

GEORGIA BAR

JOURNAL

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Apparent Necessity

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and Tricks


Leading With
Authenticity: Prioritizing
Success and Wellness
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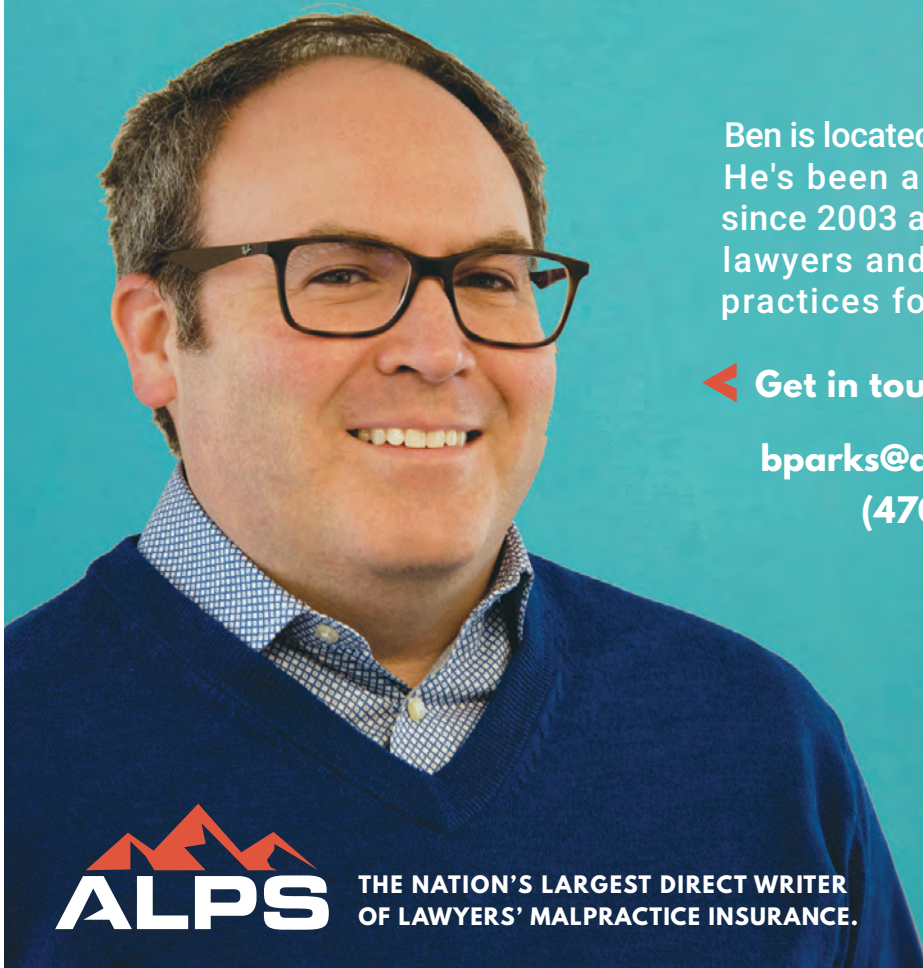
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Karlise Y. Grier

The June Issue

Welcome to the June issue of the Georgia Bar Journal. As I write this letter, I'm also preparing for my final Editorial Board meeting as editor-in-chief. It's a bittersweet feeling, having my tenure come to an end. But I am looking forward to joining the esteemed group of editors emeritus and mentoring the next *Journal* leaders. Thank you to my friends and colleagues who supported me, submitted articles and always let me know, "Hey, I read the latest issue! Looks great!" Also, a huge thank you to the State Bar's Communications Department for all their hard work.

So, let's look at some highlights of the June magazine. YLD President Ron Daniels helps kick things off with his article "If You Put Gravy on It." Daniels reflects on his time at the helm of the YLD and shares some insights he has learned as an attorney and leader. He calls his Bar work the "gravy" of the profession; it gives him energy and is a source of happiness.

Leadership is also a major theme of Executive Director Damon Elmore's article, "Lawyers as Leaders." Elmore spoke with State Bar members about why lawyers make good leaders. (Hint: it has to do with our training and experience.) He also addresses the challenges that attorneys face when they take a leadership role.

Professional challenges and attorney wellness are always important issues to the State Bar. In her article "Leading with Authenticity," Laurie Myler interviews attorney, mentor and expert networker Jessica Wood

about navigating the stress and demands of the legal profession. Wood shares excellent advice about starting where you are, being intentional, embracing connection, learning from others and leading with authenticity.

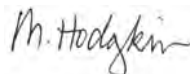
In our legal article, "Phantom Damages and the Misapplication of the Collateral Source Rule in Georgia," author Jacob Daly poses a challenge to courts about the role of phantom damages in Georgia tort law.

The votes have been tallied, and the Editorial Board is proud to present the winner of our 32nd Annual Fiction Writing Competition: Hon. Lori Duff's "Apparent Necessity." Duff's story revolves around the apparent necessity provision from *Scroggs v. State*, 94 Ga. App. 28 (1956). Careful readers may recognize the name of the main character.

It's been an active year for the State Bar. Be sure to check out our recap articles on the 2022-23 Georgia High School Mock Trial Season, the 2023 Take Charge! Solo & Small Firm Conference, the 23rd Annual Justice Robert Benham Awards for Community Service and the contributors to the "And Justice For All" campaign for Georgia Legal Services Program.

For those looking for practice pointers, the June issue has articles on Fastcase tips and tricks, storytelling in legal writing and an article from State Bar of Georgia's General Counsel Paula Frederick on whether lawyers have to put paid fees in advance into an escrow account.

Thank you, as always, for reading. This is Dr. Megan Hodgkiss, signing off. ●



MEGAN HODGKISS

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Who We Are Is Who We Were



SARAH B.
"SALLY" AKINS

President
State Bar of Georgia
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One of my favorite movies is "Amistad," the 1997 historical drama based on events aboard a Spanish slave ship in 1839, during which the African captives overtook control of the vessel but were subsequently recaptured by the American government off the coast of Connecticut. The slaves' freedom was ultimately granted by the U.S. Supreme Court.

In the climactic courtroom scene, Anthony Hopkins portrays former President John Quincy Adams, a champion of abolition, who had been brought in to represent the Africans. Pacing the courtroom past bust sculptures of a number of Founding Fathers, Hopkins as Adams tells the justices:

James Madison; Alexander Hamilton; Benjamin Franklin; Thomas Jefferson; George Washington; John Adams: We've long resisted asking you for guidance," he says. "Perhaps we have feared in doing so we might acknowledge that our individuality which we so revere is not entirely our own. Perhaps we've feared an appeal to you might be taken for weakness. But we've come to understand, finally, that this is not so.

We understand now. We've been made to understand, and to embrace the understanding, that *who we are is who we were.*

As the 2022-23 Bar year, with our emphasis on a renewed commitment to professionalism, has reached its end, it has reminded me of that quote. As Bar members seeking to fulfill our duties to serve the public and the justice system with integrity, civility and professionalism, we benefit from the history of the legal profession in Georgia and from the wisdom and examples of those who came before us. There are many such predecessors in the 60-year history of the State Bar of Georgia (and before), too many to include them all here. But I would like to share three in particular, each of whom served as chief justice of the Supreme Court of Georgia:

Harold G. Clarke

As a member of the Georgia House of Representatives in 1963, Harold G. Clarke of Forsyth ardently advocated the passage of legislation that would establish a unified State Bar. The bill had also passed the Senate overwhelmingly and on March 11, 1963, was signed into law by Gov. Carl Sanders.

Clarke entered the legal profession in 1950, following his service in the Army during World War II, when he was assigned as managing editor of the *Stars & Stripes* in Japan. When he returned to Forsyth, Clarke for many years simultaneously practiced law and published the local newspaper. He served a decade in the General Assembly.

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our State Bar of Georgia officers, "If you could choose a superpower, what would it be and why?"

Always an active leader in the legal profession, Clarke was elected as the 1976-77 president of the State Bar of Georgia, thus taking the reins of the organization he had helped nurture. In 1979, one of his fellow state representatives from the early 1960s—George Busbee of Albany, who had been elected governor—appointed Clarke to the Supreme Court of Georgia, where he served for 15 years.

As chief justice in 1993, Clarke spoke out about what he considered the woeful state of Georgia's indigent defense system at the time. As quoted by the *Atlanta Journal-Constitution*, Clarke stated, "We set our sights on the embarrassing target of mediocrity. I guess that means about halfway. And that raises a question. Are we willing to put up with halfway justice? To my way of thinking, one-half justice must mean one-half injustice, and one-half injustice is no justice at all."

With those words, Clarke is credited with having brought attention to the issue and paved the way for passage of Georgia's Indigent Defense Act several years later. In a *Georgia Bar Journal* article during his Bar presidency, Clarke described the legislative victory for unification of the Georgia Bar as a "euphoric moment. In the 13 years which have now passed, I am deeply grateful that the fears of those who opposed the organization of the Bar proved unjustified. I know of no lawyer who has been unjustly treated because of the existence of the State Bar."



SARAH B. "SALLY" AKINS

President

My superpower would be teleportation. To be able to travel instantly would be a dream come true! Especially this year when I've traveled between Savannah and Atlanta so many times. I've enjoyed listening to lots of books on Audible, but being immediately at the location would be a blessing.



HON. J. ANTONIO "TONY" DELCAMPO

President-Elect

If I could choose a superpower, I would choose teleportation. That way, I would always be on time, never have to wait in lines, deal with traffic or get on a plane.



IVY N. CADLE

Treasurer

The superpower I would choose is the ability to transcend time and space so I could learn from anyone at any time and live my life to the best of my ability.



CHRISTOPHER P. TWYMAN

Secretary

I would choose to be able to read minds. Having that superpower would make life much easier.



ELIZABETH L. FITE

Immediate Past President

My superpower would be omnilingualism. Imagine the possibilities if you could speak and understand every language. A close second would be the ability to print money. No explanation needed.



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Writing about professionalism for the *Georgia Bar Journal* in 1989, while serving as presiding justice of the Supreme Court, he titled his article "Professionalism: Repaying the Debt" and explained, "The debt of professionalism has an enormous principal, carries an astronomical rate of interest and its term extends for a lifetime. The debtor is each lawyer, but the creditors are at least five in number. Each lawyer owes a debt to the client, the law, the system of justice, fellow lawyers and the public."

Robert Benham

In December 1989, Robert Benham was appointed to the Supreme Court of Georgia by Gov. Joe Frank Harris. Benham was the first African American on that

court, having also been the first African American to establish a law practice in his hometown of Cartersville and the first African American to sit on the Court of Appeals of Georgia.

The great-grandson of slaves, Benham was born in Cartersville in 1946, according to his New Georgia Encyclopedia biography written by Sarah Grace Davis of Athens. In 1963, he graduated from Summer Hill High School and attended Tuskegee University in Alabama, where he earned a degree in political science. He also attended Harvard University and in 1970 became the second African American student to graduate from the University of Georgia School of Law.

Following his graduation from law school, Benham became a captain in the Army Reserve. He was admitted to the Bar

in 1970 and practiced law in Bartow County. In 1984, he was appointed to the Court of Appeals of Georgia and in 1986 achieved another first by becoming the first African American since Reconstruction to win a statewide election to the Court of Appeals of Georgia. He continued to serve on the Court of Appeals for five years.

In 1989, Gov. Harris, also from Cartersville, appointed Benham to the highest court in the state. Benham won election to the Supreme Court the following year and was reelected in 1996, 2002 and 2008.

Benham has served the legal profession and justice system in numerous leadership positions, including chair of the Chief Justice's Commission on Professionalism, chair of the Judicial Council, chair of the Governor's Commission on Drug Awareness and Prevention, president of the Society for Alternative Dispute Resolution and vice president of the Georgia Conference of Black Lawyers.

In 1998, the Chief Justice's Commission on Professionalism honored Benham with the establishment of the Justice Robert Benham Awards for Community Service, which the Commission has presented annually to recognize lawyers and judges in Georgia who have made significant contributions to their communities and demonstrate the positive contributions of members of the State Bar of Georgia beyond their legal or official work.

In his 1999 State of the Judiciary address to the Georgia General Assembly,

As this Bar year comes to an end, I want to thank each of you, my fellow Georgia lawyers, for your kindness, your support, your renewed commitment to professionalism and all you do to honor the legacy we have inherited.

then-Chief Justice Benham stressed the need to fight for freedom and described Georgia's judges as warriors who "put on the armor of law ... to slay the dragon of injustice so that freedom is preserved for all our citizens."

While lecturing for Emory University' Distinguished Speakers Series in 2003, Benham encouraged both law students and professors to be "freedom fighters," to be ethical and moral, and to "fight for what's right," expressing his firm belief in public service as the way to safeguard civil liberties.

P. Harris Hines

It is likely that no Georgia lawyer or judge has personified the ideal of professionalism more conspicuously than the late Chief Justice P. Harris Hines.

A native of Atlanta, he was an Eagle Scout and a graduate of Henry W. Grady High School. He received his undergraduate education from Emory University and earned his law degree from Emory University School of Law. He was admitted to the State Bar of Georgia in 1968.

He joined the law firm of Edwards, Bentley, Awtrey & Parker in Marietta, where he later became a partner. In 1974, he was appointed by then-Gov. Jimmy Carter to serve as a judge for the State Court of Cobb County and was later elected as a Superior Court judge for the Cobb Judicial Circuit. In 1995, he was appointed by then-Gov. Zell Miller to the Supreme Court of Georgia and was elect-

ed to additional six-year terms in 1996, 2002, 2008 and 2014. He served as chief justice from January 2017 until his retirement in August 2018.

Hines further served the legal profession and justice system as president of the Old War Horse Lawyers Club, emeritus master of the Joseph Henry Lumpkin Inn of Court at the University of Georgia School of Law, a member of the Board of Visitors at the University of Georgia School of Law, a fellow of the Lawyers Foundation of Georgia, chair of the Judicial Council of Georgia and chair of the Supreme Court's Committee on Justice for Children.

He served the community in Cobb County as a trustee of the Kennesaw State University Foundation, past distinguished president of the Kiwanis Club of Marietta, past distinguished lieutenant governor of the Georgia District of Kiwanis International, member of the inaugural Board of Directors of the Cobb-Marietta Girls Club, past president of the Cobb County YMCA and elder in the First Presbyterian Church of Marietta. Among numerous awards and accolades for his service, Chief Justice Hines was recognized as Cobb County's Most Admired Community Leader in 1993 and Cobb County Citizen of the Year in 2016.

Tragically, Chief Justice Hines lost his life in an automobile accident on Nov. 4, 2018, less than three months after his retirement from the Supreme Court. Then-State Bar President and Court of Appeals Judge Kenneth B. Hodges III said at the

time, "During his 50 years of service to the community, the legal profession and the justice system of our state, Justice Hines personified the Bar's principles of duty and service to the public to improve the administration of justice and to advance the science of law. Moreover, throughout his 23 years on the Supreme Court, including his tenure as chief justice, he embraced and worked to strengthen the important relationship between the Supreme Court and the State Bar. Georgia's legal community had no better friend than Justice Harris Hines, who will be missed by all who knew him."

Indeed, who we are *is* who we were. "It's that one quote that gets me," author Kelly Sedinger writes. "We don't escape history. Nothing happens without precedent, without its first principles being established years, decades, even centuries past. The road we walk is the one our ancestors paved, for good or ill." Thankfully, the road our predecessors in Georgia's legal profession paved is one of the good ones.

As I recalled in my first *Journal* article last August, urging a renewed commitment to civility and professionalism, Justice Hines often said and, more importantly, always embodied these two simple words: "Be kind."

As this Bar year comes to an end, I want to thank each of you, my fellow Georgia lawyers, for your kindness, your support, your renewed commitment to professionalism and all you do to honor the legacy we have inherited. ●

If You Put Gravy on It



RONALD EDWARD
"RON" DANIELS

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If you put gravy on it, he will eat it.¹

It's the last Friday of the month and I'm on my way home via a (soon-to-be)² four lane road staring at an overcast sky. A bright light begins emanating from my dash warning me my fuel level is low. Rapidly the onboard computer begins cutting the projected range down to zero. With a toddler safely confined in the backseat, I realize I am in trouble. I won't make it home. I coast into a station well outside of town where you can only pay inside—cash is preferred—and put \$25 dollars into the tank. It's one of those pumps where you have to aggressively cut the pump off yourself to land right on the amount you want to spend. With skill I haven't exercised in years, I pump the exact amount I paid for and made it home.

This is an allegory. Or one of those literary devices.³ At some point in time we all run out of gas—physically. But we don't run on gas. We do run on energy which requires us to consume food. While food may replenish the energy our body needs to function, we can still be emotionally and mentally exhausted.

Right about now you are wondering, "What does this have to do with gravy?" A lot. Gravy makes me happy. Specifically, my Granny's onion gravy she would make most Sundays with a roast beef she began cooking the night before. I regret never getting her to teach me how to make it. It's the standard by

which I judge all other gravy. Gravy both gives me energy and provides me with a level of happiness. Gravy, obviously, isn't a main course. It's just something extra which makes what is already hopefully good tasting even better.

As I reflected back on the last year and the 11 years since I graduated from law school, I kept coming back to food. You are likely thinking, "Surely he has done more than eat, talk about food and write about food." You are correct. But many of my fondest memories are from breaking bread with colleagues, adversaries, judges and clients. From spending hours cooking BBQ for Leadership Academy recently, cooking supper for the YLD officers at my house, to learning important lessons from a mentor over a cup of coffee, food has been a common theme.

Our profession is not an easy one. We take on the stresses of our clients and try to obtain favorable outcomes for them. While it can take a toll on us, the profession is also very rewarding. Through representation of our clients, we get to make a demonstrable impact on the world many can never imagine. Much like the profession, Bar service is not easy. It takes time away from your family, your friends, your other social obligations and your practice; although it is also very rewarding.

But I am tired. Too often I think we forget it's OK to admit we are human—to admit we can't do everything, we need help and we need rest. Even being aware

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, "If you could choose a superpower, what would it be and why?"

of this, I still don't want to admit I am tired. But I *am* tired.

Like my car, I am running on fumes. Like my car, I need to refuel. What does refueling look like? Maybe it's a deep discussion over the meaning of a fortune cookie with a mentor or a quick chat while the Keurig brews another cup. Perhaps, it's a string of text messages through the wee hours of the night while you cross your fingers and hope bark sets on a brisket. Maybe it involves gravy.

I don't know the answer. What I do know (and hope to impart) are these things I've learned:

- Be kind to one another. As I was reviewing materials for the Signature CLE on Professionalism in February, I found a quote from Will Ed Smith (also of Eastman) saying we should all live by the Golden Rule. It was true in 1989, it's still true today.
- Don't be afraid to ask for help and know when to let others lead.
- Expect change of plans and be flexible. Or as we made our mantra this year, "workable solutions."
- Don't be ashamed of success or failures. We all have them. Learn from them.
- Everyone is important. Everyone matters. Don't be afraid to tell others they are important and their input matters.



RONALD EDWARD "RON" DANIELS | YLD President

Superpower? Who wants a superpower? Superpowers are overrated. You want to see a real hero? Abe Simpson. No superpower, but he wore an onion on his belt which was the style at the time.



BRITTANIE D. BROWNING | YLD President-Elect

The superpower I would choose is teleportation because I would love to be able to go around the world without the travel time.



KENNETH MITCHELL JR. | YLD Treasurer

Based on the Atlanta traffic, I wish I had the ability to fly. I could avoid traffic and delays at any time.



VERONICA ROGUSKY COX | YLD Secretary

If I could have any superpower, I would choose the power to teleport. I could avoid the Atlanta traffic, save on my commute to work, and attend all the YLD and State Bar events across the state with ease.



ELISSA B. HAYNES | YLD Immediate Past President

Given how crazy things have been with work lately, I wish I had the power to be in multiple places at once and to never feel tired, stressed or anxious.



JENA G. EMORY | YLD Newsletter Co-Editor

If I could choose a superpower, I would want to be forgiving. Too often in life, a lack of forgiveness stops people from moving forward, breaks relationships and keeps people from enjoying life.



VIRGINIA C. JOSEY | YLD Newsletter Co-Editor

I would choose flying as my superpower. Great views, no traffic.

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- Everyone needs space sometimes. Everyone needs to rest sometime. And if you think this doesn't apply to you, it applies *especially* to you.

In this moment of retrospection, I realize Jeff was right; if you put gravy on it, there is a higher probability I will eat food. I've greatly enjoyed serving as the 76th president of the Young Lawyers Division and have an immense sense of respect for the trust placed in me by our members. Most days I really enjoy being a lawyer. But "Bar work" truly has been the "gravy" making the profession even better for me.⁴ ●

Endnotes

1. This is a quote from one of my former "bosses," Jeff Lasseter. We were getting dinner in Perry, Georgia, and Jeff told a waitress as I was asking about how the au jus was made. He said, "If you put gravy on it, he will eat it."
2. Currently a two-lane road under varying level of construction.
3. In high school my drama teacher, who was also an English teacher, once noted I used "commas as decoration." My placement of commas has substantially improved since 2004, but my interior design skills have not improved.
4. I would be remiss if I did not take the opportunity to give a shout out to everyone who has made this Bar year successful. I'll forget someone, but I promise it isn't intentional.

I am greatly appreciative of the work of our YLD officers who have continuously supported me, even when I subject them to off-the-wall ideas. I am blessed to have served with them and grown to know them over the last year.

A great deal of thanks is owed to my Board of Directors and committee chairs who took on the arduous task of increasing involvement across the YLD.

The members of the State Bar's Executive Committee have been fantastic to work with. I am especially thankful for the guidance and support provided by President Sally Akins, President-Elect Tony DelCampo, Treasurer Ivy Cadle and Secretary Chris Twyman.

I've had a lot of great mentors who got me this far in the profession: Jeff Lasseter, Brian Jarrard, John Harrington, Clif Woody, Judge Lamar Sizemore, Professor Tony Baldwin, Professor Patrick Longan, Ivy Cadle, David McCain, Jen Jordan, Bill NeSmith and Stuart Walker.

I want to thank Judge Ed Lukemire, Judge Katie Lumsden, Judge Bo Adams and Senior Judge George Nunn for taking a chance on a young lawyer and entrusting me with representing indigent defendants in the Houston Judicial Circuit for three years.

