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GEORGIA BAR

JOURNAL

From the Executive Director: Built to Last

Usufructs vs. Estates for Years: Why the Difference Matters in the Era of COVID-19

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

The *Georgia Bar Journal* welcomes the submission of news about local and voluntary bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Jennifer Mason, Assistant Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; 404-527-8761; jenniferm@gabar.org.

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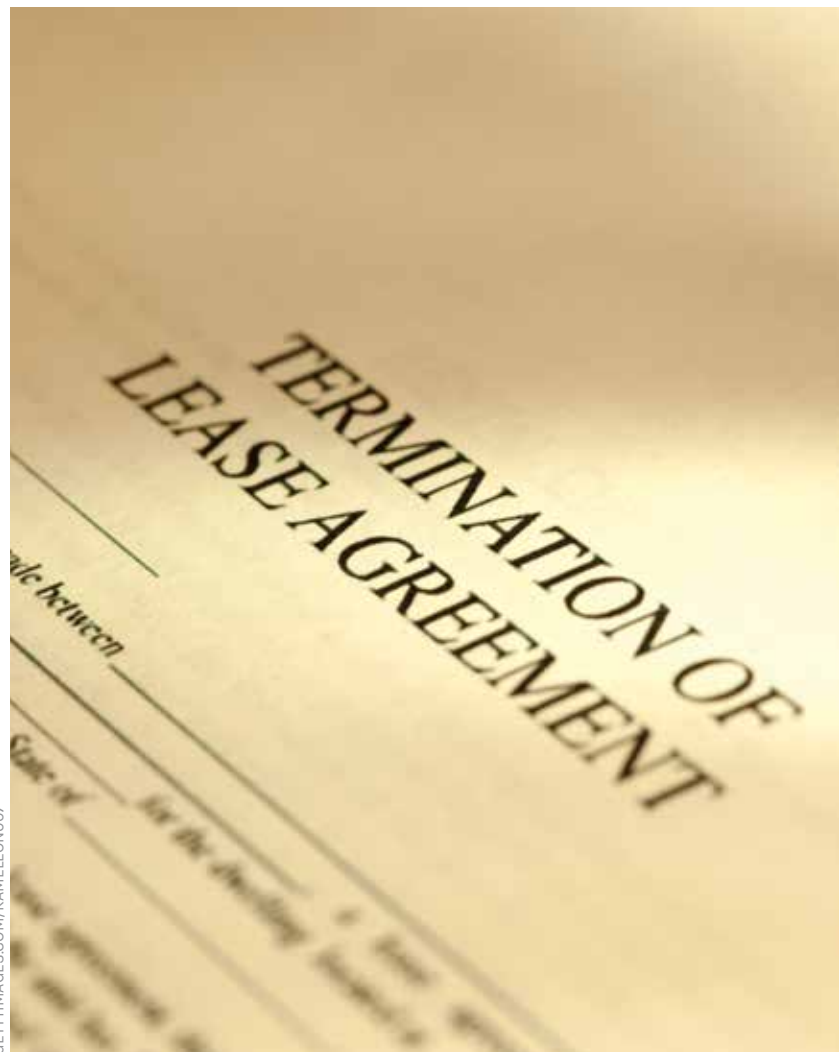
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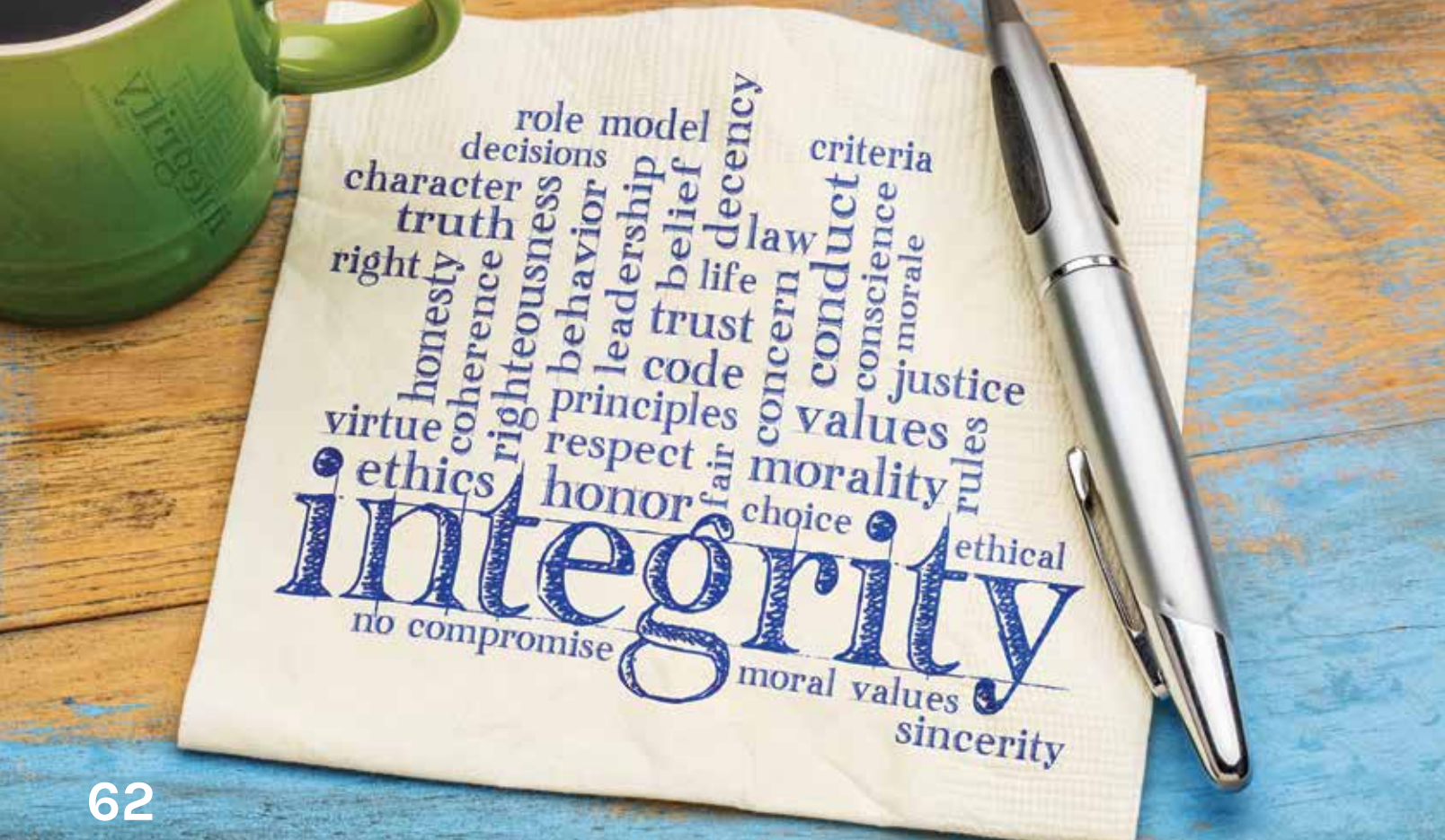
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The April Issue

I was reflecting on the last few years of my life recently when it struck me that I have been in my current job for five years this month. I love my job. I mean, really love it. I don't just say that because I know my supervisor will read this. I am constantly learning new things. I often feel like I actually get to help people. My coworkers are some of my favorite people on the planet. But before I began this job, I had begun to doubt there would ever be a time where I would find my place in the legal world. I started to second guess my decision to ever go to law school in the first place. Based on the large number of former lawyers and law school graduates working in other fields, and some lawyers I know whose job satisfaction is not what I'd call good, I have to think this kind of doubt is a pretty common feeling. It took a number of things lining up perfectly for me to land where I am: a run-in with my law school professor, Mary Radford (also high on the list of my favorite people on the planet, by the way), who happened to know of a job opening with Judge Wolk, who just gets me, in all of my goofy, oversharing awkwardness. Finding my happy place career-wise inspired in me the confidence to open many other doors as well, including this role as Editor-in-Chief of the *Georgia Bar Journal*. It really has been a kind of catalyst for more career

milestones that all build upon each other. I hope that everyone who has experienced the kind of self-doubt that I experienced gets to land somewhere he or she feels a sense of belonging and fulfillment. And I hope those of us who have found that can help encourage those doubters not to give up too quickly.

So, enough about me for now. Let me tell you about some of the great content in this edition of the *Georgia Bar Journal*. Our legal article, "Usufructs vs. Estates for Years" by Joseph B. Foltz and Seth Pierce Johnson, explores the differences between the two types of interest and why it matters, perhaps now more than ever. Our own Editorial Board member—Roxann Smithers—has a review of Lori B. Duff's "If You Did What I Asked in the First Place," which is definitely being added to my summer reading list. Our YLD president speaks on the importance of living our lives honestly and authentically. Executive Director Damon Elmore recognizes the legacy of Thomas Kennedy Sampson & Tompkins LLP. And Megan Rittle writes to remind us all of the importance of social well-being to our overall health and happiness.

As always, I appreciate all of you, our readers, and I wish you all much happiness and career fulfillment! ●



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ON THE COVER

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Full Transparency: Let's Start With the Basics



DAWN M. JONES

President
State Bar of Georgia
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I began writing this article after watching the live stream of the last five hours of Sine Die in the Georgia Legislature last month. That was an experience! I have always understood the importance of the Legislature and its direct and powerful impact on my life as a citizen. However, after following along with the process as it unfolded and watching the inner workings over the 2021-22 regular session while serving as president of the State Bar of Georgia, I now have a greater appreciation for the work that it does and how it not only impacts me as a citizen, but our profession as a whole. That's the benefit of transparency.

In that vein, I endeavor to give you, my fellow Bar members, some insight on the inner workings of our State Bar for greater transparency. I will answer the questions I am often asked about the State Bar when speaking with local bar associations and working with fellow Bar members, judges and members of the public. It dawned on me then, watching these public servants handle the business of our state on behalf of our citizens, that many of our members, despite our efforts, don't have a clear understanding of the organization and functions of the State Bar, why it is important to the practice of law in our state, and what its duties and responsibilities are to both the members of the organization as well as the public we serve.

Organizational Structure

The State Bar of Georgia is a mandatory bar and a self-governing body, meaning

we govern the practice of law in this state and require every lawyer who wants to practice law in Georgia be a member. We are an arm of the Supreme Court of Georgia; the Supreme Court ultimately has final say as to the rules promulgated by the State Bar and the disciplinary actions taken against members of the Bar. The leadership of the Bar includes the Board of Governors, which essentially serves as the "congress" of the State Bar. It is comprised of members representing 50 specific judicial circuits, some of which have multiple representatives dependent upon the total number of active Bar members in a particular circuit. The post number associated with each post in any given circuit only serves to identify that particular position. It has no purpose other than to identify the number of representatives in the circuit. Board members serve two-year terms, with about half of the Board being up for election or re-election each election cycle, usually even-numbered posts one year and the odd-numbered posts the following year.

Board Meetings

Rule 1-303 states that "the Board of Governors shall hold at least three regular meetings in each year ..." The Board currently gathers four times a year, with meetings in the fall, winter, spring and two in the summer. The Fall and Spring Meetings are smaller and less likely to have associated CLE components or larger functions.

The Midyear Meeting, held in January, is the second largest meeting of the Bar. The largest meeting of the Bar is referred to as the Annual Meeting, and its format allows for two Board meetings to be held over the course of two days, Friday and Saturday. The Friday meeting is chaired by the outgoing president and includes a general members' meeting where all Bar members may participate; reports and updates on work that has occurred throughout the year; awards presentations; and end-of-the-year addresses. The Saturday meeting is chaired by the president-elect who will be formally installed as president, along with the other new officers, that evening. This is the unofficial start of the new Bar year, which is officially defined as July 1 through June 30. The president-elect will address the body prior to conducting the business of the Bar, including the election of Executive Committee members, addressing any rule or bylaw changes, and other items of note.

Over the course of the 12 years that I have served in leadership of the State Bar—as a Board member, an Executive Committee member and as an officer—the question of why the Board meetings are sometimes held out-of-state is often posed. I'd like to share that reasoning with you now, for additional transparency.

In addition to Board of Governors meetings, there are a significant number of other meetings and events put on by Bar committees, Bar sections, ICLE, and Bar-related organizations including the Georgia Legal Services Program, the Chief Justice's Commission on Professionalism, the Institute for Continuing Judicial Education and the like, that occur around and lead up to each scheduled Board meeting. The total number of meetings that often occur at the same time, especially during the Annual Meeting, requires several large meeting rooms in addition to sufficient space to accommodate the Board members, past presidents, Supreme Court justices, Court of Appeals judges and guests who attend Board meetings, as well as associated dinners and events. Atlanta, Savannah and Jekyll Island are currently the only locations able to provide enough space for four full days of multiple, simultaneous activities, including necessary ballrooms and hotel

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our State Bar of Georgia officers, "What fun fact have you discovered about yourself, your family and/or your pet(s) that you were not aware of prior to the COVID-19 pandemic?"



DAWN M. JONES
President

What I have learned: My family's virtual gatherings are chaotic yet entertaining; my dog sleeps all day and snores like a bear; grieving virtually is extremely difficult; my dishwasher is very important; in-person State Bar meetings are a critical component of my social life; and my ALEXA skills ROCK!



ELIZABETH L. FITE
President-Elect

My dog, Betty White, does not like virtual mediations. For reasons known only to her, they are the only virtual proceedings where she routinely barks.



SARAH B. "SALLY" AKINS
Treasurer

As much as I miss the non-stop travel and gatherings of 2019 and before, I appreciate more deeply how much I treasure the one-on-one company of my husband Dale Akins.



HON. J. ANTONIO "TONY" DELCAMPO
Secretary

The funniest (most annoying?!) fact that I have discovered during the COVID-19 pandemic is that my dog has a keen awareness of when I turn off my mute button during a Zoom call. She starts barking and makes those Zoom calls very lively!



DARRELL SUTTON
Immediate Past President

That my children are remarkably and admirably resilient. They encountered the upheaval of life as they knew it with a determination to adapt and overcome. This time, it was me who learned from them, not the other way around.

rooms, while also offering attractive, high quality venues to attendees and their families. Put simply, it comes down to the issue of space. In order to accommodate all of our attendees and guests and their meeting needs, we periodically host meetings in neighboring states, which are within driving distance for most people. We have posted information regarding hosting meetings outside the state, along with a schedule of upcoming Board meetings and minutes from previous meetings, on the website at www.gabar.org/bog.

Bar Leadership

Pursuant to our bylaws, which are available for review on our website at www.gabar.org/rules, when the Board is not in session, its powers to govern our Bar lies with the Executive Committee of the State Bar of Georgia. The Executive Committee consists of 14 members, including the president, immediate past president, president-elect, treasurer and secretary of the State Bar; the Young Lawyers Division (YLD) president, immediate past president and president-elect; and six members who also hold Board posts and essentially serve as members-at-large.

Officers of the State Bar, who run via statewide election, and the YLD officers who are elected by the YLD membership, all serve one-year terms on the Executive Committee. The six non-officer members of the Executive Committee all serve two-year terms and are elected by the Board during the Annual Meeting as I referenced earlier. Nominations for officer positions of the State Bar occur during the Midyear Meeting, and those who are nominated and approved are included in the annual State Bar of Georgia Election, managed by the Elections Committee, that begins in late March and ends in late April. For more specific information about the process of State Bar elections, you can access the rules governing the process at www.gabar.org/election_rules.

Most officer positions are uncontested due to the nature and responsibilities required of the positions and the time commitment required to serve in this more specialized, elected volunteer role. The position that is usually contested is that of

secretary, as it is the first officer position in line. Once an individual is elected as an officer of the Bar, the usual progression is treasurer, president-elect and president. It is rare that someone comes in and challenges a seated officer position, but it does happen from time to time. And to clarify, once someone is elected president-elect, they will be the next president, so their name is not on the ballot. Most presidents of the Bar were first elected to the Executive Committee, and then to the secretary, treasurer and president-elect positions, in that order. After their year as president, they serve as immediate past president, with special duties and responsibilities, too.

Executive Committee meetings occur more frequently than Board meetings, usually every other month or more often when needed and, like Board meetings, are scheduled by the president. Sometimes special called meetings are scheduled to address a particular issue or concern that may come up in between the scheduled meetings. For example, during the 2020-21 Bar year, we have met as often as three times in one month due to special called meetings, in addition to more scheduled meetings than usual over the past Bar year. Executive Committee meeting schedules and posted minutes can be found at www.gabar.org/ec.

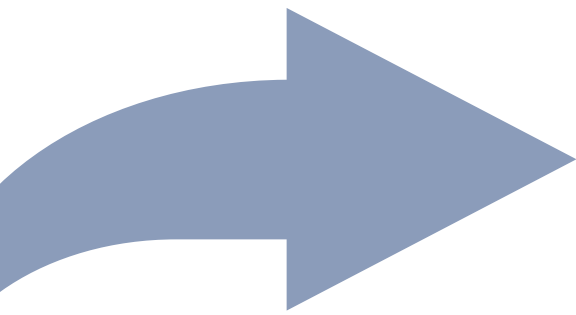
State Bar Committees, Programs and Sections

Your Bar is made up of approximately 50 standing, special and program committees, with many of those appointing subcommittees as well. Bar committees conduct much of the work of our Bar. The make-up and membership of each committee, including the number and type of committee members who serve, is also outlined in our bylaws. The president-elect of the State Bar, several months before the presidential term begins, starts the detailed process of assigning committee membership. President-Elect Elizabeth L. Fite has completed the process, but there is always room to add more if you are interested in serving on a particular committee. If so, you are strongly encouraged to go to www.gabar.org/committees; read the com-

mittee description; contact committee members to find out more information, including how often the committee meets and what duties and responsibilities are involved; and then indicate your interest to President-Elect Fite. Keep in mind that committee terms differ, so be clear of the commitment you are making when offering to serve. It may also help you to know that all committees are supported by an Executive Committee liaison and one or more State Bar staff liaisons to provide assistance, support and guidance.

Many of you actively participate in one or more Bar Sections. Membership in and funding of section activities come from section dues that you pay separately and apart from your State Bar of Georgia license fees. Each of the 52 sections of the Bar has a particular legal focus or practice area, elects its own leadership, and determines how often it meets and what work it will accomplish during the year. Many sections routinely hold robust CLE events, like the General Practice & Trial Law Institute, the Family Law Institute and the Real Property Law Institute, all with multi-day educational offerings. These institutes, and all section programs and events, are a great way to connect and network with fellow practitioners and judges while earning CLE credit.

The Bar offers a number of programs that benefit you as a member, as well as the general public. A few examples include the Fee Arbitration program, which provides a convenient mechanism for the resolution of fee disputes between attorneys and clients; the Clients' Security Fund, which fulfills, in part, the duty of the legal profession to keep faith with the public and serves to maintain the profession's collective reputation for honesty and trustworthiness; the Client Assistance Program, which serves both the public and members of the Bar by providing information and communication assistance; and the Military Legal Assistance Program, a joint program between the State Bar and the Georgia Legal Services Program, which assists service members and veterans by connecting them to State Bar members who are willing to provide free or reduced-fee legal services. There are many other Bar programs offering a wide



DID YOU KNOW?

Board Meetings aren't just for Board of Governors members. Bar members are welcomed and encouraged to attend any Board Meeting; voting privileges are only available for the general membership at the General Members' Meeting held during the Annual Meeting. A list of upcoming meetings can be found at www.gabar.org/bog.

One of the largest circuits in the Board of Governors is the Out-of-State Circuit, weighing in at more than 6,000 members who reside outside Georgia.

The Board of Governors is made up of approximately 150 circuits with approximately 152 members representing every Bar member in our state and beyond.

variety of services geared toward supporting you in your practice and the profession as a whole, all of which are managed by Bar staff. You can find a full list of Bar programs at www.gabar.org/programs.

The Bar Center, Bar Staff and Satellite Offices

The Bar Center, located in downtown Atlanta, houses Bar operations and serves as headquarters for the organization. The building was purchased in 1997 and paid off in 2011. Owning the building outright eliminates the high cost of leasing space to conduct Bar business. We also maintain satellite offices in Tifton and Savannah to serve our members in those areas. Each of the three Bar offices offer meeting and conference space, and audio-visual support for those members of the Bar who may not have the capacity or technology to meet or conduct business virtually, an offer particularly helpful to members pre-pandemic. Although COVID-19 has caused us to close all three offices and required our staff to work remotely, we look forward to moving back into our offices and opening them up when it is safe to do so and under the appropriate safety protocols, so that we can once again offer the numerous amenities that provide opportunities for learning and conducting business.

Currently, there are 106 Bar staff working to serve you in our three offices.

Executive Director Damon Elmore effectively serves as CEO of Bar staff. The Office of the General Counsel, led by General Counsel Paula Frederick, handles all Bar grievances and disciplinary actions, and regularly provides legal advice to the Executive Committee and Board, as well as providing ethics advice to members who reach out for guidance. For a listing of the departments and a staff directory, visit www.gabar.org/staff.

The Bar's Relevance

Now that we have talked about Bar leadership, committees, sections, programs of the Bar, and staff, let us briefly talk about how the Bar impacts you and your practice.

The Supreme Court of Georgia promulgates the rules for the organization and governance of the State Bar of Georgia, but did you know the State Bar often plays a role before the Court changes those rules?

Typically, the Office of the General Counsel drafts the proposed rules and amendments and shares them with relevant committees. The proposed changes are presented to the Executive Committee for input and then to the Board of Governors. If the Board of Governors approves the rule or amendment, the Bar posts a notice regarding the proposal on the State Bar of Georgia website. The State Bar welcomes all comments, feed-

back and input, so please take the time to review the notices, offer comments and share those notices with your work colleagues and local bar members to encourage them to do the same.

During the Spring Meeting every year, the Board determines the license fee amount for the next Bar year along with any related Bar assessments that may also need to be established, like the Clients' Security Fund assessment, just in time for your Bar license fee notice to be sent to you. At the Annual Meeting, the final budget for the next Bar year is voted on by the Board, which includes funding for various Bar programs, committees and other work of our Bar.

