

Government Gab

Sept. 2008 Government Attorneys' Sec. Newsletter Vol. 1, No. 2

DISCOVERING GOVERNMENT IN THE SUNSHINE, EVIDENCE AND ELECTRONIC DISCOVERY SEMINAR

We had record registration for the annual seminar this year with over 40 attendees. Although most attorneys came from Atlanta, some came from as far north as Calhoun and as far south as Macon. Learning and fun was had by all who attended.

Red Top Mountain was a picturesque location and many of the attendees stayed on the mountain the night before the seminar. Compliments abounded about the location and its close proximity (45 minutes from Atlanta). The air was so fresh and clean and the sky was so blue there. The buffet-style lunch was excellent and there was a large selection of choices. The service was wonderful.

Justice Benham of the Supreme Court of Georgia greeted attendees and shared some words of wisdom during the morning session. It was a great start for a great seminar. The seminar began with panelists Ron Freeman (Johnson & Freeman, LLC) and Marquetta Bryan (Carlock, Copeland & Stair, LLC) sharing information about the federal and Georgia Sunshine

Laws. Former Assistant Attorney General John Jones shared a video of a police officer's abuse of force and the potential government liability for its employees.

The seminar provided an insight into current and ever-changing discovery law. Electronic discovery is still on the cutting edge of technology for the legal system. Panelists Paul Oliver (Wimberly, Lawson, Steckel, Schneider & Stine, PC), David Cole (Freeman Mathis & Gary, LLP) and Ronni Solomon (King & Spalding) provided in-depth coverage of the topic, as well as, practical guidelines about preparing your agency on how to provide records in advance of litigation.

Professor Milich, Georgia State University College of Law, gave a great presentation on the upcoming revised Federal Evidence Code, which was very enlightening. He gave evidence hypotheticals reminiscent of law school days. The bench and bar have something to look forward to when the revised Code is enacted. The Committee has thoroughly reviewed and improved the Code along the lines of the federal rules.

Cobb County State Court Judge Prodgors provided beneficial insight into professionalism from the bench's perspective. He emphasized the importance

of relationships attorneys have with their colleagues, the courts and even their adversaries. He also shared former Supreme Court Justice Hines' "Golden Rule" for all attorneys to follow: courtesy, dignity and respect.

There was an impressive array of speakers contributing to the success of this seminar. A committee is being formed to prepare for next year's CLE seminar. If you are interested in directing the committee's course and in having a voice in the upcoming seminar, email cartwric@gasupreme.us for more information.

**CHILDREN BEING TRIED AS ADULTS:
PARAMETERS OF DETENTION
BY TESHA CLEMMONS, ESQ.**

Juvenile detention is a significant matter because youth held in adult facilities are at greater risk of harm and even death than are those held in juvenile facilities.¹ In 1974, Congress passed the "Juvenile Justice and Delinquency Prevention Act," which provided, in part, that children under 18 cannot be held in adult facilities unless they are being tried for or have been convicted of a felony, or if the state defines adulthood, as being under the age of 18.²

Georgia requires that children indicted for criminal offenses or transferred for criminal prosecution can only be detained in an adult jails, if the court finds "that public safety and protection reasonably require detention in the jail and the court so orders." Moreover, juveniles must be held separately from adults so that they will have no physical contact with adult prisoners.³

A child 13 to 17 years of age who is convicted of any offense under O.C.G.A. §15-11-28(b)(2)(A), including the "seven deadly sins" (murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery or armed robbery committed with a firearm), shall be committed to the custody of the Department of

Corrections rather than to the Department of Juvenile Justice.⁴ The youth confined to the custody of the Department of Corrections must be housed in a "designated youth confinement unit" until reaching the age of 17 years, despite the fact that the juvenile was tried and convicted in superior court as an adult.⁵ The "designated youth confinement unit" must be designed to ensure that at all times; juveniles are housed separately from any adult offender and must be focused on the rehabilitation of juveniles.⁶ Rehabilitation for children ages 13 to 17 includes providing youth with life skills training, academic or vocational training and substance abuse and violence prevention counseling.⁷

It is essential for children in adult prisons to be rehabilitated rather than mainstreamed into the adult populations. Segregating children from adults reduces the likelihood of children being beaten by staff, being attacked with a weapon and committing suicide more than those children who are placed in juvenile facilities.⁸

FEDERAL EMPLOYMENT TIPS



Landing a job with the federal government can be a daunting proposition. There are nearly 300 federal agencies within the federal government, and not all of them use the same hiring procedures. Resumes for federal jobs generally need to be far more detailed than resumes for non-governmental jobs, and federal job-seekers must often write essays known as KSAs ("Knowledge, Skills and Abilities.").