Presiding Justice Nels Peterson and Presiding Judge Stephen Dillard have both taught me, to varying degrees, to embrace footnotes. Or as I like to now say, "I ain't afraid of no footnote."

I also want to thank Justice Sarah Warren, Justice Verda Colvin and Justice John Ellington of the Supreme Court of Georgia and Chief Judge Brian Rickman of the Court of Appeals of Georgia for their support the last few years.

I am greatly appreciative of my experiences appearing before Chief Judge Marc Treadwell, Judge Tripp Self and Magistrate Judge Charles Weigle of the Middle District of Georgia. They have made me a better lawyer and a better advocate for my clients while affording me (and other young lawyers) the opportunity to appear in significant matters in District Court.

I cannot express the immense gratitude I have for Chief Judge Sarah F. Wall, Judge C. Michael Johnson and Judge Howard C. Kaufold Jr. of the Oconee Judicial Circuit who I have the pleasure of appearing in front of regularly. Not only have they been accommodating in allowing me to schedule around my Bar work, they have all consistently provided sagely advice. Juvenile Court Judge Stephanie Burton has also provided me with encouragement and advice for which I am forever grateful.

I want to thank Rev. Alvin Lewis, Brother Ricky Gilmore, Rev. Stephen Grantham and Dr. Bill Woodson, all of whom have greatly impacted how I have approached this Bar year whether they realized it or not.

To Attorney General Chris Carr, Deputy Attorneys General Shalen Nelson, Beth Burton, Paula Smith, Mark

Cicero and Jason Naunas, I am always thankful for you entrusting me with important work.

Past YLD presidents John Sammon, Damon Elmore, Darrell Sutton, Sharri Edenfield, Jennifer Mock, Nicole Leet, Hon. Rizza O'Connor and Will Davis have been instrumental in the success of this year.

To my dear friends who seem to share my trait of never saying no: Ryan English, Carlos Vilela, Kindall Browning, LaToya Williams, Trey Taylor, Brandi Holland and MaryBeth Handte, I appreciate you all more than I can express in a footnote. Please keep answering my texts.

Special thanks go to some of my "non-lawyer" friends: Mitchell Coffee, J. Putnam, Conner Bearden, Nicole and Justin Barnett, Bradley Mazza, Jairus Whitley, Austin Young, Zack Meyers, Katie Ambrose and the World's Greatest News Reporter Chace Ambrose.

The entire staff of the State Bar of Georgia deserve a medal for some of my antics. I want to especially recognize Danielle Buteau, Jennifer Mason, Stephanie Wilson, Mary McAfee, Rich Harris and Gakii Kassamba. Of special note is Jamie Goss who has gone over and beyond her job duties to make "The Good Lawyer" podcast a reality.

I have forged a special bond with my YLD Director Jessica Oglesby. Whether she intended to or not, she has become part of my family.

Speaking of family, my sincere appreciation goes to the Noles family who adopted me somewhere along the way in the last three years and who have supported me throughout the last year. I want to especially thank my paralegal Rebecca Noles Wyatt. We've laughed, we've cried, we've yelled, but we made it. This year would not have been possible without your sacrifices.

My Grandmother Janette Lann who still tolerates me after nearly 37 years of raising me and now my headstrong toddler. Thank you for always supporting me.

Finally, none of my Bar service or success would be possible without the unwavering support of Maggie and Joanna Daniels. Thank y'all for sharing me with the YLD the last year.

Lawyers as Leaders



PHOTO BY EVAN BARTLESON PHOTOGRAPHY

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The end of the legislative session, participation in a leadership program and joining a course offered at Emory University School of Law earlier this year all have me thinking about the concept of lawyers as leaders. Since, I have learned that the topic has been written about at length and several courses exist with an emphasis on the matter. Of course, it is more important to me to know what our members think. So, I asked a few.

First, allow me to take a moment and share an update on our Bar operations. We continue to work every day with a unique focus on member value, protecting the public and improving the quality of legal services. Around October, our full Annual Report will be ready with specific details and data related to our work and the way we helped during the 2022-23 Bar year. So many talented individuals do the work at the Bar and our results are the proof. It is true, we will see a couple leave us before the next edition of this *Journal*, including Rita Payne (Fee Arbitration) and Brinda Lovvorn (Membership), but we know they leave the Bar in a better place and the people identified to take over in those roles will build on their work.

As of the date of publication, we will have joined many of you in Savannah for our Annual Meeting. It is always a wonderful time where we recognize those that have gone above and beyond in their

service to the Bar and the profession. We also see legal education events as a core part of the meeting, and this year Georgia evidence, wellness, the U.S. Supreme Court and intellectual property rights were all topics for seminars planned for our attendees.

Our Young Lawyers Division, sections, Georgia law schools and other groups and boards, also plan meetings and events that will be important to their future work and the profession overall. We are glad that they are able to gather, celebrate and honor with us. This meeting truly does it all, especially when we recognize our outgoing leaders like President Sarah B. “Sally” Akins, and as we watch new leadership, like Hon. J. Antonio “Tony” DelCampo, be sworn in. We are beyond grateful to Akins for her service to the Bar and we look forward to a new year with DelCampo and all of the other volunteer leaders. And look at that; a perfect segue and spin back to the theme of lawyers as leaders.

I wondered why many believe lawyers make good leaders. After all, they have significant presence in the business, government and nonprofit sectors, in addition to the work we do with large and small firms. In my small ecosystem alone, I also know lawyers that are leaders in the ministry, the arts, financial planning, technology and business consulting. Our presence, our ability is endless. Here’s what I heard from my “focus group.”

I wondered in what ways a lawyer's training and experience prepares us to be effective leaders and how/if we differ from leaders from other professions. Bentina Terry, a member of our Bar and the senior vice president of Customer Strategy and Solutions for Georgia Power shared her thoughts. With this question, she shared, "effective leaders are intellectually curious—we ask questions to get more useful information to make better decisions. As lawyers, we are trained to not just settle for the status quo, but to dig deeper. That is important whether you are trying to understand the issues facing your business or what your employees need to be successful." That makes sense.

When thinking about some of the challenges lawyers face shifting into leadership roles, she has a solid set of reminders for those instances too, sharing "lawyers who become leaders need to remember that our employees aren't on the witness stand in need of interrogation. To prepare for being a good leader, lawyers should recognize it's a discipline and spend the time and energy thinking about what makes a good leader and taking advantage of resources that can help shape their leadership style."

Ira Bedzow is a visiting scholar at Emory University School of Law teaching Leadership for Lawyers with Dean Mary Anne Bobinski. He thinks about a lawyer's training this way, sharing, "lawyers are continually challenged to think about the societal implications of laws and policies. Legal training also gives lawyers the ability to make connections between past experiences and future possibilities. This aspect of law—needing to see the 'big picture' as well as the needs of their cli-

ents—is what differentiates legal training from other professional training."

Brittanie Browning was recently sworn in as president of the Young Lawyers Division at our Annual Meeting. I thought it was fitting to ask her thoughts on the subject, and I was especially curious about strengths that lawyers bring to leadership positions, as well as any challenges we may face. As far as strengths, she believes the training received in law school provides us with an advantage sharing, we learn "to distill large amounts of information and critically apply law to a set of facts. Both skills are beneficial to effective leadership."

As for challenges, she connected it to the work with the Bar. "One challenge is that [Bar] leadership is a voluntary role. Everyone has other commitments, so it is vital to use time effectively and accept support and help from others. Delegation is key; it helps you avoid burnout while recognizing that leadership is a commitment."

Bedzow also had some thoughts about those challenges. In particular, he shared that "one of the biggest challenges that lawyers face when transitioning into leadership roles is that they must shift their perspective from specialist to generalist. No longer can they focus solely, or even primarily, on the legal implications of a decision. They need to make sure that they consider the business and social implications for various stakeholders. In truth, even when serving in a legal capacity, this is a good skill to have, and the best way to prepare for transitioning into a leadership role is to build the skill of looking through different frames right at the beginning of one's career." Learning this early can bring a heavy sense of satisfaction in your professional career.

There was so much more that these three offered, but if I had to narrow their responses down to a "least you should know" from each, it would be this. For Terry, a lawyer serving in a leadership position with a large company, she reminds "if you are going to be a leader, lead. This means you have to focus on doing it right with the same intensity you focus on practicing."

For Bedzow, the lawyer teaching new lawyers, his advice is this for *any* current or future leader: "Continually reflect on how you engage others and how you could further develop ... in any and every way." Finally, for Browning as she looks forward to her work on behalf of the Young Lawyers Division, she thinks, "there is power in the 'we' versus 'me.' A leadership win to me will be helping connect members of YLD with one another and the State Bar. The YLD offers amazing programming and support for its membership while being the service arm of the Bar. We need our YLD members to achieve that goal of service."

I thank Bentina Terry, Ira Bedzow and Brittanie Browning for their support of this article, for the many ways they work as lawyer-leaders and for the way they train lawyers to be leaders. Be sure to check out the full conversation by visiting www.gabar.org/lawyerleaders or www.linkedin.com/in/damoneelmore.

I want to also thank you for your continued support and involvement in our Bar. It makes a difference. I am grateful for the opportunity to serve as executive director and to work alongside so many dedicated professionals committed to improving the quality of legal services. If we can help you and your work, never hesitate to contact us. DEE ●



Phantom Damages and the Misapplication of the Collateral Source Rule in Georgia

The two core principles of Georgia tort damages law are (1) compensatory damages should be awarded in an amount that makes the plaintiff whole, no more and no less, and (2) a defendant can be liable only for those damages it caused. Phantom damages violate both of these core principles.

BY JACOB E. DALY

The statements, views and opinions expressed within this article are those of the author and do not necessarily reflect those of the State Bar of Georgia, its officers, Board of Governors, Sections, Committees, Editorial Board or staff.

The costs of America's tort system have exploded in recent years.¹ Nationally, those costs effectively imposed a per-household tort tax of \$3,621 in 2020.² Georgia has the seventh highest annual per-household tort tax in the country at \$4,157.³ This is one reason why Georgia ranked 41st

in the most recent Lawsuit Climate Survey conducted by the U.S. Chamber of Commerce Institute for Legal Reform.⁴ A significant contributor to the high costs of Georgia's tort system is phantom damages, which artificially inflate the amount of recoverable medical expenses in tort lawsuits.

Phantom damages are the difference between a hospital's list prices for the services and procedures it offers, often referred to as chargemaster rates, and the amount it accepts as full payment for those services and procedures. A typical hospital bill itemizes

the list price for every service or procedure performed, followed by the amount accepted in full satisfaction of the bill based on the lower prices negotiated by the patient's insurance company or the lower prices allowed by Medicare or Medicaid. The difference between these two amounts is often said to be written off. However, this descriptor is inaccurate.

Phantom damages are not a legitimate item of recovery in a tort case because they do not reflect the true costs of the plaintiff's treatment. The amount by which the prices were discounted was never billed to the plaintiff, and the plaintiff was never responsible for paying that amount. Instead, the plaintiff was billed and responsible for paying only the reduced amount. Nevertheless, Georgia decisional law allows the plaintiff to recover past medical expenses based on the chargemaster rates. This results in the plaintiff receiving a windfall that violates fundamental principles of Georgia damages law.

Georgia's appellate courts have allowed this inequity through their misapplication of the collateral source rule. If they do not overrule their precedent, the General Assembly should enact legislation to prohibit the recovery of phantom damages, as Florida's legislature did earlier this year.⁵

Hospital Pricing of Medical Services and Procedures

Before addressing the problem and how to fix it, it is important to understand how hospitals price their medical services and procedures. The District of Columbia Court of Appeals has explained this incredibly complicated issue as follows:

Three different groups pay hospitals for care: patients, insurers, and the federal and state governments (for Medicare and Medicaid). The first group, self-pay patients, pay directly for their care because they have no insurance, receive elective or out-of-network care, or believe that paying directly is cheaper than relying on insurance. Self-pay patients account for fewer than 10% of all patients. Hospitals generally

charge these patients rates specified in what is called "chargemasters," which list all items and services provided by each hospital with their gross charges. Many hospitals offer discounts to self-pay patients based on standardized cash discounts or individual financial need (or both). As a result, chargemaster rates are virtually never what hospitals ultimately receive as payment. Although these gross charges bear little relationship to market rates and are usually highly inflated, they exist for historical and legal reasons. Specifically, Medicare requires hospitals' charges for Medicare and non-Medicare patients to be the same for a specific service, and hospitals comply with that requirement by listing chargemaster rates as if they were applicable to everyone, even though hospitals receive different payments depending on the payer's identity.

Over 90% of patients rely on third-party payers, i.e., insurers, Medicaid and Medicare. Medicaid and Medicare pay hospitals based on rates set by the states and the Centers for Medicare & Medicaid Services. Those rates are public. Insurance companies have contractual agreements with hospitals to pay negotiated rates for their services. Although insurers and hospitals often treat chargemaster rates as the starting point for negotiations, negotiated rates are a product of a wide range of methodologies ...

With so many different methodologies for setting rates, determining what negotiated rate applies to a particular patient for a particular item or service is exceedingly complex. Adding to the complexity, negotiated rates are not necessarily what insured patients would pay, as their out-of-pocket costs depend on their health insurance plan, which has its own rules on copays, deductibles and coverage limits.⁶

The problem with chargemaster rates is that they do not represent the reason-

able value of each listed service or procedure.⁷ In fact, they have been characterized as "uniquely irrational" because they bear little, if any, relation to the hospital's actual costs of providing the services and procedures or to the quality of the services and procedures, they vary wildly from hospital to hospital (even in the same geographic area), and they vary within a single hospital for the same service or procedure depending on who the payer is.⁸ They are usually at least two times, and sometimes up to 10 times, what the hospital would accept as full payment from private insurers, Medicare and Medicaid for the same service or procedure.⁹ Ironically, chargemaster rates are portrayed as the usual and customary rates. This implies that most patients are charged these rates on their bill, but only 1% to 3% of patients actually pay these rates.¹⁰

If all, or even most, patients paid chargemaster rates, hospitals would be enormously profitable. But evidence in a recent Georgia case showed that only 1.16% of the patients at a Columbus hospital paid its chargemaster rates and that, on average, it collected only about 33% of its chargemaster rates during the period of time relevant to the case.¹¹ There are numerous reasons why chargemaster rates are set so high, one of which is to allow for heavy discounting during contract negotiations with insurers.¹² Because almost no patients pay these rates, it strains credulity to characterize them as representing a reasonable value for medical services and procedures.

Even hospital administrators have acknowledged the irrationality of chargemaster rates. William McGowan, the former CFO and interim CEO of the UC Davis Health System, explained hospital pricing as follows: "There is no method to this madness. As we went through the years, we had these cockamamie formulas. We multiplied our costs to set our charges."¹³ One respondent in a national survey of hospital pricing conducted in 2004 and 2005 said, "With over 45,000 items in the chargemaster, the vast majority of items have no relation to anything, and certainly not to cost."¹⁴ Another respondent in the same survey said, "There is no rationality to the charge-

master and costs still do not have much relevance.¹⁵ In 2013, Carol Steinberg, a vice president at the American Hospital Association from 2002 until 2016, said, “The chargemaster can be confusing because it’s highly variable and generally not what a consumer would pay. Even an uninsured person isn’t always paying the chargemaster rate.”¹⁶

The Problem With Allowing Phantom Damages

Allowing past medical expenses to be recovered based on chargemaster rates violates fundamental principles of Georgia tort damages law. Yet since at least 1997, the appellate courts have allowed plaintiffs to recover the full price of their medical treatment, undiminished by any amounts written off, or any reductions made pursuant to a contract between the hospital and the plaintiff’s insurer, or the rates established by Medicare or Medicaid.¹⁷ Professor Paul Milich, a leading expert on Georgia evidence law, has questioned the logic of this rule:

It is odd to exclude evidence that an initial bill for medical expenses did not reflect the amount actually required to satisfy the patient’s obligation. It is common in the medical industry for providers to negotiate group or individual payment plans that are less than the “posted” price for the service or good. This final

payment amount is the true expense incurred by the patient.¹⁸

The purpose of compensatory damages is, as the term suggests, compensation.¹⁹ “The universal and cardinal principle [underlying compensatory damages] is that the person injured shall receive a compensation commensurate with his loss or injury, and no more.”²⁰ In other words, an award of compensatory damages is intended to place the plaintiff in the same position he or she would have been in had there been no injury—to make the plaintiff whole.²¹ Compensatory damages are not awarded to enrich the plaintiff or to punish the defendant, so they must be limited to compensation for the injury actually sustained.²²

The corollary to this principle is that defendants may be liable only for damages proximately caused by their negligence.²³ Ultimately, the touchstone for an award of past medical expenses is proof that the treatment was reasonably necessary, and the amount was reasonable.²⁴ Phantom damages represent money the plaintiff never paid, and was never expected to pay, so allowing recovery of these damages does not serve any compensatory purpose.

A plaintiff is fully compensated and made whole by an award that excludes phantom damages because he or she was never charged or legally obligated to pay the chargemaster-based price for the treatment received. In fact, federal law prohibits hospitals from billing Medicare and Medicaid patients more than those programs agreed to pay.²⁵ Basic principles of contract law likely would prohibit hospitals from billing privately insured patients their chargemaster rates, at least for in-network treatment, and from balance-billing those patients for the difference between the chargemaster-based price and the contract price.

Instead of fulfilling the purpose of compensatory damages, phantom damages put plaintiffs in a better position than they were in before the injury occurred, economically speaking, by causing unfairly inflated judgments and settlements. They are a species of special damages because they are for past medical expenses. As such, they

Allowing past medical expenses to be recovered based on chargemaster rates violates fundamental principles of Georgia tort damages law.

must be proved with specificity.²⁶ On the other hand, noneconomic (i.e., general) damages, such as pain and suffering, may be recovered without proof of a specific amount.²⁷ Awards of noneconomic damages are virtually unlimited because their measure is the enlightened conscience of an impartial jury.²⁸ Although there is no formula a jury must use in determining noneconomic damages, awards of noneconomic damages are often multiples of the amount of special damages.²⁹ Because the amount of special damages often provides a baseline for determining the amount of noneconomic damages, plaintiffs have an incentive to maximize their special damages in order to inflate the total award of compensatory damages.

Further, in any lawsuit involving a claim for attorney fees under O.C.G.A. § 13-6-11, an award of compensatory damages that includes phantom damages could cause the jury to inflate the attorney fees awarded because the plaintiff is likely to request attorney fees based on the contingency-fee percentage in the retainer agreement. Allowing phantom damages may also result in inflated awards of punitive damages because greater compensatory damages often lead to greater punitive damages. Thus, in addition to being inconsistent with fundamental principles of tort damages law, artificially inflating special damages by allowing evidence of chagemaster rates has an inflationary effect on other types of damages.

To illustrate, Table 1 shows the difference in an overall jury verdict when phantom damages are allowed, compared to when they are not allowed. This hypothetical case involves an automobile accident where (1) the defendant was intoxicated; (2) the chagemaster-based price of the plaintiff's medical treatment was \$300,000; (3) the plaintiff's private insurer had a contract with the hospital under which 33% of the chagemaster rates would be paid; (4) the jury determined damages for pain and suffering by multiplying the special damages by three; (5) the plaintiff's contingency-fee agreement entitled the attorney to 40% of the recovery; and (6) the jury awarded punitive damages based on a ratio of 3-to-1 with compensatory damages.³⁰

Table 1

Type of Damages	Amount When Phantom Damages Are Allowed	Amount When Phantom Damages Are Not Allowed
Special Damages	\$300,000	\$100,000
Pain and Suffering	\$900,000	\$300,000
Subtotal	\$1,200,000	\$400,000
Attorney Fees	\$480,000	\$160,000
Total Compensatory Damages	\$1,680,000	\$560,000
Punitive Damages	\$5,040,000	\$1,680,000
TOTAL	\$6,720,000	\$2,240,000

In this hypothetical case, the consequence of allowing phantom damages is a verdict three times greater compared to when they are not allowed. Although this example is hypothetical, the problem of verdict inflation is real and is contributing to the high costs of Georgia's tort system.³¹

Liability insurers do not simply absorb their payments of these increased damages. They pass their losses from these payments on to Georgia businesses, doctors, drivers and others in the form of increased insurance premiums. In turn, higher insurance premiums are passed on to Georgia consumers in the form of increased costs for goods and services.

Misapplication of the Collateral Source Rule in Georgia

Phantom damages are allowed in Georgia because the appellate courts have misinterpreted the collateral source rule as prohibiting evidence of the amount accepted by a hospital as full payment for medical bills. The rule provides that "the receipt of benefits or mitigation of loss from sources other than the defendant will not operate to diminish the plaintiff's recovery of damages."³² It applies to payments made to or on behalf of a plaintiff by insurance companies, beneficent bosses, helpful relatives and others.³³ The rationale for this rule is that "a tortfeasor is not allowed to benefit by its wrongful conduct or to mitigate its liability by collateral sources provided by others."³⁴

The question is whether the discounted price for a plaintiff's medical treatment should be a benefit to which the collateral source rule applies. If so, the collateral source rule allows the plaintiff to recover past medical expenses based on the hospital's chagemaster rates, while simultaneously prohibiting the jury from hearing evidence of the discounted rates accepted as payment in full. If the discounted price is not a benefit to which the collateral source rule applies, only the actual medical expenses paid by or for the plaintiff—i.e., those that the plaintiff is legally obligated to pay or that the hospital is legally obligated to accept—may be recovered. Georgia's appellate courts have held the discounted price is a collateral source, that plaintiffs may recover past medical expenses based on chagemaster rates, and that juries may not hear evidence of the amount accepted by the hospital as full payment for the medical treatment at issue.³⁵

These decisions incorrectly applied the collateral source rule for several reasons. Hospitals and insurance companies do not negotiate contracts for pricing of medical services and procedures on a patient-by-patient basis. These contracts are made before the treatment at issue was rendered, and often before the plaintiff became covered by the insurer. Similarly, fee schedules are updated annually by the Centers for Medicare & Medicaid Services, and the states do the same for Medicaid fee schedules. Like contract negotiations between hospitals and insur-

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ers, establishing Medicare and Medicaid fee schedules is not done on a patient-by-patient basis.

