



# The YLD Review

THE STATE BAR OF GEORGIA | LAWYERS SERVING THE PUBLIC AND THE JUSTICE SYSTEM

Young Lawyers Division | Spring 2016 | Volume 57, Issue 3

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## Reflections on the 20th Anniversary of the Atlanta Olympics

by Yari Lawson and Kevin Patrick

July 19, 2016, will mark the 20th anniversary of the Atlanta Olympic games. A Georgia attorney, **William P. "Billy" Payne**, championed the effort to bring the games to our state. Last month, Payne graciously took the time to share with us his memories from the Olympics. The lessons underscoring them serve as fine examples for younger attorneys throughout our state.

### Legal Background

Payne earned his undergraduate degree from the University of Georgia in 1969. As the son of a No. 1 NFL draft pick, Payne also played for the football team. His football skills led to a post-graduate scholarship to the law school. Payne graduated from law school in 1973 and entered into private practice with a firm in Atlanta that represented MARTA. He then transitioned to a larger law firm. After spending approximately five years there, Payne opened a practice with six other lawyers. Payne, like many other attorneys starting a practice, remembers the humble beginnings, such as running titles at the various courthouses throughout Georgia. He later built the firm into a successful commercial real estate practice with large national clients.

### A Dare to Dream

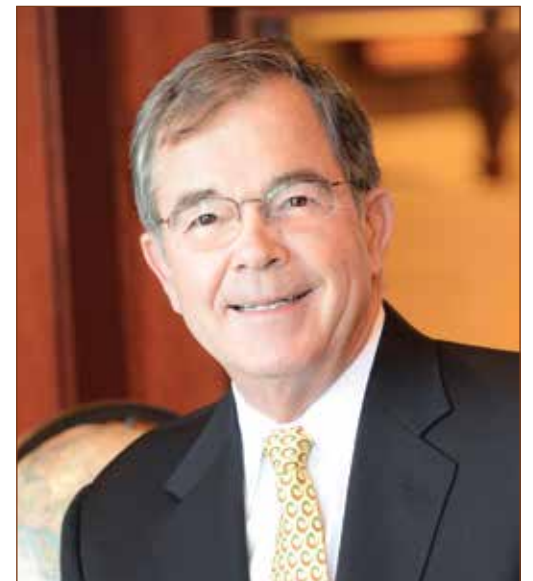
After several years of practice, he wanted to do more good than to simply earn a living for his family. Payne was inspired by his faith. When he was returning home from the dedication of a new church at his parish on Sunday, Feb. 8, 1987, Payne recalled all of the wonderful smiles and began thinking about his other dreams. He happened to pencil down bringing the Olympics to Atlanta early the following morning. He notably gets up every morning at 5:30 to begin the workday. Payne's dream certainly seemed improbable, if not impossible, to ever come to fruition at the time. Despite the myriad of obvious challenges, Payne dared to dream, and dreams do come true.

### Importance of Friends

After Payne shared his dream with his wife, who is without question his best friend, she told him to contact his friends about actually pursuing an Olympic bid. Payne began reaching out to a number of his colleagues practicing at King & Spalding among other firms. His first telephone call went to his most conservative friend. At first, Payne recalled a profound silence when he broached his idea, but then his friend responded, "That's a great idea. How much money can I give?" Payne's wife, unbeknownst to him, listened to the conversation to ensure that he would accurately recount it later to her. Payne's friends all supported him. In sum, he knew that the collective efforts of friends were immensely more valuable than any single individual effort.

### Overcoming Challenges

Since the 1996 Olympics marked the centennial anniversary of the games, Athens, Greece, initially appeared to be the most compelling location for them. Payne realized that the international community had a very limited knowledge of Atlanta, Ga., beyond the Civil War and the struggle for civil rights. In fact, one person even asked Payne whether gambling was permitted near the games because that person confused Atlanta with Atlantic City in New Jersey. Payne nevertheless continued to persevere with his quest. He stressed the community spirit, as well as volunteerism



William P. "Billy" Payne

in Atlanta with the International Olympic Committee. These common values made the difference because Atlanta was officially announced as the site for the games on Sept. 18, 1990.

### Best Memory of the Games

While Payne holds many fond memories of the Olympic games, his finest memory involves Muhammad Ali lighting the Olympic flame. Ali's role was kept as a secret until the very last moment. To this end, Payne remembers standing in the tunnel in the stadium, which was already full of the athletes, and telling Janet Evans, who is widely considered the best female distance swimmer in the world, "Now give the torch to Mohammed Ali." Her knees buckled at the news. Payne recalled being overcome with profound emotion at the historical significance of the lighting of the Olympic flame by Ali. Simply put, it was the greatest single moment of the games.

