30TH ANNUAL
URGENT LEGAL
MATTERS INSTITUTE

August 30–31, 2019
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Friday–Saturday, August 30–31, 2019

URGENT LEGAL MATTERS INSTITUTE

12 CLE Hours Including
1 Ethics Hour | 2 Professionalism Hour | 6 Trial Practice Hours
Who are we?

**SOLACE** is a program of the State Bar of Georgia designed to assist those in the legal community who have experienced some significant, potentially life-changing event in their lives. SOLACE is voluntary, simple and straightforward. SOLACE does not solicit monetary contributions but accepts assistance or donations in kind.

How does SOLACE work?

If you or someone in the legal community is in need of help, simply email SOLACE@gabar.org. Those emails are then reviewed by the SOLACE Committee. If the need fits within the parameters of the program, an email with the pertinent information is sent to members of the State Bar.

What needs are addressed?

Needs addressed by the SOLACE program can range from unique medical conditions requiring specialized referrals to a fire loss requiring help with clothing, food or housing. Some other examples of assistance include gift cards, food, meals, a rare blood type donation, assistance with transportation in a medical crisis or building a wheelchair ramp at a residence.

Contact SOLACE@gabar.org for help.
The purpose of the SOLACE program is to allow the legal community to provide help in meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience loss of life or other catastrophic illness, sickness or injury.

TESTIMONIALS

In each of the Georgia SOLACE requests made to date, Bar members have graciously stepped up and used their resources to help find solutions for those in need.

A solo practitioner’s quadriplegic wife needed rehabilitation, and members of the Bar helped navigate discussions with their insurance company to obtain the rehabilitation she required.

A Louisiana lawyer was in need of a CPAP machine, but didn’t have insurance or the means to purchase one. Multiple members offered to help.

A Bar member was dealing with a serious illness and in the midst of brain surgery, her mortgage company scheduled a foreclosure on her home. Several members of the Bar were able to negotiate with the mortgage company and avoided the pending foreclosure.

Working with the South Carolina Bar, a former paralegal’s son was flown from Cyprus to Atlanta (and then to South Carolina) for cancer treatment. Members of the Georgia and South Carolina bars worked together to get Gabriel and his family home from their long-term mission work.

Contact SOLACE@gabar.org for help.
Dear ICLE Seminar Attendee,

Thank you for attending this seminar. We are grateful to the Chairperson(s) for organizing this program. Also, we would like to thank the volunteer speakers. Without the untiring dedication and efforts of the Chairperson(s) and speakers, this seminar would not have been possible. Their names are listed on the AGENDA page(s) of this book, and their contributions to the success of this seminar are immeasurable.

We would be remiss if we did not extend a special thanks to each of you who are attending this seminar and for whom the program was planned. All of us at ICLE hope your attendance will be beneficial as well as enjoyable. We think that these program materials will provide a great initial resource and reference for you.

If you discover any substantial errors within this volume, please do not hesitate to inform us. Should you have a different legal interpretation/opinion from the speaker’s, the appropriate way to address this is by contacting him/her directly.

Your comments and suggestions are always welcome.

Sincerely,

Your ICLE Staff

Jeffrey R. Davis
Executive Director, State Bar of Georgia

Michelle E. West
Director, ICLE

Rebecca A. Hall
Associate Director, ICLE
# AGENDA

THE INSTITUTE WILL BE HELD AT THE JEKYLL ISLAND CONVENTION CENTER

FRIDAY AUGUST 30, 2019

**PRESIDING:**
- *Hon. Thomas “Tom” E. Cauthorn III*, Cauthorn Nohr & Owen, Marietta
- *James Wickliffe “Wick” Cauthorn*, The Cauthorn Firm, Atlanta

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<th>Speaker(s)</th>
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<tr>
<td>7:45</td>
<td><strong>REGISTRATION AND CONTINENTAL BREAKFAST</strong> (All Attendees must check in upon arrival. A jacket or sweater is recommended.)</td>
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<tr>
<td>8:20</td>
<td><strong>WELCOME AND OVERVIEW</strong></td>
<td><em>J. Wickliffe Cauthorn</em>, The Cauthorn Firm, Atlanta</td>
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<tr>
<td>8:30</td>
<td><strong>CIVIL FORFEITURE</strong></td>
<td><em>Adam L. Hebbard</em>, The Law Offices of Adam L. Hebbard, LLC, Athens</td>
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<tr>
<td>9:30</td>
<td><strong>CLOSING ARGUMENT: DAMAGES</strong></td>
<td><em>R. Randy Edwards</em>, Cochran &amp; Edwards, LLC, Smyrna</td>
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<tr>
<td>10:00</td>
<td><strong>BREAK</strong></td>
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<tr>
<td>10:45</td>
<td><strong>RECENT DEVELOPMENTS IN EVIDENCE</strong></td>
<td><em>Professor Ron L. Carlson</em>, Fuller E. Callaway Chair of Law, Emeritus, UGA School of Law, Athens</td>
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<tr>
<td>12:45</td>
<td><strong>LUNCHEON</strong> (included in registration fee.)</td>
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<tr>
<td>1:45</td>
<td><strong>UPCOMING 2020 LEGISLATION AFFECTING TRIAL PRACTICE</strong></td>
<td><em>Hon. Blake Tillery</em>, Senator; Smith &amp; Tillery, PC, Vidalia</td>
</tr>
<tr>
<td>2:45</td>
<td><strong>ATTORNEY DISCIPLINE UPDATE</strong></td>
<td><em>Prof. Patrick Longan</em>, William Augustus Bootle Chair in Professionalism and Ethics, Mercer School of Law, Macon</td>
</tr>
<tr>
<td>3:45</td>
<td><strong>BREAK</strong></td>
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<tr>
<td>4:00</td>
<td><strong>PERSUASIVELY REPRESENTING THE BAR EXAM APPLICANT DURING THE FITNESS PROCESS</strong></td>
<td><em>Rebecca Mick</em>, Assistant Director, Georgia Office of Bar Admissions, Atlanta</td>
</tr>
<tr>
<td>5:00</td>
<td><strong>DOMESTIC RELATIONS—GEORGIA CHILD SUPPORT WORKSHEET—DON’T LEAVE ANYTHING OUT</strong></td>
<td><em>Nicole Roth Rogers</em>, Certified Divorce Financial Analyst, The Rogers Firm, LLC, Marietta</td>
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6:00 RECESS
6:30 RECEPTION
The reception will be held at the Westin Jekyll Island.

SATURDAY
AUGUST 31, 2019

7:45 CONTINENTAL BREAKFAST

8:20 ANNOUNCEMENTS
T. E. Cauthorn, Cauthorn Nohr & Owen, Marietta

8:30 RECENT DEVELOPMENTS IN DOMESTIC RELATIONS
Jeremy Abernathy, Marietta

9:30 PREPARING FOR THE MEDIATION AND PRESENTING THE MEDIATION
Hon. G. Bryant Culpepper, Adjunct Faculty, Mercer School of Law, Macon

10:30 BREAK

10:45 RECENT CHANGES TO IMMIGRATION POLICY
(NO FAKE NEWS!)
Safiya W. Byars, The Byars Firm, Inc., Atlanta
Dara L. Berger, Berger Immigration Law LLC, Atlanta

11:35 JUDGES’ PANEL DISCUSSION
Hon. Brenda S. Weaver, Chief Judge, Appalachian Judicial Circuit, Jasper
Hon. Stephen G. Scarlett, Sr., Chief Judge, Brunswick Judicial Circuit, Brunswick
Hon. Joyette M. Holmes, Chief Magistrate, Magistrate Court of Cobb County, Marietta
Hon. G. Bryant Culpepper, Senior Judge, Superior Courts of Georgia, Perry

12:45 ADJOURN
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CIVIL FORFEITURE
Materials will be provided at the program.
CLOSING ARGUMENT: DAMAGES
MR. SHERROD: Thank you, your Honor. If it wasn't clear to you before now, it ought to be clear to you now. The defense of this case is A.J. is a liar. He crashed his bike, and now is blaming his brakes. Suzuki put A.J., a loyal customer, a mentor to our youth, a Veteran in the sudden emergency, and now criticizes how he chose to save his life. He still made the right choice. He avoided death with a bad brake, a bad brake that Suzuki knew about. And now A.J. is lying about how he used his brake and how he crashed.

It's not enough for Suzuki to come and cause so much physical harm and mental harm and emotional harm. Now they've taken only the last thing A.J. had: His good name. To protect their money, they have attacked his good name in public, on a public record. This is a permanent record, and Suzuki has called him on that record, a liar. They may want to praise him for his service to our country, but then they go on further and call him a liar.
A.J. is lying about his pain level. He's lying about being disabled. And he is lying about his brakes. The defense has engraved this indelibly into the permanent record that everyone in our community can read, and they can see it, and even A.J.'s kids may one day want to know about Dad's trial, and they'll know that he was called a liar.

The accusation is that he came in and looked you each in the eyes, put his hand on that Bible, and lied about his brakes. Suzuki has tried to wreck A.J.'s good name, not because there's anything wrong with his name, but to protect their money. But there is good news. Unlike most of the harms in this case, you can fix this one 100 percent.

How? The instant your verdict is read aloud by Ms. Miller, the instant it's read, he'll get his name back, if it is for full and fair compensation. Because all the world will know, then, is that a neutral jury heard this case, and they saw -- you saw that A.J. was telling the truth.

But whatever the amount is, whatever less than full and fair compensation, there will always be a catch to A.J.'s name, some dishonesty. People will always think that this jury did not believe him completely, nor did you believe the other Suzuki customers that this happened to.
Now, I want to talk for a minute about what this case boils down to: Credibility. That's nothing more than believability. And in this case, you're deciding credibility between A.J., who lives over on Hampton Pass, about three miles from here, and Suzuki, one of the largest corporations in world.

Now, like you, I took some notes on credibility. Let's take a look at just a few. A.J. loved Suzuki. He had the helmet, the gloves, the jacket -- the day he crashed he was wearing a Suzuki jacket. He had stickers that he bought that has Suzuki out them.

What about the credibility of Suzuki? They don't even sell this motorcycle in Japan. A.J. not only answered every question from that witness box, he volunteered for another deposition that he didn't have to do.

What about Suzuki's credibility? Date and time on an e-mail, does anybody remember that? Mark Hernandez -- Robert Hernandez, the corporate representative, the first witness in this case, do you remember how he struggled to answer every question while Mr. Edwards was questioning him? It even got to be, "Well, Mr. Hernandez, you admit that the date and time on an e-mail means the date and time on an e-mail?" "Well, I assume so. I don't know how all of that works." That's
credibility -- that's a lack of credibility.

Credibility is when you answer every question. A.J. appeared dead. You heard Mr. McArthur say that. What does Suzuki's credibility show? Let's embrace that confusion he might have appeared dead, but let's talk about what A.J. said while he laid on a spinal board with a broken back. Let's talk about that. Let's talk about what he didn't say. Is that credible?

Norris Freeman, he races motorcycles. He drag races motorcycles. He has over 20 motorcycles. He invited Suzuki into his home. Mr. Goldman said, "Yeah, remember I came to your home." What does Suzuki do with their credibility? "Norris is an unfit mechanic. Don't listen to anything he says." A.J., "Come test my brake. Suzuki, we'll invite you in and test my brake."

What does Suzuki do? They come and they test. They're all there. And now they come and criticize the test that they were part of. This ought to show you credibility.

Mr. Riggs said, "You didn't report to us about your brake, did you?" Well, no, he was learning to walk again at Shepherd's.

Well, what does Suzuki -- the one pointing the finger, they don't report to the government a safety-related issue for six months. Yet they want to
criticize this man, while he is at Shepherd's learning to
walk, that you didn't call us and give us a detail of
this, so we can run your complaint through this and deny
it anyway?

A.J. brings other Suzuki customers. We couldn't get
them here in this chair, but we got them on video, and we
got their depositions, and they told you about it. What
does Suzuki say about their other customers? They trash
them too. We wouldn't believe anybody. And it's just not
the people who testified, look at this evidence about
these other complaints.

Mr. Hernandez: "Well, I didn't have notice that you
were going to call me as a witness. I'm not prepared."
That's what he said. Mr. Edwards said a very important
question, "You know this is important, isn't it? You want
to be notified, don't you? Because that's what the case
is all about. You gave A.J. no notice of the danger."

Gwen and A.J. have lost their jobs. You can bet on that.
They've lost them.

What does Suzuki do with their credibility? They
spent $1.3 million on the only two witnesses they brought,
1.3 million for those two people that testified in this
case. Do you think it's just 1.3? Do you really think
it's 1.3? I think this is the biggest credibility issue
of all time.
I asked Norris Freeman, kind of as a joke -- we need a little levity in this case sometimes -- I said, "Norris, can you tell us about Exhibit 1192?" And we all know about 1192. "What is this? Does this look like something a bird dropped from the sky?" Norris Freeman said, "John, I can't tell you that."

What does Suzuki's one million-dollar man say? "I am positive I know what that is." That's credibility. I'll tell you right now. That's a lack of credibility for Suzuki, and that's credibility of Norris Freeman who they want to trash.

Gwen is the only one in this courtroom, out of all these lawyers, she's the one that locates the scene of where this crash happened. Because with the incident report, you can't tell where it happened. She goes out and finds Mr. McArthur because the number was on her phone. She locates the scene for all of us, all these hired experts, they all used where this happened because Gwen found the witness to locate the scene. Credibility.

What does Suzuki do? They sent a guy from Japan with a red pen, and he struck through the truth. Do you think the person that they relied on to make their brakes, doesn't have a minute-taker that's accurate? If that's the case, they need to find another brake maker over there in Japan.
Lastly, the corrosion was removed and the brakes worked. That was the test. Suzuki was involved in that test. What do they say about it? Irrelevant. That's irrelevant. I told you when we started this case, it's important. It's very important. You now see what I meant. You will be deciding this in a few minutes, and you have the rarest of opportunities.

You are sitting as judges in one of the important cases, I submit, that will be tried this year in Douglas County and beyond.

Let's compare -- well, let me say this: You realize how important it is because you've been here for almost a month. I'm hoping that with your decision, you're going to make some changes about how big businesses operate when they know about a danger; whether it's California; whether it's in Japan; or whether it's in New York, you have the power today.

Now, let's look at how careful Suzuki was in this courtroom when money is involved. They're very careful, aren't they? But compare the level of care that they use in court when they're protecting their money, with the level of care that they used in Japan in 2012, 2013. And I will submit to you these documents, if we can go a little bit deeper in them is even before 2012. In this case in front of you, they're very careful, but in Japan,
when it's time to warn yet, let's get through the selling season. We know the defect, but don't worry about it. They're careless over there about it. Human lives are involved here. But when it comes time to be in front of you, now they're very careful.

They get Randy Riggs, one of the most skilled lawyers in the nation, to represent them. You saw how hard he fought to keep those documents out on the first day. He objected to everything. He did not want the Suzuki documents to get before you.

Back in 2013, Suzuki seemed kind of casual about ordering parts for a recall, but not telling, not just A.J., do you think they told Freewheeling? Do you think they told any dealer in the country? They say in their own documents, "We don't want to upset the selling season." They didn't tell anybody. They're just casual about it. And they didn't tell the federal government. Think what you want to think about the federal government, but you've got a law saying that you've got to tell them, and they didn't.

Here in courtroom 4, Suzuki acts a little different about it, because they're protecting their money. So what do they do? They get Todd Hoover and Kevin Breen to come in here and testify. And what did they pay those two gentlemen? They got the money. I understand that.
But what they paid those gentlemen, they could have taken and bought the seal, which is the seal that they used before 2003 on the front brake. It's a little rubber seal. I submit to you it's worth a quarter. Suzuki could have bought this thing and put it on every bike in the world that has this defect ten times. Ten times is what they could have spent by just putting the seal, but they chose to use these guys, because now money is involved.

Back in 2012 and 2013, don't worry about this little seal. You heard Mr. Riggs say yesterday, A.J. and Gwen should get nothing; he means that. Mr. Riggs speaks for Suzuki. Suzuki means and believes that A.J. should get nothing, and that's their standard about human safety. And they want you to apply the same standard: Human safety means nothing.

Suzuki has spent the last three weeks refusing to answer questions. They're good about these experts, but where are the real answers of what's going on in 2012 and 2013? Why are y'all doing this? It's a real danger. It affects all of us.

It's just not about Suzuki riders. I'm reminded that he went through a crosswalk there at North Douglas Elementary School the morning this happened with a bad brake that they admit is bad. But rather than explain it, they got good lawyers, and they got some good witnesses,
and they present you a cafeteria plan, a cafeteria plan of
different ways to send him home without a nickel. Just
choose any one of these: A little bit of water got in his
hoses that we used. That's the end of the case. There
was some acid in there, end of the case. Disregard Norris
Freeman. John, if it looks clear, we don't change it.
I've got bikes with the same brake fluid. Maybe you don't
agree with Norris, but that is who A.J. relied on.

Well, when you consider these cafeteria plans, let's
look at one theory that Suzuki presented with its last
witness, Kevin Breen. A theory from Suzuki's own witness
that makes perfect sense. If you have doubts about Jeff
Hyatt and his opinions, if you have doubts, this is going
to make a lot of sense. The evidence came at a cost of
$400,000 to Suzuki, and this evidence will let you decide
this case for A.J. and Gwen.

First, you'll all remember Mr. Breen said, "Yes, it
sounds like he was having the recall condition -- hydrogen
gas in the front brake master cylinder, spongy brake, May,
Armed Forces Day. How about three days before the crash,
when he's on his cell phone taking off his bleeder cap,
and doing this for the very first time in his life?
Mr. Breen said it sounds like the recall condition. And
one thing you'll find, I think, interesting, maybe
amusing, they're going to trash this gentleman for a month
on his maintenance, but when it comes to that Friday, they
gave him a gold star for how he bled his brakes for the
first time in his life.

Mr. Riggs was praising him yesterday. "He bled his
brakes. He said they were tight. They had to be tight.
They had to be good." He got all of the gas out of it.
Why is that important? What if he didn't get all the gas
out of it? What if there was still gas in his front brake
master cylinder? Important?

Fast forward, October 2014, some of you took real
good notes. I know that. Look at how when Mr. Breen was
testifying about October 2014's CT scan. It was used on
A.J.'s bike, his complete brake system. Some of you know
what a CT scan is. They took it down to Texas.

Mr. Hoover first testified about the CT scan.
They're using it to their advantage to show there was a
little bit of air in crossover tube. It probably came
from brake damage after the crash. Just a little bit of
air, no big deal.

What did Mr. Breen say? What did he say about it?
Mr. Riggs said, "Did you find that air in the tube?" He
said, "Well, I found pockets of gas." That's what he
said, "pockets of gas." He never used the word "air."
Mr. Riggs continued questioning him about this. They put
up a CT scan that showed a pocket of gas at the reservoir
This is Defendant's Exhibit 1203. And before anybody says anything, that's my red circle around that gas. That's A.J.'s bike. And that's a pocket of gas from a Suzuki witness. And let me tell you what he said. They used a new word on me in the trial that I hadn't heard yet.

Mr. Breen said that pocket of gas is right next to the pressure chamber. Some of you know what a pressure chamber is. It's the front brake master cylinder. You've got hydrogen gas at the back door. It's knocking, and then this came.

And I don't know who is the best note taker, but if you go right to your notes when he's testifying, this is what he says. "Some of that gas could have come from the front brake master cylinder."

As I'm listening to this, I can't believe my ears. You've got Suzuki's National counsel questioning a $400,000 Suzuki witnesses, and he has just said that there could have been gas in A.J.'s bike in the front brake master cylinder.

Now, you've got to go through a few more pages of your notes, because it's not until Mr. Edwards gets up and says, "You can't rule out that that gas is hydrogen gas?" "No, I can't rule it out."
After being here for a month, it's a very complicated case. The judge will tell you that. But you've all been here. You've all listened diligently. Hydrogen gas in a front brake master cylinder, it's remarkable, since this is what Suzuki said about hydrogen gas in the front brake master cylinder: "Hydrogen gas increases stopping distances," Plaintiff's Exhibit 1.

"The brakes don't work right because of hydrogen gas." That's not me saying this. That's what their people say.

"Hydrogen gas in the front brake master cylinder is dangerous." 29 -- I'm going to name the numbers. These are the exhibits that say this.

"It's a serious safety issue," 9-B.

"Hydrogen gas in the front brake master cylinder causes the speed of response to be slow."

"Hydrogen gas causes the speed --" I'm sorry -- "is a matter that involves human lives," 29. "It's a matter that should be prioritized."

"Hydrogen gas in the front brake master cylinders is a situation where dealers and customers do not see this as a problem."

"Hydrogen gas -- 9-B -- "is a product defect."

"Hydrogen gas in the front brake master cylinder is a product defect." Don't believe me? Plaintiffs'
Exhibit 9-B, read it, because that's the very issue -- one of your questions on this long verdict form, "Is there a defect?" Look at 9-B, this is Suzuki saying that it is. Hydrogen gas in the front brake master cylinder is the exact issue that Suzuki said, "Customers will notice a reduction of the brake pressure. They will bring their vehicles to dealers. They will perform air bleeding. They will think that the problem has been resolved and resume using their vehicle." Customers like A.J., they don't know there's a problem with the structure, 9-B. Hydrogen gas in the front brake master cylinder is what was written on a letter that was sent to this man 98 days too late.

This evidence from Mr. Breen is also consistent with all the testimony.

A.J. is on his ride to work. He is coming up on the back of a flatbed trailer carrying heavy equipment. His brake doesn't work like it is supposed to. What does he do? He does what you would've done, saved his life. He swerved and he crashed.

We don't have to prove a brake failure. We have to prove that the brake didn't work right. And now, you have Suzuki's witness saying there could have been gas in the front brake master cylinder. When he is on a spine board, he says, "I tried to apply my brake."
Now, Suzuki, and they're good, I admit it. The defense says never mind that our brake is not a good brake. Don't concern yourself with our brake is not a good brake.

Let's talk about A.J. running late to work, and I wrote this down, is he saying A.J. is running late to get to work early? Isn't that what they're saying?

He left early. He has got to get there early to do his paperwork, so he left work -- he left to get there early, but he's late to get there early. Okay. I had never heard that. And then they want to talk about he is going up the merge lane because he's running late to get to work early, and he runs into some gravel and crashes. Well, let's first revisit the testimony of the EMT, who is a motorcycle rider. "Tell the jury where the skid mark was located. What lane?"

"It was located just partially -- partially in the traffic lane, leading over to the turn lane or merge lane, whatever it might be called." Well, there is the first physical evidence that he wasn't running up the merge lane on his bike. The skid mark, from what he said, was the back tire starts in the travel lane, so there goes Hoover's theory about him passing everybody in the merge lane. Well, also remember all that gravel? What did Mr. Kinsey tell you about gravel?
Well, first of all, note takers, there was no gravel. There was nothing out of the ordinary. There was what he said, and I'm using his words, "small particles of asphalt, and some like pea gravel."

"Where was it, Mr. Kinsey? You ride motorcycles. You were vigilant enough to see where the gravel was -- or the pea gravel."

"Well, it was all over in the merge lane and it was mostly collecting in the spillway, by the curb."

What did the officer say? There were gouge marks in the gravel that he saw. What was that from? Well, it looked like something from a kickstand or a piece of metal from the bike as it was flipping down the road.

What does A.J. say in the hospital? You heard Norris testify about it. And you heard Gwen testify about it. Gwen said, and I quote, "A.J. said his brake did not work right." It's the exact same thing that Mr. Soulliere said from his hospital room. The exact same thing.

Norris Freeman, think what you want to think about him as a mechanic, but he does say he came and talked to his son-in-law because they had been talking about brake problems, and he said that his brake wasn't working right again. If any one of you were to suggest, what about Suzuki? They say this doesn't happen mid-ride -- brake pressure loss mid-ride, never heard such a thing.
Remind them of exhibit -- Plaintiff's Exhibit 20 and 64, and remind them about Mr. Girard in Washington State, and Mr. Soulliere's testimony. There's an abundance of evidence that this happened mid-ride.

Now, I'm not suggesting here that lumpy sludge is perfectly okay in a brake system. We know that it is not. It is another form of the corrosion, and Mr. Hyatt gave you ample reason to find sludge as the problem. But now I'm giving you another reason, and it comes from Suzuki's own witness, that hydrogen gas was the defect, and it was found on a CT scan that you will have in front of you.

Also before I leave the CT scan, I want to show you quickly Exhibit 7-B and 1203. Quickly, this is the defendants' CT scan. This document right here is the Suzuki document in October of 2012, almost a year before A.J.'s crash. Suzuki's doing research, and they say air accumulation position. It's accumulating in this area.

Compare it to Defendants' Exhibit 1203. You'll have all these exhibits to review as to the CT scan identifying hydrogen gas.

Also, look at 147. It's this big chart. You won't have the big chart, but you can make one in the back room with the pages. I'll just simply say this: If you get down here toward the bottom, and the claimant is cooking with oil that they might make it to Suzuki saying, yeah,
this is related.

I found it interesting, when I actually looked at some of this stuff, that the flowchart they use on the last page, it urges Suzuki employees to use a CT scan, and rule out the accumulation of gas, and point the finger away from Suzuki.

Look at Exhibit 144, Paul. This is another Suzuki document. This one, when the cases go to court, it's important for Suzuki to show that gas developed after the accident, even though Suzuki knows it's difficult to prove scientifically when the corrosion occurred. This is the mentality over there.

And lastly, we've heard a lot about spongy brake. If anyone says, yeah, spongy brake is no big deal, look at this last document, what it says. "A brake does not work if 1.7cc's of gas is accumulated. At that level, even the brake lever touching the bottom grip, one could push and move the vehicle." Sound familiar? They want to talk about this gas is no big deal. They're not reading their own documents.

Sounds like what we saw at ATS, and you've seen that video six or eight times. They're pushing that bike around with the brake down. And about that, is that a brake that you want when you're coming in the back of a trailer, a brake that a little engineer can turn? Is that
what you really want when you're trying to stop on Lee Industrial Boulevard? How about on I-20?

With my remaining time, I want to talk to you about the real issue in this case. Your job is to make up for the harms that Suzuki has caused A.J. and Gwen. Money is society's only way for the defendants to accept responsibility for Suzuki's conduct.

The judge will call it "monetary damages." They are to fix what can be fixed, help what can be helped, and make up for the problems that cannot be fixed or helped.

Now, Stephanie is going to help me because I've got a lot of ribbing about my handwriting the other day. So first, I'm going to start at the top. These are legal items of damages that the Court will tell you about during his charge.

First, the medical expenses. The past medical expenses are Plaintiffs' Exhibit 294. They are $510,000 -- $510,919.06.

You heard -- you also heard from A.J.'s doctors. He will require additional care for the rest of his life. We know he's on medication. We know he needs yearly checkups at the VA. He requires more therapy. And as he ages, some of you know it doesn't get better. If you've got arthritis, now you've got traumatic arthritis. He will require more care.
And I talk about the VA, let's be clear about this:
our community shouldn't be paying for medical treatment.
So for future medical expenses, I'm suggesting take his
life expectancy as the economist said, 37 years, and give
him $10,000 for 37 years, that's an average. He may need
a lot more when he's 65. He may need less next year. I'm
taking an average of 10,000 a year for 37 years.

William Buckley is a financial analyst. He happened
to be in California, but his headquarters are here in
Atlanta. Mr. Buckley did the financial analysis and told
you that A.J.'s lost wages are $1.8 million. He simply
took -- again, I'm not an economist, but what I gathered
from what he said is you take what he makes a year, you
run that through the mandatory retirement. You get raises
for the year, you factor that in, and then you bring it
back down to today's dollars, and it was 1.8.

