

CALENDAR CALL

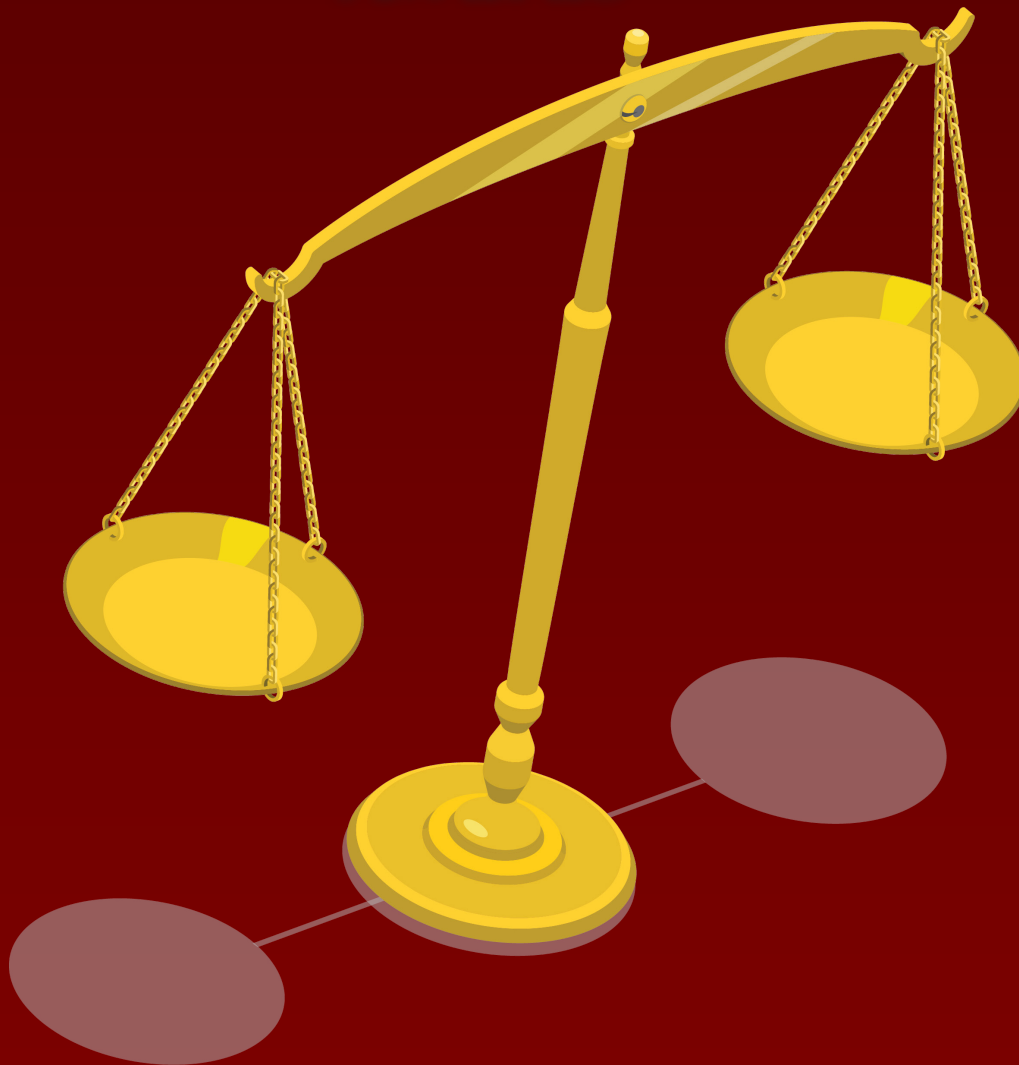
GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Summer 2026



2025

Tradition of Excellence Awards



Defense

Christine L. Mast

Page 7

General Practice

Cary Ichter

Page 11

Judicial

Hon. Jane P. Manning

Page 9

Plaintiff

Pamela S. James

Page 13

2025/2026 SECTION OFFICERS & BOARD

CHAIR



John Manly

VICE CHAIR



Will Martin

SECRETARY/TREASURER



Anna Bolden

DISTRICT 1



T. Peyton Bell

DISTRICT 2



Vacant

DISTRICT 3



David Mize

DISTRICT 4



Rob Bozeman

DISTRICT 5



Dawn M. Jones

DISTRICT 6



Brandon Taylor

DISTRICT 7



Thomas E. Cauthorn

DISTRICT 8



Tom Peterson

DISTRICT 9



Laura Austin

DISTRICT 10



Michael Ruppensburg

MEMBERS-AT-LARGE



Brittany Schmidt



Patrick Wheale



Elliott Ream



Cassandra F. Ceron



Ron Daniels

CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA
Summer 2026



EDITORS

Devin Hartness Smith, Editor
Challie Smith, Sections Coordinator

EXECUTIVE DIRECTOR

Abbey Patterson

ARTICLES

- | | |
|--|----|
| ■ Editor's Column | 4 |
| <i>Devin Hartness Smith</i> | |
| ■ Trial Institute Summary | 5 |
| <i>Rhonda Kreuziger</i> | |
| ■ "Meet the Judges" | 6 |
| <i>John Manly</i> | |
| ■ 2025 Tradition of Excellence Recipients | 7 |
| ■ Photos from the 2025 Tradition of Excellence Awards Celebration | 15 |
| ■ An Overview of Current DUI Defenses | 18 |
| <i>Anna G. Bolden & Jeff Rothman</i> | |
| ■ Key 2025 Updates to Georgia's Probate and Trust Code Arising from HB 327 | 21 |
| <i>Cassandra F. Ceron</i> | |
| ■ Interview with Former TOE Recipient - Katherine McArthur | 23 |
| <i>Devin Hartness Smith</i> | |

Calendar Call is the official publication of the General Practice and Trial Section of the State Bar of Georgia. Statements and opinions expressed in the editorials and articles are not necessarily those of the Section of the Bar. Calendar Call welcomes the submission of articles on topics of interest to the Section. Submissions should be sent to Abbey Patterson via e-mail (abbey.m.patterson@gmail.com) with a bio and picture of the author.



