Planning for a Family: What Lawyers Need to Know About Assisted Reproductive Technology **9**

Thinking Ahead: The Importance of Preserving Issues for Appeal **10**

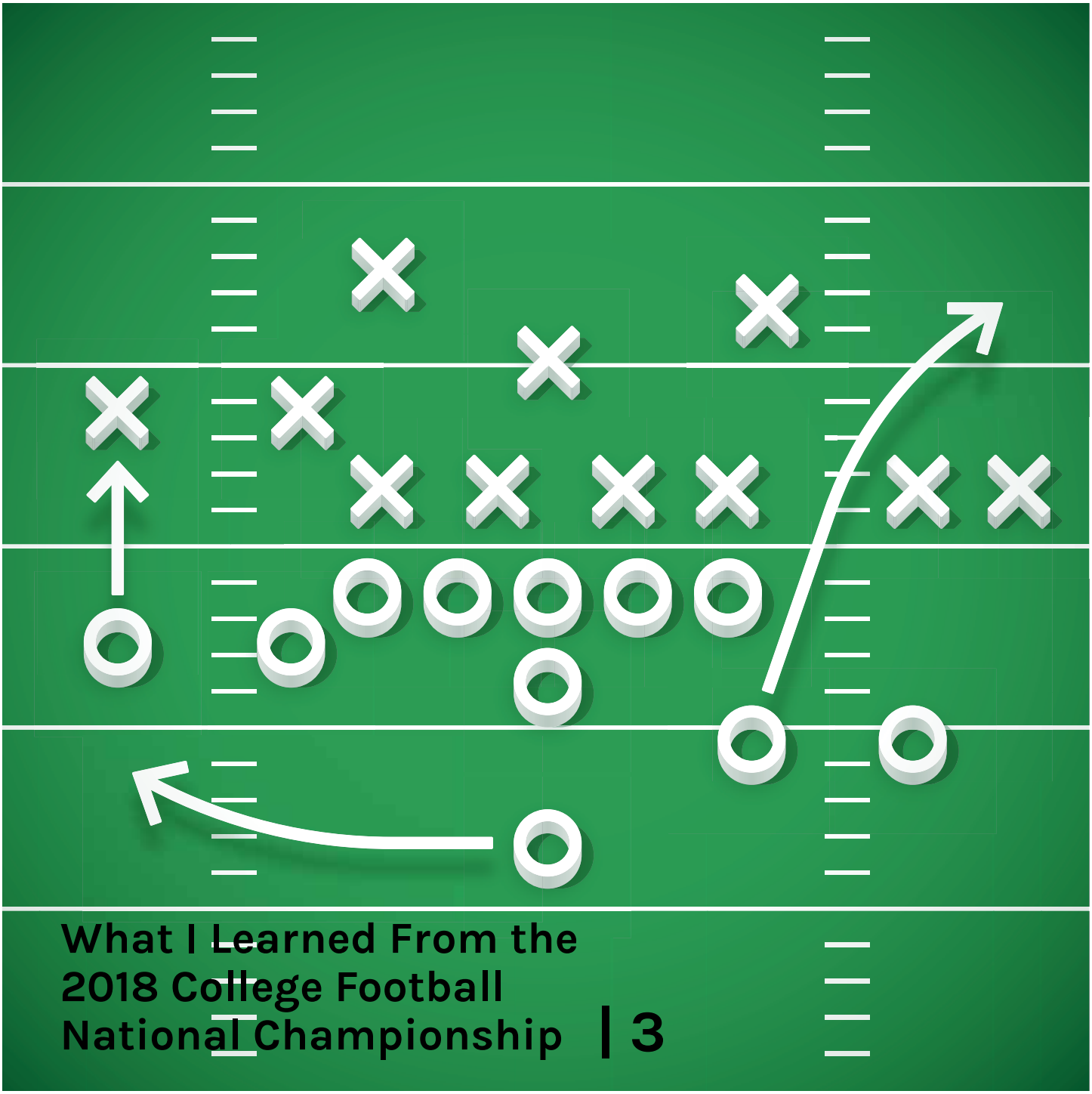
Aggressive Litigation: Experienced Lawyers Caution Against It **15**

State Bar of Georgia Young Lawyers Division

THE YLD REVIEW

Volume 59, Issue 2, February 2018

Working for the Profession and the Public



What I Learned From the 2018 College Football National Championship | 3

ILLUSTRATION BY GETTYIMAGES.COM/FILO

In this Issue

2 From the President
3 What I Learned From the 2018 College Football National Championship
3 From the Editors
5 What I Learned in 60 Minutes With Justice Britt Grant
6 What to Do When It All Goes Wrong
7 Uniform Power of Attorney Act
9 Planning for a Family: What Lawyers Need to Know About Assisted Reproductive Technology
10 Thinking Ahead: The Importance of Preserving Issues for Appeal
13 Ten Reasons to Register Your Firm or Legal Organization for the 2018 Legal Food Frenzy
14 Upcoming YLD Events
15 Aggressive Litigation: Experienced Lawyers Caution Against It

From the President

A New Year Presents New Opportunities to Learn and Serve

Nicole C. Leet

The new year is always a chance to set new goals, or to reaffirm old ones. It provides a good place to "start fresh" and look forward to a year that is not yet written. At the beginning of this new year, the YLD welcomed our 2018 Leadership Academy class, which kicked off its programming at the Midyear Meeting in January.

It was an honor to welcome this new class, which gave me an opportunity to reflect on my own Leadership Academy experience and how that shaped my leadership path and potential, as well as reflect on the concept of servant leadership, which is exemplified by Leadership Academy and the YLD as a whole. I am a proud graduate of the 2011 Leadership Academy and have continued to watch as each subsequent class nurtured another group of outstanding young lawyers to be leaders in the Bar and in their communities. The No. 1 thing I took away from my Leadership Academy experience was the connections I made with my fellow classmates, as well as the YLD and Bar members who engaged with my class throughout the program.

Those connections not only provided friends, but valuable resources and mentors—not necessarily in the traditional sense of seeking advice and counsel, but in people I respected and looked to when making decisions about what kind of leader I intended to be and what path I wanted to take. As I expressed to this year's Leadership Academy, that is the No. 1 thing I hope they take away from the program, too.

