

April 2018

Volume 23, Number 6

GEORGIA BAR JOURNAL

From the Executive
Director: Website and
Directory Enhancements
to Benefit Bar Members
and the Public

Financial Institutions:
Protecting Elderly
Clients From Financial
Exploitation

Bending the Arc: Georgia
Lawyers in the Pursuit
of Social Justice

Writing Matters:
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Mean to Your Writing

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The *Georgia Bar Journal* welcomes the submission of news about local and voluntary bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; 404-527-8791; sarahc@gabar.org.

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PUBLISHER'S STATEMENT

The *Georgia Bar Journal* (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) with a special issue in November by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Copyright State Bar of Georgia 2018. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Ga., and additional mailing offices. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMASTER: Send address changes to same address.



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The April Issue

In all my years as a member of the Editorial Board of the *Georgia Bar Journal*, never have I been more excited to publish an article than I am this month. You simply must read our feature article “Bending the Arc: Georgia Lawyers in the Pursuit of Social Justice.” Attorney Derrick Alexander Pope has highlighted the critical roles that four Georgia lawyers have played in the course of the American Civil Rights Movement. Beginning with the Confederate period, and taking the reader through the next 150 years to modern times, Pope tells the stories of four men: Amos T. Akerman, Noah Parden, Griffin B. Bell and Donald L. Hollowell. Through their stories, Pope shows us how Georgia lawyers contributed to “the first revolution in history conducted on advice of counsel.”

Akerman, as a former colonel in the Confederate Army, seems an unlikely advocate for the right to vote for all men, white and black. He was instrumental in drafting Georgia’s 1868 Constitution. Parden, the orphaned son of a former slave and a white man, put himself through law school working as a barber. He ultimately argued before the U.S. Supreme Court in an attempt to save the life of a man wrongfully accused of raping a white woman. Bell, well-known to many Atlanta lawyers, worked for years, as both a lawyer and a judge, to desegregate schools. Hollowell litigated many civil rights cases, and was “cool and masterful” in achieving the admission of the first students of color to the University of Georgia. These men had many other accomplishments, and Pope’s article is quite a compelling read.

Once you’ve read about the contributions of attorneys from the past, please read about the contributions of present-day attorneys. The 19th Annual Justice Robert Benham Awards for Community Service, sponsored by the Chief Justice’s Commission on Professionalism and the State Bar of Georgia, were presented to several honorees on Feb. 27. And in “Yes, Transactional Lawyers Can Do Pro Bono Work,” Rachel Epps Spears tells of the variety of pro bono projects available through the Pro Bono Partnership of Atlanta.

This month’s legal article, “Financial Institutions: Protecting Elderly Clients from Financial Exploitation” by Linda Shashinka, provides many resources for individuals and financial institutions who suspect that an elderly person may be the victim of financial exploitation, which is a rising concern for many. Unfortunately, this is a more frequent occurrence, but Shashinka sets out options to protect this vulnerable population. For practical advice, you can turn to the monthly Law Practice Management article for advice on how to use technology to manage your law office, or to the Writing Matters column for advice on legal writing for documents that are e-filed.

In closing, I would like to remember Michelle Hirsch, one of our Editorial Board members who passed away in February. She had worked in private practice, and was most recently an assistant attorney general. In person, she was absolutely delightful and always smiling. Michelle consistently contributed to the Editorial Board for many years. We miss her very much. ●



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**BRIAN D. "BUCK"
ROGERS**

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Start Succession Planning by Naming a Designated Attorney

Bar Rule 4-228 (a) defines an "absent attorney" as "a member of the State Bar of Georgia (or a foreign or domestic lawyer authorized to practice law in Georgia) who shall have disappeared, died, become disbarred, disciplined or incarcerated, or become so impaired as to be unable to properly represent his or her clients or as to pose a substantial threat of harm to his or her clients or the public as to justify appointment of a Receiver hereunder by the Supreme Court of Georgia."

In an effort to avoid what could happen to your law practice (and your clients) if you were to suddenly become an absent attorney, the State Bar of Georgia is implementing a voluntary program in which you can select a fellow Bar member to help return your files and other property to your clients in such a situation.

Beginning with the 2018-19 dues notice you will receive in May, we have added an area for you to designate an attorney to coordinate the return of client files in the event that, sometime in the fu-

ture, you become an absent attorney. The notice reads as follows:

NOTICE OF DESIGNATED ATTORNEY

I hereby nominate the following State Bar of Georgia member(s) to assist with coordinating the return of client files and property in the event I become an "absent attorney" as defined under Rule 4-228 (a) of the Georgia Rules of Professional Conduct. I have discussed this with the person(s) named below, and they are willing to be considered to serve in this capacity.

We are encouraging all lawyers to participate in this voluntary program. All you have to do is speak with another lawyer and obtain his or her willingness to work with the State Bar to return your files and other property to your clients in the event you become an absent attorney through death, disability or otherwise.

The Designated Attorney Program is a simple step toward developing a succession plan for your law practice. With the legal profession populated by a larger

percentage of “retirement age” members, it can also be a critical step.

I appreciate the work of the Senior Lawyers Committee, chaired by Bill Gentry, on this initiative. As Gentry explains the rationale behind the program, “The Designated Attorney Program is being done for this reason: Too many lawyers suddenly exit the practice of law without any plan for handling their cases when that time comes. Whether it’s by death, disability like a stroke or heart attack, or otherwise, the lawyer’s clients face uncertainty and perhaps even an adverse result if the lawyer has failed to plan for this event. This is happening more and more as Baby Boomer lawyers reach their 60s and 70s.”

Roy S. Ginsburg, writing for the Attorney at Work blog, noted, “In 1980, only a quarter of the legal profession was older than 55. Today, well over a third of lawyers are. That means that more than a third of those practicing today will likely not be practicing by 2030. Many of them are today’s firm leaders and key rainmakers. To quote Yogi Berra, ‘The future ain’t what it used to be.’”¹

In another Attorney at Work blog post, Ida O. Abbott explains why most lawyers avoid planning for retirement. “The legal profession has traditionally honored lawyers with long careers,” she writes. “It is common for lawyers to practice well beyond the customary retirement age of mid-60s. If you love your practice and continue to thrive professionally, you may see no reason to envision anything else.”

But many lawyers avoid the subject of retirement out of fear. Retirement signifies the end of the professional road you have spent a lifetime creating. It portends the loss of vital facets of your life: professional identity, status, the firm community, a sense of purpose, client relationships that have been nurtured over many years, stimulating intellectual challenges, a place to go every day.”²

“So what are law firms doing about this?” Ginsburg asks. “Not much, according to a 2015 Altman Weil survey. Only 31 percent of the surveyed firms have formal succession plans in place.”³

OFFICERS’ BLOCK

For this issue of the Georgia Bar Journal, we asked our State Bar of Georgia officers, “Who was your favorite law professor and why?”



BRIAN D. “BUCK” ROGERS

President

David Partlett was my torts professor as a 1L. He taught by a rigorous Socratic method and when I was well prepared, I wore a bright red shirt in hopes of being called upon. He taught the “exception” rather than the rule, which explains some of my creative understanding of torts today.



KENNETH B. “KEN” HODGES III

President-Elect

Picking between Ron Ellington, Ron Carlson and Tom Eaton is impossible for academic classes. Clinical professors at the PD’s office, however, inspired my passion to be in the courtroom. I was actually in court almost daily my third year. For that reason Al Pearson and Russell Gabriel get the nod.



DARRELL L. SUTTON

Treasurer

I went to law school at Mercer, which employs only stellar law professors. That makes choosing a favorite law professor like choosing a favorite child: an impossible venture because they are all great!



DAWN M. JONES

Secretary

I was fortunate to have several favorite professors at Georgia State University College of Law who guided, motivated and empowered me in law school. Prof. Bernadette Hartfield stands out among many because she encouraged community activism and local bar engagement (including introducing me to GABWA) as well as academic excellence.



PATRICK T. O’CONNOR

Immediate Past President

Prof. (later UGA Law Dean) Ron Ellington looked the part, acted the part and made me think like a lawyer. He was my personal Prof. Kingsfield. (For the millennials, please refer to “The Paper Chase.”)

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The Designated Attorney Program has been implemented in a number of other states, which have seen substantial success in the timely transition of client files to other lawyers. Reciprocal agreements between lawyers to help return client files and property in such events are strongly encouraged.

“The Designated Attorney Program is a simple and voluntary first step toward remedying this problem,” Gentry adds. “It’s easy to simply reach out to a friend or colleague, perhaps at a Bar function, and mutually agree to be considered in helping the other lawyer’s office return client files and property if and when a lawyer dies, becomes disabled or otherwise leaves the practice of law.”

Neighboring South Carolina is one of the states where the designated attorney system has been successfully implemented. The South Carolina Bar (which uses the term “Successor Attorney”) offers a list of suggestions for lawyers taking advantage of this opportunity, including:

- Familiarize your designated attorney with your office systems and keep him or her apprised of office changes.
- Introduce your designated attorney to your office staff. Make certain your staff knows where you keep the written agreement and how to contact your designated attorney if an emergency occurs before or after office hours. If you practice without regular staff, make sure your designated attorney knows whom to contact (the landlord, for example) to gain access to your office.
- Inform your spouse or closest living relative and the personal representative of your estate of the existence of this agreement and how to contact your designated attorney.
- Forward the name, address and phone number of your designated attorney to your professional liability insurance carrier each year. This will enable the professional liability insurance carrier to locate your

designated attorney in the event of your death, disability, impairment or incapacity.

The State Bar of Georgia staff is also glad to assist designated attorney volunteers. People willing to serve in this capacity are not expected or required to handle any cases, but merely to assist in returning client files and property.

Additionally, the Senior Lawyers Committee’s mandate is to “render advice to the staff, Executive Committee and Board of Governors with respect to 1) aiding lawyers in preparing their practices for succession upon retirement, death, impairment or otherwise; 2) assisting the Office of the General Counsel in the disposition of practices of lawyers who leave their practice without a succession plan; 3) assisting lawyers who are cognitively impaired but still practicing; and 4) creating educational programs about cognitive impairment, financial planning and law practice succession.”

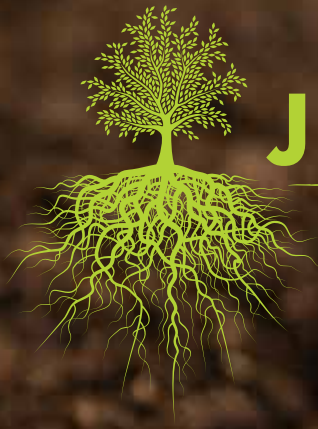
Finally, if you have questions or need assistance, please contact Natalie Kelly, director of the Law Practice Management Program of the State Bar, at 404-527-8770.

As Bill Gentry concludes, “Making these plans will not only reassure clients, it should also reassure the lawyer and the lawyer’s family and staff to have made these plans. Remember that the designated lawyer will be working with the State Bar and so will have counsel and direction from the Bar. The Designated Attorney Program addresses the first prong of the Senior Lawyers Committee mandate—to aid lawyers in preparing their practices for succession.” ●

Endnotes

1. Roy S. Ginsburg, “How to Be Successful at Succession Planning,” *Attorney at Work*, March 30, 2016.
2. Ida O. Abbott, “Prepare Yourself for a Happy Retirement,” *Attorney at Work*, Jan. 30, 2018.
3. Ginsburg.

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NICOLE C. LEET

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Selfish Service

It sounds like an oxymoron—selfish service? Service seems, by its very definition and fundamental nature, to be unselfish. And universally, the end result of service is indeed an unselfish result, one that benefits others. The motivations behind such service, however, may be very selfish indeed. And that is not a bad thing! In fact, I would encourage you to be selfish when serving. You are more likely to continue in that service, and make a bigger impact, by being selfish.

It may be Machiavellian, but from my perspective, the end justifies the means. While there may be different motivating factors, if the end result is service, no one should question the motivation itself.

Service as a Skill Builder

As a young lawyer, a lot of motivation behind doing service is selfish. Service, especially as pro bono service, can be a way to gain experience in new areas of the law or gain experience period.

It is well-recognized that in the practice of law, there may be limited opportunities for younger lawyers to obtain hands-on experience in the early years of their practice. Taking on a pro bono opportunity can provide experience that young lawyers may not otherwise get—such as arguing before a judge, taking a deposition or conducting a bench trial. Pro bono service also provides an opportunity for direct client contact and interaction, which is

invaluable experience that young lawyers also do not traditionally get in their own practice.

Service can provide training and experience in different areas of the law. Rather than taking a CLE to learn about a new area of law, young lawyers can gain experience by volunteering their time and service. This can be considered a form of cross-training that can benefit their own practice. It can serve to fulfill an interest that a young lawyer had in law school and was not able to make their sole or specific practice area. Or it may provide an opportunity to test the waters and see what is out there for someone considering a change. The practical experience obtained by pro bono service can provide direct benefits and be used strategically by young lawyers for these, and many other, reasons.

Service as a whole can provide opportunities to learn and hone other skills, such as leadership, networking, public speaking or other soft skills. A young lawyer can choose to serve in a specific capacity that may allow them to interact with potential clients or referral sources and build their network as well as networking skills. Many service opportunities allow volunteers to take leadership roles and obtain hands-on experience in a variety of leadership capacities. Exploring service opportunities with an eye toward building your own skill set is a good way to gain experience to benefit your own personal growth and development.

Service as a Benefit

Service also makes you feel good. Is that a selfish motive? Maybe. But it is a motivating reward system. People gravitate toward things that make them feel good. If service is one of those things and has such a beneficial result, then people will continue to do service, creating a benefit for both themselves and the public. One could really look at service as being of mutual benefit. There are multiple research studies showing the social, physical and psychological benefits to be gained from service. Service can benefit others as well as oneself.

There are opportunities to serve and solve problems—ranging from specific legal problems with pro bono service to societal or environmental problems such as homelessness, hunger or the betterment of our planet. Volunteering can help solve problems which can create a sense of purpose and accomplishment.

Michael Arndt, with Hawkins Parnell Thackston & Young LLP, is a young lawyer who took the YLD Pro Bono Challenge this year and pledged 50 hours of pro bono service. He noted that the experience of advising people pro bono on consumer issues was a “lovely tonic to the less pleasant parts of workday civil litigation.” Michael further described his experience:

Much ink has been spilled about happiness and, other than singing in the car (for which no study is needed to establish how it boosts happiness), an indisputable driver of happiness is feeling needed.

Our legal system is necessary for our society, but that does not mean that every person and every task within the system are necessary. . . not every task is imbued with the necessity of the system as a whole, and it is easy to get lost. To lose sight of the system. To lose the sense that you are contributing to some big and great thing.

Working on the Pro Bono Challenge is a useful antidote to this feeling. My assignment was with Legal Aid’s Consumer Clinic. Once a month, Legal Aid hosts a Consumer Clinic at the Gwinnett County Judicial Center. The clinic provides free, limited rep-

OFFICERS’ BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, “Who was your favorite law professor and why?”



NICOLE C. LEET | YLD President

Prof. Belle Stoddard made fairly dry and complicated legal topics engaging and interesting. Her sense of humor was amazing and much needed in the often stressful atmosphere of law school. I will always appreciate the opportunity of having her as my professor and mentor.



RIZZA O’CONNOR | YLD President-Elect

Sarah Gerwig-Moore is an incredible teacher that shows her students the importance of public service. I admire her for making such a difference across the state through her appellate work, dedication to justice and through her efforts in revitalizing downtown Macon.



WILLIAM T. “WILL” DAVIS | YLD Treasurer

Debbie Bell taught family law and led the Guardian ad Litem clinic at Ole Miss, and not only did she guide me toward a career which I currently love, but she was always approachable and inviting regarding anything else I may have needed while in law school.



BERT HUMMEL | YLD Secretary

My favorite was Reynold Kosek. Although the curriculum for his class was Sales and the UCC, Prof. Kosek reminded us daily to never use pronouns, never guess or assume anything, and always speak with confidence and be prepared to back up everything you say.



JENNIFER C. MOCK | YLD Immediate Past President

My favorite law professor was Prof. Dan Coenen. Learning to “argue against yourself” has been one of the most important skills that I utilize on a regular basis in my career.



SHAMIRACLE J. RANKIN | YLD Newsletter Co-Editor

Prof. Robert Brussack! We benefited from his unique teaching style, which made civil procedure easy to learn and apply. If you saw him around campus with his camera, he would graciously capture your Georgia law experience and post the photographs on his civil procedure website!



HEATHER RIGGS | YLD Newsletter Co-Editor

I especially appreciated immigration law professor Joe Rosen, who was so tremendously challenging and encouraging. I interned with Prof. Rosen my third year, and even worked with him after law school. Because of his mentorship, I took the leap to open my own solo practice.

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resentation of people with consumer debt issues or that need help navigating the legal system (either bringing or defending a case). In the times that I have volunteered with the clinic, I have consulted with folks about contracts, HOA agreements and landlord-tenant issues. Sometimes, I draft letters on their behalf; other times, I create a list of documents that they should compile before an upcoming hearing. Still other times, I have to explain that there is no legal remedy for a particular problem. You are the expert, explaining the contours of the system and guiding people through it.

The consultations will not make the news, and the details of the disputes do not lend themselves to heroic cinematic re-creation. These are ordinary folks with familiar problems: the contractor did not do what he said he would; the creditor did not abide by the terms of the contract; the HOA did not hold up their end of the bargain. On a foldable chair, you sit across from a person with a problem and brainstorm formal and informal ways of solving it. This is not terribly sexy, but feeding your soul often isn't. The Pro Bono Challenge, like pro bono work generally, is an invitation to serve as a goodwill ambassador for the profession. You table your usual obligations and volunteer for a few hours. You help people whom you've just met without any expectation of payment. The clients get access to the system that we are all shaping in some small way by our actions. They need your help, and it is great honor to do what you can.

Author and civil rights leader Howard Thurman said, "Don't ask what the world needs. Ask what makes you come alive, and go do it. Because what the world needs is people who have come alive." Please, feel free to be selfish and pursue service for the new opportunities it can provide and the "feel good" effect it can generate. The end result is a direct benefit to those you serve, and that is something we can all appreciate. ●

“And Justice for All”

State Bar Campaign for the Georgia Legal Services Program® (GLSP)



Give to GLSP on Line D of Your Bar Dues Notice and Support Justice for All!

Ms. Frances Brown is 50 years old and has suffered from mental illness and homelessness most of her adult life. She was treated at a local hospital for her mental disabilities, and the hospital staff applied to the Medicaid Waiver Program for Ms. Brown, but the application was declined. An attorney from the Georgia Legal Services Program, who has a satellite office at the hospital, was contacted by the hospital staff concerning the declined application. The GLSP attorney filed an appeal and successfully negotiated with the state department to provide Ms. Brown with community services equivalent to the Medicaid Waiver Program. The GLSP attorney and the hospital arranged to place Ms. Brown in a local group living environment among others with similar disabilities. Ms. Brown has an apartment, home health aid, and other community services she needs. The important medical-legal partnership between GLSP and the local hospital saved Ms. Brown's life.

Make your gift or pledge today on Line D!
Thank you for your generosity and support!



**2018 “And Justice for All” State Bar Campaign
for the Georgia Legal Services Program®**



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 name and photo does not necessarily represent the actual client.

Ten (10) GLSP offices outside metro Atlanta serve 154 of Georgia's 159 counties. Your gift makes a difference!

Website and Directory Enhancements to Benefit Bar Members and the Public



JEFF DAVIS

Executive Director
State Bar of Georgia
jeffd@gabar.org

Later this month, we will be launching the new and improved State Bar website, featuring a modernized, mobile-friendly and more appealing design, along with some additional and easier-to-use features, most notably an enhanced member directory—providing a more useful experience for Bar members and the public.

On the home page of www.gabar.org, you will notice a better use of vertical space. In the current layout, you see the entire home page on the screen and are not able to scroll down. This design change will be helpful to the increasing number of people browsing from their phones and tablets rather than desktop computers. People have grown accustomed to scrolling down for additional content as opposed to having to zoom in to click on a link. We can now eliminate that step, and it gives us more space to promote Bar programs and events on the home page.

The new site also features responsive design, which means you can go from your desktop to your tablet to your mobile device, and the website will look and function the same way on all. Regardless of the screen size, the website will resize itself depending on which device you are using. The display shifts easily from horizontal to vertical.

There are some time- and hassle-saving features on the new site as well. Currently, when you log in, you have to go to one place to check on paying dues, another place to see how many CLE hours are needed, another place for membership

listing, et cetera. On the new site, once you are logged in, hovering over “My Account” will produce a fly-out menu that provides a quick view of the most important information that lawyers frequently need to check.

With the State Bar having recently assumed the administrative management duties of the Institute of Continuing Legal Education, it makes sense that ICLE’s website (currently at www.iclega.org) will now be incorporated into the Bar’s new website. ICLE courses and CLE information will be presented under one menu with direct action-based options. ICLE courses can be viewed with user-selected preferences so you can quickly find the course by area of practice, CLE hours offered, location, type of seminar (live, webcast, institute, etc.) and date.

Going to the website to look up Bar Rules and Regulations will be a far more user-friendly experience. Whereas now you can see only one rule at a time, the new display will show multiple rules at a time and allow you to consecutively print as many different rules as you need.

The Transition Into Law Practice Program will introduce its Mentoring Meals and Mentoring Wellness initiative with the new website launch. Mentoring Meals and Mentoring Wellness are added informal opportunities for new lawyers and more experienced attorneys to connect around areas of interest outside the law, with the goal of building relationships and enhancing the profession. Mentors will be able to create events

to invite beginning lawyers to join them for a group meal through the website.

In focus groups of Bar members and staff, we heard multiple times that members need one place to go to see all of the member benefits the Bar offers. We listened. Quick links to insurance offerings, hotel discounts, Fastcase, Lawyers Living Well, the Law Practice Management library and many more benefits will all be found in one place on the new website.

Instead of choosing from a drop-down menu, the new website will present action-based choices—featuring the most popular uses of the website by Bar members and members of the public.

In the online membership directory, we’ve made the search smarter by utilizing additional fields in our membership database. For example, currently if someone searches for “Buck” Rogers instead of Brian D. Rogers, their search will come up empty. But on the new site, when you type in a name, the system will check it against first names, middle names, informal names, married names and names you were formerly known by. The new member directory will also offer the lawyer’s vCard with the same information that is on the website, which users can download and save as a new contact.

We will also be rolling out a new feature to aid the public in finding a lawyer. CloudLawyers is the service provider for our new enhanced directory, which will enable potential clients to find, connect and even book an appointment with a Bar member directly through the website.

We will keep the “classic” version of the directory with the essential information (current membership status, official address and public disciplinary history), because that’s what our members and courts depend on, and we need to maintain a complete listing of our members. For judges, retired lawyers or any other members who so choose, there will be a 30-day period to opt out of the CloudLawyers portion of the directory completely before it goes

live. Simply log in at www.gabar.org and choose “Edit Personal Preferences.” From there, under the “CloudLawyers Directory Preferences” heading, you may choose to make your listing visible to all, visible only to other attorneys or opt out completely. (This can also be done at any point once the new site goes live.)

All Bar members will receive a basic CloudLawyers listing at no charge, which includes all of their information that is currently shown in the Bar’s “classic” membership directory, plus up to three practice areas.

For a nominal fee of \$95 per year, members will be able to add a plethora of additional practice information to their CloudLawyers listing to showcase the depth and breadth of their practice, including a biography, awards, influential cases, payment options, articles and links to websites and social media.

Whether a member chooses the basic CloudLawyers option or the enhanced

State Bar’s Online Membership Directory Choices

TYPE	COST	INFORMATION DISPLAYED/FUNCTIONS
“Classic” Online Membership Directory <i>*Required per State Bar Rules</i>	No cost.	Name, Company, Address, City, State, Zip, Phone, Fax, Email, Admit Date, Law School, Membership Status and Public Disciplinary History.
“Basic” CloudLawyers Membership Listing <i>*Optional</i>	No cost.	Everything in the “Classic” listing, plus up to three practice areas.
“Enhanced” CloudLawyers Membership Listing <i>*Optional</i>	\$95 per year.	Everything in the “Basic” listing, plus unlimited number of practice areas; ability to post articles, press releases and links to external websites and social media; online scheduler; ability to share your profile on your website or social media; plus much more.



A design comp of the newly redesigned www.gabar.org, launching at the end of April.

CloudLawyers option, your information will never be shared or sold to a third party.

There are more than 200 practice areas to choose from, so lawyers can customize their profile to better describe their practice. As new practice areas are formed within the law, such as the recently added craft beer law, drone law and extreme sports law, CloudLawyers will add them to the site. Lawyers can also request that new practice areas be added by emailing the site's help desk.

For our members whose law practices currently have no online pres-

ence, CloudLawyers will provide one through the enhanced directory profile. Some 40 percent of small law firms don't have websites, which are expensive if you have to hire a professional to create one and time-consuming if you try to develop a site and keep it updated on your own. Only 35 percent of law firm website designs have been updated in the last three years. The CloudLawyers profile, while not a website or a website template, is simple to set up and edit, providing a searchable online presence.

According to CloudLawyers, 25 percent of adults—nearly 2 million Geor-

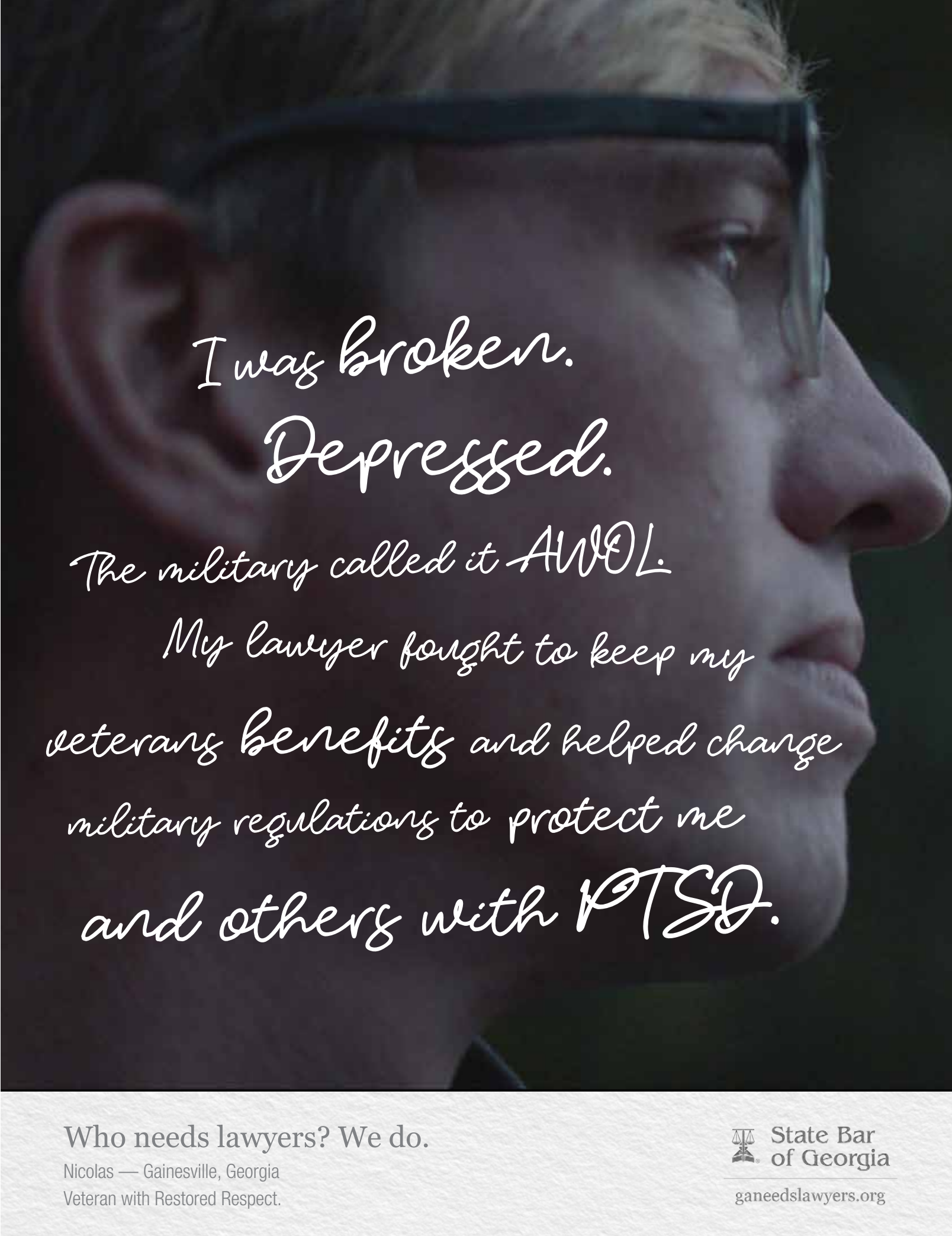
gians—have a legal need every year. Creating an online space to help lawyers share their breadth of experience will help consumers tap into that wealth of knowledge in a simple and transparent way. Additionally, 71 percent of people looking for a lawyer think it is important to have a local attorney. The CloudLawyers search results are ordered by best match and geographic proximity to the potential client, so the site will list the closest lawyers first.