Editor's Column

Devin Hartness Smith

I have high expectations of myself and other lawyers, and I do not apologize for it. Our oath requires us to “truly and honestly, justly and uprightly conduct myself as a member of this learned profession.” In other words, we should set a standard of excellence. Many of us are frustrated when we feel that we have put forth effort that is not matched, even by opposing counsel. Sure it feels great to win, but the satisfaction is dulled when you have prepared your oral argument, witness, or brief for hours (days, weeks), and the other side barely gives it the old college try. Trying to meet expectations can be exhausting, and sometimes you fail. But you go back to the office the next day and attempt again to set the example of diligence, integrity,

and quality that our profession requires.

Our Tradition of Excellence winners did not achieve distinction and preeminence by mailing it in. They showed up and put in the work. The same applies to our contributing authors who volunteered their expertise for our benefit. We are grateful to them for setting aside time to educate us. Anna Bolden and Jeff Rothman provide a motions-practice template for attorneys who do not specialize in DUI law. They call our attention to both law and science, and nuance found in each area, critical for defending these highly technical cases. Cassandra Ceron walks us through the 2025 amendments to modernize certain probate and trust laws relating to

intestate succession, beneficiary notice, and virtual execution of documents. And, in keeping with the theme of this introduction, past Tradition of Excellence winner Katherine McArthur reminds us to take the practice of law seriously and “expect great things.”

As always, we appreciate the State Bar for publishing the Calendar Call and delivering it to you. This issue would not be in your hands without the dedication of Sections Coordinator Challie Smith and Executive Director of the General Practice and Trial Section Abbey Patterson. We would love to hear from our Section members with topics you would like to see in the next issue. Our goal is to support your pursuit of excellence.



Trial Institute Summary

Judge Rhonda Kreuzuger

The 12-hour CLE was held March 12 – 14, at the Omni Hilton Head, Oceanfront Resort, and the 2026 Trial Institute's content and presenters were amazing!

Thank you so very much for contributing your experience, wisdom, and resources.

Thank you, as well, to ICLE, the hotel staff, and our Executive Director, Abbey Patterson, for your talent and expertise. Our Reception Sponsors, The Cauthorn Firm and Dawn Jones Law, also deserve a special thank you for their generosity and support.

The 2025 Tradition of Excellence Judicial Recipient, Cobb County State Court Judge Jane Manning, set the tone for a quality-filled program with a wonderful presentation on how to win e-discovery disputes. Cassandra Ceron's resourceful material about estate planning and probate issues as well as the wisdom

from Superior Court Judges Eric Dunaway and Pandora Palmer, along with their gifted Moderator Roslyn Holcomb, made the first day of the Institute informative and engaging.

On Day 2 the group received a wealth of information from Tom Cauthorn, a consummate professional, who has served this industry for over fifty years. Cary Ichter, our 2025 Tradition of Excellence General Practitioner Recipient, astutely taught about trial preparation for commercial cases from his vast experience; William Martin shared intelligent and pragmatic teachings about insurance defense strategies; and Timothy Baxter's knowledgeable insight regarding business law rounded out a group of talented presenters who made this portion of our program a great success.

The intellect and experience of our Day 3 panelists ended our program on a high note. Julie Kert and Marcia Moran, two

highly-skilled prosecutors, shared the ins and outs of practicing law in municipal courts; Elliot Ream wisely educated the group about the Trafficking Victim Protection Reauthorization Act; Brad Fallon blew us away with his bankruptcy manual that helps non-bankruptcy attorneys navigate the complexities of bankruptcy issues; and Fielding Martin's bright mind expanded our knowledge about data privacy and artificial intelligence.

As the program details, the members of the State Bar of Georgia are better equipped practitioners because of the talent, knowledge, and wisdom shared by our speakers.

Above all, I would like to especially thank our attendees – your presence and engagement truly made this program a huge success.

We look forward to seeing you all again at the 2027 Trial Institute!



“Meet the Judges”

John Manly

The Section was pleased once again to host the “Meet the Judges” luncheon in conjunction with the State Bar’s 2026 mid-year meeting in Atlanta. As in prior years, we invited members of the judiciary to participate in a Q&A session with attendees and to enjoy an opportunity to socialize with lawyers and judges from across the state. This year’s panel featured distinguished jurists who offered practical insight drawn from their experience on the bench.

Our panelists graciously shared words of wisdom and memorable “war stories” from their judicial service.

Topics of discussion included how judges transition from the practice of law to the bench, insights into evolving technology and its uses, and “do and don’ts” in the courtroom.

This event remains one of the Section’s most popular

offerings and provides a valuable opportunity for members to engage directly with judges they might not otherwise have the chance to meet.

Please join us for the presentation of the Traditions of Excellence Awards at the State Bar’s Annual Meeting in June. It is a great event and this year’s event is certain to be entertaining. I look forward to seeing you soon at a General Practice and Trial Section Meeting!

TRADITION OF EXCELLENCE AWARD



DEFENSE *Christine L. Mast*



Acceptance Speech

Thanks to Tom Cauthorn who I understand was kind enough to put my name into the hat for this. It was truly a surprise and an honor to know such a fine lawyer and gentleman thought enough of my work to nominate me.

When I heard the news, I confess I felt a bit like an imposter. That was only magnified once I saw the incredibly impressive and accomplished list of past recipients. I am not sure I belong in such distinguished company, but I am certainly honored to be here.

Warner Fox also deserves a big thank you for such a lovely introduction. We have known each other since my summer clerk tenure at what was then Freeman & Hawkins, and he showed great restraint in not revealing a few more embarrassing stories. Those may come out later in the evening.