I hope this information and increased transparency have provided you with a broader insight as to the important work we do as a Bar and its relevance to you, your practice and your clients. I hope to have motivated you to take advantage of the opportunities to serve on Bar committees, in Bar sections and with Bar programs. I hope to have encouraged you, my fellow Bar members, to seek elected leadership positions within our Bar on the Board of Governors or on the Executive Committee. Your input and leadership are necessary for our Bar to move forward. We must work together to make our Bar and our profession even better. With more volunteers like you, we can continue to #SustainASoundBar well into the future. ●

The Veracity of Our Pursuits: “Reality” Should Be Authentic, Our Voices Matter and the Public is Listening



BERT HUMMEL

YLD President
State Bar of Georgia
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We find ourselves in an interesting time in our history when nearly a quarter of the population lives in the physical world, a second exists almost exclusively in the virtual world, a third lives in the past and most of the remaining reside somewhere in the future. That leaves very few who are living in the now or, in other words, very few Americans find themselves in “reality.” For lawyers, however, living in the moment and being mindful is something we strive for, or it is at least something we implore jurors to do as the trier of fact at trials.

Almost any attorney, when addressing a jury in opening and closing statements, will ask jurors to be mindful of the facts presented, to listen to the witnesses’ testimony and, when deciding guilt or liability, to ensure that external facts, preconceived notions and bias do not factor into their decision. I always like to ask that they not leave their common sense at the courtroom door when they step into the jury box. The point is that, in trial, we ask jurors to live in the now and be mindful of the space they are in. Why then would our profession not take the same advice?

The answer is complex and, to a degree, irrelevant. What is relevant is that in order to be mindful of the now and create an authentic “reality,” we must respect and honor the veracity of the statements we make, the positions we take and the arguments we construct. Otherwise, we are misleading the public, damaging the

profession and ruining our own reputations. In a sense, this is why the present, physical world is known as “reality.”

Truth, or striving for facts, is what our entire evidentiary system is based upon. As such, truthfulness should be at the forefront of how we as attorneys conduct ourselves in everything we do, because our actions reflect our profession and the institutions we represent. In fact, our Aspirational Statement on Professionalism calls on us as lawyers:

“(g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.”

Without truth and veracity—or in the absence of a pursuit of same—we create an opening for stones to be cast against the rule of law, our system of justice and our profession by those who take notice of our shortcomings. The importance of the “rule of law” is explored masterfully by President Dawn M. Jones in the February 2021 edition of the *Georgia Bar Journal*, so I will not spend time dissecting its importance here.

Numerous Georgia Rules of Professional Conduct address dishonest statements or arguments to the Court, but so too is it important to maintain honesty in dishonesty or fraud in any professional capacity. As Rule 8.4 provides:

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, "What fun fact have you discovered about yourself, your family and/or your pet(s) that you were not aware of prior to the COVID-19 pandemic?"

"RULE 8.4 MISCONDUCT

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

(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;"

"It is important for lawyers to be honest and behave lawfully," writes Christine A. Rodriguez, for the Above the Law blog. "We cannot do our jobs effectively if we lie, cheat, and steal while also fighting for clients, whether victims or accused. The people that lawyers represent often entrust us with sensitive information and life-altering circumstances, usually during the worst times of their lives. If we are not honest and lawful in all our dealings, both personal and professional, we betray their trust in us. It makes sense that the character and fitness review that you must go through to get admitted to practice in most states is rigorous and examines every aspect of both your personal and professional life. I recently went through this process to get admitted in North Carolina. ... They wanted to be sure that I was honest, that I would not break the law, and that I would represent their people honestly and zealously. That's what we sign on for when we take the oath of office as lawyers."

During the 1950s, a U.S. senator from Wisconsin, Joseph McCarthy, began accusing various leaders in federal government and the military of being communists, or at least communist sympathizers. His accusations were sometimes rooted in fact; however, the entire country was gripped by a period of finger pointing known as "the Red Scare" and generally referred to as McCarthyism. Sen. McCarthy was an attorney, and his attempts to expose individuals as being communist were motivated by political ambition, through which he gained national attention as a leader in America's global chess match against the Soviet Union during the Cold War.



BERT HUMMEL | YLD President

My eldest daughter, Mo, has shown us that she is not only smart and strong, but also very brave during this pandemic. She'll be three in June, but she wakes up with such a purpose and thirst for life that it has been a joy to watch her develop over the past year. She's a great big sister to Harper, who already has a great sense of wonder, just like Mo.



ELISSA B. HAYNES | YLD President-Elect

While admittedly not what most people would describe as "fun," I would say I am much savvier at internet marketing and virtual business development than I ever anticipated. This "new normal" has allowed me to connect more with clients that I would have struggled to find time to meet with.



RON DANIELS | YLD Treasurer

No one warns you about the joys of parenting in a pandemic, including (without limitation) the deadly nature of small plastic balls when they meet the fifth metatarsal of a full-grown man.



BRITTANIE D. BROWNING | YLD Secretary

Like everyone, I learned how adaptable we can be using a remote platform for work. That same resiliency translated to spending time with friends and family. While I discovered new and creative recipes, socially distant potlucks allowed for connection and recipe sharing.



WILL DAVIS | YLD Immediate Past President

I've learned that DoorDash and InstaCart can be very expensive when you use quarantine as an excuse to have all of your food delivered. I'm working to get better on masking up and actually going to the grocery store.



ASHLEY AKINS | YLD Newsletter Co-Editor

I've learned that I do not like working from home. I actually enjoy going to my office each day. Having a clear division between work and home works best for me.



LAKEISHA R. RANDALL | YLD Newsletter Co-Editor

My nerdy secret is that I really enjoy listening to audiobooks of classic authors reading them. For example, "The Bluest Eye" is my favorite book. Hearing the late Toni Morrison read it was wondrous! Also, my zombie apocalypse list includes Ben & Jerry's almond milk ice cream and ingredients to bake cookies.

I challenge each of you to hold our fellow attorneys accountable when they do not seek truthfulness in their pursuits. Use your own voice to drown out the few attorneys who choose not to honor our professional oaths and aspirational goals, and who jeopardize our systems of justice for future generations.

The problem with Sen. McCarthy's investigations and accusations was that they were not entirely truthful and, in some instances, downright devoid of legitimacy. Despite a lack of evidence and proof to sustain his indictments, his theatrics took advantage of Americans' fears of the Soviet Union by creating a boogeyman that brought communism to America's doorstep. The hysteria grew, and so with it a general distrust of every man and every woman. It reached a fever pitch when McCarthy turned his sights on the Army and insinuated that communists had infiltrated a branch of the U.S. military.

During a Senate Government Operations Committee hearing, which McCarthy chaired, Army Special Counsel Joseph Welch was questioned about whether the Army was "soft" on communism. During the weeklong hearing, McCarthy, on live television, lambasted the Army and questioned Welch about a young associate in Welch's office possibly working as an extension of the Communist Party. Welch had enough of the insincerity, empty rhetoric and baseless accusations, inquiring, "Until this moment, Senator, I think I never really gauged your cruelty or your recklessness. Have you no sense of decency, sir, at long last?" Finally, the end of McCarthyism and an attack on decency had arrived.

The McCarthy hearings are only one example of lawyers abandoning the truth for personal and professional gain or national notoriety. However, it highlights the power of an attorney's statements, especially from one who has risen to the level of the U.S. Senate. The public will trust us as long as we prove trustworthy in our pursuits. When we fail or come up short, then the public ought not trust us, and when the public does not trust us, then our rule of law and system of justice suffers. We are a country built on laws, and as officers of the courts, we must realize that all of our pursuits reflect on the profession as a whole. We must not fail in our pursuit of truthfulness, justice and professionalism, because otherwise we are compromising our entire justice system.

Wayne State University Law School Professor Peter J. Henning, in his article "Lawyers, Truth and Honesty in Representing Clients" for the *Notre Dame Journal of Law, Ethics & Public Policy*, contends, "An honest lawyer is one who can be trusted. For the purposes of analyzing the rules that govern a lawyer's conduct, I define honesty to mean that an attorney's expressions and conduct are both *accurate* and *authentic*. An accurate statement is one that is truthful and does not intentionally deceive or mislead another person. ... An authentic expression is one that comprehends

fairly the lawyer's (and in certain circumstances the client's) intentions. Even if the lawyer can argue that statements were accurate in the terms described above, the lawyer has a further obligation to ensure that the representation of the client is fair both to the client and to others, including courts and opponents."

While these definitions are almost expected in our representations of clients and the arguments we make on their behalf, so too should we maintain this authenticity, truthfulness and professionalism in *all* of our pursuits. When we, as attorneys, lend our voices, our platforms and our expertise to a cause, our audience expects that our words are truthful, our goals are earnest, our pursuits honest. When we, as attorneys, betray that trust to our audience and communities, the profession as a whole suffers as we are seen as less truthful in the eyes of our future clients, jurors and peers. Naturally, if our profession is questioned, the inquisition then turns to the rule of law itself.

I challenge each of you to hold our fellow attorneys accountable when they do not seek truthfulness in their pursuits. Use your own voice to drown out the few attorneys who choose not to honor our professional oaths and aspirational goals, and who jeopardize our systems of justice for future generations. ●



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 or toll free at 800-682-9806, or log in to www.gabar.org and submit your question by email.





DAMON ELMORE

Executive Director
State Bar of Georgia
damone@gabar.org

Built to Last

The *Georgia Bar Journal* is remarkable for so many reasons. During my time in Indiana serving as general counsel for an international industrial parts manufacturer, it provided for me the same benefits it does for most of our members. It highlights the evolution or change in certain legal theories and procedure. It allows us to keep up to date with our colleagues on the move. It provides a recap of important Board of Governors, section and committee meetings. On top of all that, standing features on technology, professionalism, wellness, law practice management and even the disciplinary summaries are essential to the enhancement and refinement of our practice. It remains a solid way to stay connected and understand the value of our membership.

I will also admit that during that time I became fond of the “Hidden Legal Figures” feature that has appeared in more than a dozen editions of the *Journal*. Same as with the feature on the old Georgia courthouses, it always provides an opportunity to learn and appreciate how the organization, its membership and the profession have grown.

So, as promised, and in keeping with that spirit, I have taken the chance to research similar stories and will share

the findings here from time to time. This edition recognizes the enduring legacy of Thomas Kennedy Sampson & Tompkins LLP.

During my career, I have become familiar with those firms in continual existence since the late 1800s. Many friends are part of firms that have been built around generations of family members admitted to practice and working side-by-side with grandfathers, parents, sons, daughters or other relatives. Places like Summerville, Rome, Statesboro and Savannah serve as the base of those legacy firms. Putting those notable conditions together, with overcoming challenge and adversity makes the story of Thomas Kennedy all the more remarkable. Thanks to Shyril Beck for her contributions to this highlight. She shared the following.

In 1971, John L. Kennedy, a Morehouse College and Harvard Law grad, departed Alston Miller & Gaines (now Alston & Bird) after two years as the first Black associate hired at a major Georgia law firm. Kennedy recruited Reuben T. Bussey Jr. and Thomas G. Sampson Sr., who had graduated from the University of North Carolina law school that June, and with great vision and incorrigible optimism, they built a preeminent and highly respected law firm. Launching



PHOTO PROVIDED BY THOMAS KENNEDY SAMPSON & TOMPKINS LLP

(Left to right) Jeffrey E. Tompkins, Thomas G. Sampson and Thomas G. "Woody" Sampson II

a law firm is one thing. Longevity is quite another, especially at a time when there were only a handful of African American law firms around to emulate. This year, the firm now known as Thomas Kennedy Sampson & Tompkins LLP (Thomas Kennedy) celebrates its 50th anniversary.

Thomas Kennedy has a culture that espouses the highest level of excellence and professionalism and empowers its attorneys to be warriors within their community. Today, the firm continues to build upon its legacy of excellence, community service and mentorship.

The firm is immensely proud of the many former lawyers who have graced its halls throughout the years. Notably, 10 former Thomas Kennedy lawyers have ascended to the Superior, State and Magistrate Courts within the state of Georgia. Also among the firm's alumni are Patrise M. Perkins-Hooker, the first African American president of the State Bar of Georgia, and Paul L. Howard Jr., the first African American district attorney in Georgia.

Thomas Kennedy has a lot to celebrate these days as the year 2021 marks a major milestone of 50 years of excellence, integrity and significant accomplishments. Today, the firm represents several For-

Thomas Kennedy has a culture that espouses the highest level of excellence and professionalism and empowers its attorneys to be warriors within their community. Today, the firm continues to build upon its legacy of excellence, community service and mentorship.

A retrospective look at Thomas Kennedy's undertakings for the past 50 years reflects nothing less than a laudatory legacy of excellence.



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tune 100 and Fortune 500 companies, including the Metro Atlanta Rapid Transit Authority, which the firm has represented since the early 1970s. Additionally, the firm represents individual clients who seek justice for catastrophic injury, wrongful death and medical malpractice.

Since 1994, Thomas Kennedy has been under the leadership of Managing Partner Thomas "Tom" G. Sampson Sr., a Durham, North Carolina, native. With a solid family foundation that is steeped in law, it was inevitable for him to follow suit. His father, the late Daniel George Sampson, was a law professor and former dean at North Carolina Central University. His cousin, R.E. Thomas Jr. (the "Thomas" in the firm's name), practiced law in Atlanta for more than 50 years and was a charter member of the Gate City Bar Association.

"My family has always taken note of the many injustices in the world, especially as they relate to people of African descent," states Sampson Sr. "It was—and remains—paramount to build a firm that would serve the needs of the people with equity, fairness and excellence. As we celebrate and reflect upon 50 years in this profession, it is rewarding to see that we have been able to remain true to the initial vision, and I am particularly proud that Jeff Tompkins and my son, Woody Sampson, will continue the legacy."

A Phi Beta Kappa graduate of Morehouse, Jeff Tompkins received his law degree from Emory University, where he served as director-in-chief of the Moot Court Society. Tompkins became the firm's first summer associate in 1986 and was offered a job at the end of that summer. Thomas Kennedy is the only place he has ever worked. "After having such a wonderful experience as a summer associate, I knew this was the place for me," he said. "I wanted to try cases and I knew

I would get to do so fairly quickly. I also knew I would have great mentors, like Tom Sampson, the best trial lawyer anyone will ever see, and our former partners, Donald P. Edwards and Judge Myra Hudson Dixon, who would help me learn to try cases," said Tompkins. "They showed great confidence in me early on. I argued a case before the Court of Appeals of Georgia less than a year out of law school. My client was General Motors. I could not have asked for more," said Tompkins, who obviously learned well. He received the Gate City Bar Association's A.T. Walden Outstanding Lawyer Award in 2011.

Thomas G. "Woody" Sampson II has embraced and expanded the legacy of his grandfather and father. With 25 years of experience, carving a niche for himself representing plaintiffs in the area of civil rights in nearly 2,000 cases, his passion lies in assisting those whose civil rights have been violated. In addition to his trial experience, he has served as general counsel to the Fulton County Board of Ethics for the past 20 years.

A University of Georgia Law grad, Woody Sampson ensures the firm remains committed to mentoring the next generation of African American lawyers. During his tenure as president of the Gate City Bar Association, he started a summer intern program for law students, which is now in its 13th year and growing.

A retrospective look at Thomas Kennedy's undertakings for the past 50 years reflects nothing less than a laudatory legacy of excellence. The firm looks forward to the continued pursuit of justice for its clients.

Is your firm celebrating a milestone 50 years or greater or designated as a family firm? I would love to hear your story. Share the details with me at damone@gabar.org. ●

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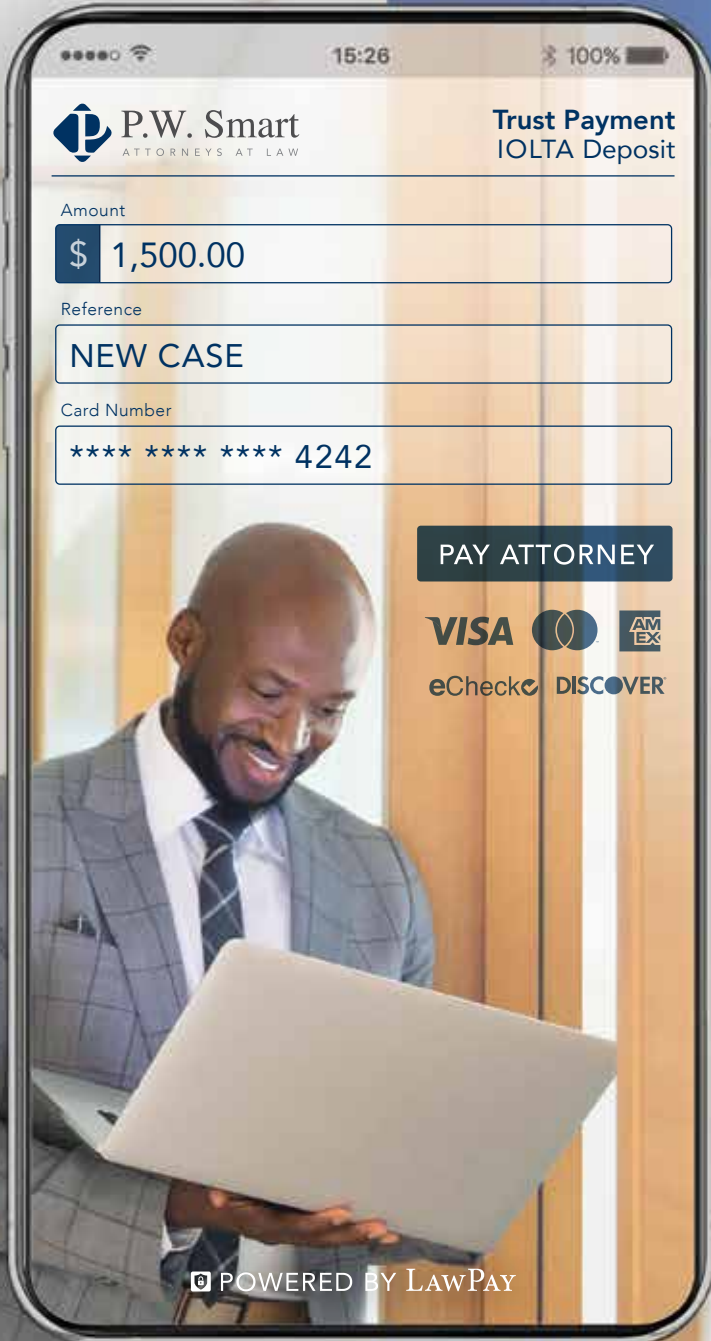
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Usufructs vs. Estates for Years: Why the Difference Matters in the Era of COVID-19

The differences between usufructs and estates for years carry inherent significance for the parties to the agreements, as well as third parties. This article explores why, even after the coronavirus threat has receded, practitioners should pay attention to the differences between a usufruct and an estate for years.

BY JOSEPH B. FOLTZ AND SETH PIERCE JOHNSON

In Georgia, the leasing of property creates either a “usufruct” or an “estate for years.”

The differences between the two significantly affect the rights and duties of the parties to the agreement. As the coronavirus pandemic enters its second year, many workers still do not know when they will return to their offices, and many struggling businesses do not know whether they will survive. In these uncertain times, one thing that does seem predictable is that many real estate leases entered into before the pandemic began will be broken before it ends.

Parties seeking to terminate an estate for years, due to COVID-19 hardships, will probably not fare well in court. In the case of usufructs, breaking a lease due to the virus is more likely justifiable. This article explores why, even after the coronavirus threat has receded, practitioners should pay attention to the differences between a usufruct and an estate for years.

For clarity, this article will use the terms “landlord” and “tenant” to refer to the parties to an agreement conveying a usufruct. The terms “grantor,” “grantee,” “lessor” and “lessee” will be used when

referring to the parties to an agreement conveying an estate for years.

Understanding the Usufruct and the Estate for Years

According to O.C.G.A. § 44-7-1(a), a landlord-tenant relationship is created “when the owner of real estate grants to another person ... the right simply to possess and enjoy the use of such real estate either for a fixed time or at the will of the grantor.”¹ This conveyance is known as a usufruct, and no estate passes from the landlord to the tenant.² A usufruct “is not insurable, is not subject to levy and sale, and ... may not be conveyed without the landlord’s consent.”³ As referenced in Georgia case law, a “usufruct is sometimes referred to as a license to use” because the conveyance does not pass a real property interest to the tenant.⁴

In contrast, an estate for years passes as realty under O.C.G.A. § 44-6-100(b). It is limited to a fixed period or one that may be “fixed and certain,” and may convey any number of years “within the rule against perpetuities.”⁵ Due to Georgia’s Uniform Statutory Rule Against Perpetuities,⁶ an

Aside from the statutory differences, there are several key distinctions to the characterizations of usufructs and estates for years.

estate for years can be any number of “fixed and certain” periods under the law.

As explained by the Court of Appeals of Georgia:

“[A]n estate for years is essentially a lease by which one person acquires a right to use real estate for a finite period ‘in as absolute a manner as may be done with a greater estate,’ so long as neither the property nor the person entitled to the reversionary interest in it is injured by that use. A usufruct, by contrast, is created when the owner of real estate grants to another person the right to use and enjoy the property for a fixed time or at the will of the grantor, as in a landlord-tenant relationship, but no property interest arises in the grantee.”⁷

Aside from the statutory differences, there are several key distinctions to the characterizations of usufructs and estates for years. Chief among these is the level of rights and privileges conveyed to the tenant or grantee. Usufructs maintain the landlord-tenant relationship, “with privileges granted to tenants holding less interest in real estate than estate for years.”⁸ In other words, the usufruct grants the tenant the right to use and enjoy the property, but prevents alterations to the substance of the property conveyed.⁹ The estate for years, however, places the grantee or lessee in “absolute control” of the estate, with “unqualified possession of the premises.”¹⁰

In simpler terms, Georgia law treats the lessee of an estate for years as the owner, whereas the usufruct’s tenant is not. With this ownership distinction comes several consequences. First, consider the duty to repair. When a usufruct is conveyed, the landlord must repair the premises and is liable for all substantial improvements thereon.¹¹ If the lease conveys an estate for years, the roles shift and the grantee must make repairs and pay the expenses necessary for the “preservation and protection of the property.”¹²

The key expenses, for many grantees, are taxes and liens levied on the property. Generally, all real property in Georgia, including the leasehold, is subject to taxation.¹³ A mere license to operate or use a designated space is not considered a taxable interest.¹⁴ Due to the distinctions discussed above, an estate for years is a taxable estate.¹⁵ A usufruct, however, is a mere license to use. As a result, because the fee estate in the property remains with the landlord and is undisturbed when a usufruct is conveyed, the tenant is not taxed for the use and enjoyment of the usufruct.¹⁶ Similar to taxes, a materialman’s lien does not attach to usufructs, but does attach to property interests in realty, like estates for years.¹⁷

Does My Agreement Convey a Usufruct or an Estate for Years?