At the conclusion of our conversation with Payne, he reminded us that the story of the Olympic games ended where it began. "Achieving the improbable and impossible is beyond the talent of any one person, and accordingly, we as individuals must turn to friends." The bonds of trust from friendships brought the Olympics to Atlanta. Most importantly, these values are the central component to leading a fulfilling life. <sup>YLD</sup>



## From the President

# Your Vote Matters!

by Jack Long

It's impossible to forget that election season is upon us. Yard signs and bumper stickers for different presidential hopefuls or local commission seats line the streets. The latest talk at the local lunch spot is an endless discussion of the different candidates and who is more or less qualified to hold an office. Yes, 2016 is an election year, and your vote matters.

That may sound cliché, but the truth is your vote *does* matter. More importantly, being informed and using that information to determine how you play a part in our system of elections matters. Many people look to us as lawyers for information about our colleagues and non-lawyer friends who are running for office; they value our opinions as we study and argue over the law that began as legislation written by those elected to serve in the General Assembly, and practice before those elected to our judiciary.

This year, there are more than 100 contested judicial elections; approximately 74 races for probate or magistrate judges alone. While many may be quick to gloss over the importance of our lower level courts, these are the courts of first impression for most people encountering our judicial system for the first time: people probating an estate of a loved one or dealing with a traffic ticket or other low-level offense. Isn't it important that our judges in these positions are qualified for the job and able to expeditiously adjudicate matters fairly and according to the law? Even more serious is the unusually large number of Superior Court seats that are vacant or contested this year. As very few Superior Court judges are challenged until they retire; this year's elections will leave indelible marks on our local benches that each of us will remember for a very long time.

Many lawyers will take one side or another in these races, and disagree on which candidate is a better fit for a position. What we all probably can agree on is that lawyers are a "go-

to" group when most candidates are trying to raise money to fund their campaigns. This can be hard on the young lawyer in particular, as student loan debt and budding family obligations make contributing to one (or many) campaigns seem like less of a priority. I have probably received dozens of push cards, donation letters and barbeque invitations just in the last few weeks, and it is hard to write the checks that inevitably follow. The truth is, however, that we should view how we elect our judges and other officials as an investment. In many cases, the winning candidate will be in office for years. A candidate for judicial office who will make lawyers look good in front of their clients and help us resolve our cases efficiently will be a valuable asset for years to come; the person who is unpleasant to work with now as a lawyer or as a candidate will only be worse if elected to office. Even if you cannot afford a large contribution, when the right candidate seeks your support, give *something*.

If making a financial contribution is not possible, get involved in a campaign. I have been involved in several and it is a thrilling experience. I've also learned a lot along the way. There are dozens of ways to participate; from putting out signs to helping a candidate develop their winning strategy and everywhere in between. Better still, run for office when the time is right. We need more lawyers in our Legislature and in positions where a J.D. isn't a prerequisite for the position. We also need younger lawyers in offices that do – whether on the bench or even in the State Bar Board of Governors, where several current or recent YLD members are seeking office.

Your vote matters, and so does your participation in the election process. So get out and learn about the candidates and the issues affecting the office. Volunteer for a campaign or contribute to a candidate. Consider your future in running for office. And finally, don't forget to vote! YLD

# Georgia's Journey to Marriage Equality CLE

by Titus T. Nichols

On Jan. 8, at the State Bar of Georgia Midyear Meeting held at Lake Lanier, Inclusion in the Profession Committee (formerly Minorities in the Profession Committee) Co-Chairs, **Titus T. Nichols** and **Amanda N. Heath** along with the Executive Board Members **ShaMiracle Johnson** and **Will Davis**, proudly presented "Georgia's Journey to Marriage Equality: The Importance of Diversity and Inclusion in the Profession." The CLE focused on the U.S. Supreme Court's decision regarding marriage equality, Georgia's legal history on the issue, and how the legal profession is dealing with diversity as a whole.

The CLE consisted of a panel discussion moderated by Johnson and Davis and a presentation on diversity led by Hon. **Glenda A. Hatchett** of the Emmy®-nominated show, "Judge Hatchett." The panel featured **Robin J. Shahar**, chief counsel, City of Atlanta Department



Front row (L-R) Hon. Glenda A. Hatchett, Robin J. Shahar and Supreme Court of Georgia Justice Robert Benham. Back row (L-R) Amanda Heath, YLD President Jack Long, Titus T. Nichols, Jeffery M. Cleghorn, Will Davis and ShaMiracle Johnson.

of Law and the mayor's advisor on LGBT issues, and **Jeffery M. Cleghorn**, partner, Kitchens New Cleghorn, and a former commissioned officer in the U.S. Army. The panel discussion began with Cleghorn discussing the history of judicial decisions on marriage equality throughout the years and how it led to the U.S. Supreme Court's most recent decision in *Obergefell v. Hodges*. Cleghorn also discussed the concerns he had during his time as an officer in the Army both before and after the Department of Defense's policy of "Don't Ask Don't Tell." Shahar shared her experience of having her offer of employment rescinded by then-Attorney General Mike Bowers because of her sexual-orientation and planned same-sex marriage ceremony.