I have had the great fortune to practice law with Warner and most all of the senior folks in



our Atlanta office for the decades since I clerked. This summer will mark my 33rd trip around the sun with most of these guys. When you find something great, there's no reason to meddle with it. We have been through quite a few highs and some lows together – and we are partners and friends through all of it. I wouldn't trade them. I will be forever grateful that they took a chance on a nerdy, blunt Midwestern girl and for the mentorship and friendship of great trial lawyers like Warner, Bill Major and especially fellow Tar Heel Lane Young who nurtured me and shaped me into a decent lawyer.

My partners also enabled me to find my niche as a lawyer's lawyer, and I thank them for that. For the first few years working on legal malpractice cases, it was rather intimidating to critique the work of attorneys who often had decades more experience than I did. My partners supported me with plenty of sink or swim training and before long, I had my sea legs. But it seemed then

—and does now —like each case presented a completely new subject area to learn. It requires focus but simultaneously forces you jump between three, four, even five completely different specialties in a day. It's always to some degree like drinking from the firehose. I'm fairly certain that legal malpractice defense work is better than Wordle or Strands for warding off dementia.

I genuinely like attorneys, which is a lucky thing because when you represent lawyers, you spend an awful lot of time around them. Plus, I married one. So it really is lawyers 24/7. My husband Tim's support of my work life has been nothing short of amazing. He serves as cheerleader and critic, free subject matter expert, late night legal researcher, and has taken on more than a fair share in raising our three daughters into strong, confident young women. Oddly not one of them has any interest in the law, though our youngest regularly employs affirmative defenses. My hope is that Tim and I can somehow orchestrate retirement on the exact same day.

For over 30 years, it has been the greatest privilege to represent so many lawyers during what is usually one of the most significant

challenges in their professional lives. I've had to serve as a combination advisor, counselor, priest and strategist, and the role in each case is different. It's not a one size fits all job. I try to adjust to the personality and needs of each of the lawyers I represent, and I hope that I have been able to help each of the attorneys I have known to get through the stress of a claim.

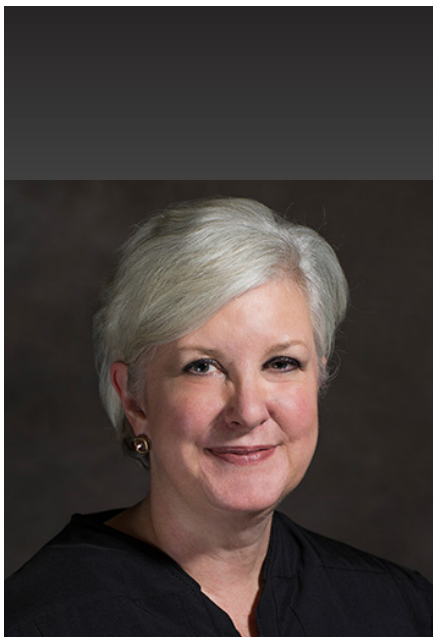
Lawyer clients can be more demanding than others. They aren't shy about calling early or late or on holidays or weekends. When a lawyer thinks he may have made a mistake, he often wants to figure out right then if he did or not and figure out how to correct it. That has meant taking calls at many inopportune times. And it's challenging to unplug. They will find you if they need you. And I'm not very good at saying no.

As a rule, lawyers care about doing the right thing. For the most part we are good people who follow the rules. Good lawyers, and even the great ones, can and do make mistakes. I have observed over 35 years that the vast majority of the time they are trying to do their best, make the right calls and give the correct advice to their clients. But yes we make mistakes. Very

very few attorneys nowadays will get through a 30 or 40 year career without at least having a claim. There are far worse things that could happen. If a claim does come, you will survive it. By and large we lawyers are an incredibly resilient bunch.

One of the collateral benefits of representing lawyers is the opportunity to participate in ethics and professionalism panels with the members of the Office of General Counsel and with trial and appellate judges and great practicing lawyers from around the state. The right answer to ethical dilemmas isn't always obvious, and it is a pleasure debating with seasoned jurists and bar counsel—Another way this practice area keeps me on my toes. As I look to the future, I hope to continue to teach and help others to problem-solve before a complaint or a grievance arises. And to help them through it when one does.

Thank you so much for this award. To be commended by this group for doing work I have loved tremendously makes it that much more worthwhile. I promise to continue to honor the tradition of this award at least until the day that Tim and I officially retire.



TRADITION OF EXCELLENCE AWARD

JUDICIAL *Hon. Jane P. Manning*



Acceptance Speech

I am so touched and humbled by this award. The day after I was told I was getting the award, there was an article about the trial in the Daily Report where it repeated that I dropped the f-bomb in court. I was afraid that you might find someone else to give the award to, but my millennial and Gen Y friends told me that if I simply repeat what someone else said, I'm not dropping the f-bomb. I guess that's good to know.

I'd like to tell y'all about what it's like being a judge, especially a State Court Judge who deals with a lot of personal injury cases. When I became a judge, I took an online course from the National Judicial College that supposedly helps you transition from being a lawyer to being a judge. The first session is, "You'll become very isolated." And the last session is "You'll be shot at." It's a weird job to say the least. On the criminal side, you're lied to every day. You see parts of society you'd rather not know about:

poverty, mental illness, substance abuse, and sometimes just downright meanness.

On the civil side, you're exposed to so many things you can become paranoid. Often when I'm sitting a stop light, I brace for impact because I've seen so many rear-end collision cases. I've also seen cases where someone's life is forever changed by the fickle finger of fate. One woman was driving down I-75 when a giant tree branch pierced her windshield and compressed her wrist, so now she is in constant pain. I had cases where a tree fell on someone, and another one where a building fell on someone.

