The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Fall 2026



Editor's Corner

By Kem A. Eyo



Does it feel to you like the world is going berserk? Or worse, that all of the futuristic movies from the 80's and 90's (picture The Terminator and I, Robot.) are becoming reality? I have found myself thinking about these things – and wondering what, if anything, I can do about.

Let's face it, we all have a part to play in affecting the state of our environments. We have control over whether we give into the temptation to respond in kind to the inconsiderate client/opposing counsel (or neighbor), or whether we maintain professionalism (and save our true thoughts and feelings to share only with our co-workers/family/friends). While AI is the way of the future, we have control over whether we let it do our work for us, or whether we do the actual research and writing, and merely allow AI to refine our creations. Some of us remember the slogan "Only YOU can control forest fires." Well same is true for what we do… Only YOU can control civility and professionalism. I encourage each of us (including myself) to recommit, each and every day, to putting out into the world that which we would like to receive – candor, consideration, courteousness, and our highest possible caliber in all we do.

Oh, and one more thing… If you have a topic you would like to share with the section, please send articles. We are always open to receiving written materials. We welcome anything that educates our clients, educates or entertains our section members, or recognizes our section members.

Editor's Emeritus

By Randall Kessler



I still recall starting the year 2000. It seemed so futuristic. A new year, a new decade, a new century. And here we are, more than a quarter of the way through the new century. I hope this quarter century is great for all of us, and am very much looking forward to the new changes in our practice. This past quarter saw incredible changes and advances; email, online research, zoom…… And now AI. What will our practice look like by 2050? We all already face questioning from clients about the alternate advice they are getting from AI. We have seen hallucinated caselaw and made-up cases appearing in legal briefs, but eventually AI will get it all right, no? But nothing, in my opinion, will replace the human element that will always give us an edge over AI. After all, AI can never tell a client "I know exactly how you feel."

Feel free to write a piece with your thoughts and submit it to the FLR, and please keep coming to our live CLE programs. The connections are invaluable.

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From the Chair

By Jamie Perez



The beginning of a new bar year provides an opportunity to reflect on the work our Section has done, and to think carefully about where we want to go next. With that in mind, the Executive Committee gathered for a planning retreat in August to discuss our priorities and goals for 2026-2027. I came away from the retreat grateful for the thoughtful ideas each member brought to the discussion and excited about the work ahead.

As I begin my term as Chair, I am also coming off the experience of planning the 2026 Family Law Institute. That process gave me a greater appreciation for how much work happens behind the scenes to support our Section. A successful FLI requires speakers who give generously of their time and knowledge, sponsors whose support makes the event possible, State Bar and ICLE staff who coordinate the logistical details, and Executive Committee members and volunteers who step in wherever they are needed. Most importantly, it depends on our members continuing to show up, participate, and invest in this community. I am grateful to everyone who helped make the 2026 Institute a success. I am also grateful to Jeremy Abernathy for his leadership during the past year and for the trust he placed in me to plan the Institute.

Planning FLI also reinforced what I value most about this Section – it gives us a place to develop relationships with colleagues throughout Georgia, exchange ideas, ask for help, and remain connected to people who understand the demands of family law practice.

As Chair, I want to build on the work of those who have led the Section before me while looking for ways to make our programming and resources even more useful to our members. During our August retreat, the Executive Committee worked on planning not only the year immediately ahead, but also the future

of the Section more broadly. We discussed updates to our bylaws, ongoing rebranding and communication efforts, upcoming Nuts & Bolts programming, and inclusion initiatives, including ways to engage Section members outside the metro Atlanta area so that lawyers from every corner of Georgia feel connected to, and represented within, our Section. Of course, we also began planning for both the 2027 and 2028 Family Law Institutes. What struck me most was the willingness of our Executive Committee members to devote their time and energy to ensuring that our Section remains relevant, responsive, and valuable to its members.

I am fortunate to serve with a talented and committed Executive Committee, and I look forward to working with them during the year ahead. I hope our members will share their ideas with us as well. If there is a topic we should address, a program you would find useful, or an article you would like to write, we want to hear from you, and encourage you to interact with us via these outlets:

Instagram: @gafamlaw_section
Facebook: Georgia Family Law Institute
Email: gafamilylawsection@gmail.com
Website: https://www.gafamilylawsection.org/

It is an honor to serve as Chair, and I am looking forward to the year ahead.

Your Client and Associates Are Feeding Your Work to the AI Machine: A Warning Attorneys Can't Afford to Skip

By Jessica Reece Fagan, Esq.

Not long ago, our firm was interviewing a prospective associate when the conversation turned to artificial intelligence.

"Do you use Harvey?" the candidate asked.

A few years ago, my answer would have been a simple: no. We are lawyers. We are not robots. We are trained to think, analyze, reason, and advocate.
That thought process is now outdated. Artificial intelligence is no longer a hypothetical future. Attorneys are increasingly confronting these issues in litigation, transactional practice, and client communications alike. Judges are issuing standing orders on the use of AI. Lawyers are asking Harvey to polish their contracts or even prepare the first draft. And if you have not already received an endless "ChatGPT" email from a client, you will soon. AI is already embedded in the tools our clients use, the software our vendors sell, and, increasingly, the platforms attorneys rely upon every day.

And it all might be discoverable if you are not careful.

The Potential Problem in Practice

It is no surprise to any practicing attorney that clients like to "self-help;" but with the advent of generative artificial intelligence, the game is changing on both sides.

Generative AI is the type of AI that creates new, original content by learning patterns from massive datasets. No longer is a client recounting what their hairdresser/pet walker/best friend's cousin's sister-in-law thinks about their case and asking what you think. The second-year associate is not going to the law library or even online to LexisNexis to spend hours researching and analyzing. No, when it comes to generative AI, users are starting their legal research by inputting massive amounts of information into an online platform and asking that faceless bot for feedback. People are often not just asking the platform to summarize or polish, but also asking it to analyze, generate new questions, identify new angles, and explore new "what ifs."

This can all be quite thrilling and advantageous. But there are risks.

First, not all AI platforms are created equal. Attorneys should understand the significant difference between entering information into a publicly available consumer AI platform and using an enterprise-level AI platform. When using a publicly available AI tool, the user inputs and outputs may be retained or utilized by the provider. When using an enterprise platform, however, the user is operating under contractual privacy, security, and data-use restrictions. As discussed below, courts view the differences between these platforms much differently.

Second, AI is extraordinarily confident. It does not say "I'm not sure" or "that depends on the judge." The platforms often will present analysis with the same

authoritative tone, whether it is correct or wildly off base. A client who spends an evening with ChatGPT may arrive convinced that their attorney has overlooked a strategy or is being overly cautious when, in fact, the AI simply did not know what it did not know. A second-year attorney who is eager to please but lacks the depth or nuance in the law can spend hours summarizing data and drafting a memo without analyzing the concepts.

And without proper protections or training, the information generated can be irrelevant, factually incorrect, or based on laws from other jurisdictions. In worst-case scenarios, such use of AI can even result in a complete waiver of privilege or protection.

What the Courts Have Already Decided

This is no longer a theoretical concern. In United States v. Heppner, decided Feb. 19, 2026, Judge Jed S. Rakoff of the United States District Court for the Southern District of New York issued what appears to be the first federal ruling to directly address whether a client's conversations with a consumer AI, which were seized pursuant to a valid warrant, are protected by attorney-client privilege or work product. The answer was unambiguous: they are not.

In Heppner, the defendant was a corporate executive under federal investigation. The facts indicate that he had used an AI platform (Claude) to analyze his legal exposure. When the Government seized those documents, he claimed privilege. Defense counsel argued the communications were privileged because: (1) the defendant inputted information learned from counsel; (2) the defendant entered the information for purposes of speaking with counsel and receiving legal advice; and (3) the defendant shared the information generated with his counsel.

Judge Rakoff rejected the claim on three grounds.

First, AI is not an attorney. As such, communications between the defendant and AI are not the same as communications between the defendant and his counsel, regardless of subject matter. There was no "trusting human relationship"; therefore, AI cannot form a privileged attorney-client relationship with a user. In fact, the court noted that this particular AI platform (Claude) expressly disclaims providing legal advice.

Second, the generated communications were not confidential because the Heppner defendant was not operating on a private platform, but a public one. The Anthropic Privacy Policy and the platform's terms of service allowed the company to collect, retain, and train on user inputs and outputs, which the Court found eliminated any reasonable expectation of confidentiality. In a critical footnote, the court stated that "even if certain information that Heppner input into [the AI] was privileged, he waived the privilege by sharing that information with [it] . . . just as if he had shared it with any other third party." It did not matter that the AI content was later shared with counsel; "non-privileged communications are not somehow alchemically changed into privileged ones upon being shared with counsel".

Third, the defendant did not communicate with AI to obtain legal advice. The Court admitted this was a closer call, but concluded that, under these facts, the materials were not prepared at counsel's direction, so they could not constitute a protected work product. The Court admitted that, had counsel suggested the defendant use AI, it may be a reasonable argument to claim AI was functioning as the "lawyer's agent", but that had not occurred in this case. Instead, the Court concluded that because the documents generated were: (1) not prepared at the behest of counsel; and (2) did not disclose counsel's strategy or mental impressions, they did not merit work product protection.

What to Do: A Practical Checklist for Practitioners

Although the law surrounding AI and privilege continues to evolve, lawyers are well advised not to assume that courts will extend traditional protections to communications with consumer AI platforms.

1. Update your retainer agreement now and discuss risks at intake. Do not rely on vague references to "confidentiality". Include explicit language in retainer agreements to make clients aware that as technology develops, so do the risks. Explain that using publicly available AI tools, such as ChatGPT or Claude, could not only generate incorrect information but also, depending on the information shared, result in a waiver of the attorney-client privilege and work product doctrine. Encourage clients to ask their counsel questions, not a bot. Note that the ABA's Formal Opinion 512 on Generative AI Tools (July 2024) confirms that

attorneys have an obligation and affirmative duty under ABA Model Rule 1.4 to communicate with clients about technology-related risks that could affect their representation. Savvy litigators are already requesting "all communications with AI-based tools, including prompts, inputs, and outputs." Get ahead of these risks and protect yourself and your clients.

2. Make sure you and your firm are utilizing the correct platforms. Georgia Rule of Professional Conduct 1.6, for example, requires that attorneys make reasonable efforts to prevent the unauthorized disclosure of confidential client information. The State Bar of Georgia's Generative AI Toolkit, released in July 2025, extends this squarely to AI: attorneys must ensure that any AI tool used in connection with a client matter offers adequate confidentiality and security protections, and should not input client information into any tool that lacks them. That means users must ensure that all settings where the platform learns from input are turned "OFF," and that AI-assisted work occurs only within secure environments controlled by the firm.

3. Update Office Guides and Talk to your team. Establish a policy on the use of artificial intelligence, including generative AI. While banning its use is one option, such an extreme measure is unlikely to be the best recruitment tool. That said, all attorneys need to be trained that AI is best used as an assistant, not a replacement, and that generative AI is not just a search engine nor a substitute for independent thought and analysis. Any experienced AI user will tell you that even the most basic AI-generated summaries must be cross-checked. Moreover, the output is only as strong as the prompt. Generating an effective prompt—what the AI is being asked to do—often requires a sophisticated understanding of the underlying facts, law, and strategy.

4. Absolutely use AI reasonably. The most successful attorneys in the future will likely be those who learn to use AI as a supplement to their professional judgment. Used appropriately, AI can be an extraordinarily effective tool for organizing timelines, identifying missing dates, sorting records, and creating witness chronologies. In a way, AI is an exceptionally eager first-year associate. It can efficiently process and synthesize large volumes of information, but the output still needs to be evaluated by a more experienced lawyer. Similarly, generative AI can help identify overlooked issues, suggest alternative theories, and test assumptions.

Examples of productive AI prompts include:

- *"Assume you are opposing counsel, what is wrong with my argument? What defenses, counterarguments, or alternative explanations would you raise based on these facts?"*
- *"Review this chronology and identify factual gaps, inconsistencies, or missing documents that should be investigated before deposition."*
- *"Based on these facts, generate a list of potential discovery requests that would help confirm or refute the client's claims."*
- *"Create a timeline of events from these records and identify dates, communications, or witnesses that require further investigation."*

But again, it all comes down to case-specific and court-specific input. The true advantage lies not in obtaining answers, but in knowing which questions to ask. And that ability remains the defining skill of the human attorney.

The Obligation Is Ours

Our clients are not acting in bad faith when they open ChatGPT. Lawyers are not trying to cut corners. They are simply doing what people do in 2026: utilizing the most accessible tool available to them.

That is precisely why the warning must come from us. Not from a terms-of-service page buried in an app, not from opposing counsel's discovery request, but from us at the beginning, in plain language, and in writing, internally and externally.

