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State Bar of Georgia Young Lawyers Division

# THE YLD REVIEW

Volume 59, Issue 3, April 2018

Working for the Profession and the Public



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## YLD Officers

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Nicole C. Leet, Atlanta  
nleet@grsmb.com

## PRESIDENT-ELECT

Hon. Rizza O'Connor, Lyons  
rizzaoconnor@gmail.com

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William T. Davis, Atlanta  
will@hollandroddenbery.com

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Bert Hummel, Atlanta  
bert.hummel@lewisbrisbois.com

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Jennifer C. Mock, Statesboro  
jennifer@mocklaw.com

## NEWSLETTER CO-EDITOR

ShaMiracle J. Rankin, Atlanta  
srankin@thecplawgroup.com

## NEWSLETTER CO-EDITOR

Heather Riggs, Atlanta  
heather.riggs@atlantalegalmarketing.com



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## From the President

# YLD: Making a Difference One Hour at a Time



Nicole  
Leet

This spring brought the conclusion of our Signature Service Project: Pro Bono Challenge. The goals of this project were to challenge young lawyers to make a pledge to complete 50 hours of pro bono service this year, as well as increasing awareness for the need for pro bono service, dispelling the misconceptions that pro bono service required “representing” a client, taking a case or going to court. The State Bar of Georgia’s Access to Justice Committee was an invaluable partner, helping to pair those who took the challenge with opportunities in their interest area, practice area or geographic location. The Pro Bono Challenge was a huge success, raising almost 10,000 pro bono hours from young lawyers.

This project was set up as a challenge for a limited period to create a fun way to get the conversation started about pro bono service. The YLD celebrated all of those who took the challenge with its Signature Service Celebration event at Eventide Brewing.

Through participating in the challenge, young lawyers were exposed to a variety of pro bono opportunities, including answering

questions online at [georgia.freelegalanswers.org](http://georgia.freelegalanswers.org) or helping review nonprofit corporations’ bylaws. Many young lawyers realized that activities that they were already doing were, in fact, pro bono activities such as providing free legal advice on where to fill out forms, where to go to get help, serving on a nonprofit board or helping to identify and navigate legal issues.

While the Pro Bono Challenge has ended, the YLD’s commitment to pro bono has not. The newly formed YLD Pro Bono Committee is still working hard to identify and share opportunities for pro bono service, and is working with other committee chairs on their pro bono activities. The YLD’s Wills Clinic will continue to provide wills and advance directives for first responders with the help of YLD members. And the YLD continues to be a strong supporter of the State Bar Access to Justice Committee’s “Due Justice. Do 50.” campaign. If you missed out on the YLD’s Pro Bono Challenge, but are interested in stepping up to do pro bono service, sign up through the [duejusticedo50.org](http://duejusticedo50.org) website to become connected with a variety of opportunities in your practice area, area of interest or location. There is an enormous need for pro bono services in Georgia, and the YLD is making a huge difference stepping up to address the need and volunteering in a variety of ways. YLD

Due Justice.

Do 50.

The cause of justice  
requires an army of  
volunteers.

Answer the call. Do Pro  
Bono. Because You Can.



[duejusticedo50.org](http://duejusticedo50.org)

# What Does Home Mean?



**Erica Taylor**

Last year, I made a very important decision for myself. I decided to leave private practice and take a job at Atlanta Volunteer Lawyers Foundation (AVLF), running the program for which I had been volunteering since being sworn in as an attorney.

When I was first licensed, I contacted AVLF because I wanted to hit the ground running; I wanted to make a difference. I was referred to the Saturday Lawyer Program. I immediately signed up and was offered a case to take on.

The first woman I helped had a very serious mold problem. Black mold was visibly growing all over her bathroom. She and her children were constantly getting sick. There was also a rat problem. I will never forget the first picture of her home that she sent to me. I also remember how hard it was to eat lunch after that. I was able to get her out of her lease so that she could move back to her home state. I was also able to get her deposit back and get her moving expenses reimbursed. That first experience was incredibly eye-opening as to how much I truly took my housing for granted.

Now that I work here, unfortunately I see stories like that of my first client all the time. Truthfully, I see conditions that are a thousand times worse than hers. The first few months that I worked at AVLF, the stories shocked me: ceilings caved in, mushrooms growing out of walls, rats, possums, sewage floods. Now that I have been here for roughly half a year, most of these issues sadly have become commonplace. Some of us may never know what it means to live like some of our clients do. But, regrettably, some of us may get a glimpse soon.

Rent prices are steadily on the rise in Atlanta while income is not keeping pace. The lack of affordable housing options forces low-income individuals into substandard



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living conditions where unscrupulous landlords take advantage of their desperation. These landlords will often refuse to make even the most basic or necessary repairs, using any opportunity to evict a tenant who complains too much about the conditions on the property.

I have also seen clients move from uninhabitable place to uninhabitable place over and over again, constantly uprooting their family as they hurriedly try to find even the most basic form of shelter. They take their kids out of school and the children's grades suffer. The clients themselves miss too much work because they became sick from the deplorable conditions or because they had to take time off to find a new place and move again. Many clients have asked us to suggest a place or a resource and we have fewer and fewer options to offer.

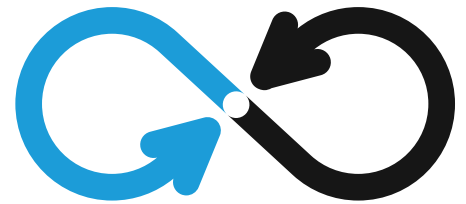
And then, I had my own toxic mold issue. After taking a job at a nonprofit, I made what I thought to be the intelligent decision to try to find a more affordable apartment. I discovered that there were not that many available. Then I found a place that I thought would be perfect. I was shown the shiny and glittery model apartment and told that my unit was not available to see. When the time came for me to sign my lease and move in, they drove me to the back of the complex and showed me a very different looking apartment. Still, I decided to take it. I figured that I could make do for the

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From the Editors

# There and Back Again

**ShaMiracle Rankin & Heather Riggs**



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Isn't it funny how things in our lives always seem to come full circle? No matter how far from home we stray, we end up coming back again, eventually. The highs and lows of life carry on as if they're a part of some invisible and unknowable rhythm.

The YLD works a lot like that, too. As we gear up to highlight two of our amazing Leadership Academy participants through their submissions on pages 5 and 11, we find ourselves reflecting on our own Leadership Academy experience and the impact it has had on getting the two of us to this very moment as newsletter editors. We're grateful, nostalgic, happy to be past it and wishing to be back all at the same time.

