Georgia Bar Journal
August 2013 Volume 19 Number 1

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Photo by Zach Porter Photography

by Charles L. Ruffin

Georgia Legal Legend: U.S. Attorney General John Berrien

This new fiscal year of the State Bar of Georgia marks the 50th anniversary of the unified Bar in our state, as well as the 130th anniversary of the formation of the Georgia Bar Association and the 225th anniversary of the ratification of the U.S. Constitution.

In a year of such important historical milestones, this will be a time to reflect not only on the progress of this organization over the past half-century, but of the legal profession and our justice system from the time that Gen. James Oglethorpe first set foot in Georgia—more than 40 years before our nation declared its independence.

Along the way, we will learn about numerous historical figures in Georgia's legal history, and I anticipate featuring several of them in these President's Page articles in the coming year. Some will be more familiar names than others.

For example, until I recently visited the Robert F. Kennedy Department of Justice Building in Washington, D.C., and saw a listing of every previous U.S. attorneys general, I could not have recalled hearing of John Macpherson Berrien.

"Berrien died in Savannah on Jan. 1, 1856, at the age of 74. The next month, Georgia's 116th county was carved out of Coffee, Irwin and Lowndes counties in South Georgia and named for him . . ."

The nation's 10th attorney general and the first of three from Georgia—the others being Amos T. Akerman, who served under President Ulysses S. Grant (1870-71) and Griffin Bell, who served under President Jimmy Carter (1977-79)—Berrien was 46 years old when he was appointed by President Andrew Jackson following Jackson's election in 1828.

According to Berrien's biography in the *New Georgia Encyclopedia*, written by Charles J. Johnson Jr. of Savannah, Berrien was born Aug. 23, 1781, in the Rocky Hill, N.J., home of his grandfather, who was one of New Jersey's colonial justices and a close friend of George Washington. The same house, writes Johnson, "may have served as Washington's head-

quarters while he wrote his farewell address to the troops."

Berrien's grandfather was also named John, as was his father, who served in the Revolutionary War under Lachlan McIntosh of Georgia. In the aftermath of British Gen. Cornwallis's surrender at Yorktown, Pa., Berrien's father moved the family to Savannah.

Young John Berrien's education took him back north, for preparatory studies in New York, after which he attended the College of New Jersey (now Princeton University). He earned a Bachelor of Arts degree at age 15, and then read law in the office of prominent lawyer and federal judge Joseph Clay Jr.

Berrien returned to Georgia and was admitted to the Bar in 1799 at 18. He served for a time as solicitor general for the Eastern Judicial Circuit before becoming a judge in 1810. His service on the bench was interrupted by the War of 1812, when he was a captain in the Chatham Light Dragoons and later a colonel in the First Georgia Calvary.

In 1822-23, Berrien represented Chatham County in the state Senate. Prior to the 17th Amendment to the Constitution being adopted in 1913, U.S. senators were elected by their state legislatures rather than by popular vote, and the Georgia General Assembly voted to send Berrien to Washington, D.C., in 1825.

In the Senate, Berrien earned a reputation as an eloquent debater on a number of major issues of the early 19th century. He was known as the "American Cicero" for his oratorical skills and was described as "the honey-tongued Georgia youth" by none other than U.S. Supreme Court Chief Justice John Marshall—no doubt contributing to Berrien's selection by Jackson as attorney general.

Unfortunately, Berrien's tenure as the nation's top lawyer met an ugly end when he found himself on the opposite side of the president amid turmoil within the cabinet over a personal matter rather than a policy dispute. Here is how historian Charles Johnson tells the story:

> ". . . Berrien suffered a falling out with the president over the Margaret (Peggy) Eaton affair, an episode in which the wife of John C. Calhoun and other cabinet wives refused to associate with the wife of John H. Eaton, Jackson's secretary of war. Eaton had an affair with Peggy, the daughter of a tavern keeper, while she was married; Peggy and Eaton were married following her husband's death. Calhoun's wife referred to Peggy as a 'hussy,' but Jackson was convinced that Calhoun had put his wife up to the snubbing. The president and Calhoun argued bitterly about the affair, fueling their already growing differences. The argument splintered Jackson's cabinet, and Calhoun's friends on it, including Berrien, were forced to resign in June 1831."

Berrien went back to Savannah and started a private law practice with Richard Cuyler. He was once again re-elected to the U.S. Senate in 1841, where he resumed his post as chairman of the Judiciary Committee. Berrien had been a member of the Jacksonian Party during his first Senate tenure in the 1820s; he was a Whig this time around, serving until 1852. Again, it was back to Savannah, where Berrien resumed his law practice.

Princeton bestowed an honorary doctor of laws degree on Berrien, as did the University of Georgia, which he served for 30 years as a trustee. Berrien was a co-founder of the Georgia Historical Society and served as its first president in 1839. Also, he was president of the Georgia branch of the Society of the Cincinnati, a member of the board of regents of the Smithsonian Institution and president of the American Bible Society.

Berrien was the father of 15 children, nine by his first wife, Eliza Anciaux, who died the year before he became attorney general, and six by his much-younger second wife, Eliza C. Hunter of Savannah. Berrien's daughter Louisa married Francis S. Bartow, a lawyer, politician and military officer who was killed in the Civil War.

Berrien died in Savannah on Jan. 1, 1856, at the age of 74. The next month, Georgia's 116th county was carved out of Coffee, Irwin and Lowndes counties in South Georgia and named for him, which was the second time that had occurred. The state of Michigan had named a Berrien County of its own in his honor 27 years earlier.

Berrien is an exemplar of the time-honored but now less frequently found combination of a devoted family man, private practitioner, public servant and involved citizen. We need to remember his example. GBJ

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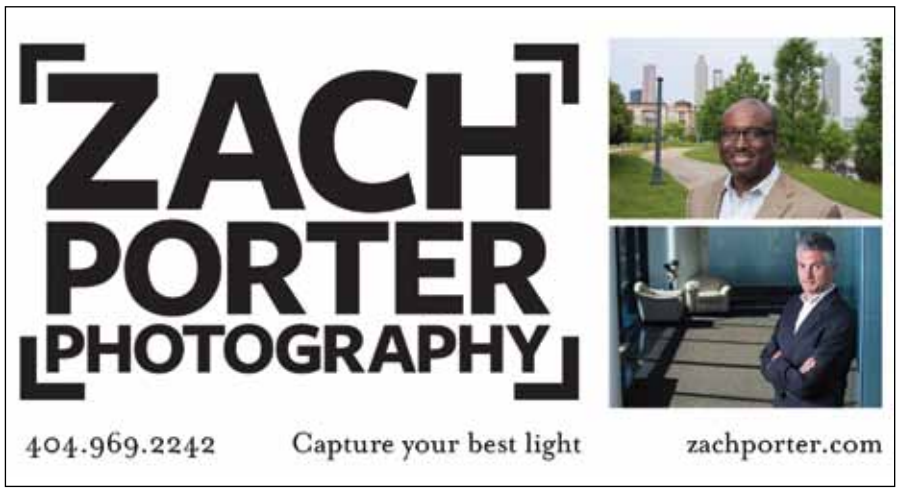

by Darrell L. Sutton

YLD Team Development:

Developing Tomorrow's YLD Leaders Today

Late last year, the Supreme Court of Georgia dedicated a portrait of fellow Cobb Countian and former Supreme Court Justice Conley Ingram. At the portrait dedication ceremony, which coincidentally took place the week following the 2012 SEC Championship Game, another Cobb Countian, current Supreme Court Justice Harris Hines, gave the keynote address. Justice Hines is a committed supporter of University of Georgia athletics. It is therefore no surprise, especially given the events of the weekend that preceded his address, that sports, and in particular football, featured prominently in his words that day.

As Justice Hines explained, sports routinely provide a fitting analogy for life. Sports so closely resemble so much of what we do every day that it is difficult, especially for the sports lovers among us, not to see life accurately reflected in the sports we watch, or, as a result, to explain something we have seen or done without the use of a sports analogy. Perhaps because I, like Justice Hines, am a sports lover, or perhaps because his speech coincided with the earliest stages of my preparation to take the helm as YLD president, I routinely find myself explaining my goals for this Bar year through a sports analogy. This is certainly true for two initiatives in particular.

> "Just like each professional sports team is only as successful from year to year as the players it fields are talented, the YLD is only as successful as our leadership from one year to the next."

Every major sport has a talent development system. Whether it be affiliates whom it directly controls (for example, each Major League Baseball team's minor league system, or the "football schools" popular with European soccer teams) or indirect suppliers of talent (such as NCAA football and basketball for the NFL and NBA, respectively), each major sports team has in place a program for the development of its future stars. The reason for this is of course obvious. Each sports team's success is dependent primarily, if not solely, upon the talent of the players it fields. And with each team's worth soaring into the hundreds

of millions (and in some cases billions) of dollars, it would be foolhardy to leave talent development, and thus the lynchpin to future success, to chance. Each sports team therefore enhances its chances for sustained excellence by a commitment to the development of its team members.

The YLD by design or coincidence also has a system of talent development: our 12 local YLD affiliates and the student populations at Georgia's five law schools. And just like a commitment to player development is the key to any sports team's chances for sustained excellence, the development of the YLD's future leaders from our local and law school affiliates is the key to the State Bar YLD's chances for sustained excellence.

This fact was certainly not lost on my predecessors. For example, YLD Past President Michael Geoffroy made admirable efforts at outreach to both local YLD affiliates and the state's law students. Yet despite the commitment of my predecessors to ensuring a connection between the YLD and our local and law school affiliates, we have lagged in the creation of a continuous flow of future leaders from them. After all, if you include me, only three of the last 10 YLD presidents were also presidents of a local YLD affiliate. And none of those 10 became involved in the YLD until after law school.

Through two initiatives this year, this trend will change. First, once a month for the next 12 months, all six YLD officers will visit a local YLD affiliate. Each visit will coincide with that local YLD affiliate's regularly scheduled business meeting or social event, and will feature an outreach program tailored to both the local affiliate and the meeting or event. Former Speaker of the U.S. House of Representatives Tip O'Neill is famous for saying that all politics is local, and I am a firm believer that all Bar involvement is local. But if we cannot consistently get the state's young lawyers from the local YLD to the state YLD, then we will bring the state YLD (or at least its officers) to the local level.

In addition, the annual YLD affiliates conference begun by Geoffroy will continue this year, but in a different form. With the cooperation of the Local and Voluntary Bars Committee of the State Bar, this year's affiliate conference will be held in conjunction with that committee's annual Bar Leadership Institute. This will give affiliate YLD leaders access not only to the leaders and programming of the State Bar YLD and other local YLDs, but also to the leaders and programming of the State Bar and other local and voluntary bar associations.

Second, with the cooperation of the career services directors at all five of Georgia's law schools, the State Bar YLD this year will put into place a YLD fellows program. It is not very well known that the YLD's bylaws allow for one law student representative from each of Georgia's law schools to serve on the YLD's Executive Council. Thanks to the assistance of Stephanie Powell, my law school classmate and the assistant director of Career Services at the Mercer University Walter F. George School of Law, however, the career services directors at each of Georgia's five law schools have committed to the creation and implementation of a State Bar of Georgia YLD fellows program. While it is still in the development stages, once implemented this program will not only ensure that each law school's Executive Council seat is filled this year, but more importantly create an infrastructure to ensure that another law student at each school is in place to fill that seat next year and each year into the foreseeable future.

Just like each professional sports team is only as successful from year to year as the players it fields are talented, the YLD is only as successful as our leadership from one year to the next. And just like every professional sports team seeks to ensure sustained excellence by a commitment to player development, the YLD must seek to ensure sustained excellence by a commitment to the development of future YLD leaders from our local and law school affiliates. With these two initiatives, we will accomplish that goal. GBJ

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The Misunderstood Alford Plea: A Primer

by Hon. Todd Markle

I must confess that as a new judge, I did not know exactly what an *Alford* plea was. It seemed a simple enough concept: an accused could either plead guilty, not guilty or something in between, a kind of purgatory. The plea colloquy is similar, but I grew curious about how many judges and lawyers, much less defendants, really understand the rationale behind the plea and its significance. It is incumbent upon judges to ensure that when accepting any guilty plea, including a plea made pursuant to *Alford*, the accused understands precisely the rights that he or she is voluntarily relinquishing.[1] By this article, I will address the questions that I had and perhaps provide a refresher for those more seasoned criminal lawyers already well familiar with the *Alford* concept.

The *Alford* Decision

To understand the *Alford* plea, we must of course consider the *Alford* decision itself. The case arose out of a guilty plea entered by a defendant in a prosecution for first degree murder in a North Carolina state court.[2] The defendant steadfastly maintained his innocence, but the investigation of his court-appointed attorney

did not support the claim.[3] The defendant ultimately entered a plea of guilty to a reduced charge of second degree murder based upon the recommendation of his counsel.[4] Even as he entered his plea, however, the defendant continued to assert that he had not committed the murder and was not, in fact, guilty.[5]

The defendant's post-conviction efforts to invalidate his plea were initially unsuccessful in state court and federal court.[6] Eventually, the defendant persuaded the 4th Circuit Court of Appeals that his guilty plea was involuntary and motivated by a fear of the death penalty

rather than a true acknowledgement of guilt.[7] His decision was, in essence, a risk assessment he and his counsel had made to avert the potential of a death sentence.

In taking the case, the U.S. Supreme Court specifically noted that had the issue been limited simply to whether the defendant pled guilty to avoid facing the death penalty, it would have remanded the case for the trial court to consider whether the plea of guilty was the product of free and rational choice.[8] Instead, the impetus for the Supreme Court taking the case was to resolve the conflict between state and lower federal courts regarding whether it was proper to accept a guilty plea when accompanied by a protestation of innocence.[9]

After examining the history of the *nolo contendere* plea, the Court held that although a plea of guilty is a waiver of trial, the U.S. Constitution does not require an express admission of guilt before a trial court accepts the plea.[10] Rather, the appropriate standard is whether the accused voluntarily, knowingly and intelligently consents to the imposition of a prison sentence even if he is unwilling or unable to admit participation in the acts constituting the crime.[11] Given the strong factual basis to support the plea and despite the defendant's profession of innocence, there was no constitutional error in the trial court accepting it.[12]

The Law in Georgia

Uniform Superior Court Rule 33.1 sets out the alternatives available to a defendant in entering a plea, reciting that a "defendant may plead guilty, not guilty, or in the discretion of the judge, *nolo contendere*."[13] The rule is silent regarding an *Alford* plea; it is not mentioned specifically anywhere in the rules. However, Rule 33.9 requires the trial judge to make such an inquiry on the record as necessary to demonstrate a factual basis for a guilty plea.[14] There is no similar requirement for other pleas such as a plea of *nolo contendere*.[15] The requirements of Rule 33.9 are mandatory to ensure that the conduct actually constitutes a crime.[16] Although some jurisdictions do not accept what has become known as an *Alford* plea, and it is rarely used in federal courts, Georgia has long recognized such a plea with many appellate cases making reference to it.[17] What is the law in Georgia, then, regarding such pleas?

The Factual Basis Requirement

Importantly, in the *Alford* decision, the plea was not tendered as is ordinarily done in Georgia; that is, prior to accepting the plea, the trial court actually heard the sworn testimony of three witnesses on behalf of the prosecution. In response, the defendant testified that he had not committed the murder but that he wanted to plead guilty to avoid the death penalty.[18] Thus, after hearing this testimony, the North Carolina trial court was confronted with the task of reconciling the plea of guilty with the defendant's assertions of innocence.[19] The U.S. Supreme Court appears to have been persuaded that there was no constitutional infirmity

because of "the strong factual basis for the plea."[20]

It is the duty of the trial court then to assure there is a strong factual basis for the plea.[21] The trial court must resolve the conflict between its duty to protect the innocent and ensuring that the plea is the product of free and intelligent choice.[22] A court should not accept a plea of guilty without determining that the plea is made voluntarily and with an understanding of the nature of the charges and consequences of the plea.[23]

The Court of Appeals of Georgia in *Minchey v. State* addressed the need for reconciling the conflicts inherent in accepting so-called *Alford* pleas.[24] In *Minchey*, the defendant was charged with possession of marijuana and cocaine as well as an alcohol offense.[25] After entering guilty pleas, he appealed contending there was not a sufficient factual basis for them.

In *Minchey*, the plea colloquy was as follows:

> THE COURT: Do you understand all of the questions that you've answered so far?
> DEFENDANT: Yes, sir.
> THE COURT: Understanding all your rights, do you still want to enter a plea of guilty to these offenses?
> DEFENDANT: Yes, sir.
> THE COURT: Is your decision to plead guilty made freely and voluntarily?
> DEFENDANT: Yes, sir.
> THE COURT: Has anyone used any force against you to cause you to plead guilty?
> DEFENDANT: No.
> THE COURT: Did you in fact commit the offense of possession of marijuana, possession of cocaine and possession of a certain amount of whiskey, the container of which did not bear and have affixed thereto the Revenue Stamps of the state of Georgia?
> DEFENDANT: Yes, sir.
> THE COURT: Did you do those things?
> DEFENDANT: The whiskey and to the marijuana, but not the cocaine.
> THE COURT: Did you have possession of cocaine?
> DEFENDANT: Yes, sir, it was found in a jacket on my premises. And I understand the law enough to know I am responsible for it, and charged for it.
> THE COURT: Do you still intend to plead guilty to the possession of cocaine?
> DEFENDANT: I have no choice, yes, sir.[26]

The *Minchey* Court observed that the quoted colloquy was sufficient to put the trial court on notice that as to the charge of cocaine possession, the defendant was asserting his innocence, which required the judge to reconcile the conflict.[27] Because the lower court did not do so, the *Minchey* Court reversed the cocaine possession conviction.[28]

Although in *Alford*, the lower court actually heard testimony from prosecution witnesses before deciding to accept the guilty plea, there is no constitutional requirement that it do so.[29] Instead, the court may ascertain the basis for the plea in a variety of ways. The court may itself question the defendant.[30] The prosecutor may state what he or she expects the evidence to show at trial.[31] Alternatively, the court may consider material contained in parts of the record other than the guilty plea hearing, so long as the evidence is identified and made a part of the record.[32] The point is that the trial court should diligently seek to fulfill its obligation to make sure there is a strong factual basis to support the plea of guilty. There is no express requirement that the trial court undertake an additional inquiry of the defendant.[33]

How is this Obligation Satisfied?

The case law in Georgia reveals a number of scenarios that are instructive in attempting to answer the question of what is sufficient to discharge the trial court's obligation. There must be a factual basis for the plea set forth on the record which satisfies the elements of the crimes charged.[34] One of the purposes of the factual basis requirement is so the court can resolve any conflict between the claim of innocence and the guilty plea.[35] A "valid and probing plea petition" in the record is not sufficient to show the requisite factual basis, but a transcript with a plea of guilty following the reading of a detailed indictment may be.[36] The trial court should note on the record that it finds a factual basis exists to support the plea despite the claim of innocence.[37] The trial court may fulfill its duty by the prosecution's summary of the evidence it anticipates in support of the charges, particularly when defense counsel stipulates to a factual basis.[38] So long as there is a strong factual basis to support the charges in the plea colloquy in the record, the appellate decisions in Georgia usually affirm the trial court's acceptance of an *Alford* plea.[39] It is also important to keep in mind that even if the defendant does not use the term "*Alford* plea," if he protests his innocence, then the obligation of the Court arises.[40]

The Consequences of the Plea

A plea tendered pursuant to *Alford* is not a plea of *nolo contendere*. There are important distinctions, particularly with regard to the effect of the plea.[41] For constitutional purposes, the U.S. Supreme Court found no practical difference between the pleas, yet it is important to remember that an *Alford* plea is one of guilt.[42] It is not an innocent plea.[43] It places the defendant in the same position as if there had been a trial and conviction by a jury.[44] As the 11th Circuit has noted:

> Once accepted by a court, it is the voluntary plea of guilt itself,

> with its intrinsic admission of each element of the crime, that triggers the collateral consequences attending that plea. Those consequences may not be avoided by an assertion of innocence. As long as the guilty plea represents a voluntary and intelligent choice among alternative courses of action open to the defendant, and a sufficient factual basis exists to support the plea of guilty, the collateral consequences flowing from an *Alford* plea are the same as those flowing from an ordinary plea of guilt. Were this not so, defendants pleading guilty would routinely proclaim their innocence to reap two benefits: (1) the avoidance of a trial and a possible reduction in sentence, and (2) the extinguishment of all collateral consequences of their plea. Nothing in . . . *Alford* sanctions this distortion of the pleading process.[45]

Unlike a plea of *nolo contendere*, an *Alford* plea, is admissible in a subsequent prosecution as similar evidence.[46] Such a plea may have consequences in related civil litigation because it has the same effect as any other guilty plea.[47] It may be used to enhance sentencing in subsequent prosecutions.[48] As a guilty plea, it also acts as a waiver of all defenses.[49] The voluntariness and intelligence of an *Alford* plea is judged by the same standard as any other guilty plea.[50]

Conclusion

Given the prevalence of plea bargaining, an *Alford* plea is an important tool for counsel in seeking to resolve cases expeditiously. Because it is a guilty plea, defense counsel should carefully advise their clients on its significance so that they are fully aware of the rights they forego by agreeing to enter such a plea. This is particularly true because the U.S. Supreme Court requires that pleas be voluntarily and intelligently entered. Only after ensuring the accused has a complete understanding of the nature of the plea and there is a strong factual basis to support the plea, should a court accept it. GBJ

Hon. Todd Markle currently serves on the Superior Court of Fulton County. He was appointed to the bench in 2011 and won election in 2012. Prior to his appointment, he served as executive counsel to Gov. Nathan Deal. Markle chaired the original Criminal Justice Reform Council in 2011 and remains a member of that Council by designation of Gov. Deal. Markle practiced law in Atlanta for 21 years before entering public service.

Endnotes

1. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).
2. North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L.Ed.2d 162 (1970).
3. *Id*. at 27.
4. *Id*.
5. *Id*. at 28.
6. *Id*. at 29.
7. *Id*. at 30.
8. *Id*. at 31.
9. *Id*. at 32.
10. *Id*. at 37.
11. *Id*.
12. *Id*. at 38.
13. UNIF SUP. CT. R. 33.1.
14. UNIF SUP. CT. R. 33.9.
15. *But see* UNIF SUP. CT. R. 33.1 (B) (treating plea of nolo contendere similar to plea of guilty).
16. Tomlin v. State, 295 Ga. App. 369, 671 S.E.2d 865 (2008); Green v. State, 265 Ga. 263, 454 S.E.2d 466 (1995); Evans v. State, 265 Ga. 332 (1995).
17. *See* Brower v. State, 230 Ga. App. 125, 495 S.E.2d 600 (1998), citing Freeman v. State, 211 Ga. App. 716, 440 S.E.2d 490 (1994) (not error to accept plea despite defendant's claim of innocence "when the defendant intelligently concludes it is in his best interest and the judge has inquired into the factual basis for the plea and sought to resolve the conflict between the plea and the claim of innocence.").
18. Alford, 400 U.S. at 29.
19. *Id*. at 38.
20. *Id*.
21. Purvis v. Connell, 227 Ga. 764, 182 S.E.2d 892 (1971).
22. *Id*.
23. *Id*.
24. Minchey v. State, 155 Ga. App. 632, 271 S.E.2d 885 (1980).
25. *Id*. at 632, 271 S.E.2d 886.
26. *Id*.
27. *Id*. at 633, 271 S.E.2d 887.
28. *Id*.
29. Alford, 400 U.S. at 28.
30. State v. Benton, 305 Ga. App. 332, 699 S.E.2d 767 (2010).
31. *Id*.
32. *Id*.
33. State v. Evans, 265 Ga. 332, 454 S.E.2d 468 (1995); Crowe v. State, 265 Ga. 582, 458 S.E.2d 799 (1995).
34. Green v. State, 265 Ga. 263, 454 S.E.2d 466 (1995).
35. Duque v. State, 271 Ga. App. 154, 608 S.E.2d 738 (2004); *see also* Cameron v. State, 295 Ga. App. 670, 673 S.E.2d 59 (2009).
36. Duque, 271 Ga. App. at 265.
37. Brower v. State, 230 Ga. App. 125, 495 S.E.2d 600 (1998).
38. *Compare* Whitesides v. State, 266 Ga. App. 81, 596 S.E.2d 706 (2004), Skinner v. State, 297 Ga. App. 828, 678 S.E.2d 526 (2009), *and* Scott v. State, 248 Ga. App. 542, 545 S.E.2d 709 (2001) *with* Jackson v. State, 251 Ga. App. 578, 554 S.E.2d 768 (2001) (trial court refused to accept *Alford* plea when defendant advised court he did not think a jury would find him guilty based on the state's evidence against him), Green v. State, 243 Ga. App. 431, 533 S.E.2d 451 (2000), *and* Harpe v. State, 254 Ga. App. 458, 562 S.E.2d 521 (2002). *See also* Crowe v. State, 265 Ga. 582, 458 S.E.2d 799 (1995) (defendant acknowledged strength of evidence against him).
39. Cameron v. State, 295 Ga. App. 670, 673 S.E.2d 59 (2009).
40. *See* Saye v. State, 263 Ga. App. 225, 587 S.E.2d 393 (2003).
41. *See* O.C.G.A. § 17-7-95(c).
42. Thompson v. State, 237 Ga. App. 466, 517 S.E.2d 339 (1999).
43. Harpe v. State, 254 Ga. App. 458, 562 S.E.2d 521 (2002).
44. Argot v. State, 261 Ga. App. 569, 583 S.E.2d 246 (2003).
45. Blohm v. Commr. Of Internal Revenue, 994 F.2d 1542, 1554-1556 (11th Cir. 1993).
46. Dixon v. State, 240 Ga. App. 644, 524 S.E.2d 734 (1999).
47. Harden v. State Farm Fire & Casualty Company, 269 Ga. App. 732, 605 S.E.2d 37 (2004).
48. Wynn v. State, 271 Ga. App. 10, 609 S.E.2d 97 (2004).
49. Schlau v. State, 282 Ga. App. 460, 638 S.E.2d 895 (2007).
50. Tomlin v. State, 295 Ga. App. 369, 671 S.E.2d 865 (2008).

The Best Evidence Rule Made Better:

A Glimpse into Georgia's New Evidence Code

by W. Matthew Wilson and Prof. Ronald L. Carlson

In a recent divorce case before Judge Bartlett in the Superior Court of Sorkin County, Sam Seaborn was about to play an audio recording to the jury. His client, Ainsley Hayes, had surreptitiously recorded her husband during a heated argument in their living room. On the tape, Dr. Hayes confessed that he had been having an affair with his partner's wife. Dr. Hayes and his partner own a very successful orthopedic clinic. Seaborn announced: "Judge, we are ready to play the tape. It is a blockbuster record of Dr. Hayes's philandering. The recording is a true copy of the original. Mrs. Hayes keeps the original locked in her deposit box at Lincoln Federal for safekeeping."

"Objection," roared Dr. Hayes's attorney, Bruno Gianelli. "We have heard this recording. Parts of it are so garbled that they are unintelligible. Plus, this is not the original. Violation of the best evidence rule, your honor."

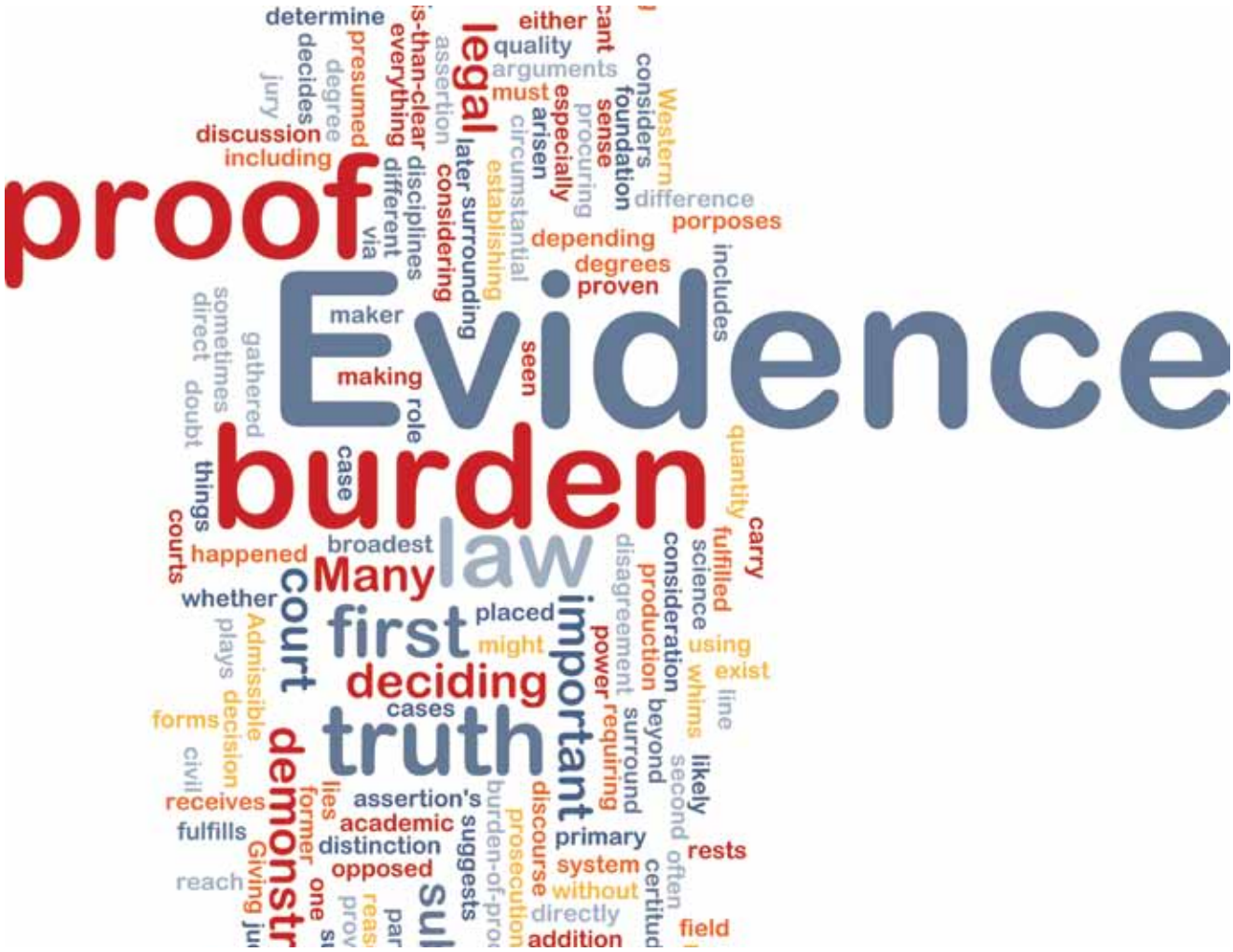
Seaborn responded: "Your honor, everybody knows the Georgia best evidence rule does *not* apply to sound recordings. The Georgia rule is restricted to writings."

At this point, Judge Bartlett interrupted: "Mr. Seaborn, you were correct as to the posture of the law up to Jan. 1, 2013. At that point in time, the rules changed. Under the new rules of evidence, you must either produce the original, or account for its absence."[1]

How could it be that audio recordings were exempt from best evidence considerations through 2012? After all, originals of sound recordings had been subject to rules of production in federal and other courts for decades. The answer lies in the fact that Georgia lawyers were controlled by Georgia's 1863 code for 150 years.

For those not familiar with the inner workings of Georgia's previous evidence code, it may be difficult to believe that until January of this year, Georgia jurists were laboring with a code that did not contemplate any technological advances of the previous century and a half. Indeed, while courts across the country grappled to apply evidence rules to modern social media including Facebook postings, Twitter tweets and YouTube videos, Georgia struggled to use evidence rules that failed to perceive the not-so-modern use of electricity, telephones and photography.

Georgia's original Code of Evidence was adopted in 1863 and was based on the significant work of the reporter of the Supreme Court of Georgia and one-third founder of the University of Georgia School of Law, Thomas R.R. Cobb.[2] Cobb's code was enacted around the time that Georgia voted to secede from the Union and was adopted after Georgia had joined the Confederacy.[3] Although the Code was completed on schedule by the commissioners, a shortage of quality paper in the war-torn Confederacy delayed the Code's publication until 1863.[4] This time period included the



first arrival of print photography,[5] and was 15 years prior to Alexander Graham Bell's telephone.[6]

The Road to a New Code

The State Bar of Georgia began a study of the evidence rules in the mid-1980s and produced a proposal of new rules in a report to the Georgia General Assembly in 1989.[7] Then state Sen. Nathan Deal introduced the legislation in the Senate, which voted unanimously in favor of the bill.[8] However, the measure was bottled up in the House and for a number of years the challenge of moving it forward proved intractable.[9]

After struggling for many years, the efforts of Bar leaders, the study committee, its reporter and legislative supporters paid off. The State Bar introduced HB 24 during the 2011 legislative session.[10] State Bar President Lester Tate announced it as "one of the most thoroughly vetted bills in the history of the Bar," and touted support for its unamended passage by the State Bar, Georgia Chamber of Commerce, Georgia Trial Lawyers Association, Georgia Association of Criminal Defense Lawyers, Council of Superior Court Judges and Medical Association of Georgia.[11] Twenty-two years after he first introduced reform legislation, Gov. Deal signed the new evidence rules into law during a ceremony at the State Bar on May 3, 2011.[12]

An Improved Best Evidence Rule

Georgia's new Evidence Code requires lawyers and judges to make changes to their litigation methods—some slight, and others much more significant. One significant change that makes lawyers' jobs much easier is the expansion of the best evidence rule. Indeed, while there are many examples in the new code of much needed modernization, perhaps none is starker than the best evidence rule. Analyzing this rule's impact before and after the 2011 rewrite highlights the significant improvement of justice the code allows by addressing modern technology.