This means that a hospital charges each patient who is insured by a particular insurance company, or covered by Medicare or Medicaid, the same price for a given service or procedure. In this sense, the prices charged to patients are not actually discounted from chargemaster rates. They were set before the patient received treatment. In fact, a hospital is not permitted to bill patients the chargemaster prices and then discount those prices. Although many hospitals give patients a bill showing the chargemaster prices for each service and procedure performed, followed by the amount discounted, this is deceptive because the hospitals were never allowed to bill the chargemaster rates. Likewise, the patients were never responsible for paying them, having never actually incurred liability for these costs.

This is a subtle but important point because there is no real discount, as nothing is actually discounted from the bill. The chargemaster rates never could have been charged to the patient, unless the patient was uninsured and not covered by Medicare or Medicaid. This means there was never anything to discount or write off. Conceptually, therefore, chargemaster rates are illusory. "It simply defies logic that an expense never incurred, paid, or expected to be paid by anyone on behalf of the plaintiff should constitute an element of actual monetary damages."³⁶

An understanding of hospital pricing and billing shows that the collateral source rule should not apply to the non-discounted amount shown on a hospital's bill. Because the plaintiff is not liable to the hospital for this amount, the non-discounted amount should not represent damages that the plaintiff can recover. Without the defendant being liable for this amount, it is not a collateral benefit conferred on the plaintiff as compensation. Increasingly, states are recognizing

this reality and are disallowing phantom damages. Some have done this judicially³⁷ and others legislatively.³⁸

One of the arguments in favor of phantom damages is that prohibiting them would create a windfall for the defendant. This argument makes sense only if the pricing fiction previously discussed is ignored. "To impose liability for medical expenses that a health care provider is not entitled to charge does not prevent a windfall to a tortfeasor; it creates one for a claimant"³⁹ Rather than being a windfall for the defendant, phantom damages penalize the defendant by making it liable for more than the plaintiff is responsible. Punishment is contrary to the purpose of compensatory damages.

Proponents of phantom damages assert it is not fair to limit recovery of medical expenses to the amount accepted by the hospital as full payment because similarly injured plaintiffs would receive different recoveries depending on whether they were insured. Even insured patients would receive different amounts, depending on whether they have private insurance or are covered by Medicare or Medicaid. However, the Court of Appeals of Georgia has essentially rejected this argument by holding that public policy does not prohibit hospitals from charging uninsured patients more than insured patients, and that it would be improper for the courts to determine appropriate prices for medical treatment by injecting themselves into commercial transactions between hospitals and insurers.⁴⁰

Further, this fairness argument is not persuasive because there is nothing unfair about a recovery for past medical expenses being dependent on whether the plaintiff is insured and, if so, whether the insurance is private or public. The cost of medical services and procedures depends on many factors, including the provider and the local market. It is to be expected that two plaintiffs with the same injury may be charged different prices for the same treatment. Although cost variations

may not always be logical, that does not make them unfair or unlawful.

Fairness has never dictated that all plaintiffs suffering the same injury must recover the same amount of medical expenses. Georgia's tort system bases compensation on a plaintiff's actual loss, not a comparison to the loss sustained by another person. Thus, if one plaintiff reasonably incurs \$25,000 in medical expenses and another plaintiff with the same injury reasonably incurs \$30,000, those are the "make-whole" amounts each should be allowed to recover. The former plaintiff's loss was only \$25,000, while the latter plaintiff's loss was \$30,000. No miscarriage of justice would occur if each were to be compensated accordingly. Rather, this would be consistent with principles of Georgia tort damages law.

Conclusion

The two core principles of Georgia tort damages law are (1) compensatory damages should be awarded in an amount that makes the plaintiff whole, no more and no less, and (2) a defendant can be liable only for those damages it caused. Phantom damages violate both of these core principles.

Proponents of phantom damages contend these principles should be ignored because admitting evidence of the amount a medical provider accepted as full payment would somehow violate the collateral source rule. This is wrong because phantom damages are not realized damages and are not a collateral source, as many courts across the country have recognized. Georgia's appellate courts should join those other courts by overruling their previous decisions allowing recovery of phantom damages. If they do not, the General Assembly should step in. Otherwise, artificially inflated judgments will continue unchecked, further burdening Georgia's businesses and consumers by inflating insurance premiums and the costs of goods and services. ●



Jacob E. Daly is senior counsel with Freeman Mathis & Gary, LLP, in Atlanta and practices in the firm's Tort and Catastrophic Loss, Appellate Advocacy and Government Law national practice sections. In addition to his practice, he is involved in tort reform efforts in his capacity as the chairperson of the Georgia Defense Lawyers Association's Legislation Committee. The opinions expressed in this article are his own and should not be attributed to his firm, his firm's clients or the Georgia Defense Lawyers Association.

Endnotes

1. DAVID MCKNIGHT & PAUL HINTON, U.S. CHAMBER OF COMMERCE INSTITUTE FOR LEGAL REFORM, TORT COSTS IN AMERICA: AN EMPIRICAL ANALYSIS OF COSTS AND COMPENSATION OF THE U.S. TORT SYSTEM 12 (2022).
2. *Id.* at 18.
3. *Id.* at 17, 19-20.
4. U.S. CHAMBER OF COMMERCE INSTITUTE FOR LEGAL REFORM, RANKING THE STATES: A SURVEY OF THE FAIRNESS AND REASONABLENESS OF STATE LIABILITY SYSTEMS 1-2 (2019).
5. Gov. Ron DeSantis signed a comprehensive tort reform bill that includes a new statute prohibiting the recovery of phantom damages. FLA. STAT. § 768.0427. Here in Georgia, Sen. Bill Cowsert (R-Athens) introduced a bill to ban phantom damages during each of the last two sessions of the General Assembly, but neither was enacted. *See* S.B. 190, 156th Gen. Assemb., Reg. Sess. (Ga. 2021); S.B. 155, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).
6. *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 530-31 (D.C. Cir. 2020) (citations, punctuation and internal quotation marks omitted). For a detailed summary, see George A. Nation III, *Hospital Chargemaster Insanity: Heeling the Healers*, 43 PEPP. L. REV. 745, 750-60 (2016) (hereinafter "*Chargemaster Insanity*").
7. George A. Nation III, *Determining the Fair and Reasonable Value of Medical Services: The Affordable Care Act, Government Insurers, Private Insurers and Uninsured Patients*, 65 BAYLOR L. REV. 425, 452-57 (2013).
8. Erin C. Fuse Brown, *Irrational Hospital Pricing*, 14 HOUS. J. HEALTH L. & POL'Y 11, 15-31 (2014).
9. Ge Bai & Gerard F. Anderson, *US Hospitals Are Still Using Chargemaster Markups to Maximize Revenues*, 35 HEALTH AFF. 1658, 1662 (2016); George A. Nation III, *Obscene Contracts: The Doctrine of Unconscionability and Hospital Billing of the Uninsured*, 94 KY. L.J. 101, 104 (2005) (hereinafter "*Obscene Contracts*"); *Chargemaster Insanity*, *supra* note 6, at 748.
10. *Obscene Contracts*, *supra* note 9, at 118; see also Victor E. Schwartz & Christopher E. Appel, *Perspectives on the Future of Tort Damages: The Law Should Reflect Reality*, 74 S.C. L. REV. 1, 8 (2022) ("No one reasonably expects to pay the 'sticker' price to buy a car; it is time to stop pretending a 'sticker' price matters for the provision of health care.")
11. *Med. Ctr., Inc. v. Bowden*, 348 Ga. App. 165, 168, 820 S.E.2d 289, 298 (2018) (physical precedent), *aff'd in part and rev'd in part on other grounds*, *Bowden v. Med. Ctr., Inc.*, 309 Ga. 188, 845 S.E.2d 555 (2020).
12. *Obscene Contracts*, *supra* note 9, at 134.
13. Uwe E. Reinhardt, *The Pricing of U.S. Hospital Services: Chaos Behind a Veil of Secrecy*, 25 HEALTH AFF. 57, 57 (2006).
14. ALLEN DOBSON ET AL., LEWIN GROUP, A STUDY OF HOSPITAL CHARGE SETTING PRACTICES 7 (2005).
15. *Id.*
16. Sarah Kliff & Dan Keating, *One Hospital Charges \$8,000—Another, \$38,000*, WASH. POST (May 8, 2013), <https://www.washingtonpost.com/news/wonk/wp/2013/05/08/one-hospital-charges-8000-another-38000/>.
17. *See, e.g., MCG Health, Inc. v. Kight*, 325 Ga. App. 349, 353-54, 750 S.E.2d 813, 817 (2013), *aff'd*, *Kight v. MCG Health, Inc.*, 296 Ga. 687, 769 S.E.2d 923 (2015); *Olariu v. Marrero*, 248 Ga. App. 824, 825-26, 549 S.E.2d 121, 123 (2001) (physical precedent); *Candler Hosp., Inc. v. Dent*, 228 Ga. App. 421, 422, 491 S.E.2d 868, 869 (1997).
18. PAUL S. MILICH, GEORGIA RULES OF EVIDENCE § 9:3, Westlaw (database updated October 2022).
19. O.C.G.A. § 51-12-4 ("Damages are given as compensation for injury ..."); ERIC JAMES HERTZ & MARK D. LINK, GEORGIA LAW OF DAMAGES § 2:1, Westlaw (database updated September 2022) ("Compensation is the underlying principle guiding the assessment of damages.")
20. *Donaldson v. Carmichael*, 102 Ga. 40, 42, 29 S.E. 135, 136 (1897).
21. *MCI Communications Servs., Inc. v. CMES, Inc.*, 291 Ga. 461, 462, 728 S.E.2d 649, 651 (2012).
22. *Id.* at 462-63, 728 S.E.2d at 651; see also *Smith v. Overby*, 30 Ga. 241, 247 (1860) (noting that "the measure of damages is, after all, the actual injury inflicted, neither more nor less").
23. *An v. Active Pest Control South, Inc.*, 313 Ga. App. 110, 113-14, 720 S.E.2d 222, 225 (2011); see also O.C.G.A. § 51-12-33 (providing that a defendant is responsible for paying only those damages apportioned to it by the jury).
24. *Allen v. Spiker*, 301 Ga. App. 893, 896, 689 S.E.2d 326, 329 (2009).
25. 42 C.F.R. § 447.15 (Medicaid); 42 C.F.R. § 489.21 (Medicare).
26. O.C.G.A. § 51-12-2(b).
27. O.C.G.A. § 51-12-2(a).
28. The Supreme Court of Georgia has held that a cap on noneconomic damages violates the right to a jury trial under the Georgia Constitution. *Atlanta Oculoplastic Surgery, P.C. v. Nestlehurst*, 286 Ga. 731, 738, 691 S.E.2d 218, 220 (2010). Presumably, however, there are constitutional limits to the amount of noneconomic damages that may be awarded.
29. *Denton v. Con-Way S. Express, Inc.*, 261 Ga. 41, 42, 402 S.E.2d 269, 270 (1991) ("Proof of special damages, such as the cost of medical care can provide a jury with an important measure for assessing the plaintiff's general damages."), *disapproved on other grounds*, *Grissom v. Gleason*, 262 Ga. 374, 418 S.E.2d 27 (1992).
30. Attorney fees awarded under O.C.G.A. § 13-6-11 are compensatory damages. *Junior v. Graham*, 313 Ga. 420, 425-26,

870 S.E.2d 378, 382-83 (2022). Thus, the award of punitive damages in this hypothetical case is based on a 3-to-1 ratio applied to all compensatory damages—i.e., special damages, pain and suffering, and attorney fees.

31. There are many examples of actual cases where the percentage of the hospital's chargemaster-based price that was accepted as full payment was much less than 33%. One particularly egregious example is a Delaware case in which the full price of the plaintiff's medical treatment was \$3,683,797.11, but the hospital accepted only \$262,550.17 as full payment. *Stayton v. Del. Health Corp.*, 117 A.3d 521 (Del. 2015). This means the hospital accepted a mere 7% of the chargemaster-based price as full payment.

32. *Polito v. Holland*, 258 Ga. 54, 55, 365 S.E.2d 273, 274 (1988) (internal quotation marks omitted). The Supreme Court of Georgia adopted the collateral source rule almost 140 years ago. *Id.* at 56, 365 S.E.2d at 274 (citing *W. & Atl. R.R. v. Meigs*, 74 Ga. 857 (1885)).
33. *Hoeflick v. Bradley*, 282 Ga. App. 123, 124, 637 S.E.2d 832, 833 (2006).
34. *Kelley v. Purcell*, 301 Ga. App. 88, 91, 686 S.E.2d 879, 882 (2009) (internal quotation marks omitted).
35. *See supra* note 17.
36. Summer H. Stevens, "Phantom" Damages: Collateral Source Benefits or Windfall for Plaintiffs?, FOR THE DEFENSE, NOV. 2006, AT 53.
37. *See, e.g.*, *Howell v. Hamilton Meats & Provisions, Inc.*, 257 P.3d 1130, 1143-45 (Cal. 2011); *Haygood v. De Escabedo*,

- 356 S.W.3d 390, 394-96 (Tex. 2011); *Butler v. Ind. Dep't of Ins.*, 904 N.E.2d 198, 203 (Ind. 2009); *Robinson v. Bates*, 857 N.E.2d 1195, 1200-01 (Ohio 2006); *Moorhead v. Crozer Chester Med. Ctr.*, 765 A.2d 786, 788-91 (Pa. 2001).
38. *See, e.g.*, N.C. R. EVID. 414; OKLA. STAT. TIT. 12, § 3009.1; TEX. CIV. PRAC. & REM. CODE § 41.0105.
39. *Haygood*, 356 S.W.3d at 395.
40. *Cox v. Athens Reg'l Med. Ctr., Inc.*, 279 Ga. App. 586, 588-89, 631 S.E.2d 792, 795 (2006); *see also Satterfield v. S. Reg'l Health Sys., Inc.*, 280 Ga. App. 584, 634 S.E.2d 530 (2006); *Morrell v. Wellstar Health Sys., Inc.*, 280 Ga. App. 1, 633 S.E.2d 68 (2006); *Pitts v. Phoebe Putney Mem. Hosp., Inc.*, 279 Ga. App. 637, 631 S.E.2d 830 (2006).



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Litigating With the Unschooled

There are those who think they can represent themselves in court. They are the infamous pro se litigants.

BY STANLEY M. LEFCO

If one breaks a bone, it's best to see a doctor rather than try to fix it on one's own. What they do in the movies when wounded, rarely, if ever, works well in real life. One who tries to repair a bone may have a self-imposed malpractice claim as a reward.

Yet, in the real world there are those, who think they can represent themselves in court. They are the infamous pro se litigants. They have read, "Representing Yourself in Five Easy Steps" (Chapter One: Using Capitalization Profusely) and "The Law in Pictures," and they think they know it all. We have represented clients, who have been sued by pro se litigants. Due to their general ineptness and bravado, these show-no-mercy litigants can cost a client lots of money and an attorney a fair amount of aggravation.

In our most recent adventure in representing a client, sued by such a misguided litigant, our journey began in Superior Court, bounced to federal court, and quickly returned to Superior Court.

We shall call our pro se litigant Gertrude. When her action took a deep south dive in the superior court, she filed a "notice of removal" to have the case tried in the U.S. District Court for the Northern District of Georgia. She boldly proclaimed the Superior Court lacked jurisdiction and

made the announcement in open court. It was a puzzling, unexplained claim.

It was our second appearance in court. Gertrude adamantly refused to be deposed. Phone calls, a letter and, of course, the notice of deposition were unavailing. Gertrude had no time for such foolishness. We filed a motion for sanctions, including dismissing her case.

In her federal suit "nunc pro tunc," (One has to love a nunc pro tunc.) she pleaded she was "neutral in the public" and "unschooled in law and making a special appearance before this court under the supplemental rules of Admiralty, a restricted appearance. ..." She continued for about 20 pages, describing the events which she believed set forth numerous causes of action.

This was a real estate contract suit. The parties had entered into a contract to buy a house, repair it and sell it. When our client realized that Gertrude, who contributed almost nothing toward the purchase, was not meeting her duties under the contract, our client undertook the cost of fixing up the house and selling it. Gertrude claimed that she was attempting to "steal the profits ... from the funds invested. ..." She alleged our client was "deceitful" and "deceptive." She claimed breach of contract.

She added that as our client's attorney, we did not have "firsthand knowledge of the facts." That is true. She argued that we "cannot be a witness and an attorney at the same time. He is either one or the other." That's also true. We related to the court what our client told us, which the judge understood. We never testified and never claimed to be involved in the transactions.

We discovered that Gertrude sought to remove the case to federal court, because the house was worth as much as \$300,000, "which is over and above what the Superior Court allowable limits [*sic*]." In effect, she claimed—wrongfully—she should not have sued in the Superior Court in the first place. We think she may have misread the chapter on suing in the Superior Court.

She also came up with the intriguing theory that if a Superior Court judge does not have clear authority, the judge could be "personally liable both at civil and criminal [*sic*]." She wanted the federal court to grant a motion for "consolidation and lack of jurisdiction, a mandatory injunction invoking automatic stay and transfer/move" the case to its court.

Gertrude, however, had created a problem of monumental proportions for herself. In the Superior Court, the judge



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had dismissed her suit because she claimed it had no jurisdiction, so her wish was duly granted. Poof. Case dismissed. We had counterclaimed for breach of contract and for attorney's fees for bad faith in the underlying transaction and had advised the court we wanted to proceed accordingly. The court gave us our day. After relating all the dastardly deeds and misdeeds of Gertrude, which she failed to mention in her suit and who opted not to appear, the court awarded substantial damages.

We did not know that while we were presenting our case, Gertrude had yet another idea. While she did not appear at the trial, she was in the courthouse. About two weeks later we received in the mail an Affidavit Notice of Fact: Notice to Principal is Notice to Agent, Notice to Agent is Notice to Principal Nunc Pro Tunc. It was filed the same day as the hearing, but the "Jurat" was dated a month before the hearing, which was also the date of the certificate of service. The affidavit, consisting of 12 pages, pretty much restated Gertrude's claims, but she that she did not consent to our client's attorney's (naming this attorney) "offer to contract" nor did she consent to "his forced offer" which is "REFUSED FOR CAUSE." She accused us of being a third-party intervenor. That hurts. Since we do not recall ever speak-

ing to Gertrude, much less making any offer, we found this rather bizarre. Cause? We have no idea what Gertrude is talking about. In any event, since Gertrude's case had already been dismissed on at her own request and this affidavit was not seeking any relief, fortunately, we concluded no response was called for, and the judge would just file this without any further action. There really is no action to take.

As for the federal suit, the judge, in a one-page order, promptly sent it back to the superior court on procedural grounds. Why deal with the claims? Since Gertrude's case had been dismissed and judgment had been entered against her, those voluminous pleadings suffered an ignominious death.

In her complaint in the superior court, she claimed she was a "real living breathing, flesh, blood woman on the land ... neutral in the public ... unschooled in law and making a Special Appearance." She cited the Seventh and Eleventh Amendments, not to mention the "rules of Admiralty." (Where is she getting this admiralty stuff? Chapter Four: What to do if your case is sinking?) She wanted, set forth in bold and all caps, a temporary restraining order and motion for preliminary injunction. She cited federal cases. Seventeen pages followed of the horrible

actions committed by our client. Gertrude obviously was unaware of notice pleadings. Does a judge pay more attention to pleadings if they are bold and all caps? Gertrude loves bold and capitalization. And details of dastardly acts are what judges relish to read.

Gertrude killed the pending sale of the house when she filed a *lis pendens*. If she had taken no action, our client would have sold the house, accepted her losses and moved on.

Greed and wanting to be Perry Mason motivated Gertrude, who now has a judgment against her. If only she had consulted a lawyer. Maybe she did. Otherwise, how would she know about nunc pro tunc? Who knows how this will end? We have an eerie feeling Gertrude will resurface with something mysterious and that the final chapter has yet to be written. ●



Stanley M. Lefco, of Lefco Law in Atlanta, joined the State Bar of Georgia in 1971 after receiving his J.D. from Emory University School of Law in the same year. He served as the 2005-06 president of the Sandy Springs Bar Association. Lefco has authored multiple books, plays and articles.

An Overview of the 2022-23 Georgia High School Mock Trial Season

If you are interested in getting involved with the Georgia High School Mock Trial Program, contact Director Rich Harris at 404-527-8779 or richardh@gabar.org.

BY RICH HARRIS



The 2022-23 season of the Georgia High School Mock Trial (HSMT) Competition ended in gripping fashion on Sunday, March 19, with a championship round featuring Jonesboro High School and the Paideia School, presided over by Supreme Court of Georgia Justice Carla Wong McMillian. Those two teams had persevered through 10 rounds since early February to emerge as the two finalists. In the semifinals, Jonesboro won a close match against Cambridge High School with Judge William Ray presiding, while Paideia prevailed against Westminster Christian Academy with Justice Verda Colvin presiding. The championship round lived up to its billing, as the nine scoring evaluators split 5-4 in favor of Jonesboro.

A Season of Change

Overall, it was a season of change and a season of returning to courtrooms for

Members of the state champion Jonesboro High School team with Justice Carla Wong McMillian (center).

PHOTO COURTESY OF JONESBORO HIGH SCHOOL

the first all in-person competition since the onset of the COVID-19 pandemic in 2020. A rather substantial change happened last June, when Michael Nixon stepped down after a decade as director of the program. After coaching a team for 12 years and becoming a devoted advocate of the many benefits of the competition for its participants, I was hired to step into the director role. It is not an overstatement to say that I had to hit the ground running.

Law Academy

Law Academy is a three-day intensive boot camp for the most dedicated and enthusiastic HSMT competitors in the state. Last summer, students from Athens, Dahlonega, Hahira, Savannah, Valdosta and of course throughout metro-Atlanta applied to attend this prestigious learning experience. The 2022 Law Academy class, with 42 students, was among the largest ever. It was held the last weekend in September, with most classes at the Bar Center.

A highlight of the event every year is the visit with Court of Appeals of Georgia Presiding Judge Stephen Louis A. Dillard, the special consultant to our HSMT program. On a Friday morning at the Nathan Deal Judicial Center, Presiding Judge Dillard spent almost two hours with the students, answering every question they had

in what could be described as a hot bench in reverse. He then escorted the group to the court's private chambers, an area most of us seldom, if ever, have an opportunity to see.

