

August 2016

Volume 22, Number 1

GEORGIA BAR
JOURNAL

A Redesign of Your
Georgia Bar Journal

An Insurer's Duty
to Settle: The Law
in Georgia

2016 State Bar
Annual Meeting
Coverage

Interview with
Attorney General
Sam Olens



54TH
STATE BAR
PRESIDENT

**PATRICK T.
O'CONNOR**

HOW TO GET INVOLVED

in the **YOUNG LAWYERS DIVISION**

WHAT IS THE YLD?

All members of the Bar who have not yet reached their 36th birthday or who have been admitted to their first bar less than five years are automatically members. Today, the YLD is one of the most dynamic arms of the Bar, offering outreach to both the profession and to the public through various legal programs and projects.

WHAT CAN THE YLD DO FOR YOU?

OPPORTUNITIES FOR SERVICE

With a mission of service, the YLD offers many avenues for young lawyers to give back to their communities and to the profession through committee involvement. Additionally, the YLD conducts a service project at each of its general membership meetings.

NETWORKING OPPORTUNITIES

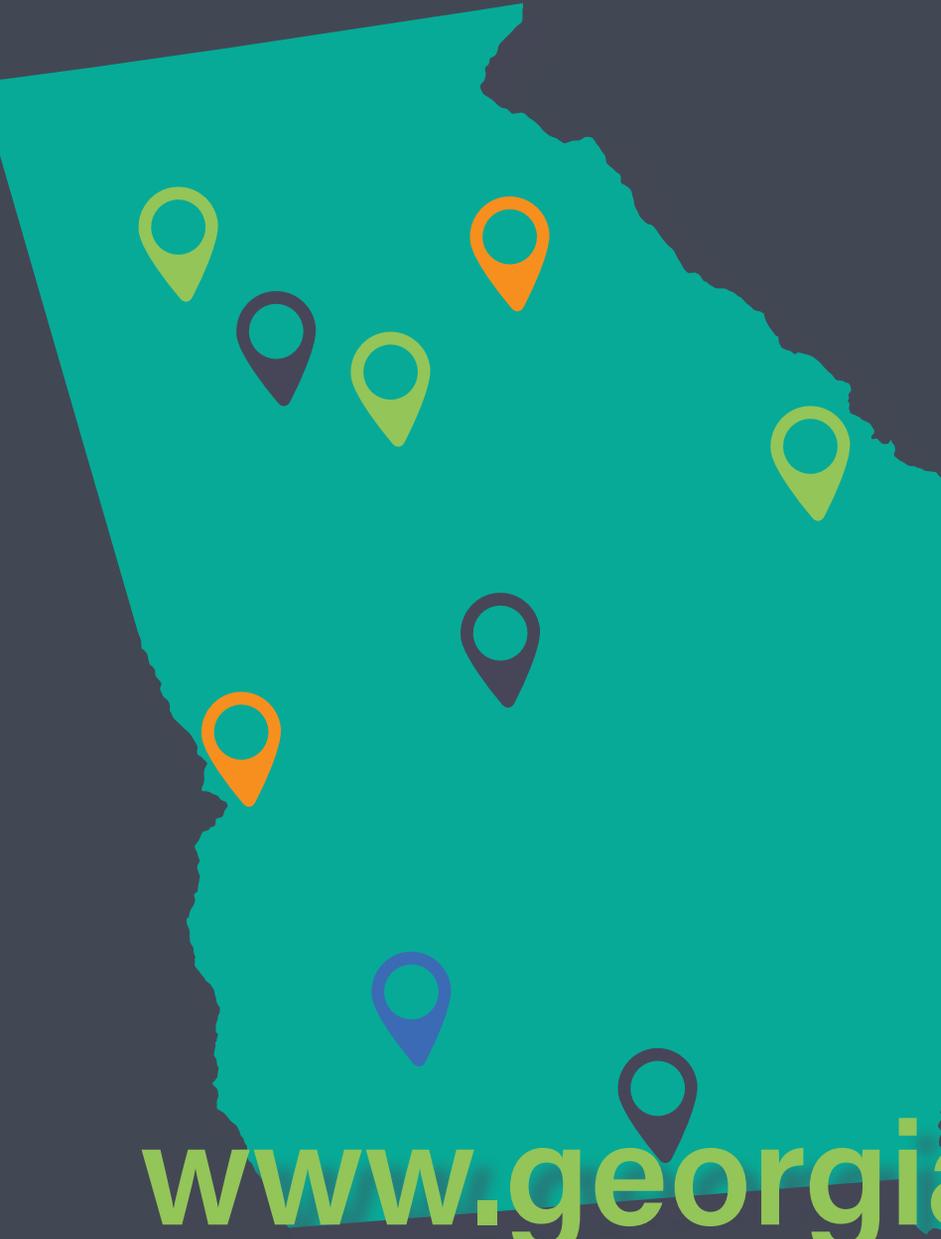
The activities and projects of the YLD put you in touch with lawyers in your practice area, others with similar interests and Georgia's legislative and judicial leaders from every corner of the state.

LEADERSHIP OPPORTUNITIES

There are many opportunities within the YLD to develop and grow leadership skills and abilities. These include chairing a committee, serving on the YLD Executive Committee or Representative Council and applying to the Leadership Academy.

WANT MORE INFO?

Contact YLD Director Mary McAfee at marym@gabar.org or visit www.georgiayld.org for more information.



www.georgiayld.org



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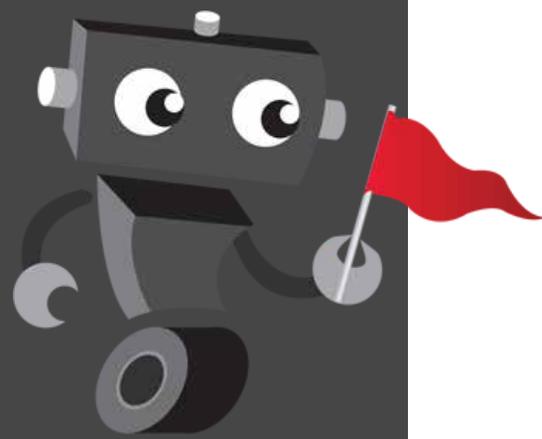
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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes)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

The *Georgia Bar Journal* welcomes the submission of news about local and 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; phone: 404-527-8791; sarahc@gabar.org.

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The Redesign.

A quick look into the Georgia Bar Journal's recent makeover.



1

The Cover

The *Journal's* all new cover sports a new flag (that part up at the top with the name of the magazine), as well as some highlights about what's included in each issue. Special attention was given to all design elements, for overall readability.

2

Table of Contents

The table of contents will now be split between two pages. The first page will highlight the issue's legal and feature articles, and the second page will list all remaining content, e.g., columns, special content, etc.



3

New Content

After multiple brainstorming sessions, the Editorial Board decided on adding content that would better engage the *Journal's* readers: letters from the editor and executive director, interviews with Georgia lawyers, and new columns highlighting Bar services and legal tech tips.

4

Newly Designed House Ads

Your Bar offers so many programs, committees and sections, it's hard to know all the great member services you have access to! The newly designed house ads will help inform you of these services, so you can be sure to use them and share them with your local bars.





PHOTO BY CASEY JONES PHOTOGRAPHY

**PATRICK T.
O'CONNOR**

President
State Bar of Georgia
president@gabar.org

Serving the Profession and the Public

Victor Hugo's timeless novel "Les Misérables" is a celebration of the human spirit. The book is a long and challenging read, but well worth the effort.

"Les Misérables," the Broadway musical, succinctly chronicles the downfall, resurrection and ultimate salvation of Jean Valjean. One of the more stirring musical numbers in the play is a song entitled "Who am I?"—a song in which Valjean confronts his demons and ultimately answers his own question. He finally knows who he is, and he lives out a meaningful and rewarding life.

Each of us, as lawyers, should ask ourselves the same question: "Who am I?" One possible answer to this question is: "I am a lawyer. In spite of challenges and difficulties, I work daily miracles in the courtrooms, offices and streets of America. I help people. I believe in the Constitutions of the state of Georgia and of the United States. I help preserve the enduring legacies established long ago through the foresight and perseverance of lawyers who came before me. I am proud of who I am and what I do."

As I embark on my journey as president of the State Bar of Georgia, I am unabashedly proud to be a lawyer, and I am proud to stand in the presence of each of my fellow Georgia lawyers and the leaders of our Bar. I give credit to the many mentors who inspired me to make Bar and community service a part of my daily life. But I am not alone. In my estimation, lawyers, as a group, and as a profession, do more good for their communities and their profession than members of any other profession.

In this initial column, I want to recognize and thank a few of my fellow Bar leaders and identify some of the outstanding work that is going on within our Bar.

First, I thank and recognize my fellow officers and Executive Committee members for their commitment and service to the Bar and to our profession.

President-Elect Buck Rogers, Treasurer Ken Hodges, Secretary Darrell Sutton and Immediate Past President Bob Kaufman are committed, thoughtful and hardworking lawyers who care about our future and are committed to

the cause of justice. Our Executive Committee is likewise made up of hardworking, thoughtful and committed people: Nicki Vaughan, Phyllis Holmen, David Lipscomb, Thomas Burnside, Elizabeth Fite and new member Dawn Jones. Our YLD officers, President Jennifer Mock, President-Elect Nicole Leet, Treasurer Rizza O'Connor, Secretary Will Davis and Immediate Past President Jack Long are also energetic, bright and hardworking.

Our 160-member Board of Governors serves as the policymaking authority of the State Bar, providing the leadership we need to ensure that our organization fulfills its missions to strengthen the constitutional promise of justice for all, promote principles of duty and public service among Georgia's lawyers and administer a strict code of legal ethics. Every judicial circuit in Georgia is proportionately represented by the Board's elected members, who along with a handful of specially appointed members help make sure the voices of all 48,000 lawyers and judges in our state are heard at the regular quarterly and called board meetings.

Under the leadership of our Executive Director Jeff Davis, Chief Operating Officer Sharon Bryant, Chief Financial Officer Steve Laine, Communications Director Sarah Coole and General Counsel Paula Frederick, the 95-member State Bar staff, working from our Bar Center Headquarters in Atlanta, the South Georgia Office in Tifton and the Coastal Georgia Office in Savannah, carries out the Bar's critical functions on a daily basis to meet the needs of our members and the public.

All of these dedicated Bar leaders will spend much of the coming year working to implement the priorities identified in the strategic plan adopted by the Board of Governors last January. We are already on the way to accomplishing many of the goals and priorities set in that plan.

During the Annual Meeting in June, the Board of Governors also heard reports on two exciting new initiatives and an update on the strong progress of our growing Military Legal Assistance Program.

2016-17 OFFICERS

The State Bar of Georgia's eight officers are elected to a one-year term by the membership and serve as members of the Executive Committee. Three of the officer positions are held by the president, president-elect and immediate past president of the YLD, shown on page 13.



PATRICK T. O'CONNOR
President

O'Connor is the managing partner of Oliver Maner LLP, located in Savannah, and has been practicing there since 1990. He concentrates his law practice on business litigation, the defense of civil rights claims, and the defense of legal malpractice and other professional negligence claims.



BRIAN D. "BUCK" ROGERS
President-Elect

A partner with Fried Rogers Goldberg LLC in Atlanta, Rogers works primarily as a civil attorney representing victims of catastrophic claim, and holds a Class "A" Commercial Driver's license. He is a P.O.S.T. (Peace Officer's Safety Training) Certified Guest Lecturer, Commercial Motor Vehicle Collisions and Law.



KENNETH B. "KEN" HODGES III
Treasurer

Hodges, of Ken Hodges Law, focuses his law practice on criminal defense and civil litigation, including but not limited to personal injury, wrongful death, medical malpractice, commercial litigation and civil rights cases. Ken Hodges Law has offices in Atlanta and Albany.



DARRELL L. SUTTON
Secretary

Sutton, of the Sutton Law Group LLC in Marietta, practices insurance defense litigation, primarily representing employers, insurers, self-insured companies and servicing agents in workers' compensation claims throughout Georgia.



ROBERT J. "BOB" KAUFFMAN
Immediate Past President

Kauffman is a managing partner of Hartley, Rowe & Fowler P.C. in Douglasville. His law practice is concentrated in the areas of commercial real estate transactions, representing many small businesses, real estate finance and estate planning.

Virtual Museum of Law

Our Law-Related Education Program (LRE) recently announced the launch of a new online educational resource, the Virtual Museum of Law, at www.thelawmuseum.org. The “Journey Through Justice” field trips for elementary, middle and high school groups to the physical Museum of Law housed at the Bar Center Headquarters remain in high demand, serving approximately 10,000 students annually, and are now being booked years in advance.

Establishing the new Virtual Museum of Law will accommodate the many students whose schools are unable to schedule a trip, and those for whom travel to Atlanta is impractical or unaffordable—while providing a similar journey into the legal history of our state and nation. Over the next five years, the LRE program will be developing short animated videos exploring major court cases, each representing a significant period or category of legal history.

For example, the videos for 2015-16, which have been posted to the new site, are *Brown v. Board of Education* (civil rights), *Marbury v. Madison* (independent

judiciary), *Furman v. Georgia* and *Gregg v. Georgia* (cruel and unusual punishment), and the Leo Frank Trial and the Lincoln Assassination (famous trials). All cases are supported by teacher-access-only Live-Binders, containing lesson plans, links to current events, and other resources related to that case and the key legal issues it raises.

The Virtual Museum of Law is a significant expansion of the LRE program’s effort to fulfill U.S. Supreme Court Justice Anthony M. Kennedy’s 2005 exhortation to the Bar “to invite young people to come inside the law.” You can help direct educators in your community to this valuable learning resource by having them contact LRE Director Deborah Craytor at 404-527-8785 or LRE@gabar.org.

Lawyers Living Well

Another recent addition is the launch of a new website, LawyersLivingWell.org, to promote the State Bar’s lawyer wellness initiative. I commend my predecessor Bob Kauffman and our Treasurer Ken Hodges, who heads a special task force on lawyer wellness, for their leadership in developing this worthy program for our members.

As Bob noted throughout the past year, too many lawyers are experiencing high levels of stress and are unhealthy and unhappy, which adversely affects their professional and personal lives. The Lawyers Living Well program will help by promoting health and wellness among our members and staff, developing work-life balance programs for CLE credit and increasing awareness of existing Bar programs that deal with such issues.

The first foray into providing this assistance is the development of [Lawyers LivingWell.org](http://LawyersLivingWell.org), which is designed as an online clearinghouse of health and wellness information to help Bar members identify and learn how to deal with issues that may be affecting our health and personal lives in three major areas: mental well-being, physical well-being and social well-being. An events calendar promoting CLE programs and wellness activities throughout Georgia is also included, along with links to information on the Bar’s existing Lawyer Assistance Program, Suicide Awareness Campaign and SOLACE (Support of Lawyers, All Concern Encouraged) program.



Stress, life challenges or substance abuse?

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

LAP Confidential Hotline | 800-327-9631

As Ken reported to the Board of Governors, the focus is on health maintenance and prevention so that these problems are avoided or dealt with in their earliest stages. Just a few small changes in our habits can have a profound impact on our overall well-being. The objective is to enhance lawyers' physical and mental well-being by educating members of our profession on how to identify and deal with those issues we all face that not only impact our practice, but our lives—things such as stress, diet, physical conditioning, social well-being, debt management and others.

I encourage you to take advantage of the site's comprehensive library of articles, videos and other resources dealing with specific issues, including depression, addictions, eating disorders, mindfulness, trauma, burnout and suicide prevention. Also included are healthy eating and exercise tips, links to mobile apps and podcasts, recipes, workout routines and other solutions for Bar members to find the right balance to ensure that fitness becomes an important part of their lives.

Military Legal Assistance Program

Also during the Annual Meeting, we heard an informative report from Eric Ballinger, chair of our Military Legal Assistance Program Committee. Established in 2009, our Military Legal Assistance Program (MLAP) is the cutting-edge initiative of its kind in the nation—providing legal resources and referrals to active military and veterans throughout Georgia with unmet legal needs.

Eric reported that thus far, about 1,700 service members and veterans have been connected with the approximately 700 Georgia attorneys who have volunteered for the program. Some 50 percent of the referrals have been related to family law matters, with divorces accounting for about half of those. Several hundred other cases have dealt with Veterans Administration (VA) benefit award matters.

MLAP operates under the organizational structure of the State Bar's MLAP

Committee and in conjunction with the Military/Veterans Law Section. Those eligible for pro bono or "low-bono" assistance from the volunteer attorneys include active duty service members, National Guard members, active Reservists, retirees and other veterans with VA disability issues, and military spouses where interests of the family are aligned, in the jurisdictions of Georgia's state and federal courts. The Board of Governors approved attorney guidelines for the program in 2010.

The program provides outreach to Georgia's 10 military bases and various Bar groups and community groups around the state. Other MLAP activities include Veterans Clinics for the law schools at Emory University and Georgia State University, with two more pending at the University of Georgia and Mercer University; VA Legal Clinics in Augusta, Decatur, Carrollton, Fort McPherson and Rome; mentors for Veterans Courts in nine judicial circuits; and numerous CLE programs.

Having already sponsored a CLE session at Normandy and Paris in 2014 to mark the 70th anniversary of D-Day, MLAP is planning another excursion across the Atlantic in the fall of 2017 to commemorate the 100th anniversary of World War I at various battle sites. To learn more about MLAP or to get involved as a volunteer attorney, contact MLAP Director Norman Zoller at 404-527-8765 or normanz@gabar.org.

The Virtual Law Museum, Lawyers Living Well and the Military Legal Assistance Program are but three examples of the good work being done by Georgia lawyers to help the State Bar fulfill our mission to serve the public and the justice system. I look forward to seeing the effective results of these and other Bar programs as we track their ongoing progress, through the monitoring functions of our strategic plan, throughout the year ahead and in the future.

I look forward to a great year in service to our Bar. I also hope you will feel free to email me at president@gabar.org to let me know your opinion on how we are meeting your needs as a member of the State Bar of Georgia. ●

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JENNIFER C. MOCK

YLD President
State Bar of Georgia
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The Healthy Value of YLD Involvement

“Lawyers Living Well” is an exciting new initiative of the State Bar of Georgia aimed at improving the personal and professional well-beings of Bar members and others in the legal community as we confront the unique career-related challenges that threaten to take a toll on our minds, bodies and spirits. You can learn more about the program elsewhere in this edition of the *Georgia Bar Journal* or by visiting LawyersLivingWell.org.

As the new president of the Young Lawyers Division (YLD) of the State Bar, I want you to know that if you are 36 or younger or have been a Bar member for five years or less, there is another proven method of improving your personal and professional health: becoming involved in one or more of the programs of the YLD.

With a membership of approximately 10,000 young lawyers from across the state, the Georgia YLD has a well-earned reputation as the “service arm” of the State Bar through the hard work of our more than 30 committees producing an array of projects and programs, several of which have gained recognition at the national level.

YLD involvement is healthy for your career.

We have one the most engaged YLDs in the country. We have several committees that plan happy hours, events, community service projects and fundraisers—all of which provide opportunities for you to network with other young lawyers from all corners of Georgia.

As Harrison Barnes, managing director of Law Crossing, a legal employment recruiting organization, explains, “Networking is one of the most fundamental necessities for long-term success in the practice of law. Your legal career depends on networking from the time you are in law school until the time you retire.”

By taking advantage of the chance to network at conferences and meetings like those sponsored by the YLD, Barnes adds, “you are taking the time to meet people. In addition, you are watching and listening to other attorneys outside your work and social circles and learning what they do. When you meet people you are learning of people they too might know and what they have in common . . . You are spreading your name around to others

you otherwise might not meet, and you are developing a reputation based on your behavior. This is extremely important . . . If you participate in networking events in more than a passing manner, you will soon be known by numerous attorneys and others throughout your city and outside your immediate circle . . . They will mention you to the myriad of people they know when one of these people might be looking for someone to fill a position. They may mention your name to companies and others that need someone with your skills to do legal work.”

The YLD’s Succession Planning Pilot Program also provides a career service for new lawyers and recent law school graduates to connect with experienced attorneys who intend to transition out of full-time practice. Many of these are successful solo practitioners in small Georgia towns, where their retirement would cause a void in the delivery of legal services in their communities. Learn more about the succession planning program at www.georgiayld.org.

YLD involvement is healthy for your clients.

The relationships that are created when young lawyers work together on a project or committee extend beyond those events and emanate into the lawyers’ practice. For example, when two lawyers find themselves on opposite sides, but they have previously built a relationship through their involvement in the YLD outside of the courtroom, the conversations seem less strained and the attitudes seem more respectful. This is beneficial for the clients as these attorneys with this pre-established relationship will likely be able to handle the case in a more efficient and fluid manner.

Los Angeles-based family law attorney Marlo Van Oorschot, writing for the American Inns of Court publication *The Bench*, states, “In the practice of law we should remember that we are dealing with human lives. Our goals should be to bring a sense of order to troubled situations, to communicate honestly and directly about the legal and human difficulties involved, and to maintain full respect for everyone with whom we deal. The law is a profession only when we maintain professionalism. Courtesy and good

2016-17 OFFICERS

The Young Lawyers Division officers consist of a president, president-elect, treasurer, secretary, immediate past president and two newsletter editors, who are responsible for carrying out the purposes of the Young Lawyers Division.



JENNIFER C. MOCK

YLD President

Mock practices law with The Mock Law Firm, LLC, in Statesboro. She maintains a general practice while focusing on commercial and residential real estate law as well as juvenile law.



NICOLE C. LEET

YLD President-Elect

Leet is a partner with Gray, Rust, St. Amand, Moffett & Brieske LLP in Atlanta. She specializes in civil tort litigation, primarily in the areas of product, construction and premises liability.



RIZZA O’CONNOR

YLD Treasurer

O’Connor is the chief magistrate judge of Toombs County. She presides over small civil claims, dispossessories, criminal warrant application hearings and the issuance of arrest and search warrants.



WILLIAM T. “WILL” DAVIS

YLD Secretary

Davis, of Kitchens New Cleghorn LLC in Atlanta, practices primarily in all areas of family law, as well as general civil litigation, corporate, DUI and other misdemeanor criminal matters.



JOHN R. B. “JACK” LONG

YLD Immediate Past President

Long, of John R.B. Long P.C. in Augusta, has a general civil litigation practice with an emphasis in family law, plaintiff’s civil rights litigation and appellate practice. He also assists corporate clients in defense of employment law matters.



SHAMIRACLE S. JOHNSON

YLD Newsletter Co-Editor

Johnson, of the Law Office of James C. McLaughlin in Atlanta, focuses her practice on tort and insurance law in a staff legal office of Liberty Mutual Insurance.



HEATHER RIGGS

YLD Newsletter Co-Editor

Riggs, owner of MindMeld Marketing in Atlanta, provides website content, blogging and social media management to fellow lawyers and law firms.

faith are not inconsistent with a vigorous, authoritative position in court; we can be forthright advocates in the law while maintaining civility in legal practice.”

These relationships also offer another important resource for young lawyers as they open communication between the lawyers to share legal knowledge and practical experiences. After three years of law school and passing a bar exam, new lawyers often realize that the learning has only just begun.

It can be intimidating to ask questions of our bosses and other more experienced lawyers. When you have been trained only in real estate transactions, and an issue in a current transaction involves a divorce decree with language you don't understand, calling the family lawyer you met at a YLD event the week before may seem a lot less intimidating than calling the unknown lawyer who drafted the document—or your boss.

The YLD also offers a number of practice area committees, including Business Law, Criminal Law, Estate & Elder Law, Family Law, Intellectual Property Law, Juvenile Law, Labor & Employment Law, Litigation and Real Estate Law—providing opportunities to discuss issues and compare notes with colleagues in your specialty from around the state in order to benefit your clients.

YLD involvement is healthy for the legal profession.

Yari D. Lawson, 2014-16 Co-Editor of *The YLD Review*, our quarterly newsletter, recently wrote: “The greatest reward of practicing law will always be the achievement of success for one's client. I believe the next greatest benefit that the practice of law offers is the opportunity to serve the profession itself.”

For the past 10 years, the Georgia YLD has offered a Leadership Academy for young lawyers who are interested in developing their leadership skills as well as learning more about their profession, their communities and their state. The Leadership Academy counts more than 400 alumni, including solo practitioners, judicial law clerks, partners in large and small law firms, assistant district attorneys, public defenders, nonprofit lawyers,

ADR specialists and in-house counsel for Fortune 500 companies.

Participating in the Leadership Academy requires a commitment of time and resources from each participant; however, alumni tell us that their experience in the program and the rewards of their participation greatly outweigh any sacrifice they make to attend.

The YLD also offers a number of committees aimed at professional development and service to our profession: Appellate Admissions, Ethics & Professionalism, Inclusion in the Profession, Judicial Law Clerk, Leadership Academy Alumni, Legislative Affairs, Long-Range Planning, Non-traditional Legal Careers, Solo/Small Firm and Women in the Profession.

YLD involvement is healthy for future lawyers.

The Georgia High School Mock Trial Program has been one of the most successful projects of the YLD since 1988. Each year, we serve nearly 2,000 Georgia students by providing an educational opportunity in a competitive atmosphere for them to expand their understanding of court procedures and the legal system.

We are particularly excited about our High School Mock Trial program these days, as Georgia will host the 2019 National High School Mock Trial Championship in Athens. The success of the annual state competition has depended heavily on the volunteer service of many Bar members in coaching a team, evaluating or presenting during competition or serving on a subcommittee behind the scenes.

This is another great way for you to get involved in YLD service. Other educational service committees offered by the YLD include Intrastate Moot Court, Law School Fellows Program, Law-Related Education, National Moot Court, Public Interest Internship Program and William Daniel Mock Trial.

YLD involvement is healthy for your community.

Our Community Service Projects Committee provides opportunities for young lawyers to participate in local, state or national

service projects focused on various social issues, such as working with organizations that address the needs of underprivileged children, hunger, domestic violence and the environment.

We also have local affiliates that plan fundraising activities such as the golf tournaments held by the Savannah YLD and the Glynn County YLD each year to benefit a worthy local charity. These events give young lawyers across the state a chance to work together and converse together in a casual atmosphere. YLD affiliates around the state include Albany, Athens/Western Circuit, Augusta, Cobb County, Columbus, DeKalb County, Glynn County, Gwinnett County, Houston County, Macon, Rome/Northwest Georgia, Savannah and Valdosta.

For the past five years, the YLD has teamed up with the Office of the Attorney General to host the statewide “Legal Food Frenzy,” a food drive and fundraiser competition among Georgia's law firms, law schools and other legal organizations. The committee partners with community legal leaders across the state to spread awareness about Georgia's hunger problems, and to make a significant impact by gathering both canned food donations and monetary donations to help those affected by hunger in the state. This competition is held in the spring, and since its inception, has raised more than 5 million pounds of food.

Other public service-based committees offered by the YLD include Advocates for Students with Disabilities, Aspiring Youth Program, Disaster Legal Assistance, Military Support and our annual Signature Fundraiser, which supports a designated charitable organization.

If you are eligible for YLD membership, I hope you by now are wondering how to get involved with the YLD and our many programs of service to the public and our profession. You can find out more by visiting www.georgiayld.org or contacting the office of YLD Director Mary McAfee at marym@gabar.org or 404-527-8778. Also be sure to read our quarterly newsletter *The YLD Review*, like us on Facebook and follow us on Twitter to keep up with what's going on throughout the year. I hope to see you at a YLD gathering soon. ●



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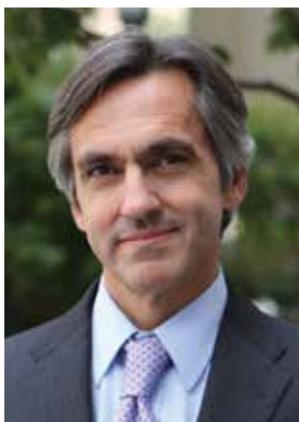
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"The best things in life are free. The second best things are very expensive."— Coco Chanel

Anyone who works in, lives in or frequently visits downtown Atlanta can attest that a secure parking space is a valuable commodity—often hard to find and almost never free.

So it should come as no surprise that, when I ask members of the State Bar of Georgia what is their favorite member benefit, "free parking" in the garage adjacent to the Bar Center at the corner of Marietta Street and Ted Turner Drive (formerly Spring Street) is by far the most popular response. Indeed, complimentary parking is available to Bar members who are visiting and using the Bar Center during business hours, as well as evenings and weekends for events at the Bar Center or the major sporting and entertainment venues within walking distance.

While we have all heard the old adage "you get what you pay for," I hope most of our members appreciate the fact that nothing is truly free. The members who utilize our complimentary parking are simply maximizing the value of their annual Bar dues.

Especially now during the construction of the new Mercedes-Benz Stadium, downtown parking is at a premium, and at peak times during special events, nearby lots charge a premium to park near special event venues such as the Georgia Dome, Georgia World Congress Center, Philips Arena, the Georgia Aquarium and Centennial Olympic Park. As a Bar member, you have the assurance of a safe, clean and secure parking space when you drive downtown to a Falcons or Hawks game or big-name concert, or during the business day when you attend a CLE seminar, have a client meeting or need to appear at a nearby courthouse.

It is difficult to place an exact monetary value on the Bar Center parking benefit; it depends on how often you come to downtown Atlanta for business or entertainment. But you could easily count on forking over roughly \$10 for a meeting during the day, upwards of \$20 for a single Hawks game or concert at Philips Arena and perhaps \$40 or more for a Falcons or major college football game at the Georgia Dome—if you get there early enough to find a space.

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An Insurer's Duty to Settle: The Law in Georgia

This article addresses the state of claims for bad faith failure to settle in Georgia, examining the duty that an insurer owes its insured, discussing how a time-limited settlement demand may affect the insurer's duty, discussing two safe harbors that Georgia courts created and analyzes the remedies afforded to policyholders if their insurers are found liable for bad faith when failing to settle a claim.