Of course, Leadership Academy programming provides opportunities to take a deeper look at the many aspects of practicing law in Georgia, from the courts across the state to the Legislature. While not specifically defined as a topic, Leadership Academy also highlights the ideas of leadership, not only to effectuate your personal goals, but the goals of the profession and society as a whole. This is servant leadership. Being a servant leader as a philosophy has its roots in times before the common era. As a phrase, "servant leadership" comes from Robert K. Greenleaf's 1970 essay "The Servant as Leader." Greenleaf said "[t]he servant-leader is servant first. . . . It begins with the natural feeling that one wants to serve, to serve first. Then conscious choice brings one to aspire to lead." Greenleaf believed that organizations, as well as individuals, could be servant leaders, stating:

> This is my thesis: caring for persons, the more able and the less able serving each other, is the rock upon which a good society is built. Whereas, until recently, caring was largely person to person, now most of it is mediated through institutions. . . . If a better society is to be built, one that is more just and more loving, one that provides greater creative opportunity for its people, then the most open course is to raise both the capacity to serve and the very performance as servant of existing major institutions by new regenerative forces operating within them.[1]

I believe the YLD practices servant leadership by encouraging service to the profession—in all of the varied forms leadership can take. There are many types of leadership which do not involve a title or traditional "leadership" mantle. In YLD committees, young lawyers have opportunities to collaborate and brainstorm ideas and take on leadership roles to generate programs or projects to meet the committee's goals. District representatives practice servant leadership principles by being active in their commu-

nities and encouraging leadership in both the practice of law and the public at large. They are often the epitome of "leading by example." The YLD is comprised of young lawyers who have a spirit of sharing their specialized knowledge with the public in the form of pro bono service, as well as leading by providing physical service in the form of community service and volunteer activities. YLD members also practice servant leadership in their practice as attorneys—by being professional when dealing with everyone from their own client to opposing counsel, judges and court staff. This serves to elevate attorneys from mere "lawyers" to "professionals."

The principles of servant leadership are not often spoken in direct terms, or specifically taught, but they are demonstrated throughout the YLD. Young lawyers often practice the "lead by example" philosophy and most probably do not realize the impact they have on all those with whom they interact. Yet their professionalism and commitment to the Bar and community are examples of the many varied paths one can take to be a "leader." I encourage all young lawyers to seek out leaders they respect and want to emulate as a mentor on a specific leadership path—whether professional, organizational, community or some other kind of leadership. And keep in mind that you yourself may be serving as a leadership mentor to those around you without even knowing it. YLD

Endnote

1. "The Institution as Servant," Robert Greenleaf (1972).

From the Editors

Learning is a Continual Process

ShaMiracle Rankin & Heather Riggs

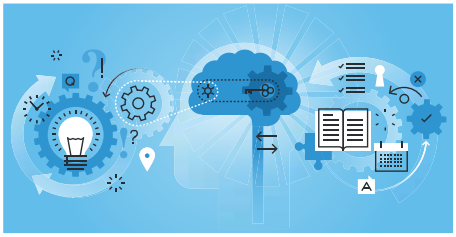


ILLUSTRATION BY GETTYIMAGES.COM/VARIJANTA

One never grows too old to learn something new from a family member, friend, mentor or colleague. As you embark upon a new year that is entrenched in new opportunities, always remain open to sharpening your skill set and acquiring knowledge. Becoming active in the YLD is an almost guaranteed way to learn something new and informative. Follow these tips to maximize your participation in the YLD and learn more this year.

First, join a committee and attend a lunch and learn. The YLD is comprised of substantive practice-based committees, many of which host meetings throughout the Bar year focused on practice-specific growth. As you listen to experts in your field, you will likely learn about professionalism, changes in the law and ways to succeed in your practice area. The great YLD members that you will meet at these meetings are an added bonus.

Second, attend the upcoming YLD Spring Meeting in Nashville, Tenn. "Iron sharpens iron" is an old proverb that rings true at YLD meetings. As you fellowship with members of the Bar, you are highly likely to glean words of wisdom and encouragement, and leave with newfound knowledge.

Last, continue reading *The YLD Review*, which received the American Bar Association's 2016-17 Award of Achievement for

▶ SEE **EDITORS**, PAGE 14

What I Learned From the 2018 College Football National Championship

Karlise Y. Grier

On Jan. 8, 2018, like millions of others, I watched the College Football National Championship game. As one of those rooting for Georgia, I was heartbroken at the loss to Alabama. But after reflecting on the game, I realized that there were some wonderful lessons for young lawyers as we strive to live out the values of professionalism.

The Chief Justice's Commission on Professionalism, in teaching professionalism, espouses the values of competence, civility and character, among others. All of these values were manifested in the championship game. At the half, a reporter interviewed coach Nick Saban who easily rattled off a list of mistakes Alabama—which was trailing Georgia—had made at that point in the game. The team's failure to demonstrate its

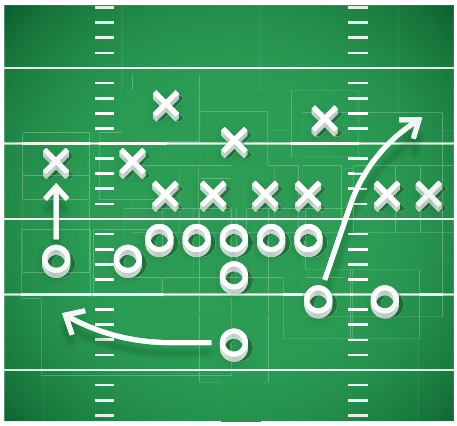


ILLUSTRATION BY GETTYIMAGES.COM/FILO

mastery of basic skills had hampered Alabama's efforts to prevail in the game . . . up to that point. As lawyers, our ethics rules, as well as our professional values, require lawyers to be competent in the work that we do. Competence, however, may not always equate with perfection, so it is important that we constantly evaluate our

▶ SEE **FOOTBALL**, PAGE 4

▶ **FOOTBALL**, FROM PAGE **3**

performance and learn from mistakes to grow more competent. As Alabama demonstrated, when we evaluate what we did well and what we need to do better, we can overcome mistakes and even benefit from them in a way that helps us perform better for our clients, while reaching our own professional goals.

Another value espoused by professionalism is civility. During the game, millions of viewers witnessed some uncivil (or in football parlance, unsportsmanlike) conduct. An Alabama player went so far as to punch a Georgia player in the head, for example. The Alabama player could have been ejected from the game, but instead his team was penalized 15 yards. In our work as lawyers, there will be many times when we get angry—with opposing counsel, with clients, sometimes even with our own colleagues. Learning how to appropriately handle that anger is important. Nothing is to be gained from uncivil conduct and more than likely we lose valuable ground if we "punch" in anger with a nasty letter, an unprofessional comment or unseemly conduct. After receiving some feedback from his coaches, the Alabama player returned to the game and finished it without further incident. We hope, as lawyers, we are never the ones who suffer the 15-yard penalty because of our uncivil conduct, but if we do, we can demonstrate through our future conduct that we have learned from our mistake as we move forward.

