

June 2020

Volume 25, Number 6

GEORGIA BAR
JOURNAL

From the President:
Addressing COVID-19
Impact on Civil Legal
Services

Transitioning into
Practicing Law Virtually

Member Benefits and
the COVID-19 Pandemic

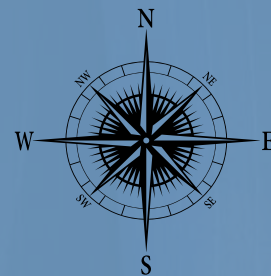
2020 Fiction Competition
Winner: The Deal

THE LEGAL

**An Overview of Ultimate
Issue Evidence**

A professional portrait of Carl R. Varnedoe, a man with a beard and mustache, wearing a dark suit, white shirt, and a patterned tie. He is smiling slightly and looking towards the camera. The background is a blurred outdoor setting with trees and a building.

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

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The June Issue

When you last heard from me, we were just a couple of weeks into the COVID-19 pandemic, and there was so much anxiety and uncertainty everywhere. Unfortunately, two months later, the situation continues to stretch, and plenty of anxiety and uncertainty remain. Disappointments seem to be piling up in my family: my youngest denied the Pre-K graduation ceremony she has been looking forward to for the last three years; our summer trip to visit family and friends cancelled; other family members are out of work. Still, my family has much to be thankful for, our health most of all, and there have been plenty of happy moments had and fun memories made. Yesterday, I took a break while working from home to paint my daughters' nails. Between them, they chose 12 different colors, because why not? My vegetable garden this year is shaping up amazingly well. I've even had a little time to start jogging again, at least occasionally.

Professionally speaking, I am proud of the work going on in the legal community. Lawyers, judges and those in support roles have been so creative and flexible in accomplishing goals and objectives, and are doing their best to promote access to justice for those most in need in these unprecedented times. Legal professionals have risen to the challenge to help others. Look no further than the amazing outcome of the Legal

Food Frenzy for proof. But, as you all know, there are so many ways this public health crisis has impacted our communities, and so much that remains to be done. As Darrell Sutton points out in this month's President's Page, civil legal assistance is and will continue to be a growing need for Georgians impacted by COVID-19. I hope Darrell's words inspire everyone to help with this critical need.

We have some other great articles to inform and entertain our readers as well. This edition's legal article, "An Overview of Ultimate Issue Evidence," by Brett M. Adams, provides up-to-date information about the state of the law related to ultimate issue evidence since the overhaul of Georgia's evidence code in 2013. Also in this issue, I am very happy to share with our readers this year's Fiction Contest winner, "The Deal" by Joe Cargile. We had a number of fantastic entries for the *Bar Journal's* Annual Fiction Contest this year, and choosing a winner was a difficult process. You are sure to be impressed with "The Deal."

We on the Editorial Board and the amazing staff at the State Bar of Georgia have put a little of our own creativity and flexibility to use to bring you this edition of the *Georgia Bar Journal*. The process of getting this publication to print has been a little different, but our content is as great as ever, and I thank you for reading. ●



KRISTIN POLAND

Editor-in-Chief, *Georgia Bar Journal*
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Addressing COVID-19 Impact on Civil Legal Services



DARRELL SUTTON

President
State Bar of Georgia
president@gabar.org

This op-ed was previously published on April 23, 2020, in the Daily Report. This reprint has been updated with current information.

BY DARRELL SUTTON, RICK RUFOLO, STEVE GOTTLIEB AND PAUL PAINTER

The COVID-19 pandemic continues to take an unprecedented public health and economic toll on our state. Most of the conditions are known all too well: the deaths of more than one thousand of our fellow Georgians and illness to tens of thousands of others, devastating families and straining the capacity of our hospitals and other health care providers. With 1.8 million Georgia workers having filed for unemployment and state government facing a budget shortfall of at least \$1 billion, the impact on the economy is like nothing we've seen in our lifetimes.

A less obvious result of the pandemic—because, understandably, the public health and economic crises have been the focus—is its dramatic effect on Georgia's justice system. In March, Chief Justice Harold Melton declared a statewide judicial emergency, essentially grinding the wheels of justice to a temporary halt, except for matters critical or essential to protecting the "health, safety and liberty of individuals."

That declaration has twice now been extended, most recently through June 12 and can be expected to remain in effect as long as other areas of government are closed. The delay of most in-person court

sessions is a necessary action to protect the health of citizens who are parties in those proceedings, as well as attorneys, judges, court staff and jurors. But it also substantially delays the delivery of justice, especially the civil legal needs of low-income Georgians and others suffering the economic fallout of COVID-19.

Readers of this publication know well that unlike indigent defendants in criminal cases, citizens facing challenges in the civil justice system are not guaranteed representation in court. Those who cannot afford to hire their own lawyer must rely on legal aid organizations that are only partly funded by the government, or attorneys who volunteer to take their cases on a free or reduced-fee basis.

For Georgians, the Atlanta Legal Aid Society offers free civil legal assistance to low-income people in Fulton, DeKalb, Cobb, Gwinnett and Clayton counties. For Georgians in the state's other 154 counties, which are covered by only 30 percent of the state's attorneys, the Georgia Legal Services Program works to close the civil justice gap for low-income and senior-aged populations.

During normal times, these agencies each take on thousands of cases every

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our State Bar of Georgia officers, "What are you grateful for now that you took for granted before the COVID-19 pandemic?"

month. New and unanticipated civil legal challenges brought on by COVID-19—including unemployment, housing and domestic abuse issues, to name a few—have caused the demand for legal assistance to swell, and that will only continue in the weeks and months ahead.

Like the rest of the legal profession and much of the business world, Atlanta Legal Aid and Georgia Legal Services attorneys and staff have been working remotely during the pandemic and for the most part have been serving clients by phone and email. They need continued public support and help from the rest of us in Georgia's legal community like never before.

To address the situation, a task force among the State Bar of Georgia, Atlanta Legal Aid Society and Georgia Legal Services Program was formed to address issues related to the delivery of civil legal services for low-income Georgians that have arisen and continue to arise as a result of this pandemic. A special committee chaired by Savannah attorney Paul Painter is fulfilling the State Bar's role in the task force. Members of the committee include Tina Battle, Hon. Josh Bell, Audrey B. Bergeson, Leslie Cadle, Sarah Cipperly, Melissa Cruthirds, Will Davis, Jana J. Edmondson-Cooper,



DARRELL SUTTON

President

Good health, especially knowing the health of so many has been compromised. Friends, family and loved ones, from whom I am now distanced. Things I once considered routine that are now significantly limited: handshakes, hugs and a face-to-face conversation. An acknowledgement that things are hard and the hope that allows us to see beyond difficulty.



DAWN M. JONES

President-Elect

I am more grateful than ever for the ability to gather with family and friends whenever possible, whether it's cooking out, grabbing dinner at a restaurant or going to the movies. Also, all who know me well know I am a "hugger," so sheltering in place has been especially challenging.



ELIZABETH L. FITE

Treasurer

Absolutely everything whether I took it for granted or not, but I'll keep it light and say YouTube. During the past two months, I've used it to find new workouts, figure out how to fix or improve items on my seemingly never-ending list of to-dos around the house and troubleshoot an issue with my docking station at the office that even impressed my IT guy.



SARAH B. "SALLY" AKINS

Secretary

Handshakes, hugs, warm greetings and the luxury of visiting my 87-year-old mother whenever I could.



HON. KENNETH B. HODGES III

Immediate Past President

Having lost friends to the virus, I wish it had never surfaced. It's a stark reminder of how fragile life is. Sheltering in place is not easy, but the silver lining is time with family. I've spent much more time at home and not on the road to/from Atlanta.

Attorneys are encouraged to utilize this Delivery of Legal Services During COVID-19 Pandemic Committee Issues Reporting Form, located at www.gabar.org/deliverylegalservices.

Delivery of Legal Services During COVID-19 Pandemic

Committee Issue Reporting Form

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First Name Last Name

Bar Number
Georgia Bar No.

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To what area(s) does this issue relate: Legal Services
 Legal Profession
 Legal System
 Other

To what practice area(s) does the issue apply (or is it general):

To what geographic area does the issue apply (if known):

Briefly state issue (one sentence): *

What is the potential harm? * Physical Harm/Basic Needs (housing, food, etc.)
 Significant Financial Harm/Basic Civil Rights
 Moderate Financial Harm/Other Legal Rights
 Inconvenience

What is the current/future scope of the problems? * Currently Widespread
 Currently Moderate Spread/Future Widespread
 Currently Occasional/Future Moderate Spread
 Currently Rare/Occasional in the Future

Additional Details

Proposed Solution(s) or Method to Solve the Issue

Lynn Garson, Steve Gottlieb, Shannon Hinson, Jim Hogan, Tracy Lindsey, Jack Long, Mike Monahan, Sarah Morris, Rick Rufolo, Molly Sutter, Martin Valbuena, Executive Committee Liaison Nicki Vaughan and Staff Liaison Natalie Kelly.

The committee has reached out to lawyers across the state to identify these issues. (A sample of the form is to the left and can be completed and submitted at www.gabar.org/deliverylegalservices.) The task force is coordinating with the appropriate judicial branch authorities, local and specialty bar associations, and existing State Bar committees, sections and programs to quickly address and develop solutions to them.

But more is—and will be—needed. The task force will work with the Governor’s Office and General Assembly for continued public support of civil legal services to enable an effective response to the ongoing pandemic and period of recovery ahead.

Contributions from private funders are just as important—if not more so. As this article is going to press, Georgia’s lawyers have the annual opportunity to contribute to Georgia Legal Services Program via their license fee statements. And lawyers and laypeople alike can contribute to both Atlanta Legal Aid and Georgia Legal Services via their websites at www.atlantalegalaid.org and www.glsp.org, respectively.

Substantial and sustained support for civil legal aid is essential to our state’s response to COVID-19. We already see the need, and we know so much more is coming. Increased support from the public and private sector is the only way Georgia’s legal services providers can meet this need and help guide Georgians through their recovery. ●

- *Darrell Sutton is president of the State Bar of Georgia.*
- *Rick Rufolo is executive director of the Georgia Legal Services Program.*
- *Steve Gottlieb is executive director of the Atlanta Legal Aid Society.*
- *Paul Painter is chair of the State Bar of Georgia COVID-19 Response Committee.*

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Georgia Legal Services Program is a nonprofit law firm that provides civil legal services for low income persons, creating equal access to justice and opportunities out of poverty. Suggested contributions are \$350 per year; \$100 for younger lawyers.

Or, you can donate at www.glspl.org (click on "Get Involved").

GLSP's civil legal services are offered free of charge for an estimated 2.5 million people in poverty who reside in 154 counties outside metro Atlanta.

GLSP is vital to our state's front-line response to COVID-19's impact on the health, economic stability, and safety of 68% of Georgia's poverty population. Please give generously. Thank you!

The background image shows a portion of a Georgia State Bar license application form. It includes sections for 'Legislative & Public Education Fund Contribution', 'Section Dues', 'GLSP Contribution', and 'Litho Fee'. A 'PAYMENT SCHEDULE' table is visible, listing fees for 2020-21 and 2021-22. A 'NOTICE OF DESIGNATED ATTORNEY' section is also present at the bottom right of the form.



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The Importance of Quality Mentorship



WILL DAVIS

YLD President
State Bar of Georgia
will@nsfamilylawfirm.com

As a young lawyer, I can attest that one of the most valuable services provided by the State Bar of Georgia, as well as some Bar sections and local and specialty bar associations, is a strong mentorship program.

Whether or not a recent law school graduate realizes the benefits of a career mentor relationship on the day of his or her admission to the Bar, the importance of having an experienced attorney provide quality professional guidance in a mentor relationship will become apparent sooner rather than later.

According to a Special Counsel blog article published in 2017, “While your legal education and internships helped develop the necessary technical skills for consistent career advancement and support, it’s important to have a career mentor.

Mentors are more senior lawyers with whom you will form a trust-based professional relationship that facilitates your career growth. They’re committed to helping you make all the right moves during each phase of your career. A mentor helps you successfully integrate into a new role and assists you with cultivating a strong professional network.”

The blog’s author continues, “Working regularly with your mentor also helps you navigate the legal profession in your area, as well as enhance your professionalism, self-confidence and legal skills. There’s far more to your professional success than be-

ing an excellent legal practitioner. There are many practical and professional ‘insider’ strategies you need that law school didn’t teach. They can show you how to confront the inevitable ethical situations or conduct crisis management to avoid career-derailing mistakes. For example, a mentor can help you answer tricky legal questions that you may not feel comfortable asking your direct supervisor. You also get support dealing with demanding clients or navigating tricky intracompany relationships.”

Wendy R.S. O’Connor, writing for *The Legal Intelligencer*, describes her first experience as a mentee. “My boss decided that I was going to get the case ready for trial and second chair it with him. In the space of four months, I learned how to develop a theory of the case, identify the evidence that supported it, draft motions in limine, select and prepare exhibits for trial, pick a jury, argue motions, prepare experts, cross-examine witnesses and—perhaps the hardest part of all—wait for a verdict. What made this experience so transformative was that someone who himself had been thrust into a stressful and difficult situation took the time to teach a young lawyer how to be a lawyer. That included the terrifying, but ultimately exhilarating, experience of actually opening my mouth in a courtroom, before a jury and being an

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, "What are you grateful for now that you took for granted before the COVID-19 pandemic?"

advocate. That experience changed my professional life."

Throughout the country, the legal profession has embraced the value of attorney mentoring. The American Bar Association's website indicates that 36 state bars are actively offering a mentoring program for young and new lawyers.

"These programs surely assist new attorneys to 'bridge the gap' between the theoretical education they received in law school and the actual, hands-on practice of law," O'Connor writes, "but perhaps the most valuable type of mentoring is the day-to-day guidance of a seasoned professional who has the time and interest in nurturing nascent talent. Almost everyone who has accomplished anything in this profession can tell at least one story of an older attorney who furnished that kind of support. . . . Being an attorney carries a great deal of responsibility and stress. None of us knew how to do this job on day one, and some of us are still trying to figure it out. All of us would probably have been grateful for a competent, caring mentor, and those of us who were lucky enough to find one—even after several years in the profession—can testify as to how that experience made us better attorneys."

The commitment of the mentors and mentees to spend considerable time with each other for discussions on the practice



WILL DAVIS | YLD President

I hate to say that I took seeing my friends and family "for granted," but having been separated for more than two months, I now see just how much in-person interaction with the ones that I love truly means. I am ready for some socially distanced backyard BBQs!



BERT HUMMEL | YLD President-Elect

Group meetings, social time and daycare.



ELISSA B. HAYNES | YLD Treasurer

Uber Eats, Amazon Prime and the ability to work from home.



RON DANIELS | YLD Secretary

Being in my car. In my car, I felt safest of all, I could lock all my doors. Now I have nowhere to drive.



RIZZA O'CONNOR | YLD Immediate Past President

I miss walking into our small-town, local restaurants and seeing people I know. While I have enjoyed sharpening my cooking skills or supporting local restaurants with take-out, I cannot wait for the day when we can all finally dine inside.



ASHLEY AKINS | YLD Newsletter Co-Editor

How easy and convenient it was to see family and friends. I look forward to catching up with everyone in-person in the coming weeks and months, though I will likely still be socially distancing for everyone's safety. Virtual meetings and phone calls with friends are fun, but they do not measure up to face-to-face hangouts.



AUDREY B. BERGESON | YLD Newsletter Co-Editor

I'm grateful for technology that supports remote work. Fortunately, our organization had launched a teleworking policy in February. I was grateful then to skip the commute two days per week, and I'm grateful now that the transition to remote work was made easier by having these policies already in place.



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of law is not an easy one to fulfill for busy attorneys. But the benefit for mentees is immeasurable, and serving as a mentor is a great opportunity to “give back” and to participate in a program that rewards both the more experienced member and the less experienced member—perhaps equally.

As Josh Viau, past chair of the Labor & Employment Law Section, which runs its own Mentorship Academy, said in a 2017 *Bar Journal* article, “The rewards are mutual for the mentor and mentee. As a mentor, not only do you get the satisfaction of helping a new lawyer find his or her way, but the enthusiasm of the younger lawyers is contagious and revitalizing for those of us who have been practicing for some time.”

In Georgia, the State Bar’s Transition Into Law Practice Program, also known as the “Mentoring Program,” is the continuing legal education requirement for all lawyers newly admitted to the State Bar of Georgia, unless they have received an exemption.

According to its website, the core of the program is to match beginning lawyers, after admission to the Bar, with a mentor during their first year of practice. The program is essentially an educational program that combines a mentoring component with a CLE component that lays the groundwork for and supports the mentoring component. The purpose of the Transition Into Law Practice Program is to equip every newly admitted member of the State Bar with meaningful access to an experienced lawyer equipped to teach the practical skills, seasoned judgment and sensitivity to ethical and professionalism values necessary to practice law in a highly competent manner. The program was developed by, and is operated under the auspices of the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency.

At a minimum, the mentoring plan must include the following key elements:

- Regular contact and meetings between the mentor and beginning lawyer.
- Continuing discussions between the mentor and beginning lawyer on at least the following topics:

- Ethics and professionalism.
- Relationships with clients, other lawyers (both in and outside the firm), the judiciary and the public, including unrepresented parties.
- Professional work habits, organizational skills and practice management.
- Economics of practicing law in the relevant practice setting.
- Responsibility and opportunities for pro bono work, bar activities and community service.
- Introduction to the local legal community.
- Specific planning for professional development and continuing legal education in and outside the firm, company or organization.
- Emotional intelligence—financial awareness, managing stress and wellness tools.
- Periodic evaluation of the mentor/beginning lawyer relationship.

Launched in early 2006, the Transition Into Law Practice Program is now a permanent program of the State Bar of Georgia. Additionally, the Chief Justice’s Commission on Professionalism developed a mentoring program piloted by Georgia members of the American Law Institute in which seasoned lawyers volunteer to serve as mentors for students at Georgia’s five law schools. The commission also assists the State Bar YLD, the Atlanta Bar Association, the Atlanta Jewish Federation, the Cobb County Bar Association, the Georgia Association for Women Lawyers, the Georgia Indigent Defense Council, and other local and special constituency bar associations in the implementation of mentoring programs in which veteran lawyers make themselves available to newer lawyers for advice and counsel. In our own way, the YLD also provides mentors for our members. While YLD members cannot routinely be described as “seasoned,” it is amazing what someone who has been practicing law for five months can learn from someone who has been practicing for five years.

As a newly admitted young lawyer, I quickly looked up to and learned from former YLD presidents like Darrell Sutton, Amy Howell and Damon Elmore as I began to balance my career with my desire to become more involved in the State Bar of Georgia. All three were willing to take time out of their busy schedules to meet for coffee or breakfast, and all offered incredibly reasoned and sound advice when it came to balancing work and my clients against my potential Bar involvement.

Similarly, I remain in touch with most managing attorneys from firms where I previously worked. Although I may have transitioned to new firms, the professional mentorship connections I established while there were not erased when I moved. I believe that having a base of strong mentors that have worked with and supported you at all stages of your career is essential to continued success as a lawyer. Men-

tors are always needed regardless of the length of one's career.

With the sun now setting on the 2019-20 Bar year, I would like to conclude this article with a note of appreciation to all who have served in YLD leadership this year, especially during the unprecedented challenges brought on by the COVID-19 public health emergency and resulting economic crisis. Thank you to all officers, directors and committee chairs for their tireless work in keeping the momentum of our organization moving since mid-March. Extra appreciation goes to YLD Director Stephanie Wilson for quickly adapting her role and truly being there whenever I needed anything. I give tremendous thanks to all those who donated to the Georgia Legal Food Frenzy, but especially to Morgan Lyndall and Veronica Rogusky, co-chairs of our YLD Legal Food Frenzy Committee. They worked countless hours

to make this year's Food Frenzy the tremendous success that it was, and it is an amazing accomplishment that more than \$700,000 was raised in a virtual food drive in a span of two weeks.

It has been an honor to serve as your YLD president this year, and I will miss this role when the 2020-21 Bar Year begins, but without a doubt, you will be served well by YLD President-Elect Bert Hummel, who will continue to move us forward during this uncertain time. I am a proud Georgia lawyer, and I am proud of the work and opportunities that the State Bar of Georgia provides for its members. Our collective efforts serve to better our state, our communities and our profession, and my year as YLD president has only served to confirm what I already knew about the State Bar of Georgia. Thank you for giving me the opportunity to serve this year. ●



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JEFF DAVIS

Executive Director
State Bar of Georgia
jeffd@gabar.org

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

Marva Jones Brooks: A Life Spent on the High Road

Growing up in a segregated America in the 1950s and 1960s, Marva Jones Brooks overcame racial prejudice by practicing a set of protocols her parents instilled in her and her two brothers. Those included “show up on time,” “smile,” “be the best prepared person in the room” and, most of all, “always take the high road.”

As the first female and African-American attorney for a major U.S. city government and, later, as general counsel for the 1996 Olympic Games Organizing Committee, Brooks had a profound influence on the transformation of Atlanta from a southern state capital to major international destination and trade center by following those childhood instructions throughout her trailblazing career.

The daughter of one of Pennsylvania’s first African-American police officers, Brooks was born and raised in Pittsburgh. Upon receiving the prestigious Margaret Brent Women Lawyers of Achievement Award in 2007, Brooks credited her upbringing with paving the way for her future success.

“I feel like I hit the jackpot being born into the family of Henry and Mildred Gordon Jones and their sons Henry and Duane,” Brooks said. “There are dozens

of reasons to feel this way. But foremost among them to me is that they were people who lived the life they sang about in their songs.

“My dad, a native of Alabama, was one of the first black men to become a policeman in western Pennsylvania. And thus he was almost a surrogate mayor for his people in a large section of the state. He was an icon to many and taught all of us about integrity, fair play and decency.

“My mother, a transplanted Georgian, was one of the most intellectually curious people I have ever known, and the entire home was a reflection of that and her Georgia roots. There were books everywhere, book club meetings, lunch or dinner at the home with any interesting visitor, and endless trips into Pittsburgh to plays, concerts and museums and the like.”

From the 45 prestigious colleges that offered Brooks a full scholarship, she chose Howard University in Washington, D.C. Calling it “the place of my dreams . . . to which I owe an enormous debt,” Brooks said of Howard, “It too was a distinguished family I had longed to become part of, and it surpassed those long-held dreams I had about it. How-

ard was a place where much was expected from you, not only as a student, but professors constantly made it clear that you were to go forward from there and contribute to the uplift of your people and the world.”

Graduating Phi Beta Kappa and *magna cum laude* from Howard in 1961, Marva Jones married Bill Brooks, and they started their family. In 1965, it was on to Harvard Law School, a place where at the time it was said female law students could be made by faculty members to feel like they were taking spaces that rightly belonged to men. It was a time of social upheaval and the beginning of removing gender barriers in the legal profession.

According to an *Atlanta Business Chronicle* profile of Brooks, out of 525 first-year law students in Brooks’ class at Harvard, 17 or 18 were women and 15 were African-American. Despite her mother’s warnings to the contrary, Brooks became politically active while in law school, taking part in anti-war protests in Washington. Traveling to Mississippi for voter registration drives and election poll monitoring, she stayed in a “dangerous county” with a family whose yard had been attacked with a cross burning shortly before her arrival.

In 1968, after becoming one of the first African-American women to earn a J.D. degree from Harvard, Brooks began her career with Pfizer’s Law Department in New York. She would later move to Atlanta and was admitted to the State Bar of Georgia in 1974. She joined the administration of Mayor Maynard Jackson, the first African-American to lead a major southern city, and became city attorney in 1980.

“Of course, it goes without saying that anyone fortunate enough to earn a Harvard Law degree should be forever indebted to a place that opens so many doors,” Brooks said. “There is no doubt, however, that I still would not be standing here to-



PHOTO FROM FACEBOOK.COM/PEOPLE/MARVA-JONES-BROOKS/1627423396

As the first female and African-American attorney for a major U.S. city government and, later, as general counsel for the 1996 Olympic Games Organizing Committee, Brooks had a profound influence on the transformation of Atlanta from a southern state capital to major international destination and trade center.

day had I not had the tremendously good fortune to become the lawyer for the late Maynard Jackson. He was the legendary mayor of Atlanta who was elected at the age of 35 and blew through Atlanta like a tsunami with me in his wake, trying to take care of the legal details.”

It signaled a new era in big-city leadership for both professional women and African-Americans. Partially because Jackson’s mother and five aunts were all graduates of Spelman College, Brooks said, “Maynard had no problem breaking with tradition and appointing me and other females to positions that had only been held by men in every city in America. With the blessing and encouraging first of Maynard and then Andrew Young, when he became mayor, I was able to hire the largest number of female assistants anywhere, and it is one of the delights of my life that they have all gone to such outstanding careers in the public and private sectors.”

Jackson put Brooks in charge of his revolutionary initiatives dictating that companies receiving city contracts had to have a certain number of minority employees or an affirmative action plan. Brooks told the *Atlanta Business Chronicle* that for integrating South Africa’s business sector after apartheid, Nelson Mandela used as a model the Jackson administration’s successful directives in the “city too busy to hate.”

“There’s been a spirit in Atlanta that’s been very progressive,” Brooks said. “For 25 years, there’s been a wonderful rapport between the black leadership and the civic leadership.”