Law Academy depends on volunteer faculty members, most of whom are experienced trial lawyers and trial judges, and all of whom have a connection to and experience with mock trial. The 2022 "faculty in residence"—meaning the group that stayed in the hotel with the students and accompanied them throughout the weekend—included veterans of the program Will Davis, Paul Panusky, Hon. Jon Setzer, Walter Zankov, and the HSMT Committee's Chair Tyler Gaines and Vice Chair Virginia Josey. Other faculty members contributed to one or more learning sessions, including Denise Abramow, Norman Barnett, Louis Cohan, Mike Dunham, Kevin Epps, Carl Gebo, Hailey Kairab, Amelia and Will Ortiz and Chris York. Two Georgia Tech Mock Trial seniors, Isabel Stafford and Surbhi Bhattar, also delivered a terrific and well-received lecture.

By the end of the weekend, the students were ready to take on the dual challenges of a written student bar exam and a closing argument. The students took with them a weekend of good memories, and more importantly took back to their teams valuable lessons about best practices in a mock trial competition.

Training Videos

I planned a modest transition, thinking that I would build on Michael Nixon's successful formula while getting the teams back into courtrooms for the first level of competition, the Regionals. But an opportunity to do more arose when I sought and received a grant from the board of the National High School Mock Trial Competition to produce training videos, with the goal of standardizing what our volunteer presiding judges and scoring evaluators are advised to look for in a mock trial round. The concept was simple enough: invite actual judges to do the talking, with the anticipation that viewers are more likely to pay attention to what they say than—for example—yours truly.

I was thrilled with the response from those I asked. The roster of participants in the project: Hon. John Carbo, Hon. Melodie Clayton, Presiding Judge Stephen Louis A. Dillard, Hon. Susan Edlein, Hon. Doris Downs, Hon. Jason Marbutt, Presiding Judge Christopher J. McFadden, Justice Carla Wong McMillian, Hon. Ashley Palmer, Hon. Pandora Palmer, Hon. Emily Richardson and Hon. Jon Setzer.

Over the course of a day and a half in early January, each of these distinguished jurists took the time to visit the courtroom in the Bar Center, where a team of professional filmmakers had created

a three-camera film studio. Many thanks to Matt McGahren, a trial lawyer by day, filmmaker “on nights and weekends” and a longtime mock trial coach for coordinating this effort.

The result (so far): hours of footage that has already been edited into a 20-minute video that was shown at the District and State Finals competitions in March. What exists today is just the first rough cut of what will become a series of videos of varying lengths that will be used for more in-depth training before the competition date and as a refresher on the competition date.

The Case

The Problem Subcommittee created a civil dispute involving two lawyers, former partners who had a falling out yet still live a few houses apart. A dog bite followed a few weeks later by the sudden death of the dog (Rags, an annual feature of the cases), leads to a claim for intentional infliction of emotional distress and a counterclaim for defamation.

The Competition

All else was prelude to the competition. The first weekend in February, 110 teams (comprised of more than 1,500 students) competed at 18 regional locations throughout Georgia, from Albany to Dalton and from Columbus to Savannah. The 17th and 18th regions were added this year in Columbus and Dahlonega, re-

spectively. With 18 regions, 54 teams (the top three from each region) advanced to compete four weeks later at nine District Competitions statewide.

The top two schools from each district advanced to State Finals the weekend of March 18-19. Thanks to the efforts of HSMT Committee Vice Chair Virginia Josey, generous sponsorships by the University of Georgia School of Law and Georgia State University College of Law enabled us to give T-shirts to each competing team member on the 18 teams that advanced to State Finals and also to feed the teams lunch and dinner at State Finals.

The schools which advanced to State Finals were: Atlanta International School, Cambridge High School, Clarke Central High School, Decatur High School, The Galloway School, Jonesboro High School, Middle Georgia Christian Homeschool Association, Midtown High School, Norcross High School, Northview High School, The Paideia School, Saint Andrew’s School (their first time advancing to State Finals), Saint Vincent’s Academy, Sherwood Christian Academy (first time advancing to State Finals, *in their first year of existence as a team*), South Forsyth High School, Southeast High School, Westminster Christian Academy and Woodland High School (first time advancing to State Finals).

By winning the State Championship, Jonesboro earned the right to compete at the National High School Mock Trial Competition May 18-20 in Little Rock, Arkansas.

Court Artist Contest

In addition to the mock trial competition itself, we administer the annual Craig Harding Memorial Court Artist Contest, which is open to any student enrolled at a school fielding a team. Contestants can submit up to two drawings made during a specified round of their Regional Competition. In other words, they have roughly two and a half hours to create their entry or entries. The artwork is judged on criteria developed by a professional courtroom artist and the Idaho Law Foundation: telling the story, composition, color/contrast and authenticity. This year, a record 36 artists entered the contest, creating 61 separate drawings. The state champion court artist is Katie Smith of Washington County High School. She accompanied Team Georgia (Jonesboro High) to Little Rock to compete in the National Court Artist Contest.

Volunteers

The HSMT Competition would not exist without the many hours given by hundreds of committed volunteers throughout the season. These volunteers write the case, teach at Law Academy, shepherd adjustments to the rules of competition, coach teams, run the competitions and judge the rounds. It takes a not-so-small army to see this program through.

In addition to the judges and lawyers already named, I want to highlight a few more volunteers who helped make the competition run smoothly from begin-



COURTROOM SKETCH COURTESY OF KATIE SMITH

Pictured above is the winning Craig Harding Memorial Court Artist Contest entry by state champion Katie Smith of Washington County High School. Smith traveled to Little Rock, Arkansas, to compete in the National Court Artist Contest.

ning to end: Hon. Eric Brewton (Marietta), Craig Call (Savannah), Draik Edinger (Dahlonega), Teresa Everhardt (Cartersville), Elizabeth Gibson (Albany), Nicole Golden (Decatur), Christina Jenkins (Cartersville), Mollie Jones (Cumming), Miranda Jordan (Douglasville), Allen Lightcap (Atlanta), Andrew Pinter (Atlanta), Andrew Powell (Dalton), Megan Rittle (McDonough), Ben Wallace (Columbus), Anre' Washington (Lawrenceville), Adam Wittenstein (Atlanta) and Sarah Young (Macon). Also, these tireless members of the State Finals Planning Board: Norman Barnett, Presiding Judge Stephen Louis A. Dillard, Tyler Gaines, Catherine Hicks, Betsy and Joe Hodges, Virginia Josey, Judge Ashley Palmer, Hon. Emily Richardson, Hon. Jon Setzer, Robert Smith, Katie Wood and Faith Worley.

All of these folks, and the many dozens who volunteered for judging panels at all three levels of competition, keep the program running.

I have ambitious goals for this competition. Georgia's champion is historically among the top teams at the National HSMT Competition each year, a testament to the strength and depth of our competing teams. I want to see the program grow even larger and even stronger. To do that, we need—you likely guessed it—even more volunteers. We can't significantly increase the number of participating schools if we don't have enough volunteers to act as judges and jurors/scorers (and of course to coach the teams).

There are many good reasons to volunteer: CLE credit for judging panelists and coaches, a terrific networking opportunity and the knowledge that you

are making a tremendous contribution to a group of extraordinarily bright young people. Also, coaching offers another benefit: teaching trial advocacy will make you a better trial lawyer. I never understood the rules of evidence as well as when I had to explain them to teenagers who haven't had the benefit of law school or an evidence class.

There are many ways to get involved. Please call me at 404-527-8779 or email richardh@gabar.org and I will help you get started. ●



Rich Harris

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State Bar of Georgia
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Apparent Necessity

The Editorial Board of the *Georgia Bar Journal* is proud to present, “Apparent Necessity,” by Hon. Lori B. Duff of Loganville, as the winner of the *Journal’s* 32nd Annual Fiction Writing Competition.

BY HON. LORI B. DUFF

The purposes of the Fiction Writing Competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year’s entries reflected a wide range of topics and literary styles. In accordance with the competition’s rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author’s identity and then scoring each entry. The story with the highest cumulative score was selected as the winner. The Editorial Board congratulates Duff and all of the other entrants for their participation and excellent writing.

If a wife kills another woman to prevent sexual relations between such other woman and her husband, the killing is justified provided it was because of apparent necessity to prevent the commission of such sexual act. On the other hand, if such killing was the result of a violent and sudden impulse of passion on the part of the defendant engendered by the circumstances, it is manslaughter. ... It is enough if it be apparent that the killing is necessary to prevent a planned act of sexual intercourse.

—Scroggs v. State, 94 Ga. App. 28 (1956)

Claudette Scroggs stuck a hatpin in her hair to fix her hat and carefully blotted her lipstick. This was a messy business, she knew, but Claudette was not a messy woman, and she would not have anyone thinking she was. She straightened her lace collar and stood up from her dressing table. No reason to dawdle.

She opened her dresser drawer and pulled out the pearl-handled revolver she’d tucked among her gloves and placed it in her pocketbook. She slipped on the gloves it had been hiding beneath and,

unable to think of any other preparations, took a deep breath and headed out the door.

It was warm for October and Claudette wished she weren’t wearing long sleeves, but she had felt the need to be covered, protected. Not that Margaret would know she was coming, or why, but she needed that layer of wool between herself and this necessity.

“In front of God and everybody,” she could hear her grandmother’s voice saying.

Grandmother, she told the voice, like she’d done a thousand times before. *I’m only doing what I have to do. Roger won’t leave her alone and she doesn’t want to be left. I’ve asked him to stop. I’ve asked her to stay away. They’re the ones flaunting their relationship in front of God and everybody.* She fingered her engagement ring through her glove. It wasn’t especially large or fancy, but it was hers. Roger had given it to her when he’d chosen her to be his wife, and followed it up with the thin band of gold when he’d promised to cherish her all the days of his life, forsaking all others.

Claudette crossed her ankles and pulled off her gloves before settling her hands on one knee. Margaret sat in a wooden chair across from her. The two women stared at each other.

Claudette straightened her neck, chin pointed at the horizon. She turned the corner at Live Oak Street, her heels clipping evenly. She wouldn't have minded if anyone had seen her, but no one seemed to be around. God knew she needed a clear path.

Finally, she saw the peeling blue paint of Margaret's porch. She walked up the three stairs, took off her right glove, rapped on the door three times with her bare knuckles. Then, after brushing the cobalt flakes from her hand, she put her glove back on.

Margaret opened the door halfway, but as soon as she saw it was Claudette, she started to shut it again. "Now Miss Margaret," Claudette said to the closing door, "I'm here to talk to you. There's no reason to be impolite."

Margaret didn't open the door, but she didn't finish closing it either.

"We need to figure out what we are going to do about Roger," Claudette said.

For a moment, Claudette was unsure if Margaret was still standing on the other side of the door. Then, Margaret said, "What's there to do? Roger's a man. You know men just like I do. They do what they want when they want to do it."

"Yes, of course," Claudette told the peeling blue door. "But you and I—we're ladies. We don't resolve things the way men do."

Claudette heard a loud, huffing sigh, then the door swung open. Margaret stood there; her threadbare flowered dress edged in cheap rick-rack. *Why Roger would ever ...* she stopped herself right there. This was not the time for why questions. *Why* was not important. There was only what *was* and that was what she was here to deal with.

Margaret stepped to the side and said, "Come on in, Claudette," with about as much hospitality as you'd expect from a mother scorpion.

The house was clean enough, as if a coat of Murphy's Oil Soap could hide the scuffs on the floorboards and the gouges in the cheap pine furniture. At least Claudette wasn't afraid of soiling her dress on the shabby tweed sofa when she sat on it. Roger had chosen a clean woman; she could say that much about her husband. Claudette crossed her ankles and pulled off her gloves before settling her hands on one knee. Margaret sat in a wooden chair across from her. The two women stared at each other.

"Well?" Margaret finally said, "You came here to talk to me. What is it you want to say?"

Her directness felt like violence to Claudette. Shouldn't Margaret offer her a glass of tea or lemonade before getting down to business? This conversation had to happen on Claudette's terms, not because Margaret wanted it to start right away. "It was a long walk over here, Margaret, and it is unseasonably warm. Could I trouble you for some water?" She smiled in mock obsequiousness at Margaret, as if she'd humbly asked for a great treasure.

Margaret sighed that loud, huffing sigh again, slapped her hands on her thighs, and wordlessly got up and went into the kitchen. Claudette heard the clink of some glassware, the sink running and Margaret returned with a glass of water, which she thrust in Claudette's direction. Claudette considered asking her if she had any ice cubes in the icebox, but she decided she ought not push her luck. She took the glass from Margaret and nod-

ded her thanks. Margaret returned to her slat-backed chair and focused her eyes on Claudette, waiting for Claudette to state her purpose.

There was no reason to put it off anymore. "I'm going to ask you one last time to stay away from Roger."

Margaret shook her head, then started to laugh. "I told you; it isn't me. Roger comes here. Everything that happens is something Roger takes for himself. Even if I wanted to, there wouldn't be anything I could do about it."

'Even if I wanted to.' But you don't want to, do you, Margaret? "You don't have to open your door."

Margaret arched an eyebrow. "How'd that work when I tried not to open the door for you?"

"That's hardly the same."

"Isn't it? You think I want some fool man yelling on my porch? I know what you think I am, but that isn't what my neighbors think I am, and I don't want them to start."

Claudette pulled her pocketbook onto her lap and opened the latch. She took out a handkerchief and patted the moisture away from her brow and underneath the hair at the nape of her neck. She carefully folded the handkerchief and put it back in the pocketbook before removing the pistol. She pointed it directly at Margaret.

Margaret's eyes widened momentarily, then crinkled at the corners as she began to laugh in earnest. "Oh, is that a *pistol*, Claudette? Am I supposed to be scared? Like you would dirty your precious fingers with gunpowder."

The pistol grew heavy in Claudette's hand, so she used her left hand to prop up her right. She should have known conversation would be pointless. "I am well aware that Roger will be coming here after work. He has told me that he is playing cards with Bill Thomaston, but Lucille Thomaston told me that isn't true. I cannot have my husband here, with you, running the risk of giving you a child before he gives one to me."

"If that's your concern," Margaret said, shifting her weight in the chair and placing a hand flat on her belly, "I believe you are a few weeks too late."

With absolute certainty, Claudette knew that Margaret did not fear the pistol. She had already learned that Margaret did not fear *her*. She did not respect her status as Roger's wife, did not seem to care how this affair made Claudette look and wouldn't do anything to turn Roger away. She'd hoped the pistol would give her gravitas; for once, Claudette Scroggs would be a woman to be reckoned with. If she didn't hold power in her voice, she could hold power in her hand; her fingers fitting neatly into the grooves of the pearl-handled grip.

But it didn't work. The pistol was a pretty thing, with swirls of color in the mother-of-pearl, the unfired barrel a shiny silver. It appeared to be an ornament, just like Claudette herself.

She'd show Margaret what an ornament could do. She took a deep breath and held it. She aimed a few inches above Margaret's smirking mouth and placed a bullet between her eyes.



J. Edward Rountree sat across his desk from his new client. It was hard to believe that this woman—this *lady*—had shot another woman in cold blood at point-blank range. Still, Jed had done his job for enough years to know that the outer package had nothing to do with the inner life. He'd represented plenty of rough looking men who had hearts of holy water and plenty of upstanding gentlemen he wouldn't trust in the room alone with a quarter.

Jed finished reading the police report, which included a detailed confession from his client, and looked her in the eye. "I would imagine, Mrs. Scroggs, that you were under quite a bit of duress when you wrote this statement."

Claudette smiled at him. "Oh, no, Mr. Rountree. As a matter of fact, I mostly just felt relief. It was the first night in a long time I knew my husband wouldn't be going to that woman's bed."

It was hard to catch Jed Rountree by surprise, but Claudette had done it, and he barked out a laugh. "It didn't upset you? To see the blood, to see a dead woman, killed by your hand?"

Claudette's smile didn't falter. Her whole body seemed stiff, posed, as if sitting to have her portrait painted. "Mr. Rountree, I guess you don't know much about me before I moved to the city, but I grew up on a farm. I have wrung the neck of chickens and helped Papa slaughter pigs and even, once, watched him put down our pet dog when he wouldn't stay out of the hen house. Killing isn't pretty, no sir, but sometimes it is just what has to be done to keep things in order, and you can't regret what you have to do."

Jed took the measure of her once again. Claudette's hair was neatly wrapped in a chignon and a small hat sat perched on top of her head. Her skin was pale and smooth. A long, slim neck swam, swan-like, out of the starched collar of a tailored dress. Her trim waist nipped with an elaborate fabric bow. This did not look like a woman who knew how to butcher a hog or pluck a chicken or, for that matter, fire a gun. Looks, obviously, were deceiving. Jed clicked into trial mode. She gave him a lot to work with, jury-wise. He couldn't imagine 12 men willing to call this woman a murderer, even if she herself was admitting to the charge. Men believed women like this to be made of porcelain. They'd shatter with the retort of a pistol. Those men forgot that these women were the same creatures who went through the bloody ravages of childbirth. Jed knew, even if they didn't, that women on the whole were stronger than men.

Lighting a cigarette, Jed took his time before speaking. "Here's the problem we have. I'm not sitting in judgment of what you did, no ma'am. Judge not, lest ye be judged, that's how I live my life. But the district attorney has a different philosophy. He has charged you with murder in the first degree; that you, with malice aforethought, took the life of Margaret Christiansen. This here," he shook the confession, "seems to be your admission of the same."

Claudette's expression didn't change. "What does that mean—*malice aforethought*?"

"In layman's terms, it means that you planned on killing her and you carried out that plan." Jed leveled his gaze at her. How would she respond to this?

“Well, Mr. Rountree. I didn’t *plan* on killing her. I *planned* on putting the fear of Jesus into her and *hoped* to get her to act like a good Christian woman by refraining from further adultery with my husband. However, Ms. Christiansen had a different plan, and I didn’t see any other options. When diplomacy fails, we must revert to war, mustn’t we?”

Jed found himself being charmed by Claudette. “But you brought a *gun*.”

“Of *course* I brought a gun. Luck favors the prepared.”

Jed laughed. “Excuse me for laughing, ma’am. This is very serious business. There is talk that the district attorney is going to ask for the death penalty.”

Claudette finally moved, clutching at the buttons of her dress. “Death penalty? That’s ridiculous. How could the state want to send me to the electric chair for killing a woman who needed to be killed?”

Jed put his hands up, putting distance between himself and what he’d just said. “Now, now, don’t panic just yet. So far that’s just rumor. The district attorney needs to get elected, and he’s going to want to take the political temperature. What we need to do is get to the paper first and see that public opinion doesn’t want to see a lovely, polished young woman such as yourself come to an end in something as unseemly as Old Sparky.”

“I don’t want my business splashed all over the headlines,” Claudette said.

“Too late for that, my dear.” Jed took a long drag on his cigarette and placed it in the crystal ashtray on his desk. “This police report is the spiciest thing to happen in this town since I don’t know when. The best you can hope for is that the coverage is in your favor. I think we can do that, paint you as the victim. Your husband is, after all, an adulterer, and the hussy who took him into her bed wouldn’t leave him alone.”

Although Claudette’s posture remained stiff, something seemed to go out of her. She blinked rapidly, as if clearing tears from her eyes. Jed worried that he’d gone too far. Claudette had seemed so steely. She struck him as a mountain of strength covered in powder and lace. Maybe he’d found the chink in her armor. He was about to apologize when she said, “That’s

exactly correct. I *am* the victim here. My husband, who is supposed to protect me from entities that will do me harm, failed in that duty, and so I had to take matters into my own hands. I’d rather not have done that, but I had no choice. It was a necessity.” She nodded, a firm period to the end of her sentence.

Generally, Jed did not like taking murder cases. They were difficult and messy, and usually rather sordid. He preferred the cleaner aspects of his practice. Oh, but he was going to enjoy working with Claudette Scroggs. He just hoped he wouldn’t have to be present for her execution.



Frank T. Wrenn IV, the district attorney, seemed frustrated that Claudette would not take a plea. “Jed, I don’t understand this.” His voice was reasonable. “Your client has admitted to this crime. I’m offering her a deal—voluntary manslaughter. She’ll be out of prison in 10 years. Probably less. Why would she risk the death penalty when the facts are not at issue?”

“You’re wrong there, Frank. She admits to the act, not to the crime.” Jed hooked his foot over his knee, adopting a relaxed posture he did not feel.

“What’s the difference?”

“The difference is that one is a violation of the law, and one isn’t.”

Frank chomped on his cigar and moved it from one side of his mouth to the other. “How is putting a bullet between the eyes of an unarmed citizen not a violation of the law?”

“The deceased was carrying on an illicit affair with my client’s husband.”

“And?”

“And my client asked her on more than one occasion to cease carrying on that affair.”

“What does that ...”

Jed put both feet on the floor. “And the deceased refused. She was going to continue her adulterous affair.”

Frank rested his cigar in a brass ashtray and folded his hands on the desk. “So, I suppose you’re going to argue that Miss Christiansen needed killin’, as they say, in order to stop the adultery.”

“Exactly!”

Frank picked the cigar back up and rolled it between his fingers. “Why did Miss Christiansen need the killin’? Why not Roger Scroggs?”

Jed shrugged. “Can’t say. I suppose either one would do to get the job done. We can speculate all day, Frank, and it doesn’t matter. I don’t know what the word is for a woman who’s been cuckolded, but the cuckolding’s been stopped in the only way possible. That’s what the law calls justification, which means she admits to the act and not to the crime.”

“Sleeping with a woman’s husband is not a capital offense. I can’t put my stamp of approval on this.”

“Leviticus 20:10 says, ‘If a man commits adultery with another man’s wife—with the wife of his neighbor—both the adulterer and adulteress are to be put to death.’” Jed looked up toward the heavens and clasped his hands to his chest as if in prayer.

“Give me a break, preacher,” said Frank. “We’re not in church, and the law of the state of Georgia and the Old Testament are not one and the same.”

Jed smiled and winked at his old friend. “Well, I know that, and you know that, but do you think you can find 12 jurors who will know that? My client’s on the right side of the Bible and that’s better than the law.”

Frank used his cigar to point at Jed. “You may be right about that.”