Hatchett's presentation on diversity within the legal profession touched on many topics central to this inclusion. Hatchett spoke about her time as the chief presiding judge of the Fulton County Juvenile Court and how she was able to use her position to help the various children and families that came before her. She also addressed the paucity of diversity within the partnership ranks of many law firms and boardrooms across the country. Hatchett's presentation emphasized the reality that in order to meet or surpass the progress in other professions, the legal profession must seek true diversity, not only in race, gender and ethnicity, but also in gender orientation. YLD

# Lessons Learned

by Darrell L. Sutton, 2013-14 YLD President



Those who read my words in this publication and the *Georgia Bar Journal* during the 2013-14 Bar year know that I wrote often about opportunity and seizing it. I did this because I believe each of us is provided a series of opportunities, and our success – or lack thereof – results from whether we seize these opportunities. After all, my words would never have found their way into this publication if I had not earlier been presented and seized an opportunity to pursue the YLD presidency.

I likewise believe the ability to seize a particular opportunity depends upon your preparedness to act – and meaningfully – when that opportunity is presented. If you have not beforehand placed yourself in position to act, and have not equipped yourself with the tools needed to act, then no matter how much you desire opportunity, you cannot seize it. Being prepared to act upon opportunity itself often leads to additional opportunities.

There is no secret formula for obtaining opportunity and seizing the opportunity you are presented. What I observed before, during and since my year as YLD president, however, is that three things routinely lead to opportunity, and mastering them is the key to seizing opportunity.

## Do Well Everything You Do

Think about it: when you seek out someone to act on your behalf, you seek out the person you believe will do the job the best. That is for good reason, because to do good work you have to at least be responsible, thoughtful and hard-working. These are the traits, especially when regularly repeated, that lead others to trust in us, and thus invite opportunity.

Doing good work also prepares you to seize opportunity. If you develop the habit of doing good work, then you are necessarily developing the habit of being responsible, thoughtful and hard-working. There are no three traits that better leave you ready at all times to seize any opportunity that comes your way.

## Seek Responsibility

By seeking responsibility you show yourself not only ready to work, but ready to do so in a meaningful way. You also demonstrate to others that you stand ready to receive opportunities to do more of the same. After all, the thinking goes, someone who will seek meaningful work will surely accept it when offered. And the more meaningful work you accomplish, the more opportunities for additional responsibility you will be offered.

## Engage Others

Opportunity, I believe, comes from others. Those who have it cannot offer it to someone they do not know, and those who want it must seek and obtain it from those who have it. This means that opportunity cannot arise from isolation. It has to be pursued, and the only practical way to do this is to engage those who possess it.

All of us are presented the opportunity to do great things. Whether we seize that opportunity depends upon how well we prepare ourselves to do so. Master these three items and more often than not you will be prepared to seize the opportunity you are presented. YLD

# Transition to the Bench

by Hon. Brian K. Ross, Presiding Associate Judge of the State Court of DeKalb County – Traffic Division



Over the course of my legal career, I always enjoyed serving as an advocate. I began my journey in the law as a prosecutor, then ran my own practice. I then ended my days as a practitioner returning to a prosecutor's office, heading up the Crimes Against Women Unit at the metropolitan Atlanta District Attorney's Office. At every stop, I fought hard on behalf of my clients by zealously advocating their interests as best I could. In July of

2015, I was appointed to serve on the bench of the State Court of DeKalb County in the Traffic Division.

Serving on the bench has been one of my professional goals since law school. But there is a world of difference from practicing law. I had to switch immediately from my role as an advocate to a role in which I was an unbiased, objective arbiter of the law. The commonly used metaphor is that judges serve the role of an umpire. It is not up to judges to make the rules. It is up to judges to apply them fairly. Since I was about to become a judge, I immediately began to develop a plan to transition from the practice of law to serving on the bench.

My job immediately prior to my appointment to the bench was that of an assistant district attorney. Accordingly, I only had one client whose interests I had to ensure were protected and that was the state of Georgia. By going through each case file and preparing a summary of the status of the cases, I was able to ensure the attorneys who inherited the files were quickly brought up to speed. Also, I reached out to witnesses and victims on cases who I previously had contact with to advise them I would no longer be handling the case on behalf of the state and the reason why. Finally, I assured those individuals their case would be in good hands because all of my files were being reassigned to excellent attorneys who had been thoroughly briefed.

While working to ensure my existing case load was being adequately addressed, I also worked to prepare for my upcoming work as a judge. I did this, primarily, by making sure I was very familiar with the *Georgia Code of Judicial Conduct*. I had read the code several times in the past, but now that my swearing-in as a judge was imminent, I took the time to go over it again. Finally, I spoke with several judges to obtain advice on best practices concerning running a courtroom and interacting with attorneys who formally had been my colleagues in the practice of law.