The best evidence rule was first designed to prevent inaccuracy and fraud when the contents of a writing were in dispute. This common law principle was codified in Georgia prior to mass electrification at a time when photography and audio and video recordings were still at their earliest stages of invention. The concept behind this principle is simple: accuracy and reliability are greatly improved when a witness attempts to prove the contents of a writing by requiring that the writing first be introduced into evidence. The introduction of the writing prevented a

witness from presenting speculative or fraudulent testimony as to the writing's content.

The Legislature later amended the Georgia Evidence Code to provide for the admissibility of secondary evidence in those circumstances in which the party offering the evidence has made a sufficient showing of the reason why the original writing was unavailable or the party offered a certified copy of the original.[13] However, the courts continued to apply the best evidence rule to writings only.[14] Indeed, Georgia courts refused to extend its application to photographs,[15] audio recordings[16] or video recordings.[17]

The best evidence rule is now found at O.C.G.A. § 24-10-1001 *et seq*. and has been specifically extended to include electronically recorded data, photographs and recordings of audio and video.[18] Thus, lawyers who were formerly uncertain about the application of the rules to modern evidence now have a systematic set of statutes to guide the process.

Absence of the Original Writing or Recording

Under some circumstances, a party may establish the content of a writing or recording by use of secondary evidence. The circumstances under which the court might accept secondary evidence in lieu of an original writing were contained in numerous different sections of the previous evidence code.[19] The new evidence code has one Code section governing the circumstances under which an original shall not be required: (1) if the original writing or recording has been lost or destroyed in absence of bad faith, (2) if the original is outside the jurisdiction of the court, (3) if the original is in possession of an opponent and (4) if the document's role is collateral.[20]

One case in particular illustrates how some courts have found the first circumstance especially well suited for electronic evidence. In *Lorraine v. Markel Am. Ins. Co.*, the federal district court in Maryland noted:

> Given the myriad ways that electronic records may be deleted, lost as a result of system malfunctions, purged as a result of routine electronic records management software (such as the automatic deletion of email after a set time period) or otherwise unavailable means that the contents of electronic writings may have to be proved by secondary evidence.[21]

The new evidence code does not recognize degrees of secondary evidence, which is consistent with federal law.[22] However, the new Code does provide for a preference for certified or compared copies when dealing with public records.[23] Additionally, if a party has provided a sufficient reason for the nonproduction of an original, a witness' recollection of a writing or recording's content is as admissible as a copy.[24]

Electronic Recordings

As we have observed, the best evidence rule has been expanded to encompass electronically recorded information. In keeping with the Legislature's passage of the 2009 Uniform Electronic Transactions Act, electronic records are given the equivalence of writings for evidentiary purposes under the improved best evidence rule.[25] Thus, Facebook postings and Twitter tweets, not to mention emails, now fall under the scope of the best evidence rule.

What about the application of the rules to computer-based business records? Suppose that electronically prepared and stored documents that are generated in Detroit are needed for a trial in Atlanta. At first blush, the Atlanta attorney may be uncertain about whether the best evidence rule applies to the material. It does. "The admissibility of computer-based records 'to prove the content of a writing' is subject to the best evidence rule set out in [Federal] Rule 1002."[26] One advantage of Georgia adopting a new evidence code based on the federal rules is that Georgia courts can take advantage of 38 years of federal case law decided under the federal rules of evidence.[27] Federal decisions have made clear that while computerized records of all types are governed by the best evidence rule, duplicate records are admissible upon the appropriate foundation and/or showing that such records should be admitted.[28]

Duplications

Having determined that the best evidence rule applies, how will our Atlanta attorney comply with its limitations? Under the new Georgia Evidence Code, a duplicate that accurately reproduces the original is admissible, unless opposing counsel raises a genuine issue about the authenticity of the documents or circumstances exist that would make it unfair to admit duplicates rather than the original documents.[29]

Next the attorney must decide whether it is necessary for the custodian of records at the Detroit business to come to Atlanta to authenticate the records during the Atlanta trial. At this point a streamlined certification process comes to the rescue. Under the new rules, a written declaration can be obtained from the custodian of the records, certifying that the business records were made at or around the time the transaction occurred, are kept in the ordinary course of business and are part of regularly conducted business activity.[30] After giving notice of her intent prior to trial, the Atlanta attorney introduces a duplicate of the Detroit records at the Atlanta trial *without* the burden of bringing an authenticating witness from Detroit.

What if the duplicate is an electronic recording? This precise situation occurred in *United States v. Ramentol*, a wire fraud case.[31] In *Ramentol*, the 11th Circuit held that scanned copies of a defendant's closing loan documents were admissible in lieu of the signed

originals.[32] The court noted two reasons why the duplicates were admissible. First, a witness testified that original documents were scanned into the system's computer in accord with company policy, and could not be altered in any way once scanned.[33] Second, the defendant identified his signature on the duplicates.[34] Therefore, the defendant had failed to raise a genuine issue regarding authenticity and was not entitled to demand production of the originals.[35]

There is similar case law supporting the admission of duplicates in a great variety of forms. The drafting committee for Federal Rule of Evidence 1003 cited some of these decisions in its advisory committee note to Rule 1003.[36] Thus, in cases in which there is no issue raised as to authenticity, the courts have held that it was not error to admit the photostatic copies of checks instead of the original microfilm,[37] a tape recording made from the original wire recording[38] and a photocopy of a joint venture agreement.[39] In recent litigation, a slightly blurred duplicate of a check was admitted in a bank fraud prosecution.[40]

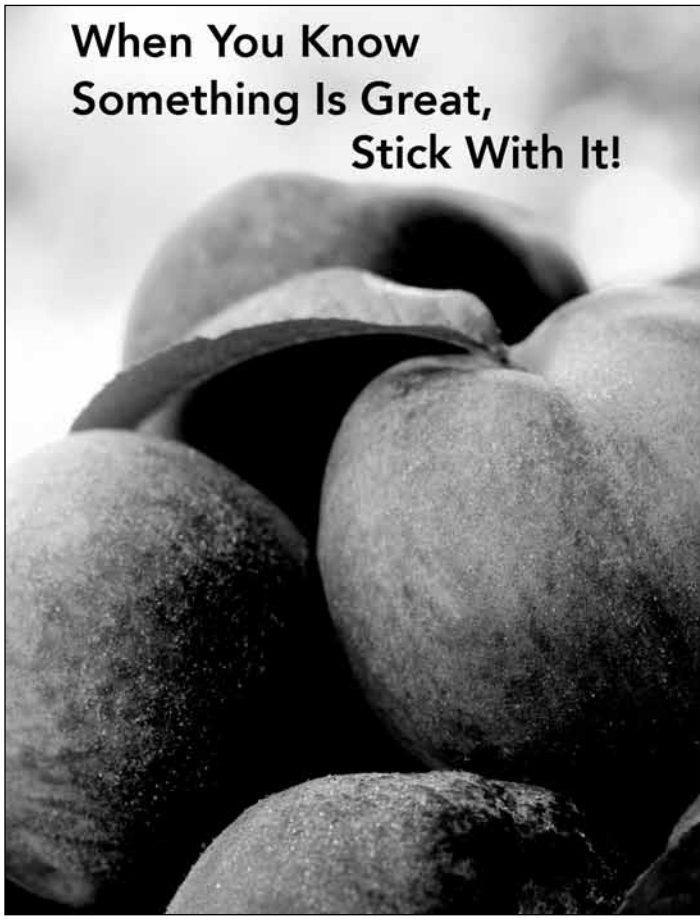
The federal courts have consistently held that copies of audio recordings of conversations are admissible once their accuracy is established.[41] In our Sorkin County case, Seaborn noted when he offered the copy of Dr. and Mrs. Hayes' recorded conversation that the copy was a true copy of the original tape, which was locked in Mrs. Hayes' safety deposit box. Dr. Hayes' attorney argued that the quality of the tape was unintelligible. The determination of whether the quality of the recording is sufficient to be understood is left to the sound discretion of the trial judge.[42] The probative value of the contents of any recorded conversation admitted into evidence is a jury question.[43] Thus, Judge Bartlett allowed Seaborn to play the tape to the jury.

Public Records

The new law utilizes a broadly applicable general statute to address the admissibility of public records under the best evidence rule. Because of the severe inconvenience that would result from requiring parties to remove public records from their place of filing to introduce them in court, parties are permitted the use of secondary evidence.[44] The rule is not limited to records forbidden by statute from being removed from official custody. However, unlike the general rule regarding secondary evidence, the rule regarding public records limits permissible secondary evidence to certified or compared copies.[45] The drafting committee for Federal Rule of Evidence 1005 noted the importance of this limitation so as not to "open the door to the introduction of every kind of secondary evidence of contents of public records . . . ."[46]

Summaries

More and more frequently, cases involve voluminous documents that make it impractical for a witness to efficiently review the docu-



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ments on the stand. In this scenario, parties are allowed to present summaries as substantive evidence of the matters they summarize.[47] The originals or duplicates of the documents upon which the summary is based must be made available to the opposing party.[48] While a trial court may, in its discretion, require the underlying documents be produced in court, there is no requirement that they be admitted into evidence.[49] The summaries should be a fair and accurate representation of the facts.[50] Courts have also held that where a chart or summary is used at trial for purely demonstrative purposes, it should not be sent out with the jury during deliberations.[51]

Conclusion

Summarized here have been some of the more significant changes in Georgia's 2013 Evidence Code. There are other provisions as well. One new Code section delineates the roles of the judge and the jury in evaluating best evidence issues.[52] The judge has the sole responsibility for making the determination as to whether secondary evidence should be admitted into evidence.[53] However, if the opposing party attacks the reliability of the secondary evidence on one or more grounds as set forth in the statute, it remains for the jury to determine the weight to be given to the evidence.[54] Another new Code section provides that a document may be authenticated by an opposing party's admission of its accuracy during a deposition or when responding to discovery requests.[55]

Section one of the 2011 evidence legislation stated: "[i]t is the intent of the General Assembly to adopt the Federal Rules of Evidence," as interpreted by federal case law as of Jan. 1, 2013, to the extent that such interpretation is consistent with the Constitution of Georgia.[56] By adopting this approach, Georgia joined the pattern of almost every other state in the nation by modernizing its evidence code. No longer does Georgia's bench and bar have to struggle to dispense justice against the backdrop of an evidence code that is in need of repair, and unrepresentative of the advancements in our modern way of life.

The new best evidence rule better reflects the current state of litigation. By expanding the rule to include photographs, audio and video recordings and electronically recorded information, the rule actually addresses the sort of modern technology that frequently comes up at trial. In addition, by allowing duplicates to be introduced where no genuine issue of authenticity exists, and summaries to be introduced that condense voluminous documents, the rule removes unnecessary obstacles to courtroom efficiency.

It is likely that the original authors of the 1863 Evidence Code could not have envisioned that a code written and adopted when Georgia was brandishing its independence would persist for 150 years, well after federal courts and the courts of 43 other states had adopted the more modern approach of the Federal Rules of Evidence.[57] Regardless, the new evidence rules that took effect this year bring Georgia law into the 21st century and streamline evidentiary issues so that parties can more efficiently reach the merits of their cases. At a time when state leaders are grappling with a recovering economy in order to continue the growth of our state's treasury, it is clear that they made a wise decision by enacting a modernized evidence code that is practical and economical. Both our citizenry and our justice system are the better for it. GBJ

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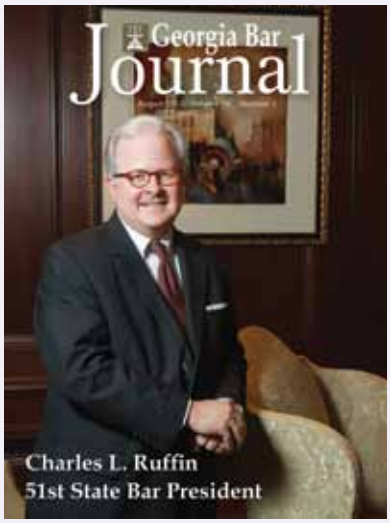
Prof. Ronald L. Carlson teaches at the University of Georgia School of Law and has written 15 books on evidence and trial practice. In 2000, he received the Harrison Tweed Award from the American Bar Association/American Law Institute in recognition of his "special merit to continuing legal education."

Endnotes

1. The best evidence rule and the laws relating thereto are now codified at O.C.G.A. §§ 24-10-1001. through 24-10-1008.
2. William B. McCash, Thomas R. R. Cobb: A Biography 110-11, 191 (1968) (an unpublished Ph.D. dissertation on file with University of Georgia Law Library). *See also* Gwen Y. Wood, A Unique and Fortuitous Combination: An Administrative History of the University of Georgia School of Law 6 (The University of Georgia Press 1998).
3. McCash, supra note 2, at 108-09.
4. Erwin C. Surrency, *The Georgia Code of 1863 and its Place in the Codification Movement*, 11 J.S. Legal Hist. 81, 96 (2003); Paul S. Milich, Georgia Rules of Evidence §§ 1:1 (2012).
5. George Ochoa & Melinda Corey, The Timeline Book of Science 151 (Ballentine Books 1995).
6. A. Edward Evenson, The Telephone Patent Conspiracy of 1876: The Elisha Gray-Alexander Bell Controversy and its Many Players 81-82 (McFarland & Company, Inc. 2000).
7. Paul S. Millich, *Georgia's New Evidence Code – An Overview*, 28 Ga. St. U.L. Rev. 379, 380-81 (2012).
8. *Id.*
9. *Id.*
10. 2011 Ga. Laws 99 (Act No. 52, H.B. 24) (codified at O.C.G.A. §§ 24-1-1 to 24-10-154 and other sections throughout the Official Code of Georgia).
11. Kathleen Baydala Joyner, *Evidence Bill Roller Coaster Ends Today*, The Daily Report, April 14, 2011.
12. Press Release, Office of the Governor, Deal Signs Bill to Fight Human Trafficking: Governor Modernizes Georgia Legal Code, Including Updated Rules of

Evidence (May 3, 2011) (*available at* http://gov.georgia.gov/press-releases/2011-05-03/deal-signs-bill-fight-human-trafficking-governor-modernizes-georgia-legal).

13. O.C.G.A. §§ 24-5-20 through 24-5-33. *See also* DOT v. Baldwin, 292 Ga. App. 816, 822 (2008).
14. *See e.g.*, Perkins v. State, 260 Ga. 292, 295(7), 392 S.E.2d 872, 876(7) (1990) ("The best evidence rule applies only to writings.").
15. Smith v. State, 236 Ga. 5, 8, 222 S.E.2d 357, 360 (1976).
16. Bostic v. State, 183 Ga. App. 430, 432, 359 S.E.2d 201, 204 (1987).
17. Reese v. State, 252 Ga. App. 650, 654, 556 S.E.2d 150, 155 (2001).
18. Audio recordings constitute a "recording . . . set down by . . . magnetic impulse, or mechanical or electronic recording" pursuant to O.C.G.A. § 21-10-1001(1). Video recordings are included within the definition of "photograph" in O.C.G.A. § 24-10-1001(2).
19. O.C.G.A. §§ 24-5-1 through 24-5-33 (2010).
20. O.C.G.A. § 24-10-1004 (2013).
21. Lorraine v. Markel Am. Ins. Co., 241 F.R.D. 534, 580 (D. Md. 2007).
22. O.C.G.A. § 24-5-5 (2010) (superseded by Act No. 52, H.B. 24). 2011 Ga. Laws 99. *See also* Neville Constr. Co. v. Cook Paint & Varnish Co., 671 F.2d 1107, 1109 (8th Cir. 1982) ("[T]he Federal Rules of Evidence recognize no degrees of secondary evidence to prove the contents of a writing that has been lost or destroyed.").
23. O.C.G.A. § 24-10-1005 (2013).
24. United States v. Walker, 60 Fed. Appx. 637, 638 (8th Cir. 2003).
25. O.C.G.A. § 10-12-7(c) (2010); O.C.G.A. § 24-10-1001(1) (2013).
26. Lorraine, 241 F.R.D. at 577 (citing WEINSTEIN at § 900.07[1][d][iv]).
27. FED. R. EVID., Pub.L.No. 93-595, 88 Stat. 1945 (Jan. 1975).
28. Lorraine, 241 F.R.D. at 576.
29. O.C.G.A. § 24-10-1003 (2013).
30. O.C.G.A. § 24-9-902(11) (2013).
31. United States v. Ramentol, 410 Fed. Appx. 236, 241-42 (11th Cir. 2010) (analyzing FED. R. EVID. 1003).
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. FED. R. EVID. 1003 advisory committee's note.
37. Myrick v. United States, 332 F.2d 279, 282 (5th Cir. 1963).
38. Johns v. United States, 323 F.2d 421 (5th Cir. 1963).
39. Sauget v. Johnston, 315 F.2d 816, 817-18 (9th Cir. 1963).
40. United States v. Rogozinski, 339 Fed. Appx. 963, 968 (11th Cir. 2009).
41. Johns, 323 F.2d at 421-22.
42. *Id. See also* McLaurin v.Kornas, 439 Fed. Appx. 38, 40 (2nd Cir. 2011) (district court properly admitted audio recording based on police officer's testimony that he participated in telephone call); Fitzgerald v. Santoro, 707 F.3d 725, 731 (7th Cir. 2013) (court dismissed plaintiff's lawsuit based on copy of the police radio dispatch audio recording).
43. Johns, 323 F.2d at 421-22.
44. O.C.G.A. § 24-10-1005 (2013).
45. *Id.*
46. FED. R. EVID. 1005 advisory committee's note.
47. O.C.G.A. § 24-10-1006 (2013).
48. *Id.*
49. *See* Herman v. Davis Acoustical Corp., 21 F. Supp 2d 130, 135 (N.D.N.Y. 1998), *rev'd on other grounds*, 196 F.3d 354 (2d Cir. 1999).
50. United States v. Conlin, 551 F.2d 534, 539 (2d Cir. 1977) ("A chart which for any reason presents an unfair picture can be a potent weapon for harm, and permitting the jury to consider it is error.") (citing Steele v. United States, 222 F.2d 628, 630 (5th Cir. 1955); Holland v. United States, 348 U.S. 121, 127-28 (1954)).
51. *See e.g.*, Pierce v. Ramsey Winch Co., 753 F.2d 416, 431 (5th Cir. 1985) (citation omitted) ("Charts of this nature are not themselves evidence and, absent the consent of all parties, they should not be sent to the jury room with the other exhibits.").
52. O.C.G.A. § 24-10-1008 (2013). *See also* RONALD L. CARLSON & MICHAEL S. CARLSON, CARLSON ON EVIDENCE 421 (2013).
53. *Id. See also* O.C.G.A. § 24-1-104 (2013).
54. O.C.G.A. § 24-10-1008 (2013).
55. O.C.G.A. § 24-10-1007 (2013).
56. 2011 Ga. Laws. 99, § 1.
57. PAUL S. MILICH, GEORGIA RULES OF EVIDENCE §§ 1:1 (2012).
58. Names provided by the authors in the trial hypothetical that appears at the start of this article to supply realism do not refer to actual persons. Any relation to real persons is coincidental.



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South Carolina's Lowcounty Shines at the 2013 Annual Meeting

by Jennifer R. Mason

Hilton Head Island, jewel of South Carolina's Lowcountry, welcomed Bar members and their families to its shores for the 2013 Annual Meeting. The meeting was held during the third week in June, a bit later than in previous years, and those who made the trip were treated to a true coastal summer experience. Business was the focus of the weekend, but there was plenty of fun to go around, from planned events such as the Opening Night Festival to more spontaneous offerings including shopping at the famous Hilton Head Outlets and enjoying time on some of the world-famous golf courses or miles of beautiful beaches.

Opening Night

Despite the threat of rain, a constant on the coast, plans to set up the Opening Night festivities out-

Photos by Sarah I. Coole, Jennifer R. Mason, Derrick W. Stanley and Stephanie J. Wilson

Bar members and their guests enjoy the Opening Night Festival, held on the pool deck of the Marriott Resort and Spa.

side went undeterred, and no one was disappointed. The event boasted some of the most delightful weather of the weekend. The casual, family-friendly gathering was well-attended and provided ample opportunity to catch up with old friends while enjoying a good meal and great company. Bar members, their families and guests enjoyed the beach tunes provided by Landsharks while they sampled the offerings of the buffet and open bars. Heated crab races were happening on one side of the pool deck while a fierce hula hoop competition was being held on the other. And as always, games that tested ones skill and athletic prowess were highlighted.

Catching Up On Business

The business of the weekend was spread out over three days, allowing members the time to incorporate work with pleasure. The CLE format once again allowed for movement between topics on one or both days, so that attendees would be able to customize their schedule by their specific interest. Topics ranged from the new juvenile code and updates on recent decisions from the Court of Appeals of Georgia, the Supreme Court of Georgia and the 11th Circuit Court of Appeals to voting rights and ethics, malpractice and professionalism to law practice management offerings and the war stories plus Georgia evidence update. Several sections also offered CLE opportunities in conjunction with their lunch programs.

In addition to the education component of the weekend, other business was also addressed through section and committee meetings. But business gave way to more social activities with the various law school and section receptions scheduled for the early evening hours. Here section members, law school alumni, Bar members and invited guests were able to meet and spend time with each other in a more relaxed setting. The receptions set the tone for the various evening events, including the YLD Dinner and Swearing-In Ceremony and the Presidential Inaugural Gala. Other social events included the annual YLD/Pro Bono 5K Fun Run and the tennis and golf tournaments.

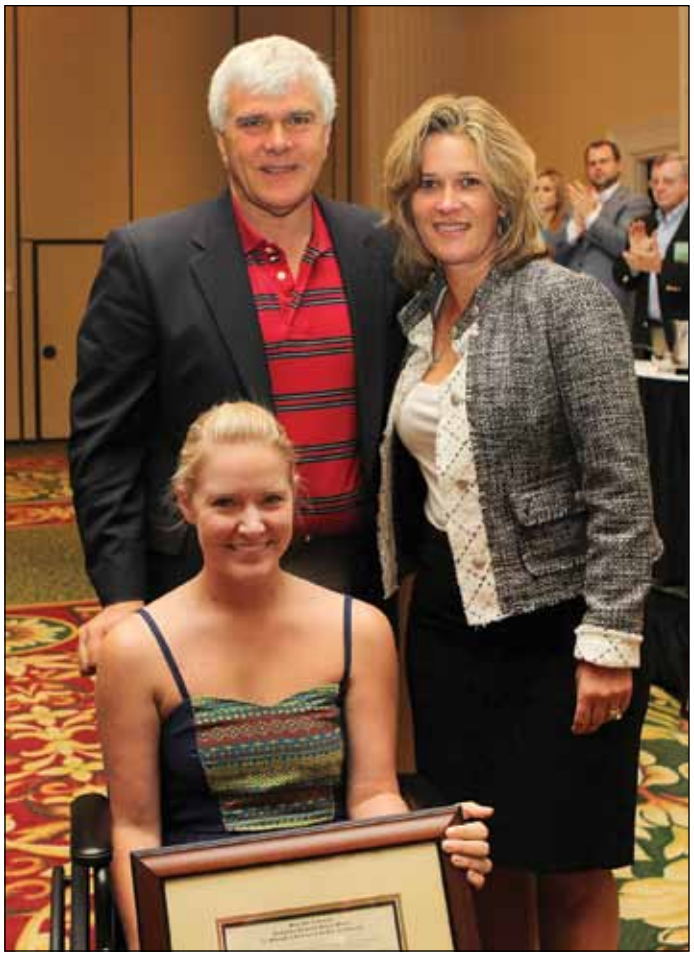
(Left to right) Eunice Mixon, longtime lay member of the Investigative Panel, enjoys the Opening Night Festival with 2012-13 Treasurer Patrice Perkins-Hooker. Mixon was attending her final Annual Meeting as a member of the Panel.

Board Meeting Highlights

Following the presentation of awards at the June 21 plenary session, the board received a report by Robert McCormack, deputy general counsel, and by unanimous voice vote, approved recommending to the Supreme Court of Georgia proposed amendments to Article III, Section 3 of the bylaws. The board then received a report on Memorials by President Robin Frazer Clark, followed by reports on the Investigative Panel by Larry I. Smith, the Review Panel by Tony Askew and the Formal Advisory Opinion Board by Jim Ellington. Gov. Nathan Deal delivered the Office of the Governor address, followed by the State of the Supreme Court of Georgia address by Chief Justice Carol W. Hunstein, the State of the Court of Appeals of Georgia address by Chief Judge John J. Ellington, the State of the U.S. District Court, Southern District address by Chief Judge Lisa G. Wood, the State of the Georgia Law Department by Attorney General Sam Olens, the State of the Senate by Sen. Josh McKoon (chair of the Senate Judiciary Committee), the State of the Georgia Senate Special Judiciary Committee by Sen. Curt Thompson (chair of the Senate Special Judiciary Committee) and the State of the House of Representatives by Rep. Edward Lindsey.

President Clark presented a resolution to Jessica Powell, who was diagnosed several years ago with Addison's disease, but recently went into Addisonian Crisis. The resolution honors Jessica for the extraordinary courage and strength she has displayed throughout her trials and tribulations and expresses the Bar's best wishes for her recovery in the months ahead, as well as a bright future and lifetime of success and happiness. Jessica is the daughter of Jay Powell, a State Bar member and a State Representative from Georgia House District 171, and Carol B. Powell.

Paula Frederick, general counsel, presented the Employee of the Year Award to Bobbie Kendall,



Jessica Powell, with her father Rep. Jay Powell, was recognized by 2012-13 State Bar of Georgia President Robin Frazer Clark for her strength and courage in the face of adversity.

2013-14 YLD President Darrell Sutton presents the YLD Ethics & Professionalism Award to Kimberlee Hillard.

legal secretary in the Office of the General Counsel, for her dedication, service and support of the State Bar.

Chief Justice Carol W. Hunstein presented a resolution from the Supreme Court of Georgia to the family of the late former chief justice and State Bar Past President Harold G. Clarke.

During the plenary session, President Robin Frazer Clark delivered her outgoing remarks as required by the bylaws of the State Bar. A copy of these remarks can be found on page 28 of the *Bar Journal*.

Charles L. Ruffin presided over the 248th Board of Governors meeting on Saturday, June 22.

Highlights of the meeting included:

- The board approved the following presidential appointments:

Investigative Panel
District 8: Donald W. Huskins (2016)
District 9: Ramon Alvarado (2016)
District 10: Larry I. Smith (2016)
At-Large: Dan Reinhardt (2016)
Review Panel
Northern District: Brad Marsh (2016)
Middle District: Rusty Simpson (2016)
Southern District: Sarah Brown Akins (2016)
Formal Advisory Opinion Board
Georgia Trial Lawyers Assoc.: Jack Helms Jr. (2015)
Georgia Defense Lawyers Assoc.: Evelyn Fletcher Davis (2015)
Young Lawyers Division: Christopher R. Abrego (2015)
Atlanta's John Marshall Law School: Jeffrey Van Detta (2015)
Mercer University: Patrick Longan (2015)
University of Georgia: Lonnie Brown Jr. (2015)
At-Large: Edward B. Krugman (2015)
Travis Sakrison (2015)
Jeffrey Schneider (fills unexpired term of Ed Carriere) (2014)

- The board approved President Ruffin's 2013-14 appointments to Standing, Special, Program and Board committees.
- The board elected Cliff Brashier as executive director for the 2013-14 Bar year.
- The board approved the appointment of Damon Elmore, Albert Reichart Jr. and Jill Pryor to the Georgia Legal Services Board of Trustees for two-year terms.
- The board approved the reappointment of Jennifer Davis to the Chief Justice's Commission

on Professionalism for a three-year term.

- The board approved the proposed 2013-14 election schedule.
- As required by Article V, Section 8 of the Bylaws, the board:
  - authorized the president to secure blanket fidelity bonds for the Bar's Officers and staff handling State Bar funds.
- As required by Article V, Section 6 of the Bylaws, the board:
  - directed the State Bar and related entities to open appropriate accounts with such banks in Atlanta, Ga., but excluding any banks that do not participate in the IOLTA Program, and other such depositories as may be recommended by the Finance Committee and designated by the Executive Committee of the Board of Governors of the State Bar of Georgia, said depository currently being Merrill Lynch, and that the persons whose titles are listed below are authorized to sign an agreement to be provided by such banks and customary signature cards, and that the said banks are hereby authorized to pay or otherwise honor any check drafts, or other orders issued from time to time for debit to said accounts when signed by two of the following: treasurer, secretary, president, immediate past president, president-elect, executive director, general counsel and officer manager provided either the president, secretary or treasurer shall sign all checks or vouchers, and that said accounts can be reconciled from time to time by said persons or their designees. The authority herein given is to remain irrevocable so as said banks are concerned until they are notified in writing, acknowledge receipt thereof.
  - Designated Cherry Bekaert & Holland as the independent auditing firm to audit the financial records of the State Bar for the fiscal year 2011-12.
- President Ruffin addressed the Board of Governors and presented an overview of his proposed program of activities for the 2013-14 Bar year (see page 36).
- Executive Committee elections were held with the following results: Elizabeth L. Fite, Kenneth B. Hodges III, David S. Lipscomb and Brian D. Rogers.
- Immediate Past President Robin Frazer Clark presented the Suicide Prevention Awareness video. She also announced that several PSAs have been developed in conjunction with this effort to educate Bar members, their families and business associates how to recognize the symptoms of suicide and where to seek help.
- Treasurer Bob Kauffman presented a report on the Bar's finances and investments, and the board, by unanimous voice vote, approved the proposed 2013-14 Operation and Bar Center budgets as submitted.
- The board received a copy of the revenue and expenditures, income statement YTD, balance sheet and Bar Center revenue and expenditures for the 10 months ending April 30.
- Following a report by Paula Frederick, the Board of Governors, by unanimous voice vote, approved recommending to the Supreme Court of Georgia proposed amendments to Rule 4-228, Receiverships. The proposed amendments will be published for members' comments before being forwarded to the Court.
- Following a report by Paula Frederick, the Board of Governors, by unanimous voice vote, approved recommending to the Supreme Court of Georgia proposed amendments to Rule 7.3, Advertising Rules. The proposed amendments will be published for members' comments before being forwarded to the Court.

(Left to right) Greg Fullerton, Court of Appeals Presiding Judge Herbert E. Phipps, Carol Fullerton and Court of Appeals Judge Carla Wong McMillian enjoy the Opening Night Festival.

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Photos *from the* Annual Meeting

1. *(Left to right)* Board Member Carl Varnedoe and his wife Christina enjoy the Presidential Gala with YLD Past President Stephanie J. Kirijan and Dane Cooper.
2. 2012-13 President Robin Frazer Clark presented the Thomas R. Burnside Excellence in Bar Leadership Award to Hon. Gordon Robert Zeese, nominated by the Dougherty Circuit Bar Association.
3. The 2013-14 Executive Committee *(left to right, top row)*: YLD Immediate Past President Jon Pannell, Kenneth B. Hodges III, David S. Lipscomb, Patrick T. O'Connor, President Charles L. Ruffin, Brian D. "Buck" Rogers, Elizabeth L. Fite and YLD President-Elect Sharri Edenfield. *(Left to right, bottom row)* YLD President Darrell L. Sutton, Secretary Rita A. Sheffey, President-Elect Patrise Perkins-Hooker, Immediate Past President Robin Frazer Clark, Phyllis J. Holmen and Treasurer Robert J. Kauffman.
4. The Commitment to Equality Awards were presented at the Annual Meeting. *(From left to right)* Committee Member Denise Loraine Allen; Award Recipients Charles S. Johnson III, Robert M. Lewis Jr., Hon. Louis Sands and Kenneth B. Hodges III; Committee Members R. Javoyne Hicks White and Jacqueline F. Bunn.
5. President-Elect Patrise Perkins-Hooker celebrates with her husband, Doug, at the Presidential Inaugural Gala.
6. *(Left to right)* David B. Bell, Susan Bell, Justice Hugh Thompson, 2012-13 President Robin Frazer Clark and her husband Bill at the Opening Night Festival.
7. *(Left to right)* Winners of the 2013 Tennis Tournament: Steven Koura, Cindy Presto, Morgan McDonald and Hon. Tom Thrash.
8. *(Left to right)* Secretary Rita A. Sheffey and Atlanta Bar Association Executive Director Terri Beck during the Supreme Court Justice's Reception.
9. *(Left to right)* Paul and James Pannell enjoy one of the best things about summer: popsicles at the Opening Night Festival.
10. The 2013-14 YLD officers are sworn-in by Justice Keith Blackwell *(left to right)* Immediate Past President Jon Pannell, Newsletter Co-Editor Will Davis, Secretary Jennifer C. Mock, Treasurer John R. B. "Jack" Long, President-Elect Sharri Edenfield, President Darrell L. Sutton and Justice Keith Blackwell. *(not pictured, Newsletter Co-Editor Crystal Conway)*
11. Attendees of the Opening Night Festival enjoyed a beautiful summer evening.
12. Local and Voluntary Bar Awards were presented during the plenary session on Friday, June 21.

Bobbie Kendall, legal secretary in the Office of the General Counsel of the State Bar of Georgia, was honored with the 2013 Employee of the Year Award, presented June 22 during the Bar's Annual Meeting. *(Left to right)* General Counsel Paula Frederick, Bobbie Kendall and 2012-13 President Robin Frazer Clark.

Gov. Nathan Deal delivers the Office of the Governor's address during the plenary session at the Annual Meeting.