The courtroom was packed on the day of trial. Not much exciting happened in Flintrock, Georgia, and the trial of a white woman for murder had never happened in anyone’s memory. The spectators were largely disappointed, however. Jed had done a good job for his client, substituting most of the testimony they’d come to hear with a dry recitation of stipulations. Yes, Claudette Scroggs had deliberately and with intent placed a pearl-handled revolver in her purse and walked to the house of her husband’s lover with the goal of ending her life if the decedent did not agree to end the affair. Yes, she pulled the trigger that launched the bullet that ended Margaret Christiansen’s life. Yes, she herself called the police afterwards to



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report the death and waited patiently for the authorities to arrive to tell them the story herself.

And now, Sgt. Fred Bailey sat in the witness stand, testifying about what he found when he arrived on the scene. Frank did his best to milk what drama he could out of it.

"Mrs. Scroggs answered the door as if it were her own home," Sgt. Bailey said. "She greeted me politely, thanked me for coming and apologized for bothering me. I said, 'not at all, ma'am' as she led me into the parlor. And there was Miss Christiansen, sitting on a chair, looking like she'd been having tea with Mrs. Scroggs and had simply gotten tired and fell asleep. Her head was nodded down like this," he demonstrated by placing his chin on his chest as best as he was able. Sgt. Bailey's love of Mrs. Bailey's apple pies had given him jowls that got in the way of him completing the action. "But other than that, she looked perfectly normal. I called out to her.

'Miss Christiansen. Miss Christiansen!' But of course, she didn't answer. So, I sat in the chair next to her and she kind of fell over on me and that's when I saw the bullet wound on her forehead." Sgt. Bailey tapped his own forehead between his eyes. "She was cold to the touch. There was no way she was alive. I asked Mrs. Scroggs what had happened and she said, as polite as could be, 'Why, I shot her, sergeant. It was the only way I could get her to stop fornicating with my husband.'"

Frank tapped on the rail of the jury box to stop the murmuring, "And what did you do next?"

"Well, sir, at first, I wasn't sure what to do. Mrs. Scroggs isn't the usual sort that I go about arresting, least of all for a crime like murder. She's a white-glove lady and all. But then I thought, Fred, you've got to go by the book. Lady Justice is blind and all, you can't go about showing favoritism when you've got a person who has just confessed to a crime."

Jed shot to his feet. "Objection, your honor."

Judge Finch turned his head towards Jed. He'd seemed annoyed at their pretrial conference that they'd had to go through with this trial, and now he seemed annoyed by the delay of an objection. "What's your objection?"

"The word 'crime' is a legal and factual conclusion that this witness is not qualified to make. That is the job of the jury." Jed faced the jury and gave them what he hoped was a winning smile. "They have to decide if this *act* was justified or if it wasn't. It's only a crime if it wasn't."

"You splitting hairs on me, Rountree?" asked Judge Finch.

"I believe that's my job, your honor."

"Mr. Wrenn?"

"Sgt. Bailey is a law enforcement officer. It's his job to arrest people who he believes have committed crimes. If he did not believe Mrs. Scroggs had committed a crime, he would not have arrested her. His belief is relevant to show his course of action."

Jed kept his focus on the jury instead of the judge. At least a third of them were honing in on Claudette, who kept her back straight and a neutral smile on her face. She pulled a lace handkerchief from her sleeve and dabbed at her left eye, the one closest to the jury. Jed had no idea if this was for show, but it worked. For all the world, she looked like a lady trying to keep it together in public.

Judge Finch sighed. "I'll allow it for that limited purpose. Jurors, the sergeant's testimony is only to be used for what the sergeant did next, not to prove any conclusions that he came to, got it?"

Most of the jury nodded, which Judge Finch apparently thought was good enough because he said, "You may proceed" to Frank.

Frank looked at Sgt. Bailey. "So, what did you do next?"

"I put handcuffs on Mrs. Scroggs and brought her down to the station; just like I would anyone else who'd shot another person dead in cold blood."

Frank's smile was awfully smug. "No further questions." He sat down.

Jed stood up, giving the jury time to settle. "Did Mrs. Scroggs cooperate with you?"

"Oh, yes, sir."

Jed nodded. "Did she give you a written statement when she got to the police station?"

"She did."

"And that is this statement here, which we have already stipulated into evidence as exhibit three, correct?" Jed placed a copy of Claudette's statement on the railing in front of Sgt. Bailey, who picked it up and looked at it.

"Yes, sir."

"Are you aware of Mrs. Scroggs' reputation within the community? I believe earlier you called her a 'white-glove lady?'"

"Yes, sir. I don't know her well—don't think I've ever had a conversation with her before that day—but she is well

thought of. Goes to church every Sunday. Serves on the ladies' auxiliary. Always quick to bring a casserole when someone is sick or if someone has died."

Jed bowed his head reverentially. Then, lifting it, he said, "And are you aware of Miss Christiansen's reputation in the community before she passed?"

Sgt. Bailey dipped his chin, just low enough so as not to meet Jed's eyes.

"Sgt. Bailey, you have to answer the question."

"I didn't know her."

"Well, you didn't know Mrs. Scroggs, either, but you were aware of her reputation within the community."

Sgt. Bailey rearranged himself in the hardbacked chair that served as the witness stand. "I'd rather not speak ill of the dead, sir, especially if I don't have firsthand knowledge."

Jed smiled. "That's fine, sergeant. I think that answers the question well enough."



Jed and Claudette had spent hours going over her testimony before the trial began. Not because they had to keep her story straight—that was the beauty of having a client, for once, that he was sure was telling the absolute truth. Rather, because he knew that nuance would matter. He wanted to make sure every word and gesture was rehearsed. Claudette couldn't come across as a cold killer, eager to do away with her husband's lover so she could have him to herself once again. It was important that the jury see her as the hapless victim of a cheating spouse. Claudette was the collateral damage of Margaret's bawdy charms; Margaret, who wouldn't keep her hands off weak, old Roger Scroggs, who was helpless to resist the easy temptation there for the taking.

So far, Claudette was doing beautifully. Sgt. Bailey's description had been the best: white-glove lady. No doubt all the

jurors could imagine you would step into Claudette's home and any surface could be touched with a white glove and you'd come away without a trace of dust. Claudette came across as the product of finishing school, of deportment lessons, of diction classes. She likely knew the protocol for every social occasion and the precise name and purpose of 15 different forks. This woman couldn't be a murderer, if for no other reason than murder was against the *rules* and no member of the Flintrock Junior League would flout the rules so blatantly. It was impossible to guess she'd ever had any part in the slaughter of a chicken or a hog.

Jed had gotten the jury charge he wanted. "Members of the jury, I charge you that a defense to murder is justification. In order for justification to be a valid defense, the defendant must admit to the underlying act and you must find that she has done so. Then, you must find that the act was justified. In this case, the act would be justified if you find that the killing was necessary, or apparently so to a reasonable mind, in order to protect the deceased from accomplishing her purpose, to wit: fornication with the defendant's husband, and that you find that the killing was the only apparent means of accomplishing that goal."

He'd cribbed most of that jury charge from a case he'd been excited to find, *Miller v. State*, 9 Ga. App. 599, a case decided almost 45 years ago in 1911. In that case, the Court of Appeals had found that a father was justified in killing the man who had defiled his minor daughter in order to prevent further defilement. Surely, he argued, this was the same, if not worse, since the father in the *Miller* case could always have used his shotgun to force a marriage rather than a funeral. Judge Finch agreed and the charge was read to the jury.

The jury only stayed out for two hours, a fact which made Jed nervous. A quick

decision was almost always a conviction. Still, he stayed positive for his client's sake; telling her that the verdict was so quick because her justification was so obvious. Claudette didn't seem worried at all to him, but she pulled out that lace handkerchief and patted her forehead and the corners of her eyes anyway.

After everyone had filed into the courtroom and taken their places, Judge Finch looked at the jury foreman. "Have you arrived at a verdict?"

"Yes, sir, we have."

No one on the jury was looking at Claudette. Jed didn't care for this fact. Juries didn't like to look at people they'd just convicted; whereas, they were proud of granting freedom to whom they'd just given that gift. Jed patted Claudette's hand; then, squeezed it.

"You may read the verdict."

The foreman, a non-descript looking man wearing a cheap suit, focused on the paper in his hand. "We, the jury, find the defendant, Claudette Scroggs, guilty of count one, murder with malice aforethought."

Jed's stomach fell. He looked over at Claudette, whose expression did not change. The only evidence that she'd even heard what the foreman said was the grip of her fingers around his own. A crashing wave of sound whipped around the room threatening to drown him; Claudette stood statuesque at its epicenter.

Judge Finch began banging his gavel. "Order! Order!"

The noise finally settled, and the foreman was allowed to read the verdicts on the rest of the counts. None of them mattered, given the first, and all Jed could hear was his heartbeat pounding in his ears.

Claudette simply stood there, back straight, long neck holding up her head as if there were books balanced atop it. He wanted her to show some emotion. To cry out, to collapse. To get the vapors,

for crying out loud. But she was impassive. He tilted his head toward her. "We can appeal. I'll visit you later. We'll discuss your options."

She nodded her head but didn't speak.

Judge Finch announced the date of the sentencing hearing and told the bailiff to take Claudette away. It all felt a thousand miles away from Jed.

Frank rapped on the table in front of him to get his attention and Jed looked up. "I really thought you had me there, Jed, with that jury charge."

"I thought I did, too, to be honest," Jed said. "You did a good job."

"So did you."

The two men looked over at the jury box. A few jurors remained, chatting. Jed got up and walked over. "I have to ask. Mr. ... Cotton, is it?"

"Yes, sir. Tom Cotton." Cotton looked like his name, rotund and wearing a white shirt, white and puffy hair sticking out in several directions.

"What was it? The deciding factor. What made you all decide she was guilty and not justified?"

Cotton looked down at his lap, then back at Jed. "Honestly, sir?"

"Yes. Always honestly."

"Honestly, sir, we didn't think it was a good precedent, to let our wives think they could take such extreme measures if they caught any of us ... " Cotton's eyes searched the ceiling for the words he needed to make his point, but they were unnecessary.

"I think I know what you're saying," Jed said. "You don't have to spell it out." He turned around and started to walk away, then turned back. "Thank you, for your service to the courts."

"Yes, sir." Cotton said, placing his fedora on his head and gathering his jacket.

"Well," said Frank, as the two men left the building.

"Well," said Jed, "law be damned, we don't want our wives taking that kind of

notion if we can't keep our own peckers in our pants."

Frank left his friend with his own storm cloud roiling over his head for a moment before saying, "She did kill a woman in cold blood."

"Justifiably and with apparent necessity, according to the law."

"Not according to the jury."

They passed Jed's office first. "Do you want to come in for a drink? I've got some fine Scotch decanted."

Frank shook his head. "No thanks, I've still got work to do. The people's business never ends, you know. Got a sentencing hearing to prepare for. Thank goodness I decided against the death penalty. Very sympathetic defendant." He winked at his old friend.

Jed's eyes bore into Frank's. "Well, justifiably and with apparent necessity I am going to pour myself a drink and think about the appeal I'm going to file on Claudette's behalf."

"You really believe in her, don't you?"


"I believe in the rule of law, Frank. It doesn't matter if I believe in her."

Frank clapped his friend on the shoulder. "You're a good man, John Edward Rountree. A good man." ●



Hon. Lori B. Duff is the managing partner of Jones & Duff, LLC. She is also a municipal court judge and the immediate past president

of the Georgia Council of Municipal Court Judges. She is the winner of the 2022 *Georgia Bar Journal* Annual Fiction Competition. She currently serves as the president of the National Society for Newspaper Columnists. Her novel, a courtroom drama titled "True North," will be released in the fall of 2024 by She Writes Press. She lives in Loganville, Georgia, with her husband, her two children having flown the nest.



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Georgia Legal Services Program

Kudos



Scott I. Zucker, a partner at Weissmann Zucker Euster + Katz, P.C., announced the publication of his third novel, “Battle for Life.” His first two novels were “Chain of Custody” (2012) and “Rally on Two” (2018). The book is available on Amazon in paperback and Kindle version or at www.scottizucker.com.



Don Edwards, principal and founder of the Law Office of Don Edwards LLC, was awarded the Lifetime Achievement Award from the Black Law Students Association (BLSA) chapter at Boston University (BU) School of Law. The award was presented during the 53rd Annual BLSA gala held in April where Edwards provided remarks to the students, professors and others present. He is a 1973 graduate from BU School of Law and former BLSA officer at BU.



Nelson Mullins Riley & Scarborough LLP partner Amy B. Cheng was elected to serve as president of the Atlanta Bar Association for the 2023–24 term. As the Atlanta Bar Association turns 135 years old, Cheng is the first individual of Asian, Asian American and Pacific Islander descent to serve as its president. The Atlanta Bar Association was founded in 1888 and is one of most respected legal institutions in the southeast.



Jason W. Blanchard, assistant U.S. attorney (AUSA) in the Southern District of Georgia’s Augusta Office, was selected as one of seven AUSAs nationally for an Executive Office for U.S. Attorneys Director’s Award in the category of “Superior Performance as an Assistant U.S. Attorney—Civil.” The annual Director’s Award recognizes “steadfast dedication, exemplary professionalism, commitment to excellence, fidelity to the rule of law and to doing the right thing.” The award was presented at the Department of Justice headquarters in Washington, D.C., in May.



Megan E. Boyd, a senior lecturer at Georgia State University, received the George M. Sparks Award, which recognizes Georgia State’s unsung heroes: faculty, staff and students who exemplify a willingness to go the extra mile with good humor and perseverance. These were the characteristics of one of the university’s most highly regarded presidents, Dr. George McIntosh Sparks, who served from 1928 to 1957.

Baker Donelson received the American Bar Association Litigation Section’s 2023 John Minor Wisdom Public Service and Professionalism Award. This national award is presented in recognition of outstanding contributions to the quality of justice in legal communities, ensuring that the legal system is open and available to all. Baker Donelson received the award at a luncheon during the section’s 2023 Annual Conference in Atlanta in April.

On the Move

IN ATLANTA



CHATMAN



PETROMICHELIS

Richter, Head, Shinall, White & Slotkin LLP announced the addition of Kameron Chatman, Maria Petromichelis, Rashad Simon and Christine Williams as associates. All of the firm’s attorneys specialize and focus on insurance defense and litigating workers’ compensation matters across the state. The firm is located at 6100 Lake Forrest Drive, Suite 200, Atlanta, GA 30328; 404-531-0000; Fax 404-531-0021; www.rhs-law.com.



SIMON



WILLIAMS



Matthew F. Totten announced the formation of The Totten Firm, LLC. Totten focuses his practice on real property litigation, including residential and commercial evictions, title litigation, property management disputes and default service representation involving non-judicial foreclosures. The firm is located at 2090 Dunwoody Club Drive, Suite 106-33, Atlanta, GA 30350; 404-692-4342; www.tottenfirm.com



Womble Bond Dickinson announced the addition of Douglas W. Butler as partner. Butler focuses his practice on serving as outside counsel to captive insurance managers and owners, advising on pertinent insurance regulatory matters, including captive insurance company formation, coverage matters and claims assistance. The firm is located at 241 17th St. NW, Suite 2400, Atlanta, GA 30363; 404-872-7000; Fax 404-888-7490; www.womblebonddickinson.com.



Hall & Lampros announced the addition of Meredith Carter as partner. Carter concentrates her practice on personal injury and labor and employment litigation. The firm is located at 300 Galleria Parkway, Suite 300, Atlanta, GA 30339; 404-876-8100; Fax 404-876-3477; www.hallandlampros.com.



Seyfarth Shaw LLP announced the addition of Sul Kim as partner. Kim's practice covers matters involving traditional labor law, wage and hour, employment training and compliance, employment litigation, and workplace safety and health. The firm is located at 1075 Peachtree St. NE, Suite 2500, Atlanta, GA 30309-3962; 404-885-1500; Fax 404-892-7056; www.seyfarth.com.



Chamberlain Hrdlicka announced the addition of Tom Cullinan as shareholder. Cullinan's practice focuses on tax controversy and litigation. The firm is located at 191 Peachtree St. NE, 46th Floor, Atlanta, GA 30303; 404-659-1410; Fax 404-659-1852; www.chamberlainlaw.com.



The Employment Law Solution, LLC, announced the addition of Blaine G. Allen Jr. as an associate. Allen specializes in advising and representing management with respect to employment law, including investigations, training, advice and counsel, administrative representation and litigation. The firm is located at 800 Mount Vernon Highway, Suite 410, Atlanta, GA 30328; 678-424-1380; www.theemploymentlawsolution.com.



LAMBERT



POLVINO

Founding partners Laurice Rutledge Lambert and Kathlynn Butler Polvino, partner Jennifer P. Whitton and special counsel Roxanna D. Tatman announced the launch of their female-founded firm, Health Law Strategists LLC (HLS). HLS is a boutique firm that intersects complex health care law with innovative strategy. The HLS team brings together more than 75 years of collective health care law experience to empower health care providers, health care entrepreneurs, digital health companies, their leaders and investors to navigate the challenging and dy-



TATMAN



WHITTON

amic health care regulatory landscape. The firm is located at 1579 Monroe Drive NE, Suite F 147, Atlanta, GA 30324; 404-937-3746; www.healthlawstrategists.com.



Eversheds Sutherland announced the addition of Rachel Reid as partner. Reid's practice focuses on corporate, insurance, cybersecurity and policy matters. The firm is located at 999 Peachtree St. NE, Atlanta, GA 30309; 404-853-8000; Fax 404-853-8806; www.us.eversheds-sutherland.com.

IN HARTWELL



The Van Dora Law Firm announced that Tash M.A. Van Dora was named a partner in the firm. Van Dora focuses his practice in the areas of workers' compensation, employment, family law and estate planning. The firm is located at 21 Vickery St., Hartwell, GA 30643; 706-377-4044; www.vandoralawfirm.com.

IN MACON



BURTNER



LING

James Bates Brannan Groover LLP announced the addition of Joseph E. "Joey" Burtner and Christina E. Ling as associates. Burtner's practice focuses on commercial and civil litigation matters such as contracts, municipal government and insurance defense. Ling focuses her practice on general litigation matters and local government law. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jamesbatesllp.com.



Smith, Hawkins, Hollingsworth & Reeves, LLP, announced the addition of Leslie L. Cadle. Cadle focuses her practice on estate planning and probate matters. The firm is located at 688 Walnut St., Suite 100, Macon, GA 31201; 478-743-4436; Fax 478-746-8722; www.shrlaw.com.

IN SUWANEEN



Dorothy "Dodie" Sachs announced the formation of Sachs Family Law, PC. Sachs focuses her practice on divorce, modification, contempts, name changes, legitimation/paternity actions and adoptions in north metro-Atlanta and North Georgia. The firm is located at 4485 Tench Road, Suite 1311, Suwanee, GA 30024; 770-695-7430; www.sachsfamilylaw.com.

Congratulations Annual Section Scholarship Recipients

The State Bar of Georgia would like to congratulate the following recipients of annual section scholarships. Recipients were chosen based on their interest in the work of the section and their excellent performance in that field. •

Environmental Law Section

Alyssa LeDoux
Mercer University Walter F. George School of Law

Alex Muir
Georgia State University College of Law

Anna Scartz
University of Georgia School of Law

Phyllicia Thomas
Emory University School of Law

Family Law Section

Nilufar Abdi-Tabari
Atlanta Legal Aid Society

Sarah Austin
Atlanta Legal Aid Society

Daysha Brown
Atlanta Volunteer Lawyers Foundation

Joel Correa Delgadillo
Atlanta Volunteer Lawyers Foundation

Kimberly Debrow
Strickland Debrow LLP

Trineice Hill
Crisis Line & Safe House of Central Georgia

Annie Jordan
DeKalb Pro Bono

James Luttrell
James K. Luttrell, Attorney at Law

Megan Ross Pulsts
Georgia Legal Services Program
Hon. Stephen Goss Memorial Scholarship

Hee Ryu
Gwinnett Legal Aid
John Mayoue Memorial Scholarship

Health Law Section

Jillian Gargano
Emory University School of Law

Olivia Ramage
Georgia State University College of Law

Sydney Tardy
Emory University School of Law

Real Property Law Section

Amanda Claxton
Mercer University Walter F. George School of Law

Hunter A. Davis
University of Georgia School of Law

Jesse C. Moore
Atlanta's John Marshall Law School

Lauryn Morris
Emory University School of Law

Alissa Williams
Georgia State University College of Law

Announcement Submissions

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.

To place an announcement, please contact Jada Pettus at jadap@gabar.org or 404-527-8736.

IN VALDOSTA



Dr. Trent L. Coggins joined the faculty of the Langdale College of Business Administration at Valdosta State University teaching business law, health care law and entrepreneurship. He was also named the director of the J. Donald Lee Center for Entrepreneurship which opened in March. The university is located at 1500 N. Patterson St., Valdosta, GA 31698; 229-245-3820; www.valdosta.edu.

IN ST. LOUIS, MISSOURI



Norton Rose Fulbright US LLP announced the addition of Kevin Fischer as a partner. Fischer focuses his practice on private equity funds and public and private companies on a broad range of corporate transactional matters in the insurance, financial services, life sciences, technology, industrial, hospitality, business services and aerospace/defense industries. The firm is located at 7676 Forsyth Blvd., Suite 2230, St. Louis, MO 6310; 314-505-8800; www.nortonrosefulbright.com.

IN WASHINGTON, D.C.



McGlinchey Stafford PLLC announced the addition of James "Jim" Milano as a member. Milano's practice focuses on federal and state lending regulations compliance. The firm is located at 1275 Pennsylvania Ave. NW, Suite 420, Washington, D.C. 20004; 202-802-9999; Fax 202-403-3870; www.mcglinchey.com.

REMOTE



CHRISTY



HOLLIS

Norton Rose Fulbright US LLP announced the addition of Sean Christy and Chuck Hollis as partners. Christy advises public and privately held companies around the world on technology, outsourcing and other strategic commercial transactions in the financial services, hospitality, health care, life sciences, consumer products, retail, energy and technology industries matters. Hollis focuses his practice on technology, outsourcing and strategic commercial transaction including a range of technology and commercial arrangements both in the United States and globally. The firm is headquartered in London at 3 More London Place, London SE1 2AQ, UK; www.nortonrosefulbright.com.