Then there are the med mal cases. Those are fun because usually you have really good lawyers and it's a treat to be in the same room as them. And after an eight-day med mal case, you think you went to medical school. But it also gives you a knowledge that you wish you didn't have. I know that doctors are not gods and nurses are not angels. But I

can pass on useful information to my friends and family: make sure after hip replacement the doctor prescribes blood thinner. Or don't let a NICU nurse heat a diaper in the microwave and put it on your baby's heel. That's not good. But sometimes when I try to relay my newfound knowledge to my family, it doesn't go so well. Like when I told my daughter-in-law (after two chiropractic malpractice cases) not to let her chiropractor touch her neck. She asked, "Well, why else would you go to the chiropractor?" Fair

enough. Or when my daughter told me her little girl had a high fever, I told her, "Whatever you do, don't put her in a tepid bath!" I couldn't remember why or what you were supposed to do instead, but I knew that much. She asked, "What happened to the baby?" I said, "You don't want to know..."

Then there was the time my daughter had to have minor surgery after a miscarriage. I said to her, "Oh I wish I could be there for you (she lives in Kentucky) but I'm in the middle

of a fascinating med mal case. The guy had abdominal surgery and then died of flesh-eating bacteria." "MOM!" That's one time I wish I could rewind the last 20 seconds of my life.

But enough about me. I want you to know that, from my experience, the vast number of judges are good people who work hard and try to get things right. You should feel good about the judiciary in Georgia. And I accept this award on behalf of all of them.



Find your people.

Georgia Lawyers Helping Lawyers (LHL) is a confidential peer-to-peer program that provides colleagues who are suffering from stress, depression, addiction or other personal issues in their lives, with a fellow Bar member to be there, listen and help.

If you are looking for a peer or are interested in being a peer volunteer, visit www.GeorgiaLHL.org for more information.

**GEORGIA
LAWYERS
HELPING
LAWYERS**



GENERAL PRACTICE

Cary Ichter



TRADITION OF EXCELLENCE AWARD



Acceptance Speech

Another trial lawyer told me a while back that trial lawyers should not need notes when they speak. We ought not to have to write things down. I explained that I only write notes for speaking when it is something very important. He asked, “How do you know when something is that important?” I said, “If I have notes.” For me, this is not just important, it is a joyous moment—not a word I use a lot.

When I first got word that I would be receiving this award, I didn’t believe it. I figured I was just being named as a placeholder until they could find someone more deserving in the transfer portal.

This award has special meaning for me because in 2002 I nominated my friend and mentor, Jerry Blackstock, for the Tradition of Excellence Award. I had the honor of introducing Jerry at the presentation ceremony. That introduction gave me a platform to say thank you for all Jerry had

done to mold me into the lawyer I would come to be. Now you know who to blame.

I am intensely conscious of who the previous recipients of this award have been. They are giants of our profession. The year Jerry received the award, the other recipients were Griffin Bell, Justice Robert Benham, and Jim Butler (I think he received the congeniality award). Others, and these are just the people I love and/or admire, are Frank Love, my former partner Mike Bowers, my friend Gino Brogdon, Jim McDonald (what a gentleman), Andy Scherffius—great lawyer and guy, Don (The Reptile) Keenan, Ray Persons, Lawton Stevens, Roy Barnes, Judd Graves, Tom Carlock, Chilton Varner, Norman Fletcher, Ben Weinberg, and Ed Garland. I don’t know that I deserve to join that list, but I will take it.

For me, this award is a happy sign that tenacity fueled by unbridled anxiety and endless insecurity, combined with a dash of Irish

Catholic work ethic, can land you in places other than prison. Very happy sign.

Today, I want to take a moment to offer recognition and thanks to others who you can hold responsible for how I have turned out. I have had the good fortune to work with many of the giants of the profession. During my days at Powell Goldstein, I worked with Frank Love, Bob Travis, Bud Simpson, and John Marshall.

Later, at my own firms, I have learned much from working with and trying to emulate Mike Bowers and Bill Barwick.

Today, I am fortunate to have Dan Davis as my partner for going on 10 years. Dan is the engine that keeps our small firm running.

My most important partner is my wife, Audrey Berland. She is one of the most diligent, hard-working, smartest and wisest

lawyers I know. She is a sounding board for some of my great ideas and the place where my bad ideas thankfully go to die. And she has been moderately successful at her biggest challenge—keeping me humble.

To friends and family who have come here to share this day with me, I say, “thank you so much.” You cannot know how much that means to me.



BAR BENEFITS

Conference Center

DID YOU KNOW?
The Bar Center conference rooms can be reserved at no charge for law-related meetings. Similar amenities are available at the Savannah and Tifton offices.

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

 **State Bar
of Georgia**

TRADITION OF EXCELLENCE AWARD



PLAINTIFF *Pamela S. James*



Acceptance Speech

Good afternoon. Congratulations to the other recipients of the Traditions in Excellence Award from the Georgia Bar. I am going to begin by talking about the importance of trust in the legal community. I want to start by saying how honored—but actually how suspicious—I am about being chosen to receive this award. When a group of attorneys tell me something I have done is “excellent,” my instinct is to study the terms and conditions to see if it is a trick. I believe John Bell and Joel Wooten nominated me for this recognition. I learned in a case that we litigated together for 12 years that their praise usually preceded an assignment for me (because of my “excellence”) to handle one hundred class members’ depositions during the cool summer month of August in Brunswick, Georgia. So you can understand the suspicion. All joking aside, this is a great honor. Practicing law in Georgia is a privilege. I am still so proud to answer the question “What do you do?” with “I am an attorney

practicing in Georgia.”