In short, the transition from the practice of law to serving on the bench is neither difficult nor easy. It is, however, not something to be taken lightly. But through preparation, familiarity with the Code of Judicial Conduct, and a faithful and impartial adherence to the rule of law, it can be done smoothly and successfully. YLD

# JUNE

## 16-19

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& Meet the Candidates  
Reception, YLD Dinner &  
Swearing-In Ceremony

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Final Cut-off Date: June 3

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# ANNUAL MEETING

# Committee Updates

## Litigation

by Jake Evans & Win Cook



(L-R) Jake Evans, Katherine Hernacki and Win Cook at the Jan. 21 Litigation Committee lunch.

The YLD Litigation Committee is off to a great start in 2016. On Jan. 21, the Litigation Committee held its first lunch meeting of the year at Thompson Hine's office in Buckhead. **Katherine Hernacki** of the Hernacki Law Firm spoke, sharing tips for young litigators. The Litigation Committee followed with a number of exciting events. The annual "War Stories" Lecture Series started on Feb. 16 with **Scott Key**, partner at Miller & Key, which took place in Atlanta; the March speakers were **Jim Butler** and **Jeb Butler**, who spoke in Columbus; and the April speaker will be **Jim Pannell** in Savannah. The Litigation Committee hosted a March Madness Happy Hour on March 17 at Gordon Biersch in Midtown, kicking off the start of the NCAA Tournament. For more information on upcoming events contact **Jake Evans** at [jake.evans@thompsonhine.com](mailto:jake.evans@thompsonhine.com) or **Win Cook** at [edwin.cook@bryancave.com](mailto:edwin.cook@bryancave.com). YLD

## Ethics & Professionalism

By J. S. LaRose, Matt Jones and Alisha Marie Scott

Do you know a young lawyer who exemplifies fairness, integrity and diligence? Have you encountered a young lawyer who consistently displays civility and professionalism in difficult situations? Consider nominating that young lawyer for the 12th annual YLD Ethics & Professionalism Award.

For the past eleven years, the YLD has recognized individuals who have exhibited such qualities. Although judges and senior partners have submitted recommendations in the past, exceptional displays of ethics and professionalism often come to the YLD's attention only through nominations by their peers.

Deadline for nominations is Friday, April 29. For more information and to download the nomination form please visit [www.georgiayld.org](http://www.georgiayld.org).

The YLD Ethics & Professionalism Committee encourages all those interested to attend its meetings and events. For more information please contact Co-Chairs **Alisha Marie Scott** at [alisha\\_marie\\_scott@fd.org](mailto:alisha_marie_scott@fd.org) and **Matt Jones** at [mljones@mijs.com](mailto:mljones@mijs.com). YLD

# Affiliate Update

## Glynn County

by Lacey Houghton

The Glynn County YLD has been busy over the past few months with volunteer work, networking events and welcoming new members. Glynn County YLD assisted the Georgia Legal Services Program with its "Ask a Lawyer" day held Oct. 29, 2015. A group of YLD volunteers successfully assisted clients with a variety of legal matters. On Dec. 5, 2015, we continued our yearly tradition of providing YLD members to serve as course volunteers for CASA Glynn's annual Jingle All the Way 5K on Jekyll Island.

In addition to our service activities, Glynn County YLD had great turnout at recent networking events. We held our November happy hour at Marshside Grill, generously sponsored by our very own former YLD member, **Clement Cullens** with Lighthouse Financial advisors. After taking a break for the busy holiday season, Glynn County YLD kicked off the new year by co-hosting a networking happy hour with the Brunswick-Golden Isles Chamber of Commerce Ambassadors and the Golden Isles Association of Realtors on Jan. 21, thanks to the hard work of Social/Membership Chair **Meg Corry**. The Young Professionals Network event was held at Bubba Garcias.



Members of the Glynn County YLD at the November happy hour at Marshside Grill.

The Executive Board worked tirelessly planning our third annual Ides of March Invitational Golf Tournament which was held March 19. We are astounded by the continued growth of this great event!

If you practice in the Brunswick Judicial Circuit or surrounding area, and are interested in joining Glynn County YLD or being added to our email list to receive notice regarding future events, please email [glynncountyylid@gmail.com](mailto:glynncountyylid@gmail.com). YLD

## RUN FOR THE YLD REPRESENTATIVE COUNCIL

Now is the time to throw your hat in the ring! Elections for representatives will occur at the YLD Annual Meeting, which will be held at the Omni Amelia Island Plantation Resort on Amelia Island, Fla., on Friday, June 17.

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 27. For more information about the elections, contact Mary McAfee or YLD President-Elect Jennifer Mock at [jennifer@mocklaw.com](mailto:jennifer@mocklaw.com).