It's important to note that Suzuki didn't put up any
evidence about all of this. They want to be critical
about what you're paying him; that's fine. Remember, the
Judge keeps telling you, the evidence is the evidence, not
what the lawyers say.

So when they talk about household services, that
sounds like a lot of money to me, 78. They put up no
evidence. Household services are 600,000, that was
determined by the Department of Labor standards. Now,
this comes to about $3.28 million. And all of that goes
to other people are to make up for the medical expenses,
but not one cent goes to A.J. for the greatest crimes in
the case: What this did to his life and his wife's.
Their human losses to do justice, to balance the scales,
you have to fill in the blanks on the rest of this page.
Just paying the bills, putting the money back in their
pocket that they've lost, does not do justice in our
society.

When it's about corporate greed, you've got to go to
the next items. These items are not something I made up.
They come from the Judge's charge. He will tell you about
this. You'll listen to it. He will mention every one of
these are proper to consider when you're weighing what the
human losses are in this case.

The first one, normal living, as to interference with
normal living, you recall the testimony that A.J. was the
type of person that worked all day; came home; cut his
neighbor's yard, Ms. Ruthie; took care of his yard, and
then still had time to play pickup basketball in the
neighborhood. I'm suggesting a figure of 600,000 for
interference with normal living.

And let me be clear about this: These are my
suggestions. The Judge will tell you it's not up to me,
and it's not up to Mr. Riggs. It's up to your enlightened
conscience to decide this. If you think more, you give more. If you think less, you can give less. I suggested 600,000 because it's worth at least a minimum in cases like this of the household services.

Enjoyment of life. There is no question that A.J. and Gwen enjoyed life, adventure, travel, coaching, community, fitness, friends, family, and giving back. Every witness that knows A.J. testified that he's no longer able to enjoy the life like he did before the crash. In cases like this, interference with the enjoyment of life is no different than the interference with normal living, and I'm simply suggesting 600,000.

Capacity to labor and earn money, this next one, I don't want to confuse you. This isn't lost wages again. This is not being a productive member of our society. Losing the ability to work. It's different, and the law allows for this.

You're going to recall the testimony that one of the biggest losses in this case to A.J. is not being able to go to drill. Tommy Carter testified, A.J., as long as I can remember, worked multiple jobs. It's what he liked doing. Air Force, post office, supervisors -- they testified in this case. How hard is it to get a supervisor to do anything for you? He had two come in. As to his capacity to labor to earn, I'm suggesting
$900,000. That's half of the lost wages. It's bad to lose income. It's half as bad to lose your ability to work. And how long has he been working? Does anybody remember the testimony? He started by on a pig farm in South Alabama.

Impairment of bodily health and vigor, you'll recall the testimony from the doctors, A.J.'s spine injury is irreversible. He'll always have pain, imbalance, weakness in his left arm and left leg. Dr. King, the neurosurgeon that opened his back up, testified that his spinal cord sensory and motor fibers, they're damaged, and they do not regenerate. That is why this is permanent. That's why he used the term "plateau, irreversible."

The hardware will stay in his back forever, the doctor said, and he'll develop traumatic arthritis. As to the impairment of bodily health and vigor, I'm suggesting $1 million in cases like this, $1 million is nothing more than a starting point, a permanent spinal cord injury, that's a starting point.

The fear and the extent of the injury. I'll just mention one bit of testimony about this one item of damage. If you recall the phrase, "use it or lose it," that's imprinted on his mind at Atlanta Medical Center. Because the nurses said, "If you don't use your arms and legs, you will lose them." So he wakes up from a
nightmare about being a quadriplegic, and gets Gwen up to start moving his arms and legs. That goes straight to the fear of the extent of injury. I'm suggesting $250,000 in cases like this. That is a reasonable starting point.

The shock of impact is another item the judge will tell you, you can consider. The shock of impact, I submit, started the moment he came up on the back of that flatbed trailer, with a brake that doesn't work right. It continues when he wakes up with strangers around him; with his arm behind his back; with a broken back; with a cervical spinal cord injury; that's the shock of impact. He knows he's hurt. He just doesn't know how bad. I'm suggesting $75,000 for the shock of impact.

The next one is pain-and-suffering. Let me be clear, the number I'm about to suggest is past pain-and-suffering, going forward for the rest of his life. You've heard of great -- all of you know what pain is. You've all experienced it in some form. So I'm not going to get up here and preach to you about pain-and-suffering. Use your own experiences. I'm here to only suggest that in the beginning, he had a 10 out of 10 pain scale, that's the EMT's testimony.

Dr. Spearman said he's going to require pain medication for nerve damage for the rest of his life. Doctors don't give out pain medication unless there's
When a corporation violates a safety rule, this is what happens. I'm reminded of his little brother who looked to him as a father when their dad died. It hit him hard. "When did it hit you?" "When I was with him and I realized that's my brother, and he's having trouble putting on a jacket."

When you put corporate greed over public safety, that's what happens. I'm suggesting $1.5 million. This is for past and going forward; cases involving permanent spinal cord injuries, 1.5 million is a reasonable starting point. You may want to give more. Some of you know what spinal cord injuries are. You have personal experience with it. Use that in deciding this and telling your fellow jurors about it.

Mental anguish, as to emotional suffering, the judge will tell you that you're to consider past and going forward.

You will recall some of the testimony. This was all about A.J. from different people that came to testify: Before he was outgoing, never met a stranger, the life of the party.

I could just see A.J. getting out of the car visiting uncles and cousins, being the kind of jokester that they talked about.
What do they say about him now? He's very quiet.

Ms. Ross testified before you. That last time we -- he didn't come to us in Auburn, Alabama anymore. We have to come to him. And the last time, he was sitting in the back of the room, kind of quiet.

Active, I'm going to go through that. All of you know about how active he was. He ran the Thanksgiving drive in the neighborhood -- in the community. His fitness tests were remarkable. He coached in our community. He was one of the few people that got picked for the Air Force squad. What did the witness say after?

He is withdrawn. He goes to Alabama. He hangs out on a farm, sometimes by himself in the woods.

Positive. We heard about positive. I thought this was brilliant. His wife says, "A.J. is the type --" and this is credibility. If anyone says this isn't credibility, let me know -- "You can drop him off in a desert for three weeks, come back and get him, and he'll tell you all about how great the desert was."

How about now? This tears me up. I'm going to tell you, ladies and gentlemen, this tears me up. Can you imagine being a grown man, and your mother coming into your garage, and you're crying. Can you imagine that? What that feels like? I'm going to suggest a million dollars for mental suffering. Mental suffering is far
worse than the physical part of it.

The last one, the need to limit activities.

Dr. Spearman testified that he is on restrictive duty to
20 pounds lifting, bending, stooping, the need to change
positions. He's no longer the person that he was that
would deliver a hospital bed to a friend in need, take his
kids to run around Six Flags. Choose the smallest kid in
the neighborhood to play basketball with. He is not
bed-ridden. I'm not suggesting that. But is he this
person? I'm suggesting $1 million for the need to limit
activities.

If someone in deliberation were to say, why give all
that money? You will say because a global corporation put
greed over safety. And now a member of our community is
permanently injured. These harms from here down are the
worst harms in the case.

The final line of damages is called loss of
consortium. The state of Georgia legally recognizes, it
promotes the value of marriage. It has created a claim,
and Judge Dettmering will tell you a lot more about it
than I will.

It's called "loss of consortium." And what I'm going
to tell you is this case is a lot about Gwen Johns. Her
case is just as important. It's just as serious as all of
the other claims in this case.
When you hear the judge tell you, you'll hear things like "loss of society," about this claim, loss of society. I think that's some fancy legal term, but what it comes down to in this case, this is at least what I came up with: A.J. and Gwen lived in a society together as a healthy, outgoing couple. This has been changed by Suzuki.

Ms. Ross said it best: "They're not the fun, adventurous couple they used to be. Since the crash, they rarely get together. You will hear the judge mention a phrase of "loss of companionship."

They love each other. That is very clear that they love each other. But there's no question they're not the companions that they once were. And I didn't get into all the intricate details about their marriage, and Mr. Riggs was nice enough to not do it either, but you heard some of the medical testimony.

You'll here about loss of affection. It means a fond attachment, devotion, or love. They still have that, but also consider is it the same, the before and after now that there is medication, the injuries, and his need a little bit to pull back, be by himself?

Every witness that knows these people said he's not the same. He is not that built and healthy person who renewed his vows just a few years ago. Suzuki took that
person. They took him away from Gwen.

It's your duty; it's your responsibility; it's your job to return a significant verdict that acknowledges the value and protects the institution of marriage in our community.

A small verdict for loss of consortium will tell people that it's okay to do this to a marriage. I'm suggesting $2.8 million on the loss of consortium claim. That's approximately one-fourth of A.J.'s claim. This will let everyone know in our community that this jury believes in the institution of marriage and will protect it.

After going through each of these items, you'll reach a total that compensates A.J. and Gwen for all the harms caused by Suzuki's full violation of a safety rule. These rules are designed to protect all of us. That amount is $14,005,919.06. That's what these cases are worth, these kinds of cases, and that's what they're worth.

The judge and his staff have provided a verdict form that you will go through in reaching a decision. I believe the judge is going to give you a copy to look at it when he explains it to you. I want to take just a second to hit one particular thing that can be confusing. The first one, "Do you, the jury, find the plaintiff, Adrian Johns, was 50 percent or more responsible for his
own injuries by a preponderance of the evidence?"

Preponderance of the evidence, the greater weight of evidence. I've heard it explained if it's 50-50, and A.J. has the weight of a feather, that's the burden of proof that we have to carry. It's not beyond all doubt.

The judge wants to know do you find him 50 percent or more responsible for his own injuries? If you put -- I believe -- what the Court wants to know is: Do you find he is equal to or more at fault than Suzuki? If you find that, the case is over. Suzuki wins. They escape responsibility for ever.

The next page, somehow it comes up again, the law wants to be very clear of where you put your fault in this case. So they'll ask you to put down percentage of fault to Adrian Johns, it says on the verdict, and then it says Suzuki Motor Corporation, we know that's Suzuki Japan, and the other Suzuki affiliate, which is Suzuki of America.

Quite frankly, I don't care what you put down for those two. You could put them all on one. You can put it 50-50, whatever you want. It doesn't matter to us. We've tried this case against Suzuki.

They can bring people from Japan or California or wherever they're at. So when you're putting down the percentage, you just determine the relative percentage to put down fault.
You do not adjust the amounts of your verdict. The judge does that. You wouldn't want it to happen twice; all you do is put down a percentage of fault.

Let me -- an example, $100 that you gave A.J. 5 percent, you don't, let's take everything that we put down to 95. The judge does that. You just put the percentage of fault down.

Now, I think my position is quite clear. I don't think A.J. did anything. He is not at fault in any way. He relied on Norris, a certified mechanic, a drag racer, who owns over 20 bikes. And Norris said, "If it's clean, I don't change it."

And let's remember the mileage on this bike:

16,000 miles. Suzuki admits that there is corrosion on bikes on showroom floors. Some of you may have written that down. You also saw photos of A.J.'s back brake piston and spring with no corrosion, the one that uses that little seal. They run the same fluid. Amazing.

Then they brought somebody to say the back brakes don't use as much, so that doesn't have as much corrosion. Those pictures were taken two years later. That thing sat with it in it with more time to corrode. It was pristine. But if you decide, for example, if some of you want to decide A.J. was 5 or 10 percent at fault for not changing his brake fluid, put that number in. Let the judge do the
math on the verdict.

I suspect, as Mr. Edwards said, and I'll venture to say, anybody, any lawyer in this courthouse, this is as bad a failure to warn case as any lawyer has ever seen. Failure to warn of a danger to the most precious thing on earth, human life.

When I think of human life, I think of the heroic acts of a guy named Lenny Skutnik. Some of you older people remember the story. It was 1982, January, Air Flight Florida 90 just hit the Potomac -- the 14th Street Bridge, the Potomac River in Washington D.C. crashed headfirst into the water.

There were a few survivors, and they had gotten out of the plane, and they were clinging to the tail of the plane up above the icy river. A helicopter came from a nearby airport and dropped a rope down. And this woman was so weak she couldn't grab it. Her body was shutting down. She couldn't hold the rope.

Lenny Skutnik was walking to work, and he watched what was unfolding, and suddenly he took off his coat. He dove headfirst into the icy water of the Potomac River. He swam out to her, as she was dying, and brought her back to shore. That's how we value human life. We risk our own life to do that. After being in this courtroom for almost a month, it's not the worst thing I've seen,
concealing a danger. This isn't the worst thing I've seen.

The worst thing I've seen is that they're still over there saying they did nothing wrong. "We did nothing wrong." It's okay to sidestep responsibility, if you've done nothing wrong. But when you have it in your own documents, take responsibility.

Ladies and gentlemen, this tells me we're dealing with a mess -- a company that has no heart, no soul, no nerve center, no respect for fellow human beings. Suzuki and corporations, they have one thing: Bank accounts. They only exist for one reason: To produce profits.

A company that will trash its own customers that come to you to tell them that this happened to them, Suzuki must receive a message that this community will not tolerate that type of behavior: Putting your busy season over human safety. When that is done, this is what happens.

You have an opportunity today to send a message straight to those in Japan who were behind this terrible secret, and chose to defend this case in a very unique way: Never address the documents. Just go and do what we can with our hired witnesses, and don't bring up what was going on in Japan in 2012 and in 2013. Don't sue Robert Hernandez. Anybody catch how long he's been with Suzuki?
He's a lawyer that's been with them for two years, and that's who they send to clean up their mess. I felt sorry for him. All he could say is, "I really wasn't prepared, and I don't really know much about this." After lunch, he didn't know anything.

Judge Dettmering will tell you that once you decide the amount of harm that Suzuki caused A.J. and Gwen, your job is not quite over. This is one of the rare cases that you must take one step more.

You'll be asked to determine if the defendants are responsible for punitive damages. The damages that the law imposes in the rare case to punish or deter this type of conduct. Conduct like fraudulent concealment of a danger, when a company know it's a safety issue, and the company's customers don't know it's a safety issue. Order your parts for a recall, but don't tell the customers just yet. We know the dealers are busy right now selling more of our bikes.

Mr. Hernandez testified that Suzuki sent quarterly reports to the government. I can assure you one thing, he didn't send these documents that you're going to have. That was not sent. And he's only been with them two years and he can tell you what they were doing in 2002 and 2013? I can tell you, these documents, you're the first jury in the United States of America that's going to see these
documents of what Suzuki knew and what Suzuki willfully decided to conceal. No one else has seen this, not yet.

And let me tell you, these documents aren't easy to get. Thousands -- hundreds of thousands of documents were produced in Japanese, and you can figure out who had to translate his stuff, but we got them. We got some of it. We probably didn't get it all. You can decide that with your verdict.

Punitive damages are for willful misconduct, like knowing Toyota was fined over $32 million for not reporting a safety issue, and decided that doesn't matter to us just yet. No report, but order your parts.

On page 9 of the verdict form, there we'll be a question that will ask you about punitive damages. You'll have the verdict form in a minute to look at. Go to page 9, it will be a "yes" or "no." Although it may be a very small check, it will be one of the biggest marks ever put on a verdict form.

You have to return a verdict for A.J. and Gwen before you can assess punitive damages. In other words, you can't just say they don't get anything, but I want to pop these guys. You have to assess monetary damages in favor of A.J. and Gwen before you can get down to business in sending that message. It doesn't matter the amount.

Whatever amount you decide in their favor, then you
can go down to punitives. Since all you're deciding is "yes" or "no," I'm not going to belabor the point. You're simply looking for one thing: Willfulness.

Willful means nothing more than they knew it was wrong, and they chose to do it anyway. It's knowing the safety rules that Mr. Hernandez agreed with and not following them. It's a conscious decision to ignore safety.

If you're not convinced by now, there's nothing else I can say because it's coming from their documents. It's Suzuki's documents that say this. That's why they fought. They didn't want you to see them.

In the four and a half years that this case has been going on, it all goes back to mean depositions, mountains of evidence, documents, we've worked with these guys, but it comes down to one thing, Paul: "If the problem comes to light, we won't be able to defend ourselves."

I can assure you that Takao Kudo has no idea what's going on in this courtroom. But even when he wrote that e-mail, one thing sticks out to me, there's fear. Fear. Fear of taking responsibility. That day has come. Suzuki must face responsibility today. If you checked "no" on punitive damages, I have a promise for you. I promise you if you say "no" to punitive damages, there will be a group of lawyers in the parking lot when you walk to your car,
and they will be high-fiving each other because they were able, without Suzuki coming here and explaining this, to allow Suzuki to escape responsibility forever. I promise you.

Don't let Suzuki get away with this, and put up no explanation for its conduct in a court of law, a court of law that provides the same rights and freedoms that American soldiers have fought and died for.

To protect those rights, I'm asking you to render a verdict that speaks real and honest truth. And there will be some of you that want to compromise. If you're on the right side of this, don't compromise. Stick to your guns and give full and complete compensation and check "yes" to punitives. You have tremendous power in this courtroom. You have more in that jury room.

At the start, I told you this was an important case. I told you this was a big case. It's probably the biggest that will be tried. Please make this day count, not just for A.J. and Gwen, but for our community, and making it safer.
RECENT DEVELOPMENTS IN EVIDENCE
Ronald L. Carlson (Fuller E. Callaway Professor of Law, Emeritus, University of Georgia School of Law): Ron Carlson was awarded the Lifetime Achievement Award by the Georgia Trial Lawyers Association, as well as the Federal Bar Association's highest honor, the Earl Kintner Award. The ABA recognized him with the ALI-ABA Harrison Tweed Award, their top award for CLE contributions at the national level. He has received every faculty honor presented by the law school student body at least once: the Student Bar Association Faculty Book Award for Excellence in Teaching, which is now the C. Ronald Ellington Award for Excellence in Teaching, the John C. O'Byrne Memorial Award for Significant Contributions Furthering Student-Faculty Relations and the Student Bar Association Professionalism Award. He was the first Georgia Law professor to receive the Josiah Meigs Award for Teaching Excellence from UGA. He also was awarded the 1987 Roscoe Pound Foundation's Richard S. Jacobson Award, honoring a single national law professor for teaching of trial advocacy. Professor Carlson was the lead and sole attorney for indigent prisoners in two significant U.S. Supreme Court appeals, Long v. District Court (establishing indigent habeas applicant's right to transcript) and Johnson v. Bennett (prisoner freed after 34 years of confinement). He is the author of 15 books on evidence, trial practice and criminal procedure, including the book Carlson on Evidence, co-authored with son Mike Carlson, which has been cited authoritatively in over 35 Georgia appellate court opinions. Carlson regularly comments on WSB radio on high-profile Georgia criminal cases.

Michael Scott "Mike" Carlson (Legal Services Director, Georgia Bureau of Investigation): Mike Carlson, who holds an “AV Preeminent” (highest possible) Martindale-Hubbell peer review rating, received his A.B degree from the University of Georgia and his J.D. degree from Washington and Lee University in 1992, where he earned, among other distinctions, the Virginia Trial Lawyers Association Award for his “excellence in demonstrating the talents and attributes of the trial advocate.” First engaging in private practice where he focused on civil litigation and media law, Carlson worked for 22 years as an assistant district attorney in various offices. During his career as a prosecutor, Carlson successfully handled numerous high-profile cases and appeals, including death penalty trials. An author and frequent speaker on issues of evidence, trial practice, and criminal procedure to Georgia’s bench and bar, Carlson has served on the adjunct faculty of Atlanta’s John Marshall Law School and Emory University School of Law, and as a mentor and lecturer at the Gary Christy Memorial Trial Skills Clinic at the University Of Georgia School Of Law. In 2015, Governor Nathan Deal appointed Carlson as a judge for the Georgia Court Martial Review Panel. Among the professional awards and recognition that Carlson has received include: Faculty Medallion from the Institute of Continuing Judicial Education of Georgia for consistently outstanding presenter ratings; Prosecuting Attorneys’ Council of Georgia’s J. Roger Thompson (now Thompson-Jones) award for training beginning level prosecutors; selection as a Master in the Joseph Henry Lumpkin Inn of American Court; named by James Magazine as one of “the most influential lawyers in Georgia”; and special recognition from the District Attorneys’ Association of Georgia and the Georgia Gang Investigators Association. In August 2019, Georgia’s three United States Attorneys presented Carlson with the Eagle Award, the highest honor that they can bestow upon a state-level attorney.
Carlsons on Evidence
Recent Developments in Evidence
Important Applications and
Distinctions Under the Georgia and
Federal Rules of Evidence
Institute of Continuing Legal Education in Georgia
Urgent Legal Matters
Jekyll Island Convention Center
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Carlsons on Evidence
Recent Developments in Evidence: Important Applications and Distinctions Under the Georgia and Federal Rules of Evidence
Institute of Continuing Legal Education in Georgia
Jekyll Island Convention Center
FRIDAY • AUGUST 30, 2019

Today’s Presentation

Speaker Introductions
Carlsons on Evidence
Speaker Introductions

• **Presenters**

  • Ronald L. Carlson
    • Fuller E. Callaway Professor Emeritus, University of Georgia School of Law
    • 15 books on evidence, trial practice and criminal procedure
    • Article cited in Advisory Committee Notes of FRE’s
    • Argued landmark cases before U.S. Supreme Court

  • Michael Scott Carlson
    • Legal Services Director and Ethics Officer, Georgia Bureau of Investigation
    • Judge, Georgia Court Martial Review Panel
    • Successfully jury tried and Supreme Court argued murder cases under Georgia’ New Evidence Code
    • Legal Advisor, Georgia Gang Investigators Association
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Georgia Evidence Code

2019 Statutory Revisions
Carlsons on Evidence
Presentation and Materials

• 2019 Statutory Updates
  • Evidence Code
    • 24-4-412
    • 24-8-820
Carlsons on Evidence
Recent Developments in Evidence: Important Applications and Distinctions Under the Georgia and Federal Rules of Evidence
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Today’s Program

Presentation and Materials
Evidence Program Goals

1. Further Develop “Code Wide” Approach
2. Underscore Fundamental Principles of Interpretation
3. Analyze and Consider Specific Applications
Carlsons on Evidence
Presentation and Materials

• Will use experience, scholarship, and mock case scenarios as a vehicle to illustrate rules and cases *in context*
• Consider objections
• Materials and discussion will feature *New GRE and FRE authority*
• Where no new GA case available, focus placed on *relevant federal and related state authority*
• Using *actual quotes* from cases
• *Please hold questions until presentation is concluded*
• Remain in contact with **lawyers and judges** for key areas of interest
• Slides and discussion will contain actual **decisions**
• Sometimes only **advance citations** are available
  ➤ **WATCH FOR RECENT OPINIONS**
• A few slides may repeat—**please follow the action**
Carlsons on Evidence
Presentation and Materials

• We should encourage debate over what statutes, rules and cases “mean”
• We should never argue over what statutes, rules and cases “say”

• Therefore we focus on:
  1. Using **actual quotations** from cases and language from the statutes
  2. Leaving the **policy determinations** to legislatures and courts
  3. “**Content heavy**” presentations

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Georgia’s New Evidence Code
Fundamental Considerations
Carlsons on Evidence
Preamble; 24-1-1

• January 1, 2013 Georgia’s new evidence code goes into effect
• Numerous issues remained to be addressed

• Primary Concerns
  ➢ What are fundamental changes?
  ➢ What law would apply to new provisions?
  ➢ What are the guiding principles?
Carlsons on Evidence
Preamble; 24-1-1

• 3 Basic Types of GRE’s
  • Federalized (vast majority)
    • No prior Georgia authority but vast federal case law
  • Hybrid but leaning federal
    • No prior Georgia authority but vast federal case law
  • Carried over from former code
    • Prior Georgia authority may be conflicting and may be impacted by adoption of other rules
    • In the case of “double covered,” GASCT has expressed a preference for federalized version
Carlsons on Evidence
Preamble; 24-1-1

• 24-1-1/100’s: GENERAL PROVISIONS
• 24-2-200’s: JUDICIAL NOTICE
• 24-3-3’s: PAROL EVIDENCE
• 24-4-400’s: RELEVANT EVIDENCE AND ITS LIMITS
• 24-5-500’s: PRIVILEGES
• 24-6-600’s: WITNESSES
• 24-7-700’s: OPINIONS AND EXPERT TESTIMONY
• 24-8-800’s: HEARSAY
• 24-9-900’s: AUTHENTICATION AND IDENTIFICATION
• 24-10-1000: BEST EVIDENCE RULE
Carlsons on Evidence
4 Scenarios for Georgia’s New Evidence Rules

- New Evidence Rules
- No Prior Statute
- Prior Statute Replaced
- Prior Statute Modified
- Prior Statute Repeated
Carlsons on Evidence
Recent Developments in Evidence:
Important Applications and Distinctions Under
the Georgia and Federal Rules of Evidence
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Davis Violations
Persistent Use of Improper Authority
• Opponent of evidence files a motion in limine citing numerous new evidence rules that were not present in Georgia’s prior code. Proponent replies, focusing on prior Georgia authority. Opponent posits that old law deficient. Proponent responds: “I don’t see what the big deal is all about. Everybody I know has been using those motions for years.”
Carlsons on Evidence
Preamble; 24-1-1

• “Simply stated, Davis infractions represent the inappropriate use of prior Georgia Evidence law to interpret federalized provisions of Georgia’s New Evidence Code and the failure to reference federal sources. As we shall see, these violations contravene a host of established principles in Georgia law.”

Carlsons on Evidence
Preamble; 24-1-1


- “[L]awyers **do this Court no favors — and risk obtaining reversible evidence rulings from trial courts** — when they fail to recognize that we are all living in a new evidence world and are required to analyze and apply the new law. **It may be hard to comprehend that**, when it comes to trials and hearings held after January 1, 2013, the most **pertinent precedent to cite on an evidentiary issue may be a decades-old decision of the Eleventh Circuit...**”
Carlsons on Evidence
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  - “Here, despite our admonition in *Davis v. State*, 299 Ga. 180 (787 SE2d 221) (2016), the parties did not brief or argue the meaning of Rule 606 (b) at the motion for new trial hearing, and the trial court did not apply it when addressing the jury-misconduct claim raised in Beck's motion. Similarly, the parties do not address the new rule on appeal. The difference between the old and new Evidence Code matters in this case.”
“Where provisions of the new Evidence Code are borrowed from the Federal Rules of Evidence, we look to decisions of the federal appellate courts construing and applying the Federal Rules, especially the decisions of the United States Supreme Court and the Eleventh Circuit.” Kemp v. State, 303 Ga. 385 (2018)

Only “[w]here a provision of the new Evidence Code differs in substance from the counterpart federal rule, as interpreted by federal courts, ... must [we] correspondingly presume that the General Assembly meant the Georgia provision to be different.” Revere v. State, 302 Ga. 44 (2017)

“This preamble, though not codified, is a clear instruction manual for courts trying to decipher what the new Evidence Code purports to do and what precedent to apply. Like any instructions, it is best to read them, and they must be read in order...