But it was also Atlanta’s era of missing and murdered children, a terrorizing killing spree from 1979 through 1981 that claimed 29 young African-American lives. Working in the mayor’s office, Brooks learned that out of frustration over the unsolved crimes, Atlanta police were considering the use of what she called “question-

“I grew up in a segregated America, as a black girl in the ‘50s and ‘60s. And though I had the audacity to hope and dream that I could make it in a profession where almost nobody looked like me, it took scores of people along my journey to make that dream come true.” —Marva Jones Brooks

able investigative tools.” Despite being a young attorney, Brooks laid down the law for the seasoned police officers: the only way that they could protect their case was to inform her every single day of crime-solving planning so that she could vet its legality.

“When the accused was brought to justice,” the ABA stated in presenting Brooks the Margaret Brent Award, “Atlanta police were widely praised for outstanding professionalism—traceable directly to Marva Brooks’ leadership, respect for the law and inviolate commitment to the high road.”

When Andrew Young succeeded Jackson as mayor, Brooks stayed on as city attorney. In 1987, she was given the assignment of ensuring that every detail of Atlanta’s bid for the 1996 Olympic Games was on solid legal ground.

Brooks left for the private sector in 1990, joining Arnall Golden Gregory LLP, which later established the Marva Jones Brooks Summer Internship in her honor. The internship is awarded to young minority women and men currently in high school who have shown an interest in pursuing a legal education and becoming attorneys.

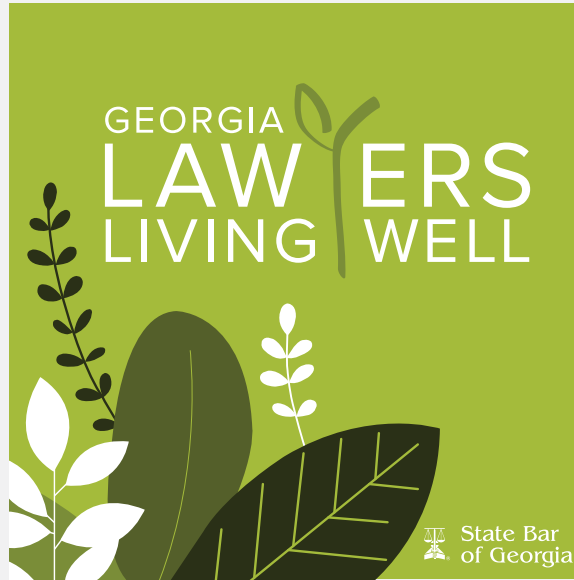
After Atlanta was awarded the Centennial Olympic Games, she was named as general counsel of its Organizing Committee. Over the next decade, according to the ABA award presentation, “She did fact-finding at Barcelona’s Olympic Games, held six years of dawn and midnight planning meetings and proudly carried the Olympic Torch through her hometown.” The 1996 Olympics left Atlanta with no financial burden and even delivered a surplus. When her Olympic tasks were done, Brooks became board chair of the National Conference of Board Examiners.

Reflecting on her remarkable career, Brooks said, “I grew up in a segregated America, as a black girl in the ‘50s and ‘60s. And though I had the audacity to hope and dream that I could make it in a profession where almost nobody looked like me, it took scores of people along my journey to make that dream come true.”

Overtis Hicks Brantley was hired and mentored by Brooks in Atlanta’s law department in 1983. In 2010, Brantley recalled, “As I navigated my career in the political arena, I was often guided by the single thought of ‘what would Marva do?’”

Another former Atlanta mayor, Shirley Franklin, had known Brooks since Maynard Jackson’s political campaigns of the 1970s. Franklin, who was the city’s chief administrative officer when Brooks was city attorney, told the *Atlanta Business Chronicle*, “She always looked for ways to advance public policy that would serve the broadest group of people in the community, as opposed to just finding the right answer.” Franklin added that Brooks was always “four, five or six steps” ahead of everyone else—proof that it always helps to take the high road. ●

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



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An Overview of Ultimate Issue Evidence

Attorneys and judges must be clear on the current Rules of Evidence and the case law that interprets them. If not . . . attorneys and judges “risk obtaining reversible evidence rulings from trial courts.”

BY BRETT M. ADAMS

On Jan. 1, 2013, Georgia saw an overhaul of its Evidence Code. Georgia adopted, almost wholesale, the Federal Rules of Evidence in that overhaul.¹ Many, if not most, of the Rules of Evidence that the majority of lawyers had employed were altered. Some changes were subtle, while others were more drastic. We are now more than seven years out from that Evidence Code, and multiple graduating law school classes have never known anything but the current Evidence Code. Yet, there are still some lawyers in Georgia who have not acquainted themselves with the “new” Code and continue to hold onto the old rules.² Indeed, it seems at this point silly to call it the “new” Evidence Code after seven years. Judges have also been guilty of not fully applying the current Code of Evidence.³

It is our obligation, as lawyers and judges, to stay abreast of the Evidence Code. The justices of the Supreme Court of Georgia are clearly becoming tired of having attorneys cite case law interpreting

the former Evidence Code and failing to cite the current Rules of Evidence and the resulting case law progeny. Even the Court of Appeals of Georgia appears to have, on occasion, inadvertently forgotten Justice Nahmias's cautioned reproach when it comes to ultimate issue evidence.⁴ As Justice Nahmias cautioned in *Davis v. State*, and as Justice Warren had to repeat in March 2019:

Georgia lawyers do this Court no favors—and risk obtaining reversible evidence rulings from trial courts—when they fail to recognize that we are all living in a new evidence world and are required to analyze and apply the new law. . . . We trust that this shortcoming will not be repeated in future cases coming to this Court.⁵

One such rule that saw a drastic change is the Ultimate Issue Rule in O.C.G.A. § 24-7-704, which until 2013 had been guided by case law.⁶

Ultimate issue evidence answers the legal or factual issue at stake, such as the elements of a crime in criminal law or liability in a civil suit. The change from the former Georgia Evidence Code is so drastic that it is important to know what the current law says.

This article first seeks to lay out what O.C.G.A. § 24-7-704 allows and does not allow regarding opinions and inferences

that go to the ultimate issue. Second, this article will draw attention to how the Supreme Court of Georgia and the Court of Appeals of Georgia have interpreted § 24-7-704, and what caveats exist in regards to the statute. Finally, this article will provide suggestions for attorneys on how to be aware of ultimate issue opinions and inferences and how to avoid pitfalls in objecting to such opinions.

Brief History

Before 2013, there was no Georgia statutory rule regarding ultimate issue. Instead, the rule regarding ultimate issue evidence came to the Georgia courts by way of the common law, and was therefore a rule crafted and altered by the courts. The traditional rule regarding ultimate issue was that “a witness may not express his opinion as to an ultimate fact, because to do so would invade the province of the jury.”⁷

Because the rule regarding opinion evidence relating to the ultimate issue came from the common law, there were exceptions that had been created and crafted by the appellate courts. For example, “Expert opinion testimony on issues to be decided by the jury, even the ultimate issue, is admissible where the conclusion of the expert is one which jurors would not ordinarily be able to draw for themselves; i.e., the conclusion is beyond the ken of the average layman.”⁸

The Supreme Court of Georgia itself had already started to tear down the walls that excluded opinions and inferences on ultimate issue by the time that an Ultimate Issue Rule was codified, and the Court itself considered adopting the federal rule regarding ultimate issue. As far back as *Smith v. State* in 1981, the Supreme Court of Georgia considered its adoption.⁹ The Court held, “Expert opinion testimony on issues to be decided by the jury, even the ultimate issue, is admissible where the conclusion of the expert is one which jurors would not ordinarily be able to draw for themselves; i.e., the conclusion is beyond the ken of the average layman.”¹⁰

With the current Code of Evidence, the common law rules relating to ultimate issue were put aside in favor of a

Ultimate issue evidence answers the legal or factual issue at stake, such as the elements of a crime in criminal law or liability in a civil suit.

statutory approach, and attorneys and judges must look to post-2013 Georgia cases and federal case law for an understanding in how to interpret the statutory rule.¹¹ The current rule, found at O.C.G.A. § 24-7-704 and modeled on Federal Rule of Evidence 704,¹² is exceedingly broad. The statute provides:

(a) Except as provided in subsection (b) of this Code section, testimony in the form of an opinion or inference otherwise admissible shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of an accused in a criminal proceeding shall state an opinion or inference as to whether the accused did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.¹³

Although with the enactment of O.C.G.A. § 24-7-704, a rule has been promulgated regarding ultimate issue opinion testimony, many attorneys and judges are apparently unaware of its existence.¹⁴ Further complicating the matter is the fact that there are only so many cases that can fill the Georgia appellate courts' dockets, and the Supreme Court of Georgia has recognized that there remains "work to do in interpreting the new Code."¹⁵ With regard to ultimate issue, the Supreme Court of Georgia likely does have some work ahead. As of the date of writing, there are only 22 Georgia cases that cite O.C.G.A. § 24-7-704.¹⁶ Of those, only seven refer to the statute to state that it is the new relevant statute, because the case was decided under the "old" rules of evidence, and does not itself make any rulings affecting § 24-7-704.¹⁷ Furthermore, of the remaining 15 cases, the Court does not reach ultimate issue in six of them and decides the case on other grounds.¹⁸ As a result, only nine Georgia cases provide any information on the appellate courts' interpretation of O.C.G.A. § 24-7-704.

Ultimate Issue Under the Current Evidence Code

As stated, the statute is exceedingly broad. As a result, an opinion or inference, as long as it is otherwise admissible, is only objectionable if 1) it is offered in a criminal proceeding; 2) it is an expert witness testifying; 3) the opinion or inference relates to whether the accused/defendant had the requisite mental state or condition; and 4) said mental state or condition is an element of the crime or defense to the crime.¹⁹ These are elements, not factors, that a judge must consider. The Supreme Court of Georgia has been literal in looking at ultimate issue cases.

Hence, the Supreme Court of Georgia found in *Eller v. State* that "[w]hether the accused committed an intentional act to harm the victim is a different question than whether someone likely committed an intentional act to harm the victim."²⁰ In *Eller*, the Georgia Bureau of Investigation chief medical examiner, tendered by the state as an expert, testified that the gunshot injuries sustained by the victim were inconsistent with the Defendant's claim of accident and justification because of the patterns of the wounds, the wounds themselves and other forensic evidence.²¹

The Supreme Court of Georgia found that, to be objectionable, the opinion has to be specifically about the defendant's state of mind or condition, not simply that someone (even though it's a category into which the defendant naturally falls) had that state of mind or condition.²² The Court reiterated this strict adherence to the letter of the statute in *Wade v. State*, holding that a physician expert's opinion and a medical examiner's opinion that the victim's injuries were "nonaccidental" did not violate § 24-7-704.²³ Instead, the two experts' opinions "concerned the nature of the injuries inflicted on the victim, not the mental state of the defendant."²⁴ Opinion evidence on whether the accused committed an intentional act to harm is not allowed, because it specifically involves the accused (assuming the other elements numbered above are also met). However, opinion and inferences relating to the injuries in general and whether a person in general likely committed an intentional act to harm are allowed, because they are

not specifically about the defendant. It is important to note that a lay witness is still able to testify about whether an act was intentional or accidental, because the witness is not an expert. The Supreme Court of Georgia in *Mack v. State*²⁵ found that comments in a video by a lay witness (the lead detective) about whether a shooting was accidental were allowed under O.C.G.A. § 24-7-704, because said comments were made by a lay witness and not an expert.²⁶

There are some important ways that this statute affects attorneys in the courtroom. Identification is an example. Traditionally, identification was considered within the province of the jury, with a few exceptions.²⁷ In *Thompson v. State*,²⁸ the Supreme Court of Georgia upheld testimony from a law enforcement officer when the officer identified the defendant in a surveillance video committing the crime. The Court found that the detective's statements that "I saw you get into . . . the truck" and "you actually touched right there near the handle at the bottom and I couldn't tell if you had a screwdriver in your hand or what was in your hand, but I have to admit you were very good at it, you got into that truck within four seconds" were "too clever by half, but they did not violate the ultimate issue rule in the new Evidence Code."²⁹ This is consistent with the U.S. Court of Appeals for the Eleventh Circuit's interpretation, which has allowed lay witness opinions that the person in a tendered photograph was the defendant.³⁰ Another example is that testimony regarding the credibility of victims and witnesses does not violate O.C.G.A. § 24-7-704, when properly phrased.³¹

Section 24-7-704 is, of course, not solely relevant to criminal law attorneys. Attorneys who practice civil law and deal with non-criminal matters must also contend with § 24-7-704. Expert opinion on whether termination is in the best interests of the child is allowed under § 24-7-704.³² In the realm of civil litigation, however, the Court of Appeals of Georgia has (lightly) tapped the brakes regarding the broad scope of § 24-7-704. In *Clayton County v. Segrest*,³³ the court essentially differentiated between testimony regarding fact and testimony regarding le-

gal standards. The court carefully parsed § 24-7-704, and ruled that “an expert may not merely tell the jury what result to reach and may not testify to the legal implications of conduct.”³⁴ The federal courts reach this result as well.³⁵ In essence, although an expert witness may be able to invade the province of the jury by giving an opinion, it may not invade the province of the judge by giving a legal conclusion.³⁶

Although ultimate issue often presents itself as an outright opinion from a witness, O.C.G.A. § 24-7-704 also includes inferences. *Grier v. State*³⁷ addressed the use of inferences in relation to § 24-7-704. Two lay witnesses stated their belief that the defendant must have been the one who killed the victims, based upon their observation that the defendant was with the victims before they were killed and knew that the defendant had said that he “offed them boys.” Because the inference was otherwise admissible lay opinion under O.C.G.A. § 24-7-701, and because these were lay witnesses and not experts, § 24-7-704(b) did not apply to the inference, and the inference was allowed.³⁸ Another example is found in *Thornton v. State*,³⁹ where a detective stated that the defendant “was the only person shown on the video who was standing in a position to shoot through the rear driver’s-side window.”⁴⁰ Because that testimony was otherwise admissible under O.C.G.A. § 24-7-701, it was not barred simply because of the fact that it addressed an ultimate issue.⁴¹

Practicing Under O.C.G.A. § 24-7-704

As of this writing, Georgia appellate courts have almost universally allowed the ultimate issue opinion or inference under O.C.G.A. § 24-7-704, with the biggest exception being *Clayton County v. Segrest*. It is also apparent from the already-discussed cases, as well as Supreme Court of Georgia precedent, that § 24-7-704 should be applied literally.⁴²

There are several pitfalls of which attorneys and judges should be mindful. The Advisory Committee Note for Federal Rule of Evidence 704 cautions, “The abolition

of the ultimate issue rule does not lower the bars so as to admit all opinions.”⁴³ As a result, attorneys and judges should ensure that the opinion evidence is “otherwise admissible” in the first place.⁴⁴ O.C.G.A. § 24-7-704 deals with objections on the sole ground of ultimate issue. If there are other grounds or objections to be made, then the evidence or testimony might still be improper to tender and admit. There may be, for example, hearsay objections or Confrontation Clause issues to address. Objections to bolstering and improperly attacking the credibility of a witness under O.C.G.A. § 24-6-608 can still lead to the exclusion of opinion evidence.

In addition, all evidence, including ultimate issue opinion and inference evidence, must adhere to the most basic admissibility rules, including O.C.G.A. §§ 24-4-401 and 24-4-402 (relevant evidence), § 24-4-403 (probative value cannot be substantially outweighed by its prejudicial impact) and § 24-4-404 (character evidence), and the remaining statutes under Chapter 4 of the Evidence Code. Attorneys can analogize ultimate issue opinion and inference evidence to that of hearsay. Just because there is an exception to the rule against hearsay does not mean that the statement is admissible if it violates another rule, such as authentication of a document on which the hearsay is found.⁴⁵ So, too, simply because opinion testimony is allowed under § 24-7-704 does not mean that an attorney’s or a judge’s analysis stops. Rather, an attorney may make other objections to the admission of such evidence. In addition, judges, before ruling on opinion and inference evidence that addresses an ultimate issue, should ensure that there are no other objectionable materials that would otherwise bar the testimony.

Furthermore, expert opinions are still governed by O.C.G.A. §§ 24-7-702 and 24-7-703. As a result, the Eleventh Circuit has found that for an expert opinion to be admissible under Federal Rule of Evidence 704, it must be helpful to the jury (i.e., relevant under Federal Rule of Evidence 401) and “must be based on adequately explored legal criteria.”⁴⁶ Expert opinions, as always, should still meet the

Daubert standard. O.C.G.A. § 24-7-701 governs lay witness opinions, and lay witness opinions must therefore be rationally based upon the perception of the witness, helpful to the jury in understanding that witness’s testimony or an issue, and not be within the scope of an expert under O.C.G.A. § 24-7-702.⁴⁷

In addition, attorneys should pay careful attention to the phrasing of their question and the phrasing of the witness’s answer, because of the concern mentioned earlier regarding legal conclusions and standards. There is a marked difference between asking a witness, “‘Did T have capacity to make a will?’ . . . [and] ‘Did T have sufficient mental capacity to know the nature and extent of his property and the natural objects of his bounty and to formulate a rational scheme of distribution?’”⁴⁸ The former would not be allowed, as it embraces a legal conclusion, whereas the latter would be admissible under § 24-7-704. In a criminal trial, it would be inadmissible to ask the victim whether the defendant committed armed robbery. It would, however, be admissible to ask the victim whether a defendant pointed a gun at the victim and took an item of value from the victim’s immediate presence. Carlson’s evidence treatise cautions against asking questions which track “the language of an applicable statute and use[] terms that have specialized legal meanings that are more precise than their lay understanding.”⁴⁹ For a criminal example, Carlson writes that “it would seem to be improper for a mental health expert to conclude: ‘The patient did not have the mental capacity to be criminally responsible under O.C.G.A. 16-3-2.’ However, an expert can describe conditions and delusional compulsions suffered by the patient.”⁵⁰ Generally speaking, the problem arises when the question ceases to ask about *facts* and instead asks about a technical and legal term of art that a lay juror would not understand.

It is easy to become complacent with our knowledge of the Evidence Code. We can often think that we know that some rule exists, or some evidence is allowed, but not in fact be aware of what the Evidence Code actually says on the matter.

Even worse, simply searching for case law on the topic can prove just as fatal. A search of cases citing “ultimate issue” is not going to reveal what the actual law currently is in Georgia regarding that topic. In all issues involving the Rules of Evidence, our first stop as attorneys and judges should be the statute itself and the language of the Georgia General Assembly.

The End Result

There are aspects of the Evidence Code that elude attorneys in Georgia. We are no longer under a new Evidence Code. Instead, we are simply under an Evidence Code. That Code of Evidence promulgated a rule on how to address testimony and evidence that deals with ultimate issue evidence. Specifically, an attorney cannot object to a lay witness opinion on the ground that it speaks on an ultimate issue. Further, an attorney cannot object to an expert witness opinion on the ground that it speaks on an ultimate issue unless the opinion 1) is offered in a criminal proceeding; 2) is the expert witness’s opinion; 3) the opinion or inference relates to whether the accused/defendant had the requisite mental state or condition; and 4) said mental state or condition is an element of the crime or defense to the crime. Even with this broad scope of allowable ultimate issue opinion, however, there are still evidentiary bars to the admission of such testimony. Namely, any other objectionable ground for evidence is allowable against ultimate issue testimony. Lawyers should turn their focus, generally speaking, away from the question of “is this ultimate issue opinion admissible” to “what other objections can I raise to this opinion testimony.”

Attorneys and judges must be clear on the current Rules of Evidence and the case law that interprets them. If not, as Justice Nahmias has warned, attorneys and judges “risk obtaining reversible evidence rulings from trial courts.”⁵¹ ●

the citizens of Douglas County, he prosecuted felony cases in the Coweta Judicial Circuit, including handling some of the conflict cases assigned to it from other jurisdictions. Adams has been practicing law since 2015.

Endnotes

1. 2011 Ga. Laws p. 99.
2. See, e.g., *Smith v. State*, 299 Ga. 424, 436, 788 S.E.2d 433, 442 (2016) (“Although this case was tried under the new Evidence Code, the parties have cited only cases . . . decided under the old Evidence Code. Neither party cites the pertinent provisions of the new Evidence Code, the parallel provisions of the Federal Rules of Evidence, or a single case interpreting the federal or new state rules.”). See also *Davis v. State*, 299 Ga. 180, 192, 787 S.E.2d 221, 232 (2016) (appellant failed to cite one of the two applicable new Evidence Code sections, prosecutor failed to cite either section, and both failed to cite case law under new Evidence Code or Federal Rules of Evidence).
3. *State v. Jones*, 297 Ga. 156, 159 n.2, 773 S.E.2d 170, 173 n.2 (2015) (“Although the Court of Appeals recognized the applicability of the new Georgia Evidence Code, it overlooked O.C.G.A. § 24-4-401’s definition of ‘relevant evidence’ and mistakenly applied a definition applicable in cases tried prior to the new Code’s effective date.”).
4. See, e.g., *Carr v. State*, 350 Ga. App. 461, 829 S.E.2d 641 (2019) (Court of Appeals of Georgia failed to cite O.C.G.A. § 24-7-704, or any case law concerning said statute, and instead opted to cite pre-2013 case law regarding ultimate issue), *cert. denied*, No. S19C1422, 2020 Ga. LEXIS 15 (Ga. Jan. 13, 2020).
5. *Davis*, 299 Ga. at 192, 787 S.E.2d at 232; accord *Beck v. State*, 305 Ga. 383, 386 n.3, 825 S.E.2d 184, 187 n.3 (2019) (quoting *Davis*).
6. *Perrell v. State*, 346 Ga. App. 219, 224, 816 S.E.2d 344, 350 (2018) (“The new Evidence Code eliminates the former ultimate issue rule ‘except as to certain expert witness testimony’ as set out in O.C.G.A. § 24-7-704 (b)”) (quoting *State v. Cooper*, 324 Ga. App. 32, 34 n.1, 749 S.E.2d 35, 37 n.1 (2013)).
7. *Fordham v. State*, 254 Ga. 59, 59, 325 S.E.2d 755, 756 (1985); accord *Butler v. State*, 292 Ga. 400, 405, 738 S.E.2d 74, 80-81 (2013) (citing *Axelburg v. State*, 294 Ga. App. 612, 616, 669 S.E.2d 439, 444 (2008)).
8. *Smith v. State*, 247 Ga. 612, 619, 277 S.E.2d 678, 683 (1981); accord, e.g., *Metro. Life Ins. Co. v. Saul*, 189 Ga. 1, 9, 5 S.E.2d 214, 221 (1939).
9. *Smith*, 247 Ga. at 615, 277 S.E.2d at 680.
10. *Id.* at 619, 277 S.E.2d at 683. The Court added, “This holding is in accord with the modern view as exemplified by Rules 702, 704 of the Federal Rules of Evidence”
11. *Mack v. State*, 306 Ga. 607, 609, 832 S.E.2d 415, 417-18 (2019).
12. FED. R. EVID. 704 provides:
(a) In General—Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.
(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.
13. O.C.G.A. § 24-7-704 (2019).
14. Even in a 2020 decision, the Court of Appeals in Georgia stated, “We note that the State argued at times that the expert could not base his opinion on hearsay evidence or give an opinion that related to the ultimate issue in the case. In this respect, the State was incorrect. See O.C.G.A. §§ 24-7-703; 24-7-704.” *Hambrick v. State*, 353 Ga. App. 666, 676 n.9, 2020 Ga. App. LEXIS 31, at **20 n.9 (2020), *petition for cert. filed*, (Ga. Mar. 2, 2020).
15. *Chrysler Group, LLC v. Walden*, 303 Ga. 358, 358, 812 S.E.2d 244, 247 (2018).
16. There are other cases that address ultimate issue questions, but that do not cite the new statute. These cases involve pre-2013 trials. See, e.g., *Batten v. State*, 295 Ga. 442, 761 S.E.2d 70 (2014); *Dyer v. State*, 295 Ga. 173, 758 S.E.2d 301 (2014) (which is specifically mentioned as being decided under the old Evidence Code in *Smith v. State*, 302 Ga. 207, 210-11 & n.2, 805 S.E.2d 835, 838 & n.2 (2017)); *Chandler v. State*, 320 Ga. App. 516, 740 S.E.2d 256 (2013). There are also cases that refer to ultimate issue, but do not actually



Brett M. Adams is an assistant district attorney with the Douglas Judicial Circuit, where he prosecutes felony cases. Prior to serving