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- Albany
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- Columbus
- DeKalb County
- Glynn County
- Gwinnett County
- Houston County
- Macon
- Rome/  
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- Savannah
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- Garnish & Gather
- Georgia Aquarium
- Hon. Glenda Hatchett
- ICLE of Georgia
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- The Law Office of Alex Susor, P.C.
- Nicholson Revell LLP
- Ron Daniels for YLD Secretary
- Will Davis for YLD Secretary

Special Thanks

- The Answer Band
- The Biltmore Ballrooms
- Bold American Events
- Courtney Goldman Photography
- DTI
- The Original Photo Hut

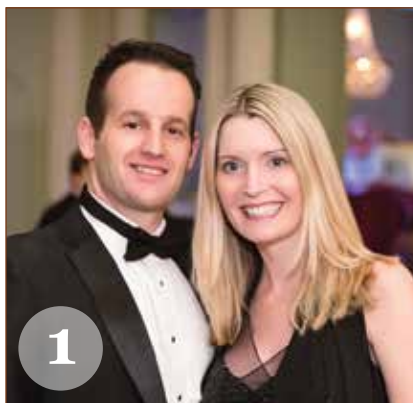
# YLD Signature Fundraiser

by Ashley A. Akins & Elizabeth Pool O'Neal

Thank you to everyone who attended the 10th annual Signature Fundraiser!

On Jan. 23, more than 100 Georgia attorneys attended this year's event and danced the night away. We raised \$130,000 for Camp Lakeside, this year's beneficiary. Camp Lakeside is a collaboration with the YMCA of Greater Augusta and Children's Hospital of Georgia at GRU to provide outdoor recreation and therapeutic programs for children with disabilities and chronic illnesses. Once the camp is open, it will serve children in Georgia by providing programs such as swimming, hiking, fishing, archery, basketball, canoeing, kayaking, arts and crafts, and more. Thanks to this year's fundraising efforts, a cabin will be named in honor of the State Bar of Georgia YLD.

We would like to extend a special thank you to The Answer Band, Biltmore Ballrooms, Courtney Goldman Photography and DTI for their generous support of the fundraiser. YLD



1. (L-R) Sean Ditzel and Robin Casey; 2. (L-R) YLD President Jack Long, Joe Dent, Darrell Sutton, Donna Barwick and Bill Barwick; 3. (L-R) Branson Lee, Jaclyn Rodriguez, Deepa Subramanian and Sharad Virmani 4. (L-R) YLD President Jack Long and Signature Service Award recipient Jana Edmondson-Cooper; 5. (L-R) Michelle Imoukhuede and Felicia Grant; 6. (L-R) Elizabeth Jabaley, Will Davis, Sherwin Figueroa and Jarred Parrish; 7. (L-R) YLD Signature Fundraiser Committee Co-Chairs Ashley Akins and Elizabeth Pool O'Neal with YLD President Jack Long; 8. (L-R) Lauren Stone, Ryals Stone, Tyson Simmons and Madeleine Simmons.

# The Importance of Involvement in the YLD as a Beginning Lawyer

by Baylie Fry



Young lawyers justify lack of involvement in the State Bar of Georgia by appealing to a busy schedule. But the truth is, participating in the YLD has significant personal and professional benefits that will make you think twice about whether you are too busy. The YLD engages young lawyers through its networking events, encourages young lawyers to give back to the community while simultaneously gaining invaluable experience and helps to transition young lawyers into the legal profession.

## Networking

Whether you are at a law firm, in-house, government work or judicial clerkship, networking is a crucial component to a beginning lawyer's development. Networking connects you with other like-minded lawyers, it develops you socially, acclimates beginning lawyers with the legal profession, and most importantly, it builds long-term professional relationships. The YLD encourages young lawyers to become involved in networking events by offering a variety of committees focused on varying legal areas.

## Giving Back to the Community

The YLD has a number of events geared toward giving back to the community. Whether it is volunteering your time to a local charity, attending an event to raise money or taking a case pro bono, the YLD engages young lawyers across the state. Being involved in public service activities can be advantageous for both beginning lawyers and the community. For example, beginning lawyers have the rare opportunity to gain invaluable oral advocacy experience from handling a case pro bono, and are able to refine their communication skills and increase their exposure with clients. At the same time, the community benefits by receiving free legal representation from enthusiastic and eager beginning lawyers.