Thus, the rule is simple: if a rule in the new Evidence Code is materially identical to a Federal Rule of Evidence, we look to federal case law.”
Carlsons on Evidence
Preamble; 24-1-1

• **Modeling of New GRE’s**
  • General Provisions (1’s and 100’s): FRE based
  • Judicial Notice (200’s): FRE based
  • Parol Evidence Rule (300’s): Former GRE based
  • Relevance (400’s): FRE based
  • Privileges (500’s): Former GRE based
  • Witnesses Generally (600’s): FRE based
  • Expert Witnesses (700’s): FRE based (former GRE based for criminal standard)
  • Hearsay (800’s): FRE based
  • Authentication (900’s): FRE based
  • Best Evidence (1000’s): FRE based
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24-1-103

Evidentiary Objections
• Proponent of evidence attempts to introduce testimony from a witness identifying a person from a surveillance video. Opponent of evidence objects, “lack of foundation and traditionally barred from evidence.” Trial judge inquires if there is further detail. Opponent rises, “We stand on our objection. That is sufficient under the new code.”
Carlsons on Evidence
24-1-1; 2; 103-106

• 24-1-1/100’s
  • 24-1-1. Purpose and construction of the rules of evidence
  • 24-1-2. Applicability of the rules of evidence
  • 101. Reserved
  • 102. Reserved
  • 103. Rulings on evidence
  • 104. Preliminary questions
  • 105. Limited admissibility
  • 106. Introduction of remaining portions of writings or recorded statements
(a) Error shall not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and:

(1) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked.
“An issue that is not presented or ruled on by the trial court is not preserved for appellate review.”


“Because Watkins did not object to Dr. Frist's testimony, we review Watkins's claim for plain error only.”

• “...objections to the admission of evidence ... are preserved only if they are timely and state the specific ground of objection, if the specific ground was not apparent from the context...” *Wilson v. Attaway*, 757 F.2d 1227 (11th Cir. 1985)

• “…the substance of the evidence that Williams sought to elicit from Carson was not sufficiently apparent from the discussion at trial to preserve the issue for ordinary review.” *Lupoe v. State*, 300 Ga. 233 (2016)
“Motions in limine to exclude purportedly prejudicial evidence must be properly particularized so as to identify what the evidence in questions is and why the opponent believes it should be excluded.”  
*U.S. v. Gulley*, 722 F.3d 901 (7th Cir. 2013)

“...under the Federal Rules of Evidence, it is no longer necessary for a party to renew an objection to evidence when the district court has definitively ruled on the party's motion in limine...Because the district court's ruling in this case was sufficiently definitive, we will consider the merits of TBW's position.  
*Tampa Bay Water v. HDR Eng'g, Inc.*, 731 F.3d 1171 (11th Cir. 2013)
• Particularizing Objections and Proffers

• “Where an appellant challenges the admission of evidence, we are concerned with the sufficiency of the appellant's objection; here, however, where the appellant challenges the exclusion of evidence, we are concerned with the sufficiency of the showing that the appellant, as proponent of the evidence, made at trial.” *Williams v. State*, 302 Ga. 147 (2017)
Incorporating Rule Numbers

“We need not parse the exact contours of Georgiadis's argument in order to locate what he has not: the specific Federal Rule of Evidence that he contends was violated.” *U.S. v. Georgiadis*, 819 F.3d 4 (1st Cir. 2016)
“In denying the motions in limine to exclude Lewis's testimony regarding Watkins's statements, the trial court did not make any express factual findings, but we can infer from its denial of the motions that it implicitly found that Watkins's statements were made in the course of and in furtherance of a conspiracy...Kemp and Hogans have failed to show that these implicit factual findings are clearly wrong.” Kemp v. State, 303 Ga. 385 (2018)

  “Thus, we conclude that the trial court did not abuse its discretion in permitting lay witnesses to give testimony identifying Glenn as one of the people in the motel surveillance video.”

  “By using language nearly identical to Federal Rule of Evidence 701 (a), which case law shows addressed the matter at issue, the enactment of OCGA § 24-7-701 (a) was a statutory modification to the admissibility of such evidence and displaced prior precedent on the matter.”
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24-1-106/8-822

Rule of Completeness
Opponent of evidence introduces a portion of a medical report pursuant to the business records exception to the hearsay rule. Proponent tenders the remainder of the report, which significantly undermines Opponent’s claims. Opponent objects, “Your honor, the rest of this report is highly prejudicial to my client...it contains information from another doctor who is being investigated for overcharging patients. We object and call for sanctions!”
• 24-1-106

• When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which, in fairness, should be considered contemporaneously with the writing or recorded statement.
When an admission is given in evidence by one party, it shall be the right of the other party to have the whole admission and all the conversation connected therewith admitted into evidence.
Carlsons on Evidence
24-1-106; 24-8-822

- *Castillo-Velasquez v. State, 305 Ga. 644 (2019)*

  - “the ‘**rule of completeness** applies to letters and records, recordings, and documents of all sorts,’ and ‘is useful with **medical records in civil cases**,’ a principle that would apply to criminal cases as well...The rule ‘**prevents parties from misleading the jury** by presenting portions of statements out of context,’ and **permits the introduction of ‘additional material’** that is relevant and is necessary to qualify, explain, or place into context the portion already introduced.’”
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24-2-201

Judicial Notice
• Proponent seeks to have the trial judge take judicial notice of a Google map in order to admit it into evidence. Opponent objects, “Not without someone from Google here, you don’t!”
24-2-201

• 201. Judicial notice of adjudicative facts
• 220. Judicial notice of legislative facts
• 221. Judicial notice of ordinance or resolution
Carlsons on Evidence

24-2-201

• 24-2-201

• (a) This Code section governs only judicial notice of adjudicative facts.

(b) A judicially noticed fact shall be a fact which is not subject to reasonable dispute in that it is either:

   (1) Generally known within the territorial jurisdiction of the court; or

   (2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
“A judicially noticed [adjudicative] fact shall be a fact which is not subject to reasonable dispute in that it is either: (1) Generally known within the territorial jurisdiction of the court; or (2) Capable of accurate and ready determination...” *McCoy v. State*, 341 Ga. App. 216 (2017)

“At the hearing on the motion, the trial court noted on the record, and the parties did not dispute, that the court reporter had significant health problems during the time period in question that affected his ability to work.” *Atlantic Geoscience, Inc. v. Phoenix Development & Land Investment, LLC*, 341 Ga. App. 81 (2017)
“The court takes judicial notice of these locations from Google Maps…”


“In fact, courts in other circuits commonly take judicial notice of information obtained specifically from Google Maps.”

“We acknowledge this undisputed fact in the Supreme Court of Georgia's opinion pursuant to OCGA § 24-2-201 (b) (2)...appellate court can take ‘judicial notice of subsequent developments in cases that are a matter of public record and are relevant to the appeal.’” *Serdula v. State*, 344 Ga. App. 587 (2018)
Unfair Prejudice Objection
Prior to Proponent calling a key witness, Opponent objects, “Judge before this witness takes the stand, opposing counsel needs to prove to the court that this testimony will not be overly prejudicial.”
• 24-4-400’s
  • 401. "Relevant evidence" defined
  • 402. Relevant evidence generally admissible; irrelevant evidence not admissible
  • 403. Exclusion of relevant evidence on the grounds of prejudice, confusion, or waste of time
  • 404. Character evidence not admissible to prove conduct; exceptions; other crimes
  • 405. Methods of proving character
  • 406. Habit; routine practice
  • 407. Subsequent remedial measures
  • 408. Compromises and offers to compromise
  • 409. Payment of medical and similar expenses
  • 410. Inadmissibility of pleas, plea discussions, and related statements
  • 411. Liability insurance
  • 412. Complainant's past sexual behavior not admissible in prosecutions for certain sexual offenses; exceptions
  • 413. Evidence of similar transaction crimes in sexual assault cases
  • 414. Evidence of similar transaction crimes in child molestation cases
  • 415. Evidence of similar acts in civil or administrative proceedings concerning sexual assault or child molestation
  • 416. Statements of sympathy in medical malpractice cases
  • 417. Evidence of similar acts in prosecutions for violations of Code Section 40-6-391
  • 418. Admissibility of criminal gang activity, disclosure

24-4-401:
- “preference for jurors to hear all admissible and helpful evidence because there is a correlation between the amount of information admitted and the accuracy of verdicts”

24-4-402:
- “courts are extremely restricted in their ability to exclude relevant evidence absent some statutory, rule-based, or constitutional authority to do so”

24-4-403:
- “provides a ‘narrowly circumscribed’ discretion on the part of the trial court to exclude evidence on the basis of unfair prejudice”
Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.
Carlsons on Evidence
24-4-401 to 403

- Only Unfairly Prejudicial Excluded
  - “But in a criminal trial, inculpatory evidence is inherently prejudicial; ‘it is only when unfair prejudice substantially outweighs probative value that the rule permits exclusion.’” Anglin v. State, 302 Ga. 333(2017)
Carlsons on Evidence
24-4-401 to 403

• Burden on Objecting Party
  • “Favors has made ‘no showing that exclusion under Rule 403 was warranted.’” Favors v. State, 305 Ga. 366 (2019)
  • “There has been no showing that the evidence would confuse the issues, mislead the jury, waste time, or be cumulative of other evidence, or that the probative value of the evidence would otherwise be ‘substantially outweighed’ by its prejudicial impact.” State v. McPherson, 341 Ga. App. 871 (2017)
Error to Invoke Non-Textual Grounds

“The court excluded the evidence of the murder ‘out of an abundance of caution.’ Rule 403 provides a list of reasons authorizing a trial court to exclude otherwise admissible and relevant reasons. ‘An abundance of caution’ is not one of those enumerated grounds. Rule 404 (b) is a rule of inclusion and Rule 403 is an extraordinary exception to that inclusivity...The court's basis for excluding the murder was thus unsound.” State v. Atkins, S18A0770 (Ga. 2018)
• Error to Apply Former Prejudice Standard

  • “Prior to the enactment of the new evidence code, Georgia had no direct statutory equivalent to Rule 403, but case law on the issue generally required that a trial court merely balance the probative value of evidence with its prejudicial effect without requiring that the objecting party establish substantial prejudice. In stark contrast, the plain meaning of OCGA § 24-4-403’s text makes clear that the trial court may only exclude relevant evidence when its probative value is ‘substantially outweighed’ by one of the designated concerns.”  

  
  
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24-4-404(b)

Other Acts Evidence
In a murder prosecution arising from a shooting, Proponent seeks to introduce evidence of a 2005 shooting committed by the Defendant to prove criminal intent. Opponent objects that this is inadmissible character proof due to its dissimilarity. Proponent responds, “That was a shooting, this was a shooting. How much difference could there be?”
Evidence of other crimes, wrongs, or acts **shall not be admissible** to prove the character of a person in order to show action in **conformity therewith**. It may, however, be **admissible for other purposes**, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident...

“extrinsic act evidence may be admitted if a three-part test is met: (1) the evidence is relevant to an issue in the case other than the defendant's character, (2) the probative value is not substantially outweighed by the danger of unfair prejudice as required by Rule 403, and (3) there is sufficient proof for a jury to find by a preponderance of the evidence that the defendant committed the prior act.”

• “Factors to be considered in determining the *probative value of other-act evidence* offered to prove *intent* include its *overall similarity* to the charged crime, its *temporal remoteness*, and the *prosecutorial need* for it.”
“After the offering party shows that some evidence is relevant, it is the resisting party's burden to show that prejudice substantially outweighs the evidence's probative value...The resisting party likewise bears the burden of furnishing a limiting instruction once the court determines that it will admit evidence under Rule 404(b).” *Gallegos v. City of Espanola*, 2015 U.S. Dist. LEXIS 114444 (D.N.M. Mar. 3, 2015)

• “The State *did not introduce* Dorsey's and Ray's police-interview statements for any of the *purposes listed* in OCGA § 24-4-404 (b), but *rather to rebut* Appellant's defense theory seeking to cast doubt on those witnesses' identification of the shooter.”
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24-5-500’s

Privilege Issues
Because a related criminal case is pending, a party refuses to respond to discovery or testify. Proponent seeks to introduce this fact in a civil proceeding. Opponent objects, stating that the right against self-incrimination cannot be used against a person in any context.
Carlsons on Evidence
24-5-501 to 510

- **24-5-500’s**
  - 501. Certain communications privileged
  - 502. Communications to clergyman privileged
  - 503. Husband and wife as witnesses for and against each other in criminal proceedings
  - 504. Law enforcement officers testifying; home address
  - 505. Party or witness privilege
  - 506. Privilege against self-incrimination; testimony of accused in criminal case
  - 507. Grant of immunity; contempt
  - 508. Qualified privilege for news gathering or dissemination
  - 509. Communications between victim of family violence or sexual assault and agents providing services to such ...
  - 510. Privileged communications between law enforcement officers and peer counselors
(a) No person who is charged in any criminal proceeding with the commission of any criminal offense shall be compellable to give evidence for or against himself or herself.

To make a confession admissible, it shall have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury.
“We find unconvincing Loveless's argument that the privilege set out in the Fifth Amendment and in OCGA § 24-5-506 overrides the clear and well-settled requirement that, to be sufficient, an answer in a civil forfeiture proceeding...” *Loveless v. State of Ga.*, 337 Ga. App. 250 (2016)

“And if an accused in a criminal proceeding chooses to testify, he or she shall be sworn as any other witness and, with certain exceptions, may be examined and cross-examined as any other witness.” *Tran v. State*, 340 Ga. App. 546 (2017)
“Anglin also argues that the warrant was improper because compelling Anglin to lift up his shirt to be photographed violated his right against self-incrimination...Assuming Anglin even preserved this ground for we previously have rejected an indistinguishable argument in another case... right against self-incrimination was not violated by requiring defendant to strip to the waist to allow police to photograph tattoos on his body.” *Anglin v. State*, 302 Ga. 333 (2017)
“It is beyond dispute that **the Constitution does not protect Defendant from giving non-testimonial evidence**...Federal courts have therefore held that photographing a defendant's tattoos for display to the jury or **requiring a defendant to reveal his tattoos to a jury does not run afoul** of the Fifth Amendment.” *United States v. Nixon*, 2015 U.S. Dist. LEXIS 93628 (E.D. Mich. July 20, 2015)

“Regardless of how the Government acquired the photo, however, the trial court could, if it so concluded, **direct Defendant to display his scar to the jury**, bypassing the photograph altogether.” *United States v. Spencer*, 2015 U.S. Dist. LEXIS 174240 (D. Minn. Dec. 11, 2015)
• *State v. Turnquest*, 305 Ga. 758 (2019)

• “Accordingly, we overrule Price and other Georgia appellate decisions to the extent that they hold that either OCGA § 24-5-506 (a) or the Georgia Constitution requires law enforcement to warn suspects in custody of their right to refuse to perform an incriminating act...Because the trial court's ruling suppressing the results of Turnquest's breath test relied on Price, we vacate that ruling.”
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24-4-608(b)

Dishonest Act Impeachment
• Proponent cross-examines Opponent’s expert witness, “In your deposition, didn’t you admit to being disciplined in grad school falsifying your time sheets?” Opponent objects. Proponent then asks, “And, by the way, isn’t true that you advertise that in a divorce cases, you are every husband’s best friend, and you never work for wives?” Opponent objects and moves to strike as improper impeachment.
• **24-6-600’s**
  - 601. General rule of competency
  - 602. Lack of personal knowledge
  - 603. Oath or affirmation
  - 604. Interpreters
  - 605. Judge as witness
  - 606. Juror as witness
  - 607. Who may impeach
  - 608. Evidence of character and conduct of witness
  - 609. Impeachment by evidence of conviction of a crime
  - 610. Religious beliefs or opinions
  - 611. Mode and order of witness interrogation and presentation
  - 612. Writing used to refresh memory
  - 613. Prior statements of witnesses
  - 614. Calling and interrogation of witnesses by court
  - 615. Exclusion of witnesses
  - 616. Presence in courtroom of victim of criminal offense
• 24-6-600’s (continued)
  • 620. Credibility a jury question
  • 621. Impeachment by contradiction
  • 622. Witness's feelings and relationship to parties provable
  • 623. Treatment of witness
  • 650. State policy on hearing impaired persons
  • 651. Definitions
  • 652. Appointment of interpreters for hearing impaired persons interested in or witness at agency proceedings
  • 653. Procedure for interrogation and taking of statements from hearing impaired persons arrested for ...
  • 654. Indigent hearing impaired defendants to be provided with interpreters
  • 655. Waiver of right to interpreter
  • 656. Replacement of interpreters unable to communicate accurately with hearing impaired persons; appointment ...
  • 657. Oath of interpreters; privileged communications; taping and filming of hearing impaired persons' testimony
  • 658. Compensation of interpreters
(b) Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than a conviction of a crime as provided in Code Section 24-6-609, or conduct indicative of the witness's bias toward a party may not be proved by extrinsic evidence. Such instances may however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

(1) Concerning the witness's character for truthfulness or untruthfulness; or

(2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.
“As for Rule 608 (b)…with certain exceptions, ‘[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, ... may not be proved by extrinsic evidence.’…But such instances may, ‘in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness[ ] ... [c]oncerning the witness's character for truthfulness or untruthfulness[.]’”

• “The statute also addresses the use of specific instances of conduct to attack (or support) a witness's character for truthfulness... or conduct indicative of the witness's bias toward a party’ such specific instances ‘may not be proved by extrinsic evidence.’” *Gaskin v. State*, 334 Ga. App. 758 (2015)
“Under this Rule, we have upheld, for example, cross-examination into an attorney's disbarment... into a witness's failure to disclose a prior arrest on his bar application... and into a prior finding by an Immigration Judge that the witness's testimony in a deportation proceeding was not credible... cross-examination into a defendant's alleged acts of fraud, bribery, and embezzlement.” *Hynes v. Coughlin*, 79 F.3d 285 (2d Cir. 1996)
“However, other hospital records prepared by a nurse and introduced without objection during the trial reflect that Mrs. Dean was in her hospital room and could have been examined by Dr. Davis, had he in fact chosen to do so on August 2, and Mrs. Dean confirmed that she did not leave her hospital room that day.” *Cent. Ga. Women's Health Ctr., LLC v. Dean*, 342 Ga. App. 127 (2017)
Carlsons on Evidence
24-6-608


  • “Prior **false allegations** of sexual misconduct are considered in federal and state courts under Rule 608 (b).”
Carlsons on Evidence
24-6-608

• *State v. Burns, 2019 Ga. LEXIS 400 (2019)*

• “In a sexual-offense prosecution, where, like here, the case comes down to witness credibility, evidence that the complaining witness has made a prior false allegation of sexual misconduct is not of ‘scant’ probative force.”
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24-6-608; 24-6-622

Bias Impeachment
On cross, Proponent inquires of Opponent’s expert witness about the amount of her fees and whether she advertises her services. Opponent objects as prejudicial, irrelevant, and improper impeachment.
24-6-608(b):
- Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than...conduct indicative of the witness's bias toward a party may not be proved by extrinsic evidence.

24-6-622:
- The state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury.
Carlsons on Evidence
24-6-608; 622

  • “Unlike many other modes of impeachment, attacks on witness bias are *constitutionally guaranteed*.”
  • “608 does *not preclude* introduction of *extrinsic evidence* to prove a witness's bias.”
“Bias is a term used in the ‘common law of evidence’ to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest. Proof of bias is almost always relevant...”

“...as a general principle, the jury is entitled to consider a witness's financial interest in a case.” *Chambers v. Gwinnett Cmty. Hosp., Inc.*, 253 Ga. App. 25 (2001)

“Kritlow has failed to point to anything in the record supporting his pure speculation that the victim's financial status motivated her to fabricate the sexual assault. A witness may not be impeached based on a wholly immaterial matter, and the victim's financial status was wholly immaterial to the issue of [Kritlow's] guilt.” *Kritlow v. State*, 339 Ga. App. 353 (2016)
“The right to inquire into partiality and bias, however, is not without limits... On the record in this case, we cannot say that the trial court abused its discretion when it disallowed cross-examination of A. L. about his immigration status.” Lucas v. State, 303 Ga. 134 (2018)
Rules 401, 402, and 403 Apply

“Because the common law party-wealth rule was itself a rule of relevance, and because there is no specific exclusionary rule in the new Evidence Code carrying forward the common law's general exclusionary rule for that type of evidence, Georgia courts must consider party-wealth evidence under the parameters of the new Evidence Code. This is yet another example of the ‘new evidence world’ in which we live.” Chrysler Group LLC v. Walden, 303 Ga. 358 (2018)
• Foundational Requirements
  • “There are similarities between bias and capacity to observe, remember, and recollect. Both are grounds for impeachment, and both may be proven by extrinsic evidence. However, before the proponent may introduce evidence under either theory, he or she must lay a foundation that establishes the legal and logical relevance of the impeaching evidence.” U.S. v. Sojfer, 47 M.J. 425 (C.A.A.F. 1998)
Use of Prior Inconsistent Statements
• Proponent of evidence attempts to impeach Opponent’s witness with a prior inconsistent statement. Opponent objects, “Judge, this was not taken under oath, so it cannot be considered substantively. Furthermore, our witness must be confronted with the time, place, persons present, and the substance of an impeaching statement before this cross can begin.”
24-6-613

(a) In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time; provided, however, upon request the same shall be shown or disclosed to opposing counsel.

(b) Except as provided in Code Section 24-8-806, extrinsic evidence of a prior inconsistent statement by a witness shall not be admissible unless the witness is first afforded an opportunity to explain or deny the prior inconsistent statement and the opposite party is afforded an opportunity to interrogate the witness on the prior inconsistent statement or the interests of justice otherwise require. This subsection shall not apply to admissions of a party-opponent as set forth in paragraph (2) of subsection (d) of Code Section 24-8-801.
“Appellant cannot meet this test because the detective's testimony concerning Pearsall's and Zakiya's prior inconsistent statements was not hearsay. On the contrary, the detective's testimony was admissible to impeach the witnesses, or as substantive evidence.”


“The failure of a witness to remember making a statement, like the witness's flat denial of the statement, may provide the foundation for calling another witness to prove that the statement was made.”

Hood v. State, 299 Ga. 95 (2016)
“Given Gurley's inconsistent testimony at trial and her convenient memory lapses about the portions of her conversation with the police that implicated Appellant, her earlier statements were not hearsay but rather were properly admitted as prior inconsistent statements.” *Thompson v. State*, 304 Ga. 146 (2018)
"The trial court thus did not abuse its discretion in refusing to allow Daniels to introduce a prior statement to attempt to impeach the victim on a collateral matter...‘A witness may be impeached by extrinsic proof of a prior inconsistent statement only as to matters which are not collateral, i.e., as to those matters which are relevant to the issues in the case and could be independently proven.’” *Daniels v. State*, 349 Ga. App. 681 (2019)
“F.R.E. 613(b) and subsequent case law interpreting that rule reflect that the **strict sequencing procedure established in Queen Caroline's Case is now unnecessary** under the Federal Rules of Evidence. Nevertheless...[i]t is equally clear, however, that Rule 613(b) does not supplant the traditional method of confronting a witness with his inconsistent statement prior to its introduction into evidence as the preferred method of proceeding.” *Robinson v. State*, 3 A.3d 257 (Del. 2010)

“Rule 613(b) contains no bar, beyond foundation requirements, to extrinsic evidence of prior inconsistent statements....Rule 613, largely a relaxation of the rule in The Queens Case..., **specifies the foundation which must be laid for introduction of extrinsic evidence.”** *U.S. v. Higa*, 55 F.3d 448 (9th Cir. 1995)
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24-7-704

Expert Opinion Parameters
Proponent of evidence calls expert witness and begins to inquire opinion on key issue in case. Opponent objects that no ultimate issue testimony is allowed. Proponent claims that under Georgia’s New Evidence Code, the ultimate issue objection is a “thing of the past.”
Carlsons on Evidence
24-7-701 to 707

- 24-7-700’s
  - 701. Lay witness opinion testimony
  - 702. Expert opinion testimony in civil actions; medical experts; pretrial hearings; precedential value of ...
  - 703. Bases of expert opinion testimony
  - 704. Ultimate issue opinion
  - 705. Disclosure of facts or data underlying expert opinion
  - 706. Court appointed experts
  - 707. Expert opinion testimony in criminal proceedings
(a) Except as provided in subsection (b) of this Code section, testimony in the form of an opinion or inference otherwise admissible shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact.
“Because Rule 704 is modeled on the Federal Rules of Evidence, we interpret it by looking “’to decisions of the federal appellate courts...’” Eller v. State, 303 Ga. 373 (2018)

“In addition, the testimony of an expert in the form of an opinion is not objectionable on the grounds that it embraces an ultimate issue to be decided by the trier of fact.” In the Interest of R. S. T., 345 Ga. App. 300 (2018)

...testimony in the form of an opinion or inference otherwise admissible shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact. *State v. Cooper*, 324 Ga. App. 32 (2013)

However, an expert may not merely tell the jury what result to reach and may not testify to the legal implications of conduct.” *Clayton County v. Segrest*, 333 Ga. App. 85 (2015)
“Under Federal Rule of Evidence 704, ‘[a]n expert may testify as to his opinion on an ultimate issue of fact,’ provided that he does not ‘merely tell the jury what result to reach’ or ‘testify to the legal implications of conduct.’”  

*U.S. v. Grzybowicz*, 747 F.3d 1296 (11th Cir. 2014)

“…to be admissible under Rule 704 an expert's opinion on an ultimate issue must be helpful to the jury and also must be based on adequately explored legal criteria.”  

*Haney v. Mizell Memorial Hosp.*, 744 F.2d 1467 (11th Cir. 1984)

“A witness may give otherwise admissible opinion testimony that affects an ultimate issue in a case unless that opinion concerns the mens rea of a criminal defendant.”  

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24-8-801

Hearsay: Self-Quotation
• Proponent asks witness, “Will you please tell us what you told my client about who is at fault?” Opponent objects as hearsay.” Proponent responds, “It is not hearsay is someone is quoting themselves.”
Carlsons on Evidence
24-8-801 to 24-8-826

• 24-8-800’s
  • 801. Definitions
  • 802. Hearsay rule
  • 803. Hearsay rule exceptions; availability of declarant immaterial
  • 804. Hearsay rule exceptions; declarant unavailable
  • 805. Hearsay within hearsay
  • 806. Attacking and supporting credibility of a declarant
  • 807. Residual exception
  • 820. Testimony as to child's description of sexual contact or physical abuse
  • 821. Admissions in pleadings
  • 822. Right to have whole conversation heard
  • 823. Admissions and confessions received with care; no conviction on uncorroborated confession
  • 824. Only voluntary confessions admissible
  • 825. Confessions under spiritual exhortation, promise of secrecy, or collateral benefit admissible
  • 826. Medical reports in narrative form
Hearsay: Classifications of Out-of-Court Statements

- **Admissions (801’s):** Party Opponent
- **Statements (803’s):** Non-party (available and not available)
- **Declarations (804’s):** Non-party (unavailable)
Hearsay Analysis

1. Is the evidence *hearsay*?
2. Is the evidence admissible for a *non-hearsay purpose*?
3. Is the evidence subject to an *exemption*?
4. Is the evidence subject to an *exception*?
5. Is the evidence only admissible for a *limited purpose*?
As used in this chapter, the term:

(a) “Statement” means:
   (1) An oral or written assertion; or
   (2) Nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) “Declarant” means a person who makes a statement.

(c) “Hearsay” means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
“Under the new Evidence Code, hearsay is defined as ‘a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.’ OCGA § 24-8-801(c). This provision uses similar language to Federal Rule of Evidence 802 (c) (2), so we properly look to federal appellate decisions when interpreting it.” Watson v. State, 303 Ga. 758 (2018)
• “The fact that past out of court statements were made by a witness testifying at trial does not remove them from the reaches of the hearsay rule if they are offered to prove the truth of the matter asserted.” *U.S. v. Lewis*, 436 F.3d 939 (8th Cir. 2006)

• “…a defendant's self-serving extra-judicial declarations are inadmissible unless they fall within a hearsay exception. That is, a defendant cannot get self-serving hearsay statements into evidence without first waiving the Fifth Amendment and testifying…” *Cisneros v. Paramo*, 2015 U.S. Dist. LEXIS 168978 (C.D. Cal. 2015)
“...blanket exclusion from the hearsay rule is only for statements by a party-opponent, not for a party's out-of-court statements offered by the party himself.”


