226-8799; www.balch.com.

### In Washington, D.C.

>  **Covington & Burling LLP** announced the election of **Jason Fowler** to **partner**. Fowler focuses his practice on high-stakes patent litigation in both the high-tech and pharmaceutical spaces. The firm is located at 850 Tenth St. NW, Washington, DC 20001; 202-662-6000; Fax 202-662-6291; www.cov.com.

# Who's Calling?

by Paula Frederick

“I wanted to see how my appeal is going,” your client announces as you pick up the phone. “Has the court set a hearing yet?”

You update your client on the case, promise to send him a copy of the appellate brief when it is filed, and let him know that you expect the court to set oral argument for the fall.

“Keep me posted, and call as soon as you hear something about that oral argument,” your client instructs. “Let me give you my cell number.”

You are jotting down the number when it hits you. “Cell number?” you ask, astonished. “You’re in prison! It’s illegal for you to even *have* a cell phone! How did you get it?”

“It cost me a pretty penny,” your client admits, “but it’s easier than you might think. There’s a guy here who takes orders and his girlfriend brings them in when she comes to visit. You got a problem with that?”

“Actually, I do,” you respond.

Does a lawyer violate the ethics rules when she speaks with a client who is calling from prison using a contraband cell phone?

Maybe.


It is clearly illegal for an inmate to possess a cell phone, and it would be a felony for a lawyer to “obtain for, procure for, or to give to an inmate” a telecommunications device (O.C.G.A. § 42-5-18(b)). But what about just taking a call from a client who has obtained the phone on his own?

While the law of other jurisdictions may differ, in Georgia the answer depends upon whether by doing so the lawyer “knowingly assists a client in criminal or fraudulent conduct.” Georgia Rule of Professional Conduct 1.2 (d) prohibits a lawyer from counseling a client about how to commit a crime or “suggesting how . . . wrongdoing might be concealed.” (Rule 1.2 Comment 10). Opinions vary on whether simply taking the call amounts to assisting in the client’s crime.

While the act of answering the call may not be a crime, lawyers should understand the danger posed by inmates’ use of cell phones. Recent indictments in

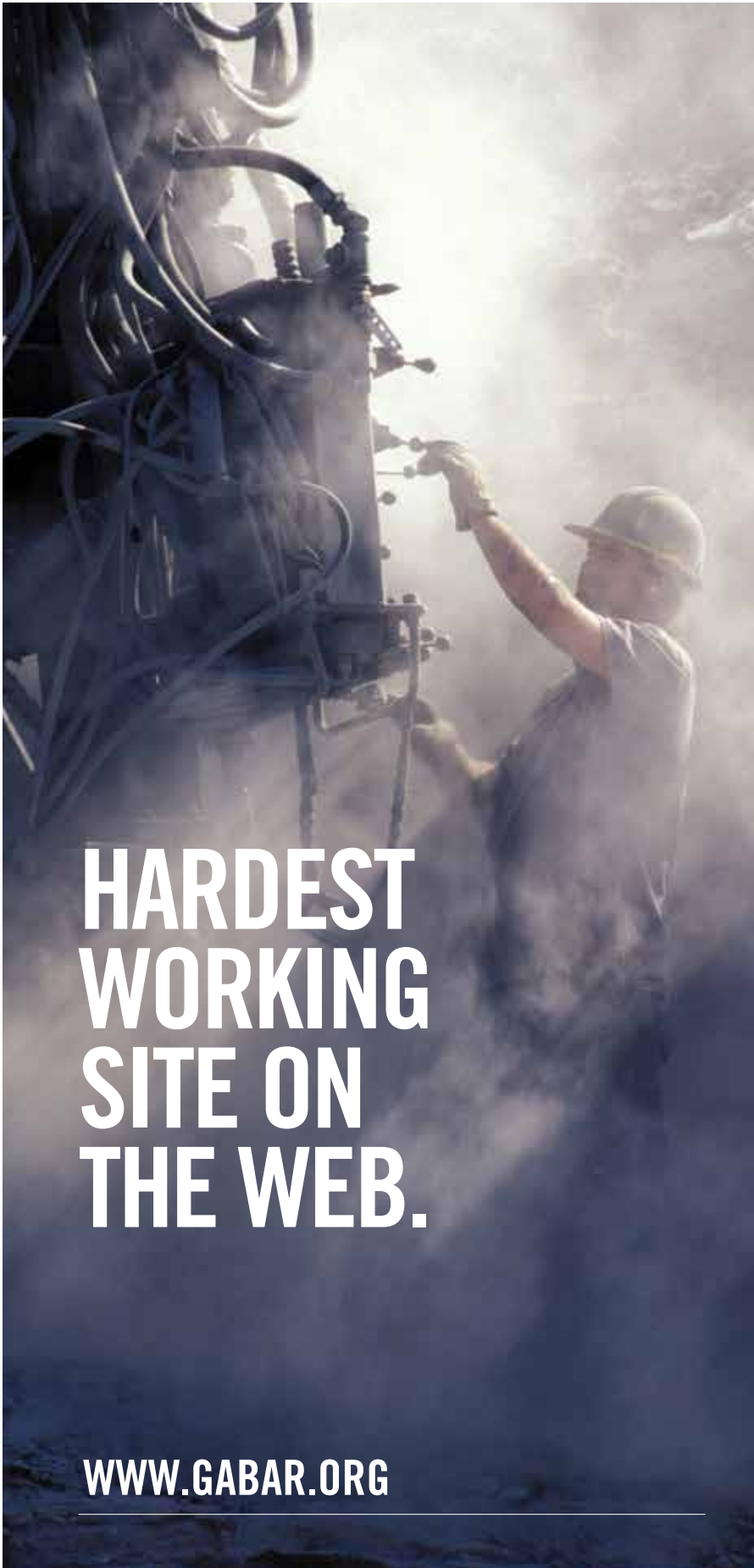


Georgia allege that inmates used contraband cellphones to threaten witnesses, commit credit card fraud and coordinate drug trafficking enterprises on the outside. It is not hard to imagine that a lawyer who remains silent about her prisoner client’s use of a cell phone could be accused of “assisting” in the resulting criminal conduct.

So the safest course of action is not to take calls from a contraband telephone. It seems reasonable to counsel the client at the earliest opportunity—let him know that merely possessing the phone is a crime, advise him to turn it in, and warn him that you and your staff will not take calls from the phone in the future. 



**Paula Frederick** is the general counsel for the State Bar of Georgia and can be reached at [paulaf@gabar.org](mailto:paulaf@gabar.org).



# HARDEST WORKING SITE ON THE WEB.

[WWW.GABAR.ORG](http://WWW.GABAR.ORG)



STATE BAR OF GEORGIA

## Member Benefits

 State Bar  
of Georgia

### LAW PRACTICE MANAGEMENT PROGRAM

The State Bar of Georgia provides all of its members with business management assistance; technical and general consultations; software advice and training; sample forms; start up resources and solo small firm discussion board and video resources.

we're here for you.



Learn more at [www.gabar.org](http://www.gabar.org) or  
contact Natalie Kelly at 404-527-8770  
or [nataliek@gabar.org](mailto:nataliek@gabar.org)



# Attorney Discipline Summaries

(Dec. 10, 2015 through Feb. 12, 2016)

by Connie P. Henry

## Disbarments/Voluntary Surrenders

### **Dianne Cook**

Rocky Face, Ga.

Admitted to Bar 1977

On Jan. 19, 2016, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Dianne Cook (State Bar No. 183600). A client paid Cook \$2,232 for representation in a domestic relations matter. Cook filed for an uncontested divorce for the client, but the parties ended up in mediation. Cook attended the initial session, but thereafter neglected the case. Cook admitted she suffers from health and personal problems. Cook had no prior discipline, displayed a cooperative attitude in the disciplinary proceedings and expressed remorse.

### **Donald Carlton Gibson**

Brunswick, Ga.

Admitted to Bar 1999

On Feb. 1, 2016, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Donald Carlton Gibson (State Bar No. 292819). On Dec. 15, 2015, Gibson pled guilty to bank fraud in the U.S. District Court for the Southern District of Georgia.

### **Jay Harvey Morrey**

Tucker, Ga.

Admitted to Bar 2002

On Feb. 1, 2016, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Jay Harvey Morrey (State Bar No. 523494). Morrey represented various individuals on a contin-

gency basis, but without formal retainer agreements or any writing describing his fees or expenses to his clients, and without maintaining adequate records. In addition, Morrey appeared in multiple cases in court as the attorney for a party in a garnishment action, and although he had strong suspicions that the individual he represented was not the actual party to the case, he undertook no investigation to dispel his suspicions. Morrey asserted that opposing counsel brought the identity issues to the court's attention prior to the hearings and that no funds were ever released improperly.

Morrey was on administrative suspension for failure to pay Bar dues and failure to meet continuing legal education requirements. He asserted that the lapses resulted from his health and personal issues. Morrey had a prior disciplinary history.

### **TaShawna Lacher Griffieth**

Monroe, Ga.

Admitted to Bar 2006

On Feb. 1, 2016, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney TaShawna Lacher Griffieth (State Bar No. 207806). In March 2015, Griffieth pled guilty to first-degree forgery in the Superior Court of Newton County.

### **Stephen B. Taylor**

Augusta, Ga.

Admitted to Bar 1972

On Feb. 8, 2016, the Supreme Court of Georgia disbarred attorney Stephen B. Taylor (State Bar No. 701200). The following facts are deemed admitted by default. Taylor agreed to represent a client in

a criminal sentencing matter and was paid \$750 by the client's family. Taylor failed to do any work on the client's behalf and failed to communicate with the client or the client's family. In another case, Taylor agreed to represent a client in a criminal matter and was paid \$2,650 by the client's family. Taylor failed to do any work on the matter, failed to communicate with the client or the client's family and failed to return the fee.

In aggravation of discipline, the Investigative Panel found that Taylor acted willfully in collecting a fee from these clients and abandoning the legal matters entrusted to him, that he acted with a selfish motive and that these two matters taken together show a pattern of client neglect. Taylor was suspended in 2013 for failing to respond to a Notice of Investigation, and he received an Investigative Panel reprimand in 2012.

## Suspensions

### **Nakata S. Smith Fitch**

Atlanta, Ga.

Admitted to Bar 1998

On Jan. 19, 2016, the Supreme Court of Georgia accepted the petition for voluntary discipline of Nakata S. Smith Fitch (State Bar No. 262068) for a six-month suspension with conditions for reinstatement. This matter was previously before the Court on Smith Fitch's petition for voluntary discipline in 2014, but the Court rejected that petition because she had failed to comply with the conditions for reinstatement in a previously-imposed suspension in 2011, including making payments ordered by a probate court.

In mitigation, the special master noted the financial and emotional strain caused by the illness and death of Smith Fitch's husband, that she was cooperative in the disciplinary proceedings and that she was remorseful. Smith Fitch eventually paid the amounts ordered by the probate court and complied with the other requirements for reinstatement imposed in the Supreme Court's 2011 opinion.

Prior to reinstatement Smith Fitch must prove that she has completed all outstanding continuing legal education requirements and within six months of reinstatement implement the recommendations of the Law Practice Management Program.

## Public Reprimands

### **Michael Anthony Eddings**

Atlanta, Ga.

Admitted to Bar 2002

On Feb. 1, 2016, the Supreme Court of Georgia accepted the petition for voluntary discipline of Michael Anthony Eddings (State Bar No. 238751) and ordered that he receive a Public Reprimand. Eddings was held in contempt of court by the Superior Court of Muscogee County for communicating with persons represented by legal counsel without the prior consent of said counsel.

In mitigation of discipline, Eddings asserted that he had no selfish or dishonest motive and engaged in the communications on the eve of trial when an answer for a plea recommendation deadline was imminent, and only after unsuccessful attempts to contact the counsel of the represented individuals. He also stated that he had no prior discipline; that during this period he was under prolonged stress from his efforts to clear his name in another disciplinary case; that he cooperated fully with the disciplinary authorities; that he submitted letters of reference; and that he is remorseful. In aggravation, the special master noted a pattern of misconduct, as Eddings had been held in contempt for the same type of misconduct in a different case the previous year.

### **Robert Benjamin Eddleman**

Carrollton, Ga.