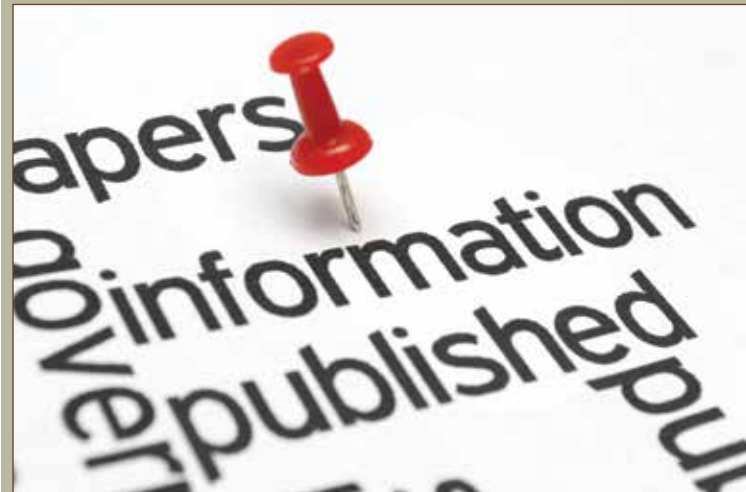
## Navigating the Legal Field

Interacting with experienced lawyers is critical to navigating and learning the intricacies of the legal field. The YLD does a great job at pairing more experienced lawyers with beginning lawyers at networking events and State Bar meetings. The YLD also created the Leadership Academy to develop young lawyers' leadership skills and educate young lawyers on the legal profession.

As a beginning lawyer myself, I have already experienced how the YLD can benefit me personally and professionally. I highly encourage other beginning lawyers to get involved. YLD

# Publication 101 for Young Associates

by Elissa B. Haynes



On any given day, my Twitter feed and LinkedIn page are filled with industry-driven articles. A common theme I noticed is that most of these articles are published by partners or other high-ranking members of law firms throughout the state. As young lawyers, name recognition and reputation building are critical to our careers. While we arguably have less experience than some of the more seasoned members of our profession, there are still many steps we can take to get published. With that in mind, I offer the following suggestions.

**Reach out to a partner.** For those who work with other experienced lawyers, take the initiative to ask to co-write an article with them. If you are struggling with choosing a topic, they can usually guide you in the right direction. Reaching out to a partner or other senior lawyers not only shows motivation and dedication to your career, but also gives you a better chance of getting published. You can also ask whether your firm publishes a monthly or quarterly "Legal Update" and see how you can contribute. It is likely that a partner or senior lawyer has been published and knows what you need to do to pave your path towards becoming a published attorney.

**Utilize your local bar or other legal association.** Young lawyers are automatically members of both the State Bar of Georgia and the Young Lawyers Division. Many of us are also members of industry-specific organizations like the Georgia Trial Lawyers Association or Georgia Defense Lawyers Association. Take some time to explore the various organizations available to you and get involved with one. All of these organizations produce some form of newsletter or magazine which is a perfect way to write an article tailored to your specific practice area.

**Get involved in your community.** Your article does not have to be law-related. In fact, when you think about it, the majority of our clients are not lawyers. A well-written, non-legal article can provide just as much value as a law-related article. Contact your local church, synagogue or Junior League and ask if you can write an article for one of their newsletters or other publications. These publications reach a broad audience and can certainly help to get your name out there, which is the overall goal of becoming published. YLD

# This is an Out-of-Court Statement About Hearsay

by Michael Rafi

Hearsay is considered one of the most amorphous and confusing legal rules – rivaled most often by the Rule Against Perpetuities. It is vital, though, for trial lawyers to know what hearsay is, when it can be admitted as evidence and when it cannot. Without a full understanding of hearsay, lawyers may not be able to admit critical information into evidence or prevent the opposition from admitting objectionable hearsay evidence. Hearsay – and a lawyer’s understanding of it – can make or break a case.

Georgia law defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”<sup>1</sup> Statements can be “oral or written” or “nonverbal conduct” so long as the person is making an “assertion.”<sup>2</sup> One reason identifying hearsay is important is because “if a party does not properly object to hearsay, the objection shall be deemed waived, and the hearsay evidence shall be legal evidence and admissible.”<sup>3</sup>

One challenge of effectively navigating hearsay is that some hearsay statements *are* admissible and some *are not*, based on the circumstances surrounding the statement. Generally, there are three categories of statements that are hearsay, but may nevertheless, be properly used as evidence. First, statements made by someone who is a party to the lawsuit, which is offered as evidence *against* that party, are not excluded as hearsay.<sup>4</sup> Second, there is a laundry list of statements that are admissible regardless of who made them, because these statements are considered reliable enough for a jury to consider<sup>5</sup> – for one, records of regularly conducted activity, commonly referred to as the business record exception.<sup>6</sup> Lastly, certain hearsay statements are admissible when the person who made the statement cannot come to trial, will not come to trial or testifies at trial that she does not remember the statement.<sup>7</sup>