“...prior statement by that witness ‘is pure hearsay evidence, which cannot be admitted merely to corroborate the witness, or to bolster the witness's credibility...’”

“In the absence of such an affirmative attack, any prior statement by that witness ‘is pure hearsay evidence, which cannot be admitted merely to corroborate the witness, or to bolster the witness's credibility in the eyes of the jury.’” *Silvey v. State*, 335 Ga. App. 383(2015)
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24-8-801(d)(2)(B)
Adoptive Admissions
• Proponent seeks to introduce evidence that, at the scene of a vehicular homicide, the Defendant failed to respond when bystanders shouted that Defendant was drunk, speeding, and ran the red light. Opponent objects, “Barred by the Mallory Rule, judge. The purpose of the evidence code project was to preserve areas of Georgia law that were well-established. Mallory is one of those rules.”
Carlsons on Evidence
24-8-801(d)(2)(B)

- **O.C.G.A. § 24-8-801**
  
  - (d) "Hearsay" shall be subject to the following exclusions and conditions:
    
    - (2) **Admissions by party-opponent**. Admissions shall not be excluded by the hearsay rule. An admission is a statement offered against a party which is:
      
      - (A) The **party's own statement**, in either an individual or representative capacity
      
      - (B) A statement of which the party has **manifested an adoption or belief** in its truth;
Carlsons on Evidence
24-8-801(d)(2)(B)

• *State v. Orr*, 305 Ga. 729 (2019)
  • “To understand where Mallory's categorical exclusionary rule is headed — oblivion — it is important to understand where the rule came from...Mallory said plainly that its rule was not imposed as a constitutional requirement. And while *Mallory was decided under the old Evidence Code* — meaning when that Code was in effect — it was not an interpretation of any provision of that statutory scheme...Indeed, the *old Evidence Code had no provision addressing* the exclusion of evidence as more prejudicial than probative.”
Carlsons on Evidence

24-8-801(d)(2)(B)

- “For evidence to qualify as a criminal defendant's adoptive admission under Rule 801 (d) (2) (B), the trial court must find that two criteria were met: first, that ‘the statement was such that, under the circumstances, an innocent defendant would normally be induced to respond,’ and second, that ‘there are sufficient foundational facts from which the jury could infer that the defendant heard, understood, and acquiesced in the statement.’”
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24-8-803(4)

Hearsay: Medical Diagnosis and Treatment
In a child sexual abuse case, the child was taken by her mother to the family doctor. During the examination, daughter describes abuse and identifies mother’s live-in boyfriend as the abuser. At trial, mother and daughter are unavailable. Proponent calls doctor who testifies that identity of abuser is pertinent to treatment. State then asks doctor what daughter described and who she identified. Opponent objects, “Judge, this has never been allowed in Georgia. Our ‘new’ rule is the same at the old one. This is bar complaint material!”
“The Georgia precedent upon which the Court of Appeals relied did not survive the adoption of the new Evidence Code. The Eleventh Circuit decisions that the Court of Appeals alternatively relied upon did not decide the question before us regarding the application of Rule 803 (4) in the context of child sexual abuse; the federal precedent the Court of Appeals rejected did decide that question. We apply that federal precedent and conclude that the Court of Appeals' categorical bar on the admissibility of identification under Rule 803 (4) in child sexual abuse cases was error.” State v. Almanza, 304 Ga. 553 (2018)
• “The Renville test is a straightforward but rigorous two-step test for the admissibility of hearsay statements under Federal Rule 803 (4) generally... First, "the declarant's motive in making the statement must be consistent with the purpose of promoting treatment[.]

Second, "the content of the statement must be such as is reasonably relied on by a physician in treatment or diagnosis."... These two prongs ensure that the hearsay statement has a sufficient guarantee of trustworthiness while excluding statements beyond the scope of the rule.”

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24-8-803(18)

Hearsay: Leaned Treatises
During direct examination, Proponent has expert witness identify a learned treatise as authoritative. Proponent then reads pertinent quotes from text and asks expert if she agrees. Opponent objects, “This is hearsay judge. Learned treatises are only admissible for impeachment purposes.”
• **24-8-802(18)**
  • The following shall not be excluded by the hearsay rule, even though the declarant is available as a witness:
    • (18) Learned treatises. To the extent called to the attention of an **expert witness upon cross-examination**, statements contained in published treatises, periodicals, or pamphlets, whether published electronically or in print, on a subject of history, medicine, or other science or art, **established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice**. If admitted, the statements may be used for cross-examination of an expert witness and read into evidence but shall not be received as exhibits;
“In Georgia there is an additional barrier to the use of treatises on direct examination. The Georgia statute limits the use of learned treatises to cross-examination and impeachment.”

“The rationale for this exception is self-evident: so long as the authority of a treatise has been sufficiently established, the factfinder should have the benefit of expert learning on a subject, even though it is hearsay.” Costantino v. David M. Herzog, M.D., P.C., 203 F.3d 164 (2nd Cir. 2000)

“The Notes of the Advisory Committee counsel a liberal interpretation of Rule 803(18), favoring admissibility…” Allen v. Safeco Ins. Co. of America, 782 F.2d 1517 (11th Cir. 1986)
“...Federal Rule of Evidence 803(18) exempts such statements from the rule against hearsay if: (A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and (B) the publication is established as reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.” Lyons v. Aguinaldo, 2018 U.S. Dist. LEXIS 136938 (N.D. Ill. 2018)
“Evidence must be authenticated or identified prior to being admitted...For a learned treatise to be admitted as documentary evidence, it must be established as a reliable authority by the testimony of the expert who relied upon it or to whose attention it was called...Not being a qualified expert, Ms. Ehret cannot establish the authority of this evidence as a learned treatise.”

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24-9-901

Authentication of Social Media
Proponent of evidence attempts to introduce social media evidence in the form of Facebook postings from the opponent’s client. Proponent’s witness describes them of being in the same style, mentions personal information, and comes from the page of the opponent’s client. Opponent objects, arguing that authentication of social media evidence requires testimony from the webmaster.
Carlsons on Evidence
24-9-901 to 924

- **24-9-900’s**
  - 901. Requirement of authentication or identification
  - 902. Self-authentication
  - 903. Subscribing witness's testimony
  - 904. Definitions
  - 920. Authentication of Georgia state and county records
  - 921. Identification of medical bills; expert witness unnecessary
  - 922. Proof of laws, records, nonjudicial records, or books of other states, territories, or possessions; ...
  - 923. Authentication of photographs, motion pictures, video recordings, and audio recordings when witness ...
  - 924. Admissibility of records of Department of Driver Services; admissibility of computer transmitted records
(a) The requirement of authentication or identification as a condition precedent to admissibility shall be satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

  • “We also note that prior to the enactment of Rule 901, our Supreme Court held that a handwriting exemplar can be any voluntary writing...That precedent is of limited utility, however, because prior to the enactment of the new Evidence Code, Georgia had no comprehensive authentication statute...Because OCGA § 24-9-901 closely tracks its federal counterpart, we look to federal appellate case law until a Georgia appellate court decides the issue under the new Code.

• “‘[d]ocuments from electronic sources such as the printouts from a website like Facebook are subject to the same rules of authentication as other more traditional documentary evidence and may be authenticated through circumstantial evidence.’ Indeed...‘there are no special rules under Georgia law governing the authentication of electronic documents or communications.’ Finally, once the party seeking to authenticate a document presents a prima facie case that the proffered evidence is what it purports to be, ‘the evidence is admitted and the ultimate question of authenticity is decided by the [jury].’”
“Exhibits depicting online content may be authenticated by a person's testimony that he is familiar with the online content and that the exhibits are in the same format as the online content...Such testimony is sufficient to provide a rational basis for the claim that the exhibits properly represent the online content....”

*U.S. v. Needham*, 852 F.3d 830 (8th Cir. 2017)
“A fact finder could well conclude that (1) Meshach Thompson sent the text messages from the name ‘Mee$h,’ and (2) Shadrach Thompson sent the messages from the name ‘$had.’ These text messages—along with other evidence presented at trial—readily establish that Meshach Thompson engaged in a conspiracy with Shadrach Thompson and Omar Wadley to possess oxycodone with intent to distribute. The text messages were attempts to set up and negotiate the purchase of oxycodone.” *U.S. v. Thompson*, 568 Fed. Appx. 812 (11th Cir. 2014)
“Addo contends that an exhibit, purporting to be a text message from Vasile to Addo with a photo of an envelope allegedly containing a copy of the lawsuit, attached to Addo's response to appellants' first motion to set aside proves that appellants received a copy of the lawsuit via mail...Simply attaching an exhibit to a motion, however, does not prove its genuineness or authenticity.” Vasile v. Addo, 341 Ga. App. 236 (2017)
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24-9-902(11) ; 24-8-803(6)

Authentication of Business Records
Proponent tenders business records with a certificate from the firm records custodian. Opponent objects, “Judge, they need a live witness to authenticate, not a piece of paper. Moreover, these contain opinions. That makes them per se inadmissible.”
Carlsons on Evidence
24-9-902(11); 24-8-803(6)

- 24-9-902(11)

The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under paragraph (6) of Code Section 24-8-803 if accompanied by a written declaration of its custodian or other qualified person certifying that the record:

(A) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of such matters; (B) Was kept in the course of the regularly conducted activity; and (C) Was made by the regularly conducted activity as a regular practice. A party intending to offer a record into evidence under this paragraph shall provide written notice of such intention to all adverse parties and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge such record and declaration;
The following shall not be excluded by the hearsay rule, even though the declarant is available as a witness:

(6) Records of regularly conducted activity. Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness and subject to the provisions of Chapter 7 of this title, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, if (A) made at or near the time of the described acts, events, conditions, opinions, or diagnoses; (B) made by, or from information transmitted by, a person with personal knowledge and a business duty to report; (C) kept in the course of a regularly conducted business activity; and (D) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with paragraph (11) or (12) of Code Section 24-9-902 or by any other statute permitting certification....
Carlsons on Evidence
24-9-902(11); 24-8-803(6)

  • “Where, as in the case of OCGA § 24-8-803 (6), Georgia's evidentiary statutes closely track the language of the Federal Rules of Evidence, we look to the federal courts' interpretation of those rules for guidance.”
Carlsons on Evidence
24-9-902(11); 24-8-803(6)

• “And, as the trial court noted, the subsection specifically applicable, OCGA § 24-9-902 (11), places no such requirement on a certificate of authenticity...we must presume that the General Assembly meant that the certificate of authenticity required through the operation of OCGA §§ 24-8-803(6) and 24-9-902(11), need not be notarized or signed under a penalty of perjury.” *Hayes v. State*, 298 Ga. 98 (2015)
“An ‘otherwise qualified witness’ may lay the foundation for records' introduction despite lacking personal knowledge of the preparation of the records, but he or she must be familiar with the creation and record keeping procedures of the organization in order to establish the records' trustworthiness.” *Jones v. State*, 345 Ga. App. 14 (2018)
“[the federal courts] interpret the term ‘qualified witness’ [in the similar federal rule] broadly, requiring only someone familiar with the creation and maintenance of the records. An ‘otherwise qualified witness’ may lay the foundation for records' introduction despite lacking personal knowledge of the preparation of the records, but he or she must be familiar with the creation and record keeping procedures of the organization in order to establish the records' trustworthiness.” Jones v. State, 345 Ga. App. 14 (2018)
“The computer-generated inspection report, which reflects the date of the incident and was printed the day after the incident, indicates the time of each inspection stop during each hourly inspection, the identity of the employee, the number and location of the sensors, and the condition of the inspected areas...The obvious purpose of the monitoring system was to contemporaneously document compliance with the store's inspection procedure. Nothing about the computer report suggests any lack of trustworthiness, and the co-manager's affidavit sufficiently authenticated the inspection report.” Johnson v. All American Quality Foods, Inc., 340 Ga. App. 664 (2017)
“And those courts have held that hospital records, including medical opinions, are ... admitted under [Federal Rule of Evidence 803 (6)], which expressly permits ‘opinions’ and ‘diagnoses.’ Given this construction of Federal Rule of Evidence 803 (6), the fact that OCGA § 24-8-803 (6) is nearly identically worded, and, as previously noted, the fact that these records were made to facilitate Samuels's treatment and not in anticipation of prosecution, the trial court did not err in admitting the hospital records under OCGA § 24-8-803 (6).” *Samuels v. State*, 335 Ga. App. 819 (2016)
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24-10-1006

Best Evidence Rule: Summaries
• Proponent introduces a chart summarizing hospital records to assist the jury in understanding the raw notes and entries. **Opponent objects under the best evidence rule.**
Carlsons on Evidence
24-10-1001 to 1008

• 24-10-1000’s
  • 1001. Definitions
  • 1002. Requirement of original
  • 1003. Admissibility of duplicates
  • 1004. Admissibility of other evidence of contents of a writing, recording, or photograph
  • 1005. Public records
  • 1006. Summaries
  • 1007. Testimony or written admission of party
  • 1008. Functions of court and jury
The contents of otherwise admissible voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that the contents of such writings, recordings, or photographs be produced in court.
• **Best Evidence Rule Federalized**

• “Our Supreme Court has emphasized that, when a provision of the new Evidence Code has been adopted from the Federal Rules of Evidence, we must consider the meaning of that provision by looking to ‘the decisions of the federal appeals courts construing and applying the Federal Rules, especially the decisions of the Eleventh Circuit.” *Patch v. State*, 337 Ga. App. 233 (2016)
“Federal Rule of Evidence 1006 allows parties to use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court...To comply with this Rule, therefore, a chart summarizing evidence must be an accurate compilation of the voluminous records sought to be summarized. Moreover, the records summarized must otherwise be admissible in evidence...Thus, summary exhibits under Rule 1006 function as a surrogate for voluminous writings that are otherwise admissible.” Krakauer v. Dish Network L.L.C., 2016 U.S. Dist. LEXIS 160512 (M.D.N.C. Sept. 19, 2016)
“Arguably, the requirement that the underlying records supporting that summary were made available for examination or copying, or both, by other parties at a reasonable time and place has been met. As acknowledged by D'Agnese, neither party conducted any discovery in this case. D'Agnese cannot complain that documents were not available to him if he never asked for them...However, Wells Fargo offered no evidence — and has made no argument — that the underlying records are too voluminous to be examined in court conveniently, a clear requirement under the text of the rule...This is a necessary precondition for admission of a document as a summary.” D'Agnese v. Wells Fargo Bank, N.A., 335 Ga. App. (2016)
“Rule 1006 of the Federal Rules of Evidence permits a proponent to use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court... The government introduced a chart containing the information that Special Agent O'Donnell gathered during his investigation of the 11 images that rezchub61 uploaded to the boy2kid group...We find no reversible error...” U.S. v. Needham, 852 F.3d 830 (8th Cir. 2017)
• “...the party desiring to introduce voluminous material in summary form must make ‘[t]he originals, or duplicates, ... available for examination or copying, or both, by other parties at a reasonable time and place’...this requirement must be satisfied ‘prior to the admission of the summary’ ...”  
  
“To qualify under Evidence Rule 1006, an evidence summary must fairly represent and be taken from underlying documentary proof which is too voluminous for convenient in-court examination, and [it] must be accurate and nonprejudicial...**Rule 1006 summaries can be brought into the deliberation room...**”

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Today’s Presentation
Review
Carlsons on Evidence

Review

• Evidence Program Goals

1. Further Develop “Code Wide” Approach

2. Underscore Fundamental Principles of Interpretation

3. Analyze and Consider Specific Applications
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(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
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UPCOMING 2020 LEGISLATION AFFECTING TRIAL PRACTICE
Materials will be provided at the program.
ATTORNEY DISCIPLINE UPDATE
This survey covers the period from June 1, 2018 – May 31, 2019.¹ The article discusses attorney discipline, ineffective assistance of counsel, bar admission, judicial ethics, malpractice, several miscellaneous cases involving legal ethics, and actions of the Formal Advisory Opinion Board.

II. LAWYER DISCIPLINE²

A. Disbarments³

1. Trust account and other financial issues

The supreme court of Georgia disbarred four attorneys during the survey period for misconduct that primarily related to their trust accounts or other financial issues.

¹ For an analysis of Georgia legal ethics during the June 1, 2017 to May 31, 2018 survey period, see Patrick Emery Longan, Legal Ethics, Annual Survey of Georgia Law, 70 MERCER L. REV. 141 (2018).

² In addition to the matters recited in the text, the State Disciplinary Board imposed confidential discipline in the form of Letters of Formal Admonition in 16 cases and Confidential Reprimands in 15 cases between May 1, 2018 and April 30, 2019 (a slightly different time period than this survey). See Melody A. Glouton, State Disciplinary Board, 2019 REP. OF THE OFF. OF GEN. COUNS. OF THE ST. B. OF GA. at 6. (https://www.gabar.org/barrules/ethicsandprofessionalism/upload/19_OGC_Report.pdf). The State Disciplinary Board also dismissed 26 cases with Letters of Instruction. Id.

³ Lawyers in Georgia can submit petitions for voluntary discipline. GA. RULES OF PROF’L CONDUCT R. 4-227 (2019). The acceptance of a petition for voluntary discipline of disbarment (sometimes described as a voluntary surrender of the lawyer’s license) is tantamount to disbarment by the court and is treated as such in this article.
Anthony Eugene Cheatham was already suspended from the practice of law for failure to complete his continuing legal education requirements when he agreed to close a real estate transaction.\textsuperscript{4} Mr. Cheatham received $140,600 as the purchase money and $1000 in earnest money, but instead of disbursing the proceeds of the sale to the seller Mr. Cheatham converted all the funds to his own use.\textsuperscript{5} After he closed the sale, Mr. Cheatham made some partial payments and misled the seller and the purchasers about the reasons why he did so.\textsuperscript{6} Mr. Cheatham also “failed to timely prepare and record the warranty deed …; failed to communicate with the seller and purchasers regarding the deed; failed to account for the proceeds of the sale …; and abandoned the completion of the sale to the detriment of the seller and purchasers.”\textsuperscript{7} Mr. Cheatham defaulted in the disciplinary process, and the supreme court disbarred him.\textsuperscript{8}

George W. Snipes lost his license because he settled a client’s case without permission, converted most of the settlement funds, and defaulted in the disciplinary process.\textsuperscript{9} After Mr. Snipes settled the case for $300,000, the insurance company sent the settlement checks to his client who, on Snipes’s instruction, endorsed the checks and sent them to Snipes.\textsuperscript{10} Mr. Snipes sent the client $170,000 and promised to pay the client’s outstanding medical bills and pay himself his attorney’s fees from the remaining funds, but instead Mr. Snipes converted all of the remaining money for himself.\textsuperscript{11}

\textsuperscript{5} Id. at 645, 820 S.E.2d at 670.
\textsuperscript{6} Id.
\textsuperscript{7} Id. at 645-646, 820 S.E.2d at 670.
\textsuperscript{8} Id. at 645-647, 820 S.E.2d at 669-670.
\textsuperscript{9} In Re Snipes, 303 Ga. 800, 800-801, 815 S.E.2d 54, 54-55 (2018).
\textsuperscript{10} Id.
\textsuperscript{11} Id. at 801, 815 S.E.2d at 55.
Richard Allen Hunt was disbarred for removing client funds from a trust account and using them for personal and business expenses.\textsuperscript{12} Mr. Hunt took possession of approximately $60,000 that belonged to a client’s two sons and then, according to his own testimony, withdrew the money from his trust account gradually and used it to fund a personal injury case he had filed, making a bet that the case would settle before he needed to repay the funds.\textsuperscript{13} Mr. Hunt lost that bet.\textsuperscript{14} The supreme court noted that the presumptive sanction for such intentional, harmful criminal conduct was disbarment.\textsuperscript{15} There were numerous aggravating factors in the case, including a long prior disciplinary history, intentional misconduct, multiple violations (including numerous withdrawals of the money and lying to the client about what he was going to do with it), selfish and dishonest motive, failure to make restitution until compelled to do so, refusal to acknowledge the wrongful nature of his conduct, lack of remorse, vulnerability of the victims, and substantial experience in the practice of law.\textsuperscript{16} The special master rejected Mr. Hunt’s arguments that there were mitigating circumstances, and the supreme court agreed that Mr. Hunt should be disbarred.\textsuperscript{17}

The supreme court rejected a special master’s recommendation of a four-year suspension and disbarred Gary Lanier Coulter.\textsuperscript{18} Mr. Coulter “administered very large sums of client-money for years, over $1 million in 2011 alone, using 12 different bank accounts, none of which were trust accounts….”\textsuperscript{19} He failed to keep accurate records of the funds and did not accurately

\textsuperscript{12} In Re Hunt, 304 Ga. 635, 820 S.E.2d 716 (2018).
\textsuperscript{13} Id. at 637, 639-640, 820 S.E.2d at 718, 719-720.
\textsuperscript{14} Id. at 639, n. 7, 820 S.E.2d at 719, n. 7.
\textsuperscript{15} Id. at 641, 820 S.E.2d at 720.
\textsuperscript{16} Id. at 642-643, 820 S.E.2d at 721-722.
\textsuperscript{17} Id. at 641-644, 820 S.E.2d at 721-723.
\textsuperscript{18} In Re Coulter, 304 Ga. 81,85, 816 S.E.2d 1, 4 (2018).
\textsuperscript{19} Id. at 83, 816 S.E.2d at 2.
account for money that was transferred from these accounts to his operating accounts, ostensibly as payment of hundreds of thousands of dollars of attorney’s fees.20 The special master found that there were three mitigating factors – remorse, good reputation, and interim rehabilitation – but the special master also found in aggravation that Mr. Coulter had substantial experience in the practice of law, a prior disciplinary history, and a dishonest or selfish motive.21 The special master also found that Mr. Coulter’s conduct included multiple violations of the rules.22 The supreme court concluded that disbarment was appropriate because of “the serious nature of the violations at issue here, the number of aggravating factors, including Coulter’s prior disciplinary history,” and because “the record facts demonstrate that Coulter did intend to violate the trust account rules.”23

2. Client abandonment and/or lack of communication

The supreme court disbarred three attorneys for misconduct that included client abandonment and/or failure to communicate.

Jack S. Jennings lost his license because he abandoned a matter and then engaged in a course of misconduct following abandonment.24 The lawyer initially failed to answer requests for admission.25 When the client fired the lawyer and new counsel sought the file, the attorney sent a partial file that omitted the evidence that the lawyer had failed to answer the requests for admission in order to conceal that fact.26 The attorney did not appear at a hearing about turning over the entire file and still refused to do so after being ordered by the court to do so and being

20 Id. at 82-83, 816 S.E.2d at 2-3.
21 Id. at 84-85, 816 S.E.2d at 3.
22 Id. at 85, 816 S.E.2d at 3.
23 Id. at 85, 816 S.E.2d at 4.
25 Id. at 134, 823 S.E.2d at 812.
26 Id.
assessed attorney’s fees (which he refused to pay). The lawyer did not respond to the bar’s formal complaint. The court found aggravating factors, including intentionally concealing the misconduct (to the detriment of his client), ignoring the trial court’s order to pay attorney’s fees, substantial experience in the practice of law, multiple rule violations, failure to cooperate in the disciplinary process, refusal to acknowledge the wrongfulness of his conduct, and indifference to making restitution.

Shannon Briley-Holmes was disbarred for misconduct in connection with the representation of 11 clients. Her misconduct included client abandonment in seven cases (violations of Rule 1.3), failure to communicate in three cases (violations of Rule 1.4), failure to refund unearned fees and/or failure to forward a client’s file to a new attorney (violations of Rule 1.16), and filing a civil suit against a client without a valid factual basis (violation of Rule 3.1). The special master recommended a five-year suspension, but the supreme court noted that it had never imposed such a long suspension other than for reciprocal discipline. Although Ms. Briley-Holmes had presented evidence of personal or emotional problems, efforts to make restitution (in 1 case), inexperience in the practice of law, and cooperation (in 6 of the 11 cases), the court found that she should be disbarred, because she knowingly engaged in a pattern of misconduct that caused serious injury to vulnerable clients and displayed indifference to making restitution to all but one of the clients.

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27 Id. at 134, 823 S.E.2d at 812-813.
28 Id. at 134, 823 S.E.2d at 812.
29 Id. at 134-135, 823 S.E.2d at 813.
31 Id. at 199-205, 208-209, 815 S.E.2d at 60-63, 65.
32 Id. at 207-208, 815 S.E.2d at 65.
33 Id. at 206-209, 208-209, 815 S.E.2d at 64-66.
The supreme court disbarred Neil Larson after he defaulted with respect to four notices of
discipline.\footnote{In Re Larson, 305 Ga. 522, 826 S.E.2d 99 (2019).} Mr. Larson had accepted payment in advance to represent four criminal defendants and abandoned all four.\footnote{Id. at 522, 826 S.E.2d at 99.} He also had made misrepresentations to one client’s family about the status of the matter.\footnote{Id.} There were no mitigating factors, and the aggravating factors included a dishonest motive in collecting fees and then abandoning the clients, substantial experience in the practice of law, multiple offenses, and a prior disciplinary history.\footnote{Id. at 522-523, 826 S.E.2d at 99-100.}

3. **Criminal activity**

Three Georgia lawyers lost their licenses during the survey period as a result of criminal conduct.

The supreme court accepted Shannon DeWayne Patterson’s petition for voluntary surrender of his license after he pled guilty in federal court to one count of aiding and assisting in the preparation and presentation of a false tax return.\footnote{In Re Patterson, 305 Ga. 38, 823 S.E.2d 264 (2019).} The supreme court accepted the voluntary surrender of the license of Richard Scott Thompson after he was convicted of the felony of aggravated stalking.\footnote{In Re Thompson, __ Ga. __, 828 S.E.2d 294 (2019).} David P. Rachel was disbarred following the exhaustion of his appeals from conviction in federal court for conspiracy and money laundering.\footnote{In Re Rachel, 304 Ga. 826, 822 S.E.2d 195 (2018).}

4. **Miscellaneous disbarment**

The supreme court disbarred one attorney for reasons other than financial misdeeds, client abandonment, or criminal activity. Prince A. Brumfield, Jr. voluntarily surrendered his
license and admitted that he engaged in deceitful conduct by knowingly filing a deed that falsely purported to contain the signature of an individual.\textsuperscript{41}

B. \textit{Suspensions}\textsuperscript{42}

1. \textbf{Six-month suspensions}

The supreme court suspended two lawyers for six months. Ricardo L. Polk was suspended for 6 months (consecutive to a 30-month suspension he was already serving) for failure to return unearned fees to a client after Mr. Polk was required to withdraw from the representation of the client due to the suspension related to other grievances.\textsuperscript{43} The court found Mr. Polk’s disciplinary history to be a factor in aggravation, while mitigation evidence included a lack of selfish or dishonest motive, remorse, cooperation with the bar, and acknowledgement of the wrongful nature of his conduct.\textsuperscript{44}

S. Quinn Johnson received a six-month suspension because he committed multiple violations of his duties of diligence and communication and also failed to return unearned fees, filed pleadings while he was suspended from practice, and violated Rule 1.15(I) (relating to trust accounts).\textsuperscript{45} Mr. Johnson had been the subject of prior discipline and had substantial experience in the practice of law, but he presented significant mitigation evidence.\textsuperscript{46} The mitigating factors included personal and emotional problems at the time of the offenses, lack of a selfish or dishonest motive, restitution, cooperation with the bar, good reputation and remorse.\textsuperscript{47}

\textsuperscript{42} This article discusses only those suspensions that constitute final discipline and does not discuss interim suspensions.
\textsuperscript{43} \textit{In Re Polk}, 304 Ga. 326, 818 S.E.2d 495 (2018).
\textsuperscript{44} \textit{Id.} at 328, 818 S.E.2d at 496.
\textsuperscript{46} \textit{Id.} at 798-799, 815 S.E.2d at 58.
\textsuperscript{47} \textit{Id.} at 799, 815 S.E.2d at 58.
presented evidence that he had taken steps of interim rehabilitation such as a consultation with
the Law Practice Management Program of the state bar, continuing legal education regarding
attorney-client relations and office procedures, and counseling for his personal problems.\textsuperscript{48}

2. **Suspensions longer than six months**

The supreme court suspended five lawyers for longer than six months during the survey
period.