Character is defined as "the mental and moral qualities distinctive to an individual." Alabama demonstrated a character trait that I believe is important for lawyers: perseverance. One fact from the game—and a heartbreaking one at that if you were rooting for Georgia—is that the only time Alabama had the lead was when the team scored the winning touchdown. Alabama trailed (or tied) Georgia during the entire game. Yet despite their technical mistakes during play and despite their shortcomings with incivility, Alabama persevered, took an honest assessment of their mistakes, worked to correct their errors and stayed in the game. Alabama did not let its past failures, which happened to be in front of millions of people, define their ultimate outcome. As lawyers and as human beings, we are imperfect. We will make mistakes. We will do or say things we will regret. We will sometimes disappoint people with our performance and our conduct. Yet our failures do not have to define us if we persevere and stay in the game. We should always strive to improve our legal performance, develop professional character and play our best game. Then—like Alabama—I believe that we, too, will have victorious outcomes simply because we overcame our mistakes and stayed in the game.

The final thing I learned from the championship game is not mentioned in the list of professionalism values, but I think it is equally important. It is the unmistakable value of wise counsel. Coach Nick Saban has now won six championship titles in less than 10 years. His young players have a lot to learn from their coach. Coach Saban surprised millions of viewers after halftime when he put a true freshman quarterback in the game. That true freshman quarterback ultimately won the game with a spectacular pass into the end zone. As lawyers, and in particular as young lawyers, we should seek out the fellowship of more experienced attorneys that we can find by involvement in bar associations or other professional groups. Having wise counsel is important, so participate in legal fellowships that include more seasoned lawyers who can help guide you as you pursue professional goals in a way that demonstrates competence, civility and character. YLD

What I Learned in 60 Minutes With Justice Britt Grant

ShaMiracle Rankin

Intellect, curiosity and judgment are three words used by Craig Primis, a litigation partner at Kirkland and Ellis, to describe Justice Britt Grant. When I learned of Justice Grant's Jan. 1, 2017, appointment to the Supreme Court of Georgia, I became intrigued with her trajectory to the bench. I was fortunate to sit down with Justice Grant to talk about her legal career, observations from the bench and her ability to have it all. After talking with her for 60 minutes, awe-inspiring, collegial and genuine are three words that I would add to Primis' befitting description of Justice Grant. I left our interview enlightened and re-energized to conquer life—one day at a time. What follows is a condensed and edited version of our interview.

When you were a child, what did you want to be when you grew up?

As a young child my parents would not allow me to wash dishes. In preschool, I had my sights set on being a dishwasher. I guess that at a young age, my desire to be independent and assist was already apparent.

Dishwasher is quite unique. Most children want to be a firefighter or a teacher. When did you shift your career goals? Did anyone influence the change?

I began considering a legal career as a teenager. My mother first planted the lawyer seed. Growing up, my mother was a public school counselor. She would routinely have me take career tests, and I always received a strong match for a career as a lawyer.

Let's fast forward some years. You are 22, a recent graduate of Wake Forest and now you are working on the Hill. What did you learn from working in the Washington, D.C., office of then-Congressman Nathan Deal?

After college, I moved to Washington, D.C., because I wanted to try something new. Working on the Hill was a wonderful experience and a meaningful opportunity to serve. As legislative correspondent and then communications director, I was impressed by then-Congressman Deal's ability to get things done without seeking media attention for doing so. From my vantage point, he really focused on doing the job well, regardless of who was taking note.

That reminds me of an age-old definition of integrity: "doing the right thing, even when no one is watching." While in D.C., you also had the privilege of serving in the White House under President George W. Bush. Tell us about that experience.

The White House always has a feeling of intensity. I started out as the assistant to the director of the Domestic Policy Council. While working in the West Wing of the White House I had a front row seat to history as it unfolded. I began working in the White House just a few weeks before 9/11. Working in the White House during that time of both recovery and unity gave me a deeper appreciation for this country and our constitutional government. Through the tragedy that we faced, our shared resolve and friendship was powerful. I hope that we can get back to that state of powerful unity without an event forcing it to occur.

What did you learn from serving in the White House?

There are too many lessons to count. If I had to pick one—and this really reflects all of my experience in government—it would be the importance of the separation of powers. In school, I learned about the separation of powers but I began to fully understand it over the course of my career, beginning in Washington, D.C. I have worked in all three branches at the federal level and two at the state level in Georgia. Given my experience, I can better understand the importance of balance between each branch. Each branch has a role to play, and that structural division serves the liberty interests the Constitution sets out.

PHOTO PROVIDED BY SUPREME COURT OF GEORGIA

Supreme Court of Georgia Justice Britt Grant

Speaking of branches of government, did you encounter any obstacles moving from your role as solicitor-general, where you were the chief appellate lawyer for the state, to your new role as a justice on the Supreme Court of Georgia?

Everyone has their own set of challenges, but serving as the solicitor-general prepared me well to be a justice. As the solicitor-general, one important part of my job was to ensure that state laws were interpreted appropriately. As a lawyer for the state, I was obligated to pursue the interests of the state, but there is also a separate obligation to consider the proper interpretation of the law in Georgia. That latter interest is much more a factor in public work than it is in representing a private client, and provided a great background before I joined this Court.

▸ SEE **GRANT**, PAGE 8

ILLUSTRATION BY ISTOCK.COM/COMERHUI1979

What to Do When It All Goes Wrong

Heather Riggs

Having a wellness routine can serve us in our day to day lives, but its importance is never clearer than in times of trauma, tragedy or tumult. I recently learned this lesson the hard way when my beloved dog, Tallulah Belle, passed away suddenly and unexpectedly a few months ago. In the context of my life and in the scope of my own experience, it felt almost unbearable.

I have come to realize, as hindsight comes into focus, how having a stress management strategy during that time could have made a positive impact on the situation, even though it could not have changed it. As someone who has always been optimistic and laid back, along with having the good fortune to have avoided particularly awful things happening in my life, my ability—or, as it turns out, inability—to handle such events with my characteristic ease never crossed my mind. Now that it has, I am also more aware that many of my friends and colleagues struggle to balance life's unexpected curve balls with the general stress that is part and parcel of our profession, too.

But, why? While I am certainly no expert, I think it comes down to expectations. The expectations placed upon us by our professional counterparts, our clients and even those expectations we place upon ourselves can work to make a bad scenario worse. What is often meant as a measure of encouragement or accountability by our managing partners and fellow associates can easily turn into competitiveness—despite obstacles. There is an expectation to achieve. Our clients, who may view us as super heroes, trust that we can save the day no matter what is happening in our personal lives. There is an expectation to solve. Being statistically prone to perfectionism, we may wrestle internally with what we believe we ought to be able to handle that turns out to be difficult or downright impossible when the perfect storm hits. There is an expectation to remain unfazed.

I believe learning to be open, honest and vulnerable can go a long way in helping us readjust and realign expectations so that we can do a better job of coping when life hands us lemons. Engage in a healthy outlet. Confide in your bestie. And perhaps most importantly, ask for help when you need it.

There is no one-size-fits-all solution for managing stress, but as young lawyers we have access to a plethora of resources in each other and through the State Bar to make it easier to find what works for us. The Lawyer Assistance Program* is an excellent (complimentary and confidential) place to start and is one of the first places I turned when facing the loss of my pet.