When determining whether an agreement conveys a usufruct or an estate for years, Georgia courts evaluate each case by its own facts and circumstances.¹⁸ Courts administer a balancing test, weighing several factors to determine the parties’ intent. This balancing test can be complicated because agreements may have provisions indicative of an estate for years, while other provisions impose restrictions that are more typical of the grant of a usufruct.¹⁹ In many leases, there is language that is “in some respects indicative of a usufruct but in other ways characteristic of an estate for years.”²⁰

Georgia courts first assess the parties’ intent by looking at the agreement as a whole and considering its general characteristics.²¹ They then analyze the specific provisions of the lease, focusing on key

factors such as: (1) the express intent of the parties; (2) the length of the term conveyed; and (3) the right to control under the agreement.²²

Express Intent of the Parties

In Georgia, the intent of the instrument itself is often considered the cardinal rule.²³ When the parties stipulate to a particular conveyance, that language is usually indicative of whether a usufruct or an estate for years is conveyed.²⁴ When clauses such as “Tenant’s interest in the Leased Premises is a usufruct, not subject to levy and sale, and not assignable by Tenant except as expressly set forth herein,” or “This Lease creates only the relationship of landlord and tenant between Landlord and Tenant, and no estate in land shall pass out of Landlord,” the characterization of the agreement seems clear.

The Supreme Court of Georgia has emphasized the role intention plays in its balancing. If parties intend to convey only a usufruct, then they can make that intent clear.²⁵ For example, in *Allright Parking of Georgia v. Joint City-County Board of Tax Assessors*, the agreement conveying a parking lot was for a fixed, 35-year term and contained several provisions consistent with an estate for years.²⁶ Yet, the Court concluded that the conveyance was a mere usufruct, due in part to the parties’

stipulation to that effect.²⁷ As discussed by the Court of Appeals of Georgia in 2012, any decision made by the courts “may be mooted by the parties’ agreements.”²⁸

Nevertheless, the parties’ intent has its limitations. The Supreme Court of Georgia has held that third persons who are not parties to an agreement may not be bound by the stipulation that the agreement conveys a usufruct or an estate for years.²⁹ In addition, the courts may treat the parties’ intent differently for private and public agreements.³⁰

In *Macon-Bibb County Board of Tax Assessors v. Atlantic Southeast Airlines, Inc.*, the Supreme Court of Georgia had to decide whether ad valorem taxes were due from the defendant.³¹ The sublease at issue between Atlantic Southeast Airlines and the Macon-Bibb County Industrial Authority was for a 30-year term, but it expressly stated the interest was “a usufruct and not an estate for years.” The Court stated that “[i]f the present case were between private parties, such express statements of intent would control.”³² However, because the case involved the subleasing of land between a private party and a municipal authority, the Court acknowledged that intention alone was not enough. Heavier scrutiny of the remaining provisions of the sublease was required.³³

Length of the Term Conveyed

One such remaining provision is the length of the term conveyed. The statutory tipping point to distinguish between an estate for years and a usufruct is five years. If the conveyance is for less time, O.C.G.A. § 44-7-1(b) presumes only the right to possess and enjoy is conveyed, “and to give only the usufruct unless the contrary is agreed upon by the parties to the contract and is so stated in the contract.”³⁴ As a result, under Georgia law, there is a rebuttable presumption that an agreement for less than five years conveys a usufruct, while an agreement for more than five years conveys an estate for years.³⁵

Georgia courts have grappled with this rebuttable presumption on numerous occasions. In *Warehouses, Inc. v. Wetherbee*, the Supreme Court of Georgia noted that though the five-year presumption exists, “there is nothing to prevent a lease for five years or more from being narrowed by the terms of the contract itself so as to convey a usufruct only.”³⁶ Rather than serve as a bright-line rule, the Court noted the five-year mark merely necessitates the balancing act to determine whether the agreement, as a whole, demonstrates the intent “to negative either by express terms or by necessary implication” the five-year presumption.³⁷ In other words,

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courts view the five-year presumption in light of the rest of the agreement, such that “[t]he key inquiry” remains whether the other restrictions in an agreement negate the presumption.³⁸

More recent cases have been more explicit in limiting the five-year presumption. In 2004, the Court of Appeals of Georgia, in *Diversified Golf, LLC v. Hart County Board of Tax Assessors*, explained that whether a conveyance is characterized as a usufruct or an estate for years depends more on the intention of the parties, and “this is true without regard to the length of the term.”³⁹ The appellate court came to the same conclusion eight years later, in *Pinnacle Properties V, LLC v. Mainline Supply of Atlanta, LLC*,⁴⁰ and again in 2018, in *City of College Park v. Paradise-Atlanta, LLC*.⁴¹ Consequently, Georgia’s appellate courts have made clear the five-year presumption remains rebuttable and the intent of the parties controls.

Right to Control

The other major factor to consider is the right to control the use of the premises. Georgia’s appellate courts have noted that control is one factor that may rebut the five-year presumption.⁴² It is important to remember that even if an agreement would ordinarily create an estate for years, it is not immediately “reduced to a mere usufruct because certain limitations are put upon its use.”⁴³ To the contrary, the interest may be limited without necessarily changing the character of the estate,⁴⁴ such that an estate for years may be encumbered without being reduced to a usufruct.⁴⁵

To distill the role of control as a factor, the Georgia courts evaluate whether the tenant-lessee takes a “circumscribed and limited use” of the property,⁴⁶ the restrictions are “so pervasive as to be fundamentally inconsistent with ownership”⁴⁷ or the owner retains “dominion and control” over the property.⁴⁸

Take, for example, *Diversified Golf, LLC v. Hart County Board of Tax Assessors*.⁴⁹ There, the Georgia Court of Appeals recognized that the lease provisions “circumscribed and limited” Diversified’s use of the conveyed real estate to the point only a usufruct could have been conveyed.⁵⁰

Among other things, Diversified could not sell the property, nor permit a lien or security interest thereon.⁵¹ Likewise, the city recreation authority alone retained the right to impose easements, licenses and “other rights or privileges in the nature of easements” on the property, while Diversified was required to act as the authority’s agent for the development of the proposed golf course.⁵²

In *Southern Airways Co. v. DeKalb County*, the Supreme Court of Georgia recognized that if the parties intended for the tenant to enjoy only the right to possession and use of the leased premises, rather than any interest in the leased premises, then the lease should be construed as a usufruct with a landlord-tenant relationship, despite a term longer than five years.⁵³ Of particular note, DeKalb County, as lessor, reserved its rights to “control, improvement, inspection, and supervision of the premises, with the right of others to use the facilities,” when it conveyed land for an airport in a 15-year lease.⁵⁴ The Court concluded the prima facie case for an estate for years was negated by this strong reservation of control in the landlord.⁵⁵ As has been demonstrated in the years since *Southern Airways*, Georgia courts often analyze the level “of dominion or control” in distinguishing one case from another.⁵⁶

Yet, the reservation of some control by the landlord-grantor does not automatically overcome the presumption of an estate for years. For instance, in *State v. Davison*, even though a 99-year lease contained certain covenants preventing the tenant-lessee from having absolute control over the premises, the conveyance was not reduced to a mere usufruct.⁵⁷ Utilizing the full force of the balancing test, the Supreme Court of Georgia determined that “such restrictions do not ... outweigh the other features of the contract, so as to reduce the character of the right acquired ... from that of a grantee of an estate for years to a mere usufruct.”⁵⁸

Why Concern Myself or My Clients with the Distinction?

For practitioners who intend to create a usufruct or to convey an estate for years,

the following scenarios may be illustrative of potential pitfalls.

Tax Consequences

The different tax consequences that result from creating either a usufruct or an estate for years cannot be overstated. Consider the 2015 decision of the Superior Court of Fulton County in *In re Airport Rental Car Facility Tax Appeals*.⁵⁹ The city of Atlanta, which owns and operates Hartsfield-Jackson Atlanta International Airport, built a consolidated rental car facility on land located in the city of College Park.⁶⁰ When Fulton County discovered that the city was exempt from taxation on the airport facilities, it created seven separate real estate parcels purporting to represent different rental car company operators’ interests within the facility.⁶¹ As a result, the operators were assessed taxes for each parcel from 2010 through 2015.

In challenging the tax assessment imposed upon the individual parcels, the rental car company operators pleaded with the Court to consider they were granted a usufruct, rather than an estate for years.⁶² Using the analysis set forth in the preceding sections, the Superior Court of Fulton County agreed that the operators were granted only a statutory usufruct.⁶³

The upshot for the operators was significant. Because their interests were merely usufructs, the Court ruled the operators’ interests to be non-taxable, and granted the recovery of litigation costs and reasonable attorneys’ fees.⁶⁴ Accordingly, the operators avoided approximately \$3.8 million in tax liability and recovered approximately \$120,000 in attorneys’ fees.⁶⁵

Last year, in *Chatham County Board of Assessors v. Jay Lalaji, Inc., Airport Hotels*, the Court of Appeals of Georgia reached a similar decision.⁶⁶ In 2006, the Savannah Airport Commission entered into a 50-year lease agreement with Jay Lalaji, to construct and operate a hotel on land owned by the Commission.⁶⁷ At the time, the Chatham County Board of Assessors “assigned the property an identification number and attempted to assess ad valorem taxes against Jay Lalaji.” It argued the lease created a taxable estate for years.

If the Board was correct, Jay Lalaji would be assessed property taxes for the entire 50-year term of the lease.

Jay Lalaji pled that it was granted a non-taxable usufruct in the property, rather than a taxable estate for years, and therefore should not be assessed taxes during the lease term.⁶⁸ The result? The Court of Appeals of Georgia agreed, holding that “[b]ecause Jay Lalaji has only a circumscribed interest and limited use of the premises, the Agreement amounts to a usufruct.”⁶⁹ This saved Jay Lalaji from paying 50 years of ad valorem tax assessments.

Ground Leasing

Practitioners typically assume that ground leases in Georgia convey an estate for years. The length of the term is usually more than five years, and ground lessees often possess ample dominion and control over the property to construct certain improvements thereon. However, in order to clearly bypass the assumption that an estate for years has been conveyed, the ground lessor and ground lessee may stipulate that the ground lease is intended to convey a mere usufruct, is not assignable without ground lessor’s consent and is not subject to levy and sale.

As noted above, these stipulations have limitations because third parties who are not parties to the ground lease may not be bound by them. Any stated intention in the ground lease, when taken with the remaining provisions therein, may not be enough to pass muster once a heavier scrutiny of other relevant provisions occurs. This is especially true when in the hands of a taxing authority or a third-party lender. As a result, practitioners should draft with third parties in mind, to ensure that the ground lessor and ground lessee’s intentions are adequately captured throughout the document.

Third-Party Lenders

Leases of all types are collaterally assigned to mortgage lenders. Considering the various distinctions between a usufruct and an estate for years, third-party lenders should be wary of how a lease characterizes the property being encumbered, es-

pecially if it is being foreclosed upon. For example, a lender may want to reconsider whether certain collateral value in a lease is appropriate if the rights to the collateral convey only a “mere usufruct.”

Although this distinction may matter less if the lease covers an office or other “space,” the distinction could be significant if a lender has ground lease or lease collateral on an outparcel that the lender believes conveys a leasehold estate maintaining certain foreclosure rights. As stated above, stipulations between the parties in the lease document may not be binding upon a third party, and Georgia courts will view the lease holistically. As an underwriting matter, lenders and borrowers should pay close attention to the value of the collateral described in the lease and whether foreclosure rights cover a usufruct or an estate for years.

Pandemics

Because a usufruct grants a mere right to use, courts may find a tenant’s termination or modification of a lease agreement in response to a pandemic justified. For example, if a restaurant has to shut down because the government deems it a non-essential business, the restaurant owner could argue the pandemic frustrated the usufruct’s primary purpose of providing a place to offer food and beverage services. Thus, lease termination might prove a viable option for the restaurant owner.

As this article explains, estates for years are not afforded the same latitude, due to their treatment under Georgia statutes and case law. The grantee is considered the owner of an estate in the premises, and thus does not have the same basis to cry foul and seek lease termination.

Conclusion

The differences between usufructs and estates for years carry inherent significance for the parties to the agreements, as well as third parties. This is especially true in the age of COVID-19.

As such, it is important to keep the distinction top of mind during lease drafting and negotiations to reduce the uncertainty and unintended consequences that lie in wait. ●



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Endnotes

1. O.C.G.A. § 44-7-1(a).
2. *Id.*
3. John Taylor, *A Loss for the Tax Man: Usufructs in Georgia*, MAKING REAL ESTATE WORK BLOG (Aug. 14, 2018) <<https://www.taylorenglish.com/blogs-making-real-estate-work,a-loss-for-the-tax-man-usufructs-in-georgia>>.
4. *Pinnacle Props. V, LLC v. Mainline Supply of Atlanta, LLC*, 319 Ga. App. 94, 96, 735 S.E.2d 166, 169 (2012) (citing *Read v. Ga. Power Co.*, 283 Ga. App. 451, 453, 641 S.E.2d 680, 681 (2007)).
5. O.C.G.A. § 44-6-100(a).
6. O.C.G.A. § 44-6-201(a).
7. *Pinnacle Props. V*, 319 Ga. App. at 96, 735 S.E.2d at 169.
8. *Martin v. Heard*, 239 Ga. 816, 818-19, 238 S.E.2d 899, 901 (1977).
9. *State v. Davison*, 198 Ga. 27, 37, 31 S.E.2d 225, 230 (1944).
10. *Evans Theatre Corp. v. De Give Inv. Co.*, 79 Ga. App. 62, 65-66, 52 S.E.2d 655, 658 (1949).
11. *Midtown Chain Hotels Co. v. Bender*, 77 Ga. App. 723, 726, 49 S.E.2d 779, 782 (1948).
12. *Id.*; see also O.C.G.A. § 44-6-105.
13. O.C.G.A. § 48-5-3.
14. 1 GA. REAL ESTATE LAW & PROCEDURE § 4:12 (7th ed. 2020 update).
15. *Allright Parking of Ga., Inc. v. Joint City-Cty. Bd. of Tax Assessors*, 244 Ga. 378, 385, 260 S.E.2d 315, 320 (1979) (citing *Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12, 131 S.E.2d 768 (1963)); see also *Evans Theatre Corp.*, 79 Ga. App. at 66, 52 S.E.2d at 658 (stating the “owner of an estate for years is liable for the

- taxes on the land, whereas a tenant is not, where there is a mere tenancy”).
16. *Allright Parking*, 244 Ga. at 385, 260 S.E.2d at 320 (citing *Whitehead v. Kennedy*, 206 Ga. 760, 761, 58 S.E.2d 832, 833 (1950)); *see also* *Macon-Bibb Cty. Bd. of Tax Assessors v. Atl. Se. Airlines*, 262 Ga. 119, 414 S.E.2d 635 (1992) (supporting the proposition that a usufruct is not considered an interest in land and therefore it is not subject to ad valorem taxation).
 17. *Pinnacle Props. V, LLC v. Mainline Supply of Atlanta, LLC*, 319 Ga. App. 94, 96, 735 S.E.2d 166, 169 (2012).
 18. *Evans Theatre Corp.*, 79 Ga. App. at 69, 52 S.E.2d at 660.
 19. *Jekyll Dev. Assocs., L.P. v. Glynn Cty. Bd. of Tax Assessors*, 240 Ga. App. 273, 274, 523 S.E.2d 370, 372 (1999).
 20. *Id.* at 276, 523 S.E.2d at 373; *Allright Parking*, 244 Ga. at 386, 260 S.E.2d at 320-21 (describing the difficulty associated with administering the Court’s balancing test due to “the fact that various sections of the lease are indicative of the grant of an estate for years, whereas other sections of the lease are characteristic of the grant of a usufruct only”).
 21. *Diversified Golf, LLC v. Hart Cty. Bd. of Tax Assessors*, 267 Ga. App. 8, 11, 598 S.E.2d 791, 794 (2004).
 22. *See, e.g., Camp v. Delta Airlines, Inc.*, 232 Ga. 37, 40, 205 S.E.2d 194, 196 (1974) (“The key inquiry turns upon whether various restrictions in the agreement ... sufficiently negate the presumption that this is an estate for years”); *Ginsberg v. Wade*, 95 Ga. App. 475, 478, 97 S.E.2d 915, 917 (1957) (demonstrating that a jury is authorized to find that a landlord-tenant relationship exists after considering “the intention of the parties and the severability of the amount of rent to be paid for different years”).
 23. *Allright Parking*, 244 Ga. at 385, 260 S.E.2d at 320; *Pinnacle Props. V, LLC v. Mainline Supply of Atlanta, LLC*, 319 Ga. App. 94, 99, 735 S.E.2d 166, 171 (2012).
 24. *John Taylor, A Loss for the Tax Man: Usufructs in Georgia*, MAKING REAL ESTATE WORK BLOG (Aug. 14, 2018), <<https://www.taylorenglish.com/blogs-making-real-estate-work,a-loss-for-the-tax-man-usufructs-in-georgia>>.
 25. *Roe v. Doe*, 246 Ga. 138, 140, 268 S.E.2d 901, 904 (1980).
 26. *Allright Parking*, 244 Ga. at 385-86, 260 S.E.2d at 320.
 27. *Id.* at 385-87, 260 S.E.2d at 320-21.
 28. *Pinnacle Props. V*, 319 Ga. App. at 100, 735 S.E.2d at 172.
 29. *Allright Parking*, 244 Ga. at 381, 386, 260 S.E.2d at 318, 320 (finding that although Section 4a of a parking lot conveyance stated “it is acknowledged and agreed that, upon execution of this Agreement, Tenant’s interest in the Premises shall be only a usufruct,” third persons not parties to the agreement are not bound by that stipulation).
 30. *Id.* at 386, 260 S.E.2d at 320.
 31. *Macon-Bibb Cty. Bd. of Tax Assessors v. Atl. Se. Airlines*, 262 Ga. 119, 119, 414 S.E.2d 635, 636 (1992).
 32. *Id.* at 120, 414 S.E.2d at 636.
 33. *Id.*
 34. O.C.G.A. § 44-7-1(b).
 35. *Diversified Golf, LLC v. Hart Cty. Bd. of Tax Assessors*, 267 Ga. App. 8, 11, 598 S.E.2d 791, 794 (2004) (citing *Macon-Bibb Cty. Bd. of Tax Assessors*, 262 Ga. at 119, 414 S.E.2d at 636); *see also* *Ginsberg v. Wade*, 95 Ga. App. 475, 478, 97 S.E.2d 915, 917 (1957) (stating that “it is also true that all leases for five years do not necessarily create an estate for years but that there is a presumption that a lease for five years does convey an estate for years”); *Camp v. Delta Airlines, Inc.*, 232 Ga. 37, 39, 205 S.E.2d 194, 196 (1974) (discussing the rebuttable presumption that an agreement to lease for more than five years conveys an estate for years).
 36. *Warehouses, Inc. v. Wetherbee*, 203 Ga. 483, 484, 46 S.E.2d 894, 896 (1948).
 37. *Id.* at 485, 46 S.E.2d at 896.
 38. *Camp*, 232 Ga. at 40, 205 S.E.2d at 196.
 39. *Diversified Golf*, 267 Ga. App. at 10, 598 S.E.2d at 794.
 40. 319 Ga. App. 94, 99, 735 S.E.2d 166, 171 (2012).
 41. 346 Ga. App. 63, 66, 815 S.E.2d 246, 249 (2018) (“To resolve whether the presumption has been overcome in this case, we must examine the terms of the lease agreements and determine what interests the parties intended to convey.”) (citations and punctuation omitted).
 42. *Camp*, 232 Ga. at 40, 205 S.E.2d at 196; *Chatham Cty. Bd. of Assessors v. Jay Lalaji, Inc., Airport Hotels*, 357 Ga. App. 34, 849 S.E.2d 768, 770 (2020).
 43. *Camp*, 232 Ga. at 40, 205 S.E.2d at 196.
 44. *Id.*
 45. *Jekyll Dev. Assocs., L.P. v. Glynn Cty. Bd. of Tax Assessors*, 240 Ga. App. 273, 275, 523 S.E.2d 370, 372 (1999).
 46. *Camp*, 232 Ga. at 40, 205 S.E.2d at 196.
 47. *Allright Parking of Ga., Inc. v. Joint City-Cty. Bd. of Tax Assessors*, 244 Ga. 378, 387, 260 S.E.2d 315, 321 (1979).
 48. *Buoy v. Chatham Cty. Bd. of Tax Assessors*, 142 Ga. App. 172, 173, 235 S.E.2d 556, 558 (1977).
 49. 267 Ga. App. 8, 598 S.E.2d 791 (2004).
 50. *Id.* at 14, 598 S.E.2d at 796.
 51. *Id.* at 13, 598 S.E.2d at 795.
 52. *Id.*, 598 S.E.2d at 795-96.
 53. *S. Airways Co. v. DeKalb Cty.*, 216 Ga. 358, 360, 116 S.E.2d 602, 604 (1960).
 54. *Id.* at 365, 116 S.E.2d at 607.
 55. *Id.*; *see also* *Midtown Chain Hotels Co. v. Bender*, 77 Ga. App. 723, 728, 49 S.E.2d 779, 783 (1948) (finding a five-year hotel lease was deemed a usufruct because the landlord maintained the right to enter and retake the premises, limit the premises to hotel use only, prevent assignment or sublease, and prevent any structural repairs by the tenant).
 56. *Buoy v. Chatham Cty. Bd. of Tax Assessors*, 142 Ga. App. 172, 173, 235 S.E.2d 556, 558 (1977) (“This lack of dominion or control is what distinguishes this case from *Southern Airways Co. v. DeKalb Cty.*”).
 57. *State v. Davison*, 198 Ga. 27, 42, 31 S.E.2d 225, 233 (1944).
 58. *Id.*
 59. *In re Airport Rental Car Facility Tax Appeals*, No. 2016-CV-283425 (Super. Ct. of Fulton Cty. Apr. 19, 2017) (Order Granting the Operators’ Motion for Summary Judgment).
 60. *Id.* at 3.
 61. *Id.* at 6.
 62. *Id.* at 7.
 63. *Id.* at 12.
 64. *Id.* at 16.
 65. *In re Airport Rental Car Facility Tax Appeals*, No. 2016-CV-283425 (Super. Ct. of Fulton Cty. May 30, 2017) (Stipulation of All Parties and Final Consent Order as to Attorneys’ Fees).
 66. *Chatham Cty. Bd. of Assessors v. Jay Lalaji, Inc., Airport Hotels*, 357 Ga. App. 34, 849 S.E.2d 768, 771 (2020). The authors thank W. Brooks Stillwell, of Brooks Stillwell, LLC, for bringing this case to their attention.
 67. *Id.* at 34.
 68. *Id.*
 69. *Id.* at 38.