The supreme court accepted the fourth voluntary petition for discipline from Samuel
Williams, who had pled guilty to a felony charge for selling unregistered securities in Alabama,
and suspended Mr. Williams for 20 months, nunc pro tunc to the date he voluntarily ceased
practicing law.\textsuperscript{49} The court noted the following mitigating circumstances that justified the
suspension rather than disbarment (the most common discipline for a felony conviction):

[Mr. Williams] was under considerable mental and emotional stress because of
the near-concurrent bankruptcy of his law firm and diagnosis of his wife with
metastatic breast cancer in the fall of 2009; that he has no prior disciplinary
history or criminal record; that he served honorably in the military for 20 years;
that he self-reported his conviction to the disciplinary authorities and has been
cooperative; that his failure to register the securities was negligent and
unintentional; that his failure to reject or secure the $380,000 was negligent and
without a selfish motive; that he is sincerely remorseful; that he has attempted to
improve his own understanding of the law and to help others avoid the mistakes
he made; and that he has complied with all of the terms of his probation. Williams
also asserts that the nearly four-year delay between his self-reporting of the
violation and the petition for appointment of a special master should be
considered in mitigation. Additionally, the Alabama prosecutor sent a letter to the
Bar saying that Williams was inexperienced, distressed because of his wife’s
illness, and extremely remorseful, and that the trial judge concluded that
Williams’s involvement in the criminal scheme was minimal.\textsuperscript{50}

\textsuperscript{48} \textit{Id.}
\textsuperscript{49} \textit{In Re Williams}, 304 Ga. 832, 822 S.E.2d 827 (2019).
\textsuperscript{50} \textit{Id.} at 833-834, 822 S.E.2d at 828.
The court noted that generally a lawyer will not be reinstated while the lawyer is on probation for a crime, because that would undermine respect for the legal system.\textsuperscript{51} In Mr. Williams’ case, however, the only thing that kept him subject to the continuing jurisdiction of the court in Alabama was his ongoing restitution obligation.\textsuperscript{52} The supreme court decided that suspension was appropriate given that it was likely that Mr. Williams would never be able to make full restitution and therefore waiting for that condition to be fulfilled and for complete release from the jurisdiction of the Alabama court would result, in effect, with an “endless suspension.”\textsuperscript{53}

The court also accepted a voluntary petition for discipline in the form of a 12-month suspension from Amber Cecile Saunders.\textsuperscript{54} Ms. Saunders converted over $26,000 in client funds to her own use at a time when she was suffering extreme emotional distress and financial difficulties stemming from being the victim of domestic violence.\textsuperscript{55} The supreme court imposed a twelve-month suspension in light of the circumstances and other mitigating factors, including full restitution to the client, cooperation with the disciplinary process, good character, and remorse.\textsuperscript{56} The court rejected the suggestion that Ms. Saunders’ inexperience in the practice of law should be a mitigating factor, noting that “even a first-year law student should understand that conversion client funds for personal use is impermissible.”\textsuperscript{57}

The supreme court accepted a petition for voluntary discipline and suspended Nathaniel Antonio Barnes, Jr. for 21 months after he pled guilty to felony possession of cocaine and

\begin{itemize}
\item \textsuperscript{51} Id. at 835, n.4, 822 S.E.2d at 829, n. 4.
\item \textsuperscript{52} Id. at 834-835, 822 S.E.2d at 828-829.
\item \textsuperscript{53} Id. at 835, 822 S.E.2d at 829.
\item \textsuperscript{54} In Re Saunders, 304 Ga. 824, 822 S.E.2d 235 (2018).
\item \textsuperscript{55} Id. at 825, 822 S.E.2d at 236.
\item \textsuperscript{56} Id.
\item \textsuperscript{57} Id. at 825, n. 2, 822 S.E.2d at 236, n. 2.
\end{itemize}
misdemeanor disorderly conduct. Mr. Barnes was found walking around the common area of his condominium complex in his underwear and holding a knife, in the midst of a delusional episode caused by three days of cocaine use and lack of sleep. Although conviction of a felony often results in disbarment, Mr. Barnes presented significant mitigating evidence: lack of a prior disciplinary record or dishonest motive, depression, addiction, acceptance of responsibility, cooperation with the bar, good professional reputation, and remorse. The court issued a slightly longer suspension than an otherwise similarly-situated lawyer received because of the knife that Mr. Barnes was wielding during the episode that led to his arrest. Mr. Barnes entered a drug court program upon completion of which the prosecution would dismiss the charges, and Mr. Barnes’s reinstatement was conditioned upon successful completion of the drug court program.

Scott L. Podvin was suspended for 18 months as reciprocal discipline. Mr. Podvin had been suspended in Florida for misconduct in connection with lack of diligence, failure to communicate with clients, submission of an “agreed” order to a court that in fact had not been agreed upon, and ex parte communications with a court.

Matthew Thomas Dale successfully petitioned for voluntary discipline in the form of an 18-month suspension. Mr. Dale pled guilty to the felony of being a Peeping Tom and was sentenced as a first offender to four years of probation. Mr. Dale’s offense was mitigated by lack of prior discipline, evidence of personal and emotional problems at the time, cooperation in

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59 Id.
60 Id. at 324-325, 818 S.E.2d at 498.
61 Id. at 325, 818 S.E.2d at 498-499.
62 Id. at 326, 818 S.E.2d at 499.
64 Id. at 379, 818 S.E.2d at 652.
66 Id. at 446, 819 S.E.2d at 6.
the disciplinary process, remorse, good character, acknowledgement of the nature of his wrongdoing, and the lack of any relationship between his conduct and the practice of law.\textsuperscript{67}

C. \textit{Public reprimands}

The supreme court ordered two public reprimands during the survey period.

The court imposed a public reprimand on Heather E. Jordan, a relatively inexperienced lawyer who had no prior disciplinary record.\textsuperscript{68} Ms. Jordan failed to communicate with a client about a matter, did not do the necessary work, provided incorrect responses in discovery and eventually stopped working on the case and communicating with the client entirely.\textsuperscript{69} The client obtained another attorney, but Ms. Jordan initially did not send the file to her successor.\textsuperscript{70} The supreme court found that Ms. Jordan had violated her duties of consultation with the client (Rule 1.2), diligence (Rule 1.3), communication (Rule 1.4), and duties upon withdrawal (Rule 1.16).\textsuperscript{71}

The supreme court also accepted a petition for voluntary discipline in the form of a public reprimand to resolve two disciplinary matters involving for Melody Yvonne Cherry.\textsuperscript{72} One of the matters involved her violation of Rule 1.15 (I)(b) by disbursing settlement funds to a client without satisfying the bill of a chiropractor who had provided services to the client based upon Ms. Cherry’s representation that the bill would be paid from the settlement.\textsuperscript{73} In the other matter, Ms. Cherry was contacted by a prospective client in connection with an automobile accident.\textsuperscript{74} Even though the prospective client did not hire her, Ms. Cherry sent a letter to the other driver’s

\begin{footnotesize}
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\item \textsuperscript{67} \textit{Id.} at 819 S.E.2d at .
\item \textsuperscript{68} \textit{In Re Jordan}, 305 Ga. 35, 823 S.E.2d 257 (2019).
\item \textsuperscript{69} \textit{Id.} at 35-36, 823 S.E.2d at 257.
\item \textsuperscript{70} \textit{Id.} at 36, 823 S.E.2d at 257-258.
\item \textsuperscript{71} \textit{Id.} at 36, 823 S.E.2d at 258.
\item \textsuperscript{72} \textit{In Re Cherry}, 305 Ga. 667, 827 S.E.2d 239 (2019).
\item \textsuperscript{73} \textit{Id.} at 668-669, 827 S.E.2d at 239-240.
\item \textsuperscript{74} \textit{Id.} at 669-670, 827 S.E.2d at 240.
\end{itemize}
\end{footnotesize}
insurance company supposedly from the prospective client.\textsuperscript{75} The letter falsely purported to have the prospective client’s signature on it, and Ms. Cherry’s employee notarized the forged signature at Ms. Cherry’s direction.\textsuperscript{76} The supreme court took note of mitigating circumstances but denied the earlier petition because Ms. Cherry did not demonstrate that she had satisfied the chiropractor’s outstanding bill.\textsuperscript{77} The court accepted the second petition when Ms. Cherry provided evidence that she had done so.\textsuperscript{78}

D. Review board reprimands

The supreme court accepted a voluntary petition for discipline in the form of a review board reprimand from Lakeisha Tennille Gantt.\textsuperscript{79} Ms. Gantt accepted a fee to represent a client in connection with an adoption.\textsuperscript{80} Ms. Gantt then neglected to complete the necessary paperwork over the ensuing three years, and during that time she failed to communicate with the client as required by Rule 1.4.\textsuperscript{81} The Supreme Court accepted the voluntary petition, despite the fact that Ms. Gantt had been disciplined before, in light of mitigating factors.\textsuperscript{82} The mitigation included that Ms. Gantt had experienced personal and emotional problems that required treatment and counseling during the relevant time period.\textsuperscript{83} Ms. Gantt also apologized to the client, offered to refund the fee, lacked a dishonest of selfish motive, and cooperated with the disciplinary process.\textsuperscript{84}

\textsuperscript{75} Id. at 669, 827 S.E.2d at 240.
\textsuperscript{76} Id.
\textsuperscript{77} In Re Cherry, 304 Ga. 836, 838, 822 S.E.2d 823, 825 (2019).
\textsuperscript{78} In Re Cherry, supra note 72, 305 Ga. at 670-671, 827 S.E.2d at 241.
\textsuperscript{79} In Re Gantt, __ Ga. __, 827 S.E.2d 683 (2019).
\textsuperscript{80} Id. at __, 827 S.E.2d. at 684.
\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
E. **Petition for reinstatement rejected**

The supreme court accepted the recommendation of the state disciplinary review board and rejected a suspended attorney’s petition for reinstatement.\(^5^\) The court suspended Alvis Melvin Moore in 2016 and imposed as a condition of reinstatement that Mr. Moore had to provide a “detailed, written evaluation by a licensed psychologist or psychiatrist that Moore was mentally competent to practice law….”\(^6^\) The review board found that the attorney’s petition for reinstatement should be rejected because the lawyer’s psychological evaluation “did not address Moore’s mental fitness to practice law and that the psychologist did not describe any familiarity with the rigors and demands of the practice of law, did not have a clear understanding of the facts, and appeared to be unaware of the specific request from this Court for a written evaluation certifying that Moore was ‘mentally competent to practice law.’”\(^7^\) The supreme court agreed and rejected the petition for reinstatement.\(^8^\)

F. **Petitions for voluntary discipline rejected**\(^9^\)

The supreme court rejected a petition for voluntary discipline in the form of a public reprimand from Denise F. Hemmann, an attorney with an extensive disciplinary history who sought to resolve charges that she abandoned and failed to communicate with a client and that she withdrew from representing the client without taking steps to protect the client’s interests.\(^10^\) The court was particularly concerned about the possibility that Ms. Hemman’s most recent

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\(^6^\) *Id.* at 420, 305 S.E.2d at 226.
\(^7^\) *Id.*
\(^8^\) *Id.* at 421, 305 S.E.2d at 227.
\(^9^\) In addition to the cases described in this section, as noted above the supreme court rejected a petition for voluntary discipline from Melody Yvonne Cherry before accepting a later one. *In Re Cherry*, 304 Ga. 836, 822 S.E.2d 823 (2019).
offenses involved conduct similar to what led to the prior discipline and that the most recent violations were a continuation of a pattern of client abandonment.\textsuperscript{91} The record was silent on these questions, and in the absence of such evidence, the court declined to accept the petition.\textsuperscript{92}

The court also rejected a petition from David Thomas Dorer, a lawyer who signed a client’s name to a document and noted on the document that he had done so with the client’s permission.\textsuperscript{93} Mr. Dorer’s assistant then notarized the signature.\textsuperscript{94} Mr. Dorer was later indicted for two felonies, filing a false statement with a government agency and filing a false document in court.\textsuperscript{95} Mr. Dorer negotiated a guilty plea to a misdemeanor.\textsuperscript{96} He then sought voluntary discipline from the supreme court for having engaged in deceitful or dishonest conduct, but the court rejected the petition because it did not contain enough facts to inform the court what actually happened and to show such a violation.\textsuperscript{97} Mr. Dorer’s notation that he had express permission to sign his client’s name would negate any deceit if he actually had such permission, and the petition did not state otherwise.\textsuperscript{98} The court followed a line of previous cases in which it rejected voluntary petitions when they “lacked sufficient detail for us to determine that a violation actually occurred or for us to understand the nature of the conduct amounting to the violation.” Chief Justice Melton dissented and would have accepted the petition.\textsuperscript{99}

The supreme court also rejected a petition for voluntary discipline in the form of a state disciplinary review board reprimand for William Leslie Kirby III, who had neglected four

\textsuperscript{91} Id. at 635, 820 S.E.2d at 673.
\textsuperscript{92} Id.
\textsuperscript{93} In re Dorer, 304 Ga. 442, 819 S.E.2d 7, 8 (2018).
\textsuperscript{94} Id.
\textsuperscript{95} Id. at 442-445, 819 S.E.2d at 8-10.
\textsuperscript{96} Id. at 444, 819 S.E.2d at 9.
\textsuperscript{97} Id. at 444-445, 819 S.E.2d at 9.
\textsuperscript{98} Id. at 444-445, 819 S.E.2d at 9.
\textsuperscript{99} Id. at 444-445, 819 S.E.2d at 9.
matters for clients, failed to communicate with them and/or did not fulfill his obligations upon withdrawal and who had a prior disciplinary history.\textsuperscript{100} Although Mr. Kirby presented some mitigating evidence, including a psychologist’s report that Mr. Kirby had been experiencing personal or emotional problems, that report also expressed concerns whether Mr. Kirby would follow through with plans for improvement.\textsuperscript{101} Mr. Kirby’s petition for voluntary discipline did not indicate that he was following the psychologists’ recommendations.\textsuperscript{102} Even though the state bar supported the petition, the court rejected it because the requested sanction was insufficient under these circumstances, given that the case included “neglect of multiple clients over a period of years, a prior disciplinary history, and questions about the lawyer’s ongoing ability to comply with his professional obligations…”\textsuperscript{103}

III. INEFFECTIVE ASSISTANCE OF COUNSEL

A. A case in which a claim of ineffective assistance succeeded

In \textit{Mims v. State},\textsuperscript{104} the defendant was convicted of malice murder and other crimes connected to an armed robbery and also of theft of a vehicle that had been stolen a month earlier in Michigan.\textsuperscript{105} The supreme court of Georgia rejected several claims of ineffective assistance but held that defense counsel rendered ineffective assistance by not seeking to sever the trial of theft charges from the other charges.\textsuperscript{106} Trial counsel’s failure to move to sever was deficient performance because the joinder of multiple charges is appropriate only when the offenses “(a) are of the same or similar character, even if not part of a single scheme or plan; or (b) are based

\textsuperscript{100} \textit{In Re Kirby}, 304 Ga. 628, 628-630, 820 S.E.2d 729, 729-731 (2018).
\textsuperscript{101} \textit{Id.} at 630, 820 S.E.2d at 731.
\textsuperscript{102} \textit{Id.}
\textsuperscript{103} \textit{Id.} at 632, 820 S.E.2d at 732.
\textsuperscript{104} 304 Ga. 851, 823 S.E.2d 325 (2019).
\textsuperscript{105} \textit{Id.} at 851, 823 S.E.2d at 328-329.
\textsuperscript{106} \textit{Id.} at 854-860, 823 S.E.2d at 331-335.
on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.”\textsuperscript{107} The theft charge and the charges relating to the murder bore no such relationships.\textsuperscript{108} The harder issues involved whether the defendant suffered any prejudice from the joinder of the charges.\textsuperscript{109} The court found that there was no prejudice as to the murder charge because there was overwhelming evidence of guilt.\textsuperscript{110} With respect to the theft charge, the court held that there was prejudice because the evidence of guilt was not overwhelming and because evidence of the defendant’s “participation in a gruesome murder was very prejudicial to the jury’s consideration of the theft offense.”\textsuperscript{111} The court reversed the theft conviction.\textsuperscript{112}

B. \textit{Cases in which orders finding ineffective assistance were reversed or vacated}

The supreme court of Georgia reversed two murder cases in which trial courts had ordered new trials based upon ineffective assistance of counsel; in another case, it vacated an order granting a new trial to the defendant and remanded the case for further findings.

In \textit{State v. Spratlin},\textsuperscript{113} the supreme court reversed a trial court’s findings that trial counsel in a murder case had rendered ineffective assistance of counsel.\textsuperscript{114} The prosecution had offered three witnesses who testified about the defendant’s pretrial silence, and defendant’s trial counsel did not object to any of the testimony.\textsuperscript{115} Also, the prosecutor referred in closing argument to the defendant’s silence and the defendant’s failure to make a statement to the police.\textsuperscript{116} The

\begin{footnotes}
\item[107] Id. at 857, 823 S.E.2d at 333 (quoting \textit{Harrell v. State}, 297 Ga. 884, 889, 778 S.E.2d 196, 201 (2015).
\item[108] Id.
\item[109] Id. at 857-858, 823 S.E.2d at 333.
\item[110] Id.
\item[111] Id. at 858, 823 S.E.2d at 333.
\item[112] Id.
\item[113] 305 Ga. 585, 826 S.E.2d 36 (2019).
\item[114] Id. at 585, 826 S.E.2d at 38.
\item[115] Id. at 587-588, 826 S.E.2d at 39-40.
\item[116] Id. at 588, 826 S.E.2d at 40.
\end{footnotes}
defendant’s trial counsel objected to that argument and asked for a mistrial.\textsuperscript{117} The trial judge sustained the objection but, instead of ordering a mistrial, gave the jury a curative instruction.\textsuperscript{118} In granting a motion for new trial, the trial court found that there was no ineffective assistance with respect to the failure to object to the first witness but that the failure to object to the testimony of the other two, and to prevent the improper closing argument, was ineffective assistance that warranted a new trial.\textsuperscript{119}

The supreme court reversed.\textsuperscript{120} The court noted that the failure to object to the first witness was not an issue on appeal.\textsuperscript{121} As to the second witness, the Court determined that it concerned testimony about a colloquy between the defendant and an arresting officer “post-arrest, pre-Miranda-warnings, without interrogation or an affirmative invocation of the right to silence … offered in the State’s case rather than only for impeachment.”\textsuperscript{122} The court concluded that the question whether such testimony was constitutionally prohibited was not settled, and therefore a failure to object could not be ineffective assistance.\textsuperscript{123} With respect to the third witness, the court held that the testimony was clearly objectionable but that it would have been a reasonable trial strategy not to object to it in order not to call attention to it and in order to avoid the exclusion of other testimony – theoretically helpful to the defendant – given as part of the same exchange with the prosecutor.\textsuperscript{124} The failure to object therefore was not deficient performance.\textsuperscript{125}

\textsuperscript{117} \textit{Id.}
\textsuperscript{118} \textit{Id.} at 588-589, 826 S.E.2d at 40.
\textsuperscript{119} \textit{Id.} at 590-591, 826 S.E.2d at 41.
\textsuperscript{120} \textit{Id.} at 585, 826 S.E.2d at 38.
\textsuperscript{121} \textit{Id.} at 590, 826 S.E.2d at 41.
\textsuperscript{122} \textit{Id.} at 593, 826 S.E.2d at 43.
\textsuperscript{123} \textit{Id.}
\textsuperscript{124} \textit{Id.} at 593-594, 826 S.E.2d at 43.
\textsuperscript{125} \textit{Id.}
The supreme court did find that the defendant’s trial counsel rendered ineffective assistance by not raising an objection before closing arguments to references to the defendant’s silence and by not objecting immediately when the prosecutor made such references.\textsuperscript{126} The court also found, however, that there was no reasonable probability that the result of the trial would have been different if defendant’s trial counsel had made timely objections.\textsuperscript{127} The court characterized the references in closing argument to the defendant’s silence as “cumulative” because the jury had already heard the testimony.\textsuperscript{128} In deciding that the defendant suffered no prejudice from the ineffective assistance of his trial counsel, the supreme court also noted that the trial judge gave a curative instruction and that the evidence against the defendant was “not weak.”\textsuperscript{129}

In \textit{State v. Tedder},\textsuperscript{130} the supreme court reversed a trial court’s grant of a new trial to a murder defendant based upon ineffective assistance of counsel.\textsuperscript{131} The victim died from a gunshot wound to the back of his head that he suffered in a shootout between people in a car and people outside the car.\textsuperscript{132} The victim was in the front seat of the car at the time of the shooting, and the defendant was seated directly behind him.\textsuperscript{133} The state’s theory was that the defendant shot the victim in the car.\textsuperscript{134} The theory of the defense was that another passenger in the car fired the fatal shot.\textsuperscript{135} The defendant was convicted.\textsuperscript{136}

\begin{footnotesize}
\begin{enumerate}
\item[126] \textsuperscript{Id.} at 594, 826 S.E.2d at 43-44.
\item[127] \textsuperscript{Id.} at 594-597, 826 S.E.2d at 44-45.
\item[128] \textsuperscript{Id.} at 595, 826 S.E.2d at 44.
\item[129] \textsuperscript{Id.}
\item[130] 305 Ga. 577, 826 S.E.2d 30 (2019).
\item[131] \textsuperscript{Id.} at 577, 826 S.E.2d at 31.
\item[132] \textsuperscript{Id.} at 578-579, 826 S.E.2d at 32-33.
\item[133] \textsuperscript{Id.} at 578, 826 S.E.2d at 32.
\item[134] \textsuperscript{Id.} at 581, 826 S.E.2d at 34.
\item[135] \textsuperscript{Id.}
\item[136] \textsuperscript{Id.}
\end{enumerate}
\end{footnotesize}
The defendant filed a motion for new trial and claimed that he received ineffective assistance of counsel because his trial counsel did not call a crime scene expert to testify.\footnote{Id.} At the hearing on the motion for new trial, the defendant presented evidence from such an expert that, in light of several pieces of physical evidence (including the victim’s wounds and the blood splatter inside the car), the crime could have not occurred as theorized by the state but instead the fatal shot must have come from outside the car.\footnote{Id.} Trial counsel represented to the court that it never occurred to him to consider calling a crime scene expert.\footnote{Id. at 582-583, 826 S.E.2d at 35.} The trial court found this to be deficient performance and found that this conduct was not reasonable.\footnote{Id. at 583, 826 S.E.2d at 35.}

The supreme court reversed and added this to a line of cases in which it has held that it will assess the reasonableness of trial counsel’s strategic “decisions” regardless of whether the attorney actually made any decision at all.\footnote{Id.} Here, the lawyer did not make a strategic decision not to call a crime scene expert; as noted, it never occurred to the lawyer to do so.\footnote{Id. at 582, 826 S.E.2d at 35.} Nevertheless, the court held that counsel’s choice to argue that another passenger shot the victim “was not so unreasonable that no competent attorney would have pursued that strategy.”\footnote{Id. at 583, 826 S.E.2d at 35.} Trial counsel could have reasonably made that decision even if he had known at the time of trial that expert testimony was available pointing to the fatal shot coming from outside [the] vehicle.\footnote{Id. (emphasis added).}
In *Gramiak v. Beasley*, the supreme court vacated an order granting relief on habeas corpus for ineffective assistance of both trial and appellate counsel. The supreme court found that trial counsel’s performance was deficient when counsel failed to advise the defendant that, if the defendant rejected a plea offer and was convicted of kidnapping with bodily injury, the defendant faced a mandatory life sentence. The court remanded the case, however, for factual determinations whether the defendant would have accepted the plea if he had been properly advised, whether the trial court would have accepted the plea arrangement, and, if those conditions were satisfied, whether the defendant’s appellate counsel provided ineffective assistance by not raising on direct appeal the trial counsel’s ineffectiveness with respect to the plea advice. The supreme court also instructed the habeas court to consider the proper remedy if it found that both trial and appellate counsel were ineffective.

C. One miscellaneous ineffective assistance case

In *Chamberlain v. State*, the defendant was convicted of molesting his ten-year-old niece. There was no physical evidence and no eyewitness to the molestation other than the alleged victim. The jury was allowed to see a recorded forensic interview in which the victim described her uncle’s actions. The defense did not call an expert on forensic interviewing in an attempt to undermine the credibility of the evidence the child gave to the interviewer. On a motion for new trial, the defendant unsuccessfully claimed that this failure to call an expert

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146 *Id.* at 523-524, 820 S.E.2d. at 60.
147 *Id.* at 514, 820 S.E. 2d. at 54.
148 *Id.* at 514-525, 820 S.E. 2d. at 54-60.
149 *Id.* at 524, 820 S.E. 2d. at 60.
151 *Id.* at 789, 826 S.E.2d at 315 (McFadden, P.J., dissenting).
152 *Id.* at 776, 826 S.E.2d at 307.
153 *Id.* at 780-781, 826 S.E.2d at 309.
witness constituted ineffective assistance of counsel. The court of appeals affirmed, finding that the failure to call the expert was a matter of trial strategy.

Judge McFadden dissented. He noted that the defendant had produced an expert at the hearing on the motion for new trial, and the expert testified about numerous deficiencies in the victim’s forensic interview about which the expert could have testified. Judge McFadden noted that defense counsel did not even consider whether to call an expert in forensic interviewing for the purpose of undermining the credibility of the recorded interview (as opposed to using one to dispute the admissibility of the recording), and therefore Judge McFadden characterized the failure to call an expert as a result of a failure to investigate rather than trial strategy. The dissent concluded that counsel’s conduct was unreasonable and that there was a reasonable probability that the defendant would have been acquitted if the expert had been called, given the lack of evidence other than the evidence that came from the alleged victim.

IV. BAR ADMISSION

The supreme court of Georgia decided four cases related to bar admission during the survey period.