Out to demystify the federal job process is a Washington, D.C.-based nonprofit called the Partnership for Public Service. According to the Partnership for Public Service, there are plenty of federal job opportunities out there.

⁴ O.C.G.A. §15-11-62(a).

⁵ O.C.G.A. §15-11-62(a).

⁶ Id.

⁷ Id.

⁸ Building Blocks for Youth. Children in Adult Jails. Factsheet. Retrieved September 10, 2008, from <http://www.buildingblocksforyouth.org/issues/adultjails/factsheet.html>.

¹ Hartney C. (2006, May). National Council on Crime and Delinquency Fact Sheet: Youth under age 18 in the Adult Criminal Justice System.

² Hartney, C., 1.

³ O.C.G.A. §15-11-48.

A report called Where the Jobs Are, available on the Website <http://www.makingthedifference.org/>, projects that the federal government will need to hire 193,000 employees in what it calls "mission critical" areas in the next two (2) years. The top five (5) jobs areas will be in security, protection and law enforcement, medicine and public health, engineering and science, accounting, budget and business, and program management and administration.

Data from the federal Office of Personnel Management shows that, as of last March, the federal government employed almost 1.9 million people. That figure does not include uniformed personnel in the armed forces.

The salary for federal employees is governed by a GS ("General Schedule") pay scale. The higher the GS number, the higher the salary. College graduates usually start at either GS-5 or GS-7 for those with bachelor's degrees, or GS-9 for those who have received a master's degree.

Salary varies slightly depending on location, with federal employees in expensive cities such as San Francisco or New York earning more than their counterparts in Atlanta. Starting salaries in Washington, D.C., for federal example are \$31,751 for a GS-5, \$39,330 for a GS-7 and \$48,108 for a GS-9.

The main federal jobs Website is <http://www.usajobs.gov/>, which lists almost all federal job openings. The Website allows job searches by location, job category and salary range. "A hidden trick" on the Website, particularly useful for people who might be unsure about what jobs they're looking for, is a section called EI23 (www.usajobs.gov/EI23.asp) that lists government job opportunities by college major, from accounting to zoology. Among the job possibilities for English majors, for example, are editorial assistants, public affairs specialists, technical writers and editors and program analysts.

There are also tips on what to look for in a typical vacancy announcement on the Website. If the vacancy period given for the job is very brief, it could be a sign that the job is going to be filled from the inside. On the other hand, if it is quite long, say a year, it might be a sign that the federal agency plans to fill the job, but might not have the money in its

budget. Federal job-vacancy announcements include a list of "major duties" for each job.

In applying for federal jobs, one should refer to the required duties as the application process proceeds. The same holds true for other portions of the job-vacancy announcements, such as sections on qualifications

and how to apply for the job, particularly since the

application procedures might differ from one federal agency to another.

When it comes to education, for example, the government wants to know your grade point average. When it comes to work experience, a federal resume requires a salary history and details on any job-related training, and asks for permission to contact supervisors. The USAJobs Website also has a section that allows applicants to build their resumes on line.

REASONABLE ACCOMMODATION FOR EMPLOYEES WITH PERCEIVED DISABILITIES BY CARLA MCALISTER

The ADA protects employees from discrimination who: (A) have a physical or mental impairment that substantially limits one or more of their major life activities; (B) have a record of such an impairment; or (C) are regarded as having such an impairment. 42 U.S.C. §12102(2).

A violation under the ADA includes an employer's failure to make reasonable accommodation for an otherwise qualified disabled employee. 42 U.S.C. §12112(b)(5)(A). At issue is whether a "reasonable accommodation" extends to employees who have perceived, not actual, disabilities. The Supreme Court has yet to address this question, and the ADA and the EEOC ADA Regulations (29 CFR Part 1630 (1991)) do not expressly state an answer either.

The EEOC federal sector case law has repeatedly held that employers are under no obligation to make

"According to the Partnership for Public Service, there are plenty of federal job opportunities out there."

reasonable accommodation for “perceived disabilities.” See Tringali v. United States Postal Service, Appeal No. 01A40498 (2005) (holding that “agencies are required to provide reasonable accommodation to individuals with disabilities, not individuals without disabilities”); Hill v. Dep’t of the Navy, Appeal No. 01A23896 (2003) (holding “we find that complainant is not entitled to a reasonable accommodation for a perceived disability”); Baldassarre v. United States Postal Service, Appeal No. 01A05157 (2003) (holding that “an individual who is regarded as substantially limited in a major life activity, rather than actually limited, is not entitled to a reasonable accommodation”).