Once a consumer finds an attorney, it will be easy for them to contact that attorney. The new enhanced directory has a prominent contact form and book an appointment button. CloudLawyers allows lawyers to have their telephone and email easily listed on their profile, but lawyers may also hide these options if they prefer.

Each lawyer may add as much or as little information as they like, including awards, cases, mediation, employment history, affiliations, news articles, press releases, blogs, photos and links to external websites and social media sites. As with all content, links and posts, please be mindful that all content must comply with the Rules of Professional Conduct. If you have questions about any content, you can call the Office of the General Counsel's Ethics Helpline at 404-527-8741 or 800-682-9806.

Another option lawyers will have is listing a range of legal fees or fixed fee packages to assuage one of the main worries of potential clients: the cost of hiring a lawyer.

Modernizing our website and creating this enhanced member directory, enabling our members to have a stronger and more fruitful online presence, are other examples of the State Bar adapting to changing times to better serve the public, the legal profession and the justice system. Should you have any questions regarding the new website, please contact Director of Communications Sarah Coole at sarahc@gabar.org. ●



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The military called it AWOI.

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veterans benefits and helped change
military regulations to protect me
and others with PTSD.*

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Financial Institutions: Protecting Elderly Clients From Financial Exploitation

Without the active participation and vigilance of financial institutions, much elder abuse could remain hidden and toxic to those who are most vulnerable and most in need of support.

BY LINDA SHASHINKA

Reports of predators targeting elderly individuals are increasing. But it may be news to many that cases of the elderly having their finances stolen or exploited, often by those near or dear to them, is the fastest growing category of elder abuse.¹

Although the definition varies by state, “financial exploitation” is generally found to occur when someone who holds a position of trust or confidence takes or misuses, without consent and for personal gain, the assets of someone known to be a vulnerable adult, such as an elderly individual, through deception, coercion or intimidation.² Therefore, a key component is that a predator knows that a victim is vulnerable. In fact, in a substantial number of elder financial exploitation incidents, the perpetrator is a family member, often an adult child or even a spouse.

There have been high profile elder abuse cases, such as those involving Mickey Rooney or Brooke Astor. In the case of the late actor Mickey Rooney, his stepson and stepson's wife eventually paid millions to settle an elder abuse lawsuit brought against them on Mickey Rooney's behalf.³ With regard to the late philanthropist Brooke Astor, after extensive litigation, her son and an Astor family attorney were found guilty and sentenced to prison for swindling Mrs. Astor after she had been stricken with Alzheimer's disease.⁴ However, there are myriad incidents that never make the news and remain hidden and secret. The victims are not public figures. The abusers are not prosecuted. The crimes are never revealed.

It is likely that some elderly victims are unaware that they are being targeted. Even when elderly victims are aware of the theft of their assets, perhaps the crimes remain unreported due to the victims' physical or mental frailties, the victims' stunned awareness of the betrayal by those they trusted, the victims' fear of their loved ones facing legal consequences, or the victims' concern for their own abandonment, or greater abuse by their tormentors, were the truth known.⁵ If a victim is physically, emotionally or mentally unable or unwilling to report a crime, then it is left to others to identify the incident and take steps to prevent further exploitation and abuse. If a family member or someone close to a victim

is the predator, then it may fall to others outside a victim's immediate circle to discern the situation and to take protective and/or corrective action.

To exploit the finances of an elderly individual, an abuser must first gain access to the assets, which may be secured in a financial institution. If a victim's finances are in an institution, then the abuser must find a way around institutional controls to prevent theft, embezzlement, fraud or such other form of criminal activity toward investors or account holders. The more sophisticated the safeguard techniques a financial institution enacts, the more underhanded an abuser's strategies must become.

Financial institutions rely on safeguards to protect themselves and their clients. Customers must present appropriate identification to gain access to assets, such as matching signatures, photo identifications, court documentation and the like. What if the documentation is in order, but a financial institution's account holder is being forced or tricked into relinquishing assets? Then, arguably, it may fall upon the financial institution to identify the possible victimization and to take protective steps for the client.

FINRA

The Financial Industry Regulatory Authority (FINRA) is a not-for-profit organization authorized by Congress to protect American investors by ensuring the fairness and honesty of the broker dealer industry.⁶ Although not a government agency, FINRA writes and enforces rules to oversee the activities of brokerage firms and, therefore, protect investors. Every firm and broker who sells securities to the public in the United States, if not regulated by a self-regulatory organization other than FINRA (for example, the Municipal Securities Rulemaking Board (the MSRB)⁷), is required to be licensed and registered by FINRA. Thus, actions by FINRA are significant.

FINRA issued, and on March 30, 2017, the Securities and Exchange Commission (SEC) approved, FINRA Regulatory Notice 17-11, entitled *Financial Exploitation of Seniors*.⁸ Regulatory Notice 17-11

Financial institutions rely on safeguards to protect themselves and their clients. Customers must present appropriate identification to gain access to assets, such as matching signatures, photo identifications, court documentation and the like.

provides for the adoption of new FINRA Manual Rule 2165, *Financial Exploitation of Specified Adults*, which permits FINRA members “to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.”⁹ Further, Regulatory Notice 17-11 amended FINRA Rule 4512, *Customer Account Information*, so that members are required to “make reasonable efforts to obtain the name of and contact information for a trusted contact person for the customer’s account.”¹⁰ Both FINRA Manual Rule 2165 and FINRA Manual Rule 4512 amendments became effective on Feb. 5, 2018.¹¹

To look deeper into what this will mean for the financial protection of the elderly, when a member “reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted” from the account of a customer who is a “specified adult,” FINRA Manual Rule 2165 permits a temporary hold on the disbursement of funds or securities from the customer’s account.¹² A “specified adult” is a person age 65 and older, or a person at least 18 years old whom a member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.¹³ The reasonable belief standard is to be based on observations that are made in the course of a business relationship with the individual.¹⁴

In addition, FINRA’s Regulatory Notice 17-11 amended Rule 4512 to require members to make reasonable efforts to obtain the identification and contact information of a “trusted contact” to be connected with each account of specified adults.¹⁵ A member must collect this information when the customer opens the account or when the customer updates his account information. Although a customer may decline to identify a contact person, if one is named, then the member must advise the customer that it will notify the trusted contact in the event it reasonably believes financial exploitation is occurring.¹⁶

When a financial institution has a reasonable belief that the account of a specified adult is at risk of exploitation,

it may rely upon a safe harbor provided in FINRA Manual Rule 2165. This safe harbor provides that the institution may, in its discretion, place a temporary hold on any disbursement of funds or securities from the account for a period of time generally not to exceed 15 days.¹⁷ During the hold period, the institution is to conduct an internal review and notify the trusted contact (unless the trusted contact is unavailable or thought to be connected in some way to the possible exploitation).¹⁸

Although FINRA and its measures are protections for those customers with investment accounts, there are also protections afforded to the elderly who do not have investment accounts but do have accounts at banks or credit unions.

Consumer Financial Protection Bureau

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) with its passage in 2010.¹⁹ Title X of the Act specifies that the CFPB is to “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.”²⁰ Its scope of coverage is over banks, savings associations and credit unions.²¹ The CFPB serves to protect clients of these institutions.

On March 1, 2016, the CFPB issued guidance to assist financial institutions with addressing, preventing and responding to elder financial exploitation. *Advisory for Financial Institutions on Preventing and Responding to Elder Financial Exploitation* (the Advisory) provides recommendations for banks and credit unions to aid in identifying, preventing and responding quickly to incidents of financial exploitation of the elderly.²² The Advisory recognizes that financial institutions are vital in detecting the financial abuse of elderly account holders.²³

In addition to the Advisory, the CFPB simultaneously published its *Recommendations and Report for Financial Institutions on Preventing and Responding to Elder Financial Exploitation* (the Recommendations and Report) for banks and credit unions

to utilize as best practices.²⁴ In the Recommendations and Report, the CFPB observed that the elderly are targets due to their assets, regular income that they may be receiving and their particular vulnerabilities. Therefore, to assist financial institutions with their efforts to prevent abusive behavior, the CFPB developed six broad recommendations for financial institutions. Financial institutions may further develop protocols, policies and procedures appropriate for their sizes and risk appetites. The recommendations are as follows:

1. **“Develop, implement, and maintain internal protocols and procedures for protecting account holders from elder financial exploitation.”**²⁵ Protocols should include training requirements, and the procedures should address reporting, compliance with the Electronic Fund Transfer Act (EFTA),²⁶ information-sharing and collaboration with key stakeholders.
2. **“Train management and staff to prevent, detect and respond to elder financial exploitation.”**²⁷ Members should hold training with regard to warning signs on a regular and frequent basis.
3. **“Detect elder financial exploitation by harnessing technology.”**²⁸ Members should use technology for detection and predictive analytics to review patterns and risk factors associated with elder financial exploitation.
4. **Report all cases of suspected elder financial exploitation to relevant federal, state and local authorities.**²⁹ Members should interact with authorities and report suspected exploitation.
5. **“Protect older account holders from financial exploitation.”**³⁰ Members should follow existing regulations and protective measures, and should institute new practices which protect older account holders.
6. **“Collaborate with other stakeholders.”**³¹ Members should collaborate with regional, state and

local agencies, and organizations that are already working to prevent, detect and respond to elder financial exploitation.

Clearly, the efforts of FINRA and the CFPB are directed toward providing protections to clients of the banks, credit unions and broker-dealers. Financial institutions also assist elderly clients by alerting authorities to potential abusive situations.

Interagency Guidance

In September 2013, eight financial regulatory agencies issued joint guidance on reporting financial abuse of older adults. The resulting *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults* (the Guidance)³² was issued expressly to clarify the applicability of privacy provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA)³³ with regard to reporting the suspected financial exploitation of older adults. The Guidance acknowledged that financial service providers might be in a position to observe the signs of possible financial exploitation of the elderly, and the Guidance encouraged financial service providers to share their observations with the appropriate local, state or federal agencies.³⁴

Title V, Subtitle A of the GLBA governs the treatment by financial institutions of consumers' nonpublic personal information. It was recognized that GLBA provides that, before disclosing nonpublic personal information about consumers to nonaffiliated third parties, a financial institution must first provide a consumer with a notice describing the disclosure and must also provide the consumer with an opportunity to opt out of the disclosure.³⁵ The Guidance, however, observed that there are GLBA exceptions which permit financial institutions' non-compliance with certain GLBA requirements, and recognized that reporting suspected financial abuse of the elderly could fall under an exception.³⁶ Specifically, the exceptions to GLBA's notice and opt-out requirements, which would permit sharing consumers' information when elderly financial abuse is suspected, include when a financial institution discloses nonpublic personal information to comply with laws and requirements that require reporting of suspected abuse,³⁷ to respond

to a civil, criminal or regulatory investigation, or to a subpoena or summons;³⁸ to protect against actual or potential fraud, unauthorized transactions, claims or other liability;³⁹ when permitted in accordance with other provisions of law;⁴⁰ and/or with the consumer's consent.⁴¹

In addition, the Guidance also referenced an advisory published by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), which described potential signs of elder financial abuse. FinCEN's *Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation* contained multiple examples of "red flags" which could serve to alert customer-facing employees of financial institutions that elderly clients may be victims of financial exploitation.⁴² The indications, including erratic or unusual banking patterns or questionable interactions between the elderly and their caregivers, may be sufficient for employees to initiate Suspicious Activity Reports (SARs).⁴³ Because an SAR requires detailed information and documentation in support, once filed with FinCEN, an SAR can provide necessary law enforcement assistance.⁴⁴

But, in addition to the protections afforded by the laws and regulations requiring or permitting financial institutions to take action when they suspect exploitation of the elderly, other protections which do not specifically focus on or identify elderly clients may still provide needed assistance to this group.

Regulation E

Questionable financial transactions indicating elder financial abuse could include unusual withdrawals from ATMs, online purchases made with a bankcard or other such activities conducted away from a financial institution and the watchful eyes of client-facing employees.⁴⁵ In such cases, although not specifically protecting elderly clients, the Electronic Fund Transfer Act, or "Regulation E," may provide limited help to elderly consumers who seek to recover losses due to unauthorized ATM withdrawals, point-of-sale terminal transactions in stores and preauthorized transfers to an account such as would

be made during a direct deposit of social security payments, direct deposit of pay or from an account as when a consumer makes an automatic bill payment.⁴⁶

In the event of a fraudulent financial transaction, such as would occur when a consumer has not authorized anyone to make a transaction, an account holder may limit losses (up to \$50) if the financial institution is alerted to the illegal activity within two business days after discovery.⁴⁷ If a notification occurs more than two business days following a discovery of theft, a consumer might be liable for some portion of the stolen funds.⁴⁸ After 60 days, if not notified by the consumer, a bank is no longer responsible for any amount of an account-holder's loss.⁴⁹ Therefore, although Regulation E provides some measure of assistance after a financial theft, elderly clients must be observant in order to recover funds.

Yet, federal agencies and authorities are not the only authorities recognizing the importance of financial institutions in protecting their elderly clients. States have also implemented laws, affecting financial institutions, which are intended to safeguard the assets of the elderly.

States' Activities

Most states have enacted financial exploitation laws, with various definitions and penalties, and many states include these statutes among their adult protective services laws. In some states, however, the prohibited financial exploitation specifically protects those who are "older" or "elderly," or who fall in a specific age category, such as "60 or older." In most states, financial exploitation is a criminal offense.

Georgia includes its prohibition of elder financial exploitation in Title 30 of the Official Code of Georgia. Under Title 30, Chapter 5, Protection of Disabled Adults and Elder Persons, Georgia defines "exploitation" as:

the illegal or improper use of a disabled adult or elder person or that person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one's own or another's profit or advantage.⁵⁰

In Georgia, as is the case with most other states, the knowing exploitation of the elderly is a criminal offense, punishable by a fine and/or imprisonment. Moreover, anyone who is found to have interfered with an exploitation investigation “shall be guilty of a misdemeanor of a high and aggravated nature.”

Further, “disabled adult” is defined to include anyone 18 years of age or older who is mentally or physically incapacitated, has Alzheimer’s disease, or has dementia and is not receiving treatment or care in a long-term care facility.⁵¹ “Elder person” is defined as anyone who is at least 65 years old and is likewise not receiving treatment or care in a long-term care facility.⁵² Therefore, although Georgia has determined that protection from “exploitation” of an elderly person begins when that person is at least age 65, a person younger than age 65 may receive protection should they have incapacities or specific vulnerabilities.⁵³

In Georgia, as is the case with most other states, the knowing exploitation of the elderly is a criminal offense, punishable by a fine and/or imprisonment.⁵⁴ Moreover, anyone who is found to have interfered with an exploitation investigation “shall be guilty of a misdemeanor of a high and aggravated nature.”⁵⁵

In addition, all states and the District of Columbia have mandated reporter statutes requiring notification to authorities when there is a reasonable suspicion of abusive or neglectful behavior or targeting of protected individuals.⁵⁶ The statutes vary as to those considered protected and those who are required to report injury or suspected injury to a protected individual. Georgia provides for mandated reporting under Title 30, Chapter 5, where it requires that,

should a person who performs services at a financial institution have a reasonable cause to believe that a disabled adult or elder person is in need of protective services, the financial institution must take certain notification steps.⁵⁷ Several states in addition to Georgia, including California,⁵⁸ Colorado,⁵⁹ Maryland⁶⁰ and Rhode Island,⁶¹ identify the elderly as protected individuals and also require employees of financial institutions to report a reasonable belief of elder abuse.

Although regulations, laws and statutes provide the framework for preventing elder exploitation, it is the financial institutions themselves that create the protections and training which complete the picture.

Individual Financial Institutions

As discussed previously in this article, a financial institution files an SAR with FinCEN when it is aware of or has reason to suspect that its client may be the victim of actual or attempted financial exploitation. In addition to this, as members of their communities, and in coordination with mandates and on their own initiatives, financial institutions are engaged in developing measures to protect their elderly clients from fraudulent and abusive exploitation. With actions ranging from developing educational materials for their employees, creating policies and best

practices, working with law enforcement agencies and through active involvement in educational outreach programs, financial institutions have proven that they can be allies to their elder clients. Without the active participation and vigilance of financial institutions, much elder abuse could remain hidden and toxic to those who are most vulnerable and most in need of support. ●

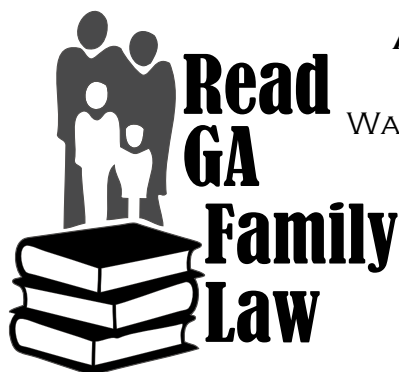


Linda Shashinka provides compliance support for institutional retirement plan services at SunTrust Bank, and is near to completion of an LL.M. in Elder Law from Stetson University College of Law.

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Bending the Arc: Georgia Lawyers in the Pursuit of Social Justice

Few know that lawyers and judges played a heroic and vital role in the success of the American Civil Rights Movement. In fact, legal and judicial efforts securing human and civil rights extend beyond that period and span the entirety of our nation's existence. Not surprisingly, Georgia lawyers have been front and center in those efforts. This article highlights a few hidden legal figures whose professional contributions deserve recognition.

BY DERRICK ALEXANDER POPE

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WORLD. YOU SEE A CONTINUAL
AND PROGRESSIVE TRIUMPH OF
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TO UNDERSTAND THE MORAL
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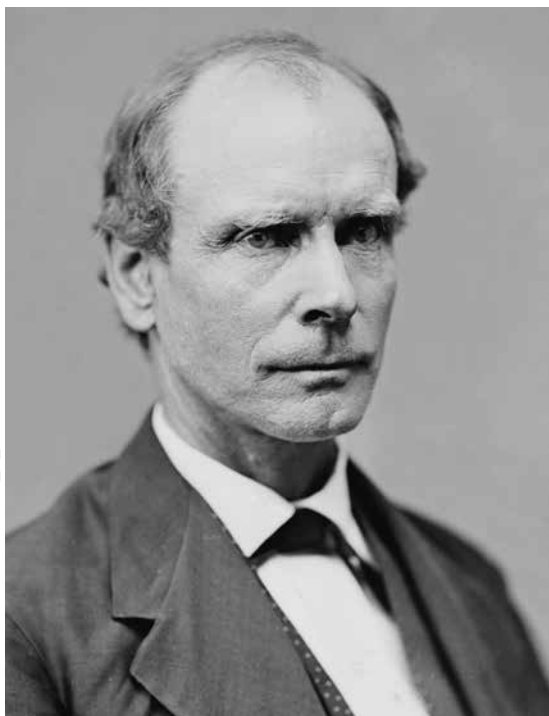
**THEODORE PARKER, TEN SERMONS OF RELIGION,
84-85 (CROSBY, NICHOLS, AND COMPANY 1853).**

Author's note: Throughout this article, African-American citizens are referred to by the now-antiquated terms "colored" and "Negro." They are used here to reflect the historical periods when these terms were common.

One was a former colonel in the Confederate Army who would become a forceful advocate for equality in private practice and as attorney general of the United States. Another would be among the first of his racial kinfolk to appear before the U.S. Supreme Court in a case that would lay the foundation for a number of constitutional safeguards. Still, two others would distinguish themselves as defenders of the most sacred elements of our nation's founding principles: one as a judge on the federal bench, and the other in courtrooms throughout the state.

Each of these lawyers—and many more like them—should be household names. Their valiant contributions to the betterment of society ought to be as common to the everyday citizen as they are within segments of the legal community. Despite being at the forefront of the historical efforts to make ours a more perfect union, the historical record too often omits the roles that lawyers and judges have played in that pursuit.

Nowhere is this truer than in the grand cause of securing, protecting and advancing human and civil rights. Whether as advocates or jurists, as counselors or intermediaries, lawyers were indispensable to the



Amos T. Akerman, 1821-1880

“Partiality and injustice breed discontent. Let us then be instructed by bitter experience. Let us abandon all absolute dogmas and unseasonable sentiments. Let us recognize truth even when in variance with our prepossessions.”

—Amos T. Akerman

American Civil Rights movement, providing a contribution of such magnitude that one scholar dubbed it “the first revolution in history conducted on advice of counsel.”¹

Indeed, “lawyers have bent that arc of the universe towards justice,”² and Georgia practitioners have time and again stood at the epicenter of the legal strides such an undertaking requires. A roll call of such luminaries and the transformative impact of their professional contributions to society could fill the pages of this *Journal*. Let the profile of four monumental figures, however, serve as an introduction to the role Georgia lawyers have played in bending that arc.

Amos T. Akerman

Amos Tappan Akerman was born Feb. 23, 1821, in Portsmouth, N.H., moving to Savannah in 1846 as a tutor in the home of Sen. John McPherson.³ He would study law in the senator’s library and was admitted to the Georgia Bar in 1850.⁴ He made his living as both an attorney and a farmer, at one point owning 11 slaves. Although he opposed secession as the outbreak of Civil War neared, Akerman served in the Confederate Army, attaining the rank of colonel.⁵

After the war, Akerman joined the Republican Party and was “among the most influential leaders in the work” of the convention that crafted Georgia’s 1868 Constitution.⁶ Rivals accused him of supporting the opposition candidate in that year’s bitter presidential contest, and he would write a letter to the *New York Times* to dispose of the rumors.⁷ Akerman also used the occasion as a forum to advocate for equal political and civil rights.

In his letter, the tempo of his argument began with a sober assessment of the confederate government and the Civil War. “In 1861, we embarked in a bold political adventure, which was soon followed by a voluntary resort of arms . . . with a chance of victory . . . and the risk of defeat.”⁸ With “the fortunes of war compelling surrender,” he described how the spirit of resentment and revenge—“improper at all times [and] peculiarly unbecoming now”—permeated the contentious aftermath of the war.⁹ Akerman laid out the cause and consequence of that spirit in the starkest of terms, saying, “[w]e gave up the Confederate Government. We gave up slavery.”¹⁰

Recognizing that a new government would soon be formed, Akerman made a compelling case for extending the right to vote to the newly emancipated:

There is no reason why a colored voter should not seek the welfare of the country to which he has so many ties. *The ends to be sought by good white men and good black men, in the act of voting, are precisely the same.* Both want good laws and a good administration of them.¹¹

Akerman rounded out his thoughts on the matter by concluding that “the most important view is this; that the abolition of all political distinctions founded on color will remove, effectually and forever, all danger of a conflict of races.”¹² This sentiment would carry over into his time in private practice where the litigation of the reconstruction period had begun to shift “from the enforcement of technicalities toward the administration of justice on broader principles of equity and a sense of right.”¹³ The most noteworthy example of this shift involved a lawsuit tailor-made for Akerman and the Supreme Court of Georgia to outfit themselves in the “courage to break away from old forms and precedents.”¹⁴

White v. Clements presented an issue of first impression, namely “the right of persons of color to hold office in this State.”¹⁵ Richard W. White was elected clerk of the Superior Court of Chatham



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County in April 1868. His opponent, William Clements, challenged the outcome, claiming that he was eligible to hold the seat “because he was not a person of color, and did not have in his veins any African or negro blood.”¹⁶ The lower court agreed and held that a person of color was ineligible to hold office.¹⁷

Akerman, who by then had earned the distinction of being “the best Republican lawyer in the state,” took up the appeal.¹⁸ Both he and Justice Henry Kent McCay, who authored the opinion, were influential in the state constitutional convention, which no doubt prompted the salient viewpoint that:

The people of Georgia, without distinction of color, came together at Atlanta in December, 1867, by their delegates, to form for themselves a Constitution and frame a government, men of both colors sat as delegates . . . and yet it is now contended that the rights guaranteed by that Constitution, stand as to the two colors, on a different footing, that as to the white man, they are securities, but as to the negro, they are grants . . . The whole thing is absurd.¹⁹

Overtaking the ruling of the trial court, Judge McCay held, “the fundamental law—the Constitution of the State—guarantees to men of color the right to be chosen to an office, and I put my judgment upon that ground.”²⁰

Akerman would later serve as attorney general of the United States, earning the distinction of being the first to head the newly created Justice Department and establishing its first investigative unit, which was the precursor to the Federal Bureau of Investigation.²¹ His tenure was marked by his zealous prosecution of the Ku Klux Klan and its violent reprisals against Negro suffrage, marking him as the first in federal civil rights litigators. After leaving the Justice Department, Akerman lived the remainder of his life in Cartersville until his death in 1880.

Noah Parden

He was holding his mother’s hand when she died. Neighbors were unsure of what to do with the six year old, so they sent him to an orphanage with only a few toys, some clothes and a Bible his mother had given him for Christmas.²² This was a rather inauspicious beginning for someone who would become a principal figure in one of the most important cases in the history of the U.S. Supreme Court.

Noah Walter Parden was born in Floyd County, Ga., around 1865; his mother, a former slave, his father, a white man he never knew. At 19, he would move to Chattanooga, Tenn., where he was a student at Howard High School, supporting himself as a barber.²³ At graduation, he spoke on the topic of “The Duty of a Citizen.”²⁴ He went on to attend Central Tennessee College of Law, finishing at the top of his class in 1893.²⁵

By age 41, Parden had become one of the most successful black lawyers in Chattanooga. He was a “law-school-trained attorney,” which made his grasp of the Constitution, statutes and precedent “far superior to many of his colleagues.”²⁶ His skills in the courtroom led to several victories against insurance companies who made it a practice to deny claims to black policyholders. Parden would impress upon the all-white juries that if big companies would take advantage of black customers, pretty soon they would begin to cheat their white ones.²⁷ His training, his courtroom acumen and his standing in the community were the combined factors that led to Parden taking the lead in a case that resulted in a landmark U.S. Supreme Court decision.

In 1906, Ed Johnson was arrested, tried, convicted, lynched and buried all within a dizzying span of 55 days from when he was falsely accused of raping a white woman.²⁸ From the time of his arrest on through his trial, Johnson would be threatened with vigilantism. At one point, a mob stormed the jail demanding that he be turned over to them.²⁹ In one of the more bizarre aspects of the trial, a juror was permitted to direct the defendant to put on an article of clothing the



Noah Parden, 1865-1944

“We are at a time when many . . . have abandoned the respect for the rule of law. Nothing less than our civilized society is at stake.”

—Noah Parden

victim said her assailant wore and was allowed to conduct a direct examination of the victim while on the witness stand.³⁰ All told, Johnson’s trial was a confluence of reversible errors and overt bias from the prosecutor, judge and sheriff.

Although he rejected multiple entreaties to be a part of the trial team, Parden and his law partner, Georgia-born Styles Hutchinson, agreed to handle Johnson’s appeal. The lawyers dutifully filed their writ of error before the Supreme Court of Tennessee, which summarily upheld Johnson’s conviction.³¹ Parden and Hutchinson filed a petition in the U.S. District Court in Knoxville under the Habeas Corpus Act of 1907 as a means of redressing constitutional violations. After an eight-hour hearing, their petition was denied, but the judge did issue a stay of execution, giving Parden the time to appeal to the U.S. Supreme Court.³²

Parden traveled to Washington, D.C., presenting his case to Justice John Marshall Harlan, the Court’s designee to hear emergency appeals from the Sixth Circuit. The U.S. Supreme Court would go on to issue the stay of execution and agree to hear the case. However, a mob lynched Johnson under the auspices of the sheriff. The sheriff’s actions were so

egregious, the U.S. Supreme Court issued a contempt citation for its order—a first—and it set Oct. 15, 1906, as the date for its show cause hearing based on the citation—the first time the high Court sat at a trial level.³³

Parden did not have a direct role in *United States v. Shipp*, but his work on the Johnson appeal would impact many others. As he stood before Harlan in a Supreme Court conference room just outside the Old Senate Chamber in the U.S. Capitol, Parden—one generation removed from slavery—raised issues that, at the time, were not applicable to state proceedings. However, his efforts laid the foundation for the repudiation of lynch mob influence on the administration of justice;³⁴ the guarantee of effective assistance of counsel;³⁵ the right to an open and public trial, including the right to have relatives, friends and counsel present, irrespective of the charge;³⁶ the protections afforded against self-incrimination;³⁷ extending effective counsel rights to appeal;³⁸ the right to the presence of counsel during a witness identification line-up;³⁹ the invalidation of systematically excluding black people from jury service;⁴⁰ and outlawing capital punishment in rape cases.⁴¹

Noah Parden, who would also spend time as an assistant state prosecutor, died Feb. 23, 1944.

Griffin B. Bell

“Figure out a way to follow the law. There are no excuses.”⁴² That was his mantra. Whether in the practice of law, in the administration of justice as a federal judge or enforcing it as attorney general, Griffin Bell saw no room for excuses.