While we cannot see the unforeseen, I have learned that having a "tragedy strategy" before you need it is well advised. If all else fails, you can always consider getting a dog. YLD

**The Lawyer Assistance Program (LAP) is a confidential service provided by the State Bar to help its members with life's difficulties. In order to help meet the needs of its members and ensure confidentiality, the Bar contracts the services of CorpCare Associates, Inc., Employee Assistance Program, a Georgia-headquartered national counseling agency.*

The LAP provides a broad range of helping services to members seeking assistance with depression, stress, alcohol/drug abuse, family problems, workplace conflicts, psychological and other issues. Bar members are entitled to six prepaid counseling sessions per issue per year.

You can contact the LAP by calling 800-327-9631, or by emailing Lisa Hardy, vice president, CorpCare Associates, Inc., at lisa@corpcareeap.com.

Uniform Power of Attorney Act

Margaret A. Head

ILLUSTRATION BY GETTYIMAGES.COM/JAMES SER

In early 2017, the Georgia Legislature passed the Uniform Power of Attorney Act (UPOAA or the Act) and on July 1, 2017, the Act became effective as Chapter 6B of Title 10 of the Official Code of Georgia Annotated. The UPOAA has been introduced in or enacted by approximately 28 states with the goal of providing a means for individuals to deal with their property in case of future incapacity while protecting such individuals during incapacity.

Misuse and abuse of powers of attorney (POAs) have risen steadily in the last several years, so it is not surprising that the primary motivation behind adopting the UPOAA in Georgia was to protect incapacitated and vulnerable individuals. Various organizations and entities, including the Alzheimer's Association, AARP, law enforcement agencies and the Georgia Banking Association, worked together to get the Act passed during the last legislative session.

Another reason for adopting the Act was to deal with the lack of willingness of third parties (i.e., financial institutions) to accept POAs. As many practitioners and clients have experienced, historically some financial institutions would not accept a POA that was not executed using the financial institution's own form.

Accordingly, the UPOAA is an attempt to balance the concerns about elder abuse and exploitation with the convenience of using a POA to transact business on another's behalf. As such, it contains provisions that encourage acceptance of a POA by third persons (such as banks and other financial institutions), safeguard vulnerable principals and provide clearer guidelines for agents.

The new Act begins at O.C.G.A. § 10-6B-1 and consists of four articles. Article 1 contains the general provisions regarding the creation and use of a POA, including provisions about acceptance and liability for failing to accept a POA. Article 2 provides default definitions for the various areas of authority that can be granted to an agent. Article 3 contains an optional statutory form that is designed for use by lawyers as well as lay persons. Article 4 contains miscellaneous provisions concerning the relationship of the Act to other law and pre-existing POAs. The remaining provisions of Chapter 6, which include the current law on POAs and agency relationships, remain unchanged.

O.C.G.A. §§ 10-6B-19 and 10-6B-20 contain the Act's acceptance provisions and provide that a failure to honor a POA that is substantially similar to the statutory form will subject such party to a court order mandating acceptance of the POA, as well as liability for reasonable attorney's fees and expenses of litigation incurred in any action or proceeding that confirms the validity of the POA or mandates the acceptance of the POA. The power of attorney form that is provided in the statute is not mandatory; as such, practitioners can still use their own power of attorney forms. However, if practitioners do not utilize the statutory form, the practitioner cannot utilize the acceptance provisions under the Act.

Following the designation of agents and successor agents, the substantive part of the form is divided into two sections dealing with different types of powers. The first section of the new form regarding powers describes areas of general authority which must be approved and initialed by the principal, in order to grant such authority to the agent. This section contains descriptive terms that cover real property, tangible personal property, stocks and bonds, banks and other financial institutions, operation of entities or businesses, insurance and annuities, claims and litigation, personal and family maintenance, benefits from governmental programs or civil or military service, retirement plans and taxes. If the principal desires to give the agent authority in all of these areas, he or she can initial one space which covers "all preceding subjects." Otherwise, each area of authority must be separately initialed. The statute defines each of these descriptive terms in Article 2 of the Act.

▸ SEE **UPOAA**, PAGE 10

▶ **GRANT**, FROM PAGE **5**

Over time, I have learned that in order to have it all, you have to just do it. You will always be able to find the time for those things that are most important. While you cannot do everything, and be a member of every organization, you can figure out what is most important to you.

Do you miss the litigation experience, even though you are obviously happy to serve as a justice? I sometimes wonder if, as a former-litigator yourself, you yearn to get out there and argue the case for some of the lawyers.
There are times when I miss working on cases, and developing and figuring out the most persuasive arguments. But because I am here to decide cases and not to argue a particular position, I do not wish to argue the cases for the lawyers who appear in front of the Court. Having argued before this Court myself, I certainly appreciate how it feels to stand before nine people asking you questions. Preparation is key for any attorney who has a case coming up on oral argument. Enlist your friends and colleagues to listen to your arguments and ask questions; you never want to hear a question for the first time during oral argument.

What is it like coming to the Court as a justice after arguing appellate arguments before the same Court?
It is certainly a lot less nerve-wracking. I was always nervous before oral arguments, but that is how you get the adrenalin to do your best. I realize the stress that accompanies oral arguments and have appreciation for the lawyers standing on the other side of the bench. It is plainly less stressful to ask the questions than to answer. But lawyers should welcome a hot bench, because it gives you the opportunity to get more of your arguments out to the justices, and to better understand what we need to know in order to decide the case.

Do you have a judicial role model or mentor?
Judge Brett Kavanaugh is one of my judicial mentors and role models. When I clerked for him, I was always impressed by how hard he worked to get to the right answer, even if it was not the one he preferred as a policy matter. Textualism and originalism were key. And he is an exceptional writer who instilled in me an emphasis on preparing clearly written judicial opinions. Last, I really learned from him the importance of civility and friendship between judges. You can disagree about what the law is without being disagreeable.

We have talked a great deal about your legal career and observations as a justice. I am sure our readers would love to learn more about you and how you gracefully wear so many robes. As a new wife, I sometimes find myself mulling over the idea of having it all—a great marriage, raising admirable children and flourishing in my career. As a wife, mother of three and a justice, what advice would you offer the younger attorney who desires to have it all?
In a way, there is a way to have it all. As a much more famous judge than me has said, each half of my life gives me respite from the other. I use an entirely different set of skills as a wife and mother than I do as a lawyer and now justice. Over time, I have learned that in order to have it all, you have to just do it. You will always be able to find the time for those things that are most important. While you cannot do everything, and be a member of every organization, you can figure out what is most important to you.

What has been your greatest accomplishment in your legal career and in your personal life?
In my personal life, I don't know if you can call it an accomplishment, but I am so thankful for my family. I treasure my husband and my three kids. Professionally, I am proud of appellate wins, but one trial-level case stands out, too. When I was in the Attorney General's Office, I led the state team in a Medicaid False Claims Act case. Ultimately, the case settled for more than half a billion dollars. I was proud that we recouped that money for the taxpayers of Georgia and the United States.