In the end, it's all about the journey, and this issue's articles have us getting there—wherever “there” may be—in every way imaginable. Whether you're cruising in a self-driving car, arriving at the destination of parenthood, climbing your way up the leadership ladder or embarking on the trip of a lifetime, we invite you to make it there and back again with us.

That's one of the greatest things about the YLD. No matter where we find ourselves on life's path, we're all in this together. Cue the epic road trip soundtrack. YLD

# Oh, the Places You Will Go: Enjoy the Journey



**ShaMiracle Rankin**

Each year, the Bar welcomes two new classes of young lawyers who are eager and anxious to take on the legal world. I was reminded of this fact when I participated in this spring's Beginning Lawyers Program held by the Transition Into Law Practice Program. The Bar Center was full of inquisitive lawyers who were ready to exercise their legal minds. As I sat in the room, I was reminded of my first six months of practice. There were days where I was convinced that I could take on a legal Goliath and days where I shuddered at the idea of my first jury trial. In hindsight, I have realized that it all works out. However, as a presenter at the Beginning Lawyers Program, I recalled the words from famous poet Dr. Seuss, "Oh the Places You Will Go." These words will serve as the framework for this article and a reminder to lawyers young and seasoned that regardless of your journey, if you stay in the race, "you will move mountains."

## Use What You Have

Before becoming a licensed attorney, who were you? That person does not disappear, simply because you have a bar license and esquire was added to your name. While you may be a young lawyer or new to a practice area, you still have a unique skill set or that *je ne sais quoi* that makes you who you are. Use those skill sets or your "it factor" to your advantage. If you were a great researcher in law school, then challenge yourself to be an extraordinary researcher as a lawyer. If you were an accomplished writer as an undergraduate, use your briefs or memorandums as an opportunity to further expound and hone your legal research and writing skills. If you ever considered becoming an actor or an actress, then make the courtroom your theater. There are many talents within that

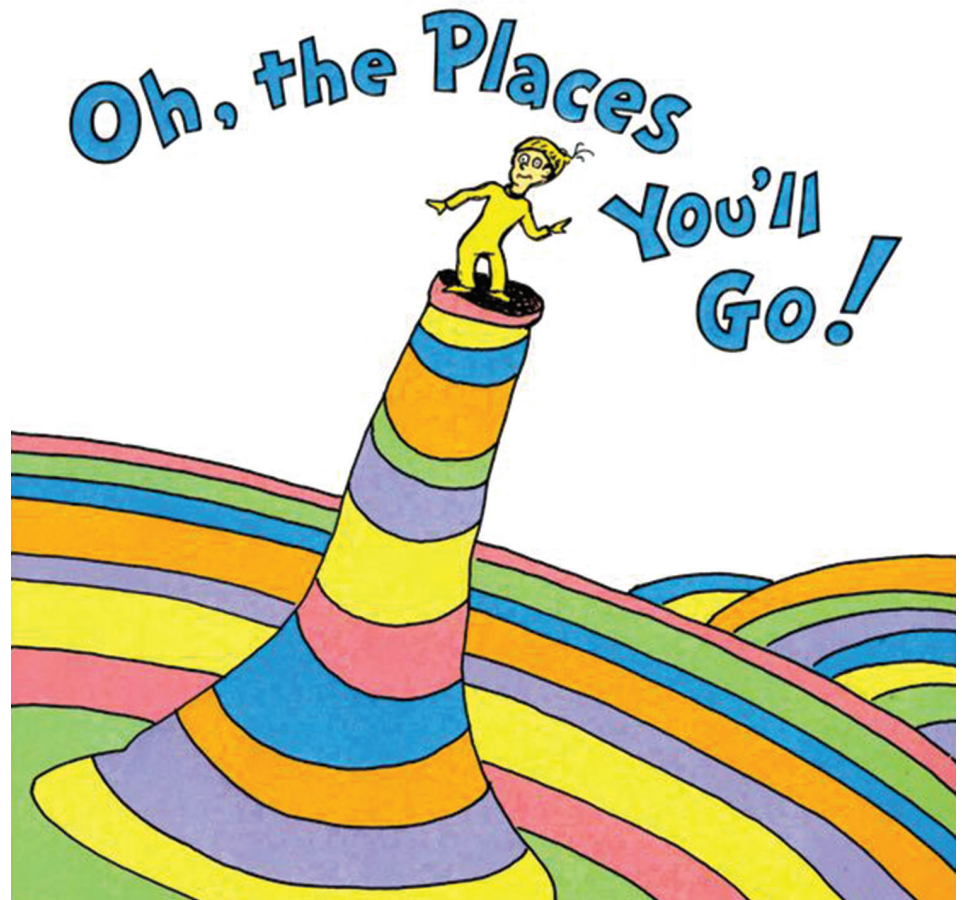


ILLUSTRATION BY DR. SEUSS

we each have that are not directly correlated with the fact that "you're a lawyer."

In fact, Dr. Seuss simplifies it all by reminding us that "[y]ou have brains in your head. You have feet in your shoes. You can steer yourself any direction you choose." Use the talents that you have cultivated for years and those which come naturally to you to become the lawyer you envision. Doing so is easier than you think. As a graduating law student, my mentor told me "not to allow the law to jade my personality. There are many lawyers who are great writers or leave you awestruck in the courtroom, but you are the only person who has your captivating personality. Use it to your advantage." Going into my first firm job, I went in with the knowledge that my personality is as unique as my name, embrace it. In doing so, I have won over cantankerous opposing counsel, found

favor with juries simply because they "like me" and navigated career moves with ease and a smile. Many trial lawyers remind jurors "not to abandon their common sense at the courthouse steps." Similarly, lawyers should also be reminded to not abandon that which has gotten you this far. Use what you have.

## Have Fun Along the Way

"Oh, the places you'll go! There is fun to be done! There are points to be scored. There are games to be won." As you forge your path in the law, do not become so bogged down with the practice of law that you fail to enjoy the journey. As with every journey, there are highs and lows. When you experience a victory (be it large or small) take a few moments to savor the win. If you are an

► SEE PLACES, PAGE 8

# Carrying Service Wherever We Go



**Brittanie Browning**

*Leadership Academy, Class of 2018*

One of my favorite quotes comes from Gandhi: “Be the change you want to see in the world.” I believe many people pursue the legal profession in hopes of changing the world, or at least their local communities, for the better. The ongoing needs of the Atlanta area are ever-present and we can be the people to address them. Luckily, the YLD and State Bar provide opportunities to engage in the community whether through pro bono work, such as the “Due Justice. Do 50.” campaign, or helping feed low-income children during the summer break through the Legal Food Frenzy.