**BY JOHN E. HALL JR. AND
W. SCOTT HENWOOD**

A cause of action exists in Georgia when an insurance company, in bad faith, refuses to pay amounts demanded under a policy. Under O.C.G.A. § 33-4-6, an insured must prove three elements to prevail on a claim of bad faith against an insurer: "(1) that the claim is covered under the policy, (2) that a demand for payment was made against the insurer within 60 days prior to filing the suit, and (3) that the insurer's failure to pay was motivated by bad faith."¹ Although Georgia has traditionally recognized statutory claims of bad faith when an insurance company fails to pay, courts have also established a long line of precedent diagnosing the problem of bad faith when an insurer fails to settle a claim against its insured.²

Claims for bad faith failure to settle arise when an insurer rejects or fails to timely respond to an injured third party's reasonable offer to settle a claim against the insured.³

Assume an automobile accident occurs where the policyholder is likely at fault and the policy limit is \$50,000.⁴ The insurer agrees to defend its policyholder when a third party, injured in the accident, brings suit against the policyholder. If the third party offers to settle the case for an amount within the \$50,000 policy, the insurer has very little choice when deciding whether to accept or reject the offer. If the insurer rejects the offer, deciding instead to take its chances at trial, the court may return a verdict that is higher than the policy limits. In that case, the insurer would likely be liable for bad faith and responsible for tendering the full policy as well as the excess judgment exceeding the policy limit.⁵ If the insurer compromises by settling within the policy limit, however, then it loses the possibility of a lower judgment at trial.⁶

An insurer's duty to settle third-party claims against its insured is an "independent duty" that arises out of tort, not contract.⁷ When an insurer refuses to settle, it will be liable for any excess judgment "where the insurer is guilty of negligence, fraud, or bad faith in failing to compromise the claim."⁸ This type of claim developed to protect policyholders in the battle over competing litigation interests.⁹ As the injured party's claim approaches the ceiling of the policy, the insured becomes more interested in protecting himself or herself from excess damages, while the insurer has less incentive to settle and more motivation to gamble on the possibility of a defense verdict or a judgment below the policy limit.¹⁰ Whether

an insurer breaches this independent duty by acting in bad faith and failing to settle is almost always a question for the jury and will rarely be resolved as a matter of law.¹¹

This article addresses the state of claims for bad faith failure to settle in Georgia. Part I examines the duty that an insurer owes its insured, while Part II discusses how a time-limited settlement demand may affect the insurer's duty. This article also discusses, in Part III, two safe harbors that Georgia courts created to insulate insurers from excess liability when circumstances are outside the insurer's control. Finally, Part IV analyzes the remedies afforded to policyholders if their insurers are found liable for bad faith when failing to settle a claim.

I. An Insurer's Duty of Equal Consideration

The duty an insurer owes to its insured when determining whether to settle a claim is nebulous and difficult to define. The original standard employed by courts and legal scholars was "such care as would have been used by an ordinarily prudent insurer with no policy limit applicable to the claim."¹² Georgia courts will also consider the totality of circumstances surrounding the demand when determining whether an insurer acted negligently or in bad faith.¹³

In practice, courts have established a complementary yet more demanding duty for insurers in failure-to-settle cases.¹⁴ Each insurer owes its insured the duty of equal consideration.¹⁵ In *United States Fidelity & Guaranty v. Evans*,¹⁶ the Court of Appeals explained that there have long been two extreme views as to an insurer's duty to settle a claim against its insured. The first view is that the insurer "has an *absolute right* to [trial or to] appeal with no duty to consider the insured's interest in rejecting a settlement."¹⁷ The second view is that "the insurer has an *absolute duty* to accept any offer to settle for an amount within the policy coverage."¹⁸ The majority rule, however, requires the insurer to "accord the interest of its insured the

An insurer's duty to settle third-party claims against its insured is an independent duty that arises out of tort, not contract.

same faithful consideration it gives its own interest.”¹⁹

The controversy in *Evans* arose when an insurance company refused to settle a case after the jury returned a verdict against the policyholder that exceeded the policy’s limit.²⁰ The insurance company refused to settle for an amount within the policy limits before the verdict, and then again refused to settle for the amount of the policy after the verdict had been delivered but before disposition of the insurer’s motion for a new trial and subsequent appeal.²¹ After the insurer lost on appeal, the policyholder sued the insurer, claiming bad faith in refusing to settle.²² A jury returned a verdict against the insurer.²³ On appeal, the insurer contended that a lack of good faith only existed if the previous appeal was frivolous, but the Court of Appeals disagreed, stating that “any prudent insurer [owes a duty] to refrain from taking an unreasonable risk on behalf of its insured.”²⁴ This is also known as the duty of equal consideration.²⁵

When deciding whether to settle a claim within or for the policy limits, “the insurance company must give equal consideration to the interests of the insured.”²⁶ The trier of fact must consider the totality of the existing circumstances when deciding whether an insurer complied with its duty, including factors such as (1) whether a time-limited settlement offer afforded the insurer the opportunity to settle within the policy limits and (2) whether any safe harbor exceptions apply.²⁷

II. Time-Limited Settlements and the Opportunity to Settle

Rejecting a time-limited settlement offer is the catalyst for most claims of bad faith failure to settle. Reasonable settlement offers may be limited to a few hours in mediation, to 10 days, or even longer in some cases. An insurance company does not act in bad faith merely because it fails to accept the offer within the pre-

scribed deadline. Instead, the company must reasonably act within the scope of equal consideration.²⁸

The seminal case addressing time-limited settlement offers is *Southern General Insurance Co. v. Holt*.²⁹ The Supreme Court of Georgia stated that bad faith may be found “when the company has knowledge of clear liability and special damages exceeding the policy limits.”³⁰ The Court also stipulated, however, that an insurer’s failure to respond to a time-limited settlement offer does not automatically constitute bad faith per se:

Nothing in this decision is intended to lay down a rule of law that would mean that a plaintiff’s attorney under similar circumstances could “set up” an insurer for an excess judgment merely by offering to settle within the policy limits and by imposing an unreasonably short time within which the offer would remain open.³¹



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In *Holt*, Southern General knew of the insured's liability, of the injured party's extensive medical bills and lost wages, and that damages would likely exceed the policy limit, yet it failed to respond to the plaintiff's settlement offer within the 10-day limit.³² Southern General claimed that it needed medical documentation to support the damages claims, but the company failed to request an extension for the time-limited offer.³³ Thus, the Court concluded that a directed verdict for Southern General was not warranted and that the issue of bad faith in failing to settle was a jury question.³⁴

The key to whether an insurer acted in bad faith is determining whether the insurer "had the opportunity to make an effective compromise."³⁵ Georgia courts, however, have failed to specifically define what constitutes an opportunity to compromise.³⁶ "[A]t a minimum . . . Georgia law mandates that the insured show that settlement was possible—the case could have been settled within the policy limits—and that the insurer knew, or reasonably should have known, of this fact."³⁷ Although an insurer must act reasonably in responding to a settlement offer, it has no affirmative duty to negotiate with

event" for the insurer to be liable for excess damages.⁴¹ In most cases, notice comes from a clear settlement offer. All that is necessary, however, is the *opportunity to settle*,⁴² and the question of whether the insurer had the *opportunity to settle* is for the jury to decide and will rarely be resolved on summary judgment.⁴³ When a settlement offer provides no reasonable settlement opportunity, rendering it impossible for the insurer to determine the value of the injured party's injuries, Georgia courts may resolve a claim for bad faith failure to settle as a matter of law.⁴⁴ Insurers may also prevail on summary judgment and avoid excess liability if certain circumstances surrounding the settlement create a "safe harbor."

III. Safe Harbors

Insurers face a "Hobson's choice" when deciding whether to settle a claim for the policy limits: settle or risk the imposition of excess liability.⁴⁵ Recognizing the possible injustice created by pressuring insurers to settle, Georgia courts have created two safe harbors.⁴⁶ First, when a time-limited settlement demand is conditioned on factors beyond the insurer's control, the insurer can shield itself from liability

from tendering its policy limits because the plaintiff's demand contained a condition over which [the insurance company] had no control."⁵⁰ The settlement offer required the company to tender its policy limits, with the injured party's acceptance contingent on another insurance company's tender of its policy limits.⁵¹ The Court, however, was unwilling to ascribe to an insurer the affirmative duty "to make a counteroffer to every settlement demand" involving a condition beyond its control.⁵² Thus, the Court held that when an insurer faces a demand conditioned upon the actions of multiple insurers, a safe harbor from excess liability is created as long as the company meets the portion of demand over which it has control.⁵³

In 2009, the Supreme Court of Georgia revisited this safe harbor in *Fortner v. Grange Mutual Insurance Co.*⁵⁴ The purpose behind the *Brightman* safe harbor is to protect "an insurer from liability under the reasonableness standard based on an allegation that it failed to satisfy a settlement condition *over which it had no control.*"⁵⁵ In *Fortner*, the issue was whether a jury charge was consistent with the *Brightman* safe harbor.⁵⁶ The case involved an automobile accident caused by the insured, where the insured had a liability policy with the defendant, Grange, and the insured's company had an additional liability policy with another insurer. The injured party offered to settle all claims with Grange for the policy limit *contingent on* the other insurer settling within its policy limits.⁵⁷ Grange countered with a conditional offer, claiming it would tender its policies if the injured party signed "a full release with indemnification language" and dismissed his claim against the insured with prejudice.⁵⁸ The injured party rejected the offer and proceeded to trial, winning a \$7 million verdict against the insured.⁵⁹ In a subsequent suit against Grange for bad faith failure to settle, the jury returned a verdict in favor of Grange.⁶⁰ The Court found that the jury charge on the duty of equal consideration was not consistent with the *Brightman* safe harbor because it would not allow the jury to consider whether the conditions in Grange's response were reasonable.⁶¹

Insurers face a "Hobson's choice" when deciding whether to settle a claim for the policy limits: settle or risk the imposition of excess liability.

third parties regarding offers exceeding the policy limits.³⁸ Further, an unreasonably short time limit imposed on a settlement demand will likely excuse an insurer's failure to settle.³⁹

The insurer may have the opportunity to make a compromise when "the insured's liability is clear, the damages are great and the insurer is on notice that it has an opportunity to settle the case, usually because a settlement demand in the amount of the policy limits or greater is received from the plaintiff."⁴⁰ The most influential element is notice, as there must be some "triggering

ity for failing to settle."⁴⁷ Second, when a potential conflict between statutory and common-law duties exists, the insurer may reasonably refuse a settlement offer for the policy limits.⁴⁸

Conditions Beyond an Insurer's Control

The Supreme Court of Georgia recognized the first safe harbor from liability in the 2003 case *Cotton States Mutual Insurance Co. v. Brightman*.⁴⁹ The question in *Brightman* was whether an insurance company "was excused, as a matter of law,

If Grange had tendered its policy limits without adding the condition that the injured party sign a full release of the insured and dismiss its claim with prejudice, then it would have satisfied the safe harbor requirements, as it would have met “the portion of the demand over which it [had] control.”⁶²

The *Fortner* decision interprets the *Brightman* safe harbor, making it clear that even where an insurer tenders its policy limits, it may still be liable for the excess judgment if the response to an injured party’s settlement offer contains additional contingencies.⁶³ To obtain summary judgment under the *Brightman* safe harbor, the insurer must not only face a settlement demand beyond its control, but also unconditionally satisfy the part of the demand over which it has control.⁶⁴

Conflicting Statutory and Common-Law Duties

A second safe harbor protects insurers from conflicting statutory and common-law duties. In *Southern General Insurance Co. v. Wellstar Health Systems, Inc.*,⁶⁵ the insurer claimed that complying with its duty under *Holt* to settle for the policy limits as well as its obligation under O.C.G.A. § 44-14-470 to satisfy any hospital liens would cause

the insurer to pay more than its policy limits.⁶⁶ The insurer claimed that the common-law duty to settle and the statutory duty to satisfy hospital liens were irreconcilable, but the Court of Appeals did not agree.⁶⁷ The insurer would have acted in good faith if it had verified the outstanding hospital liens, made payment on such liens, and then tendered the remaining funds to the injured third party in settlement.⁶⁸ Instead, before any liens were filed, the insurer offered to settle with the third party by tendering its policy limits, despite the fact that the insurer was aware of the hospital’s intention to file two liens against the injured party.⁶⁹

The court held that an insurer may create a safe harbor from bad faith liability (1) by timely acting to settle when liability is clear and damages exceed the policy limits and (2) if “the sole reason for the parties’ inability to reach a settlement is the plaintiff’s unreasonable refusal to assure the satisfaction of any outstanding hospital liens.”⁷⁰ Thus, because the insurer in *Wellstar* failed to meet the portion of the demand over which it had control, the safe harbor did not apply, and the Court of Appeals affirmed the trial court’s denial of summary judgment.⁷¹ The same basic principle applies to both the *Brightman* and the *Wellstar*

safe harbors: to avoid bad faith liability, the insurer must do what is in its control to effectuate a settlement between the insured and the injured party.

IV. Damages

If an insurer is found liable for failing to settle in bad faith, it is liable for all of the judgment that exceeds its policy limits.⁷² Again, the reason that an insurer is required to pay the entire judgment, including excess damages, is to prevent insurers from gambling with the insured’s money by not settling and taking its chances at trial.⁷³

A court may also award punitive damages against an insurer. Plaintiff must prove “by clear and convincing evidence that the defendant’s actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.”⁷⁴ In insurance litigation, proving bad faith does not necessarily entitle plaintiff to punitive damages because “bad faith” and “negligence” “are often used interchangeably . . . in describing the nature of the action against an insurer.”⁷⁵ Although an insured may assign his or her failure-to-settle claim upon successfully securing a judgment against the insurer, the in-

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insured may not assign his or her right to punitive damages.⁷⁶

Conclusion

Insurers in Georgia face a Hobson's choice when attempting to settle third-party claims against policy-holders. If the insurer fails to accept a settlement demand within or for the policy limits, it will likely face liability for failing to settle in bad faith. So, the rational choice for insurers is to settle when a demand is within the policy limits. An insurer has a duty to give equal consideration to the interests of its insured, which in practice means that, if given an opportunity, the insurer must settle the claim for the policy limits. The opportunity to compromise arises when (1) the insured's liability is clear, (2) damages are likely to exceed the policy limit and (3) the insurer has notice of the opportunity to settle. A triggering event—such as a demand being offered—will likely put the insurer on notice, but even without a demand, if the insurer knew or should have known that settlement was possible, it may be liable for failing to effectuate a settlement. Due to its fact-intensive nature, the question of whether the insured acted in bad faith is almost always for the jury to determine.

Only in a limited number of circumstances will insurers be protected from bad faith liability as a matter of law. First, if the settlement demand contains conditions beyond the insurer's control, and second, if the insurer's common-law duty to settle is in conflict with a statutory duty. Regardless, the insurer must meet the portion of the demand within its control to be protected. ●



John E. Hall Jr. is a founding partner of Hall Booth Smith, P.C., and specializes in the defense of high exposure cases,

including medical malpractice, construction, commercial litigation, mass torts, transportation and products liability. He also maintains a corporate practice in international, international trade and finance,

arbitration/mediation, business structures, health care, and commercial litigation. Hall currently serves as an honorary consul to the Country of Georgia and as chairman of the Atlanta-Tbilisi Sister City Committee where he actively engages in developing international relationships between the state of Georgia and the country of Georgia.



William Scott Henwood, of counsel, Hall Booth Smith, P.C., spent his early professional career in various positions with the Supreme Court and Court of Appeals of Georgia including the prestigious position of Reporter of Decisions. He is also actively involved with the country of Georgia Consulate and the Atlanta-Tbilisi Sister City Committee. Henwood has taught and lectured at various law schools in the country of Georgia, primarily in the areas of American Legal History and Constitutional Law.

Endnotes

1. BayRock Mortg. Corp. v. Chicago Title Ins. Co., 286 Ga. App. 18, 19, 648 S.E.2d 433, 435 (2007) (citing O.C.G.A. § 33-4-6).
2. See, e.g., S. Gen. Ins. Co. v. Holt, 262 Ga. 267, 269, 416 S.E.2d 274, 276 (1992) (holding that an insurance company acted in bad faith by failing to respond to the injured party's deadline to settle a personal injury claim within policy limits when liability was clear and special damages exceeded policy limits).
3. Adam M. Smith & Caroline L. Crichton, *Bad Faith Under a Commercial General Liability Policy*, in THE REFERENCE HANDBOOK ON THE COMPREHENSIVE GENERAL LIABILITY POLICY 311, 320-22 (Alan S. Rutkin & Robert Tugander III eds., 2010).
4. *Id.* at 320.
5. *Id.*
6. *Id.*
7. J. RANDOLPH EVANS & J. STEPHEN BERRY, *GEORGIA GENERAL LIABILITY INSURANCE* § B.2.a (2010).
8. S. Gen. Ins. Co. v. Holt, 262 Ga. 267, 268, 416 S.E.2d 274, 276 (1992).
9. JAMES SADD ET AL., *INSURANCE BAD FAITH: THE LAW IN GEORGIA* § 3.3 (2011).
10. *Id.*; Smith & Crichton, *supra* note 3, at 320-21 (stating that a dilemma exists when the insurer has absolute control of trial and the settlement offer, as it may seem the insurer has the opportunity to gamble with the policyholder's money); Cotton States Mut. Ins. Co. v. Brightman, 276 Ga. 683, 685, 580 S.E.2d 519, 521 (2003).
11. EVANS & BERRY, *supra* note 7, § B.2.c.2 (citing *Hulsey v. Travelers Indem. Co. of Am.*, 460 F. Supp. 2d 1332 (N.D. Ga. 2006)).
12. United States Fid. & Guar. Co. v. Evans, 116 Ga. App. 93, 95, 156 S.E.2d 809, 811 (1967) (quoting Robert E. Keeton, *Liability Insurance and Responsibility for Settlement*, 67 Harv. L. Rev. 1136, 1147 (1954)), *aff'd*, 223 Ga. 789 (1967).
13. EVANS & BERRY, *supra* note 7, § B.2.c.1.
14. *Evans*, 116 Ga. App. at 95, 156 S.E.2d at 811 ("As the champion of the insured, [the insurer] must consider as paramount [the insured's] interests, rather than its own, and may not gamble with [the insured's] funds.") (quoting 7A APPLEMAN, *INSURANCE LAW AND PRACTICE* § 4711, at 553).
15. *Id.* at 97, 156 S.E.2d at 812; see SADD ET AL., *supra* note 9, § 3.3.
16. 116 Ga. App. 93, 156 S.E.2d 809 (1967)
17. *Id.* at 96, 156 S.E.2d at 812 (emphasis added).
18. *Id.*, 156 S.E.2d at 812 (emphasis added).
19. *Id.* at 96-97, 156 S.E.2d at 812 (quoting *Cowden v. Aetna Cas. & Sur. Co.*, 134 A.2d 223, 228 (Pa. 1957)).
20. *Id.* at 93, 156 S.E.2d at 810.
21. *Id.*, 156 S.E.2d at 810.
22. *Id.*, 156 S.E.2d at 810.
23. *Id.*, 156 S.E.2d at 810.
24. *Id.* at 97, 156 S.E.2d at 812.
25. *Id.*, 156 S.E.2d at 812.
26. S. Gen. Ins. Co. v. Holt, 262 Ga. 267, 268, 416 S.E.2d 274, 276 (1992) (citing *Great Am. Ins. Co. v. Exum*, 123 Ga. App. 515, 519, 181 S.E.2d 704, 707 (1971)).
27. Smith & Crichton, *supra* note 3, at 321. Courts in most jurisdictions, including Georgia, will consider a laundry list of factors including (1) the insurer's view, (2) the anticipated verdict and damages, (3) the weaknesses and the strengths of the available evidence and (4) the views and requests of the insured. *Id.* This list is neither exhaustive nor exclusive. *Id.*
28. SADD ET AL., *supra* note 9, § 3.4.
29. 262 Ga. 267, 416 S.E.2d 274 (1992).
30. *Id.* at 269, 416 S.E.2d at 276.

31. *Id.*, 416 S.E.2d at 276 (quoting *Grumbling v. Medallion Ins. Co.*, 392 F. Supp. 717, 721 (D. Or. 1975)).
32. *Id.*, 416 S.E.2d at 276.
33. *Id.*, 416 S.E.2d at 276.
34. *Id.*, 416 S.E.2d at 276.
35. *Cotton States Mut. Ins. Co. v. Brightman*, 276 Ga. 683, 686, 580 S.E.2d 519, 522 (2003).
36. *See Delancy v. St. Paul Fire & Marine Ins. Co.*, 947 F.2d 1536, 1548 (11th Cir. 1991) (“Georgia law is also unclear as to whether the insured may recover for the insurer’s failure to settle when the injured party never offered to settle within the insured’s policy limits.”). In 2013, however, the Georgia legislature passed a law that governs time-limited demands for settlements as they apply to “a tort claim for personal injury, bodily injury, or death arising from the use of a motor vehicle.” O.C.G.A. § 9-11-67.1(a) (2000 & Supp. 2015). The demand must be in writing, specify the type of release, if any, to be provided, and the claims to be released. *Id.* § 9-11-67.1(a)(4), (a)(5). The insurer then has thirty days to accept the offer. *Id.* § 9-11-67.1(a)(1); *see generally* FRANK E. JENKINS III & WALLACE MILLER III, *GEORGIA AUTOMOBILE INSURANCE LAW* § 21:8 (2015-2016 ed.).
37. *Kingsley v. State Farm Mut. Auto. Ins. Co.*, 353 F. Supp. 2d 1242, 1248 (N.D. Ga.) (quoting *Delancy*, 947 F.2d at 1550), *aff’d*, 153 F. App’x 555 (11th Cir. 2005).
38. *Brightman*, 276 Ga. at 687, 580 S.E.2d at 522.
39. EVANS & BERRY, *supra* note 7, § B.2.c.3 (citing *Hulsey v. Travelers Indem. Co. of Am.*, 460 F. Supp. 2d 1332 (N.D. Ga. 2006)). Whether an insurer timely responded to a settlement demand and whether the time restrictions imposed on the demand are reasonable are questions for a jury. *Id.* (“[A] ccordingly, [*Hulsey*] noted that the reasonableness of a demand’s time limit, and the timeliness of an insurer’s reaction to a demand, are questions of fact for a jury.”)
40. *Kingsley*, 353 F. Supp. 2d at 1252.
41. *Id.* (“Put another way, to find liability for tortious refusal to settle there must be something the insurer was required to ‘refuse.’”).
42. *Id.* at 1251 (“Fundamental to the decisions in these [Georgia] cases was that the insurer at some point knew there was an opportunity to settle within policy limits . . .”) (citing *Holt*, 262 Ga. at 269, 416 S.E.2d at 276; *Driskell v. Empire Fire & Marine Ins. Co.*, 249 Ga. App. 56, 62-63, 547 S.E.2d 360, 366 (2001); *Cotton States Mut. Ins. Co. v. Fields*, 106 Ga. App. 740, 741-42, 128 S.E.2d 358, 359-60 (1962)); *see also Delancy*, 947 F.2d at 1551 (explaining that if the insurer knew or should have known the suit could be settled within the policy limits but fails “to effect a settlement within reasonable time,” then the insurer may be liable for the excess judgment against the insured).
43. *See Baker v. Huff*, 323 Ga. App. 357, 363-64, 367, 747 S.E.2d 1, 6, 9 (2013).
44. *Id.* at 367-68, 747 S.E.2d at 9.
45. *Camacho v. Nationwide Mut. Ins. Co.*, 13 F. Supp. 3d 1343, 1355-56 (N.D. Ga. 2014).
46. *Id.*; *see Cotton States Mut. Ins. Co. v. Brightman*, 276 Ga. 683, 687, 580 S.E.2d 519, 522 (2003); *S. Gen. Ins. Co. v. Wellstar Health Sys. Inc.*, 315 Ga. App. 26, 31, 726 S.E.2d 488, 493 (2012).
47. *Brightman*, 276 Ga. at 687, 580 S.E.2d at 522.
48. *Wellstar*, 315 Ga. App. at 31, 726 S.E.2d at 493.
49. 276 Ga. 683, 580 S.E.2d 519 (2003).
50. *Id.* at 685, 580 S.E.2d at 521.
51. *Id.*, 580 S.E.2d at 521.
52. *Id.* at 687, 580 S.E.2d at 522.
53. *Id.*, 580 S.E.2d at 522.
54. 286 Ga. 189, 686 S.E.2d 93 (2009).
55. *Id.* at 190-91, 686 S.E.2d at 95.
56. *Id.* at 189-90, 686 S.E.2d at 94.
57. *Id.* at 189, 686 S.E.2d at 94.
58. *Id.*, 686 S.E.2d at 94.
59. *Id.*, 686 S.E.2d at 94.
60. *Id.*, 686 S.E.2d at 94.
61. *Id.* at 191, 686 S.E.2d at 95.
62. *Id.* at 190, 686 S.E.2d at 95 (quoting *Brightman*, 276 Ga. at 687, 580 S.E.2d at 522). The Court noted that to interpret the safe harbor otherwise would, if two or more insurers are involved, allow the first insurer, as a matter of law, to “avoid a bad faith claim by offering its policy limits but making the offer contingent on unreasonable conditions that a plaintiff is guaranteed to reject.” *Id.* at 191, 686 S.E.2d at 95. The insurer may not place unreasonable restraints on its acceptance even when the plaintiff’s original settlement offer is contingent on two insurers’ tendering their policy limits. *See id.*, 686 S.E.2d at 95.
63. *See id.*, 686 S.E.2d at 95; *see also generally* Stephen L. Cotter, Stephen M. Schatz & Bradley S. Wolff, *Annual Survey of Georgia Law: Insurance*, 62 MERCER L. REV. 139, 158-162 (2010) (discussing the developments in bad faith insurance law, including the ramifications of *Fortner*).
64. *See Fortner*, 286 Ga. at 190, 686 S.E.2d at 94; *Brightman*, 276 Ga. at 687, 580 S.E.2d at 522.
65. 315 Ga. App. 26, 726 S.E.2d 488 (2012).
66. *Id.* at 28, 726 S.E.2d at 491.
67. *Id.* at 29, 726 S.E.2d at 491.
68. *Id.* at 32, 726 S.E.2d at 493-94.
69. *Id.* at 27, 726 S.E.2d at 490.
70. *Id.* at 31, 726 S.E.2d at 493.
71. *Id.* at 34, 726 S.E.2d at 495.
72. *Cotton States Mut. Ins. Co. v. Brightman*, 276 Ga. 683, 684, 580 S.E.2d 519, 521 (2003) (citing *McCall v. Allstate Ins. Co.*, 251 Ga. 869, 310 S.E.2d 513 (1984)).
73. *Id.* at 685, 580 S.E.2d at 521.
74. O.C.G.A. § 51-12-5.1(b) (2008 & Supp. 2015); *see S. Gen. Ins. Co. v. Holt*, 262 Ga. 267, 270, 416 S.E.2d 274, 276-77 (1992) (noting that availability of punitive damages is contingent on entitlement to compensatory damages).
75. JENKINS & MILLER, *supra* note 36, § 21:4(d).
76. *Id.* (citing *Chapman v. Clark*, 272 Ga. App. 667, 613 S.E.2d 184 (2005); *Canal Indem. Co. v. Greene*, 265 Ga. App. 67, 593 S.E.2d 41 (2003); *S. Gen. Ins. Co. v. Holt*, 262 Ga. 267, 416 S.E.2d 274 (1992)).

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2016 State Bar of Georgia Annual Meeting: A Successful Return to Amelia Island

BY JENNIFER R. MASON



PHOTO COURTESY OF OMNI AMELIA ISLAND PLANTATION RESORT

After a one-year hiatus, the State Bar of Georgia returned to what has become one of the most desirable beach locations on the East Coast, The Omni Amelia Island Plantation Resort, for its 2016 Annual Meeting. And once again, the resort delivered exceptional first-class service in every detail. From food and accommodations to the smoothly run meeting and everything in between, Bar members, their families and guests were treated to a weekend that exceeded expectations both personally and professionally.

Opening Night Festival

While the threat of storms resulted in a minor adjustment to the location of the Opening Night Festival, it did nothing to dampen the spirits of those who came out ready to kick things off with the traditional Thursday night event. Everyone was able to enjoy drinks and dinner in the

Aerial view of the Omni Amelia Island Plantation Resort

air-conditioned ballroom, a welcome turn of events as the heat and humidity were out in full force. Entertainment included a DJ and several performances by a pair of aerialists who amazed with their strength and agility. Outside, guests and their families could experience carnival-like games and crafts, including giant oversized versions of Connect Four, checkers and Jenga, along with the ever-popular bounce house. Of particular interest to the kids and a few brave adults were the human Bubble Balls that enabled you to climb in, strap down and bounce around to your heart's content. Laughter echoing from that particular part of the lawn was by far the best sound of the night.

Business of the Weekend

Events such as the Opening Night Festival and the Presidential Inaugural Gala catered to the social side of the weekend, but the main focus was found in the opportunities that enabled Bar members to network and fulfill professional obligations while taking care of the business of the Bar. Various section and committee meetings provided much-needed updates to projects and plans for the upcoming Bar year. CLE opportunities were plentiful on Thursday and Friday as members had the chance to meet their educational requirements with seminars on topics such as wellness, legal marketing and the lawyer's role in preserving constitutional liberty, in addition to the always well-attended war stories series.

While the primary focus during the day was on professional commitments and opportunities, the evenings tended more toward personal and social engagements. From the Opening Night Festival to the various receptions, dinners and award ceremonies, there was ample opportunity to enjoy the social side of the organization. Receptions hosted by sections, law school alumni groups and law firms offered attendees a casual yet intimate venue in which to catch up, congratulate and recognize the success of individuals and organizations over the past year while looking forward to new opportunities in the future. More formal engagements included the YLD Dinner and Swearing-In



PHOTO BY JENNIFER R. MASON

(Left to right) Sue, Chris and 2015-16 State Bar President Robert J. "Bob" Kauffman enjoy the Opening Night Festival with Carol, Liam and 2016-17 President Patrick T. O'Connor.