The courts have now made clear that pasting a lawyer's letter into a public chatbot is the legal equivalent of reading it aloud in a crowded room. It is our job to make sure our clients, and our own staff, know that before they hit "Enter."

As artificial intelligence becomes more integrated into legal practice, attorneys must remember that our professional judgment remains our most valuable asset—and one that cannot be outsourced.

Many thanks to Fagan Law Group associate Michael A. Head, Esq., whose knowledge of AI led to thoughtful contributions and feedback.



JESSICA REECE FAGAN *is the founder of Fagan Law Group, an Atlanta firm devoted exclusively to divorce and family law. She is known for pairing deep legal expertise with a genuine commitment to her clients, guiding them through everything from high-asset divorces to straightforward domestic matters with white-glove service. While Jessica frequently helps clients reach amicable resolutions through mediation and negotiation, she is equally prepared to fight for their interests in court when needed. Her clients, ranging from working professionals to public figures, share a common thread: they are strategic, family-first people seeking a forward-looking resolution to a difficult chapter in their lives. A cum laude graduate of the University of Georgia and Georgia State University College of Law, Jessica lives in Atlanta with her husband and two daughters.*

Subpoenaing ChatGPT Records: What Georgia Family-Law Practitioners Need to Know

By Elizabeth Schneider, Esq.

Artificial intelligence is quietly creating a new discovery battleground in family law: the ChatGPT account.

Increasingly, ChatGPT is woven into the ordinary work of litigation and the personal experience of a family-law dispute. A parent may use it to draft communications, analyze financial information, organize evidence, prepare court filings, discuss a custody dispute, or simply think through what is happening in the case. Those conversations may contain facts, admissions, timelines, strategies, or other information that could matter to the litigation.

So, what happens when counsel learns that the opposing party has been using ChatGPT throughout the case? The obvious answer is to subpoena OpenAI. After all, if the evidence is in ChatGPT, why not go straight to the source? However, the better discovery question may not be "How do we get the ChatGPT records?" but "Who should we get them from?"

That distinction matters. A subpoena to the AI provider is not necessarily the starting point—and in many cases, it may not be the most effective path to the evidence. Before turning to a third-party provider, family-law practitioners should consider the nature of the information sought, who possesses or controls it, how it can be authenticated, and what privacy, privilege, and procedural issues the request may raise.

The emergence of AI does not eliminate familiar discovery principles. It simply gives them a new, and increasingly important, place to operate. The better way to think about ChatGPT records is the same way we think about other electronically stored information: What exactly are we looking for? Who has it? Is it relevant? Has it been preserved? And what is the least intrusive way to obtain it?

An additional wrinkle is presented in that OpenAI has now published specific procedures for civil subpoenas, and those procedures make clear that a third-party subpoena is not simply a matter of sending a subpoena to CT Corporation and waiting for production. The process, the scope of the request, and whether the requesting party first attempted to obtain the information from the opposing party all matter.

Start With the Party, Not OpenAI

The first question in most cases should be remarkably simple: Why are we subpoenaing OpenAI instead of asking the opposing party for the records?

If the opposing party is the person using the ChatGPT account, that person presumably has access to the relevant conversations. A request for the specific conversations through ordinary party discovery is likely to be more direct, less expensive, and easier to defend than immediately seeking the same information from a third party.

That distinction is particularly important because OpenAI's current civil-request policy expressly states that, where a request seeks user data about a litigation counterparty, OpenAI may object if the requesting party has not exhausted efforts to obtain the information through party discovery. That does not mean a subpoena to OpenAI is never appropriate. It means counsel should have a reason for going there.

If the opposing party denies that the conversations exist, refuses to produce them, claims they were deleted, or there is a legitimate reason to believe relevant information exists that cannot otherwise be obtained

from the party, the analysis changes and a third-party subpoena may become necessary.

Do Not Ask for "All ChatGPT Records"

This is where lawyers can create their own problem. A request for "all ChatGPT records" may sound comprehensive, but it is also an invitation to an objection based on overbreadth, proportionality, privacy, and burden. OpenAI's current policy requires civil legal process to identify the relevant product or service, provide sufficient information to identify the account, describe the categories of records sought with particularity, specify the relevant time period, and include the court, case caption, and case number. OpenAI also warns that incomplete or overly broad requests may be rejected or require clarification.

If the issue is whether a parent used ChatGPT to discuss the custody dispute, request conversations concerning the custody dispute during a defined period. If the issue is whether the parent used ChatGPT to prepare a particular document, request the conversations relating to that document. If the issue concerns a particular financial transaction, identify the transaction and the relevant period. If the issue concerns a particular child or event, say so. The strongest subpoena is not the one that asks for the most information. It is the one that makes it immediately apparent why the requested information matters.

Know What "ChatGPT Records" Actually Means

Another problem is that "ChatGPT records" can mean several different things.

There may be:

- conversation content;
- prompts and ChatGPT responses;
- files uploaded into conversations;
- account-identifying information;
- payment or transaction information; and
- other technical or usage information.

If the lawyer wants to know what the opposing party actually said to ChatGPT, that is different from asking for information establishing that the account existed or was used at a particular time and the request should reflect that distinction.

This becomes particularly important in family-law litigation because the contents of an AI account may be extraordinarily personal. A person may use ChatGPT to discuss finances, relationships, employment, children, mental health, legal problems, or matters that have absolutely nothing to do with the litigation and most judges are not going to condone an all-out fishing expedition into someone's digital life. The fact that a person has a ChatGPT account does not make the entire account discoverable.

Preservation Is a Separate Problem

There is another issue that deserves attention much earlier than it often receives: preservation. OpenAI currently states that ordinary chats remain in a user's account until the user deletes them. Deleted chats are removed from the account immediately and generally scheduled for permanent deletion within 30 days, subject to certain exceptions. Temporary Chats are automatically deleted within 30 days. Archived chats, importantly, are not deleted; they remain subject to the ordinary retention rules. That means that if counsel has a legitimate reason to believe relevant ChatGPT conversations exist, waiting until the end of discovery to address preservation may be a mistake. Additionally, chats and files are not necessarily the same thing for retention purposes. A file saved to a user's Library is managed separately from the chat itself. Files associated with Custom GPTs or Projects may also have different retention rules. So, if the evidence matters, counsel should think about preservation before the evidence disappears.

And Then There Is the Procedural Problem

Even a perfectly drafted subpoena can go nowhere if it is not properly served. OpenAI's current civil-request policy states that, in the United States, it accepts civil requests issued from the Santa Clara Superior Court or the U.S. District Court for the Northern District of California, as well as out-of-state process properly domesticated through a California court. Service may be made through OpenAI's registered agent, CT Corporation System. OpenAI specifically states that it does not accept civil legal process by email, fax, regular mail, or customer-support channels, meaning your subpoena is now much more expensive, having to be domesticated and served in California.

The Account Identification Problem

Counsel should also be precise about whose account is being sought. OpenAI states that it may be unable to identify an account based solely on a person's name, IP address, physical address, or telephone number—they also want an account email address. This can be a problem when a party has seven different free Gmail addresses.

Family Lawyers Should Expect Privacy Objections

This is where ChatGPT discovery becomes particularly interesting in family law. A ChatGPT account may contain information that is far more personal than the ordinary discovery produced in a custody case. A parent may have discussed a medical issue, a marital problem, a child, a financial concern, a relationship, employment, or something entirely unrelated to the litigation. A request for an entire account therefore creates an obvious argument that the request is disproportionate. The answer is not necessarily to abandon the discovery. It is to narrow it.

If the relevant evidence concerns what a parent told ChatGPT about a child during a particular period, request that information. If the issue is whether a parent used ChatGPT to prepare a particular filing, request the conversations relating to that filing. If the issue is a particular event, identify the event and the relevant time period. The more narrowly the request is tied to the actual issues in the case, the easier it is to explain why the discovery is relevant and proportional.

But Be Careful About What the ChatGPT Conversation Proves

There is an evidentiary distinction that may become increasingly important as these records begin appearing in family-law cases. A ChatGPT conversation can establish what a person asked an AI system and what the AI system said in response. That does not mean the AI's response establishes the truth of the underlying proposition.

If a parent asks: "What are my custody rights under Georgia law?" the conversation may be relevant to show that the parent asked the question. It does not automatically establish that the answer ChatGPT provided accurately stated Georgia law. Likewise, if a parent asks ChatGPT to analyze whether a child's behavior is consistent with a particular psychological condition, the conversation may be relevant to the parent's beliefs, knowledge, or conduct. It does not transform ChatGPT into a testifying expert. That distinction should be considered both when drafting the subpoena and when deciding what evidentiary use to make of the records.

The Better Way to Approach ChatGPT Discovery

For most Georgia family-law cases, the sequence should look something like this:

- First: Determine whether the opposing party has the relevant conversations.
- Second: Request the specific conversations through ordinary discovery.
- Third: Address preservation if there is a legitimate concern that the records may be deleted.
- Fourth: If the party refuses to produce the records, denies their existence, or the information cannot reasonably be obtained from the party, consider whether a subpoena to OpenAI is appropriate.
- Fifth: Identify the specific account, subject matter, categories of records, and time period.
- Sixth: Be prepared to address privacy, proportionality, privilege, and relevance before the subpoena is served.

The Bigger Issue Is Not Really Artificial Intelligence

The emergence of ChatGPT creates a discovery problem, but the problem is not really about artificial intelligence. It is about where people now create information. A parent who once would have written a private journal entry may now have a lengthy conversation with an AI system. Someone who previously would have drafted an email may ask ChatGPT to draft it. A litigant may upload financial records, photographs, text messages, or custody-related documents and ask ChatGPT to analyze them. Those interactions may be highly relevant. But the fact that the information was created with artificial intelligence does not eliminate the ordinary rules of discovery. The lawyer still has to identify the evidence, establish relevance, consider proportionality, protect privileged or private information, address preservation, and use the proper mechanism to obtain the records. And the fact that the records are stored on OpenAI's

servers rather than in the opposing party's filing cabinet does not change those fundamental questions.

Before You Subpoena ChatGPT, Know What You Are Looking For

That may ultimately be the most important lesson. The interesting question in a family-law case is rarely whether someone used ChatGPT. The interesting question is what the person used it for. Did the parent use it to draft a message to the other parent? To analyze a financial account? To prepare testimony? To discuss the child? To formulate allegations? To create a document later submitted to the Court? Those are very different discovery questions, and they call for very different requests.

The lawyers who manage it well will be the ones who resist the temptation to treat AI as something mysterious and instead treat the records as what they are: electronically stored information that still has to survive the ordinary tests of relevance, proportionality, preservation, and admissibility. The best subpoena is not the one that asks OpenAI to turn over someone's digital life, it is the one that asks for the specific evidence the lawyer can explain to the Court that he or she actually needs.



***ELIZABETH SCHNEIDER**, Esq. is a family law trial attorney and the founder of Court-Confidence, a litigation consulting service dedicated to empowering attorneys and clients for court. She is based in Atlanta and regularly advises on trial strategy, digital evidence, and custody litigation. She can be reached at elizabeth@court-confidence.com.*

Family Law Institute 2026

With over four hundred attendees, sixteen vendors, and thousands of dollars in sponsorship, it is a general consensus that the 2026 Family Law Institute (FLI) was a successful event. The programming struck a deliberate balance between substantive law, practice management, professionalism, and lawyer well-being. Several sessions focused on professionalism from different angles, including attorney accountability, maintaining professionalism in high-conflict cases, evidentiary practices, working effectively with guardian ad litems, and ethical use of AI. A recurring message from the program was that professionalism is not limited to compliance with rules, but extends to how lawyers advocate, communicate, and serve clients in difficult circumstances. FLI 2026 had a particular focus on attorney well-being and resilience. Programming on burnout, mental health and addiction issues, and managing difficult cases recognized that successful family law practice requires not only legal skill but also personal sustainability. The FLI highlighted both the complexity and the humanity of modern family law practice. Through programming that addressed emerging issues such as artificial intelligence, cryptocurrency, and mental health, alongside core litigation and trial skills, the Institute reinforced the importance of combining technical competence with professionalism, sound



judgment, and personal resilience. The discussions throughout the weekend demonstrated that effective family lawyers must be prepared not only to navigate evolving legal challenges, but also to serve clients thoughtfully and sustainably in increasingly complex circumstances.

The Family Laws Section awarded scholarships for FLI 2026 to eight deserving individuals – Aliyah Berry of Atlanta Legal Aid Society, Annie Jordan of DeKalb Pro Bono, Hee Ryu of Atlanta Legal Aid Society, Sarah Austin of Atlanta Legal Aid Society, Carla Eubanks of Atlanta Legal Aid Society, Vanathi Gnanam of Raksha, Inc., Anajah McNish of Atlanta Volunteer Lawyer's Foundation, and Nilufar Agdi-Tabari of Atlanta Legal Aid Society.