During law school, I participated in the Health Law Partnership Legal Services Clinic, which works with children receiving care at Children’s Healthcare of Atlanta. Through the clinic experience, I interacted with low-income clients and strived to really understand their situation. The variety of legal issues the families faced were serious and lawyers made a real difference in their quality of life. I knew even after my clinic experience ended that I wanted to find ways to stay involved in that community.

After graduation, I sought out new opportunities to volunteer around Atlanta. I first engaged in the YLD by joining the Community Service Project Committee. I have always enjoyed volunteering because it’s a direct way to see the impact of my time on bettering someone else’s day. I took Gandhi’s challenge to heart. By reflecting on the quote, I realized that I most enjoy volunteering with children and with food banks. Whenever I prioritize time to volunteer with those entities, I always finish a shift feeling like it was time well spent.

This year is my first year co-chairing the Community Service Project Committee, which has led to leadership opportunities introducing other young attorneys to new volunteer projects or experiences.



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These service projects allow us to make a positive impact and improve the image of lawyers in the local community. Not only does the committee make it easier to plug in to a one-time volunteer experience on a Saturday, but it’s a chance to connect with other lawyers outside of a typical networking event.

One of the first committee service projects that I engaged in was Trees Atlanta. It was a workout, early on a brisk fall Saturday morning. Yet, I was able to meet folks in the neighborhood while we were planting trees. A group of kids were playing in a yard and were excited that we were there. It was a meaningful project because I know that those trees will grow in an area that will add shade and beauty that those kids can enjoy while growing up.

The second opportunity to serve came in December when the committee wrapped presents for foster children with the Division of Family and Children Services. It was overwhelming to go into a warehouse full of toys and clothes which were donated by individuals and companies. It was fun “shopping” for each individual child’s wish list before wrapping the selected items because each gift was specifically selected for him or her.

This year, the committee hosted two nonprofit attorneys to introduce our members to new career options and ways we can

get involved in nonprofits. In September, we hosted Rachel Spears, director of the Pro Bono Partnership of Atlanta (PBP), who connects attorneys with pro bono opportunities with a wide variety of local nonprofits. Rachel spoke about the nonprofits they assist and ways that lawyers have helped them. The PBP is one of the partners for the “Due Justice. Do 50.” challenge that asks every member of the YLD to pledge to do 50 hours of pro bono work this year.

In January, we hosted Tim Phillips, general counsel of the American Cancer Society, who discussed his career path as well as his role as a servant leader. During his talk, Tim quoted Marianne Williamson, who wrote, “And as we let our own light shine, we unconsciously give other people permission to do the same.” He challenged us, as young attorneys, to be a light in our community; prioritize volunteering to make a positive impact in our neighborhoods because that involvement has a ripple effect which will lead to others to do likewise.

I invite every member of the YLD to sign up for one of our service projects or seek out another opportunity that engages you. Whatever you do, get out there and make a positive impact by contemplating Gandhi’s words: become the change you want to see in your community. YLD

# Visionary Leadership Effects Powerful Changes



**Heather  
Riggs**

“Leadership,” according to American scholar, organizational consultant and author Warren G. Bennis, “is the capacity to translate vision into reality.”

But what methods should the leader of an organization, business or legal organization employ to carry out that translation? My own translation not only applies to where you work, but to the YLD itself. There are two distinct approaches, one guided by having objectives, also known as task-oriented leadership, and the other guided by the leader’s vision, or goal-oriented leadership. Which is the better path? Or should it be a combination of the two?

The objective approach to leadership is commonly described as one that focuses on the tasks that need to be performed or to achieve a certain standard of success. Pamela Spahr of St. Thomas University writes, “A task-oriented leader places a heavy emphasis on structure, plans, and schedules for getting things done. The task-oriented leadership style might include step-by-step planning and reward or punishment systems, constantly defining structure and goals, prioritizing achievement of specific outcomes, sticking to rigid schedules and requiring employees to set process-oriented goals and formulate plans to achieve them.”

Some characteristics of a skilled task-oriented leader, according to Spahr, include a clear understanding of the end result and the ability to structure a project, dissect project requirements and stay on schedule no matter what. The advantages of this approach can include clarity of purpose, precise task definition, coordinated work groups, strict schedule adherence and little or room for distractions or interference.<sup>1</sup>

But, writes Chirintan Basu for small business.chron.com, “The weaknesses of the task-oriented style include a fear of break-

ing the rules among those being led, which may lead to a lack of creativity, low morale and high turnover. Team members who are afraid to break rules may not take any risks, which means that innovation may suffer. Eventually, the creative individuals may become demoralized and leave to find interesting opportunities elsewhere.”<sup>2</sup>

Meanwhile, vision-oriented leadership, according to Leadership Freak blogger Dan Rockwell, “always centers on people, never projects, programs, properties or profits. When Martin Luther King Jr. said ‘I have a dream,’ it was about people, not programs.” Rockwell says vision creates vitality, focuses energy and explains purpose. “The clearer the vision,” he writes, “the greater the vitality.”<sup>3</sup>

Tristan Loo, writing for the Leadership Resource Center, puts it this way: “People will only follow a vision that is perfectly clear in their minds, therefore, it’s extremely important that you yourself must possess a crystal clear vision of what you want to accomplish and the direction that you want to go. Remember that vague goals will always produce vague results. Share your vision with your team and let them take ownership in that dream by showing them how it can benefit their lives. Remember that people don’t follow other people—they follow the vision that the chosen leader is committed towards.”<sup>4</sup>

According to Craig Woodman, writing for Chron.com, vision-focused leadership can inspire team unity to accomplish more than the team members can accomplish individually. “A vision defines what is success to a company or organization at any particular time,” Woodman contends. “It can define what an organization is supposed to look

like and the values that the company finds important. A vision gives a clear overview of the direction that the company is moving and how it will get there. It provides the overall reason for people to go to work and do what they do every day.”<sup>5</sup>

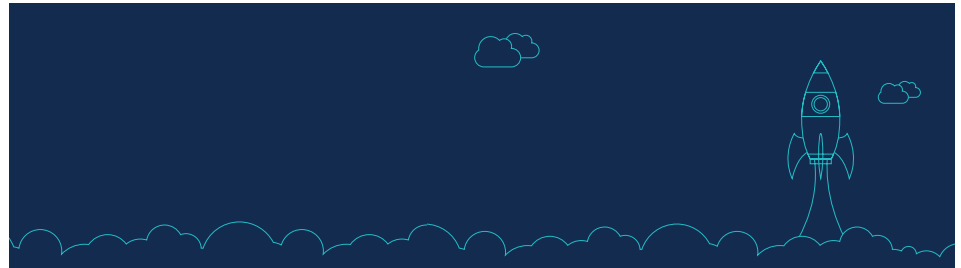
Retired Army Lt. Gen. Russel Honore, best known for turning around the military relief efforts following Hurricane Katrina, separates leadership from management this way: “Leadership is working with goals and vision; management is working with objectives.