- address ultimate issue. *See, e.g.,* Smith v. State, 342 Ga. App. 656, 662-63, 805 S.E.2d 251, 256-57 (2017) (dealing with an expert who testified on an ultimate issue, but only addressing the issue of the admissibility of the expertness of the testimony itself and not whether it is allowable as an ultimate issue).
17. *See* Smith v. State, 302 Ga. 207, 805 S.E.2d 835 (2017); Pyatt v. State, 298 Ga. 742, 784 S.E.2d 759 (2016); Saffold v. State, 298 Ga. 643, 784 S.E.2d 365 (2016); Walls v. Walls, 291 Ga. 757, 732 S.E.2d 407 (2012), *overruled in part on other grounds* by McCarthy v. Ashment-McCarthy, 295 Ga. 231, 233 n.1, 758 S.E.2d 306, 308 n.1 (2014); Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308 (2017), *aff'd*, 303 Ga. 681, 813 S.E.2d 393 (2018); Wright v. State, 327 Ga. App. 658, 760 S.E.2d 661 (2014); State v. Cooper, 324 Ga. App. 32, 749 S.E.2d 35 (2013).
 18. *See* Morgan v. State, No. S19A1261, 2020 Ga. LEXIS 102, at *6, 838 S.E.2d 878 (Ga. Feb. 10, 2020) (“We need not decide, however, whether the exclusion of the psychologist’s statement of opinion was error because, even if it were, any error was harmless and would not warrant reversal.”); Morton v. State, 306 Ga. 492, 497, 831 S.E.2d 740, 746 (2019) (“With regard to Morton’s O.C.G.A. § 24-7-704 (b) claim, and pretermittting the question of whether Sergeant Brandle actually opined as to Morton’s mental state on the drug charges, Morton cannot show plain error.”); Taylor v. State, 303 Ga. 225, 228, 811 S.E.2d 286, 290 (2018) (“Pretermittting whether the statements about which [appellant] complains would have been inadmissible under either of these statutes [O.C.G.A. §§ 24-4-403 & 24-7-704], she fails to prove the third prong of the plain error test.”); Hambrick, 353 Ga. App. at 676, 2020 Ga. App. LEXIS 31, at **19-20 (“What the trial court prohibited was the expert’s testimony about the *contents* of the police reports [and not on the basis of it going to the ultimate issue.]”); Percell v. State, 346 Ga. App. 219, 225, 816 S.E.2d 344, 350 (2018) (“Pretermittting whether counsel should have objected to this testimony for violating O.C.G.A. § 24-7-704 (b), we find any error to be harmless in light of other evidence of intent, including the victim’s testimony that Percell intended to strike her vehicle, and the court’s instructions to the jury”); Taylor v. State, 334 Ga. App. 12, 13, 778 S.E.2d 26, 27 (2015) (“even assuming for the sake of argument that it was error to allow the testimony, such error was harmless because it is highly probable that it did not contribute to the verdict in light of the overwhelming evidence of guilt, including Taylor’s oral and written admissions to the charged offense.”).
 19. O.C.G.A. § 24-7-704(b) (2019). The Court of Appeals of Georgia has ruled that “the statute applies to all criminal proceedings, not just those in which a defendant’s competency is at issue.” *Percell*, 346 Ga. App. at 224, 816 S.E.2d at 350 (citing *Eller v. State*, 303 Ga. 373, 381-82, 811 S.E.2d 299, 307 (2018)).
 20. *Eller*, 303 Ga. at 383, 811 S.E.2d at 308.
 21. *Id.* at 377, 811 S.E.2d at 304.
 22. *Id.* at 383, 811 S.E.2d at 308.
 23. 304 Ga. 5, 10, 815 S.E.2d 875, 881 (2018).
 24. *Id.* at 11, 815 S.E.2d at 881.
 25. 306 Ga. 607, 832 S.E.2d 415 (2019).
 26. *Id.* at 609-10, 832 S.E.2d at 418.
 27. *See* Smith v. State, 247 Ga. 612, 615, 277 S.E.2d 678, 680 (1981) (citing traditional rule).
 28. 304 Ga. 146, 816 S.E.2d 646 (2018).
 29. *Id.* at 153, 816 S.E.2d at 653.
 30. *United States v. Pierce*, 136 F.3d 770, 774 (11th Cir. 1998) (analyzing issue under FED. R. EVID. 701).
 31. *Dority v. State*, 335 Ga. App. 83, 91, 780 S.E.2d 129, 139 (2015). In *Dority*, the State played an interview for the jury between a detective and defendant, wherein the detective “commented on the credibility of the victim, gave his opinion that M. D. had not been coached, made comments that invaded the province of the jury, and gave his opinion that something definitely happened to the child.” *Id.*, 780 S.E.2d at 139. This testimony did not violate O.C.G.A. § 24-7-704. *Id.* at 93, 780 S.E.2d at 140. *But see* O.C.G.A. § 24-6-608 (relating to bolstering); *see also, e.g.,* *United States v. Warner*, No. 1:13-CR-00139-CAP-JFK-1, 2013 U.S. Dist. LEXIS 186862, at *19-25 (N.D. Ga. Oct. 22, 2013) (polygraph evidence proffered by defendant to bolster his testimony was inadmissible under FED. R. EVID. 608).
 32. *In re R.S.T.*, 345 Ga. App. 300, 309, 812 S.E.2d 614, 622 (2018).
 33. 333 Ga. App. 85, 775 S.E.2d 579 (2015) (physical precedent only).
 34. *Id.* at 91, 775 S.E.2d at 584-85.
 35. *See, e.g.,* *Torres v. Cty. of Oakland*, 758 F.2d 147, 150 (6th Cir. 1985) (quoting FED. R. EVID. 704 advisory committee’s note).
 36. *Segrest*, 333 Ga. App. at 91, 775 S.E.2d at 584-85 (citing *Montgomery v. Aetna Cas. & Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir. 1990) (holding, *inter alia*, that “the court must be the jury’s only source of law.”)).
 37. 305 Ga. 882, 828 S.E.2d 304 (2019).
 38. *Id.* at 886, 828 S.E.2d at 308.
 39. 307 Ga. 121, 834 S.E.2d 814 (2019).
 40. *Id.* at 123, 834 S.E.2d at 818.
 41. *Id.* at 128, 834 S.E.2d at 821.
 42. *See, e.g.,* *N.E. Atlanta Bonding Co. v. State*, 308 Ga. App. 573, 577, 707 S.E.2d 921, 925 (2011) (“when we search for this intention [of the General Assembly], we always must presume that the General Assembly means what it says and says what it means”); *see also, e.g.,* *Opensided MRI of Atlanta, LLC, v. Chandler*, 287 Ga. 406, 407, 696 S.E.2d 640, 641 (2010) (“When a statute contains clear and unambiguous language, such language will be given its plain meaning and will be applied accordingly.”).
 43. FED. R. EVID. 704 advisory committee’s note.
 44. O.C.G.A. § 24-7-704(a) (2019).
 45. *See, e.g.,* *Hungry Wolf/Sugar & Spice, Inc. v. Langdeau*, 338 Ga. App. 750, 753, 791 S.E.2d 850, 852 (2016).
 46. *Haney v. Mizell Mem’l Hosp.*, 744 F.2d 1467, 1474 (11th Cir. 1984).
 47. O.C.G.A. § 24-7-701(a) (2019).
 48. FED. R. EVID. 704 advisory committee’s note.
 49. RONALD L. CARLSON & MICHAEL SCOTT CARLSON, *CARLSON ON EVIDENCE: COMPARING GEORGIA AND FEDERAL RULES* (6th ed. 2018) at 423 (citing *Nat’l Ass’n of the Deaf v. Dist. Hosp. Partners, L.P.*, 2016 U.S. Dist. LEXIS 13670 (D.D.C. Feb. 4, 2016)).
 50. *Id.* at 426.
 51. *Davis v. State*, 299 Ga. 180, 192, 787 S.E.2d 221, 232 (2016).



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Transitioning into Practicing Law Virtually

The legal profession as a whole has been faced with redefining the parameters by which we work, going from mostly in-person activity to mostly online.

BY KELLYN O. MCGEE

As the world changed quickly earlier this year, so did our profession. On March 13, the State Bar's offices closed for what would be an unknown length of time and within three days many of the staff began telecommuting from home. The State Bar was not alone in its sudden recalibration of what "going to the office" meant. The legal profession as a whole was faced with redefining the parameters by which we work.

By March 31, the Supreme Court of Georgia issued orders declaring a judicial state of emergency, amending rules for the state's trial and appellate courts, temporarily allowing lawyers to earn all of their CLE hours via online courses and suspending the requirement that an attorney must be physically present during real estate transactions. The governor issued executive orders allowing remote notarization and attestations, as well as mandating statewide sheltering in place. In a matter of a few weeks the legal profession went from mostly in-person activity to mostly online.

The transition has not been easy, particularly when confronted with decades-

old laws and rules. We all quickly—or maybe not so quickly—stepped aboard the learning curve of how to keep legal business going, primarily through video-conferencing. Procedures and policies were altered to allow courts to hear motions, mediations to continue, the Board of Governors to meet and CLE programs to be offered via online venues. Deadlines were extended, the July Bar Exam rescheduled and provisional licenses granted to recent law school graduates.

We learned how to conduct legal business virtually, particularly within the confines of the Rules of Professional Conduct. We know that Alexa (the device and our family member) could be listening and Zoom may be recording. We were admonished to keep the profession professional—yes, judges expect attorneys to dress and appear properly for virtual court, which includes putting on shirts and perhaps not attending a hearing by a pool. By now, though, we have become (mostly) used to virtually practicing law and are likely less frustrated by the glitches that come with using new-to-us technology.

A Year From Now, What?

The unanswerable questions: How will the practice of law look in a year for those who now hold provisional licenses and the rest of us? Will some of the changes our executive and judicial bodies have temporarily ordered remain?

A bill in the Georgia House of Representatives allowing the use of remote notarization in certain situations did not pass during the 2019-20 session. Maybe it will during the next session as we see whether the temporary allowance works. In her article, "Wet Ink Signatures Requirements May Fade After Coronavirus," Melissa Heelan Stanzione, reporter for Bloomberg Law, states that "[b]efore coronavirus, 23 states allowed remote online notarization. Now, at least 19 states have enacted emergency, short-term measures to enable RON."

The question of allowing electronic signatures has also risen. We require "wet" signatures on certain documents for authenticity and veracity, but that requirement could be reconsidered in some instances. Stanzione states that the "benefits of using eSignatures instead of wet





signatures in the age of COVID-19 ‘far outweigh the negatives’ [quoting Connor Jackson, of the national firm Jackson LLP]. The wet signature requirement, that a document be signed in-person and with ink, could see its demise as social distancing practices take hold across the globe. . . .”

We will be faced with deciding if the current relaxed rules are the way forward.

Mentoring and Networking Remotely

We might not fully get back to life in the law as it was before March 2020, but we can find ways to mentor and network with our colleagues. The connection we experienced during virtual happy hours (with those backgrounds reminding us of beaches we long to return to) is also available in mentoring relationships. Virtual mentoring may not be a one-to-one substitute for in-person meetings, but it can enhance a relationship during a time when we can’t be physically close. “Five-Minute Mentoring” (a question on a specific topic that can be answered in a short period of time) remains available by texts, calls and video.

Bar associations, sections or committees can also offer virtual networking sessions via videoconferencing. In April, Sonja N. Brown, deputy chief assistant district attorney for DeKalb County, taught a virtual Zumba class for five local and national bar associations. Attorneys can use online platforms not only to complete their CLE hours but also to remain in social—not physical—contact with colleagues. From our homes we can meet people for tea or cocktails, join them on the mat for yoga or a workout, have a prayer meeting or book club. We might be limited in the physical spaces we go to, but our sudden embrace of current technology has revealed numerous creative ways to practice law and socialize with each other. We have all been affected by this crisis. We can rise out of it together while remaining connected. ●



Kellyn O. McGee

Director, Transition Into Law Practice Program
State Bar of Georgia

kellynm@gabar.org

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State Bar of Georgia's Committee on Professionalism Establishes New Speakers and Writers Bureau

The State Bar's Committee on Professionalism and the Chief Justice's Commission on Professionalism have launched a speakers and writers bureau to encourage research, writing and speaking by Georgia lawyers on issues of professionalism.

BY TERRICA REDFIELD GANZY



During orientation for my LLM in Trial Advocacy program at Temple University's Beasley School of Law, we were asked to introduce ourselves to our classmates. One by one, each of us went to the front of the room and told the group our names, where we worked and other mundane details about ourselves. If we managed to project our voices, we thought we had done a good job.

After everyone had spoken, the program's director introduced herself. And it was glorious. Her movements, her inflection, the story she told about her life left me in awe. I had never witnessed an introduction so powerful. It had not occurred to me that something as simple as a personal introduction could leave such a lasting impression. Her demonstration set the tone for the year of study that followed. We learned to connect with our audience on an emotional level and use our words and delivery to make even seemingly tedious information sing and dance in the minds of listeners.

Professionalism is a pillar that helps uphold the legal profession as a high

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calling; without professionalism our legal profession falters. It is, therefore, critical to convey ideas about professionalism best practices in a manner that makes attorneys want to sit up and listen. We must leave a lasting impression. The poet William Carlos Williams said, "It's not what you say that matters, but the manner in which you say it; there lies the secret of the ages." I have found this statement to be true in many contexts, but concerning professionalism, the "what" of your communication is as important as the "how."

To enhance both the quantity and quality of professionalism research and materials (the what) and the number of presenters capable of effectively conveying this information (the how), the State Bar of Georgia's Committee on Professionalism, with staff support from the Chief Justice's Commission on Professionalism, is launching a speakers and writers bureau to encourage research, writing and speaking by Georgia lawyers on issues of professionalism.

The Speakers and Writers Bureau is the brainchild of Committee on Professionalism Chair Robert Arrington, managing partner of Arrington | Owoo P.C. In August 2019, Arrington formed a subcommittee to lead the Speakers and Writers Bureau's design and implementation. The subcommittee is chaired by Hon. Eric Richardson, judge, State Court of Fulton County. Kevin Patrick, principle and founder of Kevin Patrick Law, and I serve as co-chairs.

The new speakers and writers bureau will accomplish two objectives. The first objective is to encourage attorneys to research and write scholarly articles regarding professionalism for submission and consideration by the *Georgia Bar Journal* and other publications. The second objective is to assist the commission in updating and developing its lists of suggested professionalism speakers. The commission's ex-

Professionalism is a pillar that helps uphold the legal profession as a high calling; without professionalism our legal profession falters. It is, therefore, critical to convey ideas about professionalism best practices in a manner that makes attorneys want to sit up and listen.

ecutive director, Karlise Y. Grier, wants the commission to have an up-to-date multicultural, multi-generational, multi-practice and geographically diverse list of potential professionalism speakers as a resource for attorneys in Georgia who are planning events and educational programming. She is excited to work with the Committee on Professionalism to identify and develop this cadre of talented presenters.

The Committee on Professionalism will identify and recruit attorneys who desire to tell stories that resonate, conduct research that enlightens, and write articles that inspire and inform. The commission may invite any attorney authors who prepare excellent written material to have their names added to the commission's list of suggested professionalism presenters and to contribute the author's written material to supplement the sample written material currently on the commission's website.

If you have a passion for promoting professionalism and want to learn more about the Speakers and Writers Bureau, contact Karlise Y. Grier at kygrier@cjcpga.org. ●



Terrica Redfield Ganzy is the deputy director of the Southern Center for Human Rights. She is the current president of the Georgia Legal Services Program Board of Directors, and member of the Center for Death Penalty Litigation's board of directors and the board of directors of the Atlanta Chapter of the Association of Fundraising Professionals. Ganzy is also a member of the State Bar of Georgia's Committee on Professionalism and the Georgia Association of Black Women Attorneys, where she is the vice president of programs.

2019 Georgia Corporation and Business Organization Case Law Developments

This article presents an overview from a survey of Georgia corporate and business organization case law developments in 2019. It is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed in this article are those of the author only and not Bryan Cave Leighton Paisner LLP.

BY MICHAEL P. CAREY

This article catalogs decisions handed down in the year 2019 by Georgia state and federal courts addressing questions of Georgia corporate and business organization law. It includes both decisions with significant precedential value and others dealing with more mundane questions of law as to which there is little settled authority in Georgia. Even those cases in which the courts applied well-settled principles serve as a useful indication of trends in corporate and business organization disputes.

The decisions are organized first by entity type—those specific to business corporations, limited liability companies and partnerships. The remaining sections of the article deal with (1) transactional



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issues potentially applicable to all forms of business organizations, and (2) litigation issues that are common to all business forms, including secondary liability, jurisdiction and venue, service of process and damages questions.

Summary

Duties and Liabilities of Corporate Directors, Officers and Employees

One of the most closely followed corporate governance cases in recent years, *FDIC v. Loudermilk*, returned to the appellate courts in 2019 after a jury found the former directors of the Buckhead Community Bank liable to the FDIC for \$5 million in losses the bank suffered due to loans approved by the defendants. A key question on appeal was whether the trial court erred by not applying Georgia's apportionment statute, O.C.G.A. § 51-12-33, which would have divided the judgment among the defendants according to their relative fault. The U.S. Court of Appeals for the Eleventh Circuit sought guidance from the Supreme Court of Georgia, certifying three questions regarding the impact of the apportionment statute on cases involving corporate board decisions that lead to pecuniary losses. The Supreme Court of Georgia unanimously held that the statute applies to tort cases involving only pecuniary losses, but does not always abrogate the traditional common law rule imposing joint and several liability on joint tortfeasors. Instead, joint and several liability remains the rule where the defendants acted in concert, because fault is not divisible under such circumstances. *FDIC v. Loudermilk*, 305 Ga. 558, 826 S.E.2d 116 (2019). The Eleventh Circuit interpreted this to mean that where fault is indivisible for any reason, § 51-12-33 does not apply. It therefore affirmed the judgment, finding

that there was no evidence from which the jury could have divided fault among the defendants. *FDIC v. Loudermilk*, 930 F.3d 1280 (11th Cir. 2019).

In *Conroy v. Amos*, 785 Fed. App. 751 (11th Cir. 2019), the Eleventh Circuit affirmed the dismissal of a shareholder derivative suit on the motion of the corporation under O.C.G.A. § 14-2-744, finding that the special litigation committee that recommended dismissal was independent and had conducted a reasonable, good faith investigation into the claims.

Corporate Stock and Debt—Contracts, Valuation and Standing

In *McDuffie v. Sautner*, 2019 WL 5865929 (M.D. Ga. Nov. 8, 2019), the Middle District of Georgia addressed a dispute between two groups of shareholders over which group owned a controlling stake in the company, a question that turned in part on whether the defendants' unrecorded purchases of stock from other shareholders could be counted. On a motion for preliminary injunction, the court sided with the defendants, holding that the sellers of the defendants' stock had fully complied with the company's bylaws by surrendering their stock certificates and that any delay in recording the sale in the company records did not serve to invalidate the sale. In another dispute that turned on incomplete corporate stock records, the Court of Appeals of Georgia held in *Laymac v. Kushner*, 349 Ga. App. 727, 824 S.E.2d 768 (2019), that the plaintiff was a shareholder in an S corporation notwithstanding his failure to pay for his shares or to receive share certificates. Reversing a ruling from the trial court, the Court of Appeals found that the parties had entered into a binding share subscription agreement, which established the plaintiff's ownership of shares even in the absence of payment. A petition for

certiorari to the Supreme Court of Georgia has been denied.

Nonprofit Organization Decisions

In *New Covenant Church, Inc. v. Armstrong*, 2019 WL 1934880 (S.D. Ga. May 1, 2019), the Southern District of Georgia enjoined two individuals from exercising control over a church's property and bank accounts, holding that their exercise of authority was *ultra vires* under the church's bylaws and the Georgia Nonprofit Code. The two individuals had claimed that they were acting under the authority of the church's founder and pastor, but the court ruled that the exercise of control over church property was a corporate act that had to be authorized by the church's board of directors.

Limited Liability Company Developments

There were several decisions regarding fiduciary and contractual duties owed by members and managers of LLCs. In *TMX Finance, LLC v. Goldsmith*, 352 Ga. App. 190, 833 S.E.2d 317 (2019), the Court of Appeals of Georgia held that two LLC members could maintain a direct action against the majority member for breach of fiduciary duty and fraud leading to the dilution of the plaintiffs' interest. While recognizing that dilution claims are typically derivative in character, the court found that in this case the plaintiffs had shown sufficient evidence that they were specifically targeted by the defendants and therefore suffered a unique injury. In *Colquitt v. Buckhead Surgical Associates, LLC*, 351 Ga. App. 525, 831 S.E.2d 181 (2019), the Court of Appeals held that the managers and non-managing members of a medical practice did not violate any fiduciary duty in voting to terminate another member. The court reasoned that under O.C.G.A. § 14-11-305 and the LLC's operating agreements, voting was

not a managerial act but rather a right that extended to all members. And in *Gryder v. Conley*, 352 Ga. App. 891, 836 S.E.2d 120 (2019), the Court of Appeals held that an informal memorandum of understanding between two individuals who later formed an LLC was not superseded by the LLC's operating agreement, which did not contain a merger clause and did not address several key matters covered by the memorandum.

In *Intelligent Investment International LLC v. Fu*, 2019 WL 1281204 (N.D. Ga. Mar. 20, 2019), the Northern District of Georgia addressed the interesting question of whether interests in LLCs formed to purchase and hold commercial real estate were securities. The court applied the longstanding *Howey* test and determined that in this case they were. The LLCs in question were formed by a real estate broker as part of a fraudulent scheme in which she promised investors that she would find properties and manage them for the LLCs' benefit. The court focused on allegations that the promoter completely controlled the operation and marketed the LLC interests to foreign investors who had no involvement in running any aspect of the venture.

In *Wright v. Scales 925 Atlanta, LLC*, 761 Fed. App. 884 (11th Cir. 2019), the Eleventh Circuit addressed a claim that a Georgia LLC was not really an LLC but rather was operated as a partnership. The court held that even though the principals referred to themselves as "partners," the company had been validly formed as an LLC and consistently held itself out as one, such as by using the LLC name on pay stubs and tax forms. In *First Southwestern Financial Services, LLC v. Dennis Waters Construction, LLC*, 2019 WL 1782123 (S.D. Ga. Apr. 23, 2019), the Southern District of Georgia held that in a procedure to obtain a charging order against an LLC member under O.C.G.A. § 14-11-504(a), it is not necessary for the plaintiff to serve the LLC itself. Finally, in *Delfin Group USA, LLC v. Baghdasarian*, 2019 WL 1903427 (N.D. Ga. Mar. 20, 2019), the Northern District of Georgia dismissed a breach of fiduciary duty lawsuit brought by the seller of an LLC interest against its purchaser and the LLC itself. The court held that LLCs owe

no fiduciary duties to their members, and that the sale was an arm's length transaction in which the purchaser assumed no fiduciary duty to the seller.

Partnership Law Developments

In *Jysk Bed'N Linen v. Dutta-Roy*, 787 Fed. Appx. 608 (11th Cir. 2019), the Eleventh Circuit affirmed the grant of summary judgment against a contractor who claimed he had formed a partnership with a company whose website he built. The court found that the contractor's evidence of a partnership, which consisted of an unsigned and undated written partnership agreement and a number of emails, was insufficient to establish that a partnership existed. In *Baker v. GOSI Enterprises, Ltd.*, 351 Ga. App. 484, 830 S.E. 2d 765 (2019), the Court of Appeals of Georgia held that the plaintiff's breach of partnership agreement claims did not relate back, for purposes of the statute of limitations, to an earlier lawsuit she had filed against the same defendant. The court reasoned that the allegations in the second suit were too dissimilar to the plaintiff's earlier allegations to be considered a renewal of the prior action.

Other Entity Types

In *AgSouth Farm Credit ACA v. West*, 352 Ga. App. 751, 835 S.E.2d 730 (2019), the Court of Appeals of Georgia considered whether an agricultural lending association owes fiduciary duties to its members with respect to the extension of loans to them. The court held that there is no categorical fiduciary duty owed by such organizations to their members, and that such duties will only arise under special circumstances demonstrating a departure from the normal relationship between lenders and borrowers. Because the trial court had assumed that member-based lending associations normally owe fiduciary duties in denying the association's motion for summary judgment, the Court of Appeals vacated the judgment and remanded with directions.

Transactional Cases

In *SDM Investments Group, LLC v. HBN Media, Inc.*, 353 Ga. App. 281, 836 S.E.2d 193 (2019), the Court of Appeals of

Georgia held that a former shareholder was barred from suing the company and its officers and directors over a merger that cashed out the plaintiff's shares. The court held that the plaintiff had failed to exercise its dissenters' rights under O.C.G.A. § 14-2-1302, and thus forfeited its right to challenge the merger through a post-merger lawsuit. In *6428 Church Street, LLC v. SM Corrigan, LLC*, 352 Ga. App. 437, 834 S.E.2d 603 (2019), the Court of Appeals affirmed a grant of summary judgment in favor of an LLC manager who was alleged to have defrauded two investors into paying \$1 million into a real estate venture. The court found that the alleged misrepresentations were not actionable because they dealt strictly with the defendant's future plans and the venture's anticipated profits, and there was no evidence of the defendant's intent not to perform. Finally, in *Division Six Sports, Inc. v. Hire Dynamics, LLC*, 348 Ga. App. 347, 822 S.E.2d 841 (2019), the Court of Appeals reversed a trial court order that had found that a corporation ratified a contract executed by one of its employees. The panel ruled that the plaintiff had not shown ratification as a matter of law because there was a question of fact as to whether anyone whose knowledge could be imputed to the corporation was aware of the contract.

Litigation Issues

Corporate Form and Standing

Infinite Energy, Inc. v. Marietta Natural Gas, LLC, 349 Ga. App. 343, 826 S.E.2d 189 (2019) involved the city of Marietta's attempt to form an LLC to compete in Georgia's deregulated natural gas market. The Court of Appeals held that the city's application was correctly dismissed by the Georgia Public Service Commission. Though the case raised an interesting question as to whether the Georgia Code permits municipalities to form LLCs as a general matter, the panel chose to rule on a narrower ground: it found that the city's charter did not permit the creation of LLCs to carry out public utility functions.