Admitted to Bar 2005

On Feb. 8, 2016, the Supreme Court of Georgia accepted the petition for voluntary discipline of Robert Benjamin Eddleman (State Bar No. 142230) and ordered that

he receive a Public Reprimand. Eddleman represented his secretary's now-ex-husband in several credit card collection cases and did not charge a fee due to the client's financial circumstances. Later, Eddleman insisted on being paid but could not agree with the client, so he considered himself discharged. He did not obtain an order allowing withdrawal from the last case until February 2013. Thus, Eddleman was attorney of record in 2012 when he represented his secretary in a divorce in which the parties' finances were relevant to the divorce action. He did not obtain written consent to the divorce representation from his secretary or her now ex-husband. In addition, Eddleman had an intimate relationship with his secretary, now wife, while the divorce action was pending. In addition, during his original representation of his former client, there were documents that appeared to bear the client's signature; however, during the disciplinary proceedings Eddleman's secretary stated that she had signed the documents

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

## **Warren R. Hinds, P.C.**

*"An Attorney's Attorney"*

- Bar Complaints
- Malpractice Defense
- Ethics Consultation



1303 Macy Drive  
Roswell, Georgia 30076  
Call (770) 993-1414  
[www.warrenhindslaw.com](http://www.warrenhindslaw.com)

# “And Justice for All”

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



# On Your 2016 Bar Dues Notice, Give to GLSP 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!**

**Thank you for your generosity and support!**



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



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

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



with her now-ex-husband's permission, and one of the documents was a release of liability in favor of Eddleman. In mitigation of discipline, Eddleman stated that he had no dishonest or selfish motive, and that his intimate relationship with his secretary did not begin until after her divorce was filed; that he suffered personal problems and was on prescription pain medication that may have caused him not to think clearly; that he cooperated with the proceedings; and that he is remorseful.

The State Bar offered in aggravation that Eddleman has received a Formal Letter of Admonition; that this matter involved multiple offenses; that his denial of the affair extended the proceedings; and the inherently selfish nature of some of Eddleman's conduct.

## Review Panel Reprimand

### Nicholas Pagano

Savannah, Ga.

Admitted to Bar 1986

On Jan. 19, 2016, the Supreme Court of Georgia accepted the petition for voluntary discipline of Nicholas Pagano (State Bar No. 558935) and ordered that he receive a Review Panel Reprimand. In 2008 a client hired Pagano to represent her in a personal injury action. Although Pagano filed suit and did some initial work on the case, he stopped communicating with his client and failed to appear at two calendar calls. At the second calendar call the judge dismissed the case for want of prosecution.

In mitigation, the Court noted that Pagano is remorseful; that he did not act with a dishonest or selfish motive; that he has been hampered by health problems; and that he displayed a cooperative attitude. In aggravation, the Court noted that Pagano received an Investigative Panel reprimand in 1992, a Formal Letter of Admonition in 2002 and that he had no excuse for his conduct.

## Reinstatements Granted

### Hugh O. Nowell

Marietta, Ga.

Admitted to Bar 1979

On Dec. 10, 2015, the Supreme Court of Georgia determined that attorney Hugh O. Nowell (State Bar No. 547375) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law.

### Clifford E. Hardwick IV

McDonough, Ga.

Admitted to Bar 1976

On Dec. 15, 2015, the Supreme Court of Georgia determined that attorney Clifford E. Hardwick IV (State Bar No. 325662) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law.


### Tony Curtis Jones

Albany, Ga.

Admitted to Bar 1984

On Jan. 19, 2016, the Supreme Court of Georgia determined that attorney Tony Curtis Jones (State Bar No. 403935) had complied with all of the conditions for reinstatement following his suspension, and reinstated him 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. 10, 2015, three lawyers have been suspended for violating this Rule and none have been reinstated. 



**Connie P. Henry** is the clerk of the State Disciplinary Board and can be reached at [connieh@gabar.org](mailto:connieh@gabar.org).

JOIN US!



[gabar.org](http://gabar.org)



@StateBarofGA  
@GeorgiaYLD



/statebarofgeorgia  
/GeorgiaYLD



/statebarofgeorgia  
/yld



/StateBarofGeorgia

# Law Practice Management Program Launches "Lunchbox Basics"

by Natalie R. Kelly

**W**anna go to lunch? How about an hour of learning something new instead of your standard fare? The

Law Practice Management Program has created a new series of programs to take place over the lunch hour — noon to 1 p.m. — to help lawyers with some basic and often cutting-edge practice management and technology topics. Staff from the program will conduct the sessions on various dates in the upcoming months.

The sessions will be free of charge and open to all Georgia lawyers and their staff. With a limit of 10 registrants per session, it is hopeful the attendees will find the programs brief and meaningful so as to provide an instant impact on their skills and knowledge of the many topics being presented.

One general hour of CLE credit will be provided on a self-reporting basis for the training, and all attendees must pre-register. The registration is limited, and therefore, is first come, first served. Lunch orders may be placed at the time of session registration with the State Bar staff. Read on for a description of session topics.

## Trust Accounting

Lawyers often struggle with the proper set up and maintenance of trust accounts and sometimes find themselves in trouble because of it. Attendees in this

session will review the proper procedures for setting up and managing a lawyer's trust account. They will learn what funds are required to be in the account and how to properly account for all trust transactions. The use of credit and debit cards with the trust account has also been an area of confusion for some lawyers, and this session will help clarify what can and must be done when accepting card payments. Compliance with the Bar rules for specific trust activity will be addressed. Register for this session if you need to learn more about trust accounting.

## Online Practice Management

Practice management systems allow users to keep track of client matter files and all of the information related to those files in one place. These powerful database programs have been helping lawyers keep their acts together for years. Today's cloud computing environment has grown ripe for putting this information online. With so many options to choose from when it comes to practice management software service, simply knowing what to look for in products is important. Attendees in this session will tour multiple options and learn about the features they need to be looking for in any system they may be interested in implementing. Register for this session if you need to learn more about online practice management software solutions.

## Building a Website

To practice law today you must have a web presence, and a basic website is where you start. Attendees at this session will learn how to build one using free web development tools. The session will cover key topics for online marketing campaigns for today's lawyers including information on the ethical concerns with websites.



You can build a basic website in one hour, so bring your credit card and leave with a basic firm website. Register for this session if you need to learn more about building your own website.

## How to Go Paperless

Is your office drowning in paper? This session will help attendees create a plan to help get rid of unnecessary paper and define workflows that eliminate the volume of paper that comes from practices which don't adhere to paperless principles. Attendees can learn which tools they will need to get rid of most (maybe all in some cases) of their paper, and learn about the proper means of saving the necessary material for their practices. Register for this session if you need to learn more about going paperless in your practice.

## Basic Computer Skills

Still not sure you know your way around the computer and basic applications? Register for this session if you need to learn more about how to complete the basics when using the computer. It features a basic review of how to navigate documents, files and folders on the computer. The pace for this session will be slower so that everyone

leaves the session with a comfortable handle on basic computing. If the class is a group of fast learners, the session will be expanded to include more advanced topics like indexed searching and basic encryption. All sessions will be conducted on PCs.

## Apps for Lawyers

Apps are everywhere and it really seems like there is an app for everything. This session will feature the latest in useful apps for lawyers. Come learn which tools are available and easy to try out. Also, look to make the business case for having apps that go beyond just the business and productivity app categories. Come prepared to both learn and share in this session featuring the very latest in apps for lawyers. Register for this session if you need to learn more about the apps lawyers can use in their practice.


## Online Legal Research with Fastcase

Fastcase is one of the best benefits of your State Bar membership. Come learn how to effectively conduct research using this invaluable practice tool provided for free to members of the State Bar of Georgia.

This session is similar to the regularly scheduled Fastcase training sessions, but with a twist. Come learn the tips and tricks for using Fastcase that you might be missing out on. Register for this session if you need to learn more about using Fastcase in your practice.

## Registration Information

Registration is free. Once the 10 classroom slots are filled, lawyers and staff may opt to be placed on the waiting list for the next scheduled session. One hour of general CLE is available via self-report. Finally, make sure you sign up for a lunch offering when you register.

Contact the Law Practice Management Program at 404-527-8772 for more details on attending an upcoming lunchbox session, or view upcoming sessions on the State Bar Calendar at [www.gabar.org](http://www.gabar.org). We'll see you at lunch! 



**Natalie R. Kelly** is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at [nataliek@gabar.org](mailto:nataliek@gabar.org).



# South Georgia Lawyer Makes Unexpected Career Shift

by Bonne Davis Cella

**P**atrick Millsaps still shakes his head in disbelief when asked about the course his career has taken—it reads like a Hollywood story—literally.

The Marietta native received his J.D. from the University of Georgia School of Law and enjoyed a successful career in Atlanta and Marietta as a litigator and business transaction lawyer. In 2004, he and his wife Elizabeth moved to her hometown of Camilla to raise their daughters, Morgan (11) and twins Kendall and Allison (10). Patrick enjoyed the slower pace and the unique challenges and perks of practicing in a small town. In 2011 his firm merged with Hall Booth Smith (HBS) and the family moved to Albany, 25 miles away.

On the day after Christmas in 2011, Patrick received a phone call from attorney Randy Evans who was acting as general counsel to then presidential candidate, Newt Gingrich. Evans, a longtime advisor to the Republican Party, invited Patrick to come to the Iowa Caucus as deputy general counsel—a voluntary position.

Thinking it was short term, Patrick packed two suits and flew to Iowa where he worked on ballot access issues. During his down time, Patrick sat with national news correspondents such as Savannah Guthrie and enjoyed “just normal conversations.” Friendly and engaging, Patrick soon had a pocketful of business cards from all the major television networks. He easily related to people and established relationships while learning how the relatively new social media outlets were impacting national behaviors.

After the loss in Iowa, Patrick was planning on going home—he really didn’t know Newt well, having met him just one time. However, before returning



Photos by Chris Cella

Patrick recaps the events that led to his career shift.

to Georgia, Patrick attended a strategy meeting with Newt and the campaign staff. When someone made a suggestion for the next move in the campaign, Patrick accidentally blurted out, “That’s the dumbest thing I’ve ever heard!”

Newt looked up and said, “Who the heck are you? Get on the bus, you are going with me!” Patrick went shopping for more underwear and got on the bus. After orchestrating Newt’s primary win in South

Carolina, Patrick was promoted to chief of staff. Patrick wrote scripts for the campaign and used his contacts in the news media to Newt's advantage, saving the campaign advertising dollars.

Newt suspended his campaign on May 2, 2012, and Patrick returned to his law practice but kept up with the presidential campaign. When he heard that African-American actress Stacey Dash publicly endorsed Mitt Romney and suffered a form of blacklisting in Hollywood, he decided to write her a letter. Patrick told her that if she ever wanted to get more involved in politics to let him know. Surprisingly, Stacey answered his letter which led to a meeting of the two. She decided not to pursue politics but asked Patrick to become her manager.

"I had to Google what a 'manager' was," he said. He promised Stacey that he would accomplish three things in 12 months and if he didn't he would fire himself. He would 1) get her paid for her opinion; 2) figure out how to get her a book deal; and 3) get her back into action. Patrick first orchestrated a deal for Stacey to be a contributor on the Fox News Channel to offer cultural analysis and commentary. He then reached out to one of the most successful ghost writers in America on Twitter and hired her to work on the book with Stacey and himself. "There Goes My Social Life" will be released later this year. And as for the last promise—Patrick convinced a director to hire Stacey for an upcoming movie by sending him a direct message on what Patrick calls, "the Twitter."

The successes he accomplished for Stacey Dash catapulted Patrick into the talent management business and got him noticed. He seamlessly took his legal and business skills from one trade to another. In 2015, Patrick left HBS to partner with former Hollywood agent Sheila Wenzel-Ganny to form Londonderry Entertainment. Patrick noted that the number of women hired to direct movies was



Patrick enjoys living in Southwest Georgia. "It keeps me grounded."


abysmal. As a father of three girls, he just didn't think that was right. One of the driving forces of his new company was to develop the next generation of female filmmakers, thus the name of the new company, Londonderry. He had read about Annie Kopchovsky Londonderry, a 19th century adventurer and journalist who circumnavigated the globe (on her bicycle) in order to prove that women were as capable as men.

"I want to empower my daughters," he said.

Following through with his intentions, Patrick was the executive producer of the female produced Sundance Film Festival favorite: "I'll See You in My Dreams," starring Blythe Danner, Rhea Perlman, June Squibb, Mary Kay Place and Malin Akerman. He is now working with several prominent actresses to form their own production companies.

Patrick now splits his time between his offices in Beverly Hills and New York but is generally on the road about one week out of the month. The rest of his work is done on his cell phone with a Beverly Hills area code and his computer from his home in Southwest Georgia.

"I have more time with my girls and I enjoy every minute of time that I am working. Whoever said

if you find something you love to do, you'll never work a day in your life was exactly right." 




**Bonne Davis Cella** is the office administrator at the State Bar of Georgia's South Georgia Office in Tifton and can be reached at [bonnec@gabar.org](mailto:bonnec@gabar.org).

## Earn up to 6 CLE credits

for authoring legal articles and having them published.