2026 Award recipients included Noreen Banks Ware and Shiel Edlin. Noreen Banks Ware was the recipient of the Joseph T. Tuggle, Jr. Professionalism Award — presented annually since 1995 to the Section member who most exemplifies the aspirational qualities of professionalism in their practice as a lawyer and/or judge. This award was renamed in 1999 to honor Joseph T. Tuggle, Jr., whose unwavering commitment to professionalism over a 35-year career set the gold standard for all of us. Noreen's recognition is a testament to her dedication to those same ideals. Shiel Edlin was the recipient of the Jack P. Turner Award — the Section's highest honor, bestowed only in years when a member has risen to the pinnacle of what all family lawyers should strive to achieve: exceptional service to the Section and the Bar, the highest standards of ethics and professionalism, and outstanding achievement to the broader practice of family law in Georgia and beyond. Shiel, a former Chair of the Section, embodies everything this award represents.

Finally, this year's FLI featured a notable change in décor – one that caused the presentations to feel more like a conversation rather than a lecture.

Our gratitude to Jamie Perez for planning a fantastic Institute!



Shiel Edlin, recipient of the Jack P. Turner Award



Noreen Banks Ware, recipient of the Joseph T. Tuggle, Jr. Professionalism Award



Scholarship recipients

















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The State Bar of Georgia Family Law Section will be soliciting nominations for awards to honor outstanding contributions to the practice of family law. Award recipients will be selected by the Family Law Section's Executive Committee, and will be announced at the 2027 Family Law Institute. The available awards are as follows:

The Joseph T. Tuggle, Jr. Professionalism Award recognizes a Section member, lawyer or judge, who has most exemplified the aspirational qualities of professionalism in their practice in a given year. The award honors the legacy of Joseph T. Tuggle, Jr., who, throughout his 35-year career, demonstrated a legacy of unwavering professionalism that continues to inspire family law practitioners. The award recipient should embody the ideals of professionalism: fiduciary duty and loyalty – placing the client's welfare ahead of personal or third-party interests while maintaining strict confidentiality; civility and respect – treating judges, opposing counsel, clients, and staff with courtesy and respect, adhering to the maxim that you can disagree without being disagreeable; sound judgment and integrity – exercising reasonable decision-making when using legal power, balancing zealous advocacy for a client with the overarching role as an officer of the court; and competence and excellence – maintaining high standards of technical knowledge, keeping abreast of legal developments, and pursuing ongoing skill enhancement.

The Jack P. Turner Award recognizes a Section member, lawyer or judge, who has demonstrated unparalleled excellence and commitment over the course of their career.. The award represents the pinnacle of achievement for family law practitioners by honoring individuals who have, throughout their career, upheld the highest standards of ethics and professionalism, provided exceptional service to the Family Law Section and the Bar, and achieved outstanding contributions to family law in Georgia and beyond.

Nomination forms will be made available at a later date. Though the deadline for nominations is yet to come, it is never too early to begin thinking about who you feel is deserving of recognition.

The Importance of Financial Literacy – takeaways from a financial literacy seminar

By Micah Lembeck

For many who have never managed their own personal finances before, financial literacy becomes an essential competency immediately after divorce. A significant number of divorcees, especially women, are suddenly faced with making financial decisions that were once shared or handled by their spouse – from creating a budget and understanding investments to managing retirement accounts, credit, insurance, and long-term financial planning. Without the knowledge or assurance to navigate these responsibilities, even routine financial decisions can feel daunting. Additionally, adapting to living on one source of income rather than two can add yet another layer of stress to an already overwhelming chapter of life. Developing financial literacy not only equips divorcees with the ability to make informed decisions but also empowers them to regain independence, stability, and control as they move forward. A stronger understanding of personal finances can provide a sense of security and make a turbulent transition like divorce more manageable.

This July, I organized a financial literacy seminar through my non-profit organization, the Open Door Financial Literacy Project, for women who either have been divorced or are currently going through divorce. Speaking at the event were Shari Herzberg, a divorce consultant and the founder of Divorce Source, Marty Varon, a forensic accountant at IAG Forensics & Valuation, and Michael Binnicker, a senior wealth advisor at HB Wealth Management. Each brought their own unique background and expertise to the table, and shared valuable insights with the group. The following are takeaways from each presenter:

Shari Herzberg, MBA (Divorce Source):

"Divorce is rarely just a legal event—it's a full transition. The emotional and the administrative collide constantly, and that collision is exhausting, but completely normal.

Financial literacy shows up during discovery - where individuals going through divorce need to identify what they have been spending and determine what they will need going forward. For many who have not

been involved with their daily finances, this task is overwhelming during a time where they're experiencing Divorce Brain Fog - but with the right support around you, the road is easier. Discovery can be a time to identify that additional financial literacy is needed once there's more bandwidth in one's life.

One of the most stabilizing things you can do is get financial clarity now, not later. Understanding what you actually have—your assets, debts, income, and what your post-divorce budget will realistically look like—turns 'What will my life look like?' from a source of anxiety into a set of facts you can plan around. The legal process has a clear endpoint, but the emotional and practical rebuilding takes longer, and it deserves just as much intention."

Marty Varon, CPA/CFF, CVA, JD (IAG Forensics & Accounting):

"After a divorce, you'll need to set up the following appointments or tend to the following items:

- Meet with a CPA. You were filing married filing jointly. After the divorce, you will be filing single or head of household. You want to run an estimate of taxes so there are no year-end surprises.
- Meet with an estate attorney and re-draft your will.
- Meet with Human Resources at your firm. You need to change all the beneficiary designations on your retirement plans and life insurance policies. Don't forget the group term life insurance policy at work.
- Meet with your insurance agent. You need to change the beneficiary designation on all life insurance policies.
- Re:credit cards - make sure all jointly held credit cards (or credit cards with multiple names on them) are cancelled.
- Follow your family attorney's instructions with regard to signing documents to transfer or receive assets per the settlement agreement.
- Meet with your physicians/physician assistants/ nurses - They most likely have a list of people they may share your health history with in the event of an emergency. Make sure you remove your ex-spouse from the list."

Michael Binnicker, CFP (HB Wealth):

"The most important consideration, in my opinion, is understanding and getting a handle on cash flow for your household budget in the first few years. Part of understanding cash flow is understanding "liquid" versus "illiquid" assets, with items to consider below:

Liquidity impacts flexibility and cash flow. Two assets with the same value may provide very different financial benefits. Cash, checking accounts, and brokerage accounts can generally be accessed quickly, while real estate, private businesses, private alternatives, and retirement accounts may be harder or more costly to convert into spendable cash.

Value does not equal accessibility. A spouse awarded a $500,000 home equity interest or business stake may appear to receive significant value, but accessing that value could require a sale, refinancing, or a future liquidity event. Understanding how and when an asset can be monetized is critical.

Taxes and transaction costs matter. Illiquid assets often come with hidden costs, such as capital gains taxes, selling expenses, early withdrawal penalties, or valuation discounts. When dividing marital property, it's important to compare the after-tax, spendable value of assets, not just their stated market value.

The subject of selecting a wealth advisor can be its own meeting, but I've tried to summarize below:

The Fiduciary Standard – Required by law to put the clients' interest first and foremost vs. a "suitability" standard, which is a lower threshold and could contain conflicts of interest.

Advisor Compensation – How is the advisor compensated for the service they provide? Commissions? Placement fees? Performance fees?

Firm Health – Client Retention Rate and Employee Turnover Rate

Referral – Trust in existing professionals who can recommend a warm introduction.

Personal Relationship – Assuming the above line items are copacetic, at the end of the day, do you trust this person moving forward to steward your wealth?"

Following the in-depth conversation with the panel of

financial professionals, the hope is that attendees left the program feeling more confident and comfortable navigating their personal finances as they enter a new phase of their lives. The seminar aimed to reduce the intimidation often associated with financial decision-making and provide attendees with practical tools to make the challenges of post-divorce financial management more manageable. Developing financial literacy is one of the most important and most immediately actionable steps individuals can take to prepare for life after divorce. I hope that the knowledge and strategies shared throughout this program and in this article provide individuals navigating divorce with valuable resources to better understand and manage the financial challenges that accompany this transition. For more information about the Open Door Financial Literacy Project, please visit opendoorflp.org.



SHARI HERZBERG *is the first person that an individual going through divorce should meet with. Shari helps both men and women with selecting a divorce team, providing discovery, and planning for a new stage in life. As someone who has gone through a divorce herself, she understands the emotional side of divorce and provides emotional support to clients.*



MARTY VARON *brings decades of experience in forensic accounting, business valuation, and family law to the panel. As a forensic accountant, attorney, and professor at Kennesaw State University, he has built a career analyzing the complex financial issues that frequently arise during divorce, including business valuations, income analysis, asset tracing, and equitable distribution. His experience in both the courtroom and the classroom allows him to communicate complex financial concepts with clarity and precision.*



MICHAEL BINNICKER *brings extensive experience in wealth management and long-term financial planning to the panel. As a Senior Wealth Advisor and Shareholder at HB Wealth, he works with individuals and families to develop strategies that promote long-term financial stability. Following a divorce, his expertise in investment management, retirement planning, and wealth preservation helps individuals adapt to their new financial circumstances and make informed decisions for the future.*



MICAH LEMBECK *is a graduate of Atlanta Jewish Academy and the founder of the Open Door Financial Literacy Project. He is passionate about finance and mathematics, with a mission of making financial education more accessible to others.*

When Family Law Meets Corporate Complexity: Strategic Collaboration in Divorce Cases Involving Business Interests

By Donald G. Tye, JD, MSW, Nancy A. Freed, Claire K. Forkner, John H. Chu, Max Riffin, Ann M. Sobolewski, and Matthew Vella

Divorce is often emotional and legally complex, especially when one or both spouses have business interests, such as equity in a start-up or interests in a private fund. In these cases, the intersection of family law and corporate law becomes virtually unavoidable. Whether a spouse is a tech founder, an early-stage employee with options, or a limited partner in a fund, divorcing parties may hold assets that are illiquid, heavily restricted, and any transfer may create unintended tax consequences and/or subject to claw-back if not properly structured.

Family lawyers don't need to be corporate specialists; however, they do need to know when to bring one in. Early and strategic collaboration with corporate counsel can make the difference between a smooth resolution and a costly legal quagmire. Understanding when to engage transactional counsel (and what questions to ask) is critical to protecting divorce client interests and achieving equitable outcomes.

When to Engage Corporate Counsel

Family law attorneys should consider involving corporate counsel as soon as a case involves:

- Ownership of a closely-held business (whether a corporation, LLC, or partnership);
- Startup or early-stage equity interests (stock, options, restricted stock, etc.);
- Anticipated liquidity events (sales, mergers, or other capital transactions); or

- Investment fund interests (e.g., carried interest, capital accounts, portfolio equity).

Engaging corporate transactional counsel early can help uncover potential restrictions on transfers, identify tax traps, interpret incentive equity plans, and evaluate strategic alternatives for buyouts or equitable division of property in the business.

Understanding a Business Owner's Equity

Startups and tech companies frequently compensate founders, key employees, advisors and consultants with incentive equity, such as restricted stock, stock options, or profits interests. These instruments commonly come with vesting schedules, acceleration clauses, transfer restrictions, and significant tax implications, all of which must be scrutinized in the divorce context.

Understanding the type of equity and its current status (vested or unvested, exercised or not, transferable or restricted) is critical to negotiating a fair and enforceable division. For example, unvested equity may or may not be considered part of the marital estate. Even vested equity may be illiquid or subject to contractual prohibitions on transfer. Further, because options are often non-transferable, direct division in divorce may be impractical. Creative workarounds, such as constructive trusts, can mirror ownership rights and obligations between spouses.
A corporate attorney can provide clarity on whether and how such interests can be valued, assigned, or divided – and when they must be handled more delicately to avoid triggering adverse outcomes or breaching corporate agreements.

Structuring a Business Buyout Between Spouses

When divorcing spouses hold ownership interests in a private business, negotiating a buyout or restructuring requires creative and sophisticated structuring.

Questions of valuation, funding, and liability must be approached with a dealmaker's mindset. For instance, how should deferred payments be secured? What role do non-compete agreements or transition services play? Is a third-party sale preferable to an internal restructuring? Corporate counsel can help structure buyouts in a way that is fair, tax-efficient, and commercially viable.

Key considerations include:

- **Valuation methodology** (asset-based, market-based, income-based);
- **Payment terms** (lump sum vs. installments);
- **Security** (personal guarantees, liens, equity pledges);
- **Ongoing involvement** (if one spouse will remain in the business).