- Following a report by Judge Lawton Stephens, the Board of Governors, by unanimous voice vote, approved the recommendations of the Next Generation Courts Commission as outlined in its Executive Summary. The Commission heard from a variety of respondents about issues currently facing the courts, and looked at trends likely to affect the courts in the next 10 to 15 years. The Commission will next develop a long-term strategy and proposed action plan based on the recommendations.
- YLD President Darrell Sutton addressed the Board of Governors and presented an overview of his proposed program of activities for the 2013-14 Bar year. He thanked Immediate Past YLD President Jon Pannell for all of his accomplishments as president. This year will be characterized by service to the YLD members around the state who have been impacted by the downturn in the economy. He will be taking the YLD on the road to meet with and visit all of the 12 local YLD affiliates around the state. He will be reaching out to the law schools to start a fellows program wherein a 3L from each of Georgia's law schools will be named a fellow and serve on the YLD Executive Council. He will continue to strengthen the Bar's legislative program, and has invited State Bar legislative consultant Jim Collins and grassroots coordinator Zack Johnson to attend each YLD meeting to inform young lawyers about the legislative process and encourage them to run for office. Lastly, he will continue with and seek permanent funding for the YLD Public Interest Internship Program. The Board of Governors also received a written report on the YLD committees, programs and projects.
- Rusty Sewell provided a recap of the Bar's 2012-13 legisla-

tive program and a preview of the 2014 legislative session. President Ruffin recognized the Bar's legislative consultants and thanked them for their work during this year's legislative session: Rusty Sewell, Jim Collins, Meredith Weaver, Roy Robinson and grass roots coordinator Zach Johnson.

- Paula Frederick provided an update on the activities of the ABA House of Delegates and upcoming ABA Annual Meeting in San Francisco.
- The board received written reports from the Office of the General Counsel, the Fee Arbitration Program, the Law Practice Management Program, the Military Legal Assistance Program, the Committee on Professionalism, the Unlicensed Practice of Law Program, the Transition into Law Practice Program and the Real Estate Task Force.
- The board received written reports from the following sections: Aviation Law, Business Law, Child Protection and Advocacy, Creditors' Rights, Family Law, General Practice and Trial Law, Individual Rights Law, Intellectual Property Law, Judicial, Local Government Law, Military/Veterans Law, Nonprofit Law, Taxation Law, Technology Law and Workers' Compensation Law.

Annual Awards

During the plenary session, outgoing President Robin Frazer Clark recognized specific Bar members and organizations for the work they have done over the past year.

Chief Justice Thomas O. Marshall Professionalism Award

The **12th annual Chief Justice Thomas O. Marshall Professionalism Award**, sponsored by the Bench and Bar Committee of the State Bar of Georgia and selected by all living past Bar presidents, honors one lawyer and one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients were **Hon. John E. Girardeau**, judge, Superior Court, Northeastern Circuit, Gainesville and **Richard Hunter Deane Jr.**, Jones Day, Atlanta

2013 Commitment to Equality Awards

The **Commitment to Equality Awards**, presented by the Committee to Promote Inclusion in the Profession, recognize the efforts of lawyers and legal employers who are committed to providing opportunities that foster a more diverse legal profession for members of underrepresented groups in the state of Georgia. These awards are presented to lawyers who not only personally excel in their own practice, but who have demonstrated a commitment to promoting diversity in the legal profession. The Randolph Thrower Lifetime Achievement Award recognizes an outstanding individual who has dedicated his or her career to these causes. The recipient of the **Randolph Thrower Lifetime Achievement Award** was **Charles S. Johnson III**, Holland & Knight LLP, Atlanta. The recipients of the **Commitment to Equality Awards** were **Robert M. Lewis Jr.**, U.S. Department of Labor, Office of Solicitor, Atlanta; **Kenneth Bryant Hodges III**, Rafuse Hill & Hodges, LLP, Atlanta; and **Hon. W. Louis Sands**, judge, U.S. District Court, Middle District, Albany.

Georgia Association of Criminal Defense Lawyers Awards

The Georgia Association of Criminal Defense Lawyers (GACDL) announced that the 2013 G. Terry Jackson Friend of the Constitution Award was presented in January to **Douglas N. Peters**.

The 2012 GACDL Indigent Defense Award was presented in November to **The Georgia Resource Center**, under the direction of Brian Kammer.

GACDL presented 2012 President's Awards to **Jill Anderson Travis** and **Charles T. Magarahan**.

Local and Voluntary Bar Activities Awards

The **Thomas R. Burnside Jr. Excellence in Bar Leadership Award**, presented annually, honors an individual for a lifetime of commitment to the legal profession and the justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section. This year's recipient was **Hon. Gordon Robert Zeese**, nominated by the Dougherty Circuit Bar Association.

The **Award of Merit** is given to local and voluntary bar associations for their dedication to

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improving relations among local lawyers and devoting endless hours to serving their communities. The bar associations are judged according to size.

- 51 to 100 members: **Fayette County Bar Association**
- 101 to 250 members: **Blue Ridge Bar Association**
- 251 to 500 members: **Stonewall Bar Association of Georgia**
- 501 members or more: **Cobb County Bar Association**

The **Best New Entry Award** is presented to recognize the excellent efforts of those voluntary bar associations that have entered the Law Day or Award of Merit competitions for the first time in four years. This year's recipient is the **Fayette County Bar Association**.

The **Best Newsletter Award** award is presented to local and voluntary bars that provide the best informational source to their membership, according to their size.

- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Georgia Defense Lawyers Association**

The **Law Day Award of Achievement** is presented to local and voluntary bar associations that best plan Law Day activities in their respective communities to commemorate this occasion. The bar associations are judged in size categories.

- 51 to 100 members: **Houston County Bar Association**
  101 to 250 members: **Blue Ridge Bar Association**
  251 to 500 members: **Gwinnett County Bar Association**
  501 members or more: **Atlanta Bar Association**

The **Best Website Award** is given to local and voluntary bar associations with websites that exemplify excellence in usefulness, ease of use, content and design in meeting the needs of the website's targeted audience. The bar associations are judged in size categories.

- 51 to 100 members: **Walton County Bar Association**
- 101 to 250 members: **Blue Ridge Bar Association**
- 251 to 500 members: **DeKalb Bar Association**
- 501 members or more: **Georgia Association for Women Lawyers**

The **President's Cup Award** is a traveling award presented annually to the voluntary bar association with the best overall program. This year's recipient was the **Atlanta Bar Association**.

Pro Bono Awards

The pro bono awards recipients will be honored at a special awards reception at the State Bar of Georgia on Oct. 24 in conjunction with the annual American Bar Association National Pro Bono Celebration.

2013-14

State Bar of Georgia | Board of Governors Meeting Dates

Fall 2013
Nov. 1-3
Jekyll Island Club Hotel
Jekyll Island, Ga.

Spring 2014
March 21-23
RitzCarlton Lodge, Reynolds Plantation
Greensboro, Ga.

Midyear 2014
Jan. 9-11
InterContinental Buckhead
Atlanta, Ga.

Annual 2014
June 5-8
Omni Amelia Island
Amelia Island, Fla.

- Dan Bradley Legal Services Award—**William K. Broker**
- H. Sol Clark Award—**Guy E. Lescault**
- William B. Spann Jr. Award—**Atlanta office of Burr & Forman LLP**
- A Business Commitment Pro Bono Award—**Atlanta office of Jones Day** and Hunter Maclean LLP attorney **Edward Olmsted Henneman Jr.**

Section Awards

Section awards are presented to outstanding sections for their dedication and service to their areas of practice, and for devoting endless hours of volunteer effort to the profession:

- **Section of the Year**
  Intellectual Property Law Section, **Philip Burrus,** chair
- **Awards of Achievement**
  Child Protection & Advocacy Section, **Nicki Vaughan**, chair; **Family Law Section**, **Kelly Miles**, chair; **Military/Veterans Law Section**, **John Camp**, chair

Tradition of Excellence Awards

The Tradition of Excellence Awards are presented each year to selected Bar members in recognition of their commitment to service to the public, to Bar activities and to civic organizations. The 2013 recipients were: **Thomas S. Carlock**, Atlanta (defense); **Mary A. Prebula**, Duluth (general practice); **Hon. William McMurray Jr.**, Atlanta (judicial); and **Eugene P. "Bo" Chambers Jr.**, Atlanta (plaintiff).

Young Lawyers Division Awards

The Distinguished Judicial Service Award was presented to **Hon. Stephen Louis A. Dillard**.

The Ross Adams Award was presented to **Elena Kaplan**.

Award of Achievement for Service to the Bar: **Ivy Cadle** and **Adriana Sola Capifali.**

Hon. Thomas B. Wells, U.S. Tax Court, administers the oath of office to 2013-14 President Charles L. Ruffin while his wife Sally looks on.

Award of Achievement for Service to the Public: **Katie Dod, Karen Kurtz, Jessica Odom, Emilia Walker** and **Sarah White**.

Award of Achievement for Service to the Profession: **Kelly Campanella, Sean Ditzel, Jennifer Nichols** and **Ashley Sawyer**.

Award of Achievement for Service to the YLD: **Karen Kurtz, Nedal Shawkat, Carl Varnedoe** and **Kirsten Widner**.

YLD Ethics & Professionalism Award was presented to **Kimberlee Hillard**.

Outstanding YLD Affiliate: **Cobb County YLD.**

Passing of the Gavel

Prior to the swearing-in ceremony, 2012-13 President Robin Frazer Clark presented the Distinguished Service Award, the highest accolade bestowed on an individual lawyer by the State Bar of Georgia, to Rep. Wendell Willard (see page 46). Willard was honored for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

Following the awards presentation, Hon. Thomas B. Wells swore in Charles L. Ruffin as the 51st president of the State Bar. Ruffin placed his left hand on the Bible and repeated the following:

I, Charles L. Ruffin, do solemnly swear that I will execute the office of president of the State Bar of Georgia, and perform all the duties incumbent upon me, faithfully, to the best of my ability and understanding, and agreeable to the policies, bylaws and rules and regulations of the State Bar of Georgia; the laws and Constitution of the United States. So help me God.

Upon the conclusion of the business portion of the evening, guests spilled out into the foyer of the convention center for dinner and entertainment. Multiple dining stations offered a variety of dinner options from seafood to Tex-Mex. Attendees took a moment to sit, eat and chat with friends old and new before venturing into the entertainment areas, which included a martini bar, scotch and cigar bar and the dance club headlined by Atlanta's Party Nation. GBJ

Jennifer R. Mason is the assistant director of communications for the State Bar of Georgia and can be reached at jenniferm@gabar.org.

A Rising Tide Lifts All Boats

Remarks to the Board of Governors

by Robin Frazer Clark

The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to "deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term in office and furnish a copy of the report to the Supreme Court of Georgia." Following is the report from 2012-13 President Robin Frazer Clark on her year, delivered June 21 at the State Bar's Annual Meeting.

One year ago, when I stood before you down the coast a bit in Savannah and outlined my vision for this year, I told you that the theme for my term as State Bar president would be the quote from President John F. Kennedy, which I have adopted as my outlook on life and the practice of law—that a rising tide lifts all boats.

I strongly believed then—and believe now—that if you reach out your hand to help lift another, you will be rewarded.

Today, as we reflect on the many successes of the past 12 months—along with a disappointment or two—I can truly say that the State Bar of Georgia has reached out its hand time and time again to help others, and the results have been rewarding for this organization and will benefit the legal profession, the justice system and the people of Georgia for generations to come and I am proud of the role I have played.

As I have said before, serving as president of the State Bar of Georgia is the single greatest honor of my legal career. And the historical significance of being both the 50th president of the unified Bar and the second woman to serve in this office is something I have thought about every day of the past year.

Photo by Sarah I. Coole

2012-13 President Robin Frazer Clark gives her end of the year report to the Board of Governors during the plenary session at the Annual Meeting.

I told you last year of my intention to promote diversity and inclusion during my term as president. I said I would make diversity appointments to various committees and always look to include points of view from

all sectors and practices of the Bar, and I have done that. And so I'm clear, I don't mean diversity for diversity's sake. . . . I mean diversity so that all points of view are truly represented, different perspectives than your own are considered, weighed and respected, and leadership is forced out of its comfort zone to walk a mile in someone else's shoes. This makes an organization more truly representative of its membership and the membership more eagerly buys into it, wants to be a part of it and wants it to flourish. That's what I mean when I say I promote diversity.

But I am most proud of the movement toward diversity that is taking place on its own in the leadership of the State Bar. Of the 82 Bar offices and Board of Governors seats that were up for election this year, 30 were won by women. In the Atlanta Circuit, women were elected to 16 out of 20 Board seats. That is amazing and is certainly a step in the right direction toward our becoming an organization whose leadership is truly representative of its membership.

Some of the programs the State Bar has initiated this year were not included in my speech last year. I am glad that we have the capability and flexibility to address issues and challenges that arise during the course of the year in a meaningful way.

As we all know, suicide touched our profession and our Bar family this year. Tragically, we are not alone. Suicide is the third-leading cause of death among lawyers. Our work is high stakes, high stress and high risk. Failure is not an option in our profession.

As Judge Anne Workman put it in her address to the DeKalb Bar Association a few years ago, "Our clients do not routinely believe we serve their interest. We are not admired by the public in general. Management of our workload overwhelms us. We are beset by ever-increasing overhead, by an overload of technological devices that tether us to the office around the clock, by unhappy and at times unmanageable clients, by a surfeit of mind-numbing work just to keep afloat, and by a general malaise brought about by the combination of all these factors."

Consequently, lawyers are three times as likely to suffer from depression as any other profession, and the rate of death by suicide is two to six times that of the general population. These statistics come from the website of the State Bar of Texas, which has taken a leading role toward suicide prevention awareness in the legal profession. Starting this year, State Bar of Georgia is taking steps to follow suit.

I created a new Suicide Prevention Committee, chaired by Randy Evans, whose primary goal is to raise awareness among Bar members about addressing the dangerous situation within the legal profession, how to recognize the risk factors and warning signs of suicide and the fact that help is available to Georgia lawyers through the Lawyers Assistance Program.

Our suicide prevention awareness initiative is named "How to Save a Life," borrowing the title of the song by

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the rock band The Fray, and has a dual purpose, directed toward those who are suffering from anxiety and depression and may be at risk for suicide, as well as all Bar members, who need to recognize the severity of the problem and be able to identify warning signs among our colleagues. I have obtained the approval of the Boards of the Institute of Continuing Education and the Commission on Continuing Lawyer Competency for this suicide prevention video to count as both regular and professionalism CLE hours and that the video will be shown at every professionalism seminar for the next year. This means that all of our members will see this video at least once in the coming year and will thereby learn the signs of someone who is at risk for suicide and will learn how to get help.

Our State Bar has the resources to help our members who are at risk. We know already that the "How to Save a Life" initiative has already worked before it's even officially launched to save at least two lives. We know that because those lawyers have told us that themselves. Just imagine how many more lives we will save once the initiative is in full force? That's something I take great pride in and something we can all be proud of.

The top highlight of this year, without a doubt, was our success during the 2013 session of the Georgia General Assembly. I think the State Bar of Georgia had our best session that I have seen in many years, perhaps ever. This is the result of the strongest lobbying team ever assembled for the Bar, and the greatest participation by our members in reaching out to our elected officials under the Gold Dome.

First of all, I am especially proud that the new Juvenile Justice Code, at long last, was approved unanimously by both the House of Representatives and the Senate. I testified in support of this bill in both the House and the Senate Judiciary Committees. The support this bill—which is the result of decades of work that originated with the State Bar's Young Lawyers Division—received from everyone involved, all stakeholders, was tremendous.

We worked with the governor's staff, particularly, Thomas Worthy, to get this passed and it was rewarding to do so, especially to accomplish something so important as reforming the way we deal with juvenile offenders to reduce the criminal recidivism rate and put our tax dollars to their most efficient use. The day that Gov. Nathan Deal signed House Bill 242 into law was a great day for Georgia's youth and Georgia citizens, too. I am very proud of the State Bar's work on this.

Another big success was the approval of an amendment to prohibit the assignment of legal malpractice claims. You will recall that the Supreme Court of Georgia issued an opinion in *Villanueva v. First American Title* that held legal malpractice claims are assignable, unfortunately going against the position the State Bar had argued for in its two Amicus Briefs in that case.

The day the Court's opinion was published, March 18, I instructed our lobbying team to look for legislation to which an amendment could be attached that would prohibit the assignment of legal malpractice claims. They found three and began working that day to do the necessary legwork to amend HB 359, which was the governor's bill dealing with unclaimed property and was pending in the Senate Finance Committee. We obtained the green light from the Chairman, Sen. Judson Hill, the bill's sponsor, Rep. Chad Nimmer and the governor's office, including Ryan Teague, David Werner and Thomas Worthy.

On Tuesday, March 19, we successfully amended HB 359 with our *Villanueva* amendment. Our lobbying team was spectacular, and I want you to know that Randy Evans was a tremendous help with this. We couldn't have done it without him. We also amended another bill, one of the Bar's own, HB 160, which Rep. Mike Jacobs carried for us. It was successfully amended in Senate Judiciary on March 20. On March 22, HB 359 passed the Senate with our *Villanueva* amendment on it. The House agreed to the Senate substitute of HB 359 on March 26.

So within a span of only eight days, the State Bar had successfully passed a bill prohibiting the assignment of legal malpractice claims and eliminating the significant problems the *Villanueva* decision would have caused the legal profession and all of our members. By the way, we passed the amendment twice because HB 160 also passed on March 26 and was agreed to March 29, the last day of the session around 5:30 p.m., which I was there to witness.

I am extremely proud of our lobbying team on pulling this off in eight days. Amazing! I also must thank the governor's office staff, the legislative leadership and our friend and colleague, Randy Evans. This was major work by the State Bar on behalf of all Georgia lawyers and it protects the confidential attorney/client relationship from the consequences of *Villanueva*.

By the way, this was the third session we had tried to pass HB 160 dealing with Future Conveyances, and it passed this year, too! What a coup!

The State Bar also took official positions opposing Patient Injury Act and the Mandatory Arbitration in Nursing Home contracts as being infringements on citizens' 7th Amendment Right to Trial by Jury. Neither of these bills could garner enough support to make it out of the Health and Human Services Committee, where they are pending going into the 2014 session.

The only disappointment from this session is that we will have to keep trying on a pay raise for our judiciary. I have not delivered the cannons of Fort Ticonderoga to Boston. Yet. I still believe it is well past time for our judges to have a pay raise to help ensure we main-

tain qualified, experienced judges in all of Georgia's courts and that qualified, competent candidates will continue to run for the bench when there is an opening. We do understand the budget pressures under which our legislators operate but hope they will be able to give this matter favorable consideration as soon as possible. This is particularly promising given the estimated savings of $88 million dollars over the next five years our Juvenile Justice Reform is anticipated to bring.

This was such a successful legislative year, from the State Bar's perspective, for a number of reasons. First, there was the splendid work of our powerhouse lobbying team, headed by Rusty Sewell and also including Meredith Weaver, Roy Robinson, Jim Collins and Charlie Tanksley. I also want to thank Chairman Nick Moraitakis and all members of our Advisory Committee on Legislation.

This year, we began the Bar's first ever grassroots program, run by the very able Zach Johnson. Zach did an amazing job creating the format that fulfilled my vision of grassroots. We had several local bar associations attend our "lobbying days" as a group, and Zach is already working to build on this incredible grassroots network in preparation for next year's session.

We also provided our members with weekly video updates from the Capitol, so that every member could quickly and effortlessly stay up-to-date on our progress during the session. I also sent out a weekly email update that talked about all bills that were progressing, not just the Bar's bills. I had numerous lawyer/legislators thank me for this email update because they said without it they wouldn't know what's going on in the other chamber! I'm glad they liked it, but I had no idea this would happen. It was just a great added benefit.

Last but certainly not least, I want to thank Gov. Deal, Lt. Gov. Casey Cagle, House Speaker David Ralston, House Judiciary Chairmen Wendell Willard and Rich Golick, Senate Judiciary Chairmen Josh McKoon and Jesse Stone, Rep. Tom Weldon, chairman of the Juvenile Justice Committee and all of our supporters in the General Assembly—especially our lawyer/legislators for their tremendous leadership and all they are doing for the justice system and the people of Georgia.

Let me say this, too, about what a successful year this has been, and that it simply points to the good will the State Bar now has at the Capitol compared to just a few years ago. Things have definitely changed for the better for the Bar. When I appear in just about any committee meeting now, the chair typically welcomes me publically, thanks me for being there and makes a statement of appreciation of the State Bar.

That is 180 degrees from the way is used to be. This sea of change has come about through the building of close relationships with Legislators, offering to a be a resource for Legislators on issues on which they

State Bar of Georgia

We're here for you!

Law Practice Management Program

The Law Practice Management Program is a member service to help all Georgia lawyers and their employees put together the pieces of the office management puzzle. Whether you need advice on new computers or copiers, personnel issues, compensation, workflow, file organization, tickler systems, library materials or software, we have the resources and training to assist you. Feel free to browse our online forms and article collections, check out a book or videotape from our library, or learn more about our on-site management consultations and training sessions, 404-527-8772.

Consumer Assistance Program

The purpose of the Consumer Assistance Program (CAP) is to serve the public and members of the Bar. Individuals contact CAP with questions or issues about legal situations, seeking information and referrals, complaints about attorneys and communication problems between clients and their attorneys. Most situation can be resolved informally by CAP's providing information and referrals to the public or, as a courtesy, contacting the attorney. CAP's actions foster better communications between clients and attorneys in a non-disciplinary and confidential manner, 404-527-8759.

Lawyer Assistance Program

This free program provides confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems and mental or emotional impairment, 800-327-9631.

Fee Arbitration

The Fee Arbitration program is a service to the general public and lawyers of Georgia. It provides a convenient mechanism for the resolution of fee disputes between attorneys and clients. The actual arbitration is a hearing conducted by two experienced attorneys and one non-lawyer citizen. Like judges, they hear the arguments on both sides and decide the outcome of the dispute. Arbitration is impartial and usually less expensive than going to court, 404-527-8750.

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may need certain substantive expertise, creating a new grassroots program in which for the first time ever the State Bar was actively having Bar members come to the Capitol to observe, show interest in the work of the General Assembly and thanking the Legislators for their service to the state of Georgia. It is evident now that unlike before, the State Bar of Georgia is well respected by the members of the General Assembly and we will continue to build on that and never, ever take it for granted.

In that spirit, the State Bar hosted our first Inaugural Legislative Forum during the Midyear Meeting in January. Moderated by former legislator Nick Moraitakis, the forum was a tremendous success. We had a full house, and the panelists—representing the legislative leadership from both houses and both parties—each provided keen insights on the major issues of 2013 and the important role that lawyers fulfill in the drafting and perfecting of all types of legislation. It was the perfect start to an incredible 2013 Legislative Session.

The bottom line, according to the panelists, is that we could use more lawyers in the General Assembly. As one of my favorite Presidents, Jed Bartlett, once said, "Decisions are made by those who show up."

So, if any of you are considering a run for a state Senate or House seat, do it. If a colleague is talking about becoming a candidate, encourage it. We need more lawyers providing influence in state government.

But, of course, "showing up" in the legislative process or other avenues of public service is not limited to actual service in the General Assembly. Here are some other ways that Bar members can become involved and engaged:

- Participate in our Grassroots Program to connect you with your local legislators at the Capitol and in your district.
- Offer your expertise as a resource to your House member or Senator, especially on issues related to your area of practice.
- Stay informed by paying close attention to the regular legislative reports from our lobbying team on the Bar's website.
- When possible, come to the Capitol during the session, attend pertinent committee meetings and meet face-to-face with your elected officials to let them know your opinion on the issues being addressed.

We have also had tremendous success with our intentional efforts to increase favorable opinions of Georgia lawyers and our beloved profession through earned media. To date we have had 162 published articles in 84 different publications, with a total circulation of 3,122,569, all touting the accomplishments of your fellow Georgia lawyers. The subjects of these letters and articles greatly appreciate the acknowledgment by the State Bar and sometimes even write me back to thank me for writing about them. For example, I wrote letters of thanks to all lawyer/legislators thanking them for the selfless act of serving in the Georgia General Assembly. Two letters I received back from legislators gives you a good idea of how meaningful this communication effort is and I want to share them with you. The first is from Sen. John Crosby and the second is from Rep. Larry O'Neal.

Letter to President Robin Frazer Clark from Sen. John Crosby:

Dear Mrs. Clark,

Enclosed is a copy of your blind letter to the editor which appeared in the paper on 4-18-2013.

This was very considerate of you, and I appreciate it very much.

Please tell Bill Clark that you meant everything you said about me, and I want him to treat me with a little more honor and respect. Just kidding.

Appreciate both of you very much.

JDC

Letter to President Robin Frazer Clark from Rep. Larry O'Neal:

Dear Robin,

Thank you sincerely for your kind remarks that were recently published in my local newspaper. It is so rare anything positive or complimentary goes in to print these days, it was noticed by several of my constituents. Also, thank you sincerely for your unselfish commitment and service to our Georgia Bar Association. You make me proud I am a lawyer again. Hope you and Bill have a great summer.

Thanks,
Larry O'Neal

That last sentence tells it all, doesn't it? "You make me proud I am a lawyer again."

Another great success of the State Bar this year was the Georgia Legal Food Frenzy. Georgia Attorney General Sam Olens is with us today. I want to thank him for all he is doing on behalf of our state and, especially, for his leadership in partnering with our Young Lawyers Division for the amazingly successful Georgia Legal Food Frenzy.

Two hundred forty-nine law firms and other entities in the legal profession joined together to raise and contribute a total of 842,317 pounds of food to the seven regional food banks in the Georgia Food Bank Association. Helping meet the food assistance needs of children and families across the state during these summer months, this year's total pounds collected represent a 38 percent increase over last year's inaugural effort.

I am proud of the State Bar's participation in Georgia Legal Food Frenzy, which goes a long way toward bettering our state and fulfilling our collective duty as lawyers to help others. Thanks to Attorney General Olens, YLD leaders and all Georgia lawyers who participated, children in Georgia are not walking the streets tonight begging for food.

Tomorrow evening, after I transfer the symbolic gavel of this office to the capable hands of Buck Ruffin, the State Bar will embark on a year of celebration, marking the 50th anniversary of the establishment of the unified Bar in 1964.

But 2013 is a milestone year as well for law and justice in our nation. Acknowledging the 150th anniversary of the issuance of the Emancipation Proclamation by President Abraham Lincoln and the 50th anniversary of Dr. Martin Luther King Jr.'s "I Have A Dream" speech in front of the Lincoln Memorial, the 50th Anniversary of the decision that forever changed American Justice, *Gideon v. Wainwright*, and that national Law Day theme for 2013 is "Realizing the Dream: Equality for All."

A special celebration of Law Day took place April 22 as the State Bar partnered with a number of local and specialty bar associations and the National Center for Civil and Human Rights to host a day-long public educational event at the Bar Center. Hundreds of school children were in attendance.

On behalf of the State Bar, our Treasurer and soon-to-be President-Elect Patrise Perkins-Hooker and Executive Committee member and soon-to-be Secretary Rita Sheffey did a superb job in spearheading this event.

Featured panelists included Ambassador Andrew Young, U.S. Attorney Sally Quillian Yates and many other civil rights leaders, state legislators and legal experts. The program was aimed specifically at making the connection between the American civil rights movement and the principles of human rights while providing an in-depth look at human rights violations that still exist at home and abroad, including juvenile justice violations, the use of torture, environmental abuses and the trafficking of an estimated 1 million people worldwide each year into involuntary servitude and sexual slavery. We can end such injustices only after acknowledging they exist.

As I wrote in an op-ed column published in the *AJC* and several other newspapers, Law Day reminds us that in America, the promise of equal treatment under the law is not supposed to be some lofty objective that we hope to achieve one day. Equality was declared some 236 years ago to be a self-evident truth and one of the basic founding principles of a new nation—despite the existence of slavery and decidedly unequal rights for women at the time.

Over the years, of course, significant strides have been made against discrimination based on race, gender, ethnicity, national origin, religion, age, disability and sexual orientation. Yet today, when it comes to equal justice, the question must be asked: are we there yet?

While we have made much progress, there are constant reminders that we have to do better. For example, during a school's recent visit to the "Journey through Justice" program at the Bar Center, a member of the Bar staff saw a young African-American student looking at the photographs of the past presidents on the wall of the third floor, along with his father who was there on the tour. The employee heard the young child say, "There isn't anyone who looks like us, Dad."

That hurts. We have more than 10,000 Georgia students walking down that third floor hall every year. They observe. They notice, and I don't want any one of them to go home thinking the State Bar of Georgia isn't an organization that they also could lead one day.

In the legal profession and this nation, we still have work to do. Hopefully, it is the generation of students now taking the "Journey through Justice" tours that will close the gap and will say "Enough." Enough discrimination, enough hypocrisy, enough subjugation of one group by another, enough hatred . . . simply enough.

This is the generation that will say "enough" of that and replace it with love. Love of your fellow man, love of the rule of law, love of equality, love of justice. But like all

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worthy things, we must work for it. Dr. King said, "Human progress is neither automatic nor inevitable. . . . Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals."

No one ever said this would be easy. But, speaking for myself, I will continue to fight for human rights, dignity and justice based on what I stand for, which is that all persons are equal . . . no exceptions. If it is written that I stood up for what I believe to be a moral issue, that of equal treatment of all people, regardless of race, gender or sexual orientation, then I will gladly accept that. Equal treatment of all people is a moral issue, not a social issue. And while we are on that moral issue, let me say this about leadership. A true leader doesn't take a survey to know how to decide a moral issue. A true leader doesn't fail to act to ensure equality for all people because of fear of repercussion or fear that not 100 percent of people agree with you. A true leader doesn't remain silent on a moral issue hoping it will simply fade away before having to take a stand on it. Remember what Dr. Martin Luther King Jr. said about this: "In the End, we will remember not the words of our enemies, but the silence of our friends." As Dr. King also said: "A genuine leader is not a searcher for consensus but a molder of consensus." And that's exactly what I plan to continue doing on the moral issue of justice and equality for all people. Dr. King said, "the Arc of the moral universe is long, but it bends toward justice." This is comforting to keep in mind, but we must remain vigilant, especially when there are still "whites only" proms in Georgia.

The promise of equality under the law is what has made America a beacon to other nations. Fulfilling that promise remains a work in progress.

A rising tide, indeed, lifts all boats.

As I close this morning, I want to thank my fellow officers, the Executive Committee, Cliff Brashier and the finest Bar staff in the United States. I thank Linton Johnson who has been an incredible help to me this year. And Cliff . . . I could not have had this amazing year without Cliff, who has always been available to me for support 24 hours a day, seven days a week. He likes to quote Tildon on tennis, that you never change a winning game, and as long as Cliff is our executive director, the State Bar of Georgia will have a winning game. Also, I could not have made it through this year with the love and support of Michelle Garner. I love her like a sister. She has gone above and beyond for me, from getting my medicine for me at the nearest CVS wherever we may be traveling, to retrieving an entire business suit I had left in my closet at the Albany Hilton Garden Inn, to making sure there was always a bottle of Maker's Mark waiting for me in my hotel room after a long, hard day of representing the State Bar. I also thank my husband of 21 years, Bill Clark, whom many of you know, who makes it possible for me to do the things I love like leading the State Bar of Georgia. I also must thank my children, Chaz and Alex, who have grown up with the State Bar and who have been my support system this entire time. When I made my first trip to an Annual Meeting they rode in car seats. Chaz (you may recall he had to learn how to tie a tie by watching YouTube because we were away at a Bar meeting) is now a sophomore in college and Alex (you may recall never noticed I was out of town for a BOG meeting in Nashville for an entire meeting) is now a junior in high school. Despite the many hours their sometimes mediocre mom has devoted to the State Bar and her law practice, I am happy to report to you they both seem to have become beautiful, compassionate, empathetic, loving, caring people and I know they will both make their mark on making our world a better place. I also thank each of you on the Board of Governors for your incredible support, uplifting words and hard work over the past year, demonstrating your dedication to the State Bar of Georgia.

Photo by Jennifer R. Mason

2012-13 President Robin Frazer Clark with her daughter Alex.

I look forward now to joining you in extending that support to Buck as he accepts this high honor and these awesome responsibilities. I know that we will have another great year ahead.

Thank you again for this incredible year. I hope like Rep. O'Neal, I have made you proud to be a lawyer again. God bless you and God bless the great state of Georgia! GBJ

Robin Frazer Clark is the immediate past president of the State Bar of Georgia and can be reached at robinclark@gatriallawyers.net.

Remarks to the Board of Governors

State Bar of Georgia Annual Meeting—June 22, 2013

by Charles L. Ruffin

The following is excerpted from Charles L. Ruffin's remarks during the 2013 Annual Meeting in Hilton Head.

Robin, thank you for your exceptional leadership during the past year. For a long time to come, the legal profession, the justice system and the people of our state will benefit from your service and the Bar's achievements during your year.

Starting this evening when I take the oath of office, I will have the honor of succeeding Robin in what will be a year of observance and celebration of the first half-century of the State Bar of Georgia.

This year, 2013-14, will mark not only the 50th anniversary of the State Bar of Georgia but also the 130th anniversary of the establishment of its predecessor, the Georgia Bar Association, and the 225th anniversary of the ratification of the United States Constitution.

Fellow Bar members, permit me to take a few minutes this morning to reflect on that last milestone, what the Constitution means to this nation and in particular to our profession, whether we have allowed or are allowing an erosion of the Constitution and the rule of law in our society and, if so, what we can do to restore its preeminent position in the affairs of our nation.

I believe the Constitution is only as good as the people for whom it was enacted and who are covered by its provisions. The character of the population for whom the Constitution provides guiding principles is paramount to its longevity.

At the close of the Constitutional Convention in 1787, Benjamin Franklin was asked, "Well, Doctor, what have we got—a republic or a monarchy?" Franklin replied succinctly, "A republic, if you can keep it."

Photo by Sarah I. Coole

2013-14 President Charles L. Ruffin addresses the Board of Governors during the Annual Meeting.

More than two centuries later, Franklin's words still ring true.