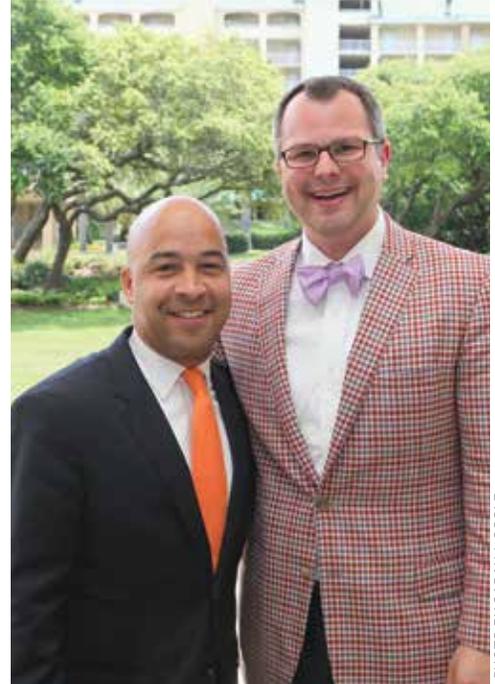


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2016-17 YLD President Jennifer C. Mock and husband, Jared, enjoy the reception for the Supreme Court of Georgia justices and Court of Appeals judges prior to the Inaugural Gala.



President Bob Kauffman and Wellness Task Force Chair Ken Hodges with the “Cope or Quit is not a Strategy” CLE presenters. (Left to right) Caroline Dotts, Michael Ethridge, Kauffman, Hodges, Helen Shymanski and Jack Pringle.



(Left to right) Past YLD Presidents Damon E. Elmore (2005-06) and Darrell L. Sutton (2013-14).

Ceremony on Friday and the Presidential Inaugural Gala on Saturday.

The Wellness Effect

Supporting 2015-16 President Bob Kauffman’s wellness initiative, the Bar featured a number of wellness events throughout the weekend including a special CLE, “Cope or Quit is not a Strategy,” and several fitness opportunities. Yoga, water aerobics and zumba classes were offered through the Resort’s Fitness Center, and the annual YLD/Pro Bono 5K Fun Run returned to the beach for 3.1 miles of sun, sand and sweat for little more than the love of running and the desire to possess a coveted Fun Run T-shirt.

Anyone who registered for a wellness event or was a member of the Wellness Task Force received a special Lawyers Living Well T-shirt. The hope is that lawyers will wear these T-shirts when participating in other events in the future to stress our commitment to helping lawyers live well.

Board Meeting Highlights

The June 17 plenary session began with the State of the Supreme Court address

given by Chief Justice Hugh P. Thompson, followed by the State of the Court of Appeals address by Chief Judge Sara L. Doyle and the State of the Georgia Law Department by Attorney General Sam Olens. At the conclusion of his address, Olens’ presented awards to the winners of the 2016 Legal Food Frenzy with the assistance of President Kauffman: *Attorney General’s Cup*, Joe S. Habachy, PC; *Attorney General’s Cup—Law School Division*, Mercer University Walter F. George School of Law; *Sole Proprietor*, Attorney Justin Oliverio, LLC; *Small Firm*, Jenkins & Roberts LLC and Strickland Brockington Lewis LLP; *Medium Firm*, Coleman Talley LLP; *Large Firm*, Moore Ingram Johnson & Steel, LLP, and King & Spalding; *Legal Organization*, Georgia Institute of Technology Office of Legal Affairs and Office of the Attorney General; *Corporate Legal Organization*, Serta Simmons Bedding, LLC.

Following the presentation of awards, President Kauffman presented the Memorials report and Immediate Past President Patrise M. Perkins-Hooker reported on the Lawyers for Equal Justice Incubator Program that began operation in January 2016. The Board of Governors also

received a copy of the Lawyers for Equal Justice 2016 Update written report.

Outgoing YLD President John R. B. “Jack” Long reported on the activities of the Young Lawyers Division, thanking the YLD officers and others who helped him during his presidency. Long highlighted the annual YLD Signature Fundraiser that raised more than \$135,000 for Camp Lakeside in Augusta and the annual Food Frenzy that met and exceeded its goal of raising more than 5 million pounds of food in the first five years of the program. The board received a written report on the YLD committees, programs and projects for the 2015-16 Bar year.

Reports were given on the Investigative Panel by John Newberry, the Review Panel by Tony Askew, the Formal Advisory Opinion Board by Brad Marsh, the Clients’ Security Fund by Paul Threlkeld and the Attorney Wellness Task Force by Ken Hodges.

During the plenary session, President Robert J. “Bob” Kauffman delivered his outgoing remarks as required by the bylaws of the State Bar. A copy of these remarks can be found on page 38 of the *Bar Journal*.

Patrick T. O'Connor presided over the 264th Board of Governors meeting on Saturday, June 18.

Highlights of the meeting included:

- The board approved the following presidential appointments:
Investigative Panel:
District 8: Kimberly Anne Reid (2019)
District 9: Dana Michelle Woodall Pagan (2019)
District 10: Amanda Nichole Heath (2019)
At-Large: Daniel S. Reinhardt (2019)
Formal Advisory Opinion Board:
Georgia Association of Criminal Defense Lawyers: Holly Wilkinson Veal (2018)
Georgia District Attorneys Association: Donald R. Donovan (2018)
Emory University: Melissa D. Carter (2018)
Georgia State University: Nicole Gail Iannarone (2018)
Investigative Panel:
Julayaun Maria Waters (2017)
Review Panel:
Brad Marsh (2017)
At-Large: Letitia A. McDonald (2018), Mary A. Prebula (2018), Jeffrey Hobart Schneider (2018)
- The board approved President O'Connor's 2016-17 appointments to standing, special, program and board committees.
- President O'Connor addressed the Board of Governors and presented an overview of his proposed program of activities for the 2016-17 Bar year (see page 42).
- Treasurer Kenneth B. Hodges III reported on the Bar's finances and investments and the board, by majority voice vote, approved the 2016-17 State Bar budget, as amended.
- As required by Article V, Section 8 of the bylaws, the board:
 - authorized the president to secure a blanket fidelity bond to cover all officers, employees and other persons handling State Bar funds.
- As required by Article V, Section 6 of the bylaws, the board:

- directed the State Bar and related entities open appropriate accounts with such banks in Georgia, but excluding any bank that does not participate in the IOLTA Program, and other such depositories as may be recommended by the Finance Committee, and designated by the Executive Committee of the Board of Governors of the State Bar of Georgia, and that the persons whose titles are listed below are authorized to sign an agreement to be provided by such banks and customary signature cards, and that the said banks are hereby authorized to pay or otherwise honor any check drafts, or other orders issued from time to time for debit to said accounts when signed by two of the following: the treasurer, the secretary, the president, the immediate past president, the

- president-elect, the executive director, the office manager and the general counsel provided either the president, the secretary or the treasurer shall sign all checks or vouchers and that said accounts can be reconciled from time to time by said persons or their designees. The authority herein given is to remain irrevocable so far as said banks are concerned until they are notified in writing of such revocation of authority and in writing, acknowledge receipt thereof.
- designated Mauldin & Jenkins as the independent auditing firm to audit the financial records of the State Bar for the fiscal year 2015-16.
- The Board of Governors, by unanimous voice vote, elected Jeff Davis as executive director for the 2016-17 Bar year.



PHOTO BY SARAH L. COOLE

Rep. Regina M. Quick (R-Athens), chair of the Family Law Section, receives the Section of the Year Award from 2015-16 State Bar President Robert J. "Bob" Kauffman.



PHOTO BY SARAH I. COOLE

1

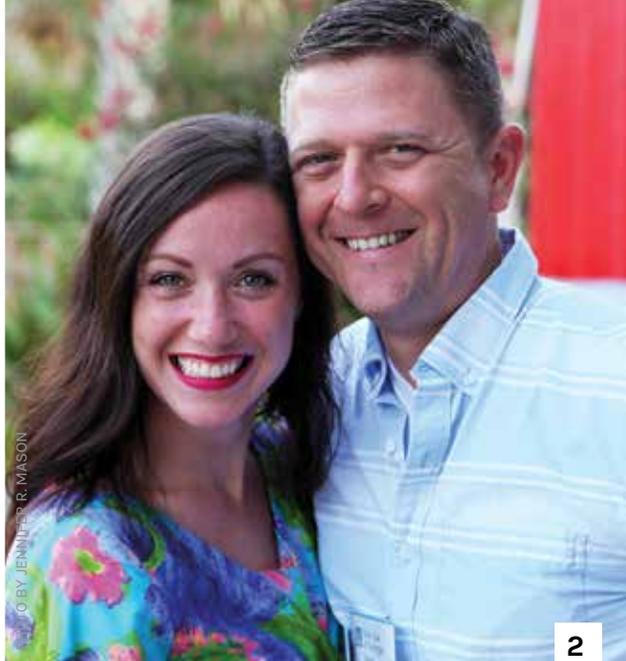


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Photos from the ANNUAL MEETING



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3

1. The President's Cup was presented to the Georgia Association of Black Women Attorneys (left to right) Janet Scott, 2015-16 State Bar President Robert J. "Bob" Kauffman and Tori Silas.
2. 2016-17 YLD Newsletter Co-Editor Heather Riggs enjoys the Opening Night Festival with husband Rob.
3. State Bar of Georgia's 2016-17 Executive Committee: (back row, left to right) Executive Committee Member Dawn Jones, Executive Committee Member Thomas R. Burnside III, YLD President Jennifer C. Mock, YLD President-Elect Nicole C. Leet, Executive Committee Member Elizabeth L. Fite, YLD Immediate Past President John R. B. "Jack" Long, Executive Committee Member Phyllis J. Holmen, Executive Committee Member Nicki N. Vaughan and Executive Committee Member David S. Lipscomb; (front row, left to right) Secretary Darrell L. Sutton, Treasurer Kenneth B. Hodges III, President Patrick T. O'Connor, Immediate Past President Robert J. "Bob" Kauffman and President-Elect Brian D. "Buck" Rogers



PHOTO BY DERRICK W. STANLEY

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4. Past President Charles L. Ruffin and wife Sally take to the dance floor with 2016-17 President Patrick T. O'Connor and wife Carol.
5. Paul Pannell tests out the human Bubble Balls.
6. (Left to right) Court of Appeals of Georgia Presiding Judge Herbert E. Phipps and wife Connie with Presiding Judge John J. Ellington and wife Sandra Kate at the reception honoring the justices and judges of the Supreme Court and Court of Appeals.



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7. (Left to right) 2015-16 President Robert J. "Bob" Kauffman and Executive Director Jeff Davis.
8. (Left to right) Section Chair William F. "Trey" Underwood III presents the 2016 Tradition of Excellence award to Hon. Michael L. Murphy, John W. Timmons, John A. Dickerson and William S. Stone.



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9. Carl and Christina Varnedoe at the Inaugural Gala.
10. 2016-17 President Patrick T. O'Connor and sons with Justice Harold Melton. (Left to right) Thomas, Pat, Justice Melton, Tyler and Tate.
11. The Swingin' Medallions.
12. Opening Night Festival entertainment.



PHOTO BY JENNIFER R. MASON

12



The Employee of the Year Award was presented to Betty Derrickson, paralegal in the Office of the General Counsel. (Left to right) Senior Assistant General Counsel John Shiptenko, Deputy General Counsel William D. NeSmith III, Derrickson and 2015-16 President Robert J. “Bob” Kauffman.



Supreme Court of Georgia Justice Keith Blackwell swears in the 2016-17 Young Lawyers Division officers. (Left to right) Immediate Past President Jack Long, Newsletter Co-Editor ShaMiracle S. Johnson, Newsletter Co-Editor Heather Riggs, Secretary Will Davis, Treasurer Hon. Rizza O'Connor, President-Elect Nicole Leet and President Jennifer Mock.

- Executive Committee elections were held with the following results: Phyllis Holmen, Dawn M. Jones and Nicki Noel Vaughan.
- The board approved the reappointments of Patrick Flinn, Patricia Gorham and Russell Bonds, and the

appointments of Marquetta Bryan and Keith Hill to the Georgia Legal Services Board of Trustees for two-year terms.

- The board approved the appointment of Monica Willis Parker to the Chief Justice’s Commission on Professionalism for a three-year term.

- The board approved the proposed 2016-17 election schedule.
- YLD President Jennifer Mock presented an overview of her proposed program of activities for the 2016-17 Bar year. She reported that the YLD’s community service efforts will focus on children and children’s services. She announced that the beneficiary of this year’s annual Signature Fundraiser will be Georgia Court Appointed Special Advocates, Inc. (Georgia CASA). She stated that she will encourage members of the Board of Governors to attend at least one YLD event at which she would like them to share with the young lawyers their experiences as leaders in the profession. She expressed that it is truly an honor to serve as the YLD president, and she looks forward to getting to know those Board of Governors members she has not yet had an opportunity to meet.
- Board Member Jon Pannell reported on the legislative process for this Bar year, referring the Board of Governors to the Board Members Handbook that has a section describing the Bar’s legislative program and sets forth restrictions on establishing a legislative policy under Standing Board Policy 100. He introduced Christine Butcher, the Bar’s new director of governmental affairs effective July 1.
- Military Legal Assistance Program Chair Eric Ballinger provided a report on the activities of the program.
- Georgia Bar Foundation Director Len Horton provided an update on the activities of the Foundation and IOLTA.
- President Pat O’Connor reported that he will continue to update the Board of Governors on the implementation of the strategic plan priorities. Since some of the priorities have been met, he announced that the Executive Committee will discuss reorganizing the priorities at its September meeting.
- The board received written reports from the following: the Office of

the General Counsel, the Insurance Committee, the Consumer Assistance Program, the Fee Arbitration Program, the Law-Related Education Program, the Law Practice Management Program, the Committee to Promote Inclusion in the Profession, the Transition Into Law Practice Program, Unlicensed Practice of Law, the Committee on Professionalism and the Chief Justice's Commission on Professionalism.

- The board received a copy of the 2015-16 media report.
- The board received written reports from the following sections: Aviation Law, Child Protection & Advocacy, Eminent Domain, Environmental Law, Family Law, Fiduciary Law, General Practice & Trial Law, Health Law, Intellectual Property Law, International Law and Local Government Law.
- President O'Connor reported that the Board of Governors received a letter from Immediate Past President Bob Kauffman on what action the Bar will take concerning the constitutional amendment and enabling legislation reconstituting the Judicial Qualifications Commission (JQC). He stated that he is appointing a task force to formulate the Bar's position on the legislation so as to provide the Bar with a cohesive and consistent voice. Members on the task force are Sarah Brown Akins, Eric Alvin Ballinger, Hon. Diane E. Bessen, Hon. J. Antonio DelCampo, Scott Delius, Harold E. Franklin, Horace Jerome Johnson Jr., Dawn M. Jones, Edward H. Lindsey Jr., Dennis C. O'Brien, M. Peterson Robinson, Buck Rogers and Paige Reese Whitaker.
- While generally agreeing with the position taken by the Executive Committee, several Board of Governors members expressed their displeasure in the way the Executive Committee handled the JQC issue by failing to communicate its efforts and not allowing further input and a vote by the board on the position.



PHOTO BY JENNIFER R. MASON

(Left to right) Javoyne Hicks, Hon. Patsy Porter, Sheryl Barnes, Jacqueline Bunn, Dawn Jones, Shermela Williams, Hon. Meka Ward, Hon. Chris Ward and Hon. Juliette Scales during the Presidential Gala.

President O'Connor stated that the Executive Committee will continue to improve communications with and have weigh-in by the Board of Governors and hopes to have its support in the effort.

Annual Awards

During the plenary session, outgoing President Robert J. "Bob" Kauffman recognized specific Bar members and organizations for the work they have done over the past year.

Employee of the Year Award

This award honors a staff member of the State Bar of Georgia who distinguishes himself or herself by being dedicated to carrying out the ideals of the Bar. This year's recipient was Betty Derrickson, paralegal in the Office of the General Counsel, and she is commended for her exemplary work, conscientious manner and positive attitude.

Chief Justice Thomas O'Marshall Professionalism Award

The 15th annual Chief Justice Thomas O. Marshall Professionalism Awards, presented by the Bench and Bar Committee of the State Bar of Georgia, honors one lawyer and one judge who have and continue to demonstrate the highest pro-

fessional conduct and paramount reputation for professionalism. This year's recipients were Justice Robert Benham, Supreme Court of Georgia, Atlanta, and Hugh Brown McNatt, Balch & Bingham LLP, Vidalia.

Local and Voluntary Bar Awards

The Thomas R. Burnside Jr. Excellence in Bar Leadership Award, presented annually, honors an individual for a lifetime of commitment to the legal profession and the justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section. This year's recipient is former Supreme Court of Georgia Justice Leah Ward Sears, nominated by the Georgia Association of Black Women Attorneys.

The Award of Merit is given to voluntary bar associations for their dedication to improving relations among local lawyers and devoting endless hours to serving their communities.

- Under 50 members: Port City Bar Association
- 101 to 250 members: Blue Ridge Bar Association
- 251 to 500 members: Georgia Association of Black Women Attorneys
- 501 members or more: Atlanta Bar Association

The Law Day Award of Achievement is presented to voluntary bar associations that best plan Law Day activities in their respective communities to commemorate this occasion.

- 101 to 250 members: Dougherty Circuit Bar Association and Henry County Bar Association
- 251 to 500 members: Gwinnett County Bar Association
- 501 members or more: Cobb County Bar Association

The Best New Entry Award is presented to recognize the excellent efforts of those voluntary bar associations that have entered the Award of Merit or Law Day Award competitions for the first time in four years. This year's recipient is the Columbus Bar Association.

The Best Newsletter Award is presented to voluntary bars that provide the best informational source to their membership.

- 101 to 250 members: Henry County Bar Association

- 251 to 500 members: Georgia Association of Black Women Attorneys
- 501 members or more: Georgia Trial Lawyers Association

The Best Website Award is given to voluntary bar associations with websites that exemplify excellence in usefulness, ease of use, content and design in meeting the needs of the website's targeted audience.

- 101 to 250 members: Blue Ridge Bar Association
- 251 to 500 members: DeKalb Bar Association
- 501 members or more: Georgia Association for Women Lawyers

The President's Cup Award is presented annually to the voluntary bar association with the best overall program. This year's recipient was the Georgia Association of Black Women Attorneys.

Section Awards

Sections awards are presented to outstanding sections for their dedication and

service to their areas of practice, and for devoting endless hours of volunteer effort to the profession:

- Section of the Year
Family Law Section, Regina Quick, chair
- Awards of Achievement
Aviation Law Section, E. Alan Armstrong, chair
Health Law Section, Daniel J. Mohan, chair
Intellectual Property Law Section, Lauren Fernandez, chair

Tradition of Excellence Awards

The Tradition of Excellence Awards are presented annually at the General Practice & Trial Law Section Breakfast to select Bar members in recognition of their commitment to service to the public, the Bar and to civic organizations. The 2016 recipients were: John A. Dickerson, Atlanta (defense); John W. Timmons, Athens (general practice); Hon. Michael L. Murphy, Buchanan (judicial) and William S. Stone, Blakely (plaintiff).

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Carol O'Connor holds the Bible while Patrick T. O'Connor is sworn in as the 54th president of the State Bar of Georgia by Supreme Court of Georgia Justice Harold Melton.

Young Lawyers Division Awards

Young Lawyers Division Awards are presented during the YLD Dinner and Swearing-In Ceremony.

The Distinguished Judicial Service Award was presented to Hon. J. Carlisle Overstreet.

The Ross Adams Award was presented to Michael G. Geoffroy.

The Award of Achievement for Service to the Bar was presented to Joshua I. Bosin and Dustin E. Davies.

The Award of Achievement for Service to the Public was presented to Ashley A. Akins, Amanda N. Moyer and Elizabeth P. O'Neal.

The Award of Achievement for Service to the Profession was presented to Jana J. Edmondson-Cooper, Heather Riggs and Daiquiri J. Steele.

The Award of Achievement for Service to the YLD was presented to Morgan I. Clemons, Elizabeth L. Fite, Anne Kaufold-Wiggins, ShaMiracle S. Johnson and Ryals D. Stone.

The YLD Ethics & Professionalism Award was presented to Amanda M. Mathis.

The Outstanding YLD Affiliate was presented to the Young Lawyers of Augusta.

Passing of the Gavel

Saturday evening began with the annual reception honoring the justices and judges of the Supreme Court and Court of Appeals of Georgia, followed by the business portion of the evening. Prior to the swearing-in ceremony, 2015-16 President Robert J. "Bob" Kauffman presented the Distinguished Service Award, the highest accolade bestowed by the State Bar of Georgia, to Hon. R. Chris Phelps (see page 52). Phelps was honored for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

Following the award presentation, Justice Harold Melton swore in Patrick T. O'Connor as the 54th president of the

State Bar. With his hand on the Bible, O'Connor repeated the following:

I, Patrick T. O'Connor, do solemnly swear that I will execute the office of president of the State Bar of Georgia, and perform all the duties incumbent upon me, faithfully, to the best of my ability and understanding, and agreeable to the policies, bylaws and rules and regulations of the State Bar of Georgia and Constitution of the United States, so help me God.

The evening continued with dinner, drinks and dancing throughout the rooms of the Conference Center. Guests were treated to three themed rooms of entertainment, including a coffee bar, cigar, scotch and bourbon bar, and the dance club featuring the Swingin' Medallions. ●



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Elizabeth L. Fite
Atlanta

Phyllis J. Holmen
Atlanta

Dawn M. Jones
Atlanta

David S. Lipscomb
Lawrenceville

Nicki Noel Vaughan
Gainesville

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Atlanta Circuit, Post 20
Jennifer Auer Jordan, Atlanta

Atlanta Circuit, Post 33
Hon. Susan E. Edlein, Atlanta

Chattahoochee Circuit, Post 1
Amy Carol Walters, Columbus

Douglas Circuit
Ryan Reese Leonard, Douglasville

Member-At-Large, Post 3
Tracee R. Benzo, Atlanta

Northern Circuit, Post 2
Hon. Richard Dale Campbell, Elberton

Ocmulgee Circuit, Post 1
Carl S. Cansino, Milledgeville

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William J. Monahan, Washington, D.C.

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Atlanta Circuit, Post 3
Kathleen M. Womack, Atlanta

Atlanta Circuit, Post 4
Jeffrey R. Kuester, Atlanta

Atlanta Circuit, Post 5
Catherine Koura, Atlanta

Atlanta Circuit, Post 6
Dwight L. Thomas, Atlanta

Atlanta Circuit, Post 7
William M. Ragland Jr., Atlanta

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Paige Reese Whitaker, Atlanta

Atlanta Circuit, Post 9
Damon E. Elmore, Atlanta

Atlanta Circuit, Post 10
Scott Dewitt Delius, Atlanta

Atlanta Circuit, Post 11
Hon. Jill Pryor, Atlanta

Atlanta Circuit, Post 12
Elena Kaplan, Atlanta

Atlanta Circuit, Post 13
R. Gary Spencer, Atlanta

Atlanta Circuit, Post 14
Edward B. Krugman, Atlanta

Atlanta Circuit, Post 15
Letitia A. McDonald, Atlanta

Atlanta Circuit, Post 16
Dawn M. Jones, Atlanta

Atlanta Circuit, Post 17
Hon. JaDawnya C. Butler, Atlanta

Atlanta Circuit, Post 18
Foy R. Devine, Atlanta

Atlanta Circuit, Post 19
Elizabeth L. Fite, Atlanta

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Jennifer Auer Jordan, Atlanta

Atlanta Circuit, Post 21
Patricia Gorham, Atlanta

Atlanta Circuit, Post 22
Frank B. Strickland, Atlanta

Atlanta Circuit, Post 23
Donna G. Barwick, Atlanta

Atlanta Circuit, Post 24
Joseph Anthony Roseborough, Atlanta

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Phyllis J. Holmen, Atlanta

Atlanta Circuit, Post 26
Anthony B. Askew, Atlanta

Atlanta Circuit, Post 27
Nancy J. Whaley, Atlanta

Atlanta Circuit, Post 28
J. Henry Walker IV, Atlanta

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Tina Shadix Roddenbery, Atlanta

Atlanta Circuit, Post 30
Karlise Yvette Grier, Atlanta

Atlanta Circuit, Post 31
Michael Terry, Atlanta

Atlanta Circuit, Post 32
Seth D. Kirschenbaum, Atlanta

Atlanta Circuit, Post 33
Hon. Susan E. Edlein, Atlanta

Atlanta Circuit, Post 34
Allegra J. Lawrence-Hardy, Atlanta

Atlanta Circuit, Post 35
Terrence Lee Croft, Atlanta

Atlanta Circuit, Post 36
J. Marcus Edward Howard, Atlanta

Atlanta Circuit, Post 37
Samuel M. Matchett, Atlanta

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Michael D. Hobbs Jr., Atlanta

Atlanta Circuit, Post 39
Anita Wallace Thomas, Atlanta

Atlanta Circuit, Post 40
Carol V. Clark, Atlanta

Atlantic Circuit, Post 1
H. Craig Stafford, Hinesville

Atlantic Circuit, Post 2
Carl Robert Varnedoe, Hinesville

Augusta Circuit, Post 1
Sam G. Nicholson, Augusta

Augusta Circuit, Post 2
William James Keogh III, Augusta

Augusta Circuit, Post 3
Thomas R. Burnside III, Augusta

Augusta Circuit, Post 4
William R. McCracken, Augusta

Bell Forsyth Circuit
Hon. Philip C. Smith, Cumming

Blue Ridge Circuit, Post 1
Hon. David Lee Cannon Jr., Canton

Blue Ridge Circuit, Post 2
Eric A. Ballinger, Canton

Brunswick Circuit, Post 1
J. Alvin Leaphart, Jesup

Brunswick Circuit, Post 2
Jeffrey S. Ward, Brunswick

Chattahoochee Circuit, Post 1 <i>Amy Carol Walters, Columbus</i>	Dublin Circuit <i>Joseph Carl Sumner Jr., Dublin</i>	Middle Circuit, Post 1 <i>John Kendall Gross, Metter</i>	South Georgia Circuit, Post 2 <i>Hon. Joshua Clark Bell, Whigham</i>
Chattahoochee Circuit, Post 2 <i>William C. Rumer, Columbus</i>	Eastern Circuit, Post 1 <i>Sarah Brown Akins, Savannah</i>	Middle Circuit, Post 2 <i>John Alexander Fitzner III, Swainsboro</i>	Southern Circuit, Post 1 <i>Christopher Frank West, Thomasville</i>
Chattahoochee Circuit, Post 3 <i>Thomas Gristina, Columbus</i>	Eastern Circuit, Post 2 <i>Lester B. Johnson III, Savannah</i>	Mountain Circuit <i>Hon. James T. Irvin, Toccoa</i>	Southern Circuit, Post 2 <i>Laverne Lewis Gaskins, Augusta</i>
Chattahoochee Circuit, Post 4 <i>Donna S. Hix, Columbus</i>	Eastern Circuit, Post 3 <i>Jonathan B. Pannell, Savannah</i>	Northeastern Circuit, Post 1 <i>Mark W. Alexander, Gainesville</i>	Southern Circuit, Post 3 <i>H. Burke Sherwood, Valdosta</i>
Cherokee Circuit, Post 1 <i>Randall H. Davis, Cartersville</i>	Eastern Circuit, Post 4 <i>John Bell Manly, Savannah</i>	Northeastern Circuit, Post 2 <i>Nicki Noel Vaughan, Gainesville</i>	Southwestern Circuit <i>Hon. R. Rucker Smith, Americus</i>
Cherokee Circuit, Post 2 <i>Thomas Neal Brunt, Cartersville</i>	Enotah Circuit <i>Hon. Joy Renea Parks, Cleveland</i>	Northern Circuit, Post 1 <i>Walter James Gordon Sr., Hartwell</i>	Stone Mountain Circuit, Post 1 <i>Hon. Stacey K. Hydrick, Decatur</i>
Clayton Circuit, Post 1 <i>Fred A. Zimmerman, Jonesboro</i>	Flint Circuit, Post 1 <i>Gregory A. Futch, McDonough</i>	Northern Circuit, Post 2 <i>Hon. Richard Dale Campbell, Elberton</i>	Stone Mountain Circuit, Post 2 <i>William Dixon James, Decatur</i>
Clayton Circuit, Post 2 <i>Harold B. Watts, Jonesboro</i>	Flint Circuit, Post 2 <i>John Philip Webb, Stockbridge</i>	Ocmulgee Circuit, Post 1 <i>Carl S. Cansino, Milledgeville</i>	Stone Mountain Circuit, Post 3 <i>Hon. J. Antonio DelCampo, Atlanta</i>
Clayton Circuit, Post 3 <i>Hon. Martin L. Cowen III, Jonesboro</i>	Griffin Circuit, Post 1 <i>Janice M. Wallace, Griffin</i>	Ocmulgee Circuit, Post 2 <i>Wilson B. Mitcham Jr., Gray</i>	Stone Mountain Circuit, Post 4 <i>Gary Stuart Freed, Atlanta</i>
Cobb Circuit, Post 1 <i>Dennis C. O'Brien, Marietta</i>	Griffin Circuit, Post 2 <i>Roy B. Huff Jr., Peachtree City</i>	Ocmulgee Circuit, Post 3 <i>Christopher Donald Huskins, Eatonton</i>	Stone Mountain Circuit, Post 5 <i>Amy V. Howell, Atlanta</i>
Cobb Circuit, Post 2 <i>Ronald Arthur Lowry, Marietta</i>	Gwinnett Circuit, Post 1 <i>David S. Lipscomb, Lawrenceville</i>	Oconee Circuit, Post 1 <i>Ashley W. McLaughlin, Eastman</i>	Stone Mountain Circuit, Post 6 <i>Claudia S. Saari, Decatur</i>
Cobb Circuit, Post 3 <i>Hon. David P. Darden, Marietta</i>	Gwinnett Circuit, Post 2 <i>Judy C. King, Lawrenceville</i>	Oconee Circuit, Post 2 <i>Stephanie Diane Burton, Eastman</i>	Stone Mountain Circuit, Post 7 <i>John G. Haubenreich, Atlanta</i>
Cobb Circuit, Post 4 <i>Patrick H. Head, Marietta</i>	Gwinnett Circuit, Post 3 <i>Hon. Robert V. Rodatus, Lawrenceville</i>	Ogeechee Circuit, Post 1 <i>Daniel Brent Snipes, Statesboro</i>	Stone Mountain Circuit, Post 8 <i>R. Javoyne Hicks, Stone Mountain</i>
Cobb Circuit, Post 5 <i>Dawn R. Levine, Marietta</i>	Gwinnett Circuit, Post 4 <i>Gerald Davidson Jr., Lawrenceville</i>	Ogeechee Circuit, Post 2 <i>Susan Warren Cox, Statesboro</i>	Stone Mountain Circuit, Post 9 <i>Sherry Boston, Decatur</i>
Cobb Circuit, Post 6 <i>Laura J. Murphree, Marietta</i>	Houston Circuit <i>Carl A. Veline Jr., Warner Robins</i>	Out-of-State, Post 1 <i>Jeb Tolliver Branham, Jacksonville Beach, Fla.</i>	Stone Mountain Circuit, Post 10 <i>Hon. Dax Eric Lopez, Decatur</i>
Cobb Circuit, Post 7 <i>William C. Gentry, Marietta</i>	Lookout Mountain Circuit, Post 1 <i>Archibald A. Farrar Jr., Summerville</i>	Out-of-State, Post 2 <i>William J. Monahan, Washington, D.C.</i>	Tallapoosa Circuit, Post 1 <i>Michael Douglas McRae, Cedartown</i>
Conasauga Circuit, Post 1 <i>Terry L. Miller, Dalton</i>	Lookout Mountain Circuit, Post 2 <i>Douglas R. Woodruff, Ringgold</i>	Pataula Circuit <i>Edward R. Collier, Dawson</i>	Tallapoosa Circuit, Post 2 <i>Brad Joseph McFall, Cedartown</i>
Conasauga Circuit, Post 2 <i>Robert Harris Smalley III, Dalton</i>	Lookout Mountain Circuit, Post 3 <i>Lawrence Alan Stagg, Ringgold</i>	Paulding Circuit <i>Martin Enrique Valbuena, Dallas</i>	Tifton Circuit <i>Hon. Render M. Heard Jr., Tifton</i>
Cordele Circuit <i>James W. Hurt, Cordele</i>	Macon Circuit, Post 1 <i>John Flanders Kennedy, Macon</i>	Piedmont Circuit <i>Barry E. King, Jefferson</i>	Toombs Circuit <i>Dennis C. Sanders, Thomson</i>
Coweta Circuit, Post 1 <i>Gerald P. Word, Atlanta</i>	Macon Circuit, Post 2 <i>Thomas W. Herman, Macon</i>	Rockdale Circuit <i>William G. Gainer, Conyers</i>	Towaliga Circuit <i>Curtis Stephen Jenkins, Forsyth</i>
Coweta Circuit, Post 2 <i>Sandra N. Wisenbaker, Newnan</i>	Macon Circuit, Post 3 <i>John Christopher Clark, Macon</i>	Rome Circuit, Post 1 <i>Paul T. Carroll III, Rome</i>	Waycross Circuit, Post 1 <i>Douglass Kirk Farrar, Douglas</i>
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Kauffman's Final Remarks to the Board of Governors

The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to “deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia.” Following is the report from 2015–16 President Robert J. “Bob” Kauffman on his year, delivered June 17 at the State Bar’s Annual Meeting.