Those are some great accomplishments. Is there one person, alive or deceased, that if given the opportunity you would most like to have dinner with?
Though I feel like I should pick a great American hero or political leader from the founding of our country, I would have to pick my late grandmother. She was the matriarch of my family, strong in her Christian faith, a quiet leader and the overall rock of our family. She was also one of my greatest encouragers and an extraordinary example to me. Though she passed away three years ago, her memory and legacy continue to live on. She even has three namesakes in our family, including my daughter. It would be so special to talk with her again.

I too would pick my grandmother and for many of the reasons you provided. I am sure she is very proud of you, your family and the success you have achieved. Are you presently serving in your dream job or is there more on the horizon that you are striving for?
Yes, I am presently serving in my dream job. I am very honored to be here, and I enjoy having the opportunity to figure out what the law is. My job involves dealing with hard questions, and I am thankful to work on answering them. YLD

Planning for a Family: What Lawyers Need to Know About Assisted Reproductive Technology

Audrey Bergeson

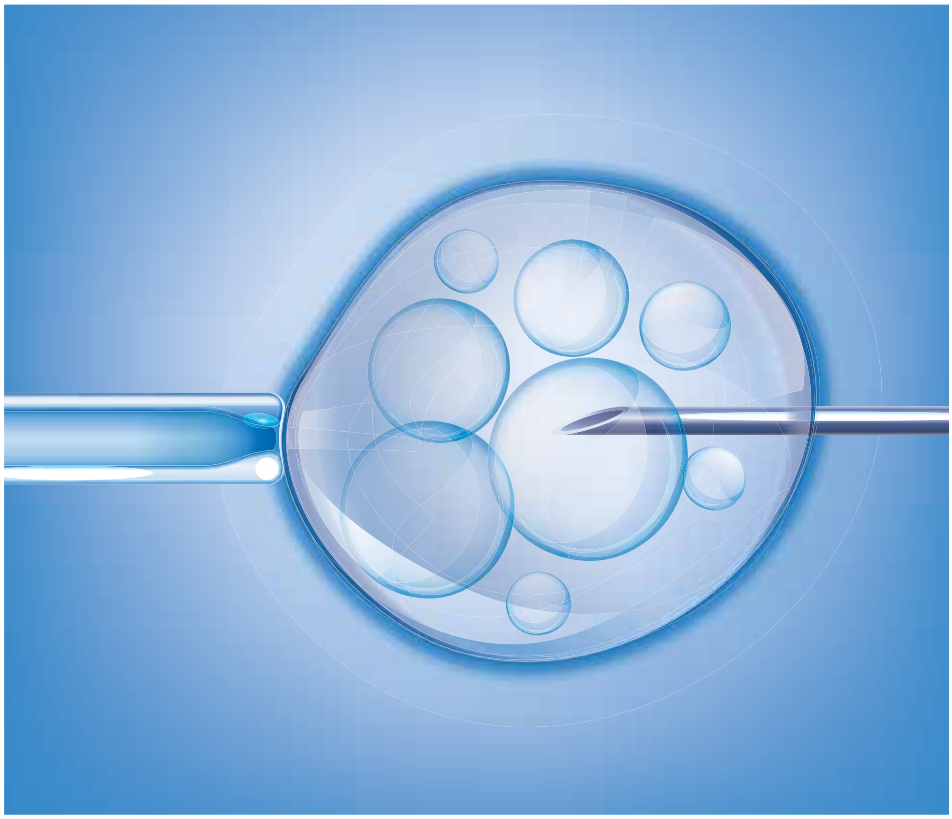


ILLUSTRATION BY GETTYIMAGES.COM/NEWANNYART

The field of reproductive technology has grown and evolved greatly over the last few decades. More and more often, individuals and couples are turning to reproductive technology to help build a family or preserve their ability to build one in the future. IVF, cryopreserving eggs or sperm, and other facets of this field have become more commonplace. Films like "Baby Mama" demonstrate a broadening understanding of building a family in our popular culture, including the idea that a single woman might choose to become a mother on her own. The television show "Jane the Virgin" unfolds as the protagonist learns that she has accidentally been artificially inseminated at a routine doctor's appointment, resulting in telenovela-style drama.

As social norms and expectations regarding family evolve, the law must catch up. The law surrounding assisted reproductive technology (ART) has not kept pace with the rapidly developing field and society's growing and changing concept of what family means. For this reason, it is important that individuals and couples considering growing their family through ART understand the legal implications. Lila Newberry Bradley, an Atlanta-based attorney who practices in this field, advises that "any couple in the process of planning to have a child needs to consult a lawyer, period."[1] Even for married couples conceiving a child without the use of ART, it is important to either update their wills or have one drafted. Depending on the form of ART, additional legal considerations and the dearth of law in this field make consulting with a legal professional a wise choice. Below are some forms of ART that a young professional should consider and the legal implications of those choices.[2]

Preserving Eggs or Sperm

There are many reasons that a person might choose to preserve his sperm or her eggs. For example, a woman who is not yet ready to have a family but wants to preserve her eggs for later use, may choose to undergo egg retrieval and have her eggs cryopreserved for a time in her career and life when she is ready to start her family. For some, health concerns may lead to this decision.

It is important that a young professional choosing to preserve his sperm or her eggs contact an estate planning attorney for advice and make his or her intentions clear in a will, stating what should happen to the sperm or eggs in the event of his or her passing. While such considerations may not be top of mind when choosing to cryopreserve genetic material, it is important to make known one's wishes in the event of death.

Sperm or Egg Donation

Sperm or egg donation is a tool to help build families that might be used for many reasons. A single woman may choose to have a child using donor sperm. A same-sex couple might be building their family using donor sperm or eggs. Heterosexual couples might use donor sperm or eggs to address fertility issues. Whatever the reason may be, sperm or egg donation is an important reproductive tool for creating families.

Individuals or couples electing to use donor sperm or eggs should consult an attorney to discuss their legal rights and options, particularly when the donor is known. For example, some couples choose a relative or friend as the donor. This person is likely to be involved in the life of the child who is created. In this instance, it is important that the

▸ SEE **PLANNING**, PAGE 12

▶ **UPOAA**, FROM PAGE **7**

In addition to the areas of general authority, the second section of the form includes areas of specific authority that may be exercised by an agent only if the POA expressly grants the authority. These powers are also known as "hot powers" since their exercise could significantly change the use and disposition of the principal's assets. These powers, if granted, can cause assets to be transferred from, or bypass altogether, the principal. Since the areas of specific authority deal with situations in which the principal's assets and estate plan could be significantly affected or changed and may be utilized to benefit the agent, these powers must be specifically initialed by the principal.