Whether we can continue to keep our republic depends, I believe, on the strength of our constitutions—

yes, plural "constitutions"—applying three of the several definitions the dictionary gives us for the word:

- First, the basic principles and laws of a nation that determine the powers and duties of the government and guarantee certain rights to the people. That's the "capital C" Constitution that we use most often.
- Second, the physical and mental makeup of an individual, especially with respect to the health, strength and appearance, as in a person with "a hearty constitution."
- Third, the structure, composition, physical makeup or nature of something, in other words the "constitution of society."

Fellow Bar members, I am concerned about our constitutions—not only the written instrument that embodies our foundational principles—but more to the point, whether we have the individual and collective constitutions that are morally, mentally, physically and spiritually strong enough to meet today's challenges.

As a nation, we seem to have lost our competitive edge. Consider the following:

- First, we have lost a lot of jobs in this country, particularly in manufacturing—seven million over the last decade. During the surge in Iraq in 2007, for example, when we were looking for a company to produce reinforced steel for military vehicles, only one company had the capacity to manufacture that kind of steel. That is not a good prospect for our nation's defense.
- Second, there are not as many jobs for the middle class as there once were. Without a vibrant middle class, we won't have the law practice we want to have. If you don't believe me, talk to your friends who practice in small towns. There is just not as much economic activity going on in small towns as there once was.
- Third, I believe the greatest security threat to our Constitution is our budget deficit. We simply must get our fiscal house in order to revitalize our economy and create manufacturing and other jobs in this country.

A lot of lawyers are suffering today. For that, there are a number of factors. We can point to lawyer advertising . . . to witness-only closings . . . to "Legal Zoom.com" and its ilk.

But I contend the overriding factors are all related to the continued sickness of our national economy and our failure to defend jobs for this country. Too many jobs, American jobs, are moving elsewhere, while too few are being created here.

I don't mean we should not participate in the world economy. But the fact of the matter is we have to tailor our federal and state tax and regulatory policies to attract and keep these jobs. We've got to have the manufacturing and economic strength to make sure we can preserve, protect and defend the constitutions of this country.

Another critical factor in maintaining our individual and societal constitution is what we teach our children. We need to teach our children about the history and founding of this country, why the rule of law, under the Constitution, is critical to our future, and the values that sustain this nation.

I was privileged to grow up in the small town of Vidalia, Ga., where I learned from my family and community a number of basic values:

- Duty to country, second only to your duty to God
- Feeding, protecting and educating your family
- There is no free lunch
- There is dignity in all work

These values were part of the air I breathed every day. Examples abounded!

And during the time that I was growing up, I heard a young new President, John F. Kennedy, issue this challenge to all Americans: "Ask not what your country can do for you—ask what you can do for your country."

These values seem to have less influence today than they once did.

Today, it often seems the prevailing philosophy is "get what you can from your country any time you can."

We are losing nuclear families right and left, often the result of divorce or births out of wedlock. As a by-product, we are suffering a decline in discipline and societal consciousness of right from wrong, which in turn leads to more poverty, more crime and a loss of the competitive edge that America once held over the rest of the world.

Presidents John Adams and James Madison over several occasions declared our Constitution was made only for a moral, informed and productive people. It is wholly inadequate to the government of any other.

The virtues I mentioned earlier—family, community, faith—erosions of these are all connected with the challenges we face today. It is our duty to teach the next generation there is something higher, something greater than me, us, them or immediate gratification.

At another crossroads in our nation's history in 1862, President Abraham Lincoln told Congress, "We shall nobly save, or meanly lose, the last best hope of earth."

Fellow Bar members, as we embark on a year of observing the 50th anniversary of the State Bar of Georgia, our job is to examine anything that threatens the Constitution and its longevity.

In these difficult times, if lawyers don't stand up for the furtherance of the Rule of Law and the restoration of the values that made this nation great, who will?

As I mentioned earlier, our national economic challenges have a dramatic effect on us in the practice of law. That is why it will be critical for us to

continue initiatives to help one another, like the SOLACE program started by Ken Shigley two years ago and the "How to Save a Life" suicide prevention initiative recently launched under Robin Clark's leadership.

It is also why we will continue to reach out to the general public through our Cornerstones of Freedom education program and rejuvenate the Citizens' Group established by Lester Tate several years ago. And it is essential that we build on our recent successes in the legislative process at the State Capitol and continue to work with our elected officials to enact laws that modernize and strengthen our justice system, measures that are in themselves economically beneficial.

Finally, through a newly formed Law & Economics Section, we as lawyers should weigh in on the causes of our moribund economy.

As we mark the 50th year of this organization, we will simultaneously celebrate the 225th anniversary of the U.S. Constitution. Next March, the State Bar will host a two-day national symposium on the Constitution—featuring a discussion with U.S. Supreme Court Justice Antonin Scalia and tentatively and hopefully Justice Stephen Breyer, two of the great legal minds of this generation who bring to the table distinctly different views of the Constitution and its application today.

David McCullough, the renowned historian, will join that symposium and speak about the Founding Fathers and the Founding Time.

We will also publish a history book on the legal profession in Georgia, a comprehensive account covering the nearly 300 years of progress from General Oglethorpe's arrival at Savannah (when lawyers were banned) through the establishment of the Georgia Bar Association, followed by the arduous 40-year effort to unify the Bar up to and including the 21st Century-model State Bar of Georgia. This book will chronicle the many contributions of the Georgia lawyers who have worked from the founding to today to fulfill the constitutional promise of justice for all.

In that regard, we certainly have big shoes to fill.

This will be a year of thinking about what has brought us to this critical time and whether we, as a profession and a nation, are able to right the ship.

Consider that in 1789, the year that the U.S. Constitution was ratified, your pet squirrel could climb a tree no more than 225 miles from the Atlantic coast, and go all the way to the Great Plains from limb to limb, tree to tree, without touching the ground.

Thomas Jefferson thought it would take a hundred generations to populate this land from the east to west coasts. Because of the pioneer spirit that existed in those days, it actually took no more than five.

Without any kind of mechanical devices to assist them, the pioneers cleared forests, plowed the fields, planted the crops and built the roads. As soft as we have become today, would we have what it takes to withstand the conditions that our forefathers did? Do we?

I believe we do, because no matter what challenges have confronted our nation in the past—the Revolution, Civil War, two World Wars, the Great Depression, presidential assassinations, the long Civil Rights struggle, political upheaval and 9/11—we have always been sustained by something called the American spirit and survived.

If these values can be recaptured, we will be able to deal more forthrightly with the problems we face today. As lawyers, we know that our Constitution can protect us only if we do our part to protect it.

The songwriter Gene Scheer captured this spirit in his "American Anthem," written in 1998, sung at two presidential inaugurations and famously performed by Norah Jones in the soundtrack for Ken Burns' World War II documentary "The War."

Scheer said his patriotic lyrics were inspired by two things:

- First, the way his parents met, which was on a picket line, protesting a YMCA that was not admitting African-Americans, and
- Second, the service and sacrifices of his relatives who served in World War II, including an uncle who was captured at the Battle of the Bulge and was held in a prisoner of war camp the last year of the war.

"American Anthem," is a reminder of all that we have been given by providence and our forefathers and of the responsibilities that we have to the country. To quote from the lyrics:

". . . Each generation from the plains
To distant shore with the gifts
That they were given
Were determined
To leave more
Valiant battles fought together
Acts of conscience fought alone
These are the seeds
From which America has grown

Let them say of me
I was one who believed
In sharing the blessings
I received
Let me know in my heart
When my days are through
America
America
I gave my best to you. . ."

Thank you, and may God bless the state of Georgia and the United States of America. GBJ

Charles L. Ruffin is the president of the State Bar of Georgia and can be reached at cruffin@bakerdonelson.com.

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Doing Things 'The Right Way'

by Linton Johnson

When Charles L. "Buck" Ruffin graduated from Vidalia High School and was preparing to further his education at Auburn University, he planned to become either an architect or a lawyer, "and I really didn't know which."

At Auburn, though, Ruffin took advantage of an opportunity that wound up having a profound impact on his choice of professions and was the first of many experiences that shaped the career of the 51st president of the State Bar of Georgia.

Under Auburn's cooperative education program, Ruffin was offered and accepted an internship in the Washington, D.C., office of U.S. Rep. Ben B. Blackburn. The year was 1973, and the nation's capital was riveted on the televised hearings of a special Senate committee investigating the Watergate scandal.

"I remember listening to those hearings when (White House assistant) Alexander Butterfield revealed the secret taping system," Ruffin recalled. "A lawyer for the committee asked him, 'Do you mean to tell me that every conversation the president has is taped?' I just remember that as being such a bombshell."

The rest, of course, is history—some of which Ruffin was able to witness first-hand. Still working in Blackburn's office in January 1974, Ruffin was on the House floor when President Richard M. Nixon entered to deliver what would be his final State of the Union address to Congress.

Capitol security wasn't as tight then as it is today. "Mr. Blackburn said, 'Buck, go over there and stand by the door,'" Ruffin recalled. "So I stood over there and watched Richard Nixon's final State of the Union message live and in person."

He worked on Blackburn's re-election campaign in 1974, arguably the high-water mark for anti-incumbent sentiment in U.S. political history. Blackburn (who died June 27, 2013, at age 86) was unseated by Elliott H. Levitas in that election, but his background in the legal profession had an influence on Ruffin, as did Ruffin's interaction with fellow campaign committee members who were attorneys, including Wendell K. Willard, now chairman of the Georgia House Judiciary Committee and the 2013 recipient of the State Bar's Distinguished Service Award; Gary R. Smith, a longtime professor at Emory Law School; and L. Jack Swertfeger Jr., a well-respected real estate attorney and former State Bar Executive Committee member.

After his time in Washington, Ruffin said, "in all likelihood, I wanted to be a lawyer." His front-row vantage point during the Watergate era taught him "there's a right way and a wrong way to do anything. It made me want to do things in the right way. If I was going to be a lawyer, I wanted to be an ethical lawyer."

It would turn out to be only the first of many learning experiences that paved the way for a successful legal career.

Photo by Zach Porter Photography

Ruffin had no close relatives who were lawyers, but a number of friends of the family who were. During his Christmas holidays in December 1975, Ruffin worked with Duncan Graham and Thomas B. Wells at the Graham & Wells law firm in Vidalia. "Tom let me hang around with him during the day; I went with him to court, and he and Mr. Graham let me sit in on meetings with clients," he said. "It was the first time I had been around a law office." That relationship's circle was completed on June 22 of this year when Wells, now a U.S. Tax Court judge, administered the oath of office and installed Ruffin as State Bar president during the Annual Meeting at Hilton Head Island, S.C.

While completing a business administration degree in economics at Auburn, Ruffin was elected president of the student body. That personal taste of politics and leadership, he said, was a "fascinating experience" that included being able to serve as an ex-officio member of the university's Board of Trustees, allowing him to meet the political leaders of Alabama, including the controversial Gov. George Wallace. He was also able to meet and talk extensively with the former Black Panther leader Eldridge Cleaver.

He entered Emory University School of Law in the fall of 1977. "I remember that I was not a very happy law student," Ruffin said. "I got so tired. It was not a pleasant experience that first year. But then I got involved in moot court and began to get the hang of it. Things improved, as I sort of figured out how to study efficiently. My grades improved dramatically, and by the time I left I was a happy camper."

Ruffin's first job out of law school was with the prominent Atlanta firm of Troutman Sanders, where he met and was able to learn from "some top-notch people there," including John J. Dalton, Daniel S. Reinhardt, Donald W. Janney, William N. Withrow Jr. and others.

"I had a great time working there, and they let me do some things that I'm not sure someone in that position today would be afforded the opportunity, such as taking depositions and having certain research responsibility," Ruffin said. One case in particular that Ruffin recalls involved Troutman Sanders client Atlantic Records, which was being sued by a recording technician to stop the production of an album because he was not receiving appropriate credit for his work.

"It was an album called 'Love Keys' by Eddie Kendricks, a former member of the Temptations as I recall," Ruffin said. "I don't know in the early 1980s how much of an intellectual property practice there was in Georgia. I hadn't taken any courses on it in law school."

Ruffin said his superiors instructed him to research the issue and find a way under the copyright laws to declare that it was not a problem. "I looked at Dan Reinhardt, who is still a friend today, and said, 'Dan, I don't know the first thing about copyright law,' and he told me, 'That's OK, you'll learn,' turned around and walked away."

Ruffin spent the next three days feverishly poring over the copyright laws in the U.S. Code and found a possible remedy that would not halt production of the album. "In that section, you could preserve your right for things to be changed later on. He could file alternative identifying material with the copyright office. And, lo and behold, my recollection is that's what the court decided, using the very language that I had literally stumbled upon."

From that case, Ruffin said, "I learned very early on that if a lawyer was thorough in his gathering of the facts and in his research of the law, he could beat someone who was a lot smarter but maybe wasn't as industrious. In other words, a hard work ethic could overcome superior intelligence, as long as you were willing to put in the hours. It was a big lesson."

Ruffin's stint at Troutman Sanders was to have become permanent when he completed a clerkship with U.S. District Court

Photos by Sarah I. Coole

(Left to right)
1. President Charles L. Ruffin surprised his wife Sally with an engraved apple and resolution to honor her retirement after 26 years of teaching. 2. President Charles L. Ruffin, pictured with his sons, Chase, Ben and William.
3. President Charles L. Ruffin and wife Sally enjoy a dance together at the Inaugural Gala.
4. Sally and President Charles L. Ruffin with their daughters, Emily and Annie.

Judge Robert E. Varner in the Middle District of Alabama, who was based in Montgomery but also held court in Opelika, Dothan and, on at least one occasion, Selma.

"He was just a quintessential Southern gentleman, a big man with a big, booming voice," Ruffin said of Varner. "He had been on the bench for about 10 years at that point and inherited a number of cases. One of these involved Judge Frank Johnson's ruling that the prison system in Alabama was overcrowded. It fell to Judge Varner to enforce the court's order."

Varner decided to order the state's prison officials to release certain nonviolent inmates. Once before, he had taken that action, and it had been appealed to the Supreme Court. He was considering doing that again.

"I remember that I was not philosophically inclined that way," said Ruffin. "I didn't feel that federal judges ought to be telling state officials whom to release from their prisons. I suggested to him the proper thing to do was impose a monetary fine on the state, stiff enough to encourage the conduct that he wanted. The 11th Circuit eventually said that you cannot force the release of particular prisoners, but that a fine would be more appropriate. During that period, the governor and the attorney general would be in and out of Judge Varner's chambers quite often. For a little guy from Vidalia, Ga., that was intriguing stuff. It was a fabulous experience."

Ruffin fondly recalls the judge's rule that every motion made in his court would be ruled on within 30 days. "We kept a calendar to rule on fully briefed and argued motions every 30 days. We had to have an order ready in his office to rule on any motion in 30 days. When he would have a hearing, bench trial or oral arguments, he would ask for briefs in advance, and they would be reviewed. A lot of times after a hearing or trial, he would just take time to confer with clerks, who had reviewed case law in advance, and then rule before the parties left the courthouse. As law clerks, we would take copious notes. You'd better have very good notes if you worked for him. He would consider the facts, consider the law in the trial briefs and then come back and rule. Win or lose, the lawyers would always appreciate the fact that there was no long period to await the rulings."

Less fondly, Ruffin recalls that Varner would receive calls that threatened his life. One evening, Ruffin fielded one of those calls in his office. Realizing that he was in front of a window, he got up and moved to another location.

"It impressed me that despite that kind of threat, he proceeded to do what he thought was exactly right," Ruffin said. "It was another seminal moment for me: regardless of public reaction, the judge has a job to do, and that is to apply the law."

After a year in Montgomery, Ruffin decided he needed to move back closer to his aging parents. Born in Savannah in 1954, Ruffin was raised in Vidalia by Mr. and Mrs. M.W. Ruffin. His father worked for the U.S. Forest Service and later became a private professional forester, and his mother worked with the local office of the Georgia Department of Veterans Service. "They were both wonderful, active parents who always cared about their families, friends and neighbors," he said.

"When I first remember Mother working for the VA, they had a sign that listed the wars that made you eligible for benefits. It started with the Spanish-American War and included the Boxer Rebellion. There were still some old codgers around from those times. I would give anything to have that sign now."

Ruffin's mother worked with the department throughout his formative years, which he said piqued his interest in veterans' affairs—an interest that would benefit him decades later.

Moving back closer to home, Ruffin settled in Macon and went to work for Jones, Cork & Miller. Still early in his career, he was given substantive responsibility in handling cases.

A memorable case for Ruffin involved the crash of a crop-dusting helicopter in Houston County that resulted in two fatalities. One of the victims was a teenage boy who was working a summer job with the crop-dusting business. The firm represented his parents in federal court against the insurance company, which was claiming an exclusion from coverage and had won a District Court decision.

Appealing the case in front of the 11th Circuit Court of Appeals and the Supreme Court of Georgia, Ruffin got that decision overturned, and the insurance company would have to pay damages. He also learned a valuable lesson when he discovered that the co-claimant in the case, the widow of the other victim, had failed to file her claim in a timely manner, which meant Ruffin's clients could take all the money. He went to Carr G. Dodson, a lawyer at the firm with whom he frequently worked, and pointed this out to him.

"I'll never forget this," Ruffin said. "He looked at me and said, 'We aren't going to do that. We are going to call our clients and tell them about it, but we are going to suggest the decent thing to do is share the money.' Our clients said, 'Of course, the man's wife needs the money more than we do.' This has been a constant reminder to me of the need for inherent decency and professionalism, for which I'll always be thankful. It takes a professional lawyer not to press every technical advantage that he has in a case. There are times when the laws of common decency take precedence over the technicalities of the law."

During Ruffin's 12 years at Jones, Cork & Miller, he occasionally handled eminent domain cases. He had more such opportunities after opening his own firm in Macon, where he maintained a general litigation practice for nine years.

"I enjoyed the eminent domain work more than anything else that I did," Ruffin said. "In 1997, we had a case where we got a good verdict, and I started focusing on that area."

He decided his practice needed an Atlanta office, so in 2003 he joined with Gambrell & Stolz, which later was merged into Baker, Donelson, Bearman, Caldwell & Berkowitz, PC. From both the Atlanta and Macon offices, Ruffin represents a wide variety of land owners, business operators and real estate investors in eminent domain, condemnation and inverse condemnation matters.

He is a board member and the Georgia representative in the national organization Owners Counsel of America and is the founding chairman of the State Bar's Eminent Domain Section. He has been selected as one of the Best Lawyers in America® in eminent domain and condemnation law since 2007, and Baker Donelson's Atlanta eminent domain and condemnation law practice, led by Ruffin, has been ranked Tier 1 by the *U.S. News*/Best Lawyers national ranking of practices.

"My clients are large companies, nationally known, right down to the average guy," Ruffin said. "My feeling is that we pay enough in taxes to government, so that when government acts to take your property, they for sure need to be paying full, just and adequate compensation."

Chairing the Eminent Domain Section was Ruffin's starting point in State Bar leadership. A past president of the Macon Bar Association, he later was elected to the Board of Governors of the State Bar. When 2008-09 Bar President Jeff Bramlett launched the Military Legal Assistance Program, he appointed Ruffin as its first committee chair. Presently, Ruffin also chairs the Bar's Constitutional Law Section.

"I saw the good things that we do and the good things that we could do and perhaps were not doing at the time," Ruffin said of those experiences. "I enjoyed being around these people, so I thought I would stick around."

Ruffin said a substantial portion of his time away from the office is devoted—along with his wife Sally, who retired as a public school educator this year—"to trying to guide our younger children into productive careers." William

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is completing his degree in history and political science at Georgia State University and just recently completed an internship with Gov. Nathan Deal's Policy Office and is now working as an intern with the Charter Schools Commission of Georgia. Emily is completing her psychology degree at Georgia State University, and Ben, the youngest, is a journalism major at Auburn University and will begin writing for *The Auburn Plainsman* this fall. Chase just completed law school and is enjoying studying for the Bar exam, after which he will join Baker Donelson. Their older children are all on their own and doing well. Shaefer is a doctor completing a fellowship at Vanderbilt; Harrison is an attorney with Carlock Copeland; and Annie is an art therapist plying her trade on her one-year-old daughter, Stella.

Ruffin also spends time hunting quail and dove in the fall, and he is a self-described "history nerd," which will come in handy during this year, marking the 50th anniversary of the establishment of the State Bar.

Ruffin has declared 2013-14 as a year of "observance and celebration" of the Bar's first half century (see page 36), as well as the 225th anniversary of the ratification of the U.S. Constitution. He laments the results of a recent Gallup poll showing that 71 percent of Americans believe the Founding Fathers would be disappointed in today's United States—compared to 54 percent who felt that way in 2001.

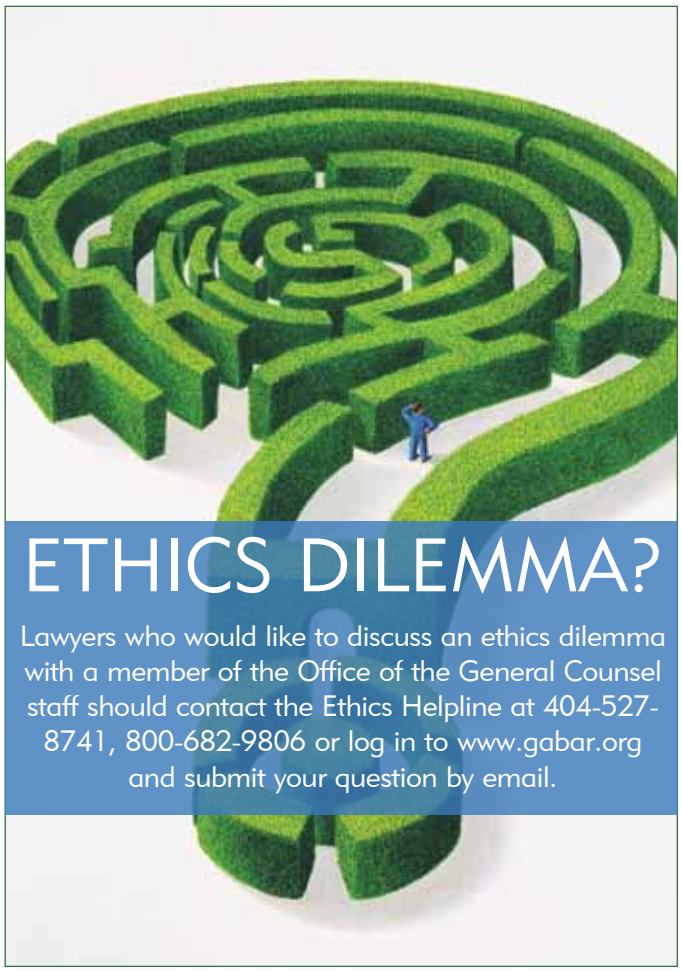
"I think we need to study the history of the founding of this nation, to determine whether we have been true to what the founders envisioned our country to be," Ruffin said. "We constantly need to go back and read those debates. It is the role of the judiciary to apply the law as it was intended to be applied historically and look at what it has to be applied to today."

Ruffin said the Bar has an educational responsibility in this regard. "We should lay all the facts out on the table and give people the opportunity to be educated on the competing versions of the interpretation of the Constitution," he said. "The more educated lawyers are, the more educated the population is, the more informed we are going forward."

Professionalism is a key component of restoring confidence in the legal system, Ruffin concluded.

"As lawyers and judges, we need to be sure that everyone is treated professionally," he said. "There are times when I have said things to other lawyers in the course of a case that I shouldn't have said. Lawyers and judges can turn a case into a war and make it miserable for everybody, but we also have the ability to make often unpleasant situations reasonably pleasant for everybody." GBJ

Linton Johnson is a media consultant for the State Bar of Georgia. He can be reached at linton.johnson@wordexpress.info or 404-285-2453.



2013 Distinguished Service Award Presented to Rep. Wendell K. Willard

by Derrick W. Stanley

The Distinguished Service Award is the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia.

During the Presidential Inaugural Gala at the State Bar's Annual Meeting on Hilton Head Island, S.C., Rep. Wendell K. Willard was presented with this prestigious award by 2012-13 President Robin Frazer Clark.

Willard was born and educated in Georgia. He earned his Bachelor's degree from Georgia State University and received his law degree in 1965 from the Atlanta Law School. He was admitted to the Bar in 1965, while he was serving in the U.S. Marine Reserves (1959-66) and as a Banking Trust Officer (1961-68).

Willard began practicing law in 1968. Willard has dedicated much of his career to public service. From 1973-77, he served as county attorney for DeKalb County. In 1986, Willard and his family moved to Fulton County where he has maintained a solo practice and serves as city attorney for the city of Sandy Springs.

During his 45 years as an attorney, he has also spent 13 years as a member of the Georgia House of Representatives. He was elected to represent part of north Fulton County in 2000 and has been re-elected for six two-year terms. Willard has served as chairman of the House Judiciary Committee since 2005. This committee handles wide variety of legislation related to law, courts and judges, as well as constitutional amendments. As an influential leader in the Georgia General Assembly, Willard has earned

Photos by Sarah I. Coole

State Rep. Wendell K. Willard (R-Sandy Springs), chairman of the House Judiciary Committee, was honored with the Distinguished Service Award, presented by 2012-13 State Bar of Georgia President Robin Frazer Clark.

Wendell K. Willard shares the honor with his wife, Vicki.

the respect of colleagues on both sides of the political aisle for his legal experience, intelligence and passion he brings to his leadership position for the benefit of the people of Georgia.

In the 2013 General Assembly Session, Willard provided essential leadership as primary sponsor of legislation to reform Georgia's juvenile code toward the goal of reducing the criminal recidivism rate among juveniles and enhancing the cost effectiveness of the juvenile justice system, which was approved by the House and Senate and signed into law by the governor.

Willard is also recognized for his successful sponsorship on behalf of legislation enacted in 2011, to modernize in a comprehensive manner the Code of Evidence used in Georgia's courts for the first time since 1863, among countless other legislative issues on which he has worked alongside and provided counsel to members of the State Bar of Georgia leadership and advocacy teams.

Willard also serves on the influential House Appropriations Committee, Ways & Means Committee, Rules Committee, Ethics Committee and Insurance Committee, as an ex-officio member of the House Judiciary Non-Civil Committee and as a member of the National Conference of State Legislatures Law and Criminal Justice Committee.

Throughout his 45 years of legal practice and 13 years as a Georgia House of Representative member, Willard has served the legal community not only as a practitioner of law, but also as a leader within the profession. He also serves the profession as a member of the Sandy Springs Bar Association and the Lawyers Club of Atlanta and the state and community as a member of the Georgia Conservancy, Georgia Conservation Voters and the Newton Park Foundation Board and as a past president of the American Cancer Society, DeKalb Chapter.

The legal community and the citizens of Georgia owe a great deal of thanks to Willard for his impeccable record of distinguished service to the public, the profession, the justice system and the state of Georgia.

The State Bar of Georgia does express its gratitude and appreciation to Willard for his many years of devotion to the legal profession, significant career accomplishments while promoting the cause of justice, upholding the rule of law and protecting the rights of all citizens by presenting him with the Distinguished Service Award. GBJ

Derrick W. Stanley is the section liaison of the State Bar of Georgia and can be reached at derricks@gabar.org.

It Takes A Village: The 2013 High School Pipeline Program

by Marian Cover Dockery

It takes a village to raise a child. Close to 100 volunteers gave their time, talents and resources to make the sixth annual Pipeline Program a success.

From May 28–June 7, 16 high school students from the metro-Atlanta area met at Atlanta's John Marshall School of Law to study grammar, writing and speech. Pierce Hand of the Teach for America Corps taught grammar and writing. Attorneys taught the speech classes and volunteered 90 minutes or more to evaluate students and help them improve their presentation skills. Georgia Diversity Program law firms and corporate law offices hosted students for lunch and mentoring on various topics including study skills, maintaining good credit, social media etiquette and dining room etiquette. The CEO of the Atlanta History Museum, Sheffield Hale, also led students on a tour of the Atlanta History Museum's exhibit on slavery.

The State Bar of Georgia Diversity Program, Atlanta's John Marshall School of Law and The Leadership Institute for Women of Color Attorneys, Inc., formed a partnership to fund the annual program.

The students participated in an annual oral and written competition hosted by Sutherland. Monetary awards were presented to the first, second and third place winners, and this year's graduating senior. This year's first place winner: Amber Johnson, a junior

Photos by Pierce Hand, Roger Washington and Marian Cover Dockery

Louise Sams, executive vice president and general counsel of Turner Broadcasting System, Inc., speaks to the Pipeline students before a one-on-one interview workshop. Students also toured CNN.

at Westlake High School; second place: Kara Wise, Riverwood International Charter School; and third place: Baili Wise, also a junior at Riverwood.

Diana Xu, a third year Pipeline student and graduate of Milton High School received a scholarship to the University of Southern California's business program in the fall. Diana aspires to be a lawyer. Her comments about the program are as follows:

> Pipeline is an amazing program and I have learned so much about speech, writing and grammar. . . . It has also taught me a lot about the importance of law and how to behave in a professional environment. I would like to thank all the teachers and volunteers who have participated in this program, as they have helped me so much!

More than 100 students have benefited from the Pipeline Program since its inception six years ago. High school students from all over Georgia and one from Illinois have participated in the grammar, writing and speech instruction taught by certified teachers including members of the Teach for America Corps and volunteer attorneys in Atlanta.

Scholarship funds for graduating students and prize money for winners of the oral and written competition have totaled more than $7,000 through the donations of the State Bar of Georgia Diversity Program and the Leadership Institute for Women of Color Attorneys, Inc.

As the program continues, we are tracking our Pipeline graduates who are students at Vanderbilt University, the University of Georgia, Georgia Tech and the University of Southern California, Berkeley.

Whether these students pursue a law degree is yet to be determined, but we realize the exposure of these students to the legal profession has provided each with an invaluable experience that will benefit them in whatever profession they pursue.

The 2013 High School Pipeline class poses in front of Atlanta's John Marshall Law School.

The 2013 winners of the oral and written competition *(left to right)* Juniors Amber Johnson, 1st place; Kara Wise, 2nd place; and Baili Wise, 3rd place.

Pipeline students tour the CNN Center. *(Front row, left to right)* Niki Phung, Alina Xu, Diana Xu, Ayannna Gaines, Amber Johnson, Felicia Jacques, Anais Mayo and Amani Dabney. *(Back row, left to right)* Eric Pinckney, Alexander Nichols, Ethan Staes, Nia Jones, Daniel Logan, Kara Wise, Nia Wynn-Sullivan and Baili Wise.

…"AND JUSTICE FOR ALL"

With GLSP's Help, Mr. Hinson Was Able to Stay in the Nursing Home.

Mr. Randy Hinson is a nursing home resident who is blind and wheel chair bound. He faced being discharged from the nursing home because his son took $15,000 from his bank account without his consent. The Department of Family and Children Services (DFCS) penalized Mr. Hinson because of the withdrawal, cancelling his Medicaid coverage for three months. The nursing home initiated discharge proceedings for non-payment. On Mr. Hinson's behalf, lawyers from the Georgia Legal Services Program appealed the Medicaid penalty and intervened in the discharge proceeding. Ultimately, DFCS agreed to waive the penalty because Mr. Hinson was not at fault, and because of the hardship that the penalty was causing. Once the Medicaid coverage was reinstated, the nursing home dismissed its discharge action.

"And Justice for All" 2013 State Bar Campaign for the Georgia Legal Services Program, Inc.

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The Georgia Legal Services Program (GLSP) is a 501(c)(3) nonprofit law firm. Gifts to GLSP are tax-deductible to the fullest extent allowed by law.

(The client story is used with permission. The photograph and name do not necessarily represent the actual client.)

Thank you to the law firms and corporations' general counsel, partners, associates, summer associates, law professors, in-house counsel, businesspersons, paralegals and administrators who volunteered as speech instructors, mentors and speakers, or provided administrative support to ensure the success of this year's program. A complete list of the volunteers may be found below. GBJ

Marian Cover Dockery is an employment discrimination attorney and the executive director of the State Bar of Georgia Diversity Program. For more information on the Diversity Program, go to www.gabar.org.

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OCT. 3, 2013

21st Annual State Bar of Georgia Diversity Program Luncheon and CLE

3 CLE with 1 Professionalism *(self-reporting)*

Welcome Reception scheduled for Oct. 2, location TBA

Keynote Speaker
Teresa Wynn Roseborough, executive vice president, general counsel and secretary, The Home Depot, Inc.

Visit www.gabar.org for more information and to register.

Questions? Contact Marian Cover Dockery at lexikonmcd@aol.com.

Thank You 2013 High School Pipeline Volunteers

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Carly Regan
Melissa Siegelman
Peter Dultsman

Kudos

Presiding Judge **Herbert E. Phipps** was unanimously elected as the new **chief judge** of the **Court of Appeals of Georgia**. He assumed the position in July, succeeding Chief Judge John J. Ellington. The Court's chief judge is responsible for the administration of the court, supervising the Court's fiscal affairs, initiating policies and representing the court in its relations with other courts, agencies of the government, the Bar and the general public. The term of chief judge of the Court of Appeals of Georgia is two years.

Leah Ward Sears, former chief justice of the Supreme Court of Georgia and current leader of **Schiff Hardin's** national Appellate Client Service Team, was elected a **fellow** of the prestigious **American Academy of Appellate Lawyers**. Academy membership is by invitation only and is limited to 500 members in the United States. Selected individuals must possess a reputation of recognized distinction as an appellate lawyer and have a practice that has focused substantially on appeals for the past 15 years or more.

Crawford & Company announced that **Allen W. Nelson** received the **2013 Revolutions Award for Outstanding Nonprofit Board Leader** for his service with the Atlanta Ballet. The award was presented by the Georgia Center for Nonprofits. Nelson is chairman of the board of Atlanta Ballet, a position he has held since 2009, and has been on its board since 2006.