These deals often resemble complex commercial transactions and may involve reissuances of equity, buy-sell agreements, or consulting arrangements to transition roles – each with corporate, tax, and securities regulatory implications.

Navigating Transfer Restrictions and Third-Party Rights

Corporate agreements, particularly in the startup space, often prohibit the unilateral transfer of equity without the company's or other equity holders' consent. These provisions can stymie a family lawyer's best intentions to "divide the pie."

In some cases, the company and/or its equity holders may exercise a right of first refusal or even veto a transfer altogether. In other instances, issuing new shares or redeeming existing interests may trigger tax consequences or potentially dilute other shareholders' existing positions. Navigating these issues requires a corporate lawyer who understands both the legal and practical limitations of equity transfers and who can help craft alternative arrangements that achieve the goals of equitable distribution.

Most startup equity is governed by documents that restrict transfers. Specifically, typical transfer restrictions include:

- **Right of First Refusal (ROFR)** – Company or shareholders get first opportunity to purchase equity proposed for transfer prior to a sale;
- **Consent Rights** – Company approval may be required for any transfer; and
- **Drag/Tag-Along Rights** – In a sale, minority holders may be forced or permitted to participate.

Often, as reflected above, a divorcing spouse cannot simply transfer options or shares to the other party (even pursuant to a court order) without triggering rights held by the company or other stakeholders.

Common workarounds include:

- **Constructive Trusts** – The holding spouse retains legal title to the equity holdings, but agrees to exercise options or sell stock in tandem with a "mirrored" pool held for the benefit of the other spouse.

- **Pledges** – Equity may be pledged as security for payments owed in the settlement, but only to the extent permitted by the governing plan and agreements.
- **Deferred Buyouts** – Installment structures based on future liquidity events, with tax and security regulatory considerations.

Each solution must be carefully vetted against company documents, tax considerations, and the broader financial picture.

Investment Fund Interests and Carried Interest

In high-net-worth divorces, clients may hold interests in venture capital, private equity, or hedge funds. These can involve complex entity structures, including:

- **LP or LLC fund entities;**
- **Management companies and general partners;**
- **Management fees and carried interest;**
- **Recycling provisions and deferred distributions.**

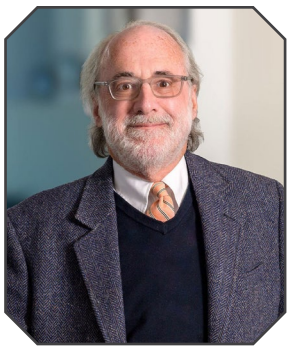
Understanding a client's entitlement to distributions, carried interest, and capital accounts is critical. Counsel must also identify any equity held in portfolio companies, and whether those interests are vested, exercisable, or subject to forfeiture.

A Collaborative Path Forward

Divorces involving business interests sit at the intersection of family law, tax law, and corporate law. As equity compensation, private investments, and complex entity structures become more common, family lawyers will increasingly find themselves in unfamiliar territory.

The key takeaway is that when divorce intersects with corporate ownership, a collaborative approach benefits everyone involved. The solution isn't to become an expert in all of these areas, it's to know when to call in support. By bringing in transactional counsel early, family lawyers can add value for their clients, reduce risk, and craft settlements that hold up both in court and in the boardroom, and avoid unintended consequences that could have been otherwise mitigated or sidestepped entirely by engaging corporate counsel earlier.

Divorces involving business interests are more than just a division of property – they're often the unwinding of intertwined financial futures. A strong partnership between family and corporate counsel ensures that both the legal and economic threads are carefully untangled.



***DONALD G. TYE, JD, MSW**, is a founding partner and co-chair Emeritus of the Domestic Relations Practice Group at Prince Lobel Tye LLP in Boston (a multi-practice firm of 120 plus lawyers that handles matters of local, regional, national, and international reach). He has over forty-five years of experience as a trial attorney, guardian and guardian ad litem, master and special master, and attorney for children (including the Massachusetts Attorneys Representing Children "ARC" Program); and is certified by the American Academy of Matrimonial Lawyers (AAML) as a mediator, arbitrator, and conciliator. Donald has prepared and argued numerous cases on appeal to the Massachusetts Appeals Court and the Supreme Judicial Court.*



***NANCY A. FREED** is the co-chair of Prince Lobel's Family Law Practice Group. She drafts complex divorce, cohabitation, paternity, and pre- and post-nuptial agreements. Nancy was also a founding member of Women@Prince, a group dedicated to advancing the careers of our women attorneys and to supporting local female-based charities. She helps her clients navigate all manner of family law matters, such as the enforceability of pre- and postnuptial agreements, attribution of income; child custody, alimony, and child support; the treatment of inherited property; and the valuation of closely held businesses, trusts, and real estate. Nancy represents clients across the Commonwealth in Probate and Family Courts as well as in the Massachusetts appeals court.*



***CLAIRE K. FORKNER** is a partner at Lee & Rivers LLP where she exclusively practices family law. She has co-chaired and moderated several CLE programs on topics including Family Law Appeals, Alimony and Child Support, and Business Valuations in the Family Law Context. She has co-authored a chapter with David H. Lee entitled Tax Considerations for the Massachusetts Divorce Law Practice Manuel which includes consideration of Tax Cuts and Jobs Act and its impact on family law.*



***JOHN H. CHU** is a partner in Prince Lobel's Business Transactions practice group where he focuses on the representation of growing enterprises, venture capital transactions, and mergers and acquisitions; and is a partner in the corporate, real estate, and transactional practice groups at Prince Lobel Tye LLP. John is a graduate of Columbia Law School and the University of Chicago.*



MAX RIFFIN *is a partner in Prince Lobel's Business Transactions practice group. His practice primarily focuses on representing businesses, investment funds, and investment advisers, helping them navigate complex transactional and regulatory matters. Max also works as outside general counsel to businesses in a variety of industries, including artificial intelligence companies, cleantech, software, semiconductor, life sciences, cryptocurrency/blockchain/digital assets, internet, and other technologies. Max also represents clients in the cannabis industry on a national basis.*



ANN M. SOBOLEWSKI *is chair of Prince Lobel's Real Estate practice. Her practice focuses on general real estate (acquisition/disposition, leasing, financing, entity formation); land use/environmental permitting (zoning, subdivision and environmental permitting and appeals); and environmental remediation. She advises clients on all aspects of commercial real estate development, acquisitions, dispositions, and leasing over a broad range of industries, including office buildings, retail properties and centers; restaurants, lab/research and development properties, hotels, warehouse and industrial properties, subdivisions, age-restricted housing and multi-family housing projects, and mixed-use developments.*



MATTHEW VELLA *is an IAM-300 ranked attorney at Prince Lobel Tye, LLP, where he is a member of the firm's Management Committee and the Co-Chair of its Intellectual Property Practice Group. Over his 25-year career, Matt has led patent licensing and litigation teams covering a wide range of technology fields, including artificial intelligence hardware and software, mobile computing, DRAM/FLASH memory, PC architecture, databases, network management, web services, orthopedics, cardiovascular, image processing and graphics, automobile safety, voice/video codec, semiconductors, cell phone GPUs, HDTV, business intelligence and analytics, credit card authentication, and digital rights management.*

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SBA 7(a) Financing for Closely Held Business Divorce Buyouts

SBA 7(a) Financing as a Divorce Settlement Tool for Closely Held Business Buyouts

By Jeff Forrestall, CPA, ABV, CVA, CFE, CFF, MFFE, PFS

Introduction: The Business Buyout Problem in Divorce – Part I Introduction and Background

Closely held businesses often create one of the most difficult settlement challenges in a divorce. The business may be the marital estate's most valuable asset, but it is frequently illiquid, dependent on the owner-spouse's continued management, and unable to fund an immediate equalization payment without significantly impairing operations. In many cases, the non-owner spouse understandably wants certainty and liquidity, while the owner-spouse wants to preserve the enterprise that generates income for both support and post-divorce financial stability. Traditional bank financing is not unavailable to finance a divorce settlement when non-owner spouse has not historically held an ownership interest.

For Georgia family law attorneys, the practical question is not simply "What is the business worth?" It is also: **How can the settlement be funded in a way that is financeable, tax-aware, protective of both parties, and operationally realistic?**

One potential answer is an SBA 7(a)-financed repurchase structure. This structure can create a "win-win":

- Allowing the owner-spouse to finance the up-to 100% of the non-owner spouse marital interest in the business over 10-years with an SBA 7(a) loan
- Owner spouse receives **tax deductible amortization expense** benefits over 15-years for value of non-owner spouse interest in business
- Non-owner spouse receives a lump-sum payment rather than monthly payments and a ballon note from the owner spouse

This article discusses SBA 7(a) financing as a settlement-planning tool for divorce matters involving privately held businesses. It is not a universal solution, and it requires coordination among family law counsel, tax advisors, valuation professionals, corporate counsel, and an SBA-experienced lender. But in the right case, the strategy may help convert an otherwise unworkable installment buyout into a funded closing that provides liquidity to the non-owner spouse while preserving business continuity.

At a high level, the proposed structure involves:

1. **Valuing the closely held business** for both marital asset division and SBA lending purposes.
2. **Temporarily transferring non-controlling limited ownership interest** to the non-owner spouse as part of the divorce settlement.
3. **Structuring the business so the original owner retains operational control** during the interim period with limited rights to the non-owner.
4. **Entering into a repurchase agreement** requiring the owner-spouse to buy back the non-owner spouse's interest within a defined period, less than one-year.
5. **Funding the repurchase with an SBA 7(a) loan**, subject to eligibility and lender underwriting.
6. **Including tax, governance, life insurance, and creditor protections** in the settlement documents and entity documents.

The strategy materials contemplate that the owner-spouse may finance the buyout over 10 years through an SBA 7(a) loan, while the non-owner spouse temporarily receives shares and is then bought out within 6 to 12 months.

Why SBA 7(a) Financing May Fit the Divorce Context

A divorce buyout often fails for a simple reason: the business has value but not cash. If the owner-spouse must pay the non-owner spouse immediately, the business may need to distribute funds, borrow at unfavorable terms, sell assets, delay necessary reinvestment, or accept an installment arrangement that leaves the non-owner spouse exposed to collection risk.

SBA 7(a) financing may address several of these settlement obstacles:

- **Liquidity for the non-owner spouse.** The non-owner spouse can receive a lump-sum payment instead of relying on a long-term stream of payments from the owner-spouse.
- **Operational continuity for the business.** The business may avoid a disruptive asset sale or excessive working-capital drain.
- **A structured repayment horizon for the owner spouse.** The owner spouse may finance the buyout over 10 years through SBA loan with no money down rather than a short-term settlement obligation.
- **Potential tax planning benefits.** In a properly structured transaction, the owner spouse buyer may seek basis and amortization benefits, including 15-year goodwill amortization deduction if the entity and tax rules support the position.

The important caveat is that this is not merely a "loan idea." It is an integrated settlement structure. SBA eligibility, lender underwriting, entity classification, valuation, operating agreement drafting, tax treatment, and the divorce decree must align.

Tax Considerations: Useful Opportunities, Important Limits

Tax planning should occur before the settlement is finalized. The tax treatment of business transfers in divorce can vary significantly depending on whether the transaction is structured as a direct spouse-to-spouse transfer, an entity redemption, a partnership interest purchase, or another arrangement.

Important tax issues include:

- **IRC Section 1041.** Transfers of property between spouses or former spouses incident to divorce are generally nonrecognition events, with carryover basis rules. However, pass-through interests can create additional issues, including phantom income, capital calls, loss limitations, negative capital accounts, future distributions, and guarantees.
- **Pass through entity basis transfer.** The owner spouse will have tax basis in the company. This basis will be transferred with the shares to the non-owner spouse. Capital gain income to the non-owner spouse is calculated by the amount received less the owner spouse basis received.
- **Section 754 and Section 743(b).** If the entity is taxed as a partnership, a Section 754 election may allow a special basis adjustment for a transferee partner in certain sale or exchange transactions. The benefit is not automatic and depends on the transaction sequence and tax characterization.
- **Section 197 amortization.** In some structures, acquired goodwill or other intangibles may be amortizable over 15 years. Self-created intangible rules, anti-churning rules, related-party considerations, and entity structure must be reviewed.
- **Capital gains and gross-up provisions.** If the non-owner spouse expects a net payment, the settlement should state whether the buyout amount is gross or net of taxes and whether any indemnity, gross-up, or true-up applies.

The key point for family law attorneys is not to resolve every tax issue personally, but to identify them early enough that the settlement documents do not create avoidable tax disputes after the decree is entered.