**Expand your network.
Join a State Bar Section.**

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

 **State Bar
of Georgia**

Only in Georgia

BY PAULA FREDERICK

“Just as I predicted, Digby fired us,” you announce to your summer associate. “I knew it was coming, and it’s actually a relief—I didn’t believe a word he said! He wants me to refund his retainer fee today, of course,” you say. “We agreed that I will keep \$500 for the time we spent working on the case.”

“Wrong checkbook,” you say as your associate hands you the firm ledger. “I need the one for the operating account, not the trust account.”

“But you put the retainer in your trust account, right?” your associate asks, her voice quavering. “I sure hope so; otherwise, you’re comingling. We learned that in the first week of school!”

“You’re in Georgia now,” you assure her.

Does a lawyer have to put fees paid in advance into her escrow account?

In most of the country, the answer would be “of course.” Not in Georgia.

American Bar Association Model Rule 1.15(c) says that a lawyer must deposit fees and advance payments for expenses into a trust account until they are earned, or until the expense is incurred. But the Georgia Rules of Professional Conduct do not include that language, and Georgia Advisory Opinion 91-2 states outright that Georgia lawyers do not have an obligation to put any fee into escrow.

So you might think there’s no need to take a look at the new Formal Opinion from the ABA, “Fees Paid in Advance for Contemplated Services” (issued May 3, 2023). Since it is based on the ABA Model Rule, the opinion finds that a fee paid in advance must go into a trust account because until it is earned, it is “other people’s money” held in a fiduciary capacity. The opinion cites public protection and promoting access to legal services as the purposes of the rule—since the lawyer has the



unearned money in escrow, she can refund it immediately if the representation ends.

Georgia lawyers are also concerned about public protection, and our Rule 1.16(d) requires a lawyer to refund unearned fees when a representation ends. But Georgia Opinion 91-2 seems to rationalize that since lawyers have a fiduciary duty to protect the interests of the client there is no need to place unearned fees in an escrow account.

Even though some of the ABA opinion is not relevant for Georgia, the discussion and definition of various types of fee arrangements is useful. The Conclusion includes suggestions that will reduce confusion

caused by “lawyer lingo” in fee agreements, such as using the term “advance” instead of “retainer.” It recommends including an explanation of what will happen to the remainder of the fee if the lawyer resigns or is fired before the case is over.

And of course, all of the recommendations presuppose that the fee agreement is in writing—so, *write it down.* ●



Paula Frederick

General Counsel
State Bar of Georgia

paulaf@gabar.org

Attorney Discipline Summaries

February 21, 2023, through March 7, 2023

BY LEIGH BURGESS

Disbarments

Kara Sherrisse Lawrence

Atlanta, GA 30309

Admitted to the Bar 2016

On Feb. 21, 2023, the Supreme Court of Georgia disbarred attorney Kara Sherrisse Lawrence (State Bar No. 534355) from the practice of law in Georgia. The matter came before the Court on the Report and Recommendation of the special master who recommended Lawrence be disbarred for her multiple violations of the Georgia Rules of Professional Conduct in connection with her representation of a single client.

In February 2019, a client hired Lawrence to initiate and handle his immigration matter. The client signed an attorney-client retainer agreement, which provided for a \$3,500 retainer as a flat fee in lieu of her hourly rate and authorized Lawrence to debit that amount from the client's bank account. The agreement specified that the attorney-client relationship between Lawrence and the client would continue until "completion of the matter or upon earlier termination of

the relationship as provided" in the agreement. Neither Lawrence nor the client ever took steps to cancel or terminate the agreement. On Feb. 22, 2019, Lawrence debited \$1,000 from the client's account as a deposit on the retainer. Several days later, she debited another \$1,300. Then, on March 5, 2019, she debited another \$3,321.75 from the client's account. Lawrence provided the client no advance notice of the March 5 debit and no notice that she was debiting more in total than the \$3,500 he had authorized.

When an attorney is involved in an immigration claim, the client is required to accept the lawyer's representation within an online portal. Lawrence's client and his daughter repeatedly attempted to contact Lawrence to learn how to accept her representation in the portal and to learn of the status of the client's matter. On several occasions, a person in Lawrence's office sent the client a "code" to use to accept the representation, but none of the codes were valid. Thus, Lawrence never entered an appearance in the client's immigration matter and did not

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

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(and could not) file any immigration paperwork on his behalf. Nevertheless, on May 21, 2019, a person from Lawrence's office sent the client an email stating that his "application [wa]s moving forward" and directing him to "create an account if [he] d[id] not already have one" with immigration services. Twice, the client appeared at Lawrence's office to speak with her about how to have his matter proceed with U.S. Citizenship and Immigration Services. The first time, no one in her office was able to provide the client with any specific information, although he was assured that she was working on his case. The second time, during late May 2019, the client discovered that Lawrence had abandoned her law office and left no contact information. The client continued to try and contact Lawrence but was unsuccessful.

Eventually, the client filed a grievance with the State Bar. In Lawrence's response, she misidentified her client multiple times, attached a copy of the email from her office to the actual client, but offered no other evidence of any codes sent to the client, any other communication with him, or any other follow-through by her or her staff. Following her response to the grievance, the Bar requested that Lawrence provide it with certain documents and information related to the matter and her IOLTA account. She did not respond to the request. On June 7, 2021, Lawrence acknowledged service of the Notice of Investigation in this matter and provided an "Oath to Response," but provided no additional response, directing the State Disciplinary Board to consider her response to the grievance (with the wrong client name) as her written response under oath. She never provided any trust accounting information to the Bar and did not refund any of the \$5,251.75 she had debited from the client's account.

The special master determined that Lawrence violated Rules 1.2, 1.3, 1.4, 1.5, 1.15 (I), 1.15 (III) (e), 1.16 (d), 8.1, 8.4 (a) (4), and 9.3 of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of Rules 1.2, 1.3, 1.15 (I), 1.15 (III) (e), 8.1 and 8.4 (a) (4) is

disbarment, and the maximum sanction for a violation of the remaining rules is a public reprimand. The special master found that Lawrence's actions were intentional and that they caused her client both actual and potential harm. In aggravation of discipline, the special master cited Lawrence's dishonest or selfish motive, her pattern of misconduct, her bad faith obstruction of the disciplinary process, her refusal to acknowledge the wrongful nature of her conduct, the vulnerability of her victims, and her indifference to making restitution. In mitigation, the special master noted her lack of a prior disciplinary history and her inexperience in the practice of law.

Gus Vincent Soto

P.O. Box 13979

Tallahassee, FL 32317

Admitted to the Bar 2012

On Feb. 23, 2023, the Supreme Court of Georgia disbarred attorney Gus Vincent Soto (State Bar No. 779589) from the practice of law in Georgia. The matter came before the Court on the Report and Recommendation of the State Disciplinary Review Board addressing a Notice of Reciprocal Discipline and an Amended Notice issued to Soto pursuant to Rule 9.4 of the Georgia Rules of Professional Conduct. The reciprocal discipline arose out of the Florida Supreme Court's temporary suspension of Soto's Florida law license on April 20, 2022, based on his violations of numerous Florida Rules of Professional Conduct by settling lawsuits on behalf of several clients but failing to disburse the settlement proceeds correctly, and repeatedly misleading the clients on the whereabouts of the funds. In its petition for emergency suspension, The Florida Bar provided evidence of Soto's misconduct via affidavits from a staff auditor, who opined that Soto handled his trust accounts "in a manner similar to a Ponzi scheme" by misappropriating funds from multiple clients (often for his personal use) and using funds from other clients' settlements to make partial payments to clients whose funds were previously misappropriated.

After the Notice of Reciprocal Discipline was filed in Georgia, Soto filed

a Petition for Disciplinary Revocation Without Leave to Apply for Readmission in Florida, stating that he had no prior discipline, listing his pending disciplinary cases, agreeing to pay restitution to the clients involved in the pending disciplinary cases and requesting that his membership in The Florida Bar be revoked without leave to seek readmission. On June 16, 2022, the Florida Supreme Court entered an order permanently revoking Soto's license to practice law. The State Bar of Georgia filed an Amended Notice of Reciprocal Discipline on Aug. 3, 2022, reflecting the fact that Soto's law license had been revoked in Florida.

In its Report and Recommendation, the Review Board considered the facts and circumstances of Soto's underlying misconduct and the Florida disciplinary proceeding as described in The Florida Bar's petition for emergency suspension and concluded that Soto's conduct as described therein would constitute a violation of the Georgia Rules and could result in the imposition of substantially similar discipline. The Review Board found no basis for recommending anything other than substantially similar discipline and recommended the Court disbar Soto. Neither Soto nor the State Bar of Georgia filed objections to the Review Board's Report and Recommendation.

Nathan Everette Hardwick IV

1624 Durrett Way

Dunwoody, GA 30338

Admitted to the Bar 1991

On March 7, 2023, the Supreme Court accepted the petition for voluntary surrender of license (which is tantamount to disbarment) filed by Nathan E. Hardwick IV (State Bar No. 325686). Hardwick, who had been a member of the State Bar since 1991, was suspended by the Court following his convictions in federal court of numerous felonies involving financial fraud. In his petition, Hardwick admitted that his convictions had been affirmed. A felony conviction constitutes a violation of Rule 8.4 (a) (2) of the Georgia Rules of Professional Conduct, and the maximum penalty for a violation of this rule is disbarment. The State Bar filed a response, requesting the Court accept



Ethics dilemma?

Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Ethics Helpline at 404-527-8741 or toll free at 800-682-9806.



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

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



Hardwick's petition. The Court agreed that the acceptance of his petition was in the best interests of the Bar and the public and was consistent with prior similar cases.

Dana Nicole Jackson

4002 Highway 78, Suite 530-262
Snellville, GA 30039

Admitted to the Bar 2010

On March 7, 2023, the Supreme Court of Georgia disbarred attorney Dana Nicole Jackson (State Bar No. 781227) from the practice of law in Georgia. The matter came before the Court on the Report and Recommendation of the special master who recommended that the Court disbar Jackson, a member of the Bar since 2010, for her misconduct related to her representation of clients in a consumer debt collection matter. The State Bar filed a formal complaint in 2021, alleging that Jackson had violated Rules 1.4 and 1.15 (I) (c) of the Georgia Rules of Professional Conduct. Jackson failed to respond to the complaint, so the special master granted the Bar's motion for default and concluded that the facts alleged and violations charged in the formal complaint were deemed admitted.

In April 2018, Jackson was hired by an attorney and her client, to collect a debt owed to the client in exchange for a 25% fee on all funds collected. On March 14, 2019, Jackson obtained a judgment for the client for \$3,821 in principal and \$162 in court costs. Jackson collected at least \$2,750 from the debtors but failed to send any of the money to the clients. She also refused to communicate with the clients about the case, though they sent her several requests for status updates. The special master found that Jackson violated Rules 1.4 (a) and (b) by completely failing to discuss the repre-

sentation with her clients and Rule 1.15 (I) (c) by failing to notify the clients of her receipt of funds from the debtors and failing to deliver the funds to the client. The maximum penalty for a violation of Rule 1.4 is a public reprimand, and the maximum penalty for a violation of Rule 1.15 (I) (c) is disbarment.

The special master concluded that Jackson violated her duties to communicate with her clients and to preserve and keep her clients' property safe and she acted knowingly and intentionally by refusing to communicate with her clients and by admitting by default that she stole her clients' money. The special master concluded that disbarment was the presumptive sanction under the ABA Standards, as Jackson knowingly converted her clients' property, noting in aggravation that she had a dishonest or selfish motive, that she refused to acknowledge the wrongful nature of her conduct and that she was indifferent to making restitution. The only mitigating factor found was that Jackson had no prior disciplinary record. Neither Jackson nor the State Bar filed exceptions to the report and recommendation of disbarment, and the Court agreed the disbarment was the appropriate sanction particularly in light of the fact that she admitted to the Rules violations by virtue of her default and offered no mitigating explanation for her behavior.

Suspensions

David John Pettinato

1000 W. Cass St.

Tampa, FL 33606

Admitted to the Bar 2014

On March 7, 2023, the Supreme Court of Georgia accepted the petition for voluntary reciprocal discipline filed by David

John Pettinato (State Bar No. 426068) and suspended him from the practice of law for 10 days, nunc pro tunc to Dec. 19, 2022, with reinstatement in Georgia conditioned upon his reinstatement in Florida. Pettinato, a member of the State Bar of Georgia since 2014, received a 10-day suspension in Florida for representing in an insurance matter that he and his firm had no prior relationship with a proposed neutral appraiser when that was not the case, and in another matter, for failing to timely correct a client's deposition testimony that he knew to be false. The State Bar urged the Court to accept the petition, and the Court agreed that a 10-day suspension imposed nunc pro tunc was the appropriate reciprocal discipline and accepted his petition.

L. Nicole Hamilton

420 Seabreeze Drive
Rincon, GA 31326
Admitted to the Bar 2002

On March 7, 2023, the Supreme Court accepted the April 14, 2021, petition for voluntary discipline of L. Nicole Hamilton (State Bar No. 320909) following the recommendation of the special master and imposed a six-month suspension as discipline for Hamilton's failure to return unearned legal fees to a client after her discharge and her failure to pay that client's subsequent fee arbitration award in a timely manner. After being retained by a client in October 2013 and paid \$6,000 in advance, Hamilton was discharged by the client for lack of communication and failure to follow instructions. Hamilton never submitted a written request to withdraw and failed to appear at a February 2014 hearing. In April 2014, after Hamilton failed to return the unearned portion of her retainer, the client filed a fee arbitration petition, seeking a re-

fund of \$4,000. Hamilton submitted an answer, in which she agreed to be bound by the fee arbitration award, but thereafter failed to appear at the hearing. In March 2015, written notification of the award was sent to Hamilton, with direction that the award be paid within 90 days. After the 90-day period elapsed and no payment was made, the client filed a grievance.

The State Bar filed a formal complaint in April 2016, charging Hamilton with a violation of Rule 1.16 (d). Hamilton filed an unsworn answer to the complaint in June 2016, and a petition for voluntary discipline in August 2016, seeking a Review Board reprimand. The State Bar conceded that the interests of the public and Bar would be best served by acceptance of the petition, but only after Hamilton submitted proof that she had refunded the full \$4,000 fee award. Hamilton submitted proof to the Bar that she completed the installment payments in June 2017.

In July 2020, the Coordinating Special Master filed a motion with the Court to remove and replace the special master in the case as the special master had not responded to communication from the State Bar during the years of 2017 to 2019. A new special master was appointed who issued a report on Sept. 22, 2020, recommending the Court accept the August 2016 petition for voluntary disciplinary and issue a Review Board reprimand. The Court rejected the recommendation. Upon remand, Hamilton filed an amended petition for voluntary discipline seeking a six-month suspension and provided greater detail regarding her failure to participate in the fee arbitration proceedings and to timely pay the award. The State Bar agreed that Hamilton's misconduct in the case reflected a

pattern of negligence and a disregard of her duties to her client and the profession—as opposed to a knowing and intentional violation of those duties—and that the appropriate level of discipline was a six-month suspension.

The special master concluded that although Hamilton admitted that she violated the duties she owed to her client and the profession, she did so as a result of negligence and because of a mental state that was exacerbated by personal hardships occurring during this time frame. The special master further concluded that Hamilton caused actual injury to her client by failing to refund an unearned fee and then by failing to pay the fee arbitration award for a significant period of time and found her conduct benefitted her at the expense of her client. In aggravation, the special master considered Hamilton's prior disciplinary history (Investigative Panel reprimands in 2006 and 2010, two formal letters of admonition in 2010, a formal letter of admonition in 2014, and a six-month suspension in 2016); her substantial experience in the practice of law; and her indifference to making restitution. As mitigating factors, the special master considered her personal and emotional problems, her physical disability on account of an automobile accident, her cooperation with the Bar in submitting her petitions and her remorse. ●



Leigh Burgess

Assistant Grievance Counsel
State Bar of Georgia

leighb@gabar.org

Reviving Success: A Recap of the 2023 Take Charge! Solo & Small Firm Conference

The Take Charge! Solo & Small Firm Conference may have been on a COVID-19 pandemic-related hiatus, but it returned better than ever in April.

BY NKOYO-ENE R. EFFIONG

Did you miss the Take Charge! Solo & Small Firm Conference? In this month's article, we are sharing a recap of the incredible two-day event that took place at the Bar Center.

The State Bar of Georgia is committed to ensuring that attorneys practicing in solo and small firms have the tools and resources necessary to run efficient, effective and ethical law practices. In a recent survey, Bar members indicated that upwards of 60% are practicing in a setting of one to 10 attorneys. If that is you, this can't miss conference is designed with you in mind.

Come for the content. Stay for the community.

A Bit of Context

The Take Charge! Solo & Small Firm Conference dates to at least 2015, and at its height in 2019, served more than 400 attendees. Then, there was a little thing that happened—the COVID-19 pandemic—and we paused the conference. As an ode to this reality, we themed this year's conference, The Revival. Our goal was to design a conference where attendees left feeling reconnected, refreshed and reinvigorated to run their law practices with purpose in an ever-changing world.

As program chair, it was an honor and privilege to host our first post-pandemic conference. It was also a full circle moment as I distinctly recall attending Take Charge year after year as a solo law firm owner. Below are some highlights that will hopefully inspire you to join us next year.

The Content: 47 High-Value Sessions

Forty-two practical educational sessions related to topics like: "Managing the Money," "Productivity & Growth," "Perfecting Your Model," "Building Your Dream Team," "All Things Tech," "Mastering Your Messaging" and "Substantive Law Updates" combined with five powerful plenary sessions:

- "Building Sustainable Habits that Support Your Wellness and Business," Nefra MacDonald
- "The Rise of AI in the Legal Profession: Lawyers Brace for Impact," Sharon Nelson and John Simek
- "60 Tips, Gadgets, Sites in 60 Minutes," Nkoyo-Ene R. Effiong, Nancy Duhon, Sheila Baldwin and Temi Siyanbade

- "Navigating the Technology Revolution in the Legal Profession: Balancing Efficient, Professionalism and Civility," Karlise Y. Grier, moderator; Molly Gillis, Hannibal Heredia, Chris Twyman and Hon. Shermela J. Williams, panelists
- "Reregulation and the Future of Law," Nkoyo-Ene R. Effiong, moderator; Kimberly Y. Bennett, Paula Frederick, Erin Gerstenzang and Stacey Lake, panelists

Feel free to check out the conference website for more details on the sessions. You can also read the session descriptions at <https://content.gabar.org/solo-small-firm-guide>.

SmartBars

This year, we introduced SmartBars, a 30-minute hands-on intensive breakout session to help attorneys move the needle forward with a business task that takes a bit of time but will catapult their practice forward. Our inaugural SmartBars included:

- How to Organize, Prioritize and Streamline Work in Clio Manage (Clio)



PHOTO BY BRYAN BEBOUT

"Navigating the Technology Revolution in the Legal Profession: Balancing Efficient, Professionalism and Civility," one of the five plenary sessions. (Left to right) Karlise Y. Grier, moderator; Molly Gillis, Hannibal Heredia, Chris Twyman and Hon. Shermela J. Williams, panelists.

- Automating Time-Consuming Tasks (CosmoLex)
- How to Streamline, Collaborate and Swiftly Eliminate Bottlenecks in Your Practice (Rocket Matter)
- Using Practice Panther Native Features to Automate Your Firm Processes (PracticePanther)
- Boosting Firm's Growth Using Social Media: Positioning Yourself As A Leader by Using Video To Drive Impressions (WSI Biggs)
- Build Your Business with the Bar's Find A Lawyer Directory: Learn How to Increase Your Traffic by Updating Your Profile (ReliaGuide)

The Community

Relationships were forged. Partnerships were created.

Exhibit Hall

We had a bustling exhibit hall with more than 30 vendors available to discuss solutions to all your most common law firm management problems.

Headshots & Mini Beauty Bar

Attorneys were able to refresh their headshots with the help of Jamila Tarisai, makeup artist with Beauty II Behold, and Practice Panther, who sponsored our headshot booth.

Networking Reception

Attendees mixed and mingled at our infamous networking reception, which included a mini wine-tasting experience as well.

We Learned. We Laughed. We Leveled Up Our Law Practices.

This conference would not have happened without the contribution of our

amazing speakers, the collaboration with our Communications Department and ICLE, and all of our sponsors and exhibitors. And, of course, it would have been nothing without each of you who made space and time in your schedules to learn how to improve your law practices.

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Nkoyo-Ene R. Effiong

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Six Slick Fastcase Tips and Tricks

Learn to make the best use of this free legal research tool available to members of the State Bar of Georgia.

BY SHEILA BALDWIN

The State Bar of Georgia has partnered with Fastcase for more than a decade providing our members with free legal research. Our coverage is one of the most fully comprehensive of any state and our membership is the most active of all states. In this article I'll point out some of my favorite tools that are designed to make even a novice researcher look like a pro.