Submit articles to:  
Timothy Colletti  
Georgia Bar Journal  
104 Marietta St. NW  
Suite 100  
Atlanta, GA 30303

Contact [sarahc@gabar.org](mailto:sarahc@gabar.org)

 Learn more at [www.gabar.org](http://www.gabar.org)

# Get Your Pro Bono Ducks in a Row

by Michael Monahan

**P**ro bono service is a law practice management issue, not so much for “Big Law” as it is for the solo or small firm lawyer.

I have been participating in many of the continuing legal education seminars of the State Bar of Georgia Transition into Law Practice Program. The Transition into Law Practice Program is a mandatory mentoring program for all newly admitted lawyers in Georgia.

My presentations to the newly admitted lawyers extol the benefits of pro bono service, including substantive law and client-interviewing skills development. However, the main point I address to new lawyers is this: To be successful as a new lawyer, you must actively manage your pro bono service. You must think strategically about pro bono. The message to manage your pro bono practice is the same for all lawyers, not just those fresh out of law school. So let’s get your pro bono ducks in a row.

Solo and small-firm lawyers, new and experienced alike, must preserve the financial health of their law practice. So many pro bono cases that might otherwise be accepted by small-town lawyers are turned away because solo and small-firm lawyers have limited resources. Lawyers don’t relish turning away pro bono and low bono clients on a regular basis. We are, after all, a service profession.

The best solution is to increase support for lawyers from the local legal aid or pro bono program. Every






small-town lawyer ought to be able to say to a potential pro bono client, "I do all my pro bono through legal aid. Go to legal aid, get screened, and if you meet the guidelines, they will send you back to my office." Adopt this method to manage the pro bono requests.

This approach achieves some economies and helps to eliminate many frustrations. You or your paralegal do not have to be the bad guy and say no; instead, your message to the local community is that you indeed provide pro bono services and you have partnered with a program to make your service more effective. Using this method, you do not have to spend a large amount of time on client intake because that is done by the legal aid or pro bono program; the local legal aid or pro bono program may be able to resolve the client's issue without pro bono intervention; and the local legal aid program or pro bono program can provide other support to you as a volunteer lawyer should you ultimately be referred the case. Importantly, you maintain more control over your workload because you set the number and type of pro bono cases you will accept through a managed pro bono program in a calendar year.

That connection to legal aid gives you some insulation from the large number of pro bono requests you receives on a daily basis, and allows you and your pro bono program to address the most critical legal needs in your community.

Law practice pro bono management means you should think strategically about pro bono service. Decide how many cases you can effectively manage and fund—because you do “fund” the case, especially so in a small firm or solo environment. Be specific about the kinds of pro bono cases you would like to handle. Communicate your specific plan to your staff, your clients, the court and the local legal aid or pro bono program. Ask what the local legal aid or pro bono program can do for you. For example, many offer free or reduced-cost CLE, CLE vouchers and professional liability insurance for the pro bono cases as well as other incentives.

I invite lawyers in Georgia to look at their business plan for 2016 to make sure that you have included pro bono in your planning. Calculate how many hours you can afford to provide free legal help to the poor on issues or case types that interest you and drive you. Communicate your pro bono plan with your local legal aid program.

I am available to answer questions you might have about pro bono in Georgia. Contact me at [probono@gabar.org](mailto:probono@gabar.org). 



**Michael Monahan** is the director of the Pro Bono Resource Center for the State Bar of Georgia and can be reached at [probono@gabar.org](mailto:probono@gabar.org).

# Join the Pro Bono All Stars Become a volunteer lawyer!

[www.gabar.org/publicservice/volunteer.cfm](http://www.gabar.org/publicservice/volunteer.cfm)

for more information  
and to sign up!

Questions? Email Mike Monahan  
[probono@gabar.org](mailto:probono@gabar.org).

# Wanna Join a Section but Don't Know How?

by Derrick W. Stanley

**O**n any given day during the year, I get a call or email asking: “How do I join a Section?” The process is simple; however, there are a couple of things you will need to know up front. The first is the website for the Bar, [www.gabar.org](http://www.gabar.org). The second is your username and password, which you will use to log in to the members’ only section of the website.

Hint: If you have not changed your information, the default username is your six-digit Bar number and the password is your last name (all lowercase) and your four digit birth year (e.g. smith1999). This information can be changed after you log in. If you forgot your password, you can reset it on the website.


Once you have logged in to your account at [www.gabar.org](http://www.gabar.org), only a few steps remain before you are member of the section(s) of your choice.

- On the left side of the webpage, click the button labeled “Section Membership” (see fig. 1).
  - A list will show your current section and committee memberships (see fig. 2).
- Click on the “Join Sections” link to see a list of the sections and dues amount (see fig. 2).
  - Sections you already belong to will have a grayed out checkmark (see fig. 3).
- Select the sections that you want to join by clicking on the box next to the name (see fig. 3).
- Once completed, click the brown “Add to Cart” button at the bottom of the page (see fig. 3).
- You will be taken to a review page (see fig. 4).

- Enter your credit card information and click the brown “Submit Order” button at the bottom of the page. This will generate a confirmation and place you in the section (see fig. 5).
- Enjoy your section membership.

This is the time of the year when the membership department begins preparing the dues statements to be mailed to members. You should receive your statement the first part of May. The printed statement will be pre-filled with any sections you may be currently a member of to make it easier for sections renewal. You can add or delete sections by indicating your choice on the statement. The important thing to remember is that even though the sections are pre-selected on the statement, they have not been added into the total at the bottom of the page. You will need to include the amount of section dues on Line C in the Summary Box. This will ensure your section membership is renewed. It is important to double-check your math. If there is a variance in the amount, it may delay your sections renewal. If you join a new section when you renew your dues, your section membership will start on July 1, the first day of the Bar year.

If you are in a medium to large firm and your dues are paid through an accounting department, please make sure they submit your section dues as well as your Bar dues. Many times, people are removed from sections due to this reason.

Hopefully these tips will assist you in joining a section. If you have issues, please feel free to send an email to [derricks@gabar.org](mailto:derricks@gabar.org). 

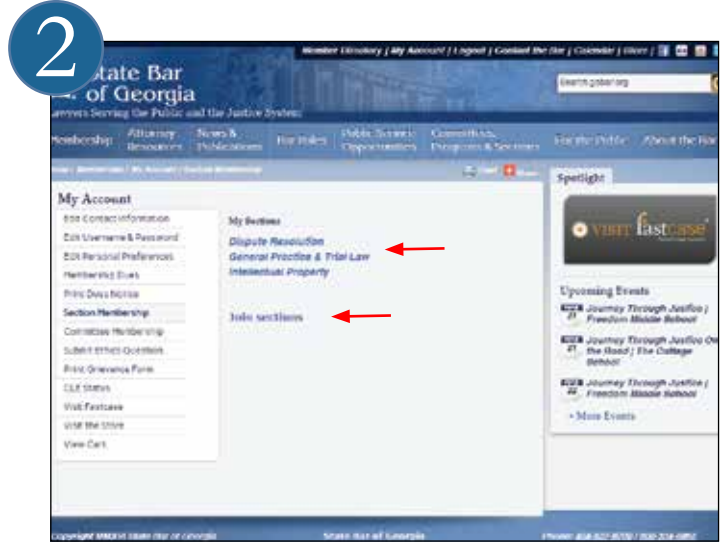


**Derrick W. Stanley** is the section liaison for the State Bar of Georgia and can be reached at [derricks@gabar.org](mailto:derricks@gabar.org).

1



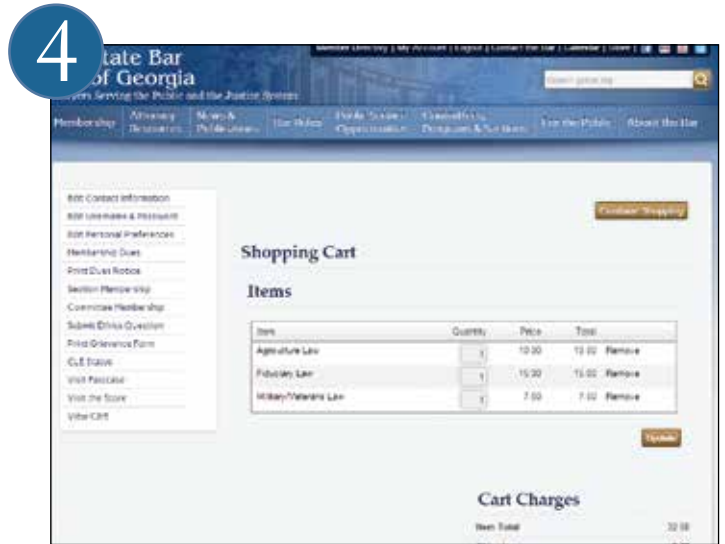
2



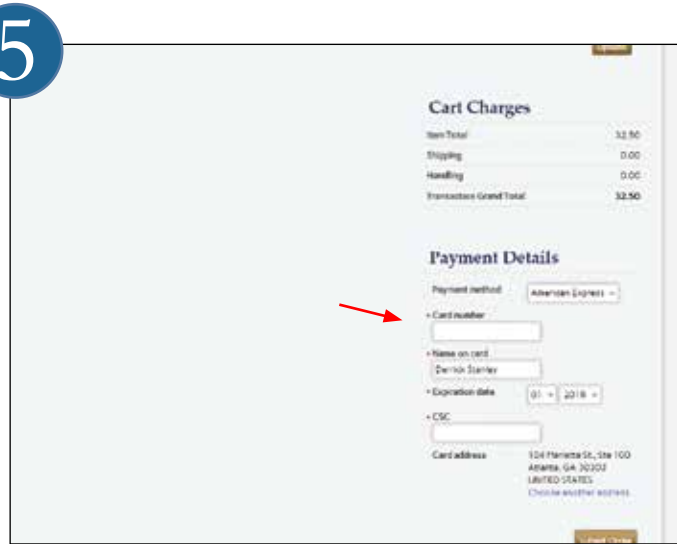
3



4



5





# Fastcase: Creative Searching in Case Law

by Sheila Baldwin

**S**ince 2009, the State Bar of Georgia has provided Fastcase as a member benefit. This nationwide legal research system has become a valuable tool for attorneys in their research. Case law and statutes are most frequently searched by attorneys for relevant cases and laws that provide precedent. In this article we'll look at creative ways to get other useful information within case law and some of the other libraries in Fastcase. Cases are narratives with sometimes valuable facts about people, companies, products and situations other than legal precedent. Fastcase's electronic full-text search engine can be helpful in finding information when conducting background and fact-finding research.

In performing due diligence, consider searching a company name, products and principal parties by name in case law. This can be useful when hiring a company or person to perform a service or if you are considering entering into partnerships or business ventures. Using the example Randstad, enter the word into the search box using "all jurisdictions" and choose

"citation lookup" as the search type. This will bring 129 cases with Randstad as a party. Use the jurisdiction filter on the top left side of the screen to show each court that contains a case with Randstad as a party; narrow to 11th Circuit to find three cases (see fig. 1).

Case law searching is useful when looking for an expert witness or investigating the opposition's expert witness. Find out what cases the expert witness testified in and see if it has been challenged. Use the expert's name as the keyword and possibly the area of expertise in the search engine and select a jurisdiction. If the name is common you may want to enter other qualifying terms.


Perhaps a small firm is considering hiring a support person in a "job-sharing" arrangement with another firm. They might search case law to investigate potential conflicts in using a non-traditional hiring process. In the advanced case law search field, enter the query *job / 3 share\**, and filter the jurisdiction to Fed. 11th Cir., M.D. Ga., N.D. Ga., S.D. Ga., GA to find 36 results. Use the jurisdiction filter at the top left corner to view only Georgia and find seven cases (see fig. 2).

To learn about what types of cases certain judges have heard and how they ruled, enter the last name in the search box and select Citation Lookup for type. Searching in Georgia with the name Nahmias by Citation Lookup, you will find 551 cases; add the word murder and find 245 cases. This is a case that might be interesting to view within the interactive timeline (see fig. 3). This approach can be used to learn about attorneys or parties.