The new Act applies to any general POA executed after July 1, 2017. For powers of attorney executed prior to July 1, 2017, Chapter 6 will continue to govern, and the Act will have no application. As enacted, a POA must be signed in the presence of a witness and a notary. In practice, this means that not only does the principal have to sign in the presence of a witness and the notary, but the witness and notary must witness and notarize in each other's presence.

The Act provides that the execution of a POA does not revoke a prior POA unless the subsequent document so provides. Further, if the principal desires to revoke the POA or the agent's authority, the principal must notify the agent by certified mail and file such revocation with the clerk of the Superior Court in the county of the principal's domicile. The POA will terminate if the agent resigns, becomes incapacitated or dies and the POA does not provide for a successor agent.

A proposed technical corrections bill has been drafted by the Technical Corrections Committee for the State Bar's Fiduciary Law Section to address some potential flaws in the Act. The committee indicated that it is attempting to maintain the uniformity of the UPOAA, while improving the Act. Overall, the new Act preserves the durable power of attorney as an inexpensive and private form of surrogate decision making. At the same time, the Act attempts to deter the use of powers of attorney as instruments for financial abuse of incapacitated or vulnerable individuals. YLD

Thinking Ahead: The Importance of Preserving Issues for Appeal

Elissa B. Haynes

It is late in the evening and you find yourself still at the office working diligently to ensure you have everything in order for your jury trial that is scheduled to begin the following morning. You are most likely rehearsing your opening statement to yourself (or anyone who is willing to listen) and closely scrutinizing the file to reassure yourself that you know everything there is to know about the case. You have victory on your mind and the last thing you are thinking about is the aftermath of the trial and handling a potential appeal. You are not alone in this thought process. Many lawyers, regardless of experience level, fail to start preparing for an appeal until after trial and do not take the requisite precautions at the trial level in anticipation of an appeal.

It is well settled that a party's failure to object in the trial court constitutes a waiver of that party's right to raise a matter on appeal.[1] While there are entire practice manuals and other books dedicated to the litany of things counsel should consider both before and during trial to properly preserve errors for appeal, I offer the following tips as a starting point.

Obtain Rulings and Orders on All Pre-Trial Motions

In both civil and criminal matters, many pre-trial motions are brought before the court. One such motion that is frequently used prior to trial is the motion in limine, which asks the judge to issue a ruling on the admissibility of certain evidence and/or testimony. While it is not required that the motion in limine be in writing, the motion and court's ruling on such motion must be a part of the trial court's record for it to be subject to appellate review. Generally, to preserve an issue set forth in a pre-trial motion for appeal, there must be a ruling and order prior to the final disposition of a case.[2]

Object With Specificity When Appropriate

First and foremost, an appellate court will not consider issues which were not properly raised before the trial court.[3] Pay close attention during trial and raise all potential objections on the record. Further, contrary to popular belief, the trials we see on "Law & Order" and in movies are typically not representative of real world trials, and merely standing and shouting "objection!" will not be sufficient to subject your objection to appellate review.[4]

Objections During Jury Charges

As a general rule, a party in a civil case must object to the giving or failure to give a jury instruction before the jury returns its verdict.[5] That being said, an appellate court will review an erroneous jury charge in the event of a substantial error which is harmful as a matter of law, regardless of whether an objection is made.[6] In criminal cases, a party does not need to make an immediate objection to a jury charge and instead may simply reserve the right to object on appeal.[7]

Have Confidence in Your Objections and Do Not Withdraw Them

If you had a reason to make an objection, ask for a jury charge, or if you simply feel that a point needs to be made during trial, ask for a ruling on it even if you believe it is a losing argument. Withdrawing your objection or backing down without a ruling operates as though the issue you were questioning never existed to an appellate

court. Take your time and make your record. This is not the judge's first rodeo. He or she will understand why you are taking these actions.

Proffer Any Evidence Which May Have Been Excluded During Trial

During trial, both parties will attempt to introduce certain documentary evidence or testimony despite the other party's objection. In the event the judge rules that your evidence or testimony is inadmissible, make an offer of proof on the record showing what the evidence or testimony would have been or would have consisted of for preservation on appeal.

Be Careful What You Ask for Because You Might Just Get It

Be mindful of exaggerations or stretching your argument too far that you in turn give the other side grounds for an appeal. Take a moment to ask yourself whether that jury charge you drafted and fought about is really necessary, or whether it is only going to prolong the litigation in a lengthy appeal process. YLD

Endnotes

1. Hargett v. State, 285 Ga. 82, 83 (2009).
2. McCannon v. Wilson, 267 Ga. App. 815, 817 (2004).
3. *See* Sharpe v. Department of Transp., 270 Ga. 101, 102 (1998) ("objections should be made with sufficient specificity for the trial court to identify the precise basis.")
4. *Id.*
5. O.C.G.A. § 5-5-24(a).
6. O.C.G.A. § 5-5-24(c); Hawkins v. State, 116 Ga. App. 448 (1967).
7. Sweat v. State, 173 Ga. App. 441 (1985).

▶ **PLANNING**, FROM PAGE **9**

parties set out their intentions in a contract, prior to moving forward. The parent(s) and donor need to be on the same page about their respective rights and responsibilities. An attorney can advise persons growing their family on what to include in such a contract, as well as what might occur if the contract were not enforced.

In Vitro Fertilization (IVF)

The process of IVF involves the creation and transfer of embryos[3] to the uterus of the person who will carry the baby. IVF may involve the sperm and egg of the people choosing to raise the child, or the sperm and/or egg might be donated. For a heterosexual couple using their own sperm and eggs in IVF, the respective rights of the parties are clearer than in other situations. Nonetheless, such a couple should still consider consulting an estate planning attorney. Kristen Rajagopal, an estate planning attorney in Atlanta and owner of Bequest by Kristen Rajagopal LLC, shares the following advice to those undergoing assisted reproduction: "Seek an attorney not just because you should have an estate plan detailing what will happen to any remaining genetic material, but also to state your own personal desires regarding whether children born of that genetic material after your death should inherit from your estate. This is a deeply personal choice, which is not likely determinable through medical consent forms."

Couples should also talk about what they wish to do with any embryos created. Some people feel strongly that embryos are human life, not to be destroyed. Such a couple should discuss what that means for them practically. Do they intend to eventually have all embryos transferred at some point with the possibility that each could result in pregnancy? For those who may not use all of the embryos created, what should happen to any remaining embryos in the event of death of one or both parents? Additionally, when planning a family, it may be difficult to discuss matters such as "what if we get divorced?" Nevertheless, these hard questions are important. With current technology, it is possible to have a child with someone you have not been married to or intimate with in years. Embryos are more and more frequently the topic of divorce settlement discussions. Will they be used by either party after the divorce? If so, what are the expectations of each parents' rights and responsibilities? Who will pay to preserve the embryos? For parties going through a divorce, who have cryopreserved embryos, it is important to consult an attorney.