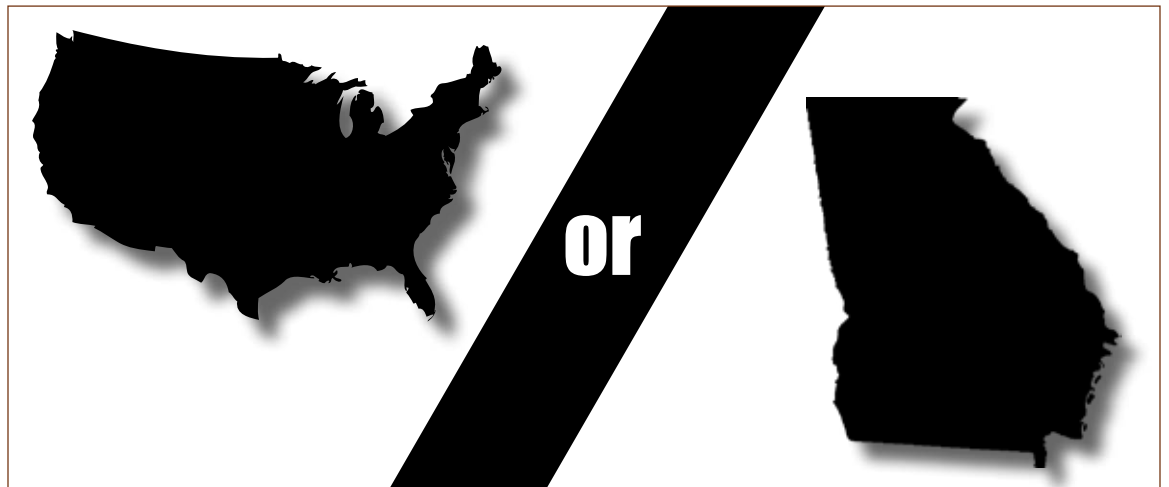
Hearsay statements can also be included within another hearsay statement – this is called “hearsay within hearsay” or “double-hearsay.” One common example of hearsay within hearsay is a police report where the officer wrote what a witness said. The police report, on its face, is hearsay. The police officer’s account of what the witness said is also hearsay, and because it is within the police report, it is hearsay within hearsay. In these situations, statements are admissible so long as “each part of the combined statement conforms with an exception to the hearsay rule.”<sup>8</sup> In the example above, the police report is likely admissible under the business records exception, but not the witness’ statement (which would need to be redacted). The witness’ statement would need to be analyzed independently to see if it met any hearsay exceptions, and if so, that portion of the report would be admissible as well. YLD

## Endnotes

- <sup>1</sup> O.C.G.A. § 24-8-801(c)
- <sup>2</sup> O.C.G.A. § 24-8-801(a)
- <sup>3</sup> O.C.G.A. § 24-8-802
- <sup>4</sup> O.C.G.A. § 24-8-801(d)(2)
- <sup>5</sup> O.C.G.A. § 24-8-803
- <sup>6</sup> O.C.G.A. § 24-8-803(6)
- <sup>7</sup> O.C.G.A. § 24-8-804(a)
- <sup>8</sup> O.C.G.A. § 24-8-805

# Variations in Federal and Georgia Court Practice

by Jake Evans



Knowing the procedural rules of the court in which a litigator practices has profound benefits. Litigation involves considerable strategy, planning and execution. But, to be effective at these elements, a litigator must know the procedural rules. Variations exist between practicing in federal courts and state courts. This article highlights some of the notable differences.

Selecting whether to litigate in state or federal court is important. Plaintiffs typically prefer state court, while defendants typically prefer federal court. Defendants believe they are subjected to lower potential verdicts in federal court. Reasons supporting this belief include:

1. federal jury pools are selected from a wider geographic range, likely translating into more rural jurors (who may be more conservative and less likely to award large verdicts) being included in the jury;
2. federal judges generally conduct *voir dire*, limiting a plaintiff’s lawyer’s ability to connect with the jury;
3. federal courts are more limited on the discovery permitted; and,
4. the Federal Rules of Civil Procedure (F.R.C.P.) are often more stringent and carry harsher consequences for non-compliance. Although not universal, defendants will usually remove a case filed in state court when federal jurisdictional requirements, such as diversity of citizenship and amount in controversy, are met.

Arguably the most notable difference between federal and state court practice is discovery. The federal rules require parties in civil cases to disclose certain information, even without being served with discovery requests. These disclosures are called “initial disclosures” and must be served within 14 days of the parties’ Rule 26(f) conference, unless the parties or the court stipulate otherwise. The Rule 26(f) conference is also unique to federal court. This conference must take place “as soon as practicable” and never later than 21 days before a scheduling conference occurs. Contrastingly, the Georgia Civil Practice Act (G.P.A.) requires discovery disclosures only in response to written requests or court orders.

The G.P.A. states the discovery period begins upon a defendant’s answer filing and lasts for six months (although the court has discretion to shorten, extend or reopen the discovery period). Accordingly, a plaintiff can serve discovery requests with the complaint, which is often the case. The F.R.C.P. dictates the discovery period does not begin until after the Rule 26(f) conference. Thus, discovery requests cannot be served with the complaint in federal court.

In Georgia courts, scheduling orders are not required, although an increasing number of state judges issue them in complex cases. Federal courts, conversely, are required to issue scheduling orders “as soon as practicable,” but never later than 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared, whichever is earlier.