You may want to know how successful the opposing counsel is or if a particular party is litigious. Using a family law attorney's name for a search query in Georgia while choosing Keyword Boolean or Citation Lookup

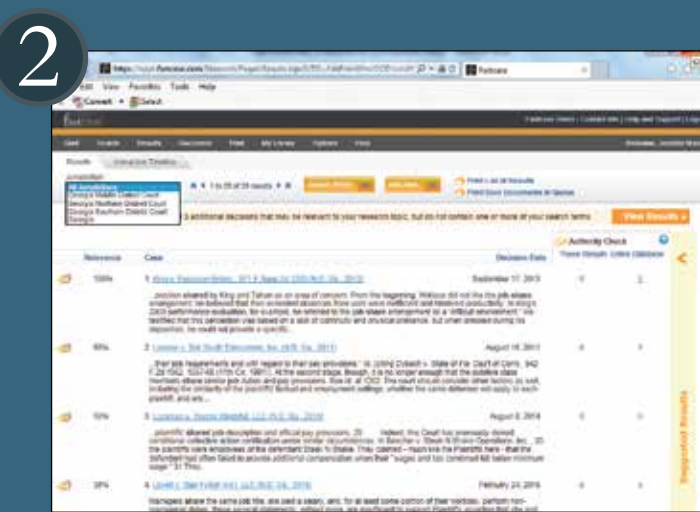
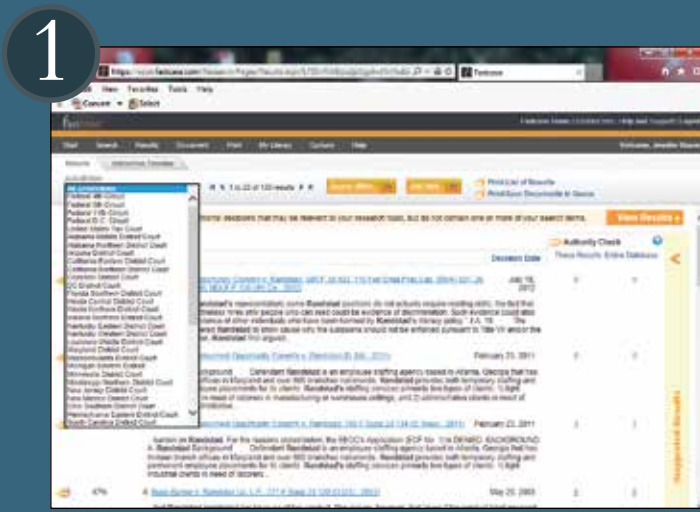
will yield five cases. If you conduct the same search but choose Natural Language you will find 2,012 cases. This illustrates the lack of precision with that type of search. Natural Language brings no relevance to the terms and brings too many results to be helpful other than giving general information on the topic of law or terminology.

When searching names of businesses or people in cases you will most likely need to visit the Secretary of State's website first and do a business or corporate search to find precise information about a company. Enter the name of a business to find the full name and address of registered parties, or enter a name to find out what companies with which the person may be associated. Georgia law requires business corporations to submit the Articles of Incorporation, including the name of the corporation, the number of shares the corporation is authorized to issue, the street address and county of the corporation's registered office, the name of the registered agent at that office, the name and address of each incorporator and the mailing address of the initial principal office of the corporation.

These ideas may not be new, but they may help users consider other ways they can utilize Fastcase's innovative design to gain information. If you are not getting the maximum advantage from this member benefit, consider signing up for a Fastcase webinar or live training. Visit the calendar on the top right side of the State Bar's website for information about both options; CLE credit is available for either. Please feel free to contact me at [sheilab@gabar.org](mailto:sheilab@gabar.org) or 404-526-8618 with any questions. 



**Sheila Baldwin** is the member benefits coordinator of the State Bar of Georgia and can be reached at [sheilab@gabar.org](mailto:sheilab@gabar.org).



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

# The Power of Paragraphs

by Karen J. Sneddon and David Hricik

**W**hen one of us was in high school, a good friend complained that her grade was low because, among other things, the teacher said that having one long paragraph as a three-page essay was not good writing. “I thought,” the friend said, “paragraphs were optional.”

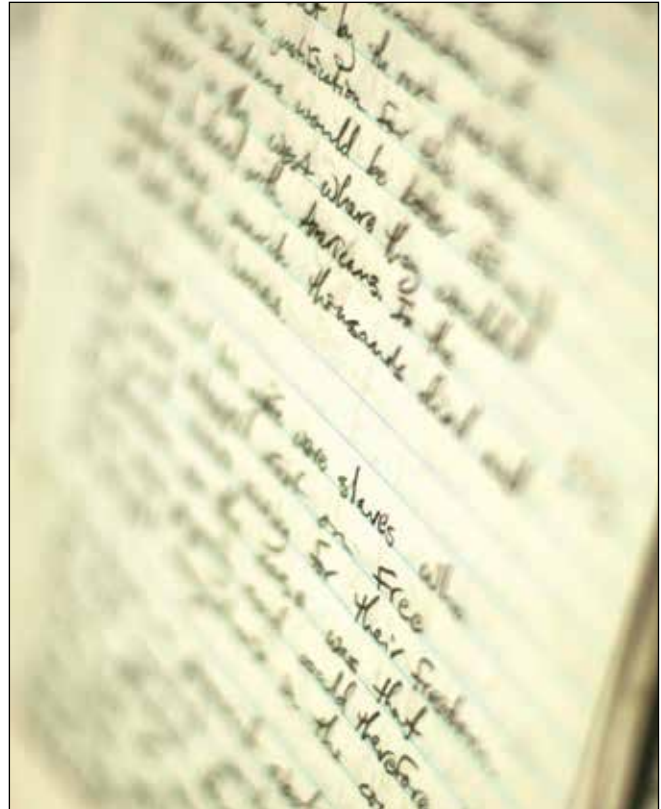
They most assuredly are not.

This installment of “Writing Matters” reminds you of the function of paragraphs, highlights the characteristics of a well-written paragraph, and shares some strategies to help you craft powerful paragraphs.

## Function of Paragraphs

Paragraphs are visually segmented units of written text. Yet that intuitive definition doesn’t capture the power of paragraphs to enhance communication. Besides the known effect that having white space creates for comprehension, this segmentation aids both the job of the writer and the reader.

Paragraphs help the writer to logically group thoughts to develop sub-points relevant to the larger purpose of the writing and to break those points down into visually appealing and logically driven segments that enhance comprehension of the substance of the text. To that end, paragraphs afford the writer the opportunity to present the substance in a way that ensures the reader more willingly engages with the substance, comprehends it without undue difficulty and retains relevant information. If the writer does his or her job, the reader perceives visually manageable segments that efficiently and effectively move the reader from the beginning to the end of a writing, both literally and, more importantly, with respect to its substance. Paragraphs should move the reader from one logical point to the next. Writers should also avoid overdeveloped paragraphs that undermine communication by bogging the reader down—again both visually and with respect to the substance.



Keeping these functions in mind should help you to use and develop paragraphs that advance the goals of the communication.

## Characteristics of Well-Written Paragraphs

Paragraphs vary. But all well-written paragraphs share two characteristics. Those characteristics are unity and coherence.

Paragraph unity refers to a paragraph’s content. Every paragraph must have a focus, or subject, and every sentence in that paragraph needs to relate to that subject. Cohesion relates to how the sentences within a paragraph relate to each other and how paragraphs are connected to each other.

A paragraph’s focus is typically stated in its first sentence, the “thesis sentence.” (The first sentence is some-



times called a “topic sentence.” We prefer “thesis” because that label is more descriptive, we believe, of what the first sentence should accomplish—not just give the topic, but explain the point of the paragraph.) A thesis sentence defines what content should and must be presented in the paragraph. The thesis sentence sets out the boundaries of the paragraph’s unity. A writer uses details and examples to illustrate the thesis sentence. Unity requires the sentences within the paragraph relate to and support the thesis sentence. For example, a paragraph with a thesis sentence defining the meaning of “valuable consideration” should not include text relating to the reasonableness of a contract’s terms. Thus, a paragraph must have a sense of unity.

But a jumble of even related details and examples can quickly overwhelm the reader: unity *and* cohesiveness are required. Even if each sentence provides a detail or example related to the thesis sentence, the writer must order those sentences in logical manner, and link the sentences within the paragraph to produce a cohesive paragraph. This can be done by using transitions, introductory phrases, repetition of key terms and use of parallel constructions.

## Drafting Powerful Paragraphs

These four strategies will help you draft powerful paragraphs.

### Review Each Thesis Sentence

To check the effectiveness of each thesis sentence, review the text just reading the thesis sentence for each paragraph. Highlight each thesis sentence, and read only those highlighted sentences in order, alone. Each sentence should be clear and achieve its purpose and then each sentence viewed within the whole document should demonstrate a logical movement from start to finish. If the thesis sentences individually and collectively do not achieve

both goals, they should be revised until they do.

### Dovetail Each Paragraph

Just as a jumble of sentences does not make a well-written paragraph, a string of paragraphs don’t form a well-written text. To ensure paragraphs flow, review the connections between paragraphs. The connections between paragraphs are commonly called dovetails. (A reference to the woodworking term of joining.) A weak dovetail will cause fractures, both in furniture and in legal writing.

To check the strength of your dovetails, consider how the last sentence of a paragraph leads the reader to the first sentence of the next paragraph. In reviewing these sections, the connection should be clear. A key phrase may be repeated in both sentences. Or, a transitional word or phrase in the first sentence of one paragraph may refer a point in the last sentence of the prior paragraph.

### Examine the Amount of White Space

Look at the white space on each page. One inch margins create a visual frame of white space for each page of text, but the reader likely needs a lot more. That’s the visual appeal of paragraph breaks. The white space gives the reader’s eye a fleeting break from the text and the reader’s mind a moment to process meaning.

To create sufficient visual and mental space, examine the amount of white space. You should avoid page-long paragraphs but instead have at least—at least—one paragraph break per page. Although less often a problem with legal writing—because the text is generally dense and so space is a helpful tool—too many paragraph breaks can also be a problem. Consider carefully any page that has more than five paragraph breaks. Is the white space a distraction because it gives the reader too many opportunities to visually and mentally disengage from the text?


## Look at the Length of Each Paragraph

Count the number of sentences in each of your paragraphs. Length should be dictated foremost by the concept of unity. As a general rule, however, most paragraphs should have between four and eight sentences. Even so, a well-developed 12 sentence paragraph may visually call the reader’s attention to its importance and also allow deep development of a key point and analysis of critical nuances.

### A Well-Placed One-Sentence Paragraph May Underscore a Key Point

Above all, varying and balancing the length of the paragraphs is critical. Too many short paragraphs may lead the writer to provide only a cursory, superficial analysis. Too many lengthy paragraphs can bog the reader down with unnecessary details or combine ideas that deserve separate paragraphs. Varying paragraph length also avoids a monotonous looking text.

## Conclusion

Paragraphs are far more than a double space and an indent. Paragraphs provide structure and convey meaning to the reader. Harness the power of paragraphs to produce a more effective text. 



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



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

# Outstanding Community Servants Honored:

## 17th Annual Justice Robert Benham Awards for Community Service

by Avarita L. Hanson

It was a typical cold and rainy February evening in Georgia, but that did not deter the more than 200 individuals who gathered at the Bar Center on Feb. 23 to support the 12 Georgia lawyers who comprised the 2016 class of recipients of the Justice Robert Benham Awards for Community Service. One might say that each of the lawyers and judges honored that evening brought sunshine to those whose lives have been too long without.

Supreme Court of Georgia Chief Justice Hugh P. Thompson lead off the event stating that Robert Benham is the poster child for this service award, as he has “served wisely in the public service of his home, in the public service of his state, in the public service of his country and the public service of his profession. I don’t think you’d find a better example of someone to emulate than Bob Benham.” State Bar President Robert J. “Bob” Kauffman added, “There is no better way to get the word out to the citizens of the state of Georgia about what lawyers are all about and the good that lawyers do than by community service.” YLD President John R. B. “Jack” Long said that the



Photos by Don Morgan Photography

Chief Justice Hugh P. Thompson welcomes the attendees and honorees to the program.

honorees provide “inspiration to the YLD and are certainly folks that we as young lawyers want to emulate.”

WXIA-TV Business Editor and Help Desk Manager William J. “Bill” Liss introduced Justice Benham with an interview where Benham provided colorful, genuine, thought-provoking and inspiring stories from his life experiences showing his commitment to and legacy of service. Avarita L. Hanson, executive director of the Chief Justice’s Commission on Professionalism, served as emcee. After each honoree was introduced, the audience was treated to a short video summarizing their service before the award was presented.

Honorees selected are members in good standing with the State Bar of Georgia, have a record of outstanding community service and continuous service over a period of time to one or more causes, organizations or activities. Judges and lawyers meet the criteria if they have combined a professional career with service to their communities through voluntary participation in community organizations, government-sponsored activities, or humanitarian work outside of their professional practice or official duties. Contributions may be made in any field, including but not limited to: social service, education, faith-based efforts, sports, recreation, the arts, public service and youth activities.

The Lifetime Achievement Awards were presented to: Juanita Powell Baranco, attorney, executive vice president and chief operating officer, Mercedes Benz of Buckhead, Atlanta; and Edward J. “Jack” Harding, founding partner, Rogers & Hardin LLP, Atlanta.