BY ROBERT J. “BOB” KAUFFMAN



PHOTO BY SARAH L. COOLE

Members of the Judiciary, fellow Bar officers, members of the Executive Committee and Board of Governors, Bar members, staff and guests, it has been a great privilege and honor to serve as your president.

Well, as I mentioned the night I was sworn in, I heard a quote that I felt would apply. If you remember, the quote was attributed to Mother Theresa, but it was actually Woody Allen, and the quote is: “If you want to hear God laugh, tell him about your plans.” Well, although there were some surprises, I am convinced we still had a very good year and there are a number of people and groups I want to thank, because when I asked, they delivered.

First, I want to thank Pat O’Connor for stepping up when asked. He not only served as your treasurer, but also as president-elect, requiring Pat move up his schedule and get mentally ready to serve as president a year earlier than expected. I am very confident our Bar will be in good hands next year.

2015-16 President Robert J. “Bob” Kauffman presents his final remarks to the Board of Governors during the plenary session of the Annual Meeting.

Second, I want to thank your officers and Executive Committee. As you know, we continued and completed the work on the strategic plan that was started under my predecessor, Patrise Perkins-Hooker. So, instead of easing into the Bar year, we had a number of meetings, spent our entire retreat working on the plan and now continue to review the plan. Further, due to some unique, unplanned events this year, we had a number of specially called meetings. They never complained, and when asked, they delivered.

Third, I must thank all the committees that put in time and effort this year:

- The E-Discovery Task Force, led by Leslie Bryan, spent many hours working on the bill. We also had meetings with the parties on either side of the issue and finally this board approved the bill. Although we did not succeed in getting it passed at the Capitol, we did start the discussion.
- The Access to Justice Committee is developing a pro bono video to show at CLEs.
- The Law-Related Education Committee has developed an online educational tool, the virtual law museum. As you may know, we have 10,000 school kids come to the Bar for field trips each year, but we can't accommodate all who want to come, and some school systems can't afford the travel cost. This will allow those teachers to use this resource.
- Finally, the Communications/Cornerstones of Freedom Committee is developing a PSA with the theme "Who needs a lawyer? You do"—with stories that we are going to solicit from you, the Board of Governors.

Fourth, I must also thank the members of the Disciplinary Rules Committee and its chair, John Haubenreich. As you may recall, after spending time on the Investigative Panel, discussing various issues with the General Counsel's office and members of the Supreme Court, I asked this group to review our entire disciplinary system from beginning to end. They

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Georgia lawyers have a new member benefit:
LawyersLivingWell.org.

The website was developed by a special task force appointed by 2015-16 State Bar President Robert J. "Bob" Kauffman and chaired by Kenneth B. Hodges III.

"Too many lawyers are experiencing high levels of stress and are unhealthy and unhappy, which adversely affects their professional and personal lives," Kauffman said. "The State Bar wants to help by promoting health and wellness among our members and staff, developing work-life balance programs for continuing legal education (CLE) credit, and increasing awareness of existing Bar programs that deal with such issues."

LawyersLivingWell.org provides an online clearinghouse of health and wellness information to help Bar members identify and learn how to deal with issues that may be affecting their health and personal lives in three major areas: mental well-being, physical well-being and social well-being. An events calendar promoting CLE programs and wellness activities throughout Georgia is also included, along with links to information on the Bar's existing Lawyer Assistance Program, Suicide Awareness Campaign and SOLACE (Support of Lawyers, All Concern Encouraged) program.



"We want to focus on health maintenance and prevention so that these problems are avoided or dealt with in their earliest stages," Kauffman said. "Just a few small changes in our habits can have a profound impact on our overall well-being. The objective is to enhance lawyers' physical and mental well-being by educating members of our profession on how to identify and deal with those issues we all face that not only impact our practice, but our lives—things such as stress, diet, physical conditioning, social well-being, debt management and others."

The website provides a comprehensive library of articles, videos and other resources dealing with specific issues, including depression, addictions, eating disorders, mindfulness, trauma, burnout and suicide prevention. Also included in the new site are healthy eating and exercise tips, links to mobile apps and podcasts, recipes, workout routines and other solutions for Bar members to find the right balance to ensure that fitness becomes an important part of their lives. ●

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reviewed the Consumer Assistance Program, how grievances are filed, the role of the Investigative Panel and Review Panel, special masters and whether they should be compensated, among other issues. They have a number of recommendations that will be presented to you prior to the Fall Meeting for your consideration. Thank you for responding to my request with your delivery of the proposals.

Fifth, I want to thank all members of the Wellness Task Force and its chair, Ken Hodges. As you saw earlier, we have a website with lots of good information, motivated task force members and their subcommittees to keep developing concepts next year. The need to assist our members is clear given the results of the recent ABA survey of lawyers and the extremely high levels of depression and alcohol dependency. Once again, I asked and this group delivered.

Sixth, I must thank all of our Bar staff, especially our Executive Director Jeff Davis; our Chief Operating Officer Sharon Bryant; our Chief Financial Officer Steve Laine; and our General Counsel Paula Frederick, not to mention Sarah Coole, communications director. And I must acknowledge Michelle Garner, director of meetings, who fought through chemo and radiation and the meetings never missed a beat. You all delivered, even when I did not ask.

Seventh, I must thank you, the Board of Governors. When asked, you delivered with your participation, especially when you consider we had a fifth meeting this year. There were many lively debates and comments, but what I love about lawyers is that we can disagree in the meeting room and when we walk out, still be professional with each other.

Last, I must thank my partners at Hartley, Rowe & Fowler, and of course, I also must thank my wife, Sue, and my sons for their support and encouragement. Sue and I had a lot of walks at night and I appreciate her listening to my rants. In the end, as I look back, the hard part of this job is not the time, but rather the mental energy.

I honestly couldn't remember what I used to think about in my spare time, until I recalled something Jeff Foxworthy said. So I guess I will go back to just thinking about what all guys think about: sports, beer and, well, you know.

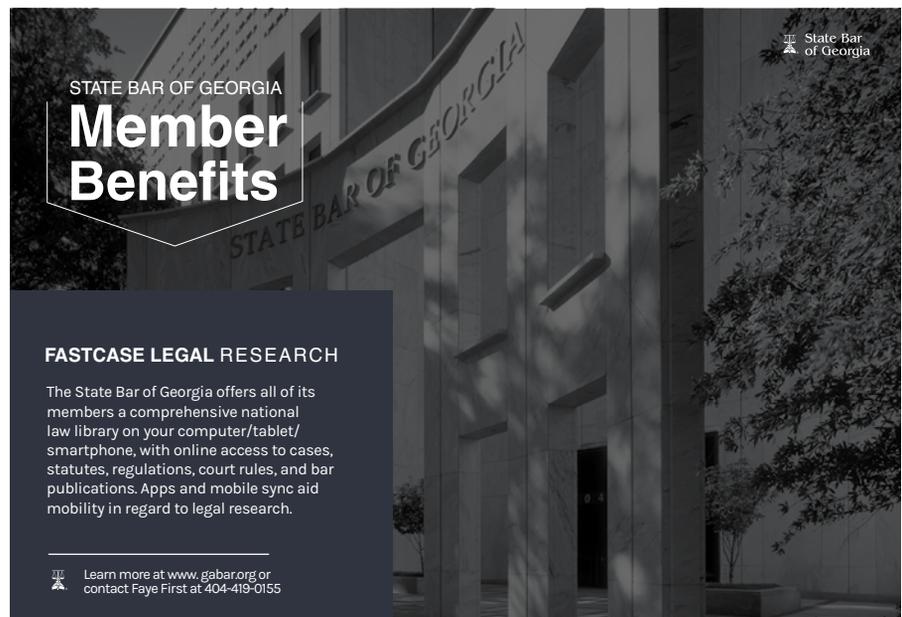
Again, thank you for your support, as well as this honor to serve as president. God bless you all and the State Bar of Georgia. ●



Robert J. "Bob" Kauffman

2015-16 President
State Bar of Georgia

rkauffman@hrfllegal.com



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O'Connor's Remarks to the Board of Governors

The following is excerpted from Patrick T. O'Connor's remarks to the Board of Governors on June 18, during the 2016 Annual Meeting on Amelia Island.

BY PATRICK T. O'CONNOR



PHOTO BY SARAH I. COOLE

Members of the Judiciary, fellow Bar officers, members of the Executive Committee, members of the Board of Governors, fellow Bar members, staff and guests, I want to start by saying thank you to each and every one of you. Whether you are a judge, a lawyer practicing in a large firm, a sole practitioner in a small town, a prosecutor, a defense lawyer, a family lawyer, a volunteer lawyer providing pro bono services to underprivileged citizens, a mediator or arbitrator, an estate planner, a transactional lawyer or just the lawyer who everybody at your church flocks to for advice—thank you for helping to make the State Bar of Georgia a leader in the administration of justice.

Together we are all part of a system of justice in this state and nation which is second to none. You are to be thanked for your willingness to be a part of this effort.

Now as we look forward to the challenges and opportunities that lie ahead,

2016-17 President Patrick T. O'Connor addresses Board of Governors members and guests on Saturday, June 18.

I would be remiss in failing to provide some historical context to this moment. Linton Johnson, with the help of our Past President Buck Ruffin, and our Communications Director Sarah Coole, wrote a wonderful history of the legal profession in Georgia—"From Banished to Unified." I am sure most of you have the book and have read or at least reviewed it. It was published in 2014. I want to thank Linton, Buck and Sarah for creating this important history of our Bar—and today, as you will see, I plan to borrow heavily from it.

When the Colony of Georgia was founded in 1733—in Savannah, where I reside—one of the few formal laws enacted at inception was one prohibiting lawyers. Oglethorpe and the colonial trustees believed that each colonist was capable of pleading his own case. The rule prohibiting lawyers was discarded in 1755, five years after Oglethorpe returned to England.

Ironically, we are now reminded, on a regular basis, of the critical importance of lawyers as we see unwarranted attacks on our overburdened judiciary and as we face growing numbers of pro se litigants without the skill or knowledge to properly represent themselves crowding court dockets and often creating more problems than they solve.

At the same time, a dearth of lawyers in the legislative branch of government has resulted in laws that are oftentimes poorly written and that lead to unintended consequences.

The Georgia Bar Association, predecessor of the State Bar of Georgia, first met outside Atlanta in 1889 in Savannah.

Savannah has been home to nine prior presidents of the Georgia Bar Association and one president of the unified Bar of Georgia. Sonny Seiler was president of the State Bar of Georgia in 1973.

We could make that three presidents of the Unified Bar from Savannah if we count Kirk McAlpin (who listed Atlanta as his residence, although he was a native of Savannah), and Jay Cook, who was born in Savannah. Kirk was State Bar president in 1980 and Jay in 2007. The only one listing Savannah as home in the last 50 years is Sonny Seiler. I am honored to be in the company of those great lawyers.

I have other connections to former State Bar presidents.

In the summer of 1980, while I was a second year law student at the University of Georgia, at the urging of my uncle, James B. O'Connor, who was a Superior Court Judge in the Oconee Circuit at that time, I spent the first half of the summer clerking for a two-lawyer firm in Eastman, Ga. The two lawyers in that firm were Will Ed Smith and Wilton Harrington and the firm was known as Smith and Harrington.

Will Ed Smith (1964-65) of Eastman was the first elected president of the State Bar of Georgia (and the second president of the unified Bar in Georgia). Hugh M. Dorsey Jr. (1963-64) of Atlanta served as the first president during the transition from a voluntary to unified Bar.

Passage of The Unified Bar Bill was no easy task. One of our past presidents, Irwin W. Stolz Jr. was actually impeached as a sitting member of the Board of Governors because of his efforts to obtain Bar unification. Despite his impeachment, Judge Stolz became president of the State Bar in 1970, and served on the Court of Appeals.

That summer of 1980, I learned the value of mentoring. On my first day at work Mr. Will Ed, as I called him, took me over to the record room at the Dodge County Courthouse in Eastman, an easy walk from his office. There he showed me around and introduced me to the clerk, the clerk's staff and various other courthouse personnel.

One of the projects I was to work on that summer was title research on prop-



Gov. Carl Sanders signing the Unified Bar Bill into law on March 11, 1963.

STATE BAR ARCHIVES

Will Ed Smith was a leader in the struggle—and I use the word struggle purposefully—to unify the bar, an effort undertaken for the primary purpose of implementing a system of lawyer discipline.

Here is a picture of Gov. Carl Sanders signing the Unified Bar Bill into law on March 11, 1963. The person standing on the far left is none other than Will Ed Smith, the lawyer for whom I clerked in the first half of the summer of 1980.

erty fronting some city streets that were to be repaved. Mr. Will Ed showed me the deed records, the execution dockets and the other records which would need to be researched.

Then he told me: "Pat, when you find the legal description of the property you are searching, you don't use the copy machine out in the lobby to copy it—you write out the legal description." Copies in 1980 were a nickel each. I thought it was

pretty strange that Mr. Will Ed wanted me to take the time necessary to write out a legal description when I could copy it in one-tenth of the time for only five cents.

Later that day I went to lunch at a local restaurant and when I returned Mr. Will Ed called me into his office and said, “Pat—when you go to lunch, make sure to turn the lights off in your office.”

That evening, I told my dad that I had enjoyed working for Mr. Will Ed and Mr. Wilton the first day—but I did not think it was going to be a long-term thing.

In hindsight, I recognize that Will Ed was just doing a good job of mentoring me. By making me write out legal descriptions I actually learned how to read a legal description, and I gained a familiarity with metes and bounds. I realized it was important to understand what you were working on, rather than just blindly doing the work.

By urging me to turn off the lights he taught me that details were important and that resources should not be wasted. We need mentoring like that today.

If you go into the hallway of the Bar Center on Marietta Street in Atlanta where photos of past presidents line the walls, you will see a picture of Wilton Harrington and might notice that Wilton is the only past president in the history of the State Bar of Georgia to have an official photograph while holding a shotgun. Most people do not notice the gun, however, because they are focused on the beautiful hunting dog, also in the photo.

Later in the summer of 1980, I had a completely different cultural and mentoring experience when I returned to Athens to resume my clerkship for a lawyer who

is now a member of the Board of Governors—our recent appointee to the JQC—Ed Tolley. This clerkship also connected me to another past president of our Bar, Ed’s partner, Jay Cook.

Being able to hang out with Ed in the summer of 1980 in Athens was like palling around with Omar Sharif in Hollywood. We spent about as much time having fun as we did working.

Needless to say, I was exposed to some of the giants of our profession that summer and those influences have helped mold my professional future and my willingness to serve our Bar.

I want to also remember this morning another lawyer who was an influential mentor and friend to me. He also was a true leader in this organization. Of course, I am referring to my dear friend Harvey Weitz.

It was Harvey who hired me to come to Savannah in 1981 after I missed his firm’s on campus interviews at The University of Georgia Law School. When the firm, then known as Friedman, Haslam, and Weiner, interviewed on campus in February of 1981, I was in New York City with the University of Georgia’s National Moot Court team competing in the National Finals, as coach.

Having grown up in Southeast Georgia in towns like Dublin, Jesup and Statesboro, I had decided that Savannah was where I wanted to practice and, apparently, Harvey and the firm were impressed with my resume. Even though I was unable to interview on campus, I got a call back to visit the firm and was offered the job by Harvey while I was there in February 1981.

Harvey was my first mentor and he was a good one. Harvey taught me how to practice law and how to be professional in the process.

It was Harvey who pushed me to be a leader in the Young Lawyers Section of the Savannah Bar Association. It was Harvey who called me up one Saturday afternoon and asked me if I was ready to be president of the Savannah Bar Association to which I responded, “What are you talking about?” It was Harvey who urged me to run for a spot on the Board of Governors, to offer for the Executive Committee and to become an officer in this great organization.

At the heart of my willingness to take on this role and my goals for this year is a belief that a unified Bar is good for the lawyers of Georgia ...

It was Harvey who guided me all along the way. He preordained this day.

I regret that Harvey is not with us here today, but I truly believe his spirit lives on in not only me but in all of us. He taught me more about lawyering than I ever thought I would know.

At the National Archives in Washington D.C. you can see this inscription: "What is Past is Prologue." It is my firm conviction that these words of wisdom are particularly applicable to the State Bar of Georgia, its mission and its future.

At the heart of my willingness to take on this role and my goals for this year is a belief that a unified Bar is good for the lawyers of Georgia, is good for the judicial system of Georgia and is good for the citizens of Georgia.

I will do everything in my power to protect, preserve and perpetuate our unified Bar, not only because I feel a particular allegiance to those who came before us and who struggled to bring us to where we are today, but because I believe it is the right thing to do for the future of our profession and the public.

Keeping in mind Bob Kauffman's prophetic statement that the coming year will probably be filled with the unexpected, here are some of the goals I have in mind for the coming year—many of which are tied to carrying out the directions of our strategic plan.

We are going to work hard to strengthen and improve our communications with the legislative and executive branches of government.

With the declining number of lawyers serving in the Legislature, our ability to have regular and open communications with all branches of government is critical to our ability to carry out our legislative agendas.

We lost a great resource in Thomas Worthy, but we have strong advocates in Rusty Sewell, Roy Robinson, Meredith Weaver, and now Christine Butcher.

In regard to the JQC specifically, I intend to appoint a task force to help the Bar as we work with legislative leaders to draft enabling legislation that best serves the public. We have already begun this process and we will not let up.



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As set forth in the strategic plan, we are going to continue to revamp, improve and streamline our system of lawyer discipline, while at the same time emphasizing the continued role of lawyers in our system.

Lawyer discipline is our reason for being. The lawyers of Georgia, our judicial system, and the public deserve an efficient and effective system if we are to fulfill the purposes for which the unified Bar was created.

The first president of the State Bar of Georgia, Hugh M. Dorsey Jr., said, "The capstone of the State Bar is the power of self-discipline which has been sought so long and is needed so badly. For the first time all of us can, and will, be held to answer to the public for the conduct and character of our profession and here we must not, and cannot, fail."

Last year, when we canvassed various constituencies in developing the strategic plan, one of the responses we got, from a judge, was, "The State Bar needs to decide what it is."

Well, that was decided for us when we were created. We are an administrative arm of the Supreme Court charged with governing the disciplinary function of lawyers in Georgia. Focusing on this core purpose will be a primary goal for the coming year.

We are going to work with the Georgia Bar Foundation to reinvigorate and take advantage of the Fellows program.

In fact we are going to begin that process today. You will find at your chairs an envelope from the Georgia Bar Foundation. This is an introduction to the Fellows Program for those of you who are not already Fellows or who are not familiar with the program.

First, let me say that becoming a Fellow of the Georgia Bar Foundation is a high honor. Not every lawyer in Georgia is invited to be a Fellow, in fact less than 3 percent of Georgia lawyers are Fellows. That is by design.

It is a program that honors lawyers of distinction and at the same time provides a fund for grants to help local communities solve local law-related problems. It is separate from and in addition to IOLTA and really serves a different purpose—it is for local law-related organizations throughout the state.

The Georgia Bar Foundation chair, Judge Bobby Chasteen, is committed to reinvigorating the Fellows program and I have pledged to assist in that process. You will see in the near future a resurgence of grants to local law-related organizations and an emphasis on identifying and engaging additional Fellows throughout the state.

As the elected representatives of lawyers from around the state, members of

not only in their law practices but in their lives—and we will regularly publicize the good things that lawyers do.

Someone is watching everything we do—at all times. We owe it to ourselves, our families, our profession, our predecessors and future generations to be good role models.

We, as a profession, are the sum of our members. Let's show the citizens of Georgia what that really means—through programs and activities like the Fellows program, the food drive, pro bono service and resistance to attacks on an independent judiciary.

I will continue to seek diversity among our ranks.

I have already begun this process by reaching out to various constituencies of the Bar to seek additional minority and diverse participation on committees and in leadership roles. I have made every reasonable effort to fulfill all requests that have been made to me in this regard.

At a bar leadership institute which I attended in the past several months, I read a quote from George Brown, the executive director of the State Bar of Wisconsin, who attributed the following statement to Verna Myers of Baltimore: "Diversity is being invited to the party; inclusion is being asked to dance."

We need to make sure that everyone has an opportunity to dance and I will continue to do my part to make this goal a reality.

We will continue our pursuit of access to justice for underprivileged citizens.

The Conference of Chief Justices and the Conference of State Court Admin-

istrators adopted a resolution in 2013 urging each state to establish an Access to Justice Commission.

One of the fundamental charges of these commissions is to remove barriers for access to civil justice. Georgia has a number of organizations and projects that are doing great work toward this end, but the work is not coordinated.

Thirty-seven states have created legal services commissions. Every state in the Southeast, except Georgia, has done so. I intend to work with the leaders of the legal services programs in Georgia and Chief Justice Hugh Thompson, to fully explore this option for Georgia.

One of the most common questions we get from people contacting our State Bar office is "How do I find a lawyer?"

In the coming year we are going to explore ways to give better answers to such questions by studying systems in place in other states like South Carolina, Arkansas and elsewhere—states which have implemented programs such as "Find a Lawyer" or "State Bar Referral Services."

We need to be able to meaningfully assist members of the public when they make a good faith call to the State Bar of Georgia trying to get legal help.

By order dated May 5 of this year, the Supreme Court of Georgia added the president of the State Bar of Georgia or his or her designee as a non-voting member of the Judicial Council of Georgia.

For me this is a particularly positive event. One of my first exposures to the judicial system in any context was when I traveled with my uncle, James B. O'Connor, in 1973 to a Judicial Council meeting. He served briefly on the Judicial Council and I was a high school student interested in what he did. I clearly recall attending that meeting in Atlanta. There, I met Judge Frank Cheatham, Judge Paul Painter, and Bar President Sonny Seiler. I was in awe.

Having a seat at the Judicial Council table will provide an important con-

I pledge to you that I will do everything in my power to maintain the integrity and importance of the unified Bar.

the Board of Governors should be the first to lead in this area. I ask each and every one of you who is not yet a Fellow to give consideration to becoming a Fellow. This is the first invitation that will be made to the members of this board. Please give my request serious consideration.

Next, we are going to emphasize the need for lawyers to be role models—

tact between the Bar and the judges of Georgia and will allow us to have more direct and fruitful communications.

We are going to emphasize our underutilized SOLACE program.

Justice Harold Melton has agreed to co-chair this program along with Board of Governors member Karlise Grier. SOLACE is an acronym for “Support of Lawyers/Legal Personnel—All Concerned Encouraged.”

This program allows members of the legal community to reach out in meaningful and compassionate ways to judges, lawyers, court personnel and law office staff who have a medical crisis arise in their families. The types of assistance offered range anywhere from a need for a place for a family to stay near a distant hospital to help in getting an appointment with a medical specialist with a long waiting list.

The program began in Louisiana as an outgrowth of the Hurricane Katrina disaster and was brought to Georgia by Past President Ken Shigley.

Our Bar has already begun to focus on better utilizing and publicizing this program through our Communications Department and we will continue to support this program as Karlise and Justice Melton lead the effort to build the program.

I am appointing a task force to pull together and coordinate the efforts of various constituencies which are already addressing the aging lawyers issue. It will be called—appropriately—the Aging Lawyers Task Force.

There is already much good work being done to deal with the challenge of responding to and assisting lawyers who are experiencing cognitive and age-related issues.

Under the leadership of Avarita Hanson, the Chief Justice’s Commission on Professionalism is focused on this issue as are the Disciplinary Rules Committee, the Mental Health Wellness Subcommittee of the State Bar’s Wellness Task Force and the Lawyer Assistance Program Committee.

The task force will seek to coordinate and foster communications among these various groups and make recommendations to the Board of Governors.



PHOTO BY SARAH I. COOLE

2016-17 State Bar President Patrick T. O'Connor.

The Board of Governors is going to hear from our sections and programs this year.

Reports from the circuits at Board of Governors’ meetings have been beneficial and informative in the past. Now we are going to ask our various sections and programs to bring us up to date on the many positive things that are being done by the Bar. We will start today with a report from our Military Lawyers Assistance Program. I hope you will find the presentations beneficial.

I am sure there will be more challenges and opportunities, but for today I will stop there. We have a lot of work to do and I look forward to working with you to accomplish our goals.

On the campus of my Alma Mater, Auburn University, a historic marker was placed near Samford Hall, one of the oldest and most recognizable buildings on campus. That marker reads, “Owing much to the past, Auburn’s mission makes its greater debt ever to the future.”

There is no more appropriate statement that could be made about our Bar: our greater debt is ever to the future. Although from time to time we face raging seas, our ship is not about to capsize. Far from it.

There is no question in my mind that when this Bar is united on an issue of importance that we can mobilize and prevail. The struggle for a unified Bar in Georgia, due to the foresight and efforts of many of the leaders that I have mentioned this morning, and others, was appropriate in 1963 and is appropriate now.

I pledge to you that I will do everything in my power to maintain the integrity and importance of the unified Bar.

I look forward to the coming year—our year—and I thank you for your attention and support. ●



Patrick T. O'Connor

President
State Bar of Georgia

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New President Learned from Predecessors

BY LINTON JOHNSON



2016-17 President Patrick T. O'Connor and his family following the Presidential Inauguration on June 18 at Amelia Island. (Front row, left to right) Mary Grace, Kelly, Carol and Maggie; (back row, left to right) Tate, Thomas, Pat and Tyler.

Patrick T. "Pat" O'Connor is a true son of Southeast Georgia. With the exception of his college years in Auburn, Ala., and his law school years in Athens, Ga., all of the places O'Connor has called home since early childhood are located south of I-20 and east of I-75.

Because of his father's job as an engineer with the Georgia Department of Transportation, O'Connor's family moved from one small town to another when he was growing up.

"I attended grammar school in Dublin when I-16 was being built," O'Connor said. "When the stretch from Macon to Soperton was completed, they transferred my dad to Jesup, where I attended junior high school. Later in life, my parents were longtime members of the First Baptist Church in McRae, and my mother taught school there for many years. I also spent

PHOTO BY SARAH I. COOLE

many summers in Soperton, working on my grandparents' farm."

O'Connor's family moved to Statesboro in the summer of 1969, after his father had retired from the DOT and had invested in a bridge-building company. He enrolled that fall in Statesboro High School, where he graduated four years later and, as a bonus, met his future wife, Carol Darby O'Connor.

When it came time to pick a college, O'Connor chose Auburn University. "My dad and granddad had gone to Georgia Tech. I grew up as a Tech fan, and Georgia was the rival school," he recalls. "But what they offered at Tech academically was not what I was looking for. My uncle, Tom O'Connor, had gone to Auburn and became a veterinarian. He was the coolest guy I knew, somebody worth emulating. The first time I set foot on the Auburn campus was for orientation in 1973. It was the right place for me, and all three of my sons wound up going there."

O'Connor earned his undergraduate degree in journalism. One year of calculus and chemistry convinced him that his original pre-medical or pre-veterinary school plans were not going to pan out. "I refocused as a journalism major, with minors in English and political science," he said. "And I started making good enough grades to get into law school."