In *Earls v. Aneke*, 350 Ga. App. 455, 829 S.E.2d 661 (2019), a law firm's former cli-

ent claimed that his engagement agreement was unenforceable because the firm was not properly organized. On appeal from a summary judgment order against the client, the Court of Appeals declined to review the matter because it appeared that the trial court had not considered whether the firm, which held itself out as an LLC, could enforce the agreement given that the agreement was not signed by a member of the LLC. In *Whitesell Corporation v. Electrolux Home Products, Inc.*, 2019 WL 6219856 (S.D. Ga. Nov. 20, 2019), the Southern District of Georgia held that a parent corporation lacked standing to recover damages allegedly sustained by its Canadian affiliate, which was not a party to the lawsuit or to the contract that formed the basis for the parent company's claims. The court explained that the parent had not demonstrated that it had standing to sue on behalf of the separately incorporated Canadian entity.

Alter Ego, Piercing the Corporate Veil and Other Forms of Secondary Liability
Two cases addressed principles of successor liability in cases where defendants were accused of forming a second company to avoid paying creditors. In *Stamey Cattle Co., LLP v. Wright*, 2019 WL 722597 (S.D. Ga. Feb. 19, 2019), the Southern District of Georgia held that a family-owned LLC was liable for the debts of a related family business under the "mere continuation" theory, in which a new entity is formed that is identical as to the "objects, assets, shareholders, and directors" as a previous discontinued business. The court also found that the plaintiff could pierce the LLC's veil to hold one of its members individually liable. In *Z-Space, Inc. v. Dantanna's CNN Center, LLC*, 349 Ga. App. 248, 825 S.E.2d 628 (2019), the Court of Appeals of Georgia affirmed an order denying a motion to dismiss alter ego and "mere continuation" claims against two construction firms, the second of which was formed by the owners of the first firm after a large judgment was entered against it.

Jurisdiction and Venue

In a case of first impression in *Georgia, Enterprise Propane Terminals and Storage, LLC v. Sterling Transport Co., Inc.*, 2019

WL 2435681 (M.D. Ga. June 11, 2019), the Middle District of Georgia held that master limited partnerships are subject to the same citizenship rules as LLCs and other unincorporated entities for purposes of federal diversity jurisdiction. As a result, a master LP is considered to be a citizen of every state in which one of its unit holders resides. In this case, which involved a publicly traded master LP, it meant that the LP was a citizen of all 50 states and was effectively immune from federal diversity jurisdiction. *Enterprise* is part of a growing trend of federal district courts in Georgia carefully scrutinizing the citizenship of unincorporated entities, sometimes *sua sponte*. In *Maxey v. CM Buffington Road LLC*, 2019 WL 2080268 (N.D. Ga. Feb. 21, 2019), the Northern District of Georgia ordered the parties in a removal action to file notices setting forth the citizenship of a defendant that was an LLC. Finding the parties' responses to be insufficiently thorough, the district court remanded the case.

A different kind of diversity jurisdiction issue arose in *Snadon v. SEW-Eurodrive, Inc.*, 421 F. Supp. 3d 1360 (N.D. Ga. 2019), in which the Northern District of Georgia denied a motion to remand on the grounds that the plaintiff fraudulently joined a corporate officer who had no personal involvement in the events that injured the plaintiff. The case illustrates that where diversity jurisdiction is at issue, courts can look beyond the pleadings and consider evidence (in this case, un rebutted affidavit testimony from the officer) contrary to allegations in the complaint regarding an officer's personal involvement in a tort.

There were two notable decisions addressing personal jurisdiction. In *Baker & Murakami Produce Company LLLP v. Weng Farms Inc.*, 2019 WL 3208372 (S.D. Ga. July 16, 2019), the Southern District of Georgia held that it could exercise personal jurisdiction over an out-of-state corporate officer. The court applied settled Georgia law rejecting the "fiduciary shield" doctrine. In *Weinstein Group, Inc. v. O'Neill & Partners, LLC*, 2019 WL 5999275 (N.D. Ga. Nov. 14, 2019), the Northern District of Georgia denied a law firm's motion to dismiss for lack of

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personal jurisdiction, holding that it established minimum contacts with Georgia by making plans to start an office there and hiring the plaintiff to locate Georgia lawyers to work for the office.

Finally, the Court of Appeals of Georgia addressed a novel venue question in *Andrews v. Blue Ridge NH Associates, LLC*, 353 Ga. App. 75, 836 S.E.2d 197 (2019). The plaintiff sued an LLC in DeKalb County one day before the LLC filed its annual registration statement, which moved its registered office to Dawson County. The court rejected the LLC's argument that the change of residency became effective on the date on which the filing was signed, which was a few days earlier. Instead, it held that under O.C.G.A. § 14-11-206, an LLC cannot specify an effective date that predates the date of filing as reflected in the Secretary of State's time and date stamp for the document.

Service of Process

As usual, there were a number of decisions applying the federal and state court rules for service of process on a business entity. In *Cross v. Equityexperts.org, LLC*, 2019 WL 2494599 (N.D. Ga. Apr. 17, 2019), the Northern District of Georgia held that a company that listed a virtual office as its address was properly served when a process server hand delivered the summons and complaint to a person claiming to be in charge of the virtual office facility. The defendant's claims that the individual served was not an employee of the company were found by the court to be irrelevant. In *Turfstore.com, Inc. v. Hall*, 348 Ga. App. 398, 823 S.E.2d 81 (2019), the Court of Appeals of Georgia held that the default period for a foreign corporation did not begin to run until the corporation actually received the summons and complaint, which had been misdelivered to a similarly named company. In *Burgos v. Sand Canyon Corp.*, 2019 WL 4889268 (M.D. Ga. Oct. 3, 2019), the Middle District of Georgia held that a plaintiff failed to perfect service against a foreign corporation that had obtained a certificate of withdrawal of its authority to do business in Georgia prior to the filing of the

lawsuit. The court held that O.C.G.A. § 14-2-1520(c) required the plaintiff to mail a copy of the process to an officer of the corporation at the address provided on the certificate, which the plaintiff had not done. That order has been appealed to the Eleventh Circuit.

Receivership

In *A&M Hospitality, LLC v. Alimchandani*, 351 Ga. App. 310, 828 S.E.2d 615 (2019), the Court of Appeals held that a trial court's appointment of a "limited receiver" for an LLC to conduct an audit and inspection of the LLC was not an abuse of authority under Georgia's receivership statutes. The court held that compliance with O.C.G.A. § 9-8-4 was not necessary because notwithstanding the trial court's use of the term "limited receiver," the real effect of the order was to appoint an auditor. Finding no abuse of authority under O.C.G.A. § 9-7-3, which governs the appointment of auditors, the panel affirmed. In *Nayyar v. Bhatia*, 348 Ga. App. 789, 824 S.E.2d 675 (2019), the Court of Appeals affirmed the appointment of a receiver in a dispute between business partners where the defendant was alleged to have taken control of the business while his partner was living out of the country.

Bankruptcy Issues

In *Matter of Jimenez*, 608 B.R. 322 (Bankr. M.D. Ga. 2019), the Bankruptcy Court for the Middle District of Georgia dismissed in part a creditor's petition seeking a determination that debts owed by a professional corporation and guaranteed by its principals were non dischargeable under 11 U.S.C. § 523(a)(4) and (6). The court held that the petition failed to state a claim "for fraud or defalcation in a fiduciary capacity" because there was no technical trust giving rise to the sort of fiduciary duty described in the Bankruptcy Code. On the other hand, the court found that the petition could state a claim that the defendants caused willful and malicious injury by negotiating a sale of the corporation's assets to a third party in exchange for future employment. In *Suzhou Allpro Certified Public Accountants Co., Ltd. v. Sure Heat Manufac-*

turing, Inc., 2019 WL 1438162 (N.D. Ga. 2019), the Northern District of Georgia ruled in favor of a Chinese bankruptcy administrator who sued the bankrupt entity's U.S.-based parent for breach of an intracompany note.

Damages and Remedies

In *Miller v. Lynch*, 351 Ga. App. 361, 830 S.E.2d 749 (2019), the Court of Appeals of Georgia held that a minority member of an LLC could not seek prejudgment interest from the LLC's majority member under O.C.G.A. § 13-6-13. The court held that § 13-6-13 applies only to breach of contract cases, and the plaintiff's claims were premised on fiduciary duties imposed by law.

Miscellaneous Litigation

Procedural Issues

Finally, in *Chappuis v. Ortho Sport & Spine Physicians Savannah, LLC*, 305 Ga. 401, 825 S.E.2d 206 (2019), the Supreme Court of Georgia addressed a matter of first impression under the Civil Practice Act: when matters in a pleading may be struck under O.C.G.A. § 9-11-12(f) for being "scandalous." The lengthy opinion may be of interest to litigants in business disputes concerned about the reputational harm caused by prejudicial statements made in pleadings. The Court unanimously adopted a framework instructing trial courts not to strike allegations solely because they are prejudicial, but instead to weigh the relevance of the allegation before considering its prejudicial effect. The Court also cautioned that striking allegations should be done sparingly and that courts should attempt to strike only as much language as is necessary. ●



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

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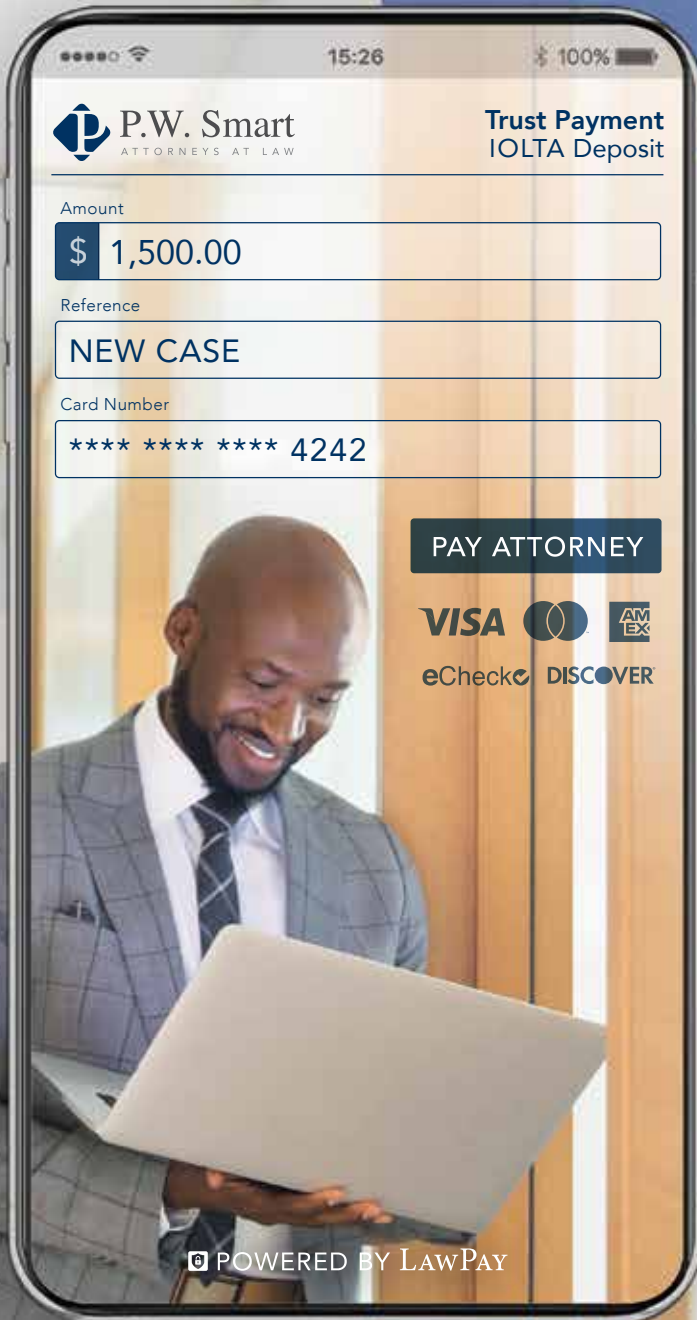
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The Deal

The Editorial Board of the *Georgia Bar Journal* is proud to present “The Deal,” by Joe Cargile of Thomasville, as the winner of the *Journal’s* 29th Annual Fiction Writing Competition.

BY JOE CARGILE

The purposes of the Fiction Writing Competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year’s entries reflected a wide range of topics and literary styles. In accordance with the competition’s rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author’s identity and then scoring each entry. The story with the highest cumulative score was selected as the winner. The Editorial Board congratulates Cargile and all of the other entrants for their participation and excellent writing.



He closed his eyes. Breathing in and out, he counted each breath. His heart rate began to slow as he worked to calm his mind. His thoughts wandered. They went to his hearing yesterday in Calhoun County. His client’s testimony on the stand.

“It was bad,” he thought to himself. “I should have prepared him better.”

He breathed deeply through his nose and out of his mouth. He thought about his bank account. “Checking has about a thousand or so,” he guessed. “I hope we can make payroll next week.”

Back to the breath he went. The hum from the silence grew with each passing second. He could hear his counselor’s words in that calming voice say, “When something pops into your mind, bring yourself back to your breath.” His thoughts wandered to Coach Weeks.

The obituary appeared in the newspaper that morning. He mulled the first three lines of the tribute over in his head. It was a quote that appeared in bold italics under a photograph of the coach. The quote was from an interview in 2002. The Panthers had just beaten Brooks County in the second round of the playoffs the night of Feb.

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15. A reporter from the *Americus Times-Recorder* caught Coach walking off the court from the Panthers' second-round win. The reporter miscounted the number of steals Jake had that night but did not misquote Coach Weeks.

"No one at 18 years old is yet certain who they are. This team of 12 young men is no different. If they figure out who they want to be before the end of the season, then I accomplished what I came here to do."
—Melvin Weeks, 2002

Jake leaned back in his chair and put his feet on the desk. He opened his eyes for a moment and looked at the minute hand on his watch. Three more minutes were left in the exercise. He closed his eyes, and instead of trying to clear his mind, he tried to remember the last time he saw the coach. It had been at least a year.

When Jake went back to his hometown, he avoided eating out. He would visit his mother and check in with a few old friends. He chose to leave on Sundays before church began and had not set foot in his old high school's basketball gym since 2003. The county school and Americus High merged in 2004 to become Americus-Sumter County High School. The legendary career of his old coach, and the Panthers' tradition, continued in the merger. New banners hung from the rafters. New players joined the roster. Jake wanted nothing to do with it.

He remembered the last time he saw his coach. It was at a Walmart in Camilla last Christmas. The coach must have been in Mitchell County visiting his daughter and grandkids. Jake was stopping in on his way home from a hearing in Thomsville. The evening encounter was mere happenstance. Jake hurried through the packed store in one of his best suits. Hustling down an aisle with a bag of dog food slung over his shoulder, Jake nearly ran straight into the coach. They talked for 10 minutes, and Jake had to run.

"Been busy, Coach," he remembered saying.

"Busy doing what?" Coach huffed.

"Busy lawyering until the Lakers decide to pick me up," he replied.

"Those boys in LA don't need another showboater on their roster," Coach said with a laugh.

"I'm more of a defensive player now, Coach," he said.

"I'm sure you are, counselor. Stop by next time you are in town," Coach said as he walked away.

They did not talk about how Jake's career was going. He did not ask about how Jake's knee was doing. That 2002 Panthers' team that went on to win state never came up. The coach asked about Jake's mom and talked about his granddaughter's new dog. Jake had no idea Coach was sick. They shook hands and parted ways. It was the last time Jake Collins would see his old coach.

The funeral was that afternoon. Jake would attend, as would many of his former teammates. He thought about their days playing for Coach. It felt like yesterday. They were the heralded 2002 team. With his eyes closed, he could hear the sounds of the crowd in his old high school gym. He laced his shoes up. He looked at the faces of his teammates. He felt the butterflies in his stomach. He heard the stomping of the feet on the bleachers and the cheerleaders chanting. The smell of popcorn seeped into the locker room as they huddled around Coach for a pregame speech.

"Come to terms with the fact that you are a team of scrappers," he would say.

Coach would get in a player's face and yell, "Get out of this locker room if that bothers you."

"You scrap and you claw all night, you hear me!"

"Nobody wants to play this team because we fight, scratch and hustle all four quarters!"

"They may be bigger, but you have more heart."

"They may be faster, but you worked harder this offseason."

"They may hit you out of the gate, but you won't back down."

"You will not quit."

Then Coach would say, "Bring it in men," and he would pray.

There was a rigid dichotomy between the way Coach would motivate a team and the way he would pray with it. He would dog cuss you for a missed assignment in

practice. He allowed skirmishes between teammates until punches to the face were thrown. He encouraged heated on-court rivalries as long as a handshake followed the competition. He was ruthless in his criticism and a terror to play for. Then before dismissing the team each day, he would direct everyone to take a knee so that he could remind everyone that they have one purpose on this earth.

"The heart of man plans his way, but the Lord establishes his steps," Coach would say as he brought the team in for a huddle. He ministered to his players with all of his soul, and then would break the huddle with, "Panthers on three!"

Jake Collins loved basketball. He was a slashing guard—excellent ball control, quick feet and equally talented at passing with either hand. He ran the court like a wild man and took the ball to the hoop as much as possible. If you stepped in the lane to stop him, Jake would kick it out to a teammate. If you did not honor his ability to take the ball in with the tall trees, Jake would cut you two points at a time. He started at point guard for the Panthers his sophomore year and never looked back. Teams all over Georgia knew Jake Collins before he was done with his time in high school. At 35, he still held the records for career points, assists and steals.

He breathed those memories in deep, and the silence surrounded him. He felt calm. The desk phone rang.

"Jesus Christ," he murmured, before pressing the microphone button.

"Mr. Collins?" said the receptionist.

"Yes?" he replied.

"Tim Brown with First National Bank, line two," she said.

"Tell him I'll call him back," he said with a sigh.

"You've got it," she replied.

The funeral was at 2 p.m. He would leave for Americus around lunch. He picked up his cellphone and checked his bank account. It was lower than he thought. He then clicked open his Outlook calendar to review the remainder of his morning's appointments.

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The man walked into the lobby right at 11 a.m. He carried a collapsible folder and

In Jake's experience, there are generally two kinds of conversations that kick off the client consultation. The first is the kind you would expect in the South The second kind of conversation is when the client has come prepared to talk to Jake, well, about Jake.

wore a black backpack. A lady sat in an armchair reading a newspaper, and a little boy played on a tablet. The music from the boy's device sang and pinged. The woman glanced up at him as he walked to the receptionist's desk, but the boy did not take his eyes away from his game.

"I am here to see Mr. Collins," the man said to the receptionist.

"Can I get your name, please?" she replied.

"It is Will Felt, and I have an 11 a.m. appointment scheduled."

"Can you remind me what it is about so I can let him know?" she inquired.

"I want to talk to him about a contract."

The receptionist, Claire Bond, was in her late twenties. She wore a blue blouse, and her gold bracelets bounced as she worked the mouse and the phone. Her dark hair and eyes shined from behind the desk. From what Will could see, he wanted to keep looking.

"I'll see if he is ready for you," she said, initially not looking up from her computer. When she did, she realized Will had been gazing a little longer than was acceptable.

"Go ahead and grab a seat, and we will be right out there to get you," she added with a smile.

"I'll grab a seat then, and thank you," Will said, with an awkward smile.

Ten minutes passed, and Will watched the lady in the armchair. She now had some paperwork and a clipboard. She wore her hair in a bun and had a scarf

around her neck. She looked weathered, and she rubbed her forehead as one does, frustrated. The boy still sat quietly next to her, consumed by the game.

The law office's sign loomed outside the door, "Barnes & McLean: Serving the Community for Thirty Years," in blue lettering that had faded along with the rest of the building. Below the sign were the lawyers' names and practice areas. Family Law, Criminal Defense, Bankruptcy, Personal Injury, Workmans' Compensation and Business Law were listed in equally faded letters.

Will assumed the worst for the lady in the scarf. He imagined that she was here for the family law services. Cheating husband, absent father and all the other clichés that precipitate a divorce filing crept into Will's mind. The alcohol abuse, arguments, verbal abuse and money troubles had taken her to the edge. She made it through the holidays and the family members visiting from out of town. She put the Christmas card together and posted pictures on social media. Will could see their smiling faces and her husband's puffy eyes. She endured. This weekend, though, it all needed to end. The marriage reached the tipping point, and she found herself here. Even though it was all in his imagination, Will still wished he could help.

The sound of the receptionist's voice broke his train of thought. "Mr. Felt, can you follow me back to the conference room?"

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Jake Collins walked into the small conference room and extended his hand. "I apologize for being late," he said as he took a seat. At 35, Jake was in good physical shape. He had a full head of hair and prided himself on dressing sharp. He had a coffee cup in his hand and carefully set it down on the table. His brown eyes stared at the man for a few seconds waiting for Will to speak first. Will stared back at him.

In Jake's experience, there are generally two kinds of conversations that kick off the client consultation. The first is the kind you would expect in the South. Potential clients ask Jake about his family and where he is from. They want to talk about who referred them to the firm by word of

mouth. They want to know if any of Jake's "people" are people that they know. They want to know where he goes to church and which football team he roots for on Saturday afternoons. They want to get to know Jake before discussing a legal issue. If they approve of Jake, they will pay his fee.

The second kind of conversation is when the client has come prepared to talk to Jake, well, about Jake. They have done their research on him and oftentimes want him to know it. "I saw you went to Mercer," or "Looks like you practice in Florida and Georgia" is sprinkled in to assure Jake that they know more about him than he knows about them. "You played some ball at Florida State, that's impressive," some would even say. Jake knows that these potential clients want the upper hand. They are prepared and expect him to be, too. They want to test him before discussing the legal issues involved.

In Jake's mind, the second kind of initial conversation indicates a few things. First, the person knows more about what they are looking for in a lawyer. Second, this person has done their research on the kind of legal help needed, so a more sophisticated explanation of what service you can provide is necessary. Lastly, this person might be a pain in the ass to work for. Get your fee because they will use every bit of it.

"What can I do for you today, Mr. Felt?" Jake opened with a smile.

"I need to talk to you about some trouble I'm in," Will responded. "See, a buddy of mine, Jim Strickland, said you helped him get out of a DUI last year."

"I know Jim. He is a good guy," Jake replied.

Jake Collins knew the guy well. Jim "Stick" Strickland was a repeat offender. Stick was 6'5" and wiry. He was California hair in Georgia boots. The guy liked to party but kept his missteps to misdemeanors. He always had a little money to pay for his legal troubles and came from a good family.

"How is Stick doing?" Jake asked.

"Living it up as you would expect," Will replied. "I saw him at an event last weekend, and he was singing your praises to a group of 10 or so people."

"That's the kind of marketing money can't buy," Jake thought.

The last case Jake worked on for Stick was a classic. A trooper pulled the guy over for going 80 MPH on a country road in Miller County. Stick was driving a brand new GMC Sierra 3500HD Denali. The trooper gets to the window of the truck, pulls Stick out and loads him up. Speeding, Open Container, DUI, Reckless Driving, Possession of Marijuana and Attempting to Elude were gifted on the spot.

"He tell you about that case?" Jake asked.

"Oh yeah, Stick said you put a little miracle together for him."

"He got lucky," Jake replied with a smirk.

Sensing an opportunity to regale his potential client with a story of victory, Jake proceeded.

"First, the state trooper in Jim Strickland's case made a big mistake," Jake said with authority. "He lied in his report about how things went down. I was going through the discovery in the case and saw it right off. I knew if the solicitor actually watched the video, he'd have to just toss the case out," Jake explained.

"See, Stick did not initially stop when the blue lights came on. He starts to slow down, but he drives for at least another mile until he comes to a clearing on the side of the road. The trooper sees a passenger in the truck moving around, so of course, he suspects the worst. He thinks the guy is stalling and trying to hide something in the cab," Jake said, setting the scene. "Once the truck stops, the trooper steps out and puts the spotlight on the back of Stick's truck."

Jake noticed that his potential client was enjoying the story. Will leaned against the table with his forearms. Jake leaned back in the chair and continued.

"I had gotten the CAD report, so I had the recording of the trooper's radio call into dispatch. He was pissed, and he proceeds to call for backup like he is about to take down the cartel's kingpin," Jake said, adding some theatrics.

"The trooper heads toward the window of the truck and later testified that he could smell the booze from the tailgate. Apparently, Stick had put away quite a bit of moonshine that night, so my guy probably smelled like a can of gasoline," Jake added with a laugh.

"Well, the trooper gets to the window and barks his standard request for license and proof of insurance. While Stick is apparently looking for his license, the trooper steps up on the running bar of the truck to look inside. He sees a cute blond sitting in the passenger seat with her jeans unbuttoned and her tank top on backwards. The trooper shines his flashlight at her blushing face, and then spots an orange-colored lace bra on the floorboard."

Jake leaned over the table and said in a hushed voice, "Stick told me his passenger was buck naked when the blue lights came on."

Jake stopped to let the scene set in for young Will Felt.

"Well, Captain America gets antsy because Stick is taking time to locate his license and asks, 'Have y'all been doing some drinking tonight?'"

Jake paused and then said, "Will, I've handled hundreds of DUI cases in my career and 99 out of 100 clients lie in that situation."

"Jim Strickland is not most people," Will added.

"Bingo!" Jake chirped. "Jim Strickland is not most people."

Jake took a sip of his coffee and then leaned back, balancing his weight on the back two legs of the chair. Speaking with his hands, he reenacted the last bit of the tale.

"These troopers don't usually have body cams on them like you see on TV. They capture all of their traffic stops from a dashcam video," Jake explained. "You could see on the video that the trooper is just staring Stick down while he is apparently fumbling around his truck looking for his wallet."