Tina Shadix Roddenbery, founding partner of Atlanta law firm **Holland Roddenbery LLC**, was elected **treasurer** of the **Georgia Chapter of the American Academy of Matrimonial Lawyers**, founded in 1962 to provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law. Roddenbery, a fellow of the national organization for 14 years, has practiced family law since 1987.

Boyd Collar Nolen & Tuggle, LLC, announced the appointment of partner **Kathleen B. "Katie" Connell** to the **Georgia Commission on Child Support**. Connell was appointed by Gov. Nathan Deal to serve on the commission for a four-year term. She has served on the State of Georgia's Electronic Child Support Worksheet Task Force, working with fellow practitioners and judges to improve Georgia's Child Support Calculator.

McGough

McGinnis

Warner, Bates, McGough, McGinnis & Portnoy announced that partner **Barry McGough** was named the 2013 recipient of the **Joseph T. Tuggle, Jr. Professionalism Award**. Established in 1995, the award recognizes the attorney or judge whom the Family Law Section of the State Bar of Georgia believes best exemplifies the "aspirational qualities of professionalism." McGough is the second partner at the firm to receive the award in the last five years.

Partner **Jim McGinnis** was named to the **Atlanta Volunteer Lawyers Foundation (AVLF) Board of Directors**. AVLF was created in 1979 through the joint efforts of the Atlanta Legal Aid Society, the Atlanta Bar Association, the Atlanta Council of Younger Lawyers and the Gate City Bar Association to offer lawyers an opportunity to provide civil legal representation for the poor. Since then, AVLF has provided representation for indigent clients through the efforts of volunteer private attorneys, its student clinical program and various outreach programs.

Bryan Cave LLP announced that partner **Scott Killingsworth** was selected to receive the **Distinguished Legal Writing Award** by The Burton Awards for Legal Achievement for his article, "Modeling the Message: Communicating Compliance through Organizational Values and Culture." The Burton Awards program was established to honor the greatest achievements in law, with special emphasis on writing and reform. This specific honor is given to no more than 30 authors annually based on nominations submitted by the nation's 1,000 largest law firms.

Boyd Collar Nolen & Tuggle, LLC, announced the completion of the ***LexisNexis Practice Guide: Georgia Family Law 2013 Edition***. Written collaboratively by the firm's lawyers, the book provides Georgia family law practitioners with an overview on topics including marriage and divorce, family violence, paternity and legitimization, jurisdiction and venue, alternative dispute resolution and emerging issues.

Manatt, Phelps & Phillips, LLP, announced that **Richard S. Costigan III** was elected **vice chair**

of the **Finance & Administration Committee** for **CalPERS**, the largest public pension fund in North America and among the top 10 funds in the world. Costigan has served on the CalPERS Board as the representative of the California State Personnel Board (SPB) since January 2011. He was appointed to the SPB by Gov. Arnold Schwarzenegger in 2007.

Sutherland Asbill & Brennan LLP announced that partner **W. Henry Parkman** was elected to serve on **Board of Trustees** of **The Georgia Trust for Historic Preservation**. The Trust is one of the country's largest statewide, nonprofit preservation organizations, committed to preserving and enhancing Georgia's communities and their diverse historic resources for the education and enjoyment of all.

Alexander

Lord

Vayner

Kilpatrick Townsend & Stockton LLP announced that partner **Miles Alexander** was named a **2013 inductee** into the **IP Hall of Fame**. Inductees are chosen by members of the IP Hall of Fame Academy, which comprises individuals already inducted into the IP Hall of Fame and other acknowledged IP leaders.

Partner **Ty Lord** was elected to the **Georgia First Amendment Foundation Board of Directors**. The Foundation advances the cause of open government through education and advocacy. It strives to educate citizens, journalists and public officials concerning freedom of information and on open government and meetings laws in Georgia.

Associate **Sabina Vayner** was selected to participate in the **LEAD Atlanta Class of 2014**. In 2004, Leadership Atlanta founded LEAD Atlanta, as an initiative for emerging leaders between the ages of 25 and 32. Through personal and professional development and broad exposure to the community, LEAD Atlanta aims to equip young leaders early in their careers with the skills and knowledge needed to be effective leaders committed to the common good.

Long & Holder, LLP, announced that **Thomas L. Holder** became a member of the **Board of Directors** of the **Workers' Injury Law and Advocacy Group (WILG)**. WILG is a national organization made up of attorneys who represent the interests of injured workers who need expert legal assistance to obtain medical care and other relief under workers' compensation programs.

The Law Office of Laura E. Stevenson announced that **Laura Stevenson** was appointed **chief judge** of the **Municipal Court** for the new **city of Brookhaven** in February. Stevenson will also continue her private practice, which focuses on commercial litigation and employment law.

Hyatt & Stubblefield, P.C., announced that **Wayne S. Hyatt** was the recipient of the **Frederick S. Lane Award** given by The American College of Real Estate. The award is the highest honor the college can bestow. The Lane Award has previously been given only seven times since the college was founded in 1978 to honor the career contributions of distinguished real estate lawyers who have selflessly served the profession, the college and their community.

HunterMaclean partner **Ted Henneman** was recently honored with the State Bar of Georgia's **2013 A Business Commitment Pro Bono Award**, which recognizes exceptional business law pro bono contributions in Georgia. The State Bar of Georgia Access to Justice Committee and the State Bar of Georgia Pro Bono Project recognized Henneman for his service as a member of the advisory committee charged with creating a housing trust fund for the city of Savannah. He will be presented the award at a reception at State Bar of Georgia in October.

Carlock, Copeland & Stair, LLP, announced that **Marquetta J. Bryan** accepted a nomination to join the prestigious **Claims and Litigation Management Alliance (CLM)**. CLM is an alliance of insurance companies, corporations, corporate counsel, litigation and risk managers, claims professionals and attorneys. CLM's goal is to promote and further the highest standards of litigation management in pursuit of client defense.

Weissman, Nowack, Curry & Wilco, P.C., announced that **Jeff Schneider** was named **chair** of the **Real Property Law Section** of the **State Bar of Georgia**. The section is composed of attorneys practicing in the area of commercial and

residential real estate. For the past nine years he has served on the executive committee of the Real Property Law Section. He previously served as chair of the title standards subcommittee and the section liaison with the Georgia Insurance Commissioner and title insurance industry. Schneider recently chaired the 2013 Real Property Law Institute on Amelia Island, Fla., which experienced the highest participation in recent years.

> The **Georgia Association of Black Women Attorneys (GABWA)** announced the winners of its **2013 Founders Awards: Hon. M. Yvette Miller, Julie M. T. Walker, Karlise Grier, Chief Justice Carol W. Hunstein, Georgia Legal Services Program** and **Laverne Gaskins**. The Founders Awards were established in 2006 to recognize the accomplishments of women and organizations that embody the mission of GABWA and the legacy of its founders.

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Hunton & Williams LLP announced that **Rita A. Sheffey**, a partner in its litigation and intellectual property practice, received the **Charles E. Watkins Jr. Award**, the **Atlanta Bar Association's** highest honor. She also was presented a **Distinguished Service Award** for her work chairing the search committees for an executive director and a continuing legal education director. President of the Atlanta Bar Association from 2011-12, she has received numerous awards from the association, including the inaugural Rita A. Sheffey Public Interest Award in 2012, a Distinguished Service Award for pro bono service in 2010 and the Women in the Profession Section's Outstanding Woman in the Profession Achievement Award in 2005.

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Compass Law Group, LLC, announced that founding partner **Taylor Hanson Haley** was appointed to the **Georgia State Personnel Board** by Gov. Nathan Deal. She recently completed an appointment to the State Commission on Family Violence. Haley's practice areas include litigation and government as well as title insurance defense, zoning issues and real estate development projects.

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McKenna Long & Aldridge LLP announced the appointment of partner **Shari Klevens** as a member of the **American Bar Association's Standing Committee on Lawyer's Professional Liability**. Klevens began her three-year term in August. The committee provides a source of information on legal malpractice claim statistics, insurance for lawyers and malpractice prevention information and help.

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Ragsdale Beals Seigler Patterson & Gray, LLP, announced that partner **Herbert H. "Hal" Gray III** was elected a **fellow** of the **American College of Civil Trial Mediators**. The college, based in Orlando and founded in 1995, has 150 fellows nationwide. Fellows are elected to membership on the basis of their excellence, experience, skill, ethical standards and commitment to mediation as a method of dispute resolution.

On the Move

In Atlanta

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Brian A. Becker announced the opening of **The Becker Law Firm, LLC**, a solo practice dedicated to trusts and estates, business transactions and mediation. The firm is located at Horizon, Suite 1513, 3300 Windy Ridge Parkway, Atlanta, GA 30339; 404-590-7578; www.thebeckerfirm.com.

> **Chevelle D. Douglas** announced the formation of the **Douglas Law Group, LLC**. Previously, Douglas was employed with Cordell & Cordell, P.C., a men's rights firm. The Douglas Law Group, LLC, is a family law practice specializing in child custody disputes. The firm is located at 444 Highland Ave. NE, Suite 301, Atlanta, GA 30312; 678-534-2490; Fax 678-534-3462; www.douglaslawgroup.com.

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David Scott Thompson announced the opening of **The Law Offices of David Scott Thompson, LLC**. Thompson was previously a senior associate with Drew, Eckl & Farnham. He focuses his new practice on workers' compensation, employment law and personal injury. The firm can be contacted at P.O. Box 250142, Atlanta, GA 30325; 404-668-2572; www.davethompsonlaw.com.

>
Robinson

Spanos

Falk
Barnes & Thornburg LLP announced that **James R. Robinson** and **Peter Spanos** joined the firm as **partners** and **Roslyn Falk** joined the firm as **of counsel**. Robinson is a member of the corporate department and private wealth services practice

group. Spanos is a member of the labor and employment law department. Falk is a member of the corporate department. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; www.btlaw.com.

Cohen

Gaffney

Hall Booth Smith, P.C., announced that **Dana Cohen** and **Nathan Gaffney** joined the firm as **associates**. Cohen represents clients in the medical malpractice and long term care practice groups. Gaffney is a member of the medical malpractice, dental and criminal practice groups. The firm is located at 191 Peachtree St., Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.

Barbara E. Keon and **Deborah S. Ebel** announced the formation of **Keon & Ebel**. The firm focuses entirely on all aspects of family law including: divorce, custody, custody and support modifications, mediation, contempt actions, paternity and legitimation actions, guardian ad litem work, prenuptials and post-nuptials, family violence and protective order cases and sexual abuse in families. The firm is located at 115 Perimeter Center Place, Suite 1080, The Terraces South, Atlanta, GA 30346; 770-350-8582 or 770-350-8581; Fax 770-698-9658.

Walker

Bryant

Owens

Carlock, Copeland & Stair, LLP, announced that **Michael J. Walker** joined the firm as **of counsel**, and **Meredith A. Bryant** and **William K. Owens Jr.** joined the firm as **associates**. Walker joined the commercial litigation, education law and employment litigation teams, which includes the defense of public and private entities in employment-related litigation. Bryant joined the workers' compensation team. Owens is a member of the general liability and insurance coverage and bad faith litigation practice groups. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; www.carlockcopeland.com.

GABWA Celebrates 28th Year of Legal Talk Show

"Legally Speaking" was first produced by the Georgia Association of Black Women Attorneys (GABWA) in 1984 to educate and inform citizens about various topics in the law. Over the course of many years, "Legally Speaking" has grown into an award-winning talk show tackling tough issues such as voting rights, family law, bankruptcy and domestic violence. The show introduces top advocates in their respective fields to address viewers about various legal topics. In 2012, "Legally Speaking" began its 28th season with a new set, new network and new hosts, Kenya Johnson and Sonja Natasha Brown.

"By using television and social media, GABWA has been able to effectively fulfill its mission of advocating for women and children and empowering our community on a broader scale. The more citizens know about relevant legal issues, the better citizens they will be. Even though our show doesn't give legal advice, viewers learn the relevant issues in the fields of law that we address—making them better informed when they seek legal counsel," says co-host Kenya Johnson.

Recent show topics include immigration reform, tax matters, voting rights and how to apply for law school. Guests have included Sen. Renee Unterman (R-Buford) discussing the commercial sexual exploitation of children, DeKalb Solicitor Sherry Boston on domestic violence and Atlanta Municipal Judge Crystal Gaines addressing traffic safety laws.

(Left to right) Kenya Johnson and Sonja Natasha Brown, co-hosts of GABWA's "Legally Speaking."

"Legally Speaking" is seen in more than 1 million households in the metro-Atlanta area and airs the second Sunday of every month at 9:30 p.m. on the AIB Network which can be found on Comcast Cable (channel 5), AT&T U-verse (channel 6) and Charter Communications-Smyrna/Roswell (channel 22) and live online at aibtv.com. Past episodes can be found on YouTube under "GABWA Legally Speaking."

> **Bryan Cave LLP** announced the addition of four new **partners** to the firm's Atlanta office: **Scott Hobby, Charles F. Hollis III, Derek C. Johnston** and **Sean D. Christy**. All joined the firm to continue a pre-eminent international practice focusing on outsourcing. The firm is located at One Atlantic Center, Fourteenth Floor, 1201 W. Peachtree St. NW, Atlanta, GA 30309; 404-572-6600; Fax 404-572-6999; www.bryancave.com.

>
Green

Howard

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announced that **Jonathan E. Green** and **Dylan W. Howard** were elected as **shareholders** in its Atlanta office. Both Green and Howard concentrate their practices in the areas of business litigation and real estate litigation. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

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Ross

Green

Hunton & Williams LLP announced that **Trevor K. Ross** was promoted to **partner** and **Robert L. Green** joined the firm as a **senior attorney**. Ross advises on corporate finance, securities law compliance, mergers and acquisitions and general corporate matters, with a particular focus in the real estate, financial services and specialty finance industries. Green leads the firm's transaction processing industry initiative. Green has 15 years of experience working with financial services companies. The firm is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.

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Siskind Susser, P.C., announced that attorney **Zulma P. López** joined the firm as an **associate**. López assists clients in family and employment-based immigration, as well as assisting clients in removal or deportation proceedings. The firm is located at 200 Ashford Center N, Suite 220, Atlanta, GA 30338; 770-913-0800; Fax 770-913-0888; www.visalaw.com.

> **Ken David & Associates, LLC**, announced that **Vince Toreno** joined the firm as **chair** of the **civil litigation group** and **Alissa Atkins** was promoted to **co-chair** of the **workers' compensation group**. Toreno's practice focuses on civil litigation defense work, including medical malpractice and a general insurance defense practice. Atkins practices exclusively in the area of workers' compensation, representing employers, insurance carriers and third-party administrators throughout Georgia. The firm is located at 229 Peachtree St., Suite 950, Atlanta, GA 30303; 404-446-4488; Fax 404-446-4499; www.kendavidlaw.com.

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Littler Mendelson, P.C., added **Tamika Nordstrom** as a **shareholder** in the Atlanta office. Nordstrom was previously a shareholder with Ogletree Deakins' Atlanta office. She has significant experience in the area of employment litigation and arbitration. The firm is located at 3344 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-233-0330; Fax 404-233-2361; www.littler.com.

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Lewis Brisbois Bisgaard & Smith, LLP, announced that **Jonathan D. Goins** joined the firm as a **partner**. Goins specializes in the intellectual property transactional and litigation practice areas of trademarks, copyrights and trade secrets for a wide variety of industries including technology, new media, entertainment and sports. The firm is located at 1180 Peachtree St. NE, Suite 2900, Atlanta, GA 30309; 404-348-8585; Fax 404-467-8845; www.lewisbrisbois.com.

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Stewart

Seay

Felton

L. Chris Stewart, Quinton S. Seay and **Eugene Felton Jr.** announced the formation of **Stewart, Seay & Felton**. The firm handles cases involving personal injury, sexual assault, trucking and motor vehicle accidents, nursing home neglect, wrongful death, burn injuries and employment discrimination. The firm is located at 260 Peachtree St. NE, Suite 1001, Atlanta, GA 30303; 404-637-0240; www.ssfjustice.com.

>
Katz

Hamilton

Nelson Mullins Riley & Scarborough LLP announced that **David F. Katz** joined the firm as a **partner** and **Sara Hamilton** joined the firm as an **associate**. Katz leads the privacy and information security practice group. Before joining the firm, he spent seven years with Aaron's Inc. Hamilton practices pharmaceutical and medical devices litigation and employment law. The firm is located at 201 17th

St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.

> **Miller & Martin PLLC** announced that **Tate M. Keenan** joined the firm's Atlanta office as an **associate** in the litigation department. Keenan was previously with Robins, Kaplan, Miller and Ciresi. The firm is located at 1170 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; www.millermartin.com.

>
Durdaller

Richmond

Stites & Harbison, PLLC, welcomed attorneys **Paul Durdaller, member**, and **Valerie Richmond, counsel**, to the firm's Atlanta office. Both Durdaller and Richmond joined the creditors' rights and bankruptcy service group. The firm is located at 2800 SunTrust Plaza, 303 Peachtree St. NE, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

>
Portnoy

Garner

Siver

Eyo

The family law firm of Warner, Bates, McGough & McGinnis will be known as **Warner, Bates, McGough, McGinnis & Portnoy** following the addition of **Kathy L. Portnoy** as **partner**. Portnoy practices in the areas of domestic law and family litigation. **Kynna Duncil Garner, Keith D. Siver** and **Kem A. Eyo** joined the firm as **associates**. Garner practices in the areas of domestic law and family law. Siver and Eyo practice in the areas of domestic law and family litigation. The firm is located at 3350 Riverwood Parkway, Riverwood 100 Building, Suite 2300, Atlanta, GA 30339; 770-951-2700; Fax 770-951-2200; wbmfamilylaw.com.

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James-Bates-Brannan-Groover-LLP announced that **W. Collins Brown** joined the firm as an **associate**. His practice areas include tax law, estate and asset protection, tax-exempt organizations and business law. The firm is located at 3399 Peachtree Road NE, Suite 1700, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; jamesbatesllp.com.

> **Robert F. Glass** and **James A. Robson** announced the formation of **Glass & Robson, LLC**. Glass is former of counsel and Robson is a former associate with Cash, Krugler & Fredericks, LLC. Their practice focuses on plaintiff's personal injury and wrongful death matters. The firms is located at 3445 Peachtree Road, Suite 425, Atlanta, GA 30326; 404-751-4702; Fax 404-261-0024; www.glassrobson.com.

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Rollins Inc., a nationwide consumer services company, named **Elizabeth B. "Beth" Chandler vice president and general counsel**. Before joining Rollins, Chandler was vice president, general counsel and corporate secretary for Asbury Automotive. Rollins Inc., is located at 2170 Piedmont Road NE, Atlanta, GA 30324; 404-888-2000; www.rollins.com.

Eighteen Attorneys Chosen for Leadership Atlanta Class of 2014

Celebrating more than 40 years of developing leaders, Leadership Atlanta is the oldest sustained community leadership program in the nation. Together with an expansive network of distinguished alumni, Leadership Atlanta continues a proud tradition of connecting and inspiring leaders to strengthen metro-Atlanta's communities.

The core of Leadership Atlanta's programming is a signature nine-month, executive-level series. Seventy-five established leaders are chosen each year to represent a broad cross-section of metro-Atlanta. Through retreats, full-day seminars, service projects, discussion groups and community tours, members explore critical community issues, examine themselves as leaders and build relationships of trust and mutual understanding.

The 18 attorneys chosen for Leadership Atlanta Class of 2014 are: **Douglas Randall Balyeat**, Pratt Industries, Inc.; **Eric Leroy Barnum**, Schiff Hardin LLP; **Mary Terry Benton**, Alston & Bird LLP; **James Walton Boswell III**, King & Spalding LLP; **John C. Childs**, Georgia Pacific; **Noni Anika Lois Ellison Southall**, Turner Broadcasting Systems Inc.; **Jeffrey Brian Ellman**, Jones Day; **Candace Oxendale Fowler**, Kilpatrick Townsend & Stockton LLP; **David E. Gevertz**, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; **Craig Lewis Goodmark**, Goodmark Law Firm, LLC; **Hollister Anne Hill**, Troutman Sanders LLP; **Michael E. Hollingsworth II**, Nelson Mullins Riley & Scarborough LLP; **Gary Scott Hulsey**, U.S. Attorney's Office; **Sonjui Lal Kumar**, Kumar, Prabhu, Patel & Banerjee, LLC; **Natosha Oriana Reid**, Habitat for Humanity International; **R. Todd Silliman**, McKenna Long & Aldridge LLP; **Michael Joseph Sullivan**, Womble Carlyle Sandridge & Rice, LLP; and **Robert David Wolf**, Fulton County District Attorney's Office.

In Albany

Watson Spence LLP announced that **Chuck Wainright** returned to the firm as a **partner**. Wainright handles a full array of complex litigation matters, specializing in medical malpractice defense. The firm is located at 320 Residence Ave., Albany, GA 31701; 229-436-1545; Fax 229-436-6358; watsonspence.com.

In Columbus

Page, Scrantom, Sprouse, Tucker & Ford, P.C., announced that **Andrea J. Flandry** joined the firm as an **associate**. She represents individuals and corporations in the areas of family law and civil litigation. The firm is located at 1111 Bay Ave., Third Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; www.columbusgalaw.com.

In Cumming

Andrew Richman announced the opening of the **Richman Law Firm**. Richman concentrates his practice in the areas of DUI and criminal defense. The firm is located at 6150 Georgia Highway 400 N, Suite C, Cumming, GA 30028; 678-935-6268; www.georgiacrime.com.

In Dunwoody

Kelly Michael Hundley announced the relocation of his law practice, **Kelly Michael Hundley, LLC**. Hundley focuses his practice on providing advice, guidance and representation to business owners across the spectrum of employee relations issues in addition to his practice in the areas of local government law and general commercial law and litigation. The firm is located at Two Ravinia Drive, Suite 500, Atlanta GA 30346; 770-680-4391; www.kellyhundleylaw.com.

In Evans

Hull Barrett, PC, announced that **Michael E. Fowler Jr.** became a **shareholder** in the firm. His practice concentrates on representing corporate, banking and individual clients in transactions such as real estate closings, lease and contract negotiation and loan closings. The firm is located at 7004 Evans Town Center Blvd., 3rd Floor, Evans, GA 30901; 706-722-4481; www.hullbarrett.com.

Athens Justice Project Receives Emergency Grant from Georgia Bar Foundation

The Georgia Bar Foundation presented a $10,000 emergency grant to the Athens Justice Project (AJP), a local nonprofit organization that provides legal representation and other assistance to low-income individuals who are facing criminal charges.

AJP's aim is to empower its clients to break the cycle of crime and poverty and create lives as self-supporting and law-abiding, taxpaying citizens by providing legal representation, counseling and employment opportunities.

The Georgia Bar Foundation grant will enable AJP to continue to operate despite having lost more than 60 percent of its funding from traditional services since 2008 because of the economic downturn. AJP is in a restructuring process that involves partnering with another local nonprofit organization to ensure the project's future economic viability.

(Left to right) Georgia Bar Foundation Trustee and former President William D. Harvard of Evert, Weathersby & Houff; Athens Justice Project Secretary William M. Overend of McArthur, McArthur & Overend; and Athens Justice Project Executive Director Jenni Olson.

The Georgia Bar Foundation was created for charitable, religious and educational purposes in 1967. It is a 501(c)(3) organization named by the Supreme Court of Georgia in 1983 to receive Interest on Lawyer Trust Accounts (IOLTA) funds to support legal services for the poor, to improve the administration of justice, to promote professionalism in law practice in order best to serve the public, to aid children involved in the justice system and to advance the legal system through historical study.

The Foundation has a 19-member Board of Trustees, 16 of whom are appointed directly by the Supreme Court of Georgia and three of whom are members by virtue of being officers of the State Bar of Georgia.

In Gainesville

Charles Elton DuBose Jr. was named a **partner** at **Stewart Melvin & Frost**. Since 2000, DuBose has focused his practice on workers' compensation defense work, primarily representing employers, insurers and third-party administrators. The firm is located at Hunt Tower, Suite 600, 200 Main St., Gainesville, GA 30501; 770-536-0101; Fax 770-532-2171; www.smf-law.com.

In Norcross

Shyam K. Reddy joined **Euramax International, Inc.**, as **senior vice president, general counsel** and **corporate secretary**. Euramax is an international manufacturer of aluminum, steel, vinyl, copper and fiberglass products for original equipment manufacturers, distributors, contractors and home centers worldwide. In addition to being the company's chief legal and compliance officer, Reddy is responsible for leading and managing the real estate function and the human resources department at the company. Euramax International, Inc., is located at 303 Research Drive, Suite 400, Norcross, GA 30092; 770-449-7066; www.euramax.com.

Zimmerman & Associates announced that **Brad J. Zimmerman** joined the firm as an **associate**. His practice areas include criminal law, corporate law, contractual negotiation and litigation, domestic relations, personal injury and immigration. The firm is located at 6376 Spalding Drive, Norcross, GA 30092; 770-350-0100; Fax 770-350-0106; www.zimmermanatlantalaw.com.

In Peachtree City

Alan W. Connell and **DeAnn Wheeler** announced the opening of an additional office in Peachtree City of **Connell & Wheeler**, a family law and personal injury firm. The office is located at 401 Westpark Court, Suite 200, Peachtree City, GA 30269; 706-647-8180; www.connellwheeler.com.

In Saint Simons Island

Compass Law Group, LLC, announced that **Lindsey R. Stewart** joined the firm as an **associate**. Stewart has a general practice, with a focus on civil litigation and real estate matters. The firm is located at 300 Main St., Suite 301, Saint Simons Island, GA 31522; 912-268-4386; Fax 800-250-7761; www.compasslawgroup.net.

In Savannah

HunterMaclean announced that **Gary E. McClanahan** joined the firm as **counsel**. McClanahan is a member of the health care practice. He concentrates his practice on billing and reimbursement, federal and state regulatory compliance in the areas of fraud and abuse, self-referral, HIPAA/HITECH and Affordable Care Act compliance. The firm is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

In Chattanooga, Tenn.

Evans Harrison Hackett PLLC announced that **Scott M. Shaw** joined the firm as a **member**. His practice focuses primarily on business-based and property-related litigation at the state and federal levels. The firm is located at One Central Plaza, Suite 800, 835 Georgia Ave., Chattanooga, TN 37402; 423-648-7890; www.ehhlaw.com.

In Greenville, S.C.

Elizabeth M. Nelson joined **Nelson Mullins Riley & Scarborough LLP's** Greenville office as an **associate**. Nelson is part of the corporate, securities and tax team and focuses her practice on the tax aspects of real estate and corporate transactions. The firm is located at Poinsett Plaza, Suite 900, 104 S. Main St., Greenville, SC 29601; 864-250-2300; Fax 864-232-2925; www.nelsonmullins.com.

How to Place an Announcement in the Bench & Bar column

If you are a member of the State Bar of Georgia and you have moved, been promoted, hired an associate, taken on a partner or received a promotion or award, we would like to hear from you. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the *Georgia Bar Journal* will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, Chambers USA, Who's Who, etc.). Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not members in good standing of the State Bar of Georgia will not be printed. For more information, please contact Stephanie Wilson, 404-527-8792 or stephaniew@gabar.org.

In Norfolk, Va.

Darryl W. Lunon II joined the U.S. Department of the Navy's Office of General Counsel as an **assistant counsel** to **Naval Facilities Engineering Command–Mid-Atlantic** (NAVFAC MIDLANT). Lunon provides counsel on a full range of installation issues, concentrating on construction service acquisitions, architecture/engineering and base operations services, fiscal law, facilities maintenance, utility issues, real estate and public-private ventures. NAVFAC MIDLANT is located at 9742 Maryland Ave., Norfolk, VA 23511; 757-341-1410; portal.navfac.navy.mil.

In Raleigh, N.C.

Hedrick Gardner Kincheloe & Garofalo, LLP, announced that **Laura M. Forrest** joined the firm. Her practice is concentrated in civil litigation, commercial litigation, motor vehicle negligence, premises liability, construction litigation and insurance coverage disputes. The firm is located at 4011 Westchase Blvd., Suite 300, Raleigh, NC 27607; 919-719-3728; Fax 919-832-7425; www.hedrickgardner.com.

In Tallahassee, Fla.

Robert L. Moore Jr. was named **vice president/chief human resource officer** of **Tallahassee Memorial HealthCare**. In this role, Moore will advance the human resources program including policies, procedures and colleague activities. Tallahassee Memorial HealthCare is located at 1300 Miccosukee Road, Tallahassee, FL 32308; 850-431-1155; www.tmh.org.

In Tampa, Fla.

Butler Pappas Weihmuller Katz Craig LLP announced that **Curt Allen** joined the firm as a **partner**. Allen is active in the field of insurance coverage and extra-contractual matters. The firm is located at 777 S. Harbour Island Blvd., Suite 500, Tampa, FL 33602; 813-281-1900; www.butlerpappas.com.

Fulton DA Looks Toward Future with Youth Programs

by Kenya M. Johnson

"You cannot be what you cannot see." That is Fulton County District Attorney Paul Howard Jr.'s mantra and guiding force behind his passion for serving and mentoring youth. For almost eight years, Howard has taken the grim statistics regarding crime, truancy, literacy and graduation rates for minority youth and used them as fuel for four innovative youth programs: Legal Lives, Junior DA, the Perkeson Reading Program and Partnership for Perfect Attendance.

Legal Lives

Since 2000, Howard has sent 25-dedicated assistant district attorneys into fifth grade classes in eight inner-city schools to volunteer in a program called Legal Lives. The program was originally created by the Brooklyn District Attorney's Office in New York with great success. In Fulton County's version of the program, selected students learn about various aspects of the law and crimes common to their age. Topics like fighting in school, drug possession, theft and pulling school alarms are just a few of the scenarios addressed along with lessons on gun safety and what to do when found in harmful situations. By visiting classrooms, the assistant district attorneys serve as role models for the children—many themselves having grown up in similar inner-city school environments. Students often begin the program with negative views of law enforcement and by the end of their experience come full circle with a respect and understanding of the law and the need for a civil society.

Three exceptional students from each school that participated in the Legal Lives program were selected to attend an all-expense paid trip to Washington, D.C.

In addition to the legal teaching portion of the program, Legal Lives attendees practice for the program highlight—a mock trial competition against neighboring schools. The grand prize is the coveted DA's cup, a symbol of a job well done. The program culminates with the selection of three exceptional students from each participating school to attend an all-expense paid trip to Washington, D.C. There, they get to witness the law in action and learn how it relates to government. In June 2008,

35 students, teachers and attorney chaperones flew to the nation's capitol and visited sites such as the White House, Congress and the Civil War and Lincoln Memorials. It was an eye-opening experience for many students, several of whom had never flown on an airplane or even left the Atlanta area. It is Howard's hope that by exposing young people to the law and allowing them to participate as well as broadening their horizons through travel, the Legal Lives participants will walk away feeling empowered and positive about their future.

Junior DA

Where Legal Lives ends, the Junior DA program picks up. During the month of July, 25 students are selected to attend a four-week program designed to expose 12- to15-year-olds from Fulton County to law, politics and government. In the Junior DA program, the students get an overview of the criminal justice system and observe its components in action. Throughout this program, the students participate in various field trips including City Hall to meet the mayor; the Supreme Court of Georgia to hear oral arguments; the youth detention facility; Atlanta Police Headquarters and even a guest appearance on the Nancy Grace Show, hosted by Grace, a former Fulton County assistant district attorney. The students also observe courtroom proceedings and complete workbook activities that teach common legal vocabulary and explanations of law.

Upon entry into this program, students with an interest in the law are given navy blazers to wear to emphasize the importance of looking and acting professionally in the work place. Once the program is completed, the "junior DAs" are pinned at a special graduation and banquet with a junior district attorney's badge. It is a symbol of professionalism and recognition designed to engender self-respect and pride in the students.

In 2011, junior DA Jessica Maple of Sandtown Middle School solved a burglary in Jasper, Ga., using forensic techniques learned in the program. Solving the crime garnered national attention including appearances on CNN, Good Morning America and Fox News.

Perkeson Reading Program and Partnership for Perfect Attendance

The Perkeson Reading Program and Partnership for Perfect Attendance are two other youth projects from the Fulton DA's office designed to address the statistical correlation between third grade reading scores and truancy with criminal offenders. In the Perkeson Reading Program, assistant district attorneys mentor and tutor third graders from Perkeson Elementary School in hopes of increasing student's reading proficiency.

Fulton County Superior Court Judge Christopher Brasher speaks to a group of junior DAs.

"Once I found out that jails were being built based on third grade reading scores, I knew we had to do something," says Howard, who himself has gone into the school to read to children. "It was also startling to recognize that a large majority of our criminal defendants did not complete their secondary education," says Howard.

The district attorney subsequently partnered with his nephew, NBA superstar Dwight Howard and the Dwight Howard Foundation to give away bicycles to students who had perfect attendance in school. By rewarding Atlanta students for perfect school attendance, the DA's office hopes to send the message that by staying in school, students will be rewarded in life. Howard's visionary programs and his commitment to the youth of Fulton County is a legacy to be remembered.

Kenya M. Johnson is a senior assistant district attorney in Fulton County and director of youth programs. She can be reached at kenya.johnson@fultoncountyga.gov.

The State Bar of Georgia Handbook is available online at www.gabar.org/barrules/.

Conflict? What Conflict?

by Paula Frederick

"Thanks for signing me up to help with the poverty law hotline," your associate exclaims, collapsing into your guest chair. "I finally feel like a real lawyer! My client had an eviction warrant from NastyLandlord. I got them on the phone and threatened them with a counterclaim for the lousy conditions. They backed down, and the client has a zero balance. Case closed!"