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JEFF FORRESTALL, CPA, ABV, CVA, CFE, CFF, MFFE, PFS*, is the Managing Partner of Forrestall CPAs, LLC, a third-generation, veteran-owned full-service CPA Firm employing 26 full-time staff certified public accounting firm based in Sugar Hill, Georgia. His practice includes business valuation, forensic accounting, litigation support, fraud investigations, mergers and acquisitions, estate and gift planning, real estate transactions, and advanced taxation 3. Jeff has served as a court-certified expert in matters involving business valuations, contract termination value disputes, lost income damages and forecast models, and marital asset mediation. He has performed valuations for SBA lenders, litigation matters, mergers and acquisitions, estate and gift tax planning, and succession strategies. Jeff holds a BBA in Accounting from Georgia Southern University and a Master of Science in Fraud and Forensic Examination from West Virginia University.*

Child Support Arrearage Issues: Remembering Wright and Considering Interest

By Susan Stelter

How often do we represent clients needing to recover back child support payments owed to them by the other parent? Unfortunately, and sadly, too often.

In the State of Georgia, there is no official data available on the percentage of civil cases which make up child support cases. However, according to the Georgia Justice Project, there is over $2.53 billion of unpaid child support money currently owed to Georgia's children and over 83% of state-monitored child support cases involve a parent who is behind on payments.[1] And this does not include all of the cases which are self-monitored. Those are the cases that walk into our offices regularly and often.

A client who does not receive her child support comes to you, asking if you would assist her to secure some amount of the child support that she is owed. She says she would be happy and satisfied, and even willing to forgo the remaining amount of arrearages, just to recover something. However, in an effort to reach a resolution, if you forget or are unfamiliar with the case of Wright v. Burch, you will not only do a disservice to your client but arguably could be committing malpractice.

The case of Wright v. Burch, 331.Ga. App. 839, 771 S.E.2d 490 (2015) involved parents, who were married in 1996 and had a son in September 1999. The parties divorced in Tennessee and a final decree was entered on December 16, 2003. The final decree incorporated a marital dissolution agreement whereby Thomas Burch would pay child support of $600 a month to Monica Wright, except when the child was living with Mr. Burch, until the termination of the agreement.[2] The agreement specified that "No action by the parties will be effective to reduce the child support set forth herein after the due date of each payment and that each party understands that court approval must be obtained before child support can be reduced unless such payments are automatically reduced or terminated under the terms of his [agreement]."[3] After the divorce was finalized, the minor child lived with Ms. Wright in Georgia. About ten years later, the child elected to live with Mr. Burch in Maryland and moved there the following month. In May 2013, Mr. Burch filed a petition to domesticate the Tennessee divorce decree and for monies he claimed the Georgia Department of Human Resources had erroneous garnished in excess of his child support obligation under the parties' agreement. The parties engaged in negotiations as to what was the correct arrearage amount, the child's change in residence, and a reduction in child support. Mr. Burch later amended his petition to include a modification of child custody and child support.[4] Three months later, through their counsel, the parties reached a resolution purporting to modify both custody and child support. The draft of the consent order specifically stated that "all arrearage issues are resolved by this order, and no back child support is owed by [Burch] to [Wright]" and that Ms. Wright would pay Mr. Burch $385 per month in child support, with some further provisions. The proposed consent order was not signed by the parties, although Ms. Wright's counsel, in an email to opposing counsel, assented to the terms of the parties' settlement. Ms. Wright's counsel then withdrew from the case and Mr. Burch filed a Motion to enforce the parties' settlement.[5] The trial court held the settlement was enforceable, entered the consent order as part of its judgment and awarded Mr. Burch $2,500 in fees against Mr. Wright and her counsel. Ms. Wright applied for discretionary review of the fees and one month later for discretionary review of the trial court's earlier orders. Both applications were granted.

In its review, the Court of Appeals stated that although it is undisputed the parties reached an agreement in writing, a modification action "is the sole means by which a child support award included in a divorce decree may be modified", citing Robertson v. Robertson, 266 Ga. 516, 517-518(1), 467 S.E.2d 556 (1996). Further, "While the parties are free to enter into an agreement purporting to modify [a] child support obligation, that agreement only becomes enforceable when incorporated in an order of the court. Thus, the trial court was authorized to conclude that the parties had agreed to submit the settlement to the court.[6]

1 https://www.gjp.org/child-support-debt-for-low-income-families//

2 Wright v. Burch at 840.

3 Id.

4 Id. at 841.

5 Id.

6 Id at 843.

With respect to the amount of child support arrearages, "[the parties, however, were not empowered to reach a compromise as to any arrearage in child support payments already due, and the trial court was not authorized to modify the divorce decree as to such payments." [7]

The Court of Appeals held that neither a trial court nor the parties could reduce the total amount of child support owed under the existing court order. Only a **repayment** schedule (emphasis added) of the past-due child support can be negotiated by the parties or ordered by the court, as long as the amount of the arrearage can be accurately determined." [8]

The Court's authority stems from O.C.G.A. 19-11-12(e) which provides:

> When the trier of fact, the administrative law judge for administrative orders, or a judge of the superior court for court order, as the case may be, determines that there is a significant inconsistency between the existing child support order and the amount of child support which would result from the application of Code Section 19-6-15, the trier of fact may use this inconsistency as the basis to increase or decrease the amount of support ordered. *The trier of fact may also address the repayment of any arrears accumulated under the existing order*. (emphasis supplied).

Consequently, it is not lawful for parties to simply agree on an arrearage amount, it must be the actual calculated amount. If the parties are unable to agree as to how to calculate the actual arrearages, the arrearage amount issue must be decided by the judge. The only issue upon which the parties are free to negotiate broadly is the manner or the schedule regarding the repayment of the actual arrears.

Once the actual amount of the child support arrears is determined, as zealous advocates for our clients, we should not fail to consider whether interest on the child support arrears amount is appropriate under the circumstances. If you think it's appropriate, you should include a request for interest in your client's petition for recovery of child support arrearages.

Whether a party is entitled to interest on outstanding child support payments is a matter committed to the discretion of the trial court. See O.C.G.A. 7-4-12.1(a); McCarthy v. Ashment, 353 Ga. App. 270, 276 (5), 835 S.E.2d 745 (2019). Courts have broad discretion to apply or waive interest. In determining whether to apply, waive, or reduce the amount of interest owed, the factors the court must consider are whether:

(1) Good cause existed for the nonpayment of the child support;

(2) Payment of the interest would result in substantial and unreasonable hardship for the parent owing the interest;

(3) Applying, waiving, or reducing the interest would enhance or detract from the parent's current ability to pay child support, including the consideration of the regularity of payments made for current child support of those dependents for whom support is owed; and

(4) The waiver or reduction of interest would result in substantial and unreasonable hardship to the parent to whom interest is owed.[9]

After thoughtful consideration of the above four factors, should the Court find that an award of interest is appropriate, the Georgia Code Section § 7-4-12.1 (a) provides that "monetary amounts shall accrue interest at the rate of 7 percent per annum commencing 30 days from the date such award, court order, decree, or judgment is entered or an installment payment is due, as applicable."

In Spirnak v. Meadows, 355 Ga.App. 857, 844 S.E.2d 482 (Ga.App. 2020), the Court of Appeals addressed the issue of the trial court's award of interest paid on past due child support. The case involved an initial legitimation matter filed by Stephen Spirnak. He and Kathryn Meadows had a child together in 2009, but never married. A legitimation and custody order was entered in 2010 whereby Mr. Spirnak was ordered to pay child support to Ms. Meadows in the amount of $650 a month, plus a portion of the child's medical

7 Id.

8 Advisory Opinion 9 (Issued November 2, 2016 by the Georgia Commission on Dispute Resolution

9 O.C.G.A. 7-4-12.1(a)

expenses and Ms. Meadow' prenatal expenses. At the time the order was entered, Mr. Spirnak was earning between $55,000 and $67,000 in a marketing and sales job. In 2013, he was diagnosed with cancer and underwent treatment. In 2014 he was laid off from his job. Mr. Spirnak recovered from his cancer and was found to have the ability to resume similar employment. However, after his lay-off, he began working part time as a self-employed tree specialist and stopped most of his child support payments. In 2015, Ms. Meadows filed for recovery of back child support. In 2016, Mr. Spirnak filed a petition to modify his child support and Ms. Meadows filed a counterclaim for contempt for his failure to pay child support.[10] At trial, Ms. Meadows submitted a spreadsheet detailing the amount of child support due and the amount paid, with the interest accrued each year. She calculated the interest as $4,807.47. The trial court denied Mr. Spirnak's petition to modify child support and granted Ms. Meadow's counterclaim for modification and contempt. With respect to the interest the trial court specially found Ms. Meadows was entitled to interest of $4,807.47on the child support arrearage amount.[11]

The Court of Appeals found that the trial court failed to give consideration of the four factors outlined in O.C.G.A. 7-4-12.1(a) before awarding interest.[12] Consequently, it vacated the trial court's award of interest and remanded the case for further factual findings. Further, the Court of Appeals also found the trial court's calculation of interest was flawed:

> "Because Spirnak is ordered to pay monthly child support payments, the proper way to calculate the past interest due is on the monthly, not annual, basis. See, e.g., Jerry Reiss, Marc H. Brawer, The Intersection of F.S. S55.03 and Florida Family Law: Statutory Interest Calculations for Past-Due Support Payments, 87 Aug. FLBJ 54 (2013) ("For purposes of this simplified discussion, the monthly interest rate is the annual simple-interest rate divided by 12."); see also RJ Bronstein, Legal Aspects of the Use of "Ordinary Simple Interest," 40 U. Chi. L. Rev. 141 (1972). Cf. Noons v. Holiday Hospitality Franchising, 307
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> Ga. App. 351, 355 (3), 705 S.E.2d 166 (2010) (calculating interest rate each month). Accordingly, seven percent per annum must be converted to a monthly interest rate. But that is not what it appears that Meadows - or the trial court - has done. Should the trial court determine on remand that past due interest ought to be applied, it should recalculate the amount due using the proper method as outlined above."[13]

Ultimately, when it comes to advocating for a client who is owed back child support, family law practitioners need to be vigilant in calculating the true arrearage amount, to never agree to forgive or compromise what is legally owed, and to thoughtfully pursue interest where appropriate. Attention to these details not only ensures clients receive the full support due but also protects attorneys from potential malpractice exposure.



SUSAN STELTER *is a partner at the law firm of Rowsey & Stelter located in North Fulton. Susan specializes in domestic law and mediation.*

10 Spirnak at 485.
11 Id. at 486.
12 Id. at 492.
13 Id. at 492.

Lateral Moves: Two Important Issues for the Lawyer Leaving and the Firm Being Left

By Jonathan Hawkins

We are getting to that time of year where lawyers are starting to think about moving to new law firms or maybe leaving to start their own. These moves often create tension among those leaving and the firms they are leaving. A large part of my practice is consulting with people on both sides of this issue, and the same issues seem to come up in most cases.

If you find yourself in this situation, there are a number of issues that will need to be addressed. This article addresses two of them: 1) notice to clients and 2) dealing with client files.

Notice to Clients

Are there requirements regarding notice to clients when a lawyer leaves a law firm? Yes and no. In Georgia, there are no strict requirements regarding how notice must be given, i.e., does it have to be joint notice or can it be sent separately by both the firm and the departing lawyer?

While Georgia does not dictate how the notice is sent, there are general guidelines around when notice can be sent, which clients need notice, and what should be included in the notice. Below are guidelines around notice:

- Notice should not be given to clients until notice has been given to the firm that the lawyer is leaving.
- Notice should only be sent to clients the departing lawyer "had significant contact with or actively represented." (See Ga. Formal Advisory Op. 97-3)
- Joint notice from the firm and the departing lawyer is preferred, but not required.
- Any communication must not be false, deceptive, or misleading.
- An appropriate communication may advise the client of
    - the fact of the attorney's departure,
    - the attorney's new location,
    - the attorney's willingness to provide legal services to the client, and
    - the client's right to select which attorney to handle the client's future legal representation.
- The departing attorney may also inform the client whether she will be able to continue the representation at her new law firm.

Client Files

Another question that comes up is how to handle client files. For example, can the departing lawyer just take them? Does the firm have a right to keep a copy of the files? Can the firm withhold the files until the client pays outstanding accounts receivable?

As a general proposition, client files belong to clients, not their attorneys. Absent "good cause," clients are presumptively entitled to their file documents, and client files must be transferred at the client's direction.

A departing lawyer should not remove client files without first giving notice to the law firm, so that it may have an opportunity to copy the file. The law firm has a legitimate interest in such files, because they would be essential in defending a future malpractice action or bar grievance.

Unless and until the client has given direction on the transfer of the file, a departing lawyer may not remove the client file. Once a departing lawyer obtains authorization from the client, the lawyer may take those files of the client reasonably related to representation of the client. For all involved, get the client authorization in writing.