The Community Service Awards were presented to: Thua G. Barlay, managing attorney, Barlay Law Group, LLC, Conyers; Hon. John J. Ellington, presiding judge, Court of Appeals of Georgia, Soperton; Damon E. Elmore, partner, Nowell Sparks LLC, Lithia



(Left to right) Damon E. Elmore, Edward J. “Jack” Hardin, Justice Robert Benham and Camille Hope.



(Front row, left to right) Juanita Powell Baranco, Chief Justice Hugh P. Thompson, Justice Robert Benham, Avarita L. Hanson and Edward J. “Jack” Hardin. (Middle row, left to right) Thua G. Barlay, Harold E. Franklin Jr., Thomas David Lyles, Damon E. Elmore and Michael L. Thurmond. (Back row, left to right) Presiding Judge John J. Ellington, Hon. A.J. “Buddy” Welch, Camille Hope, T. Mills Fleming and Hon. Dax E. Lopez.



(Left to right) Chief Justice Hugh P. Thompson, Presiding Judge John. J. Ellington, Justice Robert Benham and Avarita L. Hanson.



Springs; T. Mills Fleming, partner, HunterMcLean, Savannah; Harold E. Franklin Jr., partner, King & Spalding LLP, Atlanta; Camille Hope, Chapter 13 Trustee, U.S. Bankruptcy Court, M.D. of GA, Macon; Hon. Dax E. Lopez, judge, State Court of DeKalb County, Decatur; Thomas David Lyles, senior assistant district attorney, Paulding Judicial Circuit, Dallas; Michael L. Thurmond, attorney, Butler Wooten Cheeley & Peak LLP, Stone Mountain; and Hon. A.J. "Buddy" Welch, chief judge, Henry County Juvenile Court, senior manager, Smith Welch Webb & White LLC.


## Thank You

This event was made possible by the assistance of so many. We'd like to thank the YLD members and their friends who served as volunteer hosts for the event: Shiriki L. Cavitt, Kasey C. Chow, Miguel A. Dominguez, Waverley A. Eubanks, Tiffany A. Roman, Erica T. Taylor and Beza Tadessa. Also a big thank you goes out to the Bar Conference Center staff, Joyce Jarvis and Mark Brayfield, who were so helpful in providing assistance. We could not achieve such an excellent presentation without our technicians and caterers, and extend our appreciation to: Vince Bailey, videographer, Vince Bailey Productions, Inc.; Don Morgan, photographer, Don Morgan Photography; Eric Thomas, musician; Affairs to Remember, event caterer. Finally, the excellent service provided by the staff of the Chief Justice's Commission on Professionalism: Terie Latala, assistant director; and Nneka Harris-Daniel, administrative assistant.

Each year members of the selection committee for the Justice Benham Community Service Awards convene to review policy, nominations and select the recipients. Many thanks to the committee for honoring their commitment to serve: Janet C. Watts, chair; Mawuli M. Malcolm Davis;

Elizabeth L. Fite; Laverne Lewis Gaskins; Michael D. Hobbs Jr.; W. Seaborn Jones; C. Joy Lampley-Fortson; Hon. Chung Hun Lee; William J. "Bill" Liss; and Brenda Carol Youmas.

Why not start thinking about a colleague or two to nominate for next year's award? While lawyers who serve are not doing so to get recognized, receipt of the Justice Benham Award for Community Service is always a highlight of their careers. Anyone can submit a nomination. In the fall of 2016, look for the Call for Nominations for the 18th annual Justice Benham Awards in the *Georgia Bar Journal*, on the State Bar of Georgia website, or contact Nneka Harris-Daniel at the Chief Justice's Commission on Professionalism at [nneka@cjcpga.org](mailto:nneka@cjcpga.org) or 404-225-5040.

The Justice Benham Awards for Community Service were created to meet four objectives: 1) To recognize that volunteerism remains strong among Georgia's lawyers; 2) To encourage all lawyers to become involved in serving their communities; 3) To improve the quality of life of lawyers through helping others; and 4) To raise the public image of lawyers. All of the ingredients of the Benham Awards Program—the court and bar leaders, selection committee members, staff and volunteers—were well-served at this year's presentation program. So I leave you with this thought: Ultimately, what counts is not what we do for a living; it's what we do for the living. 



**Avarita L. Hanson**, Atlanta attorney, has served as the executive director of the Chief Justice's Commission on Professionalism since May of 2006. She can be reached at [professionalism@cjcpga.org](mailto:professionalism@cjcpga.org) or 404-225-5040.



## Juanita Powell Baranco

DeKalb County Education Task Force and Georgia Board of Regents, past chair; Cities in Schools, Georgia State Board of Education, Scottsdale Child Development Center, Project Impact DeKalb County, past board member; Clark Atlanta University Board of Trustees, chair; Southern Company, Woodruff Arts Center, Buckhead Coalition and Commerce Club, board member.



## T. Mills Fleming

Bethesda Academy, former board member and past chair; Lucas Theatre for the Arts, former board member and president; Telfair Museum, former board member and past chair; Savannah Music Festival, Rape Crisis Center, Memorial Health University Medical Center Foundation and CASA, past board member; Savannah Country Day School and Jewish Educational Alliance, fundraising chair.



## Hon. Dax E. Lopez

Georgia Hispanic Bar Association, past president; Caminar Latino, CEPTA and GALEO, board; Emory Board of Visitors and Vanderbilt University Law School National Council, past board member; Anti-Defamation League Glass Leadership Institute, alumnus; Athena's Warehouse and the Hispanic Organization Promoting Education (HoPe), speaker; frequent guest reader at DeKalb County elementary schools.



**Thua G. Barlay**

Board of Governors of Conyers-Rockdale Chamber of Commerce, past chair; Rotary Club of Conyers, president; Children’s Museum of Atlanta, Conyers Rockdale Economic Development Council and Family Promise of New Rock, Inc., board member; Leadership Rockdale, State Bar YLD Leadership Academy, ARC’s Regional Leadership Institute and Leadership Georgia alumnus.



**Hon. John J. Ellington**

Vidalia Rotary Club, Soperton Lion’s Club and Treutlen County Sportman’s Club, past president; Four Rivers Ducks Unlimited, past chairman; Swainsboro Technical College, former director; Colony Bank of Truetlen County and ABAC Foundation, director; 2001 Class of Leadership Georgia alumnus; Atlanta Lawyer’s Club, member; Lawyers Foundation of Georgia, fellow.



**Damon E. Elmore**

Young Lawyers Division, past president; Georgia Legal Services Program, past chair; #BikeGACounties fundraiser; State Bar of Georgia Board of Governors, member; Willie Dean Ministries Community Center; Most Blessed Sacrament Catholic Church in Atlanta Food Pantry Ministry; initiated #CyclingForGood to feed and assist homeless Atlantans; Lawyers for Equal Justice, board member.



**Harold E. Franklin Jr.**

Atlanta Bar Association, president; Gate City Bar Association, past president; established the Justice Robert Benham Law Camp pipeline program; Lawyers’ Committee for Civil Rights Under Law, executive board member; Election Protection, regional vice chair and spokesman; in 2015, established the Equal Justice in Law Enforcement Initiative.



**Edward J. “Jack” Hardin**

Gateway, LLC, co-founder and current chair; Georgia Works!, founder and supporter; Regional Commission on Homelessness, co chair; Georgia Legal Services Program, president; Board of Directors of the United Way of Metropolitan Atlanta, past chair; Governor’s Education Reform Study Commission; Board of Visitors of Grady Hospital, member.



**Camille Hope**

Community Foundation of Central Georgia, Intown Macon, Macon Heritage Foundation, Middle Georgia Food Bank and Miller-Lanier Central Foundation Fund, board member; Georgia Legal Services Program, League of Women Voters, Career Women’s Network, Macon Heritage Foundation, former board member; Central High School Mock Trial coach.



**Thomas David Lyles**

Teaches courtroom demeanor and report writing to law enforcement officers in Paulding and Forsyth County, Hiram and Atlanta; Paulding County Boys & Girls Club, Public Safety Appreciation, Fellowship of Christian Athletes and Family Alliance, board member; Paulding County Chamber of Commerce Leadership Program, member.



**Michael L. Thurmond**

Former Georgia state legislator from Clarke County; Georgia Division of Family and Children’s Services, former director; three-term Georgia Labor Commissioner and superintendent of DeKalb County School System; Georgia Historical Society, Board of Curators; lecturer at UGA’s Carl Vinson Institute of Government.



**Hon. A.J. “Buddy” Welch**

Council of Juvenile Court Judges, past president; Board of Trustees for Gordon College, member; State Bar of Georgia Board of Governors, former member; Board of Henry County Chamber of Commerce, former chair; active with Cubihatcha Outdoor Learning Center; volunteer reader to Henry County public school students.

\*Partial list of honoree accomplishments.

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.

**Walter H. Bolling Jr.**

Ringgold, Ga.  
University of Tennessee College  
of Law (1975)  
Admitted 1976  
Died August 2015

**Mary Jane Cardwell**

Waycross, Ga.  
Mercer University Walter F.  
George School of Law (1987)  
Admitted 1987  
Died January 2016

**Harry L. Cashin Jr.**

Atlanta, Ga.  
University of Georgia School of  
Law (1959)  
Admitted 1959  
Died December 2015

**Charles E. Clark**

Marietta, Ga.  
Mercer University Walter F.  
George School of Law (1972)  
Admitted 1973  
Died January 2016

**Charles A. Evans**

Marietta, Ga.  
Emory University School of Law  
(1967)  
Admitted 1966  
Died November 2015

**Joel M. Feldman**

Roswell, Ga.  
Emory University School of Law  
(1964)  
Admitted 1963  
Died February 2016

**Kevin Blair Garrison**

Athens, Ga.  
University of Mississippi School  
of Law (2009)  
Admitted 2009  
Died February 2016

**Claudia Edwards Gordon**

Alexandria, Va.  
Mercer University Walter F.  
George School of Law (1982)  
Admitted 1982  
Died February 2016

**Benjamin Gratz Jr.**

Saint Augustine, Fla.  
Woodrow Wilson College of Law  
(1976)  
Admitted 1976  
Died February 2016

**Kenneth M. Henson**

Sea Island, Ga.  
University of Georgia School of  
Law (1947)  
Admitted 1947  
Died February 2016

**J. Joseph Kennedy**

Duluth, Ga.  
Emory University School of Law  
(1974)  
Admitted 1975  
Died January 2016

**Kenneth Kilpatrick**

Suches, Ga.  
University of Georgia School of  
Law (1956)  
Admitted 1956  
Died January 2016

**William Kevin Kincheloe**

Norcross, Ga.  
Emory University School of Law  
(1990)  
Admitted 1990  
Died February 2016

**Rhett Herschel Laurens**

Atlanta, Ga.  
Harvard Law School (2001)  
Admitted 2002  
Died February 2016

**Nancy Jayne Malcom**

Monroe, Ga.  
Atlanta's John Marshall Law  
School (1993)  
Admitted 1994  
Died November 2015

**Walter C. McMillan Jr.**

Sandersville, Ga.  
Woodrow Wilson College of Law  
(1950)  
Admitted 1951  
Died January 2016

**G. Robert Oliver**

Forest Park, Ga.  
Emory University School of Law  
(1959)  
Admitted 1959  
Died February 2016

**Rudolph N. Patterson**

Macon, Ga.  
Mercer University Walter F.  
George School of Law (1963)  
Admitted 1962  
Died February 2016



**John M. Strain**

Rome, Ga.  
University of Georgia School of Law (1974)  
Admitted 1974  
Died December 2015

**Harold A. Sturdivant**

Griffin, Ga.  
Woodrow Wilson College of Law (1978)  
Admitted 1978  
Died February 2016

**Daniel A. Summer**

Gainesville, Ga.  
Emory University School of Law (1985)  
Admitted 1985  
Died January 2016

**Albert B. Wallace**

Jonesboro, Ga.  
University of Georgia School of Law (1950)  
Admitted 1950  
Died February 2016




**Harry L. Cashin Jr.**

passed away December 2015. Cashin was born and raised in Augusta, Ga., and graduated with high honors from Boys' Catholic High School. He attended the University of Georgia, receiving his B.B.A. in 1955 and his J.D. in 1959. Between college and law school, Cashin served on active duty in the U.S. Navy as a courier officer in Taipei, Taiwan, as well as a communications officer on a destroyer escort in the North Atlantic. He was admitted to the Bar in 1959 and became a successful and highly respected trial lawyer.

Cashin served as president of the Lawyers Club of Atlanta (1972), the Atlanta Bar Association (1975), the Old Warhorse Lawyers Club (1988), the Advocates Club (1997) and the Atlanta Bar Foundation. He received the Atlanta Bar's prestigious Leadership Award in 1995

in recognition of his extensive service and loyalty to his profession.