These holdings are neither new nor unique. For example, in 1994, the EEOC held that “the agency erred when it concluded that appellant was entitled to reasonable accommodation as a result of being disabled.” Howard v. Dep’t of the Air Force, Appeal No. 01931905 (1994). In its reasoning, the Commission cited to a 1993 decision, which stated in a footnote that “one who is merely regarded as having a disability, and does not actually have such a substantially limiting impairment, does not require reasonable accommodation.” Mansell v. Dep’t of the Air Force, Appeal Nos. 01891189 and 01891224, n.18 (1993).

Likewise, in a 1988 Rehabilitation Act case, the EEOC expressly stated that under 29 C.F.R. 1613.704(a), “[an] agency would be required to make a reasonable accommodation only in the case of ‘known physical or mental limitations,’ and thus this regulation clearly refers to an actual handicap rather than a perceived one.” Holly v. Dep’t of Health and Human Services, Request No. 05880425 (1988).

In the private sector, Circuit Courts are split on the issue. Some circuit courts have held that employees who are regarded as having a disability are entitled to reasonable accommodation. In a recent case of first impression, the Eleventh Circuit held that “the plain language of the ADA yields no statutory basis for distinguishing among individuals who are disabled in the actual-impairment sense and those who are disabled only in the regarded-as sense.” D’Angelo v. Conagra Foods, Inc., 422 F.3d 1220, 1235 (11th Cir. 2005). Thus, it follows that employees with perceived disabilities are entitled to reasonable accommodation under the ADA. See Williams v. Phila. Hous. Auth. Police Dep’t, 380 F.3d 751, 772-76 (3d Cir. 2004).

Rejecting this “plain language” view, the Fifth, Sixth, Eighth, and Ninth Circuits have held that the ADA’s reasonable accommodation requirement does not apply to perceived disabilities. Kaplan v. N. Las Vegas, 323 F.3d 1226, 1233 (9th Cir. 2003); Weber v. Strippit, Inc., 186 F.3d 907, 916-17 (8th Cir. 1999); Workman v. Frito-Lay, Inc., 165 F.3d 460, 467 (6th Cir. 1999); Newberry v. E. Tex. State Univ., 161 F.3d 276, 280 (5th Cir. 1998).

In reaching its decision, the Ninth Circuit reasoned that, while the ADA does not expressly differentiate between the three (3) types of disability liability, the result of requiring reasonable accommodations for employees with perceived disabilities would be “perverse and troubling” because impaired employees would actually be ‘better off under the statute if their employers treated them as disabled, even if they were not,’ worsening disability stereotypes rather than erasing them. Kaplan, 323 F.3d at 1232.

STUDENT LOAN FORGIVENESS TAXABILITY

The United States Department of Treasury has confirmed that Public Service Loan Forgiveness under the “College Cost Reduction and Access Act” (CCRAA) meets the requirements of Tax Code Sec. 108(f) and is not taxable. Although all income from any source is generally taxable including income from a cancellation of debt; Section 108(f) allows forgiveness of student loans to be excluded from taxable income, if the student loans were forgiven as the result of the borrower working for a certain period of time “in certain professions for any of a broad class of employers.” Likewise, Section 108(f) defines a “student loan” as a loan to assist an individual in attending an educational organization.

By letter to Congressman Levin, the Department of the Treasury has confirmed that all student loans eligible for CCRAA Public Service Loan Forgiveness, including Federal Direct Consolidation Loans, will be considered student loans, as defined by Section 108 (f). For this reason, the loan forgiveness program meets the requirements of 108(f) and are not taxable. In Revenue Ruling 2008-34, the Treasury Department had previously confirmed that most law school based loan forgiveness programs also met the requirements of 108(f) and would not be taxed.