O'Connor also got some hands-on experience in the newspaper business during his years at Auburn. He was sports editor of the campus newspaper and a correspondent for the *Columbus Ledger-Enquirer* and the *Birmingham News*. He also worked for six months as sports editor of the weekly *Auburn Bulletin*.

"When you are in charge of a section at a newspaper that size, you do everything—write all the articles, choose the pictures, lay out the pages; it's all on you," O'Connor said. "On press night, you worked like a dog. After six months of doing that, while taking a full load of classes, I decided to do something else."

O'Connor's decision on where to attend law school came down to the two home-state institutions where his application had been accepted: Mercer University and the University of Georgia. He set aside his feelings about the South's



PHOTO BY CASEY JONES PHOTOGRAPHY

President Patrick T. O'Connor overlooking Savannah.

oldest football rivalry and packed his bags for Athens.

"I had a lot of friends at UGA and knew it was an excellent law school," he recalls. "At that point, things like football allegiances were secondary to career objectives. While I try not to flaunt it, my heart is still with Auburn."

In the summer of 1980, before his third year in law school, O'Connor interned with a small law firm in Eastman, where his uncle, James O'Connor, was serving as a Superior Court judge in the Oconee Judicial Circuit.

The two partners in that firm were Will Ed Smith, who served as the second president of the unified State Bar of Georgia in 1964-65, and Wilton D. Harrington, who was the 15th State Bar president, serving in 1977-78. O'Connor notes, "Who would have thought, 36 summers after that internship in Eastman, I would be sworn in as the 54th State Bar president, following in the footsteps of those two great leaders of the legal profession, from whom I learned so much?"

To complete O'Connor's longtime connection with the State Bar presidency, he also clerked during law school with the Athens firm now known as Cook, Noell, Tolley & Bates, working specifically with Ed Tolley, whose partner, Jay Cook, served as State Bar president in 2006-07.

For most of his career in the legal profession, O'Connor's mentor was a fellow UGA Law alumnus, the late Harvey Weitz. But the meeting that spawned their relationship almost didn't happen. In the winter of 1981, Weitz was part of a delegation from the Savannah law firm of Friedman, Haslam & Weiner (now known as Weiner, Shearhouse, Weitz, Greenberg & Shawe) who traveled to Athens to conduct preliminary screening interviews of third-year law students who would soon be entering the job market. Those making the first cut would be invited to Savannah for a second round of interviews.

"At the time, I was the coach of UGA's moot court team, and we were in New York for the national finals," O'Connor said, "so I missed that interview." But the firm didn't hold his absence against him and asked him to come down for a visit anyway. Upon his arrival in Savannah, O'Connor was greeted and ultimately hired by Weitz.

"I had come to appreciate Savannah at a young age," O'Connor said. "All of the towns where we lived when I was growing up were close enough that my mother would bring us to Savannah to go shopping or to the movies or to the beach. I always thought it was a special place. I made the decision in law school that Savannah

was where I wanted to focus my job search efforts. When I got a job offer, I took it.”

O’Connor started with the firm in a general law practice, “doing some appointed criminal defense cases, domestic relations, closing a few loans, writing some wills—a little bit of everything,” but soon found his work focused on litigation. The senior partner, Erwin A. Friedman—who had been president of the Younger Lawyers Section of the Georgia Bar Association in 1963, just before the unification of the State Bar of Georgia, and later served as chairman of the Georgia Board of Regents—had become increasingly involved in commercial and residential real estate development. Friedman was thus taking on more transactional and construction business, leaving Weitz and Ronald E. Ginsberg to handle most of the litigation work.

Weitz became O’Connor’s main mentor, and as a result civil litigation grew into his main area of practice.

“I worked on some cases for the city of Savannah, and in the mid-1980s, I was representing two police officers in major litigation over a shooting incident that had received national attention,” O’Connor said. “That case was a watershed moment for me. I had been doing so many things without focusing on one area. That case came along, and we got a good result. I decided this is what I needed to be doing, litigation, especially on behalf of local governments.”

On Jan. 1, 1990, O’Connor made a career move, joining Oliver Maner & Gray, now known as Oliver Maner LLP, where civil litigation was and still is the firm’s major practice area. Twenty-six years

later, O’Connor is managing partner, and while he does represent plaintiffs in select personal injury cases, his practice is “essentially 100 percent civil litigation, representing cities, counties and their employees and elected officials.”

O’Connor has received numerous professional honors over the years, including an AV Rating by Martindale-Hubbell and being named Savannah Lawyer of the Year in the “Best Lawyers in America” listing for 2014. The highest honor, he says, was his induction as a Fellow of the American College of Trial Lawyers. He is currently the state chair for Georgia, with his two-year term set to conclude in October.

“It’s an invitation-only organization for lawyers who have proven themselves, who have actually tried cases and exhibited a high level of professionalism,” he said. “Just being a Fellow is an honor, and it is an extraordinary honor to serve as state chair.”

When O’Connor left Friedman, Haslam & Weiner for Oliver Maner, he did so on “very good terms” and remained close to his former colleagues and mentors through the years—especially so with Harvey Weitz, whom O’Connor credits for steering him onto the professional leadership path that has culminated in the State Bar’s highest office.

“I don’t know what he saw in me,” he recalls. “I had been involved in a couple of committees with the local bar association, and one day Harvey called and asked me if I was ready to be president of the Savannah Bar Association. I kind of laughed it off, but he stayed after me, and I soon became secretary and then moved up the ladder.”

O’Connor served as president of the Savannah Bar in 1995-96, by which time Weitz was already a member of the Board of Governors of the State Bar and would soon be elected to its Executive Committee.

“When a board seat from Savannah opened up, Harvey called and urged me to run for the seat, and I was elected,” O’Connor said. “When he retired from the Executive Committee, that’s when I decided to run and filled, in my mind at least, Harvey’s spot.”

Weitz served 20 years on the Board of Governors and 12 years on the Executive

“Who would have thought, 36 summers after that internship in Eastman, I would be sworn in as the 54th State Bar president, following in the footsteps of those two great leaders of the legal profession, from whom I learned so much?”

Committee but never sought to be an officer of the State Bar. “He never wanted to be in the spotlight,” said O’Connor, who in 2014 ran for State Bar secretary at Weitz’s urging and was elected.

“I was never in a single contested election,” O’Connor said. “I’ve got a feeling that the fact Harvey was supporting me had a lot to do with that.”

On Aug. 14, 2014, O’Connor was walking to lunch with a colleague and met up with Weitz, who was heading in the opposite direction along State Street in downtown Savannah.

“We chatted in front of the restaurant for about five minutes,” O’Connor recalls. “Then I slapped Harvey on the shoulder and told him, ‘I’ll see you later, my friend.’”

Within 15 minutes after returning to his office, O’Connor received word that Weitz had suffered a massive stroke and had been rushed to Memorial University Medical Center, where he died the next day.

O’Connor told the *Savannah Morning News*, “Harvey was one of the finest lawyers to ever practice in the state of Georgia. He had a brilliant mind” and could practice anything from criminal law, complex civil matters, to writing an estate plan and navigating the tax laws. “He did all of that and remained everybody’s friend.”

When O’Connor took the oath of office as State Bar president in June at Amelia Island, Weitz was on his mind. “I regret that Harvey is not here to see me make it to this point,” he said. “But he knew this day was coming. He was the one who mapped it out.”

What could not have been foreseen for O’Connor was an accelerated ascension to the Bar presidency. Following the resignation of President-Elect Rita Sheffey in October 2015, O’Connor served as both treasurer and president-elect, which meant skipping one rung of the customary four-step officer ladder.

“It was certainly never planned that I would simultaneously serve in those two offices,” said O’Connor, who is also wrapping up terms as board chairman of the Savannah Country Day School, as a board member of the Georgia Southern University Foundation this year and, as mentioned earlier, state chair for the American



PHOTO BY CASEY JONES PHOTOGRAPHY

Pat, Carol and their grandchildren overlooking the Savannah River. (Left to right) Liam, Pat, Grace, Daniel and Carol.

College of Trial Lawyers. “I would have hoped to have had more of a gap between some of these responsibilities. But I have been able to adjust my schedule to allow me to fulfill all of these responsibilities for these great organizations.

“The major thing is—and I’m not saying this as a negative—my year as president has essentially been laid out for me. We are just beginning the stages of implementing our strategic plan, so I already have a blueprint laid out for me. Additionally, all the Bar meetings had already been planned, except for one. To me that’s the biggest difference.”

During the accelerated year of preparation, O’Connor has already established a personal record for time spent on the road to meet the demands of his law practice, professional and community service.

“The timing of that from my family’s perspective has been good,” he said. “Our sons are all grown and out of college. Carol is able to travel with me to most of these events. Without her support, I couldn’t have taken all of these responsibilities. My law partners have been very supportive as well.”

O’Connor realizes another year of reduced time enjoying his favorite lei-

sure activities lies ahead, noting, “My golf game is at an all-time low. The fish that feed around my dock are not feeling threatened. Walking the trails on my farm will be put on the back burner for the next year.”

If being able to sleep in one’s own bed makes a difference for a weary traveler, O’Connor takes comfort in having three homes to choose from: the primary residence on the Isle of Hope near Savannah, the family farm near Eastman in Dodge County and a just-completed house in Auburn adjacent to the university’s golf course—a family gathering place nearer to his sons and their families, all of whom reside in Alabama.

“During this Bar year, we will use the Auburn house a good bit. It’s closer to Atlanta than Savannah is,” O’Connor explained. “One other thing I’m looking forward to doing is spending more time with my three grandchildren. They’re probably wondering who I am these days.” ●



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Northern Judicial Circuit Superior Court Judge Receives Distinguished Service Award

The 2016 Distinguished Service Award was presented to Hon. R. Chris Phelps at the State Bar's Annual Meeting for his extensive service to the legal profession.

BY STEPHANIE J. WILSON



PHOTO BY SARAH I. COOLE

The Distinguished Service Award is the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia.

During the Presidential Inaugural Gala at the State Bar's Annual Meeting in Amelia Island, Fla., Northern Judicial Circuit Superior Court Judge R. Chris Phelps was presented with this prestigious award by 2015-16 President Robert J. "Bob" Kauffman.

Phelps was honored for his extensive service to the legal profession, the justice system and the public during his four-decade career as an attorney and judge. He recently completed 32 years of continuous service on the Board of Governors of the State Bar of Georgia, representing the attorneys of the Northern Circuit, which includes Elbert, Franklin, Hart, Madison and Oglethorpe counties.

He also served on the Finance Committee of the State Bar for 20 years and as its chairman for 12 years. He previously

(Left to right) Hon. R. Chris Phelps and 2015-16 State Bar President Robert J. "Bob" Kauffman.

served as chair of the Review Panel of the State Bar Disciplinary Board, the Continuity of Law Practice Committee, the Programs Committee and the Bar Governance Committee of the State Bar. A lifelong resident of Elberton, Phelps was engaged in the general practice of law for 38 years prior to being appointed by Gov. Nathan Deal as Superior Court judge. Additionally, he served as city attorney of Elberton for 28 years, as judge of the Elberton Municipal Court for 10 years and judge of the Elbert County Magistrate Court for three years.

He was sworn in as Superior Court judge on March 4, 2015, and was elected to a full four-year term on May 24, 2016.

Phelps, who achieved the designation of Eagle Scout himself in 1966, has served as Scoutmaster of the Elberton Troop 127

of Boy Scouts of America since 1978, producing 48 Eagle Scouts during that time. He is also a past president of the Elbert County Chamber of Commerce, the Elberton Rotary Club and Elbert County Little League.

Phelps and his wife, Pamela Jo Gaines Phelps, have two children and four grandchildren and are active members of Elberton First United Methodist Church. He is a 1973 graduate of the University of West Georgia and earned his law degree in 1976 from the University of Georgia School of Law.

Among numerous awards for professional and community service, Phelps is a recipient of the Award of Merit from the Northeast Georgia Council of Boy Scouts of America (1990), the Silver Beaver Award from the National Council of

Boy Scouts of America (1993), the Georgia Super Lawyers designation (2005) and the Elbert County Chamber of Commerce Leadership Award (2011).

“The legal community in our state owes a debt of gratitude to Judge Phelps for his many years of exemplary service,” said Kauffman in making the presentation, “not only for his many years of exemplary service in the practice of law and as a jurist but also as a public servant in his hometown of Elberton and the Northern Judicial Circuit, and as an outstanding leader of the State Bar of Georgia.” ●



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State Bar Diversity Program Holds 9th Annual Business Development Symposium

Attorneys shared their expertise on effective ways to build a book of business at symposiums presented by the State Bar Diversity Program.

BY MARIAN COVER DOCKERY



PHOTO BY DON MORGAN PHOTOGRAPHY

(Left to right) Leo E. Reichert, executive vice president/general counsel, Wellstar Health System, Inc.; Almeta E. Cooper, senior vice president, general counsel, corporate secretary, Morehouse School of Medicine; Sarah Cash, in-house counsel, Georgia Power Company; Clyde E. Mize Jr., partner, Morris Manning & Martin, GDP co-chair; Renee M. Shepherd, senior assistant city attorney, Atlanta; Elizabeth O'Neill, chief counsel, MARTA; and Colin S. Wright Sr., director, MTS Product Standards & Certifications, McKesson Corporation.

The State Bar Diversity Program (GDP) held its annual symposium to give attorneys effective strategies to build their law practices. Business development is a skill that few law schools teach, but it is a critical skill that private practitioners must master in order to establish a successful law practice and a lucrative book of business. The GDP launched this series a decade ago which includes two continuing legal education programs to fill that void featuring seasoned law firm partners and corporate counsels who share their tips and experience on strategies to develop business. Each program offers 1 CLE credit (including 1 professionalism).

Attorneys who graduate from law school and choose private practice will discover that few associates are elevated to partnership status. Business development is one of the keys to the brass ring and the series provides attorneys an opportunity to hear from successful rain-makers at law firms who give attendees

advice on how to successfully secure clients and keep them. The general counsels advise attorneys regarding what their companies expect from private practitioners. The symposium is also a great networking event and opportunity to meet with in-house counsel who private practitioners typically would not meet in the normal course of business.

Part I of the Symposium, "Strategies to Build Your Law Firm Practice: Tips From Law Partners," was held on Jan. 29 at the State Bar featuring C. Edward Dobbs, partner, Parker Hudson Rainer & Dobbs LLP; William B. Hill Jr., partner, Polsinelli P.C.; and Sonjui Kumar, managing member, Kumar Prabhu Patel & Banerjee LLC. The moderator, Anita Wallace Thomas, is a partner at Nelson Mullins Riley & Scarborough.

Part II, "Tips From the General Counsels," held on March 10, featured corporate attorneys who shared their tips on the most effective means of developing business with their companies. Moderated by Clyde E. Mize Jr., Morris Manning & Martin, LLP, the panel included: Sarah Cash, in-house counsel, Georgia Power Company; Almeta E. Cooper, senior vice-president, general counsel, corporate secretary, Morehouse School of Medicine; Elizabeth O'Neill, chief counsel, MARTA; Leo E. Reichert, executive vice-president/general counsel, Wellstar Health System, Inc.; Renee M. Shepherd, senior assistant city attorney, city of Atlanta; and Colin S. Wright Sr., director, MTS Product Standards & Certifications, McKesson Corporation.

According to the law firm partners, it has become increasingly more challenging for private practitioners to build a book of business. The economic downturn we experienced several years ago is still causing repercussions for private practitioners. There has been a decline in business opportunities for outside counsel and opportunities are not as lucrative. First, corporations have expanded their law staffs and handle more legal matters in-house, including litigation, thereby decreasing the volume of work companies need to farm out. Second, more companies use a flat fee structure where they negotiate with law firms instead of paying a set hourly rate as in the past. Third, relationships continue



(Left to right) Law firm partners C. Edward Dobbs, Anita Wallace Thomas, William B. Hill Jr. and Sonjui Kumar prior to the panel discussion.



Marian Cover Dockery, executive director of the State Bar Diversity Program, introduces the general counsel panel hosted by Morris Manning & Martin, LLP.

to be key in the selection process. Many attorneys who are presently in-house solicit attorneys from their former employer law firms or recruit attorneys where they are familiar with the quality of their work and had formed prior relationships. Relationships still continue to be the linchpin to securing clients.

The law firm partners agreed that to overcome these obstacles, attorneys first

and foremost must do excellent work. An excellent work product will help establish an attorney's reputation, and not only will attorney members of one's law firm, but opposing counsel will also provide referrals. External exposure outside the office is also critical and this can be achieved by speaking on panels or becoming active in bar associations, i.e., heading bar subcommittees or working in other

leadership positions. It is also valuable to think outside the box and get visibility in your church, join other boards or private clubs, or get involved in your community where you have an opportunity to meet other professionals. It is never too soon to develop and nurture relationships that may be potential sources of business so that when associates are promoted to partners, they are prepared to reach out to a network of persons who may provide them opportunities.

Today a larger number of attorneys are competing for less work. Whether diversity of attorneys seeking business is essential may depend upon the client, the expertise the attorney is offering and the goals of the corporation seeking outside counsel. Although the economy has improved, corporations continue to use this new business model in order to contain costs. Corporations offer lower hourly fees to outside counsel depending on the type of lawsuit, but still use large firms to handle more complex cases where the stakes are high.

Lower fees are to be expected, but expectations for excellent work have not changed.

Corporate panelists also emphasized that many of the firms they choose to select are those with whom they already have known or have worked with in the past. Many in-house counsel send business to the law firms they were once affiliated with or a lawyer who was referred to them by a colleague who they trust.

It may take "10 touches" to build relationships, but by the time new attorneys make partner, their colleagues who left to practice in-house may be in a position to send the partner legal work where they become the relationship partner.

Business development is hard work in the office and outside of one's law firm, and although new attorneys face more challenges practicing law than ever before, developing a successful practice is achievable and worth it. ●



Marian Cover Dockery

Executive Director, Diversity Program
State Bar of Georgia
 lexikonmcd@aol.com



PHOTO BY DON MORGAN PHOTOGRAPHY

Attorneys listen to general counsels present at Morris Manning & Martin, LLP, during Part II of the State Bar Diversity Business Development Symposium on March 10.



STATE BAR OF GEORGIA
 ANNUAL DIVERSITY
 LUNCHEON & CLE

Bar Center
 7:30 a.m. – 2 p.m.

KEYNOTE SPEAKER:
 Kelley Park

Senior Vice President of Diversity
 Southwire Company LLC, Carrollton

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 2016

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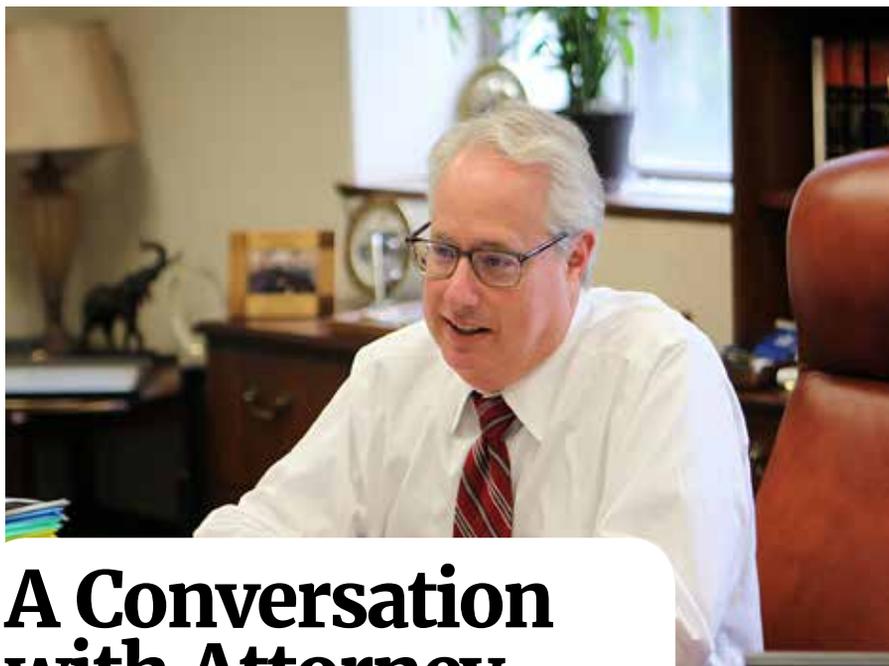


PHOTO BY SARAH L. COOLE

A Conversation with Attorney General Sam Olens

BY JACOB E. DALEY

Members of the State Bar of Georgia are serving their clients, their communities and their state in positive ways. In this new column, the *Georgia Bar Journal* will highlight a Georgia Bar member's service to the public and the profession. For the inaugural column, Editorial Board Member Jake Daly sat down with Attorney General Sam Olens for a candid chat about the office and his accomplishments as attorney general as well as his opinion on several current hot-button national issues.

During your first campaign for AG, you said some of your top priorities would be to prosecute public corruption and health care fraud and to strengthen the state's ethics laws. Now that your first term has been completed, how do you think you've done on achieving those goals?

Olens: With regard to public corruption, we're active in a lot of investigations. With regard to Medicaid fraud, shortly after I was elected, then-Gov. Perdue called me and said, look I'm prepared to sign an executive order with regard to the Medicaid

Fraud Unit. At the time there were three partners: the state auditor, GBI and the AG office. It didn't work. There were too many cooks in the kitchen. He signed the order with the new governor's consent. It kicked in July 1, 2011, my first year, and the Medicaid Fraud Unit is now totally different. It now is aggressive in both the civil and criminal arenas, where appropriate. We have had numerous settlements, pleas and trials that are far, far greater than ever before in the history of the Medicaid Fraud Unit. The governor has given us additional resources. The unit is working on all cylinders and doing a great job bringing dollars back to Georgia

As for strengthening the ethics laws, we made huge changes in 2012. Was it a perfect bill? Of course not. Is it much better than before? Much cheaper, much easier for the citizen to get what they need? Yes. We still help. I'll listen to a news story where a government will say it will cost the requester \$3,000 to get this, and we make a call the next morning and they get it for about \$60. The Open Records Law is a very important law for Georgians and we are always looking at improving it. I would mention that, since the governor's office and our office are the two entities that get sued in the name of the state, it's really essential that we work as closely and as constructively as possible. And the governor's been a great partner. It's gone really, really well these first six years. That doesn't mean that we don't disagree. But when we do, we handle it in a very professional, legal manner. It's been a very positive relationship.

Do you think it's good to have a constitutionally independent AG or should the AG be an executive appointment as in the federal system?

Olens: You need the attorney general to be independent. When we see an issue, we are able to work with the governor. That wouldn't happen nearly as easily if it weren't for two things. One, the governor is a lawyer and appreciates the rule of law and understands that decisions have to be based on the rule of law rather than one's politics and personal opinions. Two, the independent nature of this office.

Do you have the resources you need, or do you need more from the Legislature?

Olens: I think the big thing I needed they gave me this past session, which was additional financial resources to retain those high-quality lawyers, and the Legislature—at the governor’s request—really did an excellent job. I should note that the State Bar supported the request, which we greatly appreciated. Our starting salary will go from \$52,000 to \$60,000. I can’t compete with large firms, but I need our employees to be able to pay their monthly bills. I need them to not be afraid of someone serving them with a court summons for not being able to meet their law school loans, etc.

What is there about the way your office works that most lawyers don’t know?

Olens: I’ll tell you a couple of things. One, similar to an appellate court, precedent is very important. Before we issue an opinion, before we take a position in litigation, we spend a lot of time looking at where we were the prior decades in that area. And no one in the law department should ever be political. There’s no place for it. We should be lawyers. The decisions need to be legal. I routinely say in a lot of my talks, the laws aren’t Republican or Democrat. They’re laws. We have an obligation to support those we like and those we dislike.

What do you consider to be your most significant accomplishment thus far as Attorney General? What are you most proud of?

Olens: Well, that’s a hard question, to be honest. This is a team sport; it’s not about me. It’s about the lawyers and the staff in this building. The Medicaid Fraud Unit is a huge gain for our state. The acquisition of a solicitor general and staff is a huge gain for our state. We do a program every fall for the high schools to seek to limit prescription drug abuse, and I’m very proud of that program. But I think, day in and day out, the huge gain is the lawyers. We have great lawyers. I have a lot of pride in the office, and a lot of pride in their output. It’s the work product of those lawyers, paralegals,

assistants and investigators that makes it happen.

You helped create the Legal Food Frenzy in 2012. Why is that program so important to you?

Olens: We live in a state where more than 60 percent of our public school children are eligible for free or reduced lunch. Only 15 percent of those children have access to a summer food program. We, as lawyers, are placed in a very unique position where we get to improve our community based on the bounty of our education and resources. If we don’t use that to help those who have no voice, then why are we here on this earth?

Will you run for a third term?

Olens: To be honest, I am no closer to a decision. This has been a great ride. I never had a plan. There was no five-year or 10-year plan. I’ve been blessed by the good folks in Cobb and our state. It’s given me great opportunities, and my family and I feel no rush to decide whether I run for re-election or not, or whether I run for another office or not. I’ve got plenty of work to do, and I think those individuals that spend all their time thinking about what they want to do two years ahead are doing a disservice to their current position.

Is it fair to say that right now nothing is ruled in or out for your political future?

Olens: True.

Tell us your thoughts on the transgender bathroom issue and why you decided to join the lawsuit in Texas.

Olens: Candidly, that’s not about transgender. That’s about federal overreach. The president does not have the authority to write or rewrite laws. He has the authority to go through the rulemaking process where it’s consistent with the statute, but that was not done in this case. Or he can work with Congress to pass laws. But, the “Dear Colleague” letter¹ was no different than our immigration lawsuit, our water lawsuit or our energy lawsuit. It’s all about abuse of executive authority.

So the issue is solely separation of powers and keeping within one’s jurisdiction.

As a Cobb resident and the former Cobb Commission chairman, how do you feel about the Braves moving to Cobb County?

Olens: I think from an economic development perspective, it’s a win for the county. But I think when you leave an office, your comments relating to the prior office should be non-existent. I think that’s a courtesy you owe the people that are in office after you.

As an elected Republican, are there any comments you’d care to share about Donald Trump or Hillary Clinton?

Olens: No. I’m going to support the Republican nominee. You’re going to be looking at approximately four new justices with the next administration, and that’s generational. Justices don’t serve four years or eight years. They serve more like 20 to 30 years, and I think that is a huge issue in this election.

What do you do for fun outside this building?

Olens: Like a typical parent, it’s really pretty much about the family. I’ve been married 31 years to a very patient woman. I’ve got two great kids, ages 23 and 26. They’re all about where we plan a summer vacation. ●



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.

Endnote

1. This is a May 13, 2016 letter, issued by the U.S. Department of Justice and the U.S. Department of Education, determining that a student’s gender identity will be considered his or her gender for purposes of Title IX of the Education Amendments of 1972.

Kudos



Damon Elmore, Nowell Sparks, LLC, was invited to serve as a member of an advisory committee to the Legal Services Corporation (LSC), to help update the guidance LSC provides to legal aid programs about effective governance, leadership and administration. The LSC is the single largest funder of civil legal aid for low-income Americans in the nation.

Leadership Atlanta announced the following members of its Class of 2017: Brett Bartlett, Seyfarth Shaw LLP; Stephanie Benfield, City of Atlanta; Simon Bloom, Bloom Sugarman LLP; Sherry Boston, Office of DeKalb County Solicitor-General; William Brewster, Kilpatrick Townsend & Stockton; Ben Garren, The Coca-Cola Company; Jamila Hall, Jones Day; Jeong-Hwa Lee, Nelson Mullins Riley & Scarborough LLP; Meritt McAlister, King & Spalding LLP; Jamala McFadden, McFadden Davis, LLC; Hon. Shukura Millender, Magistrate Court of Fulton County; Winfield Murray, U.S. Department of Housing & Urban Development; Byung Pak, Chalmers Pak & Burch LLC; Evan Pontz, Troutman Sanders LLP; Pilar Prinz, Lawler Green Prinz, LLC; Clinton Rucker, Fulton County District Attorney's Office; and Amelia Rudolph, Sutherland Asbill & Brennan LLP. Leadership Atlanta is the oldest continuously running training program of its type in the country.



MULLER



AKINS

Georgia Defense Lawyers Association (GDLA) announced the election of Peter D. Muller, Goodman McGuffey Lindsey & Johnson, as president during its annual meeting held in June. Other GDLA officers elected include President-Elect Sarah B. "Sally" Akins, Ellis, Painter, Ratterree & Adams; Treasurer Hall F. McKinley III, Drew Eckl & Farnham; and Secretary Craig C. Avery, Cowsert & Avery. GDLA was founded 49 years ago to advance the civil defense bar, providing training, facilitates communication and offers networking to more than 875 members.



MCKINLEY



AVERY



The National Minority Supplier Development Council (NMSDC) honored I. Javette Hines with a Leadership Award during the 2016 National Minority Supplier Development Council Leadership Awards at the New York Hilton. The council awards minority business owners and

NMSDC affiliate council presidents for outstanding leadership that has a positive impact on their companies and resonates throughout the NMSDC network.

Allen Buckley of The Law Office of Allen Buckley LLC published his book, "Legal Handbook for Financial Planning in 2016" which provides sorely needed easy-to-understand legal guidance relating to personal finances for individuals and households making \$75,000 to \$400,000 in 2016.

Boyd Collar Nolen & Tuggle, LLC, announced that partner Jonathan J. Tuggle was elected as president of The Charles Longstreet Weltner Family Law American Inn of Court. The mission of the American Inn of Court Foundation is to promote professionalism, collegiality and continue education among Atlanta's family law community.

The Bowen Law Group announced that attorney Charles Bowen was awarded the Helen V. Head Business Advocate Award during the Savannah Chamber of Commerce's 2016 Business Expo & Awards Banquet. The award honors those following in Helen Head's footsteps of dedication to the community as well as a belief in and support of small businesses.



Carl S. Cansino of Cansino Petty & Stribling LLP was elected to serve on the State Bar of Georgia Board of Governors. Cansino was installed during the organization's annual meeting in June and will serve in the Ocmulgee Judicial Circuit, Post 1 seat.



Smith Moore Leatherwood LLP announced that attorney Kenton J. Coppage was elected as a fellow of the American Bar Foundation. The foundation is an honorary organization of attorneys, judges and law professors whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.