Griffin Boyette Bell was born in Sumter County on Oct. 31, 1918.⁴³ He attended Georgia Southwestern College, now Georgia Southwestern State University, for one year before being drafted into the army. While stationed in Fort Lee, Va., he would meet and marry Mary Powell.⁴⁴ In the Army he attained the rank of major, serving in the Quartermasters Corps and the Transportation Corps.⁴⁵ After his discharge, he would attend Mercer Law School on the GI Bill, graduating with honors in 1948.⁴⁶

Bell had a part-time job examining land titles that carried him throughout the rural South. Seeing the segregated conditions of colored schools, he understood that “this won’t last. This can’t last. It’s not fair . . . and it must reflect

“I have often said that if we did not have the equal protection clause in the Constitution, we would have to make up one. The country could not hold together without the equal protection clause.”

— Griffin B. Bell



Griffin B. Bell, 1918-2009

in the teaching.”⁴⁷ He would venture to Atlanta in 1953 joining King & Spalding after practicing in Savannah and Rome, becoming its managing partner in 1958.⁴⁸ One year later, this son of the Old South took his first steps toward being a father to its new frontier.

Georgia—like other southern states—was confronted with the reality of desegregating its public schools in the wake of the *Brown v. Board of Education* decision.⁴⁹ Gov. Ernest Vandiver, who had campaigned against integrated schools, appointed Bell as his chief of staff, charging him with the responsibility of organizing an effort to guide the course of desegregation.⁵⁰ Bell established the Sibley Commission, which would be credited as instrumental in keeping schools from closing and preventing the violence prevalent in other states.⁵¹

Bell would go on to become a federal judge, appointed to the U.S. Court of Appeals for the Fifth Circuit by President John F. Kennedy in October 1961. He presided over a number of monumental cases, including one that invalidated Georgia’s county unit system.⁵² In addition,

Bell would decide 140 school desegregation cases, most notably *United States v. Hinds County*, which involved the simultaneous desegregation of 33 county school districts.⁵³ Bell would always take special pride in “working on all those school cases and getting the schools renovated and going through . . . the civil rights revolution.”⁵⁴

He would leave the Court in 1976 when the tedium of presiding over an onslaught of drug cases set in, but he was called back into public service when President Jimmy Carter tapped him to be attorney general.⁵⁵ Bell would remain in that position until 1979 returning to private practice. Bell died Jan. 5, 2009.

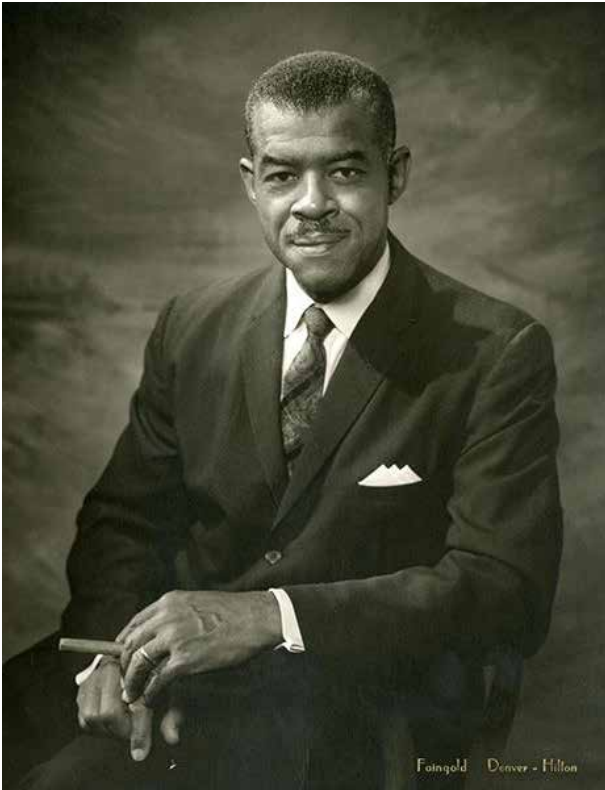
Donald Lee Hollowell

The Christmas holidays of 1917 brought more than just presents into the Wichita, Kan., home of Ocenia and Harrison Hollowell. On Dec. 19, it also brought their third child, Donald.⁵⁶ Hollowell attended Lane College in Jackson, Tenn., where he excelled both academically and as a three-sport athlete. His studies were interrupted

by a stint in the Army, where he met and married Louise Thornton while stationed at Fort Benning before going off to combat. After his service, he returned to Lane, graduating *magna cum laude* in 1938. It was in college and in the Army where he first encountered racial prejudice.

Traveling through the South to play football games against other Negro schools brought Hollowell into contact with a “society whose primary passion seemed to be the isolation of the races and the demeaning of all Negro citizens in every imaginable way.”⁵⁷ Worse, the barrage of racial indignities he experienced in the Army—serving in the segregated Tenth Cavalry Regiment; being relegated to eat in the kitchen, instead of the mess with other officers; and being ushered out of the base’s movie theater because he was Negro—had demoralized his spirit. He yearned for a “calm and financially stable future,” and he thought that as a dentist he could “operate comfortably within a segregated system.”⁵⁸

Upon his return to Lane College, his vocational aspiration changed, however, when, as a delegate to the 1946 convocation of the Negro Youth Conference,



Donald Lee Hollowell, 1917-2004

“Hate consumes. One has to use that energy constructively in an effort to change those diabolical aspects of life which impinge upon him and others of his race. That’s what I chose to do.”

— Donald Lee Hollowell

he heard the inspiring words of Paul Robeson. The law, he reasoned, was his calling and he went on to earn his law degree from Loyola University in Chicago in 1951.⁵⁹

Hollowell would establish his law practice in Atlanta in 1952. Vernon Jordan, who became his law clerk, thought that “there was no better teacher and mentor. He was, quite simply, one of the most gifted trial lawyers in all of Georgia.”⁶⁰ He was “perfectly suited to the difficult task” of handling “the most troubling moral and social issues” of the day and the need for his “keen intellect and quiet determination” was frequent and varied.⁶¹ Hollowell came to the aid of those facing capital punishment.⁶² He would represent college students involved in the sit-in protests.⁶³ He associated with C.B. King in Albany to defend the legal rights of protestors in that city.⁶⁴ He would serve as lead counsel in the effort to obtain the admission of the first black student to the University of Georgia School of Law.⁶⁵ He conducted the legal challenge to the admissions policies of Georgia State College of Business Administration (now Georgia State

University).⁶⁶ His representation in civil rights cases reached its apex, however, in 1961 in another case involving admission to higher education, once again involving the state’s flagship institution.

Hollowell served as lead counsel in the lawsuit seeking to gain the admission of the first students of color to the University of Georgia.⁶⁷ Over the course of five days of hearings, the “cool and masterful way” Hollowell handled the case left a powerful impression on all those present.⁶⁸ It also resulted in an order from Judge William Augustus Bootle outlawing the school’s discriminatory admission policies, finding that “the two plaintiffs are fully qualified and would already have been admitted had it not been for their race and color.”⁶⁹ After several months of protracted appeals, the matter concluded with the registration of Hamilton Holmes and Charlayne Hunter.

Perhaps the words of Julian Bond, one who benefited from his legal acumen best capture his impact:

If it had not been for Don Hollowell, black Georgians wouldn’t have ad-

vanced as far as we have. . . . Not only did he have the courage, but he also had a brilliant legal mind. He . . . out-argued . . . these so-called great constitutional lawyers who had erected this barrier of segregation throughout the South. They had the reputation, *but Hollowell had the goods.*⁷⁰

In 1966, Hollowell would be appointed regional director of the Equal Employment Opportunity Commission by President Lyndon Johnson, a post he would hold for nearly 20 years. He returned to private practice and succumbed to heart failure on Dec. 27, 2004.

Amos T. Akerman, Noah Parden, Griffin B. Bell and Donald Lee Hollowell provide a glimpse into the good works lawyers have furnished to the nation. Yet, there is a rather glaring concern. This article—and the male legal figures it features—shows that while the legal profession can take great pride in its involvement in advancing civil rights, sadly, it too long sanctioned an exclusionary bias within its ranks. Although racial inequities dominate much of our

civic and social past, gender discrimination has been no less of a concern. Women were not permitted to practice law in Georgia until 1916, and it would be more than a quarter century later when women of color would be admitted to the profession.

Happily, there have been monumental strides in remedying that misfortune, as the careers of Leah Ward Sears, Dorothy Toth Beasley, Linda Klein, Teresa Wynn Roseborough, Romae Turner Powell, M. Yvette Miller and Carol Hunstein—just to name a few—attest. As Judge Beasley reminds us, “[t]he law needs to speak to life and if it excludes large groups of people then the law is skewed.”⁷¹

When we enter a room, history both precedes and follows, setting the table before us and sitting in the seats alongside us. The business we conduct there is both limited and broadened by the omnipresent force of our individual and collective past. As a profession, our history is filled with numerous instances where the lawyering endeavor has been the main ingredient in a recipe for civic betterment, the *sine qua non* in the pursuit of social justice. In these latest of days, every headline screams the breaking news that a refresher of sorts is needed about the significance of maintaining a fidelity to the rule of law. True to our history, lawyers will, I am sure, continue to bend the arc of human activity toward its most natural and ineluctable destination: liberty and justice for all. ●



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24. FRANK M. SMITH, *TENNESSEE SCHOOL REPORT 1890: ANNUAL REPORT OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE SCHOLASTIC YEAR ENDING JUNE 30, 1890*.
25. CURRIDEN & PHILLIPS, *supra* note 22, at 131.
26. *Id.* at 133. Not many lawyers during this time had formal education. Many lawyers – black and white – “read” or “studied” law as an apprentice to a judge or an established lawyer. See J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844 – 1944* 33 (Univ. of Penn. Press 1993); DONALD FLEMING & BERNARD BAILYN, *LAW IN AMERICAN HISTORY* 573 (Little, Brown and Co. 1971).
27. CURRIDEN & PHILLIPS, *supra* note 22, at 131.
28. Nevada Taylor was attacked and raped near the Forest Hill Cemetery in Chattanooga on January 23, 1906 and Johnson was arrested two days later. Two weeks after the incident, Johnson’s trial began, and a verdict of guilt was entered on February 9. His execution was set for March 13, but was later extended to March 23. Johnson’s appeal to the Tennessee Supreme Court and the United States District Court in Knoxville took place on March 3 and March 10 respectively. The United States Supreme Court agreed to issue a stay of execution on March 18, but Johnson was taken from jail by mob and lynched the next day, fifty-five days after the incident for which he had been falsely accused.
29. CURRIDEN & PHILLIPS, *supra* note 22, at 41–44.
30. *Id.* at 108. Still another juror was able to declare in open court, “If I could get to him, I’d tear his heart out right now.” *Id.* at 109.
31. *Id.* at 149.
32. *Id.* at 168. The judge found there was “great haste in this trial, and that the trial was had under a kind of species of apprehension on the part of the counsel, and that counsel were to an extent

- terrorized on account of the fear of the mob.” The judge thought that the trial could have been a sham, that the jury was biased, that the lawyers had been intimidated, and that the defendant had been denied his right to appeal, but that the matter was beyond his control as the Fifth and Sixth Amendment rights did not extend to state court proceedings. His only power, he reasoned, was to issue a stay to permit an appeal to the United States Supreme Court.
33. In *United States v. Shipp*, 214 U.S. 386, 423 (1909), the Court made its views on the respect for the rule of law abundantly clear. “[I]f the life of anyone in the custody of the law is at the mercy of a mob, the administration of justice becomes a mockery. . . . And when its mandate, issued for his protection, was defied, punishment of those guilty of such attempt must be awarded.”
 34. *Moore v. Dempsey*, 261 U.S. 86 (1923).
 35. *Powell v. Alabama*, 287 U.S. 45 (1932).
 36. In re *Oliver*, 333 U.S. 257 (1948).
 37. *Miranda v. Arizona*, 384 U.S. 436 (1963).
 38. *Anders v. California*, 386 U.S. 738 (1967).
 39. *United States v. Wade*, 388 U.S. 218 (1967).
 40. *Carter v. Jury Commission of Green County*, 396 U.S. 320 (1970).
 41. *Furman v. Georgia*, 40 U.S. 238 (1972).
 42. Interview by Susan Hoffman with Griffin Bell (July 25, 2006), available at <http://www.gpb.org/conversations/griffin-bell>.
 43. E.R. Lanier, *Griffin Bell (1918 – 2009)*, NEW GEORGIA ENCYCLOPEDIA, October 19, 2016, <http://www.georgiaencyclopedia.org/articles/government-politics/griffin-bell-1918-2009>.
 44. *Id.*
 45. *Id.*
 46. See Hoffman interview, *supra* note 42.
 47. Interview by Nina Totenberg with Griffin Bell (August 10, 2008), <https://www.npr.org/templates/transcript/transcript.php?storyId=99174869> (last visited March 16, 2018).
 48. Maurice C. Daniels, Ed.D., with assistance from Michelle D. Black, *FSP Unsung Foot Soldiers, Judge Griffin B. Bell (1918-2009)*, UNSUNG FOOT SOLDIERS: THE FOOT SOLDIERS PROJECT FOR CIVIL RIGHTS STUDIES AT THE UNIVERSITY OF GEORGIA, <http://footsoldier.uga.edu/foot-soldiers/bell.html>.
 49. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).
 50. DANIELS, *supra* note 48.
 51. *Id.* In 1959, a federal district judge ruled that Atlanta’s segregated schools were unconstitutional. Judge Frank Hooper gave state authorities one year to create a desegregation plan. Against this backdrop, Bell established the Sibley Commission, named after its Chairman, Horace Sibley. Bell envisioned public hearings throughout the state in each of its congressional districts to give the public an opportunity to express its views within the framework of a methodology towards desegregation, all calculated to avoid massive resistance.
 52. *Gray v. Sanders*, 203 F. Supp. 158 (1962). Judge Bell offers an excellent historical treatment of the county unit system. *Id.* at 161-164.
 53. 423 F.2d 1264 (5th Cir. 1969).
 54. See Totenberg interview, *supra* note 47. However, he thought busing as a remedial component of those cases to be “one of the most foolish things ever started in this country. It put the burden on the people. . . somebody higher up, to settle out a case, to carry out a court order had sacrificed them. And they get up at 5 o’clock in the morning to ride bus two hours each day. How can you get educated like that? And in almost every case it was a black being bused. All you had to do was make the neighborhood schools better. . . moving the children around by buses was like treating them as inanimate objects.” See Hoffman interview, *supra* note 42.
 55. See source cited *supra* note 43.
 56. LOUISE HOLLOWELL & MARTIN C. LEHFELDT, *THE SACRED CALL: A TRIBUTE TO DONALD L. HOLLOWELL, CIVIL RIGHTS CHAMPION* 27 (Four-G Publishers 1997).
 57. *Id.* at 43.
 58. *Id.* at 83.
 59. *Id.* at 41.
 60. VERNON E. JORDAN, JR. WITH ANNETTE GORDON-REED, *VERNON CAN READ! A MEMOIR* 126 (Public Affairs 2001).
 61. *Id.* at 130.
 62. *Id.* at 131-135. One of the more notable death penalty cases Hollowell handled involved a 15-year-old black male sentenced to death. The case drew national attention including the interest of former first lady, Eleanor Roosevelt, who, upon learning of the case, telegraphed Governor Vandiver, saying that she was, “shocked to learn that a 15-year-old boy was sentenced to die. This to me is unthinkable, and I hope you will do all that you can to obtain clemency.” See generally *Cobb v. The State*, 218 Ga. 10, 126 S.E.2d 231 (1962).
 63. DANIELS, *supra* note 48; HOLLOWELL & LEHFELDT, *supra* note 56, at 130, 144.
 64. HOLLOWELL & LEHFELDT, *supra* note 56, at 130, 144. See also CONSTANCE BAKER MOTLEY, *EQUAL JUSTICE UNDER LAW: AN AUTOBIOGRAPHY* BY CONSTANCE BAKER MOTLEY 147 (Farrar, Straus and Giroux 1998).
 65. *Ward v. Regents of University System of Georgia*, 191 F. Supp. 491 (N.D. Ga. 1957). The effort proved unsuccessful and Horace Ward, who would later become a federal judge, would earn his law degree from Northwestern University in Illinois.
 66. *Hunt v. Arnold*, 172 F. Supp. 847 (1959).
 67. *Holmes v. Danner*, 191 F. Supp. 385 (M.D. Ga. 1960).
 68. HOLLOWELL & LEHFELDT, *supra* note 56, at 6.
 69. *Holmes*, 191 F. Supp. at 410.
 70. HOLLOWELL & LEHFELDT, *supra* note 56, at 139 (quoting Julian Bond) (emphasis supplied).
 71. Dorothy Toth Beasley, *Remarks at Women in the Profession: 100 Years of Georgia Women Lawyers* (August 24, 2016).

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Record Attendance at the 27th Annual Georgia Bar Media & Judiciary Conference

From current First Amendment U.S. Supreme Court cases to a gubernatorial forum, this year's Bar Media & Judiciary Conference was a success.

BY STEPHANIE J. WILSON



PHOTO BY STEPHANIE J. WILSON

On Friday, Feb. 23, record numbers of judges, attorneys and journalists attending the 27th annual Georgia Bar Media & Judiciary Conference necessitated not one but two overflow rooms at the State Bar of Georgia in Atlanta. This yearly conference, organized by Jones Day Partner Peter C. Canfield, examines recent or recurring events and their impact on the First Amendment. It always seems impossible to top the quality of the previous year's conference, and yet somehow it happens every time.

New Conceptions of the First Amendment: What's in the Oven at the U.S. Supreme Court?

Moderator

- Sean J. Young, Legal Director, American Civil Liberties Union of Georgia

Atlanta Mayor Keisha Lance Bottoms greets an audience member prior to her keynote address.

Panelists

- Prof. Sonja West, Otis Brumby Distinguished Professor of First Amendment Law, University of Georgia School of Law
- Paul Smith, Vice President, Litigation & Strategy, The Campaign Legal Center

ACLU of Georgia Legal Director Sean Young led Paul Smith, who has argued more than 20 cases before the U.S. Supreme Court, and Prof. Sonja West in a conversation about First Amendment cases on the Court's docket this term and trends that are appearing in the Court's decisions regarding what exactly is considered free speech. West said, "The Roberts Court has been a very free-speech-protective court—I will say, unless you are a government employee, a prisoner or a student, but otherwise, critics and supporters really universally agree that the Court has been recognizing more First Amendment protections in a broader range of areas than what we have seen before."

West mentioned two recent First Amendment decisions handed down by the Court. The first case was *Sorrell v. IMS Health, Inc.*, in which the Court held in 2011 that a Vermont statute that restricted the sale, disclosure and use of records that revealed the prescribing practices of individual doctors violated the First Amendment. The second case was *Expressions Hair Design v. Schneiderman*. The Court held that price controls, when used to prohibit the communication of prices of goods with regards to a surcharge, was a regulation of speech and required an analysis of the First Amendment's protections for freedom of speech.

Smith added, "What we're really talking about here is how the First Amendment has grown into a broader range of controversies than it would have in the past." He also stated that sentiment on the Court has shifted to the very conservative justices now staunchly supporting free speech as opposed to the liberal justices. One example Smith mentioned was the Court's 2015 decision in *Reed v. Town of Gilbert* in which the Court clarified when municipalities can impose content-based restrictions on signage. The case also clarified the level of constitutional scrutiny



PHOTO BY STEPHANIE J. WILSON

(Left to right) Prof. Sonja West and Paul Smith discuss recent and current cases before the U.S. Supreme Court during "New Conceptions of the First Amendment: What's in the Oven at the U.S. Supreme Court?"

that should be applied to content-based restrictions on speech. Another area Smith discussed where the shift seems evident is campaign finance. The five more conservative justices seem to be throwing out campaign finance regulations on the grounds that "money is speech."

The current cases the panel discussed included ones where the First Amendment intersected with voting, civic participation or the public marketplace, such as *Gill v. Whitford*, the Wisconsin gerrymandering case that Smith himself argued before the U.S. Supreme Court. The Court has also agreed to hear *Benisek v. Lamone*, a second partisan gerrymandering case out of Maryland, which suggests that redistricting will feature even more prominently during the court's current term. Discussion was followed by a Q&A session with the audience.

Cultural Challenges to the First Amendment: The Next Generation, Hate Speech and Fake News

Moderator

- Ron Thomas, Director, Journalism and Sports Program, Adjunct Professor of English, Morehouse College

Panelists

- Tony Maddox, Executive Vice President and Managing Director, CNN International
- Kevin Riley, Editor, *Atlanta Journal-Constitution*
- Kevin Sack, Senior Writer, *The New York Times*
- Dr. Teresa Jo Styles, Adjunct Professor of English and Journalism, Morehouse College

The First Amendment states: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

"Let's start with the knowledge that the First Amendment presents tremendous challenges. . . . It is a fact of life and we in the media know why. Technology has afforded all those who are citizen journalists—those who blog, those who are on Twitter, Facebook—technology has given us all an opportunity to speak their truth, and at the same time feel the American tradition of press freedom protects them," Dr. Teresa Styles began. The migration to citizen journalism has changed the journalistic standards with which news is reported.

Styles provided some historical background on the evolution of the freedom of the press beginning with Henry VIII and prior restraint, to Thomas Jefferson and Benjamin Franklin in colonial America. “From Henry VIII to Trump, who accuses the media of fake news, press freedom is always in question. Fake news gets more traffic than real news. Those who develop what some consider ‘fake’ are protected, not only because of historical press freedoms, but also because the courts have—over time—shown an individual’s right to defend him or herself against a charge to become more flexible and fair.” The increase in fake news demands solutions. “Let me be clear,” Styles said, “fake news is our enemy.”

isn’t just an American phenomenon but has extended abroad as well. “I’ve always believed that relationships between the press and government do need a touch of Tabasco®. It shouldn’t be too cozy, and it is false to think that these tensions between the press and the presidential administrations are a new thing—certainly the way in which this one is being portrayed is a new thing, and the dialogue is new—but it’s important by way of context to understand that this has always been a relationship with some edge.

“The sustained use of ‘fake news,’ the assertion that the press is the enemy of the people, what we’re seeing is a concerted, sustained attempt to denigrate the legitimacy of *legitimate* journalism What we’re seeing here is a weaponizing of the

Panelists

- Hon. Amy Totenberg, U.S. District Court Judge, U.S. District Court for the Northern District of Georgia
- Edward D. Buckley III, Managing Partner, Buckley Beal, LLP
- Johnita P. Due, Vice President and Assistant General Counsel, CNN
- Karen Lehto, Director of Human Resources, Hoshizaki America, Inc.
- Mike Petchenik, North Fulton County Bureau Chief, WSB-TV
- Ellen Fitzsimmons, Executive Vice President and General Counsel, SunTrust Banks, Inc.

The following scenario is mostly imaginary. Any similarity to real names or locations is purely coincidental. The individuals portraying the characters in the presentation are friends and neighbors who agreed to do this out of support for the Georgia First Amendment Foundation. They have not perpetrated nor have they been victims of harassment as described in the hypothetical.

Retired U.S. Navy fighter pilot Jim “Biggles” Bigglesworth bought a small Georgia-based design aircraft firm and created Biggles Aviation. He began work on a solar-powered aircraft out of Lizard Lick International Airport. The ultimate goal: solar powered freight aircraft. Bigglesworth became the first person to fly solo around the world in an aircraft powered by the sun. Orders began pouring in, increasing Biggles’ already considerable wealth and international stature. Things are great . . . there’s only one problem.

One of the women who worked on the design team asked for an appointment with the Biggles Aviation HR director. The employee wanted advice from HR on how to deal with some “personnel stuff.” She didn’t want to use the corporate integrity whistleblower line because she worried about confidentiality. The employee’s name was Susie-Anne McSweeney.

Susie-Anne claimed that Biggles had repeatedly touched her inappropriately during meetings, rubbing her knee underneath the table. She had privately asked him to stop, but she claimed the unwanted attention continued.



Donald J. Trump
@realDonaldTrump

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The FAKE NEWS media (failing @nytimes, @NBCNews, @ABC, @CBS, @CNN) is not my enemy, it is the enemy of the American People!

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Amid newsroom fears of being labeled fake news and *The “failing” New York Times* by President Donald Trump, *Times* reporter Kevin Sack shared very encouraging statistics regarding the surge in subscription rates, namely a 42 percent increase over the fourth quarter of 2016 and a doubling of the *Times*’ stock price since election day. Sack also said, “The assault on real news has bolstered and enhanced our previously shaky status with large numbers of consumers while degrading it with others—regardless of the truth of the matter.”

Tony Maddox, managing director of CNN International, assured the audience that the toxic term “fake news”

language to denigrate and undermine one of the fundamental principles of the First Amendment, which is a free press.”

Thomas shared his hope that the effect of all of this is that more young people will start following the news and will see journalism as an exciting career to pursue. A Q&A session with the audience followed.

Sex, Lies and Hotel Receipts

Interlocutor

- Richard T. Griffiths, President, Georgia First Amendment Foundation

Susie-Anne then went on a business trip to Huntsville, Ala. She said that Biggles showed up at her hotel room pushing his way inside telling her that if she wanted to get ahead he needed for her to make him happy. If he was happy, she would get to run the entire wing panel design group. She then broke down in tears telling HR that, fearing she would lose her career, she slept with Biggles. Susie-Anne claimed that he continued to suggest more encounters but she said no.

Without warning, she was taken off leadership of the cutting-edge wing panel design group and reassigned to the engine development group. Same pay, lateral move, but not where she wanted to be.

As Richard Griffiths unfolded the scenario for the panel, the level of knowledge and expertise of the panelists was very apparent to the audience. One of the most impressive performances was from WSB-TV's Mike Petchenik, who wrote an original news story while the panel was at work. Having no prior knowledge of the details of the scenario, Petchenik extemporaneously penned these words:

Things are not so sunny for solar-powered aircraft inventor and internationally renowned businessman Jim Bigglesworth. He's facing complaints about slimy behavior in Lizard Lick and beyond. In a lawsuit we obtained, a 29-year-old subordinate engineer claims Bigglesworth made inappropriate advances toward her and forced her to sleep with him in exchange for upward movement at his company, Biggles Aviation. In an exclusive interview, Susie-Anne McSweeney's attorney Ed Buckley told WFRG-TV when she rebuffed his advances, he reassigned her to another division of the company telling her, "I expect our employees to be all in." Buckley asked for other potential victims to come out. In a statement, Biggles Aviation spokeswoman told us WFRG-TV that the Navy veteran and church volunteer had no comment, but pointed to the company's values and respect for women in the workplace. In court documents we obtained, Bigglesworth maintained the relationship was consensual, claiming he had the receipt

to prove they had met for a nightcap; however, a bartender we interviewed told us she saw a very drunk pair drinking wine and that Bigglesworth appeared to be forcing himself upon what appeared to be a very uncomfortable McSweeney. Biggles' close friend Congressman Talmadge Lowe said he's a "kind and considerable man" and calls this a "cynical campaign to discredit Biggles," and another friend, Donald Truman, called McSweeney, "a money-grubbing slut who attempted to seduce her boss, only blaming him because she couldn't do her job." Ed Buckley, however, called both of those claims "hog wash" and "fake news." Stockholders are now putting pressure on Biggles to resign and seek treatment at a sex addiction facility.

Petchenik's impressive efforts earned him a well-deserved round of applause from the audience.

The session can be viewed in its entirety on the State Bar of Georgia's YouTube channel at https://youtu.be/RXVNATQ_61s.

Meet the Mayor: Keisha Lance Bottoms

Introduced by Christopher Walker, Associate, Greenberg Traurig, LLP

On Jan. 2, 2018, Keisha Lance Bottoms was sworn in as the 60th mayor of Atlanta. During Bottoms' inaugural address, she announced the priorities of her first 100 days in office. Included among those priorities were criminal justice reform, education and transparency. Less than two months into her administration, Bottoms has already taken measurable action to address the first two. She signed into a law a city ordinance eliminating cash bonds to secure release from city of Atlanta detention centers following an arrest for violations of city ordinances. Also, on Tuesday, Feb. 20, she signed an ordinance transferring the deeds of 31 properties to Atlanta Public Schools. Bottoms' address to the audience members of the Bar Media & Judiciary Conference was about her plans to tackle the third priority: transparency.

Thank you to the sponsors of the 27th annual Georgia Bar Media & Judiciary Conference

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Bottoms strongly believes that transparency enables good government, and that the best cure for a lack of transparency is sunshine, particularly with respect to the city's contracting and procurement process. During her campaign, Bottoms announced her commitment to introduce a sweeping ethics and transparency reform package which will set the framework for a complete overhaul of how the city collects and shares data and information with the media and the public.

Bottoms ended her time at the conference by taking questions from the audience.

Political Rewind Returns: What's Hot and What's Not in Georgia

Hosts

- Bill Nigut, Senior Executive Producer, Georgia Public Broadcasting



(Left to right) WSB-TV's Mike Petchenik and CNN's Johnita Due share a laugh during one of the many humorous moments of "Sex, Lies and Hotel Receipts."