Departmental Spotlight

THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

WWW.OSAH.GA.GOV
(404) 657-2800

Chief State Administrative Law Judge: Lois F. Oakley

Number of Employees: 40

Mission: *To enhance public trust in the integrity of state government by providing an independent forum for resolving disputes between the public and state agencies in a fair, respectful, timely and professional manner.*

Recognition and Accomplishments: Featured in the Georgia Bar Journal, “Administrative Law Judges ‘Ride the Circuit’ to Provide Georgians with a Day in Court”

Recipient of Georgia Oglethorpe Award Focus Recognition

Highlighted in the Journal of Organizational Excellence, “From Bureaucracy to Meritocracy and Customer Focus: A Georgia State Agency Reinvents Itself”

Recipient of the Jim Kelly Leadership Award, presented for leadership in using the Georgia Oglethorpe (Baldrige) Criteria for Performance Excellence

The Office of State Administrative Hearings (OSAH) was created in 1994 by the Georgia Legislature in order to provide Georgians with an independent and

impartial forum to resolve disputes with State agencies. Prior to the creation of OSAH, agency decisions were reviewed by the agency officers. OSAH’s purpose is to help insure the integrity of decisions made by state officials, regarding the rights, benefits and privileges of private citizens, such as the denial of food stamps, the suspension of a driver’s license or the issuance of a permit. The OSAH administrative appeal process is designed to confirm that State agency decisions are in compliance with applicable statutes and rules.

The OSAH Administrative Law Judges conduct hearings in all 159 of Georgia’s counties and settle disputes for over 300 types of cases including environmental permits, professional licensing complaints, special education matters, labor and employment issues, election disputes, real estate, tax and consumer fraud issues as well as appeals for matters related to public assistance determinations and child support obligations. OSAH received over 32,000 case referrals last year.

Georgia is one of 26 states that has adopted the central panel model of administrative adjudication and has one of the largest central panels in the country as measured by the span of case types. OSAH leads the nation in the efficiency of its administrative tribunal and has received national recognition for its performance excellence and the professionalism of its staff.

Hearings held by OSAH’s judges are governed by the Georgia Administrative Procedures Act and OSAH rules. Complex cases may include extensive prehearing motions, prehearing exchange of documents, subpoenas to compel attendance and evidentiary hearings. The rules of evidence applied in OSAH hearings are similar to those in non-jury civil trials. Once a case is referred to OSAH, a hearing is scheduled immediately and a notice is sent to the parties within 24 hours. The average case is scheduled for hearing and resolved by the issuance of a written decision in less than 32 days. Hearings are conducted in donated space in county and municipal buildings, state agency offices and even

unconventional places such as nursing homes and bedrooms.

Many of the cases brought before OSAH judges involve *pro se* litigants. These cases create unique challenges for OSAH judges. OSAH judges are tasked with creating and maintaining a hearing environment in which all voices can be respectfully heard and a comprehensive record can be fully developed. To assist *pro se* litigants in best presenting their case, and to familiarize them with the OSAH process, the OSAH website provides a video guide on case presentation and procedure. Model forms are also available on the website along with answers to frequently asked questions in both English and Spanish. In order to continue providing Georgians and State agencies with efficient service and easy access to case information, in 2008, OSAH will implement the “eCourt,” a new web-based case management system that will provide automation of internal processes, filing by e-mail, internet case file access, and vastly improved case tracking measures.

The Office of State Administrative Hearings was created to provide Georgians with service that is impartial, professional, accountable and efficient. OSAH provides a forum in which parties may contest actions taken by state agencies in a fair, respectful, timely and professional manner. OSAH helps to instill Georgians with confidence in the integrity of state government.

MEET THE OFFICERS

CYNTHIA CARTWRIGHT

Cartwright has held all positions as an officer of the Government Attorney Section and is in her second term as Chair. She envisions creating more opportunities for members to network, creating a employment listing resource for attorneys out of work or seeking a new position, revising the section’s bylaws, creating a blog for members to easily communicate, solidifying a quarterly newsletter with pertinent information for members, and providing more lunch and learns for members to obtain assistance in areas of interest.

LOAN FORGIVENESS LUNCH & LEARN

There was a large turnout for the Loan Forgiveness Lunch and Learn held at the State Bar headquarters recently. Lawyers came from many areas of the state to participate. Several panelists gave an in-depth presentation on the new state bill to forgive student loans for employees of nonprofits and government. There will also be a forum on loan forgiveness at the Georgia State University College of Law in Room 170 on September 30 at noon and at 4:30 p.m.