After a client gives authorization for the transfer of the file, a firm's refusal to hand it over would be an ethics violation in most situations. Also, a lawyer cannot condition a handover of the file on payment or a liability release, because an attorney's ethical obligation not to cause prejudice to the client is paramount over any rights under the lien statute. (See Ga. Formal Advisory Op. 87-5.)

Conclusion

When lawyers leave, the stress on those involved inevitably increases. And sometimes cooler heads do not prevail. Hopefully, this article can give those involved a little guidance to lower the heat and let everyone move on quickly and smoothly.



JONATHAN HAWKINS *is the Founder of Law Firm GC, host of Founding Partner Podcast, and author of "The Law Firm Life Cycle". Jonathan is a business lawyer for lawyers. He serves as Outside General Counsel to law firms, and assists lawyers in starting law firms, law firm structuring, partnership agreements, lateral moves, separation agreements, law firm dissolutions, health crisis planning, and succession planning. He can be found at www.lawfirmgc.com.*

In Memoriam

Tributes by Robert Wellon, Esq.

M. Debra Gold

Debbie Gold has both meant so much to, and done so much for, the Family Law Bar. With a trip to Lisbon recently being advertised for members of the Family Law Bar, it reminds many of us about Debbie's several trips which were so successful in attracting many lawyers and judges to forge a union between the Barcelona Bar and our Bar. Interestingly, Debbie lived in Spain for four years and naturally became well-acquainted with their bar. But Debbie meant so much more to the Bar than trips overseas.



She began her career as an associate of Jack Turner (as many of us did); who became a true mentor to her, and helped her to become so interested in the area of custody. She became a well known and respected child advocate, so much so that many of us would associate her in custody hearings. At a moment's notice, she would give apt and excellent advice to assist a lawyer, and many times not even charge a fee. I believe it was just such a pleasure for her. She was also a notable and sought after Guardian Ad Litem, once more giving of her time as a child advocate. In addition, Debbie was also in other pro bono services with DeKalb Volunteer Lawyers Foundation. As for that volunteer time, she was awarded the Hon. Clarence Seeliger Phoenix Award representing her fight for survivors of domestic violence.

Yet, for many members of our Family Law Bar who did know her well, and either referred business to her, associated her in custody hearings, or simply practiced in the area of custody, the true value of time spent for her was reflected in the monthly newsletters she published. I know I always looked forward to reading those newsletters to learn about the appellate custody cases cited, as well as news concerning procedures affecting custody matters. Certainly, those newsletters have impacted my practice in handling custody cases, and, I am confident, that of many other family law attorneys as well. We are truly indebted to have had such an advocate so willing to give of herself to help others.



Debbie passed away some time ago, and she will be sorely missed for all she has meant to the Family Law Bar.

Anne Heavrin Jarrett



The 1998-1999 Chairperson of the Family Law Section has passed away after a long illness. Anne, a graduate of Emory University and its Law School, was noted for her extreme devotion and dedication to the practice of family law, both as a practitioner and leader. She was a Fellow and President of the Georgia Chapter of the American Academy of Matrimonial Lawyers, a founding member and master of the Charles Longstreet Weltner Family Law Inn of Court, and a former Chairperson of the Atlanta Bar Family Law Section. She was well-known for her long time employment with Jack Turner. Of course she did have time for a personal life, as a devoted Atlanta Braves fan and her love for animals, especially dogs and horses, which led her to

animal welfare causes. She will certainly be missed for her zeal as a family law specialist.

Case Law Update

CHILD SUPPORT DEVIATION

Cook v. Turner; **A25A1225** (October 28, 2025)

The parties, Cook (husband) and Turner (wife), divorced in 2021. The husband paid monthly child support in the amount of $2,305.00 per month. In April 2024, the husband filed a petition to decrease child support on the grounds that his income had declined while the wife's income had increased. In addition, the husband wanted to deduct day care amounts from his payments. At the final hearing, the Court found his gross monthly income was $13,476.00 while the wife's was $4,251.00. Though the presumptive amount of child support was $2,206.86, the Trial Court increased his monthly payments to $2.500.00 with an upward deviation of $293.00 per month. The husband appeals and the Court of Appeals reverses.

The husband argues that the Trial Court erred by increasing his child support obligation from $2,305.00 to $2,500.00 without making a necessary finding that the presumptive amount was unjust or inappropriate. Here, the Trial Court's Order contained no explanation, only one-word answers to the three questions as follows: a) would the presumptive amount of child support be unjust or inappropriate? No; b) would the deviation serve the best interest of the child for whom the support is being determined? Yes; c) would the deviation seriously impair the ability of the custodial parent or the non-custodial parent to maintain minimal house, food and clothing for the children being supported by the Order and to provide other basic necessities? No.

The Trial Court's written findings must connect the dots to explain that applying the presumptive amount of child support would be inappropriate. Here, in the addendum to the Order, the Trial Court stated that due to the differences of the parties incomes, a high income deviation was added to the father in the amount of $293.00. But the record shows that the husband and wife's combined income was $17,727.00. The high income deviation provided for in O.C.G.A. §19-6-15(b)(7)(a) applies to combined gross incomes of more than $40,000.00 per month. Therefore, the Trial Court's written Order fails to sufficiently explain the reasons for the deviation and did not connect the dots as required for an upward deviation. Given this conclusion, the Court of Appeals did not address the husband's remaining arguments.

EQUITABLE CAREGIVER

Venticinque v. Lair; **S25A1342** (September 9, 2025)

Venticinque and her long-term romantic partner, Lair, lived together in Savannah, and decided to start a family in 2018. After choosing a sperm doner, Venticinque became pregnant. There was a baby shower in which the parties participated in a gender reveal and picked out items for the baby registry. Venticinque also sent Lair birthday cards and messages calling her "Mommy" and "Mama." The couple intended to get married, for Lair to formally adopt the child, and for the child to have Lair's last name. The child was born in July 2021. Venticinque stayed home with the child while Lair returned to work after two weeks. They sent out cards announcing LV's (the child) birth that referred to both women as "proud parents." After some time, Venticinque's personality allegedly changed and she started sheltering the child. In November 2022, when the child was 16 months old, Venticinque took the child to visit her family in Pennsylvania. Venticinque did not return to Savannah and stopped all contact between Lair and the child. On December 18, 2022, Lair filed an action seeking equitable caregiver status of the child through O.C.G.A. §19-7-3.1. Venticinque responded to the Petition and challenged the constitutionality of the equitable caregiver statute. On June 12, 2023, the Trial Court issued an Order denying Venticinque's Motion to Dismiss, finding that equitable caregiver statute is constitutional because it is narrowly tailored to limit the individuals who may seek equitable caregiver status and because it directly incorporates the "constitutional statute for evaluating harm to children."

In June 2023, the Order of the Trial Court determined Lair satisfied the statutory requirements for equitable caregiver status, concluding she has shown, by clear and convincing evidence, that she was fully committed to taking a parental role. The Trial Court then turned to the last statutory requirement addressing whether Venticinque has demonstrated the child will suffer physical or long-term emotional harm if Lair's Petition is granted, and whether continuing the relationship between the Plaintiff and the child is in the child's best interest. The Trial Court awarded Lair equitable caregiver status of the child and also awarded Lair temporary joint legal custody and visitation time, with primary decision-making authority remaining with Venticinque. On August 14, 2024, when the child was about two years old, the Court held a bench trial to determine custody, visitation and child support. In the Trial Court's Amended Final Order, in which the Trial Court relied on O.C.G.A. §19-9-3 in determining custody and visitation rights, and in relevant part, the Trial Court granted the parties joint legal custody of the

child with Lair having primary custody and Venticinque having visitation rights as set forth in the Trial Courts November 4, 2024 Parenting Plan. Venticinque appealed the Trial Court's Amended Final Order and Parenting Plan and the Supreme Court reverses.

Venticinque argues, among other things, that the Trial Court erred in awarding Lair equitable caregiver statute because it incorrectly placed the burden on Venticinque to demonstrate that the child would suffer physical or long-term emotional harm if Lair's Petition was granted. Here, the Trial Court applied the incorrect standard and erroneously placed the burden of proof with respect to the issues of harm of the child on Venticinque. Therefore, the case is reversed and remanded to apply the correct statutory standard. Because of this, the constitutionality of the equitable caregiver statute need not be decided until Trial Court determines the statutory requirements have been satisfied.

Justice Peterson writes a lengthy concurrence. Relevantly, O.C.G.A. §19-7-3.1(d)(5) states that in order to establish standing, the Court shall first find, by clear and convincing evidence, that the individual has demonstrated that the child would suffer long-term personal harm and that the continuing relationship between such individual and child is in the best interest of the child. In other words, the statute requires that a putative equitable caregiver show by clear and convincing evidence the child would suffer physical harm or long-term emotional harm if the Petition is not granted, citing *Dias*. The Equitable Caregiver Statute requires Lair, as the individual seeking equitable caregiver status, to demonstrate the child will suffer harm if Lair's Petition is not granted. It poses no burden on the Defendant.

Justice Peterson states some potential constitutional issues with equitable caregiver. 1) Any remedy under the Equitable Caregiver Statute must be tailored to the harm caused by the parent's particular decision regarding the child's contact within an adjudicated equitable caregiver. This is the case that presents serious issues about the nature of fundamental rights. The Court can imagine such a scenario in which, notwithstanding a parent's constitutional rights, the Court permissibly may override a fit parent's decision not to allow visitation between the parent's child and an equitable caregiver on the basis that denying such visitation threatens serious emotional or mental harm to the child; but cannot imagine a scenario in which a child will suffer harm from a fit parent's decision to decline to share legal custody. Therefore, if a child's parent is fit, it seems difficult to show that a child will suffer the sort of harm that justifies State intervention by allowing that fit parent, rather than a third party, to make decisions about the child's education, extracurricular activities, health, and religious upbringing.

2) The Equitable Caregiver Statute cannot evade the requirement to show harm from parental decisions before interfering with them by creating a new class of persons with the constitutional rights of parents. The Equitable Caregiver Statute does not explicitly require the Trial Court to give deference to the parent's judgment as to the best interest of the child regarding visitation with a third party and contains no presumption that it is in the best interest of the child to be in the custody of the legal parent. In addition, it does not explicitly require that the "relief awarded to the equitable caregiver be narrowly tailored to the harm or threatened harm that has been shown." Instead, the Equitable Caregiver Statute requires the putative equitable caregiver to show standing by establishing, among other things, that the child would suffer physical harm or long-term emotional harm. Harm from what, the statute leaves unspecified.

The Trial Court here issued its relevant Orders prior to the limited guidance provided in *Dias*. The Trial Court appears to have treated the legal parent, Venticinque, and the adjudicated caregiver, Lair, as if they were both parents, as one would in a familiar context of a custody determination in the divorce of two parents. The Court then went on to consider factors typically used to determine custody in divorce context. The Trial Court awarded joint legal custody with Lair having primary custody and tie-breaking decision authority. That approach, although appropriate for custody determinations between two parents, cannot be squared in the context within the requirements of our case law. Lair argues on appeal that it is proper to treat a parent and an adjudicated equitable caregiver as constitutional equals for the purpose of determining custody because once the Court finds caregiver status, the Court should no longer view the case through the prism of a parent and a non-parent as the equitable caregiver obtains parental status no different than an adoption. Here, serious concerns would arise if the statute clearly operated as Lair argues.

Placing the legal parent and the adjudicated equitable caregiver on equal constitutional footing, as the Trial Court apparently did here, presumes that the General Assembly has the power to create a new class of persons who enjoy the fundamental constitutional rights of a parent. This Court is skeptical that the General Assembly has such power. Lair also suggests that the harm required was satisfied here because the child would be harmed without contact between Lair and the child. Lair fails to appreciate that the Trial Court can enforce a visitation Order through other means, such as

contempt power, and does not need to resort to placing custody with equitable caregiver in order to prevent any harm that might be caused by lack of visitation. The statute plainly does not require Trial Courts determining what relief to award an equitable caregiver to deem that the equitable caregiver possesses rights equivalent to the parent's fundamental constitutional rights.

3) The mere existence of the Equitable Caregiver Statute at the time of relevant actions by a parent fostering or supporting a parent-like relationship between a child and a third party does not, without more, show a knowing waiver of a constitutional right. Lair argues Venticinque waived her right to exclusive parenthood, but waiver could not have applied. In *Dias*, all the conduct that might have supported waiver occurred before the effective date of Equitable Caregiver Statute. However, nothing said in *Dias* supports the idea that the mere existence of the Equitable Caregiver Statute can substitute for the actual knowledge of the likely consequences of conduct that could constitute a waiver. Lair argues that the law presumes that every citizen knows the law. However, this is a legal fiction. A waiver of fundamental constitutional rights requires actual knowledge.