Florida Gov. Rick Scott's package of gun reform measures, which includes a blanket ban on the purchase of weapons by anyone under the age of 21; school shootings and arming teachers; HB 961, a bill to eliminate the CEO-form of government in DeKalb County; HB 605, the Hidden Predator Act of 2018, which seeks to hold entities accountable who conceal the sexual assault of children and extends the statute of limitations for victims; HB 673, a bill to require the use of hands-free phone technology for drivers in Georgia; and HB 887, which proposes imposing taxes on streaming services to help raise money for state-subsidized internet expansion in rural Georgia.

To hear the full broadcast, visit <http://gpbnews.org/post/political-rewind-state-bar-georgia> or subscribe to the "Political Rewind" podcast.

Reflections on Georgia's Judicial System and Supreme Court: The Road Traveled and Ahead

Moderator

- Ed Bean, Senior Vice President, Poston Communications

Panelists

- Hon. Harold Melton, Presiding Justice, Supreme Court of Georgia
- Hon. Leah Ward Sears, Partner, Smith, Gambrell & Russell, LLP
- George W. "Buddy" Darden III, Senior Counsel, Pope McGlamry
- Robert S. Highsmith Jr., Partner, Holland & Knight LLP

Justice Harold Melton began by discussing the change of the makeup of the Supreme Court of Georgia from seven justices to nine, and what impact that expansion has had on the decisions the Court is handing down. "You don't necessarily speed up the process, but you definitely get a more careful and critical eye," Melton said. "We stay busy. The rationale for the additional justices . . . you do have two additional judges to write opinions, but you especially have two other judges to divide up the administrative roles that exist out there." Regard-



(Left to right) Bill Nigut discusses current events at the state Capitol with panelists Loretta Lepore, Dr. Michael Thurmond and state Rep. Mary Margaret Oliver during a live broadcast of GPB's "Political Rewind."

- Jim Galloway, Columnist and Blogger, *Atlanta Journal-Constitution*

Guests

- Rep. Mary Margaret Oliver (D-Decatur), Georgia House of Representatives
- Loretta Lepore, Founder and Principal, Lepore Associates

- Dr. Michael Thurmond, Chief Executive Officer, DeKalb County
- For the third year in a row, Bill Nigut, Jim Galloway and their radio show guests thrilled the conference audience with fast-paced discussion of political news items and current legislation under the Gold Dome during a live broadcast of GPB's "Political Rewind." Some of the topics covered were

ing the administrative tasks of the Court, former Supreme Court of Georgia Justice Leah Ward Sears added, “I don’t think most lawyers really understand how bogged down justices get with all of the administrative. It is quite heavy.”

Ed Bean then shifted the discussion to Gov. Deal’s legacy as far as judicial appointments are concerned. Robert Highsmith began by saying, “I think Gov. Deal has done an absolutely fantastic job in populating our courts with outstanding judges. I think perhaps there is no better testament to that than we now have two sitting justices to our Supreme Court” who are on a list for federal judicial appointments. Former U.S. Congressman Buddy Darden agreed with Highsmith saying, “I think one of the bright spots of the Deal administration has been his appointments. . . . One of his strongest legacies will be his contributions to the bench of the state of Georgia.” Justice Sears dissented sharing, “The people appointed are qualified—no question about it—but I have been pretty vocal about the lack of diversity among all of the appointments. The vast majority are white men.” Sears pointed out that although approximately 70 percent of Georgia’s judges are white males, the population is far more diverse. When citizens go to court, they can’t find someone that looks like them, and that creates distrust in the system.

Prior to taking questions from the audience, the panel also discussed the Judicial Nominating Commission, the impact of the lack of diversity in applicants on the nomination process and the commission’s consideration of judicial philosophy.

Ask Georgia’s Next Governor: A Candidates Forum

Organizer

- Ken Foscett, Senior Editor/Investigations, *Atlanta Journal-Constitution*

Moderators

- Greg Bluestein, Political Reporter, *Atlanta Journal-Constitution*



(Left to right) Gubernatorial candidates Brian Kemp, Hunter Hill, Stacey Evans and Stacey Abrams face off during “Ask Georgia’s Next Governor: A Candidates Forum.”

- Rose Scott, Host, “Closer Look with Rose Scott,” WABE, 90.1 FM

Candidates

- Former Rep. Stacey Abrams (D-Atlanta), Georgia House of Representatives
 - Former Rep. Stacey Evans (D-Smyrna), Georgia House of Representatives
 - Former Sen. Hunter Hill (R-Atlanta), Georgia Senate
 - Brian Kemp, Georgia Secretary of State
- Greg Bluestein and Rose Scott served as moderators to a panel of four gubernatorial candidates. Prior to questions, each candidate had four minutes to make opening statements introducing themselves and their platforms.

The first question asked of the candidates was if, as governor, would they support legislation like SB 375, which allows adoption agencies to refuse to place children with same-sex couples based on their religious beliefs? The bill also prohibits the Georgia Department of Human Services from taking “adverse action” against such agencies.

Question two involved raising the age to purchase firearms and banning assault weapons.

Question three dealt with the city of Atlanta’s elimination of cash bonds for low-level offenses. The candidates were asked if this would be a good move statewide or if the decision should be left to local governments.

Question four had the candidates answering how they would improve mental health treatment in Georgia.

The final question from the moderators: Is it time for Georgia to revise mental and/or developmental disability assessment as it concerns the death penalty?

The audience posed questions regarding plans for reform as related to political or partisan gerrymandering; measures the candidates would take as governor to protect the security of our elections from outside sources; and what the candidates would do to improve upon criminal justice reform.

The entire candidates forum may be viewed on the State Bar of Georgia’s YouTube channel by visiting https://youtu.be/z2W_yFLLtI4. ●



Stephanie J. Wilson

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PHOTO BY STEPHANIE J. WILSON

Fellows Answer the Call to Protect Georgia's Children

The Fellows Program of the Georgia Bar Foundation returned to the grant-making world in 2017, awarding seven deserving organizations with funds totaling \$60,400.

BY C. LEN HORTON

2017 was a special year in legal grant making in Georgia. The Fellows Program of the Georgia Bar Foundation returned to the grant-making world, answering questions about its intentions and its ability to be part of the ongoing effort to help solve law-related problems of communities throughout the state.

Before you meet the seven recipients of the 2017 Fellows grants, I'd like to take a moment to answer the following questions: Who are fellows and why do lawyers become fellows?

If a lawyer is a leader in the legal community or the community in general, then he or she may well be invited to become a fellow of the Georgia Bar Foundation. Being a fellow of the Georgia Bar Foundation is public acknowledgement that a lawyer's accomplishments among his or her legal peers and in his or her community are now recognized throughout Georgia.

As important as the recognition is, being a fellow also means joining with peers in helping to solve many of Georgia's most challenging law-related problems. A community-focused grant-making effort, the Fellows Program provides financial support to programs that are making a big difference in local communities all over Georgia. The major source of funds for fellows grants is the annual \$250 contribution for five years. An ex-

amination of how these funds were used last year shows what is possible.

The LilyPad Sane Center in Albany, run by Mary Martinez, provides help and assistance to victims of sexual assault and their families in 19 southwest Georgia counties. More specifically, it provides a 24-hour crisis line for families who do not know where to turn. Providing 24/7 forensic and medical examinations with evidence collection, LilyPad is laser focused on ending sexual assault and protecting children and the family. Evidence collection often requires interviews with child victims, and LilyPad does that using its highly trained experts. A total of \$10,000 in fellows funds was used to update the center's interview recording equipment and to obtain a UV light source that assists the trained nurse in spotlighting bruises and contusions caused by violence. Foundation Trustees Ken Hodges and Hon. Robert W. Chasteen Jr. led a site visit to this much appreciated and well known community organization.

SafePath Children's Advocacy Center in Marietta, managed by Jinger Rogers, is an organization devoted to ending child abuse in Cobb County. It provides a neutral, child-friendly environment that focuses first on the needs of the child and second on supporting government agencies. It also provides trained professional

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staff to deal with child abuse cases. Offering a comprehensive approach to stopping violence against children, SafePath provides assistance in stopping internet crimes against children, particularly child sex trafficking. A total of \$10,000 in fellows funds was awarded to SafePath to provide a two-day staff training program for its entire multi-disciplinary team to enhance the necessary skills to testify professionally in the courtroom. Trustee Hon. G. Conley Ingram led a site visit of this organization that has become so important to Cobb County.

Continuing the fellows focus on children, a \$10,000 grant was presented to the Southwestern Judicial Circuit Family Violence Council in Americus as it was expanding the breadth of its services to victims of domestic violence and embracing a new name: The Southwest Georgia Victim's Assistance Alliance. Covering six rural counties including Lee, Macon, Schley, Sumter, Stewart and Webster, this organization, managed by Alicia Page, asked for funds to support two law school students providing 10 hours of legal research and one day in person for each of 12 weeks. The ability to offer legal assistance as part of helping victims of family violence is essential to combating family violence. A reception and tour of this organization for foundation staff was led by Hon. R. Rucker Smith.

Northwest Georgia was on the mind of the Board of Trustees and the fellows of the Georgia Bar Foundation thanks in large part to the encouragement of Robert M. Brinson. At his suggestion, the Sexual Assault Center of Northwest Georgia in Rome applied for and ultimately received a \$10,000 grant to provide legal assistance to sexual assault victims. Specifically, it pays for two attorneys, who have agreed to work at reduced rates, to obtain temporary protective orders and represent victims in divorce proceedings and legal custody disputes. Since divorce and custody problems are often not covered by legal services providers because they require so much time and are quite costly, this grant is particularly useful to victims. The grant enables Executive Director Kim Davis to add legal assistance to the

many support services she provides. The Sexual Assault Center of Northwest Georgia serves Bartow, Floyd, Chattooga, Gordon and Polk counties. A tour of the facilities was arranged by Brinson and Frank Beacham, board member of the Sexual Assault Center.

Families in need were also a concern of The Mediation Center of Savannah. Jill Cheeks, executive director, works to help pro se litigants through the Family Law Resource Center with divorce, name change, child support and other legal matters. The focus of the center is avoiding litigation through mediation and other conflict resolution methods. The grant funds are targeting organization essentials such as computers, desks and chairs, and supporting an additional temporary part time staff member. Patrick T. "Pat" O'Connor, immediate past president of the State Bar of Georgia and an extraordinary supporter of the Fellows Program, is someone who appreciates the work of the center. The \$10,000 grant for the Family Law Resource Center program inside The Mediation Center of Savannah along with the fellows grants already mentioned shows that the Board of Trustees of the Georgia Bar Foundation was focusing on families and the prevention of violence all over the state.

Fellows money was also awarded to the Judicial Program of the State YMCA of Georgia, a program the Georgia Bar Foundation has assisted a number of times. A grant of \$8,400 was awarded to provide general support to the program, which acquaints 9th-12th graders with the appellate level of Georgia's judicial system. An intellectual challenge to advanced students, this program teaches participants how to prepare legal arguments. Managed by Dr. Randall Trammell, this program has been supported by the Georgia Bar Foundation since 1986. It is not unusual for students going through this program to become attorneys and judges. S. Lester Tate, past president of the State Bar of Georgia and former trustee of the Georgia Bar Foundation, presented the award to Dr. Trammell on behalf of the foundation.

Just talking about the problems our country is facing can sometimes identify a financial need that foundation fellows can help meet. Like citizens everywhere, Georgians are talking, wondering how government can be better when few people understand what government really is. The consensus of those conversations is that there probably has never been a greater need for citizens to understand government and how it works. In response to that need, former U.S. Supreme Court Justice Sandra Day O'Connor created iCivics in 2009. iCivics uses video games to teach middle and high school students how democracy works. In essence, Justice O'Connor was arguing for putting civics back into our schools. Many people, including Brinson and Chasteen, have supported that same argument in Georgia for years. So when Hon. Dorothy T. Beasley asked if the Georgia Bar Foundation would be willing to provide the iCivics Committee of the State Bar of Georgia with a \$2,000 grant, the Foundation was interested. The committee wanted to bring in an expert teacher to the annual conference of the Georgia Council for Social Studies to educate them about iCivics and its importance to our country. The request was approved.

In total, seven fellows grants totaling \$60,400 were awarded in 2017—not a bad year's work for our 1,204 fellows.

If you are not currently a fellow of the Georgia Bar Foundation and receive an invitation to become one, I hope you will consider it. You will be one of a group of movers and shakers leading our state forward. For our current fellows, I hope you will step forward again. Your state and your country have seldom needed you more. ●

Every Georgia lawyer in this story is a fellow of the Georgia Bar Foundation.



C. Len Horton

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2017 Georgia Corporation and Business Organization Case Law Developments

This article presents an overview from a survey of Georgia corporate and business organization case law developments in 2017. The full version of the survey, contains a more in-depth discussion and analysis of each case (<https://www.bryancave.com/en/thought-leadership/now-available-survey-of-2017-georgia-corporate-and-business-1.html>). This article is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed in this article are those of the author only and not Bryan Cave LLP.

BY MICHAEL P. CAREY

This article catalogs decisions handed down in 2017 by Georgia state and federal courts addressing questions of Georgia corporate and business organization law. It includes both decisions with significant precedential value and others dealing with more mundane questions of law as to which there is little settled authority in Georgia. Even those cases in which the courts applied well-settled principles serve as a useful indication of trends in corporate and business organization disputes.

The year 2017 saw two notable decisions in the area of shareholder derivative and class actions, one granting a corporation's motion to dismiss a derivative suit based on the results of a special litigation committee investigation, the other upholding the denial of class certification on the grounds that



the proposed class representative could not adequately represent the class. In addition, the Georgia appellate courts addressed matters of first impression regarding the duties of managing members of insolvent limited liability companies, as well as whether business entities can bring claims based on injuries typically thought to be personal in nature, such as intentional infliction of emotional distress. There were also a number of decisions interpreting the 2013 amendments to the Civil Practice Act's provisions for service of process on a corporation.

The decisions are organized first by entity type—those specific to business corporations, limited liability companies and partnerships. The remaining sections of the survey deal with (1) transactional issues potentially applicable to all forms of business organizations, and (2) litigation issues that are common to all business forms, including secondary liability, jurisdiction and venue, evidence questions and insurance issues.

Review of Decisions

Duties and Liabilities of Corporate Directors, Officers and Employees

The Northern District of Georgia dismissed a shareholder derivative action involving directors and officers of SunTrust, granting SunTrust's motion to dismiss the lawsuit based on a determination by a special committee of its board that the claims lacked merit and should not be pursued. The decision, in a case styled *LR Trust on behalf of SunTrust Banks, Inc. v. Rogers*, 270 F. Supp. 3d 1364 (N.D. Ga. 2017), is one of the most extensive opinions to date addressing the dismissal of shareholder derivative actions under O.C.G.A. § 14-2-744, and it serves as a useful guide to the sorts of issues that are (and are not) litigated when a corporation moves to dismiss under the statute. In response to

a shareholder demand letter, SunTrust formed a "demand review committee" to investigate the shareholder's allegations. The committee submitted a comprehensive report of its investigation, in which it determined that no actionable conduct had occurred and that it would not be in the best interest of SunTrust to pursue claims based on the shareholder's allegations. SunTrust thereafter moved to dismiss a lawsuit brought by the shareholder based on the allegations that formed the basis for the demand. Under O.C.G.A. § 14-2-744, a court's consideration of a motion to dismiss is limited to evaluating the independence of the committee and the reasonableness of its investigation. The court found that the members of SunTrust's demand review committee were sufficiently independent and that the committee conducted a thorough, good faith investigation, and therefore granted the motion to dismiss. The plaintiff has appealed the decision to the Eleventh Circuit.

Other decisions involving director and officer liability issues in 2017 include *HCC Insurance Holdings, Inc. v. Flowers*, 237 F. Supp. 3d 1341 (N.D. Ga. 2017), in which the Northern District addressed a breach of fiduciary duty claim based on an officer's plans to start a competing company while still employed by the corporation. The court granted summary judgment in favor of the defendant, holding that while the officer may have made preliminary plans to form a new business, there was no evidence that he acted upon those plans while he was employed by the plaintiff. In *In re Alpha Protective Services*, 570 B.R. 888 (Bankr. M.D. Ga. 2017), the Bankruptcy Court for the Middle District of Georgia held that the fact that a director advanced money to a corporation to help it make payroll did not establish as a matter of law that the director had "reasonable cause" to believe that the company was insolvent, and found that the director's testimony denying that

he knew about the company's tax debts was sufficient to create a triable issue of fact. Finally, in *Lynchar, Inc. v. Colonial Oil Industries, Inc.*, 341 Ga. App. 489, 801 S.E.2d 576 (2017), the Court of Appeals of Georgia held that a guaranty was unenforceable against two shareholders of a corporation who executed the guaranty, because it did not correctly identify the name of the corporation that was the principal debtor.

Limited Liability Company Developments

The year 2017 saw a number of notable decisions involving LLC issues. In *Georgia Commercial Stores, Inc. v. Forsman*, 342 Ga. App. 542, 803 S.E.2d 805 (2017), the Court of Appeals of Georgia held that managing members of an insolvent LLC owe common law fiduciary duties to the LLC's creditors, similar to those owed by directors of an insolvent Georgia corporation. As a result, an LLC's creditors may bring a common law breach of fiduciary duty action against the managing members for their failure to conserve and manage the LLC's assets for the benefit of creditors. Georgia courts have long recognized such a duty in the corporate context, but it was an open question whether managing members of insolvent LLCs were under a similar duty not to engage in preferential transactions. The Court of Appeals held that it was only logical that LLC managing members be treated the same as corporate directors, because they occupy a similar role within the business entity. While this ruling creates parity between Georgia corporate and LLC law on this point, it simultaneously creates a significant distinction between Georgia and Delaware LLC law. Delaware law allows breach of fiduciary duty claims by creditors of an insolvent corporation, but not an insolvent LLC.

Two decisions addressed the enforceability of LLC operating agreements. In *Practice Benefits, LLC v. Entera Holdings*,

LLC, 340 Ga. App. 378, 797 S.E.2d 250 (2017), the Court of Appeals held that an LLC may be sued for breach of its own operating agreement regardless of whether the LLC signed the agreement. The panel held that O.C.G.A. § 14-11-101(18) unambiguously binds an LLC to its own operating agreement whether or not the LLC executes it. In *Souza v. Berberian*, 342 Ga. App. 161, 802 S.E.2d 401 (2017), the Court of Appeals held that an email discussing proposed terms of an LLC operating agreement did not create an enforceable operating agreement because it was too indefinite as to the material terms of the relationship, including the percentage of equity that one of the founding parties would receive.

In *McCabe v. Rainey*, 343 Ga. App. 480, 806 S.E.2d 867 (2017), the Court of Appeals reversed a trial court's grant of summary judgment in favor of an LLC's managing member, holding that the other member raised a genuine factual question as to whether the managing member sold the LLC's assets fraudulently and without proper authorization. Although the governing documents contained broad exculpatory language and gave the defendant significant powers in selling assets, the court found that a jury could conclude from the evidence that the defendant intentionally breached those documents and used his powers to benefit himself and family members. In *Richardson v. Coverall North America, Inc.*, 2017 WL 6059208 (N.D. Ga. Dec. 7, 2017), the Northern District of Georgia held that an LLC's owner who signed a franchise agreement on behalf of the LLC was personally bound by the agreement's arbitration clause. As a result, the LLC owner was required to arbitrate statutory and tort claims against the franchisor, even though he was asserting the claims on his own behalf and not on the LLC's behalf. Finally, in *Echenblatt v. Piedmont/Maple, LLC*, 341 Ga. App. 761, 801 S.E.2d 616 (2017), the Court of Appeals held that an LLC equity holder's claims against its managing member were not barred by the doctrine of *res judicata* despite their similarity to claims that were litigated in a prior suit between the parties. The court held that

the new claims all were based on conduct occurring after the first suit had ended.

Nonprofit Corporations

One of the more interesting Court of Appeals of Georgia decisions from 2017 involved electric-membership corporations. In *Walker v. Oglethorpe Power Corporation*, 341 Ga. App. 647, 802 S.E.2d 643 (2017), the Court of Appeals affirmed the dismissal of two class action lawsuits brought by retail customers of various EMCs, who by virtue of being customers are members of the EMCs that serve them, alleging that the EMCs violated statutory and contractual duties to their members by failing to distribute revenues in excess of operating expenses (known as "patronage capital") to their members in a timely fashion. The court addressed questions of standing as well as whether the EMC Act, O.C.G.A. § 46-3-170 *et seq.*, imposes any duty on EMCs to return patronage capital to members at any particular time. As to the standing question, the court found that the EMC Act did not provide for a private right of action by EMC members to enforce its requirements. The court also noted that the plaintiffs had never been members of several of the EMCs who were defendants, and that this lack of privity deprived the plaintiffs of any claims against those EMCs. Turning to the merits, the court held that even if a private right of action existed, the EMC Act did not create any express or implied duty to return patronage capital on any particular schedule. Instead, the court interpreted the operative statute, O.C.G.A. § 46-3-340, as giving EMCs broad discretion to accumulate patronage capital for purposes such as maintaining reserves and meeting future capital needs.

In *Lathan v. Hospital Authority of Charlton County*, 343 Ga. App. 123, 805 S.E.2d 450 (2017), the Court of Appeals held that a hospital authority is not a corporation that is subject to service under § 9-11-4(e)(1)(A). Instead, even though such bodies are often referred to as public corporations, they are "public bodies" that must be served through their CEO or clerk pursuant to O.C.G.A. § 9-11-4(e)

(5). In *McCoy v. Bovee*, 300 Ga. 759, 796 S.E.2d 679 (2017), the Supreme Court of Georgia addressed a dispute between a homeowners' association and its president. The Court affirmed a trial court's injunction removing the officer on the grounds that he had frustrated the work of a receiver that the court had previously appointed to manage the association's affairs. The Court's review was limited to whether there was any evidence to support the trial court's decision, meaning that it did not review whether the removal was authorized under the Non-profit Corporations Code.

Stock Ownership and Transactional Cases

In *EMM Credit, LLC v. Remington*, 343 Ga. App. 710, 808 S.E.2d 96 (2017), the Court of Appeals of Georgia held that a jury was authorized to find that the defendant in a fraudulent transfer action was the "true owner" of a corporation, meaning that he owned all of its stock. The defendant presented evidence that stock certificates had been issued to other people, and there was no evidence that the defendant himself ever received stock certificates. The corporation was unable to produce a complete and reliable stock ledger, however, and claimed instead that its records had been lost or stolen. Given the absence of such evidence, the Court of Appeals held that a reasonable jury could view the defendant's claims with suspicion, and that it did not need to be presented with direct evidence that the defendant was issued stock certificates in order to find that the defendant owned the corporation.

In *Wallace v. Wallace*, 301 Ga. 195, 800 S.E.2d 303 (2017), the Supreme Court of Georgia vacated a trial court order, issued after a bench trial, resolving a dispute over the valuation of shares in a family-owned corporation. The dispute turned on whether the valuation was to be governed by the company's original bylaws or a later buy-sell agreement. This critical question was left unanswered by the trial court's order, which included no findings of fact or conclusions of law. The Court concluded that it could not meaningfully review the lower court order in the ab-

sence of such findings, and remanded the case with instructions to make such findings. Finally, in *One Buckhead Loop Condominium JE-067 Association v. Regent Tower Holdings, LLC*, 341 Ga. App. 5, 798 S.E.2d 633 (2017), the Court of Appeals held that the presence of a corporate seal on an agreement invoked the 20-year limitations period set forth under O.C.G.A. § 9-3-23. The defendant claimed that its only intent in affixing the seal to the document was to show that the signing officer had the ability to bind the corporation, but the court held that the defendant's stated reasons for affixing the seal were irrelevant.

Litigation Issues

Standing and Capacity to Sue

The Court of Appeals of Georgia issued two decisions in 2017 addressing the novel question of whether a business entity can bring claims for intentional infliction of emotional distress. In *Osprey Cove Real Estate, LLC v. SE-027 Towerview Construction, LLC*, 343 Ga. App. 436, 808 S.E.2d 425 (2017), the Court of Appeals held that Georgia law does not recognize such a claim, for the simple reason that business entities cannot experience emotions. The Court of Appeals later reaffirmed this holding in *Ortho Sport & Spine Physicians Savannah LLC v. Chappuis*, 808 S.E.2d 559 (Ga. App. 2017), and also held that a business entity cannot bring an invasion of privacy claim because privacy is a personal right. The court distinguished the type of privacy claim asserted in *Ortho Sport*, which was based on an LLC's allegations that its landlord was harassing it, from claims involving the misappropriation of trade names, which are permitted under Georgia law. An earlier decision involving some of the same parties addressed the corporate separateness doctrine in the context of applying the prior pending action rule. See *Oskouei v. Orthopaedic & Spine Surgery of Atlanta, LLC*, 340 Ga. App. 67 (2017).

Secondary Liability

The Georgia courts continue to address—and reject—attempts by credi-

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There has been an interesting trend in Georgia federal courts toward more careful scrutiny of diversity jurisdiction cases where the citizenship of an LLC is involved. Unlike a corporation, which is a citizen of its state of incorporation and the state where it maintains its principal office, an LLC is a citizen of every state in which one of its members is a citizen.

tors to reach corporate assets to satisfy debts owed by their shareholders, a type of claim known as “reverse veil piercing.” In *Community & Southern Bank v. Lovell*, 302 Ga. 375, 807 S.E.2d 444 (Ga. 2017), a unanimous Supreme Court of Georgia held that a creditor could not use the Uniform Fraudulent Transfers Act (UFTA) as a basis for asserting a reverse veil piercing claim. The plaintiff sought to set aside transfers made by a corporation owned by the debtor, but the corporation was not alleged to have owed any money to the plaintiff. The Court held that the UFTA provided no basis for a departure from the settled rule against reverse veil piercing. In *Corrugated Replacements, Inc. v. Johnson*, 340 Ga. App. 364, 797 S.E.2d 238 (2017), the Court of Appeals held that the prohibition against reverse veil piercing is not subject to any exceptions. In that case, the plaintiffs argued unsuccessfully for an equitable exception that would apply when the plaintiff is otherwise without an adequate legal remedy.

Finally, in a more conventional veil piercing case, the Bankruptcy Court for the Middle District of Georgia rejected a customer’s attempt to pierce the veil of a homebuilder’s wholly owned corporation in *Matter of Hilsman*, 576 B.R. 717 (Bankr. M.D. Ga. 2017). The record showed that the defendant had not strictly observed certain corporate formalities such as annual meetings, but the court found no evidence that the defendant had commingled funds or had otherwise abused the corporate form.

Jurisdiction, Venue and Service of Process

There has been an interesting trend in Georgia federal courts toward more careful scrutiny of diversity jurisdiction cases where the citizenship of an LLC is involved. Unlike a corporation, which is a citizen of its state of incorporation and the state where it maintains its principal office, an LLC is a citizen of every state in which one of its members is a citizen. In *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218 (11th Cir. 2017), the Eleventh Circuit reviewed a sanctions order that was issued in a case that proceeded to summary judgment and an appeal before the parties realized that diversity was destroyed due to the citizenship of a member of a member of one of the parties. While the Eleventh Circuit held that counsel had acted in good faith and reversed the sanction on the basis of that holding, the panel nonetheless used its opinion to admonish attorneys handling diversity cases to be more proactive in resolving questions about the citizenship of LLCs at an early point in the litigation.

In other decisions involving jurisdiction and venue questions, the Eleventh Circuit held in *Life of the South Insurance Company v. Carzell*, 851 F.3d 1341 (11th Cir. 2017) that two Georgia corporations that were headquartered in Florida (and therefore were citizens of both states) could not remove a class action brought on behalf of a Georgia-only class by claiming that their Florida citizenship created the “minimal diversity” required under the Class Action Fairness Act’s re-

moval provisions. The panel held that the defendants could only establish minimal diversity by showing that they were not citizens of Georgia, which as Georgia corporations they could not do. And in *Burchfield v. West Metro Glass Company, Inc.*, 340 Ga. App. 324, 797 S.E.2d 225 (2017), the Court of Appeals of Georgia addressed a case that had been removed under Georgia’s corporate venue statute, O.C.G.A. § 14-2-510(b). The court held that a motion to transfer should have been denied because it was not made during the statute’s 45-day window for removal.