Cashin was a member of the State Bar of Georgia for more than 50 years and served as chairman of several of its committees and the Senior Lawyers Section. He received the State Bar's Distinguished Service Award and the Tradition of Excellence Award from the General Practice & Trial Law Section. He was a member of the Georgia Bar Foundation, and a member and chairman of the Judicial Qualifications Commission. Cashin was an emeritus member of the International Academy of Trial Lawyers and the International Society of Barristers. He was also a member and president of the Georgia Trial Lawyers Association (1979). 



Rudolph N. Patterson  
1939-2016

**Rudolph N. Patterson** of Macon, 1999-2000 president of the State Bar of Georgia, died Feb. 27, 2016. He was 77.

Patterson earned his law degree from the Walter F. George School of Law at Mercer University in 1963, the same year he joined the Macon firm now known as Westmoreland, Patterson, Moseley & Hinson LLP. He represented numerous

clients in the areas of Social Security disability law, personal injury and workers' compensation law and in 1995 was presented with the Tradition of Excellence Award by the General Practice & Trial Law Section of the State Bar of Georgia.

A longtime leader in the legal profession, Patterson served as president of the Macon Bar Association in 1967 and as a Georgia delegate to the American Bar Association from 2000 through 2014, in addition to his service as the 37th president of the State Bar of Georgia.

Patterson was also chair of the General Practice & Trial Law Section (1985-87), president of the National Organization of Social Security Claimants' Representatives (1981-83), chair of the Benefits Committee of the Administrative Law Section of the American Bar Association, chair of the State Bar General Counsel's Office Overview Committee, a trustee and Fellow of the Georgia Bar Foundation and a trustee of the Institute of Continuing Legal Education in Georgia.

A native of Poulan, Ga., Patterson is survived by his wife, Margaret M. Patterson of Macon; sons, James E. "Jay" Patterson and his wife Pam of Forsyth, Rudolph N. "Pat" Patterson and his wife Donna of Milledgeville; grandchildren, John Eliotte Patterson, Kathryn Elizabeth Patterson, James Andrew Patterson, Isabella Jayne Patterson, all of Forsyth, Maria Blair Weaver and her husband Brandon of Milledgeville; two great-grandchildren; a brother, Richard Patterson, and his wife Fonda of Augusta; sister, Gail Patterson Lucich of Cocolalla, Idaho; and several nieces and nephews.

Memorial contributions may be made to the Alzheimer's Association, 886 Mulberry St., Macon, GA 31201; or [www.alz.org](http://www.alz.org).

# April-July

<b>APR 12</b>	ICLE <i>Webinar: Child Support Worksheets</i> 1 CLE	<b>MAY 3</b>	ICLE <i>Webinar: Cyber Liability</i> 1 CLE
<b>APR 14</b>	ICLE <i>Construction Law for the General Practitioner</i> Atlanta, Savannah and Tifton, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE	<b>MAY 5</b>	ICLE <i>Entertainment Law Basics Boot Camp</i> Atlanta, Ga. (Available via web stream) See <a href="http://www.iclega.org">www.iclega.org</a> for location 3 CLE
<b>APR 22</b>	ICLE <i>Aviation Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE	<b>MAY 6</b>	ICLE <i>7th Annual Dispute Resolution for Trial and Non-Trial Lawyers</i> Augusta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE
<b>APR 22</b>	ICLE <i>Solo Small Firm Spring Seminar</i> Atlanta, Savannah and Tifton, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE	<b>MAY 10</b>	ICLE <i>May Group Mentoring</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location No CLE
<b>APR 26</b>	ICLE <i>Webinar: Winding Down a Practice</i> 1 CLE	<b>MAY 10</b>	ICLE <i>Webinar: Opening Statements</i> 1 CLE
<b>APR 28</b>	ICLE <i>Building Professional Presence</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE	<b>MAY 12-14</b>	ICLE <i>38th Annual Real Property Law Institute</i> Amelia Island, Fla. See <a href="http://www.iclega.org">www.iclega.org</a> for location 12 CLE
<b>APR 29</b>	ICLE <i>Animal Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE	<b>MAY 13</b>	ICLE <i>Georgia DUI Update</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE
<b>APR 29</b>	ICLE <i>Fulton County Family Division: Changes in the Court!</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE	<b>MAY 13</b>	ICLE <i>Atlanta Public Schools Case</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 3 CLE

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



- MAY 19-21** ICLE  
*34th Annual Family Law Institute*  
 Jekyll Island, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 14 CLE
- JUN 2-3** ICLE  
*Chapter 12 Bankruptcy Institute*  
 Atlanta, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 10 CLE
- JUN 7** ICLE  
*Webinar: Tax Sale*  
 1 CLE
- JUN 14** ICLE  
*Webinar: Trial Practice*  
 1 CLE
- JUN 23-26** ICLE  
*Gary Christy Memorial Georgia Trial Skills*  
 Athens, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 24 CLE
- JUN 24** ICLE  
*Powerful Witness Preparation*  
 Atlanta, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 6 CLE
- JUL 12** ICLE  
*Webinar: Georgia's Hottest Evidentiary Issues*  
 1 CLE
- JUL 14-16** ICLE  
*Fiduciary Law Institute*  
 St. Simons Island, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 12 CLE
- JUL 15-16** ICLE  
*Solo Small Firm Institute*  
 Atlanta, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 12 CLE
- JUL 26** ICLE  
*Webinar: Damages*  
 1 CLE
- JUL 29-30** ICLE  
*Environmental Law Section Summer Seminar*  
 St. Simons Island, Ga.  
 See [www.iclega.org](http://www.iclega.org) for location  
 8 CLE

## Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. Memorial Contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW, Suite 610, Atlanta, GA 30303, stating in

whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible. Unless otherwise directed by the donor, In Memoriam Contributions will be used for Fellows programs of the Georgia Bar Foundation.



# First Publication of Proposed Formal Advisory Opinion No. 15-R1

Pursuant to Rule 4-403 (c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the following proposed opinion should be issued. State Bar members are invited to file comments to this proposed opinion with the Formal Advisory Opinion Board at the following address:

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

An original and one (1) copy of any comment to the proposed opinion must be filed with the Formal

Advisory Opinion Board by May 31, 2016, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. Any comment submitted to the Board pursuant to Rule 4-403 (c) is for the Board's internal use in assessing proposed opinions and shall not be released unless the comment has been submitted to the Supreme Court of Georgia in compliance with Bar Rule 4-403 (d). After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia.

## Proposed Formal Advisory Opinion No. 15-R1

### Question Presented:

May a sole practitioner<sup>1</sup> use a firm name that includes "group," "firm," "& Associates"?

### Summary Answer:

A sole practitioner may not use a firm name that includes "group" or "& Associates" because both terms would incorrectly imply that the sole practitioner practices with other lawyers. However, a sole practitioner may use a firm name that includes "firm."

### Opinion:

The question presented is governed by Rules 7.1 and 7.5 of the Georgia Rules of Professional Conduct. Rule 7.5 (a) provides that "[a] lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1." Rule 7.1 (a), in turn, provides that advertisements about a lawyer's services may not be "false, fraudulent, deceptive or misleading." A firm name is a form of advertising about a lawyer's services, and so a firm name may not be false, fraudulent, deceptive, or misleading either. Rule 7.5 Comment [1]. In addition, Rule 7.5 (d) provides that a firm name may

state or imply that a lawyer "practice[s] in a partnership or other organization only when that is the fact."

In applying these rules to the question presented, the Board is mindful that lawyer advertising is commercial speech that is entitled to some protection by the First Amendment to the United States Constitution. *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *In re Robbins*, 266 Ga. 681 (1996) (per curiam). Commercial speech is not entitled to absolute protection, and false, fraudulent, deceptive, or misleading commercial speech may be freely regulated or even prohibited entirely. *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623-24 (1995); *Zauderer v. Office of Disciplinary Counsel of Sup. Ct. of Ohio*, 471 U.S. 626, 638 (1985); *In re Robbins*, 266 Ga. at 683. Thus, there is no constitutional impediment to prohibiting names of law firms that are false, fraudulent, deceptive, or misleading.

The question, of course, is whether a particular firm name is false, fraudulent, deceptive, or misleading. The requestor has asked only about whether the use of "group" in a sole practitioner's firm name, such as Doe Law Group,<sup>2</sup> is false, fraudulent, deceptive, or misleading. Because the use of "firm" and "& Associates" in a sole practitioner's firm name, such as Doe Law

Firm and Doe & Associates, is so similar to the use of “group,” this opinion considers all three. Indeed, the Office of the General Counsel regularly receives requests for ethical guidance regarding the use of all of these terms in firm names, not just the use of “group” as the requestor has asked, and so it is appropriate to expand the scope of the requestor’s request.

In determining whether it is false, fraudulent, deceptive, or misleading for a sole practitioner to use “group” in his firm name, this opinion first considers the common dictionary definitions of this term. According to the New Oxford American Dictionary, a “group” in the business context is “a number of people who work together or share certain beliefs.” NEW OXFORD AMERICAN DICTIONARY 768 (3d ed. 2010). Merriam-Webster similarly defines “group” as “a number of individuals assembled together or having some unifying relationship.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 552 (11th ed. 2011). These common dictionary definitions of “group,” as well as the absence of a specialized definition of “group” in the context of the legal profession, lead to the conclusion that a sole practitioner may not use “group” in his firm name because this term would incorrectly imply that the firm consists of multiple lawyers. This conclusion is consistent with ethics opinions in other jurisdictions,<sup>3</sup> and it is also consistent with the position taken by the Office of the General Counsel when it has been presented with informal inquiries regarding the use of “group” in a sole practitioner’s firm name.

A different result is required with respect to the use of “firm” in a sole practitioner’s firm name. Although there is some similarity between the meanings of “firm” and “group” in denoting the name of a business, a different result is required because the Rules define a “firm” as “a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law.” Rule 1.0 (e). “This specific definition is, at least implicitly, a recognition that firms may consist of many lawyers or only a single practitioner.” D.C. Bar, Legal Ethics Comm., Ethics Op. 332 (2005).

Nevertheless, it should be noted that the common dictionary definitions of “firm” are not as clear as the common dictionary definitions of “group.” The New Oxford American Dictionary defines “firm” as “a business concern, esp. one involving a partnership of two or more people; a law firm.” NEW OXFORD AMERICAN DICTIONARY at 651. Although this definition assumes that most firms will be comprised of more than one person, it allows for the possibility that a firm will have only one person. Similarly, Merriam-Webster defines “firm” as “a partnership of two or more persons that is not recognized as a legal person distinct from the members composing it,” but it also defines

“firm” as “the name or title under which a company transacts business.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY at 472. Even Black’s Law Dictionary is ambiguous about whether “firm” signifies more than one person. It defines “firm” both as “[t]he title under which one or more persons conduct business jointly” and as “[t]he association by which persons are united for business purposes.” BLACK’S LAW DICTIONARY 751 (10th ed. 2014). Thus, unlike “group,” “firm” is not necessarily pluralistic.

The definition of “firm” in the Rules means that it is not false or untruthful for a sole practitioner to use a firm name that includes “firm.” But because an accurate firm name still may be deceptive or misleading, this opinion must consider whether a firm name such as Doe Law Firm is deceptive or misleading when Doe is a sole practitioner. This name is not inherently deceptive or misleading because it would not cause a reasonable member of the public to believe that Doe necessarily practices with other lawyers.<sup>4</sup> However, the use of “firm” in a sole practitioner’s firm name could be deceptive or misleading in certain contexts, and so a sole practitioner who uses “firm” in his firm name must be mindful of his obligations under Rules 7.1 and 7.5.

The use of “& Associates” in a sole practitioner’s firm name, such as Doe & Associates, is a much more common issue. Whether this is proper depends on the meaning of “associate.” Generally, an associate is “a partner or colleague in business or at work” or “a person with limited or subordinate membership in an organization.” NEW OXFORD AMERICAN DICTIONARY at 97; *see also* MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY at 75 (defining “associate” as “an entry-level member (as of a learned society, professional organization, or profession)”); BLACK’S LAW DICTIONARY at 147 (defining “associate” as “[a] colleague or companion”). But “associate” has acquired a specific meaning in the context of the legal profession:

An associate is a ... lawyer-employee who is not a partner of the firm. All other non-lawyer employees are to be considered simply employees and not associates. This category of employees includes paralegals, secretaries, non-lawyer clerks, officer [sic] managers and the like. When the word associates is employed on firm letterhead or in commercial advertisement such term refers to lawyers working in the firm who are employees of the firm and not partners.