“Unlike managers, leaders are followed because of their personality, behavior and beliefs. A leader personally invests in tasks and projects and demonstrates a high level of passion for work. Leaders take a great deal of interest in the success of their followers, enabling them to reach their goals to satisfaction—these are not necessarily organizational goals.”<sup>6</sup>

Effective leadership also includes the ability to turn an apparent problem into an opportunity. Writing for Future of CIO, Pearl Zhu declares, “Seeing something as a problem or an opportunity is definitely all about personal perception: all problems are opportunities, but not all opportunities are problems. A problem often leads to opportunities because they challenge us to address something that is not working for us.”<sup>7</sup>

While vision-focused leadership would appear to value long-term thinking exclusively over short-term thinking, Robert Ferguson of Ferguson Values, says that is a common but dangerous assumption. “Effective leaders know that dealing with the present and future is like talking about apples

► SEE LEADERSHIP, PAGE 10



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# The Wellness Crisis of the Legal Community and Practical Recommendations for Change



**LaKeisha  
Randall**

“When health is absent, wisdom cannot reveal itself, art cannot manifest, strength cannot fight, wealth becomes useless, and intelligence cannot be applied.” —*Herophilus*

The wellness crisis in the legal community must be a top priority for young lawyers. Research shows that lawyers have a higher percentage of depression, substance use and suicidal thoughts than the general population. And, the younger the lawyer, the greater the likelihood of substance abuse and depression.

The 2016 ABA Commission on Lawyer Assistance Programs (CoLAP) Study of the Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys revealed that 28 percent of lawyers self-reported signs of depression; 19 percent severe anxiety; and 11.5 percent reported suicidal thoughts during their career. While there may be a myriad of reasons to explain this phenomenon, the statistics correspondingly show that many of these ails began in law school.

In response to these alarming findings, the National Task Force on Lawyer Well-Being was organized, a collation of subject matter experts/stakeholders in the wellness-legal community. Partners included: ABA Commission on Lawyer Assistance Programs (of which I am one of 10 commissioners), National Organization of Bar Counsel, Association of Professional Responsibility Lawyers, ABA Standing Committee on Professionalism, ABA Center for Professional Responsibility, National Conference of Chief Justices, National Conference of Bar Examiners, ABA Young Lawyers Division and ABA Law Practice Division Attorney Well-being Committee. Together, they published “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.”

This report includes 44 recommendations directed to change the culture of the legal profession and the recommendations are broken down by legal stakeholders: judges, regulators, legal employers, law schools, bar associations, professional liability carriers and lawyer assistance programs.

I highly encourage that you read this report. Until then, here are some highlights:

## Barriers to Help-Seeking

- Not wanting others to find out they needed help;
- Concerns about privacy or confidentiality.

## Three Reasons to Take Action

1. Increased organizational effectiveness;
2. Ethical integrity and professionalism (Rule 1.1—competence, Rule 1.3—diligence, Rules 4.1 through 4.4—transactions with persons other than clients); and
3. Humanitarian reasons—it is the right thing to do. It directly benefits lawyers and their families.

## Five Core Steps for a Sustainable Culture in the Legal Profession

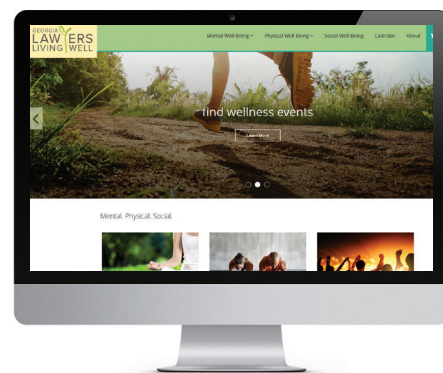
1. Identify stakeholders and their roles;
2. Diminish stigma associated with seeking help;
3. Emphasize that well-being is a part of competence;
4. Educate on well-being/mental health/substance use disorders; and
5. Make health and well-being a top priority throughout the profession.

## General Recommendations

The legal community must acknowledge the problems and take responsibility. Every one of us must take a leadership role within our sphere of influence. This can be as simple as intentional self-reflection or helping col-

GEORGIA  
**LAWYERS**  
LIVING WELL  
[www.lawyerslivingwell.org](http://www.lawyerslivingwell.org)

The State Bar of Georgia has made lawyer wellness a priority. In addition to CLEs and other activities related to wellness, we launched [lawyerslivingwell.org](http://lawyerslivingwell.org). Visit the site to view articles and resources related to wellness, and learn more about State Bar programs that help lawyers in their lives and practices. Be sure to check out the wellness partners and get discounts on gym memberships, fitness classes and more.



Learn more by visiting  
[www.lawyerslivingwell.org](http://www.lawyerslivingwell.org)

leagues you suspect are at risk or suffering in silence.

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### ► HOME, FROM PAGE 3

time being and maybe transfer to another unit later. I noticed that there was a smell but assumed it was typical of an old apartment that had been closed up for a while. It was not long before I noticed that the smell never went away and that I was getting sick. Shortly after, visible mold popped through where it had obviously been painted over.

I still remember the sinking feeling I had when I realized what was going on. I started weighing my options. I decided to break my lease and leave. Not long after leaving, I discovered mold growing on some of my personal property and felt that sinking feeling again.

The months that followed were chaotic. My move was fast and unplanned and led to disorganization. Even though I put in a mail forwarding request, I did not receive

all my mail, and at times bills went unpaid just by accident. But with each new upset also came the realization of how lucky I was. When I found the mold in my home, I had the money to move. I had the money to go to the doctor when I started to get sick. I had the money to buy a mold test and prove it was mold. When I discovered mold growing on my clothes, I had the money to get them cleaned.

These are luxuries that most of my clients just do not have. And the chaos that comes with unplanned moves happens to them over and over again.

At AVLf, we have a presentation that we show potential volunteers to educate them more about our clients and our program. One of the exercises that we occasionally do is ask people to say what they

think of when they hear the word “home.” We often hear words like “security,” “family” or “comfort.” Whether we realize it or not, home is often synonymous with stability and safety.

But what happens when it is not? What happens when you are afraid to go home? What if home makes you depressed or sick? What if you do not really feel like you have a home? Having a safe home means so much more than we usually think about. The role attorneys can play in stabilizing housing by standing up to landlords who would bully those without resources cannot be overstated.