Cynthia Cartwright works with the Supreme Court of Georgia and Georgia Court of Appeals as the Assistant Reporter of Decisions. Her primary duty is to create the research index that is published in the Georgia Court of Appeals Reports. Her public service includes City Attorney for the City of East Point, Assistant City Attorney for the City of Orlando, and Assistant Public Defender for the City of Atlanta. Her pre-law school work for the government included Civil Rights Field Investigator for the State of Washington, Property Clerk for the State of California, Housing Manager and

Budget Analyst for the United States Navy, and Customs Clerk for the United States Customs Department. When leisure time is available, Cynthia enjoys her garden, the koi pond, and making natural body products. One of her greatest joys is the time she spends with her grandson.

ANGELA WOODLIFF JONES

Angela is the Section Secretary and is Senior Associate Counsel with the Georgia Department of Transportation. In this role,

she provides general consultation regarding employment matters, represents the Department at administrative hearings and provides training regarding compliance with employment regulations. Angela is a 1996 graduate of Georgia State University College of Law. She is a certified grievance hearing officer, holds a Senior Professional in Human Resources (“SPHR”) certification and is trained in mediation. She can be reached at the Georgia Department of Transportation, 600 West Peachtree Street, N.W. Suite 2316, Atlanta, Georgia 30308. Or at (404) 631-1474, angela.jones@bellsouth.net. Please congratulate Angela on her recent nuptials.

CHUCK OLSON

Charles C. ("Chuck") Olson is the General Counsel for the Prosecuting Attorneys' Council of Georgia and Vice Section Chair. Chuck Olson received his Associate of Arts from Gordon Military College in 1968, a B.S. from Georgia State University in 1971 and his J.D. from Woodrow Wilson College of Law in 1981. He has been with the Prosecuting Attorneys' Council of Georgia since 1975 and is responsible for handling, among other duties, ethics, RICO, grand jury and international law issues that arise in criminal cases for prosecuting attorneys in the State of Georgia. Chuck was coordinator of Prosecution Support for the 1996 Olympic & Paralympic Games and the 2004 G8 Summit. He has provided planning assistance to the Director of Crown Prosecutions, New South Wales, Australia for 2000 Summer Olympics, the Utah Prosecution Council for the 2002 Winter Olympics, and the Ministry of the Attorney General, British Columbia, Canada for the 2010 Winter Olympics.

Chuck has lectured on criminal justice topics for the United States Department of State, U.S. Attorney, Northern District of Georgia, the Georgia Public Safety Training Center, the Georgia Fire Academy, the Georgia Department of Economic Development, the Georgia Police Academy, numerous regional police academies and police agencies, the Georgia Sheriff's Association, the Georgia Jail Association, and Georgia State University. He was counsel of

record for the National District Attorneys Association as amicus curiae in Medellin v. Drentke. He is a member of the American Bar Association and the International Association of Prosecutors and has been admitted to practice before the United States Supreme Court, the Supreme Court of Georgia and the Georgia Court of Appeals.

His Publications include Mark J. Kadish & Charles C. Olson, Sanchez-Llamas v. Oregon and Article 36 of the Vienna Convention on Consular Relations: The Supreme Court, The Right to Consul, and Remediation, 27 Mich. J. Int'l L. 1185 (2006); The Prosecuting Attorney in Georgia's Juvenile Courts, 13 Georgia Bar Journal, No. 5, p. 26 (2008); Logistics Operations of the 48th Infantry Brigade (Mech) in Operation Desert Shield/Storm (US Army Quartermaster Center and School, 1992) ; Editorships include the Trial Manual (Vol. 1, 3, and 5); Grand Jury Handbook; Grand Jury Handbook, Annotated; Prosecuting Attorneys Deskbook; and Georgia Explosives Laws (Prosecuting Attorneys' Council of Georgia).

Chuck has served in the military with the rank of LTC (Retired), Quartermaster Corps, Georgia Army National Guard. He served 24 years including Operation Desert Shield/Storm. He was awarded the Meritorious Service Medal w/the 2 Oak Leaf Clusters, an Army Commendation Medal and an Army Achievement Medal. He currently coaches JROTC drill team at North Springs High School in Sandy Springs, Georgia.

He is married to Ann Veldhuis Olson of Atlanta. He has three sons: SGT Erik Olson, US Army (Iraq); Scott (North Georgia College & State University) and William. He has two (2) grandchildren and is active in Troop 463 of the Boy Scouts of America.

MARISSA KEY

Marissa M. Key is a Senior Assistant City Attorney with the City of Atlanta Law Department and Section Treasurer. Marissa has represented the City of Atlanta for approximately

7 years. During that time she has provided general legal advice to the Departments of Police, Fire and Corrections as well as employment advice to the Department of Human Resources. Marissa has successfully defended the City in State and Federal Court on civil rights claims, employment discrimination cases and Civil Service Board appeals. Marissa volunteers with the Truancy Intervention Project and currently serves as the Treasurer of the Government Attorneys Section of the State Bar.