*Florida Bar v. Fetterman*, 439 So. 2d 835, 838-39 (1983) (per curiam); *see also* BLACK’S LAW DICTIONARY at 147 (defining “associate” as “[a] junior member of an organization or profession; esp., a lawyer in a law firm, usu. with fewer than a certain number of years in practice, who may, upon achieving the requisite seniority, receive an offer to become a partner or shareholder”).<sup>5</sup>

This opinion adopts this definition. This means that a sole practitioner may not use a firm name that includes “& Associates” because, by definition, a sole practitioner does not have any associates. A sole practitioner also may not use “& Associates” in his firm name to refer to partners or non-lawyer employees, such as paralegals, investigators, nurse consultants, etc., because they are not associates. For the same reason, a sole practitioner also may not use “& Associates” in his firm name to refer to lawyers with whom he has an office-sharing arrangement. Thus, for a firm name that includes “& Associates” to be proper, there must be at least one lawyer who employs two or more associates.<sup>6</sup> For example, a firm name such as Doe & Associates is proper only if Doe is the only partner in the firm and the firm employs at least two associates. Otherwise, the name would be false, fraudulent, deceptive, or misleading because it would incorrectly identify the number of lawyers in the firm and misrepresent the status of the firm’s lawyers and employees.

This conclusion raises additional questions, and although it is not possible to foresee all questions that may arise, a couple of the more obvious ones are addressed here. First, is it proper to use “& Associates” in a firm name to refer to part-time associates, lawyers designated as “of counsel,”<sup>7</sup> and lawyers hired on a contract basis? The answer depends on the degree to which the lawyer practices with the firm. For example, a part-time associate who works one day every month might not qualify, but a part-time associate who works twenty-five hours every week probably would qualify. The key is not the lawyer’s title but rather whether the lawyer actively and regularly practices with the firm.<sup>8</sup> If the lawyer does so, he falls within the definition of “associate” quoted above, even though he may not work full-time hours and may actually be a contractor rather than an employee.

Second, must a lawyer whose firm name includes “& Associates” change the name of the firm when the number of associates employed by the firm falls below two? At that time, the name of the firm has become inaccurate, but this opinion recognizes the practical difficulties associated with changing a firm’s name. When confronted with this issue, other jurisdictions have taken a flexible approach. In Minnesota, the continued use of “& Associates” in a firm name will not subject the lawyer to discipline if the requisite number of associates are hired within a reasonable amount of time or if the lawyer reasonably and objectively anticipates hiring the requisite number of associates within a reasonable amount of time. Minn. Lawyers Prof’l Resp. Bd., Op. 20 (2009). In Alabama, a disciplinary decision may depend on how long the firm has been without the requisite number of associates and what efforts have been made to hire more associates. Ala. State Bar, Off.

of Gen. Couns., Formal Op. 1993-11 (1993). Similarly, in the District of Columbia, the factors considered include the frequency and duration of the firm’s time without the requisite number of associates and the extent of the efforts made to hire more associates. D.C. Bar, Legal Ethics Comm., Ethics Op. 189 (1988). Ultimately, though, a law firm will have to change its name if it no longer employs at least two associates. This opinion agrees with the flexibility used in Minnesota, Alabama, and the District of Columbia, but determining whether a firm name violates Rules 7.1 or 7.5 because of hiring and firing decisions will have to be made on a case-by-case basis.

Although this opinion does not consider all of the possible terminology that could be used in the name of a sole practitioner’s firm, it does establish the principle that any name implying that a firm is larger than it truly is will be considered false, fraudulent, deceptive, or misleading and, therefore, a violation of Rules 7.1 and 7.5.

## Endnotes

1. For purposes of this opinion, a sole practitioner is a lawyer who does not have any partners and does not employ any other lawyers.
2. This opinion uses Doe Law Group, Doe Law Firm, and Doe & Associates as examples of firm names implicated by the question presented. These sample names are fictitious and are not intended to refer to actual law firms or lawyers.
3. It appears that there are opinions on this issue from only four other jurisdictions, and all four concluded that a firm name may include “group” only if there are two or more lawyers practicing together. Wash. State Bar Ass’n, Advisory Op. 2163 (2007); Wash. State Bar Ass’n, Advisory Op. 2121 (2006); Sup. Ct. of Ohio, Bd. of Comm’rs on Grievances & Discipline, Op. 2006-2 (2006); N.Y. State Bar Ass’n, Comm. on Prof’l Ethics, Op. 732 (2000); Mo. Bar, Informal Advisory Op. 20000142 (2000).
4. Again, it appears that there are very few opinions on this issue from other jurisdictions. All of them agree that a sole practitioner may use the term “firm” in his firm name. N.Y. State Bar Ass’n, Comm. on Prof’l Ethics, Op. 869 (2011); D.C. Bar, Legal Ethics Comm., Ethics Op. 332 (2005); Ala. State Bar, Off. of Gen. Couns., Formal Op. 1993-11 (1993); Iowa Sup. Ct., Bd. of Prof’l Ethics & Conduct, Op. 79-68 (1979).
5. In the analogous context of interpreting a statute, “the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.” O.C.G.A. § 1-3-1(b). This principle warrants reliance on the specific definition that “associate” has acquired in the context of the legal profession rather than on its general definition.
6. Almost all other state bar associations that have considered this issue, as well as the American Bar Association, agree with this conclusion. N.Y. State Bar



Ass'n, Comm. on Prof'l Ethics, Op. 931 (2012); Minn. Lawyers Prof'l Resp. Bd., Op. 20 (2009); State Bar of N.M., Ethics Advisory Comm., Formal Ethics Advisory Op. 2006-1 (2006); S.C. Bar Ethics Advisory Comm., Ethics Advisory Op. 05-19 (2005); D.C. Bar, Legal Ethics Comm., Ethics Op. 332 (2005); Sup. Ct. of Ohio, Bd. of Comm'rs on Grievances & Discipline, Op. 95-1 (1995); Utah State Bar, Ethics Advisory Op. Comm., Op. 138 (1994); Va. State Bar, Legal Ethics Op. 1532 (1993); D.C. Bar, Legal Ethics Comm., Ethics Op. 189 (1988); Wash. State Bar Ass'n, Advisory Op. 1086 (1987); Fla. Bar, Ethics Op. 86-1 (1986); Wash. State Bar Ass'n, Advisory Op. 919 (1985); Miss. Bar Ethics Comm., Op. 93 (1984); Wash. State Bar Ass'n, Advisory Op. 178 (1984); Ky. Bar Ass'n, Ethics Op. E-246 (1981); Okla. Bar Ass'n, Ethics Op. 288 (1975); N.Y. State Bar Ass'n, Comm. on Prof'l Ethics, Op. 286 (1973); Colo. Bar Ass'n Ethics Comm., Formal Op. 50 (1972); ABA Comm. on Prof'l Ethics, Formal Op. 318 (1967); ABA Comm. on Prof'l Ethics, Formal Op. 310 (1963). Two states, Alabama and Arizona, appear to allow the use of "& Associates"

when there is only one associate employed by the firm. Ala. State Bar, Off. of Gen. Couns., Formal Op. 1993-11 (1993); State Bar of Ariz., Comm. on Rules of Prof'l Conduct, Op. 90-01 (1990). This opinion rejects this view because "& Associates," as a plural term, obviously refers to more than one associate. Thus, the use of "& Associates" in a firm name to refer to only one associate is false, fraudulent, deceptive, or misleading. However, the use of "& Associate" would present a different question.

7. See State Bar of Ga., Formal Advisory Op. 98-4 (1998) (defining what constitutes an "of counsel" relationship between a lawyer and a law firm).
8. In Utah, a lawyer qualifies as an "associate" only if he "regularly spends a majority of [his] time working on legal matters for the firm." Utah State Bar, Ethics Advisory Op. Comm., Op. 04-03 (2004). This standard is too stringent, especially in light of the fact that a lawyer in Georgia is permitted to practice in multiple law firms. State Bar of Ga., Formal Advisory Op. 97-2 (1997).

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

### NOTICE OF FILING OF FORMAL ADVISORY OPINION IN SUPREME COURT OF GEORGIA

Second Publication of Proposed Redrafted  
Formal Advisory Opinion No. 03-2  
Hereinafter known as "Formal Advisory Opinion No. 03-2"

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

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the redrafted version of Formal Advisory Opinion No. 03-2, pursuant to the provisions of Rule 4-403 (d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after April 30, 2016.

Rule 4-403 (d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, **only 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 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 Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403 (d) must be simultaneously served upon the Board through the Office of the General Counsel of the State Bar of Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223 (a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of

Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403 (e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, 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, which shall treat the

opinion as persuasive authority only. If the Supreme Court 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 approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

## Proposed Redrafted Formal Advisory Opinion No. 03-2

STATE BAR OF GEORGIA  
ISSUED BY THE FORMAL ADVISORY OPINION BOARD  
PURSUANT TO RULE 4-403 ON JANUARY 26, 2016  
FORMAL ADVISORY OPINION NO. 03-2  
(Redrafted In Light of the November 3, 2011 Amendments to the Georgia Rules of Professional Conduct)

### Question Presented:

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

### Summary Answer:

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

### Opinion:

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

When one client in a joint representation requests that some information relevant to the representation be kept confidential from the other client, the attorney must

honor the request and then determine if continuing with the representation while honoring the request will: a) be inconsistent with the lawyer's obligations to keep the other client informed under Rule 1.4. Communication; b) materially and adversely affect the representation of the other client under Rule 1.7. Conflict of Interest: General Rule; or c) both.

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

Consent to conflicting representations, of course, is permitted under Rule 1.7. Consent to continued joint representation in these circumstances, however, ordinarily would not be available either because it would be impossible to obtain the required informed consent without disclosing the confidential information in question<sup>2</sup> or because consent is not permitted under Rule 1.7 in that the continued joint representation would "involve circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients." Rule 1.7 (c) (3).

The potential problems that confidentiality can create between jointly represented clients make it especially important that clients understand the requirements of a joint representation prior to entering into one. When an attorney is considering a joint representation, informed consent of the clients, confirmed in writing, is required prior to the representation "if there is a significant risk that the lawyer's . . . duties to [either of the jointly represented clients] . . . will materially and adversely affect the representation of [the other] client." Rule 1.7. Whether or not informed consent is required, however, a prudent attorney will always

discuss with clients wishing to be jointly represented the need for sharing confidences between them, obtain their consent to such sharing, and inform them of the consequences of either client's nevertheless insisting on confidentiality as to the other client and, in effect, revoking the consent.<sup>3</sup> If it appears to the attorney that either client is uncomfortable with the required sharing of confidential information that joint representation requires, the attorney should reconsider whether joint representation is appropriate in the circumstances. If a putative jointly represented client indicates a need for confidentiality from another putative jointly represented client, then it is very likely that joint representation is inappropriate and the putative clients need individual representation by separate attorneys.

The above guidelines, derived from the requirements of the Georgia Rules of Professional Conduct and consistent with the primary advisory opinions from other jurisdictions, are general in nature. There is no doubt that their application in some specific contexts will create additional specific concerns seemingly unaddressed in the general ethical requirements. We are, however, without authority to depart from the Rules of Professional Conduct that are intended to be generally applicable to the profession. For example, there is no doubt that the application of these requirements to the joint representation of spouses in estate planning will sometimes place attorneys in the awkward position of having to withdraw from a joint representation of spouses because of a request by one spouse to keep relevant information confidential from the other and, by withdrawing, not only ending trusted lawyer-client relationships but also essentially notifying the other client that an issue of confidentiality has arisen. See, e.g., Florida State Bar Opinion 95-4 (1997) ("The attorney may not reveal confidential information to the wife when the husband tells the attorney that he wishes to provide for a beneficiary that is unknown to the wife. The attorney must withdraw from the representation of both husband and wife because of the conflict presented when the attorney must maintain the husband's separate confidences

regarding the joint representation.") A large number of highly varied recommendations have been made about how to deal with these specific concerns in this specific practice setting. See, e.g., Pearce, *Family Values and Legal Ethics: Competing Approaches to Conflicts in Representing Spouses*, 62 Fordham L. Rev. 1253 (1994); and, Collett, *And The Two Shall Become As One . . . Until The Lawyers Are Done*, 7 Notre Dame J. L. Ethics & Public Policy 101 (1993) for discussion of these recommendations. Which recommendations are followed, we believe, is best left to the practical wisdom of the good lawyers practicing in this field so long as the general ethical requirements of the Rules of Professional Conduct as described in this Opinion are met.

## Endnotes

1. See ABA MODEL RULES OF PROF'L CONDUCT, R. 1.7, cmt. 31 ("As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation.")
2. See GEORGIA RULES OF PROF'L CONDUCT, R. 1.0 (h) (defining "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct"); see also *id.*, cmt. 6 ("The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives.")
3. See ABA MODEL RULES OF PROF'L CONDUCT, R. 1.7, cmt. 31 (advising that "[a] lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other).