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30th Annual Georgia Bar Media & Judiciary Conference

The 30th anniversary of the Bar Media & Judiciary Conference, held virtually over three days in February, brought together judges, lawyers, and print and television journalists to explore current issues amid the COVID-19 pandemic.

BY ASHLEY G. STOLLAR

Normally, the Georgia Bar Media & Judiciary Conference fills one very full Friday in February. As you might imagine, this year, things weren't normal. The 2021 conference was spread out over three days in February and featured discussions covering COVID-19, social justice issues, elections and election law, and reporting. Each day, registered participants were sent links to view the scheduled panels from the comfort of their home or office.

The conference opened on Wednesday, Feb. 24, with a panel discussion on how to apply lessons learned in 2020 to today—and tomorrow.



PHOTOS BY ASHLEY G. STOLLAR

Members of the Judicial Council of Georgia COVID-19 Task Force discuss the work the courts have done during the pandemic and how that work will continue to be affected as we move forward. (Top row, left to right) Hon. Susan Edlein, judge, State Court of Fulton County; Hon. Brian Amero, judge, Superior Court, Flint Judicial Circuit; (bottom row, left to right) Hon. Harold D. Melton, chief justice, Supreme Court of Georgia; Hon. Shawn LaGrua, justice, Supreme Court of Georgia.

Coping with COVID-19: The Science & Our Society

Moderator

- Andy Miller, *Georgia Health News*

Panelists

- James Curran, Chair, Georgia Board of Public Health; Dean, Rollins School of Public Health at Emory University
- Carlos del Rio, Professor of Global Health, Rollins School of Public Health at Emory University
- Patrice Harris, President-Emeritus, American Medical Association, Atlanta
- Amber Schmidtke, Microbiologist and Author, Georgia COVID-19 Updates Newsletter
- Scott Steiner, President & CEO, Phoebe Putney Health System, Albany

The first panel of the conference looked at how COVID-19 has affected society, and the science behind the shifting, and often contradictory, health guidelines that the United States has been wrangling with since the beginning of the pandemic. Discussion included issues such as the underestimation of the severity of the pandemic, health inequities across the country, mental health strain, safely reopening schools and vaccine hesitancy among racial groups based on historical issues (e.g., Tuskegee Syphilis Study).¹

Beyond the immediate grief of those who have lost loved ones and the disruption of routines, Dr. Patrice Harris expressed concern about the long-term impact of the pandemic, especially on mental health, saying, “Historically, mental health infrastructure has been ignored and underfunded.”

Scott Steiner related his experience as the hospital administrator who dealt with

While a departure from the usual, this year’s iteration of the Bar Media & Judiciary Conference was one that will be remembered for its unique interactive opportunities and powerful subject matter, which will hopefully guide all participants as they move forward in their respective professions.



(Left to right) Georgia First Amendment Foundation President Emeritus Richard T. Griffiths interviews Georgia Secretary of State Brad Raffensperger during the “Elections in Modern Day America: Georgia Style” panel.

being Georgia’s COVID-19 ground zero. By March 24, 2020, Albany was the fourth hottest spot in the world for COVID-19 issues. At one point, 70% of their patients had COVID-19.

James Curran evaluated the Centers for Disease Control’s (CDC) performance and explained that no one thought a respiratory disease would kill 500,000 people in one year. The CDC slowed down testing when, rather than buying tests used overseas, the United States chose to make its own. Curran felt that the CDC’s role was politicized, and that it was unable to work without oversight by the former administration. But, Curran noted, he is optimistic because “we’ve learned from the perils of the pandemic.”

With vaccination numbers increasing, is this the beginning of controlling COVID-19? Dr. Carlos del Rio remarked that though the numbers look good, it is too early to tell: “We’re coming down from Everest. We’re just at the first base camp.”

Amber Schmidtke related that, at this point, the younger cohort is the group that is transmitting COVID-19 at a higher rate. Variants are 40-80% more transmissible, so the risk of spreading will increase. Schmidtke stated that it’s a race against time to get the younger pop-

ulations vaccinated so that they aren’t inadvertently spreading COVID-19.

Day Two | Feb. 25

The second day of the conference featured a panel that addressed access to data and reporting information about the pandemic, followed by a panel that reviewed Georgia’s election process, both topics that will be relevant for some time to come.

Reporting on the Pandemic: Access to the Data That Counts

The COVID-19 pandemic has exposed dangerous gaps in the public’s civic information safety net. Data about coronavirus infections at schools, nursing homes and workplaces has been released inconsistently at times because of confusing federal privacy laws. Panelists discussed the challenges of obtaining reliable data about the pandemic and what the law says about the government’s duty to provide health-related information.

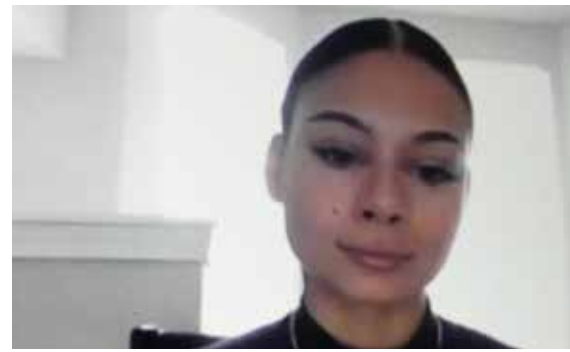
Moderator

- Frank LoMonte, Director, Brechner Center for Freedom of Information, Gainesville, Florida

Panelists

- Alexis Madrigal, COVID-19 Tracking Project, *The Atlantic*, Oakland, California
- Al-Amyr Sumar, Counsel, *New York Times*, Washington, D.C.
- Carrie Teegardin, Investigative Reporter, *Atlanta Journal-Constitution*
- Sam Whitehead, Reporter, WABE, Atlanta

Getting good information from the Georgia Department of Public Health has never been easy, according to Carrie Teegardin, *AJC* reporter. Last year, Teegardin spoke to the Bar Media & Judiciary Conference about her work on nursing homes that led to action by the Georgia General Assembly. This year, she addressed reporting on the state’s response to COVID-19 data. The amount of information varied from location to location. As the pandemic progressed, metro-Atlanta hospitals were not forthcoming about the number of cases, while hospitals outside the metro area were more likely to share information. Teegardin noted that the state government stymied requests for public information by delaying responses for record requests and quoting thousands of dollars needed to fulfill requests.



Participants on the “Meeting the Moment: Racial Justice, Law Enforcement and the Right to Protest” panel included (top row, left to right) Lisa Cupid, chair, Cobb County Commission; Flynn D. Broady Jr., district attorney, Cobb Judicial Circuit; Jasmina Alston, reporter, CBS46; (bottom row, left to right) John Melvin, assistant director, Georgia Bureau of Investigation; and Tiffany Williams Roberts, Southern Center for Human Rights.

Sam Whitehead discussed the daunting task of getting information from state and federal levels, especially during a time when public meetings are not being held. Other states are being specific, he explained, whereas Georgia claimed sharing information would be violating HIPAA. He predicted a flood of retrospective COVID-19 stories.

Alexis Madrigal explained the advent of the COVID-19 Tracking Project and its procedures for procuring and interpolating data from individual states. Al-Amyn Sumar began researching HIPAA when journalists were met by health officials who cited it when not sharing data, and noted that HIPAA cannot stop journalists from reporting public information.

Elections in Modern Day America: Georgia Style

A review by interview of the Georgia election process—successes, challenges and lessons learned for the future.

Moderator

- Richard T. Griffiths, President Emeritus, Georgia First Amendment Foundation, Atlanta

Keynote Interview

- Brad Raffensperger, Georgia Secretary of State

Panelists

- Sen. Jen Jordan (D-Atlanta), Senate Committee on Special Judiciary
- Rep. Barry Fleming (R-Harlem), Special Committee on Election Integrity
- Andra Gillespie, Associate Professor of Political Science, Emory University

Moderated by Richard T. Griffiths, this panel focused on Georgia’s 2020 general election and the ongoing work of the Georgia General Assembly as it tackles a slew of voting legislation.

First, Griffiths interviewed Georgia’s Secretary of State Brad Raffensperger, who began by saying, “Our office worked hard to ensure we had an open and honest election in 2020.” Georgia had five million absentee voters, 16 early voting days and an average wait time of under three minutes on election day. When asked about the new voting technology used this year, Raffensperger noted that the state was ready during the primary, and there were some hiccups because of the inability to do hands-on training in light of the pandemic. While the Secre-

tary of State’s office took heat for sending out absentee ballot forms, Raffensperger stood by his decision to get ahead of other groups that send out forms. “At the end of the day,” he said, “all Georgians want is honest and free elections. They’d like to see the appropriate balance between accessibility and security, and I’ll fight hard for that.”

Griffiths then spoke with Rep. Barry Fleming and Sen. Jen Jordan about the ongoing session of the Georgia General Assembly, in which several bills were introduced that make changes to Georgia’s election process.

Fleming talked about Georgia’s last two general elections, 2018 and 2020, both of which were extremely close when the final votes were tallied. In his estimation, there seems to be a lack of confidence in the election system—there were significant perceived problems in the 2020 general election. The challenge for the Legislature is to see what changes can be made to increase confidence in elections. The best way to fix perception of problems is to instill confidence in the process.

Jordan shared her thoughts on the 2020 general election, saying, “In November and January, Georgia had some of the

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best run elections we've ever had. It was in large part because of the massive efforts by the Secretary of State, local county election boards [and] by private corporations and individuals that did everything they could to make the elections as safe and transparent as possible." She noted that our election laws are already uniform and are working better than ever.

Andra Gillespie closed out the panel by giving her thoughts on the current voting legislation. When Griffiths asked what these bills represent to her in historic terms, Gillespie replied, "It represents the ongoing struggle to make sure everyone gets the right to cast a vote. It represents the fault lines that exist in our society today

along partisan and racial lines. We need to look at the intent, timing and their potential effectiveness." In her opinion, the challenge of the 2020 general election is that a lot of rumors and misinformation was spread, and policy shouldn't change because people doubled-down on a lie. She noted that the American election system is largely fraud-free.

Day 3 | Feb. 26

The final day of the conference included panels on racial justice, media and politics, and a conversation about the pandemic and Georgia courts, featuring the chief justice of the Supreme Court of Georgia, the COVID-19 Task Force chair and the president of the Council of Superior Court Judges.

The Pandemic and Georgia Courts: Where We Are and Where We're Headed

Moderator

- Hon. Susan Edlein, Chief Judge, State Court of Fulton County

Panelists

- Hon. Harold D. Melton, Chief Justice, Supreme Court of Georgia; COVID-19 Task Force member
- Hon. Shawn Ellen LaGrúa, Justice, Supreme Court of Georgia; COVID-19 Task Force chair
- Hon. Brian Amero, Chief Judge, Superior Court, Flint Judicial Circuit; COVID-19 Task Force member

Hon. Susan Edlein moderated a discussion with members of the Judicial Council of Georgia's COVID-19 Task Force, focused on the work the courts have done during the pandemic.

Chief Justice Harold Melton was in charge of creating a pandemic plan 10 years ago when then-Chief Justice Leah Ward Sears asked him to put together a committee within the judiciary to focus on how courts would operate during a pandemic situation. A bench book was pro-

duced that would prove valuable. Once the COVID-19 situation arose, the courts were able to react using the plan that was established years before. "It provided a source of comfort, to know that we had plan," Melton said.

At the beginning of the pandemic, Melton explained, there was a sense of panic. Courts were handling things on a local level, using the model order from the bench book. When the governor declared a statewide emergency order, the judiciary was able to declare a judicial emergency. The Supreme Court and Judicial Council created the COVID-19 Task Force intended to provide guidance for courts during the pandemic.

Justice Shawn LaGrúa, then a Superior Court judge on the Fulton County bench, was named chair of the COVID-19 Task Force, which included judges from all classes of court, lawyers and health experts. The task force was divided into civil, criminal and juvenile sections, since each one has different requirements. LaGrúa noted that while everyone has had challenges during the pandemic, using videoconferencing for court procedures has put the state of Georgia a decade ahead.

Hon. Brian Amero compared his pre-pandemic court to what courts look like right now. On a typical day, his court calendar would have 40 cases. Now the courts will have more targeted calendaring to have fewer people in court and being vigilant about health concerns—masks, sanitizer and proper distancing. Amero said that the courts will need to enlist academics to study what new aspects of courts should stay and what can return to normal. Over the next 5-10 years, courts will need to think through how to use these efficiencies and not lose the truth-seeking process.

Melton noted that the Supreme Court's move to virtual arguments during the pandemic has not created any drop-off in the quality of arguments, despite some technical glitches.

When asked about the resumption of jury trials, Melton admitted that processing the backlog of cases is the most overwhelming issue the courts face. LaGrúa said, "Everyone needs to be mindful that

there's a long road ahead with many challenges." Jury trials won't look the same, and the courts will need to address the criminal backlog before civil cases. Amero discussed his concerns about speedy trial demands that may overwhelm the system from newly indicted cases.

Meeting the Moment: Racial Justice, Law Enforcement and the Right to Protest

The tragic deaths of Ahmaud Arbery and other Black Americans in 2020 brought increased attention to racial justice issues and spurred largely peaceful demonstrations. This panel addressed the question of how elected officials, law enforcement and communities can meet this moment and move toward equity and justice for all.

Moderator:

- Lisa Cupid, Chair, Cobb County Commission

Panelists

- Jasmina Alston, Reporter, CBS46, Atlanta
- Flynn D. Broady Jr., District Attorney, Cobb Judicial Circuit
- John Melvin, Assistant Director, Georgia Bureau of Investigation
- Tiffany Williams Roberts, Southern Center for Human Rights

Led by moderator Lisa Cupid, panelists discussed the racial justice issues and events of 2020. District Attorney Flynn D. Broady Jr. spoke of the history of minorities in the United States. He believes the criminal justice system has been used to stop minorities or hold them down, and they continue to be oppressed and see things in a different light than most Americans. He sees this as a time to step up to protest, because people are tired of the hate, intolerance and divisiveness that pervade society. "Going forward, I think our country is ready to go forward and make things better," he said.

Jasmina Alston was on the ground during the Atlanta protests, reporting for CBS46. "Last year was a breaking point for many people," she said. "The video of

George Floyd's killing was played so often that people decided enough was enough." She cited the pandemic as a factor supporting the significant participation in the protest—because a majority of people were quarantined at home, they had time to sit, watch, think and organize. Alston also spoke about the incident where she witnessed two college students being tased by police, and reported the situation live.

John Melvin noted that systemic racism and government involvement is not a thing of the past: "At the age of 56, and being raised in Atlanta, we still had segregated water fountains." He added, "When you allow silence, you allow the perpetrators of that hate to keep on going. It was time for people for people to speak out."

Tiffany Williams Roberts spoke of the very clear message from communities that continue to organize and resist, saying, "Things don't change because we wish them to change. We have to act."

Cupid noted that regardless of one's profession, these events impacted everyone personally. It is important to keep that in context as these issues are addressed.

2021: The Media & Our Politics

A discussion of how media coverage of government and politics is evolving.

Moderator

- Richard Belcher, WSB-TV, Atlanta

Panelists

- Jim Galloway, *Atlanta Journal-Constitution* (retired)
- Nicole Carr, Investigative Reporter, WSB-TV, Atlanta
- Robin Kemp, *The Clayton Crescent*
- Matthew Osborne, *The Northeast Georgian*

Veteran Atlanta newscaster Richard Belcher guided the discussion with Atlanta-area TV and print reporters. The panel addressed issues such as COVID-19, election coverage and school openings.

What has stood out to the reporters over the past year? Matthew Osborne noted the use of the internet and social

media during political campaigns has led to a lot of negativity. Robin Kemp said that covering local politics was hampered by courts being closed. Nicole Carr and Jim Galloway both noted the battle with disinformation as the greatest hurdle of the past year. Carr, discussing her vaccine and pandemic coverage, said she is looking at the overall distribution and allocation of vaccines, and at the time of the conference, there had been 4,000 unused doses that were thrown away. She also produced a piece focusing on schools during the pandemic, finding that Rockdale County "lost" 3,000 students during distance learning; statewide, 36,000 students were unaccounted for, not having the technology available in their homes to enable distance learning.

Galloway wrapped up the panel by saying the *AJC* staff is half the size it was 20 years ago; it doesn't have the bodies to cover specialized beats, and those are not likely to return. The good thing, he said, is that we have cell phone cameras and video. In his view, reporting's saving grace is more activated individual citizens, like panelist Robin Kemp, and he believes more of those are needed. We have citizenry who knows what's right and wrong, he stated, and they can spot things, put it out on social media or give reporters a call.

While a departure from the usual, this year's iteration of the Bar Media & Judiciary Conference was one that will be remembered for its unique interactive opportunities and powerful subject matter, which will hopefully guide all participants as they move forward in their respective professions. ●



Ashley G. Stollar

Communications Coordinator
State Bar of Georgia

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Endnote

1. Centers for Disease Control and Prevention, U.S. Public Health Service Syphilis Study at Tuskegee <<https://www.cdc.gov/tuskegee/timeline.htm>>.

Georgia Diversity Program Hosts Fall Learning Lab

Advancing diverse talent requires consistent commitment to each firm's respective goals and a willingness to continue to evolve as the issues involved in diversity, equity and inclusion evolve.

BY REBECCA CHRISTIAN SMITH

The State Bar of Georgia Diversity Program (GDP) held its Fall Learning Lab on Dec. 20, 2020. The virtual event, "Advancing Diversity, Equity, Inclusion and Social Justice in 2021," sought to capture 2020 through the lens of the judiciary, law firms and in-house legal departments with a specific focus on what it means to have a diverse judiciary and the need for legal organizations to become social justice warriors. The two-part CLE began with an insightful discussion moderated by Hon. Dax E. Lopez, judge, State Court of DeKalb County. The judicial panelists included Chief Justice Harold D. Melton, Supreme Court of Georgia; Hon. Berryl A. Anderson, chief magistrate judge, Magistrate Court of DeKalb County; and Hon. Shermela Williams, judge, Fulton County Superior Court. The panelists tackled issues including the meaning of judicial diversity, the challenges in achieving a diverse bench, the relationship between diversity and public trust in the judicial system and whether diversity impacts their own work.

In the wake of racial unrest and protests, and the disparate impact of COVID-19 on communities of color, the second half of the CLE examined re-

sponses of law firms and legal in-house departments to what we all experienced in 2020. Kathleen O. Currey, partner, Parker Hudson Rainer & Dobbs, LLP, led the discussion among panelists that included: Yendelela Neely Holston, partner and chief diversity officer, Kilpatrick Townsend & Stockton LLP; Tara Jackson, associate, Akerman LLP; D'Andrea J. Morning, vice president, corporate compliance, Grady Health Systems; and J.C. Roper, partner, Drew Eckl & Farnham. Here are the highlights of what was discussed in each session.

Diversity, Equity & Inclusion and the Bench: Perspectives from Jurists and Advocates

When asked what judicial diversity means and what forms are important, the panelists agreed that all forms of diversity on the bench are important. Just as the law requires a jury of peers, the bench should reflect the community. The panelists also agreed that it is in the best interest of the litigant for the judiciary to reflect the community. Judicial diversity is broad and includes not only race and

gender, but includes other factors such as religion, age, disability and sexual orientation. However, Anderson cautioned that creating a diverse bench is not easily accomplished and is achieved through intentionality and affirmative steps. The work necessary to create a diverse bench is never done, but the result of a diverse bench is increased public confidence in the judiciary.

One of the biggest obstacles to creating a diverse bench is finances. The election process is expensive and may involve a candidate having to halt his or her respective practice in order to run. As a public servant, talented lawyers may not be willing or cannot afford the decreased salary. The financial toll is a real factor, and often the process and position is not feasible. Another obstacle is simple math. Are there enough diverse lawyers in the selection pool? Is there an active pipeline working to ensure individuals move from high school, through college and law school into the work force, and are then identified as a potential candidate? Lastly, in the appointment process, there must be a concerted effort to make sure that the judicial qualifying





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commissions are diverse and tapped into diverse candidate pools and communities. Working to create a diverse and inclusive bench never ends.

The obstacles to diversifying the bench and inclusion are not insurmountable. All of the judges expressed action-oriented solutions to keep in mind. First, recognize that diversifying the judiciary involves long-term commitment. Second, identifying and mentoring talent is crucial. Third, ensure that training programs are available for those who want to run for judicial office. These programs are crucial to learning about the political and appointment process. Fourth, judges must create inclusive courtrooms and be intentional about creating a diverse and inclusive staff that reflects the community.

Law Firms & In-House: Where Diversity, Equity and Inclusion Intersect with Social Justice

In 2020, the spotlight was brightly and directly placed on unjust policies, racial and social unrest, a pandemic and the disparate impact of COVID-19 on Black people, people of color and all vulner-

able communities. Law firms, in-house legal departments, legal organizations and agencies took note. The intersection of social justice and diversity, equity and inclusion presented the opportunity for all legal organizations to respond by conducting internal organizational scans and reaching out to the communities where legal firms, departments and organizations have a footprint.

Born out of the desire to do more than offer statements of solidarity, both Akerman LLP and Kilpatrick Townsend & Stockton LLP took thoughtful and decisive action.

Akerman created the Akerman Racial Justice Initiative (ARJI) with full support from the top of the firm down. ARJI's goal is to form partnerships with national and local organizations to address systemic causes of racism and racial inequities by increasing pro bono work, education and community outreach led by firm lawyers and staff. As a result of the initiative, Akerman realized internal firm benefits, including the sharing of experiences between all employees, communicating thoughts and the creation of an internal think tank.