LEGITIMATION

Soto v. Daniels; **A25A2163** (December 22, 2025)

In January 2022, Soto (father), a New Jersey resident, filed a Petition for Custody in Georgia alleging the minor child had been injured in a car accident while in Daniels' (mother's) care. The mother was arrested for DUI. In February 2022, the Trial Court granted the father temporary physical custody. In March 2025, the father filed an Amended Petition seeking both permanent physical custody and legitimation. Following the hearing, the Trial Court issue a Final Order of Legitimation which found it was in the best interest of the minor child to legitimate the father's relationship with the minor child, and also stated that both parents are loving and now fit to care for the minor child. The Trial Court granted the mother primary physical custody and the mother and father joint legal custody. When outlining the Parenting Plan, the Court recognized the father resides in New Jersey and the mother resides in Georgia, found that a traditional Parenting Plan is not appropriate, and set out the minimum amount of visitation to which the father would be entitled in the event the parties were unable to agree on the terms of visitation. The father appeals and the Court of Appeals affirms in part and reverses in part.

The father contends the Trial Court erred by awarding primary physical custody to the mother because the mother failed to file a responsive pleading or counterclaim seeking custody. Citing OCGA § 19-7-25, the father contends the mother must have filed a separate Complaint for Modification or Counterclaim for Modification. However, this was an initial custody determination, not a modification of custody. Because the father had not legitimated the minor child, only the mother was entitled to custody of the child. The fact that there had been an interim custody award did not change the nature of the proceedings. A Temporary Custody Order was intended merely to ensure that the child was adequately cared for until further Order of the Court and a Temporary Order does not decide any final issues between the parties. Because this was an initial permanent custody determination between the parties, the mother was not required to comply with the requirements of O.C.G.A. §19-9-23.

The father next argues that the Trial Court erred in awarding primary custody to the mother. The Trial Court heard testimony at the final hearing from the father, the mother, the maternal grandmother, the maternal aunt, the paternal grandfather, and the Guardian Ad Litem (GAL). The GAL testified that the mother is a success story and that she complied with every request including every request for a drug screen. The mother testified that she had not drunk alcohol or smoked marijuana for the last five years since the car accident that resulted in the child's temporary custody change to the father. There are also issues about the crime and quality of schools in the father's district. In addition, there were concerns about the father's drug use, and the father testified that he would test positive for marijuana. Here, the evidence at the final hearing demonstrated that both parents were fit and proper parents and each had a loving relationship with the child. Although the evidence showed that years before the final hearing, the mother drove the child while under the influence of drugs and alcohol, there was an abundance of evidence that the mother rehabilitated herself and maintained a safe environment.

The father also contends the Trial Court erred by failing to incorporate a permanent Parenting Plan in its Legitimation Order that fully complies with O.C.G.A. §19-9-1 which provides, in pertinent part, that the final order shall include the following: a) a recognition that the close and continuing parent-child relationship and continuity in the child's life will be the best interest of the child; b) a recognition that the child's needs will change and grow as the child matures and demonstrate that the parents will make an effort to parent that takes this issue into account so that further modifications to the parenting plan are minimized; c) a recognition that the parent with physical custody will make the

day-to-day decisions and emergency decisions while the child is residing with such parent; and d) that both parents will have access to all the child's records and information, including, but not limited to, education, health, health insurance, extracurricular activities, and religious communication. Here, the Legitimation Order did not comply with the requirements of O.C.G.A. §19-9-1. The above language should have been included in the Parenting Plan and, therefore, this part of the Legitimation Order is vacated and the Judgment is remanded to include a Parenting Plan that complies with O.C.G.A. §19-9-1.

LEGITIMATION/UCCJEA

Newsome v. Hawkins; **A25A2179** (January 30, 2026)

In 2018, Newsome (mother) was separated from her husband and had a romantic relationship with Hawkins (father) resulting in the birth of N.H. (child) in 2019. The mother lived with the child in Virginia and she filed a Complaint for Determination of Paternity in Georgia where the father lived. An Order of Paternity was entered. In 2023, the father filed a Petition for Custody in Virginia on the grounds he believed the mother was unstable and a danger to the child. The mother answered that Virginia had jurisdiction over the Petition and that Hawkins was the father of the child. Following a hearing in August of 2023, at which the mother did not appear, the Virginia Court granted the father temporary sole legal and physical custody. The following month, the parties sought to transfer the custody case to Georgia once the mother had established residency in Georgia. The mother agreed to a Consent Order of Legitimation in Georgia and the Georgia Court would adopt the Virginia Courts temporary custody ruling with a modification permitting her supervised visitation. After the mother transferred her residency to Georgia, the Virginia Court acknowledged and transferred the case to Georgia, and the Georgia Court reaffirmed custody would remain with the father. The Court also awarded the mother supervised visitation. The mother later filed a Habeas Petition and an Emergency Motion to return the child to her custody, arguing the Virginia Order was void as the Court lacked subject matter jurisdiction and the father had not legitimated the child. The Trial Court denied the Habeas Petition and Emergency Motion. The mother appeals and the Court of Appeals reverses and remands.

The mother argues Georgia had no authority to issue a custody order because Virginia was the proper home state pursuant to UCCJEA regardless of her consent to the Georgia proceedings. Under the UCCJEA, jurisdiction over the initial custody petition generally lies in the child's home state pursuant to O.C.G.A. §19-9-61(a)(1). Here, there is no dispute that Virginia was the home state at the time the father filed his Petition and when the Court made the initial determination of temporary custody. It is also undisputed that Georgia could not qualify the child's home state at the time the case was transferred because the child had not lived in Georgia the requisite amount of time. Once Virginia exercised its jurisdiction, it remained the exclusive Court with authority to address the issues of the child custody.

Although UCCJEA allows for termination of the home state jurisdiction when the child and parents are no longer living there or where the Court of another state would be more convenient, when there are simultaneous proceedings, the UCCJEA requires the Courts to communicate with each other. Here, although the Virginia Court noted that none of the parties lived in the state any longer, nothing in the record shows the Courts engaged in the communication, nor do either of the orders contain the necessary findings of facts to comply with the requirements to terminate jurisdiction in favor of the more convenient forum. Instead, the Virginia Court Order shows it relied solely on the Georgia Courts earlier Order to transfer the case, and the Georgia Court based its decision primarily on the party's agreement. Under UCCJEA, the Virginia and Georgia Courts must communicate, and the Georgia Court should consider the factors as set out in O.C.G.A. §19-9-67(b) and set out the basis for its decision in determining whether to accept or decline jurisdiction. Therefore, in light of this conclusion, we do not address the mother's remaining enumerations of error.

MATERIAL CHANGE

Kimbro v. Warren; **A25A1348** (October 23, 2025)

This Court previously vacated the Trial Courts custody order modifying primary custody from joint custody between Kimbro (mother) and Warren (father), and awarding physical custody to the father. The case was remanded for the Trial Court to make findings on the threshold issue of material change in circumstances warranting a change in custody. On the new Final Order issued on remand from the prior appeal, the Trial Court found that the inability of the parents to co-parent was a material change in circumstances affecting the welfare of the children. The conflict of the parties had escalated to a physical altercation involving a weapon while in the presence of the children. The Court found that the joint physical custody arrangement was no longer feasible nor in the best interest of the children due to the tension and animosity demonstrated by each party

towards one another. The Court concluded that it was in the best interest of the children for the father to have primary custody of the children and to continue joint legal custody with the mother and father. The Court also further held both parties in contempt for failing to fulfill certain financial obligations pursuant to the Divorce Decree. The mother appeals and the Court of Appeals affirms.

The mother contends the Trial Court erroneously modified the custody of the children without any evidence of material change of circumstances. The mother argued that the parent's hostile relationship does not constitute a material change of circumstances because evidence of the divorced party's hostile relationship was continued and ongoing since the divorce but was not a new or material change in circumstances. However, rather than ongoing, the evidence at the hearing portrayed an escalating conflict between the parties, that began after their divorce, that negatively impacted their ability to co-parent. The mother testified that after the divorce, the co-parenting had initially worked well, and that the parties had been flexible with each other's schedule and she preferred the 50/50 shared custody; but the Trial Court found that the conflict between the parties had escalated to physical violence, and the parties are not capable of mutual cooperation and flexibility needed for a joint physical custody arrangement. In addition, the mother's new job required her to report to Oregon for several days each month, which only compounded the lack of stability for the children.

The mother also argues that the Trial Court erred in granting custody to the father because it was not in the best interest of the children. The mother points to the factors in considering the best interest of the children under O.C.G.A. §19-9-3(a) and maintains the Trial Court did not consider any of the factors in determining the best interest of the children. Here, contrary to the mother's assertions, there was evidence about the father's violent history, employment, and parenting ability presented at the hearings and in the Guardian Ad Litem report. The Trial Court is required, if requested, to not only recite findings of facts, but to also explain how the facts support a separate conclusion regarding the best interest of the children. The mother did not make such a timely request for findings of facts. Therefore, deferring to the Trial Courts factual determination based on the evidence in the record, we find the Court appropriately considered all relevant factors in its decision making.

The mother also contends the Trial Court erred by failing to consider the father's history of domestic violence, suicidal tendencies, and criminal conduct prior to awarding primary physical custody of the children. According to the mother, the Trial Court and Guardian Ad Litem were under the erroneous legal assumption that they could not consider conduct that occurred prior to the divorce. The mother notes that during her testimony at the temporary custody hearing, the Trial Court directed that with regards to the best interest of the children, the only thing that is relevant going forward is anything that has occurred since the entry of the Parenting Plan that addresses custody and visitation. The mother asserts this is legal error pursuant to O.C.G.A. §19-9-3(a)(3)(P) which includes evidence of family violence as a factor to determine the best interest of the children. She also argues that section (a)(4)(b) requires the Judge to consider the perpetrator's history of causing physical harm. Within the context of determining the threshold finding of material change and circumstances, the Trial Courts statement was correct in that it must determine whether there was a material change of circumstances affecting the welfare of the children since the last custody award.

POSTNUPTIAL AGREEMENT

Crane v. Crane; **A25A2209** (February 5, 2026)

The parties were married in 2005. In 2014, the couple entered into a postnuptial agreement that would govern distribution of their assets in event of divorce. In pertinent part, the agreement provided each party would retain their respective interests in their joint marital residence, with the wife having the right of first refusal to buy the home, and that each spouse would retain his or her respective vehicles and financial accounts, including retirement and stock accounts. With respect for the husband's future inheritance from his mother, the agreement provided that he would pay the wife $50,000.00 of those funds to the wife and the remainder would be his separate property. It is undisputed the agreement did not include a financial disclosure form or a listing of the husband and wife's separate property. The husband filed a Complaint for Divorce in 2024. The wife filed her Answer and Counterclaim for Divorce and Other Relief. The husband filed a Motion to Enforce the Agreement. The Trial Court conducted a hearing in which the husband, wife and the attorney who drafted the agreement and the notary who signed the document testified. At the conclusion of the hearing, the Trial Court announced its findings, granted the husband's Motion to Enforce the Prenuptial Agreement, and concluded the Postnuptial Agreement was not a result of fraud, duress, mistake or misrepresentation and it was not unconscionable. The wife filed an interlocutory appeal which was granted and the Court of Appeals reverses.

The wife argues the Trial Court erred by finding there had been a full and fair disclosure of material facts at the time the agreement was executed. The Supreme Court has held that the same tests that were made applicable to any prenuptial agreement is equally applicable to postnuptial agreements. To determine if a postnuptial agreement is enforceable, you must apply the prongs of *Scherer*. The first prong of this test is the only prong at issue, and requires the party seeking enforcement to show there was both a full and fair disclosure of the assets of the parties prior to the execution of the agreement and the party opposing enforcement entered into the agreement freely, voluntarily, and with full understanding of tis terms after being offered the opportunity to consult with independent counsel. Georgia law imposes an affirmative duty of pre-execution disclosure on the party seeking to enforce such an agreement. The husband testified that he had no independent evidence other than his testimony that he identified his assets or income to the wife prior to the agreement being signed. The Trial Court made findings that the parties were married for nine years prior to the agreement being executed, the wife trusted the husband to take care of finances, she had access and login information to the party's joint bank accounts, and that she was allowed to use her debit card of the joint accounts freely. The Court also acknowledged that wife testified that she was aware the husband had earned a good salary and did not put any spending limits on the wife, and the children were able to freely participate in extracurricular activities. However, in the context of a postnuptial agreement, the burden is on the husband to affirmatively disclose all facts in order to have the agreement enforced. The burden does not fall on the wife to accumulate information from available sources. This duty to disclose his particular significance where one party is waiving his or her right to alimony. Therefore, the husband's income was material to any antenuptial agreement and would have been a critical factor in the wife's decision to waive alimony.