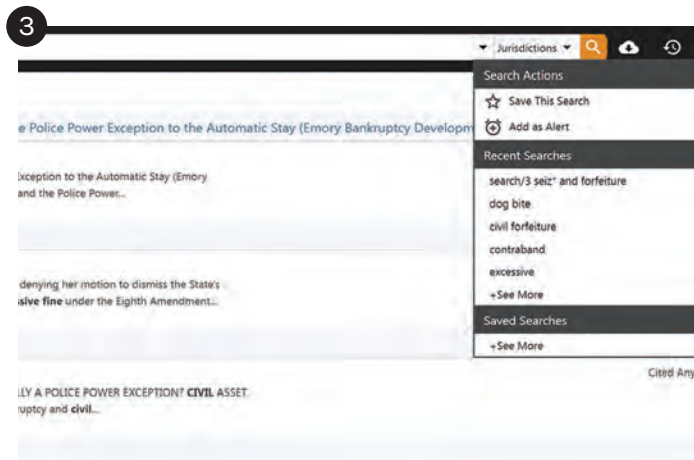
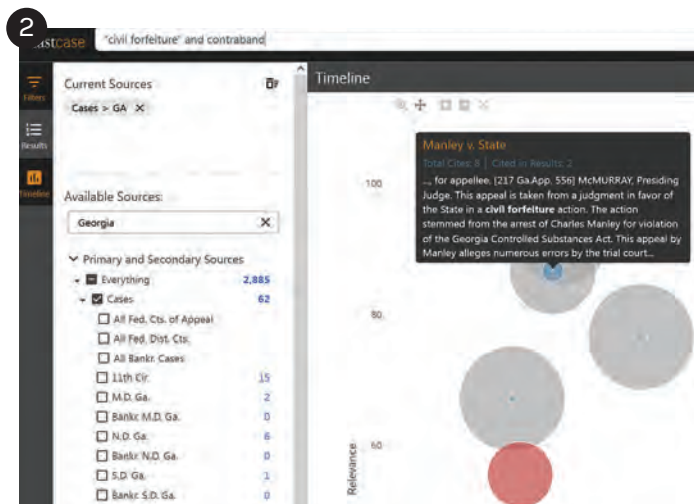
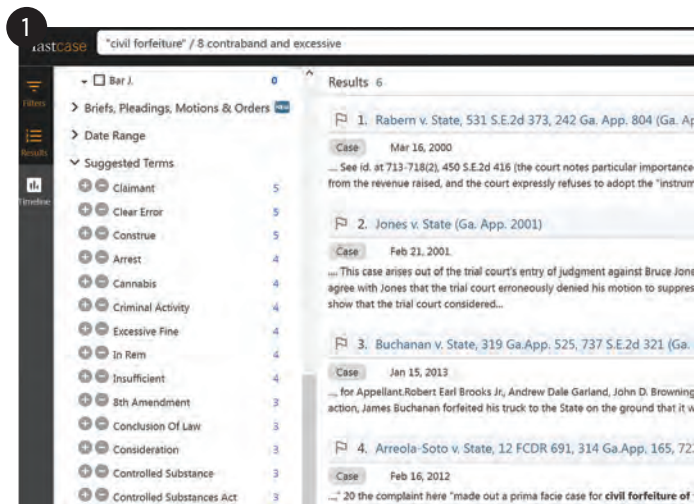
Pro Tips

Pro Tip 1

Using “civil forfeiture” and the terms “contraband” and “excessive” in Georgia Cases and Statutes, a collection of 30 cases and statutes appear in my search results. From this point, I can arrange them by time, relevance, alphabetical order, or by number of times cited and cited within the results. Learn to use the various filters to get the best results.

Pro Tip 2

Look at the left lower side panel of the results and see two more great ways to find key cases. The date range filter lets you choose a custom time period, and the “suggested terms” tool helps you craft a better search query by letting you view and then add or subtract terms that are



frequently used in the list of results. Not only does this save time, but it is like a brainstorming exercise encouraging creativity (see fig. 1).

Pro Tip 3

Have you ever noticed the three filters on the extreme top left of the results screen? Click on the filter labeled TimeLine and get a new perspective on your results in 3D. All cases that appear in your results are viewable in a graph that reveals key data about your results. The bubbles represent different facts about the cases. Larger sized bubbles indicate a greater number of times a case has been cited by other cases. The inner darker blue inside a bubble indicates that it is also cited by cases within your results that are going to be most relevant. Try hovering over a bubble to see an image with the key text of the case and number of times cited. The vertical and horizontal axis indicate time and relevance. You can zoom into a specific segment of the graph to isolate select cases. This feature clarifies your search results in one view (see fig. 2).

Pro Tricks

Pro Trick 1

How would you like to automate your research efforts? This can be done by setting an auto alert after you run your search and letting the alert system continue to run the search even when you don't log into your account. By doing this, your search continues daily or weekly and will send any new cases that respond to your search to your email. Pro tip: set up a separate email account for your research to avoid clutter. To set an alert, find the dropdown on the query box and choose Alerts. Other features include save or remove a search and rerun a recent search. Find saved searches by clicking on the li-

brary icon to the left of the question mark on the tool bar (see fig. 3).

Pro Trick 2

Using the Fastcase Alerts, build a "latest cases" digest within your own account. Simply create a query that searches for all cases during "may ?, 2023" to see a list of cases that have been published from the chosen jurisdiction and have them sent as an alert every day. The "?" stands in for the day of the month. Add a term such as "marital" to narrow to categories of cases—family law, in this instance.

Pro Trick 3

Check out the guide on how to use Boolean Terms by tapping Help & Support from the homepage when logged in to your Bar account to find this useful menu. And, Or and Not are the three basic operators used with all websites. To be a pro, learn the power of parentheses (which in a comparable way are used in algebra) to direct the search engine to an order of operation; namely, to find cases with the words in the parentheses first and then other terms. Use quotation marks around several words to be an exact phrase. Wild-card is indicated by an * at the end of the word and pulls in results that include all variations of the root word.

Try these tips and tricks to save time and keep up with the latest cases. The Fastcase support team is available from 8 a.m. to 9 p.m. ET Monday through Friday, by phone at 866-773-2782 or email at support@fastcase.com, or contact me at 404-526-8618 or sheilab@gabar.org. ●



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Leading With Authenticity: Prioritizing Success and Wellness in the Workplace

The following conversation with attorney Jessica Wood provides advice on how to navigate the stress and demands of the legal profession.

BY LAURIE L. MYLER

Did your 1L “welcome to law school” introduction speech include the infamous “look to your left and then to your right, and three years from now, only one of you will still be here” line? Mine did, and although most of my classmates ultimately attended our unseasonably warm New Hampshire graduation ceremony, the line has stuck with me. At various points in my career, after the “Great Rescission,” leaving private practice for public interest law, the birth of my fourth child and the COVID-19 pandemic, I have looked to my peers for wisdom about how to navigate the stress and demands of the profession and stay sane. Being a lawyer is not for everyone, I will admit; some of my law school peers are happily employed as CEOs, teachers or in tech roles. This publication’s editor-in-chief, who has a J.D. and a PhD, helps business owners post written content. As I approach my 20th year of practice, I pause to consider what I could do to interrupt the attrition cycle and ensure that lawyers—practicing or not, myself included—are healthy and engaged in meaningful work. To help guide my understanding of leadership, professional satisfaction and well-being, I consulted with Jessica Wood, a skilled litigator, esteemed mentor, expert networker and well-being advocate.¹ To know Wood is to know that she is charming, witty, unabashedly direct and insightful. At her core, Wood has a genuine desire to be personally and professionally con-

nected and fulfilled. My recent discussion with her reminded me that we are more successful when we are authentic and honest. Here are a few of her practical life hacks that she learned from mental health professionals and leaders in the legal community that anyone can easily implement: start where you are, be intentional, embrace connection, learn from others and lead with authenticity.

Start Where You Are

No matter the phase of your professional life, Wood advises to start where you are. She recommends examining the aspects of your life and purposefully identifying areas for personal development and improvement. For instance, if you are not getting any exercise, Wood suggests that you find an accountability partner to help you and make a plan. Admitting that she is human and quick to remind me that she is far from perfect, Wood approaches well-being from a belief that lawyers do not have to be miserable or sacrifice happiness to get a good result for a client. “Wellness ensures that you have the physical, emotional and mental ability to operate at your highest level for the client and for your colleagues who collaborate with you. To get the most effective deliverables, we need to be able to decide or have input in the when, where, why, what, who and how of the work we’re performing,” Wood says.

Research supports adopting a holistic approach to well-being because it yields benefits like enhancing mood through physical activity and increasing happiness by fostering social connections.² Wood prioritizes sleep, proper nutrition, exercise, time alone to think and decompress, and time with family and friends, though she admits that she falls short of her aspirations on occasion. To stay on track, goal setting is vital to reinforce healthy habits. This year Wood is going to walk the Peachtree Road Race, so she has clean socks and running shoes in her desk drawer, so she can get her steps in. In addition, she always has nuts and fruit nearby, so she does not get “hangry” during the day. Wood has a therapist (Zoom, every two weeks), a fitness coach (FaceTime, four times a week for strength training), and when people extend invitations to get together, she always requests a walking date. You can often find her getting social connection and a walk in Piedmont Park or the BeltLine.

Reviewing your activities outside the office is important, as is taking a look at your work life. In recent years, Wood adjusted her work schedule. Pre-pandemic, she never took work home. Instead, she stayed late or came in on the weekends because she wanted to create a clear demarcation between work and home; only work at work and home was her oasis. During the COVID-19 pandemic how-



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ever, Wood worked solely from home and did not step foot in the office for months. Post-pandemic she enjoys a mix of work from home and in-office work. “I am astonished at how much calmer I feel now with a hybrid schedule,” Wood said. Even though she lives only six miles from work, the unpredictable traffic in Atlanta could easily turn her commute into a time-consuming ordeal. Eliminating traffic just two days per week has paid enormous positive dividends.

Act With Intent

Wood has been deliberate in setting and enforcing boundaries, and in taking steps to ensure that there are consequences for those who fail to respect them. Wood shared an example with me when she had an opposing counsel and his associate in her office. The opposing counsel repeatedly interrupted and spoke over Wood and his associate, prompting her to warn him that he would be escorted out of her office if he did it again. When he failed to heed her warning, she followed through on her consequence and walked him to the front door of the office. Interestingly, just days later, when they appeared before a woman judge, the judge commented on the opposing counsel’s condescending tone. Wood noted that if he had been open to constructive criticism, he may have had a better outcome in court. According to a study by the *Journal of Oc-*

cupational Health Psychology, employees who set and maintained good boundaries reported lower levels of stress and higher levels of job satisfaction.³

Embrace Connection

Another practical tip Wood shares: get to know other people’s points of view because you will be better for it. Wood explains that she values connectedness because it ensures that different vantage points are honored. A leader at her firm as well as numerous bar associations and legal organizations, Wood sees her role as mutually beneficial. She recognizes the value of being involved in bar associations and the legal community because it allows her to gain insight from diverse perspectives, including those of practitioners from different generations. And Wood learns and grows by participating in formal bar presentations and informal networking and friendship.

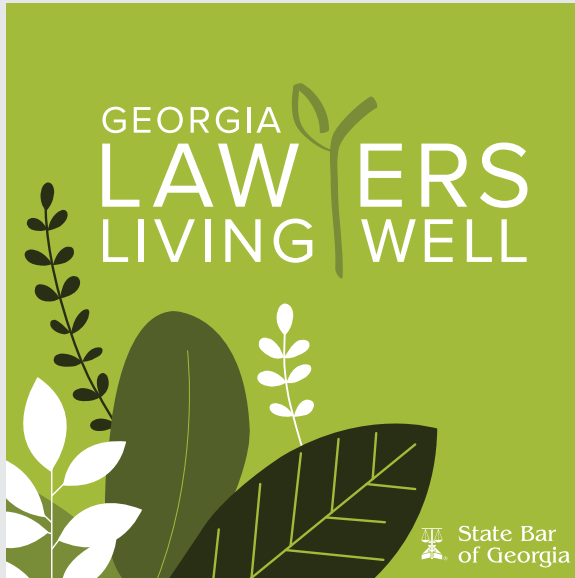
Wood leads an informal networking group that facilitates connections between law students and new lawyers with seasoned attorneys. When asked about her decision to take on this role, Wood explained that much of her mentorship stemmed from specific requests from friends to talk to a law student or to participate in a particular group. According to Wood, her mentorship efforts align with her wellness journey; she strives to be the support she needed at various

points in her own career. Wood embraces the concept of reverse stealth mentoring, recognizing that the younger lawyers she meets inform her both as a person and as an attorney. For Wood, cultivating relationships with these talented practitioners not only helps her feel valued, but it also satisfies her desire to be productive and learn.

According to a study by the American Bar Association, mentorship programs have been shown to have a positive impact on the professional development and well-being of mentees, as well as the professional satisfaction and sense of fulfillment of mentors.⁴ Additionally, the study found that mentorship programs can improve the overall culture and morale within a legal organization.⁵ No matter what stage you are in your career, your development is aided by your connections to others.

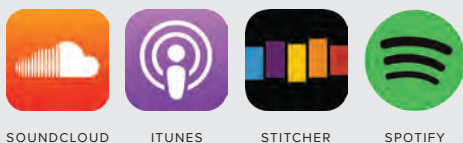
Learn From Others

Having role models and learning from them is another tip Wood offers to foster greater connection and fulfillment. Wood told me about a time when, at the end of productive mediation, she asked opposing counsel, a more experienced woman attorney, if she wanted Wood to draft a settlement agreement so they could finish negotiations that day. Her opposing counsel said, “Jessica, it’s 8 p.m. I’m exhausted. My husband is cooking me dinner. Let’s start fresh tomorrow. Our clients deserve



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well-rested attorneys.” Wood remembers being blown away because her opposing counsel was so confident and so right: “This taught me that I did not have to demonstrate my fealty to the client by forcing myself to run on fumes.”

Wood is quick to recognize lawyers have differing obligations and experiences, and she acknowledges that not everyone has the same 24 hours in their day. Commuting, caregiving, illness and disability can all eat into our time, which is why Wood reminds us to be mindful of our own privilege and experiences. While we all went through the pandemic, she points out that some did so from a place of luxury while others struggled to make ends meet. Wood calls upon law firm leaders to be aware of what associates, judges and opposing counsel are dealing with outside of work. Moreover, she supports firms creating policies that honor the whole person, including their contributions to the larger community. Leaders can encourage taking vacation time and being flexible with work production. “We need to all be aware of our own roles, our own power, our own voices and our abilities to promote healthy change,” Wood says. “Look around at your own office or in the courtroom and think about how to avoid being the problem and contribute to the solution.” At work she tries to create safe space for feedback from colleagues because she is genuinely trying to improve. “We do call it ‘practicing law,’” she says, “and we’re never going to be perfect at it. That’s exciting: we can always learn and grow. And there is new case law for us to absorb every day.”

Research supports this approach. Lawyers who share their successes and struggles, directly and in person with other lawyers, “reframe help-seeking as a sign of strength that is important to resilience.”⁶ This normalizes conversations about well-being and reduces the stigma or judgment of peers. In fact, key traits of people who foster connection include making people feel included,

safe, encouraged to contribute and challenge the status quo without fear of being embarrassed or punished.⁷ After all, a lawyer's role should include the "human obligation to be concerned about a colleague's well-being and assist him or her to obtain the services needed and/or adjudge work demands to ensure ethical performances."⁸

Be Authentic

Of all things, authenticity is the single factor that predicts happiness and satisfaction in lawyers and judges.⁹ Research demonstrates that personal life choices are a stronger indicator of well-being than external factors like prestige, money or status.¹⁰ The good news is that there are relatively simple ways to feel connected to your work, yourself and others, and experience more fulfillment. Mindfulness, self-reflection and movement or exercise are a few of the easiest, most powerful methods to develop your capacity for connection.¹¹ Wood adds self-awareness and asking for help, when needed, to that list.

Wood shared with me that at the beginning of her legal career, she struggled to find her voice. "I was so intimidated by others," Wood said. "I suppose it was a form of imposter syndrome and over-deference due to my youth and lack of experience as an attorney. I had to get out of my own way." Through her own observations, Wood discovered that her firm's work was often superior to their opponents'. This realization allowed her to recognize her worth and competence in the field, leading her to compete against herself instead of others. Now, Wood knows that she has earned her place at every conference room table and courtroom, and she is quick to make room for others.

Wood, a member of the State Bar's Lawyer Assistance Program (LAP) Committee, has an interest in lawyer well-being because she knows people who struggle with anxiety, depression, suicidal ideation, and drug and alcohol is-

suess. Wood seeks to normalize asking for help and "being vulnerable enough and respectful enough of ourselves to seek a more relaxing and spacious life." She actively promotes the State Bar's "Use Your 6" campaign and encourages everyone to call the LAP hotline at 800-327-9631 and make an appointment with a therapist. All State Bar members get six prepaid (i.e., free) appointments per year.¹² "What we do for a living is intense and time-consuming, and we occasionally have brutal days. But undue suffering is not the rent we must pay in the world to be effective attorneys," Wood says.

For the good of our profession and our clients, perhaps it is time to reject the "look to your left and then to your right" assumption of attrition (whether due to burnout, toxicity or some other negative reason), and use our own powers of advocacy and knowledge of wellness to work toward contentment and satisfaction for all. In the hypothetical, that includes three skilled attorneys or judges sitting next to each other. Our profession needs all three. Consider where you are in your wellness journey, outline your goals and consider calling the toll-free hotline, a therapist, a business coach or another advisor. If you can play a role in improving the law practice experience for others, consider taking a more active presence in the community as a mentor, speaker or volunteer. And please share your defeats and victories—you never know who is listening. ●

Content for the Attorney Wellness section of the Georgia Bar Journal is provided by members of the Print and Media Subcommittee of the State Bar of Georgia Attorney Wellness Committee.



Laurie L. Myler is a senior associate county attorney with the Cobb County Attorney's Office and a member of the State Bar of Georgia's Attorney Wellness Committee.

Endnotes

1. This article defines well-being in the traditional sense: diet, exercise, healthy habits, sleep and more broadly includes emotional and mental health, social connection, and the need for meaning and purpose.
2. *More evidence that exercise can boost mood*, May 1, 2019, Harvard Health Publishing. L.S. Krieger and K.M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. LAW REV. 554 (2015).
3. J. R. B. Halbesleben, J. Harvey and M. C. Bolino, *Too engaged? A conservation of resources view of the relationship between work engagement and work interference with family*. J. OCC. HEALTH PSYCHOL., 14(4), 325-340 (2009), <https://doi.org/10.1037/a0016739>.
4. American Bar Association, *The Power of Mentoring: A Guide to Mentoring for Lawyers and Law Students*, (2016), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mentor_toolkit_authcheckdam.pdf.
5. *Id.*
6. *Id.*
7. *Id.*
8. Sabrina S. McKenna and Louise K.Y. Ing, Report of the Hawaii Task Force on Lawyer Well-Being (2021), <https://www.courts.state.hi.us/wp-content/uploads/2021/06/2021-06-01-Lawyer-Well-Being-Task-Force-Report.pdf>.
9. L. Krieger, *The Surprising Master Key to Happiness and Satisfaction According to the Lawyer Research*, FLA. B. J., Vol. 92, No. 1, January 2018, at 16.
10. L.S. Krieger and K.M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. LAW REV. 554 (2015).
11. L. Krieger, *The Surprising Master Key to Happiness and Satisfaction According to the Lawyer Research*, FLA. B. J., Vol. 92, No. 1, January 2018, at 16.
12. To learn more about the State Bar of Georgia Lawyer Assistance Program, visit www.gabar.org/LAP.

A New Phenomenon in Legal Writing: Storytelling Complaint Introductions—Part II

In the last decade, some lawyers have begun to use storytelling techniques in an unexpected place: complaints, and specifically, complaint introductions.

BY MEGAN E. BOYD

Storytelling is an essential part of good lawyering, but until recently, few lawyers have employed storytelling techniques in the place they might be most useful—the complaint. In Part I of this two-part series, I discussed the use of persuasive introductions in complaints and gave some examples of the ways that Georgia lawyers have used introductions to give the reader an overview of the case and start to persuade the reader about the soundness of the plaintiff’s position. Because few cases ever get before a factfinder, “the complaint may be the plaintiff’s only opportunity to tell her story;”¹ thus, the use of storytelling techniques in a complaint introduction may be crucial to getting the plaintiff’s story into the public eye.

Even lawyers who frequently use storytelling techniques in other filings may be hesitant to include complaint introductions because of concerns that introductions might run afoul of the requirement that a complaint provide a short and plain statement of the claim. Besides requiring that complaints contain certain information, such as the basis subject matter jurisdiction and the relief sought, Federal Rule of Civil Procedure 8 and its Georgia correlative, O.C.G.A. § 9-11-8, require that a complaint provide a “short and plain statement” of the claim “showing that the pleader is entitled to relief.”

These rules were intended to simplify the pleading process. Generally, though, lawyers have interpreted the “short and plain” language to, if not mandate, at least strongly encourage that each paragraph include only one “plain and concise”² sentence with a single factual or legal allegation. Conventional wisdom has also suggested that lawyers employ only sterilized terms in complaint drafting; that is, the use of emotional language and imagery, adjectives and adverbs in complaints has been discouraged under the theory that including this type of language will cause a defendant to deny the allegations, even if the substance is effectively unobjectionable. This traditional practice has led many if not most lawyers to draft what have been called “minimalist” complaints,³ which use anodyne language and provide little-to-no detail beyond the bare minimum required to state a claim.

Some academics and lawyers have pushed back against the idea that complaints must be spartan, arguing that Rule 8 is merely “intended to liberate lawyers from code pleading. It is not intended to restrict how they may choose to plead;”⁴ that is, the short-and-plain statement language is intended to serve as a floor, not a ceiling, and if lawyers want to go above that minimum requirement to include additional information, they may do so.

This argument makes sense because, after all, challenges to the sufficiency of

a complaint are almost always based on the complaint containing *too little*, not too much, information. Complaints about complaint introductions seem rare. I could locate no reported Georgia state or federal case in which a judge sanctioned, disciplined, or otherwise prohibited a lawyer from filing a complaint with an introduction. Concerns that introductions are not allowed under Rule 8 or O.C.G.A. § 9-11-8 are unsupported, at least as those rules have been interpreted by the Georgia courts.

One wrinkle, though, is the mandate of Rule 10 and O.C.G.A. § 9-11-10 that allegations in complaints “be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.”⁵ Prose-style complaint introductions, written in paragraph form, may violate the spirit, if not the letter of Rule 10 both because they are not made in numbered paragraphs and go beyond providing information on a “single set of circumstances.”

Lawyers might also hesitate to use a complaint introduction for fear that the defendant will move to strike it, particularly if the introduction is more robust and uses charged language. Federal Rule of Civil Procedure 12(f) and its counterpart, O.C.G.A. § 9-11-12(f), permit a defendant to move to strike on the ground that the introduction is “immaterial, im-



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pertinent, or scandalous.” While a motion to strike a complaint introduction is certainly possible, courts disfavor motions to strike and grant them only in the rare circumstance that an allegation has “no possible bearing on the subject matter of the litigation.”⁶ Well-written introductions that contain information supported by the allegations that follow should never suffer from that problem.