Home means so much more than we often realize. The notion of home is something worth protecting and something that truly, *truly* needs protection right now. YLD

### ► PLACES, FROM PAGE 4

attorney at a firm, create a “kudos” folder for yourself and save your “wins.” This folder is helpful in many ways. First, on those days when you are questioning how great you really are, the wins within the folder are a reminder of the value that you add to the practice of law. Second, when you are up for your midyear or annual review, you can refresh your memory (and maybe your managing partner’s memory) about the contributions you make to the firm. Last, it can serve as a way of charting your growth. As your practice becomes more sophisticated, your wins do as well.

While you are creating legal memories, reserve time to create memories with your friends and family. As a young associate, I received great advice from opposing counsel, a managing partner at a mid-size firm in Atlanta. One Friday evening, I sent an email to opposing counsel at 10 p.m. The following Monday morning, he called me in response to my email and at the end of our conversation, he admonished “I am telling you what I have told many young associates in the past, protect your time. At 10 p.m. on a Friday night, you should not be sending emails unless it is an emergency. That email can wait. As an attorney, you have to protect

your time or no one else will.” Our conversation made a great impression upon me and from that day forward I became the protector of my time. While the idea of setting time parameters as an associate may seem daunting, it can be done. I have found that by creating protected time—be it deciding the latest time I am willing to stay at the office, fighting the urge to look at work emails when I am at home or forcing myself to take vacations from the practice of law—I have been able to create more memories with my family and friends. It is important that you have fun along the way.

#### Yes, You Will Succeed

If you ever have those days where you wonder, “should I have become a surgeon?” hold steadfast to your dreams of being a great lawyer. Success in the law is a marathon, not a sprint. As you mature in your legal career, build a tool kit for success.

Like many tool kits, there are items that can be consistently found regardless of the brand. A lawyer’s tool kit should always include the State Bar’s Ethics Helpline number, 404-527-8720, a good mentor, tough skin and the willingness to remain a student of the

law. If you utilize your toolkit to your advantage, tap into what truly makes you unique as an attorney and find time to enjoy the journey, “will you succeed? Yes! You will, indeed! You’ll move mountains.” YLD





# The Taxability of Personal Injury Settlements



**Kevin  
Patrick**

People often wonder whether or not their personal injury settlement is considered taxable income. Fortunately, the IRS has given a fair amount of guidance on this topic. The most important aspect is that the IRS typically will not disturb a settlement that is “consistent with the substance of the settled claims.” This terminology basically means that the IRS will not alter a settlement so long as the parties are being truthful about the nature of it.

Let’s consider the following types of settlements:

## Physical Injuries or Sickness

If a person receives a settlement for a personal injury case, such as an automobile accident, and the settlement is a lump sum payment, then the full amount is not taxable. A person does not need to include the settlement proceeds in his or her income. As a practical matter, attorneys typically request a settlement in this form. If a settlement is broken down, i.e. “X” for medical bills, “Y” for pain and suffering, and “Z” for lost income, then the IRS may tax certain portions of that settlement. A person would then be required to report it on Line 21 of Form 1040 as “other income.”

## Emotional Distress and Mental Anguish

Building on this topic, settlements oftentimes contemplate emotional distress and mental anguish. This type of settlement typically is not taxable, but again, the IRS has a few exceptions. The main exception is non-physical injury or physical sickness, which means that a person was not physically hurt. Those amounts are included as

taxable income. A person can, however, reduce this amount by any payments made for medical expenses attributable to emotional distress and previous deductions for medical expenses that did not give a tax benefit. Again, those portions would be reported as “other income.”

## Lost Wages or Lost Profits

A person may miss time from work. Assuming that the settlement is broken down, those proceeds are taxable. Additionally, that part of the settlement is subject to employment tax withholding by the employer. The employee needs to report those proceeds as “Wages, Salaries, Tips, etc.” on Line 7 of Form 1040. Another situation is lost profits from a person’s business. That portion of the settlement is again subject to self-employment taxes. The IRS has offered more guidance on it in Publication 334.

## Loss-in-Value of Property

Quite simply, if a settlement is less than the value of the property, then it generally does not need to be reported on a person’s tax return. In rare circumstances, a property settlement is more than the value of the property. If that is the case, then a person is required to report it as a capital gain under Schedule D of Form 1040.

## Interest and Punitive Damages

There are a few other areas that will occasionally come into play: interest and punitive damages. Interest on a settlement is generally taxable obviously as “interest income.” It’s reported on Line 8 of Form 1080. Punitive damages, which are designed to punish or deter conduct, are also taxable income even if the punitive damages arose from a personal injury case. Much like the other areas, punitive damages are reported as “other income” on Line 21 of Form 1040. <sup>YLD</sup>



## RUN FOR THE YLD REPRESENTATIVE COUNCIL

Now is the time to throw your hat in the ring! Elections for representatives will occur during the YLD Annual Meeting, at the Omni Amelia Island Resort on Amelia Island on Friday, June 8.

The Representative Council is comprised of 10 representatives from each of Georgia’s federal judicial districts (Northern, Middle and Southern), two representatives from outside Georgia and 12 members-at-large. Representatives participate in the YLD’s five annual membership meetings, provide input and perspective with respect to YLD activities and are appointed to serve on various YLD committees.

If you are interested in standing for election to the YLD Representative Council, please send a biography or resume to Mary McAfee, YLD director, at [marym@gabar.org](mailto:marym@gabar.org) or fax to 404-287-4990 by May 18. For more information about the elections, contact Mary McAfee or YLD President-Elect Rizza O’Connor at [rizzaoconnor@gmail.com](mailto:rizzaoconnor@gmail.com).

► LEADERSHIP, FROM PAGE 6

and oranges,” he writes. While they are both measures of time (like apples and oranges are both fruit), navigating the present and future of a company or organization require completely different skill sets.”