The husband points to the holding in *Mallen v. Mallen*. However, *Mallen* is factually and legally distinguished in several respects. In *Mallen*, the parties entered an antenuptial agreement which included financial disclosure forms, but neither financial disclosure form included any reference to income. In addition, it said the wife would receive alimony adjusted for the number of years of marriage. The Court said the wife had lived with the husband for years and was aware of the standard of living and enjoyed a significant income from the business and other sources. In the present case, no financial disclosures were made a part of the agreement, and within the agreement, the wife waived her right to alimony. Both of these distinguishes the facts of *Mallen*. Therefore, we find that by relying on the wife's ability to access joint accounts, joint tax returns, and joint mortgage documents and her general awareness of other investments the husband made in the family standard of living, the Trial Court erred in relieving the husband of both his affirmative duty to make full and fair disclosures of material facts and his burden to demonstrate his fulfillment of that duty. Moreover, the record is silent on the value of the husband's annual income, his 401k, and profits, if any, from the investment in a text book business; and therefore, the husband did not carry the burden to show that the wife entered into the agreement, in which she waived her right to alimony, with full understanding of its terms. Judge Doyle dissents.

PRO SE APPEAL

Weinstock v. Small; **A25A2061** (January 23, 2026)

Weinstock (mother) was married to Small (father), had a daughter, and divorced in 2017. The mother was awarded primary custody. In November 2023, the mother filed a modification of the parenting plan's visitation schedule. The mother initially was represented by counsel. In January 2025, the Trial Court entered a Final Order concluding that no change of custody or visitation was warranted. On January 31, 2025, counsel for the mother filed a Motion to Withdraw from representation. Earlier that same day, the mother filed a *Pro Se* Motion for New Trial. On April 18, 2025, the Trial Court dismissed the Motion for New Trial as a nullity because the mother was still represented when she filed the Motion. The Trial Court noted that they had not granted the attorney's Motion to Withdraw and, in any event, the mother was still represented by counsel. The Court also awarded attorney fees to Father of $12,735.00 pursuant to O.C.G.A. §9-15-14. The mother appeals and the Court of Appeals affirms.

The mother filed a Notice of Appeal from the two Orders entered on April 18, 2025 arguing the Trial Court erred by dismissing her *Pro Se* Motion for New Trial. The mother filed a *Pro Se* Notice of Appeal, but no Order granting the mother's attorney's motion to withdraw or addressing whether any other attorneys continued to represent the mother appears in the record between the dismissal of the Motion for New Trial and the filing of the *Pro Se* Notice of Appeal. The Trial Court held that the *Pro Se* filing, including a *Pro Se* Notice of Appeal filed by a represented party in civil cases, is a nullity and does not confer Appellate jurisdiction to the Appellate Courts. The mother argues the Supreme Court, in the decision in *Johnson*, held that a Pro Se filing by counseled criminal defendant was not always

a nullity and that, in the context of a criminal matter, the Court has discretion to recognize the timely and otherwise procedurally proper *Pro Se* filing made by the defendant who is still represented by counsel. However, Johnson's holding is explicitly couched in the language applicable to Pro Se filings by criminal defendants. Therefore, *Johnson* does not allow the Appellate Court discretion to recognize a *Pro Se* filing of a represented party in a civil matter.

SET ASIDE

Baez v. Garcia; **A25A2180** (November 19, 2025)

On January 24, 2022, Garcia (husband) filed a *Pro Se* Motion to Dissolve the Marriage with Baez (wife). The husband asked the Trial Court to grant a divorce and incorporate in its Final Order the Settlement Agreement purportedly reached by the parties regarding, among other things, division of assets and liabilities. The Court entered a Final Judgment and Decree of Divorce on March 9, 2022. However, the Court struck through the language that would have incorporated the Settlement Agreement into the divorce decree. The divorce decree does not otherwise address the settlement or discuss financial issues relating to the dissolution of the marriage. Twenty months later, the wife moved to set aside the Decree and the Settlement Agreement noting that contested issues remained regarding the marital estate. The Court denied the Motion and the wife appeals. The Court of Appeals reverses.

Pursuant to O.C.G.A. §9-11-60(d), the Trial Court may set aside a Judgment based upon 1) lack of jurisdiction of the person or subject matter; 2) fraud, accident or mistake or acts of the adverse party unmixed with the negligence or fault of the moving party; or 3) a non-amendable defect appearing on the face of the record or pleading. The wife first argues that the Trial Court erred by not setting aside the divorce because the court did not have personal jurisdiction over her. However, the record contains a Sheriff's Entry of Service stating that the wife was served with the divorce action and summons. Nevertheless, we agree with the wife that the Judgment should have been set aside because a non-amendable defect appears on the face of the record. Pursuant to Uniform Superior Court Rule 24.7, no divorce shall be granted unless all contested issues in the case have been finally resolved. Here, the Divorce Decree at issue does not resolve, or even address, financial issues relating to the divorce, such as the division of marital property and liabilities. Multiple contested issues remain pending when the Trial Court entered a Final Decree on March 9, 2022 and therefore, the granting of the divorce was improper and an abuse of discretion.

UCCJEA

Garay v. Garay; **A25A2063** (September 9, 2025)

The parties were married in 2016 and had two minor children born in 2017 and 2018. The parties lived together in Georgia until the parties separated and the father moved to South Carolina in 2023. Just prior to the separation, the mother voluntarily placed temporary custody of the two children with the father's mother in Illinois, where they remained until March, 2024 when they moved in with the father in South Carolina. In March 2024, the father filed a Complaint for Divorce in Chatham County, Georgia subjecting himself to jurisdiction of the State, and requested primary physical custody of the children. In November 2024, the Court held a hearing on the issue of the home state of the children. At that time, the Court learned the father relocated to Washington with the children in July, 2024, and the hearing was continued. A second hearing was held in January, 2025 and the parties agreed to brief the question of jurisdiction. The mother argued that Georgia had jurisdiction because it was the home state of the father until he filed this action, the children lived in Georgia with both parents and attended school here, and their doctors were here. The father argued that Washington had jurisdiction because it was, at the time, the current home state of the children and the children had significant connections there; the children had not lived in Georgia since June, 2023 when both parents agreed to place them in Illinois; and the only significant connection they had with Georgia was the mother lived here. The Trial Court issued an Order determining that it lacked jurisdiction to make an initial custody determination and determined the home state was Illinois. The mother appeals and the Court of Appeals affirms.

The mother argues that the Trial Court erred by declining to exercise jurisdiction. Under the UCCJEA, the Trial Court's subject matter jurisdiction to make an initial child custody determination heavily depends on whether the Court is the home state of the child. The divorce proceedings commenced on March 20, 2024. Thus, the operative period under O.C.G.A. § 19-9-61(a) is September 20, 2023 to March 20, 2024. During this period of time, the children did not live in Georgia ,and although they lived in Illinois with their paternal grandmother for nine months, they did not live with a parent or person acting as a parent because the paternal grandmother did not have legal custody. Because the children have not lived in Georgia with either parent for at least 6 consecutive months immediately before the

commencement of the divorce action, Georgia is not the home state of the children. In addition, Georgia lacks jurisdiction because there is no significant connection between the children and Georgia. While the mother has a significant connection to Georgia, the children have not lived in the state for over two years; and thus, the Trial Court was correct in concluding there was no substantial evidence available concerning the children in Georgia.

Because Georgia lacks subject matter jurisdiction of the first three paragraphs of O.C.G.A. §19-9-6(a), Georgia may issue an initial custody determination only if no Court of any other state would have jurisdiction under the first three paragraphs. We cannot say that Washington State, where the children have been living with the father since July 2024, would not have jurisdiction under this provision.

The mother also argues that the Court should exercise subject matter jurisdiction because the domicile of the children never changed. In support of this contention, the mother contends that one or more parent was in Georgia at the commencement of the proceeding and had resided in Georgia during the nine months the children were living temporarily with their paternal grandmother. Here, the children had not lived in Georgia since June, 2023; and despite the mother's assertions that only a Georgia Court can be trusted to make a fair custody determination involving a Georgia parent, the residence of a parent is not a factor to be considered under the UCCJEA.



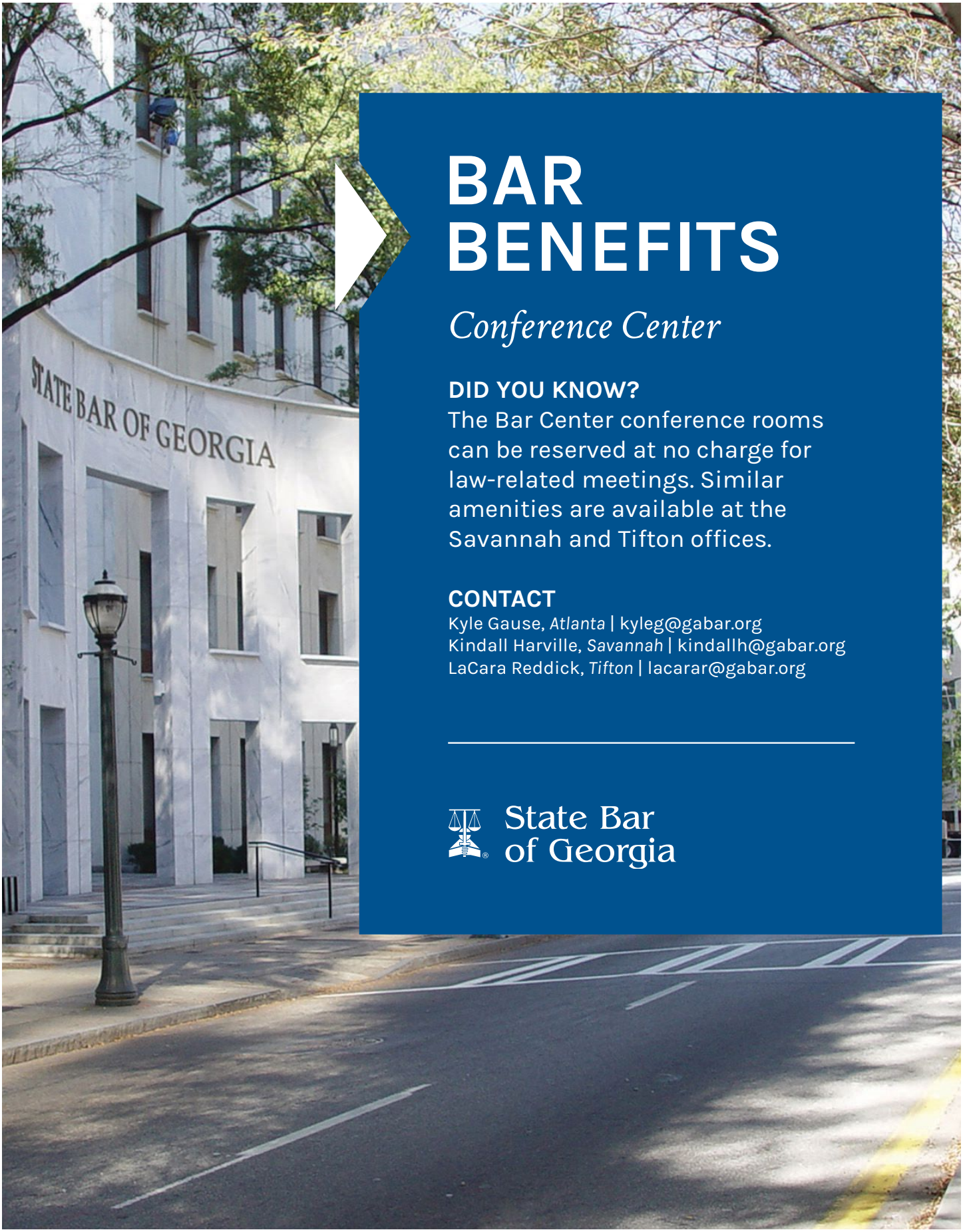
VIC VALMUS *graduated from the University of Georgia School of Law in 2001 and manages Valmus Law Firm located in Marietta. His primary focus areas are family law and criminal defense. Vic can be reached at vic@valmuslaw.com.*



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CONTACT

Kyle Gause, *Atlanta* | kyleg@gabar.org
Kindall Harville, *Savannah* | kindallh@gabar.org
LaCara Reddick, *Tifton* | lacarar@gabar.org

State Bar of Georgia

Family Law Section
State Bar of Georgia
Kem Eyo, Editor
104 Marietta St., NW, Suite 100
Atlanta, GA 30303

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kevin@familylawga.com

Cherese Clark-Wilson, *Member-at-Large*
cherese@cllfamilylaw.com

Sean Ditzel, *Member-at-Large*
sean@adhbfamilylaw.com

Tori White, *Member-at-Large*
tori@toriwhitelaw.com

Richard Sanders, *Member-at-Large*
richard@jkslawfirm.com

David Sarif, *Member-at-Large*
david@nsfamilylawfirm.com