Because of the Rule 10 requirements, defendants are probably more likely to move to strike prose introductions, as opposed to those written in paragraph form, but for the lawyer whose primary concern is getting their client’s story front and center at the earliest possible time, the risk may be of little concern. For those wishing to use introductions who want to minimize the likelihood that a defendant will object, using numbered paragraphs of single sentences, statements or allegations is likely the best way to ensure that the defendant lacks grounds to complain. The downside is that some of the rhetorical power of a strong complaint introduction may be dissipated when the introduction comes in numbered paragraph form rather than a prose style.

Ultimately, good complaint introductions serve the same function as introductions in other legal filings: giving context that will enable readers to better understand the factual and legal allegations that follow, priming the reader to

believe the lawyer’s version of the legal story, and, in the words of Professors Armstrong and Terrell, “mak[ing] [the reader] comfortable enough with the document’s approach and language so that they are willing to spend some time in the writer’s company.”⁷

Complaint introductions, whether written in numbered paragraphs or prose style, have the power to “demonstrate the writer’s competence and confidence as well as create some initial clarity.”⁸ As I have shown, concerns that complaint introductions violate any pleading rules are overblown, particularly when the writer uses numbered paragraphs. The likelihood that an introduction will lead a defendant to move to strike is low and in any event, the motion would almost certainly be denied.

As more cases are settled or disposed of pretrial, the use of storytelling techniques early in the case becomes even more important. And when the complaint is a high-profile one, the plaintiff almost certainly needs to put forth the best and strongest version of the facts and law at the earliest time to get the public’s attention. Beyond advancing the plaintiff’s interests, complaint introductions serve the laudable function of enabling the judge and defendant to understand the larger context of the suit at the start of the case, making complaint introductions a story worth telling. ●



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procedure and advanced legal writing courses. She has taught legal writing to thousands of law students and lawyers across the country and is the co-author of “Show, Don’t Tell: Legal Writing for the Real World.” Boyd currently serves as the editor-in-chief of *The Scribes Journal of Legal Writing*.

Endnotes

1. *Id.* at 9.
2. Gerald Lebovits, *Drafting New York Civil Litigation Documents: Part II—The Complaint*, 82-Oct N.Y. ST. B.J. 64, 56 (2010).
3. *Untold Stories: Restoring Narrative to Pleading Practice*. Elizabeth Fajans and Mary R. Falk. 15 LEGAL WRITING: J. LEGAL WRITING INST. 3, 8 (2009).
4. *Id.*
5. F.R.C.P. 10(b). The language of O.C.G.A. § 9-11-10(b) is identical.
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23rd Annual Justice Robert Benham Awards for Community Service

The Chief Justice's Commission on Professionalism is pleased to recognize lawyers and judges who have made significant contributions to their communities and who demonstrate the positive contributions of members of the Bar beyond their legal or official work.

BY KARLISE Y. GRIER



PHOTO BY DON MORGAN PHOTOGRAPHY

(Left to right) Chief Justice Michael P. Boggs and Justice Robert Benham at the 23rd Annual Justice Robert Benham Awards for Community Service ceremony at the Nathan Deal Judicial Center in March.

Chief Justice Michael P. Boggs, along with former Chief Justice Robert Benham, joined more than 100 attorneys and Georgia community members at the Nathan Deal Judicial Center in March for the 23rd Annual Justice Robert Benham Awards for Community Service hosted by the Chief Justice's Commission on Professionalism (the Commission). Since 1998, the Benham Awards have honored lawyers and judges in Georgia who have made significant contributions to their communities and who demonstrate the positive contributions of members of the Bar beyond their legal or official work. 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. Historically, the Benham Awards Selection Committee has accepted nominations for this prestigious statewide award from each of Georgia's 10 judicial districts, and the awards have been presented to selected attorneys in the judicial districts from which nominations were received. The award that is still given to award recipients was designed in 1998 by Patrise Perkins-Hooker, who at

that time, was a member of the Benham Awards Selection Committee. Perkins-Hooker later went on to serve as the first African American president of the State Bar of Georgia in 2014-15.

The Lifetime Achievement Award is the highest recognition given by the Commission and is reserved for a lawyer or judge who, in addition to meeting the criteria for receiving the Justice Robert Benham Award for Community Service, has demonstrated an extraordinarily long and distinguished commitment to volunteer participation in the community throughout their legal career.

In 2023, the Commission awarded the Lifetime Achievement Award to J. Michael Levensgood, founding member, Law Office of J. Michael Levensgood, LLC, Lawrenceville. The 2023 district award recipients were: Mary T. Benton, pro bono partner, Alston & Bird LLP, Atlanta; Simon H. Bloom, founding partner, Bloom Parham, LLP, Atlanta; Hon. Ronald J. Freeman Sr., managing member, Johnson & Freeman, LLC, Historic Union City; Elicia N. Hargrove, assistant district attorney, Henry County District Attorney's Office, McDonough; Edward H. Lindsey Jr., partner, Dentons US LLP, Atlanta; Jason Banks Moon, Moon Law Firm, Valdosta; Wallace H. Wright, Wright & Edwards, P.C., Metter. All award recipients are members of the State Bar of Georgia.

This year's ceremony was successful due to the hard work of many individuals whom I would like to thank. First, the Commission appreciates the work of the Benham Awards Selection Committee members who determined the award recipients: Committee Chair Hon. Joy Lampley-Fortson, U.S. Department of Justice, Atlanta; Hon. Joshua Clark Bell, Bell/Payne, LLC, Whigham; John Michael Dugan, DRL Law LLC, Greensboro; Jena G. Emory, Copeland Stair Valz & Lovell LLP, Atlanta; Terrica Redfield Ganzy, Southern Center for Human Rights, Atlanta; Laverne Lewis Gaskins, Law Office of Laverne Lewis Gaskins, P.C., Augusta; Michael Hobbs, Troutman Pepper Hamilton Sanders LLP, Atlanta; Hon. Chung H. Lee, The Law Office of Lee & Associates PC, Duluth; William J. "Bill" Liss, WXIA-TV/11Alive, Atlanta; Jennifer Mock, The

Lifetime Achievement Award for Community Service



J. Michael Levensgood's community service has been a foundational pillar throughout his legal career.

Levensgood served on the Gwinnett Health System Board of Directors, the Hospital Authority of Gwinnett County, the Georgia Hospital Association and the National Scleroderma Foundation. Levensgood and his family have raised significant dollars to fund research for a cure in memory of his sister-in-law, Kathleen, who passed away in 2009 from the disease.

During the '90s, Levensgood coached youth baseball and basketball teams, and for many years served as president of the Mountain Park Athletic Association. In 2001, Levensgood formed the Gwinnett Parks Foundation with several other community advocates, and initially served as the foundation's secretary. For more than two decades, the foundation has provided more than \$100,000 in scholarships for youth camp opportunities, senior health and wellness classes, and youth sports activities. The foundation conducts two community work days each year to beautify and improve county parks called Park'nership, which promotes good stewardship by encouraging youth and adults to participate in park beautification activities.

Levensgood, a 2003 graduate of Leadership Gwinnett, served as chair of the organization's Steering Committee. He formed the Leadership Gwinnett Foundation in 2007.

Levensgood, who became an Eagle Scout in 1970, is also active with the Boy Scouts of America Northeast Georgia Council. He serves in numerous critical roles that benefit more than 13,000 youth and adult members in 26 counties. Currently, Levensgood is pro bono counsel, where he has given thousands of hours of legal advice to guide through the bankruptcy of the national organization. Most recently, he has agreed to serve as the next president of the Council's 160-member Executive Board of Directors.

Levensgood is chair of the Community Foundation for Northeast Georgia, and currently serves on the Gwinnett County Public Schools Foundation Fund Executive Committee and on the Superintendent's Business Leaders Council. In addition, he is an emeritus board member of the Gwinnett Chamber of Commerce. Levensgood has served multiple times as Church Council president at Christ the King Lutheran Church in Peachtree Corners and at All Saints Lutheran Church in Lilburn. ●

Mock Law Firm, LLC, Statesboro; Hon. Herbert E. Phipps, Court of Appeals of Georgia, Atlanta; Cindy Wang, Georgia Department of Juvenile Justice, Decatur; and Hon. Brenda Carol Youmas, Macon. In addition to the Selection Committee, members of the Benham Awards Planning Committee assisted with organizing and fundraising. The Planning Committee was co-chaired by Christopher J. Chan, founder, Christopher J. Chan IP Law, and LaToya S. Williams, Georgia Public Defender Council, Atlanta. Ad-

woa Ghartey-Tagoe Seymour, vice president of litigation, Albertsons Companies, Inc., was an advisor to the CSA23 Planning Committee. Committee members included: Hon. William P. "Bill" Adams, Middle Georgia Justice, Macon; Marian Adeimy, Cox Enterprises, Inc., Atlanta; Hon. Phinia Aten, Rockdale County Magistrate Court, Conyers; Ann Baird Bishop, Hall Booth Smith, P.C., Atlanta; Addison Hilary Brown, undergraduate student, University of Georgia, Athens; William C. "Bill" Gentry, Gentry Law Firm, LLC,



PHOTO BY DON MORGAN PHOTOGRAPHY

(Front row, left to right) Simon H. Bloom, Mary T. Benton, Justice Robert Benham, J. Michael Levorgood and Wallace H. Wright. (Back row, left to right) Edward H. Lindsey Jr., Hon. Ronald J. Freeman Sr., Karlise Y. Grier, Elicia N. Hargrove, Jason Banks Moon and Chief Justice Michael P. Boggs.

Marietta; Norbert D. “Bert” Hummel IV, Hummel Trial Law, Kennesaw; Gerond Julian Lawrence, Greenberg Traurig, LLP, Atlanta; Deborah F. Lempogo, Squire Patton Boggs (US) LLP, Atlanta; Kenneth A. Mitchell, Giddens, Mitchell & Associates, P.C., Decatur; Alan G. Poole, Troutman Pepper Hamilton Sanders LLP, Atlanta; Cathy L. Scarver, C. L. Scarver & Associates, LLC, Atlanta; Shaniqua Singleton, Nelson Mullins Riley & Scarborough LLP, Atlanta; Cathy Clark Tyler, Atkins North America, Inc., SNC-Lavalin, Atlanta; Meka B. Ward, The Home Depot, Atlanta. Finally, individuals who volunteered to assist during the evening of the awards ceremony were Ann Baird Bishop, Christopher Brock, Christopher J. Chan, Jena G. Emory, Lynn Johnson, William J. “Bill” Liss, Kenneth Mitchell Jr., Paula Myrick, Cathy L. Scarver, Adwoa Ghartey-Tagoe Seymour, Shaniqua Singleton, Jasmine Smith Reaves, LaToya S. Williams, Angie Wright Rheaves and Ranee Zilton.

I also wish to thank Chief Justice Michael P. Boggs, Justice Andrew A. Pinson and Justice Robert Benham for their examples and for their continuing support and guidance regarding the Commission and the awards ceremony. Thank you to Therese “Tee” Barnes, Tia C. Milton, Lynnitia Terrell, Bob McAteer, Anita Harrison, Emily Youngo, Marti Head, Sgt. Dexter Harden and all of the staff of the Supreme Court of Georgia who helped to make this event possible. I am grateful that the members, advisors and liaisons of the Commission continue to understand the role and importance of the awards ceremony in the Commission’s work to promote and enhance professionalism among Georgia’s lawyers and judges.

Additional information regarding the awards ceremony, including a program book, photographs and honoree videos are available on the Commission’s website at cjcpga.org/benhamcsa23. ●

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Justice Robert Benham Award for Community Service: 2023 Honorees



Mary T. Benton

Volunteered with the Truancy Intervention Project Georgia, Inc., beginning in 1996; joined the board in 2002, and served as board chair from 2012-14. Provided volunteer support and leadership to Georgia Appleseed for almost 15 years;

served for two terms as board chair; was part of a coalition that worked to rewrite the Georgia Juvenile Code that passed unanimously and was signed into law by Gov. Nathan Deal in 2013. Currently serves on the boards of the National Appleseed Foundation, United Way of Greater Atlanta, the Gateway Center and the National Homelessness Law Center.



Simon H. Bloom

Has volunteered for almost 30 years for the Boys and Girls Clubs of Metro Atlanta (BGCMA); served as BGCMA's board chair from 2020-22; hosted an annual "Pig Gig Fundraiser" for almost 22 years and raised more than \$1 million to support BGCMA. Currently serves on the boards of the Atlanta Police Foundation, Georgia State University College of Law Board of Visitors and as board vice chair for Great Promise. Founded Hope + Access in 2017, a nonprofit committed to providing youth development and social services through partnerships with churches.



Hon. Ronald J. Freeman Sr.

Since 1992, has served as a board member for the Andrew & Walter Young Family Metro YMCA; raised millions of dollars to expand and renovate the facility, and served as a longtime volunteer aerobics instructor. Founded the Tiger Soccer Club (TSC) and helped develop approximately 2,000 players; coached TSC U17 Boys Competitive Team that ranked second in international play in their division. Currently serves on the Georgia State University (GSU) Foundation Board, the GSU College of Law Board of Visitors and as secretary of the GSU Emeriti Society; GSU's Black Law Student Association named its chapter in his honor.



Elicia N. Hargrove

Volunteered in Albany, Georgia, for SOWEGA Rising's voter election literacy and rights trainings, Women9to5's Albany campaign for utilities justice, and as a Board member for Open Arms and United Minds Empowered. Volunteers in Milledgeville, Georgia, on the Boards of Straight Street Minis-

tries House of Ananias Inc., which focuses on community outreach and ministry, and MIA Maddox Investing in America, Inc., which helps to feed more than 100 families each month. Volunteers in McDonough, Georgia, for the "Ignite My Fire" program held at the Shaquille O'Neal Boys & Girls Inc., which works to engage, educate and empower youth.



Edward H. Lindsey Jr.

Currently serves as a member of the State Elections Board, which establishes voting rules and regulations. Serves as co-chair of the Committee for a United Atlanta. Founding board member of Georgia Fugees Charter School, a state-funded, public charter school established in 2020, with the primary mission of serving the unique educational needs of refugee and new American students. Served for 10 years in the Georgia House of Representatives, including three terms as the House majority whip. Sponsored HB 200, which was Georgia's first comprehensive attack on human trafficking. Co-sponsored the State Charter School Constitutional Amendment.



Jason Banks Moon

Served as a Boy Scouts of America (BSA) Cubmaster of Pack 491 from 2017-22; grew the Pack from 18 to more than 35 active scouts; maintained the Pack's membership during the COVID-19 pandemic by implementing safety protocols; co-founded Troop 2020, the first all-girls BSA troop in the Alapaha District of the South Georgia Council; currently serves as a District Committee member for the BSA Alapaha District, a merit badge counselor for the Law Merit Badge, and as vice president for membership on the Executive Board of the BSA South Georgia Council.



Wallace H. Wright

Serves as a certified dog handler for Tyler, a certified therapy dog; visits local schools, hospitals and retirement homes in Candler County with Tyler to help children learn to read, to help relieve pain, suffering and anxiety in hospitals, and to spread cheer in retirement homes. Serves as a board member for Communities in Schools in Candler County. Mentors local school children. Volunteered with Ogeechee Area Hospice, by assisting in its formation, participating in a capital fund drive, providing pro bono legal services and serving on the board of directors.

**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.

C. HEATH ARMFIELD JR.
Ellijay, Georgia
Atlanta Law School (1976)
Admitted 1976
Died February 2023

**JOHN GORDON
BARKSDALE III**
Covington, Georgia
Atlanta's John Marshall
Law School (1972)
Admitted 1973
Died January 2023

W. DEXTER BROOKS
Marietta, Georgia
University of Baltimore
School of Law (1969)
Admitted 1972
Died April 2023

WILLIAM W. BYINGTON JR.
Rome, Georgia
University of Georgia
School of Law (1976)
Admitted 1976
Died May 2023

JAMES F. CALLAHAM JR.
Atlanta, Georgia
Emory University School
of Law (1962)
Admitted 1973
Died April 2023

JEFFREY WYNN COFER
Auburn, Alabama
Atlanta Law School (1992)
Admitted 1993
Died April 2023

ALERA JILL ELLIOTT
Macon, Georgia
Woodrow Wilson College
of Law (1975)
Admitted 1975
Died April 2023

GREELY ELLIS
Covington, Georgia
Emory University School
of Law (1959)
Admitted 1958
Died December 2022

**JAMES FERGUSON
FINDLAY**
Augusta, Georgia
Samford University
Cumberland School
of Law (1971)
Admitted 1973
Died December 2022

IKE A. HUDSON
Newnan, Georgia
Atlanta Law School (1979)
Admitted 1979
Died March 2023

**ROBERT ALLEN
MAGNUSON**
Tulsa, Oklahoma
Depaul University College
of Law (1995)
Admitted 2000
Died January 2023

**DIANE PATRICIA YORK
MARTIN**
Brookhaven, Georgia
Atlanta's John Marshall
Law School (1990)
Admitted 1990
Died March 2023

**MATTHEW WILLIAM
NICHOLS**
Atlanta, Georgia
University of Georgia
School of Law (1993)
Admitted 1993
Died April 2023

FRANK SLOVER
Atlanta, Georgia
Georgia State University
College of Law (1985)
Admitted 1986
Died April 2023

HOWARD J. STILLER
Albany, Georgia
Woodrow Wilson College
of Law (1978)
Admitted 1978
Died April 2023

RICHARD JOSIAH TILLERY
Decatur, Georgia
Emory University School
of Law (2009)
Admitted 2009
Died March 2023

HOMER LEE WALKER II
Atlanta, Georgia
Emory University School
of Law (1986)
Admitted 1986
Died March 2023

LYSANDER ALLAN WOODS
Lilburn, Georgia
Texas Southern
University Thurgood
Marshall School of Law
(1994)
Admitted 1996
Died May 2023

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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.

Copyright: A Writer's Guide

By Michael S. Webb
99 pages, Vision Press

REVIEWED BY DERRICK ALEXANDER POPE

Most of us have a creative side to our personalities, and more than a few of us dare to follow through on our instinct to fashion a new idea.

We write books and plays and music. We develop software programs or write codes to improve or debug existing ones. We expect of ourselves—and the like-minded—that we bring into existence something never seen before; something needed, something useful, and even if we do not realize it, something to spark the imagination of others to do the same.

“Copyright: A Writer’s Guide” by Michael S. Webb is a useful and needed tool for the creative-minded individual who wants to learn, in a practical and easy-going manner, the ins and outs of protecting originally created works.

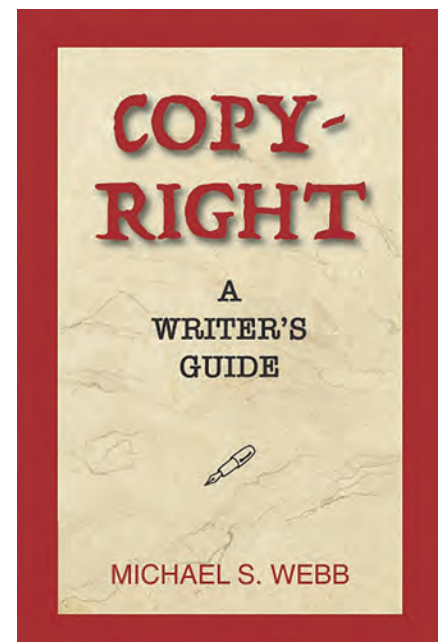
In one page shy of a hundred, Webb offers “Copyright” as “a practical resource for ... writers who seek guidance in matters of copyright law.” Before you dive in, however, don’t make the mistake of thinking that this is one of those celebrated and popular “how to for dummies” tomes. In fact, to his credit, Webb tells us from the start that he finds those titles insulting and insists that we should, too. This admonition sets the stage for the book’s careful balance between a professor’s lecture and a friend’s barstool counsel.

There are three questions most writers want answered: (1) How do I protect my work?; (2) How do I profit from my

work?; and (3) How do I prevent others from using my work? Webb answers these questions in 14 succinct but information-packed chapters. In the book’s opening intervals, Webb begins with an explanation of the foundational principles of copyright issues, the copyright clause in the Constitution and the role of Congress in setting the framework for legal protection. He continues by outlining types of works that can obtain copyright protection, who owns the copyright to created works, and the benefits and limitations attendant to that ownership.

The interior chapters are devoted mainly to an exposition of how individual ownership is situated with other considerations that either permit the fair use of copyrighted materials to further larger societal goals or censor the unauthorized use of those original works by others through infringement actions. The book closes with practical steps on registering created works for protection, both domestically and internationally, and includes helpful tidbits on the implications of how ever-changing technology impacts copyright concerns. As an added bonus, Webb includes a glossary defining common terms.

Once you are done creating your next written work of art and you begin seeking information on how to protect this masterpiece of the ages against posers and imposters lying in wait, “Copyright:



A Writer’s Guide” by Michael S. Webb is the desired “go-to, how-to” resource that should be within easy reach on your bookshelf. ●



Derrick Alexander Pope is an adjunct professor of business and health law in the Stetson-Hatcher School of Business at Mercer University, the founding director of The Arc of Justice Project and host of the “Hidden Legal Figures” podcast.

Note: ICLE courses listed here are subject to change and availability. For the most up-to-date ICLE program details, please visit icle.gabar.org. For questions and concerns regarding course postings, please email ICLE@gabar.org.

JUNE

- 13 Special Needs Trusts**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 16 Eminent Domain**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 22-23 Environmental Law Section
Annual Summer Seminar**
Classic Center | Athens, Georgia
8 CLE Hours

JULY

- 13-15 Fiduciary Law Institute**
Hotel Effie Sandestin
Miramar Beach, Florida
12 CLE Hours

SEPTEMBER

- 7 Secrets to a Successful Plaintiff's
Personal Injury Practice**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 14 Medical Malpractice Boot Camp**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 28 Nursing Home Litigation**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 29 Aviation Law**
Bar Center | Atlanta, Georgia
6 CLE Hours

OCTOBER

- 5-7 Workers' Compensation Law Institute**
Jekyll Island Convention Center
Jekyll Island, Georgia
12 CLE Hours
- 12-14 Insurance Law Institute**
Ponte Vedra Inn & Club
Ponte Vedra Beach, Florida
12 CLE Hours
- 13 Title Standards**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 20 Criminal Practice**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 20 Zoning Law**
Bar Center | Atlanta, Georgia
6 CLE Hours
- 27 Family Law Seminar**
Savannah Rapids Pavilion
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