"After some digging around, you hear on the audio that the trooper points out to our guy that his wallet is splayed out on the floorboard. Stick thanks the trooper, picks it up to fish out his license and says with perfect delivery, 'Well officer, it looks like you caught us with our pants down.'"

Will laughed at the story. He was unsure what to say and also unsure if it was completely true.

"Well, the trooper had no sense of humor, and he hauled Stick and his passen-



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ger to jail,” Jake continued with a chuckle. “It took some time, but we worked it out.”

Jake was pleased with himself. He remembered the case well. He remembered that consultation well. It was Jim Strickland’s third DUI arrest in a span of 18 months. At the time, Jake had little hope that he could work a deal. The trooper was known to be hard to work with, and the solicitor was new to the job. Jake had told Stick at their first meeting, “I want you to start wrapping your head around this DUI going on your record.”

He remembered Stick responding with, “Buddy, you have to learn to sell your services a little better.” Stick, while paying \$7,500, said, “Work that magic, Jake.”

“So how did you get him out of it?” Will asked.

There was a brief silence, and Jake stretched it. He studied his potential client for a moment. He then folded his hands and said, “Let’s talk about you, Will.”

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Will Felt pulled out his collapsible folder and opened it. Out of it came newspaper clippings. They were from the *Albany Herald*, *Tallahassee Democrat*, *Camilla Enterprise*, *Florida Times-Union* and *Montgomery Advertiser*. He slid them across the table. They were all the same news story. The date on each was Jan. 21, 2018. The first

was titled “Southwest Georgia’s Newest Millionaire,” and another read “Under Thirty, Going On Thirty Million.” Jake picked each up to examine them. Standing in each picture, holding an oversized check, was Will Felt.

“Looks like you came into a bit of money, Mr. Felt?”

“You could say that,” Will replied.

More silence and Jake looked back at the newspaper articles in front of him. Sensing an opportunity, he wanted to think before easing into the rest of their conversation. He read the article over from the *Florida Times-Union* titled “Man Plays Lottery for First Time, Wins Big.”

“Last night’s Mega Millions Winner has come forward. The Georgia Lottery confirmed that the winner is from Tifton, Georgia. The lucky ticket, bought by 26-year-old Will Felt, was the first lottery ticket he ever purchased. The night of the drawing, Felt walked into a Pilot Travel Center in Cordele, Georgia, to purchase the ticket. He bought it 15 minutes before the drawing. The ticket is worth \$30.3 million.”

Jake turned the article over in his hands to look over the backside. He did so as if he were inspecting it to verify its authenticity. He understood this consultation to be about a contract issue. Barnes & McLean was not known for its transactional work. Truthfully, it was not known

for much at all. He wondered why this new millionaire was not taking his problem, and money, to a silk-stocking firm known for this type of work. Jake’s contract cases were small-time disputes. They would involve a tenant’s rental agreement or a lease to own contract on a mobile home. If Will Felt was coming into this office for advice on a contract tied to his newfound millions, he must not have known he was at the wrong place. Jake was not about to tell him, either.

“So, Claire up at our front desk said you have a contract you want to talk to me about?” Jake said.

“Yeah, I think that’s what you would call it,” Will replied.

“Do you have a copy I can take a look at while you tell me about it?” Jake asked.

“Well, I don’t have a written agreement,” Will replied.

“That’s alright, tell me what it is about,” Jake prodded.

“Does it matter that the agreement is not written down?” Will said, sidestepping the question.

“That depends,” Jake replied, hoping he did not need to prepare a spiel on contract formation.

There was more silence, and Will began to collect the newspaper articles on the conference table. He stacked them in his hands and started filing them back into his

collapsible folder. Will was unsure about his choice at the moment. He looked up at the lawyer as Jake was checking his watch. It was 11:45 a.m. and Jake would need to leave the office by 12:30 p.m. to make the funeral. Jake began to grow impatient.

"I saw you play ball at Florida State," Will said.

"Oh yeah?" Jake replied. The sudden change of topic caught him off guard. "You didn't start, but you played a ton of minutes," Will continued.

"Which game was it?" Jake asked.

"Y'all were playing Pitt."

"That was my sophomore year. I remember that game well," Jake added with hesitation.

"FSU got the win," Will replied.

"Yeah, and we had a really good team that year. Lots of seniors on the roster. We went all the way to the Sweet Sixteen, so it was fun to be a part of all that." Jake said, providing the canned response he used often.

"You went down with a knee injury right before the game ended," Will said.

The comment sounded like it was spoken underwater. It confirmed what Jake suspected this potential client already knew. It made his stomach hurt. He reached his hand under the table to rub his right knee. It had been 15 years since that game. The memory still bothered him. The knee still bothered him.

"That's right. There was 1:47 left in the game. It was a tough night," Jake said in an effort to end the conversation on the topic.

"I was in middle school at the time, and it was my first FSU basketball game," Will said, redirecting the focus of the night to his perspective. "My older brother played you in high school, and he thought you were the best player he ever played against. He still thinks that you are. You burned him for 30 points."

"I appreciate that," Jake replied.

"He thinks that if you had not injured your knee, you might have played in the NBA," Will said with an awkward smile.

"I fractured my tibial plateau and tore my ACL, MCL, LCL and patellar tendon that night," Jake said, injecting harshness in his tone. "I never played in another basketball game after that night. It was the worst sports-related knee injury the surgeon at

the Hughston Clinic had ever seen."

"I am sorry it happened," Will replied.

"It was a long time ago."

More silence and Jake glanced at his watch again.

"Look, I actually have to make a funeral for my old basketball coach this afternoon." Jake began.

"No, I get it," Will said cutting him off. "I am here today because I need some advice, and I need it all to be confidential."

"Well, everything you say to me in this consultation is confidential. It does not matter if you decide not to hire me to handle this contract matter. I can't speak about it to anyone outside of my firm unless you tell me it's alright to do so," Jake assured him.

Will wondered if Jim Strickland knew his latest DUI arrest was being recapped to potential clients. Then again, he would probably love it. Will assumed that the door was opened somehow to talk about the case. Maybe it was when Jake asked whether Stick told Will about the case. Either way, Will was not concerned about Jim Strickland. What he cared about was his brother's advice.

"The night that I won this money, I did not plan to play the lottery," Will began. "I pulled into that gas station in Cordele where I bought the ticket because my car was running on fumes. I was about 40 miles from home. I pull up at the pump and realize I'd left my debit card at a bar in Athens the night before."

"That kind of thing happens in Athens," Jake added with a smile.

"It's 9:30 p.m. on a Friday night, and I have no checkbook, credit card or cash on me," Will explained. "It was embarrassing."

"I walk over to a picnic table outside of the convenience store and start calling around to family and friends to see if anyone can help me out."

"Sounds like a good time to play the lottery," Jake remarked.

"Yeah, well, a guy walks up to me wearing a baseball cap. He tells me his name is Luke and that he overheard my conversation on the phone. He tells me he wants to help me out with some gas money."

As Jake sat there listening, he began to see the issue. Now, he was the one leaning in, forearms against the conference table,

listening to the story.

"The guy starts asking me how much further I have to go and where I am coming from. He pulls out a cigarette and offers me one. I accept it and stand there for 10 minutes talking to the guy about my bad luck the night before."

"What kind of bad luck?" Jake asked.

"I was at a bar with a buddy of mine from college. I start talking up a cute bartender that was about to get off her shift. We are buying her shots, and things are going well. Then the bouncer starts coming by telling me and my buddy to 'settle it down.'"

"I have a feeling I know what happens next," Jake groaned.

"I give the bouncer a little bit back and the next time he comes by, he tosses me," Will said with a shrug. "I never went back into the bar to grab my card."

"Anyways, the guy at the gas station, he loans me twenty-five bucks."

"Luke loans you twenty-five bucks," Jake reiterated, to show he was listening.

"Right. At first, I don't want to accept it, but the guy insists. He tells me, 'Take the money, Will. You are due some luck tonight.'"

"I thank the guy, and as I am walking off, he says 'Hey Will, buy yourself a lottery ticket with part of that gas money.'"

Will takes a moment to let what he just told Jake to settle in. This lawyer was only the second person to hear the story about what took place in Will Felt's life that night. He studied Jake's expression from across the conference table and continued on.

"I tell the guy that 'I owe him one' and start walking into the store."

"Pretty common thing to say to someone that helps you out," Jake replied, trying to reassure his potential client.

"That's what I thought," Will said.

"Well, the guy laughs and says, 'don't sweat it, how about you just owe me one in the next life?'" Will said in a somber tone. "He then walked toward me, extended his hand, and said 'that a deal?'"

"What did you say?" Jake asked.

"I told him it was a deal."

-5-

Jake drove east on Highway 280. He would make the funeral. Passing through

Preston and Plains, he felt the comfort of returning to familiar terrain. With the windows down in the truck, he breathed in the country air. Rural Georgia is beautiful in its own way. The farmland tied to each small town surrounds the roads that lead nowhere in particular. Jake accrued countless hours of windshield time every year. He rode country highways to the county courthouses all across Southwest Georgia. He enjoyed the scenery, and, cell service permitting, it gave him an opportunity to catch up on phone calls from the office.

This afternoon the calls to clients could wait. He reflected on his meeting with Will Felt. It was a first in his career. “A deal with Lucifer himself,” Jake said out loud. He chuckled at the story as he watched the farmland pass by.

He knew the growing seasons and recognized that farming peanuts, soybeans and other crops was not easy. Difficult, yes, but the entire soul goes into the farmer’s work. Jake wanted to put his soul into something and feel that purpose in life. He thought of what he would give to feel that connection to his craft that he felt on the basketball court. He thought of his clients that he helped file for bankruptcy under Chapter 12 over the years. He remembered the tears in their eyes as they decided to close down their farming operations. How many of them would pledge their souls in exchange for millions?

The cellphone rang. Jake rolled the windows back up in his truck and pressed the answer key on the vehicle’s touch screen.

“This is Jake.”

“Hey, it’s Claire. I wanted to let you know that Mr. Felt made a payment on his account today. He told me you quoted him \$30,000 to handle his case. He paid with a personal check.”

“Take it to the bank and make sure it clears,” Jake said.

“I am heading that way now,” Claire said.

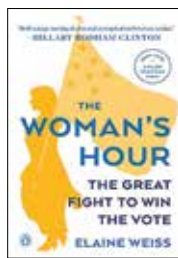
“I’ll be at this funeral for a bit and might hang around Americus for the evening,” Jake said.

“Are you driving back tonight?” she asked.

“I am not sure. I have some people to see over here,” Jake replied.

Now Read This: Summer Reading Suggestions

When we asked Georgia lawyers to submit reading summer suggestions, we had no idea what lay ahead of us. The COVID-19 crisis has changed the landscape of the things we take for granted when it comes to work, school and leisure. Chances are you won’t be packing up to go to the beach this summer, but you still might have time for a good read.



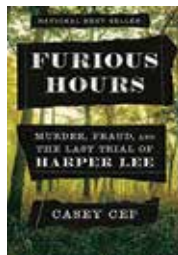
The Woman’s Hour

by Elaine Weiss

Submitted by Jocelyn Daniell

“The Woman’s Hour” tells the story of the last state to vote to ratify the 19th Amendment—Tennessee. I am sure each state had its struggles with ratification throughout that long process during 1919-1920, and the book explains the national movement, but it primarily focuses on how Tennessee finally got there. It also pointed out that Georgia voted not to ratify.

Lifelong learning is important; I am glad to periodically delve back into history to appreciate the present.

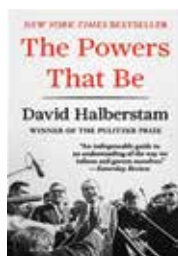


Furious Hours

by Casey Cep

Submitted by Aziz Parker

“Furious Hours” follows a murder trial that was to be Harper Lee’s next great book that was never written. It is one-third true crime thriller, one-third legal drama and one-third tragedy. The book touches on issues in criminal, insurance and tax law while requiring any lawyer to consider race, justice and jury nullification in the South. The book’s focus on defense attorney Tom Radney reveals the real life complications and rewards of an attorney in rural Alabama.

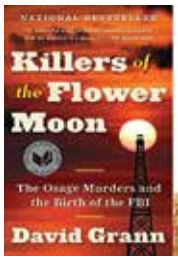


The Powers That Be

by David Halberstam

Submitted by Eric Teusink

This book was published two years before my birth, but I have never read anything that has provided me with more insight into the current relationship of media and politics. It’s discussions of Roosevelt’s use of radio, Nixon’s relationship with the *Los Angeles Times* and Kennedy’s understanding of television are thought-provoking lenses with which to view modern politics and social media. Read this book.



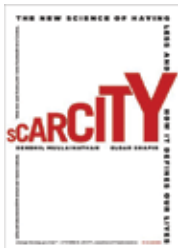
Killers of the Flower Moon: The Osage Murders and the Birth of the FBI

by David Grann

Submitted by Linda Dunikoski

This is an excellent book that will keep you entranced. The Osage Indians of Oklahoma are targeted through marriage in order to obtain the headrights to their oil

fortunes, but it soon turns to murder, and the story of the law men who sought justice.



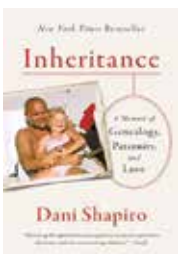
Scarcity: Why Having Too Little Means So Much

by Sendhil Mullainathan and Eldar Shafir

Submitted by Sarah Babcock

Have you ever had a pro bono client who is impossible to reach or who failed to bring important documents to court and thought “I would never behave this way!”? “Scarcity: Why Having Too Little Means So Much” will

show you that you’re wrong—busy attorneys and their pro bono clients are much more alike than we think. “Scarcity” is a quick read with real-life examples that will change how you think about pro bono practice and your own workday.



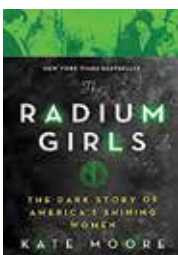
Inheritance: A Memoir of Genealogy, Paternity, and Love

by Dani Shapiro

Submitted by Max Ruthenberg-Marshall

Shapiro thought little of sending off her DNA test, but the results shocked her. Her father—who raised her, loved her and whose Jewish heritage she identified so strongly with—was not her father. At least

not biologically speaking. With her parents having passed away, Shapiro is left to navigate this mystery on her own and come to terms with why her parents made the choices they did. Along the way, she connects with her biological father, recognizing in him parts of herself that previously made her feel like an outsider. Shapiro’s journey explores the powerful ties of both love and biology. A perfect read for any family law attorney.



The Radium Girls

by Kate Moore

Submitted by Dr. Megan Hodgkiss

Is this book a summery, sit-by-the-pool read? No. But should this non-fiction book be on every attorney’s reading list? Absolutely. “The Radium Girls” follows the lives of female factory workers in 1920s

New Jersey, Illinois and Connecticut who contracted radiation poisoning from painting watch dials with self-luminous paint. Author Kate Moore tells this devastating story from the perspectives of the workers themselves. As these young women began to develop horrific and deadly diseases during what should have been the prime of their lives, a few courageous workers filed suit against the corporations who hid the truth about the toxic paint. The women’s bravery and perseverance led to historic changes in the fields of health physics and occupational disease labor law.



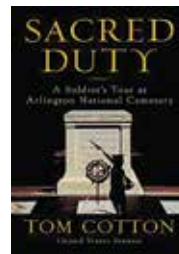
The Wide Sargasso Sea

by Jean Rhys

Submitted by Michael O’Neill

The thin but amazing “The Wide Sargasso Sea” is a must read for any attorney. The author carefully develops the main character into an insane monster. Since the main character is also in “Jane Eyre,” keep that book close by (especially in the

wild last chapter!). This is one of those books that purposely is silent about many important details that the reader only realizes at the end or after many re-readings. The mostly Caribbean background with the introduction of the word “zombie” and with strange flora is the perfect background to this masterpiece.



Sacred Duty

by Sen. Tom Cotton

Submitted by Duncan Harle

Sen. Tom Cotton grew up on a farm in Arkansas and attended Harvard University and Harvard School of Law. During law school, the attacks of 9/11 affected Cotton’s thoughts about serving his country in the field of law. He joined the Army after

three years working as an attorney to pay off his law school debt and was eventually selected to serve in the Army’s Old Guard—an elite regiment charged with the responsibility of watching over the Tomb of the Unknown Soldier, as well as at Arlington National Cemetery. Sen. Cotton gives an in-depth look of the “sacred” work of these soldiers who honor and steadfastly remember the lives of those who made the ultimate sacrifice for their country. This book is a reminder to lawyers that we have a vocation to serve the public—and that we have a sacred duty not only to our clients, but to the system of justice that we serve.

"Will I see you this weekend?" Claire prodded.

"I haven't made it that far yet. Let me know if the check clears, and I'll talk to you later."

Twenty minutes later, he pulled into the parking lot of the church. The lot was packed, and he circled around to the side street to find an open space. Most people walking toward the church wore Panthers' blue to honor Coach. Jake wore a black suit and dark tie.

He slammed the door to his truck and hustled in the direction of the church. He checked his watch. It was 1:57 p.m. By Coach's standards, Jake was late. His cell-phone vibrated. It was Claire again.

"Did you make it by the bank yet?" he asked.

"I am leaving now," she replied.

"Did the check clear?" he asked.

"The check was good. Why are you acting strange?"

"I am not acting strange," he insisted.

"You had a strange look on your face after leaving your last appointment today. You have been determined to get this check deposited. What's going on with this new case?" she prodded.

"Thanks for getting that to the bank, Claire. I have to run," Jake said.

Jake entered the church through the main entrance. The coach was Catholic. It was suited to his rote training methods, but not compatible with his approach to courtside sermons. As predictable and brutal as the coach's practices were, his preaching was equally unpredictable. The team never knew what to expect. There were days that Jake felt he stepped into a tent revival once Coach finished running the team into the ground. It surprised him that Coach was not a devout Baptist. The evangelist in Coach Weeks was impressive. More impressive than the tyrant he often portrayed. The coach drove his players to be men that defined themselves as Christians. Jake never questioned it, until one day he did.

The organ began to play, and the funeral-goers stood. The modest sanctuary was full. The priest, along with the family and acolytes, proceeded down the aisle to the front of the church. The traditional funeral Mass would take close to an hour.

He pulled out his cellphone, ensured it was on silent, and glanced at the missed text message from Claire: "Sorry again about your coach. Call me if you need anything." He decided to turn it off and returned it to his pocket. He smiled as he could hear his counselor's voice saying, "Be present, Jake."

The priest stood and walked to his pulpit. Father John appeared to be in his early sixties. His silver hair was neat, and he was clean-shaven. His black robe bore a Panthers' Blue vestment for the occasion. The sanctuary was quiet as he readied his notes. He looked out at the group and began to tell a story about his first interaction with Coach Melvin Weeks.

In his Louisiana accent, the priest explained that when he arrived at the small church in Americus, "It took time for some of the congregants to come around."

The funeral-goers laughed as the priest continued his self-deprecating introduction.

"Coach visited me four times for confession in the first week," Father John chuckled. "I soon came to realize he was not just coming to confess, but he was coming to motivate me to lead this parish."

"I enjoyed those talks," he continued, "I believe many of you in this room received some of that wisdom, at some time, from the coach."

Father John then proceeded to give a short sermon. The trial lawyer in Jake recognized the skill that Father John brought to his post. The clergyman spoke with eloquence and tactfully wove passages from the Bible into his sermonette. Jake noticed that Father John's warm and welcoming presentation seemed to be well received. Many in attendance had no use for organized religion. The priest recognized his opportunity.

After the sermon, Father John invited those in the attendance to receive Holy Communion. He explained that the Catholic Church places certain requirements on anyone that wishes to receive the Eucharist. He said, "I believe that an open table is what Jesus would want. I urge those that loved the coach, and are not in communion with the Church, to still come to the front to receive a blessing." Jake elected not to take part.

Outside of the church, Jake talked to familiar faces. Friends that he had not seen in years. Teachers from another life. Jake lingered as most people loaded up into their vehicles to join the procession to the graveside. The graveside service, or Rite of Committal, would involve the priest reading a verse or two of Scripture. He would allow those family members to say their last special prayers, and all would watch as the coffin lowered into the ground. Jake did not feel he should intrude on the family's last moments with the coach. Father John made his way out of the church and stopped to talk to the funeral director. Recognizing Jake, he then walked in Jake's direction.

"Good afternoon, Father," Jake said.

"Mr. Collins?" He replied with a hand extended.

"Yes, sir," Jake said.

"I appreciate your decision to attend today," the priest said.

"You did a nice job with the coach's service. I enjoyed your sermon," Jake said with sincerity.

"Thank you," the priest responded.

They stood on the front steps of the church, watching the vehicles gather into a line behind the hearse.

"I received your letter," Jake said.

"He would have been pleased that you decided to show up," Father John replied.

"He asked you to send the letter?" Jake asked.

"That he did."

"Why?" Jake said, still staring at the hearse and family as they lifted the casket into the vehicle.

"I am not certain, but I think Melvin Weeks believed he failed you, Mr. Collins," Father John replied.

"How? We won a lot of basketball games together. He helped me get a full ride to an ACC school to play basketball. I thought he would look at my career as a basketball player with some pride, at least," Jake said with frustration.

"As the coach would say, that is not your only purpose in life," Father John said with a smile.

"The coach would say that," Jake sighed.

The priest turned to look at Jake and put his hand on his shoulder. The priest was a

strong man, and he could feel the intensity of what the priest was prepared to say.

“I don’t know you, Mr. Collins. However, I talked for hours with your old coach about his life and work. He was fond of you. You had great potential in the game of basketball. Still, what happened to your athletic career does not give you a reason to turn your back on the Lord. It was a long time ago, but it was part of the plan.”

Jake stared back at Father John. He was taken aback by the priest’s sudden forthrightness. “Like you said, it was a long time ago,” Jake remarked.

Father John removed his hand from Jake’s shoulder. “Long time ago or not, you must push on with the battle. Good struggles with evil everyday. It intervenes in our lives.”

“You mean the Devil intervenes?” Jake mocked.

“That he does. He tempted Jesus in the Wilderness. Do you not believe he would do the same to you?” Father John replied.

Jake looked away in silence. The pointed approach taken by the priest was unexpected. Jake would be obligated, one way or another, to listen a little longer.

“What would you say then to someone that turned his or her back on the Lord?” Jake asked to appease the priest.

“I’d tell that person that God did not go anywhere. He has been with you the entire time,” Father John replied.

Jake then asked, “What does one do if they have committed themselves to the Devil, then?”

The priest raised his eyebrow, then said with his Louisiana drawl, “You are a lawyer, Mr. Collins, correct?”

“Yes, sir.”

“There is no deal the Devil can ever make with you or me that is binding in the courts above,” the priest replied.

“You have a reference for that?” Jake asked, in jest.

“There is therefore now no condemnation to them which are in Christ Jesus, who walk not after the flesh, but after the Spirit. For the law of the Spirit of life in Christ Jesus hath made me free from the law of sin and death,” Father John said with a serious tone. “Romans 8:1.”

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“Only asking for a friend,” Jake said again with a smile.

As the priest walked away, he turned to Jake and said, “God uses unexpected people in unexpected places. Don’t ever forget that, Mr. Collins.”

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Jake stood in his old driveway, looking up at the basketball hoop. The light from a floodlight shone down on the makeshift court. He dribbled the ball in front of him and tested the bend in his knees. The stiffness in his right knee gave resistance as Jake imitated his old triple threat stance. Putting the ball on the ground, he lumbered toward the basket and executed a smooth lay-in. He stepped back behind the flowerpot at the corner of the carport and launched a shot toward the goal. The sweet sound it made as it slid through the net

brought back memories. Memories unearthed by the coach’s departure. “I can’t keep this guy’s money,” Jake thought to himself.

He dribbled the ball behind his back and moved up to take a shot from the faded free-throw line. Jake knew that it was time for him to let the game of basketball go. He had another purpose in life. To move on, he would let the game he loved move on as well. He looked up at the hoop in front of him and said to himself, “I make this and I keep the cash.”

As a boy, he envisioned taking game-winning shots all over this old driveway. The crowd would go wild as time expired, and Jake would be carried off on the shoulders of his teammates.

The 93 percent career foul shooter left it short.

Jake smiled to himself and picked up his cellphone. He scrolled through his

Outlook calendar to find the number. The phone rang twice.

“Mr. Felt, this is Jake Collins.”

“Evening, Mr. Collins. Did you make your coach’s funeral today?” Will asked.

“I did. Listen, I want to talk to you about your case.”

“Did you see my brother there?” Will interrupted.

“Your brother?” Jake replied, confused.

“Yeah, he is the new head basketball coach over there. I know he attended the funeral and spoke briefly at the graveside service,” Will replied.

“The coach had a lot of great people there. I must have missed him, Will,” Jake said as he connected the dots.

“My brother was an assistant coach on Coach Weeks’ staff during his last season. I told my brother about what happened to me up in Cordele, and he recommended I come to you. I guess the coach always said,



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If Jake Collins is half as good a lawyer as he was a basketball player, no one will be able to stop the guy in the courtroom,” Will said.

There was silence as Jake looked out at the night sky. “I believe your story, Will.”

“I know you do,” Will replied.

“I can’t keep your money, though,” Jake said.

“I thought you might say that,” Will groaned.

“I could spin some bullshit about the statute of frauds or tell you that I’ll stay on retainer if some guy named Luke files a lawsuit in Crisp County alleging you had an agreement to split the lottery proceeds,” Jake said. “I am not going to practice that way anymore, though.”