The *Georgia Bar Journal* is available online at [www.gabar.org](http://www.gabar.org). You can now:

- Search the *Georgia Bar Journal* in its entirety by keywords.
- Access all the information of the printed edition, but electronically.
- Add "sticky notes" and "favorite" tabs to the copy you access.
- Share the entire *Journal* or specific pages of the *Journal* with your colleagues by sending an email or posting it on social networking sites.
- Link directly to advertisers within each issue.

Try it now! [www.gabar.org/newsandpublications/georgiabarjournal/](http://www.gabar.org/newsandpublications/georgiabarjournal/)



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

The Supreme Court of Georgia, having considered Motion 2015-1 to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, issued an order approving an amendment to the following rule effective February 4, 2016.

## **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) A lawyer may:

(1) Provide legal services to clients while working with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, 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 client and the lawyer, 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 Conduct, or to alter the forms in which a lawyer is permitted to practice, including but not limited to the creation of an alternative business structure in Georgia.

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

#### Comment

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the law-

yer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] The provisions of paragraph (e) of this Rule are not intended to allow a Georgia lawyer or law firm to create or participate in alternative business structures (ABS) in Georgia. An alternative business structure is a law firm where a non-lawyer is a manager of the firm, or has an ownership-type interest in the firm. A law firm may also be an ABS where another body is a manager of the firm, or has an ownership-type interest in the firm. This Rule only allows a Georgia lawyer to work with an ABS outside of the state of Georgia and to share fees for that work.

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

The Supreme Court of Georgia having considered Motion 2015-2 to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, issued an order amending the following rules effective March 3, 2016:

#### Rule 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

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

(b) A Domestic Lawyer shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rule.

(k) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rule.

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

#### **Rule 7-303. Confidentiality.**

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



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

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

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

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

#### **Rule 7-305. Emergency Suspension.**

Upon receipt of sufficient evidence demonstrating that an impaired attorney's conduct poses a substantial threat of immediate or irreparable harm to the attorney's clients or the public, or if an impaired attorney refuses to cooperate with the Committee after an authorized intervention or referral, or refuses to take action recommended by the Committee, and said impaired attorney poses a substantial threat to the attorney, the attorney's clients, or the public, the Committee may request that the Office of the General Counsel petition the Supreme Court of Georgia for the suspension of the attorney pursuant to Rule 4-108. All proceedings under this part which occur prior to the filing of a petition in the Supreme Court of Georgia pursuant to this Rule shall remain confidential and shall not be admissible against the attorney before the

State Disciplinary Board of the State Bar of Georgia. Information from a designee of the Committee acting as a member of a volunteer network established pursuant to Rule 7-202 shall not constitute "evidence" within the meaning of the Rule.

#### **Rule 10-103. Funding.**

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

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

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

**WANT TO  
SEE YOUR  
NAME IN  
PRINT?**

### **How to Place an Announcement in the Bench & Bar column**

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

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

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

A copy of the proposed amendments may be obtained on and after April 6, 2016, from the court's website at

[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by May 6, 2016.

## Proposed Amendments to the Uniform Rules of Superior Court

At its business meeting on January 21, 2016, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 22 and 36. A copy of the proposed amendments may be found at the Council's website at <http://georgia.superiorcourts.org>.

Should you have any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, Georgia 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, July 11, 2016.

State Bar  
of Georgia

Access next-generation legal research as a free benefit of your membership with the State Bar of Georgia.



**Your Member Benefit Includes:**

- U.S. Supreme Court
- All Federal Circuit Courts
- U.S. District Courts
- Appellate Decisions for all 50 States
- Nationwide Statutes

**fastcase**  
Smarter legal research.



### Property/Rentals/Office Space

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

**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](mailto:rlmoss@mossgilmorelaw.com).

**From the law office of Guy Davis, deceased:** Kimball Pres. Series walnut exec. desk 86x42 and credenza 78x19 in excellent condition, CWC sells new \$8,000, asking \$2,500, photos avail. Also FREE law books for decorating. Martha Davis, 770-395-0030.

**Georgia Mountain Family Retreat**—less than 2 hours from downtown Atlanta; 4 BR, 3 B main house with 2 1/1 car garage and work room; fireplace; Franklin Stoves; central air and heat; high ceilings; remodeled baths; 2 living rooms; big kitchen with new appliances; 3.2 acres secluded but less than 3 miles from town; great decks with tons of birds; 1 mile to huge marina on Lake Notley; creek; great hiking nearby as well as golf, tennis and lots of other recreational facilities; IN ADDITION rental cabin with monthly income of \$450 per month, Blairsville, Georgia. Price reduced to \$249,990. Call Reynolds Allen @ 813 334 9321.

### Practice Assistance

**Information Technology Services.** Specializing in custom databases, advanced spreadsheets & data forensics. Contact me first for your computer/data needs. 20 years' experience. Local. Please review my client list at [www.atlantaaccessandexcel.com](http://www.atlantaaccessandexcel.com). Contact me at 404-377-4462 or [mark@atlantaaccessandexcel.com](mailto:mark@atlantaaccessandexcel.com).

## LAWYER ASSISTANCE PROGRAM

Stress, life challenges  
or substance abuse?

We can  
help.

*The Lawyer Assistance Program is a free program providing confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law.*

Confidential Hotline  
800-327-9631



## Position Wanted

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

**Nationally recognized boutique law firm**, headquartered in Tallahassee, FL, is searching for an associate to assist in handling large mergers and acquisitions. Minimum experience of 2 years. Competitive salary and benefits package. Email resume to [accounting@dealerlawyer.com](mailto:accounting@dealerlawyer.com).

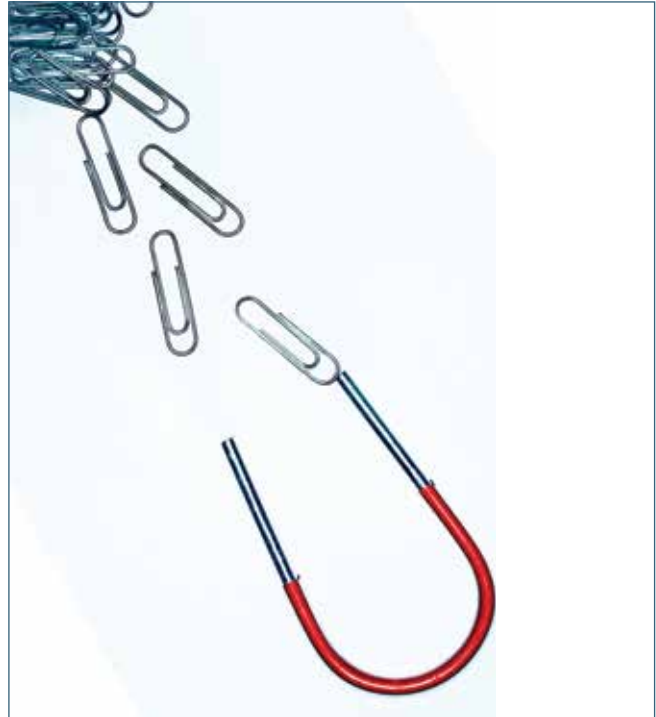
**Personal Injury Attorney** – Atlanta plaintiff's firm seeking an experienced (8+ years) PI attorney for a flexible, part-time position. Must be in good standing with the Bar association, have excellent writing skills and have experience in plaintiff or defense PI representation. Great financial opportunity. Send resume and cover letter: [nbkdwx3@gmail.com](mailto:nbkdw3@gmail.com).

## Marketing/Advertising

**Tell Your Story. Grow Your Firm.** The legal profession is filled with great stories, unfortunately many are left untold. At Brandwater Media we specialize in growing sustainable marketing results for firms with genuine purpose and vision. Let us help tell your story. Contact us at [www.brandwatermedia.com](http://www.brandwatermedia.com), 813-777-9412, or email [matt@brandwatermedia.com](mailto:matt@brandwatermedia.com).

## Personal Development/Coaching

Bar exam anxiety? Trouble with marketing your practice? Legal career at a standstill? The answer doesn't lie in working harder – your outcomes are being affected by energy blocks which prevent you from being the best legal professional you can be. Confidential, cutting-edge self-development coaching by Idara E. Bassey, J.D., LL.M., Mc.D. Make your appointment with Dr. Idara today! 678-837-6567.



# ADVERTISE

Are you attracting the right audience for your services? Advertisers are discovering a fact well known to Georgia lawyers. If you have something to communicate to the lawyers in the state, be sure that it is published in the *Georgia Bar Journal*. Contact Jennifer Mason at 404-527-8761 or [jenniferm@gabar.org](mailto:jenniferm@gabar.org).

## Advertisers Index

Gilsbar, LLC.....	5
Law Firm of Shein & Brandenburg.....	17
Member Benefits, Inc. ....	29
Mitchell Kaye Valuation.....	33
Norwich Document Laboratory .....	35
Quintairos, Prieto, Wood & Boyer, P.A. ....	17
Warren R. Hinds, P.C.....	53

# Trial By Jury: What's the Big Deal?

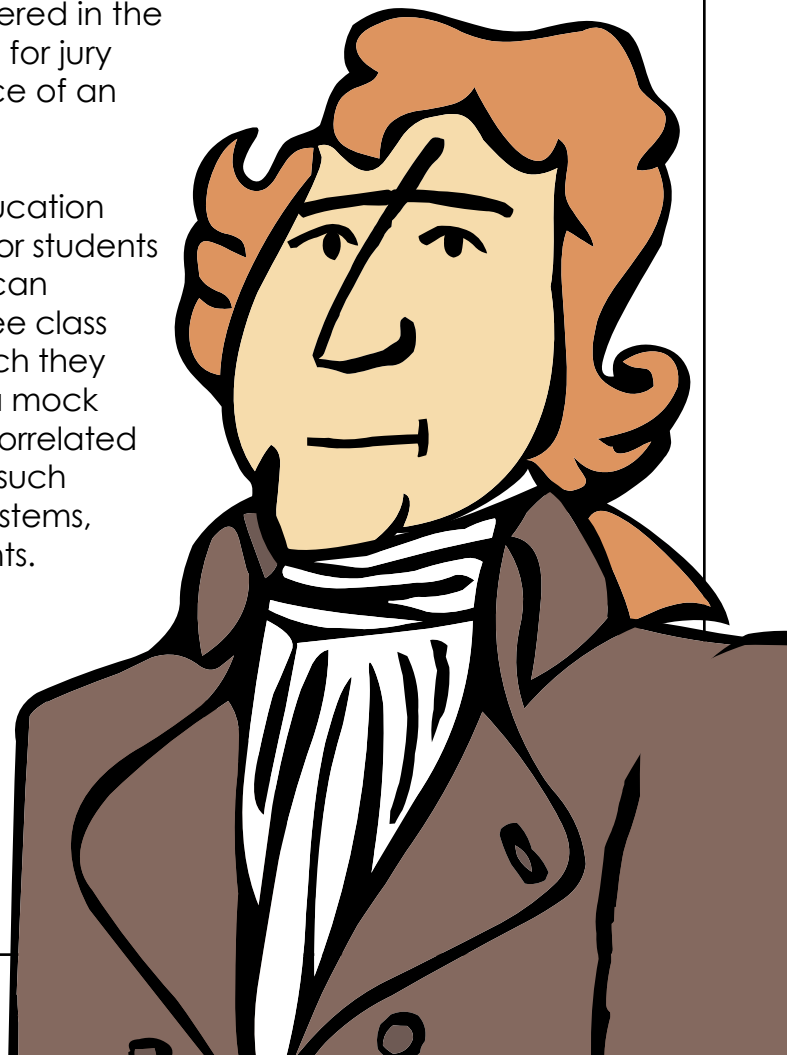


“Trial By Jury: What's the Big Deal?” is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics 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](http://www.gabar.org/forthepublic/forteachersstudents/lre/teacherresources). For a free DVD copy, email [laurenf@gabar.org](mailto:laurenf@gabar.org) or call 404-527-8736. For more information on the LRE Program, contact Deborah Craytor at [deborahcc@gabar.org](mailto:deborahcc@gabar.org) or 404-527-8785.**



# JUNE

16-19

Omni Amelia Island  
Plantation Resort

*Opening Night Festival,  
CLE Opportunities,  
Presidential Inaugural  
Dinner, Social Events,  
Family Activities, Exhibits*

Early Bird & Hotel  
Cut-off Date: *May 13*  
Final Cut-off Date: *June 3*

AMELIA ISLAND, FL

Visit [www.gabar.org](http://www.gabar.org)



2016 STATE BAR OF GEORGIA

# ANNUAL MEETING