Georgia has very little statutory law governing ART. This limited law includes O.C.G.A. § 19-7-21, which provides that "[a]ll children born within wedlock or within the usual period of gestation thereafter who have been conceived by means of artificial insemination are irrebuttably presumed legitimate if both spouses have consented in writing to the use and administration of artificial insemination." This statute has been thought by some to extend to married couples using IVF where donor sperm was used. The Supreme Court of Georgia recently addressed this question in *Patton v. Vanterpool*.[4]

In *Patton*, YLD Leadership Academy alum Richard Sanders argued successfully before the Supreme Court of Georgia on behalf of the ex-husband. In *Patton*, the parties agreed that the wife would undergo IVF during the pendency of their divorce, as she desired a child. Donor egg and sperm were used and the final settlement agreement of the parties, which was incorporated by the court in its final order, stated that there were no children of the marriage and none were anticipated. The wife was pregnant at the time the divorce was finalized, thanks to IVF. The parties were divorced and the wife subsequently gave birth. Thereafter, she filed a paternity and child support action, seeking to declare her former husband the father, pursuant to O.C.G.A. § 19-7-21. The majority of the Court held that "IVF involves implanting a fertilized egg into a female; though each procedure aims for pregnancy, the procedures are distinct, and we conclude that the term 'artificial insemination' does not encompass IVF." Therefore, the Court found that O.C.G.A. § 19-7-21 did not apply to children conceived through IVF.

It is important to note that despite sensationalized local headlines like "IVF babies have no father," the Court answered only the narrow question presented. By contrast with O.C.G.A. § 19-7-21, which addresses only artificial insemination, O.C.G.A. § 19-7-20 addresses the relationship of children born to married couples more broadly. O.C.G.A. § 19-7-20 provides that "[a]ll children born in wedlock or within the usual period of gestation thereafter are legitimate." The difference is that O.C.G.A. § 19-7-21 creates an irrebuttable presumption. Thus, the Supreme Court's holding did not declare that the children had no father. Rather, it denied the former wife's claim to have her ex-husband declared the father under this specific statute.

Another IVF case, *Wilson v. Delgado*, grabbed some headlines last year. In *Wilson*, argued in April 2017, the trial court granted the husband full control over a divorcing couples' remaining embryos.[5] There, the husband's sperm had been used along with donor eggs. The wife appealed asking for "custody" of the embryos. Arguments were heard by the Supreme Court of Georgia, but the case was later dismissed as improvidently granted.[6] These cases are sure to be making more frequent appearances in our higher courts in this developing area of the law.

Surrogacy

Surrogacy is perhaps the most legally complex of all forms of ART addressed herein. It generally presents the same legal considerations as IVF, but with the addition of a surrogate. Depending on the situation, surrogacy might include two future parents, a sperm donor, an egg donor and a surrogate. As with other forms of ART, it is important that all participants are clear on their role and intended future role. Typically, doctors will not assist in ART using a surrogate unless legal contracts are in place defining each party's rights and responsibilities.

Conclusion

Those exploring their options using ART may have arrived at this juncture for many

reasons. Whether planning for the future or looking for other alternatives when unable to conceive without ART, those using ART should consider seeking out counsel. An attorney can help the parties understand the legal implications surrounding their choices and help plan for the future. Ultimately, understanding one's rights as a parent and having the tough conversations about the future, will help to build a strong foundation for growing a family. YLD

Endnotes

1. Lila Newberry Bradley is a member of the State Bar of Georgia, a Fellow of the Academy of Adoption & Assisted Reproduction Attorneys, and a member of the Georgia Council of Adoption Lawyers. We are thankful for her willingness to contribute her expertise to this article.
2. This article is an overview of some forms of ART and some situations which might result in a person or couple choosing ART. The writer is aware that this article touches on only a few such reasons and situations. The American concept of family is growing and expanding in rapidly changing ways and the absence of mention of certain family formulations is in no way meant to imply that those are any less important than those specifically mentioned herein.
3. As this is an overview rather than a detailed analysis, the term embryo is used generally herein. Nuanced arguments have been made and are likely to arise again as to whether the law should differentiate between embryos and pre-embryos, but that is beyond the scope of this article. For those interested, some discussion and analysis of this issue can be found in the seminal case on IVF, arising out of Tennessee, Davis v. Davis, 842 S.W.2d 588 (1992).
4. S17A0767, 2017 Ga. LEXIS 896.
5. S17A0797.
6. For those interested, the argument in this case can be viewed at https://www.gasupreme.us/court-information/oral-arguments-april-17-2017/.

Ten Reasons to Register Your Firm or Legal Organization for the 2018 Legal Food Frenzy

Brett M. Adams

The Legal Food Frenzy is a partnership among the Young Lawyers Division, the Attorney General's Office and the Georgia Food Bank Association, and the most profitable food and fund drive in Georgia. The 2017 Legal Food Frenzy was the competition's most successful year yet, generating $329,287.86 and more than 19,000 pounds of food, a statewide increase of 8.6 percent. In total, 215 firms and legal organizations in more than 45 cities and towns across Georgia participated in 2017.

We need volunteers like you to help market the 2018 Legal Food Frenzy and recruit law firms and legal organizations in your community and throughout Georgia. We have leadership and volunteer positions based on the number of hours you can commit.

Here are 10 reasons you should consider registering and/or volunterring:

1 More than one in four children in Georgia are food insecure and do not know if or when their next meal is coming.

2 Sixty percent of children rely on free or reduced lunches in public schools. This is sometimes the only meal these children will have. During the summer break, these children have even fewer options.

3 With just $1, you can help your local food bank purchase approximately four meals.

4 Signing up your firm or legal organization (thereby becoming "firm champion") evidences that you can take on more responsibility and you care about your community.

5 The Legal Food Frenzy is a great way to market yourself and your law firm, school, company or legal organization.

6 It's easy! Sign up your law firm or legal organization at http://galegalfoodfrenzy.org/sign-up and follow us on social media. Tag us in your posts using the hashtag #GaLFF18.

7 No heavy lifting! The local food bank will collect the food donations from law firms and organizations in your community.

8 There are 12 award categories, so everyone has a chance to win. Winners are recognized in the *Daily Report* and at the State Bar's Annual Meeting in June 2018. And, because many of the awards are based upon "pounds per person," the smallest firm has just as much of a chance as the biggest to win.

9 The YLD's Food Frenzy Committee has leadership positions available in your county. If you're willing to donate some of your time and you're interested in volunteering, please contact one of the co-chairs below.

10 *All* donations go to your *local* food bank and help feed families and children in *your* community. All donations are 100 percent tax deductible.