VOLUNTEER OPPORTUNITIES ABOUND

Volunteer to make your Section the best ever. Many of the Section's events are not attended by the vast

OPEN RECORDS NEWS



In the Unified Government of Athens-Clarke County v. Athens Newspapers, LLC, the Court of Appeals held that under the Open Records Act, the three (3) day time-period for responding to Open Record Act requests starts to toll upon receipt of the request by the governmental entity. In ruling that the county police did not have to release investigatory records relating to the pending investigation of the 1992 slaying of a UGA student, "the appeals court opinion added that the county violated the part of the open records statute that required the county to respond to all open records requests within three (3) business days. The employee in control of the requested police records responded to the request within three (3) days of receiving it herself, but someone else in the county's offices had signed for the letter containing the request six days before the county responded." As reported by Alyson M. Palmer, Staff Reporter, Daily Report, July 1, 2008.

majority of the members. We tend to get settled into our routines and neglect getting out to meet other attorneys. There are ample opportunities to contribute to the section and facilitate ideas that will benefit it as a whole. Having attended some committee meetings, I know that they are a a lot of fun and there are personal rewards in seeing your ideas turn into reality.

Volunteers are needed for a Technology Committee to set up a blog, job postings and improve our website page. The newsletter welcomes new writers to contribute. There is a by-laws committee working to update the section by-laws. A CLE Committee is being formed to work on next year's seminar. What could be more fun than joining the Social Committee to plan social events and the proposed Government Attorney of the Year Award? More opportunities to get involved are forthcoming. Your ideas are always welcome. To sign up, email cartwric@gasupreme.us. We look forward to hearing from you!

MAINTAINING A HEALTHY BALANCE BY KEVIN WILSON, ESQ. STAFF ATTORNEY FOR THE HONORABLE HAROLD MELTON

I have always believed that it is important to maintain a healthy balance between one's work life and one's life outside of work. Yes, I am a lawyer, and I truly enjoy the work that I do with the Georgia Supreme Court, but being a lawyer is not the only thing that defines me. I am also a flamenco singer, a salsa dancer (performer and instructor), a creative writer, a stage director, an actor, and a host of other things that, at first glance, would seem to have nothing to do with my being a lawyer. However, I really think that taking the time to feed my creative side and maintain a healthy balance between my work life and my life outside of work has made me, not only a better lawyer, but a better person. With every creative pursuit that I have engaged in, I have met new people, learned something new about myself and others, and have become a more well-rounded person both at work and away from work.

For five (5) years, I was involved with writing, directing, and performing in the Atlanta Bar

Association's "Courthouse Line" series (an annual musical/comedy stage production affectionately referred to as the "Bard" show by many of the folks who have had the pleasure of participating in it). Through my involvement with the "Bard," I met many talented lawyers, judges, and others who have become great friends and great contacts. Had I not taken the chance to do something creative like the "Bard" show outside of my daily work routine, I may never have met these wonderful people who have come into, and remained, in my life.

For the past eight (8) years, I have been a salsa dancer, performer, and instructor with the professional dance company, "Salsatlanta." I still teach salsa classes almost every weekend, and I still love salsa dancing as much today as I did when I first decided to try it, on a whim, nearly ten (10) years ago. I may even love salsa dancing today more than I did when I first started, because it was through salsa dancing that I met my lovely wife. Nowadays, my wife and I teach and perform salsa together on a regular basis. Had I not tried something new outside of work all those years ago; I may never met the wonderful woman who now helps me maintain a wonderful balance between my work life and home life every day.

Besides dancing salsa together, my wife and I also perform in our own flamenco performance group, "Caló Gitano." My wife, who has been dancing flamenco practically her entire life, is the lead dancer of Caló Gitano, and I am the lead singer in the group. We offer flamenco classes in our spare time, and our flamenco group currently plays a regular gig the first Saturday of every month at a restaurant in East Atlanta called VINO LIBRO. You can see some of our work at www.calogitano.com. Through singing with Caló Gitano, I have been able to hone my Spanish skills to the point where I can actually communicate in a second language (something that I never thought that I would be able to do), and I have learned a great deal about a beautiful dance, flamenco, that I never really knew much about before I met my wife.