The court upheld the decision of the board to determine fitness of bar applicants to deny LaJuan Miguel Certion a certificate of fitness. The applicant had been arrested for assault and false imprisonment in connection with an incident in which the victim claimed he grabbed her,

154 Id.
155 Id.
156 Id. at 786-790, 826 S.E.2d at 312-315. Because Judge McFadden dissented, the opinion is physical precedent only. Id. at 786, 826 S.E.2d at 312.
157 Id. at 788-789, 826 S.E.2d at 314.
158 Id. at 787-789, 826 S.E.2d at 313-314.
159 Id. at 786, 819 S.E.2d at 313.
160 In Re Certion, 305 Ga. 504, 826 S.E.2d 52 (2019).
threw her down, punched her, dragged her by the hair and choked her. Mr. Certion’s fitness application contained none of these details but rather stated that he and the victim had a discussion about their relationship and then engaged in “play wrestling/fight[ing] like [they] always did.” The board held an informal conference at which Mr. Certion admitted there was “some truth” to the victim’s description but denied many of the details, accused the victim of lying to the police, and described the lessons he learned from the experience as the need to be careful in choosing whom to become involved with and to “end relationships by just walking away.” After the board issued an order tentatively denying certification, a special master held a formal hearing at which the applicant admitted that the victim had told police the truth about what happened and that he had not been candid at the informal interview. The special master found that the applicant had not understood the purpose and importance of the informal interview and that he had answered questions “defensively, out of shame, not in an attempt to deceive anyone ….” The special master found that the applicant had demonstrated rehabilitation by his candor and expressions of remorse at the formal hearing and by evidence of community service and completion of a batterers’ intervention program, and the special master recommended that the applicant be certified as fit. The board rejected the special master’s findings and denied the certificate of fitness, finding that the applicant’s “conscious decision to make untruthful statements during the informal conference reflected deficiencies in the honesty, trustworthiness, and judgment required for admission to the Bar.” The supreme court affirmed the denial of the

161 Id. at 504, 826 S.E.2d at 53.
162 Id.
163 Id. at 505, 826 S.E.2d at 54.
164 Id.
165 Id. at 506, 826 S.E.2d at 54.
166 Id. at 506, 826 S.E.2d at 54-55.
167 Id. at 506-507, 826 S.E.2d at 55.
fitness certification, noting that it is deferential to decisions of the board and will uphold decisions for which there is any evidence.\textsuperscript{168}

The Georgia board of bar examiners rejected a petition by Harriet O’Neal, a military spouse who was licensed in Louisiana and who sought a waiver of the admission requirements while her spouse was stationed in Georgia.\textsuperscript{169} The board denied the request without explanation.\textsuperscript{170} The supreme court described the policies that govern military waivers and expressed concern that it is difficult to ascertain exactly what criteria apply because the waiver policy cross-references other requirements and standards.\textsuperscript{171} The court also noted that as a matter of policy the applicant should receive a written statement of the reasons for denial.\textsuperscript{172} The court vacated the denial and remanded the matter to the board “to clearly apply the military waiver policy and explain why O’Neal has or has not met the waiver requirements.”\textsuperscript{173}

The Georgia board to determine fitness of bar applicants denied the application of John Anthony Montesanti for a certification of fitness, and the supreme court of Georgia affirmed.\textsuperscript{174} The applicant had initially begun the process of seeking a character certification in Florida but eventually abandoned that effort.\textsuperscript{175} The court found that the applicant had engaged in “a pattern of failing to disclose relevant information to the Board and providing inconsistent statements to both the Board and the Florida Bar.”\textsuperscript{176} There was testimony at the formal hearing on the application that the applicant had admitted to a law professor that he had intentionally withheld

\textsuperscript{168} \textit{Id.} at 507, 826 S.E.2d at 55.
\textsuperscript{169} \textit{In Re O’Neal}, 304 Ga. 449, 819 S.E.2d 1 (2018).
\textsuperscript{170} \textit{Id.} at 451-452, 819 S.E.2d at 3.
\textsuperscript{171} \textit{Id.} at 453, 819 S.E.2d at 4.
\textsuperscript{172} \textit{Id.} at 453-454, 819 S.E.2d at 4.
\textsuperscript{173} \textit{Id.} at 454, 819 S.E.2d at 5.
\textsuperscript{175} \textit{Id.} at 380, 818 S.E.2d at 586-587.
\textsuperscript{176} \textit{Id.} at 381, 818 S.E.2d at 587.
information sought by the Florida Bar because he did not believe that the Florida Bar was
entitled to the information. The court rejected an argument that it should “accommodate” his
“inability to be truthful, accurate, and forthcoming in his bar application disclosures and his
professional dealings” because the applicant had sleep apnea that caused cognitive deficits and
increased the chances or errors. The court stated that if he was confused he should have sought
clarification or followed the principle of “when one is in doubt, he or she should disclose.”

Finally, Freddie Darnell Harrell, who had been disbarred in 1995, applied for a
certification of fitness to practice law. The supreme court found that Mr. Harrell had
demonstrated his rehabilitation by clear and convincing evidence and granted the certification.

V. JUDICIAL CONDUCT

The supreme court decided two cases during the survey period regarding judicial
conduct, and the court of appeals decided one.

A trial judge orally held a lawyer in contempt and asked for submission of a proposed
written order within ten days. Five days later, the lawyer filed a motion to recuse the trial
judge because the judge’s rulings on the contempt motion were wrong and because the judge
employed “condescending” and “angry” facial expressions and tone in the contempt hearing and
in other unrelated cases. The record showed that the lawyer filed the motion to recuse, but
there was no direct evidence that he “presented” it to the trial judge, as required by the uniform

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177 Id. at 382, 818 S.E.2d at 588.
178 Id. at 384, 818 S.E.2d at 589.
179 Id.
181 Id. at 664, 821 S.E.2d at 346.
183 Id. at 765, 815 S.E.2d at 73.
superior court rules.\textsuperscript{184} Two weeks later, the trial judge entered a written order on the contempt issue and then recused himself.\textsuperscript{185} The supreme court held that the trial judge should not have proceeded with the contempt order until the recusal motion was decided because such an order must be considered to be “on the merits” of a matter even though it did not relate to the underlying dispute between the parties.\textsuperscript{186} However, the court found the error was harmless because the recusal motion was insufficient on its face.\textsuperscript{187} The majority did not find it necessary or prudent to decide whether the recusal motion had been properly “presented” to the trial judge, especially since the parties did not raise the issue or brief it.\textsuperscript{188} Justice Hunstein concurred specially and would have concluded that the recusal motion need not have been addressed by the trial court because it was not “presented” to the court in addition to being filed with the clerk.\textsuperscript{189}

The supreme court imposed a public reprimand on a magistrate judge with the judge’s consent.\textsuperscript{190} A woman had her car repossessed by the owner of a car dealership for failure to make payments that were due and for failure to have insurance on the car.\textsuperscript{191} Judge Anderson called the owner of the dealership and demanded that he either return the vehicle to the woman or reimburse her for what she had paid to the dealership and to her insurance company related to the car.\textsuperscript{192} When the owner refused, Judge Anderson told the woman to file a case against the owner of the dealership in his court, and she did so.\textsuperscript{193} Judge Anderson also did not properly supervise

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\textsuperscript{184} Id. at 769, 815 S.E.2d at 76.
\textsuperscript{185} Id. at 765, 815 S.E.2d at 73.
\textsuperscript{186} Id. at 770-773, 815 S.E.2d at 77-79.
\textsuperscript{187} Id. at 779, 815 S.E.2d at 82.
\textsuperscript{188} Id. at 769-770, 815 S.E.2d at 76.
\textsuperscript{189} Id. at 780-786, 815 S.E.2d at 83-87.
\textsuperscript{190} In Re Anderson, 304 Ga. 165, 816 S.E. 2d 676 (2018).
\textsuperscript{191} Id. at 165, 816 S.E.2d at 677.
\textsuperscript{192} Id.
\textsuperscript{193} Id.
\end{flushleft}
the associate magistrate judge to whom that case was assigned. Judge Anderson agreed to a public reprimand because these acts violated numerous provisions of the Georgia Code of Judicial Conduct. The supreme court of Georgia agreed and ordered the public reprimand.

The court of appeals faced a question about the limits of inherent judicial authority in *Csehy v. State.* A trial judge was about to begin a criminal trial but observed that defense counsel was behaving oddly, was sweating profusely, and had bloodshot eyes. After a bench conference with the defendant and defense counsel, during which the defendant reaffirmed that he wanted his lawyer to represent him, the trial judge ordered the lawyer to take a drug test. The judge later testified that she ordered the drug test because “I have a duty as a judge, a sworn duty as a judge, to preserve the integrity of my courtroom and to make sure the defendant is adequately defended.” Several hours later, the defense counsel announced ready for trial, but the trial judge noted that the lawyer’s urine tested positive for cocaine and methamphetamine. The judge held the lawyer in contempt. The next day, based upon these events, the district attorney obtained a search warrant to draw blood from the attorney, and on the basis of that search the lawyer was charged with drug possession. After he was convicted, the lawyer appealed the denial of his motion to suppress, arguing that the blood test (and later blood tests that were required as a condition of his release on bond) resulted from the urine test, which was

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194 *Id.* at 167, 816 S.E.2d at 678.
195 *Id.* at 165-167, 816 S.E.2d at 677-678.
196 *Id.* at 168, 816 S.E.2d at 678-679.
198 *Id.* at 748, 816 S.E.2d at 836.
199 *Id.*
200 *Id.* at 750, 816 S.E.2d at 838.
201 *Id.* at 748-749, 816 S.E.2d at 836.
202 *Id.* at 749, 816 S.E.2d at 837.
203 *Id.*
an illegal warrantless search. The court of appeals rejected the argument that the trial judge had the inherent or statutory power to order a warrantless drug test of an apparently impaired attorney and thus found the urine test to have been unlawful. The court nevertheless upheld the convictions on the basis that there was probable cause for the blood tests without taking the illegal urine test into account.

VI. MALPRACTICE

The court of appeals decided three legal malpractice cases during the survey period.

In Lalonde v. Taylor English Duma LLP, the court of appeals affirmed a trial court’s grant of summary judgment to a lawyer and his law firm. Lalonde invented a portable continuous positive airway pressure device (commonly known as a CPAP) to treat sleep apnea. Lalonde contributed his invention (and the related intellectual property rights) to a new entity known as Deshum LLC in exchange for a one-third ownership interest in the entity. The other member of Deshum LLC was an entity known as PBM, which agreed to contribute $5 million for the development of the CPAP invention in exchange for a two-thirds ownership stake. Lalonde hired the Taylor English Duma firm to represent him in connection with the

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204 Id. at 750, 816 S.E.2d at 837.
205 Id. at 754, 816 S.E.2d at 840.
206 Id. at 754-758, 816 S.E.2d at 840-843.
207 __ Ga. App. __, 825 S.E.2d 237 (2019). Judge Hodges concurred only in the judgment and Judge Brown dissented in part. Therefore, the opinion is physical precedent only. Id. at __, 825 S.E.2d at 245.
208 Id. at __, 825 S.E.2d at 239.
209 Id. at __, 825 S.E.2d at 239.
210 Id.
211 Id.
drafting and negotiation of the operating agreement for Deshum LLC. PBM had separate
counsel to represent its interests in that process. The final operating agreement to which the parties agreed included a provision that enabled PBM to dissolve Deshum LLC without Lalonde’s permission. PBM eventually exercised this right and dissolved Deshum, LLC over Lalonde’s objection, and Deshum LLC’s assets, including Lalonde’s invention, were transferred to a new entity controlled by PBM and a related entity. Lalonde claimed that his lawyers committed malpractice by drafting an operating agreement that gave PPM this power. When Lalonde’s lawyers sought summary judgment, the trial court did not find, one way or the other, whether the lawyers breached the standard of care; rather, the court granted summary judgment to the lawyers because Lalonde would not be able to prove that the lawyers’ malpractice, if any, caused him any damage.

One way in which a client can attempt to prove damages from a lawyer’s malpractice in the context of a transaction is by showing that, but for the lawyer’s malpractice, the client would have obtained a better deal. In Lalonde’s case, this would mean that, if his lawyers had not breached the standard of care, he would have been able to sign an operating agreement for Deshum LLC that protected him from dissolution of the LLC without his permission. The court of appeals rejected this argument because Lalonde provided no evidence that PBM ever would

\[\text{Id.}\]
\[\text{Id. at } \_\_, 825 \text{ S.E.2d at 244.}\]
\[\text{Id. at } \_\_, 825 \text{ S.E.2d at 239.}\]
\[\text{Id. at } \_\_, 825 \text{ S.E.2d at 239-240.}\]
\[\text{Id. at } \_\_, 825 \text{ S.E.2d at 240.}\]
\[\text{Id.}\]
\[\text{Id. at } \_\_, 825 \text{ S.E.2d at 244.}\]
have signed an operating agreement that did not give it the right to dissolve Deshum, LLC without Lalonde’s agreement.\textsuperscript{219}

Another way for a client to prove damages from a lawyer’s malpractice in a transaction is to prove that the client would not have entered into the transaction at all if the lawyer had not breached the standard of care and that the client would have been better off as a result.\textsuperscript{220} Lalonde testified that, if his lawyers had alerted him to the dangers associated with the dissolution provisions of the Deshum, LLC operating agreement, he would not have become a member of the LLC, would have retained control over his device, and would have pursued another opportunity.\textsuperscript{221} Judge Brown, in dissent, argued that Lalonde had presented sufficient evidence to create a fact issue with respect to the “no deal” theory of causation.\textsuperscript{222}

The majority concluded instead that Lalonde had “severed the proximate causation between his claimed damages and any negligence on the part of his lawyers….\textsuperscript{223} This “severance” of causation arose, according to the majority, from the following sequence of events.\textsuperscript{224} In the midst of PBM’s attempts to dissolve Deshum, LLC, Lalonde sued PBM and Deshum, LLC in Delaware to force a judicial dissolution rather than the dissolution that PBM was attempting to effect on its own.\textsuperscript{225} Presumably, success in the Delaware suit would have enabled Lalonde to retrieve or be compensated for his invention, in which case his lawyers’ failures to protect his ownership rights in the Deshum, LLC operating agreement would not have

\textsuperscript{219} Id. at __, 825 S.E.2d at 244-245.
\textsuperscript{220} Id. at __, 825 S.E.2d at 246 (Brown, J., dissenting).
\textsuperscript{221} Id.
\textsuperscript{222} Id.
\textsuperscript{223} Id. at __, 825 S.E.2d at 241.
\textsuperscript{224} Id. at __, 825 S.E.2d at 240-243.
\textsuperscript{225} Id. at __, 825 S.E.2d at 240-241.
harmed him. However, rather than prosecute the Delaware case to judgment, Lalonde settled the case and received $310,000 in exchange for a release and an unrestricted license to his invention. The court of appeals concluded that the settlement severed any chance of showing proximate cause between the alleged malpractice and the harm to Lalonde because, after all, “[i]f Lalonde had chosen to litigate, rather than to settle, and if he had won,” then indisputably his lawyers’ alleged malpractice would not have harmed him.

The court of appeals analogized Lalonde’s situation to one in which a lawyer commits malpractice in connection with a lawsuit rather than a transaction. If a lawyer commits malpractice in a litigated matter, but the client might nevertheless prevail and negate any harm from the malpractice, the client may not settle the case without severing proximate cause between the lawyer’s malpractice and the outcome. Because the claim might have terminated favorably to the client absent the settlement, the client who settles waives any claim that the lawyer’s malpractice caused any damage. In Lalonde’s case, the court concluded, he waived any right to recover for his lawyers’ alleged malpractice when he settled the Delaware case that might have negated any harm his lawyers otherwise may have caused him.

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226 Id. at __, 825 S.E.2d at 241. Even if Lalonde had won the Delaware litigation and regained control over his invention, he still would have been out the time, trouble and expense of having to protect himself from his lawyers’ (alleged) malpractice. The court of appeals declined to consider this theory of damage -- known as “having to litigate in the first place” because of the lawyers’ malpractice -- because it concluded that the argument was not raised in the trial court and that, on appeal, Lalonde presented “no real argument and no citations to the record or to legal authority....” Id. at __, 825 S.E.2d at 244.
227 Id. at __, 825 S.E.2d at 241.
228 Id. at __, 825 S.E.2d at 243.
229 Id. at __, 825 S.E.2d at 241.
230 Id.
231 Id. at __, 825 S.E.2d at 243. The court of appeals also declined to allow Lalonde to proceed with a claim to recover the $58,000 in legal fees that he paid his lawyers in connection with the operating agreement. It is worth noting that Lalonde may have had a valid claim for forfeiture of those fees as a remedy for his lawyers’ breaches of fiduciary duty to him, even if he could not
In *McNeill v. SD & D Greenbuilt, LLC*, the Georgia court of appeals affirmed the denial of summary judgment to a lawyer and a law firm in a legal malpractice case. The plaintiff lost $150,000 in earnest money in connection with a real estate transaction. The Purchase and Sale Agreement set forth two dates by which the plaintiffs could have required return of the earnest money. One date permitted the plaintiff to obtain a refund for any reason. The second allowed the plaintiff to obtain a refund only under specific conditions relating to environmental testing of the land being sold. The plaintiff demanded a refund after the first date and before the expiration of the second date, but for reasons unrelated to the environmental testing. The seller refused to refund the earnest money.

The plaintiff filed a legal malpractice action against its lawyers and claimed that the lawyers had led it to believe that the deadline for obtaining a refund for any reason had been extended beyond the date listed in the written contract. The lawyers defended on the basis of *Berman v. Rubin*. That case stands for the proposition that generally a client may not recover for professional negligence based upon counsel’s misrepresentation of the meaning of a document that a well-educated client, who has no disability, reads, if the meaning of the...
document is plain, obvious and requires no legal explanation.\textsuperscript{242} The court of appeals agreed with the trial court, however, that \textit{Berman} did not apply to his case because the alleged negligence was not about the draftsmanship of the contract itself but rather concerned statements that the lawyer made after the contract was executed about the “legal effect” of potential changes to its terms – in particular an extension of the right to terminate the contract and require return of the earnest money.\textsuperscript{243} The court concluded that there was a jury question whether the client was entitled to rely on their communications with the lawyer “after the signing of the contract, as opposed to the language therein.”\textsuperscript{244}

In \textit{Stewart v. McDonald},\textsuperscript{245} a jury returned a verdict that an attorney was liable to his former client for $392,000 as a result of malpractice in connection with a business transaction.\textsuperscript{246} The trial court entered judgment notwithstanding the verdict for the defense.\textsuperscript{247} The court of appeals reversed that judgment and found that the plaintiff had introduced sufficient evidence of an implied attorney-client relationship because there was enough evidence of a reasonable belief by the plaintiff that the attorney was representing the plaintiff.\textsuperscript{248} The lawyer had helped the would-be client try to obtain equity in the transaction and helped negotiate the would-be client’s employment contract.\textsuperscript{249} The court of appeals further found that there was sufficient evidence of a breach of duty because the attorney admitted that he did not look out for the plaintiff’s interests.

\begin{footnotes}
\item[242] \textit{Id.} at 855, 227 S.E.2d at 806.
\item[243] \textit{McNeill}, supra note 232, 349 Ga. App. at 146, 825 S.E.2d at 524.
\item[244] \textit{Id.} at 147, 825 S.E.2d at 525.
\item[246] \textit{Id.} at 40-41, 815 S.E.2d at 667.
\item[247] \textit{Id.} at 41, 815 S.E.2d at 667.
\item[248] \textit{Id.} 47-48, 815 S.E.2d at 671-672. Judge Ray concurred only in the judgment and Judge Ellington dissented in part. Therefore, the opinion is physical precedent only. \textit{Id.} at 52, 815 S.E.2d 674.
\item[249] \textit{Id.} at 46-47, 815 S.E.2d at 671.
\end{footnotes}
(under the mistaken belief that they did not have an attorney-client relationship).\textsuperscript{250} The court of appeals also held that there was enough evidence of damages because there was evidence that the plaintiff could have obtained a better deal in the underlying transaction.\textsuperscript{251} Judge Ellington dissented on the basis that the proof of damages -- that the plaintiff could have obtained a better deal with the lawyer’s help -- was too speculative.\textsuperscript{252}

VII. MISCELLANEOUS CASES

The Georgia court of appeals decided 7 miscellaneous legal ethics cases during the survey period.

In Phillips v. Adams, Jordan & Herrington, P.C.,\textsuperscript{253} the court of appeals affirmed in part and reversed in part a trial court’s decision to grant summary judgment to a law firm on a former associate’s claim for compensation.\textsuperscript{254} The associate worked for the firm initially under the terms of a letter agreement that provided that he would be compensated for his work on medical malpractice cases “upon successful resolution” of a case by payment of a “portion of the fee,” “on a case by case basis,” based upon “the extent” of his work.\textsuperscript{255} Approximately one year later, the firm began paying the associate a set amount each month, which the associate claimed merely advanced fees to be earned upon completion of medical malpractice cases he worked on but which the firm claimed was a salary that it paid under an agreement that superseded the original letter agreement.\textsuperscript{256} When several medical malpractice cases that the associate had worked on settled, he demanded to be paid under the letter agreement and then resigned when he

\textsuperscript{250} Id. at 49, 815 S.E.2d at 672-673.
\textsuperscript{251} Id. at 50, 815 S.E.2d at 673.
\textsuperscript{252} Id. at 52-55, 815 S.E.2d at 674-676.
\textsuperscript{254} Id. at __, 828 S.E.2d at 415.
\textsuperscript{255} Id. at __, 828 S.E.2d at 415-416.
\textsuperscript{256} Id. at __, 828 S.E.2d at 416.
was not satisfied with the firm’s response.\textsuperscript{257} The associate sued the firm and sought compensation under the letter agreement and under the doctrine of quantum meruit.\textsuperscript{258} The trial court granted summary judgment for the firm because it concluded that the letter agreement was too indefinite to be enforced and that the associate was not entitled to quantum meruit compensation because the parties had a written contract.\textsuperscript{259}

The court of appeals affirmed with respect to the contract claim.\textsuperscript{260} The letter agreement did not contain sufficient specificity to make it possible to calculate the associate’s compensation for any particular case.\textsuperscript{261} For example, there was no agreement as to the “portion” of the fee he would receive, nor was there any agreement about how to measure the “extent” of the associate’s involvement.\textsuperscript{262} The law firm retained discretion to calculate the compensation “on a case-by-case basis.”\textsuperscript{263} The court of appeals reversed with respect to the quantum meruit claim.\textsuperscript{264} The court noted that there was evidence that the associate provided valuable services on the medical malpractice cases and that, when a contract is found to be void for vagueness (as the letter agreement was found to be), a claim for quantum meruit is appropriate.\textsuperscript{265} The Court remanded the case for further proceedings.\textsuperscript{266}

The court of appeals enforced an arbitration clause in a lawyer’s fee agreement with a client in \textit{Summerville v. Innovative Images, LLC}.\textsuperscript{267} When a former client sued a law firm for

\begin{thebibliography}{99}
\bibitem{257} Id.
\bibitem{258} Id.
\bibitem{259} Id.
\bibitem{260} Id. at __, 828 S.E.2d at 416-417.
\bibitem{261} Id.
\bibitem{262} Id. at __, 828 S.E.2d at 417.
\bibitem{263} Id.
\bibitem{264} Id.
\bibitem{265} Id.
\bibitem{266} Id. at __, 828 S.E.2d at 418.
\end{thebibliography}
legal malpractice, the firm sought to enforce the fee agreement’s mandatory arbitration clause, but the trial court refused to enforce that provision because it was unconscionable.\(^{268}\) The trial court’s reasoning was that Georgia Rule of Professional Conduct 1.4(b), which is identical to Model Rule of Professional Conduct 1.4(b), requires lawyers to explain matters to their clients “to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”\(^{269}\) Model Rule 1.4 had been interpreted by the American Bar Association to require lawyers who include arbitration clauses in their fee contracts to explain the advantages and disadvantages of such clauses.\(^{270}\) Because there was no evidence that the lawyers had given these explanations, the trial court held the clause to be unconscionable and therefore unenforceable.\(^{271}\) On interlocutory review, the court of appeals reversed the trial court and enforced the arbitration clause.\(^{272}\) The court applied the general contract law doctrine of unconscionability and found that this fee contract was not unconscionable.\(^{273}\) The court also noted that the Georgia Arbitration Code expressed a strong policy preference for arbitration and declined to engraft on its provisions the requirement that lawyers make the disclosures required by the American Bar Association’s interpretation of Model Rule 1.4(b), particularly when the Georgia supreme court has not decided whether Georgia Rule 1.4(b) requires those disclosures.\(^{274}\)

\(^{268}\) *Id.* at 592, 826 S.E.2d at 395.
\(^{269}\) *Id.*
\(^{270}\) *Id.*
\(^{271}\) *Id.*
\(^{272}\) *Id.*
\(^{273}\) *Id.* at 595-596, 826 S.E.2d at 396.
\(^{274}\) *Id.* at 598, 826 S.E.2d at 397.
In *Hillman v. ALDI, Inc.*,\(^{275}\) the court of appeals vacated and remanded for reconsideration a trial court’s summary finding that a lawyer was in criminal contempt of court for statements the lawyer made during closing argument.\(^{276}\) The lawyer had been warned not to refer in closing argument to any allegations that the defendant had destroyed evidence.\(^{277}\) The lawyer nevertheless argued, and displayed a PowerPoint slide to the jury that said, that the defendant “had a videotape that they would have … preserved had it shown that [the defendant] was not at fault.”\(^{278}\) The court of appeals vacated the contempt order because the trial judge had not made the necessary findings that the lawyer’s conduct “interfered with or posed a threat to the administration of justice” and that the lawyer “was on notice that his comments ‘exceeded the outermost bounds of permissible advocacy.’”\(^{279}\) The trial court also had not applied the correct standard – proof beyond a reasonable doubt – but instead had ruled that the court “was not required to apply ‘any evidentiary standard of proof.’”\(^{280}\)

The court of appeals reversed the trial court’s denial of the defendant’s motion to withdraw a guilty plea in *Lynch v. State*.\(^{281}\) The defendant accepted the plea offer after the defendant sought unsuccessfully to fire his retained counsel and after defendant’s counsel recited at length in open court all the reasons why the defendant should plead guilty.\(^{282}\) The court of appeals found that denial of the motion to withdraw the guilty plea resulted in manifest injustice because the defendant accepted the plea only after the trial court’s improper handling of the


\(^{276}\) *Id.* at 444-446, 825 S.E.2d at 880-881.

\(^{277}\) *Id.* at 438-439, 825 S.E.2d at 877.

\(^{278}\) *Id.* at 439, 825 S.E.2d at 877.

\(^{279}\) *Id.* at 445, 825 S.E.2d at 881.