There were a large number of noteworthy decisions involving the sufficiency of service of process under O.C.G.A. § 9-11-4. In *S.D.E. Inc. v. Finley*, 340 Ga. App. 684, 798 S.E.2d 303 (2017), the Court of Appeals affirmed a decision holding that a McDonald’s franchisee’s shift manager was a “managing agent” of the franchisee, and that the franchisee was properly served when a copy of the complaint and summons were delivered to the shift manager working behind the restaurant’s counter. The court held that the trial court was authorized to find that the shift manager had a supervisory or managerial role for the corporation due to the fact that she was generally in charge of the employees working on her shift. The decision suggests that courts may take a broad view of the “managing agent” as it is used in 2013 version of § 9-11-4(e). In *La Mara X, Inc. v. Baden*, 340 Ga. App. 592, 798 S.E.2d 105 (2017), the Court of Appeals held that a corporation operating a restaurant was not properly served, even

though the complaint and summons were served on its CEO at its correct address, because the corporation was incorrectly identified in the complaint and summons. The documents identified an existing but different corporation whose separate existence could be proven from the Secretary of State's records. Because there was another corporation that went by the name on the documents, the court held that the misidentification was not a mere misnomer. In *Vasile v. Addo*, 341 Ga. App. 236, 800 S.E.2d 1 (2017), the Court of Appeals held that a plaintiff exercised "reasonable diligence" in attempting to serve an LLC as that term is used in O.C.G.A. § 14-11-209(f), even though the plaintiff made only one attempt to serve the LLC personally before exercising the option of making substitute service on the Secretary of State. One reason why the plaintiff's efforts were deemed to be reasonable was that the LLC's principal had stated to the plaintiff (who lived in the same house) that he was out of the country. Finally, in *Hunt v. Nationstar Mortgage, LLC*, 684 Fed. Appx. 938 (11th Cir. 2017), the Eleventh Circuit held that a plaintiff failed to serve a defendant through its receptionist, because the receptionist was not an authorized agent and she did not accept service.

Class Certification

In *Lewis v. KNOLOGY, Inc.*, 341 Ga. App. 86, 799 S.E.2d 247 (2017), a divided nine-judge Court of Appeals panel affirmed a trial court order denying class certification in a putative shareholder class action challenging a corporate merger. The majority held that the trial court acted within its discretion when it found that the proposed class representative was inadequate. The trial court's decision was based largely on the plaintiff's deposition testimony, which indicated that she was unaware of basic facts regarding the lawsuit and did not understand the nature of her own claims. A dissenting opinion argued that the trial court's review should have been more narrowly confined to evaluating the adequacy of class counsel

and the presence or absence of any conflicts of interest between the proposed representative and absent class members. A petition for certiorari to the Supreme Court of Georgia was denied.

Indemnification and Insurance

In *Georgia Dermatologic Surgery Centers v. Pharis*, 339 Ga. App. 764, 792 S.E.2d 747 (2017), the Court of Appeals of Georgia upheld a trial court order granting a director's claim for mandatory indemnification following his successful defense against litigation brought by the corporation and its other director. The court rejected the corporation's argument that the mandatory indemnification statute, O.C.G.A. § 14-2-852, did not apply because it could have asserted claims against the defendant solely in his capacity as an officer or in some other capacity.

Evidentiary Issues

In *Robles v. Yugueros*, 343 Ga. App. 377, 807 S.E.2d 110 (2017), the Court of Appeals of Georgia re-examined its prior opinion on the admissibility of 30(b)(6) deposition testimony at trial in light of the Supreme Court's holding in *Yugueros v. Robles*, 300 Ga. 58, 793 S.E.2d 42 (2016) that the use of such testimony at trial is limited by other applicable evidentiary rules, including the rules governing expert testimony. This time, the Court of Appeals held that a corporate representative's 30(b)(6) testimony cannot be admitted at trial as expert testimony without independently satisfying the requirements of § 24-7-702. Because the proponent of the testimony relied only on Rule 30(b)(6) in arguing that the testimony should be admitted, the Court of Appeals held that the trial court correctly excluded the testimony.

Decisions of the Fulton County Business Court¹

In *Rollins v. LOR, Inc.*, No. 2014-cv-249480 (Ga. Super. Apr. 28, 2017), the Business Court granted in part and denied

in part summary judgment in favor of the sons of O. Wayne Rollins in a lawsuit challenging their conduct as directors of LOR, Inc., a family corporation established to hold assets of the Rollins estate. The case is related to the *Rollins v. Rollins* litigation that has led to multiple appellate decisions in recent years. The plaintiffs, trustees of a marital trust that held shares of LOR stock, alleged that the defendants breached their fiduciary duties to the marital trust by approving certain transactions that depressed dividends, failing to pay dividends owed to the marital trust, and using LOR to purchase property, an airplane and other assets for their personal use. The court held that a number of claims were time barred, rejecting the plaintiffs' tolling argument on the grounds that the record failed to show fraudulent concealment and the plaintiffs should have exercised greater diligence. The court further held that much of the conduct complained of fell within the statutory safe harbor for conflicted interest transactions and/or the business judgment rule, and the defendants showed that they were entitled to the protections of those statutes and rules. The court denied summary judgment, however, as to the claims that the defendants used LOR funds to buy and manage assets for their personal use, finding that such conduct was not entitled to business judgment rule protection but would have to be evaluated under an en-

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tire fairness standard instead. The court also addressed a demand for inspection of books and records, which it found to be moot in light of the extensive discovery taken during litigation, and a claim for judicial dissolution of LOR, which it tabled for later consideration.

In *Gross Endowment Trust, LLC v. Inglesby*, No. 2015-cv-261031 (Ga. Super. Mar. 9, 2017), the Business Court granted summary judgment to the defendant in a dispute between former business partners that turned on whether the plaintiff could rescind a release the parties executed in connection with the dissolution of their venture. The court held that the plaintiff's rescission claim was foreclosed by his five-month delay in seeking rescission after learning of a potentially undisclosed business opportunity that formed the basis for his fraud claim. In *BSL Holdings, LLC v. Trinity Lifestyles Management, LLC*, No. 2016-cv-278256 (Ga. Super. Jan. 20, 2017), the Business Court granted in part and denied in part a motion to dismiss 17 counts a complaint involving the management of LLCs that own and operate senior living facilities. One highlight

of the court's opinion is its discussion of operating agreement provisions that purport to eliminate the statutory prohibition on conflicting interest transactions, O.C.G.A. § 14-11-307. The court held that such provisions do not, without more, relieve members and managers of other duties, including the duty of care.

In *Obarski v. Elting*, No. 2016-cv-275799 (Ga. Super. May 9, 2017), the Business Court held that it lacked personal jurisdiction over a New York resident who was an officer of a Delaware corporation that maintained an Atlanta office. The case involved claims by an employee of the Atlanta office that the defendant promised him an ownership stake in the event of a sale. The court found that the defendant did not engage in any purposeful act in Georgia related to the plaintiff's claims. In *Strategic Jubilee Holdings, LLC v. Jubilee Development Partners, LLC*, No. 2016-cv-283484 (Ga. Super. Apr. 14, 2017), the Business Court denied a motion to strike a lawsuit seeking a declaratory judgment that the defendants were not members of an LLC. The motion was based on the anti-SLAPP statute and argued that the lawsuit had been filed in

retaliation for an earlier lawsuit the defendants had filed in Florida. The court held that the lawsuit before it was strictly a corporate governance matter and was not sufficiently related to the Florida suit to raise any concerns under the anti-SLAPP statute. ●



Michael P. Carey practices corporate, securities and other complex litigation at Bryan Cave LLP, with a focus on director and officer liability issues. Carey is co-author of a chapter on director and officer liability in a book published annually by the *Daily Report*. "Georgia Business Litigation" (*Daily Report* 2013). He can be reached at michael.carey@bryancave.com.

Endnotes

1. Opinions from the Fulton County Business Court may be found on the Georgia State University College of Law's website, at <https://readingroom.law.gsu.edu/businesscourt>.

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Kudos



Taylor English Duma LLP announced that partner Mark Carter was elected to serve as co-chair of the Atlanta Legal Aid Society (ALAS) Service Council. ALAS assists low-income individuals in meeting basic needs through free civil legal services. The core of Legal Aid's mission is to help

low-income people navigate the complexities of the court system at the most vulnerable times in their lives.



FordHarrison LLP announced that former managing partner C. Lash Harrison has transitioned to the role of chairman of the executive committee where he will work with six other firm partners in overseeing every aspect of the firm's operation and development. Harrison has more

than 50 years of experience representing management in all aspects of labor and employment law in almost every state.



Kilpatrick Townsend & Stockton LLP announced that Eric Charity was appointed to the Young Leaders Council of Big Brothers Big Sisters of Metro Atlanta (BBBSMA). BBBSMA's mission is to provide children facing adversity with strong and enduring, professionally supported, one-to-

one relationships that change their lives for the better, forever.



Brian D. Burgoon was re-elected as an out-of-state representative on The Florida Bar Board of Governors. The 52-member Board of Governors has exclusive authority to formulate and adopt matters of policy concerning the activities of the Bar, subject to limitations imposed by the rules regulating The Florida Bar.



Supreme Court of Georgia Justice Britt C. Grant was elected to the American Law Institute. The American Law Institute is the leading independent organization in the United States producing scholarly work to clarify, modernize and otherwise improve the law. Members of the

American Law Institute have the opportunity to influence the development of the law in both existing and emerging areas by drafting, revising and publishing model codes, principles of law and restatements of the law, bodies of work that are influential in the courts and legislatures as well as in legal scholarship and education.



Nelson Mullins Riley & Scarborough LLP announced that partner Elisa S. Kodish was elected board president of Atlanta Legal Aid Society (ALAS). ALAS helps low-income individuals in meeting basic needs through free civil legal services. The core of Legal Aid's mission is to help

low-income people navigate the complexities of the court system at the most vulnerable times in their lives.



M. WARSHAUER



L. WARSHAUER

Warshauer Law Group announced that Michael Warshauer was elected president of the Georgia Chapter of the American Board of Trial Advocates (ABOTA). ABOTA is a national association of experienced trial lawyers and judges dedicated to preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution.

The firm also announced that Lyle Warshauer was elected to serve on the board of Second Helpings Atlanta, Inc. Second Helpings is a 501(c)(3) nonprofit organization whose vision is to fight hunger in the five-county metro-Atlanta area by rescuing surplus food and delivering it to those in need.

On the Move

IN ATLANTA



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CARROLL



BIJANKI

Parker Poe Adams & Bernstein LLP announced that Michael Binns and Karen Carroll joined the firm as partners and Sharad Bijanki joined as an associate. Binns is a member of the intellectual property practice group and

focuses primarily in the area of patent litigation. His experience includes all aspects of intellectual property (IP) law related to a variety of technologies, including patent and trademark prosecution proceedings before the U.S. Patent and Trademark Office, IP licensing and counseling clients on all forms of IP evaluation and risk assessment. Carroll's practice focuses on complex IP litigation and counseling, with a specific focus on pharmaceutical and biotechnology-related patent matters, including Hatch-Waxman litigation. Bijanki focuses his practice on IP, especially patent litigation and post-grant proceedings before the patent

trial and appeal board. The firm is located at 1180 Peachtree St. NE, Suite 1800, Atlanta, GA 30309; 678-690-5749; Fax 404-869-6972; www.parkerpoe.com.



Alston & Bird LLP announced that Jeremy Silverman joined the firm as a partner in the corporate transactions and securities group. He advises private equity funds, closely held businesses and publicly traded companies in mergers and acquisitions transactions, and other strategic matters.

He also assists clients in the health care industry in mergers and acquisitions and other strategic transactions, and has non-mergers and acquisitions transactional experience, including assisting clients in structuring and effectuating joint ventures, strategic alliances and other complex commercial relationships. The firm is located at One Atlantic Center, 1201 W. Peachtree St., Suite 4900, Atlanta, GA 30309; 404-881-7000; Fax 404-881-7777; www.alston.com.



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STONE

Shawn Kalfus and Matt Stone announced the formation of their civil defense law firm, Stone Kalfus LLP. Kalfus's practice focuses on defending wrongful death and catastrophic injury cases for companies and individuals. Stone focuses on motor vehicle liability claims, automotive dealership cases and consumer and regulatory issues. He also represents motor carriers, specialty haulers, bus lines and motor coaches, waste haulers, mobile crane companies, emergency and non-emergency medical transportation providers and automobile dealerships. The firm is located at 1718 Peachtree St. NW, Suite 550, Atlanta, GA 30309; 404-736-2600; Fax 404-736-2601; www.stonekalfus.com.



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FLAKE

Smith Moore Leatherwood LLP announced the addition of Dorothy H. Cornwell as partner, Dan M. Silverboard as of counsel and Kori E. Flake as an associate. Cornwell is a member of the firm's health care group and focuses on litigation and regulatory compliance, particularly at the intersection of the health care and health insurance industries. Silverboard represents a variety of health care providers, including hospitals, physician groups, pharmacies, clinical laboratories and federally qualified health centers. His practice focuses on transactions and complex regulatory matters relating to Medicare and Medicaid compliance, including practitioner and facility licensing and certification, reimbursement, HIPAA, and fraud and abuse laws including the Physician Self-Referral (Stark) Law and Anti-Kickback Statute. Flake is a member of the transportation and logistics group and focuses her practice on the defense of commercial

motor vehicle companies, their drivers and insurers in all aspects of litigation. The firm is located at 1180 W. Peachtree St. NW, Suite 2300, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; www.smithmoorelaw.com.



Dentons US LLP announced that Mark G. Trigg joined the firm as partner in the litigation and dispute resolution practice. His experience includes representing corporations and individuals in government investigations, administrative proceedings and civil actions in federal and state courts.

The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.dentons.com.



FREDERICKS



HART



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NASH

Nelson Mullins Riley & Scarborough LLP announced that Kate-Lyn Fredericks, Lee Hart, Nekia H. Jones and Mark Nash joined as partners. Fredericks focuses her practice in the areas of corporate law, mergers and acquisitions, and private equity and venture capital. Hart is a member of the financial institutions group and focuses his practice on real estate finance, structured finance and corporate finance. Jones handles white collar criminal defense matters, government investigations and business litigation. Nash focuses his practice in the area of general litigation. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.



Taylor English Duma LLP announced that John Taylor joined as partner in the real estate practice group. His practice focuses on commercial real estate issues, including transaction, litigation and mediation. Taylor's experience includes real property litigation as well as serving as special master in disputes concerning discovery generally and electronically stored information particularly. The firm is located at 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.



Conley Griggs Partin LLP announced the addition of Scott Farrow to the firm as of counsel. Farrow brings more than 30 years of experience in product liability, premises liability, truck/car accidents, fire-related injuries and business disputes. The firm is located at 4200 Northside Parkway NW, Building One, Suite 300, Atlanta, GA 30327; 404-467-1155; Fax 404-467-1166; www.conleygriggs.com.



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AVERBUCH

Hall Booth Smith, P.C., announced the addition of Russell Britt, Michael Johnson, Justin Kerenyi and David Younker as partners, Douglas G. Ammerman as of counsel and Austin Atkinson and Allison Averbuch as associates to the firm. Britt specializes in governmental liability and local governmental law, and his experience includes representing local government entities including counties, municipalities and school districts throughout Georgia. Johnson joined with experience including more than three decades of commercial insurance litigation experience counseling clients on commercially insured risks and litigating coverage disputes in the state and federal courts across the country. Kerenyi focuses his practice on a broad range of litigation, transactional and intellectual property work. Younker specializes in civil litigation matters and possesses trial experience as well. Ammerman focuses his practice on professional negligence, medical malpractice, and dental litigation and trial. Atkinson specializes in aging services. Averbuch focuses on employment law and general liability. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.



Butler Wooten & Peak LLP announced that Robert H. Snyder Jr. was elected partner. Snyder's practice focuses on whistleblower/qui tam, accounting malpractice, business torts, products liability, wrongful death, trucking and automobile wreck cases. The firm is located at 2719 Buford Highway, Atlanta, GA 30324; 404-321-1700; Fax 404-321-1713; www.butlerwootenpeak.com.



Eversheds Sutherland LLP announced that Jeremy D. Spier joined the firm as counsel. Spier counsels clients on intellectual property (IP) law, including international and domestic IP rights. He primarily focuses on patent and trademark procurement. In addition, he counsels clients on patent portfolio management and prepares patentability, validity, non-infringement and product clearance opinions. The firm is located at 999 Peachtree St. NW #2300, Atlanta, GA 30309; 404-853-8000; Fax 404-853-8806; www.us.eversheds-sutherland.com.



GALLARDO



BERGER



ENGLANDER

Kilpatrick Townsend & Stockton LLP announced the addition of Aaron Gallardo as a litigation attorney and Ross Berger, Dan Englander and Juan Martinez as associates. Gallardo focuses his practice on internal investigations and white collar criminal defense. His experience includes conducting international investigations and audits for companies as well as compliance training for company board members and employees. Berger joined the global sourcing and technology team in the corporate, finance and real estate department. He focuses on technology transactions, including information technology outsourcing, business process outsourcing, ERP licensing, SaaS arrangements and other commercial transactions. Englander focuses on domestic and international trademark portfolio protection and enforcement, and has experience with trade dress and copyright counseling, as well as right of publicity, false advertising, licensing and product packaging issues. Martinez focuses his practice on internal investigations and white collar crime. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



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MCGUIRE



RUETER

Smith, Gambrell & Russell, LLP, announced that William Long, Perry J. McGuire and Nicholas C. Rueter joined the firm as partners. Long joined the firm's intellectual property practice where he focuses on patent and other intellectual property and technology-related disputes. McGuire focuses on franchise, mergers and acquisitions and governmental affairs. Rueter represents domestic and international clients in a variety of corporate and transactional matters, including mergers and acquisitions, joint ventures, venture capital and private equity transactions, emerging company issues, fund formations, private placements and franchise law. The firm is located at Promenade, Suite 3100, 1230 Peachtree St. NE, Atlanta, GA 30309; 404-815-3500; Fax 404-815-3509; www.sgrlaw.com.



DiPietro Family Law Group announced that Kelli Byers Hooper joined as a partner. Hooper's practice focuses on all aspects of family law, including divorce, child custody, prenuptial agreements and support disputes. The firm is located at 3348 Peachtree Road, Suite 700, Atlanta, GA 30326; 404-490-4435; Fax 888-881-4946; www.familyanddivorcelawyers.com.



REID



LICHTMAN

George Reid and Keith Lichtman announced the opening of Bridgewater Resolution Group, a boutique mediation firm. Reid is a mediator, commercial attorney and arbitrator who has successfully mediated more than 2,000

disputes, involving a wide variety of complex business issues. Lichtman is a trained and registered mediator, and board-certified construction lawyer. The firm is located at 3330 Cumberland Blvd., Suite 325, Atlanta, GA 30339; 770-818-4430 or 470-481-1531; www.bridgewaterresolutions.com.



Stites & Harbison, PLLC, announced that Brian Levy was promoted to partner. Levy's practice focuses on representing financial institutions, mortgage servicers and other creditors in state and federal courts throughout Georgia in commercial loan recoveries and consumer finance litigation.

His experience includes litigating and arbitrating complex business disputes across a range of industries, including financial institutions, real estate, insurance, manufacturing and technology. The firm is located at 303 Peachtree St. NE, Suite 2800, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.



ALFONSO



BROCK

Swift, Currie, McGhee & Hiers LLP announced that Ashley Alfonso, Ken Brock, Mark Irby, Marion Martin, Jeff Stinson and Drew Timmons were elected as partners. Alfonso practices in the areas of general liability and civil litigation, focusing primarily on automobile litigation, premises liability, medical malpractice and workers' compensation defense. Brock focuses his practice in the area of workers' compensation defense, where he represents employers, insurers, self-insurers and third-party administrators in numerous workers' compensation claims. Irby focuses his practice on workers' compensation, where he advises adjusters, managers and



IRBY



MARTIN



STINSON



TIMMONS

employers on the process and administration of workers' compensation law. Martin focuses her practice on workers' compensation litigation, where she represents employers, insurers and self-insureds. Stinson represents employers and insurers in workers' compensation claims. Timmons focuses his practice in the areas of medical malpractice defense, premises liability, insurance coverage and automobile liability. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; www.swiftcurrie.com.



DIXON



LEWIS

Balch & Bingham LLP announced that Tashwanda Pinchback Dixon and Righton Johnson Lewis joined the firm as partners. Dixon practices in the labor and employment and litigation practices and provides counsel to large and small corporations on complex and emerging employment laws. Lewis practices in the litigation and government relations practices and defends product manufacturers and utilities against a variety of allegations, including property damage and personal injury. The firm is located at 30 Ivan Allen Jr. Blvd. NW, Suite 700, Atlanta, GA 30308; 404-261-6020; www.balch.com.



LOWNDES



SCARBROUGH

Jones Walker LLP announced that Jennifer S. Lowndes and Tyler P. Scarbrough were elected to the firm as partners. Lowndes has dedicated her practice to assisting clients in avoiding and resolving complex construction disputes, and working closely with large construction managers, general contractors, subcontractors and developers, as well as large equipment manufacturers and owners in both public and private sectors throughout the United States and abroad. Scarbrough works with the construction practice team, focusing exclusively on construction and infrastructure projects, construction litigation, alternative dispute resolution and government contracting. He represents a variety of clients in the construction industry, which includes owners, general contractors, engineers, EPC contractors, design-build contractors and subcontractors. The firm is located at One Midtown Plaza, Suite 1030, 1360 Peachtree St. NE, Atlanta, GA 30309; 404-870-7500; Fax 404-870-7501; www.joneswalker.com.



Carlock, Copeland & Stair, LLP, announced that Tyler J. Wetzel joined the firm as a partner. Wetzel focuses his practice on commercial litigation, including accounting and legal malpractice defense. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-221-2268; Fax 404-523-2345; www.carlockcopeland.com.

CORRECTION

In the February 2018 issue of the *Georgia Bar Journal*, Meghan R. Gordon was incorrectly listed as practicing at Miller & Martin PLLC's Chattanooga, Tenn., office. Gordon is based in the firm's Atlanta office, located at Regions Plaza, Suite 2100, 1180 W. Peachtree St. NW, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; www.millermartin.com. We apologize for this error.



Harris Lowry Manton, LLP, announced that T. Peyton Bell joined the firm as an associate. Bell's practice focuses on product liability, wrongful death, personal injury and business torts. The firm is located at 201 Peachtree St. NE, Suite 900, Atlanta, GA 30361; 404-961-7650; Fax 404-961 7651; www.hlmlawfirm.com.



WARNOCK



HOLMAN

FordHarrison LLP announced that Henry Warnock joined as partner and Margaret F. Holman was named chief operating officer. Warnock focuses his practice on the health care and technology industries, defending employers in discrimination and retaliation cases involving the Fair Labor Standards Act, Family and Medical Leave Act, Americans with Disabilities Act and Title VII. Holman oversees all non-legal operations of the firm and serves as an advisor to firm leadership on performance, strategic planning and growth. The firm is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.



Burr & Forman LLP announced the election of Bret Beldt to partner. Beldt is a member of the general commercial litigation group where he focuses on business disputes and financial services litigation. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.



ALPER



TIO

Fish & Richardson announced that Erin Alper and Jacqueline Tio were named principals in the firm's litigation group. Alper focuses her practice on patent litigation, which covers a range of technologies in venues across the country, including the U.S. International Trade Commission (ITC) and inter partes review proceedings before the Patent Trial and Appeal Board. Tio focuses her practice on IP litigation in venues across the country, including before the U.S. ITC, with an emphasis on patents covering a wide range of technologies. The firm is located at 1180 Peachtree St. NE, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; www.fr.com.



Carlton Fields announced that D. Barret Brousard joined the firm as an associate. His practice focuses on business disputes in both federal and state courts. The firm is located at One Atlantic Center, 1201 W. Peachtree St. NW, Suite 3000, Atlanta, GA 30309; 404-815-3400; Fax 404-815 3415; www.carltonfields.com.



PARHAM

The firm of Bloom Sugarman is now Bloom Parham LLP, and has named Stephen M. Parham managing partner. Parham has more than 18 years of experience in counseling clients and trying cases in the fields of complex commercial, construction, business, fiduciary duty, real estate and tort litigation. The firm is located at 977 Ponce de Leon Ave. NE, Atlanta, GA 30306; 404-577-7710; Fax 404-577-7715; www.bloom-law.com.



CARROLL



POTENTE



SEYMOUR

James Bates Brannan Groover LLP announced that Callen A. Carroll, L. Joseph Potente and Michael L. Seymour joined the firm as associates. Carroll practices in the firm's financial institutions group, focusing on counseling banking and financial institutions in a variety of areas, including regulation compliance, risk mitigation and collections. Potente joined the firm's commercial litigation group, where he focuses on representing individual and corporate clients in commercial and business litigation. Seymour joined the firm's corporate and transactional practice group, where his practice focuses on business and corporate transactions, including mergers and acquisitions, and corporate formation. The firm is located at 3399 Peachtree Road NE, Suite 1700, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; www.jamesbatesllp.com.



Coleman Talley LLP announced that Emily Macheski-Preston was promoted to partner. Macheski-Preston works with the litigation group and specializes in local government law, zoning and affordable housing property management. The firm is located at 3475 Lenox Road NE, Suite 400, Atlanta, GA 30326; 770-698-9556; Fax 770-698-9729; www.colemantalley.com.



Adams and Reese LLP announced the addition of C. Glenn Dunaway as special counsel to its forestry/timber law practice. His practice focuses primarily in the field of timber and timberland transactions, with a concentration on complex finance structures and cross-border considerations. Dunaway provides structural tax advice on both domestic and international transactions. The firm is located at 3424 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 470-427-3700; Fax 404-500-5975; www.adamsandree.com.

IN ALBANY



Perry & Walters, LLP, announced that Hayden Headley Hooks was elevated to partner. Her practice focuses on civil litigation, local government and education matters. The firm is located at 212 N. Westover Blvd., Albany, GA 31707; 229-439-4000; www.perrywalters.com.



Hall Booth Smith, P.C., announced that Robert Middleton joined the firm as a partner. Middleton is the head of the firm's energy, regulatory and utilities practice group as well as a member of the firm's agriculture, business litigation, government affairs and transactional practice groups. He represents both public and private clients, governmental entities and nonprofits in a broad range of legal matters including administrative and civil litigation and appeals, corporate law, transactions, complex contract negotiations, economic development and government affairs before agencies and legislative bodies. The firm is located at 2417 Westgate Drive, Albany, GA 31708; 229-436-4665; Fax 229-888-2156; www.hallboothsmith.com.

IN CANTON



Thompson, Meier & King, P.C., announced that Cynthia L. Patton joined the firm as a partner. Patton practices in all areas of family law. The firm is located at 341 E. Main St., Canton, GA 30114; 770-479-1844; Fax 866-813-1298; www.thompsonmeierking.com.

IN MACON



James Bates Brannan Groover LLP announced that Caitlyn Clark joined the firm as an associate. Clark's practice focuses on general and insurance litigation. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jamesbatesllp.com.



Jones Cork, LLP, announced that R. Matthew "Matt" Shoemaker joined the firm as of counsel. Shoemaker focuses his practice on general civil litigation, including insurance defense, premises liability defense, products liability defense, insurance coverage, business litigation and medical malpractice defense. The firm is located at 435 Second St., Macon, GA 31201; 478-745-2821; Fax 478-743-9609; www.jonescork.com.



MAYO



HILL

Michael Mayo and Michael Hill announced the formation of Mayo | Hill, a firm specializing in cases involving catastrophic injury. The firm is located at 577 Mulberry St., Suite 110, Macon, GA 31201; 478-238-9898; www.mayohill.law.

IN ROSWELL



The Hilbert Law Firm, LLC, announced the addition of Kelly Himes Brolly as a senior associate. Brolly's practice focuses on general civil litigation and education law. The firm is located at 205 Norcross St., Roswell, GA 30075; 770-551-9310; Fax 770-551-9311; www.hilbertlaw.com.

IN SAVANNAH



Bouhan Falligant LLP announced that Andrew Dekle was named partner. Dekle practices in the areas of civil litigation, corporate and employment law, collections and bankruptcy. He represents individuals, businesses and government agencies. The firm is located at One W. Park Ave., Savannah, GA 31401; 912-232-7000; Fax 912-233-0811; www.bouhan.com.



Joseph J. Steffen Jr. announced the opening of The Law Offices of Joseph J. Steffen Jr. Steffen's practice concentrates on personal injury, cycling accidents and advocacy, government relations, and local and education law. The firm is located at 317 Tattnell St., Savannah, GA 31401; 912-604-4147.

IN VALDOSTA



Coleman Talley LLP announced that Mary Margaret Williams was promoted to partner. Williams practices in the firm's transactional group, focusing on affordable housing, commercial real estate and commercial transactions. The firm is located at 910 N. Patterson St., Valdosta, GA 31601; 229-242-7562; Fax 229-333-0885; www.colemantalley.com.

IN MOBILE, ALA.



Adams and Reese LLP announced that Brian Smithweck was named partner. Smithweck practices in the areas of tax, corporate securities, mergers and acquisitions, business planning and estate planning. He represents clients with the formation, operation and termination of business entities as well as corporate restructuring. The firm is located at 11 N. Water St., Suite 23200, Mobile, AL 36602; 251-443-3234; Fax 251-438-7733; www.adamsandreese.com.

IN WASHINGTON, D.C.



Linklaters LLP announced the addition of Amy Edgy as a partner in the firm's restructuring and insolvency practice. Edgy has industry-specific experience in municipal bankruptcies, health care systems, cultural institutions, retail corporations, financial institutions and airlines, and represents both debtors and creditors in connection with some of the country's largest restructurings and reorganizations. The firm is located at 601 13th St. NW, Suite 400 S, Washington, DC 20005; 202-654-9211; Fax 212-903-9100; www.linklaters.com.