“I appreciate your honesty,” Will replied. “Keep the money though. Apply it to that woman’s account who was

in the waiting room this morning with her son.”

“You don’t have to do that,” Jake insisted.

“I want to do it,” Will said.

“Well, I want you to visit Father John here at St. Mary’s in Americus,” Jake began.

“He will provide you the counsel you need.”

“Who is going to provide you with the counsel you need?” Will asked.

“I have someone in mind.”

They hung up the phone and Jake felt a weight lifted off of his shoulders. It was his first step in beginning to practice with his soul. He dribbled the basketball up and down the driveway. He listened as the sound echoed off in the distance. He felt the purpose in his life that used to be tied to the game of basketball fade with the sounds. He would find a new purpose. He would find a new love. He pulled his cellphone out and scrolled through the contacts list. The phone rang three times.

“Hey, is everything alright?” she said.

“Everything is great,” he replied. “Do you want to come over to Americus and meet my mother this weekend?”

“What prompted this?” she said with a laugh.

“I’ll tell you all about it,” he said. “What do you think?”

“I’ll tell you next time I see you,” she said, after a long pause.

“Bring your church clothes, Claire. We are staying through Sunday lunch.” ●



Joe Cargile is in his fifth year of practice with Whitehurst, Blackburn & Warren in Thomasville, Georgia. He is passionate about representing clients facing criminal defense and personal injury matters. He can be reached at jcargile@wbwk.com.

A Conversation with Steve Berry

In this installment of the Georgia Lawyer Spotlight, Editorial Board Member Jacob E. Daly interviews attorney and best-selling author Steve Berry.

BY JACOB E. DALY

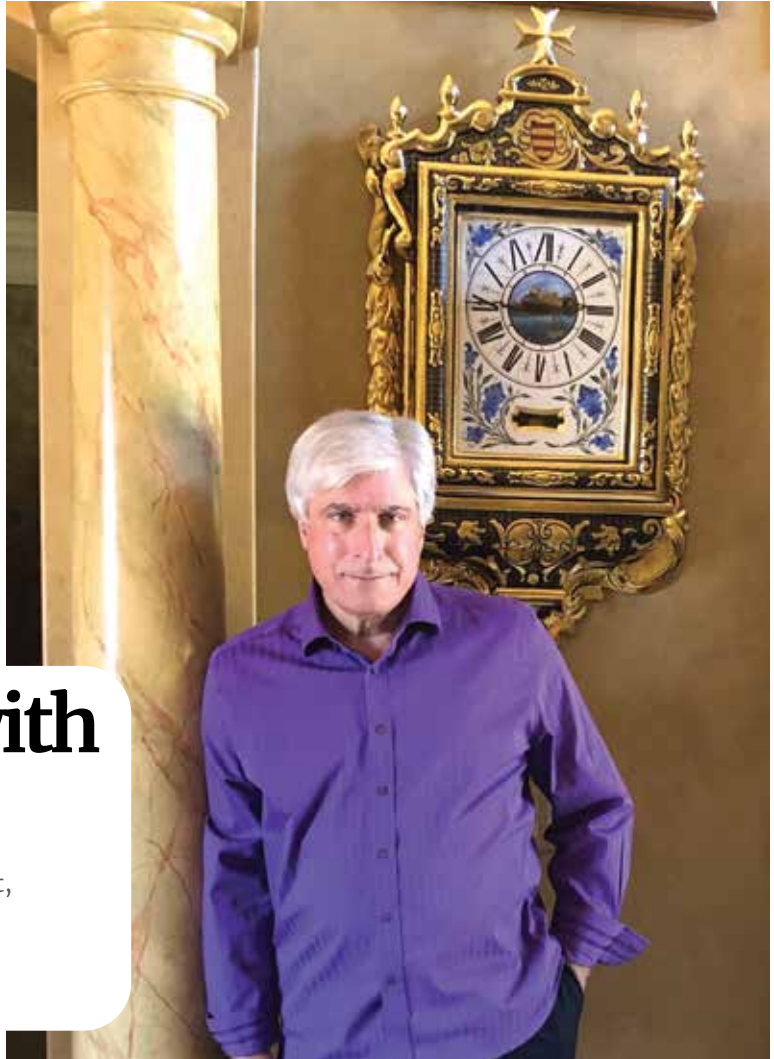


PHOTO PROVIDED BY STEVE BERRY

Steve Berry, at his home in St. Augustine, Florida, with a Tal-Lira, a traditional Maltese clock that he commissioned from a local clockmaker, whose family has been making these clocks since the 18th century. It is one of many items decorating Berry's home that relate to the subjects of his books.

What was your experience at Mercer law school like?

Law school was life-changing. I went in with perfect vision and came out wearing glasses. I was single as a freshman, married with a child by the third year. I was also part of the first class to occupy the school's new building (a replica of Independence Hall) up on the hill above Macon. Back then, law school taught you all about how to think, but almost nothing about how to actually apply that thinking in the real world. Trial practice classes were then only in their infancy. So I graduated law school knowing next to nothing about how to practice law. Less than 60 days later I was standing before a

judge, picking a jury. Needless to say, that was quite an education.

What type of practice did you have as a lawyer?

I practiced in a small town, a street lawyer, handling pretty much whatever came through the door. The only exceptions were workers comp and bankruptcy. I never did either. I stayed in court several days each week. Over 30 years I handled thousands of divorces, countless criminal defendants, personal injury and every kind of civil litigation imaginable. But I also did the everyday stuff. Wills, corporations, real estate closings, adoptions, landlord/tenant. Anything and everything folks needed.

Ninety-five percent of the fees were by the job, not the hour. Small fees. But they added up with volume. "A lot of a little, instead of a little of a lot," was how I used to put it.

Why did you get into politics? How did you like life as an elected official?

Public service always intrigued me. So, in 1988, I ran for the local school board and won. I served four years then gave the seat up. In 2000, I ran for the county commission and won, serving until 2010 when I resigned before moving from Georgia to Florida. I enjoyed being a county commissioner. I miss it. You can make a difference in your community

from a position like that. I encourage everyone to dedicate themselves to some sort of public service.

When did you first get bitten by the writing bug?

The little voice in my head that told me to write (which every writer possesses) started in the 1980s, but I ignored it. Finally, in 1990, I sat down and wrote my first manuscript. It took a year and it was awful. 170,000 words. That's a lot of unnecessary words. From 1990 to 2002 I wrote eight manuscripts, five were submitted to New York publishing houses, rejected a total of 85 times. It was on the 86th try, 12 years after I started, that I finally was in the right place, at the right time, with the right story, which was "The Amber Room," published in 2003. Since then there have been 18 more published novels. Four are standalones. Fifteen are in the Cotton Malone series.

How did you balance practicing law and writing before you became a full-time novelist?

I went in every weekday morning to my office and wrote from 7 to 9 a.m. No one ever saw me write my first dozen or so manuscripts. I was always there alone. I made sure I worked those two hours, Monday to Friday, trying to produce 1,000 words a day, no matter what. I learned that if I maintained that pace, I could have a manuscript done in a year. I realized that if I ever managed to sell one of the stories any publisher would want a book-a-year. So I taught myself the skill. During the rest of the work day, if there was time, I would write a little here and there. At night, before bed, I did my research for the next day's work. I learned the craft of writing amongst the chaos of a working law office and constant distractions. To this day I still need those distractions to keep going. Peace and quiet drives me crazy.

Was there a particular moment that caused you to decide to stop practicing law and to become a full-time novelist?

It was after "The Alexandria Link," published in 2007. I had five books out then and had achieved a moderate level of success. "The Templar Legacy" (2006) had

"I learned the craft of writing amongst the chaos of a working law office and constant distractions. To this day I still need those distractions to keep going. Peace and quiet drives me crazy."

been a big success (it remains my largest selling novel). By 2007, I had a backlist generating solid sales and a contract for new frontlist. Writing, and book promotions, were taking more and more of my time. That's when I did the math and determined I was making more writing than practicing law. So I quit in 2008. It was utterly terrifying. I sold the office, my library and all of the furniture and equipment. My clients found other lawyers. Like Cortez and his ships, there was no going back. Thankfully, the decision worked out.

Describe your process for writing a novel from the development of an idea for a story to final publication.

It's an 18-month process from start to finish. It begins six months before the writing starts, while I'm working on the book before. I do the preliminary research, sketching out the overall plot, gathering some of the 300 to 400 books that will eventually be used as sources and outlining the first 100 pages. Once I finish the novel I'm working on and turn it in, I immediately start the new one. No break. No rest. Just right in. That's necessary since I need 12 more months to continue the research and actually write it to stay on schedule. My contract calls for a book-a-year. I try to stay 50 pages ahead of myself with outlining, but it never works out. You always write

faster than you outline. But if I can maintain that process the book will be done within the 12 months. It's imperative on a working commercial fiction writer that they honor their contract and turn in their work on time. You'd be surprised how many don't.

The protagonist in most of your novels is a retired government lawyer/intelligence operative, Cotton Malone. Who or what was your inspiration for creating Cotton?

When I created Cotton in "The Templar Legacy" (2006) I incorporated a lot of my own personality, which I allowed to stay within him once the character took hold. Cassiopeia Vitt, his love interest, is basically my wife, Elizabeth. Both characters, though, have changed a lot over the course of 15 books. You never want your characters to remain static. Fictional personalities, like real life people, have to grow and evolve. Cotton was born in Copenhagen while I was sitting at a café in Højbro Plads, a popular Danish square, and that's why he owns a bookshop there. I also wanted someone with government ties and a background that would make him, if threatened, formidable. But I also needed him to be human, with flaws. I gave him an eidetic memory, since who wouldn't like one of those? Back in 2006 I never conceived that he'd be around 15 books later. I was just hoping we could get one book out there with him and maybe another after that. But he's survived and people have come to like him. That's truly gratifying.

Do you have a long-term plan for Cotton, or is his fate evolving one book at a time?

I just want him to keep going. And evolve. The Cotton Malone from "The Templar Legacy" (2006) is not the same man as depicted in "The Warsaw Protocol" (2020). I try to explore something different in his personality with each book. That way he's constantly expanding. New challenges bring to light new traits in his personality, and it's fun creating those. His next adventure is "The Kaiser's Web," which will hit stores in February 2021.

Which one of your books is your favorite or the one you are most proud of? Why?

I have to say, I love all 19 of my children equally. There is no favorite. Each was created in its own right, with its own purpose. Each is likewise different, standing on their own, separate from the others, offering readers choices. I've dealt with a wide range of historical periods from ancient times, to the Middle Ages, to the Cold War, to now. There are domestic (American) stories and international tales. Each is a modern day thriller with an historical hook. Lots of action, history, secrets and conspiracies. Something for everyone. But not to worry. There is no need to read the 15 Cotton Malone books in order. I write them so you can pick up the series anywhere you would like.

What elements of novel writing do you think lawyers should incorporate into their legal writing?

The object of legal writing is to persuade. That's done by saying the same thing over and over until it sticks. The object of writing fiction is to entertain and to say things only once. Those skills are quite different. And you never want to incorporate legal writing into fiction. That's why my first manuscript was 170,000 words long. I wrote it like a lawyer, saying the same thing over and over. It took me six years to get legal writing out of my head. On the other hand, using techniques from fiction in legal writing works. Absolutely. It loosens things up. Allows you to develop issues. Set the scene. Tell a story. And who doesn't like a good story? For several years, I taught a CLE course across the country called "Put A Little Fiction Into Your Legal Writing." It was fun and, I hope, informative.

Tell us about your passion for history and the work of your foundation, History Matters.

Money for historic preservation is one of the first things to be cut from any budget. In 2009, my wife, Elizabeth, and I came up with an innovative way to raise money for historic preservation, and that's when

History Matters was born. The most popular choice has been our four-hour writing workshop that we teach where writers, aspiring writers and readers buy their way in with a contribution. Usually, that's somewhere between \$75 and \$200. All of the money raised from the workshop goes to the particular historical project we are there (in that community) to support. No expenses or appearance fees are ever charged. In fact, we pay all of those ourselves. So far, we've taught more than 3,000 students. Other ways History Matters raises money is through meet and greets, speaking engagements, galas, receptions, luncheons, dinners, club meetings or a cocktail party. In quite a few communities these have worked well in conjunction with a workshop, as it allows a broader base for both participation and contributions. "Whatever works for you," is History Matters' motto. So far, we've raised a little over \$2 million for some 80 historical preservations across the country and Canada. If anyone wants to know more they can check it out on my website, www.steveberry.org.

What do you read for pleasure? Who are some of your favorite authors?

I read mainly history, as I go through those 300 to 400 sources I use on every novel. But for fun I'm a thriller junkie. I love anything by Dan Brown, James Rollins, Clive Cussler, Joseph Finder, Lee Child, David Baldacci and just about any other working thriller writer today. I like to pick and choose when I get the time to read purely for fun. ●



Jacob E. Daly is of counsel with Freeman Mathis & Gary, LLP, in Atlanta and a member of the Georgia Bar Journal Editorial Board. He represents

private companies, government entities and their employees in personal injury litigation with a focus on defending property owners, management companies and security companies in premises liability lawsuits.



Front row: Sam G. Nicholson - Middle row: Harry D. Revell, Adam W. King -
Top row: A. Dixon Revell, George S. (Sam) Nicholson



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Kudos



John O'Neal was appointed to the Clayton County Board of Commissioners legal department as senior assistant county attorney. O'Neal will serve as deputy to the county attorney, supervising three other assistant attorneys and staff.



HunterMaclean announced the retirement of Andrew H. "Drew" Ernst, who spent his 43-year career at the firm. Drew started his HunterMaclean career four days after graduating from the University of Georgia School of Law in 1977, and he became a partner in 1981. Through the years,

Ernst developed his expertise in environmental law, commercial real estate and industrial development, handling complex permitting applications and regulatory compliance with the EPA and USACE Regulations Laws of the Clean Water Act.

On the Move

IN ATLANTA



JORDAN



TEPLITZKY

Kessler & Solomiany LLC announced the addition of Nancy Ingram Jordan as of counsel and Molly Teplitzky as an associate. Jordan's practice focuses on family law appeals and family law. Teplitzky focuses her practice on family law.

The firm is located at 101 Marietta St., Suite 3500, Atlanta, GA 30303; 404-688-8810; Fax 404-681-2205; www.ksfamilylaw.com.



Smith, Gambrell & Russell, LLP, announced the addition of Tori M. Silas as a partner. Silas focuses her practice on technology transactions, cybersecurity and data 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.



Chamberlain, Hrdlicka, White, Williams & Aughtry announced the addition of Jasmin Severino Hernandez as an attorney. Severino Hernandez focuses her practice on trusts and estates, working with private wealth clients to establish estate and business succession plans. The firm is

located at 191 Peachtree St. NE, 46th Floor, Atlanta, GA 30303; 404-659-1410; Fax 404-659-1852; www.chamberlainlaw.com.



YANACEK



CELESTINE

Hall Booth Smith, P.C., announced the addition of Meg Hatfield Yanacek as partner, Josanne Celestine as of counsel, and Peter Skaliy, Jack D. Summer and Lauren N. Wortman as associates. Yanacek's practice focuses on defending acute care, skilled nursing, assisted living facilities, pharmacies and health care providers at trial and appeal. Celestine focuses her practice on defending clients in a wide range of transportation claims. Skaliy's practice



SKALIY



SUMMER



WORTMAN

focuses on workers' compensation matters. Summer focuses his practice on defending clients in a wide range of general liability matters. Wortman's practice focuses on workers' compensation disputes. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.



678-690-5750; Fax 404-869-6972; www.parkerpoe.com.

Parker Poe Adams & Bernstein LLP announced the addition of Alonzo Llorens as counsel. Llorens' practice focuses on corporate law and representing clients ranging from startups to Fortune 500 companies. The firm is located at 1075 Peachtree St. NE, Suite 1500, Atlanta, GA 30309;



Matthew Hollingsworth announced the launch of Hollingsworth Injury Law. His practice focuses on plaintiff personal injury and wrongful death litigation. The firm is located at 2020 Howell Mill Road NW, Suite D-338, Atlanta, GA 30318; 770-330-3415; Fax 404-225-3978; www.hollingsworthinjurylaw.com.



404-252-8080; Fax 404-252-9324; www.cohenandcaproni.com.

Cohen & Caproni, LLC, announced the addition of Margaret A. Head as a partner. Head focuses her practice on estate planning, probate litigation, trust and estate administration, tax planning and business law. The firm is located at 750 Hammond Drive, Building 7, Suite 200, Atlanta, GA 30328;



Naggiar & Sarif LLC announced the election of William T. Davis to partner. Davis' practice focuses on all areas of family law, including divorce, child support, legitimation, custody and adoption. The firm is located at One Ameris Center, 3490 Piedmont Road NE, Suite 1450, Atlanta, GA 30305; 404-816-2004; Fax 404-816-2005; www.nsfamilylawfirm.com.

IN MACON



James-Bates-Brannan-Groover-LLP announced the addition of Kathryn Willis as an attorney. Willis' practice focuses on general litigation and trial, where she represents individuals, businesses and local governments in a variety of civil matters including business disputes, employment disputes, contractual disputes and probate matters, including guardianship/conservatorship matters and will/trust disputes. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jamesbatesllp.com.



Adams Law Firm announced the addition of Emily R. Wright as an associate. Wright's practice focuses on personal injury, automobile litigation and general torts. The firm is located at 598 D.T. Walton Sr. Way, Macon, GA 31201; 478-238-0231; Fax 478-216-9188; www.brianadamslaw.com.

IN MARIETTA



Gregory Doyle Calhoun & Rogers LLC announced the addition of D. Austin Gillis and Jenna Rubin as associates. Gillis and Rubin focus their individual practices on representing education clients and advising school systems on employment and special education matters; development and oversight of policies and procedures; compliance with federal and state rules and regulations; and student matters and discipline. The firm is located at 49 Atlanta St., Marietta, GA 30060; 770-422-1776; www.gdcrlaw.com.

IN SMRYNA



Sharon Zinns announced the launch of Zinns Law, LLC. Zinns' practice focuses on asbestos litigation, representing mesothelioma and lung cancer victims in Georgia and throughout the country. The firm is located at 2082 Westwood Road SE, Smyrna, GA 30080; 404-882-9002; www.zinnslaw.com.

Giving Back to Health Care Workers and First Responders

Harris Lowry Manton LLP donated 500 box lunches to Atlanta health care workers and first responders on the front lines of the COVID-19 (coronavirus) crisis in April. Over the course of five days, the meals were prepared and delivered by Empire State South, a midtown Atlanta restaurant, to various hospitals, police precincts and fire/EMS locations throughout downtown and midtown Atlanta.

"We want to give back to the people in Atlanta who are working hard to keep all of us safe during the coronavirus pandemic," said Harris Lowry Manton LLP partner Jeff Harris. "We also think it's important to support workers in the service industry who have been hit hard by the economic effects of this public health crisis."

Additionally, in Savannah, Harris Lowry Manton joined forces with Nine Line Apparel to donate 1,000 protective masks to Savannah-area first responders serving on the front lines of the battle against the spread of COVID-19. Organizations receiving the mask donations included the Savannah Fire Department, Savannah Police Department, Chatham EMS, Chatham County Sheriff's Office and Chatham County Police Department.

This donation is part of Nine Line's new "Masks for Heroes" initiative, a campaign focused on donating American-made protective masks to essential workers in the health care, first responder and military communities. Harris Lowry Manton LLP is a partner in the Masks for Heroes initiative.

"As first responders, we are facing many challenges during this pandemic, and one of the biggest problems we're facing is the shortage of personal protective equipment," said Savannah Fire Department Chief Derek Minard. "With the development of this mask, we will be able to help stretch our resources for our various agencies. We're extremely grateful." ●

IN WOODSTOCK



Stephanie Wilson announced the launch of Stephanie Wilson Family Law, L.L.C. Wilson's practice focuses on divorce and domestic relations matters. The firm is located at 2295 Towne Lake Parkway, Suite 116-167, Woodstock, GA 30189; 404-720-2970.

IN CHERRY HILL, NEW JERSEY

Freeman Mathis & Gary, LLP, announced the addition of an office in Cherry Hill, New Jersey. The office is located at 3 Executive Campus, Suite 155, Cherry Hill, NJ 08002; 856-324-8200; www.fmglaw.com.

Pandemic Pandemonium: Don't Forget the Basics

BY PAULA FREDERICK

"This is Mindy Jones, you're handling my divorce case," the voice mail message begins. "You said you'd call if we still have to go to court next week. I haven't heard from you so I'm assuming we don't. I sure don't want to go out if I don't have to, so please let me know if you get this message."

You make a note of the call and start the next message. *"Hello? Mr. Jones? I'm not sure you will get this message; I sent you a letter last week but didn't hear back. . ."*

Next call. *"Hi, this is Ann Kramer. I was just calling to see if your office is open? I want some advice about a possible divorce. . ."*

"Why doesn't anybody just listen to the outgoing message?" you wonder. Although you are teleworking right now, your voice mail provides all the information a caller needs in order to track you down. And yet the frantic calls keep coming. . . .

Are there special requirements for communicating during a pandemic?

Yes! People are anxious, and that anxiety extends to their pending legal matter. At the same time, lawyers may be checking messages less often and devoting less time to nonessential matters. Rule 1.4 requires communication that is appropriate for the circumstances. In the extraordinary circumstance of a global pandemic, clients may require more handholding than usual.

The Bar's Client Assistance Program conducts much of its business by telephone, so it has continued with business as usual even when the Bar building has been closed. As usual, the number one complaint clients have about their lawyer

is poor communication. A few lessons from the CAP playbook:

- First, if a client isn't certain that you got their message, they are going to contact you again. And again. And again. Acknowledge communication promptly, even if it is just to say that you need more time to fully respond.
- Second, let clients, opposing counsel and potential clients know how best to reach you during any period of time when your physical office is closed. Tell clients what to expect and give them whatever information you can about how the pandemic will affect their legal matter.
- Third, provide information in a variety of formats and places, and update it as necessary. Your website and Facebook page should have the same up-to-date information as your outgoing voice mail message. If you update your voice mail message but forget to change the website, clients will be unnecessarily confused.

If you have ignored the need to stay up-to-date on technology, you are no doubt regretting it now. But as you adapt to new and different ways of working, don't forget the basics—return your clients' phone calls! ●



Paula Frederick

General Counsel
State Bar of Georgia

paulaf@gabar.org





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The Lawyer Assistance Program (LAP) and Georgia Lawyers Helping Lawyers (LHL) are confidential programs that provide those in the legal profession with help in life's difficulties. Peer-to-peer programs and professional counseling are available.

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www.gabar.org/LAP
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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.



Attorney Discipline Summaries

March 7, 2020 - April 6, 2020

BY JESSICA OGLESBY

Disbarments

Marc Celello

2870 Peachtree Road, Unit 140
Atlanta, GA 30305

On March 13, 2020, the Supreme Court of Georgia accepted the petition for voluntary surrender of license for attorney Marc Celello (State Bar No. 950497) following his entry of a guilty plea in the U.S. District Court for the Northern District of Georgia to conspiracy to commit securities fraud in violation of 18 U.S.C. § 371. Celello admitted that by this conviction he violated Rule 8.4 (a) (2) of the Georgia Rules of Professional Conduct. The maximum penalty for a violation of Rule 8.4 (a) (2) is disbarment.

Marta Maria Noriega-Allen

48 SHS CN 286
Augusta, ME 04333

On March 26, 2020, the Supreme Court of Georgia disbarred attorney Marta Maria Noriega-Allen (State Bar No. 356678) from the practice of law in Georgia. A client hired Noriega-Allen to represent him in a divorce and paid \$29,922.50 in retainer funds. Noriega-Allen initially provided monthly invoices showing she had earned \$12,866 as of September 2014. After the divorce settled in September 2015, the parties agreed to have the trial court decide the issue of attorney fees; however, Noriega-Allen

failed to file a motion for fees on her client's behalf, failed to respond to the motion for fees filed by her client's ex-wife, failed to appear at the hearing on the issue of fees, failed to respond to her client's requests for information regarding the balance owed from the remaining retainer funds, failed to account for the unearned balance and moved to Maine without providing contact information. Noriega-Allen failed to respond to the grievance or the Notice of Investigation, and the State Disciplinary Board found probable cause that she violated Rules 1.2 (a), 1.3, 1.4, 1.5, 1.15 (I), 1.15 (II), 1.16 (d) and 3.2 of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of Rules 1.2 (a), 1.3, 1.15 (I) and 1.15 (II) is disbarment, and the maximum sanction for a violation of Rules 1.4, 1.5, 1.16 (d) and 3.2 is a public reprimand. In aggravation the Board found the following factors: dishonest or selfish motive, multiple offenses, substantial experience in the practice of law and indifference to making restitution. In mitigation the Board noted Noriega-Allen's absence of a prior disciplinary record.

Andrew David Taylor

3841 W. Charleston Blvd., Suite 201
Las Vegas, NV 89102

On April 6, 2020, the Supreme Court of Georgia disbarred attorney Andrew Da-

vid Taylor (State Bar No. 940522) from the practice of law in Georgia pursuant to a notice of reciprocal discipline under Rule 9.4 (b) of the Georgia Rules of Professional Conduct. Taylor was disbarred from the practice of law in Nevada on July 5, 2019. The Nevada Court determined that Taylor misappropriated more than \$1 million of clients' funds, commingled personal funds with clients' funds and opened numerous law firms with different trust and operating accounts in order to mislead the Nevada Bar and his clients. The Nevada Court also determined that Taylor entered into litigation-advance-ment loan agreements on behalf of his clients without their knowledge or consent, used the funds for personal and business expenses, and failed to repay many of the loans. Taylor failed to file a response or objection to the imposition of reciprocal discipline, and the State Disciplinary Review Board recommended that the Supreme Court disbar Taylor.