Finally, leaders are called on to balance control versus trust. Trust-based leadership seeks to delegate to teams—individuals and groups alike—as much responsibility for and control over tasks and projects as possible. This is something organizations would do well to bear in mind when tempted to solve challenging situations by tightening control. Of course, risks must be confronted and dealt with, but control must not be allowed to degrade or replace trust. Total control would mean zero trust. If we are aware of trust as a valuable resource and we use it actively in the workplace or in our bar associations—and in daily life—then this invisible raw material may prove to be the most important competitive parameter we have. After all, “trust-based leadership is downright effect; it saves money, bolsters motivation, enhances job satisfaction and ultimately brings greater productivity and prosperity to individuals, organizations and societies.” And isn’t that exactly the type of leader we’d all like to be? YLD

**Endnotes**

1. Pamela Spahr, St. Thomas University online, Nov. 25, 2014, updated Oct. 30, 2015.
2. Chirintan Basu, smallbusiness.chron.com <http://smallbusiness.chron.com/strengths-weaknesses-taskoriented-leadership-style-37835.html>.
3. Dan Rockwell, “The Seven Qualities of Visionary Leaders,” Leadership Freak Blog, July 23, 2013.
4. Tristan Loo, “Be a Visionary,” Leadership Resource Center, 2007.
5. Craig Woodman, “The Differences Between Vision and Mission Objectives,” Chron.com.
6. Avantika Monnappa, “What’s the Difference Between Leadership and Management?” Simplilearn.com, Oct. 12, 2017.
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8. Keld Jensen, “Control Is Good, But Trust Is Cheaper,” Forbes.com, Dec. 8, 2014.



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# Do You Have to Pay Your Interns?

## The USDOL Is Updating Its Guidelines



**Autumn  
Cole**

Leadership Academy, Class of 2018

Do you or your clients use unpaid student interns of local universities or law schools to perform various tasks? On Jan. 5, 2018, the U.S. Department of Labor (USDOL) announced that it is updating the test used to determine whether those interns must be paid under the Fair Labor Standards Act (FLSA). Previously the USDOL intern test was a rigid assessment that required all six factors to be met. The USDOL is introducing a new “primary beneficiary” test recently used by appellate courts across the nation, including the 11th Circuit.

In the 2015 11th Circuit case, *Schumann v. Collier Anesthesia, P.A.*, the court dismissed the USDOL’s old test as not accurately interpreting the U.S. Supreme Court (SCOTUS) precedence (glibly remarking that the USDOL has no more expertise in construing a SCOTUS case than does the judiciary). The 11th Circuit, and other appellate courts, found the old test to be outdated and incongruent with the characteristics of current-day internships. It is a reduction of the considerations used in a 68-year-old SCOTUS case, *Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S. Ct. 639 (1947). The facts of *Portland Terminal* relate to a railroad training program offered to create the company a labor pool and are difficult to compare with modern internships for extended academic degrees and professional certifications. Understandably, the courts found the old test’s factors to be unrealistic in a real-world setting.

The 11th Circuit also noted that the complexity arises in discerning who the primary beneficiary of the relationship is when both the intern and the employer obtain significant benefits. The factors of the “primary beneficiary” test are tailored to focus on the benefits derived by the intern, while also considering whether the employer is tak-



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ing advantage of the intern. This flexibility protects against the abusive and unfair practices that concerned Congress when enacting the FLSA, while still allowing for unpaid internships to exist legally.

The new “primary beneficiary” test allows for an identification of the primary beneficiary of a modern internship that can be tailored to account for the unique qualities of the types of internship at issue. The test looks at the totality of the circumstances, rather than a strict consideration of whether every factor is met. It considers the extent to which each factor is met and allows for a case-by-case analysis of the individual circumstances of the internship relationship. The test is comprised of seven factors:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provid-

ed by educational institutions.

3. The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Not every factor must weigh in favor of the same conclusion, rather a consideration of the whole, together with factors outside of those contained within the test may factor into the determination.

► SEE INTERNS, PAGE 15

► WELLNESS, FROM PAGE 7

### Create a Profession-Wide Action Plan

The State Bar of Georgia is already a leader in this sphere. Some critical Georgia resources include:

- [www.lawyerslivingwell.org](http://www.lawyerslivingwell.org)
- Attorney Wellness Committee
- SOLACE Committee
- Lawyers Helping Lawyers

### Facilitate, De-stigmatize and Encourage Help-Seeking Behaviors

Stigma prevents lawyers from seeking help. The most effective way to reduce stigma is direct contact with someone who has personally experienced a relevant disorder and has sought assistance. Here are some other ways to encourage help-seeking behaviors:

- De-emphasizing alcohol at events
- Promoting healthy additions to social events/model other ways to de-stress and have fun

### Recommendations for Employers

- Establish infrastructure that will promote well-being. For example, appoint a Lawyer Well-Being Committee or a well-being advocate to develop initiatives to promote well-being, create accountability and track progress of the strategies.
- Establish policies and practices that encourage well-being.
- Provide education on well-being. Incorporate well-being education in new lawyer orientation programs. Offer education on well-being topics to introduce new lawyers to the psychological challenges of the job and reduce stigma surrounding mental health problems.

Finally, remember that “[o]ne can save one’s life as a human being, along with one’s professional existence, if one seizes every opportunity to act humanly towards those who need another human being . . . Everyone in his [or her] own environment must strive to practice true humanity toward others. The future of the world depends on it.”  
*Albert Schweitzer, 1933* <sup>YLD</sup>

# Providing a Legal Helping Hand



**Mercedes Ball**

Winston Churchill once said, “we make a living by what we get; we make a life by what we give.” I know what you are thinking, that sounds good but there just are not enough hours in the day to juggle my career with social activities and pro bono work or community service. But if not you, then who? Many Georgians need the kind of help that only a lawyer can provide,<sup>1</sup> and pro bono work offers a unique opportunity for young lawyers to make significant and far reaching differences in the lives of others.<sup>2</sup> Thus, while we are all busy attempting to advance in our careers and be legal rock stars, pro bono service should be a priority.

Completing the suggested 50 pro bono hours a year<sup>3</sup> may seem daunting, but there are many ways to commit to pro bono work or other service activities while remaining focused on achieving in our legal careers and maintaining the work life balance that we all need to stay physically and mentally healthy. In fact, some mental health practitioners believe that service to others can improve your overall quality of life. According to Vaughn N. Gay, a Georgia licensed professional counselor, “[w]hen we give our time and efforts to those that are in need, we often experience intrinsic rewards that bring us satisfaction, knowing that our efforts can have a positive impact on someone else’s life. These rewards have a positive impact on our self-esteem and self-efficacy, while creating a space for us to understand our value to others.” In short, our pro bono service to others can significantly enrich our own lives because helping others simply feels good.

Getting involved with pro bono programs and service activities in Georgia is now easier than ever. For example, the State Bar of Georgia partnered with Atlanta Legal Aid Society, Georgia Legal Services Program, and Atlanta Volunteer Lawyers



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Foundation to create the “Due Justice. Do 50.” campaign,<sup>4</sup> which centralizes amazing service opportunities into a website that allows users to select the pro bono opportunity that best coincides with their skills, interests and schedules.<sup>5</sup> Additionally, Georgia is also home to numerous local and volunteer bar associations that offer quality pro bono service opportunities for Georgia lawyers. The need and opportunities are there—dive in!