It's Your Disciplinary System—Own It!

BY PAULA FREDERICK



"I'm really grateful to you for taking my case," your newest client says with a sigh of relief. "I talked to a dozen lawyers, and no one would handle it once they heard my first lawyer was in trouble."

"It's been an ordeal," you admit. "But I'm hopeful we can get back some of the money that he stole."

"I just can't believe the Supreme Court went so easy on him," your client complains.

"What do you mean?" you ask. "Didn't I send you the order? They disbarred him last week."

"He surrendered his license," your client responds. "That makes it look like he just decided to stop practicing, not like he did anything wrong. I can't believe the Bar did not even request a hearing so I could tell my story in open court. I was really hoping he would be disbarred."

"It's the same thing!!!" you point out, exasperated. You have had this conversation with the client every week since her first lawyer filed his Petition for Voluntary Discipline, but she still is not convinced that voluntary surrender is as bad as disbarment.

"If you say so," your client says doubtfully. "So if he's disbarred, can I finally get my money back from the Bar?"

Although it is understandable that many lawyers want nothing to do with the disciplinary system, all Georgia lawyers should have a basic knowledge of how it works.

“Yes, you should qualify for reimbursement from the Clients’ Security Fund now that Joe has been disbarred,” you state with confidence. “I cannot imagine what you have been through—\$50,000 stolen—but hopefully you will get it back soon.”

HELP!!!

Any experienced lawyer knows how harmful it can be to create unrealistic expectations at the outset of a case. We in the Office of the General Counsel sometimes find that complainants have expectations about the disciplinary process that we cannot possibly meet. Sometimes Bar members feed these expectations by making promises based upon a faulty understanding of the system.

Although it is understandable that many lawyers want nothing to do with the disciplinary system, all Georgia lawyers should have a basic knowledge of how it works. There are several myths about the process that Bar members can help dispel.

Myth #1—A voluntary surrender of license is less than disbarment.

False! The Court order accepting a voluntary surrender often recites that the surrender is “tantamount to disbarment.” Despite this, some members of the pub-

lic believe the word “voluntary” connotes something more like a slap on the wrist than actual discipline.

Myth #2—A disbarred lawyer can never return to the practice of law.

False! Georgia does not have permanent disbarment. A disbarred lawyer may apply for reinstatement five years after disbarment, although it is quite rare for a lawyer to be reinstated that soon. The disbarred lawyer must go through the fitness process in order to prove rehabilitation, and if certified as fit to resume practice, must pass the bar examination. The reinstatement process is rigorous; it requires repayment of any amounts paid by the Clients’ Security Fund to former clients and allows for input by the public. The number of reinstated lawyers is quite small, but two or three disbarred lawyers do return to practice each year.

Myth #3—The Clients’ Security Fund will reimburse attorney’s fees or settlement funds stolen by an unethical lawyer.

Partially true! The fund is a wonderful public service that we as Georgia law-

yers should be proud of, but there is not enough money to pay all of the eligible losses in a given year. Payments are restricted to \$25,000 per claim and the Fund only pays out a maximum of \$500,000 in any given Bar year.

Having been burned once by an unethical attorney, complainants are understandably suspicious of their new counsel and distrustful of the disciplinary system. It is especially important that they get accurate information about the disciplinary process, particularly from members of the Bar.

Call or email the Ethics Helpline if you need information about the process, or if you represent a client who has complained about a lawyer. We’ll let you know what to expect in the context of your client’s particular matter. ●



Paula Frederick

General Counsel
State Bar of Georgia

paulaf@gabar.org

Attorney Discipline Summaries

Dec. 12, 2017, through March 2, 2018

BY JESSICA OGLESBY

Disbarment

Larry Bush Hill

P.O. Box 264

Lookout Mountain, TN 37350

On Jan. 29, 2018, the Supreme Court of Georgia accepted the petition for Voluntary Surrender of License of attorney Larry Bush Hill (State Bar No. 354360). In his petition, Hill admitted that in September 2017 he entered a guilty plea in the Superior Court of Walker County to one count of influencing a witness in violation of O.C.G.A. § 16-10-93 (a) and one count of criminal attempt to suborn perjury in violation of O.C.G.A. § 16-10-72. As both offenses are felonies, Hill's convictions violate Rule 8.4 (a) (2) of the Georgia Rules of Professional Conduct, the maximum penalty for which is disbarment.

Christopher Mark Miller

P.O. Box 7150

Savannah, GA 31418

On Jan. 29, 2018, the Supreme Court of Georgia accepted the petition for Voluntary Surrender of License of attorney Christopher Mark Miller (State Bar No. 506428). On Nov. 7, 2016, the Supreme Court accepted a petition for voluntary discipline filed by Miller pending the resolution of multiple felony charges. Miller entered guilty pleas to counts of financial transaction card fraud, financial transaction card theft, theft by taking, theft by

conversion and theft by deception. Miller admitted that, by entering these pleas, he is in violation of Rule 8.4 (a) (2) of the Georgia Rules of Professional Conduct, the maximum sanction for a violation of which is disbarment.

Lorne Howard Cragg

1286 B Washington St.

Clarksville, GA 30523

On Jan. 29, 2018, the Supreme Court of Georgia accepted the petition for Voluntary Surrender of License of attorney Lorne Howard Cragg (State Bar No. 697876). In his petition, Cragg admitted that he received client funds and that he should have preserved those funds in his trust account, but that he misappropriated those funds for his personal use and did not otherwise account to his client for the funds. He further admitted that the bank at which he maintained his attorney trust account notified the State Bar about checks he had written on that account, which checks had to be returned as the account held insufficient funds to pay them. Finally, Cragg admitted that he provided false and misleading information to the Office of the General Counsel during its investigation of this matter. Cragg acknowledged that the above described conduct violates Rules 1.15 (II) (b), 8.1 (a) and 8.4 (a) (4) of the Georgia Rules of Professional Conduct. The maximum

penalty for a single violation of any of those rules is disbarment.

Richard V. Merritt

P.O. Box 1265

Smyrna, GA 30081

On Jan. 29, 2018, the Supreme Court of Georgia accepted the petition for Voluntary Surrender of License of attorney Richard Vinson Merritt (State Bar No. 503105). In his petition, Merritt admitted that in February 2017 he settled a client's personal injury matter for \$75,000, but failed to promptly disburse those funds to his client or her medical providers, and failed to render a full accounting of the funds to his client. Merritt acknowledged that the above-described conduct violated Rules 1.15 (I) (c) of the Georgia Rules of Professional Conduct. The maximum penalty for a single violation of Rule 1.15 (I) is disbarment.

Robert Jutzi Howell

301 Fayetteville St., Suite 1900

Raleigh, NC 27602

On Jan. 29, 2018, the Supreme Court of Georgia accepted the petition for Voluntary Surrender of License of attorney Robert Jutzi Howell (State Bar No. 561931). In his petition, Howell admitted that in June 2016 he pled guilty in South Carolina to one felony count of Pointing/Presenting a Firearm, in violation of SC Code §16-23-410; one misdemeanor

count of Unlawful Carrying of a Pistol, in violation of SC Code § 16-23-20; and one misdemeanor count of Possession of Cocaine, in violation of SC Code § 44-53-370 (d) (3). Howell admitted that, by virtue of his felony conviction, he violated Rule 8.4 (a) (2) of the Georgia Rules of Professional Conduct.

Adam Lorenzo Smith

3107 Gold Drive SW
Atlanta, GA 30311

On Feb. 5, 2018, the Supreme Court of Georgia accepted the petition for Voluntary Surrender of License of attorney Adam Lorenzo Smith (State Bar No. 653199) following the entry of a guilty plea in the U.S. District Court for the Northern District of Georgia to the offense of conspiracy to commit bribery. Smith admitted that, by his conviction, he has violated Rule 8.4 (a) (2) of the Georgia Rules of Professional Conduct.

Ricky W. Morris Jr.

305 Charming Court
McDonough, GA 30252

On Jan. 29, 2018, the Supreme Court of Georgia disbarred attorney Ricky W. Morris Jr. (State Bar No. 525160), based on 11 underlying grievances. On April 21, 2017, the Bar personally served Morris with the Notice of Discipline, see Bar Rule 4-203.1 (b) (3) (i).

Morris admitted by virtue of default regarding State Disciplinary Board (SDB) Docket Nos. 6935, 6938, 6940-6944 and 6982 that between August 2013 and January 2016 he took retainers ranging from between \$1,000 and \$15,000 to represent clients in criminal matters in various counties.

In one case, SDB Docket No. 6941, Morris made direct personal contact with the prospective client in the hallway of a courthouse and offered to handle his case for a fee, even though that client had not sought any advice or legal representation from Morris.

Morris either abandoned the cases at issue in the above-listed disciplinary matters or failed to properly handle them. Morris failed to contact the clients or respond to their efforts to contact him with regard to their cases, failed to return

unearned portion of retainers when his services were terminated and failed to respond timely to the properly served Notices of Investigation that resulted from these grievances.

In SDB Docket No. 6982, Morris' client had a bench warrant issued for his arrest after the client failed to appear at a hearing about which Morris failed to advise him; the client learned that Morris was in custody and was able to resolve the warrant on his own and have his case rescheduled. Morris responded to that client's termination letter, but failed to return the unearned portion of retainers paid to him.

In SDB Docket Nos. 6936 and 6939, Morris was paid a \$17,500 retainer to represent a defendant in a criminal matter in Henry County. Although the client paid an additional \$400 to cover expenses for an expert witness, the expert was never hired. Morris appeared at the call of the criminal jury trial calendar on Jan. 25, 2016, and announced that he was ready for the trial, which was then set to begin with jury selection the next morning. Later that afternoon, the assistant district attorney (ADA) on the case overheard Morris on a telephone call in the courthouse men's restroom, apparently attempting to purchase controlled substances for himself. The ADA brought Morris's behavior to the presiding judge's attention. The next morning, Morris appeared in court for jury selection but seemed to be under the influence of a controlled substance. The court recessed the trial and held a hearing on Morris's fitness to proceed as defense counsel. At that hearing, Morris declined the court's request that he submit to a drug test; denied he was under the influence or that he had made the phone call the prior day; and threatened the ADA with bodily harm. Morris was held in contempt and jail time imposed that was to be immediately served. Morris took no further action on behalf of the client, and failed to refund the unearned portion of the retainer. In addition, Morris was charged with Felony Intimidation of a Court Officer and Felony Terroristic Threats for threatening the ADA. In November 2016 Morris resolved the

*"He who is his own lawyer
has a fool for a client."*

Warren R. Hinds, P.C.

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charges by pleading guilty to disorderly conduct and simple assault.

In SDB Docket No. 6937, Morris appeared at the Spalding County jail allegedly to have his client sign a Power of Attorney, but he did not have the proper identification to enter the jail. The Booking Clerk reported that Morris was acting erratically and appeared to be under the influence of an unknown substance. Morris told the clerk that his paralegal was present with proper identification and would meet with his client in booking first. Although he falsely identified the person with him as his paralegal, jail staff knew her to be the wife of the client—a fact Morris attempted to conceal. Morris was allowed to meet with the client for the sole purpose of having him sign the Power of Attorney, but was observed sleeping during that meeting; the visit was interrupted and Morris was asked to leave the jail. In aggravation, Morris's conduct involves multiple offenses and evidences a pattern of misconduct, and he failed to timely respond to the Notices of Investigation relat-



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information on lawyer
discipline, visit

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



State Bar
of Georgia

ing to these disciplinary matters. The facts clearly demonstrate that Morris violated 1.2 (a), 1.3, 1.4, 1.16 (d), 3.5 (d), 4.1 (a), 7.3 (d) and 8.4 (a) (4) of the Georgia Rules of Professional Conduct. The maximum penalty for a single violation of Rule 1.2 (a), 1.3, 4.1 (a), 7.3 (d) or 8.4 (a) (4) is disbarment, while the maximum penalty for a single violation of Rule 1.4, 1.16 (d) or 3.5 (d) is a public reprimand.

Cameron Shahab

444 Cornerstone Drive
Newtown Square, PA 19073

On Jan. 29, 2018, the Supreme Court of Georgia disbarred attorney Cameron Shahab (State Bar No. 135087), for multiple violations of the Georgia Rules of Professional Conduct in relation to his deficient representation and neglect of two unrelated clients.

In July 2014 one client paid Shahab \$2,500 to help him apply for asylum. The client expressed that he wanted the application filed before his legal student resident status expired in early October

2014. Shahab said he would have a draft application ready for the client's review by early August. In late August, the client asked about the delay, and Shahab responded that he would provide an update within a few days. Having not heard from Shahab, the client emailed him on Sept. 3, 2014, and asked why he had not provided an update or a draft asylum application as promised. The client then sent a text message to Shahab in late September after he failed to respond to the client's emails. Shahab responded and exchanged several text messages with the client, who reminded Shahab that the asylum application was due by Oct. 2, 2014. On Sept. 30, 2014, Shahab told the client that he was dealing with a family health matter in another state, and reassured the client that he would submit the asylum application on time and would supplement the application afterward if necessary. Shahab later told the client that the application would be filed at the end of October. Shahab never sent a draft application to the client, never filed an application for the client and refused the client's demand for a full refund. The client later received a fee refund award through the State Bar's Fee Arbitration program.

In May 2013 a second client paid Shahab \$11,750 to help the client establish legal residence in the United States. The client provided Shahab with requested documentation over the succeeding months. In Jan. 2014, the client made several phone calls to Shahab but could not reach him. The client also sent a number of emails to Shahab. Shahab failed to notify the client of a December 2013 immigration hearing, causing the client to miss it and resulting in a deportation order being issued against the client. Shahab later told the client that he would file a motion to reopen the client's case, and had assured the client that he had filed the motion, but immigration authorities had no record of any such filing. The client's wife twice requested to meet with Shahab in May 2014 but he declined.

In July 2014 the second client met with another attorney, who asked Shahab to provide an accounting and copies of the documents filed in the case. In response, Shahab offered a partial refund to the cli-

ent if the client did not terminate representation. The client's wife learned in December 2014 that immigration authorities had no record of a motion to reopen ever being filed. She asked Shahab to provide proof of filing. He responded more than a month later, with a PDF attachment which claimed to show the label for the packet he sent to immigration authorities. The client's wife determined that, as of Jan. 26, 2015, the postal service had obtained an electronic notification that mail was to be sent to the postal service but no package had actually been delivered to the postal service. By March 20, the client obtained new counsel. Responding to new counsel's email, Shahab initially promised to deliver the paid filing fees (\$3,000) to new counsel, but later refused to do so. The client later received a \$11,750 fee refund award through the State Bar's Fee Arbitration program.

Natalie Dawn Mays

P.O. Box 973
Ellenwood, GA 30294

On Feb. 19, 2018, the Supreme Court of Georgia disbarred attorney Natalie Dawn Mays (State Bar No. 479761). Mays was served by publication after she failed to acknowledge service of the Notice of Discipline mailed to her at the post office box address on file with the State Bar's membership department.

The facts were admitted by virtue of the default. In August 2013, a client retained Mays to represent her in connection with a bankruptcy case and paid her \$4,000. The client thereafter tried to contact Mays on numerous occasions about her case, but she failed to respond. Mays also failed to respond to the client's attorney in a pending personal injury lawsuit in order to settle that lawsuit, and failed to respond to the bankruptcy trustee. In April 2017, the bankruptcy court entered orders sanctioning Mays and terminating her as counsel for the client. Mays did not refund the unearned portion of the fee that the client had paid. In aggravation, the Investigative Panel found that Mays acted willfully in collecting a fee from the client and then abandoning her legal matter; acted with a selfish motive; had substantial experience in

the practice of law, having been admitted to the Bar in 1994; had a prior disciplinary history, having received an Investigative Panel reprimand on Oct. 3, 2008; and failed to respond adequately to the Notice of Investigation. The Investigative Panel found that Mays' conduct violated Georgia Rules of Professional Conduct 1.3, 1.4, 1.5, 1.16 and 3.2. The maximum sanction for a violation of Rule 1.3 is disbarment.

Suspension

Clarence R. Johnson Jr.

325 Edgewood Ave.
Atlanta, GA 30312

On Jan. 29, 2018, the Supreme Court of Georgia accepted a petition for voluntary discipline filed by attorney Clarence R. Johnson Jr. (State Bar No. 392870) and imposed a six-month suspension. In his petition, Johnson admits that he became subject to collection efforts after he was hospitalized due to illness and unable to work while on bed rest, that he deposited personal funds into his trust account to conceal them from his creditors and that he made withdrawals for personal expenses from the trust account. Johnson admitted that his conduct violated Bar Rules 1.15 (I) (a), 1.15 (II) (a), 1.15 (II) (b) and 8.4 (a) (4), of the Georgia Rules of Professional Conduct.

In mitigation, Johnson offers that he had no prior disciplinary history, cooperat-

ed by submitting a detailed letter concerning his misconduct to the State Bar and consulted with the Law Practice Management Program as advised, has otherwise good character and reputation as shown by submitted letters of support from the legal community and has expressed remorse for his conduct. The Bar recommended a suspension of one year, and noted in aggravation that Johnson's conduct was dishonest and selfishly motivated.

Review Panel Reprimand

Donald Edward Smart

84 Chelsea St.
Stratford, CT 06615

On Feb. 19, 2018, the Supreme Court of Georgia imposed a Review Panel reprimand on attorney Donald Edward Smart (State Bar No. 653526). By virtue of default, Smart admitted that he represented a client and the client's son before the Georgia Department of Education to ensure the client's son had access to special education services and support as a result of the son being diagnosed with learning disorders. A hearing was scheduled for June 20, 2016, with the witness and exhibit lists due June 13, 2016. Smart did not file the witness list until June 14, 2016, and the hearing officer granted the opposing party's motion for involuntary dismissal, but also indicated that the cli-

ent would be allowed to testify because the hearing officer wanted to hear his testimony. Smart, however, informed his client that there was no need to appear at the hearing, because he intended to move for voluntary dismissal without prejudice. However, Smart filed the voluntary dismissal after the deadline for doing so, and the hearing officer dismissed the matter with prejudice on June 20, 2016.

The Investigative Panel found probable cause to believe that Smart violated Rules 1.1, 1.2 (a), 1.3 and 1.4 of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of Rules 1.1, 1.2 and 1.3 is disbarment, and the maximum sanction for a violation of Rule 1.4 is a public reprimand.

In aggravation, the Investigative Panel found that Smart had substantial experience in the practice of law and that he had a selfish motive when he failed to inform his client that, despite the matter being dismissed due to Smart's mistake, the hearing officer wanted to hear the client's testimony. In mitigation, the Investigative Panel noted that Smart had no prior disciplinary history. ●



Jessica Oglesby

Clerk, State Disciplinary Board
State Bar of Georgia
jessicao@gabar.org

Strength to Deliver

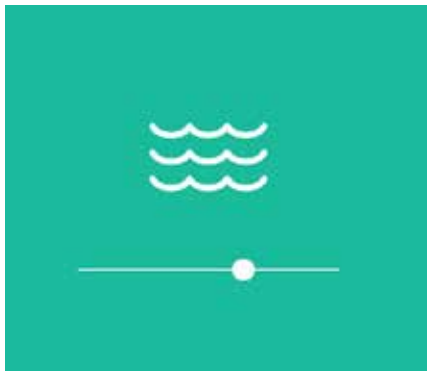
- Financial stability to sustain exceptional policyholder protection
- Title professionals who provide educational and underwriting guidance to our partners
- Technology solutions that streamline your processes to save you time and money
- SearchCONNECT for searches, document retrieval, and recordings (mysearchconnect.com)
- Commercial expertise through a dedicated commercial division
- iTracs® account reconciliation services (myitracs.com)
- 1031 Tax-Deferred Exchange services

southeast@invtitle.com | 800.732.8005 | invtitle.com

Investors Title
INNOVATIVE BY INSTINCT

Legal Tech TIPS

BY NATALIE R. KELLY
AND MIKE MONAHAN



1 Noisli

www.noisli.com

Available from the App Store, Google Play or the Chrome Web Store, this service allows users to create background noise and generate colors ideal for working and relaxing. Sounds can be created by mixing various sounds like waves, wind and train tracks. The service also includes a sharing option, a timer and a text editor.

2 Tech Books from LPM Resource Library

www.gabar.org/lpmlibrary

The LPM Resource Library just got in “Macs in Law: The Definitive Guide for the Mac-Curious, Windows-Using Attorney”; “The 2018 Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple”; “Fastcase: The De-

finitive Guide”; and “Microsoft Office 365 for Lawyers.” Check out these and other legal technology titles to help with your early summer reading list plans.

3 Zelle

www.zellepay.com

You’ve likely seen the commercials about the Zelle payment service, but what you might not have recognized is that it differs from some other earlier services like PayPal or Venmo in that the service manages transactions directly between banks. Zelle was created by Early Warning Services LLC, a consortium of seven of the largest U.S. banks, including Bank of America, JPMorgan Chase and Capital One. You can have your bank review options for your business accounts to receive client payments faster. Just don’t forget your obligations for tracking financial transactions and your trust accounting rules!

4 Amazon Dash Buttons

www.amazon.com/ddb/learn-more

With buttons from Scotch Laminating Pouches and Expo Markers to coffee pod refills, Amazon can quickly serve up office supplies to your law office. Don’t overlook the future possibilities, as Amazon has more than 250 dash buttons for easy ordering. Simply attach the button to the area where supplies are likely to run out, and through a Wi-Fi connection, the service will order a new batch of the depleted

product from Amazon by asking you to confirm your order via your Amazon app or account dashboard. Don’t like the idea of buttons all over the place? Check out the new virtual dash buttons!

5 Ghost of ABA TECHSHOW Just Past

[#ABATECHSHOW](https://twitter.com/ABATECHSHOW)

If you missed the ABA TECHSHOW in Chicago last month, make sure you keep an eye out for the many reviews of what was seen and heard at this year’s event. Simply search #ABATECHSHOW or TECHSHOW to learn about the latest legal technology developments and cool gatherings. The 2018 conference moved to a different location and boasted new content and program ideas. Go ahead and add Feb. 27–March 2, 2019, to your calendar for next year’s ABA TECHSHOW!

6 CameraMicAlert

play.google.com

Paranoid about your phone’s camera or mic? Has someone hacked your phone and is eavesdropping? There are apps to alert you to a phone camera that’s been turned on. For example, Android apps like CameraMicAlert add a layer of privacy protection. The app won’t find any malicious app you may have downloaded, but it will tell you when your phone’s camera or mic is activated.

7 Tweet Up to 280 Characters

www.twitter.com

Twitter lets you ramble on now. But be judicious. It's true you now have 280 characters—double the original 140—but after a recent upgrade, you can also thread your tweets together giving you a longer soapbox. If you want to compose a thread—like steps in a process or a progression of ideas with photos and GIFs—just compose each Tweet up to the maximum 240 then click on the plus sign on the bottom right of the Tweet field. Keep doing that until you've completed the thought, then submit the full thread. But remember to ask yourself first: Is this helpful to my followers?

8 Drop Business Card Scanner

www.getdrop.net

Most of us still use the traditional paper business card. Download a business card scanning app to add the cards you collect to your contacts. Many scanning apps are free and you can also use them to send your business contact or “vCard” to a colleague using SMS. Try out Drop Business Card Scanner.

9 Use Your Home Assistant for Wellness

GoogleHome is good for #wellness. Several home assistants are on the market: Google Home, Alexa and others. Consider using your home assistant to calendar reminders about your medications and exercise schedules. Sync your calendar with your fitness tracking app and then use your home assistant to call up exercise routines on YouTube, meal plans for

the week and reminders about your fitness goals. If you need motivation to get up and get moving, ask your home assistant to launch your gym playlist to get you in the mood.

10 Investment Apps

Novice investors, take note: There's an app—or three—for you. If you're fresh out of law school or you've had your nose buried in LexisNexis for years and want to join the ranks of investors, there are some apps that will help you get over your nervousness and teach you the basics without risking too much money right off the bat.

Acorns (www.acorns.com), Robin Hood (www.robinhood.com) and Stash (www.stashinvest.com) will let you begin experimenting. Stash and Acorns are similar. Choose an investment strategy from a preset list, link your bank account and add as little as \$10 and create recurring investments. These apps will allow you to add spare change from rounding up purchases you make using that bank account. Other apps, like Betterment (www.betterment.com), will teach you and give you easy tools to invest for retirement—especially useful if you are just starting out in your career. Check your App Store for versions of these investment apps.

Testimonial



Mike Monahan
Director, Pro Bono Resource Center
State Bar of Georgia



Amazon Dash Buttons

Amazon Dash Buttons are great shortcuts for finding and buying my Prime shipping-eligible things I order frequently on Amazon. I can avoid the search and find my items quickly, then just tap on the “Buy” in the dash button and I'm done. It's one-step shopping once my Amazon home page loads. Great for remembering favorite office supplies, pharmacy items like contact lens solution and those “go-to” business gift items.



Managing Your Practice with Technology

As a key member service to State Bar of Georgia members, the Law Practice Management Program helps lawyers learn to select and utilize technology to manage their practices.

BY NATALIE R. KELLY

Lawyers should keep pace with the ever-changing technology landscape. Modern law offices have embraced technology and some firms have even taken the lead in discussions about where technology will take us in the law practice of the future. Take the time to step back and analyze your practice and the use of technology. Adopt new ideas smartly. Keep what works. Change what doesn't. A core set of services and production technology tools surrounded by specific apps and programs can help lawyers focus on very defined practice-area needs.

As a key member service to State Bar of Georgia members, the Law Practice Management Program helps lawyers learn to select and utilize technology to manage their practices. This article provides general tips and information to kickstart thinking about your next steps with using technology and to help select products most suitable for you if you are just starting out.

Technology Platforms

For firms that desire to be up-to-date with the latest available technology, the first question that needs to be answered is about a preferred work platform. You can use a traditional wired network of computers or go with an updated online platform like Office 365 or GSuite to handle your office's applications and tools. You may have already considered this option based upon the devices—tablets and smart phones—you've chosen to use. You also must consider which product will work best for you when integrating with others, and which product provides the slate of applications and tools you are most likely to use or are already using. Whether you use a Mac or PC should be considered, but with the prevalence of online platforms, many firms find that debate may no longer matter as much. In fact, "mixed shops" have found their reliance on cloud systems has given them flexibility when



GETTYIMAGES.COM/MACTRUNK

their users want to work with the tools they are familiar with. Because cloud systems give users access to firm data online from any location, strict adherence to sticking with one system over another is no longer required.

Word Processing

Lawyers work with words, and where these words are created matters. While most lawyers use Microsoft Word or Corel WordPerfect for generating documents, there are many other programs available to manage this core law office work function. While we rarely recommend straying from the tried and true Word and WordPerfect programs specifically, we have seen that lawyers are not fully exploiting the word processing tools' potential to increase productivity. Investing in training in the use of their products pays off. We are so convinced of this that we plan to unveil specialized training as a part of our updated consulting services in the near future. Keep an eye out for this new member benefit.

Practice Management Software

Another area of legal technology that should be a key part of any technology update should be practice management software. In my award-winning article, "Say Yes to a Practice Management System," I lay out the many reasons firms should use these programs to help manage their practice. These reasons have not changed over the past 20 years. Lawyers and their staff must be able to access and work with client and prospective client information without having to duplicate data input and worry about losing information as is possible with physical paper files. Further, email applications should not be the dumping ground for everything client related or otherwise. Utilize these practice management programs to help organize information with the client matter record or the contact record of

an individual or company serving as the center of a relational database program offered in standalone network format or—most recently and more generally recommended—via an online platform. The list of online cloud practice managers continues to grow, and the cloud features are being developed at a pace that makes them more comparable to the older networked versions of these programs. Because the options are plentiful, you can get help from the Law Practice Management Program with selecting a service most suitable for your individual office needs.

Document Management

After those documents are generated, the paper is sent, stored and managed in several places and formats. To make it easier to keep track of the many options for dealing with documents, particularly those related to client matters, you can choose from a wide array of document management software programs and services geared specifically toward law firms. You could also try one of the open-source programs available. As with practice management and other law office technology solutions, you may contact the Law Practice Management Program for assistance with selection.

Litigation Support

Litigators require special tools to help organize client matter files. From exhibits to deposition transcripts to briefs and electronic discovery tools, litigation support technology tools are ever expanding. With options to help get a case ready and through trial, available technology can help outline steps and organize key people and information readily. However, as with all types of legal technology, cost concerns exist at every level of practice. You can contact the Law Practice Management Program to help sort through the options if you are a litigator looking for practical and affordable solutions to manage your cases.

Apps for Lawyers

Apps are all the rage. The sheer number of apps is staggering, and legal-specific ones are likely to continue to grow. For each of the practice management, document management and litigation support tools available, it's likely that they offer a corresponding app. And there are hundreds of standalone apps out there to make using technology in practice management easier. From productivity options to working tools, lawyers will be using apps for the foreseeable future. Check out the *Legal Tech Tips* column in this *Journal* regularly for options.