Concerned about what message they wanted to send and how it would be perceived, Kilpatrick Townsend decided that to do nothing or act superficially would send the wrong message. In response, the firm partnered with Law Firm Antiracism Alliance to further its mission of dismantling barriers by using law as a vehicle for change, benefitting vulnerable communities through increased pro bono work and advocacy with organizations on legal issues, including crime and access to justice, immigration and education. Internally, Kilpatrick Townsend engaged in the 2020 election by staffing voter call centers and providing transportation to the polls. The firm's overarching goal is to ensure that individuals both within and outside of the firm are treated as people, and they are using their connections, resources and talents to accomplish this.

Grady Hospital approached the racial protests, civil unrest and COVID-19 through the lens of mental health and wellness. The hospital provided avenues for all employees to process the issues, and offered care, options like peer support programs, mindfulness training and peer check-ins.



The Georgia Diversity Program would like to thank outgoing Executive Director Rebecca Christian Smith for her work and service over the past three years. We appreciate her dedication and commitment to the program, and wish her well in her new position.

As a result of the protests and civil and social unrest, Drew Eckl & Farnham, LLP, doubled down on their diversity efforts by engaging in several initiatives, including seeking Mansfield certification for mid-sized law firms. Based on the concept of the NFL's Rooney Rule, the Mansfield Rule seeks to boost the representation of diverse lawyers in law firm leadership by broadening the pool of candidates considered for these opportunities. Law firms that seek certification are committed to raising the numbers of diverse lawyers within their firms to 30%. Intended benefits include engaging with a collective knowledge base, cross pollination of ideas and resource sharing. Meeting the goals of the Mansfield Rule serves as a tool for recruiting diverse lawyers.

All of the panelists agreed that equality and equity are not the same. Equity re-

quires recognition that everyone is not on the same footing and that each hire may have different needs in order to advance in their firm. Advancing diverse talent requires consistent commitment to each firm's respective goals and a willingness to continue to evolve as the issues involved in diversity, equity and inclusion evolve.

GDP would like to recognize and thank all of the sponsors that not only helped to make this program possible, but have provided continuous support over the years to ensure that GDP continues to produce relevant and quality programming. ●



Rebecca Christian Smith
Executive Director
State Bar of Georgia Diversity Program
gadiversityprogram@gmail.com

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QUINTAIROS, PRIETO, WOOD & BOYER, P.A., a growing multi-office national law firm, is seeking **LITIGATION ATTORNEYS** for its Georgia based office with experience in the following practice areas: Professional Liability Defense, General Liability Defense, Insurance Defense, Commercial Litigation and Workers' Compensation Defense. We will consider Attorneys located in other areas of Georgia as we continue to expand our Georgia footprint and Attorneys licensed in Georgia who live and are licensed in Georgia neighboring states. Portable book of business a plus.

Also seeking 1-3 year Associates
Email resume to RESUME@QPWBLAW.COM

Find your people.

Georgia Lawyers Helping Lawyers (LHL) is a confidential peer-to-peer program that provides colleagues who are suffering from stress, depression, addiction or other personal issues in their lives, with a fellow Bar member to be there, listen and help.

If you are looking for a peer or are interested in being a peer volunteer, visit www.GeorgiaLHL.org for more information.

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When the unthinkable happens.

The SOLACE program is designed to assist any member of the legal community (lawyers, judges, law office and court staff, law students and their families) in Georgia who suffer serious loss due to a sudden catastrophic event, injury or illness. Visit www.gabar.org for more information on SOLACE, or email solace@gabar.org.

SOLACE

Support of Lawyers, All Concern Encouraged

2020 “And Justice for All” State Bar Campaign for Georgia Legal Services Program

The 2020 Campaign kicked off on April 1, 2020, and ended on March 31, 2021.

GLSP is delighted to recognize our 2020 campaign donors in each issue of the *Georgia Bar Journal*. Or, feel free to give anonymously. Give today and help close the justice gap in Georgia. Thank you for your generosity!

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Will You Help Close the Justice Gap in Georgia?

Tsunami of Evictions Coming



The COVID-19 pandemic has wreaked havoc across the state of Georgia. People continue to lose their jobs and the backlog in processing unemployment claims continues. Thus, many tenants are unable to pay their rents and the tsunami of evictions filings is starting to hit.

**Since March 2020, GLSP has
opened more than 330 new cases
for tenants facing a housing crisis!**

This client story is used with permission.

The name and photo do not necessarily represent the actual client.

Mary was doing well until COVID hit. As a server in a local restaurant, she was able to pay the rent on the home she shared with her two children. But when COVID hit, she was laid off from her job. She filed for unemployment but has yet to receive her benefits. With the help of GLSP, Mary was able to assert her protection from eviction provided by the CARES Act and later by the Order from the Centers for Disease Control and Prevention. While she remained in the unit, GLSP helped Mary reach an agreement with her landlord for her to make partial payments until her unemployment benefits started. GLSP's assistance allowed Mary to keep her home and avoid eviction.

Unfortunately, we are seeing some frustrated landlords using illegal means and methods to remove tenants from rental properties. Georgia law prohibits self-help evictions and requires that landlords go through court to remove tenants from rental property. This is true even if there is not a written lease between the landlord and tenant.

Give to the Georgia Legal Service Program at www.glsp.org.

Your donations go to help close the justice gap in Georgia.

Thank you for your generosity and support!

Kudos



Carlton Fields announced that attorney Roben S. West was named a 2021 Leadership Council on Legal Diversity (LCLD) Pathfinder. The LCLD Pathfinder Program is designed for diverse, high-potential, early-career attorneys at LCLD member organizations. The goal is to provide

Pathfinders with practical tools for developing and leveraging internal professional networks through relationship-building skills, foundational leadership skills and an understanding of career development strategies applicable to both in-house and law firm practice. LCLD is a premier national organization that provides opportunities for women and minority in-house counsel to connect with women and minority law firm partners and senior associates through its Fellows and Pathfinder programs.



SMITH



TORGRIMSON

Parker Poe Adams & Bernstein LLP announced that Ellen W. Smith and Christian Torgrimson were chosen for leadership positions with Commercial Real Estate Women (CREW) Atlanta. Smith was voted president-elect of

CREW Atlanta, which serves to transform the commercial real estate industry by advancing women. Torgrimson was appointed co-chair of CREW Leadership, which provides an opportunity for a smaller group of CREW Atlanta members to shape strategies for their development as professionals and leaders.



Gerber & Holder Workers' Compensation Attorneys announced that Thomas Holder was awarded the Comp Laude Award from WorkCompCentral for being the National Claimants' Attorney of the Year in 2020. The Comp Laude Awards encompass the entirety of the workers' compensation industry and recognize individuals and companies who strive to make a difference in the world of workers' compensation.



Nelson Mullins Riley & Scarborough LLP selected Jenaé Moxie as a member of the Leadership Council on Legal Diversity's (LCLD) 2021 class of Pathfinders. The LCLD Pathfinder Program is designed for diverse, high-potential, early-career attorneys at LCLD member organizations. The

goal is to provide Pathfinders with practical tools for developing and leveraging internal professional networks through relationship-building skills, foundational leadership skills and an understanding of career development strategies applicable to both in-house and law firm practice. LCLD is a premier na-

tional organization that provides opportunities for women and minority in-house counsel to connect with women and minority law firm partners and senior associates through its Fellows and Pathfinder programs.

On the Move

IN ATLANTA



PETERSEN



AVERY

Hall Booth Smith, P.C., announced the addition of Paul E. Petersen III, Ryland S. Avery, E. Wylly Killorin III, William B. Podres III and Samia Marino Taufiq as associates. Petersen's practice focuses on a wide range of transportation-related litigation. Avery focuses his practice on insurance coverage disputes and general liability matters. Killorin's practice focuses on defending clients in medical malpractice, transportation,



KILLORIN



PODRES

premises liability, negligent security and insurance coverage lawsuits. Podres focuses his practice on defending hospitals, correctional facilities, physicians and other health care providers in medical malpractice and negligence lawsuits. Taufiq's practice focuses on medical malpractice. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.



TAUFIQ



GREEN

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, announced the election of George Green and Anna Idelevich to partner. Green's practice focuses on commercial litigation, consumer litigation, construction litigation, medical malpractice, catastrophic injury, premises liability and transportation litigation. Idelevich focuses her practice on catastrophic injury, mass tort, environmental law and toxic tort, transportation, product liability, premises liability, nursing home and long-term care litigation. The firm is located at 3344 Peachtree Road NE, Suite 2400, Atlanta, GA 30326; 404-876-2700; Fax 404-875-9433; www.wwhgd.com.



IDELEVICH



RUMSEY



SMITH

James-Bates-Brannan-Groover-LLP announced the election of Sara Kate Rumsey, Bryson M. Smith and Doroteya N. Wozniak to partner. Rumsey's practice focuses on all aspects of commercial real estate, including acquisition, development,

disposition, financing and leasing of a wide array of commercial projects. Smith focuses her practice on commercial real estate, including acquisition, financing, and sale and leasing of commercial property. Wozniak's practice focuses on creditor's rights and bankruptcy issues, as well

as non-bankruptcy commercial litigation, regulatory compliance and contract matters. The firm is located at 3399 Peachtree Road NE, Suite 1700, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; www.jamesbatesllp.com.



WOZNIAK



MOKOTOFF

FordHarrison LLP announced the election of Jeffrey D. Mokotoff to managing partner and Loren C. Locke to partner. Mokotoff's practice focuses on broad employment law issues, including drafting and litigating executive, arbitration and non-compete agreements, as well as litigating wage/hour collective and class actions in state and federal courts. Locke focuses her practice on employment-based immigration, helping individual foreign nationals and their employers obtain a variety of nonimmigrant and immigrant visas and achieve lawful permanent residence in the United States. The firm is located at 271 17th

St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.



LOCKE



SHETH

Bovis, Kyle, Burch & Medlin, LLC, announced the election of Rahul Sheth and Michael D. Stacy to partner. Sheth's practice focuses on workers' compensation, representing employers and insurers in a wide variety of matters, including protecting insurers' subrogation liens in third-party fault situations. Stacy focuses his practice on corporate law and civil and commercial litigation, including contract preparation and disputes, business torts, commercial real estate, shareholder disputes and employment matters. The firm is located at 200 Ashford Center N, Suite 500, Atlanta, GA 30338; 770-391-9100; Fax 770-668 0878; www.boviskyle.com.



STACY



Cordell & Cordell P.C. announced the election of Jill Massey to litigation partner. Massey's practice focuses on family law. The firm is located at 1 Glenlake Parkway NE, Suite 975, Atlanta, GA 30328; 404-793-0000; www.cordellcordell.com.



BREWSTER



BUTLER

Troutman Pepper Hamilton Sanders LLP announced the election of Constance Brewster, Timothy A. Butler, Alan Poole and Karlie Clemons Webb to partner. Brewster's practice focuses on all aspects of employee benefits and executive compensation matters. Butler focuses his practice on data privacy and technology matters. Poole's practice focuses on communication and electric infrastructure. Webb focuses her practice on advising

clients on environmental components of both asset and stock transactions, including advising on Brownfields and other clean-up programs. The firm is located at 600 Peachtree St. NE, Suite 3000, Atlanta, GA 30308; 404-885-3000; www.troutman.com.



POOLE



WEBB



Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announced the election of David Gevertz to the firm's board of directors. Gevertz's practice focuses on employment discrimination, wage and hour, non-compete, whistleblowing and trade secrets. The firm is located at 3414 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.



DAVIS



GOLDSTUCKER

Kilpatrick Townsend & Stockton LLP announced the election of Kimberlynn Davis and Richard Goldstucker to partner and the elevation of Crystal Genteman to counsel. Davis' practice focuses on prosecuting foreign and domestic patent applications in pharmaceuticals, the chemical arts and metallurgy; due diligence and freedom to operate analysis; and client counseling and portfolio strategy for companies, universities and research institutions. Goldstucker focuses his practice on counseling and patent litigation covering a broad range of technologies. Genteman's practice focuses on trademark and copyright law. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



GENTEMAN



Davis, Matthews & Quigley, P.C., announced the addition of Miranda E. Siegel as an associate. Siegel's practice focuses on family law. The firm is located at 3400 Peachtree Road NE, Suite 1400, Atlanta, GA 30326; 404-261-3900; Fax 678-904-3169; www.dmqlaw.com.



LUECHTEFELD



FIELDING

Chamberlain, Hrdlicka, White, Williams & Aughtry announced the elevation of Jeffrey S. Luechtefeld to shareholder and the addition of James Fielding as an associate. Luechtefeld's practice focuses on representing clients in IRS examinations,

appeals and litigation. Fielding's practice focuses on labor and employment, counseling employers on a variety of legal issues and litigating complex matters before federal courts. The firm is located at 191 Peachtree St. NE, 46th Floor, Atlanta, GA 30303; 404-659-1410; Fax 404-659-1852; www.chamberlainlaw.com.



PAUL

Jackson Lewis P.C. announced the elevation of Melanie L. Paul to principal and the addition of M. Travis DeHaven as a principal. Paul's practice focuses on occupational safety and health, and wage and hour issues. DeHaven focuses his practice on employee benefits and executive compensation. The firm is located at 171 17th St.

NW, Suite 1200, Atlanta, GA 30363; 404-525-8200; 404-525-1173; www.jacksonlewis.com.



Parker Poe Adams & Bernstein LLP announced the addition of Diane Lidz as counsel. Lidz focuses her practice on real estate and commercial development. The firm is located at 1075 Peachtree St. NE, Suite 1500, Atlanta, GA 30309; 678-690-5750; Fax 404-869-6972; www.parkerpoe.com.



Taylor English Duma LLP announced the addition of Edward M. Newsom as a partner. Newsom's practice focuses on product liability, toxic torts and defense of personal injury claims, including in-court litigation and out-of-court negotiations. The firm is located at 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.



MendenFreiman LLP announced the addition of James A. "Jim" Tramonte as of counsel. Tramonte's practice focuses on estate planning, estate administration, and tax and business law. The firm is located at 5565 Glenridge Connector NE, Suite 850, Atlanta, GA 30342; 770-379-1450; Fax 770-379-1455; www.mendenfreiman.com.



Autry, Hall & Cook, LLP, announced the election of Antonio E. Veal to partner. Veal's practice focuses on business and construction litigation. The firm is located at 3330 Cumberland Blvd., Suite 325, Atlanta, GA 30339; 770-270-6974; www.ahclaw.com.



AVERETT



BEANE

Swift, Currie, McGhee & Hiers, LLP, announced the addition of Justin Averett, Rebecca Beane, Lauren Byrne, Danielle Doctor, Margaret "Ames" Filippini, Charles "Graham" Foster, G. Scott "Scotty" Hoffman, Jessica Hubbart, Benjamin D. McClure, Stephen "Kyle" McDonald, Marissa Merrill, Tara Schlairet, Michael "Brandon" Rosenstein, Logan Stone and Ben Yancey as attorneys. Averett's practice focuses on defending clients in civil matters related to premises, products and auto liability litigation in state and federal courts. Beane focuses her practice on products liability, construction law, commercial litigation and general liability defense. Byrne's practice focuses on representing clients in matters related to automobile, bad faith and trucking litigation, as well as insurance coverage and premises liability. Doctor focuses her practice on counseling clients in cases related to arson and fraud, bad faith litigation and insurance coverage. Filippini's practice focuses on defending clients in commercial litigation, catastrophic injury and wrongful death claims, insurance coverage, premises liability and products liability. Foster focuses his practice on workers' compensation, providing defense representation to employers and insurers. Hoffman's practice focuses on workers' compensation. Hubbart focuses her practice on defending insurers, motor carriers and their drivers in matters related to trucking and transportation litigation. McClure's practice focuses on workers' compensation, representing insurance companies, self-insured companies and servicing agents. McDonald focuses his practice on representing clients in claims related to automobile litigation, premises liability, and trucking and transportation litigation. Merrill's practice focuses on defending national insurance carriers and business entities in claims related to automobile litigation, catastrophic injury and wrongful death, medical malpractice and premises liability. Schlairet focuses her practice on workers' compensation, counseling employers



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YANCEY

and insurers through sensitive issues, claims and employment-related matters. Rosenstein's practice focuses on workers' compensation. Stone focuses his practice on representing insurers and trucking and transportation companies in trucking litigation matters. Yancey's practice focuses on representing insurers, businesses and individuals in matters related to automobile litigation, construction law, premises liability, products liability and trucking litigation. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; www.swiftcurrie.com.



HENNER



SCARBROUGH

Shareholders Joseph Henner and Tyler Scarbrough announced the establishment of Henner & Scarbrough LLP, and the addition of James Artzer, Karen Bain and Kathleen Kapetanovic as attorneys. All attorneys focus their practice on litigation and alternative dispute resolution for cases involving all aspects of the construction industry, representing both domestic and international clients in the construction industry, including owners, general contractors and suppliers, on projects ranging from multibillion-dollar stadium and infrastructure projects to alternative energy production and greenfield industrial installations. The firm is located at 3379 Peachtree Road NE, Suite 555, Atlanta, GA 30326; 404-260-3206; Fax 404-260-3205; www.henscarlaw.com.



ARTZER



BAIN



KAPETANOVIC



Freeman Mathis & Gary, LLP, announced the addition of John S. Ghose as a partner. Ghose's practice focuses on advising clients on data security and privacy legal issues, including regulatory compliance with federal and state data security and privacy laws. The firm is located at 100 Galleria Parkway, Suite 1600, Atlanta, GA 30339; 770-818-0000; www.fmglaw.com.



Butler Wooten & Peak LLP announced the addition of L'Zandra V. Jones as an associate. Jones focuses her practice on business torts, product liability and personal injury. The firm is located at 2719 Buford Highway, Atlanta, GA 30324; 404-321-1700; Fax 404-321-1713; www.butlerwootenpeak.com.



McArthur Law Firm announced the addition of Michael L. Thompson as an associate. Thompson's practice focuses on plaintiff's personal injury, including medical malpractice. The firm is located at 1201 Peachtree St. NE, Suite 2000, Atlanta, GA 30361; 404-565-1621; www.mcarthurlawfirm.com.



Smith, Gambrell & Russell, LLP, announced the addition of Alex Khoury as a partner. Khoury's practice focuses on electronic discovery for business and government bodies involved in complex litigation and counseling clients on information governance issues such as data retention, destruction and privacy. The firm is located at 1230 Peachtree St. NE, Suite 3100, Atlanta, GA 30309; 404-815-3500; Fax 404-815-3509; www.sgrlaw.com.

IN ATHENS



Kimbrough Law announced the addition of Hailey Brock as an attorney. Brock's practice focuses on estate planning and VA and Medicaid planning. The firm is located at 1077 Baxter St., Suite 700, Athens, GA 30606; 706-850-6910; www.kimbroughlaw.net.

IN COLUMBUS



Page, Scramton, Sprouse, Tucker & Ford, P.C., announced the addition of Jack P. Schley. Schley's practice focuses on civil litigation and business and corporate law. The firm is located at 1111 Bay Ave., Third Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; www.psstf.com.



Hall Booth Smith, P.C., announced the election of Mariel E. Smith to partner. Smith's practice focuses on defending companies in labor and employment lawsuits and pre-litigation investigations involving various state and federal agencies. The firm is located at 1301 1st Ave., Suite 100, Columbus, GA 31901; 706-494-3818; Fax 706-494-3828; www.hallboothsmith.com.



Butler Wooten & Peak LLP announced the addition of Ramsey B. Prather as a partner. Prather's practice focuses on representing whistleblowers in False Claims Act cases, plaintiffs in business tort litigation and victims in serious personal injury matters, such as tractor trailer wrecks. The firm is located at 105 13th St., Columbus, GA 31901; 706-322-1990; Fax 706-323-2962; www.butlerwootenpeak.com.

IN MACON



Anderson, Walker & Reichert, LLP, announced the addition of Robert A. B. Reichert as of counsel. Reichert's practice focuses on business law, economic and community development, and government relations. The firm is located at 577 Mulberry St., Suite 1410, Macon, GA 31201; 478-743-8651; www.awrlaw.com.



MYERS



HAWKINS

James-Bates-Brannan-Groover-LLP announced the addition of Edgeley A. Myers as counsel and John Dustin "JD" Hawkins and Spencer D. Woody as associates. Myers' practice focuses on general civil litigation, employment law, premises liability, eminent domain, business law, insurance litigation and appellate litigation. Hawkins focuses his practice on all areas of tax and estate planning matters. Woody's practice focuses on general litigation, including business litigation, tort litigation and insurance defense.

WOODY

The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jamesbatesllp.com.

IN SAVANNAH



LINEBERRY



LYNDALE

Bouhan Falligant LLP announced the addition of Logan Lineberry, Chase Lyndale and John Parker as associates. Lineberry focuses his practice on corporate defense, transportation and logistics, education law, medical malpractice and product liability. Lyndale's practice focuses on maritime, malpractice and professional liability, transportation and logistics, and health care. Parker focuses his practice on commercial and residential real estate. The firm is located at 1 W. Park Ave., Savannah, GA 31401; 912-232-7000; www.bouhan.com.



PARKER



KRASNY



HICKS

HunterMacLean announced the addition of Hannah L. Krasny and Charles E. Hicks as associates. Krasny's practice focuses on litigation. Hicks focuses his practice on real estate law. The firm is located at 200 E. Saint Julian

St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.



MCKEE



KARNEGIS

Savage, Turner, Pinckney & Savage announced the addition of Elizabeth McKee and Sophia Karnegis as associates. McKee's practice focuses on complex civil litigation, serious personal injury, civil rights violations, malpractice and other high-

stakes cases. Karnegis focuses her practice on serious personal injury, wrongful death and civil rights violations. The firm is located at 102 E. Liberty St., 8th Floor, Savannah, GA 31401; 912-231-1140; Fax 912-232-4212; www.savageandturner.com.

IN SAINT SIMONS ISLAND



SMITH



CORRY

Whelchel & McQuigg, LLC, announced the election of Britton A. Smith to partner and the addition of Brian D. Corry as a partner. Smith's practice focuses on residential real estate, property tax sales, the representation of homeowner

and condominium associations, and general business matters. Corry focuses his practice on local government representation, civil litigation and personal injury. The firm is located at 504 Beachview Drive, Suite 3D, Saint Simons Island, GA 31522; 912-638-1174; Fax 912-638-6595; www.wandmattorneys.com.