Matthew A. Dickason

1801 Peachtree St., Suite 155
Atlanta, GA 30309

On April 6, 2020, the Supreme Court of Georgia accepted the petition for voluntary surrender of license for attorney Matthew A. Dickason (State Bar No. 220375). In his petition, Dickason acknowledged that the State Bar had

received numerous grievances about his failure to account for fiduciary funds placed in his trust account in connection with various real estate closings. Dickason admitted that he failed to account for such funds and that the failure to do so violated Rule 1.15 (I) (c) of the Georgia Rules of Professional Conduct, which carries the maximum punishment of disbarment. The State Bar responded noting that there were 20 grievances pending against Dickason and asking that the Court accept the petition.

Suspension

Barry Wayne Rorex
177 North Church Ave., Suite 1100
Tucson, AZ 85701

On April 6, 2020, the Supreme Court of Georgia suspended the license of Barry Wayne Rorex (State Bar No. 176530) for a period of six months based upon a similar suspension in Arizona. On June 21, 2017, the Supreme Court of Arizona ordered that Rorex be suspended for six months and one day (retroactive to Feb. 24, 2017) with conditions on reinstatement based upon his violation of disciplinary rules in 2014 and 2015. Rorex was found to have abandoned the legal matters of three separate clients, failed to adequately communicate with those clients, failed to return the clients' files or unearned fees, and failed to respond to the Arizona Bar. In July 2019, the State Bar of Georgia issued a notice of reciprocal discipline pursuant to Rule 9.4 (b). Rorex failed to respond or file any objection to the reciprocal proceeding, and the State Disciplinary Review Board, noting that Rorex had not yet been reinstated in Arizona, recommended that he be suspended from the practice of law in Georgia for six months from the date of the Court's order. The Court agreed, and ordered Rorex suspended for six months from the date of the order with reinstatement conditioned on proof of reinstatement in Arizona after the payment of restitution

and costs as described in the Arizona disciplinary order.

Review Board Reprimand

Muhammad Abdul-Warit Abdur-Rahim
860 Johnson Ferry Road NE, Suite 141
Atlanta, GA 30342

On April 6, 2020, the Supreme Court of Georgia accepted the petition for voluntary discipline filed by Muhammed Abdul-Warit Abdur-Rahim (State Bar No. 560822) consenting to a State Disciplinary Review Board reprimand for his disrespectful and disruptive behavior in a criminal proceeding in which he represented himself. Abdur-Rahim was involved in an altercation with his father in September 2017, and as a result was charged with family violence battery, third-degree cruelty to children and disorderly conduct. At his April 2018 arraignment, Abdur-Rahim was unnecessarily argumentative with prosecutors, used profanity, failed to follow the instructions of the court and generally engaged in disruptive behavior. He conceded that his conduct violated Rule 3.5 (d) of the Georgia Rules of Professional Conduct which carries a maximum penalty of a public reprimand. In mitigation, Abdur-Rahim said he was suffering from personal and emotional problems at the time of the arraignment and later sought treatment for these problems as well as apologized to the judge and court staff and disclosed his wrongful conduct to the State Bar and State Disciplinary Board. The Supreme Court also noted that Abdur-Rahim had no prior disciplinary history, and his disrespectful and disruptive conduct appeared to be an isolated incident, and agreed that a Review Board reprimand was appropriate discipline. ●



Jessica Oglesby

Clerk, State Disciplinary Boards
State Bar of Georgia

jessicao@gabar.org

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

Warren R. Hinds, P.C.

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State Bar
of Georgia

Legal Tech TIPS

BY NATALIE R. KELLY
AND MIKE MONAHAN



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1 Microsoft 365 Remote Work Resources

<https://bit.ly/2VMCqLq>

Businesses using Microsoft 365 can get help with their remote work setup at the link above. Microsoft provides its 365 business users help with moving to the cloud using Office 365; setting up secure virtual offices and device security; and using collaboration, videoconferencing and document sharing tools like Microsoft Teams, OneDrive and SharePoint.

2 Switching from G Suite to Office 365

<https://bit.ly/35gDASA>

If you have been a Google G Suite user but have decided to move to the online version of Microsoft's Office Suite, you will need to know how to make the switch. Microsoft provides detailed steps just for this at the link above.

3 RingCentral

www.ringcentral.com

Known historically for its phone service, RingCentral has created a full communications hub online for businesses of all

sizes. Phone service with RingCentral has been augmented with video and messaging service to make for a complete communications platform for users. The standard plan is \$24.99 per user per month for the messaging, video and phone system combined. The detailed phone call reports are also extremely helpful to firms.

RingCentral[®]

4 Zoom Breakout Rooms

Everyone's "Zooming" these days. To go further with Zoom, you can orchestrate even more flexibility as you conduct online meetings by using the program's breakout rooms. Participants can navigate to separate sessions while the main meeting is taking place, while Zoom meeting administrators have the ability to move from breakout room to breakout room. Besides being useful for subcommittee work during a longer meeting, these breakout rooms are being used for online negotiations during mediation and client conferences during depositions.

5 Free Videoconferencing Services (Besides Zoom)

If you are looking for alternatives to Zoom, you're in luck. For a limited time, both Adobe and Cisco are offering their online meeting services, Adobe Connect and Cisco WebEx, at no cost. Visit their respective websites to grab an account and start meeting online. And, as with any online videoconferencing service, be sure to work through all of the security and setup options beforehand to make sure you are conducting a secure meeting.

6 Curricula

www.getcurricula.com

Curricula is a Georgia-based cyber awareness training company that offers custom-built cyber security awareness training modules to firms. The modules are designed to help users understand and avoid cybersecurity risks, and includes modules like the timely COVID-19 phishing tests for remote employees.

7 Facebook Ads Guide

www.facebook.com/business/ads-guide

Facebook has been busy in its business resources space. There are a wide array of useful tools for business owners, including an especially useful guide for developing ads for Facebook Business pages. The individual modules cover basic setups for ads as well as information on marketing to target audiences. The resources help users with the proper format for ad specs such as dimensions, file sizes and character limits, and with placement for ads on its platforms. Find it on the Facebook for Business page at the link above.

8 Photos App as Video Editor

Who knew you could use the Windows 10 Photos App to edit video clips? We did not realize how handy this tip was until it was necessary for us to make edits to Zoom recordings, and we didn't have immediate access to the program we used in the past. We were forced to look to our local machine for answers, and the Windows 10 Photos App delivered. You can pull in video files and edit them using drag and drop and sizing functions to capture exactly what you need in your video.

9 Microsoft Word Focus Mode

Focus Mode takes away all menus and places your Word page on a blank background screen so you can concentrate only on what is in front of you. This is useful for drafting and longer writing sessions requiring more attention to the production of the document. The setting is found under the View menu's Immersive section and can be added to the Status Bar (area at the bottom displaying the page number) for easier access. Bonus tip: You can right-click on the Status Bar and customize it with things like Focus and Line Number, too. Note: Focus Mode is a setting only available to Microsoft Office 365 subscribers.

10 Windows Virtual Desktops

Working at home may mean you do not have the same amount of space, or you lose your setup with multiple monitors. If you need additional space working from a computer using Windows 10, create more with Virtual Desktops. Users can create a new desktop via the Task View option; just right-click on the Windows Taskbar. You can config-

ure it to have open programs dedicated to work on specific tasks. The settings allow you to show the same taskbar as your main desktop and choose whether you want the new desktop's applications to show if you use the ALT+TAB shortcut to open active windows.

Testimonial



Yolvondra Martin-Brown
The Martin Law Group, LLC

The Many Benefits of RingCentral

Talk about savings! RingCentral's plan with "unlimited" features offers a significant savings compared to competitors. You can make a call from your desktop, desktop phone or any mobile device while maintaining your privacy; plus, RingCentral integrates with Office 365 and other popular software and has 24/7 customer support.



Ten Effective Marketing Tips for Uncertain Times

In these challenging times, it is important to adjust your marketing strategies to continue to grow your business. The Law Practice Management Program hopes these tips will help you re-imagine your marketing practices.

BY NATALIE R. KELLY

Building business during a pandemic is different and challenging. If you are concerned that current or potential clients can't find you now that you are not physically located in your brick and mortar office, or if your online presence just isn't there yet, the following tips may help you adjust and find a more effective approach to marketing your services.

1 Continue to Be Yourself in Marketing

Unless you have launched a new branding campaign or have reinvented yourself and your practice since the onset of the pandemic, continue to be yourself when marketing your firm and services. Check to see if your messaging is still effective by monitoring your intake level. Of course, the economic hardships are affecting the numbers, but you can still make sure your marketing is reaching your target audience and that your message conveying who you are, what your firm does and how you can provide a unique service is clear to potential clients. Simply continue to be yourself.

2 Check on Past Clients

One set of contacts you can work from to develop new business is past clients. Reach out to them with useful informa-

tion about what your practice is doing or is planning to do during this uncertain time. Discuss options and share useful resources and information that speaks to situations where you may be able to help. Simply showing you care and are available as a resource can be a great benefit by encouraging those past clients to keep you at the top of their mind for direct legal services and as a referral to those they know.

3 Offer Multiple Ways to Communicate

Client portals, of which I wrote about in the February 2020 issue of the *Georgia Bar Journal*, and email, texting and even DM (direct message) contact are likely to be used more regularly now that we are practicing social distancing and working remotely. Be sure that you are easily accessible through a number of different channels. The variation can be streamlined for management, making sure you can be contacted from wherever clients or potential clients may be. It can mean new business possibilities reach you more readily than the competition.

4 Keep Your Contact Information Front and Center

Plastering your number, email address or social media handles over your various



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marketing channels can direct potential clients to you faster than ever before. Don't make people hunt down information that should be at their fingertips if they have an interest in your services. Move contact information to key locations, and even revisit signature blocks on reply emails. You can use contact information space to broadcast meeting availability with a link to your online calendar; share when your physical office will reopen; and even communicate when's the best time to reach you, generally. Put the information in voicemail messages, too. Keep your information up to date and front and center.

5 Update Your State Bar CloudLawyers Profile

Bar members receive free basic enhancements to the State Bar's Member Directory with CloudLawyers. Log into your State Bar membership account and update your CloudLawyers profile to reflect your practice areas, share your availability to new clients and direct members of the public to you from the Find a Lawyer option from the State Bar's website. Members can select up to three practice areas; add a profile photo; opt to show you are accepting new clients; and link your membership email to your profile record for direct contact from the public. Remember that these enhancements are free, but you have the option to purchase an upgrade, which allows for listing unlimited practice areas and other functionalities.

6 Do Pro Bono Work

During these uncertain times, consider giving back through pro bono service. Everything you need to get started is available through the State Bar's Pro Bono Resource Center, as well as Georgia Advocates, www.GeorgiaAdvocates.org/GOJC. Navigate there to start volunteering. Your

work for others can lead to referral business you might not otherwise receive.

7 Get to Work in State Bar Sections and Committees

With so much to do, it takes a village. Villages exist within the State Bar in our sections and committees. Become active and contribute to the important work of the State Bar through these entities. You can join a section at any time of the year. Pick one or more that match up to your practice interests. Committee members are appointed by the president-elect each year, so you if you have an interest to serve, communicate it to Bar leadership. Learn more about the opportunities to serve from the State Bar's website. Your willingness to serve will be noticed, and you can network with other attorneys who may become a referral source for your business going forward.

8 Reset Your Marketing Budget

Budgeting during a pandemic is challenging to say the least. For marketing budgets, it is no less complicated. Begin by making sure you have assessed where your marketing spend currently stands, and whether you will be able to recoup any refunds based on campaigns that may not be able to proceed due to the pandemic. For ongoing campaigns, be sure to track reach and analyze their effectiveness for determining return on investment. Reset the budgets to reflect new audiences you look to reach or new opportunities that may have arisen with the onset of the pandemic and its impact on your target audience.

9 Embrace Social Media

If you have a social media presence, then use it more for outreach about your work and activities. Ethically show off

what you have been accomplishing and how you can help. Monitor traffic and use site analytics to spend more time and attention on areas that are gaining more traction with impressions (numbers of touches from users from clicking on and spending time at the various elements within your sites and channels). Get help from web developers and marketers as needed to embrace the space where everybody is currently going for information and to research service options.

10 Adopt New Networking Models

With social distancing in place, gatherings and handshakes have been forever impacted and altered. Adjust by making new connections differently. Update your LinkedIn and other social media profiles. Use online social media channels to attend virtual happy hours, lunches or other events, and follow up via emails, texts, online videoconference meetings or phone calls—remember those! Broaden your presence and monitor who you've reached. Stay in touch and keep introducing yourself to others. If you choose to reinstitute in-person networking, be sure to follow health guidelines for social distancing during the pandemic.

Certainly, times have become challenging. And unless you are working in practice areas automatically getting business during the pandemic, you will need to adjust your marketing strategies. If you need assistance beyond any of these tips, feel free to reach out to the Law Practice Management Program for more information and ideas. ●



Natalie R. Kelly

Director, Law Practice Management
State Bar of Georgia

nataliek@gabar.org

Member Benefits and the COVID-19 Pandemic

The State Bar of Georgia and its various programs, initiatives and member benefits providers are available to lend support during this time of personal and professional uncertainty.

BY SHEILA BALDWIN

The year 2020 began with unusually challenging problems as the COVID-19 virus spread across the globe. Georgia's first cases were reported on March 2, and by mid-March companies were shutting their doors and setting up work from home procedures where possible. Abruptly shifting work from office to home isn't easy, particularly with a profession that's as complex as the law. The State Bar of Georgia and its various programs, initiatives and member benefits providers are available to lend support. This article will cover pandemic-related news and information, where you can find it and how to get in touch with those who can help.

COVID-19 Updates & Resources

Our communications team quickly added a robust pandemic resource page to the Bar website at www.gabar.org, providing easy-to-find information to assist both our members and the public whom we serve. Visit COVID-19 Updates & Resources, located under Recent News from the Bar, to access both the Updates and Resources pages. The State Bar COVID-19 Updates page has links to important information organized by categories: public resources,

from the governor, from the courts, from the president, member resources, CLE information, Office of the General Counsel and a running list of cancelled/rescheduled State Bar meetings. The accompanying links are dated and refreshed to provide relevant and reliable information.

State Bar COVID-19 Resources directs you to a page full of resources for Georgia lawyers. Here you can access information and guidance on a wide range of topics presented by local, state and national organizations, in addition to member benefits offered by the State Bar and ways to help those less fortunate. Visit this page to access business and financial resources, general office management/working virtually resources, mental health resources, ways to aid Georgia's legal services organizations and additional law practice management resources. Information and categories are added as they are made available.

Lawyer Wellness

Before the coronavirus was part of our daily lives, the State Bar's Attorney Wellness Committee was on the case, promoting various health and wellness initiatives under through the Lawyers Living Well website. Their key objec-



There's still a great deal of uncertainty as businesses begin to transition back to pre-pandemic routines. The State Bar of Georgia and the companies that provide member benefits will continue to update resources and respond to the needs of our members.

tive is to make sure our members know about resources already in place.

The Lawyer Assistance Program, featuring six pre-paid counseling sessions per calendar year, is available to all of our members at no cost and completely confidential. Call 800-327-9631.

SOLACE provides a touch point for you or someone in the legal community in need of help: just email SOLACE@gabar.org. If it is determined that the need falls within the parameters of the program, the information will be shared with one of our Bar members who will follow up and work to coordinate/provide assistance.

Lawyers Helping Lawyers is a volunteer peer support program created to give additional tools to members who might benefit from a peer-to-peer conversation with someone who has experienced a similar situation or condition.

Visit www.lawyerslivingwell.org for information and access to these programs and other wellness initiatives.

Law Practice Management Program and Member Benefits

The Law Practice Management Program (LPM) is a member service designed to help all Georgia lawyers and their employees with all aspects of running a successful firm. The Georgia shelter-in-place order changed the way attorneys do their work, and LPM is particularly well-positioned to help firms adjust and succeed while working remotely. We offer collaboration tools for lawyers, including a checklist for opening a virtual law office and resources that speak to working from home. You can explore this resource at www.gabar.org/lpm, or

email nataliek@gabar.org to learn more.

As the LPM member benefits coordinator, I have been privileged to work closely with three companies that have been providing valuable products and services to our members for a number of years: Member Benefits, Inc., Fastcase Legal Research and CloudLawyers. During this uncertain time, they have gone beyond their normal offerings by adding value in some special way to serve our members better.

Member Benefits, Inc.

Member Benefits, Inc., developed the Private Insurance Exchange for State Bar of Georgia to provide our members access to the best health, dental and vision insurance, as well as a number of other products. In response to the COVID-19 pandemic, they offered all State Bar of Georgia members a complimentary subscription to telehealth services through the end of May, and are currently offering COVID-19 payment grace period extensions upon request. If you are experiencing a qualifying life event and are in need of health insurance coverage, contact a counselor online or call 800-282-8626.

Fastcase Legal Research

Our long-time free legal research partner has created a COVID-19 resource hub replete with free legislative and government updates and COVID-19 content across leading news media sources. In addition to the standard Fastcase webinars, they have introduced a series of non-CLE approved webinars focused on learning more about the COVID-19 pandemic and how it pertains to the legal and legal tech industries. Access to resources not normally available in the State Bar of Georgia subscription

can be found on their COVID-19 resource page at www.fastcase.com/covid19/, including data from Littler, Docket Alarm, Bloomberg Law, sixfifty and AILA.

CloudLawyers

The current public health crisis has resulted in an increase in how the public is utilizing the internet and online services, underscoring the importance of providing access to legal service providers. CloudLawyers is a benefit that gives our members the power to manage their online presence while helping our Bar create a strong national lawyer search network. Find a Lawyer is the publicfacing side of the network that serves consumers in an effort to improve access to legal services while keeping within ethical guidelines. CloudLawyers offers a variety of marketing ideas listed on our attorney resource page. Take a few minutes to enhance your existing directory profile by adding a photo and up to three specialty areas from your Bar account. Need help? Contact the CloudLawyers help desk at support@zeekbeek.com or 844-899-9335.

There's still a great deal of uncertainty as businesses begin to transition back to pre-pandemic routines. The State Bar of Georgia and the companies that provide member benefits will continue to update resources and respond to the needs of our members. Stay tuned to the website and our social media channels, and feel free to call or email staff with any questions. ●



Sheila Baldwin

Member Benefits Coordinator
State Bar of Georgia

sheilab@gabar.org

The Benefits of Counseling

Attorney Megan Murren Rittle shares how she dealt with anger, grief and shame after a difficult life event by seeking professional counseling, available through the Lawyer Assistance Program.

BY MEGAN MURREN RITTLE

As I sat down to write this article, I had been in quarantine for 11 days. Eleven long days, and then Gov. Kemp issued an executive order extending quarantine for at least 10 more days.

The first time I saw the movie “Cast-away,” I envied Tom Hanks’ character. What a treat it would be, I thought—solitude; no work; every night is Friday night, and every day is Saturday. I also wholeheartedly believed that I had the mental fortitude to endure four years of solitude. Now, given my current situation, I am not so confident.

Quarantine has shown me a side of myself that I have not seen before. I am anxious. I am worried. I am irritable. I feel isolated and suffocated at the same time. My wonderful husband, who is the most optimistic person I know, is taking my mood swings in stride and offering unwavering support, which is adding guilt to the litany of negative emotions I feel, because I think I should be positive and optimistic. I need help. I can’t do this alone. I can’t expect my husband to shoulder his burdens and mine, too.

Thankfully, I have a resource and so do you. The State Bar of Georgia’s Lawyer Assistance Program has a great resource called Use Your Six, which provides any

Georgia lawyer with six counseling sessions per calendar year with an independent, fully-licensed counselor. The sessions are provided at no cost to the lawyer and are completely confidential.

According to the American Psychological Association, research suggests that therapy effectively decreases patients’ depression, anxiety and related symptoms—such as pain, fatigue and nausea. Therapy has also been found to have a positive effect on the body’s immune system. Research increasingly supports the idea that emotional and physical health are very closely linked and that therapy can improve a person’s overall health status. One major study showed that 50 percent of patients noticeably improved after eight sessions while 75 percent of individuals in therapy improved by the end of six months.¹

Several years ago, I went through a divorce. Although the divorce was amicable, I was still experiencing a lot of anger—with myself, my ex-husband and the world (especially all those happy couples who seemed to have it all figured out). I also experienced grief for the loss of our marriage and the loss of the life I thought I would have. Worst of all, I felt so ashamed that I had failed at something I thought should have been the one thing I could get

right. I avoided telling anyone who did not need to know; I especially wanted to hide my shame from anyone in my firm. I was afraid that having a life crisis would result in work drying up and the end of my career. If I lost my marriage and my career, I felt I would have nothing.

During this time, I was second chair on a case in a county several hours away from my office, so I took a lot of long rides with the senior partner of my firm. He was 70 years old and had practiced law for nearly 40 years, developing a reputation as a hardnosed bulldog who did not take [insert explicative] from anyone. On one of our long rides, he ferreted out that I would shortly be divorced. He offered kind words about the difficulty of marriage and condolences for my feelings, and left it at that.

A few weeks later, I found him in the break room of our office eating his lunch when I came in to refill my water bottle. He asked me how I was doing. I probably said something like, “Oh, I’m just dandy!” Like many in our profession, I am adept at cultivating a perception that I’ve got everything under control.

I’ll never forget how he put his fork down, turned and looked at me and said, “No. How are you doing?”

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In the silence that followed, my tear ducts betrayed me, and I finally said, “Not good. I am angry. And I am sad.” Then, he asked me the most important question that anyone asked me throughout that entire process, “Are you talking to anyone about this?” Seeing an opening for humor (and to escape) I told him, “Oh yeah. I talk to my mom and sister every day, ad nauseam.”

“That doesn’t count,” he replied. “They have a stake in it. You need to talk to someone who doesn’t have a stake in it.” He then proceeded to tell me about his own experiences with counseling and offered a few referrals.

A few weeks later, he called me down to his office. Like always, I took my pen and notepad with me, ready to take on a new challenge. When I sat down, he asked if I had gone to see a counselor yet. Of course, I had not. He said again that I needed to go. So, I went back to my office, and I made my first appointment with a therapist. It was the best thing that I did for myself during that season of life.

Going into counseling, I imagined myself as Betty Draper of “Mad Men,” lying on a hard chaise, facing a wall, as a stranger sat behind me, silently judging. To my surprise, I got to sit on a comfy couch, with lovely decorative pillows, across

from a woman curled up in a comfortable armchair with a hot cup of tea. The room was relaxing and judgment-free.

On the first visit, the psychologist asked me a few questions. The purpose of the questions was to determine whether I was experiencing depression, anxiety or any substance abuse issues. I was not; however, I was experiencing a lot of anger, shame and grief. Plus, I had a lot to mentally unpack. Over the next year and half, I did a lot of talking, my therapist did a lot of listening and I learned a lot about myself.

I never would have expected the bulldog senior partner not only to give me permission but insist that I seek mental health help. In fact, I thought that he would have judged me weak, stopped giving me work and probably found a way to show me the door. Would I have gone if he had not suggested I go, and then insisted I go? No.

Counseling was successful for me in part because I jumped in and participated fully, but also because my counselor was a great fit for me. Like lawyers, every counselor has a different style. Most counselors will describe their style on their website or will give you a description before you make an appointment. Many counselors specialize in certain areas, such as marriage and divorce, substance abuse, eating disorders,

adolescent and family issues, etc. Before embarking on the journey, it is important to do the research and find a good fit.

For anyone who reads this, I hope you will consider your own needs. I hope you will consider talking to someone (who doesn’t have a personal stake in your cares) to discuss your anxiety and fears, especially in these uncertain times. I also hope that you will consider the people around you, especially the people who work for you. They may need help but are afraid of being perceived as weak. They may need your permission, or maybe even your insistence. ●



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.

Endnote

1. American Psychological Association. (2019). “How to Find Help Through Seeing a Psychologist.” <http://www.apa.org/helpcenter/therapy>.

Getting Good at the New Norm: Writing Briefs and Motions for Screen Readers

Electronic documents and screen reading will certainly be a part of the new norm on a greater scale than before. Learn about possible concerns, strategies and additional resources on how to get good at what appears to be the new norm.

BY DAVID HRICK AND KAREN J. SNEDDON

In a few past installments of “Writing Matters,” we discussed the studies that have shown that readers receive information differently, and typically less efficiently, when reading from a screen than from text on a physical page of paper.¹ Given that the courts have moved to eFiling, and some have recently banned any paper submissions due to the COVID-19 pandemic,² this installment of “Writing Matters” summarizes the concerns that may arise when preparing a brief or motion that will likely be read exclusively by the judge on a screen. This installment also describes some strategies to address those concerns and provides additional resources on how to get good at what appears to be the new norm.