If I have conducted myself in law and in life in a way that deserves any sort of recognition, it is because I go home after long days at work to a loving family. My husband Ray Doumar is the best attorney I know because of the way he prepares his cases, serves and treats his clients and other attorneys. My daughter Emily who introduced me is a rising star in the legal community in Augusta and is already serving on community boards as well as the Augusta Bar Association. Our twins Jackson and Allie just graduated from Georgia. To my family, you’ve been patient, supportive, and only occasionally called me out for “cross examinations at the dinner table.” I love you for that.

Aside from the grace shown by my family during my 30 years of practice, this honor I am receiving today is a direct result of the attorneys and judges who have been in my circle of practice. These are attorneys who taught

me to be all in and to “bring it,” but to “bring it” with integrity. I learned from these great people that there is more to building a reputation than just big verdicts and important legal opinions. A good reputation is built on small, daily moments: the phone calls returned to clients, the advice given freely to someone in need, and opposing counsel treated with respect even when they may deserve considerably less. Many of you have heard Al Pacino’s inch by inch dialogue in the football movie *Any Given Sunday*. “The inches we need are everywhere around us. They’re in every break of the game, every minute, every second.” We have opportunities in the small moments of each day to demonstrate and build on our integrity.

In the few minutes I have, I want to highlight kindness as part of building integrity. Kindness is an action verb that we have the chance to conjugate daily. When I was President of the Augusta Bar Association, I asked John Marshall to be our featured speaker. John and I served on several boards together in Atlanta. During his presentation, he suggested that the Augusta Bar members consider forgiving opposing counsel’s mistakes and missed deadlines instead of exploiting them; admitting when we are wrong; having lunch with obstinate attorneys to learn something about them outside of law; and showing grace during litigation, even if it is unreciprocated. The room was quiet as he spoke of opportunities presented in our daily law practice to demonstrate

kindness and compassion and the way in which this conduct can change the tide in a highly litigious case. His words that day changed my practice mindset. Similarly, I have spent a great deal of my law life with John Bell and Joel Wooten. No one loves the practice of law and enjoys the company of attorneys more than these two gentlemen lawyers. They always find something positive about opposing counsel—they wrote a good brief, they admitted their mistake to the court, they worked hard at the trial. In the words of Ted Lasso, they tend to “be curious and not judgmental.” If you asked John or Joel for a courtesy during litigation, they are likely to agree even if it slightly disrupts their strategy.

I have primarily practiced in the area of class action litigation. Anyone who has done this work knows these cases are rarely monetized for plaintiffs’ class counsel until they are ripe for resolution. This requires a situationship among the attorneys involved to stay positive for each other in order to enjoy the ride. These are the attorneys with whom I have ridden these tsunami class action waves who made all the difference for me: John Bell, Joel Wooten, Jim Butler, Bob Killian, David Hudson, Bill Pannell, John Manly, Jim Shipley, Paul Threlkeld, Robert Jackson, and Roy Barnes. The outstanding attorneys I affectionately reference from “the dark side” who have defended my cases have likewise impacted me. They made me a better practitioner because of their high level of performance

and integrity. Sometimes we schooled them, sometimes we were schooled. These great attorneys include Kevin Buster, Wallace Harrell, Lisa Godbey Wood, Emmet Bondurant, Bill Trotter, Jay Elmore, Bill Withrow and Judith Powell. Judge Bowen, Judge Alaimo, Judge Overstreet, Judge Fleming, Judge John Flythe, Judge Rick Story, Judge Brian Epps, Judge Jim Graham, Judge Leon Barfield, Judge John Ellington, Judge Ann Barnes and, Judge Rosemary Barket are also part of the circle of high performers in my career. What stands out about these attorneys and jurists is their ability, professionalism, kindness, compassion, trustworthiness, and reliability. In my experience with all of these attorneys and judges, we did not try to win on technicalities. We were in it to win fairly with our skill set, facts and law. I have, without checking with my client, allowed anyone who ever asked me to forgive an overlooked deadline (including the deadly requests for admissions) said “yes.” I have never tried to advance by exploiting a lawyer’s honest mistake. This is the way attorneys should treat each other. This is how I was treated. I learned from the best and somehow parlayed that into a career practicing law and serving my community in a way that led me here, today, because I received and accepted with such gratitude and appreciation, the help, the lessons and the balance these great attorneys and jurists taught me. Thank you so much.

Photos from the 2025 Tradition of Excellence Awards Celebration









An Overview of Current DUI Defenses

Anna Bolden & Jeff Rothman

For many general practitioners, DUI cases make up at least part of their practice. Nationwide estimates calculate that approximately 11% of arrests are for DUI. In Georgia, the estimated conviction rate for DUI charges is over 95%, one of the highest conviction rates for any state in the nation. Based on the DUIs we see, this statistic indicates that attorneys are not raising vigorous defenses to DUIs.

Practicing DUI law requires specialized knowledge to assess cases and raise relevant defenses, however, all of the case law updates and defenses for DUI cases are easily accessible. Motions to suppress for probable cause and reasonable articulable suspicion, along with DUI-specific defenses, should be raised in every case.

Rather than an exhaustive and intensive breakdown of each defense, instead, this article is intended to be a guide to summarize current DUI defenses for attorneys who do not specialize in DUI law.

I. Watching the DUI Video

In 2026, it is not possible to adequately prepare a DUI case without watching the DUI video(s). The dashcams and body cameras used by law enforcement generally benefit clients more than law enforcement. The DUI video will inevitably add something to, or take something away, from the incident report.

The DUI video should be watched once you have obtained a copy of the incident report. The use of AI software is not a substitute for watching the video – AI transcripts are often incorrect and cannot identify some of the strongest defenses that involve movement rather than speaking.

One recent Georgia Court of Appeals case, *State vs. Jones (2024)*, found that detaining a suspect to wait for eleven minutes for another officer to conduct field sobriety tests unreasonably prolonged the traffic stop. This frequently occurs and is a great way to win a motion to suppress. Investigative detentions must be the least intrusive means

reasonable available to verify or dispel the officer's suspicion in a short period of time, and recent case law requires increased scrutiny of any periods of detention on the side of the road.