IN HARTFORD, CONNECTICUT

Freeman Mathis & Gary, LLP, announced the addition of an office in Hartford, Connecticut. The firm is located at 185 Asylum St., 6th Floor, Hartford, CT 06103; 959-202-5150; www.fmgllaw.com.

Announcement Submissions

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

Notices are printed at no cost, must be submitted in writing and are subject to editing. Some restrictions apply, and items are printed as space is available. News releases regarding lawyers who are not members in good standing of the State Bar of Georgia will not be printed. Learn more at www.gabar.org/newsandpublications.

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



Serve the Bar. Earn CLE credit.

2

Volunteer and complete online training to be a peer in the Georgia Lawyers Helping Lawyers program and earn up to **two** CLE hours during your training. Visit www.georgialHL.org to learn more.

3

Coach a team or judge a trial for the High School Mock Trial program and receive up to **three** hours of CLE credit. Contact michaeln@gabar.org for more information and to volunteer.

6

Earn up to **six** CLE credits for having your legal article published in the *Georgia Bar Journal*. Contact sarahc@gabar.org to learn more.



State Bar
of Georgia



Working Through Adversity

BY PAULA FREDERICK

Your assistant forwards a call from a potential client.

“You probably don’t remember me, but I live in Castleville, near the new recycling center,” the potential client begins. “We met a couple of years ago when you helped Re-Use get its environmental permits, remember?”

“I remember meeting a lot of people at those neighborhood association meetings,” you reply vaguely.

“We appreciated you coming out to explain things to us. I really liked how you handled all the neighbors’ concerns. We thought the recycling center might bring a lot of traffic into the neighborhood, but it hasn’t been a problem at all.”

“I’m glad to hear things are going well, you respond. “How can I help you?”

“We just got word that a developer wants to build a gas station and convenience store across from the Re-Use Center. The city wants to change the zoning to allow it. The neighborhood association is against it; we’re worried

about contamination from underground tanks. When we thought about getting a lawyer to help us oppose it, we all thought about you.”

“I’m flattered,” you admit, “but I’m going to have to think about whether I can do it. The folks at Re-Use probably won’t like it, but it really doesn’t have anything to do with them.”

Or does it?

Georgia Rule of Professional Conduct 1.9 prohibits a lawyer from representing a new client whose interests are *materially adverse* to those of a former client if the matters are substantially related and if the former client objects.

Some readers will disagree that the scenario above involves matters that are substantially related, but it comes directly from Comment 3 to the Rule: “... a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning

of the property on the basis of environmental considerations ...”.

So how do you tell whether matters are materially adverse? Is it possible for a new representation to be materially adverse to representation of a former client if the former client won’t even be a party to the new matter?

A new opinion from the American Bar Association provides some guidance.

Formal Opinion 497 (Feb. 10, 2021) includes examples of situations that involve “material adverseness.” Most obvious is suing a former client, but negotiating against or cross-examining a former client also create problems if the lawyer will use confidential information from the prior representation.

The opinion provides three examples where a lawyer either directly attacks or undermines work that the lawyer has done for another client. The examples are from actual cases in which courts have discussed “material adverseness.” They reach different conclusions based



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upon the economic or reputational harm to the former client, confidentiality concerns and what seems to be a general concern about the appearance of a lawyer “switching sides.”

Ultimately the examples illustrate that there is no bright line test for Rule 1.9 and that courts must determine whether matters are substantially related and materially adverse. The safest course of action for a lawyer undertaking representation that could impact a former client is to seek the consent of the former client. Without that consent, the new representation can be a risky undertaking that might end with the lawyer’s disqualification. •

The safest course of action for a lawyer undertaking representation that could impact a former client is to seek the consent of the former client. Without that consent, the new representation can be a risky undertaking that might end with the lawyer’s disqualification.



Paula Frederick

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State Bar of Georgia

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Attorney Discipline Summaries

December 22, 2020 – March 18, 2021

BY JESSICA OGLESBY

Disbarment

Jeffrey Bull Grable

2677 Chriswell Drive

Marietta, GA 30068

Admitted to the Bar 1997

On Feb. 15, 2021, the Supreme Court of Georgia accepted the petition for voluntary surrender of license for attorney Jeffrey Bull Grable (State Bar No. 303870). Grable admitted that he represented an individual client in a dispute with her business co-owner and agreed to prepare and file a lawsuit on the client's behalf, which he did not complete. When the co-owner sued the client instead, he agreed to file a counterclaim, which he did not complete and file, and a sizable judgment was eventually entered against the client. Grable became aware of the judgment but failed to advise the client. Grable admitted that his conduct violated Rules 1.2 (a), 1.3 and 1.4 (a) (3) of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of Rules 1.2 (a) and 1.3 is disbarment and the maximum sanction for a violation of Rule 1.4 (a) (3) is a public reprimand. Grable also admitted that he was suspended from the practice of law for six months in 2005, based on similar conduct.

Patrick A. Powell

P.O. Box 576

Dacula, GA 30019

Admitted to the Bar 1998

On Feb. 15, 2021, the Supreme Court of Georgia disbarred attorney Patrick A. Powell (State Bar No. 586289) from the practice of law in Georgia. In June 2020, the State Bar filed and served a formal complaint by email, and served it by mail and by publication in August 2020. Powell failed to answer the formal complaint, and the Special Master granted the State Bar's motion for default. The Special Master found that in May 2018, Powell was retained by a third party to represent a client in connection with federal criminal charges pending in the U.S. District Court for the Northern District of Georgia. The third party paid Powell a \$4,000 retainer and made one additional \$1,000 payment toward the \$12,000 fee Powell quoted. Although Powell entered an appearance on the client's behalf in May 2018, he failed to respond to requests for an update on the case, failed to perform any work on the case, failed to appear at pretrial and status conferences held in August 2018, failed to respond to the district court and prosecutor when they

attempted to contact him and failed to appear at a show cause hearing. A grievance was filed in December 2018, and Powell failed to respond to the resulting Notice of Investigation.

The Special Master determined that Powell violated Rules 1.2, 1.3, 1.4 (a), 1.5 (a), 3.2 and 9.3 of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of Rules 1.2 and 1.3 is disbarment, and the maximum sanction for a violation of the remaining rules is a public reprimand. The Special Master found that Powell's actions were intentional and caused injury that affected his client significantly. The Special Master found numerous aggravating factors and no mitigating factors, and concluded that disbarment was an appropriate sanction.

David R. Sicay-Perrow

P.O. Box 2108

Atlanta, GA 30301

Admitted to the Bar 1990

On Feb. 15, 2021, the Supreme Court of Georgia disbarred attorney David R. Sicay-Perrow (State Bar No. 645285) from the practice of law in Georgia. The disciplinary matter came before the Court

on the State Bar's Notice of Discipline, filed at the direction of the State Disciplinary Board, seeking disbarment for violations of Rules 1.15 (I) (a), (c), 1.15 (II) (a)-(b) and 8.4 (a) (4) of the Georgia Rules of Professional Conduct. The maximum sanction for a single violation of each rule is disbarment. The State Bar attempted to serve Sicay-Perrow at his official address, but he failed to acknowledge service. Since personal service could not be perfected, he was also served by publication but failed to file a Notice of Rejection and therefore waived his right to an evidentiary hearing.

The Board's investigation revealed that in January 2013, pursuant to a contingency fee agreement, a husband and wife (the "clients") retained Sicay-Perrow's law firm to represent their interests in a civil collections case. Sicay-Perrow received \$805 at the time he was retained. In April 2013, the clients were notified that a settlement agreement had been negotiated on the couple's behalf; in May 2013, a consent judgment was signed awarding \$100,000 to the clients in Hall County Superior Court, and the judgment was then filed with the clerk of court in August 2013. The judgment ordered the defendant to pay an initial lump sum of \$30,000 to the firm on behalf of the clients—to be deposited in and administered from Sicay-Perrow's IOLTA account—and the remaining \$70,000 was to be remitted by the defendant to the firm in monthly payments of \$600, which were to be deposited and administered from the IOLTA account to the clients in monthly payments of \$600. Sicay-Perrow received the initial lump sum of \$30,000 in May 2013, but he failed to deposit it into his IOLTA account; instead, he deposited it into his business checking account. Similarly, money orders representing the defendant's June and July payments of \$600 were both deposited in August 2013 in the firm's business checking account.

The clients expected to received \$23,850 from the initial lump sum (as Si-

cay-Perrow was entitled to \$7,950 based on a contingency fee agreement); however, in September 2013, Sicay-Perrow sent the clients an email stating that, "an exceptionally large amount of money was stolen by a former office manager" and "I expect that we will be able to remit the lump sum amount to you within 30 days." Sicay-Perrow did not communicate with the clients within the promised 30 days; instead, he sent an email to the clients in January 2014, confirming that he collected a total of \$31,800 (the initial \$30,000 and three payments of \$600) of which he still owed the clients \$23,850. The clients then sent him a demand letter in March 2014, and he responded that he needed a little more time or he would need to file for bankruptcy. Unbeknownst to the clients, his firm had been placed into receivership in March 2014. Sicay-Perrow then told the clients he would be unable to repay them until the receivership ended in March 2017.

In February 2017, the clients emailed him to confirm that the payments would resume in March 2017, and he responded by email, confirming that the monthly payments of \$1,200 would resume. The clients received a check for \$1,200 in March, but did not receive a check in April 2017, as promised. After several unsuccessful attempts to contact Sicay-Perrow, the clients learned he was no longer practicing law and his whereabouts were unknown. As of Sept. 8, 2020 (the date of the Notice of Discipline), the clients had received seven checks from Sicay-Perrow totaling \$6,400, with the last disbursement remitted from the firm's business checking account and received in March 2017. Although Sicay-Perrow provided the State Bar with three checks remitted to the clients from his IOLTA account, an investigation revealed that the funds disbursed to the clients from his IOLTA account belonged to different clients represented by his firm, such that he had also misappropriated those client funds when he made disbursements from his

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

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IOLTA account to the clients. An investigation of Sicay-Perrow's bank records also revealed that his IOLTA account did not have sufficient funds to repay the balance owed to clients.

The State Bar stated that the Board determined that the appropriate sanction to be imposed was disbarment, and in aggravation the Board considered that Sicay-Perrow had a prior disciplinary history that included the suspension of his law license in 2017, his dishonest conduct and his 30 years practicing law. The Board found no mitigating factors to be present. ●



Jessica Oglesby

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State Bar of Georgia

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Legal Tech TIPS

BY NATALIE R. KELLY
AND MIKE MONAHAN



1 PCMag's Best Computer Monitors for 2021

www.pcmag.com/picks/the-best-computer-monitors

Considering we've been working from home since last March, you might be missing the luxury of dual monitors in your home office. Check out *PCMag's* list of the best monitors for 2021, which features multiple reviews and editors' rankings.

2 Georgia Legal Aid

www.georgialegalaid.org

Check out Georgia Legal Aid's website, our public interest community's portal for legal information for low-income and marginalized communities across the state. You'll be surprised by the amount of information you can share with your clients—and family members and friends—who press you for legal information!

3 Pro Bono Volunteer Resources

And speaking of Georgia-grown digital resources, volunteer lawyers can benefit from a variety of support websites, including www.GeorgiaAdvocates.org and www.LegalAidProbono.org. Your favorite public interest program may also have an online library for its volunteer lawyers,

like www.GeorgiaAdvocates.org/Library. And don't forget www.Georgia.FreeLegalAnswers.org, a great website that allows you to do pro bono from your kitchen table or while hanging out at the airport.

4 Windows 10 Snap

If you are a Windows user, and the lack of dual monitors is really bothering you while working remotely, use the Windows 10 Snap feature to create the feeling of dual monitors by setting up two windows docked next to each other. Simply drag open windows to the far left or far right of your monitor screen until Windows 10 snaps the window to the selected border.

5 C by GE Full Color Smart Bulb

Another issue with the new COVID-19-impacted workplace is that almost everyone needs to participate in videoconferences. Using the proper lighting while on screen enhances your viewers' experience. The C by GE Full Color Smart Bulb simulates daylight, and using the associated app, you can change the bulb's light color to virtually any color with a simple swipe. This product is available at Amazon, Walmart, Target and other retailers.

6 mmHmm

www.mmhmm.app

Give mmhmm a try. Mmhmm allows you to customize video calls and presentations with custom slides, effects, backgrounds, etc. The basic version, sans Premium Tools, is free.

7 Prezi

www.prezi.com

Similar to mmhmm, but a little more professional and easy to work with is Prezi. Prezi requires a paid subscription, but if you're interested in adding more to your tool chest than just PowerPoint, Prezi might fit your needs.

8 Practice Management 2021 Buyers Guide

bit.ly/3K0Iis

Using reliable practice management software is always recommended. While the Law Practice Management Program can assist members with selecting the appropriate system, the 2021 "Practice Management Buyers Guide" produced by Above the Law and LegalTech Publishing is a great resource to determine what you need. To check out the guide, contact the Law Practice Management Program at 404-527-8772, or download it at the link above.

9 Cheetah COVID-19 State & Federal Compare Smart Chart

bit.ly/3tP3oQM

For a great listing of all of COVID-19-related regulations and information from state and federal sources, check



PHOTO BY WWW.ABOVETHELAW.COM

out the free Cheetah COVID-19 State & Federal Compare Smart Chart, provided by Wolters Kluwer. For instance, view each of the governor's orders since the pandemic began by selecting "Executive Orders and Proclamations" and "Georgia."

10 WOOP

www.woopmylife.org

Here's a new #LawyersLivingWell, #Well-Being app—WOOP—that is free and available in iOS and Android. The app describes itself as a science-based mental strategy that people can use to find and

fulfill their wishes, set preferences and change their habits. The app guides you through the four steps of WOOP (Wish, Outcome, Obstacle, Plan) and allows you to save your WOOPs.



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Managing Common Technology Mishaps: How to Avoid Announcing, “Your Honor, I’m NOT a Cat!”

When used incorrectly or without the requisite knowledge or adequate training, technology can create chaos and wreak havoc on work product. To help you avoid some of these common tech missteps, consider these tips.

BY NATALIE R. KELLY

Technology can be a godsend, helping legal professionals do their jobs more efficiently and productively. But when used incorrectly or without the requisite knowledge or adequate training, technology can create chaos and wreak havoc on work productivity. The viral cat lawyer video is a prime example of how a lack of understanding of used technology can cause an entire process to run off the rails. This display playing out publicly underscores the importance of knowing how to use the products and platforms that are essential to doing business. While the cat seen in the video was not a Zoom feature, the hilarious video emphasizes that lawyers and judges not only need to know it is a filter, but how and why it can be disabled. The bottom line is that lawyers must know how to use the tools they employ. Kudos to the judge for allowing the video to be posted to demonstrate professionalism and to allow for this learning opportunity.

Headlines often share stories of lawyers or their staff who have improperly used technology. They did not turn off a filter; they did not password protect a device or program; they clicked on a suspicious email from someone from whom they did not expect to receive a message; they used a black box image to cover text

instead of applying redactions; they did not remove confidential notes or background metadata in final drafts. To help you avoid some of these common tech missteps, consider these tips.

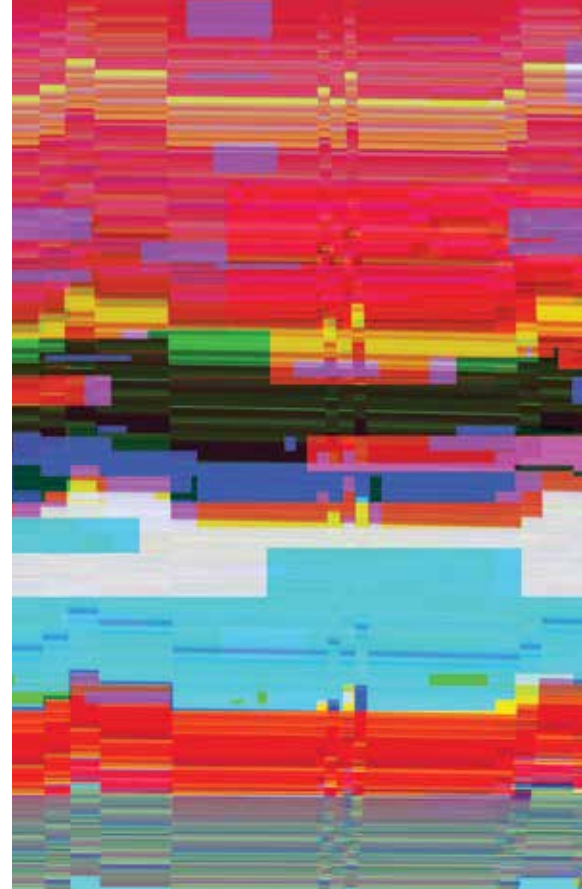
Zoom Missteps

Zoom is arguably the most-widely used videoconferencing platform since the start of the pandemic. If you are a legal professional using the service, it’s easy enough to join a session. However, if you are hosting the meeting, you need to be able to set up secure sessions and manage profiles and connections during your meetings. There are a number of training tutorials available to guide you through both basic and more advanced features to help you secure and enhance your sessions going forward. Check all the devices you will be using beforehand and become familiar with how basic features work on each item. Quick YouTube videos are available alongside the actual Zoom tutorials, covering basic features like adding your name and professional photo to your profile and uploading a background to help minimize potential distractions—remembering some proceedings will require the background fea-

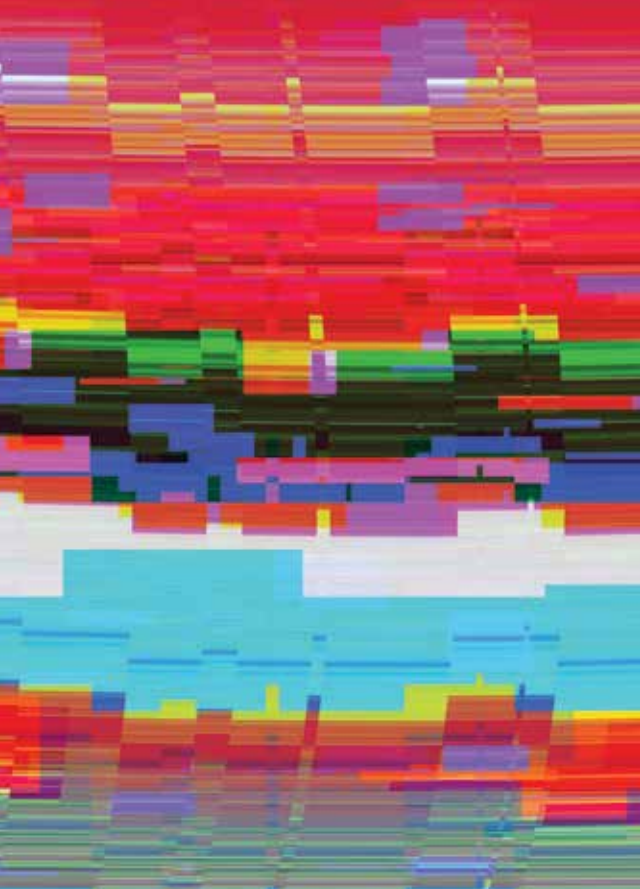
ture be turned off. It’s also very important to understand how to mute and unmute your microphone and turn your video on and off during the session if need be. You should also review the procedure for using a phone instead of your computer’s audio to cure connection issues you might encounter. Finally, go over how to record your sessions, including capturing the information placed in the chat area. It’s also a good idea to practice going online and inviting others into your videoconference prior to your meeting to work out any kinks before the actual session begins.

Metadata

An easy definition of metadata is the file information behind any file. Metadata tracks the properties and identifying fields and tags defining a document. If you fail to adequately manage—and in some cases “scrub”—the metadata from files, you may inadvertently disclose confidential information. This can lead to being mentioned in embarrassing headlines (at a minimum), and more seriously, dealing with disciplinary proceedings resulting from revealing sensitive information. Invest time in learning how to properly protect and share data residing behind



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files. Password protect documents and use the Windows Inspect function to strip out information you do not want to travel with any particular file.

Redaction

For some reason, redaction is still hard for some to get right. Use proper redaction tools to protect against inadvertent disclosure of confidential information; highlighting sensitive information with a dark blue or black highlight is not appropriate and will fail. True redaction is available in many PDF management tools, like Adobe Acrobat DC. The application of redaction will extract data and image layers in files and create an impenetrable image in its place.

Ransomware

Lawyers continue to be victimized by hackers seeking a ransom, or worse, your confidential data. Ensuring you have proper backups, using secure connections and implementing two-factor authentication for logging onto systems can help. Likewise, implementing Virtual Private Network connections may provide additional security.

Phishing Schemes

Data loss and security breaches result from lawyers taking the bait when it comes to online scams. With appropriate phishing prevention training combined with common sense and some DIY detective work, users can learn to identify whether emails are legitimate or should be blacklisted and avoided. Prevention training coupled with clear firm policies on how to handle phishing emails goes a long way toward keeping data protected.

Lost or Stolen Devices

While the pandemic has resulted in social distancing rules that should eliminate the possibility that people will be looking directly over your shoulder, it is still good practice to make sure screens are not available to prying eyes. Likewise, protecting items with location tracking and data swiping features can help eliminate some of the possible loss of data, which could occur easily with a lost or stolen device. Password protection remains a simple, straightforward solution to unauthorized access. And random-word pass phrases, where accepted, are harder to crack than random characters, i.e., skytoothfavorite-caselaw vs. myvoiceismypassword123!



The State Bar of Georgia would like to thank outgoing Law Practice Management Program Director Natalie R. Kelly for her more than 25 years of service to the profession. We appreciate her dedication and commitment to the program, and wish her well in her new position as director of legal management for the Southern Poverty Law Center.

The missteps with technology are often surprisingly simple to resolve. If you are not sure of a particular technology you are currently using or are considering implementing, then get help. Use tech support, product knowledge bases, Google searches, vendor forums and even YouTube videos to learn more about a particular technology. Check regularly to make sure your systems are properly updated. Secure devices and platforms with passwords and two-factor authentication. Participate in training on processes and procedures. Practice data backup and restore routines so you are protected beyond any breach.

If you approach your use of technology focused on using these tips, you won't feel as if you have to announce to the world that you are not a cat.