"That's great, but ummm . . . did you know that NastyLandlord is a client of the firm?" you ask. "Senior Partner is going to blow a gasket! I hope we don't have to drop Nasty as a client because you now have a conflict with a pro bono client."

You let your associate sweat for a few painful minutes, then put her out of her misery. "Don't worry; I won't let Senior Partner chew you out. Lucky for you, the rules of professional conduct just changed—guess you'll never forget about running a conflicts check again," you gloat.

The Supreme Court of Georgia recently approved an addition to the Georgia Rules of Professional Conduct – Rule 6.5. It creates an exception to the rules governing conflicts of interest so that a lawyer volunteering at a courthouse, bar-sponsored kiosk or on a pro bono hotline and providing one-shot advice does not have to do a conflicts check before offering the advice.

In other words, if a lawyer does not *know* that she has a conflict with the pro bono client, she may render the advice.

The rule has several caveats: the lawyer must be working with a court-sponsored program or a program sponsored by a nonprofit organization. The client must understand that the representation ends after the consultation. The lawyer must provide the services with no expectation of being paid.

Once the representation ends the lawyer must treat the pro bono client as a former client for purposes of determining future conflicts, but when there is a conflict with the interests of the former pro bono client it does not have to be imputed to the rest of the law firm under Rule 1.10.

The rule is based upon the American Bar Association Model Rules and none of the more than 40 states that have adopted it have reported any problems with its implementation long-term.

Georgia's pro bono providers hope that the new rule will eliminate barriers to participation and increase the pool of volunteers. Let's hope so! GBJ

Paula Frederick is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.

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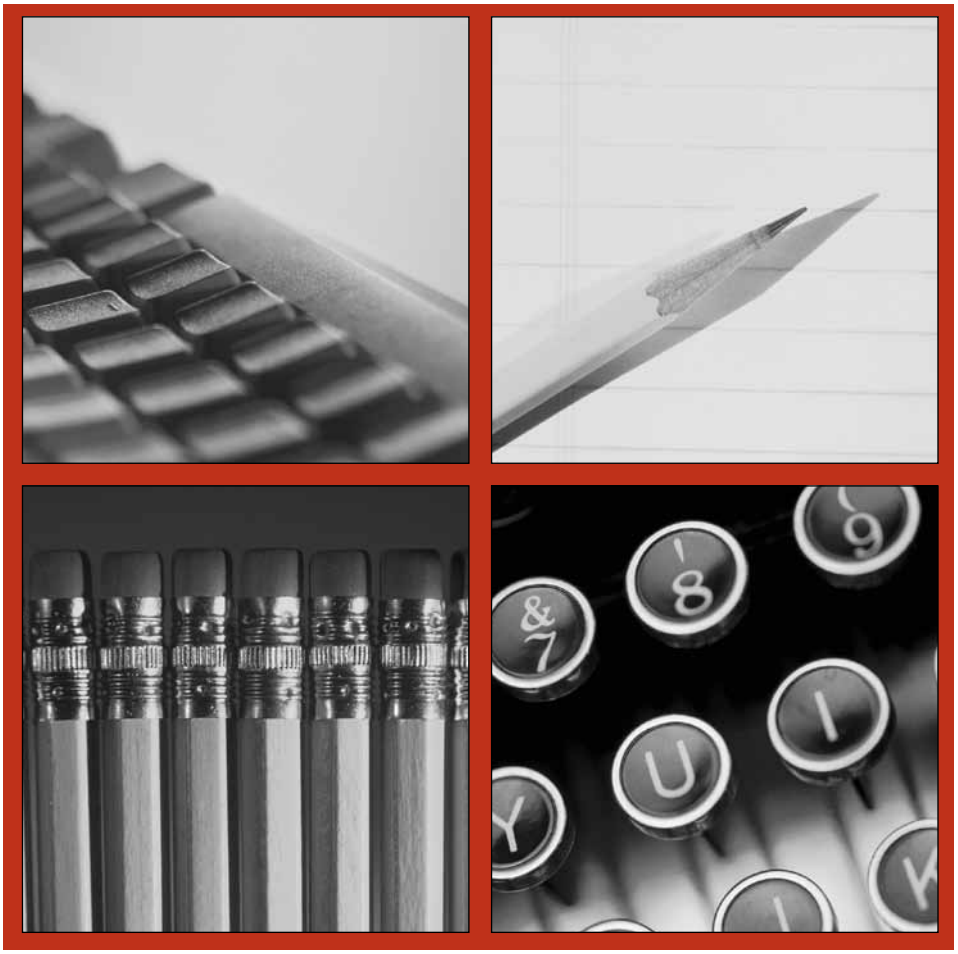

EARN CLE CREDIT

The Editorial Board of the Georgia Bar Journal is in regular need of scholarly legal articles to print in the Journal. Earn CLE credit, see your name in print and help the legal community by submitting an article today!*

Submit articles to Sarah I. Coole, Director of Communications,
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If you have additional questions, you may call 404-527-8791.

*Not all submitted articles are deemed appropriate for the Journal.
The Editorial Board will review all submissions and decide on publication.

Discipline Summaries

(May 1, 2013 through June 14, 2013)

by Connie P. Henry

Voluntary Surrender/Disbarments

John Ramsay Wall
Dunwoody, Ga.
Admitted to Bar in 2005

On May 6, 2013, the Supreme Court of Georgia disbarred attorney John Ramsay Wall (State Bar No. 142638). The following facts are admitted by default:

A client retained Wall in early 2011 to file a divorce action and paid him $750. Wall filed a divorce petition and negotiated temporary spousal support for her. In April 2011, the client paid Wall $2,202 for work previously done. In August the client provided him with dates she would be available for her deposition. Wall told her that he had served discovery and had not heard back from her husband's lawyer about her deposition. In October, Wall asked for $1,500 to respond to discovery requests and in selecting a custody evaluator. In December, the client learned that she had missed her deposition, that Wall had never filed the spousal support and visitation agreement, that her husband had served discovery in August and filed motions to compel and for sanctions and that Wall had not served any requests for discovery. Wall did not inform her of any of these matters and failed to communicate with her thereafter.

In another matter, a client retained Wall in February 2011 to file a divorce action and paid him $956. Wall filed the divorce petition in May. He failed to communicate with the client thereafter.

In a third matter, a client paid Wall $1,700 to provide representation in a divorce action. Wall failed to take any action and did not communicate with the client in any way.

The Court found in aggravation of discipline that Wall acted willfully and dishonestly in accepting a fee, then abandoning the clients' legal matters, and that he acted with a selfish motive.

Lynn McNeese Swank
Morrow, Ga.
Admitted to Bar in 1975

On May 6, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Lynn McNeese Swank (State Bar No. 498450). Swank filed her Petition in anticipation of the entry of a guilty plea to perjury in the Superior Court of Fulton County in March 2013. In 2010 Swank was arrested on charges she forged a Fulton judge's signature on several court orders.

Robert Emmett Maloney Jr.
Stockbridge, Ga.
Admitted to Bar in 2004

On May 6, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Robert Emmett Maloney Jr. (State Bar No. 468108). Maloney was convicted of bank fraud in violation of 18 U.S.C. § 1344.

Michael L. DiTano
Atlanta, Ga.
Admitted to Bar in 1995

On May 20, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Michael DiTano (State Bar No. 222850). DiTano was employed as in-house counsel

for a corporation that allowed him to perform outside legal work as long as he did not do so on company time and his work did not raise any conflicts of interest with company matters. DiTano began utilizing a law firm that performed legal services for the corporation to perform work on behalf of himself and his clients. An employee of the law firm allegedly altered the law firm's time records and submitted billings to the corporation for legal work performed on behalf of DiTano and his clients. DiTano approved those billings for payment by his employer knowing the work was not performed on behalf of the corporation.

Sidney Joe Jones
Aiken, S.C.
Admitted to Bar in 2008

On June 3, 2013, the Supreme Court of Georgia disbarred attorney Sidney Joe Jones (State Bar No. 734128). In 2011, Jones was convicted of 11 misdemeanors, including 10 violations of O.C.G.A. § 42-4-13(e), which prohibits the carrying of items for an inmate across the guard line at a jail without the knowledge and consent of the jailer. Jones smuggled tobacco or tobacco-related items to his client on several occasions, and smuggled packages with unknown contents. The 11th misdemeanor was for disorderly conduct in violation of O.C.G.A. § 16-11-93. Jones was convicted of these misdemeanors in the Superior Court of Richmond County upon his entry of a guilty plea.

In mitigation, the special master found that Jones had no prior discipline or criminal history, that he expressed remorse and that he was relatively inexperienced in the practice of law. Jones argued that he acted without a selfish motive, that he took responsibility for his wrongdoing since initially lying to law enforcement, and that he had already been punished by his interim suspension to practice law in South Carolina. In aggravation, the Court found repeated deceit, dishonesty, breaches of trust and disregard for safety and the security of the jail.

Suspensions

Ashley A. Davis
Cartersville, Ga.
Admitted to Bar in 2003

On May 6, 2013, the Supreme Court of Georgia suspended attorney Ashley A. Davis (State Bar No. 207475) for 30 months with conditions for reinstatement. Davis was convicted of unlawful possession of methamphetamine, and was sentenced as a first offender to probation for three years. Davis expressed remorse, took full responsibility for her actions and is in counseling to deal with difficult issues in her personal life. She had no prior discipline, cooperated with disciplinary authorities and no harm was done to any of her clients. At the conclusion of her 30-month suspension, Davis must fulfill several conditions, including the successful completion of her first offender probation and certification that she has no mental or emotional health condition that would adversely affect her ability to practice law.

Eric Charles Lang
Atlanta, Ga.
Admitted to Bar in 1990

On May 6, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Eric Charles Lang (State Bar. No. 435515) and suspended him for 12 months for misappropriation of trust funds. Reinstatement is conditioned upon a showing of fitness to resume the practice of law. Lang was retained to defend a client in a lawsuit on a note. The lawsuit was settled in February 2011. Lang's law firm was experiencing financial problems and he drew upon the funds in his trust account. Lang was unable to pay the plaintiff. He sent transmittal letters to opposing counsel purporting to enclose a settlement check that he did not enclose. In December, Lang sent copies of the letters to counsel, but again failed to enclose a check. The mailings made it appear that the check had been lost or inadvertently omitted. Lang also made the false impression that an overnight package had been sent to opposing counsel. Lang finally tendered a check, but it was dishonored for insufficient funds.

In mitigation of discipline the Court noted that Lang paid the settlement amount and attorney fees and that he made full restitution to his client. Lang has been under psychiatric care for anxiety for the last 10 years and has been treated for major depression and symptoms of bipolar disorder. Aside from the wrongdoing, Lang has a good reputation and has done extensive pro bono work and has volunteered in his community, both professionally and personally. Lang showed remorse for his wrongdoing, and offered apologies to his client, the State Bar and the Court. Lang's misappropriation of trust funds was not for his own pleasure, but to pay the creditors and employees of his firm. He now only assists other lawyers with their legal services.

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Lang has arranged to speak to other lawyers about his wrongdoing and the problem of impaired legal counsel at a continuing legal education seminar.

In aggravation the Court found not only the misuse of client funds by Lang, but also a prolonged effort to deceive his client, his opposing counsel and their client about the status of the settlement payment.

Arjun S. Kapoor
Macon, Ga.
Admitted to Bar in 1995

On May 20, 2013, the Supreme Court of Georgia suspended attorney Arjun S. Kapoor (State Bar. No. 407514) for a period of six months. After someone made allegations of family violence against Kapoor, he learned that the accuser may have been in contact with a local crisis center. Kapoor wanted to obtain any documents in the center's possession relating to the accuser, but the center refused his request. Kapoor returned to the center with a subpoena that he obtained from the court through misleading representations. He did not serve the subpoena on any other party or counsel. Kapoor did not advise the center's executive director that there was no case pending. The Court found that Kapoor knowingly abused the court process to obtain the upper hand in a personal matter and that he acted with a dishonest or selfish motive.

Public Reprimand

Reed Edmondson Jr.
Covington, Ga.
Admitted to Bar in 1996

On May 6, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Reed Edmondson Jr. (State Bar. No. 239914) and imposed a Public Reprimand with several conditions to be met within six months. Edmondson was hired by a client to defend a civil suit involving the client's alleged breach of a home equity loan. At the time he was hired, the plaintiff had filed suit and had moved for summary judgment, so Edmondson filed discovery responses and successfully defended the motion. The plaintiff filed a subsequent motion for summary judgment, but Edmondson decided not to file a response. He failed to tell the client and did not advise the client to hire other counsel, and did not withdraw from representation. The Court awarded summary judgment to the opposing party, but Edmondson did not inform his client. The client received correspondence, which included a notice of garnishment, from opposing counsel. He furnished the correspondence to Edmondson but Edmondson failed to respond. Eventually, he filed a traverse to the judgment and offered to represent the client with no additional fee.

In aggravation of discipline the Court found that Edmondson had two prior disciplinary matters. In mitigation, the Court noted Edmondson's remorse, his lack of a dishonest or selfish motive, and his full disclosure and cooperation with the State Bar. He did not cause his client financial harm and he acted to rectify his actions.

Review Panel Reprimands

Johnnie Mae Graham
Albany, Ga.
Admitted to Bar in 1981

On May 6, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Johnnie Mae Graham (State Bar. No. 304625) and imposed a Review Panel Reprimand. A client hired Graham to represent him regarding claims against an insurance company. Graham did not timely file the law suit. Ultimately, she did not file any pleadings against the insurance company. The client also filed for bankruptcy. Graham was not prompt in responding to inquires or a subpoena from the bankruptcy trustee. Eventually, she entered into a consent order and paid $2,000 to the trustee's law firm for the expenses of bringing the motion to compel and for contempt. She also paid $1,500 to her client and the trustee on the trustee's motion to disgorge fees. Graham had no prior discipline, had no dishonest or selfish motive, made full disclosure and cooperated with the State Bar.

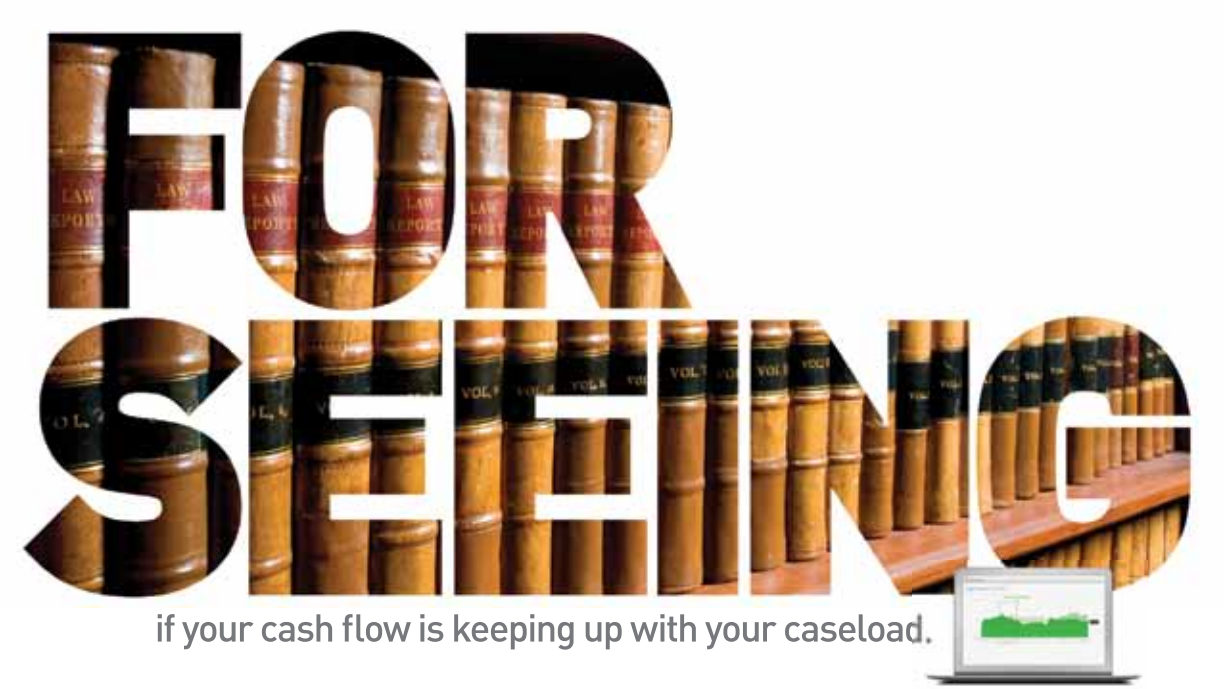
Michael René Berlon
Grayson, Ga.
Admitted to Bar in 1993

On May 20, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Michael René Berlon (State Bar. No. 054822) and imposed a Review Panel Reprimand. Berlon represented a client in regard to child support. The client asked Berlon to file an action for change of custody but learned that he had never filed the action when he appeared for a hearing on a child support contempt matter. Berlon then filed the change of custody action. Additionally, Berlon remitted $2,500, which he had been given by the client to a private investigator. The client had a contractual dispute with the investigator and did not authorize the payment. Berlon and the client agreed to terminate their relationship, and the client later dismissed the custody action. In mitigation of discipline Berlon had no prior discipline and refunded the $2,500.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since May 1, 2013, no lawyers have been suspended for violating this Rule and one has been reinstated. GBJ

Connie P. Henry is the clerk of the State Disciplinary Board and can be reached at connieh@gabar.org.



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Creating Your Post-Summer Practice Management Reading List

by Natalie R. Kelly

Summer has once again flown by, but in case you have a few more lazy days awaiting you, you can take advantage of some of the new arrivals in the State Bar's Law Practice Management Resource Library. Bar members, their legal staff and law students can check out up to three titles at a time and keep them for two weeks. Contact Kim Henry, kimh@gabar.org or 404-527-8772; or Pam Myers, pamm@gabar.org or 404-526-8621, for more information on this service.

Here are some of the latest books we've received. You can check them out by stopping by our office, calling or emailing our staff, or filling out the online check-out form on the Law Practice Management Program page of the State Bar's website.

The Essential Little Book of Great Lawyering just sounds like a must read, doesn't it? If you think you'll zoom through the pages of that one, others from the "Little Book" series include: *The Little Book of Skiing Law; The Little Book of Boating Law; The Little Book of Movie Law; The Little Book of Cowboy Law; The Little Book of Basketball Law; The Little Book of Space Law*; and last, but certainly not least, *The Little Book of BBQ Law.*

If you are planning a fall law firm retreat focusing on internal office procedures, you might have your staff read *The 2013 Legal Assistant's Complete Desk Reference: A Handbook for Paralegals and Assistants.* And if you're wondering how the new economic climate affects you in a small town, take a peek at *Practicing Law in Small Town America.*

If you'd prefer to work on your mobile lawyering skills as summer winds down, you might find solace in the pages of *iPad in One Hour for Lawyers*, *Android Apps in One Hour for Lawyers*, *iPad Apps in One Hour for Lawyers*, *The Paperless Law Office* or *Google Gmail and Calendar in One Hour for Lawyers*. And if you admit you're still a little scared about having your client information out on the Internet for anyone to see, you can check out our new copy of *Information Security and Privacy: A Practical Guide for Global Executives, Lawyers and Technologists.*

For the social media aficionado wannabe's among you, be sure to check out *Facebook in One Hour for Lawyers* or *Twitter in One Hour for Lawyers*. We also have copies of *LinkedIn in One Hour for Lawyers*. Related titles arriving soon include *Blogging in One Hour for Lawyers, iPad in One Hour for Litigators* and *Social Media as Evidence: Cases, Practice Pointers and Techniques*.

The aforementioned are newer titles in the library, but you can always check out our full listing online. Additionally, the library includes reference material that can only be viewed in our office: a running catalog of periodicals, DVDs and audiotapes on topics specific to law practice. If you don't want to face having to be placed on our waiting list for checkouts, you can order up many of the titles at a discount. The Law Practice Management Program offers a State Bar of Georgia discount for any of the ABA publications whether you are a member of that organization or not. Use the code **PAB5EGAB** for a 15 percent discount. You can get a quick peek at new titles and any special discounts at the very bottom of the Law Practice Management page. (The easiest way to access the LPM page is by clicking on the "Attorney Resources" drop down menu on the State Bar website and selecting "Practice Management.")

The Law Practice Management Resource Library is one of the most widely used resources in our department, and we know it will continue to be one of the better ways that we help members with their office management needs. If you have ideas about resources to add to the library or the program in general, please feel free to contact us. Happy reading! GBJ

Natalie R. Kelly is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at nataliek@gabar.org.

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Merging Law, Largesse and Aviation Into A Meaningful Career

by Bonne Davis Cella

Dubbed "Air Marshal and Commander of Bar Force One" by State Bar Past President Ken Shigley, Randall H. "Randy" Davis is a Cartersville attorney who volunteers his time, his Beechcraft Duke and his aviation acumen to save State Bar leaders hours of travel time. Taking the "Duke" from Atlanta to the Henry Tift Myers Airport [1] in Tifton takes about one halcyon hour above the fray rather than almost three hours of negotiating the endless work zones of I-75.

Representing the Cherokee Judicial Circuit, Davis has served on the Board of Governors for five years. He took the seat formerly occupied by State Bar Past President Lester Tate, who is a valued colleague and frequent flyer of Davis'.

"Randy is an excellent lawyer and Phoenix Air is fortunate to have him as their general counsel," said Tate. "He is a skillful pilot who flew me all over the state during my year as president. More than that, he is an outstanding human being ready to help where there is a need. He is a kind and generous friend."

Photos provided by Randy Davis

Davis in the Phoenix Air Gulfstream III cockpit after having landed in Abu Dhabi from Cartersville.

Davis is vice president and general counsel of Phoenix Air Group, Inc., in Cartersville. Phoenix Air is a worldwide provider of specialized jet aircraft services to government and industry clients.[2] His colleagues at Phoenix Air have been great in their support of his State Bar activities. "I am proud to be associated with Phoenix Air and consider it to be one of the best and most unique aviation companies in the country," Davis said. An active pilot, with more than 15,000 hours of flight time, Davis holds FAA Airline Transport and Flight Instructor Certificates as well as a helicopter rating. He is qualified as an international captain for the Learjet, Citation and Gulfstream aircrafts. He made his first transoceanic flight as a sophomore at Amherst College delivering a small twin-engine aircraft from Boston to London.

Prior to joining Phoenix Air, Davis was a partner with the firm of Neely & Player, focusing on aviation defense. He speaks warmly of his former colleagues and worked closely with his senior partner, the late Ned Neely. "Ned was a first class human being and he taught me, early on, how to be a lawyer. I continue to miss him and I still think of him almost every day." Davis also practiced with David Boone, an Atlanta attorney and pilot. "He is another fine and compassionate lawyer who means a great deal to me."

Aviation plays a significant role within Davis' family. His father, Lester Davis, built a small airfield on their farm on Long Island, N.Y., in the 1950s and passed on his love of flying to his children—and to their children. Last year, Lester Davis received the Wright Brothers Master Pilot Award for completing more than 50 years of safe flight operations.

"Between his children and grandchildren, some of us are flying small propeller planes and some of us are flying jets, but regardless of the type of airplane, my father's profession-

The Phoenix Air Gulfstream III sits at the Gibraltar Airport, with the Rock of Gibraltar as an impressive backdrop, after Randy and crew made a record-breaking seven-hour nonstop flight from the Cartersville-Bartow County Airport.

The Phoenix Air Learjet, which Randy flew on 9/11, sitting on the ground at an Air Force base (military C-17 in the background).

Randy and daughter Bethany on a CDC humanitarian relief mission to Haiti with the Phoenix Air Gulfstream III in the background.

Randy in the back cabin of the Phoenix Air Gulfstream III with his penguin passengers, somewhere over the Pacific.

alism and safety consciousness continues to be an example to all of us," Davis said.

Davis' brother, Lee C. Davis (Atlanta attorney) enjoys recreational and business flying as does their brother Whitney Davis. Lee's 17-year-old daughter Lane received her FAA Sport Pilot License in a 1946 Piper Cub. Davis' daughter Bethany learned to fly on her father's lap. During college breaks she flew as co-pilot with him on many Phoenix Air international missions. After obtaining dual degrees from Georgia Tech (an MBA and a Master's in Aerospace Engineering), Bethany is a sales engineer with Gulfstream and is married to Savannah attorney, Tyler Love, who is also a private pilot. Davis' daughter Amelia is an elementary school counselor in North Georgia. "She does a wonderful job helping her students through difficult times in their young lives and works hard to maximize their future potential," Davis said. Amelia's husband, Dmitri Kouznetsov, is a student pilot and is completing his MBA at Georgia Tech.

"My wonderful wife Deborah has been most gracious over the years to put up with my travel schedule, as well as to travel with me when circumstances permit." Deborah works in disability management for Georgia Power and is a veteran of the "Pinch-Hitter" course that teaches instruction in aircraft control, navigation and radio usage.

When asked about some of his more memorable missions with Phoenix Air, Davis cited his flight on 9/11. It is possible that he and his co-pilot were the only civilian pilots in the air on that horrific day. Without hesitation, Davis accepted the duty when Phoenix Air was asked to fly emergency management officials from various locations across the southeast to New York's Stewart Air National Guard Base (about 60 miles north of Ground Zero).

While the Learjet 35 was prepared for takeoff, Phoenix Air obtained a unique transponder code from the North American Defense Command (NORAD) providing clearance for the special flight. "When you're up in a sophisticated or high performance aircraft, usually you're told what altitude and what routing. It's certainly highly unusual to be told 'any altitude, any direction,'" Davis said. He covered more than 2,000 miles between the evening of Sept. 11 and the early morning of the next day delivering emergency response teams who worked in logistics, counseling and mortuary services. On the way home to Cartersville, he heard the friendly voice of an Atlanta air traffic controller: "There are 20 of us down here doing nothing but watching you folks return to Cartersville. Good to have you back." Of the experience Davis said: "The desire to take practical and immediate action to help out was strong on the afternoon of Sept. 11. I am grateful that our company could do something meaningful on that terrible day."

Davis has flown into at least 50 countries and at one point transported a long-deceased Catholic saint in a sarcophagus on a world tour. He delighted in flying a Gulfstream III across the Pacific with a cargo of penguins. "We had to keep the cabin temperature below 40 degrees to keep them happy. Their handlers took turns taking care of the penguins in the back, and then coming up to the cockpit for a few minutes to get warm." Davis flew rocket and satellite parts to space centers in Cape Canaveral, Kazakhstan and Cayenne (French Guyana). He crewed Phoenix Air's first three flights through the new Russian Federation and was able to use his language skills in Russian. However, Davis said his most rewarding Phoenix Air missions are providing Air MedEvac services to injured U.S. troops and flying home other Americans who become ill or injured in foreign lands. In the Southeast, he donates his time flying indigent patients and abandoned pets seeking new homes.

While not on missions like these, Davis, the attorney, stays busy working in the highly regulated area of aviation law. "I find that after being in town for a week or two, working at my desk and doing legal work, I am happy to then go off on a flight mission for one or several days. After that, though, I am happy to be back at my desk doing lawyer work again. Flying and legal work both require attention to detail, and it is important to remain diligent."

While you are having a prosaic day at the office, look out the window and you may see a Phoenix Air Gulfstream or Learjet bound for exotic places, carrying unusual cargo and piloted by an accomplished aviator, lawyer and humanitarian, Randall H. Davis. GBJ

Bonne Davis Cella is the office administrator at the State Bar of Georgia's South Georgia Office in Tifton and can be reached at bonnec@gabar.org. She is the author of *Fixing the Moon: The Story of The First Presidential Pilot and Aviation Pioneer Lt. Col. Henry Tift Myers*.

Endnotes

1. Henry Tift Myers of Tifton was the first Presidential Pilot.
2. To view the services offered at Phoenix Air, view their website at www.phoenixair.com.

Sections Present and Receive Awards

by Derrick W. Stanley

Sections of the State Bar are honored each year by receiving the State Bar Section of the Year Award or Awards of Achievement. Both of these awards are presented during the Plenary Session of the Annual Meeting. This year's awards were presented by 2012-13 President Robin Frazer Clark on June 21 on Hilton Head Island, S.C.

The State Bar of Georgia's Intellectual Property (IP) Law Section, chaired by Philip H. Burrus IV of Burrus Intellectual Property Law Group in Atlanta, received the Section of the Year Award. The award honors an outstanding section of the State Bar each year for its members' dedication and service to their areas of law practice and for devoting significant hours of volunteer effort to the profession. The section dedicated many hours to developing programming for section members as well as elevating the profile of the section by hosting federal judges at a gala ceremony and CLE program at the High Museum. Additionally, the section gave back to the profession by making several contributions to law-related organizations. The IP section also formed a Philanthropy and Outreach committee to discuss and create opportunities for the section to donate their time to organizations in need.

Three Awards of Achievement were also presented this year. The sections honored were the Child Protection and Advocacy, Family Law and Military/Veterans Law sections.

Child Protection and Advocacy Section

Chaired by Nicki N. Vaughan of Gainesville, the Child Protection and Advocacy Section thrived while completing a long list of projects, quite an accomplishment for a section that has just finished its first full year. Among its achievements, the section created a day-long program in conjunction with ICLE which was both well-attended and received. This active section also co-sponsored other programs and participated heavily with the Georgia Legislature. They also created a newsletter, *Kids Matter*, and have enriched the content of their web pages at www.gabar.org to provide important information for practitioners of this specialty in law.

Family Law Section

Fellow Gainesville practitioner Kelly A. Miles chaired the Family Law Section during the 2012-13 Bar year and lead the section down a path that ultimately yielded an award of achievement. Many of the section activities involved bringing together section members from across the state. A series of webinars were created to provide practitioners the opportunity to learn about specialty topics in 30 minutes over lunch. These programs were very well

received and were made available to all members, as well as being archived on the section's webpage. There were also social events to bring the members together to catch up and enjoy each other's company. Members of the executive committee and section were called upon to assist the obtaining legislation as well as creating legislation of their own to be presented to the Legislature. Special committees were created to meet the needs of section members. New committees included: Technology/Social Media, Diversity, Community Service, Sponsorship, POP (practicing outside the perimeter) and Military and Federal Employees. The section also held the largest Family Law Institute in 30 years and completed other CLE programs to ensure the needs of the Family Law practitioners were being met.

Military/Veterans Law Section

The State Bar of Georgia's Military/Veterans Law Section, chaired by W. John Camp of Westmoreland Patterson Moseley & Hinson in Warner Robins, also made a major impression this year. Being newly revitalized, many goals were accomplished. The section focused on: continuing an aggressive program to provide for accreditation and training of Georgia attorneys; partnering with the Military Legal Assistance Program (MLAP) and the Atlanta Regional Office of the Veterans Administration; and working with the Veterans Administration to provide legal services to the medical center in Decatur by adopting a Memorandum of Understanding. The section also assisted the Bar in providing information and working on the passage of military-related legislation.

Section Member Awards

Sections not only receive awards from the State Bar, but several sections present their own awards to members, honoring the achievement of the recipients and representing a higher level of service for practitioners of law specialties.

Photos by Sarah I. Coole, Jennifer R. Mason and Derrick W. Stanley

Section Awards are presented to outstanding sections for their dedication and service to their areas of practice and for devoting endless hours of volunteer effort to the profession. Nicki Vaughan accepts the Award of Achievement on behalf of the Child Protection and Advocacy Law Section, presented by 2012-13 President Robin Frazer Clark.

Sean Ditzel accepts the Award of Achievement on behalf of the Family Law Section from 2012-13 President Robin Frazer Clark.

The Creditors' Rights Section gives the Morris W. Macey Lifetime Achievement Award. The award is presented to an individual who has displayed an unerring commitment to the community and to the professionalism of the Creditors' Rights Section. The 2013 recipient will be named in October.

The Family Law Section presents two awards, although not

John Camp accepts the Award of Achievement on behalf of the Military/Veterans Law Section from 2012-13 President Robin Frazer Clark.

Hon. Johnny Mason, chair, Judicial Section, presents Gov. Nathan Deal with the Spirit of Justice Award during the section lunch at the Annual Meeting.

always yearly. The Joseph T. Tuggle Jr. Award and the Jack P. Turner Award.

The Joseph T. Tuggle Jr. Award is given in recognition of the person who the section deems to have most exemplified the aspirational qualities of professionalism in their practice as a lawyer and/or a judge. The 2013 award recipient is Barry B. McGough of Warner, Bates, McGough & McGinnis, Atlanta.

The Jack P. Turner Award recognizes outstanding contributions and achievements in the area of family law. The criteria for the award includes: having a career devoted to the practice of family law with substantial and significant contributions to improve and advance the practice of family law in the state of Georgia; recognition by the recipient's peers as an outstanding lawyer; a record of integrity and fairness; a commitment to assist other members of the Bar and the practice of family law and by taking the practice of family law to a higher level of increased respectability and recognition. The 2013 award recipient is Hon. Bensonetta Tipton Lane, judge, Superior Court Atlanta Circuit, Atlanta.

The Tradition of Excellence Award is given annually to members of the General Practice and Trial Law Section. Candidates for these prestigious awards should meet the following qualifications:

- must be a Georgia resident
- have 20 years of outstanding achievement as a trial lawyer, general practitioner or judge
- be 50 years or older
- have made a significant contribution to CLE or Bar activities
- have a record of community service; and
- have a personal commitment to excellence.

Awards are presented during the Annual Meeting of the Bar during a breakfast ceremony in the following categories: plaintiff, defense, general practice and judicial. The recipients are then honored at a formal reception in the evening. The 2013 recipients are: Eugene "Bo" Chambers Jr., Atlanta (plaintiff); Thomas S. Carlock, Atlanta, (defense); Mary A. Prebula, Duluth, (general practice); and Hon. William L. McMurray Jr. Atlanta, (judicial).