II. Standard DUI Issues

A. Portable Breath Tests

As of 2022, a refusal to submit to portable breath test cannot be used against your client at trial. *Bradberry vs. State (2020)*.

B. Standardized Field Sobriety Tests

The DUI videos often show that officers are not meeting the requirement that their administration of any SFSTs “substantially comply” with the standards for the test.

Also, a refusal to submit to SFSTs cannot be used against your client at trial. *Ammons vs. State (2022)*.

C. State-administered Urine Tests

Urine tests only show metabolites, which can still

form the basis of the DUI charge, but these days, urine can almost never prove that a person was under the influence of a substance that impaired their ability to drive. In Ben Sessions's case, *Awad vs. State* (2022), the defendant argued that his constitutional right to refuse compelled self-incrimination in providing a urine sample was violated. The Georgia Supreme Court held that the right against compelled self-incrimination includes the right to refuse to give a urine sample, and that such refusal is inadmissible at trial.

D. Voluntariness

Recent case law found that a language barrier can prevent the State from meeting the voluntariness requirement as to both roadside tests, such as SFSTs, as well as implied consent. In *State vs. Ortiz* (2022), the driver, who did not speak English, was charged with DUI. Both SFST instructions and implied consent were read in English. The trial court found that the language barrier meant that the reading of implied consent and the SFSTs were not consented to voluntarily by the defendant. The Georgia Court of Appeals upheld the trial court, holding that the Defendant didn't give actual consent to the SFSTs or the State's chemical test because of the language barrier. The Court also found that the implied consent notice does

not have to be read in any language other than English, but noted that the State still must prove that a chemical test was knowingly and voluntarily given.

E. Mouth Alcohol

All of the law enforcement manuals and training require a twenty-minute observation period before a person blows into the Intoxilyzer. It is extremely rare that this is followed. The reason for this rule is because mouth alcohol can skew the results upward (foreign objects in the mouth, including gum, nicotine, etc., as well as burping, belching, or regurgitating can all cause this). Officers don't inquire about any of these issues, and don't observe the waiting period.

F. Implied Consent

Listen for any statement regarding your client's right to an independent test. Typically, when an independent test is mentioned, many officers will ignore the request.

Under *Elliott vs. State* (2019), a refusal to submit to a breath test cannot be used by the State at trial. After *Elliott*, the implied consent law was changed, however, officers are still misreading implied consent and substituting in words from the old implied consent notice. Have the current implied consent notice in front of you and read along when watching the videos.

The current state of the law is that refusal to submit to a State-administered blood test may be admissible at trial. *State vs. Dias* (2025) and *State vs. Randall* (2024 & 2020).

G. Reliability of the Intoxilyzer 9000

The printout of the Intoxilyzer 9000 that shows the breath test result includes the specific margin of error for the sample, indicated by a (+/-) value next to the breath test result. This number changes based upon several variables, including the temperature, the flow and duration of the flow, and the breath volume of the sample. This margin of error or "measurement uncertainty" must be subtracted from the breath test result, and you should never plead a client to a per se DUI-Alcohol violation if the breath test result minus the margin of error is less than 0.08.

Back when the Intoxilyzer 5000 was being retired, the GBI evaluated the potential replacement breath-testing machines. The results are in a September 2012 Comparison Study, and some of the results of the testing are staggering. For example, on page 107, it notes that a one-inch cube of Publix sheet cake caused a breath test result of .032 after four minutes. This is relevant to the mouth alcohol defense and the

general unreliability of the Intoxilyzer 9000.

H. Unconstitutional

Roadblocks

Many roadblocks conducted throughout Georgia are illegal. To competently prepare a case involving a roadblock, open records requests for the roadblock paperwork to evaluate the constitutionality of the roadblock are necessary. Check for the mandatory *Lafontaine vs. State* factors:

- 1) The decision was made by supervisory personnel rather than officers in the field;
- 2) All vehicles were stopped, rather than random stops;
- 3) Minimal delay to motorists (this is often an issue);
- 4) The roadblock was well identified as a police checkpoint, and;
- 5) Screening officers are qualified to make the determination of sobriety.

I. DUI Drugs

Prescription medication, when taken as directed, is intended to bring the person back to normal. Therefore, the presence of a drug, even if beyond therapeutic levels, should still be evaluated carefully if the person is prescribed the drug. Charles L. Winek's studies and tables are invaluable for this.

Specifically as to DUI – Marijuana charges, a 2017 NHTSA study, "Marijuana

Impaired Driving: A Report to Congress" found that "[a] number of states have set a THC limit in their laws indicating that if a suspect's THC concentration is above that level (typically 5ng/mL of blood), then the suspect is to be considered impaired. This per se limit appears to have been based on something other than scientific evidence. Some recent studies demonstrate that such per se limits are not evidence based." There is a lack of scientific basis correlating THC concentrations with impairment. The study also noted "[t]here are currently no evidence-based methods to detect marijuana impaired driving" and that "[a]vailable research does not support the development of such a psychomotor behavior or cognitive test that would be practical and feasible for law enforcement to use at this time." The Standard Field Sobriety Tests used by Georgia law enforcement do little to correctly identify drivers impaired by marijuana. Georgia does not have a per se DUI – Marijuana law, instead, it is a less safe state. However, given the peer-reviewed studies, it is difficult to prove DUI-Marijuana, whether the charge is based on SFST performance, or on a blood test result.

III. General Evidentiary Issues

Harper vs. State is no longer the standard in criminal cases.

The Daubert standard applies in criminal cases now, and it is a higher standard than *Harper*. This is particularly important when the State tries to introduce expert testimony from law enforcement officers.