Rita A. Sheffey, assistant dean for Public Service at Emory University School of Law, was elected to serve on the Executive Council of the National Conference of Bar Presidents (NCBP). The Executive Council serves as the governing board of the NCBP which provides information and training to state and local bar association leaders.



Kilpatrick Townsend & Stockton announced that partner Alicia Grahn Jones was sworn in as the 2016-17 president of the Georgia Association for Women Lawyers (GAWL). Founded in 1928, GAWL proudly serves the diverse interests of women lawyers around Georgia.



Drew Eckl & Farnham announced attorney Jennifer Parrott was admitted into the 2016-17 TIPS Leadership Academy. The TIPS Leadership Academy brings together a diverse group of 25 attorneys identified as emerging leaders from across the nation and provides them with

the knowledge and skills necessary to develop a vision to lead the legal profession and to improve leadership service in the community as a whole.

On The Move

IN ATLANTA

The State Board of Workers' Compensation announced the addition of Glenn D. Chitlik to the alternative dispute resolution unit. As a certified mediator, Chitlik conducts mediations for Georgia workers' compensations throughout the state. The office is located at 270 Peachtree St. NW, Atlanta, GA 30303; 404-656-2939; www.sbcw.com.



Berman Fink Van Horn announced the addition of Lawrence Kasmen as shareholder. Kasmen's areas of concentration include corporate and commercial real estate law and business finance. The firm is located at 3475 Piedmont Road, Suite 1100, Atlanta, GA 30305; 404-261-7711; www.bfvlaw.com.



BRAY



CRESSMAN

Nelson Mullins Riley & Scarborough LLP announced the addition of Melody P. Bray and Morgan M. Cressman as attorneys as well as the addition of Sarah E.W. Trevino as an associate. Bray has experience in employment matters in state and federal court, including Title VII, the American Disabilities Act, Georgia Whistleblower and unlawful disclosure. Cressman practices education law and insurance defense. Trevino practices with the general litigation team. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.



TREVINO

Sutherland Asbill & Brennan LLP announced the election of partner Ram C. Sunkara to the executive committee. Sunkara focuses his practice on negotiating and finalizing acquisition and disposition agreements, structuring transactions and auc-

tion processes and managing all aspects of a deal. The firm is located at 999 Peachtree St. NE, Suite 2300, Atlanta, GA 30309; 404-853-8000; www.sutherland.com.



Smith Moore Leatherwood announced the addition of Marvis Jenkins as an associate. Jenkins represents a wide variety of clients in the transportation industry including commercial motor vehicle companies and motor carriers, drivers, specialty haulers, bus lines and motor coaches, automobile dealerships, emergency and non-emergency transportation providers and their insurers. The firm is located at 1180 W. Peachtree St. NW, Suite 2300, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; www.smithmoorelaw.com.



MendenFreiman LLP announced the addition of Laura B. Traylor as of counsel. Traylor's practice focuses on estate planning and estate administration, succession planning for family-owned businesses and the formation and funding of limited partnerships, limited liability companies and nonprofit corporations. The firm is located at 5565 Glenridge Connector NE, Suite 850, Atlanta, GA 30342; 770-379-1450; www.mendenfreiman.com.



FordHarrison LLP announced the addition of Patrick H. Ouzts as counsel. Ouzts focuses his practice on helping human resource leaders and in-house lawyers with employment-related issues, including employee discipline and discharge, accommodations and leave, allegations of discrimination, harassment and retaliation and policy review. The firm is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.



STEVENS

Drew Eckl & Farnham announced the addition of John Stevens as of counsel and Robert Quinn as an associate. Steven's practice primarily focuses on the defense of various classes of medical litigation, including the defense of individual medical professionals, acute care hospitals, psychiatric hospitals, and long term care facilities in medical malpractice, regulatory and administrative matters. Quinn represents defendants ranging from large international corporations to small businesses and individuals. The firm is located at 880 W. Peachtree St., Atlanta, GA 30309; 404-885-1400; Fax 404-876-0992; www.deflaw.com.



QUINN

Swift, Currie, McGhee & Hiers, LLP, announced the addition of David M. Atkinson as a partner as well as the addition of Ari Shapiro, Calvin Yaeger and Pilar Whitaker as associates. Atkinson's practice focuses on civil litigation defense, including tort claims, construction litigation, insurance coverage, business disputes and intellectual property. Shapiro primarily

advises insurance carriers on a wide range of coverage issues, including potential liability for bad faith and also represents both policyholders and insurance carriers in state and federal courts throughout the country. Yaeger defends lawsuits involving automobile and trucking accidents, premises liability and construction litigation. Whitaker's practice focuses on insurance coverage and commercial litigation. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; www.swiftcurrie.com.

Thompson Hine LLP announced the addition of Chris Troutman as an associate. Troutman joins the firm's real estate practice. The firm is located at 3560 Lenox Road, Suite 1600, Atlanta, GA 30326; 404-541-2900; Fax 404-541-2905; www.thompsonhine.com.

Carlton Fields announced the addition of James V. Chin as a shareholder. Chin's practice focuses predominantly on the representation of commercial property insurers in large, complex first-party coverage matters. The firm is located at 1201 W. Peachtree St. NW, Suite 3000, Atlanta, GA 30309; 404-815-3400; Fax 404-815-3415; www.carltonfields.com.

Fish & Richardson announced the addition of Ashley A. Bolt, Lawrence Jarvis and Sabrina Wilson as associates. All have joined the firm's intellectual property litigation group. The firm is located at 1180 Peachtree St. NE, 21st Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; www.fr.com.



PANNELL

Kilpatrick Townsend & Stockton announced the election of Charles A. "Chad" Pannell to counsel as well as the addition of Sean Libby as an associate. Pannell's experience includes practice in computer software and hardware, wearable technology, avionics, military technology, energy efficiency, "green" technology, textiles and carpet, telecommunications, industrial equipment and processes, chemicals, medical devices, medical monitoring and printer technology. Libby focuses his practice on defending employers in harassment, discrimination and retaliation lawsuits brought under state and federal law including Title VII, the Americans with Disabilities Act and the Age Discrimination in Employment Act. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



Hall, Arbery, Gilligan, Roberts & Shanlever LLP announced the addition of Nina Maja Bergmar as an associate. Bergmar's practice focuses on the guidance and defense of employers in a wide variety of matters, including compliance with federal and state laws prohibiting discrimination and harassment and providing for reasonable accommodations, family and medical leave and overtime and minimum wage. The firm is located at 3340 Peachtree Road NE, Suite 1900, Atlanta, GA 30326; 404-442-8776; www.hagllp.com.

Barnes & Thornburg announced the addition of Lori C. Bibb as of counsel. Bibb's focuses her practice on corporate finance, mergers and acquisitions, private equity transactions, venture capital investments, joint ventures, complex business transactions and securities offerings. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; www.btlaw.com.

Friend, Hudak & Harris, LLP, announced the addition of Suzanne M. Arpin as a partner. Arpin practices corporate and transactional law with a focus on employment law matters such as employee benefits, executive compensation and ERISA. The firm is located at 3 Ravinia Drive, Suite 1700, Atlanta, GA 30346; 770-399-9500; Fax 770-395-0000; www.fh2.com.

DLA Piper announced the addition of Frank Layson as a partner. Layson concentrates his practice on domestic and international M&A matters, joint ventures and strategic alliances. The firm is located at 1201 W. Peachtree St., Suite 2800, Atlanta, GA 30309; 404-736-7800; Fax 404-682-7800; www.dlapiper.com.



McGuire Woods announced the addition of John F. O'Brien III as counsel. O'Brien represents food manufacturers, restaurants, retailers and other clients in litigation arising from product recalls, foodborne illness outbreaks, labeling challenges, unfair competition claims and intellectual property matters. The firm is located at 1230 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.

Taylor English Duma LLP announced the addition of Diana Sarju Kim as counsel. Kim focuses her practice on representing employers in single-plaintiff and multi-plaintiff litigation involving claims of discrimination based on various protected categories, including race, national origin, sex, age, religion, disability and pregnancy, as well as claims for retaliation. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.



Thomas Kennedy Sampson & Tompkins, LLP, announced the addition of Miguel A. Dominguez as an associate. Dominguez's practice areas include personal injury, wrongful death, premises liability, insurance defense, medical malpractice and civil rights. The firm is located at 3355 Main St., Atlanta, GA 30337; 404-688-4503; Fax 404-684-9515; www.tkstlaw.com.

Lewis Brisbois announced the addition of Keith Kodosky as a partner. Kodosky has extensive toxic tort and products liability litigation experience including cases involving alleged exposures to welding rod fumes, lead paint, carbon monoxide and benzene. The firm is located at 1180 Peachtree St. NE,

Suite 2900, Atlanta, GA 30309; 404-348-8585; Fax: 404-467-8845; www.lewisbrisbois.com.



KALB

Hunton & Williams announced the election of Joshua M. Kalb and Brandon A. Van Balen to counsel. Kalb's practice focuses primarily on IP litigation and creating and preserving value in IP assets through aggressive enforcement and protection of IP rights. Van Balen's practice focuses on commercial lending matters, particularly on representing banks and financial institutions as agents and lenders, as well as corporate borrowers, in secured lending transactions. The firm is located at 600 Peachtree St. NE, Suite 4100, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.



VAN BALEN

IN AUGUSTA



OUELLETTE

Hull Barrett, PC, announced the addition of James Ouellette as counsel and Aimee Pickett Sanders as an associate. Ouellette focuses his practice on civil litigation, national security and cyber law. Sanders focuses on litigation and employment law. The firm is located at 801 Broad St., 7th Floor, Augusta, GA 30901; 706-722-4481; Fax 706-722-9779; www.hullbarrett.com.



SANDERS

IN CARROLLTON



Swindle Law Group, P.C., announced the election of Dane M. Garland to partner. Garland's practice focuses on criminal defense, particularly DUI defense. The firm is located at 310 Tanner St., Carrollton, GA 30117; 770-836-8332; www.swindlelaw.com.

IN COLUMBUS



Page, Scrantom, Sprouse, Tucker & Ford, P.C., announced the addition of Cameron H. A. Saunders as an associate. Saunders focuses his practice mainly in the areas of estate planning, real estate, banking and financial services, business and corporate law, taxation and exempt organizations. The firm is located at 1111 Bay Ave., Third Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; www.columbusgalaw.com.

IN DALTON



The Cowan Law Firm, LLC, announced the addition of Scott Graham DeLay. His practice includes litigation related to corporate and business disputes, personal injury and family law. The firm is located at 315 N. Selvidge St., Dalton, GA 30720, 706-278-2099; www.cowanlawoffice.com.



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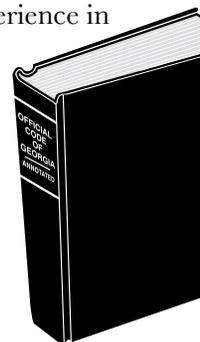
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CORRECTION

In the June 2016 issue of the *Georgia Bar Journal*, we incorrectly printed that Stites & Harbison, PLLC, elected Melissa Davey to counsel. Davey was elected to partner. The firm is located at 303 Peachtree St. NE, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com. We apologize for this error.

IN DULUTH



Andersen, Tate and Carr Law announced the addition of Roberta D. Cooper as of counsel. Cooper's practice specializes in immigration law; including immigrant and non-immigrant employment and family-based petitions, I-9 audits, J-1 waivers, Deferred Action (DACA), U visas and citizenship. The firm is located at 1960 Satellite Blvd., Suite 4000, Duluth, GA 30097; 770-822-0900; Fax: 770-822-9680; www.atclawfirm.com.

IN EVANS



MCELREATH



COURSEY

Hull Barrett, PC, announced the addition of Benjamin McElreath as partner and the election of Brian S. Coursey to partner. McElreath's practice focuses on residential real estate practice. Coursey's practice focuses on estate planning and tax

law. The firm is located at 7004 Evans Town Center Blvd., Third Floor, Evans, GA 30809; 706-722-4481; Fax 706-722-9779; www.hullbarrett.com.

IN MACON

Gautreaux & Sizemore, LLC, announced the addition of Lamar W. Sizemore Jr. as of counsel. Sizemore's practice focuses on the areas of personal injury and mediation. The firm is located at 778 Mulberry St., Macon, GA 31201; 478-238-9758; Fax 478-216-9179; www.gstriallawyers.com.

IN SAVANNAH



Bouhan Falligant announced the addition of Jay Thaw as an associate. Thaw's practice focuses on medical malpractice litigation, and other business and general litigation matters. The firm is located at 447 Bull St., Savannah, GA 31401; 912-232-7000; Fax 912-233-0811; www.bouhan.com.



HunterMaclean announced the election of Daniel Crook to real estate practice group leader. Crook is responsible for aligning goals for the group and its individual attorneys for professional and business development. The firm is located at 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

IN SMYRNA



K. Julie Hojnacki, Law Offices of Bruce S. Harvey, announced the opening of Legal Backup, which through online integration, specializes in providing legal research and writing for attorneys and firms through the preparation of appeals, motions and discovery review/analysis on a project-to-project basis, without the need for physical delivery of case files. Legal Backup is located at 3316A S. Cobb Drive SE, Suite 159, Smyrna, GA 30080; 404-519-3434; www.legalbackup.org.

IN AIKEN, S.C.

Hull Barrett, PC, announced the election of Paul K. Simons to partner. Simons represents banking and corporate clients in commercial transactions. The firm is located at 111 Park Ave. SW, Aiken, SC 29801; 803-648-4213; Fax 803-648-2601; www.hullbarrett.com.



GEORGIA LEGAL SERVICES PRESENTS ITS

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State Bar Center, 3rd Floor Gallery, 5:30 PM - 7:30 PM

Please join GLSP in celebrating our 2015-16 Champions who are outstanding leaders in the cause of justice for all.



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Georgia Supreme Court
(Atlanta)



Hon. James Bass
Superior Court, Eastern
District of Georgia
(Savannah)



Hon. Patricia Barron
Chief Magistrate Judge
Athens-Clarke County
(Athens)



John Cromartie
former GLSP
Executive Director
(Gainesville)



Harold T. "Hal" Daniel
former GLSP Board
President & State Bar
President
(Atlanta)



Mary Jean Macon
former GLSP
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Nancy Terrill
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If You're On Both Sides, You Always Win!

BY PAULA FREDERICK

"I just sent you some business, and I think it's going to be a big moneymaker for both of us," your buddy says as you pick up the telephone. "The potential client has a huge claim against BigCo. I've told her I can't represent her, but I promised you would do a great job. She doesn't object to you and me dividing the fee from the case, so I'm going to ask you to give me half the fee in exchange for the referral. She's going to call you this afternoon."

"Slow down!" you beg, confused by your buddy's story. "Don't you represent BigCo?"

"My partner does," your buddy confirms impatiently. "That's why I can't represent this lady. But I'm looking out for you. BigCo will settle this one as fast as possible, then it's payday for both of us!"

"I don't know how to break it to you," you tell your buddy, "but I don't think you get to divide the fee with me this time! I'll be suing *your firm's biggest client!* Your partner will be sitting across the table from me! You can't get paid by both sides!"

"Why not?" your buddy asks. "The Rule just says the client has to agree, and she already said she would."

"Can you spell C-O-N-F-L-I-C-T?" you ask, exasperated.

Does a lawyer violate the Rules of Professional Conduct by taking a fee for referring a matter when the lawyer has a conflict of interest?

A recent opinion from the ABA Standing Committee on Ethics and Professional Responsibility¹ says yes.

Rule 1.5(e) of the Georgia Rules of Professional Conduct allows a lawyer to divide a fee with another lawyer who is not in the same firm if the client does not object to the amount each lawyer will receive, if the total fee is reasonable, and if, by written agreement with the client, the lawyers assume joint responsibility for the representation.² The ABA opinion finds that "joint responsibility" means both lawyers actually *represent* the client, so it is not possible to meet that requirement of Rule 1.5(e) if a conflict of interest would prohibit you from handling the matter referred.

The opinion reminds us that Rule 1.5(e) typically applies to contingency fee cases being referred to a litigator or other specialist. It was never intended to apply to situations where the refer-

ral comes because the referring lawyer has a conflict that prohibits her from accepting the representation.

In Georgia we have not weighed in on the issue presented in ABA Opinion 474; however, the rationale underlying the opinion makes sense. Allowing division of a fee in the face of an actual conflict would likely violate Rule 1.7 on Conflicts of Interest, and cause the lawyer to act with divided loyalty. ●



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Endnotes

1. ABA Formal Opinion 474, "Referral Fees and Conflict of Interest," April 21, 2016.
2. As an alternative to assuming joint responsibility, the rule allows lawyers to divide a fee in proportion to the services performed by each lawyer.

Attorney Discipline Summaries

(April 16, 2016 through June 17, 2016)

BY CONNIE P. HENRY

DISBARMENTS

David P. Hartin

Marietta, Ga.

Admitted to Bar 1979

On April 26, 2016, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney David P. Hartin (State Bar No. 333775). In connection with the representation of a client in a divorce action, Hartin received proceeds from the sale of the marital home and was required by the final decree to disburse the funds equally to his client and his client's ex-wife, but he failed to disburse the sale proceeds as directed.

Stephen Bailey Wallace II

Jonesboro, Ga.

Admitted to Bar 1991

On April 26, 2016, the Supreme Court of Georgia disbarred attorney Stephen Bailey Wallace II (State Bar No. 734309). The following facts are admitted by default. Wallace was hired to represent a client seeking damages for injuries the client suffered in 2003. Wallace filed suit in September 2004 and communicated with

his client through January 2013, assuring the client that the case was progressing towards trial and that he was waiting for an order allowing the client's physician to testify. Wallace told the client to forward his medical bills to him and not to worry about them. The client forwarded approximately \$100,000 in medical bills over a period of years and did not pay those bills. In reality, Wallace had not filed anything in the client's case since April 2006, and the case was dismissed in June 2013. Wallace failed to respond to the Notice of Investigation and the Supreme Court of Georgia issued an interim suspension order effective June 30, 2015.

Jennifer L. Wright

Forest Park, Ga.

Admitted to Bar 2000

On May 23, 2016, the Supreme Court of Georgia disbarred attorney Jennifer L. Wright (State Bar No. 519727). In April 2015 Wright pled guilty in the Superior Court of Douglas County for felony possession of Alprazolam, a Schedule IV substance, for which she was sentenced to three years probation.

The special master found that Wright was not compliant with the terms of her probation, including the requirement that she participate in a substance abuse treatment program and discontinue her use of marijuana. Wright also has a history for arrests for driving under the influence, a failure to take responsibility for her actions or to show remorse, a tendency to blame other people and circumstances for her problems, and a lack of candor with a counselor conducting an alcohol and drug abuse assessment. Wright received a formal letter of admonition in 2012.

SUSPENSIONS

Gayle S. Graziano

Hiawassee, Ga.

Admitted to Bar 1975

On April 26, 2016, the Supreme Court of Georgia suspended attorney Gayle S. Graziano (State Bar No. 306650) for six months with conditions for reinstatement. Graziano agreed to represent a client in a dispute with a contractor. Graziano filed suit and the contractor counterclaimed.

In March 2013, Graziano closed her office and advised her clients to obtain

*"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

new counsel. This client declined to do so, and Graziano appeared at trial in June 2013. The trial ended in a mistrial after the client made statements to the opposing party within earshot of jurors. Graziano advised the client to seek new counsel since she anticipated being called as a witness, but the client did not do so.

On Sept. 23, 2013, Graziano began a leave of absence for health reasons. On Oct. 1, opposing counsel emailed to Graziano a Motion for Contempt for Attorney Fees to recover fees from the mistrial. No hearing notice was included, but Graziano received notice of a pre-trial conference scheduled for Nov. 1. Graziano told counsel that she was attending to an ill aunt, and had been unable to reach her client, but that she would address the issues. On Oct. 29, Graziano mailed the client a letter advising that she would only stay on the case until the client could obtain new counsel. Graziano included a copy of the contempt motion, but no notice of the upcoming pre-trial conference.

On Oct. 31, Graziano reached the client and advised her to go to court on Nov. 1 to explain Graziano's absence and to request a continuance or obtain new counsel. The client did not appear in court and the court granted opposing counsel's motion to dismiss and entered a Rule Nisi setting a hearing for Dec. 6 on the counterclaim and contempt motion. Opposing counsel sent an email to Graziano with notice of the dismissal and Rule Nisi, but neither Graziano nor the client appeared in December and the court entered judgment against the client for \$14,075. In January 2014, Graziano withdrew from the case at the client's request.

The Court noted in mitigation that Graziano had no prior discipline, that she was cooperative during the disciplinary process, that she was dealing with health problems and the sickness and death of a family member for whom she was physically and financially responsible and that she was remorseful. Reinstatement is conditioned on payment of \$2,000 to her client.

Mary E. Franklin

Atlanta, Ga.

Admitted to Bar 1987

On April 26, 2016, the Supreme Court of Georgia suspended attorney Mary E. Franklin (State Bar No. 273720) for three months. Franklin resigned her job as an in-house bank lawyer in 2005 to care for her children. In January 2009, the Supreme Court ordered that Franklin's now-deceased husband, Bradley J. Taylor, receive a six-month suspension arising from his 2005 misappropriation of a client's funds. Franklin asserts that Taylor told her that he had been reinstated to practice law in July 2009, but she did not verify it. In the fall of 2009, Taylor and Franklin began sharing office space, and Taylor registered the Franklin Taylor Law Group with the Secretary of State.

In March 2011, Franklin signed a complaint on behalf of a client and friend of Taylor. Although Franklin's signature was on the complaint, she contends that her signature was forged on other documents. Ultimately, Taylor settled the case for \$80,000, but he mis-

appropriated the funds to his own use. Franklin states that she did not know of Taylor's deceit until November 2012. Franklin later learned that Taylor remained suspended after July 2009, and that he repaid \$25,000. Taylor passed away in January 2014.

Franklin noted in mitigation that she cooperated during the disciplinary process, that she has no prior discipline; that she suffered from mental and emotional conditions at that time, that she is undergoing counseling and treatment for depression, and that she is remorseful.

REVIEW PANEL REPRIMAND

Tiffini Colette Bell

Atlanta, Ga.

Admitted to Bar 2006

On June 2, 2016, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Tiffini Colette Bell (State Bar No. 676971) for a Review Panel reprimand. In the representation of a client in a child custody matter, Bell failed to truthfully communicate with her client regarding discovery, failed to seek appointment of a guardian ad litem and failed to thoroughly prepare for certain hearings. Bell stated that she did not have a selfish motive, that she sincerely regrets her conduct and that she showed a cooperative attitude in the disciplinary proceedings. Bell received an Investigative Panel reprimand in November 2015.

INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since April 15, 2016, three lawyers have been suspended for violating this Rule and one has been reinstated. ●



Connie P. Henry

Clerk, State Disciplinary Board
State Bar of Georgia

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Testimonials



Mike Monahan
Director, Pro Bono
Resource Center

Pomodoro

Need help with focusing on tasks? Try Pomodoro. “I multitask a lot and found I needed help focusing sometimes on just one thing. I downloaded an app called Pomodoro that lets me set up time slots no longer than 50 minutes as well as mandatory breaks and adds a timer. I can set a time slot for a specific task that I can focus on and the app tells me when to stop and move on or take a break.” Simple Pomodoro (Android) and Focus Timer (iOS) used to be called PomodoroPro.



Sarah Gerwig-Moore
Associate
Professor of Law
Mercer University

Pen, Paper and Smartphone

Don't forget the value of the pen, paper and the phone. That's a tech tip. “I'm still one of those who likes to hold a piece of paper in my hand, but I'm learning and re-learning from my students that there are a ton of apps and technological tools that could also make my life easier. So I'm resolving to embrace change and take a page from their book . . . ahem . . . smartphone.”

Draw in Firefox

<https://addons.mozilla.org/en-us/firefox/addon/screen-draw/>

If you're preparing a visual presentation that draws on web content, use Draw in Firefox with a browser add-in. It can help if you're taking screenshots, need to demonstrate a website, or doing some other type of online presentation.

Namechk

namechk.com

Lets you see where your typical username is still available! No more visiting domain after domain. You can also check to see if the username is trademarked. As a side benefit, if you have someone's username, you can see all the sites in which it is used.

Boomerang

<http://www.boomeranggmail.com/>

Boomerang for Gmail lets you take control of when you send and receive email messages.



Learn The Law

www.Learnthelaw.org

Free for legal aid organizations, courts, law school faculty, and nonprofits to build online education or pro se services classes, checklists or trainings, and to share content.



Chrome

<https://www.google.com/chrome>

Chrome Browser for crossing platforms. It provides the simplest syncing across your devices, regardless of your operating systems.

The Surface Pen

<https://www.microsoft.com/surface/en-us/accessories/pen>

Make the best of your Microsoft Surface. The Surface Pen has an improved design for the Surface Pro. Clicking the pen top once and opens Microsoft's OneNote application. Hold the pen top down and it will open Cortana (Microsoft's version of Siri). Clicking the pen top twice will take a screenshot and send it to OneNote.

LastPass

<https://lastpass.com/>

Do you have too many passwords to remember—especially when you are on the go? Use a password manager. A password manager is a must-have tool when managing information and accounts across devices. Check out LastPass, Keeper and Roboform.

TinyPNG

<https://tinypng.com>

Use TinyPNG to shrink images for your apps and sites. It will use less bandwidth and load faster.

Take Charge: The 2016 Solo Small Firm Institute

BY SHEILA BALDWIN



PHOTO BY ISTOCK.COM/D3DAMON

The Law Practice Management Program's Solo and Small Firm Institute was held July 15-16 at the Bar Center in Atlanta. The two-day event gave solo and small firm lawyers insight into current issues for solo and small firm practice and gave them information on the latest in legal technology.

The event's special guest speakers were Sharon Nelson, president, and John Simek, vice president, Sensei Enterprises, Inc.; and Jim Calloway, director, management assistance program, Oklahoma Bar Association. They were the headliners on sessions covering both practice management and technology topics. Calloway opened the event with his presentation, "The Future is So Passé: How Your Practice Can Excel in a New Era." Nelson and Simek presented their popular case study, "On the Trail of the Craigslist Killer: A Study in Digital Forensics" to a full audience. More than 30 other CLE presenters also delivered educational sessions in the conference's technology, practice management and substantive law tracks. When not in CLE sessions, attendees visited and took part in the conference's exhibit hall. The exhibit hall featured 28 vendors of legal products and services who shared their expertise with participants to help them find solutions that might be a good fit in their practices. The attendees were able to continue their learning and networking in the relaxed exhibit hall atmosphere while enjoying sponsored breaks and exhibitor giveaways.

Day One Highlights

Attendees were welcomed to the event by Conference Chair and Law Practice Management Program Advisory Committee

Member Kathleen Womack before moving into the various breakouts. Sessions throughout the day were presented on how to protect against cyber hackers, using project attorneys successfully, law office accounting, elder abuse law tips, law office automation, running a Mac practice, same-sex couples and family law, practicing in the cloud, mediating a divorce, how to rid your practice of paper, immigration practice guidance, attracting clients through legal video, dashboard analytics and forecasting, and a panel discussion on solo and small firm practice success.

After the last session, attendees transitioned to a networking reception where attendees and exhibitors enjoyed discussing topics related to the day's events over cocktails. The day ended with a "mystery tour" of the Bar Center by Joyce Jarvis, the Bar's knowledgeable third floor security. She explained the colorful history of the building as it was originally occupied by the Federal Reserve Bank of Atlanta, ending the tour in the sub-basement with a walk through the once money-filled vault and a quick view of the firing range used by the FBI back in the day. The 1920s feel of the bank archives made a good background for selfies.

Day Two Highlights

Saturday morning began early with breakfast, more conversations and prizes. Educational sessions continued on day two, with e-discovery, pro bono and the solo small firm, serving the entertainment industry, workers' comp update, ethical billing, document assembly and how to lock down your information. The day concluded with Hon. Shukura Ingram Millender, judge, Fulton County Magistrate Court, speaking on professionalism in 2016.

Although it was a busy two days, attendees left with a year's worth of CLE credit, increased knowledge, new ideas and some fun memories. If you didn't make it for this year's conference, be sure to save the date and join us next year, July 14-15. ●



Sheila Baldwin

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PHOTO BY SHEILA BALDWIN

Third floor security Joyce Jarvis gathers attendees in the President's Boardroom before setting off on a tour of the Bar Center.



PHOTO BY SHEILA BALDWIN

Attendees were able to meet and interact with vendors showcasing a wide variety of products and services that catered toward the solo/small firm practitioner in the Exhibit Hall.

What's Your Plan?

Thinking about retirement but can't imagine not practicing law in some way? Here's how you can develop a retirement plan that includes volunteering in-house.

BY MICHAEL MONAHAN

If you are thinking about retirement, think again. If you love being a lawyer and can't imagine losing the connection to colleagues or missing the challenge of practicing law in some way, I have a solution for you: Become an in-house volunteer lawyer for one or two days a week.

The first of the trend-setting generation of "baby boomers" celebrated their 65th birthday back in 2010. In 2016 the generation of lawyers born between 1946 and 1964 continues its march toward retirement—yours truly included. Our generation's numbers are large, and our

retirement's impact on the legal system should not be underestimated. Boomers comprise about 35 percent of the State Bar's membership.

You can redefine what it means to be a baby boomer lawyer in retirement. You can stay in the game and limited pro bono service in-house can provide you with the continuing contact with colleagues and the court that feeds your soul.

We Boomers have been an influential generation, to say the least. Our run has been marked with many highs and lows, but most compelling with relation to the justice system has been the



ILLUSTRATION BY ISTOCK.COM/PAMELA MOORE

commitment to, and participation in, pro bono publico service of lawyers in our generation. Throughout Georgia, Boomer lawyers have been the mainstay of pro bono and access to justice—not just in terms of participation numbers, but in the creation and nurturing of the values, policies and programs that support pro bono.

So, what's a Boomer lawyer to do? Step out, step away, step down? The idea of losing part of our identity—an important part—to favor leisure activities or simply to get some rest and perhaps deal with health issues we have delayed until now seems to irritate many of us. The lawyer in us wants to remain in the game, so to speak, to be relevant and to keep participating in efforts that make our communities a better place in which to live.