Georgia has a very unique voluntary dismissal statute. In Georgia courts, a plaintiff may dismiss his/her case voluntarily and without prejudice once at any time before the first witness is sworn. A plaintiff can even refile that case after the statute of limitation expires, as long as the case is filed within six months of the dismissal. In federal court, a plaintiff can only dismiss his/her case either by court order or by stipulation of all parties after an opposing party has filed an answer or motion for summary judgment. This distinction is significant because Georgia’s renewal statute applies in state and federal court.

Litigation is akin to chess. To master chess, you must master the rules. Likewise, to be an effective litigator, you must comprehensively learn the procedural rules. YLD

## Hic et Nunc



### Editor's Block

by Yari D. Lawson

The Section of Legal Education and Admissions to the Bar of the American Bar Association is adamant that there is no shortage of lawyers in the United States. According to ABA publications, law school graduating classes have increased in size over the past 30 years. The section also found that in 2013, nearly 33 percent of lawyers graduating from law school were unemployed or had part-time, non-legal work. At the same time that this group of young or newly licensed lawyers may be looking for work, there is a clear need for lawyers in rural America.

According to *The New York Times*, 20 percent of Americans live in rural areas, but only 2 percent of small law practices are in those areas. In Nebraska for instance, 12 of the 93 counties have no lawyers. Twenty-one of North Dakota's 53 counties have fewer than four lawyers, and four counties have no attorneys at all. And in Georgia, there are six counties that have no lawyers, and of the rural attorneys in our state many are close to retirement. This creates clear opportunities for the young lawyers to locate in or near rural areas to practice law.

There is no question that the immediate concerns for many young lawyers who may want to practice law in rural areas are the lack of immediate experience and knowledge, and limited networking support. Just as in any business, starting a law practice – solo, medium or large – requires an investment. The most important investment for a young lawyer considering starting his or her own practice can make is the investment in self. The YLD has been the single most important investment that I have made in my professional career since leaving the Office of the Fulton County District Attorney in 2009.

Through the YLD, I have met other young lawyers from across Georgia, several of whom have either introduced me to other lawyers or have directly referred clients to me. I have met and personally spoken to many of our state's Superior and State Court Judges, Court of Appeals Judges and Supreme Court Justices. And now, for any of the 10,000 lawyers interested in my voice, they get to hear from me four times a year through this publication. (Hopefully, my words do me more justice than the picture above.) I cannot deny the impact that my participation in the YLD has had on the growth of my law practice. Mostly, that growth can be attributed to the relationships, network and resources that I have acquired since becoming involved.

**Linda Klein**, president-elect of the ABA and managing shareholder at Baker Donelson, has recognized the need to recruit lawyers, in particular young lawyers, to practice law in rural Georgia. I remember meeting Klein when I was co-chair of the YLD Leadership Academy. If any young lawyer, anywhere, but especially in rural Georgia is considering starting the practice of law, he or she can make the commitment to the YLD and that attorney will be thankful to meet powerful allies like Linda Klein and many others who are champions of the very idea of young lawyers starting firms in rural Georgia. It certainly helps any new business to have established allies and friends who can help build a successful business model. YLD

by Kevin Patrick

All of us face the realities of earning an income in a challenging, albeit improving, economic climate. The Young Lawyers Division is often an under-utilized way for us develop a long-term book of business. So accordingly, Yari and I are devoting our respective columns of *The YLD Review* to the practical business benefits of the YLD. I am highlighting three ways in particular the YLD pays dividends to our actual practices, as follows:

First, the YLD is a great source of *referral relationships* because the YLD bridges the gap between unique practice settings and diverse physical locations. A senior partner at my previous firm graciously reminded me that YLD connections might take months or even years to lend themselves to referrals. Patience truly is a virtue, and the partner was right. One of my very first cases at my own firm was the result of a referral from an out-of-state friend through the YLD.

Second, for those individuals practicing outside of the metro-Atlanta area, the YLD is an excellent way to develop themselves as *local counsel* for larger firms. I once was tasked with locating counsel in LaFayette, which is located in the northwest corner of our state, for a complex insurance coverage case because of my YLD connections. We often find ourselves as the go-to person at a firm or office for unique referral situations because of the YLD.

The third avenue, which is especially meaningful to me, is the ability of the YLD to help attorneys *start their own practice*. I recently embarked on a new endeavor by opening a personal injury practice, Kevin Patrick Law, on Jan. 1. The YLD also offers CLEs on building a practice. And now there is an opportunity with Lawyers for Equal Justice (LEJ), a collaborative incubator program. LEJ is a post-graduate training and support program for recent law school graduates who are interested in solo or small firm practice and are committed to serving communities in need, both pro bono and for an affordable fee. These experiences are the catalysts to lay the foundations for a law firm and learn from others.

As younger attorneys, we need to continue to stress the importance of the YLD for business development along with its inherent public service attributes with the senior members of our law firm, governmental agency or corporation. We are also always looking for new ways to make the YLD more appealing for business development so please feel free to contact us with any comments or suggestions. You have a voice! YLD



### Editor's Block