For State-administered blood tests, a refusal is currently admissible, however, the admissibility may be challenged with a Rule 403 objection that the evidence of the refusal is more prejudicial than probative. It is especially important to raise a Rule 403 if there is actual evidence of the circumstances enumerated by Justice Peterson in his concurrence in *State vs. Dias (2025)*, e.g., a client telling an officer he or she has a phobia about needles.

IV. Conclusion

This overview is meant to assist general practitioners representing people charged with DUI with issue-spotting. When vetting issues in specific cases, we encourage you to reach out to an attorney who specializes in DUIs. Generally, DUI attorneys are collegial and willing to share knowledge and can be a valuable resource and a way to save time during case evaluation. This article summarizes a number of presentations we have done about DUI law. For additional details when one of these issues arises, written materials, scientific studies, and case law referenced in this article may be accessed at the following link:

<https://tinyurl.com/DUI2026CalendarCall>



Key 2025 Updates to Georgia's Probate and Trust Code Arising from HB 327

Cassandra F. Ceron

In 2025 Georgia's House Bill 327 was signed into law, thus amending multiple titles of O.C.G.A., mostly dealing with probate, estates, domestic relations, powers of attorney, guardian, property, and related legal procedures. The bill sought to modernize and unify the existing code. This overview highlights the most relevant updates and their implications for practitioners.

1. Changes to Parentage for Intestate Succession

One of the more impactful changes to the probate code involves the expansion of how paternity may be established for purposes of inheritance, as HB 327 significantly revises O.C.G.A. § 53-2-3. Under longstanding Georgia law, a child automatically inherits from or through the mother, but inheritance from or through the father is allowed only when paternity is legally established. Historically, the legal establishment from the father was determined upon one of the following methods:

(i) a court of competent jurisdiction has entered an order declaring the child to be legitimate, under the authority of Code Section 19-7-22 or such other authority as may be

provided by law;

(ii) a court of competent jurisdiction has otherwise entered a court order establishing paternity;

(iii) the father has executed a sworn statement signed by him attesting to the parent-child relationship;

(iv) the father has signed the birth certificate of the child; or

(v) there is other clear and convincing evidence that the child is the child of the father.

These following points from above have now been expanded/added to include the following (expanded/added language in bold italics):

(ii) A court of competent jurisdiction has otherwise entered a court order establishing paternity;

– ***Allows Department of Human Services/Office of Administrative Hearing adjudication of paternity, and allows quasi/administrative proceedings to establish paternity.***

(iii) The father has executed a sworn statement signed by him attesting to the parent-child relationship;

– ***Allows notarized acknowledgements that are filed with Vital Records;***

– ***Allows use of an Acknowledgement of Paternity under oath through Child Support Recovery.***

(iv) The father has signed the birth certificate of the child (a note: this practically was not useable since fathers typically don't sign birth certificates in Georgia).

– ***Now, includes when a father is included on birth certificate with "written consent" of the father.***

The following point was added:

(v) ***"the father has otherwise acknowledged paternity under oath in any manner satisfying the definition set forth in paragraph (14) of Code Section 19-11-3 or the requirements of subsection (a) of Code Section 19-11-14."***

The practical impact: These changes reduce barriers to establishing inheritance rights and reaffirms the authority of both the probate and superior courts to determine questions of heirship, including the identity and interest of heirs.

2. Revised Beneficiary Notice Requirements

In 2023, when O.C.G.A. § 53-5-8 was adopted, a strict 30-day deadline was implemented for notifying beneficiaries of the appointment of an Executor. Additionally, a formal Notice with the court of such notification was due within 60 days. A much-welcomed update to this code section now gives the following parameters for notifying beneficiaries:

- Extended the time to 6 months for notice to beneficiaries;
- Waived the filing requirement with the probate court if the beneficiary otherwise waived service (for example, by consenting to the Petition to Probate Will in Solemn Form).

The practical impact: These updates are much more consistent with other probate administration timelines and relieves the Executor of the hardship of sending written notice and unnecessary additional paperwork with the probate court.

3. Clarification on Virtual Execution of Estate Planning Documents

Virtual notarization of estate planning documents is still not allowed. During the COVID-19 pandemic, the Governor signed Executive Order 04.09.20.01, which allowed virtual notarization of Wills and other estate planning documents. That Order was never codified. In HB 327, an amendment to § 53-4-20 memorialized that Order but did not extend the allowance. It also clarified that a Will is not invalidated solely because it was not executed or attested in the testator's physical presence during that time and pursuant to the Executive Order.

The last major updates have to deal with Trusts, and specifically when an electronic signature is and isn't allowed.

- Trusts, when they deal with the disposition of real property or make testamentary disposition of assets must still be physically signed (with

wet ink), in front of witnesses and notaries.

- However, many ancillary trust documents can now be signed electronically (documents such as Certifications of Trust, Consents to Trustee action, delegations, waivers, etc.)
- Allows emails to serve as notices (with consent) and an assumption of receipt upon the email being sent.

The practical impact: The changes to electronic signatures allow for more efficient trust administration while preserving safeguards for estate planning documents.

In conclusion, these 2025 updates amend multiple titles of O.C.G.A., mostly dealing with probate, estates, domestic relations, estate planning documents, and related legal procedures. These updates reflect a shift toward greater procedural flexibility and modernization, while unifying the existing code.



Tradition of Excellence Interview of Katherine McArthur

This article continues our series of conversations with past recipients of the Tradition of Excellence Award, recognized annually by our Section in the areas of Plaintiff, Defense, General Practice, and Judicial.

Our featured guest is Katherine McArthur of the McArthur Law Firm in Macon, who was recognized with the Tradition of Excellence Award in the category of Plaintiff.