C hair's Comments:

I would like to thank the Newsletter Committee: Chiquita Johnson, Editor (Augusta Law Department); Ottrell Edwards, Assistant Editor (Equal Employment Opportunity Commission); Tesha Clemons, Writer (Fulton County Juvenile Court); and Brian Johnson, Writer (Georgia Senate Research); for their dedication in putting together our newsletter. Consider writing an article for the newsletter or providing information about interesting topics. I look forward to reading the newsletter each quarter.

In these difficult economic times, job security is very important. Many attorneys find themselves without a job because of firms closing or downsizing, state agency budget cuts, and other government offices tightening their economic belts. Looking for a job in the legal profession is not easy in Georgia. Other than the Daily Report, the newspaper, and a handful of websites, there are few resources to find openings.

As a service to the Government Attorneys' Section, we will start emailing job announcements to members. We are also starting a blog for job posting as well as a source for easy communication amongst members. We are looking at adding key law job search engines on our web page with the State Bar of Georgia.

To be effective, we need each agency to inform us of jobs as they become available. Basic information can be sent directly to me at cartwric@gasupreme.us as we sort out the mechanics.

From all of the things that I have done, and still do, outside of work, I have learned new things about myself and the world around me, and pushed myself to do more things than I ever would have thought possible. By maintaining interests that are seemingly independent of my life as a lawyer, and maintaining a healthy balance between my life as a lawyer and my outside interests, I have actually become a better, more grounded, lawyer as a result. So, no matter what line of work you are in, the next time you think to yourself “Gee, I’ve always really wanted to try (some healthy activity outside of work),” stop just thinking about it and actually do it. I truly believe that you will be rewarded in ways that you may have never dreamed possible when you actively pursue your interests outside of work. Who knows? Maybe I’ll even see you at salsa class or at our next flamenco show.



As reported by the American Bar Association, the **GEORGIA BAR WINS AN ABA YLD AWARD.** The State Bar of Georgia is among two (2) winners of the ABA's 2007-08 Awards of Achievement. The bar won for its *Model Juvenile Code Project*.

At right, Amy Viera Howell accepts the Most Outstanding Single Project Service to the Bar Award on behalf of the State Bar of Georgia Young Lawyers Division.

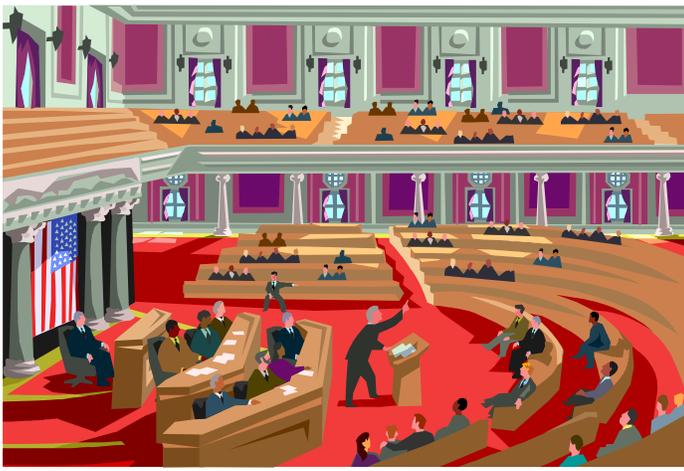


You should include the job title, agency’s name and location, a brief job description, salary, deadline for resumes/application, and link to obtain more information.

Government attorneys provide a unique service to the public and the skills we acquire are often unique to governmental agencies. That is all the more reason a job network specifically targeting government jobs is critical to section members.

Pass the word on to your Human Resource Department or hiring personnel that this section can get job listings out to hundreds of potentially qualified attorneys. Alternatively, you can email the hiring contact’s information and we will contact them to give them information on listing jobs. Let’s all get involved and provide a safety net for job security. You never know when you will need it.

*Cynthia Cartwright
Chair*



Legislative Update

On August 14, 2008, the President signed into law the Higher Education Reauthorization and College Opportunity Act of 2008 (HR 4137) including four (4) new loan forgiveness and repayment programs that benefit public interest lawyers:

THE JOHN R. JUSTICE PROSECUTORS AND DEFENDERS INCENTIVE ACT

Providing \$10,000 per year in exchange for one time renewable three-year commitment for state and local prosecutors and public defenders.

THE LEGAL ASSISTANCE LOAN REPAYMENT PROGRAM

Providing \$6,000 per year in renewable three-year commitments to a maximum of \$40,000 for civil legal assistance lawyers.