\(^{280}\) *Id.*


\(^{282}\) *Id.* at 260-262, 819 S.E.2d at 55-56.
defendant’s motion to fire his own retained counsel.\textsuperscript{283} The trial court had declined to allow the defendant to fire his counsel because the trial court found that the lawyer was providing effective assistance, but that is the standard only for discharging appointed counsel and not retained counsel.\textsuperscript{284} The trial court also failed to engage in an appropriate balancing of the right to fire counsel and the need for orderly administration of the courts, because the court did not explain to the defendant that he had choices to proceed with retained counsel, to proceed with new counsel without delay, or to represent himself.\textsuperscript{285}

In \textit{Edward N. Davis, P.C. v Watson},\textsuperscript{286} an attorney claimed an attorney’s lien on real property that was recovered for a client as a result of the lawyer’s legal services.\textsuperscript{287} The lawyer did not, however, record the lien, and the court of appeals held that the attorney’s lien was subordinate to parties who became creditors of the client and perfected their liens after the attorney had recovered the property.\textsuperscript{288}

In \textit{Coen v. Aptean, Inc.},\textsuperscript{289} the plaintiff had been a party to an earlier case against his former employer in which the trial court had found that the employer and its law firm had engaged in bad faith tactics.\textsuperscript{290} The plaintiff then sued the employer, the employer’s law firm, and two of the employer’s lawyers under the abusive litigation statute, O.C.G.A. § 51-7-80, and sought general damages for mental distress and punitive damages.\textsuperscript{291} The trial court held that the plaintiff’s claim could not survive unless he pled special damages and that punitive damages

\textsuperscript{283} \textit{Id.} at 265, 819 S.E.2d at 58.
\textsuperscript{284} \textit{Id.} at 264-265, 819 S.E.2d at 58.
\textsuperscript{285} \textit{Id} at 264, 819 S.E.2d at 58.
\textsuperscript{287} \textit{Id.} at 730, 814 S.E.2d at 827.
\textsuperscript{288} \textit{Id.} at 730-733, 814 S.E.2d 827-829.
\textsuperscript{290} \textit{Id.}, at 816, 816 S.E.2d at 68.
\textsuperscript{291} \textit{Id.} at 815, 816 S.E.2d at 67.
were not available for statutory abusive litigation claims, and the trial court therefore dismissed the plaintiff’s complaint for failure to state a claim upon which relief could be granted.\textsuperscript{292} The court of appeals reversed in part and held that, although the plaintiff could not recover punitive damages, he could recover general damages in a statutory claim for abusive litigation.\textsuperscript{293}

The court of appeals dealt with the issue of a prosecutor’s duty to disclose exculpatory evidence to the defense in \textit{McClendon v. State}.\textsuperscript{294} Two defendants were convicted of criminal street gang activity, based in part upon the testimony of Taliah Knox.\textsuperscript{295} Unbeknownst to the defense, Ms. Knox was a paid informant for the Atlanta Police Department and received financial assistance from the district attorney’s office during the trial.\textsuperscript{296} The prosecution did not disclose this impeachment evidence to the defense, and the court of appeals held that their failure to do so violated the prosecution’s disclosure obligations because the evidence was material and therefore its unavailability to the defense undermined confidence in the outcome of the trial.\textsuperscript{297} Accordingly, the court of appeals reversed the convictions and remanded the cases for new trials.\textsuperscript{298}

\\textsuperscript{292} \textit{Id.} On April 1, 2019, the Georgia supreme court granted certiorari in this case to address this issue: “Does the language ‘all damages allowed by law’ in OCGA § 51-7-83 (a) authorize an award of punitive damages in a statutory claim for abusive litigation?” (order available at https://www.gasupreme.us/wp-content/uploads/2019/04/s18c1638.pdf).
\textsuperscript{293} \textit{Id.} at 819-824, 816 S.E.2d at 70-73.
\textsuperscript{295} \textit{Id.} at 543, 820 S.E.2d at 170.
\textsuperscript{296} \textit{Id.} at 544, 820 S.E.2d at 170-171.
\textsuperscript{297} \textit{Id.} at 545-555, 820 S.E.2d at 171-177.
\textsuperscript{298} \textit{Id.} at 549, 555, 820 S.E.2d at 173, 177.
The formal advisory opinion board received one request for an opinion during the survey year.\textsuperscript{299} The request had two parts. The first was for an opinion regarding whether the confidentiality requirements of Rule 1.6 apply to unsolicited comments made to a lawyer by a potential client with whom there is no pre-existing relationship.\textsuperscript{301} The board determined that no Georgia rule of professional conduct answers this question, although Model Rule of Professional Conduct 1.18 and ABA Formal Advisory Opinion 10-457 (which interprets Model Rule 1.18) do.\textsuperscript{302} The board referred the issue to the disciplinary rules and procedures committee for consideration whether the Georgia Rules of Professional Conduct should be amended to add a version of Model Rule 1.18.\textsuperscript{303} The committee adopted a proposed rule based largely upon Model Rule 1.18, and the supreme court of Georgia was considering at the close of the survey period whether to adopt the proposed rule.\textsuperscript{304}

The second part of the request asked whether a lawyer could reveal communications from a potential client if those communications indicate that the potential client may be engaged in ongoing inappropriate behavior if revealing the communication could prevent death or serious

\footnotesize{\textsuperscript{299} The author is a member of the State Bar of Georgia Formal Advisory Opinion Board. This discussion is the author’s alone and does not reflect any opinion or policy of the Board or any of its members. 
\textsuperscript{301} \textit{Id.} 
\textsuperscript{302} \textit{Id.} 
\textsuperscript{303} \textit{Id.} 
\textsuperscript{304} \textit{Id.}}
bodily injury. The board declined to address this part of the request because the board determined that the existing rules of conduct adequately answer the question.

The formal advisory opinion board also considered during the survey period whether to revise or withdraw Formal Advisory Opinion 87-6 regarding the circumstances under which a lawyer may communicate directly with a represented entity about a matter. Since that opinion was issued, the supreme court of Georgia adopted the Georgia Rules of Professional Conduct. The board determined that Georgia Rule 4.2 answers the question posed by the opinion and that the opinion no longer accurately reflects Georgia law. Accordingly, the board asked the supreme court to withdraw the opinion, and it did so.

IX. CONCLUSION

This article surveys recent developments in Georgia legal ethics through May 31, 2019. For updates on developments after that date, you may visit the web site of the Mercer Center for Legal Ethics and Professionalism.

305 Id.
306 Id.
307 Id.
308 Id.
309 Id.
310 Id. at 11-12.
311 As a service to the Georgia bench and bar, the Mercer Center for Legal Ethics and Professionalism provides monthly updates and other resources on recent developments in Georgia legal ethics. Visit http://law.mercer.edu/academics/centers/clep/updates-legal-ethics/.
PERSUASIVELY REPRESENTING THE BAR EXAM APPLICANT DURING THE FITNESS PROCESS
We all know that lawyers must pass a bar examination in order to practice law. However, future lawyers must first receive certification of fitness to practice law before they are eligible to sit for the Georgia bar examination. The responsibilities of ensuring that all who practice law are both competent and qualified by character and fitness rests with two separate Boards appointed by the Supreme Court of Georgia and staffed by the Office of Bar Admissions. The Board of Bar Examiners evaluates competence, and the Board to Determine Fitness of Bar Applicants has the daunting task of determining whether each bar applicant possesses the requisite character and fitness to be admitted to the practice of law in Georgia.

**The Fitness Application Process**

The Board to Determine Fitness of Bar Applicants (“Fitness Board”) was established in 1977 by the Supreme Court of Georgia with the charge to “inquire into the character and fitness of applicants for admission to the practice of law and shall certify as fit those applicants who have established to the Fitness Board’s satisfaction that they possess the character and fitness requisite to be members of the Bar of Georgia.”¹ The Fitness Board is composed of ten members, seven lawyers and three members of the public, all appointed by the Supreme Court.

The Fitness Board adopted the Policy Statement Regarding Character and Fitness Reviews (“Policy Statement”), which states that the burden is on the applicant to establish and document his or her current good character and fitness for admission², following the holding of the Supreme Court of Georgia in *In re Beasley*, 243 Ga.134 (1979). The statement explains that “a person with a record showing a deficiency in honesty, trustworthiness, diligence, reliability, or judgment might not be recommended by the Fitness Board to the Supreme Court for admission.” The Supreme Court and the Fitness Board view character as exemplified by honesty and trustworthiness, while fitness comprehends diligence, reliability, and good judgment. In *In
In evaluating current good character and fitness of an applicant whose file shows misconduct in the past, the Fitness Board considers the seriousness and the recency of the misconduct as well as the applicant’s age at the time. In addition, the Fitness Board looks at patterns of misconduct and evidence of rehabilitation from the misconduct.4

Applicants must be completely candid in filling out the application and answering follow-up questions by the Fitness Board. While the application asks for sensitive information, the Fitness Board’s files are completely confidential and not subject to public disclosure.5 Confidentiality is an essential feature of the process.

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

Upon reviewing a file, if the Fitness Board harbors concerns about an applicant’s character and fitness that are not resolved through correspondence between the applicant and the application analyst, the Fitness Board may table the application for further investigation or invite the applicant to meet with the Fitness Board in an informal conference.

If the Fitness Board has concerns regarding the applicant’s substance abuse or mental stability, further investigation may take the form of a request by the Board that the applicant undergo an independent medical evaluation with a licensed psychiatrist or psychologist recommended by the Board at the Board’s expense.8

**Informal Conference**

The informal conference is a discussion between the applicant and the Fitness Board. It is transcribed by a court reporter, but does not rise to the level of a formal proceeding. In the conference, the Fitness Board asks questions of the applicant regarding the areas of concern and affords the applicant the opportunity to resolve any concerns the Board may have. An applicant may bring counsel to the conference, but the applicant must answer the Fitness Board’s questions directly, not through his or her attorney. The Fitness Board averages between 40-50 conferences per year. In many cases, the informal conference allays the concerns of the Board and the applicant is granted certification of fitness to practice law.

Preparation for the informal conference is key. It is imperative that counsel fully prepares the applicant. This includes reviewing the case law that applies to the applicant, the Policy Statement, all areas of concern identified by the Fitness Board, and any rehabilitation undertaken by the applicant. Applicants should go into this conference assuming the Fitness Board knows all. There will be one lead interviewer, but the rest of the Fitness Board members may also ask questions.
The Fitness Board will not issue a Tentative Order of Denial of certification without first meeting with the applicant in an informal conference. Each year, on average, six to eight applicants are issued Tentative Orders of Denial of certification of fitness to practice law. If the Fitness Board issues a Tentative Order of Denial, the applicant may request a formal evidentiary hearing before an independent hearing officer appointed by the Supreme Court. Historically, three to four formal hearings are held each year.

**Grounds for Denial of Certification**

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

1. Lack of candor, including during the application process;
2. Financial irresponsibility, with regard to consumer debt, repayment of student loans, and compliance with court orders;
3. Improper conduct in court or school, including contemptuous or disrespectful conduct;
4. Substance abuse or addiction;
5. Mental or emotional instability;
6. Unlawful or criminal conduct;
7. Academic misconduct or dishonesty.

**Lack of Candor**

The number one reason for denial of certification of fitness of applicants nationally and in Georgia is lack of candor or a pattern of dishonesty. The hallmark of a person of trust and character who is fit to practice law is honesty in every situation. Lack of candor encompasses a plethora of behavior including, but not limited to, providing false or misleading answers in making applications, committing fraud or deceit in any court, abusing the legal process, unscrupulous business practices, and academic misconduct, including plagiarism. Keep in mind that even if the applicant’s law school or employer makes findings that the applicant did not commit fraud, deceit or plagiarism; these findings are not binding on the decision of the Fitness Board as to these matters. Giving false, evasive and misleading answers to the Fitness Board during the application process is grounds for denial of certification in itself. The rule to follow is, “when in doubt, disclose,” or at the very least contact the Office of Bar Admissions for clarification.
In recent years, a number of applicants have been found to have been less than candid on their applications to law school regarding past unethical or criminal behavior. This may also be grounds for a denial of certification if the omission is not corrected promptly, or the applicant fails to offer a credible, reasonable explanation for the original non-disclosure.13

Financial Irresponsibility

Neglect of financial obligations and other legal obligations are also common grounds for tabling or denying fitness applications. The Fitness Board views defaulting on student loans, consumer debt, and other financial obligations as evidence of financial irresponsibility. The Supreme Court has emphasized the importance of demonstrating stability in meeting financial obligations in a number of cases.14 Applicants who have defaulted student loans or failed to pay child support are of particular concern to the Fitness Board. The Policy Statement explains that if an applicant currently has an unsatisfactory credit record, especially unpaid collections, judgments, liens, or charged off accounts, the Fitness Board will table the application until the applicant has provided proof of six current consecutive months of payments in the monthly amount as agreed to by the creditor(s) in order for the applicant to demonstrate a good faith effort to exhibit financial responsibility.

However, the Georgia Supreme Court has made it clear that one isolated incident does not amount to a showing of financial irresponsibility. In In the Matter of Harold Wayne Spence, the Supreme Court reversed the Fitness Board’s decision to deny certification of fitness.15 Mr. Spence had been disbarred and accumulated a number of debts. He worked several jobs to repay his debts and then applied for readmission. The Fitness Board revoked his certification for failure to make payment on his law school loans for several months. At his informal conference, Mr. Spence explained that he had stopped making payments for a period of months in order to fund his daughter’s study abroad program. Mr. Spence admitted that it was a lapse of judgment and paid off his student loans. The Supreme Court held that this was an isolated incident showing a lapse of judgment but did not show a pattern of dishonest conduct or financial irresponsibility. The Court reversed the Fitness Board’s denial and certified Mr. Spence to sit for the bar examination.
Improper Conduct in Court/Contemptuous of the Law or Rules of Conduct

The Fitness Board takes abuse and disrespect of the legal process very seriously. Applicants have been denied certification for filing frivolous complaints, making threatening comments to attorneys and judges or others involved in their cases, and sending disrespectful emails using profanity to those involved in a court action or at their school. In one case, the Supreme Court found that an applicant was properly denied certification of fitness, as the applicant’s conduct during his worker’s compensation cases was “inappropriate, threatening and an abuse of the legal process,” which included filing frivolous complaints.

The Supreme Court has also upheld the Fitness Board’s decision to deny certification of fitness where an applicant was intoxicated and insubordinate during an internship. In addition to other troubling factors, the Fitness Board’s denial was based on the applicant’s conduct at his internship in refusing to sit by the senior attorney in court, leaving the courtroom without permission, and sending insulting emails to the senior attorney which contained profanity.

This is not to say that an applicant’s lack of experience with court proceedings (prior to being a licensed attorney) is a basis for denial. The Supreme Court reversed the Fitness Board’s decision to deny certification to an applicant based on her actions during the prosecution of a traffic charge initiated against her. The applicant had represented herself during her first year of law school and demonstrated a total lack of understanding of the judicial process. Furthermore, the applicant had stated to the Fitness Board that she believed the police officers lied during her trial and that the district attorney and judge knew it. Based on this belief, the applicant concluded that there had been a great miscarriage of justice. The Supreme Court found that the applicant’s statements and beliefs went to her competence to try a case rather than her character and fitness. It should be noted that the Fitness Board found no dishonesty on the part of the applicant, but found only a misguided understanding of the law and a lack of judgment and professionalism.
**Substance Abuse**

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

**Mental or Emotional Instability**

Emotional and mental health is an area where the Fitness Board must make inquiry relating to whether the applicant has an issue that could impact his or her ability to practice of law. The preamble to the questions regarding substance abuse and mental health states that, “The mere fact of treatment for mental health problems or addictions is not in itself a basis on which an applicant will be denied admission. To date, the Board to Determine Fitness of Bar Applicants has never denied an applicant based solely on this information. Further, the Fitness Board has routinely certified individuals for admission who have demonstrated personal responsibility and maturity in dealing with mental health and addiction issues.” The Fitness Board understands that law school and life in general can be stressful and may result in an applicant’s seeking counseling or other treatment. This treatment is not necessarily viewed as evidence of a mental or emotional problem. The Fitness Board encourages any applicant to obtain such treatment if the treatment will be helpful to the applicant. Only where an applicant has serious mental or emotional health issues will the Fitness Board conduct an in-depth inquiry in order to ensure that those issues will not affect the ability of an applicant to practice law in a competent and professional manner.
Unlawful or Criminal Conduct

Unlawful or criminal conduct is of paramount concern to the Fitness Board, but does not result in an automatic denial of certification. The Supreme Court has held that where an applicant has a criminal background, he or she must prove “full and complete rehabilitation by clear and convincing evidence.”21 The Fitness Board may consider all unlawful acts committed by the applicant. There is no requirement that the act resulted in a conviction. This includes any arrests and actions adjudicated without guilt pursuant to the Georgia First Offender Act.22

The Fitness Board will not consider an applicant’s file if a criminal charge is pending against the applicant or if the applicant is currently serving a term of probation. In such cases where an applicant has had the term of probation terminated early, the Fitness Board will adhere to the court’s original sentence of probation in determining when the applicant will be eligible for consideration for certification of fitness.23 Where the applicant has a felony conviction, the Fitness Board requires the applicant to apply for a pardon prior to filing his fitness application. Because the Fitness Board believes that restoration of civil rights is critical to an applicant’s ability to function as a lawyer, the applicant must have his or her civil rights restored prior to being certified as fit.

Conduct that involves theft, fraud, deceit, or unscrupulous business practices raises a presumption that the applicant does not possess the fiduciary responsibility necessary to meet the requisite character and fitness standard. However, depending on the facts of the case, even someone with a criminal background may meet the burden of demonstrating his or her fitness by presenting clear and convincing evidence of rehabilitation, as discussed below.

Academic Misconduct

The Fitness Board recently added a section to its Policy Statement to address Academic Misconduct. In summary, the Fitness Board believes that misconduct such as plagiarism is indicative and predictive of untrustworthiness in the practice of law. The Fitness Board is particularly concerned when academic misconduct occurs in law school.24
Rehabilitation

There is no conduct that automatically excludes an applicant from admission, and any applicant can show rehabilitation, regardless of the seriousness of the conduct. However, the burden is on the applicant to demonstrate full rehabilitation. Evidence of rehabilitation is the most crucial factor the Fitness Board uses to determine whether past problems should lead to denial of fitness certification. To make this determination, the Fitness Board looks carefully at the applicant’s conduct, particularly as it relates to honesty, trustworthiness, diligence, reliability, and judgment. Generally, the Fitness Board will assess whether the problems of the past continue, and, if they do not, whether the applicant’s life has changed in ways that suggest the problems of the past are unlikely to recur.

The Georgia Supreme Court was one of the first courts to issue a decision on the issue of rehabilitation for character and fitness purposes. In In re Cason, 249 Ga. 806 (1982), the Court defined rehabilitation as “the re-establishment of the reputation of a person by his or her restoration to a useful and constructive place in society.” The Georgia Supreme Court has further added that merely showing that one has complied with his obligations and not engaged in further criminal or unethical conduct is not sufficient proof of rehabilitation. The applicant must take full responsibility for any past misconduct, and show by positive action that he has restored himself to a useful place in the community by providing evidence of dedication to his or her “occupation, religion, or community service.”

The first step in showing rehabilitation requires the applicant to fully accept responsibility for his or her conduct and show understanding and remorse. Simply admitting the conduct is not enough. In In Re White, the Georgia Supreme Court upheld the Fitness Board’s final decision denying certification of fitness to an applicant where the applicant admitted that he turned in a wholly plagiarized paper during law school, but “was either unwilling or unable to admit that he deliberately” plagiarized and was not able to offer any credible explanation.

Similarly, in In re Terry Glenn Lee, an applicant pled guilty to six counts of unauthorized practice of law, but continually tried to minimize or justify his “technical” violations of the Georgia Rules of Professional Conduct to the Fitness Board.
The second step in showing rehabilitation requires the applicant to provide evidence of community service in order to restore the applicant’s reputation in the community. The Fitness Board has found rehabilitation where applicants involved themselves in various civic, youth, and religious activities and associations that serve the community, such as by performing service at homeless shelters, religious nonprofit organizations, and taking a leadership role in those activities. However, the Fitness Board will not credit toward rehabilitation any self-serving, such as legal externships where the applicant receives law school credit.

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

The Hearing Process

If the applicant requests a hearing, the Fitness Board makes the initial presentation of the reasons for the tentative denial by issuing Specifications to the applicant, who then files an Answer to the Specifications. The burden is on the applicant at all times to prove that he or she possesses the requisite character and fitness required for certification.

The Special Master is not strictly bound to observe the rules of evidence but shall consider all evidence deemed relevant to the proceedings. After hearing the evidence, the hearing officer makes findings of fact and a recommendation to the Fitness Board. The recommendation is not binding upon the Fitness Board or the Georgia Supreme Court. In fact, no previous findings or recommendations are binding on the Fitness Board or the Supreme Court, including those made by a law school or the Judicial Qualifications Commission. The Georgia Supreme Court will uphold any final decision of the Fitness Board if there is any evidence to support it. However, the ultimate decision on an applicant’s fitness always rests with the Supreme Court.

Review by the Georgia Supreme Court

Once the Fitness Board issues a final denial of certification of fitness, the applicant has the right to appeal to the Georgia Supreme Court. As stated above, the Court will uphold a final decision if there is any evidence to
support it, but the ultimate decision on an applicant’s fitness always rests with the Court. While all applicant files on appeal are sealed, the Court will use the full name of the applicant in published opinions “because public access to the decisions of this Court is essential to [its] role in establishing and interpreting the law.”37 The applicant’s file, however, will remain confidential.38

**Character and Fitness is Ultimately Based on Our Choices**

In the popular Harry Potter series of fantasy novels, author J.K. Rowling uses her characters and stories to teach basic moral values. In one instance, Harry asks Professor Dumbledore what is the difference between himself and the villain of the series, Lord Voldemort, since they both possess the same powerful talents and abilities. The very wise head master Dumbledore answers “It is our choices, Harry, that show what we truly are, far more than our abilities.” J.K. Rowling, *Harry Potter and the Chamber of Secrets*. The Board to Determine Fitness takes an in-depth look at all choices, both past and present, made by an applicant in determining his or her current character and fitness. As case law on character and fitness continues to evolve, one thing remains certain: honesty and responsibility will almost invariably carry the day.
Endnotes

1 Rules Governing Admission to the Practice of law, Part A, Sec.2.
2 Policy Statement of the Board to Determine Fitness of Bar Applicants.
3 Rules Governing Admission to the Practice of Law, Part A, Sec. 6.
4 Policy Statement of the Board to Determine Fitness of Bar Applicants.
5 Rules Governing Admission to the Practice of Law, Part F, Sec. 4 (b).
8 Policy Statement of the Board to Determine Fitness of Bar Applicants, Sec. F.
9 Rules Governing Admission to the Practice of Law, Part A, Sec. 8.
20 Application for Certification of Fitness to Practice law, Preamble to Questions 24-26.
23 Policy Statement of the Board to Determine Fitness of Bar Applicants.
24 Policy Statement of the Board to Determine Fitness of Bar Applicants (B).
27 *In re Cason*, 249 Ga. 806, 808 (1982).
32 Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (a).
34 Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (c).
35 Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (c); *In re K.S.L.*, 269 Ga. 51, 52 (1998); *In re Jenkins*, 278 Ga. 529 (2004).
38 Rules Governing Admission to the Practice of Law, Part F, Sec. 4 (b).
DOMESTIC RELATIONS—GEORGIA CHILD SUPPORT WORKSHEET—DON’T LEAVE ANYTHING OUT

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Domestic Relations Financial Affidavit
Georgia Child Support Worksheet
Don’t Leave Anything Out!

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Domestic Relations Financial Affidavit
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- Appendix C: Child Support Worksheet
Most often when people fall in love and make the decision to enter into marriage with one another the thoughts of divorce do not cross their minds. When a bride is thinking of her big day, her wedding dress, and how many layers of cake she wants in the wedding cake, the bride is not thinking about if she should keep her personal checking account separate and in her name solely after marriage. Just as, when a groom is thinking of his big day, he is not thinking about if he will use his inheritance from his great-grandmother to purchase the big home on the golf course in the newly built country club community, and what it might mean for him financially in the event of a divorce many years in the future. Although people do recover from divorce, divorce is a tragedy for all involved. It is a time when people have high emotions, are not thinking clearly, and need the guidance and expertise of professionals to assist them in getting through the divorce process.

There are situations when a divorce is the most appropriate decision for a married couple and can be quite simple in terms of dividing the assets of the marriage. If the parties had a short marriage and no children were born during the marriage, the divorce process and resulting financial decisions should not create a complex financial situation to be equalized. However, there are times when a divorce may be the best decision for all involved, but the complexity of splitting the assets and liabilities, and calculating child support if necessary, can be overwhelming to everyone involved in the divorce process.
In both scenarios, Georgia law and the Council of Superior Court Judges have put rules and procedures into place to alleviate some of the financial complexity of divorce. The two documents that are most useful to the courts, neutrals, attorneys, and parties to the divorce action are the Domestic Relations Financial Affidavit as set forth in Uniform Superior Court Rule 24.2 and the Child Support Worksheet as implemented and provided by the Georgia Commission on Child Support.

I. Domestic Relations Financial Affidavit (DRFA)

The Domestic Relations Financial Affidavit ("DRFA") is a required form pursuant to Uniform Superior Court Rule 24.2 in a domestic relations case filed in the Superior Court. U.S.C.R. 24.2 and 24.2A are attached as Appendix A. The DRFA as found on the Clerk of the Superior Court of Cobb County’s website is attached as Appendix B.

The purpose of the DRFA is to provide the judge, neutral, attorneys, and parties with a document that encompasses an overview of financial values regarding the assets, liabilities, income of the parties, expenses of the parties, and if applicable, the expenses of any minor children of the marriage. The party completing the DRFA must swear under oath in the presence of a Notary Public that the information contained in the DRFA is true and correct as of the date of signing the DRFA.

In a contested divorce matter, it is best when the DRFA is updated and amended from time to time to reflect the most current values of the assets and liabilities of the marital estate and the income and expenses needed in order to calculate spousal support and child support. The DRFA can also be presented to represent several different scenarios. For example, a party can prepare a DRFA that shows a snapshot of the financial circumstances as an in-tact family; a snapshot of the custodial parent living in the marital residence with the children during the pendency of the divorce action; and, a
projected snapshot of the financial circumstances once the parties are divorced and each supporting a household.

Additionally, in a contested divorce case, it is imperative that the values set forth on the DRFA are correct so that the judge or the jury can use the DRFA when adjudicating the contested issues in the divorce, such as division of property, calculation of child support, and the need and ability to pay in respect to spousal support.

The DRFA includes a cumulative listing of the assets and liabilities of the marital estate which can also be referred to as the Marital Balance Sheet ("MBS"). The MBS includes the values for all assets and all liabilities of the parties, both marital property, separate property, and mixed marital assets. The MBS should be created by a Certified Divorce Financial Analyst (CDFA) or an accounting professional who can later authenticate and testify regarding the preparation of the MBS. The CDFA and/or attorney should work directly with the client to initially create the document.

The MBS may include values for the following assets:

- Bank accounts, such as savings and checking accounts;
- Investment accounts;
- Retirement accounts;
- Value of business or business interests;
- Employee benefits, such as stock options, performance shares, or other long-term incentive plans;
- Ownership interests in real estate;
- Automobiles, boats and other vehicles; and,
- Furniture, jewelry, furs, collectibles, and other personal property.
The MBS may include values for the following liabilities:

- Mortgage for marital residence;
- Line(s) of credit;
- Home equity loans;
- Automobile loans;
- Personal loans;
- Personal guarantees for business loans;
- Notes payable;
- Credit card accounts;
- Student loans; and,
- Taxes due to the federal or state government.

The MBS can be used as a guide for the attorney to determine what information should be obtained through the discovery process. In the discovery process, the values of the assets and liabilities identified in the MBS can be further examined by collecting data through the review of tax returns, bank records, charge card accounts, retirement account statements, investment account statements, employee benefits documentation, mortgage statements, personal financial statements, loan applications, appraisals, valuations, and other relevant financial documents. This financial information will assist the attorney, CDFA, or accountant in the calculation of present cash value of assets listed on the MBS as well as verifying and analyzing any claims of separate property.

Since the values of assets and liabilities will be used by the attorney for settlement or by the judge or jury in adjudicating the issues, each value listed on the MBS should be traced back to a document that verifies the value. For example, if a value
is listed for a retirement account, the value was likely found on a document produced in discovery. It is helpful to have a place on the MBS to enter the identifying information of the relevant document next to the value.

Additionally, if an asset is claimed as separate property by one of the parties, a document evidencing the value and ownership of the asset at the time of marriage should be identified on the MBS. When claiming that an asset is separate property, it is very important to have the necessary documentation to prove the claim.

The next portion of the DRFA consists of the income and expenses of the parties as well as the expenses for any minor children. A critical determination in divorce is the income of the parties. A party's W-2 wages and/or tax returns cannot be used as the sole document to determine income. So, the question becomes what constitutes income?

Sources of income can include the following: wages; commissions; fees; tips; income from self-employment, partnership, close corporations, and independent contractors; bonuses; overtime payments; severance pay; recurring income from pensions or retirement plans; interest and dividends; trust income; income from annuities; capital gains; Social Security disability or retirement benefits; workers' compensation benefits; unemployment benefits; judgments; gifts; prizes and lottery winnings; alimony; assets used for support of the family; and fringe benefits.

When calculating gross income for use in the DRFA, it is important to calculate gross income as set forth in U.S.C.R. 24.2A. When calculating net income, any unnecessary deductions, such as 401(k) contributions that are voluntary, changes to health and dental insurance due to the change in the family as a result of the divorce, and tax withholding based upon the change in withholding status will need to be added.
back into the net income amount. In most situations, the total number for net income will increase.