Please contact one of the senior co-chairs at the email addresses below if you are interested in this opportunity to broaden your legal network and help fight Georgia's hunger problem. YLD

YLD Legal Food Frenzy Committee
Justin Oliverio | justin@ajollc.com
Cameron Roberts | croberts@pacga.org
Brett M. Adams | badams@pacga.org

▶ EDITORS, FROM PAGE 3

the best state-level young lawyer's newsletter. As editors of *The YLD Review*, we work diligently to procure articles that will empower and enlighten our readers. In fact, in this issue, you will receive words of wisdom from Supreme Court of Georgia Justice Britt Grant, learn about the intersection of the law and reproductive technology, and realize the State Bar programs that are available to attorneys who are coping with stress.

These are just a few of the great articles that are included in this issue. As you read, remain open to learning something new and then challenge yourself to do something new in 2018—submit an article for inclusion in *The YLD Review*. YLD

Upcoming YLD Events

FEB 21 | YLD Women in the Profession Committee
The YLD Women in the Profession Committee is hosting a happy hour on Wednesday, Feb. 21, from 6-8:30 p.m. at Fadó Irish Pub in Midtown, located at 993 Peachtree St. NW, Atlanta, GA 30309. Please RSVP to Baylie Fry at bfry@bakerlaw.com.

FEB 22 | YLD IP Committee
Join the YLD IP Committee at a networking happy hour on Thursday, Feb. 22, at 5:30 p.m. at Tin Lizzy's in Buckhead for a fun evening of networking. Get to know other attorneys who practice the same area of law as you. Be sure to bring plenty of business cards! Please RSVP to Sonia Lakhany at sonia@lakhanylaw.com.

FEB 28 | YLD Solo/Small Firms Committee
Join the YLD Solo/ Small Firms Committee for the SSF Pro Bono Project on Wednesday, Feb. 28, from 12-2 p.m. at the State Bar of Georgia, Meeting Room 3. We will be answering questions for georgia.freelegalanswers.org. No training, experience or "expertise" is necessary. All that is required is a license to practice law in Georgia and a laptop. Lunch will be provided. Volunteers are encouraged to complete the Volunteer Attorney Registration at http://georgia.freelegalanswers.org prior to the event. If you are able to attend, please RSVP to Shalamar Parham at sparham@parhamlaw.net and include any dietary restrictions.

MAR 14 | YLD Litigation Committee
Join the YLD Litigation Committee as they host their annual six-hour "Litigation: Soup to Nuts" CLE on Wednesday, March 14, at the State Bar. All speakers will be YLD members, and topics will include Using Depositions at Trial, Voir Dire, Starting and Running a Law Firm, E-Discovery, State vs. Federal Court Litigation and Judges Panel on Ethics Tips for Young Lawyers. The cost of registration is $95. Go to http://iclega.org/programs/9871.html for more information and to register.

ILLUSTRATION BY GETTYIMAGES.COM/NATROT

MAR 24 | YLD Women in the Profession Committee
The YLD Women in the Profession Committee is teaming up with Atlanta Legal Aid to host an Estate Planning Clinic on Saturday, March 24, from 10 a.m.-2 p.m. Interested attorneys will provide legal services to metro-Atlanta women in need of a last will and testament, power of attorney and health care directive who cannot financially bear to obtain these important documents otherwise. Please consider joining us at First Presbyterian Church in Midtown located at 1328 Peachtree St. NE, Atlanta, GA 30309. Donating a small amount of your time can make a huge difference to these women. Please RSVP to Baylie Fry at bfry@bakerlaw.com. YLD

Aggressive Litigation: Experienced Lawyers Caution Against It

Sherwin K. Figueroa

ILLUSTRATION BY GETTYIMAGES.COM/ID-WORK

Whether it is a reference to a classic movie or listening to a war story, it seems that the practice of law was more cordial, professional and agreeable in the past. Today, law schools and CLEs teach "aggressive litigation" tactics, encouraging lawyers to take advantage of flooding a case with unnecessary, complex and last-minute filings. Litigators brag about surprising the opposing side, pushing the envelope with filings or being hostile in the courtroom to win at all costs.

Being a prosecutor for the last six years, I constantly repeat the advice Cobb Superior Court Judge Mary Staley Clark gave me. "Never forget your sense of humor" is my best panacea when confronted with cantankerous opposing counsel. For this article, I approached several lawyers and judges who have been practicing law for decades and have excellent reputations as being successful without being disagreeable.

Marty First

Marty First has been a prosecutor for more than 30 years in Cobb, DeKalb and Gwinnett counties. Most would certainly call him an aggressive, reliable, professional and straightforward litigator. First does agree that over his three decades of practice, some lawyers are proud to be what can only be described as difficult. His advice to new and young lawyers is: "Your career is going to be longer than any particular case; you will lose cases and you must abandon the 'win-at-all-costs' mentality. Your credibility and reputation matter more than any one case's outcome." He also suggests that we respect the judge and the process—regardless of the outcome.

Jimmy Berry

Practicing law for 47 years, Jimmy Berry has tried hundreds of jury trials and is a highly sought-after criminal defense attorney. Most years of his career he averages 20 jury trials, and he has defended at least 50 death penalty jury trials. Berry told me that in the past five to seven years he has seen and heard about more aggressive behavior among lawyers. He does not feel that this type of behavior is necessary to be successful since most cases do ultimately work out and trials are rarer. He shared with me that he tells his clients that being hostile or jumping up and down is not his style, and he does not find jurors to be persuaded by such lawyer behaviors. He tells clients that knowing the case, filing motions and conducting cross examination are where he can obtain the best results. When asked how he deals with difficult opposing counsel, Berry says that he goes to trial. He suggested that younger lawyers must not be obnoxious because it will hurt their reputation for future cases and will hurt their clients in the end.

Hon. S. Lark Ingram

Cobb Superior Court Judge S. Lark Ingram has served as a judge for more than 25 years and has practiced law for a total of 39 years. She has seen the level of hostility among lawyers' ebb and flow. Her recommendation to young lawyers is to attend networking events and to get to know lawyers in another context, rather than as adversaries. She warns that there will be cases where an adversary becomes an attorney on the same side of a case, such as a parent's attorney or guardian in a domestic matter. Ingram also recommends, within your qualifications, trying new areas or different sides of the law. In other words, switching sides may restore or maintain your empathy and ability to comprehend opposing sides. As YLD members, we can do so by taking advantage of pro bono opportunities.

I hope we can all find members in our profession whose personality and reputation we hope to emulate; someone who practices excellent advocacy, but with a good sense of humor. Do you know of such a person in practice? If you do, send them an email and thank them. YLD

ShaMiracle Rankin, Editor
Heather Riggs, Editor
The YLD Review
104 Marietta St. NW, Suite 100
Atlanta, GA 30303

Presorted
Standard Mail
US Postage Paid
Atlanta, GA
Permit No. 1447

PHOTO COURTESY OF THE KIMPTON AERTSON HOTEL

2018 YLD SPRING MEETING

THE KIMPTON AERTSON HOTEL | NASHVILLE, TENN. | MARCH 15-18

Visit www.georgiayld.org
for more information
and to register.