We have great unmet legal needs in Georgia. Our public interest programs can meet only a part of the needs of low-income and marginalized Georgians.

You have questions about office space, phone, a computer and professional liability insurance. The answer is straightforward: You'll have that support.

Here's how structured volunteering in-house with a legal aid or pro bono program works generally. You contact a local legal aid or pro bono program to ask how you might drop in for one or two days each week or on some other schedule. Each program has specific kinds of cases that it accepts like housing cases, consumer cases or family law cases. Your interests might lie with more specialized areas like immigration or nonprofits and business law. You might be interested in case intake and interviewing, brief advice or even full representation of a client. A supervisor is assigned to you to help you feel comfortable in your new office and to acquaint you with procedures and help with questions on your volunteer days.

The Savannah Regional Office of Georgia Legal Services Program has made use of retired attorneys for more than 25 years.

"Not only do volunteer attorneys allow us to do a better job on behalf of our clients, but they also, by their example,

PRO BONO STAR STORY

JOANNA JAE SMITH



JoAnna J. Smith
Attorney At Law
The Law Offices of
JoAnna J. Smith, LLC

I was appointed as a guardian ad litem through Atlanta Volunteer Lawyers Foundation to represent the best interests of a young boy in a legitimation and custody case.

When I got into the case, both parties intended to go to trial, airing all of their dirty laundry. There were a lot of hurt feelings on both sides of the case as well as a total lack of communication. But in speaking to both sides and their witnesses, I was able to see that they both wanted the best for their child and that they weren't far apart on what they would agree to.

At a status conference, I asked the parties to go to mediation and then worked with the mediator to get an agreement they could both live with. Most importantly, both parties felt that their concerns were heard and also agreed to go to co-parenting counseling so they could continue to improve their communication.

Being a guardian ad litem doesn't come with all the glory of winning at trial. It can be a ton of work without much recognition. But I am confident that my presence prevented a messy trial and helped bring much-needed stability to one child's life. Having that kind of positive impact in the world is a rare and precious thing. It's why I take these cases and why I hope others will, too. ●

affirm the importance of the work being done. Their being a part of the office yields many unanticipated dividends," says Bill Broker, the managing attorney of the Savannah GLSP office. "The rich diversity of experience and outlook of our volunteers has brought to our practice a definite advantage."

Your service as an in-house volunteer lawyer goes beyond pro bono. Seasoned lawyers like you who volunteer in-house for legal aid programs also act as mentors to legal aid lawyers and to less-seasoned volunteer lawyers.

At age 70, you can take emeritus status with the State Bar of Georgia. With emeritus status you no longer pay bar dues, the CLE requirement is removed and you may practice law solely on a pro

bono basis under the auspices of a recognized, structured pro bono or legal aid program in Georgia.

Emeritus status aside, contact your local legal aid or pro bono program today so that you, too, can develop a retirement plan that includes volunteering in-house.

For more information on opportunities or to find a pro bono program, please contact me at probono@gabar.org. ●



Michael Monahan

Director
Pro Bono Resource Center
State Bar of Georgia

probono@gabar.org

Fastcase Research Home

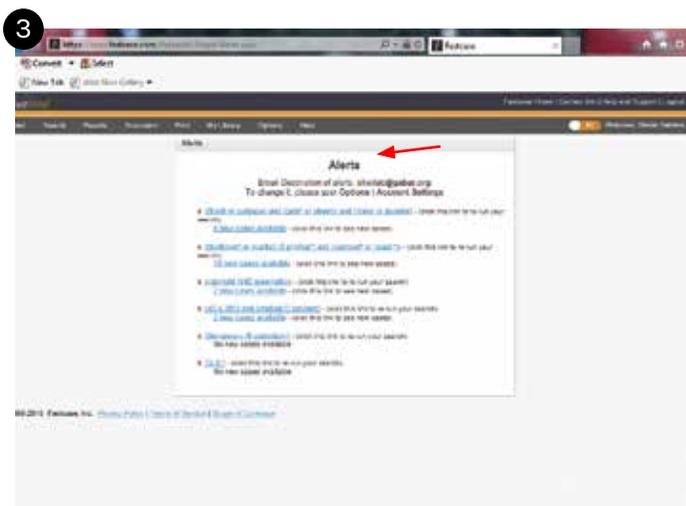
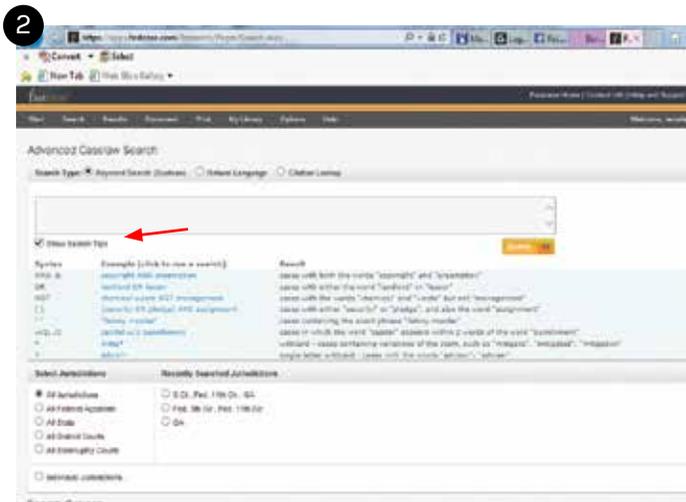
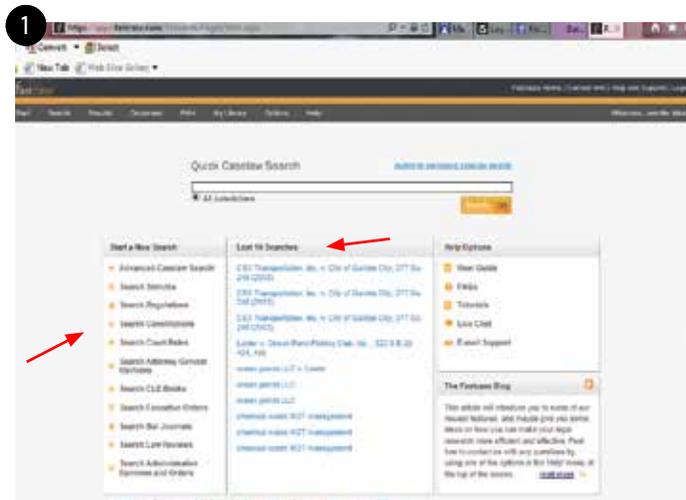
Fastcase training classes are offered three times a month at the State Bar of Georgia in Atlanta for Bar members and their staff. Training is available at other locations and in various formats and will be listed on the calendar at www.gabar.org. Please call 404-526-8618 to request on site classes for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

BY SHEILA BALDWIN

Fastcase continues to be one of your best member benefits. State Bar of Georgia members have free access to quick case law searching and a variety of other law-related materials. This article will introduce you to some of the most common features in Fastcase that are accessed from the landing page that can help make your legal research more efficient and effective.

My Research Home

When you log in to Fastcase, you are taken to the landing page. The My Research Home page contains intuitive navigation and will be the launch pad for all of your legal research projects. The first thing you will see at the top of this page is the Quick Caselaw Search which allows you to perform a basic search using the most commonly selected options. If you have used the Advanced Caselaw Search to select specific jurisdictions or jurisdiction groups in the past, the Quick Caselaw Search will search within your most recent jurisdiction or jurisdiction group. If you have not specified individual ju-



risdictions or jurisdiction groups in the past, Quick Caselaw Search will search all jurisdictions. You can click the “Switch to Advanced Caselaw Search” link to specify more advanced search options. If you’re not finding what you are searching for here, the “Start a New Search” section provides you with handy links to the many different search types that are available on Fastcase. As we add new search types, this list will grow (see fig. 1). At any time, you can choose Start > My Research Home from the menu to return to this page and continue your search or begin an entirely new one.

Last 10 Searches

Would you like to have a bookmark on your homepage, something to remind you of what you last searched for? The Last 10 Searches section shows you just that (see fig. 1). Clicking any one of the links under Last 10 Searches will run that search for you again, with the exact same options as the last time you ran it. It’s a great way to pick up where you left off. The Start page also features one-click access to help and support, as well as a

What’s New section which will be updated to keep you informed of the latest changes and feature additions.

The Advanced Caselaw Search

The Advanced Caselaw Search page will allow you to refine your search to specific jurisdictions, dates and courts. You can also view examples of how to perform more advanced searches by using the Search Tips (see fig. 2). Also, this is where you can enable the Authority Check feature which helps you find the most authoritative cases. Though it cannot tell you if a case is good law, it can help you identify candidates for further inspection. Checking Show Number of Citations in Search Results will display the number of times a case is cited by other cases in your results list. If a particular case is cited many times by other cases relevant to your query, it is likely that it is an authoritative case. Similarly, Show Number of Citations in Entire Database will show the number of times a case is cited anywhere in the case law database. The higher the number, the more authoritative the case is likely to be.

Alerts

On your My Research Home or landing page you will also see a notice in the top center of the screen that tells you that you have new alerts. The icon of an ! in an orange circle gives the number of alerts waiting for you to view. These are previous searches you have created and set up to refresh as new cases are published. Simply click on the icon to see any new relevant cases that may have an impact on a particular area of law in which you have expressed an interest (see fig. 3).

These tips should get you started if you are a first-time user. If you are not getting the greatest advantage from this member benefit, schedule a training by visiting the calendar on the upper right side of www.gabar.org. Sign up for a webinar by Fastcase experts or choose to attend a live training here at the bar. CLE credit is available for either option. ●



Sheila Baldwin

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ATTORNEY COACHES ARE NEEDED FOR HIGH SCHOOL TEAMS THROUGHOUT GEORGIA

Serve as a mentor to a team in your area and make a positive impact in your community.

CLE credit is available for coaching a mock trial team!

For more information on coaching a team, contact the mock trial office before Sept. 30 at 404-527-8779 or mocktrial@gabar.org | www.georgiamocktrial.org

Volunteer forms and a list of teams statewide who are in need of coaching assistance may be found under the Volunteer section of the mock trial website.



Writing Really Does Matter

Chances are, you won't be disbarred because you're a weak writer, but be careful, a misplaced comma could lead to a malpractice suit.

BY KAREN J. SNEDDON
AND DAVID HRICIK

For almost 10 years now, we've been providing guidance, tips, examples and otherwise discussed in this column ways to improve your writing. We think it's self-evident, but in this installment of "Writing Matters," we're going to remind you why, well, writing matters.

It should be obvious why writing matters: lawyers must represent their clients competently. This core ethical duty is codified in the Georgia Disciplinary Rules of Professional Conduct. Among other things, competency requires that a lawyer bring to bear on a matter "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."¹ In Georgia, a breach of the duty of competency can result in disbarment.²

Writing Matters in Litigation

Do courts actually discipline lawyers for poor legal writing? Without looking very hard, we found that they have. Indeed, now-justice then-judge Sotomayor served on an appellate panel that did so. The court held that an appellant's brief was so poorly written that it referred the lawyer to the court's grievance committee for further review.³

But obviously, courts are not likely to actually discipline lawyers for being weak writers.

Even so, writing still matters: a lawyer's failure to competently present his client's case can result in harm to the client, the lawyer and the courts. One court, for example, characterized the lawyer's brief on appeal as "worthless."⁴ Another



PHOTO BY ISTOCK.COM/MAREK MNICH

court recognized that by “submitting a poorly written brief, the attorney fails the court as well as the client.”⁵

Writing matters even for lawyers who are motivated solely by self-interest. Having a court write an opinion noting that a brief was “devoid of clarity and rife with spelling errors, grammatical miscues, poor formatting, and questionable quotations,”⁶ is hardly going to cause clients to beat a path to a lawyer’s door.

Writing Matters in Transactional Work

Some lawyers refer to their colleagues who write contracts, trusts, separation agreements and other legal documents as doing “pre-litigation” work. They write the documents that the litigators get to poke at and find fault with. Litigators enjoy that game!

More legal malpractice may arise out of the failure to draft legal documents properly than failing to write a good brief. While the words of a brief are important, a typo or misplaced comma is not likely to cause the brief to be wholly ineffective to carry out the intent of the client, and so result in a legal malpractice claim. The same is not true of transactional work. Indeed, a Westlaw search for “malpractice” in the same sentence as “estate, agreement, or contract” returned more than 10,000 cases. Although not all of those malpractice cases are about drafting, many are. Malpractice actions are based upon typographical errors⁷ or inaccurate descriptions of property.⁸ They also are based upon omitting necessary provisions from common legal documents.⁹ For example, malpractice claims are often based on the lawyer having omitted provisions such as real property provision¹⁰ or a residuary clause¹¹ in wills.

Again, sometimes there is not necessarily harm to the client in the form of damages caused by malpractice, but the client is still disadvantaged. In one recent contract case, for example, the court in its opinion found an agreement ambiguous because, although the section in controversy used an Oxford Comma, other sections of the agreement did not, making the use of the Oxford Comma in the key section not dispositive of the interpretation.¹²

The impact of “bad” writing in transactional matters may be more direct and obvious than in litigation matters. Yet, in all areas of legal practice, writing matters.

Writing Matters. It Really Does.

Legal writing is about more than commas and pronoun agreement. (Of course, commas and pronoun agreement are important!) Disciplinary proceedings and malpractice claims may not be inevitable for the average lawyer who struggles with writing. But, this installment is just a reminder of what is often understood but not articulated: good legal writing is part of the duty that lawyers owe to every client and to the judicial system in litigation. Legal writing matters to all of its participants. ●



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



David Hricik is a professor of law at Mercer University School of Law who has written several books and more than a dozen articles.

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

ENDNOTES

1. Ga. R. Prof. Conduct 1.1.
2. *Id.*
3. Zhang v. Mukasey, 296 Fed. Appx. 177 (2d Cir. 2008).
4. High v. Rhay, 519 F.2d 109, 113 (9th Cir. 1975).
5. Kuzmin v. Thermaflo, Inc., 2009 WL 142173, at *2 n. 6 (E.D. Tex. May 20, 2009).
6. Gandy v. Lynx Credit, 2014 WL 6805501, at *1 (N.D. Tex. Dec. 3, 2014).
7. Prudential Ins. Co. of Am. v. Dewey Ballantine, Bushby, Palmer & Wood, 170 A.D.2d 108 (N.Y. App. Div. 1991).
8. Spence v. Spence, 628 S.E.2d 869 (S.C. 2006).
9. Young v. Williams, 645 S.E.2d 624 (Ga. Ct. App. 2007).
10. See, e.g., *id.* at 625.
11. See, e.g., Arnold v. Carmichael, 524 So. 2d 464, 465-66 (Fla. Dist. Ct. App. 1988).
12. Medfusion, Inc. v. Allscripts Healthcare Solutions, Inc., 2015 WL 1455680 (N.C. Sup. Ct. March 31, 2015).



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The 2016 Convocation on Professionalism: The New Normal for Delivery of Legal Services

BY RITA A. SHEFFEY



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Every day, the news and social media show us how the world is changing. The legal news inundates lawyers with information about rapidly changing technology affecting our profession, extraordinary unmet legal needs, challenges preventing access to justice, unemployed or underemployed recent law school graduates, and the high levels of stress, substance abuse and suicide among members of our profession. How will today's lawyers not only survive, but thrive in this changing world? What jobs will there be for tomorrow's lawyers? How can and should we deal with rapidly evolving technology and the meteoric rise of companies providing legal services in non-traditional ways? How can we improve lawyer well-being in the face of all this change?

On Tuesday, Aug. 30, the Chief Justice's Commission on Professionalism (CJCP) will pose and attempt to answer these and other timely questions through its 2016 convocation, "The New Normal for Delivery of Legal Services." This full-day, six-hour CLE program, held at the State Bar of Georgia Conference Center, will open with a welcome and overview given by Chief Justice Hugh P. Thompson and Avarita L. Hanson, executive director, CJCP. Topics to be addressed include the following.

Lawyering Today and in the Future

Moderated by Prof. Nicole G. Iannarone, Georgia State University College of Law, this session will frame the day's discussion by defining access to justice broadly, beyond the traditional notion of low- and moderate-income clients, to include representation for all people and organizations that access the justice system and need legal representation. Invited speakers include: Paula Frederick, general counsel, State Bar of Georgia; Hon. Catherine M. Salinas, U.S. magistrate judge, Northern District of Georgia; Prof. Lauren Suedall Lucas, Georgia State University College of Law and director, Center for Access to Justice.

Embracing and Thriving with Tomorrow's Innovation and Today's Technology

Moderated by Emory University School of Law Assistant Dean for Public Service Rita A. Sheffey, this session will highlight some of the new models for providing legal services with a particular focus on rapidly evolving technology to assist lawyers. Looking at Fastcase, Ross, Avvo, LegalZoom and others, participants will explore what demand these companies are meeting, what lawyers from sole practitioners to public interest lawyers to lawyers in global mega-firms can learn from them and how lawyers can embrace new platforms to be more productive, efficient and successful. Invited speakers include Natalie Kelly, director, Law Practice Management, State Bar of Georgia; Ed Walters, founder and CEO, Fastcase; Andrew M.J. Arruda, co-founder and CEO, ROSS Intelligence; and John Mayer, executive director, Center for Computer-Assisted Legal Instruction.

Entrepreneurs for Change—Public, Private and the Academy: Georgia Showcase

Moderated by Prof. Timothy W. Floyd, Mercer University School of Law, this session will highlight Georgia lawyers who are using innovation to enhance access to justice and make legal services more accessible and affordable for all consumers. Invited participants include Stephanie A. Everett, executive director,

Lawyers for Equal Justice, Inc.; Michael E. Manely, The Manely Firm; Sheila Manely, The Justice Café; Dean Stephanie Powell, Career Services, Mercer Law, State Bar of Georgia Young Lawyers Division's Succession Planning Pilot Project. Others invited include recent Emory Law graduates working with United Lex using innovative technology to streamline litigation management for large corporate clients, and members of the first class of attorneys working with Lawyers for Equal Justice, Inc.

A Conversation with Linda A. Klein, President of the American Bar Association

During lunch, following a welcome by State Bar of Georgia President Patrick T. O'Connor, guests will enjoy an informational conversation between Prof. Steve H. Hobbs, University of Alabama School of Law, and Linda A. Klein, 2016-17 ABA president. Klein, past president of the State Bar of Georgia (1997-98) will inform the audience about the ABA's Commission on the Future of Legal Services and other important national initiatives.

Meeting the Needs of All Consumers of Legal Services

In this session, moderated by Hon. Pinkie Toomer, judge, Fulton County Probate Court, participants will address unique access to justice issues, including serving non-English speaking and deaf and hearing-impaired litigants; serving the large number of individuals charged with lower-level crimes who often appear *pro se*; and novel initiatives being employed in some courthouses by innovative legal administrators to make the courthouse more user-friendly. Invited participants include Jana J. Edmondson-Cooper, attorney, Georgia Legal Services Program; Clyde E. Mize Jr., partner, Morris Manning & Martin LLP; Erica L. Woodford, clerk, Bibb County Superior Court; and Claudia S. Saari, public defender, DeKalb County.

Lawyers Living Well

The day will conclude with a program moderated by Mercer Law Dean Daisy Hurst Floyd focusing on the mental, physical and social health of lawyers, consistent

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with the State Bar's recently unveiled Lawyers Living Well program designed to educate lawyers to improve their health to achieve work-life balance and better serve clients. Panelists include Hon. Shondeana G. Morris, judge, DeKalb County State Court; and Avarita L. Hanson, who will respectively discuss dealing with mental health challenges and aging in the law and transitioning out of law practice.

Please save the date for this important program (registration available through ICLE of Georgia, www.iclega.org) and join us to explore practical solutions for surviving and thriving in the "new normal." For more information, contact one of the Convocation Co-Chairs: Avarita L. Hanson, ahanson@cjcpga.org; Rita A. Sheffey, rita.sheffey@emory.edu; Nicole G. Iannarone, niannarone@gsu.edu; or Tim Floyd, floyd_tw@law.mercer.edu. •



Rita A. Sheffey is the assistant dean for public service for the Emory University School of Law.

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.

STEVEN MYERS ALLEN
Atlanta, Ga.
Atlanta's John Marshall Law School (1994)
Admitted 2000
Died May 2016

D. ROBERT AUTREY JR.
Marietta, Ga.
Woodrow Wilson College of Law (1969)
Admitted 1971
Died May 2016

HERMAN D. BAKER
Tucker, Ga.
Mercer University Walter F. George School of Law (1952)
Admitted 1965
Died November 2015

OBY T. BREWER III
Atlanta, Ga.
Vanderbilt University Law School (1979)
Admitted 1979
Died October 2015

J. MICHAEL CRANFORD
Macon, Ga.
Woodrow Wilson College of Law (1984)
Admitted 1985
Died June 2016

THERESA DRINKWATER DAVIS
Marietta, Ga.
Georgia State University College of Law (2003)
Admitted 2003
Died May 2016

LONZY F. EDWARDS
Macon, Ga.
Duke University School of Law (1976)
Admitted 1977
Died April 2016

MICHELE BROWN FLADEBOE
Palmyra, Va.
University of Georgia School of Law (1976)
Admitted 1977
Died February 2016

CYNTHIA LYNNE HANEY
Silver Spring, Md.
George Washington University Law School (1988)
Admitted 1991
Died May 2016

PEGGY ANN KATZ
Brookhaven, Ga.
Emory University School of Law (1990)
Admitted 1991
Died December 2015

ELIZABETH BELL KILLORIN
Brewster, Mass.
Georgia State University College of Law (1987)
Admitted 1987
Died July 2016

RALPH IRVING KNOWLES JR.
Atlanta, Ga.
University of Alabama School of Law (1969)
Admitted 1990
Died May 2016

JOHN S. KNOX IV
Atlanta, Ga.
University of Georgia School of Law (1949)
Admitted 1949
Died July 2016

CHARLES ALFRED MCCLENDON
Roswell, Ga.
Georgia State University College of Law (1993)
Admitted 1993
Died February 2016

EPHRAIM M. NEWMARK
Vero Beach, Fla.
Emory University School of Law (1969)
Admitted 1970
Died September 2015

WILLIAM L. NORTON JR.
Gainesville, Ga.
Emory University School of Law (1950)
Admitted 1950
Died May 2016

BRADFORD R. PIERCE
Palm Coast, Fla.
Mercer University Walter F. George School of Law (1978)
Admitted 1978
Died April 2016

CHARLES EDWARD PINKARD JR.
Cumming, Ga.
Atlanta's John Marshall Law School (1993)
Admitted 1994
Died March 2016

ALAN H. RUMPH
Atlanta, Ga.
University of Virginia School of Law (1984)
Admitted 1985
Died February 2016

WALTER B. RUSSELL JR.
Stone Mountain, Ga.
Emory University School of Law (1970)
Admitted 1970
Died May 2016

ROBERT L. STEED
Atlanta, Ga.
Mercer University Walter F. George School of Law (1961)
Admitted 1960
Died June 2016

SAMUEL W. WEAVER III
Knoxville, Tenn.
William and Mary Law School (1960)
Admitted 1968
Died June 2016

WARNER R. WILSON JR.
Atlanta, Ga.
University of Virginia School of Law (1962)
Admitted 1962
Died June 2016

DAN P. WINN
Cedartown, Ga.
Emory University School of Law (1948)
Admitted 1948
Died May 2016

SAMUEL W. WORTHINGTON III
Columbus, Ga.
University of Georgia School of Law (1970)
Admitted 1970
Died July 2016

MARK RICHMOND YOUNG
Columbus, Ga.
Albany Law School (1965)
Admitted 1971
Died May 2016

OBITUARIES



James Michael "Mike" Cranford passed away June 2016 at age 70. Cranford was born in Washington, D.C., and lived in Macon, Ga., since 1948. He had

more than 45 years of experience as a successful business owner and was an attorney in solo practice for nearly 30 years. In addition to his law practice, he served as a city council member for the city of Macon in a city-wide seat from 1995-1999 and was re-elected to City Council in March of 2005, where he served as a chairman for the appropriations committee during his last term.

Cranford was an active member of the community, working with youth for more than 45 years in sports, education, recreation and scouting. He lectured throughout the community and state on issues pertaining to youth, law and government.

In addition to his law practice, Cranford thrived on the competitive edge flat track racing motorcycles in the senior division. He had been in the top 10 for the past nine years and had currently achieved his third consecutive state championship in the senior division. He also enjoyed scuba diving, mountain climbing and boxing.

Survivors include his wife, Teresa Marie Cranford of Macon; children, William Bodie Pilcher (Kim) of Byron, Heather Iris Fields (Nic) of Tennessee, James Michael Cranford Jr. of Macon, and Christopher Michael Cranford of Macon; four grandchildren, Amanda Pilcher of Cochran, Ashley Powell (Kyle) of Byron, Dillan Spicer of Tennessee, and Marissa Spicer of Tennessee; three great grandchildren, Brodeigh Pilcher of Cochran, Gabriel Capps of Tennessee, and Savannah Spicer of Tennessee; mother, Wanda Lovell Cranford of Dawsonville; and two sisters, Sherry Lee Weeks (Bill) of Dawsonville, and Susan Kay Dillard (Mike) of Athens; and one brother, Julian "Jay" Cranford (Jan) of Macon.



Robert L. "Bob" Steed, 79, passed away June 4. Steed was born in Augusta, Ga., on Nov. 20, 1936, to the late Robert Pentecost Steed and Doris Roop Steed and

grew up in Bowdon, Ga. After graduating from Bowdon High School, Steed attended Mercer University, graduating in 1958. He received his law degree from Walter F. George School of Law of Mercer University in 1961.

Steed served as law clerk to Supreme Court of Georgia Justice Carlton Mobley from 1961-62. He joined King & Spalding in 1962 and was a partner for more than 50 years.

He served for two decades as a member of the Mercer Board of Trustees, including one term as chairman, and is only the seventh person elected as a Lifetime Trustee to the school. He holds an Honorary Doctor of Laws from Mercer University. The lobby of Mercer's Walter F. George School of Law building is dedicated to and named for him.

His work as a humor columnist for the *Atlanta Journal-Constitution* and the *New York Times* Regional Newspaper Group appeared for many years and typically poked fun at anyone who took themselves too seriously. He had several published books, including *Willard Lives!*, 1981; *Lucid Intervals*, 1983; *Money, Power and Sex (A Self-Help Guide for All Ages)*, 1985; *The Sass Menagerie*, 1988; *Mail Fraud*, *The Laughable Letters of Robert L. Steed*, 1991; and *A Ship without an Udder*, 1995. (Mercer University Press and Longstreet Press).

Steed was married to his childhood sweetheart, Linda "Lu" McElroy Steed, for 58 years. In addition to Lu, Steed is survived by three children, 10 grandchildren and his brother Michael P. Steed and wife Cheryl Steed of Bowdon. He was predeceased by his son, Robert Lee Steed Jr. ●

In Memoriam Contributions to the Georgia Bar Foundation

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Mother of Chief Justice Hugh P. Thompson
Jimmy and Fay Foy Franklin

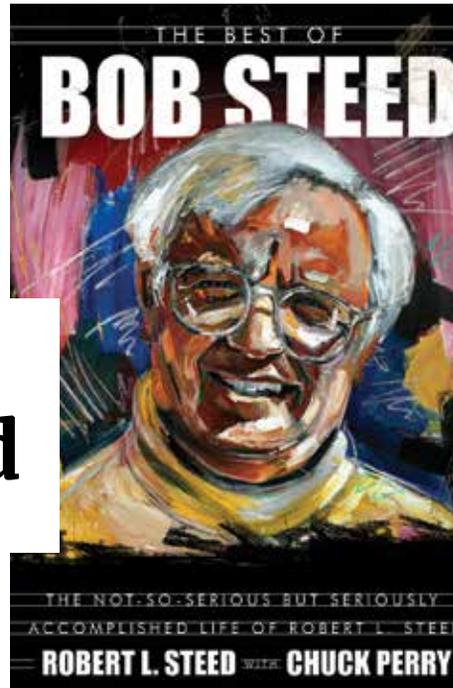
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Robert and Maggie Brinson

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The Best of Bob Steed

by Robert L. Steed and Chuck Perry, 224 pages, Mercer University Press

REVIEWED BY CHAD HENDERSON



The words “successful bond lawyer” and “esteemed humorist” may never again be used to describe the same person. Such was the enigmatic life of Robert L. Steed, as depicted in the last of his approximately half-dozen published works, titled simply “The Best of Bob Steed” (Mercer University Press, 2014).

“The Best of Bob Steed” is both a biography of the renowned satirist and a compendium of his works. The biography is written with admiration and affection by Chuck Perry, based in large part on interviews with Steed and his family, colleagues and friends. If there was any major tragedy or controversy in Steed’s life, it is missing from this account. In that sense, the biography portion of the book reads like a Christmas newsletter covering an entire lifetime rather than just a year.

In light of his recent passing, this part of the book now reads like a proud obitu-

ary, chronicling Steed’s journey from the small, west Georgia town of Bowdon, to his college and law school years in Macon, and eventually to Atlanta, where he joined King & Spalding when it was a firm of only 19 lawyers. It was there that Steed was mentored by none other than Griffin Bell, who later served as a federal judge and U.S. attorney general, and who is credited with giving his protégé the title of Half Lawyer, Half Wit.

However, the biography serves mostly as a prologue to the main attraction of the book, which is an extensive compilation of humorous articles, letters and essays written by Steed himself. The story of Steed’s upbringing and education give context to his gleeful skewering of small town life, traditional Christian quirks and hang-ups (with equal ribbing of both Baptists and Methodists), and especially his beloved Mercer University. And the sweet story of his

Nobody’s life is completely worthless, you can always serve as a bad example.

literally life-long friendship, courtship and romance of Lu, his soulmate and wife of nearly 60 years, help soften what might otherwise come across as mean-spirited or at least callous barbs at her expense. As Steed himself explains in one of his passages:

[T]here still are those who enthusiastically accuse me of saying and writing “rude and insensitive things” about my wiry wife. I, of course, vigorously and vehemently deny this allegation, pointing out that I would never say anything rude or insensitive about my bride for a number of reasons. First, she’s mean as a snake, vicious, cunning and cruel, and second, as any husband with a grain of sense knows, there comes a time in every twenty-four-hour day when the husband is in bed asleep while the wife is still up stalking about. If the husband has truly gotten crossways in the stream with the wife, she can seize upon that unhappy moment to take up some blunt, or, worse yet, sharp, instrument and do him some grievous bodily harm.