As licensed Georgia attorneys, we have been afforded a coveted opportunity to use our skillsets to positively impact lives. While it is important for us to focus on making a living, using our talents to help others is fulfilling and is completely doable. So, no excuses in 2018, just do it! <sup>YLD</sup>

### Endnotes

1. One in five Georgians live in poverty and need legal aid and there are an estimated 20,000 critical need legal cases per year that need the help of pro bono attorneys. <http://duejusticedo50.org>
2. There are approximately 37,000 active attorneys per year in Georgia, but only 3,500 Georgia lawyers perform pro bono work with structured pro bono programs.
3. See Georgia Bar Rule 6.1 Voluntary Pro Bono Public Service, “[a] lawyer should aspire to render at least (50) hours of pro bono public legal services per year.”
4. <http://duejusticedo50.org>
5. <https://www.gabar.org/publicservice/volunteer.cfm>

# Trial and Heirs: What All Lawyers Need to Know About Probate in Georgia



**Mandy Moyer**

There are some areas of law that we all should know at least the basics of, due to the realities of the “my child/grandchild/cousin/sister-in-law’s friend is a lawyer, so he/she will know!” predicament. “Probate” or “estate administration,” or what happens after someone dies, is one of them, and I am uniquely qualified to discuss it with you due to my past life as staff attorney and chief deputy clerk of the Forsyth County Probate Court. Now that I have opened my own firm, I am educating other lawyers about probate basics so that you can provide better value to your clients . . . even if you do not practice probate law.

## The will is not effective until the judge says so.

Even when someone prudently acts by preparing and executing a will, there are additional steps to take once someone passes away. The will has to be “probated” before its terms can be put into effect.

## But the family might not need to probate the will.

(It is rare, though.) If there is a stand alone trust and all assets have been *actually* transferred into the trust before the death of the deceased person, then the Will may not need to be probated. If all assets were jointly titled and pass by operation of law, and/or all assets have beneficiary or “transfer on death” designations, then the probating the Will may be superfluous.

## The importance of being original.

Unlike some areas of law where a copy is every bit as effective as an original, that’s not the



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case when it comes to an original will. That’s because Georgia law assumes that if the original of the will cannot be located, the deceased person intentionally destroyed the will. It’s a rebuttable presumption, but a presumption that must be overcome, nonetheless.

## The debt question.

Families of a deceased person are not legally liable for the debts of the deceased person, provided no one was a joint borrower or signed a guarantee. But the deceased person’s assets are subject to the debt. So, generally, the family will not receive anything from the estate unless and until the deceased person’s debts are repaid or negotiated. But some assets—like life insurance proceeds, retirement accounts, etc.—are typically not part of the probate estate, and therefore pass directly to the named beneficiary . . . regardless of whether the deceased person had unpaid debts.

## Heirs vs. beneficiaries: it matters.

Some of you are rolling your eyes at me, but *believe me* when I say that many lawyers do not understand the difference between these legal terms, or why it matters. Even lawyers that practice in probate courts somewhat regularly will use the words interchangeably, but they are not synonyms. “Heirs” are the people legally entitled pursuant to Georgia law to receive your property upon your death. “Beneficiaries” are the people who are to receive property according to the will. The confusion arises because quite frequently, the heirs are the beneficiaries. But the words mean different things, and it is important to distinguish between the two because during one part of the probate process, the heirs receive notice while the beneficiaries do not, and then later, the beneficiaries receive notice while the heirs do not. So, if you are going to incorporate probate law as part of your practice, take the time to learn the ter-

► SEE HEIRS, PAGE 15

# Avoid FLSA Wage Claims for Off-the-Clock Smartphone Work



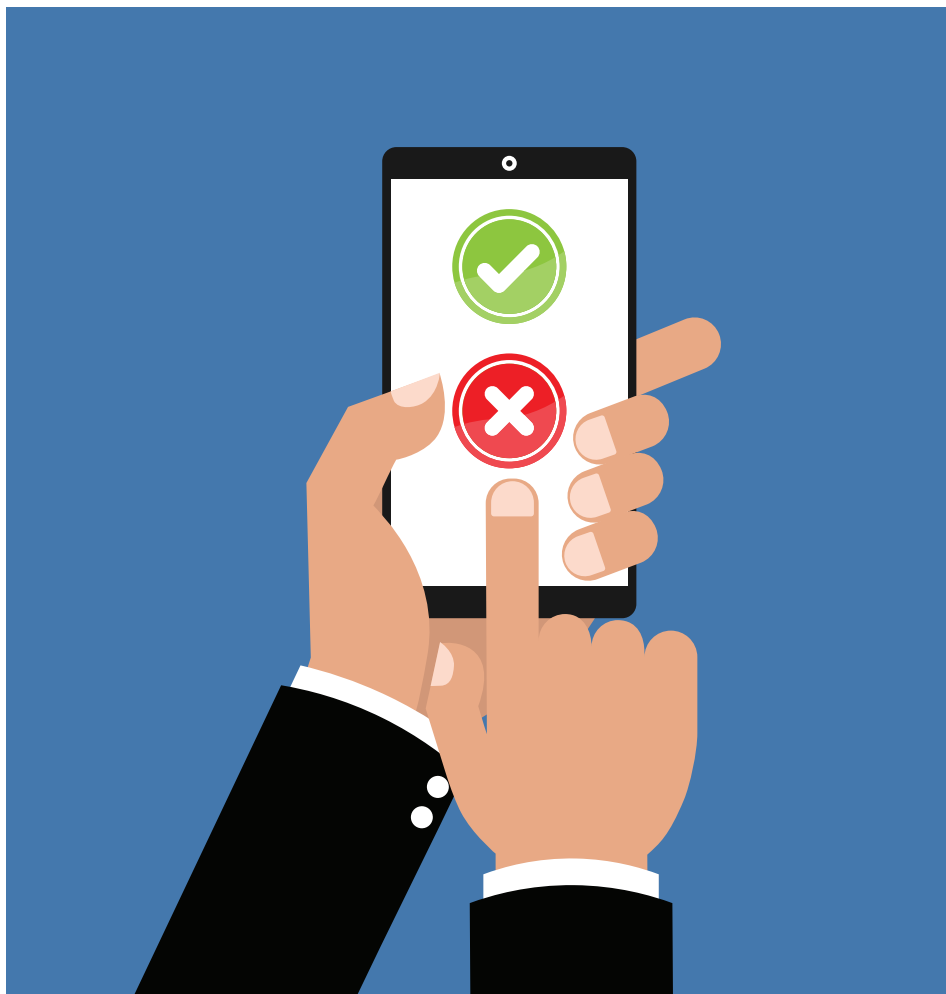
**Natasha Sarah-Lorriane Banks**

Remember the good old days when we did not rely on smartphones? Albeit a foggy, distant memory—it is true. Life went on without them. They are a necessary accessory we carry everywhere, every day. We not only use smartphones for social stimulation, but to answer a quick work-related email or call. In today's workplace, employers must employ processes tracking such off-the-clock work. A recent case illustrates the issues employers may face if they fail to do so.