The Judicial Section presented the following awards at the Annual Meeting of the State Bar in June:

- Spirit of Justice Award—Gov. Nathan Deal
- Distinguished Service Award (posthumously)—Hon. Anne

Workman (accepted on behalf of the family by Bryan Cavan)

- Judicial Service Award—Hon. Susan Edlein, State Court of Fulton County
- Guest Speaker Award—Jeffrey Davis, director, Judicial Qualifications Commission

The Workers' Compensation Section presents its Distinguished Service Award at their annual institute. The criteria for the award are that the nominee must: be at least 50 years old; have been working in the workers' compensation area for 20 years; and have been working for the good of the system in particular and the community in general. Recipients of this award read like a Who's Who of workers' compensation law. The 2012-13 award recipient is Marvin Price, Atlanta.

Several sections also awarded scholarships to students for outstanding performance in a particular area of study in law school. Additionally, some sections choose to provide scholarships to attorneys to attend institutes in exchange for pro bono work, as well as scholarships to attend the Gary Christy Memorial Trial Skills Clinic.

Sections, through the process of earning awards, enhance the knowledge and skills of section members by providing programming and events geared to a particular practice area. Once members achieve a stature in the section and become seasoned practitioners, they honor their own by presenting their own awards. Sections thrive on input from their members, and members benefit from the programs and events created for them. To learn more about sections, go to www.gabar.org. GBJ

Derrick W. Stanley is the section liaison of the State Bar of Georgia and can be reached at derricks@gabar.org.

The Tradition of Excellence awards were presented at the General Practice and Trial Law Section breakfast held during the Annual Meeting. *(Left to right)* Section Chair Laura Austin; Thomas S. Carlock, Atlanta (defense); Mary A. Prebula, Duluth (general practice); Hon. William L. McMurray Jr. Atlanta (judicial); and Eugene "Bo" Chambers Jr. Atlanta (plaintiff).

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Keeping Up with Fastcase

by Sheila Baldwin

Fastcase continually adds tools designed to make legal research easy and smart. Legal research can be time consuming so anything that makes the process more efficient is welcome. To make sure you're aware of the latest improvements, Fastcase provides a blog and a news section at www.fastcase.com, located at the bottom of the page. An easier option is to register for the Fastcase newsletter and receive information on new developments in law and technology, as well as specific Fastcase news and features sent directly to your email.

Since the June column I wrote for the *Journal* covered new features from Fastcase, with Bad Law Bot taking the spotlight, the designers have rolled out a whole new collection. Power users may already be aware of the features that are covered in this article, but for those of you that don't, try these tips and tools in your next research project.

Search Within

Observant Fastcase users may have noticed the orange arrow labeled "Search Within" at the top of the results page (see fig. 1). Click on the arrow and you will be returned to the query box where you can add text and rerun your search (see fig. 2). This feature allows you to search within your case law results in order to narrow them down.

Alerts

Some users have made use of the alerts available in Google Scholar and have wished that Fastcase had the same feature; now they do. This device will track your search terms and send you an email alert when new cases or documents are added that match your terms. The alert is created by clicking on the orange arrow labeled "Alerts" on the top or the results page right below the "Search Within" arrow (see fig. 1). A dialog box will open up that provides direction on how to set up and manage your alerts (see fig. 3).

Annotated Statutes

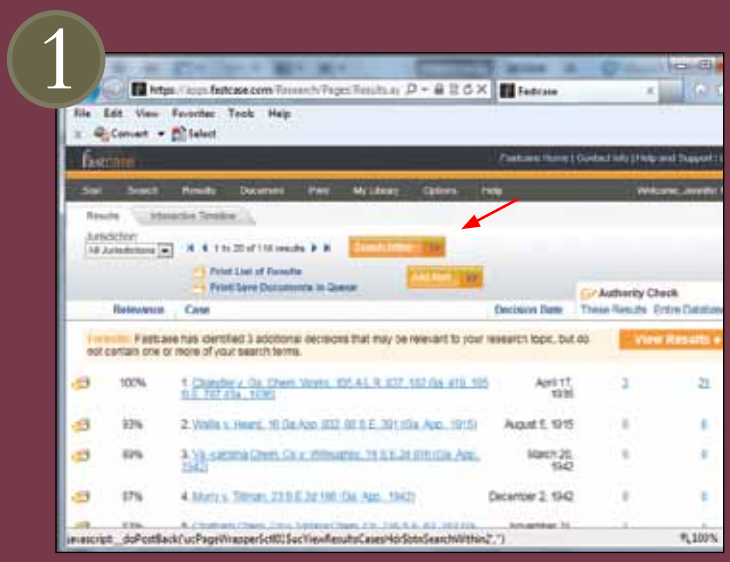
Annotated statutes are a great way to shed more light on how courts have interpreted a code section. To view the annotated Code, simply search and view any section. All citing cases are listed at the bottom of each section. Unlike other online annotated codes, Fastcase allows you to sort the annotations by case name, decision date and number of times a case has been cited (see fig. 4).

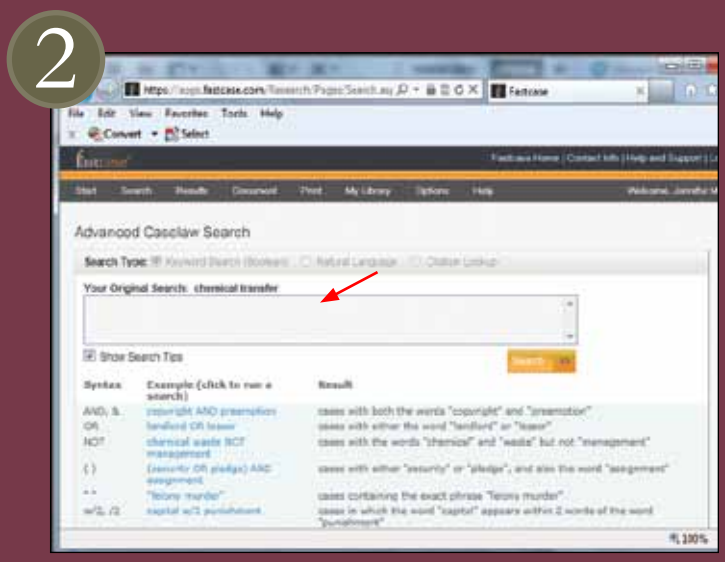
Hein and Fastcase Announce Publishing Partnership

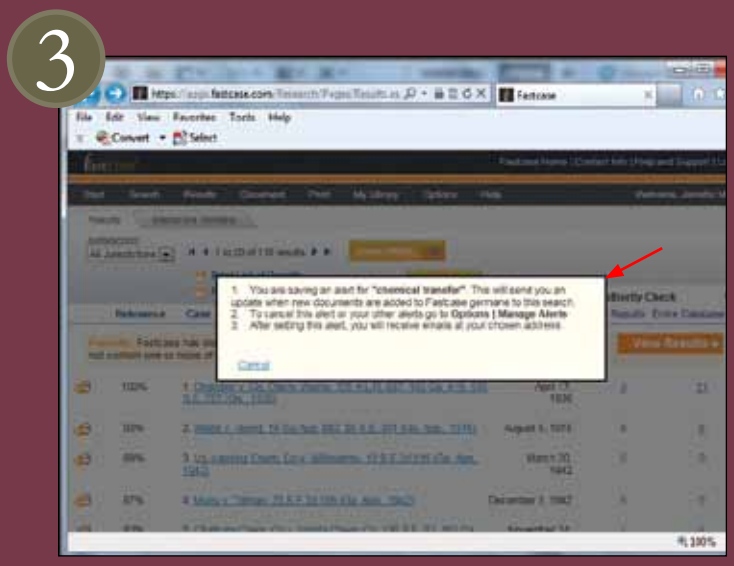
If you are inquisitive and read the news items on the Fastcase website you will be aware of a new partnership with legal publisher William S. Hein & Co., that will enhance member research. Beginning this fall, Fastcase will integrate HeinOnline's extensive law review and historical state statute collection into search results in the Fastcase research application. The Hein collection will include more than 1,800 law reviews back to their first volumes, and represents the first secondary material to be integrated into the Fastcase legal research service.

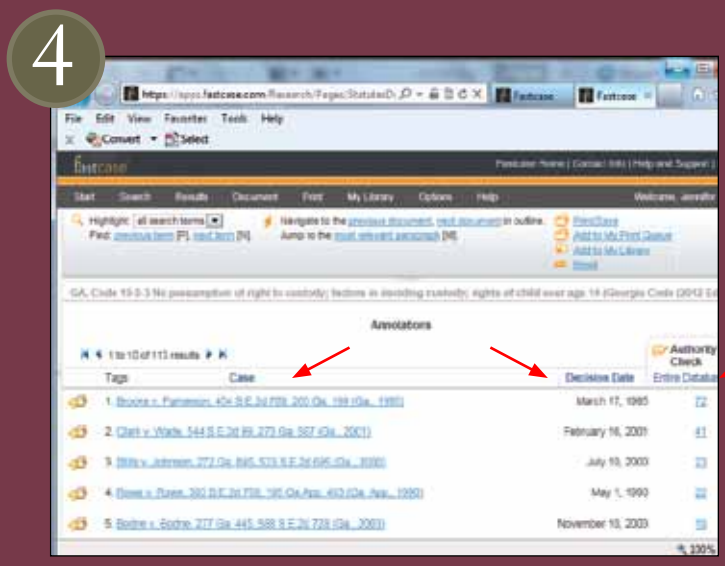
Each month members can sign up for live Fastcase CLE classes held at the State Bar or register for one of the webinars hosted by Fastcase, also with CLE credit. Just check the calendar at www.gabar.org for the schedule. Contact sheilab@gabar.org or 404-526-8618 for Fastcase help. GBJ

Sheila Baldwin is the member benefits coordinator of the State Bar of Georgia and can be reached at sheilab@gabar.org.









Fastcase training classes are offered four times a month at the State Bar of Georgia in Atlanta for Bar members and their staff. Training is available at other locations and in various formats and will be listed on the calendar at www.gabar.org. Please call 404-526-8618 to request onsite classes for local and specialty bar associations.

Disarming Your Opponent: Effective Use of Adverse Authority

by Karen J. Sneddon and David Hricik

This installment of "Writing Matters" examines the disclosure of adverse legal authority to tribunals. We briefly examine the ethical duty that lawyers owe to tribunals to disclose adverse legal authority before explaining why effective advocates do far more than disclose controlling legal authority. Instead, they use their opponents' best weapons against them.

The duty to conduct reasonable inquiry into the laws and fact to avoid frivolous filings arises from Rule 11 of the Federal Rules of Civil Procedure, state analogs to that rule, ethical principles and state substantive law precluding frivolous legal proceedings.[1] In the course of this due diligence, lawyers may learn of adverse legal authority. As part of their duty of candor, lawyers must disclose controlling adverse legal authority to a tribunal.[2]

Of course, with rare exceptions,[3] even controlling authority can be distinguished. The test for whether a case is "controlling enough" so that it must be disclosed is sometimes stated as whether a reasonable judge would feel misled by the implied representation that the lawyer knew of no adverse authority.[4] While of uncertain breadth, this narrow duty has some purchase. For example, in a federal case from this past spring,[5] a federal judge ordered lawyers to attend 10 additional hours of ethics CLE for misunderstanding this duty. The lawyer argued that a duty to disclose controlling adverse authority would chill zealous advocacy. The court called this view of a lawyer's professional obligations "sadly skewed."[6]

That view is sadly skewed: lawyers have a clear obligation to disclose controlling adverse legal authority. Just as a rule prohibiting frivolous filings "chills" zealous representation, so too does a rule requiring disclosure of adverse legal authority. The rules balance competing interests.

But we believe lawyers often should disclose and distinguish even persuasive adverse authority and do so in an opening brief, before the authority is addressed by the opposing party. The practical benefits of doing so are clear.

First, competent opposing counsel is likely to find the adverse authority anyway. So, the cases will be before the judge. The real issue is which party gets to address the cases first, the movant or the respondent. By addressing the authority in an opening brief, the lawyer can characterize the facts and results of the cases in a manner favoring his or her client.

For example, suppose the legal principle is that an arbitration clause that is "inconspicuous" is unenforceable. The lawyer's position is that the clause was inconspicuous. Suppose that courts rely upon a variety of factors—including font size, location, whether the type is bold, sophistication of the consumer—in determining whether the clause was conspicuous. There likely will be no "controlling" adverse authority given the fact-intensive nature of this analysis:

each contract will be different. Yet, the opening brief could in a footnote distinguish the adverse cases, hypothetically as follows:

> Of course, under different facts than presented here, courts have found arbitration clauses conspicuous. *E.g., White v. White,* 483 S.E.2d 187, 189 (Ga. 2000) (clause was in bold and on first page); *Fring v. Goldman,* 482 S.E.2d 187, 188 (Ga. 1999) (clause was in larger font than the rest of the contract, and on the signature page); *Schrader v. Pinkman,* 481 S.E.2d 187, 189 (Ga. 1998) (clause was highlighted in light blue).

This approach takes away the respondent's weapons. A defenseless opponent is a good opponent.

The second benefit in addressing authority in this fashion is pragmatic. Court rules often severely limit the length of reply briefs. There may simply be limited space to devote to re-characterizing a case.

There are other benefits too. In our experience, decision-makers give credence to lawyers who cite and address not just controlling, but merely persuasive, adverse authority. On closely fought issues, or in deciding questions where judicial discretion exists, credibility counts. Further, judges want to get things right, and they and their law clerks are busy. Citing persuasive adverse authority can make a difference on the merits.

In sum, effective legal writers will seldom focus on whether authority is "controlling enough" to necessitate disclosure. Instead, effective advocates know that the best approach to adverse authority is to seize the authority and use the authority against their opponent. GBJ

Karen J. Sneddon is an associate professor of law at Mercer University School of Law.

David Hricik is currently on leave from Mercer University School of Law, serving as law clerk to Chief Judge Randall R. Rader of the U.S. Court of Appeals for the Federal Circuit during 2012-13. He will return to Mercer in 2013. The legal writing program at Mercer University continues to be recognized as one of the nation's top legal writing programs.

Endnotes

1. *See* Ga. R. Prof. Conduct 3.1(b) (prohibiting a lawyer from knowingly advancing a claim or defense unless it can at least "be supported by good faith argument for an extension, modification or reversal of existing law").
2. Ga. R. Prof. Conduct 3.3(a) (prohibiting a lawyer from knowingly failing "to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel"). *See generally*, Daisy Hurst Floyd, *Candor Versus Advocacy: Courts' Use of Sanctions to Enforce the Duty of Candor Toward the Tribunal*, 29 Ga. L. Rev. 1035 (1995); *Tyler v. State*, 47 P.3d 1095, 1100–02 (Alaska 2001) (explaining interrelationship between Rule 11, other state substantive rules, and ethical rules).
3. The entire opinion in *Denny v. Radar Indus., Inc.*, 184 N.W.2d 289 (Ct. App. Mich. 1971) is:
   > The appellant has attempted to distinguish the factual situation in this case from [a prior case]. He didn't. We couldn't.

   Affirmed. Costs to appellee.
4. *Tyler v. State*, 47 P.3d 1095, 11004–05 (Alaska 2001) (discussing various formulations).
5. *Arch Ins. Co. v. Carol & Dave's Roadhouse, Inc.*, 2013 WL 1900953 (W.D. Pa. May 7, 2013). *See Lamkin v. Morinda Props. Weight Parcel LLC*, 2012 WL 2913257, *2 n.15 (D. Utah July 16, 2012) (noting that a lawyer would have found controlling adverse authority had he spent a "few minutes" Shepardizing the case the lawyer did cite to the court); *Stewart v. JPMorgan Chase Bank, N.A.*, 473 B.R. 612, 740 (Bankr. W.D. Pa. 2012) (Court cautioned counsel to be "more candid in the future or sanctions may be imposed."); *State v. McNeil*, 2012 WL 1337365, *7 n.3 (Ct. App. N.C. Apr. 17, 2012) (reminding counsel of duty to disclose adverse authority); *Former Employees of Chevron Prods. Co. v. U.S. Sec. of Labor*, 245 F. Supp.2d 1312, 1281 n.7 (U.S. Ct. Int'l. Tr. 2002) (explaining continuing nature of this duty); Ga. R. Prof. Conduct 3.3(b) (same).
6. Arch Ins., 2013 WL 1900953 at *4.

Making the Mark: Fitness, Character and Integrity for Admission to the Bar

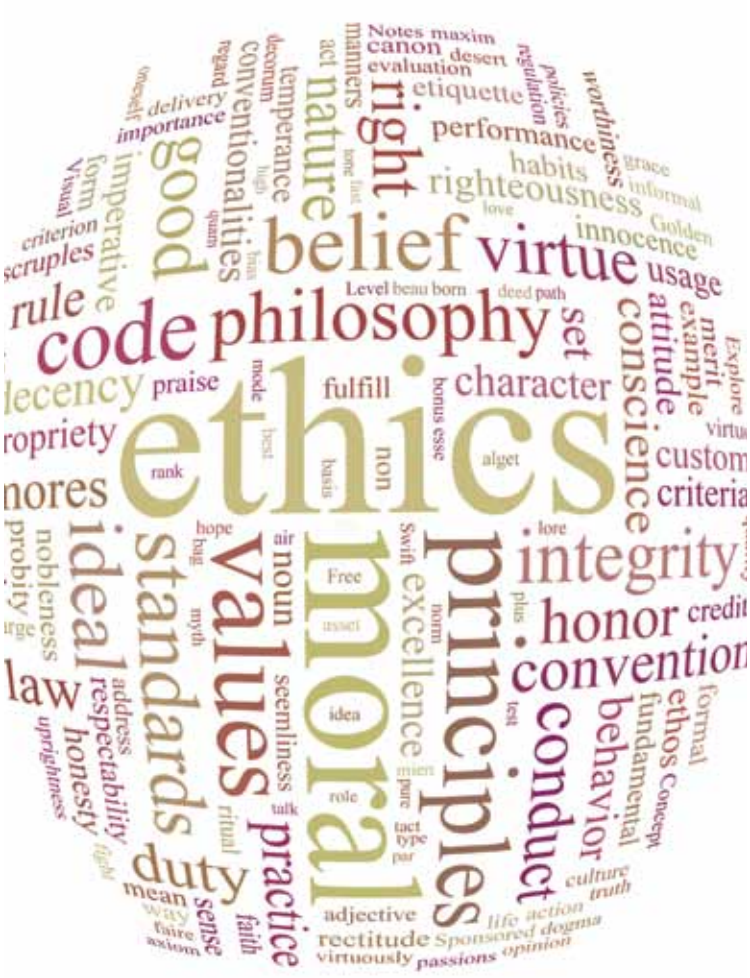
by Rebecca S. Mick

Following is an update on the process and considerations of fitness, character and integrity required for persons to be admitted to the Bar in Georgia. The article aptly sets forth the current process and requirements of the Board to Determine Fitness and is important information for Georgia's bench and bar.

We all know that lawyers must pass a bar examination in order to practice law. However, future lawyers must first be certified as 'fit' to even sit for the bar examination. The responsibility of ensuring that all who practice law are both morally fit and competent rests with two separate boards residing in the Office of Bar Admissions. The Board of Bar Examiners deals with competence, and the Board to Determine Fitness of Bar Applicants has the daunting task of ensuring that each bar applicant is morally fit and possesses the requisite character and integrity to practice law.

The Fitness Application Process

The Board to Determine Fitness was established in 1977 by the Supreme Court. The Board processes between 1,800 and 2,000 fitness applications each year. In most cases, the applicant fills out a fitness application which requests personal information including but not limited to financial, legal, employment, mental health and criminal background pertaining to the applicant.



Information is verified by the application analysts in the Office of Bar Admissions, and inquiries are sent

to personal references, employers and other individuals familiar with the applicant.[1] In reviewing all of this information, the Board focuses primarily on candor, fiscal matters, compliance with court orders, criminal activity, alcohol and drug abuse and mental and emotional stability.

Applicants must be completely candid in filling out the application and answering follow up question with the Board. While the application asks for sensitive information, the Board's files are completely confidential and not subject to public disclosure.[2] The Board may make additional inquiry into areas of concern including, but not limited to, unlawful conduct, academic misconduct, any act involving dishonesty, fraud or deceit, abuse of the legal process, neglect of financial or other legal obligations, violation of a court order, evidence of drug or alcohol dependency, disciplinary action in another jurisdiction against any professional license and denial of fitness to sit for the bar in another jurisdiction.

If the Board has concerns regarding an applicant's fitness that are not resolved via correspondence, the applicant may be called in for an informal conference with the Board.[3] The informal conference is a discussion that is recorded but does not rise to the level of a formal proceeding. The Board will ask questions of the applicant regarding the areas of concern. An applicant may bring counsel to the conference, but the applicant must answer the Board's questions directly not through his or her attorney. The Board averages between 35 and 40 conferences per year out of the applications filed. On average, six to eight applicants are issued a tentative denial of certification of fitness. There are no "conditional" admissions made in Georgia. An applicant may be either certified or denied. If the Board issues a tentative denial, the applicant may request a formal evidentiary hearing before an independent hearing officer selected by the Supreme Court.[4]

The Hearing Process

If the applicant requests a hearing, the Board makes the initial presentation of the reasons for a tentative denial by issuing Specifications. The applicant files an Answer to the Specifications. The burden is on the applicant at all times to prove that he possesses the requisite moral fitness required for certification.[5]

These determinations require the Board to examine an applicant's "innermost feelings and personal views on those aspects of morality, attention to duty, forthrightness and self-restraint which are usually associated with good character."[6] The Board's primary responsibility is to the public to see that those who are admitted to practice are ethically cognizant and mature individuals who have the character to withstand the temptations which are placed before them as they handle other people's money and affairs. This is to protect the public as the bar holds lawyers out as worthy of trust and confidence. If the Board is not "reasonably convinced" that the applicant could not handle such temptations, the Board may deny him certification for fitness.[7]

The Supreme Court has held:

> [B]ecause the Board's and this Court's primary concern in admitting persons to the practice of law is the protection of the public, any doubts must be resolved against the applicant and in favor of protecting the public.[8]

If the applicant requests a hearing, the hearing officer shall not be strictly bound to observe the rules of evidence but shall consider all evidence deemed relevant to the proceedings.[9] After hearing the evidence, the hearing officer makes findings of fact and recommendations to the Board. This recommendation is not binding upon the Board or the Supreme Court of Georgia. In fact, no other previous findings or recommendations on

Chief Justice's Commission on Professionalism is 25 Years Old

by Avarita L. Hanson

The 2013-14 Bar year marks the 25th anniversary of the Chief Justice's Commission on Professionalism (the Commission). We thank Chief Justice Carol W. Hunstein for her wise and committed leadership in chairing the Commission from 2009 to 2013. We expect the leadership of Justice Hugh Thompson, who assumes the Commission's chair on Aug. 15, will be as impactful and meaningful.

Plans are underway to celebrate the Commission's anniversary in several ways with events for the bench, bar, law schools and the public. We will take a look at 25 years of professionalism and what that means today to Georgia's legal and greater community.

This is also the year of the 15th anniversary of the Justice Robert Benham Awards for Community Service, the presentation of which will take place Feb. 25, 2014, at the Bar Center. We will honor our colleagues who share their time and talents in public and community service. Information is available at www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp. Nominations are due Nov. 22.

The Commission presents its other signature program in August, the Law School Orientations on Professionalism, at all six Georgia law schools in collaboration with the State Bar's Committee on Professionalism. This program engages entering law students in a facilitated discussion of professionalism scenarios to prepare them to make good ethical and professional decisions in law school and practice.

the ultimate issue are binding on the Board or the Supreme Court, including those made by a law school or the Judicial Qualifications Commission.[10] The Supreme Court of Georgia will uphold any final decision of the Board if there is any evidence to support it. However, the ultimate decision always rests with the Supreme Court.[11]

Grounds for Denial of Certification

Applicants have been denied certification of fitness based on six general categories of behavior.

- Candor, in all aspects including the application process;
- Fiscal responsibly, including repayment of student loans and compliance with court orders;
- Proper conduct in court;
- Alcohol and substance abuse;
- Mental or emotional instability;
- Unlawful/criminal conduct, including juvenile and other matters discharged without an adjudication of guilt.

Candor

The *No. 1* reason for denial of applicants nationally is lack of candor or a pattern of dishonesty. The hallmark of a person of trust and character who is fit to practice law is honesty in every situation. Applicants with a record showing a lack of candor, trustworthiness, diligence or reliability may not be certified. Lack of candor encompasses a plethora of behavior including but not limited to, providing false or misleading answers in making application, committing fraud or deceit on any court, abusing the legal process, unscrupulous business practices, and academic misconduct including plagiarism.[12] Keep in mind that even if the applicant's law school or employer makes findings that the applicant did not commit fraud, deceit or plagiarism, these findings have no bearing on the decision of the Board as to these matters.[13] Giving false, evasive and misleading answers to the Board during the application process is grounds for denial of certification in itself. The rule to follow is, "when in doubt—disclose" or at the very least contact the Office of Bar Admissions for clarification.[14]

In recent years, a number of applicants have been found to have been less than candid on their applications to law school regarding past unethical or criminal behavior. This may also be grounds for a denial of certification if the omission is not corrected promptly and a credible, reasonable explanation is not proffered as to the original non-disclosure.[15]

Fiscal Responsibility and Compliance with Court Orders

Neglect of financial obligations and other legal obligations are also common grounds for denial. This includes defaulting on student loans, credit card bills and other financial obligations. The Supreme Court has emphasized the importance of demonstrating stability in meeting financial obligations in a number of cases.[16] Defaulted student loans and failure to pay child support are of particular concern to the Board.

However, the Supreme Court of Georgia has made it clear that one isolated incident does not amount to a showing of fiscal responsibility. *In the Matter of Harold Wayne Spence*, the Supreme Court reversed the Board's decision for denial.[17] Spence had been disbarred and accumulated a number of debts. He worked several jobs to repay his debts and then applied for readmission. The Board revoked his certification for failure to make payment on his law school loans for several months. Spence explained that he had stopped making payments for a period of months in order to fund his daughter's study abroad program. Spence admitted that it was a lapse of judgment and paid off his student loans. The Supreme Court held that this was an isolated incident showing a lapse of judgment but did not show a pattern of dishonest conduct or that Spence was fiscally irresponsible. The Court reversed the Board's denial and certified Spence to sit for the bar examination.

Proper Conduct in Court

The Board takes abuse and disrespect of the legal process very seriously. Applicants have been denied for filing frivolous complaints, making threatening comments to attorneys and judges or others involved in their cases and sending disrespectful emails using profanity to those involved in a court action.[18] An extreme example is *In re: Richard Barrett* where an applicant licensed to practice law in another state appeared pro hoc vice before the Northern District. The trial judge held that the applicant attempted to perpetrate a fraud upon the court by attempting to present a false appearance of competency for a witness to testify.[19] This conduct before the Northern District alone justified denial of certification. In another case, the court found that the applicant was properly denied certification as applicant's conduct during his worker's compensation cases was "inappropriate, threatening and an abuse of the legal process" which included filing frivolous complaints.[20]

The Supreme Court has also upheld the Board's decision where an applicant was intoxicated and insubordinate during an unpaid internship. While this applicant had other troubling factors, part of the denial was based on the applicant's conduct at his internship in refusing to sit by the senior attorney in court, leaving the courtroom without permission and sending insulting emails to the senior attorney which contained profanity.[21]

This is not to say that being incompetent during a court proceeding (prior to being a licensed attorney) is a basis for denial. The Supreme Court reversed the Board's decision to deny an applicant based on her actions during the

prosecution of her traffic charge. The applicant had represented herself during her first year of law school. The applicant demonstrated a total lack of understanding of the judicial process. Furthermore, the applicant had stated to the Board that she believed the police officers lied during her trial and that the district attorney and judge knew it, resulting in a great miscarriage of justice. The Supreme Court found that the applicant's statements and beliefs go to her competence to try a case rather than her character and fitness. It should be noted that the Board found no dishonesty on the part of the applicant, only a misguided understanding of the law.[22]

Alcohol and Substance Abuse

Chemical dependency or abuse is an area of particular concern for the Board due to the potential to impact one's ability to practice law if left untreated. The Board strongly encourages any applicant who has an issue with drugs or alcohol to get the counseling and treatment needed as soon as possible. The Board also has the option of requiring an applicant to obtain a drug or alcohol evaluation from a licensed psychiatrist recommended by the Board. The Board understands that other types of misconduct can arise from chemical dependency and truly focuses on the applicant's recognition and acceptance of responsibility for any problem, obtaining proper treatment, and, as discussed in depth below, showing rehabilitation if relevant, from any past misconduct associated with a drug or alcohol problem.

Mental or Emotional Instability

Emotional and mental health are issues where the Board must make inquiry. The Board understands that law school and life in general can be stressful and may result in an applicant seeking counseling or other treatment. This treatment is not necessarily viewed as evidence of a mental or emotional problem.

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The Board encourages any applicant to obtain such treatment if the treatment will be helpful to the applicant. Only where an applicant has serious mental or emotional health issues will the Board conduct an in-depth inquiry in order to ensure that those issues will not impact the ability of an applicant to meet the moral fitness standards of practicing law.

Unlawful or Criminal Conduct

Unlawful or criminal conduct is of paramount concern to the Board but may not necessarily result in an automatic denial of certification. However, the Supreme Court has held that where an applicant has a criminal background, he must prove "full and complete rehabilitation by clear and convincing evidence."[23] The Board may consider all unlawful acts committed by the applicant. There is no requirement that the act resulted in a conviction. This includes any arrests and actions adjudicated without guilt pursuant to the Georgia First Offender Act.[24]

Where the applicant has a felony conviction, the Board expects that the applicant will apply for a pardon prior to filing his application for fitness. Conduct that involves theft, fraud, deceit or unscrupulous business practices raises a presumption that the applicant does not posses the fiduciary responsibility necessary to meet moral fitness. However, depending on the facts of the case, even someone with a criminal background may carry the burden of demonstrating fitness through showing "rehabilitation," as discussed below, by clear and convincing evidence.

Rehabilitation

Rehabilitation is defined by the Supreme Court of Georgia, as "the re-establishment of the reputation of a person by his or her restoration to a useful and constructive place in society."[25] The Supreme Court of Georgia has further added that merely showing that one has complied with his obligations and not been into further trouble is *not* proof of rehabilitation.[26] The applicant must take full responsibility for any past bad conduct, and show by positive action that he has restored himself to a useful place in the community. This is usually shown through one's "occupation, religion or community service."[27]

The very important first step is for the applicant to *fully* accept responsibility for his or her conduct and show understanding and remorse. Simply admitting the conduct happened is not enough. The Court upheld the Board's final decision denying an applicant where the applicant admitted that he turned in a wholly plagiarized paper during law school but "was either unwilling or unable to admit that he deliberately" plagiarized and was not able to offer any credible explanation.[28] Similarly, *in the matter of Terry Glenn Lee*, the

applicant pled guilty to six counts of the unauthorized practice of law but continually tried to minimize or justify his "technical" violations of the law to the Board.[29] Lee also showed no remorse for his conduct in his refusal to assume full responsibility for it.

The second step is providing evidence of community service in order to restore the applicant's reputation in the community. The Board has found rehabilitation where an applicant involved himself in various civic, youth and religious activities and associations that serve the community. Some examples are applicants who are heavily involved in various civic and youth groups, performing more than 1,400 hours of service at homeless shelters and religious nonprofit organizations, including taking a leadership role in some of those activities.[30] However, self-serving activities will not count toward rehabilitation such as legal externships where the applicant receives law school credit.[31]

Rehabilitation is the most critical element that the Board considers when making a determination as to whether past misconduct should be the basis for a denial of certification. The Board will certify those applicants with *current* good character and fitness.

The Supreme Court

Once the Board issues a final denial of certification, the applicant may choose to appeal it to the Supreme Court. As stated above, the Supreme Court will uphold a final decision if there is any evidence to support it, but the ultimate decision always rests with the Court. While all applicant files on appeal are sealed, the Supreme Court will use the full name of the applicant in published opinions "because public access to the decisions of this Court is essential to our role in establishing and interpreting the law."[32] The applicant's file remains confidential.[33]

Character and Fitness is Ultimately Based on One's Choices

In the popular Harry Potter series of fantasy novels, author J.K. Rowling uses her characters and stories to teach basic moral values. In one instance, Harry asks Prof. Dumbledore what is the difference between himself and the villain of the series since they both possess the same powerful talents and abilities. The very wise headmaster answers "it is our choices, Harry, that show what we truly are, far more than our abilities." — J.K. Rowling, *Harry Potter and the Chamber of Secrets*

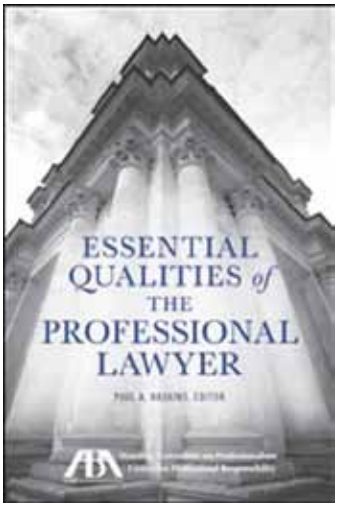
The Board to Determine Fitness takes an in-depth look at all choices made both past and present by applicants in defining an applicant's current character and fitness. As case law on character, integrity and moral fitness continues to evolve, one thing remains certain, honesty and responsibility will almost invariably carry the day. GBJ

Rebecca Mick is a senior assistant attorney general in the Education, Elections and Government section. She has acted as lead counsel in more than 300 administrative hearings, handled litigation and advice for clients including the Professional Standards Commission (teacher licensing), the Board of Regents of the University System of Georgia, the Secretary of State Elections Division, the Nonpublic Post-secondary Education Commission and the Board to Determine Fitness of Bar Applicants. Mick earned her bachelor's degree from Bowling Green State University in Ohio and her J.D. from the University of Georgia School of Law. Mick has been with the Attorney General's Office since 1991.