For assistance with any legal technology scheme, please reach out to the Law Practice Management Program at 404-527-8772 or email lpdept@gabar.org. ●



Natalie R. Kelly

Director, Law Practice Management
State Bar of Georgia

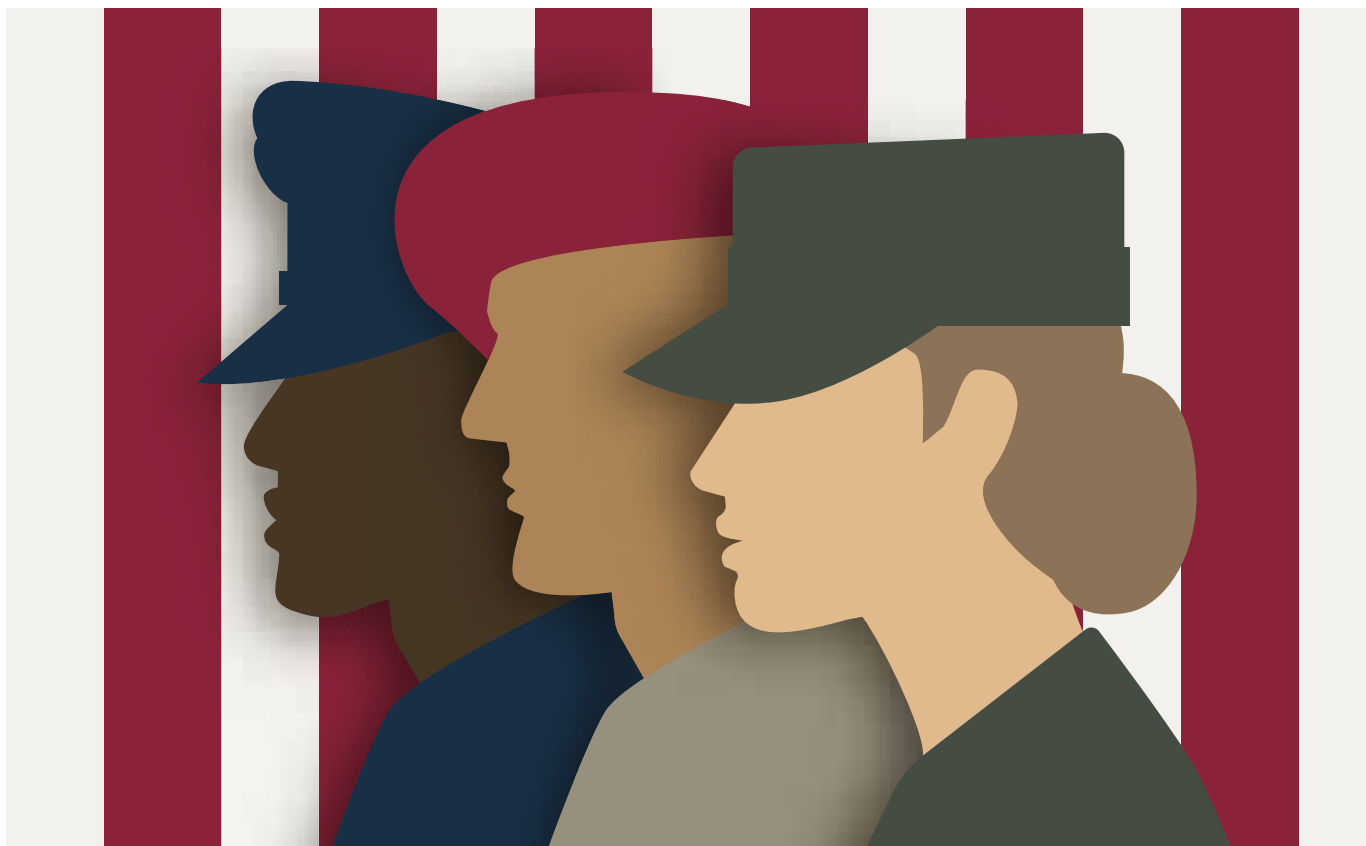
lpdept@gabar.org

Make 2021 the Year of the Unseen Veteran

This year, MLAP and its volunteer lawyers will delve more deeply into legal issues affecting our low-income rural veterans. No one left behind, no veteran left unseen.

BY MIKE MONAHAN

The Pew Research Center reports that U.S. military veterans have consistently had higher standards of living than non-veterans over the past 40 years. The Pew Research Center study also indicates more good news—that “households headed by veterans have higher incomes and are less likely to be in poverty, on average, and this is especially the case for veterans in racial or ethnic minority groups and those with less education.”¹



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Despite the overall good economic health of veterans, the U.S. Census reveals 1.5 million veterans live at or under the federal poverty level in the United States.² In Georgia, more than 52,000 veterans are receiving SNAP (food stamps) benefits—that’s about 8% of the state’s 625,000 veteran population. It’s a population small enough to be politically weak, unseen and ignored.

What would a “New Legal Deal” look like for these unseen 52,000 low- or no-income Georgia veterans? With more than 33,000 in-state, active lawyers in Georgia, we could make significant strides in using the law to breach or reduce barriers veterans face to housing and veterans’ benefits and improve their access to education, job training and health care. Legal intervention can also prevent descent into poverty. For the veteran, the transition from active-duty payroll is a critical moment for legal help on issues of employment, family stability and homelessness.

Veterans and non-veterans with a disability are more likely to be among the working-poor than those who are non-disabled. The Veterans Administration recognizes the fastest-growing contingent of economically insecure veterans is the single parent, a majority of whom are women veterans.³

Our Military Legal Assistance Program (MLAP) has been serving the legal needs of Georgia’s veteran and military active duty for more than a decade. MLAP identifies pro bono opportunities for members of our Bar that are in line with our aspirational Bar Rule 6.1 that urges lawyers to dedicate at least 50 hours per year of pro bono service. Volunteer attorneys provide pro bono representation on a variety of civil legal issues, including family law matters, veterans’ benefits, guardianship, debt and consumer issues, landlord-tenant matters and others.

In 2021, in partnership with the University of Georgia School of Law Veterans Legal Clinic, we have been hosting

popular virtual legal clinics and serving no-income to working veteran households. The volunteer lawyers who participate in our virtual clinics provide brief services and advice. Our model includes using large firm lawyers in Atlanta to serve in rural areas where we have few lawyers to deliver legal help to unseen and isolated rural veterans living in poverty. The clinic approach is funded by a mini grant from the American Bar Association Military and Veterans Legal Center.

This year, MLAP and its volunteer lawyers will delve more deeply into legal issues affecting our low-income rural veterans. Our online training videos are available to help lawyers understand the legal issues and the veteran client. You can find our first set of training videos at www.GeorgiaAdvocates.org/Library. You can also sign up to volunteer on the site. Our virtual clinic model allows you to volunteer and serve from your home or office while helping us reach a veteran in the far corners of our state.

No one left behind, no veteran left unseen.

For more information or to volunteer to make a difference, contact MLAP Director Christopher Pitts at christopherp@gabar.org or cpitts@glsp.org. •



Mike Monahan

Director, Pro Bono Resource Center
State Bar of Georgia

probono@gabar.org

Endnotes

1. <<https://www.pewresearch.org/fact-tank/2019/12/09/veteran-households-in-u-s-are-economically-better-off-than-those-of-non-veterans/>>.
2. <<https://nvf.org/veteran-poverty-united-states/>>.
3. <https://www.va.gov/vetdata/docs/SpecialReports/The_Veteran_Working_Poor.pdf>.



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State Bar of Georgia

Fastcase and Casemaker: The Peanut Butter & Jelly of Legal Research

Fastcase and Casemaker have joined forces and will work together to provide a superior research experience.

BY SHEILA BALDWIN

The State Bar of Georgia first offered legal research as a member benefit in January 2005. This relationship was initiated due to our members' desire to have access to quality legal research at an affordable price. Electronic legal research was developed in the late 70s, with LexisNexis and Westlaw dominating the market with their expensive and somewhat complex online services and CDs. Eventually, other internet-based search engines entered the legal technology market with software that helped attorneys keep up with case law, statutes and research resources. Legal professionals were forced to move beyond their firm libraries to the cloud to keep current and access expanding content. Two such providers that came on the scene were Casemaker and Fastcase, with Casemaker being the first to exclusively market to bar associations, giving them the edge to become our members' most popular and valuable member benefit 15 years ago.

Five years later, Fastcase was moving into the bar association market and offered the State Bar of Georgia an opportunity to vet their service. Due to its

speed and ease of use, the Board of Governors voted to change providers, and Fastcase was introduced to State Bar of Georgia members in January 2011. Since that time, State Bar members' use of their Fastcase Legal Research benefit has increased to the point that Georgia is the most active state bar partner. At the same time, Casemaker has continued to represent the bar community while adding additional content and features that Fastcase doesn't have.

As the State Bar's member benefits coordinator, I can confirm that there are loyal Casemaker devotees who will be especially happy to learn that these two companies have joined forces and will work together to provide a superior research experience. Like peanut butter and jelly, one will be better with the other. At no extra cost, our members will now have the ability to take advantage of the best of both of these legal research platforms as part of their member benefit.

At a recent meeting with the Member Benefits Committee, Ed Walters, CEO of Fastcase, announced the year-long process to successfully merge Fast-



At no extra cost, our members will now have the ability to take advantage of the best of both of these legal research platforms as part of their member benefit.



PHOTO PROVIDED BY FASTCASE

case with Casemaker, assuring all that both companies look forward to offering members a superior service. The company name will remain Fastcase, with Casemaker being a subsidiary. The transition will be a gradual incorporation of the best features of both companies: Casemaker's editorial and production excellence combining with Fastcase's superior technology platform and one of the most powerful search engines. New content will be added from the Casemaker appendices, including the Pacific Reporter and the Southern Reporter, extending back to the 1800s; Federal Rules of Decisions; and a growing Tribal Court library. The companies will still function as they do now, with members logging in to either the Fastcase or Casemaker portal, depending on which service they have. Users will notice added content and improvements in technology over time.

Fastcase addressed possible concerns about the merger in a list of frequently asked questions, stating that there will not be an increase in cost to Bar members. The FAQs emphasize that the

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Sheila Baldwin

Member Benefits Coordinator
State Bar of Georgia

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Sober Curious

Sober Curious began as a movement for individuals looking to give their minds and bodies a break from alcohol. For readers who might be considering sober curiosity, or even cutting back on your alcohol intake just one day a week ... take it one day at a time.

BY MEGAN MURREN RITTLE

In keeping with this year's wellness theme of designing an integrated life¹ and taking a closer look at the six dimensions of lawyer well-being, we are spotlighting a lawyer's social well-being. The American Bar Association (ABA) defines thriving social well-being as "developing a sense of connection, belonging and a well-developed support network while also contributing to our groups and communities."² While one's social well-being encompasses many arenas and relationships, this article will focus on one aspect of this dimension.

Around this time one year ago, we were all in quarantine. After about two weeks of lockdown, my husband and I started to get restless. We live within walking distance of several breweries that were open for to-go drinks and food, so, feeling deprived of exercise and social interaction, we decided we should walk there to get some fresh air, get out of the house and support our local businesses. After a few months, our "support" was starting to look more like micro-investing as we took a daily evening walk—after a workday of non-stop Zooming—to grab a few beers, chat with the servers and bartenders, and head back home. Before we knew it, we were in the habit of drinking two to three

beers a night. Once the days got shorter and the temperature dropped, we traded our brewery run for splitting a bottle of wine at home and watching whatever newest binge-worthy show just hit Netflix ("The Queen's Gambit" really is worth the hype.) It became a way for us to unwind and spend time together without having to use our over-videoconferenced brains.

As the pandemic wore on, and our need for social interaction overcame our fear, we began to meet up with friends in parks or backyards, always with a tumbler of wine or cooler of beer. By the time January rolled around, which is traditionally "Dry January" in our house, we were so entrenched in our nightly habit, and still so exhausted with COVID-19, that we did not even consider taking our annual break from alcohol.

However, with February came our yearly physicals. It turns out that drinking three glasses of wine daily (at about 120 calories per five-ounce glass) does not come without consequences. Many extra pounds and several looks of concern from our primary care physicians later, we decided it was time for us to consider becoming "Sober Curious."

Sober Curious began as a movement for individuals looking to give their



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minds and bodies a break from alcohol.³ A search of #sobercurious on Instagram reveals more than 176,000 posts, many of which include recipes for “mocktails,” fancy drinks with no alcohol, and ads or endorsements for non-alcoholic distilled spirits, wines and beers. Doing some research on the Sober Curious movement, I found that, according to a piece published by NPR in 2019, a British study showed that adults who abstained from alcohol for a month lost weight. In a similar 2016 study, in addition to weight loss, other benefits of taking a break included better sleep and a sense of achievement.⁴

April is Alcohol Awareness Month, a public health program organized by the National Council on Alcoholism and Drug Dependence, created to increase outreach and education regarding the dangers of alcoholism and issues related to alcohol.⁵ To spread awareness to the legal community, the 2016 ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation study of nearly 13,000 currently practicing lawyers found that between 21 and 36% of lawyers qualify as “problem drinkers.”⁶

While my husband’s and my nightly habit has not resulted in social or professional consequences yet, our scales have certainly indicated that we have a problem. After coming to grips with the shock of the weight gain, we put together a plan to make a change. The question for us was, how can we continue to spend time together in a meaningful way but drop the booze? What can we do within our community that does not require us to buy drinks? How can we spend time with our friends sans a morning-after hangover?

We started with what we could control at home. Since the weather turned warmer, we decided that instead of jumping on the couch to watch TV, we would take our dogs for a nightly walk. Sometimes we talk, but sometimes we let our brains go numb and walk in companionable silence. We also decided that for the nights

we still end up on the couch because of rain, wind, freezing temperatures or simple laziness, we would enforce a “no booze on school nights” rule. We’ve also been trying out some alcohol-free distilled spirits, wine and beer. Although the beer we tried is not great, Grüvi’s non-alcoholic Dry Secco is actually quite good (and only 50 calories per serving)!

Within our community, we also realized that we could, in fact, support our local businesses by having a meal without alcohol. We also joined monthly neighborhood trash clean-up efforts on Saturday mornings. We’ve met several of our neighbors that we would not have known otherwise, filled our need to socialize and feel present, and connected to the community we live in.

Finally, we worked on a plan for interacting with our friends. We started inviting our friends to engage in appropriately-distanced activities instead of saying, “Hey, let’s meet up and day drink!” My husband started playing frisbee golf with a group of guys every weekend. I started inviting friends to dog park playdates and long, leisurely bike rides. Much to our relief, our friends have been receptive and have even confessed that they had found themselves in a similar pattern of overindulgence and wanted to break the cycle.

Although we have not given up alcohol completely, considering our options as #sobercurious has helped us be comfortable with saying, “I’m not drinking today,” and gave us confidence to broach the subject with our friends who were experiencing the same anxiety we were about socializing and drinking. It has also allowed us to consider new ways to interact with each other and our community.

For readers who might be considering sober curiosity, or even cutting back on your alcohol intake just one day a week, my advice is to remember to take it one day at a time. Don’t set limits that are unreasonable for you. Do talk to your family and friends about your plans. Don’t worry

if today did not work out the way you had hoped—tomorrow is another day to try again. Finally, remember that it’s always okay to reach out for guidance, whatever your circumstances. The State Bar’s Lawyer Assistance Program provides a broad range of services, including a 24-hour hotline (800-327-9631) and six prepaid counseling sessions (#UseYour6). You may call anytime to schedule a session or simply ask questions. ●



Megan Murren Rittle is a partner at the law firm of Smith, Welch, Webb and White, LLC, practicing in the education and general

civil litigation groups. She is an avid runner and swimmer, and her favorite food is sushi or ice cream. Rittle lives in Atlanta with her husband, Tom, and their fur babies.

Endnotes

1. “*Designing and Living an Integrated Life*,” Plamen Russev, *GEORGIA BAR JOURNAL*, Feb. 2021, p. 50.
2. “The Path to Lawyer Well-Being,” National Task Force on Lawyer Well-Being (2017), p. 9 <<https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>>.
3. “Breaking the Booze Habit, Even Briefly, Has Its Benefits,” April Fulton and Allison Aubrey, June 23, 2019 <<https://www.npr.org/sections/health-shots/2019/06/23/732876026/breaking-the-booze-habit-even-briefly-has-its-benefits>>.
4. *Id.*
5. See <<https://www.alcohol.org/awareness-month/>>.
6. “The Path to Lawyer Well-Being,” National Task Force on Lawyer Well-Being (2017), p. 7 <<https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>>.

The Amazing (and Amazingly Misused) Apostrophe

An apostrophe is a critical form of punctuation. To reduce mistakes in usage, keep their purposes and these common mistakes in mind.

BY DAVID HRICK AND KAREN J. SNEDDON

Punctuation helps writers convey their intended meaning. Used incorrectly, punctuation can create ambiguity and erode the writer's credibility with the reader. This installment of "Writing Matters" focuses on the apostrophe, a valuable form of punctuation that is sometimes overlooked and misused. We first summarize the three key purposes of the apostrophe and then share three common apostrophe mistakes made even by experienced writers.

The Apostrophe's Three Key Purposes

To Show Possession

Apostrophes are used to create possessives, to convey ownership. Usually, this means the apostrophe indicates ownership by a noun. A statute's purpose will inform a court's interpretation. An apostrophe and the letter "s" follow both the singular noun "statute" and the singular noun "court" to indicate ownership of the following word, "purpose" and "interpretation."

Plural nouns are no different: Writers' habits have changed as more and more

writers compose drafts exclusively on digital devices. In that sentence, the word "writers" is both plural, referring to more than one writer, and possessive, indicating their ownership of the word "habits." To indicate possession by a plural noun, the apostrophe is most often followed by the letter "s": The motion will focus on the children's best interests. Or an apostrophe follows a plural noun ending in "s," as in "writers' habits."

To Show Omitted Letter(s)

Apostrophes can be used to indicate omission of a letter or letters, including what are known as "contractions." Contractions are shortened forms of a word or group of words from which one or more letters have been omitted, such as "aren't" and "don't." The apostrophe takes the place of omitted letters.

Contractions are more commonly used in informal writing, so legal writers typically limit their use to emails. But, when a contraction is used, the apostrophe must be placed properly. Consider this sentence: I've often said that I don't like legal writing; I love legal writing! The word "I've" is the shortened form of the





The speed of typing and the pace of handwriting can sometimes cause misplacement of an apostrophe in an initial draft. Proper proofreading is the solution ...

words “I have.” The word “don’t” is the shortened form of the group of words “do not.” (Interestingly, and with many contractions, not only is a letter omitted, but so is a space, and so that contraction converts two words into one shortened word with an apostrophe.) This purpose for apostrophes should be familiar to y’all, the properly punctuated form of “you all.” (We’ll leave it to you to decide if “all y’all” is the proper plural form!)

To Clarify Meaning

In addition to the two more common purposes described above, apostrophes can be used to make certain text easier to understand. Consider this sentence: Legal writers are often told to mind their p’s and q’s. The apostrophes do not indicate possession or a contraction. Instead, they increase the readability of the sentence. Look at the sentence without the apostrophes: Legal writers are often told to mind their ps and qs. Did you have to re-read the sentence? The apostrophes help.

For this purpose, an alternative tool to apostrophes is capitalization. So, instead of apostrophes, the sentence could read:

Legal writers are often told to mind their Ps and Qs.

Three Common Apostrophe Mistakes

Proofreading Glitches

The speed of typing and the pace of handwriting can sometimes cause misplacement of an apostrophe in an initial draft. Proper proofreading is the solution, but proofreading for apostrophes can be difficult for three reasons.

First, unlike commas, apostrophes create in a reader no noticeable sound—or pause. So, the common proofreading strategy of reading a text out loud is unlikely to reveal the incorrect placement of an apostrophe: The word “parents” sounds just like the word “parent’s.” Second, apostrophes hang at the top of the line of text. When reading, our eyes not only do not necessarily read every character on the page, but our eyes often stay in the middle of the line of text. Apostrophes (and quotation marks) are thus outside of our typical line of sight when proofreading. Third, grammar check,

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which is a helpful proofreading tool, can sometimes misread the presence or absence of apostrophes or share incorrect suggested “corrections.”

Common Apostrophe Problems

There are some common problems. One is mistaking “its” for “it’s.” The word “its” refers to the possessive pronoun. Legal writing has its challenges. In this sentence, “its” is possessive. The word “it’s” is just one of several possessive pronouns that don’t use an apostrophe. Other examples include ours, yours, his, hers and theirs.

In contrast to the possessive conveyed with use of the word “its,” the word “it’s” refers to the contractions of the words “it is” or “it has.” It’s challenging to proofread a document late at night. “It’s” is a contraction that always means “it is” or “it has,” as in “it’s been a long year.”¹

A similar mistake involves “whose” and “who’s.” But the same rule for “its” versus “it’s” applies to the words “whose” and “who’s.” The word “whose” refers to possession; the word “who’s” refers to the contraction of the words “who is” or “who has.”

Another common mistake arises from the fact that hundreds of common English plural nouns do not end in the letter “s.”² So it’s “the children’s best interests,” not “the childrens’ best interests.”

Changing Conventions

Different conventions about the use of apostrophes have developed over time. Some remain in style guides and manuals. Some have been abandoned or updated. For example, apostrophes are generally not used for decades: The 1990s had the best music of the twentieth century. In the sentence, 1990 is neither possessive nor missing letters. Yet, some publications, like *The New York Times*, still use an apostrophe, and so would use “1990’s.”

Another example of differing conventions involves a singular noun that ends

with the letter “s.” You see both uses in these two sentences:

- Chris’s neighbors think the world of him.
- Chris’ neighbors think the world of him.

Where the conventions diverge or are changing, you have a choice. The key, however, to clear writing that does not distract a reader is to be consistent within each document.

Conclusion

An apostrophe is a critical form of punctuation. Mistakes in usage can be hard to detect but, at the same time, glaring to a careful reader. To reduce them, keep their purposes and these common mistakes in mind. ●



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The Legal Writing Program at Mercer continues to be recognized as one of the nation’s top legal writing programs.



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Endnotes

1. Related to this use of contractions is the mistaken use of the phrase “would of” for “would’ve” or “would have” as in “I would have busted a vein if the students keep writing ‘would of.’”
2. <<https://www.quora.com/Are-there-any-plural-nouns-in-English-that-dont-end-in-s-or-es>>.