Technology Audits

You don't know how well your practice is doing until you are evaluated, and the Law Practice Management Program has been evaluating the progress of State Bar member firms since 1995. With onsite consultations, the staff of the Law Practice Management Program can review your technology approach and help you become savvier with practical advice about what you should be doing and how to do it. Give the program a call to set up a low-cost, confidential technology consultation visit. The program can also help you with general legal technology audit services as a part of its member service to you.

Whether you have vowed to give up your status as a technological dinosaur or to become your firm's go-to power user, using technology to manage your law office is a modern day necessity and a daily challenge. Learning where to get help is often the answer, and the Law Practice Management Program is here for you. Contact us to get help with your legal technology budget and plans. ●



Natalie R. Kelly

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Yes, Transactional Lawyers Can Do Pro Bono Work

If you are hesitant to take on pro bono work because you feel you will be assigned projects that fall outside your area of expertise, don't worry. Organizations such as Pro Bono Partnership of Atlanta, among others, match their pro bono projects to the skills and expertise of their volunteers.

BY RACHEL EPPS SPEARS

When I was a young transactional lawyer, I thought of pro bono work as something that was completely separate and apart from my regular practice. Based on the work we do at Pro Bono Partnership of Atlanta, I now know it doesn't have to be that way.

As a transactional associate at a large law firm, I responded to my sense of obligation to do pro bono work by handling adoptions for low-income people. I participated in a day-long training and took full advantage of the assistance offered by the pro bono provider. While I thoroughly enjoyed helping my pro bono clients, I felt



uncomfortable with the litigation aspects of my work, which were completely different from my day-to-day practice. The enjoyment I gained from my pro bono work kept me at it, but I understood my transactional colleagues' reluctance to take on pro bono work because it was so different from what we were being trained to do. I just thought that was the reality of pro bono work.

Then I was asked to help on a pro bono project that did require my skills as a public finance attorney. An issue that had baffled a team of attorneys was very straightforward to me because it was in my area of expertise. My pro bono efforts on the project only took a few hours of my time but it had a tremendous impact on the work of a nonprofit fighting homelessness—all because it was in my area of expertise. My eyes were opened to the possibility that even transactional lawyers could find pro bono work that was similar to their regular practice.

That's exactly what we provide at Pro Bono Partnership of Atlanta—pro bono projects that are matched to the skills and expertise of the volunteers. We don't handle litigation and we don't represent individuals. All of our clients are nonprofits that serve the poor and that need legal assistance—just like any business.

I'm amazed at the variety of pro bono projects that come through our door. For example, nonprofits need assistance with registering trademarks, drafting conflict of interest policies, properly using independent contractors, understanding contracts, revising employee handbooks, acquiring other nonprofits, reviewing leases and complying with IRS regulations. If you do any of these things in your regular practice, you can also do them in your pro bono work.

Interested attorneys sign up to receive a monthly email with volunteer opportunities or check out the current list at www.pbpatl.org/for-attorneys/volunteer-opportunities. Volunteers send me an email with a list of projects that interest them and I match them up with a project. After the volunteer attorney opens a file, we schedule and participate in an initial call or meeting with the client to make sure everyone is on the same page. Our staff at-

PRO BONO STAR STORY

CREIGHTON FROMMER



Creighton Frommer
Chief Counsel
RELX Group, Alpharetta

Creighton Frommer first learned about Pro Bono Partnership of Atlanta (PBPA) in 2009 when his employer at the time, Choice-Point, participated in a Non-profit Legal Check Up. In the years since, he has taken on 17 pro bono matters for nonprofit clients through PBPA. Frommer often advises on intellectual property issues including trademark and copyright, and he also drafts policies and conducts legal audits of nonprofit websites. In 2014, he did a webcast for PBPA on legal issues with electronic signatures.

Even while serving as the Association of Corporate Counsel-Georgia Chapter president in 2016, Frommer still found the time to volunteer with PBPA. He worked with Tourette Information Center and Support of Georgia to review their terms of use and privacy policy for their website. He has also advised PBPA clients like Soccer in the Streets, Loving Arms Cancer Outreach and Lawrenceville Cooperative Ministry. "It's such a perfect way to give back to the Atlanta community broadly, but in a way that uniquely uses my legal skills. And as an Atlanta native, it's especially important for me."

torneys are available to provide forms and assistance as needed but because attorneys take projects that are within their practice area, no training is required.

There is one benefit I see as consistent among all types of pro bono work, whether it is or isn't in your area of expertise. Pro bono clients really need your help and they are not shy about expressing their appreciation. For me, their expressions of gratitude (such as a homemade red velvet cake from one of my adoption clients) provided tremendous motivation to do pro bono work. I encourage you to take the leap and take on a pro bono project, whether through our organization or one of the many others that provide pro bono opportunities.

More than 3,000 attorneys have completed pro bono projects for nonprofit

clients through Pro Bono Partnership of Atlanta since we started in 2005. If you'd like to sign up to receive our monthly email with volunteer opportunities, please email volunteer@pbpatl.org. If you are a first time volunteer, please include your contact information (including address and phone number), the name of your law firm or legal department, practice area, state(s) in which you are licensed to practice law and year(s) of admittance in your email. ●



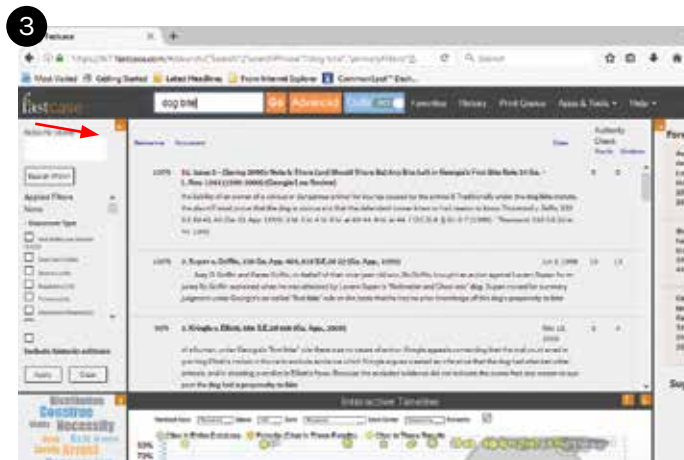
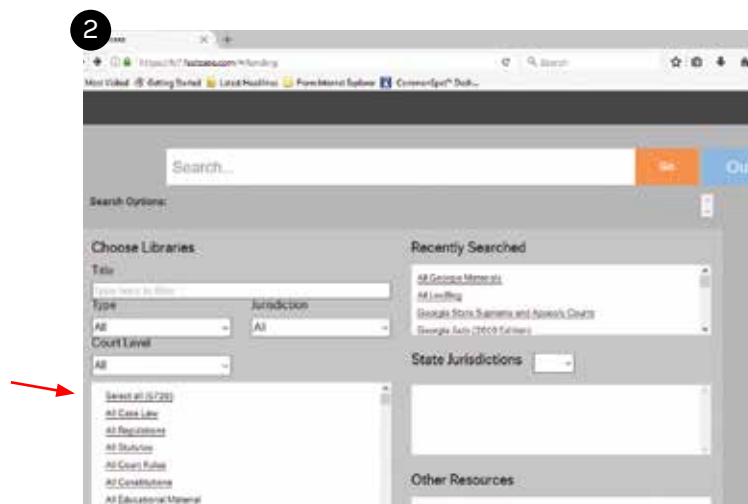
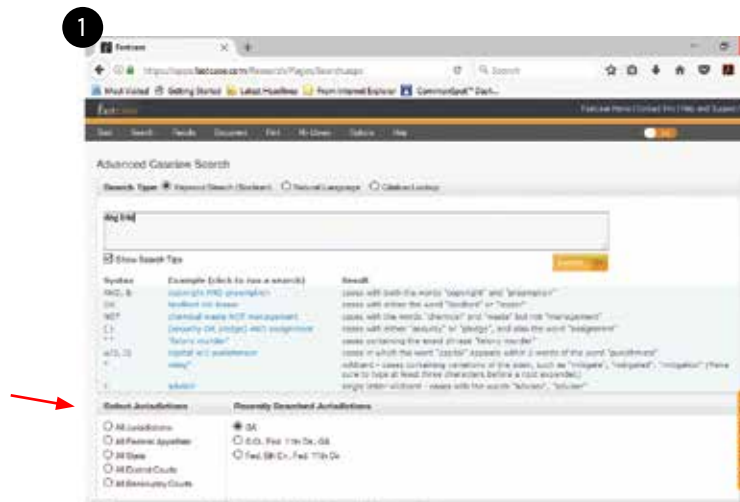
Rachel Epps Spears has been practicing law for more than 20 years, first as an associate at King & Spalding and later as executive director of Pro Bono Partnership of Atlanta, which she joined in 2005.

Fastcase 6 vs. Fastcase 7: Advanced Search

Fastcase training classes are offered three 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.

BY SHEILA BALDWIN

Finding the seminal case is one of the most important tasks in legal research, and Fastcase's integrated citation analysis tools provide a powerful way to find the seminal case in any research. Considering the vast information on the site, it's understandable that the website design requires a great deal of versatility. Some are familiar with the way Fastcase 6, the default version that opens when you log in to your Bar account, gathers results based on relevancy, decision date and how often a case is cited. These are all necessary factors in research, but it can be tedious viewing them all in a list format. The developers at Fastcase designed the interactive timeline to help users view all the data on a graph, making the most important cases stand out immediately. The 2016 launch of Fastcase 7 integrated all these features into a parallel platform that enables a unified search capability. For the first time, you can search across different materials at once, eliminating the need to repeat the process in each indi-



vidual content library. To view the new version, use the orange toggle switch at the top right of Fastcase 6, and see if you achieve more in less time. The following comparison of the Advanced Search feature found in Fastcase 6 and Fastcase 7 may help you determine which version will work best for you.

Advanced Caselaw Search is a good starting point to find cases when using Fastcase 6. You can perform three types of searches: Keyword, Natural Language or Citation Lookup, with Keyword being the recommended choice. Below the query box you can see Search Tips that explain the Boolean language used in Fastcase. At the bottom of the Advanced Search page, choose your jurisdiction and then press the Search button (see fig. 1). The resulting cases are filtered by relevance, decision date, case name and how often cited. The default is always relevance. Fastcase determines relevance using an algorithm that examines the number of times terms appear; close proximity of terms to each other; the balance of the terms in relation to other terms in the query; and the number of search terms appearances in relation to the length of the document. Once the algorithm brings cases that meet the relevance, decision date (looking for recent) and highly cited criteria, you can examine the cases further to determine their effectiveness in proving your argument. In the process, you will likely rethink how to run your query in order to improve your results. The disadvantage of this version is that you must search each library individually, such as statutes, rules or law reviews.

In Fastcase 7, the Advanced Search has a different look. From the home screen, locate the query box at the top left, enter your search terms and choose either Go, Outline or Advanced. Notice that the label is Advanced with no mention of caselaw because you are not searching only caselaw as in the older version. By choosing the Advanced option, a wide variety of filters appear (see fig. 2). Because Fastcase 7 features a unified search, you are able to mix and match types of documents and jurisdictions. If you want to search one particular type of material, you choose a state in the state jurisdiction box

and select the material you are interested in viewing in the box below. What happens if you select the Go option? Using the terms "dog bite" and the Go button, 10,869 documents appear in the results screen (see fig 3). In essence you end up directly on the results page without pre-selecting your criteria such as jurisdiction or type of material. The sidebar to the left breaks down the results according to each type (or library) and jurisdiction. Narrow the search from this screen by using checkmarks to denote specific types and jurisdictions and add search terms to further target helpful information. I prefer entering terms and selecting Advanced instead of Go, and then choose the type of material and the jurisdiction. If you select Georgia as the jurisdiction, the data in the selection box below will change and show only Georgia materials. Then decide what particular information you want to view, or choose the all-inclusive option such as "all Georgia materials," which can be a good starting place.

If you haven't yet explored Fastcase 7, I encourage you to give it a try. Once again, it's easy to change versions using the orange toggle switch at the top right of your screen. You'll notice the new, updated look immediately, and while the research starting point may look different, the content and filtering options are still available with the added benefit of the unified search.

Fastcase is a great member benefit. If you don't feel that you are getting the most out of your Fastcase research, schedule a training. You can see what's available on the calendar found on the Bar's website. Sign up for a webinar by Fastcase experts or attend a live training at the Bar Center; CLE credit is available for either option. Please contact me at sheilab@gabar.org or call 404-526-8618 with any questions. ●



Sheila Baldwin

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contact Sheila Baldwin at 404-526-8618

Writing Matters: What e-Filing May Mean to Your Writing

This installment of Writing Matters examines how the fact that e-filing may mean that judges are making decisions solely by reading documents on screens should inform how lawyers write briefs and other court documents.

BY KAREN J. SNEDDON AND DAVID HRICK

Federal courts have long accepted e-filed briefs and other court documents, and a growing number of Georgia trial courts are as well.¹ While e-filing has the potential to reduce costs (paper, alone) and save money (no traveling to the courthouse, postage or messengers), the increase in e-filing means that more judges may be reading documents on screens, not paper. This installment of Writing Matters examines how the fact that e-filing may mean that judges are making decisions solely by reading documents on screens should inform how lawyers write briefs and other court documents.



We start by noting how much has changed in a very short period of time. When we began our careers as lawyers, law firms had libraries—with books, tables to place books on and more books available from other libraries. You could tell someone was busy writing a brief or memorandum by the size of the cart of books outside his or her office, or stationed at the copier nearby. Everything was on paper at some point in the research, writing and filing process. Even when computerized research became more prominent, it was still unusual to read a case or document on a screen: we did the research online, and then printed out the cases or articles to read later.

So much has changed with how we access information and how we engage with information.² A famous YouTube video shows a small child using an iPad regularly, but then being given a magazine and trying to “double click” images on the printed page. “This one doesn’t work,” she says.³ Perhaps that says it all.

Now with the rise of e-filing, briefs can be drafted, revised and filed without a print existence. They’re written electronically, filed electronically and received electronically. This means that the judge may be making the decision in the same way: reading everything only on a screen. We are making a leap “from e-filing to e-briefing.”⁴

This reality should make you as a writer reflect on how you present any document bound for a courthouse and a judge’s screen. In this regard, think about how you read when you read paper texts compared to electronic texts. In addition to reflecting on that, ask yourself whether the following might help you represent your clients more effectively and help judges better do their jobs.

NDL
Norwich Document Laboratory
Forgeries - Handwriting - Alterations - Machine Printing - Ink Exams
Medical Record Examinations - “Xerox” Forgeries - Seminars
F. Harley Norwitch - Government Examiner, Retired
Court Qualified Scientist - 35+ years. Expert testimony given in
excess of six hundred times, including Federal and International
Offices in Augusta and West Palm Beach
www.QuestionedDocuments.com
Telephone: (561) 333-7804 Facsimile: (561) 795-3692

Consider the Judge’s Inability to Make Notes and Marginalia

When reading, many lawyers read actively, underlining text, making notes in the margins or diagraming who sued who over what.⁵ Clearly, with many legal documents “full comprehension . . . may depend on making notes related to a particular text during the act of reading it.”⁶ While electronic devices often allow the reader to mark-up text or make notes, doing so is not, yet at least, as intuitive for most people as is marking up paper and ink documents. Further, studies show that readers retain less information when reading documents in electronic, rather than paper, formats.⁷

Given those facts, consider whether it may now be useful to more frequently provide a diagram in the text to present for the judge what he or she may, with paper and pen, have drawn in the margins “in the old days.” Diagraming in the text what a judge may have done on his or her own in the margins may more often be an

important tool for electronic documents. For example, if the family tree is important in a will contest and somewhat hard to follow, include a simple drawing or chart.⁸

Consider that Hyperlinks Distract

Some courts require lawyers to link to a case, or factual support in the record, for statements made in brief.⁹ Whether required or not, hyperlinking presents a wonderful opportunity to gain credibility with a judge by providing a link to the underlying testimony, document or case.

Yet, studies have found that hyperlinks distract readers and reduce comprehension.¹⁰ “Research continues to show that people who read linear text comprehend more, and learn more than those who read text peppered with links.”¹¹ What this means, somewhat perversely, is that although more information can be contained in an electronic brief, less information is conveyed.

For this reason, while obviously required hyperlinks must be included, consider the impact of hyperlinks on comprehension. Previous “Writing Matters” have explained how to make text easier to comprehend and more memorable. Those strategies have included attention to headings, paragraphing, margins, line spacing and typeface. With e-filing, those skills bring even more value than before.

Reduce or Eliminate Footnotes

Footnotes are already distracting. Now think about a judge reading a brief on an iPad and either having to scroll down to read the footnote, and then scroll back up, or to click on a footnote number and then be taken somewhere in the file to read the note before clicking back to return to the text. And, then amplify those distractions by those created by the required (or optional) hyperlinks. With that in mind, consider whether a footnote is necessary and, if it is, consider putting it in the text.

Condense the Text

Briefs must of course conform with applicable rules, but if a court permits briefs to be single spaced, rather than double, consider using a larger font and single spacing. That may allow the reader to scroll less and read more, and so increase usability and comprehension.

Conclusion

In addition to making it easier for judges to read documents in electronic form, consider the impact that not reviewing printed documents may be having on you when you are writing a brief. Given that it is harder to comprehend e-documents, and more difficult to retain the information in them, perhaps you should consider printing out materials before drafting a legal document. Printing out the material and making notations may improve your work product. By paying attention to the medium from start to finish, lawyers will have a better understanding of the cases and facts, and e-file something that better advances the lawyer’s cause. ●



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



David Hricik is a professor of law at Mercer University School of Law who has written several books and more than a dozen articles.

The Legal Writing Program at Mercer continues to be recognized as one of the nation’s top legal writing programs.

Endnotes

1. See eFiling in Georgia Courts, <https://www.gabar.org/efiling.cfm> (last visited Feb. 18, 2018).

2. See generally Mary Beth Beazley, *Writing for a Mind at Work: Appellate Advocacy and the Science of Digital Reading*, 54 Duq. L. Rev. 415 (2016); Daniel E. Harmon, *Seeing Double ... or Triple Can Multiple Desktop Monitors Improve Your Work?*, LAWYER’S PC (Oct. 15, 2016); Patrick Meyer, *The Google Effect, Multitasking, and Lost Linearity: What We Should Do*, 42 OHIO N.U.L. REV. 705 (2016); Ellie Margolis, *Is the Medium the Message?*, 12 LEG. COMM. & RHETORIC: JALWD 1 (2015).
3. <https://www.youtube.com/watch?v=aXV-yaFmQNK>.
4. Am. B. Ass’n Council of Appellate Lawyers, *The Leap from e-Filing to e-Briefing: Recommendations and Options for Appellate Courts to Improve the Functionality and Readability of e-Briefs*, (2017) (available at https://www.americanbar.org/content/dam/aba/administrative/appellate_lawyers/2017_cal_ebrief_report.authcheckdam.pdf) (last visited Feb. 18, 2018).
5. For more on active reading, see *In a Case, On the Screen, Do They Remember What They’ve Seen? Critical Electronic Reading in the Law Classroom*, 30 HAMLINE L. REV. 247 (2007).
6. Stephen T. Maher & Ana Romes, *The Quiet Revolution in Brief Writing*, LAW PRACTICE TODAY (Feb. 12, 2016).
7. See Maia Szalavitz, *Do E-Books Make it Harder to Remember What you Just Read?* TIME, Mar. 14, 2012.
8. *Id.*
9. See generally, *The Leap from e-Filing to e-Briefing*, *supra*, n.4.
10. See Martin L. Kutscher, *The Effects of Digital Technology on Reading*, PSYCHOLOGY TODAY (Jan. 15, 2017).
11. *Id.*



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Justice Robert Benham Awards for Community Service

The Chief Justice's Commission on Professionalism and the State Bar of Georgia honored 12 Bar members with awards for community and public service.

BY KARLISE Y. GRIER AND NNEKA HARRIS-DANIEL

The 19th Annual Justice Robert Benham Awards for Community Service, sponsored by the Chief Justice's Commission on Professionalism (Commission) and the State Bar of Georgia, was held Feb. 27 at the Bar Center. More than 350 people were on hand to honor and celebrate the deserving recipients.

Since 1998, the Commission has presented the Benham Awards to Georgia attorneys who go beyond their usual legal work or judicial duties to serve their communities. Judges and lawyers meet the criteria for these awards if they combine a professional career with outstanding service and dedication to their communities through voluntary participation in community organizations, government-sponsored activities, or humanitarian work outside of their professional practice or judicial duties. Service may be made in any field, including but not limited to: social service, education, faith-based efforts, sports, recreation, the arts or politics. The selection committee generally believes that community or public service is not service to a bar association; however, community service can be done through bar-sponsored or related activities or projects.

Awards Program

Honorees and program participants entered the auditorium to music provided by

attorney and vocalist Laurel R. Boatright, assistant U.S. attorney, U.S. Attorney's Office, Northern District of Georgia, Atlanta, accompanied on piano by Norman Lewis Barnett, assistant district attorney, Douglas County District Attorney's Office, Douglasville. Chief Justice P. Harris Hines welcomed everyone on behalf of the Supreme Court, while State Bar President Brian D. "Buck" Rogers and Young Lawyers Division President Nicole C. Leet brought greetings from the State Bar and YLD. Karlise Y. Grier, executive director of the Commission, served as the emcee for the program.

The audience then enjoyed an entertaining question and answer segment led by William J. "Bill" Liss, attorney, community service awards selection committee member and WXIA-TV News business editor. Liss used the interview format to introduce Justice Robert Benham, who shared his views on what professionalism and community service mean to him. Benham concluded the session by telling the audience that he believed that professionalism's most important factor is to heal and to bring together the community in a positive way.

Award Recipients

The Lifetime Achievement Award for Community Service recognizes a lawyer or a judge who, in addition to meeting



PHOTO BY DON MORGAN PHOTOGRAPHY



(Front row, left to right) Avarita L. Hanson, Justice Robert Benham, Chief Justice P. Harris Hines, Karlise Y. Grier and Hon. Robert "Bobby" Chasteen. (Back row, left to right) Gregory W. Edwards, Hon. Thomas L. Hodges III, Hon. Kathryn M. Schrader, La'Keitha D. Carlos, Tommy T. Holland, Robert B. Remar, Patrick T. O'Connor, Charles L. Jones, Allegra J. Lawrence-Hardy and Ann B. Bishop.

the general criteria for the Justice Robert Benham Award for Community Service, has also demonstrated an extraordinarily long and distinguished commitment to volunteer participation in the community throughout his or her legal career. This year's recipients were Hon. Robert "Bobby" Chasteen Jr., chief judge, Cordele Judicial Circuit, Fitzgerald; and Avarita L. Hanson, former executive director of the Commission, legal consultant, Atlanta.

The Justice Benham Awards for Community Service were presented to: Ann B. Bishop, partner, Sponsler, Bishop, Koren & Hammer PA, Atlanta; La'Keitha D. Carlos, chief of staff, DeKalb County Law Department, Decatur; Gregory W. Edwards, district attorney, Dougherty Judicial District, Albany; Hon. Thomas L. Hodges III, chief judge, Northern Circuit Superior Court, Hartwell; Tommy T. Holland, attorney, Jonesboro; Charles E. Jones, attorney, Jones & Oliver, P.C., Fort Valley; Allegra J. Lawrence-Hardy, founding partner, Lawrence & Bundy LLC, Atlanta; Patrick T. O'Connor, managing partner, Oliver Maner, LLP, immediate past president, State Bar of Georgia, Savannah; Robert B. Remar, partner, Rogers & Hardin LLP, Atlanta; and Hon. Kathryn M. Schrader, judge, Gwinnett County Superior Court, Lawrenceville. This year's honorees were exceptional servants to their communities and each has answered Benham's charge for lawyers and judges to help heal and to bring the community together in a positive way through their service and commitment.

In Grateful Appreciation

This year's program was successful because of the contributions and hard work of many people. Selection committee members responsible for the selection of the deserving honorees included: Janet G. Watts, attorney, Chapter 7 Trustee, U.S. Bankruptcy Court, Jonesboro; Mawuli Davis, The Davis Bozeman Law Firm, Decatur; Elizabeth L. Fite, DeKalb County Attorney's Office, Decatur; Joy Lampley-Fortson, Georgia Commission on Equal Opportunity, Atlanta; Laverne Lewis Gaskins, Augusta University, Augusta; Michael Hobbs Jr., Troutman Sanders LLP, Atlanta; W. Seaborn Jones, Owen, Gleaton, Egan, Jones & Sweeney LLP, Atlanta; Hon. Chung Lee, associate judge, Duluth Municipal Court, Duluth; William J. "Bill" Liss, legal and financial advisor, WXIA-TV News, Atlanta; and Brenda C. Youmas, Edwards & Youmas, Macon. Their work was invaluable.

A program of this magnitude is successful only with the assistance of others. We had a large number of volunteers on hand that evening to ensure everything ran smoothly. From decorating the venue to registering attendees and assisting our honorees, we thank them for their help: Aisha Hill, Precious Johnson, Shermela Williams, Jena Emory, LaQuierra Harris, Beza Tadessa, Josephine Frazier, Carrie C. Foster, Roberta Rhodes, Joyce Marsh, Vicki Hall, Bernadette Hartfield, Janet Prioleau, Avery Dixon, Antonia Hardin, Anthony Salgado, Joshua Crenshaw, Kira Jacobs, Lisa Dixon, Ressie Hardin and Sparkle Adams. A special thank you

to Angie Wright-Rheaves of Atlanta Interfaith Broadcasting who served as our commentator for filming, and to Hon. Carla Wong McMillian, Court of Appeals of Georgia, who served as our guest tweeter.

The Commission also appreciates our program vendor team members: Don Morgan, photographer; Vince Bailey, videographer; Eric Thomas, musician; AIB-TV, film production services; and Serendipity, catering. We'd like to also recognize our reception sponsors: Hon. J. Antonio DelCampo, DelCampo & Grayson LLC, Atlanta; and Gerald M. Edenfield, Edenfield, Cox, Bruce & Edenfield, Statesboro.

The awards ceremony would not have been possible without the tireless assistance of the Bar Conference Center staff: Faye First, Joyce Jarvis, Kyle Gause, Mark Brayfield and Ulysses Fred. Finally, the awards ceremony was a wonderful event because of the hard work of the Commission staff: Karlise Y. Grier, executive director; Terie Latala, assistant director; and Nneka Harris-Daniel, administrative assistant. ●



Karlise Y. Grier

Executive Director
Chief Justice's Commission
on Professionalism
kygrier@cjcpga.org



Nneka Harris-Daniel

Administrative Assistant
Chief Justice's Commission
on Professionalism
nneka@cjcpga.org

**Ann B. Bishop**

Past president and current member of the Board of Directors of Kids Chance of Georgia, Inc.; member, Board of Visitors for Mercer University Law School; Wesley Friendship Sunday school teacher at Northside United Methodist Church.

**La'Keitha D. Carlos**

Founder of It's My Birthday, Atlanta, a nonprofit organization for children facing life-threatening illnesses; past president, Georgia Association of Black Women Attorneys; volunteer, Project Open Hand and Hosea Feed the Hungry; member, Executive Committee, American Constitution Society.

**Hon. Robert "Bobby" Chasteen Jr.**

Member, Board of Trustees, Wiregrass Georgia Technical College Foundation; volunteer, Habitat for Humanity "Great Day of Service"; founding member "LOVE OUT LOUD 365," youth mentoring group; president, Fitzgerald Rotary Club.

**Gregory W. Edwards**

Supporter of The Lily Pad "Walk a Mile in Her Shoes" event; developed "Growing Albany's Next Generation," an initiative for at-risk local youth; life member of Alpha Phi Alpha Fraternity; quizmaster for the Georgia Quiz Bowl Competition; co-chair, Board of Trustees, Hines Memorial CME Church of Albany.

**Avarita L. Hanson**

Founded legal ministry at Ben Hill United Methodist Church; past president, Georgia Association of Black Women Attorneys; candidate for College Park City Council Ward 5; active in College Park Voters League; volunteer, Election Protection Taskforce; past president, Atlanta Chapter Links, Inc.

**Hon. Thomas L. Hodges III**

Little League coach; past president, Kiwanis Club and the Optimist Club of Elberton; board chair, Broad River District, Boy Scouts of America; president and treasurer of the Chancel Choir and finance committee chair of the Elberton First United Methodist Church; past director, Elbert County Chamber of Commerce.

**Tommy T. Holland**

Board member and former chairman of Calvary Refuge, Inc.; former chairman of deacons, Jonesboro First Baptist Church; led mission trips to build churches, schools and other facilities in approximately 25 countries, including Liberia, Sri Lanka, Brazil, Cambodia, Russia and the Dominican Republic.

**Charles E. Jones**

Works with the literacy program Leadership Education for Adults; board member, Mount de Sales Academy; baseball and football coach, Warner Robins Recreational League; advisor, Fort Valley Boys and Girls Club; coach, Macon County High School Mock Trial Team.