Most of the book is comprised of humor articles originally published in the 1980s and early 90s by the *Atlanta Journal-Constitution*. Thus, not only do they provide a window into Steed’s life and personality, they serve as a time capsule filled with the most ridiculed and satirized elements of that era of American culture, lifestyle and politics. His subjects included everything from television evangelists and infomercials to Dr. Ruth, Salman Rushdie, tofu, sushi, President Bush (the first one), the war in Iraq (ditto), joggers, “The People’s Court,” professional wrestling, Tammie Fae Bakker, and local targets like overzealous Olympics boosters, the Peachtree Road Race, the Big Chicken and gregarious Chastain Park concertgoers.

Based on the sample provided here, Steed’s humor and writing style were similar in tone and content to Lewis Grizzard, but without any particular agenda or partisanship. If he had an agenda at all, Steed’s seemed to have been very simply just to make his readers chuckle, with ob-

servations such as: “Nobody’s life is completely worthless, you can always serve as a bad example.” This is no doubt the result and reflection of the fact he made his living not from his writing, which was merely a diversion or hobby for him, but from his very successful legal practice. Unlike most writers, he wasn’t weighed down with any sort of pressure to make a statement or give voice to any particular cause or interest. The charm of his writings is that they can be enjoyed at face value, as comedy for comedy’s sake, like a Mel Brooks movie or *Caddyshack*. In fact, the image of Bob Steed that takes shape from exploring his writings is something like if Ted Knight’s character in *Caddyshack* had been the irreverent prankster, rather than Rodney Dangerfield’s.

Taken as a whole, the book serves as a fitting and final tribute to a man who left a lasting impression on those who knew him and many who didn’t. The lesson of the book seems to be that if a long-time partner at a silk stocking law firm can manage not to take himself too seriously, then maybe there’s hope for all of us. His good humor and optimism, as much as his loyalty and work ethic, seem to have endeared him to those who knew him best, including Emily Myers of Mercer University, who said of him: “Two things in particular come to mind when I think of Bob. One, he is the most loyal, dependable and true-to-his-word person I’ve ever known. Whatever he told you he would do, he did in spades, with his full energy and effort. And two, regardless of your status or station in life, he gave everyone the very best of himself.” It’s safe to say whoever knew him got the best of Bob Steed, and thanks to this book, the same is available now to those of us who didn’t have the pleasure. ●



Chad Henderson is a recreational writer and student of comedy who occasionally performs stand-up, for his own entertainment

if not others’. He is a member of the *Georgia Bar Journal* Editorial Board as well as the Executive Committee of the Real Property Law Section.



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Webinar | 1 CLE
- 19** ICLE: **Contract Litigation**
Atlanta, Ga. | 6 CLE
- 19** ICLE: **Nuts & Bolts of Family Law**
Savannah, Ga. | 6 CLE
- 23** ICLE: **Navigating the Ever-Changing World of Social Media**
Webinar | 1 CLE
- 30** ICLE: **Convocation on Professionalism**
Atlanta, Ga. | 6 CLE

SEPTEMBER

- 1** ICLE: **Trial of Leo Frank**
Atlanta, Ga. | 3 CLE
- 2** ICLE: **Class Actions**
Atlanta, Ga. | 6 CLE
- 2-3** ICLE: **27th Annual Urgent Legal Matters**
St. Simons Island, Ga. | 12 CLE
- 9** ICLE: **Secrets to a Successful Plaintiff's Personal Injury Practice**
Atlanta, Ga. | 7 CLE

- 9** ICLE: **Growth Companies | Legal and Business Considerations**
Atlanta, Savannah & Tifton, Ga. | 6 CLE
- 13** ICLE: **Law Practice Management**
Webinar | 1 CLE
- 15** ICLE: **Punitive Damages**
Atlanta, Ga. | 6 CLE
- 15** ICLE: **New Negotiation Advantage**
Atlanta, Ga. | 6 CLE
- 15-16** ICLE: **63rd Institute for City and County Attorneys**
Athens, Ga. | 12 CLE
- 16** ICLE: **Social Media and the Law**
Atlanta and Tifton, Ga. | 6 CLE
- 16-17** ICLE: **Intellectual Property Institute**
Amelia Island, Fla. | 11 CLE
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Webinar | 1 CLE
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Kennesaw, Ga. | 3 CLE
- 23** ICLE: **Georgia Law of Torts**
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- 27** ICLE: **Contract Modifications**
Webinar | 1 CLE
- 28-29** ICLE: **Video Replays TBD**
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- 29 - Oct 1** ICLE: **Southeastern Admiralty Law Institute**
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OCTOBER

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- 6** ICLE: **Zoning Law**
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Atlanta, Ga. | 6 CLE

- 14** ICLE: **12th Annual Family Law Seminar**
Augusta, Ga. | 6 CLE
- 20** ICLE: **Succeeding in Family Law Hearings and Trials**
Atlanta, Ga. | 6 CLE
- 20** ICLE: **23rd Annual U.S. Supreme Court Update**
Atlanta, Ga. | 6 CLE
- 20-22** ICLE: **Workers' Compensation Law Institute**
St. Simons Island, Ga. | 12 CLE
- 21** ICLE: **32st Annual Technology Law Institute**
Atlanta, Savannah and Tifton, Ga. | 6 CLE
- 21** ICLE: **Expert Testimony in Georgia**
Atlanta, Savannah and Tifton, Ga. | 6 CLE
- 21** ICLE: **23rd Annual Securities Litigation**
Atlanta, Ga. | 6 CLE
- 21** ICLE: **Basic Fiduciary Practice**
Macon, Ga. | 6 CLE
- 25** ICLE: **Dependency and Representing Children**
Webinar | 1 CLE
- 27-28** ICLE: **11th Circuit Appellate Practice Institute**
Atlanta, Ga. | 12 CLE
- 27** ICLE: **Nuts & Bolts of E-Discovery**
Atlanta, Savannah and Tifton, Ga. | 6 CLE
- 27-28** ICLE: **35th Annual Business Law Institute**
Atlanta, Ga. | 12 CLE
- 28** ICLE: **Trial Advocacy**
Statewide Satellite Broadcast | 6 CLE

Notice of Filing of Formal Advisory Opinion in Supreme Court

Second Publication of Proposed Redrafted
Formal Advisory Opinion No. 10-2

Hereinafter known as "Formal Advisory Opinion No. 16-2"

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after August 31, 2016.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, **only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia.** The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of

the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403(d) must be simultaneously served upon the Formal Advisory Opinion Board through the Office of the General Counsel of the State Bar or Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223(a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

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Proposed Redrafted Formal Advisory Opinion No. 10-2 Hereinafter known as “Formal Advisory Opinion No. 16-2”

STATE BAR OF GEORGIA
ISSUED BY THE FORMAL ADVISORY OPINION BOARD
PURSUANT TO RULE 4-403 ON JUNE 14, 2016
FORMAL ADVISORY OPINION NO. 16-2 (Redrafted Ver-
sion of Formal Advisory Opinion No. 10-2)

Question Presented:

May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child’s objection?

Summary Answer:

When it becomes clear that there is an irreconcilable conflict between the child’s wishes and the attorney’s considered opinion of the child’s best interests, the attorney must withdraw from his or her role as the child’s guardian ad litem.

Opinion:

Relevant Rules

This question squarely implicates several of Georgia’s Rules of Professional Conduct, particularly, Rule 1.14. Rule 1.14, dealing with an attorney’s ethical duties towards a child or other client with diminished capacity, provides that “the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” Comment 1 to Rule 1.14 goes on to note that “children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.”¹

This question also involves Rule 1.2, Scope of Representation, and Rule 1.7, governing conflicts of interest.² Comment 2 to Rule 1.7 indicates that “[l]oyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer’s other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.”³

This situation also implicates Rule 3.7, the lawyer as a witness, to the extent that the guardian ad litem must testify and may need to advise the court of the conflict between the child’s

expressed wishes and what he deems the best interests of the child. Finally, Rule 1.6, Confidentiality of Information, may also be violated if the attorney presents the disagreement to the Court.

Statutory Background

Georgia law requires the appointment of an attorney for a child as the child’s counsel in a termination of parental rights proceeding.⁴ The statute also provides that the court shall additionally appoint a guardian ad litem for the child, and that the child’s counsel is eligible to serve as the guardian ad litem unless there is a conflict of interest between the lawyer’s duty as an attorney for the child and the lawyer’s “considered opinion” of the child’s best interest as the guardian ad litem.⁵ In addition to the child’s statutory right to counsel, a child in a termination of parental rights proceedings also has a federal constitutional right to counsel.⁶

In Georgia, a guardian ad litem’s role is “to protect the interests of the child and to investigate and present evidence to the court on the child’s behalf.”⁷ The best interests of the child standard is paramount in considering changes or termination of parental custody. *See, e.g., Scott v. Scott*, 276 Ga. 372, 377 (2003) (“[t]he paramount concern in any change of custody must be the best interests and welfare of the minor child”). The Georgia Court of Appeals held in *In re A.P.*, based on the facts of that case that the attorney-guardian ad litem dual representation provided for under O.C.G.A. § 15-11-98(a) (the predecessor to O.C.G.A. § 15-11-262(d)) does not result in an inherent conflict of interest, given that “the fundamental duty of both a guardian ad litem and an attorney is to act in the best interests of the [child].”⁸

This advisory opinion is necessarily limited to the ethical obligations of an attorney once a conflict of interest in the representation has *already arisen*. Therefore, we need not address whether or not the dual representation provided for under O.C.G.A. § 15-11-262(d) results in an inherent conflict of interest.⁹

Discussion

The child’s attorney’s first responsibility is to his or her client.¹⁰ Rule 1.2 makes clear that an attorney in a normal attorney-client relationship is bound to defer to a client’s wishes regarding the ultimate objectives of the representation.¹¹ Rule 1.14 requires the attorney to maintain, “as far as reasonably possible . . . a normal client-lawyer relationship with the [child].”¹² An attorney who “reasonably believes that the client cannot adequately act in the client’s own interest” may seek the appointment of a guardian or take other protective action.¹³ Importantly, the Rule does not simply direct the attorney to act in the client’s best interests, as determined solely by the attorney. At the point that the attorney con-

cludes that the child's wishes and best interests are in conflict, the attorney must petition the court for removal as the child's guardian ad litem. The attorney must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney's view of the child's best interests and the child's view of his or her own interests is severe, the attorney may seek to withdraw entirely under Rule 1.16(b)(3).¹⁴

The attorney may not withdraw as the child's counsel and then seek appointment as the child's guardian ad litem, as the child would then be a former client to whom the former attorney/guardian ad litem would owe a continuing duty of confidentiality.¹⁵

This conclusion is in accord with many other states.¹⁶ For instance, Ohio permits an attorney to be appointed both as a child's counsel and as the child's guardian ad litem.¹⁷ Ohio ethics rules prohibit continued service in the dual roles when there is a conflict between the attorney's determination of best interests and the child's express wishes.¹⁸ Court rules and applicable statutes require the court to appoint another person as guardian ad litem for the child.¹⁹ An attorney who perceives a conflict between his role as counsel and as guardian ad litem is expressly instructed to notify the court of the conflict and seek withdrawal as guardian ad litem.²⁰ This solution (withdrawal from the guardian ad litem role once it conflicts with the role as counsel) is in accord with an attorney's duty to the client.²¹

Connecticut's Bar Association provided similar advice to its attorneys, and Connecticut's legislature subsequently codified that position into law.²² Similarly, in Massachusetts, an attorney representing a child must represent the child's expressed preferences, assuming that the child is reasonably able to make "an adequately considered decision . . . even if the attorney believes the child's position to be unwise or not in the child's best interest."²³ Even if a child is unable to make an adequately considered decision, the attorney still has the duty to represent the child's expressed preferences unless doing so would "place the child at risk of substantial harm."²⁴ In New Jersey, a court-appointed attorney needs to be "a zealous advocate for the wishes of the client . . . unless the decisions are patently absurd or pose an undue risk of harm."²⁵ New Jersey's Supreme Court was skeptical that an attorney's duty of advocacy could be successfully reconciled with concern for the client's best interests.²⁶

In contrast, other states have developed a "hybrid" model for attorneys in child custody cases serving simultaneously as counsel for the child and as their guardian ad litem.²⁷ This "hybrid" approach "necessitates a modified application of the Rules of Professional Conduct."²⁸ That is, the states following the hybrid model, acknowledge the "hybrid" nature of the role of attorney/guardian ad litem which necessitates a modified ap-

plication of the Rules of Professional Conduct," excusing strict adherence to those rules.²⁹ The attorney under this approach is bound by the client's best interests, not the client's expressed interests.³⁰ The attorney must present the child's wishes and the reasons the attorney disagrees to the court.³¹

Although acknowledging that this approach has practical benefits, we conclude that strict adherence to the Rules of Professional Conduct is the sounder approach.

Conclusion

At the point that the attorney concludes that the child's wishes and best interests are in conflict, the attorney must petition the court for removal as the child's guardian ad litem and must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney's view of the child's best interests and the child's view of his or her own interests is severe, the attorney may seek to withdraw entirely following Rule 1.16(b) (3).

Endnotes

1. Georgia Rules of Professional Conduct, Rule 1.14, Comment 1.
2. Georgia Rules of Professional Conduct, Rules 1.2, 1.7.
3. Georgia Rules of Professional Conduct, Rule 1.7, Comment 4.
4. O.C.G.A. § 15-11-262(b) ("The court shall appoint an attorney for a child in a termination of parental rights proceeding. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child").
5. O.C.G.A. § 15-11-262(d) ("The court shall appoint a guardian ad litem for a child in a termination proceeding; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem").
6. *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1359-61 (N.D. Ga. 2005), *rev'd on other grounds*, 2010 WL 1558980 (U.S. Apr. 21, 2010).
7. See *Padilla v. Melendez*, 228 Ga. App. 460, 462 (1997).
8. *In re A.P.*, 291 Ga. App. 690, 691 (2008).
9. See, e.g., Wis. Ethics Op. E-89-13 (finding no inherent conflict of interest with the dual representation of an attorney and guardian but concluding that if a conflict does arise based on specific facts, the attorney's ethical responsibility is to resign as the guardian).
10. Georgia Rules of Professional Conduct, Rule 1.2.
11. Georgia Rules of Professional Conduct, Rule 1.2, Comment 1.
12. Georgia Rules of Professional Conduct, Rule 1.14.
13. *Id.*
14. Rule 1.16 (b)(3) of the Georgia Rules of Professional Conduct provides that a lawyer may seek to withdraw if "the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent."

15. See Rule 1.6(e) of the Georgia Rules of Professional Conduct.
16. See, e.g., Wis. Ethics Op. E-89-13, Conflicts of Interests; Guardians (1989) (providing that dual representation as counsel and guardian ad litem is permitted until conflict between the roles occurs, and then the attorney must petition the court for a new guardian ad litem); Ariz. Ethics Op. 86-13, Juvenile Proceedings; Guardians (1986) (providing that a “lawyer may serve as counsel and guardian ad litem for a minor child in a dependency proceeding so long as there is no conflict between the child’s wishes and the best interests of the child”).
17. Ohio Board of Comm’rs. on Griev. and Discipline, Op. 2006-5, 2006 WL 2000108, at*1 (2006).
18. *Id.* at *2.
19. *Id.*
20. *Id.*, quoting *In re Baby Girl Baxter*, 17 Ohio St. 3d 229, 479 N.E.2d 257 (1985) (superseded by statute on other grounds).
21. *Id.* See also *Baxter*, 17 Ohio St. 3d at 232 (“[w]hen an attorney is appointed to represent a person and is also appointed guardian ad litem for that person, his first and highest duty is to zealously represent his client within the bounds of the law and to champion his client’s cause”).
22. See Conn. Bar Ass’n Comm. on Prof. Ethics, CT Eth. Op. 94-29, 1994 WL 780846, at *3 (1994); *In re Tayquon*, 821 A.2d 796, 803-04 (Conn. App. 2003) (discussing revisions to Conn. Gen. Stat. § 46b-129a).
23. See Mass Comm. For Public Counsel Servs., Performance Standards, Standard 1.6(b), at 8-10, available at http://www.publiccounsel.net/private_counsel_manual/private_counsel_manual.pdf/chapters/chapter_4_sections/civil/trial_panel_standards.pdf; See also *In re Georgette*, 785 N.E.2d 356, 368 (Mass. 2003).
24. Mass Comm. For Public Counsel Servs., Performance Standards, Standard 1.6(d) at 11.
25. *In re Mason*, 701 A.2d 979, 982 (N.J. Super. Ct. Ch. Div. 1997) (internal citations omitted).
26. See *In re M.R.*, 638 A.2d 1274, 1285 (N.J. 1994).
27. See *Clark v. Alexander*, 953 P.2d 145, 153-54 (Wyo. 1998); *In re Marriage of Rolfe*, 216 Mont. 39, 51-53, 699 P.2d 79, 86-87 (Mont. 1985); *In re Christina W.*, 639 S.E.2d at 777 (requiring the guardian to give the child’s opinions consideration “where the child has demonstrated an adequate level of competency [but] there is no requirement that the child’s wishes govern.”); see also *Veazey v. Veazey*, 560 P.2d 382, 390 (Alaska 1977) (“[I]t is equally plain that the guardian is not required to advocate whatever placement might seem preferable to a client of tender years.”) (superseded by statute on other grounds); Alaska Bar Assn Ethics Committee Op. 85-4 (November 8, 1985)(concluding that duty of confidentiality is modified in order to effectuate the child’s best interests); Utah State Bar Ethics Advisory Opinion Committee Op. No. 07-02 (June 7, 2007) (noting that Utah statute requires a guardian ad litem to notify the Court if the minor’s wishes differ from the attorney’s determination of best interests).
28. *Clark*, 953 P.2d at 153.
29. *Id.*
30. *Id.*
31. *Id.* at 153-54; *Rolfe*, 699 P.2d at 87.

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Notice of Filing of Formal Advisory Opinion in Supreme Court

Second Publication of Proposed Redrafted
Formal Advisory Opinion No. 15-R1
Hereinafter known as "Formal Advisory Opinion No. 16-3"

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after August 31, 2016.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, **only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia.** The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant

to Rule 4-403(d) must be simultaneously served upon the Formal Advisory Opinion Board through the Office of the General Counsel of the State Bar of Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223(a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

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.

Proposed Redrafted Formal Advisory Opinion No. 15-R1 Hereinafter known as “Formal Advisory Opinion No. 16-3”

STATE BAR OF GEORGIA
ISSUED BY THE FORMAL ADVISORY OPINION BOARD
PURSUANT TO BAR RULE 4-403 ON JUNE 14, 2016
FORMAL ADVISORY OPINION NO. 16-3
(Proposed Formal Advisory Opinion No. 15-R1)

Question Presented:

May a sole practitioner¹ use a firm name that includes “group,” “firm,” “& Associates”?

Summary Answer:

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

Opinion:

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

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

The question, of course, is whether a particular firm name is false, fraudulent, deceptive, or misleading. The requestor has asked only about whether the use of “group” in a sole practitioner’s firm name, such as Doe Law Group,² is false, fraudulent, deceptive, or misleading. Because the use of “firm” and “& Associates” in a sole practitioner’s firm name, such as Doe Law Firm and Doe & Associates, is so similar to the use of “group,” this opinion considers all three. Indeed, the Office of the General Counsel regularly receives requests for ethical guidance regarding the use of all of these terms in firm names, not just the use of “group” as the requestor has asked, and so it is appropriate to expand the scope of the requestor’s request.

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

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

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

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

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

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

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

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

This opinion adopts this definition. This means that a sole practitioner may not use a firm name that includes “& Associates” because, by definition, a sole practitioner does not have any

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

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

Second, must a lawyer whose firm name includes “& Associates” change the name of the firm when the number of associates employed by the firm falls below two? At that time, the name of the firm has become inaccurate, but this opinion recognizes the practical difficulties associated with changing a firm’s name. When confronted with this issue, other jurisdictions have taken a flexible approach. In Minnesota, the continued use of “& Associates” in a firm name will not subject the lawyer to discipline if the requisite number of associates are hired within a reasonable amount of time or if the lawyer reasonably and objectively anticipates hiring the requisite number of associates within a reasonable amount of time. Minn. Lawyers Prof’l Resp. Bd., Op. 20 (2009). In Alabama, a disciplinary decision may depend on how long the firm has been without the requisite number of associates and what efforts have been made to hire more associates. Ala. State Bar, Off. of Gen. Couns., Formal Op. 1993-11 (1993). Similarly, in the District of Columbia, the factors considered include the frequency and duration of the firm’s time without the requisite number of associates and the extent of the efforts made to hire more associates. D.C. Bar, Legal Ethics Comm., Ethics Op. 189 (1988). Ultimately, though, a law firm will have to change its name if it no longer employs at least two associates. This opinion agrees with the flexibility used in Minnesota, Alabama, and the District of Columbia, but determining whether a firm name

violates Rules 7.1 or 7.5 because of hiring and firing decisions will have to be made on a case-by-case basis.

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

Endnotes

1. For purposes of this opinion, a sole practitioner is a lawyer who does not have any partners and does not employ any other lawyers.
2. This opinion uses Doe Law Group, Doe Law Firm, and Doe & Associates as examples of firm names implicated by the question presented. These sample names are fictitious and are not intended to refer to actual law firms or lawyers.
3. It appears that there are opinions on this issue from only four other jurisdictions, and all four concluded that a firm name may include "group" only if there are two or more lawyers practicing together. Wash. State Bar Ass'n, Advisory Op. 2163 (2007); Wash. State Bar Ass'n, Advisory Op. 2121 (2006); Sup. Ct. of Ohio, Bd. of Comm'rs on Grievances & Discipline, Op. 2006-2 (2006); N.Y. State Bar Ass'n, Comm. on Prof'l Ethics, Op. 732 (2000); Mo. Bar, Informal Advisory Op. 20000142 (2000).
4. Again, it appears that there are very few opinions on this issue from other jurisdictions. All of them agree that a sole practitioner may use the term "firm" in his firm name. N.Y. State Bar Ass'n, Comm. on Prof'l Ethics, Op. 869 (2011); D.C. Bar, Legal Ethics Comm., Ethics Op. 332 (2005); Ala. State Bar, Off. of Gen. Couns., Formal Op. 1993-11 (1993); Iowa Sup. Ct., Bd. of Prof'l Ethics & Conduct, Op. 79-68 (1979).
5. In the analogous context of interpreting a statute, "the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter." O.C.G.A. § 1-3-1(b). This principle warrants reliance on the specific definition that "associate" has acquired in the context of the legal profession rather than on its general definition.
6. Almost all other state bar associations that have considered this issue, as well as the American Bar Association, agree with this conclusion. N.Y. State Bar Ass'n, Comm. on Prof'l Ethics, Op. 931 (2012); Minn. Lawyers Prof'l Resp. Bd., Op. 20 (2009); State Bar of N.M., Ethics Advisory Comm., Formal Ethics Advisory Op. 2006-1 (2006); S.C. Bar Ethics Advisory Comm., Ethics Advisory Op. 05-19 (2005); D.C. Bar, Legal Ethics Comm., Ethics Op. 332 (2005); Sup. Ct. of Ohio, Bd. of Comm'rs on Grievances & Discipline, Op. 95-1 (1995); Utah State Bar, Ethics Advisory Op. Comm., Op. 138 (1994); Va. State Bar, Legal Ethics Op. 1532 (1993); D.C. Bar, Legal Ethics Comm., Ethics Op. 189 (1988); Wash. State Bar Ass'n, Advisory Op. 1086 (1987); Fla. Bar, Ethics Op. 86-1 (1986); Wash. State Bar Ass'n, Advisory Op. 919 (1985); Miss. Bar Ethics Comm., Op. 93 (1984); Wash. State Bar Ass'n, Advisory Op. 178 (1984); Ky. Bar Ass'n, Ethics Op. E-246 (1981); Okla. Bar Ass'n, Ethics Op. 288 (1975); N.Y. State Bar Ass'n, Comm. on Prof'l Ethics, Op. 286 (1973); Colo. Bar Ass'n Ethics Comm., Formal Op. 50 (1972); ABA Comm. on Prof'l Ethics, Formal Op. 318 (1967); ABA Comm. on Prof'l Ethics, Formal Op. 310 (1963). Two states, Alabama and Arizona, appear to allow the use of "& Associates" when there is only one associate employed by the firm. Ala. State Bar, Off. of Gen. Couns., Formal Op. 1993-11 (1993); State Bar of Ariz., Comm. on Rules of Prof'l Conduct, Op. 90-01 (1990). This opinion rejects this view because "& Associates," as a plural term, obviously refers to more than one associate. Thus, the use of "& Associates" in a firm name to refer to only one associate is false, fraudulent, deceptive, or misleading. However, the use of "& Associate" would present a different question.
7. See State Bar of Ga., Formal Advisory Op. 98-4 (1998) (defining what constitutes an "of counsel" relationship between a lawyer and a law firm).
8. In Utah, a lawyer qualifies as an "associate" only if he "regularly spends a majority of [his] time working on legal matters for the firm." Utah State Bar, Ethics Advisory Op. Comm., Op. 04-03 (2004). This standard is too stringent, especially in light of the fact that a lawyer in Georgia is permitted to practice in multiple law firms. State Bar of Ga., Formal Advisory Op. 97-2 (1997).

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

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

A copy of the proposed amendments may be obtained on and after August 5, 2016, from the court's website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by September 9, 2016.

NEED HELP?

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WHAT IS THE CONSUMER ASSISTANCE PROGRAM?

The State Bar's Consumer Assistance Program (CAP) helps people with questions or problems with Georgia lawyers. When someone contacts the State Bar with a problem or complaint, a member of the Consumer Assistance Program staff responds to the inquiry and attempts to identify the problem. Most problems can be resolved by providing information or referrals, calling the lawyer, or suggesting various ways of dealing with the dispute. A grievance form is sent out when serious unethical conduct may be involved.

Does CAP assist attorneys as well as consumers?

Yes. CAP helps lawyers by providing courtesy calls, faxes or letters when dissatisfied clients contact the program. Most problems with clients can be prevented by returning calls promptly, keeping clients informed about the status of their cases, explaining billing practices, meeting deadlines, and managing a caseload efficiently.

What doesn't CAP do?

CAP deals with problems that can be solved without resorting to the disciplinary procedures of the State Bar, that is, filing a grievance. CAP does not get involved when someone alleges serious unethical conduct. CAP cannot give legal advice, but can provide referrals that meet the consumer's need utilizing its extensive lists of government agencies, referral services and nonprofit organizations.

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

- Where the information clearly shows that the lawyer has misappropriated funds, engaged in criminal conduct, or intends to engage in criminal conduct in the future;
- Where the caller files a grievance and the lawyer involved wants CAP to share some information with the Office of the General Counsel; or
- A court compels the production of the information.

The purpose of the confidentiality rule is to encourage open communication and resolve conflicts informally.



www.gabar.org/cap

Call the State Bar's Consumer Assistance Program at
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Save the Date!
08.24.16 | 5:30-8 p.m.



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Aug. 24, 2016 | 5:30-8 p.m.
State Bar of Georgia, 104 Marietta St. NW
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Register at www.georgiaYLD.org.

POSITION WANTED

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Senior Attorney seeks an Attorney/Partner with experience in estate planning law, contracts, general business law and/or general practice to share space, and/or merge with eventual buyout. This is a 38-year established practice based in Sandy Springs, Georgia, with Class A office space amenities. Send resume to smagfount@comcast.net.

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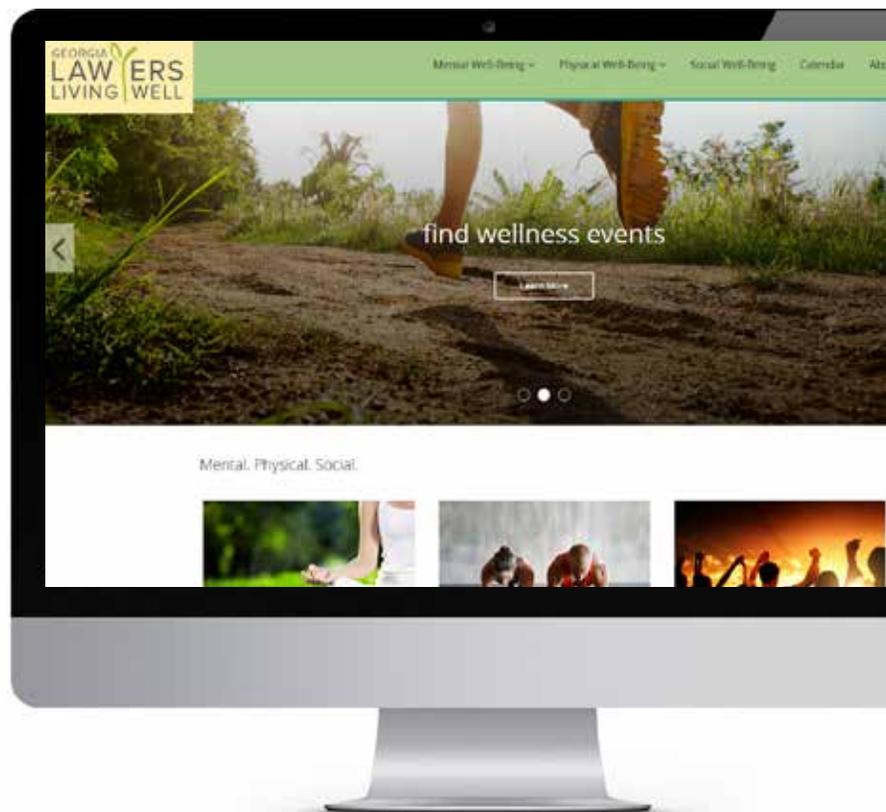
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www.lawyerslivingwell.org

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