1. Tell us about your background and what prompted you to become a lawyer.

I became a lawyer more or less by default. I was a liberal arts major at UNC Chapel Hill with no idea what I wanted to do with my life. I thought about being a doctor, but I hated the chemistry labs, so I moved to pharmacy, then accounting, and finally graduated with a bachelor's degree in business administration. But I did not know what I wanted to do with it. I grew up in my family's business, a small motel in Wilson, North Carolina. I did not know any lawyers. But I believed the profession was honorable, and presumably I could get a job, so I went to law school.

Afterward I took a job at Mullis Reynolds Marshall Horne & Phillips in Macon. Carl Reynolds had a plaintiff's practice and

was a rising star trial lawyer. I became his right arm, and that was the proving ground for me. We practiced together for 28 years. We tried cases all over the Southeast, plus Los Angeles, Aspen, Miami, North Carolina, and more.

Under Carl, I had great training in the practice of law and trial work. We represented injured people, and I cannot fathom doing any other practice in law. I don't love every day of plaintiff's work, but I have loved every year of it (47 years and counting). I recommend it to anyone who doesn't know what they want to do with themselves. Practicing law is an honorable profession. And unless you really screw up, no one can take it away from you.

2. What would you say is your professional "calling card"?

My calling card is outworking the others and being pleasant to everyone. I don't mind being firm, and I will not be walked all over, but I conduct business in a professional manner. I do excellent work, but I'm nice while I'm doing it.

Carl said, "Don't settle the case until you are satisfied every rock has been overturned." My goal is to not just take what a person tells me at face value. I'm going to look behind what happened to find out why it happened. The why usually adds the greatest value to the case. Was my client injured because of a terrible system failure? Or because a company knew their driver should not have even been in the car? You do the discovery, you force the issue, you get behind things. That's the "working hard and doing good work part"—that's how you represent people to the greatest extent. Success and

money can't help but follow.

3. Share any effective mentors you had and why they were effective.

It would be great if lawyers had residencies like doctors, so they can get exposure to good lawyers and how to practice law the right way. Carl Reynolds—in addition to being my mentor, former boss, and best friend—is a brilliant trial lawyer, with a command of the law that I do not have. Carl's work ethic and moral compass meant that we always did what was best for the client. Carl said never settle a case because the firm needed the money; only settle if it was in the best interest of the client.

Carl insisted that we never call clients by their first names;

we always referred to them as "mister" or "miss." His philosophy was that many of them were not treated with respect anywhere else in their lives, and they would appreciate the gesture. I took that to heart.

Carl put an actual courtroom in the front of our office. It conveyed the idea that the firm was a serious place. In addition to setting the tone, it gave us a place to have client meetings, let witnesses practice testifying in a courtroom setting, and host focus groups for mock trials.

Carl always dressed like a lawyer, and I do too. Putting on my "uniform" makes me work better. I ask the lawyers at my firm now to dress and act the part because the clients deserve it. Being a lawyer

is a position of respect, and we should treat it with respect. We still follow the more formal way of practicing: having a nice office, working at your desk, dressing as lawyers, acting as professionals. We are not approaching the law in a casual way.

4. Advice for young lawyers, mid-career, and older lawyers.

The advice is the same for all three: Do good work, do the right thing and for the right reasons, and treat clients as you want to be treated. If you do all that, then success and money will follow.

I have a reminder sign in my office: "Settle less often. Expect great things."

We all have to start somewhere.

The State Bar of Georgia values wellness in the legal profession, and we offer a variety of resources to help lawyers in their lives and practices. Visit lawyerslivingwell.org to read articles on wellness and access discounts to gym memberships and classes. Plus, learn about the following programs:

Lawyer Assistance Program
Lawyers Helping Lawyers
Suicide Awareness Campaign
SOLACE
#UseYour6

GEORGIA
LAWYERS
LIVING WELL
lawyerslivingwell.org

Questions? Please contact one of our Wellness Committee members, listed at gabar.org/committees under Attorney Wellness.



For the most up-to-date information
on lawyer discipline, visit

[www.gabar.org/
forthepublic/
recent-discipline.cfm](http://www.gabar.org/forthepublic/recent-discipline.cfm)

 State Bar
of Georgia



Ethics dilemma?

Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Ethics Helpline at 404-527-8741 or toll free at 800-682-9806, or log in to www.gabar.org and submit your question by email.



**State Bar
of Georgia**

SERVE THE BAR EARN CLE CREDIT



State Bar
of Georgia

» 6

GEORGIA BAR JOURNAL LEGAL ARTICLES

Earn up to six CLE credits for having your legal article published in the *Journal*. Contact jenniferm@gabar.org for more information.

» 3

HIGH SCHOOL MOCK TRIAL

Coach a team or judge a trial for the High School Mock Trial program and receive up to three hours of CLE credit. Contact richardh@gabar.org for opportunities.

» 2

GEORGIA LAWYERS HELPING LAWYERS

Volunteer and complete online training to be a peer in the Georgia Lawyers Helping Lawyers program and earn up to two CLE hours during your training. Visit www.georgiaLHL.org for more information.

The State Bar of Georgia's 51 sections provide newsletters, programs and the chance to exchange ideas with other practitioners. Section dues are very affordable, from \$10-35. Join one (or more) today by visiting www.gabar.org/sections. Questions? Contact Sections Director Mary Jo Sullivan at maryjos@gabar.org.

**Move on up.
Join a State Bar Section.**



State Bar
of Georgia

General Practice & Trial Section
104 Marietta Street NW
Suite 100
Atlanta, GA 30303

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

CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA



APPLICATION FOR MEMBERSHIP IN THE GENERAL PRACTICE & TRIAL SECTION OF THE STATE BAR OF GEORGIA

For the members of the State Bar of Georgia:

Name: _____

Bar #: _____

Address: _____

City, State & Zip: _____

E-mail: _____

Application date: _____

Cost: \$40, payable by check to the State Bar of Georgia, and send to:
The General Practice & Trial Section, 104 Marietta Street NW, Suite #100, Atlanta, GA 30303

Signature