In August 2017, the 7th Circuit Court of Appeals issued a favorable decision for an employer in *Allen v. City of Chicago*, turning on the issue of whether the employer had knowledge of the work performed. The plaintiffs were current or former members of the Chicago Police Department's (CPDs) Bureau of Organized Crime. The Bureau issued mobile devices to the plaintiffs given, at times, their roles required off-duty work on their devices. To ensure compensation for such time, CPD permitted officers to submit "time-due slips" requesting compensation for unpaid off-the-clock work done on their devices. The plaintiffs alleged there was an unwritten policy preventing or discouraging reporting of overtime smartphone work in violation of the Fair Labor Standards Act (FLSA).

The FLSA requires employers to compensate non-exempt employees at time and one-half their regular rate of pay for all hours worked over 40 hours in a workweek. For law enforcement, it requires overtime compensation if the employee works for more than 171 hours per 28-day period.

The FLSA obligates employers to compensate for overtime work when an employer has actual or constructive knowledge that the work is performed. As the



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7th Circuit noted, "Employers must, as a result, pay for all work they know about, even if they did not ask for the work, even if they did not want the work done, and even if they had a rule against doing the work." Constructive knowledge is found where an employer, through reasonable diligence, "should have" known work was being performed. For example, an employer may exercise reasonable diligence where it establishes a reasonable process for an employee to report unpaid work time. But, if an employer prevents or has an unwritten policy discouraging employees from reporting their time, the presence of a process for

reporting unpaid time will not shield the employer from liability.

To corroborate their claims, the plaintiffs testified that the Bureau "frown[ed] on submitting slips." They also provided evidence of a Bureau policy entitled, "General Orders," guiding employees' use of department-issued devices and explaining when use of a smartphone would be considered "hours worked." Despite these arguments, the trial court concluded the plaintiffs failed to establish the Bureau had actual or constructive knowledge the plaintiffs were not being paid for compensable work performed on smartphones, or that the plain-

tiffs neglected to submit slips accounting for work performed on smart phones.

The officers appealed arguing the trial court erred in holding that the Bureau lacked knowledge of the underreported overtime hours. The appellate court provided that although CPD may have known of the time worked, it facilitated a reporting procedure to account for unpaid time. Because the plaintiffs did not avail themselves of this process, the court agreed no overtime liability existed.

### What Employers Need To Know

Modern technology has changed the American workplace forever. As a result, employees will continue filing these types of lawsuits. Accordingly, employers should consider the following tips to avoid and/or minimize claims:

- Restrict the availability of mobile devices for non-exempt employees. If mobile devices are issued, be clear that work performed on these devices outside of work hours may be compensable, and should be reported to management. Or, if possible, restrict smartphone use to exempt employees.
- Establish time reporting policies. Employers should prepare a comprehensive, time reporting policy regarding the use of smartphones and explaining how employees should report unpaid time.
- Require employees to review their daily and weekly hours worked to confirm that they are reporting, and thus being paid for, every hour worked.
- Consider an email curfew policy cutting off an employee's access to conduct cell phone work at certain times.
- Train employees on time management. Encourage them to perform work within the hours of their work day to minimize work performed off-site or after regular hours.
- Frequently communicate the time reporting policy to employees through ongoing training and reminders.
- Complete regular, internal audits to certify that employees are reporting all hours worked. <sup>YLD</sup>

### ► INTERNS, FROM PAGE 11

The new “primary beneficiary” test used by the 11th Circuit (and now by the USDOL) may create new opportunities to utilize unpaid interns at your firm or organization that would have otherwise been illegal under the stricter test. However, it is prudent to ensure that the office in which the intern will be working is not located in an appellate circuit that continues to rely on the more stringent six-factor test. <sup>YLD</sup>

### Endnotes

1. Wage and Hour Div. U.S. Dep’t of Labor. U.S. Dep’t of Labor Clarifies When Interns Working at For-Profit Employers are Subject to the Fair Labor Standards Act, News Release (Jan. 5, 2018), <https://www.dol.gov/newsroom/releases/whd/whd20180105> (last visited Jan. 24, 2018).
2. Schumann v. Collier Anesthesia, P.A., 803 F.3d 1199, 1203 (11th Cir. 2015).
3. *Id.* at 1210.
4. *Id.*
5. *Id.*
6. *Id.* at 1211.
7. *Id.*
8. Wage and Hour Div. U.S. Dep’t of Labor. Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act (Jan. 2018), <https://www.dol.gov/whd/regs/compliance/whdfs71.htm> (last visited Jan. 24, 2018).

### ► HEIRS, FROM PAGE 13

minology and use it properly. (As you might imagine, you can either earn or lose the respect of the judge (and the staff attorney) by using these words properly or improperly.)

### There are always heirs. Always.

Probate in solemn form, which is used 99 percent of the time, requires that notice be given to the deceased person’s heirs. So, the identity of the heirs must be clearly set out in the petition to probate. Usually, the heirs include the spouse of the deceased person and his or her children, if he or she had any. If any child of the deceased person died before him or her and had children, those children—the grandchildren of the deceased person—would also be heirs. It gets a bit more confusing if the deceased person survived his or her immediate family, but virtually everyone has heirs. The deceased person may not have been in contact with their distant relatives, but the consanguinity still exists. Lawyers preparing a petition to probate need to set out the facts regarding the deceased person’s family members so that the judge can independently determine the deceased person’s heirs. It is not enough to simply state that there are no other heirs of same or higher degree.

### For my wife, with love.

“Year’s support” is a statutory right unique to Georgia and available to the surviving spouse. If no one objects, the surviving spouse can receive the entire estate value without paying the deceased person’s debts, and even avoid property taxes for one year! It is a powerful tool, but there’s a two year statute of limitations, so families need to act relatively quickly.

There is more to it, of course, but those are the highlights. If someone comes to you with a probate problem that exceeds your current knowledge of probate law, I would be happy to help you, so please reach out. All my contact info is available at [www.gabar.org](http://www.gabar.org). <sup>YLD</sup>

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