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Honestly

Join with me in reflecting on and considering how the promises we made in the Attorney Oath of Admission should guide our professional and personal conduct as Georgia lawyers who act with professionalism and—honestly.

BY KARLISE Y. GRIER

It did not occur to me to think much about my attorney oath of admission until recently, after I read an article in the *Daily Report* that talked about a Texas judge who led attorneys in retaking their oath of office.¹ It prompted me to look for and more carefully consider the wording of the oath of admission I took when I became a Georgia lawyer. In doing some research on the attorney oath of admission, I learned that the oath I took, and the oath that is currently in use, were created as part of Georgia's professionalism movement.

On March 31, 1988, Chief Justice Thomas O. Marshall, along with State Bar of Georgia President A. James Elliott, gathered 120 prominent judges and lawyers from around the state to attend a "Consultation on Professionalism and The Practice of Law" hosted by Emory University's President James T. Laney at Emory's Houston Mill House. At the conclusion of the consultation, Hon. Griffin B. Bell, who had served as the 72nd attorney general of the United States,² made closing remarks that were captured in a transcript of the consultation.³ In speaking about the attor-

ney oath of admission, Bell said: "[W]hen we were admitted to the bar, we all made certain promises through the oath we took. We would do well, I think, to recall the original oath for attorneys and solicitors in the State of Georgia. That oath, taken from an English statute dated 1729 and used in our state until 1823, required that both attorneys and solicitors swear 'to truly and honestly demean themselves.' Many years later the wording of the oath was changed to require that lawyers 'justly and uprightly demean themselves.' Perhaps we should have stayed with the old oath. The words 'truly and honestly' just seem to be stronger. And therefore, it might be a good idea to readopt the old oath as a part of our new emphasis on professionalism."⁴ The Supreme Court of Georgia did readopt some of the wording of the 1729 oath, and in particular, the words "that I will truly and honestly demean myself. ..."

The oath used after the consultation until 2002 read as follows: "I, _____, swear that I will truly and honestly, justly, and uprightly demean myself, according to the laws, as an attorney, counselor, and solicitor, and that I

will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God."⁵

This is the attorney oath of admission that I would have taken in July 1992. Ten years later, in 2002, the oath was again revised to make the wording more relevant to the current practice of law, while retaining the original language calling for lawyers to "truly and honestly" conduct themselves.⁶ The current oath, which was approved by the Supreme Court of Georgia on April 22, 2002, and which remains in place today reads: "I, _____, swear that I will truly and honestly, justly and uprightly conduct myself as a member of this learned profession and in accordance with the Georgia Rules of Professional Conduct, as an attorney and counselor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God."⁷

In 1988, why did Griffin Bell believe that it might be a good idea to readopt the oath dating back to 1729, which contained the words "truly and honestly" as a part of Georgia's new emphasis on professional-





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ism? I believe because he understood that people can be *dishonest*, unprincipled, untrustworthy, unfair and uncaring without breaking the law or the code.⁸ Truly *professional* people measure their conduct not by rules but by basic moral principles such as honesty, integrity and fairness. In addition, professionalism challenges us to consider our conduct in all aspects of our lives, not just our professional lives.⁹ Although it has been 33 years since Judge Bell encouraged the attendees of Georgia's first consultation to remember the promises each attorney made through the oath he or she took, Judge Bell's message is equally important today. So, I ask you to join with me in reflecting on and considering how the promises we made in the Attorney Oath of Admission should guide our professional and personal conduct as Georgia lawyers who act with professionalism and—honestly. ●



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Endnotes

1. Angela Morris, *Judge Renews Vow to Uphold Law After Capitol Hill Riots, Asks Lawyers to Do the Same*, *Law.com*, Texas Lawyer, <<https://www.law.com/texaslawyer/2021/01/08/judge-renews-vow-to-uphold-law-after-capitol-hill-riots-asks-lawyers-to-do-the-same/>>.
2. Bell served as the United States Attorney General from January 26, 1977, until August 16, 1979.
3. See Chief Justice's Commission on Professionalism, *Proceedings of A Consultation on Professionalism and the Practice of Law* (March 31, 1988) at 38 – 47, <<http://jcpga.org/wp-content/uploads/2021/02/1988ConsultationOnProf.pdf>>.
4. See *Id.* at 47. See also Carol Rice Andrews, *The Lawyers Oath Both Ancient and Modern*, 22 *Geo. J. Legal Ethics* 3, 14 and 22 (2009).
5. See Richard P. Kessler Jr., *Bobby Jones, Sept. 11 and Keeping the Lawyer's Oath*, *Georgia Bar Journal*, April 2002, at 61.
6. See *Id.* at 63.
7. Supreme Court of Georgia, *Attorney Oath* (April 22, 2002) <<https://www.gasupreme.us/rules/amendments-to-rules/attorney-oath/>>.
8. See, e.g., Ga. Rules of Prof'l Conduct, Rule 4.1 and Comments 1 and 2. See

- also Art Hinshaw and Jess K. Alberts, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics*, 16 *HARV. NEGOTIATION L. REV.* 95 (2011) (concluding that the American Bar Association's Model Rule 4.1, which is similar to Rule 4.1 of Georgia's Rules of Professional Conduct, legitimizes some deceitful negotiation techniques and only prohibits fraudulent misrepresentations about material matters).
9. See *A Lawyer's Creed and the Aspirational Statement on Professionalism* at Lines 48, 64, 155, 157, <<http://jcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf>>. (As a lawyer, I will aspire to preserve the dignity and the integrity of our profession by my conduct; as to the public and our systems of justice, I will aspire to consider the effect of my conduct on the image of our systems of justice.)

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.

ROBERT W. ASHMORE
Atlanta, Georgia
University of Virginia
School of Law (1969)
Admitted 1971
Died January 2021

NICHOLAS E. BAKATSAS
Marietta, Georgia
Atlanta's John Marshall
Law School (1962)
Admitted 1969
Died February 2021

JILES MCNATT BARFIELD
Vidalia, Georgia
Mercer University Walter
F. George School of Law
(1980)
Admitted 1980
Died January 2021

TERRELL W. BENTON JR.
Athens, Georgia
University of Georgia
School of Law (1963)
Admitted 1962
Died January 2021

MARK ERICH BIERNATH
Atlanta, Georgia
Georgia State University
College of Law (2001)
Admitted 2001
Died January 2021

ROBERT E. BRIZENDINE
Smyrna, Georgia
Vanderbilt University Law
School (1971)
Admitted 1971
Died November 2020

LAURA KIM BUFORD
Hazlehurst, Georgia
Nova Southeastern
University Shepard Broad
College of Law (1999)
Admitted 2002
Died January 2021

JAMES C. CARR
Atlanta, Georgia
Emory University School
of Law (1966)
Admitted 1966
Died January 2021

SIDNEY J. CHERRY
Marietta, Georgia
University of North Carolina
School of Law (1970)
Admitted 1971
Died October 2020

GEORGE L. COHEN
Hilton Head Island,
South Carolina
University of Virginia
School of Law (1956)
Admitted 1957
Died February 2021

BOBBY LEE COOK
Summerville, Georgia
Vanderbilt University
Law School (1948)
Admitted 1949
Died February 2021

JAMES MONROE DONLEY
Macon, Georgia
Pepperdine University
School of Law (1995)
Admitted 1997
Died January 2021

JAMES B. DREW JR.
Chamblee, Georgia
Emory University School
of Law (1959)
Admitted 1964
Died December 2020

GARTH KLEBER DUNKLIN
Charlotte, North Carolina
University of North
Carolina School of Law
(1988)
Admitted 2006
Died January 2021

STANLEY R. DURDEN
Athens, Georgia
University of Georgia
School of Law (1972)
Admitted 1972
Died February 2021

WILLIAM JEFFERSON EAST
Meridian, Mississippi
University of Mississippi
School of Law (1968)
Admitted 1989
Died January 2021

WAYNE T. ELLIOTT
Blue Ridge, Georgia
University of Georgia
School of Law (1968)
Admitted 1968
Died December 2020

ROBERT W. GALLOWAY
Pooler, Georgia
Atlanta's John Marshall
Law School (1973)
Admitted 1978
Died March 2021

JAMES F. GINGREY JR.
Atlanta, Georgia
Emory University School
of Law (1971)
Admitted 1972
Died March 2021

HARRY P. HALL JR.
Canton, Georgia
Emory University School
of Law (1956)
Admitted 1956
Died January 2021

FRED THURMAN HAMLET
Greensboro, North
Carolina
Harvard Law School
(1973)
Admitted 1973
Died February 2021

SPARTICUS D. HEYWARD
Marietta, Georgia
Thurgood Marshall
School of Law, Texas
Southern University
(2002)
Admitted 2002
Died February 2021

GLOWER W. JONES
Atlanta, Georgia
Emory University School
of Law (1963)
Admitted 1962
Died January 2021

PATRICIA K. KEESLER
Atlanta, Georgia
Emory University School
of Law (1980)
Admitted 1980
Died January 2021

JAMES P. KELLY
Atlanta, Georgia
Harvard Law School (1975)
Admitted 1975
Died February 2021

HERBERT S. KOLODKIN
Atlanta, Georgia
Woodrow Wilson College
of Law (1966)
Admitted 1966
Died January 2021

MARK EARLE LAYNG
Lawrenceville, Georgia
Atlanta Law School (1980)
Admitted 1980
Died December 2020

JAMES E. MCALEER JR.
Savannah, Georgia
Gilbert Johnson Law
School (1953)
Admitted 1953
Died February 2021

**WILLIAM ROSS
MCCONNELL**
Cornelia, Georgia
Atlanta Law School (1982)
Admitted 1982
Died January 2021

OBITUARY

THOMAS J. MORSE

Thomasville, Georgia
Atlanta's John Marshall
Law School (1971)
Admitted 1971
Died January 2021

MARC L. PETERZELL

Atlanta, Georgia
Tulane University School
of Law (1966)
Admitted 1970
Died January 2021

LEE R. REDMOND JR.

Columbus, Georgia
Washington and Lee
University School of Law
(1949)
Admitted 1951
Died February 2021

PHILLIP BOND SARTAIN

Gainesville, Georgia
University of Georgia
School of Law (1986)
Admitted 1986
Died December 2020

R. PERRY SENTELL JR.

Athens, Georgia
Harvard Law School
(1958)
Admitted 1957
Died January 2021

CHARLES M. SHAFFER JR.

Atlanta, Georgia
University of North
Carolina School of Law
(1967)
Admitted 1968
Died March 2021

JEROME ROBERT SMITH

Wilmington, North
Carolina
Emory University School
of Law (1977)
Admitted 1977
Died January 2021

ROBIN MELISSA SMITH

Saint Simons Island,
Georgia
University of Georgia
School of Law (1985)
Admitted 1986
Died November 2020

TERRANCE C. SULLIVAN

Atlanta, Georgia
University of Virginia
School of Law (1975)
Admitted 1975
Died January 2021

ROBERT L. THOMPSON

Atlanta, Georgia
University of North
Carolina School of Law
(1966)
Admitted 1968
Died January 2021

WILLIAM PAUL WALKER

Roswell, Georgia
Woodrow Wilson College
of Law (1952)
Admitted 1952
Died February 2021

WILLIAM R. WHITEHURST

Winston-Salem, North
Carolina
University of North
Carolina School of Law
(1982)
Admitted 1982
Died February 2021

JOSEPH WILEY JR.

Columbus, Georgia
Cumberland School of
Law, Samford University
(1989)
Admitted 1990
Died January 2021



Bobby Lee Cook of Cook & Connelly LLC in Summerville, one of America's best-known trial lawyers, died at his mountain home in Cloudland, Georgia, on Feb. 19, 2021, at the age of 94.

Born in Chattoogaville, a community outside the town of Lyerly, Georgia, in 1927, Cook graduated from the University of Alabama and earned his law degree from Vanderbilt University Law School. He was admitted to the State Bar of Georgia in 1949. For more than seven decades, Cook focused the law practice he started in Summerville, Cook & Connelly LLC, in the areas of criminal law, civil litigation and municipal law.

His record of success in the courtroom attracted clients from throughout Georgia and high-profile out-of-state and international cases as well. Achieving more than 150 acquittals for his clients accused of murder, his career is believed to have inspired the television show "Matlock," and one of his more colorful cases in Savannah is chronicled in the book and motion picture "Midnight in the Garden of Good and Evil."

A professional leader, Cook chaired the Georgia Criminal Justice Committee of the State Bar of Georgia in 1979-80, served as vice president of the Georgia Association of Criminal Defense Lawyers since 1979 and was a professor of criminal law with the National College of Criminal Defense in 1979-80.

He was recognized with lifetime achievement awards by both the National and Georgia Associations of Criminal Defense Lawyers; received the Georgia State University College of Law's 2017 Ben F. Johnson Jr. Public Service Award, GreenLaw's Lifetime Achievement Award and the Small Town Lawyer Made Good Award (presented by the State Bar of Washington); and was inducted into the American Trial Lawyers Hall of Fame, among numerous other honors.

Outside the practice of law, Cook served in the Georgia General Assembly and was a Navy veteran of World War II. ●

If You Did What I Asked in the First Place

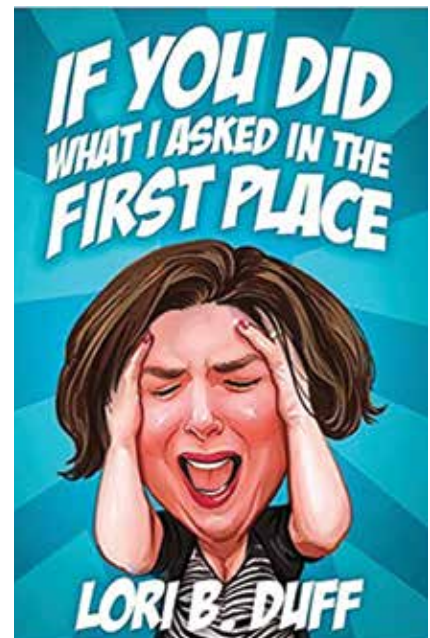
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222 pages, Deeds Publishing

REVIEWED BY ROXANN SHERRI SMITHERS

Remember the good old days of March 2020? The prospect of a few weeks to a month of respite from the rat race of “normal” life was the begrudging silver lining in the cloud of a pandemic-induced shutdown. Many of us movers and shakers mused about the hobbies we would take up and the skills we would acquire. Soon the reality of the pandemic, politics and social unrest tarnished that silver lining. This was the climate in which I started reading Lori B. Duff’s “If You Did What I Asked in the First Place” in the fall of 2020. Duff’s breezy missive arrived just in the nick of time. “If You Did ...” is a collection of essays, comical confessions and a few poems about her life as a woman of a certain age, Georgia attorney and judge, mother, wife and author. The vignettes are grouped together in six sections: If You Did What I Asked in the First Place; Out of My Element; This Is What I’m Asking For; First World Problems; Time for a Snack; and Sometimes You Do What I Ask.

Duff, an attorney at Jones and Duff in Monroe and presiding judge in the Municipal Court of Loganville, is simultane-

ously honest and vulnerable about her quirks and insecurities—which is the first sign of a self-acceptance and confidence that is well worked for. She writes about how her recent obsession with all things Wonder Woman, a curious-fitting onesie and her teenage son taught her a lesson about shame and self-confidence. I am sure every parent can relate to Duff’s rundown of the Top 10 types of parents you will encounter at any PTO (parent teacher organization) meeting. Duff does not exempt herself the analysis. She dubs herself Last-Minute Lisa. What woman will not sympathize with Duff’s diatribe about the utter lack of utility of the pockets in women’s clothing? From mini pockets to faux pockets, it can be enough to break you on a bad day. Duff’s essays about the last poignant moments with her growing teenagers will definitely speak to parents who are cherishing the extra time to connect with their own teenagers and young adults finishing high school or starting college in a COVID-19 lockdown—the lockdown that had them at home for family Tik Tok challenges, Netflix binging and bake-offs with their parents.



“If You Did ...” is a collection of essays, comical confessions and a few poems about Duff’s life as a woman of a certain age, attorney, mother, wife and author.

Although the title is outwardly focused, “If You Did ...” is primarily an inward survey of Duff’s acceptance and celebration of the collection of quirks, physical ailments and foibles that make her, her. There is a certain calm in the eye of the storm that comes with knowing the good, bad and ugly of yourself, and being just fine with it. That includes a penchant for making up words, avoiding the doctor at all costs, an unredeemable taste for grits and Vegemite, and a pre-planned funeral. Duff is her full self in the uniquely odd glory for which we should all strive. We get a panoramic view of how Duff sees herself, her place in her family and her place in the world. In turn, this approach leaves her free to appreciate the sweet ridiculousness of life.

With a run time of more than two hundred pages, “If You Did ...” teeters on the verge of too much navel gazing. However, the good natured tone and relatable observations pull it back from the ledge. It provided a delightful mental break from the heavy realities of the concerns with which we have all grappled during lockdown. Plus, if there was ever a time for a story about a grown-up in a Wonder Woman onesie, now is the time! ●



Roxann Sherri Smithers is a founder and managing member of Smithers + Ume-Nwagbo, LLC. Smithers’ practice includes

commercial litigation, premise liability, construction, contract review/negotiation and general counsel services in various state/federal jurisdictions. She is also a registered mediator, focusing on business disputes.

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Spring Into ICLE Livestreams

The pandemic grounded ICLE livestreams temporarily. But just like spring, ICLE livestreams have returned with fresh content for your learning and viewing pleasure.

BY MICHELLE E. WEST

There is nothing like spring ... being enamored by the crisp morning air, the trees and flowers bringing forth new blooms, and the varying shades of natural color everywhere. Spring signals new beginnings, renewal and rebirth. The pandemic grounded us temporarily. But just like spring, ICLE livestreams have returned with fresh content for your learning and viewing pleasure.

Livestream programming resumed in April, so refresh this spring with engaging real-time content from the comfort of your home or office. Use this opportunity to correspond directly with the presenters and pose your burning questions that I am sure you will have given our new content, including:

- Real Property Law Institute | May 13 | www.gabar.org/real-property-institute
- Workers' Compensation for the General Practitioner | May 21 | www.gabar.org/workers-comp-gp
- Restrictive Covenants and Trade Secrets | June 17 | www.gabar.org/restrictivecovenants
- Social Security Law Institute | July 23 | www.gabar.org/socialsecurity

Stay tuned for additional livestreams throughout the spring and summer. Now

that May is here, remember two important causes: Mental Health Awareness and Well-being Week in Law (WWIL) formerly known as Lawyer Well-Being Week. WWIL promotes inclusivity, awareness and engagement in well-being across the profession. WWIL occurs annually during the first week of May, which this year was May 3-7. However, I encourage you to incorporate wellness throughout the year. It is important to align your life with your values.

If you are looking for content that coincides with the occasion and supports your wellness journey, then check out our on-demand webcast options, Living Well to Practice Well, www.gabar.org/practice-well, and Attorney First Aid Kit, www.gabar.org/attorneyfirstaidkit. For further information and an array of resources on well-being, visit the State Bar's wellness page at www.lawyerslivingwell.org, and the Institute for Well-Being in Law at www.lawyerwellbeing.net.

As you look for ways to fulfill CLE requirements while continuing to practice social distancing, visit the State Bar's website for a complete list of ICLE livestreams and webcasts. Fresh and timely webcast content is also periodically added to ICLE's online program offerings.

If you were admitted during the spring, please look for your \$25 Bar anniversary discount email. You can take advantage of this promotion when you register for an ICLE webcast during your Bar anniversary month. As outlined in the Supreme Court of Georgia's order dated Dec. 3, 2020, Bar members may continue to fulfill their CLE requirements online through the extended grace period of May 31, 2021. Remember, ICLE's full library of webcast programs can be found by visiting www.gabar.org/webcasts.

Please continue to be safe. We will continue to reassess the evolving health situation and provide future updates regarding new programming. ICLE values the volunteer efforts of all chairs and speakers, and appreciates your continued understanding as we work through our current reality. Protecting the health and safety of our speakers, employees and members continues to be our paramount concern.

Questions? Please contact ICLE at icle@gabar.org. ●



Michelle E. West

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State Bar of Georgia

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ICLE WEBCASTS

Below is a list of webcasts that correspond with programs ICLE typically administers in April and May. You can view these titles online now, along with all available webcasts, at www.gabar.org/webcasts.


- ▶ Administrative Law and State Government Law for Attorneys
- ▶ ADR In The Workers' Compensation Arena
- ▶ ADR Institute and 2019 Neutrals' Conference
- ▶ Building Winning Appeal Issues Into Social Security Disability Cases
- ▶ Civil Prosecutions of DUI & Dram Shop in Georgia
- ▶ Commercial Real Estate
- ▶ Construction Law For The General Practitioner
- ▶ Defense of a Personal Injury Case
- ▶ Family Law Seminar
- ▶ Georgia Auto Insurance Claims Law
- ▶ Georgia DUI Update
- ▶ Handling Big Cases
- ▶ Jury Trials in Divorce
- ▶ Not Your Everyday Custody Case
- ▶ Nuts and Bolts of Family Law
- ▶ Personal Injury Law Clinics
- ▶ Professionalism, Ethics and Malpractice
- ▶ Real Property Foreclosure
- ▶ Residential Real Estate
- ▶ Secrets to a Successful Plaintiff's Personal Injury Practice
- ▶ Social Security Law Institute
- ▶ Title Standards
- ▶ VA Accreditation

#STAYWELL

Proposed Amendment to the Uniform Rules for Superior Court


At its business meeting on Jan. 21, 2021, the Council of Superior Court Judges approved a proposed amendment to Uniform Superior Court Rule 39. A copy of the proposed amendment may be found at the Council's website at <http://georgiasuperiorcourts.org>.

Should you have any comments on the proposed amendment, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, Georgia 30334, or email them to uniformrules@cscj.org. To be considered, comments must be received by Friday, July 16, 2021.



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The State Bar of Georgia's suicide awareness campaign has a dual purpose, directed toward lawyers and judges who are suffering from anxiety and depression and may be at risk for suicide, as well as all Bar members, who need to recognize the severity of the problem and be able to identify warning signs among our colleagues.

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Learn more at gabar.org/suicideawareness.



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