**Allegra J. Lawrence-Hardy**

Architect of Sutherland Scholars, a summer pre-law school program offered at no cost; member, Children's Museum of Atlanta Board of Directors; past executive committee member and board member, Girl Scouts of Greater Atlanta; Board of Trustees member and current chair, Atlanta Girls' School; created AT&T legal pipeline program.

**Patrick T. O'Connor**

Past president and executive board member, of the Coastal Georgia Council Boy Scouts of America; immediate past president, State Bar of Georgia; past chair, Savannah Country Day School Board of Trustees; past national president, Theta Chi fraternity; chairman of deacons, Ardsley Park Baptist Church; member, Auburn University's Dean Advisory Council for the School of Liberal Arts.

**Robert B. Remar**

Member and current vice president, secretary and treasurer, National Board of the American Civil Liberties Union; past president, Georgia Chapter of ACLU; past president, Georgia Center for Law in Public Interest a/k/a GreenLaw; member, City of Atlanta Board of Ethics; member and former chair, Board of Directors, Georgia Appellate Practice and Educational Resource Center.

**Hon. Kathryn M. Schrader**

Co-sponsored and organized inaugural Mental Health and Substance Abuse Summit in Gwinnett County; advisor, Central Gwinnett High School Legal Team; coach, Greater Atlanta Christian School Mock Trial Team; Marriage Enrichment small group leader, Cross Point, The Church at Gwinnett; member, Gwinnett Chamber of Commerce and Leadership Gwinnett.

**partial list of honoree accomplishments*

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.

CYNTHIA LEE COLEMAN

Sandy Springs, Ga.
University of Georgia
School of Law (1989)
Admitted 1989
Died January 2018

CHARLES L. DREW

Atlanta, Ga.
University of Georgia
School of Law (1954)
Admitted 1954
Died January 2018

WILLIAM D. EDWARDS

Valdosta, Ga.
Woodrow Wilson College
of Law (1981)
Admitted 1982
Died August 2017

AMELIA M. FEUSS

Decatur, Ga.
University of Cincinnati
College of Law (1978)
Admitted 1982
Died December 2017

MILTON F. GARDNER

Milledgeville, Ga.
Atlanta Law School (1947)
Admitted 1947
Died August 2017

SEARCY S. GARRISON JR.

Decatur, Ga.
Mercer University Walter
F. George School of Law
(1966)
Admitted 1966
Died January 2018

DAVID ROY HEGE

Tifton, Ga.
Atlanta Law School (1973)
Admitted 1973
Died September 2015

MICHELLE J. HIRSCH

Atlanta, Ga.
John Marshall Law
School, Chicago (1994)
Admitted 2004
Died February 2018

GWENDOLYN JOHNSON

Atlanta, Ga.
St. Louis University
School of Law (1979)
Admitted 1980
Died January 2018

MICHAEL BERNARD KING

College Park, Ga.
Atlanta Law School (1990)
Admitted 1990
Died January 2018

J. ALVIN LEAPHART JR.

Jesup, Ga.
Atlanta Law School (1962)
Admitted 1962
Died January 2018

MAURICE N. MALOOF

Atlanta, Ga.
Emory University School
of Law (1956)
Admitted 1955
Died December 2017

HINSON MCAULIFFE

Atlanta, Ga.
Woodrow Wilson College
of Law (1949)
Admitted 1949
Died January 2018

JACK J. MENENDEZ

Acworth, Ga.
Atlanta's John Marshall
Law School (1978)
Admitted 1978
Died November 2017

COOPER L. MORRIS

Shady Dale, Ga.
Woodrow Wilson College
of Law (1981)
Admitted 1985
Died January 2018

**WILLIAM GREGORY
POPE SR.**

Covington, Ga.
University of Georgia
School of Law (1996)
Admitted 1996
Died December 2017

NANCY ELIZABETH QUINN

Tifton, Ga.
University of Virginia
School of Law (1986)
Admitted 1994
Died January 2018

JOHN H. RIDLEY JR.

Atlanta, Ga.
Oklahoma City University
School of Law (1974)
Admitted 1974
Died January 2018

GARY LEE SIMPSON

Roswell, Ga.
University of Tennessee
College of Law (1972)
Admitted 1999
Died December 2017

H. GRAY SKELTON JR.

Marietta, Ga.
Emory University School
of Law (1968)
Admitted 1968
Died January 2018

MICHAEL DAVID SORKEY

Columbus, Ga.
Mercer University Walter
F. George School of Law
(2003)
Admitted 2003
Died July 2017

STEPHEN H. TUCKER

Melville, N.Y.
University of Florida Levin
College of Law (1978)
Admitted 1979
Died October 2017

ROBERT H. UEHLING

Watsonville, Calif.
University of South
Carolina School of Law
(1977)
Admitted 1983
Died May 2017

RAYMOND H.

VIZETHANN JR.
Watkinsville, Ga.
Washington & Lee
University School of Law
(1966)
Admitted 1967
Died January 2018

ALBERT MIMS

WILKINSON JR.
Atlanta, Ga.
University of Georgia
School of Law (1949)
Admitted 1948
Died January 2018

OBITUARIES



Joseph Alvin Leaphart Jr. of Jesup and Shellman Bluff, the longest-serving member of the Board of Governors of the State Bar of Georgia, died Jan. 22, 2018, at Southeast Georgia Health System in Brunswick after a lengthy illness. He was 80 years old.

Leaphart was born and raised in Jesup, where he was a communicant of St. Paul's Episcopal Church. During high school, he worked in his father's hospital as an orderly as well as a lab and X-ray assistant. He graduated from Georgia Military Academy and attended Oglethorpe University, Florida State University and Atlanta Art Institute. He served his country in the Coast Guard, stationed for two years off the coast of New England on a search-and-rescue cutter and a cable-laying vessel.

Leaphart earned his law degree from Atlanta Law School and was admitted to the State Bar of Georgia in 1962. After starting his legal career in Atlanta, he practiced law in Jesup and throughout southeast Georgia for 55 years. He was a member of the Board of Governors of the State Bar of Georgia for 40 years, from 1969 through 1971 and continuously from 1979 until the time of his passing. Throughout his tenure, he provided a strong voice for the interest of his fellow Bar members, especially his fellow "country lawyer" colleagues in Georgia's small towns and rural areas. He also served the public as attorney for the cities of Jesup and Odum, for Wayne County, the Wayne County Board of Education and the McIntosh County Board of Education.

An accomplished author, Leaphart wrote several novels, many of which were set in coastal Georgia. He was the proudest of his law manual published in December 2016: "How to Practice Law in a Small Town and Make Money Doing It." He was an artist, avid reader and history student and had traveled extensively throughout the world. He enjoyed hunting, fishing, sailing and boat building, having constructed a 65-foot steel hull sailboat in his backyard. He held a Master's License issued by the Coast Guard.

Leaphart was a longtime member and past chairman of the Wayne County Democratic Party. He served on the state committee of the Democratic Party of Georgia and was active in the campaigns of many local, state and presidential candidates. He and his wife, Beverly, attended both of President Bill Clinton's inaugurations and were both delegates to the 2016 Democratic National Convention. He was also a longtime member of the Jesup Elks Lodge #2133 B.P.E., the Jesup Lodge #112 F&AM, the Alee Temple and Shrine Club, the Jesup Royal Arch Masons #70 R.A.M., and was a member and past president of the Jesup Rotary Club. ●



William Gregory Pope Sr. passed away in December 2017. Born in Atlanta, Pope was a lifelong resident of Covington. He attended Piedmont Academy, graduating in 1989. While in high school, he served as the youth governor of the 44th Youth Assembly for the State YMCA of Georgia. Pope earned

a bachelor's degree in finance from the University of Georgia, graduating with honors in 1993. He graduated from the University of Georgia School of Law in 1996. While at Georgia, Pope was an active member of Phi Gamma Delta fraternity, was selected for the Arch Society and was a member of the Moot Court Team.

After briefly working in Atlanta, Pope returned to Covington and founded The Pope Law Firm, P.C., spending 19 years representing disabled and injured workers. He also served eight years as a Newton County magistrate judge. Pope was a member of the Commerce Club and the Atlanta Lawyers Club. He served twice as Rotary president in Covington. At the time of his death, he was serving as a representative for the Alcovy Circuit of the State Bar of Georgia Board of Governors. An active member of First United Methodist Church of Covington, Pope served on several committees, was a Sunday school teacher and a church trustee. ●

Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the Georgia Bar Journal with memorials to honor deceased members of the State Bar of Georgia. Memorial Contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW,

Suite 610, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible. Unless otherwise directed by the donor, In Memoriam Contributions will be used for Fellows programs of the Georgia Bar Foundation.

Seeing Through Legalese: More Essays on Plain Language

by Joseph Kimble,
273 pages, Carolina Academic Press

REVIEWED BY DONALD P. BOYLE JR.

Joseph Kimble has taught legal writing at Western Michigan University-Cooley for more than 30 years and is now a lecturer. He also is the co-founder of the Center for Plain Language and a past president of the international organization Clarity. He was a drafting consultant on all federal court rules. This is his third book on legal writing.

This book should be of value for three groups of lawyers: first, legislators and their staff who write statutes; second, judges and the committees who write court rules; and third, practitioners, both litigators and business lawyers, who need to be clear to the courts, their clients and other parties.

The book is a collection of essays and illustrations of revisions to codes and rules. Kimble divides the book into three parts: (1) drafting; (2) writing generally; and (3) interviews and remarks.

Drafting

The drafting section provides a number of illustrations of stylistic changes to the Federal Rules of Civil Procedure and the

Federal Rules of Evidence. Kimble shows how the advisory committees were able to shorten the Rules considerably without changing their substance. The handiest items in the toolkit were use of headings, subheadings and subdivisions.

Because Georgia's Civil Practice Act has not yet had the benefit of these changes, it no longer resembles the Federal Rules of Civil Procedure as closely as it once did. (Similarly, the 2011 adoption of many of the Federal Rules of Evidence into Title 24 of the Georgia Code just missed the 2011 federal stylistic changes.) Our General Assembly may and should consider adopting similar changes. This would be useful not only to make the Civil Practice Act and Evidence Code more obviously conform to the federal models, but also to give courts and litigators the benefit of improved clarity and readability.

The section on drafting also has advice for writers of contracts and consumer documents. Kimble gives an example, with photo included, of a Michigan gas station's literal adoption of required language from a Michigan regulation on a sign posted by the pump:

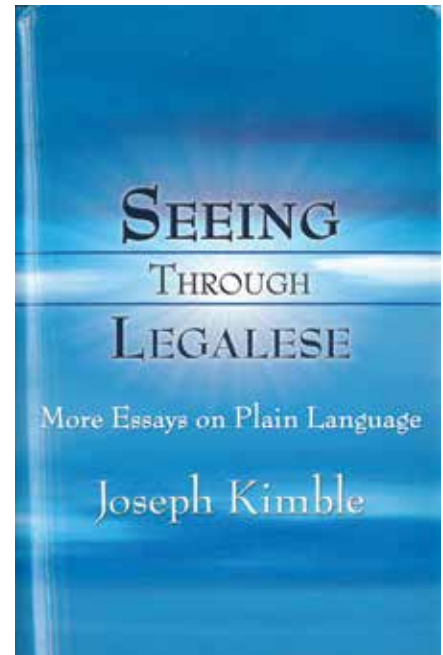
A PERSON SHALL REMAIN IN ATTENDANCE OUTSIDE OF THE VEHICLE AND IN VIEW OF THE NOZZLE.

The sentence is nearly a direct quote from the regulation. The gas company's attorney must have decided to use the exact language from the statute in order to avoid any penalty from regulators. This way of drafting, although common, ignores the purpose of the statutory requirement, which is to communicate with the consumer.

Kimble does not cut the gas station's lawyer any slack. (How does a nozzle "view" anyone?) He concedes that governing law sometimes requires specific language—but when it doesn't, follow the law and be clear.

Similarly, it is common for jury instructions to pull language directly from governing statutes. The result may be a precise statement of the law, but not clear to the jurors who hear it. In Kimble's opinion, many model jury instructions are "appalling" because they are not written in plain language.

Kimble calls drafting a "neglected" topic. Legal writing courses in law schools



emphasize writing briefs and largely omit instruction in the drafting of contracts (let alone statutes, administrative rules and rules of procedure). Compounding this problem, contracts often are not “tested” in the way that court filings inevitably must be. A boilerplate clause or a favorite form “works”—until it doesn’t.

A long section on revisions to the Federal Rules of Civil Procedure and Federal Rules of Evidence illustrates some of Kimble’s drafting principles, including:

- “Put the parts in a logical order”—chronological order will often be best;
- “Use lists to the best advantage”—separate a long paragraph into manageable chunks;
- “Break up long sentences”—look for the conjunction and split the sentence in two;
- “Avoid needless repetition”—e.g., use pronouns;
- “Don’t state the obvious”—i.e., don’t belabor the point when it’s obvious to a reader in good faith;
- “Say what you mean in normal English”—be direct and concise;
- “Try to put statements in positive form”—e.g., “the pleading is sufficient if” rather than “the pleading is not insufficient if”;
- “Minimize cross-references”—they “are at least distracting and at worst irritating”;
- “Use informative headings and sub-headings”—as navigational aids for the reader;
- “Simplify inflated diction”—e.g., use “later” instead of “thereafter”; and
- “Banish ‘shall’”—it should mean “must,” but is often interpreted as “should” or “may.”

Regarding the last item, Kimble is proud to say that his committee eliminated every “shall” in the Federal Rules of Civil Procedure as of Dec. 1, 2007—but one change didn’t last. The elimina-

tion of “shall” from Rule 56 (“judgment shall be rendered”) set off an explosion of complaints that the change was substantive and not just a matter of style. In 2010, the advisory committee reversed course and restored “shall” to the summary judgment standard.

Kimble calls the pre-2007 Federal Rules of Civil Procedure “a gold mine—or should I say a landfill?”—for examples of how not to draft.” Georgia’s Civil Practice Act still has the pre-2007 language (and in some cases, language from even earlier versions of the Federal Rules of Civil Procedure).

Writing Generally

Throughout, Kimble comes back again and again to his themes: (1) be clear; and (2) avoid legalese.

By “legalese” he means those words that regular people never use but somehow show up in nearly every motion, brief and rule: *hereof, therefor, wherein, pursuant to, prior to, provided that*, etc. (Microsoft Word thinks that “therefor” is a misspelling, and is obviously controlled by a plain-language advocate.) There are such things as terms of art, and Kimble concedes that they are unavoidable.

This book should be of value for three groups of lawyers: first, legislators and their staff who write statutes; second, judges and the committees who write court rules; and third, practitioners, both litigators and business lawyers, who need to be clear to the courts, their clients and other parties.



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But he insists that much legal writing is marred by legalese that is both useless and vague. A writer who wants to be clear won't use legalese.

In drafting briefs, Kimble insists on moving citations out of the text and into footnotes for readability. He rejects the common objection of litigators that the reader will miss the citations or be distracted by having to move back and forth between the text and the bottom of the page. As support for why this is not the case, he cites his poll of *Michigan Bar Journal* readers, who preferred citations in footnotes, compared to the same material written traditionally, with citations in text.

Some litigators may be afraid to make this change because it might require more space and so make it harder to stay within page limits. Although Kimble does not address this concern, I can say from my own drafting that there does not appear to be any change in total page length when I move citations from the text to footnotes. In addition, the Court of Appeals of Georgia (but not the Supreme Court of Georgia) has amended its rules to impose word limits rather than page limits in briefs. The hope is that this is a trend that the other courts will follow.

Interviews and Remarks

Not all lawyers have converted to the plain-language movement, Kimble admits, and he takes on his critics in two separate sections in the book. Some of the main objections (and Kimble's responses) are:

- Plain language leads to errors when terms are simplified and distorted—but not if the drafter is careful in use of plain language.

- Statutes and court rules shouldn't be written for lay people—no, lay persons “should have the greatest possible access to the law.”
- Plain language advocates would impose a conformity on all legal writing—rather, standard English should be used in a way that conveys the desired meaning to the most readers possible.

The book is a bit of a grab-bag. Kimble's impatience with the slowness of change in legal writing is obvious. His detailed notes on revisions of the federal rules are probably more detailed than necessary. There is some redundancy as one reads through the book, but maybe that's better considered as useful repetition to get the point across.

His role as a teacher rather than a practicing attorney is a strength that allows him to shake up attorneys' bad habits. On the other hand, Kimble probably doesn't give enough allowance for the job of an attorney working zealously for the client. Sometimes vagueness is required, or at least seems the only alternative, if the facts are against you. Kimble himself admits that vagueness may be required in a contract if the parties cannot agree on wording of a particular term; they may decide on vagueness over clarity in order to reach agreement.

This book is a challenge to lawyers' bad habits. No one likes having bad habits pointed out, but it's hard to argue against seeking clarity. ●



Donald P. Boyle Jr., a member of the *Georgia Bar Journal* Editorial Board and past editor-in-chief, is a litigation partner at Taylor English Duma LLP.

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APRIL

- 20** ICLE: **GA Auto Insurance Seminar**
Atlanta, Ga., and Statewide Satellite | 6 CLE

MAY

- 4** ICLE: **9th Annual Dispute Resolution for Trial and Non-Trial Lawyers**
Martinez, Ga. | 6 CLE
- 10-12** ICLE: **40th Annual Real Property Law Institute**
Amelia Island, Fla. | 12 CLE
- 11** ICLE: **Georgia DUI Update**
Atlanta, Ga. | 6 CLE
- 22** ICLE: **May Group Mentoring**
Atlanta, Ga.
- 24-26** ICLE: **36th Annual Family Law Institute**
Jekyll Island, Ga. | 14 CLE

JUNE

- 7** ICLE: **Wellness for Lawyers: Why We Need it and How We Get It**
Annual Meeting
Amelia Island, Fla. | CLE TBD
- 7** ICLE: **War Stories XVIII**
Annual Meeting
Amelia Island, Fla. | CLE TBD
- 8** ICLE: **ICLE/ICJE Social Media Seminar**
Annual Meeting
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Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than 30 days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, 2017-2018 State Bar of Georgia Directory and Handbook, p. H-7 (hereinafter referred to as "Handbook").

The exact text of the Motion to Amend, including the text of the proposed amendments, can be found on the State Bar of Georgia's website at www.gabar.org/newsandpublications/announcement/announcementdetail.cfm?id=65491. Any member of the State Bar of Georgia who wishes to obtain a printed copy of these proposed amendments may do so by sending such request to the following address:

Betty Derrickson
Office of the General Counsel
State Bar of Georgia
104 Marietta St. NW, Suite 100
Atlanta, GA 30303

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member in good standing of the State Bar of Georgia who desires to object to part or all of these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, Handbook, p. H-7. This Statement and the verbatim text of the proposed amendments are intended to comply with the notice requirements of Rule 5-101, Handbook, p. H-7.

Jeffrey R. Davis
Executive Director, State Bar of Georgia



Notice of and Opportunity for Comment on Amendments to the Rules of the United States 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 United States Court of Appeals for the Eleventh Circuit. The public comment period is from April 4 to May 4, 2018.

A copy of the proposed amendments may be obtained on and after April 4, 2018, from the court's website at <http://www.ca11.uscourts.gov/rules/proposed-revisions>. 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, or electronically at <http://www.ca11.uscourts.gov/rules/proposed-revisions>, by 5 p.m. Eastern Time on May 4, 2018.

Proposed Amendments to the Uniform Rules for Superior Court

At its business meeting on January 18, 2018, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 31 and 39. A copy of the proposed amendments may be found at the Council's website at <http://georgiasuperiorcourts.org>.

Should you have any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, Georgia 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, August 6, 2018.

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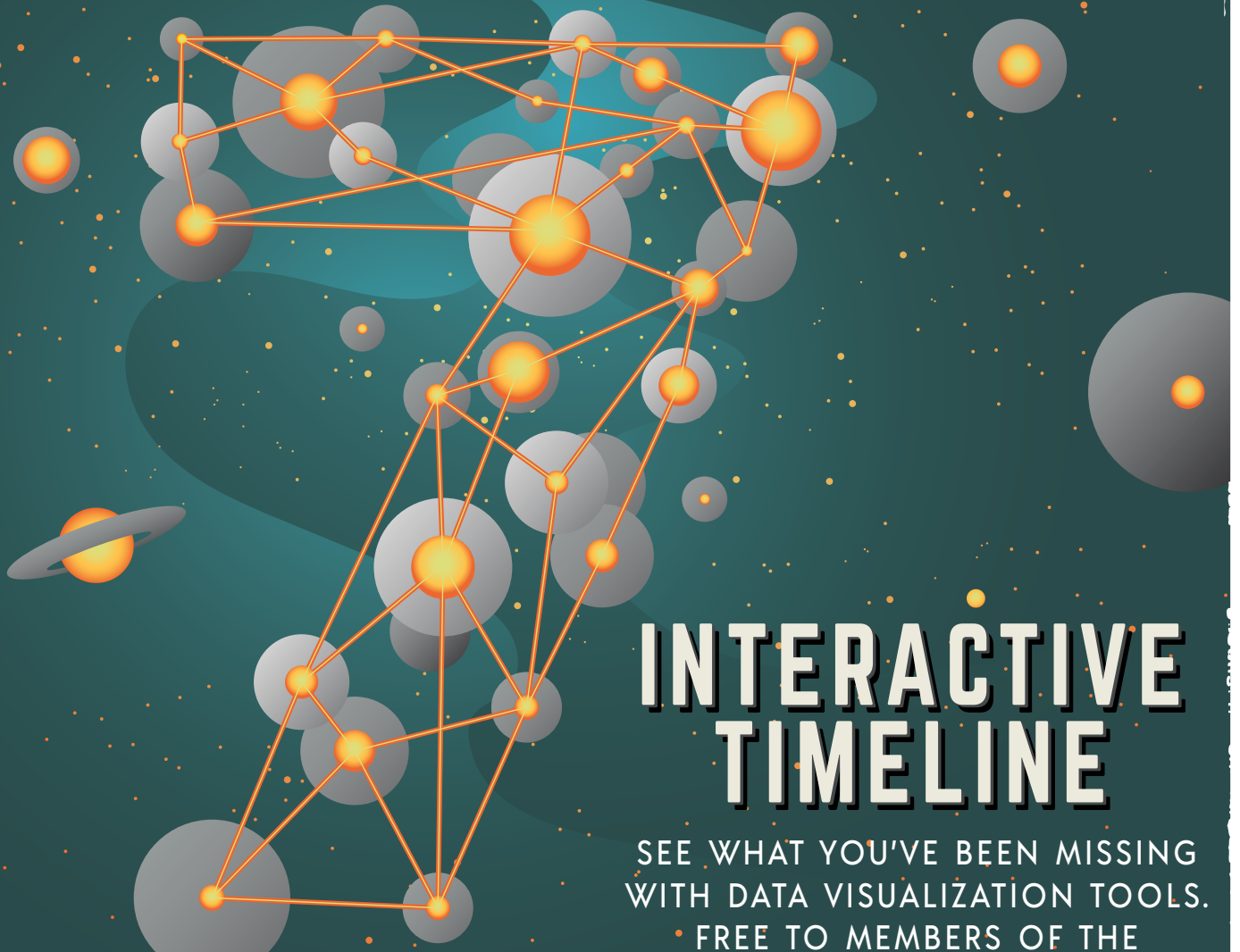
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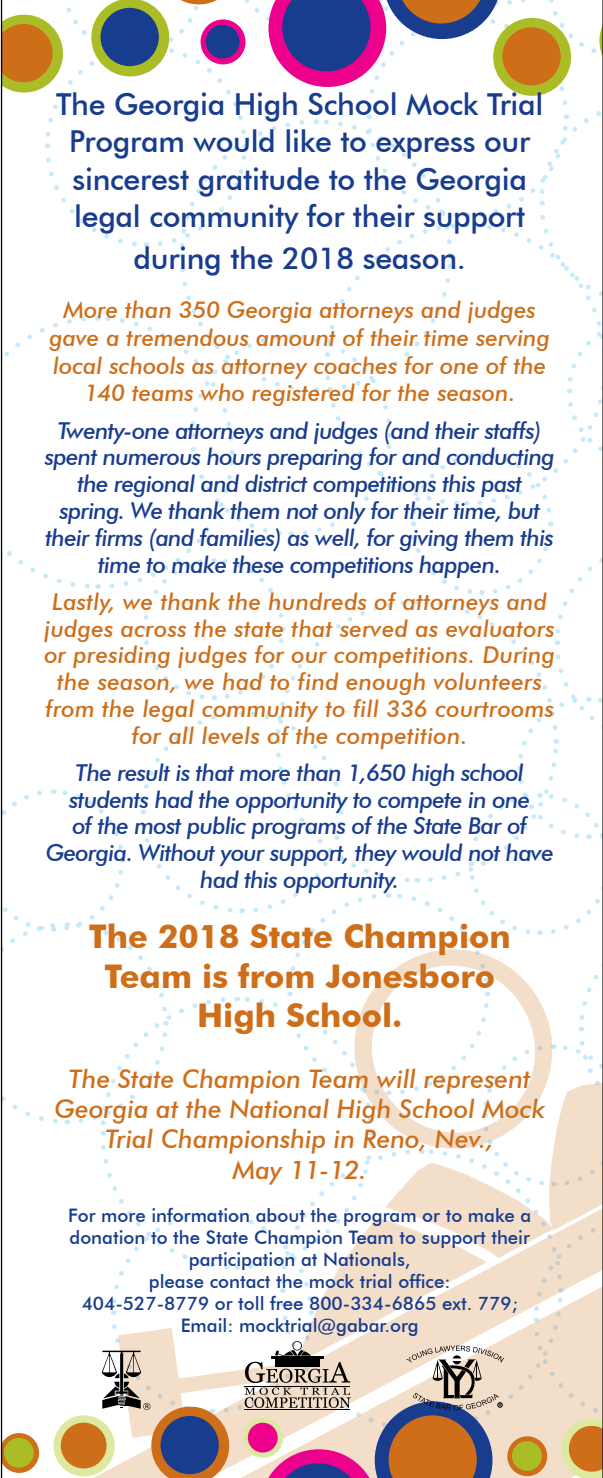
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Position Wanted

Managing Attorney—In-town firm seeks experienced attorney to assist in overseeing the management of cases in litigation. Ideal candidate will have significant experience in civil litigation. Collegial work environment, stable firm, benefits. All replies confidential. Please send resume to: spsnhs@me.com.

PI Associate Attorney—Personal injury law firm is seeking a junior associate in the Jacksonville, Fla., area with 0-5 years of PI experience for entry level personal injury position. Energetic



The Georgia High School Mock Trial Program would like to express our sincerest gratitude to the Georgia legal community for their support during the 2018 season.

More than 350 Georgia attorneys and judges gave a tremendous amount of their time serving local schools as attorney coaches for one of the 140 teams who registered for the season.

Twenty-one attorneys and judges (and their staffs) spent numerous hours preparing for and conducting the regional and district competitions this past spring. We thank them not only for their time, but their firms (and families) as well, for giving them this time to make these competitions happen.

Lastly, we thank the hundreds of attorneys and judges across the state that served as evaluators or presiding judges for our competitions. During the season, we had to find enough volunteers from the legal community to fill 336 courtrooms for all levels of the competition.

The result is that more than 1,650 high school students had the opportunity to compete in one of the most public programs of the State Bar of Georgia. Without your support, they would not have had this opportunity.

The 2018 State Champion Team is from Jonesboro High School.

The State Champion Team will represent Georgia at the National High School Mock Trial Championship in Reno, Nev., May 11-12.

For more information about the program or to make a donation to the State Champion Team to support their participation at Nationals, please contact the mock trial office: 404-527-8779 or toll free 800-334-6865 ext. 779; Email: mocktrial@gabar.org



self-starters with great written and verbal communication skills is a must. If you are highly motivated to do great lawyering for your clients, aren't afraid to pay your dues and want excellent professional development and earnings potential, then send detailed cover letter (explaining your desire to represent the injured and your willingness to pay your dues) along with resume AND references to busylawfirm@outlook.com. If you are not serious about your legal career and willing to pay your dues, then do not apply.

Request for Proposal

Legal Services Corporation Notice of Availability of Grant Funds for Calendar Year 2019—The Legal Services Corporation (LSC) announces the availability of grant funds to provide civil legal services to eligible clients during calendar year 2019. The Request for Proposals (RFP), which includes instructions for preparing the grant proposal will be available from <http://www.grants.lsc.gov/grants-grantee-resources> during the week

of April 9, 2018. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. On or around the week of March 12, 2018, LSC will publish the list of service areas for which grants are available and the service area descriptions at <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas>. Applicants must file a Notice of Intent to Compete (NIC) and the grant proposal through LSC's online application system in order to participate in the grants process. The online application system will be available at https://lscgrants.lsc.gov/EasyGrants_Web_LSC/Implementation/Modules/Login/LoginModuleContent.aspx?Config=LoginModuleConfig&Page=Login during the week of April 9, 2018.

Please visit <http://www.grants.lsc.gov/grants-grantee-resources> for filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to LSCGrants@lsc.gov.

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