The Known Differences Between Paper- and Screen-based Communications

Several studies have analyzed the differences between paper- and screen-passed communications. While the jury is to some extent still out, the consensus so far is something that litigators should consider: “Screen readers consistently overestimated their reading comprehen-

sion. Paper readers were more accurate in their self-judgments.”³ That difference is critical because the reader may not recognize that more effort is needed than with reading paper: “people who overestimate their abilities are likely to put in less effort. The less effort a person puts into a reading passage, the less they are likely to comprehend. That’s because reading comprehension, like all learning, isn’t easy and requires work.”⁴

Other studies show that we look at the text differently based upon the medium of communication. Specifically, one study showed that for printed text, we read across each line then down the page. For screen-based text, the readers’ eyes follow an “F” pattern, and the reader reads “a paragraph’s topic sentence fully (and horizontally) with diminishing returns farther down the paragraph.”⁵ That same study showed screen readers—despite the fact that they have less reading comprehension—take less time to read.⁶

Finally, the tactile experience of paper affects the reader’s retention of the text. When reading on paper, readers often remember where an argument, idea or authority physically appeared in a paper text.⁷ “For instance, we might recall that



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the majority opinion stated its holding in the right-hand corner at the top of the page below headnote five.” But, “in contrast, digital text gives far fewer physical cues to the reader.”⁸ Thus, the lack of a tactile page may mean that the screen reader has less recall of specific ideas, facts or arguments from the text.

Improving Screen Writing

Despite the challenges with screen reading, we all know that an increasing amount of text is read exclusively on screens. In addition to our earlier installments of “Writing Matters,” there are several articles that describe ways to improve screen-based communications.⁹ The following are compilations of common suggestions from us and those other writers.

The need for a few changes arises from the nature of electronic (also called digital) texts. For example, because links in text are often underlined, it is best to avoid using underlining as a means to emphasize text, opting instead for either italics or bold (but not both in the body of a text!).

Similarly, instead of merely putting page numbers, use the format of “1 of ___” pages: a reader of a brief can tell how far into it she is, but that awareness is not apparent from viewing an electronic file. “With a paper document, we sense our approximate location in the document: We know, without conscious effort, whether we are near the beginning, the middle, or the end.”¹⁰ Using “1 of ___” thus gives context that otherwise is lacking—and its absence may be distracting, the reader thinking, “Am I almost done yet?” Likewise, footnotes should be avoided because they cause the text to either scroll to the footnote or to jump to it, causing disorientation not present with ordinary paper.

Other strategies arise from the fact that screen readers spend less time engaging with or reviewing the text. Again, many screen readers follow the “F” pattern, and yet believe they are comprehending more than they actually are and less than when reading paper. The following strategies can be used to overcome this particular shortcoming:

- short, strong topic sentences;
- concise summaries of the arguments and facts;
- more meaningful headings and sub-headings to provide better visual roadmaps;
- more diagrams and pictures, both to assist in comprehension but also to do the work that the reader might otherwise be doing in the margins if the text were on paper;
- fonts such as Century Schoolbook, Garamond and Georgia, because these serif typefaces make long passages easier to read and understand;¹¹
- lists (like this one) with one line per item;
- additional white space; and
- left alignment (as opposed to fully justified) text.¹²

In addition to avoiding these negative aspects of screen-based texts, good screen writing requires leveraging technology to enhance reading. For example, using “bookmarks” in an Adobe PDF file allows for easier navigation than with a paper document.¹³ Likewise, hyperlinking to documents (such as trial testimony or cases cited in the brief) may be a useful tool—if it is done in a way that does not confuse the reader as to how to return to the brief itself.

Conclusion

As we write this column in mid-April 2020, it is difficult to see exactly how different many aspects of life will be as a result of the COVID-19 virus. But, even if things returned to the way they were at the end of 2019, electronic documents and screen reading will certainly be a part of the new norm and more likely a greater part. We hope this installment of “Writing Matters” provides you confidence that you will be ready for that challenge. ●



David Hricik, a professor of law at Mercer University School of Law, has written a number of books and articles. The Legal Writing

Program at Mercer is among the best in the nation.



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

Endnotes

1. Karen Sneddon & David Hricik, *Writing Matters: What e-Filing May Mean to Your Writing*, *Writing Matters*, 23 GA B.J. 79 (April 2018); Jennifer Murphy Romig, *Writing Matters: Georgia Judges on iPads: Brief-Writing for the Screen (Part One)* 20 GA. B.J. 58 (April 2015); Jennifer Murphy Romig, *Writing Matters: Georgia Judges on iPads: Brief-Writing for the Screen (Part Two)*, 20 GA. B.J. 44 (June 2015).
2. *E.g.*, Continued Modifications of Court Operations (Fed. Cir. March 20, 2020) (*available at* <http://www.cafc.uscourts.gov/sites/default/files/rules-of-practice/Administrative-Orders/AdministrativeOrder-ModifiedOperations-03202020.pdf>).
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9. *Id.*
10. Beazley, *supra* note 8.
11. Cosgrove, *supra*, note 9.
12. *Id.*
13. Adobe’s instructions on how to create bookmarks is available at: <https://helpx.adobe.com/acrobat/using/page-thumbnails-bookmarks-pdfs.html>.

21st Annual Justice Robert Benham Awards for Community Service

The Chief Justice’s Commission on Professionalism is pleased to recognize lawyers and judges who have made significant contributions to their communities, demonstrating the positive contributions of members of the Bar beyond their legal or official work.

BY KARLISE Y. GRIER

When you hear Justice Robert Benham (retired) speak about the involvement of lawyers and judges in community service, you immediately understand why he says he has “been rabid” about the topic. In his view, community service is a way of transforming how the public—and lawyers—views the role of lawyers in our society. In 2019, Justice Benham recalled that the Chief Justice’s Commission on Professionalism established the Awards for Community Service in his name because “we wanted the community to see lawyers as servants of the community. We’ve encouraged lawyers to become involved with the boy scouts, the girl scouts, the civic clubs, the business leagues, and become part and parcel of the community.” When lawyers become involved in their communities, Justice Benham believes they have a better feeling about the practice of law, and the community fosters a better feeling about lawyers.

Since 1998, the commission has presented the awards to honor Georgia lawyers and judges who have made significant contributions to their communities and demonstrate the positive contributions of members of the Bar beyond their legal or official work. The commission planned to continue its tradition of hon-

oring lawyers at the 21st Annual Justice Robert Benham Awards for Community Service ceremony on March 14 in Atlanta, an event that would give the legal community an opportunity to honor an exceptional group of lawyers and judges who volunteer in numerous ways in the community. Additionally, attendees were to hear Justice Benham speak following his retirement from the Supreme Court of Georgia on March 1, 2020, after 30 years of service. Unfortunately, due to the public health crisis brought about by the COVID-19 pandemic, the commission canceled the ceremony in order to ensure the health and safety of everyone involved. At the time of writing this article in April, a statewide shelter-in-place order was in effect, and it appeared likely that the order would be extended. Therefore, the commission had not yet discussed or made plans for a rescheduled awards ceremony.

Award Recognition

While we are currently unable to predict when a rescheduled awards ceremony will occur, the commission is moving forward with recognizing these individuals here so as to provide readers with uplifting and

Justice Benham believes that when lawyers become involved in their communities, lawyers have a better feeling about the practice of law and the community has a better feeling about lawyers.



Justice Robert Benham,
Supreme Court of Georgia
1990-2020

PHOTO PROVIDED BY JOHN DISNEY, THE DAILY REPORT

positive news during this unprecedented time in our lives.

The recipients of the 2020 Justice Robert Benham Community Service District Awards are Donarell Rhea Green IV, Athens; Hon. Robert Dale Leonard II, Marietta; Rita C. Spalding, Brunswick; Jennifer Leigh Weizenecker, Atlanta; Connie L. Williford, Macon; and Sally Quillian Yates, Atlanta.

The Lifetime Achievement Award for Community Service recipients are Thomas William “Tommy” Malone (posthumously), Atlanta, and Jacqueline L. Payne, Marietta. The Lifetime Achievement Award is the highest recognition given by the commission and recognizes a lawyer or a judge who, in addition to meeting the general criteria for the Justice Robert Benham Award for Community Service, has also demonstrated an extraordinarily long and distinguished commitment to volunteer participation in the community throughout his or her legal career. Read more about these two honorees on page 70.

Thanks and Appreciation

Numerous members of the legal community, including judges, lawyers and legal professionals, volunteered their time and tal-

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Lifetime Achievement Award for Community Service



Nov. 2, 1942 - Oct. 1, 2019

Thomas William "Tommy" Malone was born and raised in Albany, Georgia. He was admitted to the Georgia Bar in 1965, prior to receiving his J.D. from Mercer University Walter F. George School of Law in 1966.

Malone was not only well regarded for his courtroom skills but also for the countless number of causes he supported with his generosity of time, talent and capital. Malone established several scholarships during his lifetime, including the Rosser Malone Endowed Scholarship in honor of his father, awarded to Mercer Law students with demonstrated financial need and

in good academic standing. He also established the Petrona Underwood Malone Scholarship Fund at Shorter College (Shorter University) in honor of his mother, which provides assistance to students who are in financial need.

Malone also supported the Shepherd Spine Center, now known as the Shepherd Center, and its foundation, on whose board of trustees he served for many years. Malone was also a long-time supporter of Mercer University, serving as a member of the University's Board of Trustees from 2006-17, which he chaired from 2015-17. In an interview with G. Steven Henry, Malone was once asked what his motto was, to which he responded, "There is no greater reward than being able to make a meaningful difference in the quality of life of another person." ●



Jacqueline L. "Jacki" Payne graduated from University of Georgia School of Law in 1980, and has spent almost all of her 38-year legal career as a lawyer for the Atlanta Legal Aid Society (ALAS). ALAS Executive Director Steve Gottlieb wrote about Payne: "One of Jacki's contributions to Atlanta Legal Aid was to help create the Kinship Care Project, which she now manages. This project helps grandparents and other relatives adopt children they are raising . . . Jacki recognized the need for this work after seeing the number of children being raised by grandparents and

other relatives after they had been abandoned, abused or orphaned by AIDS."

Payne has also spent most of her professional life serving others in her community. Her recent and ongoing service includes serving on the Board of the Innovative Solutions for Disadvantage and Disability; serving as a former president and board member of the Marietta Schools Foundation Board; co-founding and serving as a member of the 10 Women of Hope; and leading American Cancer Society walk teams. Payne is also currently active at the Episcopal Church of the Incarnation in Atlanta. In the past, Payne taught Sunday school; served as a Girl Scout leader; served on the PTA at several levels; and served on the Atlanta-Fulton Commission on Children and Youth. Payne genuinely enjoys serving others and is always looking for ways to help.

Marietta attorney Carlos Rodriguez's comment in a letter of support for Payne's nomination embodies one of the reasons Justice Benham initially wanted to establish the community service awards. Rodriguez observed: "Jacki has been an example and role model to me for how a lawyer with a servant's heart should meaningfully contribute to improving our community." ●

ent in advance of the awards ceremony as the commission worked to plan a uniquely special occasion. Those volunteers included members of the Benham Awards Selection Committee, chaired by Janet G. Watts; Volunteer Committee Co-Chairs Jena Emory and Paula Myrick; Fundraising Committee Co-Chairs Adwoa Seymour and R. Kyle Williams; and Visual Arts Committee Chair Vanessa Hickey Gales.

Attorney artists Phil Sandick, William Stiles and Hon. Phinia Aten had committed to display samples of their artwork at the awards ceremony. In addition, 2020 honoree Rita C. Spalding planned to display six posters of murals found throughout Brunswick. A small group of performers from the Atlanta Bar Association's Bard Show—Norman Barnett, Laurel R. Boatright, Abbey Martin and Kevin C. Wilson—were to provide entertainment during the ceremony. William J. "Bill" Liss, special assignment and consumer editor, WXIA-TV (NBC), had prepared for a fire-side chat with Justice Benham about public and community service. Hon. Chung Lee and the Korean American Saxophone Band were to play for the after-party. Approximately 50 additional lawyers and law students had volunteered their services. In addition, Chief Justice Harold D. Melton, commission chair, and Justice Sarah Hawkins Warren, commission advisor, provided guidance and leadership throughout the planning process, while the generosity of numerous sponsors (see page 69) helped ensure the event would be memorable. The commission remains deeply grateful to everyone who assisted in planning the awards ceremony.

In conclusion, I hope that once it is safe for Georgians to gather in community again, we can celebrate together—and in person—the service of the 2020 Benham Award honorees. The commission will post updates regarding any future plans for the awards ceremony at www.cjcpga.org. ●



Karlise Y. Grier

Executive Director
Chief Justice's Commission
on Professionalism

kygrier@cjcpga.org

Justice Robert Benham Award for Community Service: 2020 Honorees



Donarell Rhea Green IV

Partnered with the Athens YMCA for more than 12 years training young people to box; contributed to the Athens Tutorial Program and the Leaders as Readers program; member, Clarke County Mentor Board; member, Athens Child Development Board.



Jennifer Leigh Weizenecker

Member, Board of Directors for the Southeast Regional UNICEF USA; volunteer founder, UNICEF NextGen Atlanta; chair, NICEF Next-Gen Atlanta Steering Committee; volunteer lead counsel for two asylum merit hearings in 2019; volunteer teacher of pre-law classes at Georgia Tech.



Hon. Robert D. Leonard II

Chair, member, executive committee member, Tommy Nobis Center Board of Directors; mentor, Marietta Mentoring for Leadership; assistant coach, Cobb Youth Football League; head coach, Allatoona Youth Basketball League; Oregon Park

Baseball Association Board member; participant in the Cobb County Superior Court's "Court 2 You" program.



Connie L. Williford

Founder, Mercer University School of Law, Women Law Students Annual Charity Gala and Auction; chairperson, Childhood Hunger Council for the Middle Georgia Community Food Bank; recipient, Legal Food Frenzy Award (2018-19); volunteer and pro bono counsel, Crisis Line & Safe House of Central Georgia; board member and executive committee member, Middle Georgia Access to Justice Project; volunteer, All About Animals.



Rita C. Spalding

Member, Steering Committee of Forward Brunswick; volunteer, Community Action Authority, assisting with Rise Risley, LLC; board member, Brunswick Downtown Development Authority; leader, Downtown Brunswick Mural Project;

Lay Eucharistic Minister; mentor and coordinator for St. Mark's Episcopal Church's Education for Ministry program; volunteer, Safe Harbor Children's Center; former den leader, Boy Scout Troop 253; former regional coordinator, Georgia High School Mock Trial Competition.



Sally Quillian Yates

Co-chair, Board of Trustees of the Council on Criminal Justice; board member, Ethics & Compliance Initiative; board member, Project Healthy Minds; speaker on suicide prevention; established New Beginnings re-entry program; former coach, Georgia High School Mock Trial program; former volunteer, Everybody Wins Atlanta.

**partial list of honoree accomplishments*

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

JACK B. ALBANESE

Atlanta, Georgia
Emory University School of Law (1972)
Admitted 1979
Died February 2020

A. QUILLIAN BALDWIN JR.

LaGrange, Georgia
Mercer University Walter F. George School of Law (1969)
Admitted 1970
Died March 2020

JAMES N. BUTTERWORTH

Cornelia, Georgia
Mercer University Walter F. George School of Law (1968)
Admitted 1968
Died March 2020

ROOSEVELT CARTER II

Albany, Georgia
Texas Southern University Thurgood Marshall School of Law (1997)
Admitted 2000
Died March 2020

FRED S. CLARK

Savannah, Georgia
University of Georgia School of Law (1961)
Admitted 1960
Died March 2020

GEORGE H. CONNELL JR.

Atlanta, Georgia
University of Georgia School of Law (1969)
Admitted 1970
Died April 2020

ROWENA ANASTANIA DANIELS

Doerun, Georgia
Florida A & M University College of Law (2013)
Admitted 2015
Died April 2020

GORDON LEE DICKENS JR.

Evans, Georgia
University of Georgia School of Law (1948)
Admitted 1948
Died March 2020

ELIZABETH N. FEAGIN

Atlanta, Georgia
Woodrow Wilson College of Law (1968)
Admitted 1970
Died March 2020

DAVID H. FRITTS

Savannah, Georgia
Emory University School of Law (1950)
Admitted 1951
Died March 2020

THOMAS E. GREER

Carrollton, Georgia
University of Georgia School of Law (1975)
Admitted 1975
Died March 2020

DOUGLAS L. HENRY

Clarksville, Georgia
Georgia State University College of Law (1986)
Admitted 1986
Died April 2020

SAM POWEL INGLESBY JR.

Savannah, Georgia
University of Georgia School of Law (1964)
Admitted 1964
Died April 2020

WILLIAM D. JENNINGS III

Augusta, Georgia
Cumberland School of Law, Samford University (1977)
Admitted 1978
Died March 2020

LINDA CARTER KING

Savannah, Georgia
Atlanta's John Marshall Law School (1978)
Admitted 1979
Died April 2020

JACKSON ALLEN LANCASTER

Kennesaw, Georgia
Mercer University Walter F. George School of Law (2001)
Admitted 2001
Died November 2019

N. KENT LAWRENCE

Athens, Georgia
Woodrow Wilson College of Law (1978)
Admitted 1978
Died March 2020

STEVEN W. LUDWICK

Atlanta, Georgia
Loyola University New Orleans College of Law (1968)
Admitted 1974
Died April 2020

MAX R. MCGLAMRY

Columbus, Georgia
Mercer University Walter F. George School of Law (1952)
Admitted 1953
Died March 2020

HANSEL G. MORGAN

Buford, Georgia
Atlanta's John Marshall Law School (1950)
Admitted 1950
Died February 2020

MAX OLIM

Atlanta, Georgia
University of Alabama School of Law (1967)
Admitted 1968
Died April 2020

LINDSAY C. ROACH

Marietta, Georgia
University of Georgia School of Law (1979)
Admitted 1979
Died January 2020

SHERI CAPES ROBERTS

Covington, Georgia
University of Georgia School of Law (1992)
Admitted 1993
Died April 2020

HUGH ROBINSON

Marietta, Georgia
St. John's University School of Law (1965)
Admitted 1967
Died March 2020

JEANETTE S. SCOTT

Athens, Georgia
Private Study
Admitted 1968
Died April 2020

CHARLES W. SMEGAL

Dahlonega, Georgia
Woodrow Wilson College of Law (1974)
Admitted 1974
Died March 2020

NANCY S. STEPHENSON

Albany, Georgia
University of Georgia School of Law (1981)
Admitted 1981
Died April 2020

OBITUARY

CARL J. STIMMEL

Townsend, Georgia
Emory University School
of Law (1973)
Admitted 1973
Died March 2020

BERNARD R. THOMAS SR.

Atlanta, Georgia
University of Minnesota
Law School (1974)
Admitted 1975
Died March 2020

**CHRISTOPHER ALAN
TOWNLEY**

Chickamauga, Georgia
Mercer University Walter
F. George School of Law
(1977)
Admitted 1977
Died March 2020

PAUL E. VON NESSEN

Brisbane, Queensland,
Australia
University of South
Carolina School of Law
(1974)
Admitted 1975
Died April 2020

WILLIAM C. YOUNGQUIST

Atlanta, Georgia
Atlanta Law School (1979)
Admitted 1979
Died March 2020



Christopher Alan Townley, 67, passed away in March in Chickamauga. Born in Columbus, Ohio, on Aug. 11, 1952, Townley graduated from Tucker High School in Tucker, Georgia, attended Stetson

University, and graduated from Mercer University and Walter F. George School of Law at Mercer University in Macon. He married Sandra Carolyn Davis, his high school sweetheart, in 1972. Their twins, Heather and Shaun, were born in 1977.

After law school, Townley worked in the district attorney's office in South Georgia before moving to Northwest Georgia in 1978 where he worked in the district attorney's office for the Lookout Mountain Judicial Circuit. Later, he worked at Harriss & Hartman Law Firm, PC, and in 1990, started his own practice, which he ran for more than 25 years. In 2018, he was elected solicitor general of Walker County State Court.

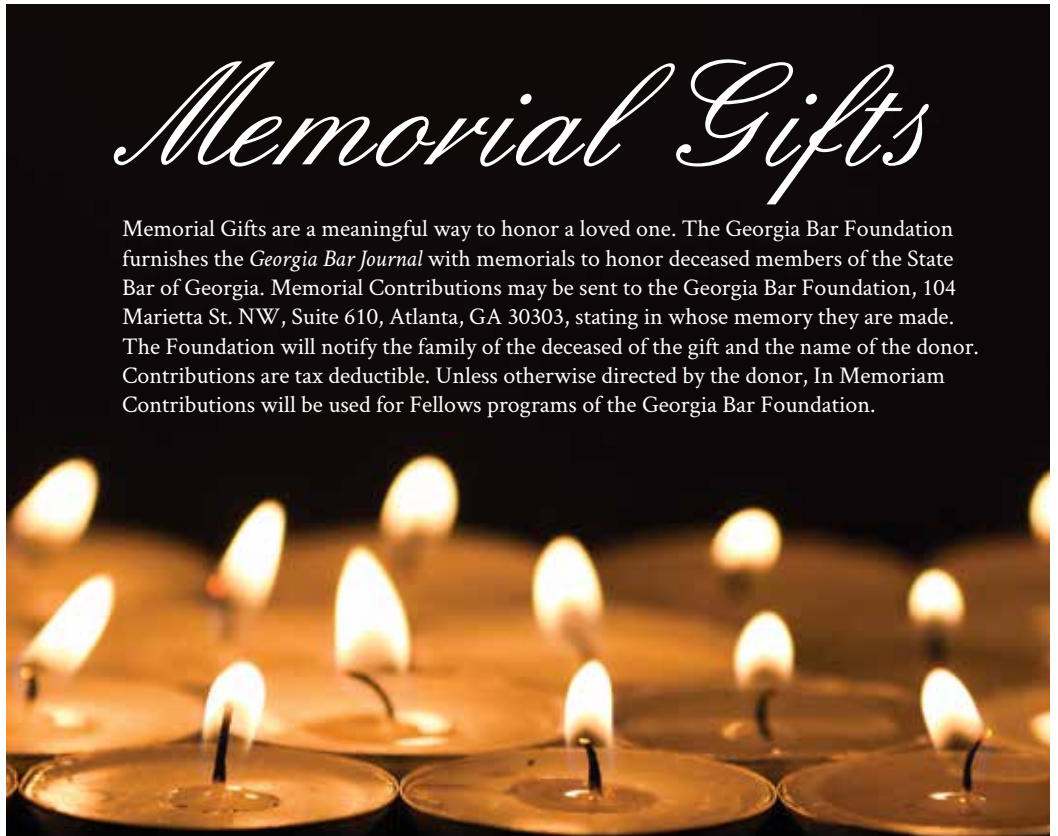
Townley served on the State Bar of Georgia's Board of Governors, Investigative Panel, and the Disciplinary Rules and Procedures Committee. He was a recipient of the State Bar of Georgia's 2019 Chief Justice Thomas O. Marshall Professionalism Award.

Townley served the Cherokee Presbytery as moderator and was a ruling elder of the Presbyterian Church (USA). He was a member of Chickamauga Presbyterian Church for more than 40 years and served as a Sunday School teacher, liturgist, youth group leader, choir member and treasurer.

Townley loved his family, his God, his community and the practice of law. He enjoyed spending time with family, especially his grandchildren, whom he supported in all their activities. He also enjoyed traveling, coaching, playing golf and working in his yard. ●

Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. Memorial Contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW, Suite 610, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible. Unless otherwise directed by the donor, In Memoriam Contributions will be used for Fellows programs of the Georgia Bar Foundation.



The Heat Is On . . . and So Is Summer Online Learning

BY MICHELLE E. WEST

Summer is here, and so is our new normal. Well, at least for now. I know that many of you are accustomed to spending parts of your summer attending ICLE programs or away at one of our institutes. Never fear! Although we are practicing social distancing, we have online programming available on topics that you would normally see at our summer institutes and programs. All are available at www.gabar.org/webcasts.

While you continue to sharpen your skills and enhance your knowledge through ICLE online webcasts, please know that ICLE is busy adding new content, rescheduling cancelled programs, and scheduling fall and winter programs. As we look toward the future, we are

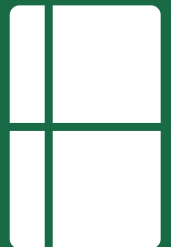
pursuing efforts to allow the safe resumption of in-person ICLE programs. By the time we meet again, we hope to have contingencies in place to lessen the interruption of our calendared programming. However, while we are working on fine-tuning the future of continuing legal education, please take time out this summer and enjoy programs from our online library. ●



Michelle E. West

Director, Institute of Continuing
Legal Education
State Bar of Georgia

michellew@gabar.org



ICLE WEBCASTS

Below is a list of related topics that correspond with our previously scheduled May through June programs. You can view corresponding webcasts online now, along with all available webcasts, at www.gabar.org/webcasts.

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- ▶ Attorney First Aid Kit
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- ▶ Basic Fiduciary Law 201
- ▶ Civil Prosecutions of DUI & Dram Shop
- ▶ Commercial Real Estate
- ▶ Construction Law
- ▶ Criminal Practice
- ▶ Drum Majors for Justice
- ▶ Eminent Domain
- ▶ Family Law Seminar
- ▶ Georgia Auto Insurance Claims Law
- ▶ Georgia DUI Update
- ▶ Jury Trials for Divorce
- ▶ Not Your Everyday Custody Case
- ▶ Premises Liability
- ▶ Professionalism and Ethics Update
- ▶ Real Property Foreclosure
- ▶ VA Accreditation
- ▶ War Stories XVIII
- ▶ Whistleblowers' Symposium
- ▶ White Collar Crime

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