PUBLIC SERVICE STUDENT LOAN FORGIVENESS

Providing no more than \$2,000 per for five (5) years for Public Sector Employees, including public interest legal service (prosecution, public defenses, or legal advocacy in low-income communities at a nonprofit organization).

PERKINS LOAN CANCELLATION FOR PUBLIC SERVICE

Providing partial loan cancellation for persons in specified public service jobs including federal public defenders.

BAR HEADQUARTERS RECEPTION

A BIG SUCCESS

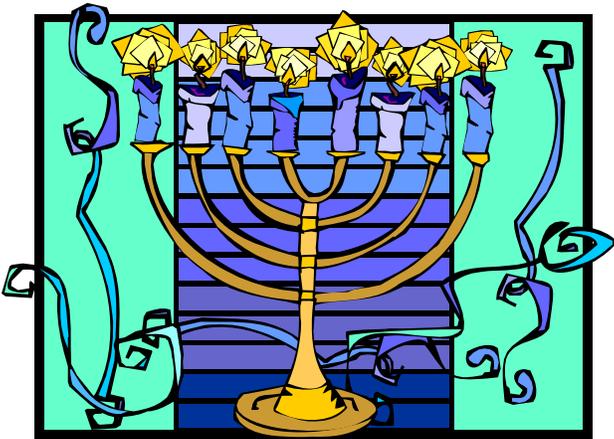


On June 10th , the Section held a Judicial Reception at the State Bar headquarters with plenty of food and drinks. Justice Benham of the Supreme Court of Georgia was in attendance, as well as, Fulton County State Court Judge Brenda Cole, a DeKalb Magistrate Judge and many others. It was suggested that section members coordinate with retired judges to facilitate their attendance, as we had some retired judges present. There was quite a welcome and reunion celebration for the retirees. If you are interested in planning a reunion or other Section activities please email Cynthia Cartwright at cartwric@gasupreme.us.

Holiday Celebration 2007



The Section held its Holiday Reception at the Supreme Court of Georgia in 2007. There were several Supreme Court Justices and Court of Appeals Judges in attendance. *Pictured are: Cynthia Clanton, Administrative Office of the Courts; Chief Judge Anne Barnes; Amy Doyle; Justice Harold Melton and Judge Herbert Phipps.* Presiding Justice Carol Hunstein and Judge Debra Bernes are not pictured.



**TESTIMONY AT EMPLOYEE POST-TERMINATION
HEARINGS BY MARY J. HUBER, ESQ.**

In the case of Glass v. City of Atlanta, 2008 Ga. App. LEXIS 818 (7/8/2008), the Court of Appeals approved the use of hearsay at post-termination hearings conducted by the City of Atlanta Civil Service Board. According to the Court, the City ordinance governing hearings allowed the Board to consider hearsay. The Court's ruling on this point is contrary to due process, which requires that a public employee be given the opportunity to confront and cross-examine the witnesses against him. See Kelly v. Smith, 764 F.2d 1412, 1415 (11th Cir. 1985).

The Court of Appeals acknowledged this in the case of Finch v. Caldwell, 155 Ga. App. 813 (1980). In that case, the Court considered an appeal from a decision of the superior court affirming an administrative decision to deny the claimant's application for unemployment benefits. The Court held the use of unsworn affidavits to establish evidence violated the right of confrontation and cross-examination of witnesses. 155 Ga. App. at 815. The Court held further that in Georgia "even in the absence of objection, hearsay is without probative value to establish any fact." Id.

Glass was discharged from employment in 1992 and Glass' case was an appeal by certiorari from a decision of the City's Civil Service Board issue in 1995. The case spent 12 years in the Superior Court of Fulton County before ending up in the Court of Appeals. Although the Court of Appeals expressed its disapproval of the delay in the case, both before the Civil Service Board and in the Superior Court, it nevertheless affirmed the decision of the Superior Court. From the reported decision, it appears that Glass' counsel did not raise the claim that the use of hearsay violated Glass' right to procedural due process.

The bottom line is that counsel should consider the holding in Glass to be an aberration. In order to

comply with due process, counsel must present live witnesses, not affidavits, at administrative hearings.

Mary practices exclusively in the area of employment law, specializing in public employment. Through the Atlanta law firm of Hollowell, Foster & Gepp, P.C., Mary handles employment litigation for the Fulton DeKalb Hospital Authority and for DeKalb County.