Endnotes

1. Rules Governing Admission to the Practice of Law, Part A, Sec. 6.
2. Rules Governing Admission to the Practice of Law, Part F, Sec. 4 (b).
3. Rules Governing Admission to the Practice of Law, Part A, Sec. 7.
4. Rules Governing Admission to the Practice of Law, Part A, Sec. 8.
5. *In re Beasley*, 243, Ga. 134 (1979).
6. *In re Lubonovic*, 248 Ga. 243, 246(1981).
7. *In re Lubonovic*, 248 Ga. 243, 245(1981).
8. *In re Cook*, 284 Ga. 575, 576 (2008).
9. Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (c).
10. Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (c); *In re K.S.L.*, 269 Ga. 51, 52 (1998); *In re Jenkins*, 278 Ga. 529 (2004).
11. *In re Spence*, 275 Ga. 202 (2002).
12. *In re Payne* 2011 Ga. LEXIS 656 (Ga. Sept. 12, 2011); *re Cook*, 284 Ga. 575(2008); *In the Matter of White*, 283, Ga. 74 (2008); *In re: K.S.L.*, 269 Ga. 51 (1998); *In re: R.M.C.*, 272 Ga. 99 (2000); *In re: J.W.N.*, 266 Ga. 58 (1995).
13. *In re Jenkins*, 278 Ga. 529 (2004); *In re K.S. L.*, 269 Ga. 51 (1998).
14. *In re Payne* 2011 Ga. LEXIS 656 (Ga. Sept. 12, 2011).
15. *In re Payne* 2011 Ga. LEXIS 656 (Ga. Sept. 12, 2011).
16. *In re C.R.W.*, 267 Ga. 534 (1997); *In re Johnson*, 259 Ga. 509 (1989); *In re Adams*, 273 Ga. 333(2001).
17. *In re Spence*, 275 Ga. 202 (2002).
18. *In re Yunker*, 2011 Ga. Lexis 662 (Ga. Sept. 12, 2011), *In re D.K.M.*, 271 Ga. 473 (1999).
19. *In re Barrett*, 260 Ga. 903 (1991).
20. *In re D.K.M.*, 271 Ga. 473 (1999).
21. *In re Yunker*, 2011 Ga. Lexis 662 (Ga. Sept. 12, 2011).
22. *In re Ringstaff*, 288 Ga. 21(2011).
23. *In re Cason*, 249 Ga. 806 (1982); *In re J.W.N.*, 266 Ga. 58 (1995).
24. *In re Lee*, 275 Ga. 763 (2002).
25. *In re Cason*, 249 Ga. 806, 808 (1982).
26. *In re Lee*, 275 Ga. 763, 764 (2002).
27. *In re Cason*, 249 Ga. 806, 808 (1982).
28. *In re White*, 283 Ga. 74, 75 (2008).
29. *In re Lee*, 275 Ga. 763, 765 (2002).
30. *In re Friedberg*, 286 Ga. 472 (2010); *In re Calhoun*, 286 Ga. 417 (2010),
31. *In re Payne* 2011 Ga. LEXIS 656 (Ga. Sept. 12, 2011).
32. *In re Johnson*, 272 Ga. 444 (2000).
33. Rules Governing Admission to the Practice of Law, Part F, Sec. 4 (b).

Georgia Authors Contribute to an Innovative, Practical, New Professionalism Book from the ABA: "Essential Qualities of the Professional Lawyer"



This summer, the American Bar Association releases an innovative, timely and important new book on professional formation and development: "Essential Qualities of the Professional Lawyer." This resource rich book is intended to support, guide and equip law students and new lawyers on the path to professional formation and a career of service. It addresses the widely recognized need for practice-focused professionalism teaching resources, and demonstrates ways in which truly professional conduct contributes to professional standing and a rewarding career.

William Sullivan writes in the Foreword, "This is a moment when lawyers, especially new lawyers and law students, need resilience. This book speaks directly to that need in a useful and eminently wise way. The authors provide tools and concepts that can successfully guide beginners in the law through an increasingly uncertain and challenging career landscape." Sullivan co-authored the groundbreaking 2007 Carnegie Foundation report on legal education.

Two of the authors are Georgia-based, Mercer Law School's University Professor of Law and Ethical Formation, Daisy Hurst Floyd and executive director of the Chief Justice's Commission on Professionalism, Avarita L. Hanson. Essential Qualities of the Professional Lawyer will enrich law school professionalism courses, mentoring programs for new lawyers and law students, and professionalism training programs, as a primary or supplemental resource. Chapter titles and authors are:

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In Memoriam honors those members of the State Bar of Georgia who have passed away. As we reflect upon the memory of these members, we are mindful of the contributions they made to the Bar. Each generation of lawyers is indebted to the one that precedes it. Each of us is the recipient of the benefits of the learning, dedication, zeal and standard of professional responsibility that those who have gone before us have contributed to the practice of law. We are saddened that they are no longer in our midst, but privileged to have known them and to have shared their friendship over the years.

Hakim Farid Abdul-Rashid
Dallas, Texas
Atlanta Law School (1994)
Admitted 1995
Died August 2012

O. Hale Almand Jr.
Macon, Ga.
Mercer University Walter F. George School of Law (1970)
Admitted 1970
Died July 2013

James Lewis Alston
Atlanta, Ga.
Emory University School of Law (1939)
Admitted 1939
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Susan J. Aramony
Fort Lauderdale, Fla.
Emory University School of Law (1981)
Admitted 1981
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H. Samuel Atkins Jr.
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Admitted 1969
Died July 2013

W. Hale Barrett
Augusta, Ga.
University of Georgia School of Law (1955)
Admitted 1954
Died May 2013

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Charlotte, N.C.
New York University School of Law (1970)
Admitted 1976
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University of South Carolina School of Law (1974)
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Atlanta, Ga.
Ohio State University Moritz College of Law (1990)
Admitted 1990
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Woodrow Wilson College of Law (1979)
Admitted 1979
Died May 2013

Alfred J. Davies
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Atlanta Law School (1984)
Admitted 1985
Died June 2013

Lee R. Grogan
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Admitted 1954
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Ohio State University Moritz College of Law (1970)
Admitted 1973
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University of Florida Levin College of Law (1970)
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Died April 2013

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Drake University Law School (1946)
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H. Lamar Knight
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University of Georgia School of Law (1949)
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Donald E. Manning
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Atlanta's John Marshall Law School (1978)
Admitted 1978
Died January 2013

James Wilbur McAllister Jr.
Atlanta, Ga.
University of Georgia School of Law (1988)
Admitted 1988
Died January 2013

James Boyd Page
Atlanta, Ga.
University of Virginia School of Law (1973)
Admitted 1973
Died June 2013

Griffith Fontaine Pitcher
Smyrna, Ga.
University of Virginia School of Law (1963)
Admitted 1996
Died April 2013

Shirley A. Ransom
Roswell, Ga.
University of Michigan Law School (1979)
Admitted 1984
Died June 2013

Jeffrey Charles Renz
Atlanta, Ga.
Samford University Cumberland School of Law (1989)
Admitted 1990
Died June 2013

William M. Towson
Dublin, Ga.
University of Georgia School of Law (1949)
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First Publication of Proposed Formal Advisory Opinion No. 11-R1

QUESTIONS PRESENTED:

1. May a lawyer representing a plaintiff personally agree, as a condition of settlement, to indemnify the opposing party from claims by third persons to the settlement funds?

2. May a lawyer seek to require, as a condition of settlement, that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third persons to the settlement funds?

SUMMARY ANSWER:

1. A lawyer may not ethically agree, as a condition of settlement, to indemnify the opposing party from claims by third persons to the settlement funds. Such agreements violate Rule 1.8(e) of the Georgia Rules of Professional Conduct, which prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation.

2. Further, a lawyer may not seek to require, as a condition of settlement, that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third persons to the settlement funds. Such conduct violates Rule 8.4(a)(1) of the Georgia Rules of Professional Conduct, which prohibits a lawyer from knowingly inducing another lawyer to violate the Georgia Rules of Professional Conduct.

OPINION:

Lawyers often represent clients in civil actions, such as personal injury or medical malpractice, who have incurred substantial medical bills as a result of their injuries. These lawyers are required to work diligently to obtain a fair settlement for these clients. Obtaining a settlement or judgment can sometimes take years.

The proper disbursement of settlement proceeds is a tremendous responsibility for a lawyer who receives such proceeds. Clients are often in need of funds from the settlement. Lawyers need payment for their services. And third persons such as medical providers, insurance carriers, or Medicare and Medicaid seek reimbursement of their expenses from the settlement.

Increasingly, lawyers who represent plaintiffs are being asked to personally indemnify the opposing party and counsel from claims by third persons to the settlement proceeds. Lawyers are concerned not only about whether it is ethical to enter into such an agreement but also whether it is ethical to seek to require other lawyers to enter into such an agreement.[1]

1. A lawyer may not ethically agree, as a condition of settlement, to indemnify the opposing party from claims by third persons to the settlement funds.

The first issue is governed by Rule 1.8(e) of the Georgia Rules of Professional Conduct, which provides as follows:

> "A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
>
> 1. a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; or

2. a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client."

Comment 4 provides further guidance:

> "Paragraph (e) eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer. It further limits permitted assistance to court costs and expenses directly related to litigation. Accordingly, permitted expenses would include expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses would not include living expenses or medical expenses other than those listed above."

Financial assistance can take many forms. Such assistance includes gifts, loans and loan guarantees. Any type of guarantee to cover a client's debts constitutes financial assistance. Rule 1.8(e) provides narrow exceptions to the prohibition on a lawyer providing financial assistance to a client in connection with litigation. Those exceptions do not apply when a lawyer enters into a personal indemnification agreement. Because a lawyer, under Rule 1.8(e), may not provide financial assistance to a client by, for example, paying or advancing the client's medical expenses in connection with pending or contemplated litigation, it follows that a lawyer may not agree, either voluntarily or at the insistence of the client or parties being released, to guarantee or accept ultimate responsibility for such expenses.[2]

Moreover, any insistence by a client that the lawyer accept a settlement offer containing an indemnification agreement on the part of the lawyer might require the lawyer to withdraw from the representation. The lawyer may otherwise be in violation of Rule 1.16(a)(1), which provides that "a lawyer shall . . . withdraw from the representation of a client if . . . the representation will result in violation of the Georgia Rules of Professional Conduct."

2. <u>A lawyer may not seek to require, as a condition of settlement, that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third persons to the settlement funds.</u>

The second issue is governed by Rule 8.4(a)(1), which provides that "It shall be a violation of the Rules of Professional Conduct for a lawyer to . . . violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or ***induce another to do so,*** or do so through the acts of another." (emphasis added). Comment 1 to Rule 8.4 also provides direction:

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"The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prevent a lawyer from attempting to violate the Georgia Rules of Professional Conduct or from knowingly aiding or abetting, or providing direct or indirect assistance or inducement to another person who violates or attempts to violate a rule of professional conduct. A lawyer may not avoid a violation of the rules by instructing a non-lawyer, who is not subject to the rules, to act where the lawyer can not."

In light of the conclusion that plaintiff's counsel may not agree to indemnify the opposing party from claims by third parties, it is also improper for a lawyer representing a defendant to seek to require that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third parties to the settlement funds. Nor can the lawyer representing the defendant avoid such a violation by instructing his client or the insurance company to propose or demand the indemnification.

Endnotes

1. This opinion is intended to address the ethical concerns associated with a lawyer's agreement to indemnify. This opinion does not address the legal or ethical issues involved in the disbursement of settlement funds.
2. This opinion is consistent with advisory opinions from other states holding that an agreement by a client's lawyer to guarantee a client's obligations to third parties amounts to guaranteeing financial assistance to the client, in violation of Rule 1.8(e) or its equivalent. See, e.g., Alabama State Bar Ethics Opinion RO 2011-01; Arizona State Bar Ethics Opinion 03-05; Delaware State Bar Association Committee on Professional Ethics Opinion 2011-1; Florida Bar Staff Opinion 30310 (2011); Illinois State Bar Association Advisory Opinion 06-01 (violation of Illinois Rule 1.8(d), which is similar to Rule 1.8(e)); Indiana State Bar Association Legal Ethics Opinion No. 1 of 2005 (non-Medicare and Medicaid settlement agreement that requires counsel to indemnify opposing party from subrogation liens and third-party claims violates Indiana rules); Maine Ethics Opinion 204 (2011); Missouri Formal Advisory Opinion 125 (2008); Association of the Bar of the City of New York Committee on Professional and Judicial Ethics Formal Opinion 2010-3; Supreme Court of Ohio Opinion 2011-1; Philadelphia Bar Association Professional Guidance Committee Opinion 2011-6 (2012); South Carolina Ethics Advisory Opinion 08-07; Utah Ethics Advisory Opinion 11-01; Virginia Legal Ethics Opinion 1858 (2011); Washington State Bar Association Advisory Opinion 1736 (1997); Wisconsin Formal Opinion E-87-11 (1987).
   Many of these jurisdictions also hold that an agreement to guarantee a client's obligations to third parties also violates Rule 1.7(a) or its equivalent regarding conflicts of interest. In reaching its decision, the Board does not consider it necessary to address that issue here.
3. The mere suggestion by the client that the lawyer guarantee or indemnify against claims would not require withdrawal by the lawyer, only the client's demand that the lawyer do so would require withdrawal. See Rule 1.16(a)(1) ("A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Georgia Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.").
4. This opinion is consistent with advisory opinions from other states holding that a lawyer's demand that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third parties to the settlement funds violates Rule 8.4(a)(1) or its equivalent. See, e.g., Alabama State Bar Ethics Opinion RO 2011-01; Florida Bar Staff Opinion 30310 (2011); Missouri Formal Advisory Opinion 125 (2008); Association of the Bar of the City of New York Committee on Professional and Judicial Ethics Formal Opinion 2010-3; Supreme Court of Ohio Opinion 2011-1; Utah Ethics Advisory Opinion 11-01; Virginia Legal Ethics Opinion 1858 (2011)).

Re-Publication of Formal Advisory Opinion No. 10-1

On April 15, 2013, the Supreme Court of Georgia issued an Order approving Formal Advisory Opinion No. 10-1 (FAO No. 10-1) pursuant to Rule 4-403. The Order also contained the Court's opinion regarding FAO No. 10-1. Because of the extensive language contained in the Court's opinion, the language was made part of FAO No. 10-1. Notice of the Court's issuance of FAO No. 10-1 was published in the June 2013 issue of the *Georgia Bar Journal*.

Following the issuance of FAO No. 10-1, a motion for reconsideration was filed with the Supreme Court. On July 11, 2013, the Court issued an Order granting the motion, withdrawing its opinion regarding FAO No. 10-1 issued on April 15, 2013, and issuing a substitute opinion.

In light of the Supreme Court's withdrawal of its opinion contained in the April 15, 2013, Order, and its issuance of a substitute opinion in the July 11, 2013, Order, the language of the substitute opinion has been made a part of FAO No. 10-1, replacing the language of the April 15, 2013, opinion.

Following is the re-publication of the full text of FAO No. 10-1, including the language from the Court's July 11, 2013, opinion. Please note, only the language of the Court's opinion regarding FAO No. 10-1 changed.

STATE BAR OF GEORGIA
FORMAL ADVISORY OPINION NO. 10-1
Approved and Issued On July 11, 2013
Pursuant to Bar Rule 4-403
By Order Of The Supreme Court of Georgia
With Comments
Supreme Court Docket No. S10U1679

COMPLETE TEXT FROM THE ORDER OF THE SUPREME COURT OF GEORGIA

Responding to a letter from the Georgia Public Defender Standards Council (GPDSC), the State Bar Formal Advisory Opinion Board (Board) issued Formal Advisory Opinion 10-1 (FAO 10-1), in which the Board concluded that the standard for the imputation of conflicts of interest under Rule 1.10 (a) of the Georgia Rules of Professional Conduct applies to the office of a circuit public defender as it would to a private law firm. FAO 10-1 was published in the June 2010 issue of the *Georgia Bar Journal* and was filed in this Court on June 15, 2010. On July 5, 2010, the GPDSC filed a petition for discretionary review which this Court granted on January 18, 2011. The Court heard oral argument on January 10, 2012. For reasons set forth below, we conclude, as did the Board, that Rule 1.10 (a) applies to a circuit public defender office as it would to a private law firm, and pursuant to State Bar Rule 4.403 (d), we hereby approve FAO 10-1 to the extent it so holds.[1]

1. At the heart of FAO 10-1 is the constitutional right to conflict-free counsel and the construction of Rule 1.10 (a) of the Georgia Rules of Professional Conduct. "Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest." Wood v. Georgia, 450 U.S. 261, 271 (101 SC 1097, 67 LE2d 220) (2008). Indeed, this Court has stated in no uncertain terms that, "Effective counsel is counsel free from conflicts of interest." Garland v. State, 283 Ga. 201 (657 SE2d 842) (2008). In keeping with this unequivocal right to conflict-free representation, Rule 1.10 (a) provides as follows:

> While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by *Rule 1.7: Conflict of Interest: General Rule, 1.8(c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary.*

(Emphasis in original.) Comment [1] concerning Rule 1.10 defines "firm" to include "lawyers . . . in a legal services organization." Comment [3] further provides "Lawyers employed in the same unit of a legal service organization constitute a firm,. . . ."

Under a plain reading of Rule 1.10 (a) and the comments thereto, circuit public defenders working in the circuit public defender office of the same judicial circuit are akin to lawyers working in the same unit of a legal services organization and each judicial circuit's public defender's office[2] is a "firm" as the term is used in the rule. This construction is in keeping with our past jurisprudence. Cf. Hung v. State, 282 Ga. 684 (2) (653 SE2d 48) (2007) (attorney who filed motion for new trial was not considered to be "new" counsel for the purpose of an ineffective assistance of counsel claim where he and trial counsel were from the same public defender's office); Kennebrew v. State, 267 Ga. 400 (480 SE2d 1) (1996) (appellate counsel who was from the same public defender office as appellant's trial lawyer could not represent appellant on appeal where appellant had an ineffective assistance of counsel claim); Ryan v. Thomas, 261 Ga. 661 (409 SE2d 507) (1991) (for the purpose of raising a claim of ineffective assistance of counsel, "attorneys in a public defender's office are to be treated as members of a law firm..."); Love v. State, 293 Ga. App. 499, 501 at fn. 1 (667 SE2d 656) (2008). See also Reynolds v. Chapman, 253 F3d 1337, 1343-1344 (11th Cir. 2001) ("While public defenders' offices have certain characteristics that distinguish them from typical law firms, our cases have not drawn a distinction between the two."). Accordingly, FAO 10-1 is correct inasmuch is it concludes that public defenders working in the same judicial circuit are "firms" subject to the prohibition set forth in Rule 1.10 (a) when a conflict exists pursuant to the conflict of interest rules listed therein, including in particular Rule 1.7.[3] That is, if it is determined that a single public defender in the circuit public defender's office of a particular judicial circuit has an impermissible conflict of interest concerning the representation of co-defendants, then that conflict of interest is imputed to all of the public defenders working in the circuit public defender office of that particular judicial circuit. See Restatement (Third) of the Law Governing Lawyers §123 (d)(iv) ("The rules on imputed conflicts . . . apply to a public-defender organization as they do to a law firm in private practice. . .").

2. Despite the unambiguous application of Rule 1.10 (a) to circuit public defenders, GPDSC complains that FAO 10-1 creates a per se or automatic rule of disqualification of a circuit public defender office. We disagree. This Court has stated that "[g]iven that multiple representation alone does not amount to a conflict of interest when *one* attorney is involved, it follows that counsel from the same [public defender office] are not automatically disqualified from representing multiple defendants charged with offenses arising from the same conduct." Burns v. State, 281 Ga. 338, 340 (638

SE2d 299) (2006) (emphasis in the original). Here, Rule 1.10 does not become relevant or applicable until *after* an impermissible conflict of interest has been found to exist. It is only when it is decided that a public defender has an impermissible conflict in representing multiple defendants that the conflict is imputed to the other attorneys in that public defender's office. Even then, multiple representations still may be permissible in some circumstances. See, e.g., Rule 1.10 (c) ("A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7: Conflict of Interest: General Rule.) Thus, FAO 10-1 does not create a per se rule of disqualification of a circuit public defender's office prior to the determination that an impermissible conflict of interest exists and cannot be waived or otherwise overcome.

Although a lawyer (and by imputation his law firm, including his circuit public defender office) may not *always* have an impermissible conflict of interest in representing multiple defendants in a criminal case, this should not be read as suggesting that such multiple representation can routinely occur. The Georgia Rules of Professional Conduct explain that multiple representation of criminal defendants is ethically permissible only in the unusual case. See Rule 1.7, Comment [7] ("The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant."). We realize that the professional responsibility of lawyers to avoid even imputed conflicts of interest in criminal cases pursuant to Rule 1.10 (a) imposes real costs on Georgia's indigent defense system, which continually struggles to obtain the resources needed to provide effective representation of poor defendants as the Constitution requires. See Gideon v. Wainwright, 373 U.S. 335 (83 SC 792, 9 LE2d 799) (1963). But the problem of adequately funding indigent defense cannot be solved by compromising the promise of Gideon. See Garland v. State, 283 Ga. 201, 204 (657 SE2d 842) (2008).

Since FAO 10-1 accurately interprets Rule 1.10 (a) as it is to be applied to public defenders working in circuit public defender offices in the various judicial circuits of this State, it is approved.[4]

Formal Advisory Opinion 10-1 approved. All the Justices concur.

Endnotes

1. In FAO 10-1, the Board purported to answer a broader question–whether "different lawyers employed in the circuit public defender office in the same judicial circuit [may] represent codefendants when a single lawyer would have an impermissible conflict of interest in doing so"—and we asked the parties to address a similar question in their briefs to this Court. That statement of the question, however, is too broad. The real issue addressed by the Board—and addressed in this opinion—is solely a question of conflict imputation, that is, whether Rule 1.10 (a) applies equally to circuit public defender offices and to private law firms. No doubt, the question of conflict imputation under Rule 1.10 (a) is part of the broader question that the Board purported to answer and that we posed to the parties. But whether multiple representations are absolutely prohibited upon imputation of a conflict—even with, for instance, the informed consent of the client or the employment of "screening" measures within an office or firm—is a question that goes beyond Rule 1.10 (a), and it is one that we do not attempt to answer in this opinion. To the extent that FAO 10-1 speaks to the broader question, we offer no opinion about its correctness.

2. There are 43 circuit public defender offices in Georgia.

3. Rule 1.7 of the Georgia Rules of Professional Conduct provides:

   (a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).

   (b) If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent confirmed in writing to the representation after: (1) consultation with the lawyer pursuant to Rule 1.0(c); (2) having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation; and (3) having been given the opportunity to consult with independent counsel.

   (c) Client informed consent is not permissible if the representation: (1) is prohibited by law or these Rules; (2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or a substantially related proceeding; or (3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients. The maximum penalty for a violation of this Rule is disbarment.

4. Our opinion cites several precedents that concern the constitutional guarantee of the assistance of counsel, and it is only fitting that we think about the constitutional values that Rule 1.10 promotes as we consider the meaning of Rule 1.10. We do not hold that the imputation of conflicts required by Rule 1.10 is compelled by the Constitution, nor do we express any opinion about the constitutionality of any other standard for imputation. Rule 1.10 is a useful aid in the fulfillment of the constitutional guarantee of the right to the effective assistance of counsel, but we do not hold today that it is essential to fulfill the constitutional guarantee. We do not endorse any particular alternative to Rule 1.10 (a), but we also do not foreclose the possibility that Rule 1.10 (a) could be amended so as to adequately safeguard

high professional standards and the constitutional rights of an accused—by ensuring, among other things, the independent judgment of his counsel and the preservation of his confidences—and, at the same time, permit circuit public defender offices more flexibility in the representations of co-defendants. As of now, Rule 1.10 is the rule that we have adopted in Georgia, FAO 10-1 correctly interprets it, and we decide nothing more.

FORMAL ADVISORY OPINION NO. 10-1

QUESTION PRESENTED:

May different lawyers employed in the circuit public defender office in the same judicial circuit represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so?

SUMMARY ANSWER:

Lawyers employed in the circuit public defender office in the same judicial circuit may not represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so.

OPINION:

In Georgia, a substantial majority of criminal defendants are indigent. Many of these defendants receive representation through the offices of the circuit public defenders. More than 40 judicial circuit public defender offices operate across the State.

Issues concerning conflicts of interest often arise in the area of criminal defense. For example, a single lawyer may be asked to represent co-defendants who have antagonistic or otherwise conflicting interests. The lawyer's obligation to one such client would materially and adversely affect the lawyer's ability to represent the other co-defendant, and therefore there would be a conflict of interest under Georgia Rule of Professional Conduct 1.7(a). See also Comment [7] to Georgia Rule of Professional Conduct 1.7 (". . .The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant"). Each such client would also be entitled to the protection of Rule 1.6, which requires a lawyer to maintain the confidentiality of information gained in the professional relationship with the client. One lawyer representing co-defendants with conflicting interests certainly could not effectively represent both while keeping one client's information confidential from the other. See Georgia Rule of Professional Conduct 1.4 ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. . .").

Some conflicts of interest are imputed from one lawyer to another within an organization. Under Georgia Rule of Professional Conduct 1.10(a), "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so. . . ." Therefore, the answer to the question presented depends in part upon whether a circuit public defender office constitutes a "firm" within the meaning of Rule 1.10.

Neither the text nor the comments of the Georgia Rules of Professional Conduct explicitly answers the question. The terminology section of the Georgia Rules of Professional Conduct defines "firm" as a "lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization. See Comment, Rule 1.10: Imputed Disqualification." Comment [1] to Rule 1.10 states that the term "firm" includes lawyers "in a legal services organization," without defining a legal services organization. Comment [3], however, provides that:

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

That is the extent of the guidance in the Georgia Rules of Professional Conduct and the comments thereto. In the terms used in this Comment, the answer to the question presented is determined by whether lawyers in a circuit public defender's office are in the same "unit" of a legal services organization.

The Supreme Court of Georgia has not answered the question presented. The closest it has come to doing so was in the case of Burns v. State, 281 Ga. 338 (2006). In that case, two lawyers from the same circuit public defender's office represented separate defendants who were tried together for burglary and other crimes. The Court held that such representation was permissible because there was no conflict between the two defendants. Presumably, therefore, the same assistant public defender could have represented both defendants. The Court recognized that its conclusion left open "the issue whether public defenders should be automatically disqualified or be treated differently from private law firm lawyers when actual or possible conflicts arise in multiple defendant representation cases." Id. at 341.

Other states, in case law and ethics opinions, have decided the question presented in disparate ways. Some impute conflicts within particular local defender offices. *See* Commonwealth v. Westbrook, 400 A2d 160, 162 (Pa. 1979); Turner v. State, 340 So.2d 132, 133 (Fla.

App. 2nd Dist. 1976); Tex. Ethics Op. 579 (November 2007); Va. Legal Ethics Op. No. 1776 (May 2003); Ct. Informal Op. 92-23 (July 1992); S.C. Bar Advisory Op. 92-21 (July 1992). Some courts and committees have allowed for the possibility that there can be sufficient separation of lawyers even within the same office that imputation should not be automatic. Graves v. State, 619 A.2d 123, 133-134 (Md. Ct. of Special Appeals 1993); Cal. Formal Op. No. 2002-158 (Sept. 2002); Montana Ethics Op. 960924. Others have decided more generally against a per se rule of imputation of conflicts. *See* Bolin v. State, 137 P.3d 136, 145 (Wyo. 2006); State v. Bell, 447 A.2d 525, 529 (N.J. 1982); People v. Robinson, 402 N.E.2d 157, 162 (Ill. 1979); State v. Cook, 171 P.3d 1282, 1292 (Idaho App. 2007).

The Eleventh Circuit Court of Appeals looked at an imputed conflict situation in a Georgia public defender office. The Court noted that "[t]he current disciplinary rules of the State Bar in Georgia preclude an attorney from representing a client if one of his or her law partners cannot represent that client due to a conflict of interest." Reynolds v. Chapman, 253 F.3d 1337, 1344 (2001). The Court further stated that "[w]hile public defender's offices have certain characteristics that distinguish them from typical law firms, our cases have not drawn a distinction between the two." Reynolds, supra, p. 1343.

The general rule on imputing conflicts within a law firm reflects two concerns. One is the common economic interest among lawyers in a firm. All lawyers in a firm might benefit if one lawyer sacrifices the interests of one client to serve the interests of a different, more lucrative client. The firm, as a unified economic entity, might be tempted to serve this common interest, just as a single lawyer representing both clients would be tempted. Second, it is routine for lawyers in a firm to have access to confidential information of clients. A lawyer could access the confidential information of one of the firm's clients to benefit a different client. For at least these two reasons, a conflict of one lawyer in a private firm is routinely imputed to all the lawyers in the firm. See RESTATEMENT OF THE LAW GOVERNING LAWYERS Third, Sec. 123, Comment b.

The first of these concerns is not relevant to a circuit public defender office. "The salaried government employee does not have the financial interest in the success of departmental representation that is inherent in private practice." Frazier v. State, 257 Ga. 690, 695 (1987) citing ABA Formal Opinion 342.

The concerns about confidentiality, however, are another matter. The chance that a lawyer for one defendant might learn the confidential information of another defendant, even inadvertently, is too great to overlook.

Other concerns include the independence of the assistant public defender and the allocation of office resources. If one supervisor oversees the representation by two assistants of two clients whose interests conflict, the potential exists for an assistant to feel pressured to represent his or her client in a particular way, one that might not be in the client's best interest. Furthermore, conflicts could arise within the office over the allocation of investigatory or other resources between clients with conflicting interests.

The ethical rules of the State Bar of Georgia should not be relaxed because clients in criminal cases are indigent. Lawyers must maintain the same level of ethical responsibilities whether their clients are poor or rich.

Lawyers employed in the circuit public defender office are members of the same "unit" of a legal services organization and therefore constitute a "firm" within the meaning of Rule 1.10. Lawyers employed in the circuit public defender office in the same judicial circuit may not represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so. Conversely, lawyers employed in circuit public defender offices in different judicial circuits are not considered members of the same "unit" or "firm" within the meaning of Rule 1.10.

Notice of and Opportunity for Comment on Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after Aug. 1, 2013, from the court's website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., NW, Atlanta, Georgia 30303 (phone: 404-335-6100). Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by Sept. 3, 2013.

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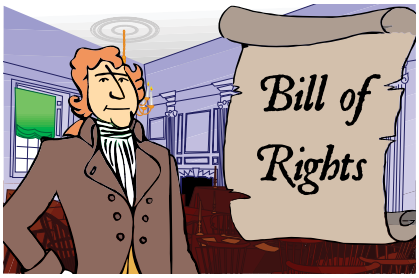
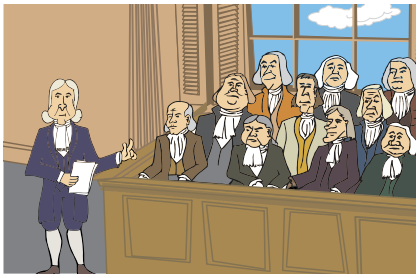
Trial By Jury: What's the Big Deal?





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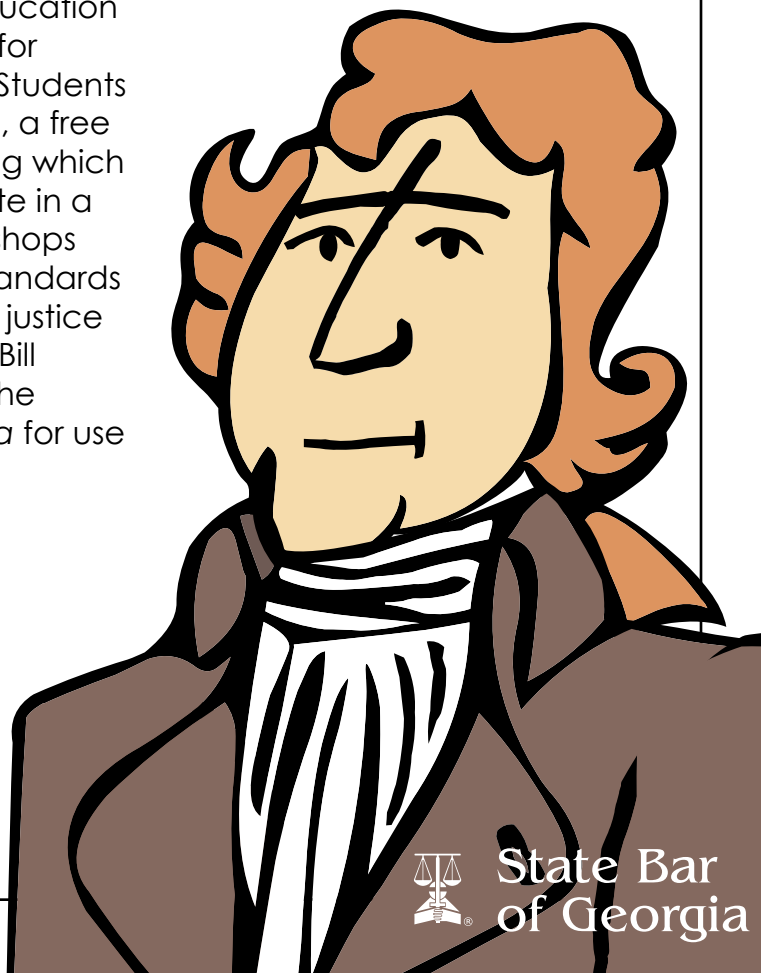

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