A good method for calculation of income for a party is to look to the child support statutes, particularly for self-employment income and fringe benefits. These types of income are commonly hidden within financial documents and can be a source of disagreement with both parties and opposing counsel regarding whether or not it should be counted as income for purposes of calculation of child support.

Self-employment income is defined in O.C.G.A. § 19-6-15(1)(B) as follows:

Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income. Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership, limited liability company, or closely held corporation is defined as gross receipts minus ordinary and reasonable expenses required for self-employment or business operations. Ordinary and reasonable expenses of self-employment or business operations necessary to produce income do not include:

(i) Excessive promotional, travel, vehicle, or personal living expenses, depreciation on equipment, or costs of operation of home offices; or

(ii) Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court or the jury to be inappropriate for determining gross income.

In general, income and expenses from self-employment or operation of a business should be carefully reviewed by the court or the jury to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. Generally, this amount will differ from a determination of business income for tax purposes.

Business documents may need to be reviewed and analyzed for assurance that personal expenses are not being paid by the business. If payment is being made by the business for personal expenses, then the amount of the payment needs to be counted as income. This type of income is considered fringe benefits. Fringe benefits are defined in O.C.G.A. §19-6-15(f)(1)(C) as follows:

Fringe benefits for inclusion as income or "in kind" remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as
income if the benefits significantly reduce personal living expenses. Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board. Fringe benefits shall not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including, but not limited to, employer paid portions of health insurance premiums or employer contributions to a retirement or pension plan.

An example of a fringe benefit that is incorrectly listed on the DRFA is when a party’s employer pays the expense of the party’s cellular telephone, but the party lists the cellular telephone as a personal expense on the DRFA. This is double dipping and is not an accurate reflection of the party’s monthly expenses.

The DRFA should include the monthly expenses of the parties. Monthly expenses include: mortgage/rent; property taxes; homeowner’s or renter’s insurance; utilities; health insurance; co-pays and other uncovered medical expenses; prescription and non-prescription medications; subscriptions; dues; clothing; dry cleaning; vacations; religious and charitable donations; entertainment; and recreational expenses.

In many instances, one or both of the parties believe that listing a decreased value in income or an increased value in expenses will assist in obtaining a higher or lower child support monthly payment and/or spousal support monthly payment. In contested divorce cases, a party will be questioned about the values listed on the DRFA by the attorney or opposing counsel, and if the party cannot support the values on the DRFA, the honesty and integrity of the party may come into question. For example, opposing counsel may ask why a certain expense is so high when the party has primary physical custody of the child and the party is foolishly spending money on an unnecessary expense.

Another example of an inaccurate value on the DRFA is when a party pays for monthly expenses with a credit card. If the expense is listed on the DRFA as a line item and is also included in a monthly payment to a credit card company, then it is
considered double dipping and is not an accurate reflection of the party’s monthly expenses.

These types of incorrect financial information on the DRFA often get overlooked by preparers of the DRFA. The preparation of the DRFA is very detailed and time consuming but the accuracy of the values listed on the DRFA is of utmost importance in a divorce case.

II. Child Support Worksheet

In 1988, Congress enacted the Family Support Act of 1988 (the “Act”) which established the child support guidelines as we know them today.\(^1\) The Act “limited judicial discretion and required states to establish specific minimum guidelines, which became “rebuttable presumptions” for support awards.”\(^{ii}\) The Act “mandated the use of guidelines, requiring that all States, as a condition of receiving Federal funds, have guidelines and use them when calculating a support amount.”\(^{iii}\) The enactment of this Act created consistency in support awards and encouraged settlement of domestic actions in the courts by providing guidelines for support obligations.

O.C.G.A. § 19-6-50 created the Commission on Child Support (“Commission”) as follows:

“There is created the Georgia Child Support Commission for the purpose of studying and collecting information and data relating to awards of child support and to create and revise the child support obligation table. The commission shall be responsible for conducting a comprehensive review of the child support guidelines, economic conditions, and all matters relevant to maintaining effective and efficient child support guidelines and modifying child support orders that will serve the best interest of Georgia’s children and take into account the changing dynamics of family life. Further, the commission shall determine whether adjustments are needed to the child support obligation table taking into consideration the guidelines set forth in Code Section 19-6-53. Nothing contained in the commission’s report shall be considered to authorize or require a change in the child support obligation table without action by the General Assembly.”
The Commission is required by Federal regulation to review the child support guidelines at least once every four years. The Commission contracted with Dr. Jane Venohr and her organization, the Center for Policy Research ("CPR"), for a formal assessment as to whether Georgia's child support schedule should be updated in 2007, 2011, 2014, and 2018.

O.C.G.A. § 19-6-53(a)(2) states that the Commission shall have the duty to evaluate and consider the experiences and results in other states which utilize child support guidelines.

Currently, states use one of three guideline models:

1. **Income Shares Model.** This Model is best described as a cost-sharing model where the income of both parents is considered in the award of child support. Laura Morgan better describes this model as:

   "... setting child support obligations by first determining what proportion of their combined income the divorcing parents spent on their children in an intact household. This determination is based on economic data estimating child-rearing expenses; the applicable base child-rearing expense amount is adjusted according to extraordinary expenses unique to the divorcing couple's children such as child care and medical expenses. The final amount, termed the "basic child support obligation," is then prorated between the two parents based on their relative incomes."^v

   It is noted that this is the guideline model that is currently used in the State of Georgia.

2. **Percentage of Income Model.** This Model establishes an award of child support based on statutorily specified percentage of the non-custodial parent's income. (e.g., pre-2007 Georgia Guidelines)

3. **Melson-Delaware Model.** This Model is the most complex of the three guideline models with a three-step process. First, the court reduces a "self-support" allowance from income. Second, the court determines the "children's primary support
needs.” Third, the court determines any additional “standard of living” allowance to be
added to the primary support amount to determine the total support obligation.⁶

O.C.G.A. § 19-6-15 sets forth the guidelines for calculating child support under
Georgia law, see Appendix C. Within this code section, adjustments and deviations are
defined and guidance is provided in how they are used in the calculation of child
support.

An adjustment to child support includes health insurance premiums and work-
related child-care expenses which are automatic calculations within the child support
worksheet.

Deviations to child support include the following: low income; high
income; vision insurance; dental insurance; life insurance for the benefit of the
child; child and dependent tax care credit; travel expenses; alimony; mortgage
payments for the child’s housing if paid by the non-custodial parent;
extraordinary educational expenses (which includes tuition, room and board, lab
fees, books, fees, and other reasonable and necessary expenses associated with
special needs education or private elementary or secondary schooling); special
expenses for child rearing (which include expenses such as summer camp; music
or art lessons; travel; school sponsored extracurricular activities; and other
activities intended to enhance the athletic, social, or cultural development of a
child); and extraordinary medical expenses (which include expenses that are not
covered by insurance and may include medical expenses of the child, a parent, or
a child of a parent’s current family).

Adjustments do not require findings in Schedule E of the Child Support
Worksheet. However, deviations do require that certain findings be listed on Schedule
E of the Child Support Worksheet and the absence of these findings can result in the appellate courts reversing the trial court’s judgment.

As divorce cases are adjudicated by Superior Court judges and appealed by divorcing parties, guidance is provided from the appellate courts regarding certain aspects of child support. This guidance is provided in appellate opinions and, in some instances, within the opinion itself on other issues.

For example, in June 2018, the Georgia Court of Appeals issued an opinion in Noble v. Noble in regard to fringe benefits. The Court held:

"The guidelines do not otherwise define "personal living expenses," and we find no precedent addressing whether college tuition is included in the broad category of personal living expenses. Common sense would suggest that "personal living expenses," as opposed to "personal expenses," denotes those expenses that are necessary to maintaining daily life, such as food, shelter, transportation to and from employment, etc., not those that may be forgone or deferred."

The guidance provided in Noble v. Noble offers clarity on how the appellate court views personal expenses versus personal living expenses.

There has also been guidance provided regarding the determination of a parent’s gross income when incomplete information and a lack of income documentation is provided to the court.

In Brogdon v. Brogdon, the Court held:

"trial court properly determined father's gross income by reference to evidence of his expenses, cash withdrawals, and personal use of his business account"

In Harris v. Snelgrove, the Court held:

"trial court properly determined mother's gross income by extrapolating from information about her assets, her earning capacity given her specialized skills, her expenses, and other "relevant circumstances"

In Banciu v. Banciu, the Court held:

"having concluded that father's income on financial affidavit was understated, trial court properly considered father's earning capacity as gleaned from his ongoing business and history of expenses and lifestyle"
An example of a deviation with a lack of clear guidance, particularly in the State of Georgia, is the deviation for high income. The guidelines are written to create consistent awards and allow the best interest of the child to be served via financial support by the parent(s) based upon economic data from governmental sources to calculate the minimum needs of a child. In low income child support actions, the obligor parent may not have the means to pay the ordered support amount. In high income child support actions, an obligor parent may end up in the same predicament.

Gregory Bartlett wrote “[D]etermining what is fair and reasonable amount for the support of a child of high-income parents requires a different, but not always easier, analysis for a trial judge.”

States use different methods in considering high income deviation in child support calculations. These methods vary from providing the court with full authority to deviate without regard to the state guidelines to the guideline maximum being set as the presumptive basic award to the court having to provide a high-income formula.

Critics of the strict formula approach to high income deviation cite the “Three Pony Rule” from the Kansas case In Re Marriage of Patterson. In Patterson, the court stated that “no child, no matter how wealthy the parents, needs to be provided more than three ponies.”

There are three common factors that are considered when using deviations in the calculation of child support which are as follows:

1. Best Interest of the Child. Best interest is defined by statute in all fifty (50) states and is a common factor in any proceeding involving children. The best interest of the child is most commonly defined in respect to custody proceedings when
determining legal and physical custody. Best interest as defined by Edward Kruk, Ph.D. is “the essential needs, helping children grow and develop, and achieve their capabilities to the maximum extent possible.”

2. **Parties' Standard of Living.** The standard of living when the family was an intact family has been found to be a factor that most states consider when deviating from the guidelines due to high income. Most states believe that the children from a divorced home should not suffer in their standard of living based upon their parents' divorce and they should remain at a standard of living to which they are accustomed. However, this does not mean that the obligor parent should live in pauperous conditions so that the children remain at a higher standard of living. The award of child support must be equitable to all involved.

3. **Needs of the Child.** States that are discretion states are to look at the actual needs of the children when awarding support over the guideline amount, particularly in high income cases. As Kathleen Hogan wrote, “[H]igh-income situations pose a challenge for courts, which must carefully fashion an award that provides for the actual needs of a child, while avoiding an excessive award that would essentially amount to a wealth transfer between parents.”

The Supreme Court of New York found that “consideration of the child’s actual needs with reference to the prior standard of living continues to be appropriate in determining an award of child support on parental income in excess of [the guideline amount].”

Overall, the factors considered when deviating from the guideline amount of child support is focused on the child and the needs of the child. Child support is not to be used as a form of support for the custodial parent. The non-custodial parent should
absolutely share in the costs of the basic needs for the child at the custodial parent's home (such as housing and utilities), however, it should not provide a source of income to the custodial parent so that the custodial parent can decrease the financial support that they provide to the child.

The receipt of child support by the custodial parent has been shown to reduce the child poverty rate and improve child well-being. Studies show that receipt of child support has a positive effect on academic achievement and improves young children's cognitive development. State investment in child support reduces other public spending. Child support collections lower the costs associated with welfare, food stamps and Medicaid.

Child support also affects families and marriage. Payment of child support can foster better relationships between children and parents and act as a disincentive for divorce. Payment of child support also leads to increased involvement and influence of noncustodial fathers. Studies show that fathers who pay child support are more likely to visit their child, to see their child more frequently, and to affect how their child is raised, regardless of how much support they pay.

Georgia law and the Council of Superior Court Judges have attempted to simplify the financial aspect of divorce by creating the Commission on Child Support and implementing U.S.C.R 24.2 and the Domestic Relations Financial Affidavit. Although these two documents could potentially settle a divorce action on the issues of equitable division of property, child support, and spousal support, when applicable, there are times when parties cannot settle their affairs without the help of legal and financial professionals and they rely upon the Superior Courts in the State of Georgia to make these hard decisions for them.
During the times that divorcing parties rely upon the courts to make these personal decisions for them and their families, it is of the utmost importance that the DRFA and CSW are prepared accurately and have all identifying information contained within the two documents so that the judge or the jury can adjudicate the divorce action.

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4 45 C.F.R. § 302.56
5 Laura W. Morgan, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION § 1.03(c)(1)(1996 & Supp. 2007).
6 Supra note ii, at 486.
9 Harris v. Snelgrove, 290 Ga. 181(3) (718 SE2d 300)(2011)
Appendix A

U.S.C.R. 24.2 and 24.2A
Rule 24.2. Financial Data Required; Scheduling and Notice of Temporary Hearing

Except as noted below, at least 5 days before any temporary or final hearing in any action for temporary or permanent child support, alimony, equitable division of property, modification of child support or alimony or attorney's fees, all parties shall serve upon the opposing party the affidavit specifying his or her financial circumstances in the form set forth herein. In cases involving child support, the worksheet(s) and schedules required by OCGA § 19-6-15 and only as promulgated by the Georgia Child Support Commission shall be completed and served upon the opposing party contemporaneously with the filing of the affidavit required above. In 45 emergency actions, the affidavit, worksheet(s) and schedules may be served on or before the date of the hearing or at any other time as the Court orders.

In cases filed with complete separation agreements or consent orders resolving all issues but the issue of divorce, the parties are not required to serve financial affidavits, unless otherwise ordered by the Court. In cases involving child support, the parties must attach to the proposed final judgment a completed worksheet or worksheets and any applicable schedules. In addition, the separation agreement must include the parties' gross and adjusted incomes.

The Office of Child Support Services is exempt from filing financial affidavits.

Notice of the date of any temporary hearing shall be served upon the adverse party at least 15 days before the date of the hearing, unless otherwise ordered by the Court.

The parties shall serve upon each other the affidavit and worksheet(s) and schedules (where applicable) at least 5 days prior to any mediation or other alternative dispute resolution proceeding.

In any case in which a party has previously served the affidavit, worksheet(s) and schedules and thereafter amends the affidavit or worksheet(s) and schedules, any such amendments shall be served upon the opposing party at least 5 days prior to final hearing or trial.

On the request of either party, and upon good cause shown to the Court, the affidavits, worksheets, schedules, and any other financial information may be sealed, upon order of the Court.

Only the last four digits of social security numbers, tax identification numbers, or financial account numbers shall be included in any
document served or filed with the Court pursuant to this rule. No birth
date should be included, only the year of birth. See also OCGA § 9-11-7.1.

A Certificate of Service shall be filed with the Clerk of Court certifying
proper service of the affidavit required above and worksheet(s) and
schedules (where applicable). Each party shall submit to the Court the
original affidavit and worksheet(s) and schedules (where applicable) at
the time of hearing or trial.

Failure of any party to furnish the above financial information may
subject the offending party, in the discretion of the Court, to the penalties
of contempt and may result in continuance of the hearing until the
required financial information is furnished and may result in other
sanctions or remedies deemed appropriate in the Court’s discretion.

Notwithstanding the time limits contained in this rule, the Court may
decide a matter without strict adherence to a time limitation, if the
financial information was known or reasonably available to the other
party, or if a continuance would result in a manifest injustice to a party.

Amended effective January 18, 1990; October 28, 1993; amended November 4, 1999, effective December 16, 1999; amended effective August 12, 2004; January 18, 2007; May
24, 2007; January 17, 2008; October 25, 2008; September 17, 2009; October 7, 2010; September 30, 2011; May 15, 2014; September 18, 2014; August 30, 2016.

Rule 24.2A. Monthly Figures Required; Week and Hour to
Month Multipliers

Except as specified in the child support calculator instructions, all
amounts listed must be monthly. In all domestic cases in which a
conversion of economic data from weekly to monthly must be made, a
conversion factor of 4.35 weeks per month shall be used. In calculating
monthly income based upon a forty hour work week, hourly salary shall
be multiplied by 174 hours.

Adopted effective January 17, 2008; amended effective August 30, 2016.
Appendix B

Domestic Relations Financial Affidavit
IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

Petitioner:________________________________________

and

Civil Action File No.:_____________________________

Respondent:_____________________________________


DOMESTIC RELATIONS FINANCIAL AFFIDAVIT

<table>
<thead>
<tr>
<th>(1) Your Name:</th>
<th>Your Age:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse’s Name:</td>
<td>Spouse’s Age:</td>
</tr>
</tbody>
</table>

| Date of Marriage: | Date of Separation: |

Names and birth dates of children for whom support is to be determined in this action:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Resides with</th>
</tr>
</thead>
<tbody>
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<td></td>
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</tbody>
</table>

Names and birth dates of your other children:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Resides with</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

(2) SUMMARY OF YOUR INCOME AND NEEDS: (fill out this part after you complete pages 2-5)

<table>
<thead>
<tr>
<th>(A) Gross Monthly Income (from Item 3A below)</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>(B) Net Monthly Income (from Item 3B below)</td>
<td>$</td>
</tr>
<tr>
<td>(C) Average Monthly Expenses (Item 5A below)</td>
<td>$</td>
</tr>
<tr>
<td>Monthly Payments to Creditors (Item 5B below)</td>
<td>$</td>
</tr>
<tr>
<td>Total Monthly Expenses &amp; Payments to Creditors (Item 5C below)</td>
<td>$</td>
</tr>
</tbody>
</table>

"Divorce Without Minor Children Packet"
Provided by the Superior Court of Cobb County.
## (3) (A) YOUR GROSS MONTHLY INCOME: (Complete this section or attach Child Support Schedule A). (All income must be entered based on monthly average regardless of date of receipt. Where applicable, income should be annualized)

<table>
<thead>
<tr>
<th>Income Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary or Wages — ATTACH COPIES OF 2 MOST RECENT WAGE STATEMENTS</td>
<td>$</td>
</tr>
<tr>
<td>Commissions, Fees &amp; Tips</td>
<td>$</td>
</tr>
<tr>
<td>Income from self-employment, partnership, close corporations and independent contracts (gross receipts minus ordinary and necessary expenses required to produce income) ATTACH SHEET ITEMIZING YOUR CALCULATIONS</td>
<td>$</td>
</tr>
<tr>
<td>Rental income (gross receipts minus ordinary and necessary expenses required to produce income) ATTACH SHEET ITEMIZING YOUR CALCULATIONS</td>
<td>$</td>
</tr>
<tr>
<td>Bonuses</td>
<td>$</td>
</tr>
<tr>
<td>Overtime Payments</td>
<td>$</td>
</tr>
<tr>
<td>Severance Pay</td>
<td>$</td>
</tr>
<tr>
<td>Recurring Income from Pensions or Retirement Plans</td>
<td>$</td>
</tr>
<tr>
<td>Interest and Dividends</td>
<td>$</td>
</tr>
<tr>
<td>Trust income</td>
<td>$</td>
</tr>
<tr>
<td>Income from Annuities</td>
<td>$</td>
</tr>
<tr>
<td>Capital Gains</td>
<td>$</td>
</tr>
<tr>
<td>Social Security Disability or Retirement Benefits</td>
<td>$</td>
</tr>
<tr>
<td>Worker’s Compensation Benefits</td>
<td>$</td>
</tr>
<tr>
<td>Unemployment Benefits</td>
<td>$</td>
</tr>
<tr>
<td>Judgments from Personal Injury or Other Civil Cases</td>
<td>$</td>
</tr>
<tr>
<td>Gifts (cash or other gifts that can be converted to cash)</td>
<td>$</td>
</tr>
<tr>
<td>Prizes &amp; Lottery Winnings</td>
<td>$</td>
</tr>
<tr>
<td>Alimony and maintenance from persons not in this case</td>
<td>$</td>
</tr>
<tr>
<td>Assets which are used for support of family</td>
<td>$</td>
</tr>
<tr>
<td>Fringe Benefits (if significantly reduce living expenses)</td>
<td>$</td>
</tr>
<tr>
<td>Any Other Income (Do not include means-tested public assistance, such as TANF or food stamps.)</td>
<td>$</td>
</tr>
<tr>
<td>TOTAL Gross Monthly Income (also write in 2A on page one)</td>
<td>$</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>(3)(B) Net Monthly Income From Employment (deducting only state and federal taxes and FICA) (also write in 2B on page one)</td>
<td>$</td>
</tr>
</tbody>
</table>
### (4) ASSETS

(List all assets here, including both non-marital and marital property. If you claim or agree that all or part of an asset is non-marital, indicate the non-marital portion under the appropriate spouse's column and state the amount and the basis: pre-marital, gift, inheritance, source of funds, etc. The total value of each asset must be listed in the "Value" column. "Value" means what you feel the item of property would be worth if it were offered for sale.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Separate Asset of Petitioner</th>
<th>Separate Asset of Respondent</th>
<th>Basis of the Claim (pre-marital, gift, inheritance, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Stocks, Bonds</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>CD’s / Money Market Accounts</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Bank Accounts (list each account below):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(3)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Retirement Pensions, 401(k), IRA or Profit-Sharing</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Money Owed to You (or Spouse)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Tax Refund Owed to You</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Real Estate (list properties &amp; mortgages):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Debt owed on Home</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Other Real Estate</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Debt owed on Other Real Estate</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automobiles / Vehicles (list vehicles &amp; amounts owed on each one):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Debt owed on Vehicle (1)</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Debt owed on Vehicle (2)</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

"Divorce Without Minor Children Packet"  
Provided by the Superior Court of Cobb County.  
Page 24 of 63  
Rev6. 5/2017
(4) ASSETS (continued)

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Separate Asset of Petitioner</th>
<th>Separate Asset of Respondent</th>
<th>Basis of the Claim (pre-marital, gift, inheritance, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life insurance (net cash value)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Furniture / Furnishings</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Jewelry</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Collectibles</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Other Assets (specify):</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>TOTAL ASSETS</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

(5)(A) AVERAGE MONTHLY EXPENSES FOR YOU AND YOUR HOUSEHOLD

### HOUSEHOLD EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgage or Rent Payments</td>
<td>$</td>
<td>Gas</td>
<td>$</td>
</tr>
<tr>
<td>Property taxes</td>
<td>$</td>
<td>Repairs &amp; Maintenance</td>
<td>$</td>
</tr>
<tr>
<td>Homeowner’s / Renter’s Insurance</td>
<td>$</td>
<td>Lawn Care</td>
<td>$</td>
</tr>
<tr>
<td>Electricity</td>
<td>$</td>
<td>Pest Control</td>
<td>$</td>
</tr>
<tr>
<td>Water</td>
<td>$</td>
<td>Cable TV / Internet Access</td>
<td>$</td>
</tr>
<tr>
<td>Garbage &amp; Sewer</td>
<td>$</td>
<td>Misc. Household &amp; Grocery Items</td>
<td>$</td>
</tr>
<tr>
<td>Telephones</td>
<td></td>
<td>Meals Outside Home</td>
<td></td>
</tr>
<tr>
<td>Residential Lines</td>
<td>$</td>
<td>Other (specify)</td>
<td>$</td>
</tr>
<tr>
<td>Cellular Telephones</td>
<td>$</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

### AUTOMOTIVE

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gasoline &amp; Oil</td>
<td>$</td>
<td>Auto Tags / Registration / License</td>
<td>$</td>
</tr>
<tr>
<td>Repairs &amp; Maintenance</td>
<td>$</td>
<td>Insurance</td>
<td>$</td>
</tr>
</tbody>
</table>

### OTHER VEHICLES (boats, trailers, RVs, etc.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gasoline &amp; Oil</td>
<td>$</td>
<td>Tags / Registration / License</td>
<td>$</td>
</tr>
<tr>
<td>Repairs &amp; Maintenance</td>
<td>$</td>
<td>Insurance</td>
<td>$</td>
</tr>
<tr>
<td>CHILDREN'S EXPENSES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>-----</td>
<td>-------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Child Care (total monthly cost)</td>
<td>$</td>
<td>Allowance</td>
<td>$</td>
</tr>
<tr>
<td>School Tuition</td>
<td>$</td>
<td>Children's Clothing</td>
<td>$</td>
</tr>
<tr>
<td>Tutoring</td>
<td>$</td>
<td>Diapers</td>
<td>$</td>
</tr>
<tr>
<td>Private lessons (e.g., music, dance)</td>
<td>$</td>
<td>Medical, Dental, Prescriptions (out-of-pocket uncovered expenses)</td>
<td>$</td>
</tr>
<tr>
<td>School Supplies / Expenses</td>
<td>$</td>
<td>Grooming / Hygiene</td>
<td>$</td>
</tr>
<tr>
<td>Lunch Money</td>
<td>$</td>
<td>Gifts from children to others</td>
<td>$</td>
</tr>
<tr>
<td>Other Educational Expenses (list type &amp; amount):</td>
<td></td>
<td>Entertainment</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Activities (including extra-curricular, school, religious, cultural, etc.)</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>Summer Camps</td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OTHER INSURANCE</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Insurance</td>
<td>$</td>
<td>Life Insurance</td>
<td>$</td>
</tr>
<tr>
<td>Children's portion:</td>
<td>$</td>
<td>Relationship of Beneficiary:</td>
<td></td>
</tr>
<tr>
<td>Dental Insurance</td>
<td>$</td>
<td>Disability Insurance</td>
<td>$</td>
</tr>
<tr>
<td>Children's portion:</td>
<td>$</td>
<td>Other Insurance (specify)</td>
<td>$</td>
</tr>
<tr>
<td>Vision Insurance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children's portion:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>YOUR OTHER EXPENSES</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dry Cleaning &amp; Laundry</td>
<td>$</td>
<td>Publications</td>
<td>$</td>
</tr>
<tr>
<td>Clothing</td>
<td>$</td>
<td>Dues, Clubs</td>
<td>$</td>
</tr>
<tr>
<td>Medical / Dental / Prescription (out-of-pocket uncovered expenses)</td>
<td>$</td>
<td>Religious &amp; Charities</td>
<td>$</td>
</tr>
<tr>
<td>Your Gifts (special holidays)</td>
<td>$</td>
<td>Pet expenses</td>
<td>$</td>
</tr>
<tr>
<td>Entertainment</td>
<td>$</td>
<td>Alimony Paid to Former Spouse</td>
<td>$</td>
</tr>
<tr>
<td>Recreational Expenses (e.g., fitness)</td>
<td>$</td>
<td>Child Support Paid for other children</td>
<td>$</td>
</tr>
<tr>
<td>Vacations</td>
<td>$</td>
<td>Date of initial CS order:</td>
<td></td>
</tr>
</tbody>
</table>
Travel Expenses for Visitation $ Other (attach sheet to list) $

TOTAL ABOVE MONTHLY EXPENSES (also write on first line of 2C on page one) $

(5)(B) YOUR PAYMENTS & DEBTS TO CREDITORS

<table>
<thead>
<tr>
<th>To Whom</th>
<th>Balance Due</th>
<th>Monthly Payments</th>
<th>(Please check one)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>Joint</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>Petitioner</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>Respondent</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

Total Monthly Payments to Creditors (also write this total on line 2 of 2C on page one) $

(5)(C) TOTAL MONTHLY EXPENSES (Total Expenses from final line on page 5 + Total Monthly Payments to Creditors above) (also write this total on line 3 of 2C on page one) $

(Sign your name before Notary) ☐ Petitioner ☐ Respondent, Self-Represented

Name (print or type): ______________________
Address: __________________________________
Daytime Telephone Number: ______________________

Sworn to and affirmed before me, this ___ day of __________.

NOTARY PUBLIC
My commission expires: __________
(Notary Seal)

"Divorce Without Minor Children Packet"  Page 27 of 63
Provided by the Superior Court of Cobb County.  Rev6. 5/2017
Appendix C

Child Support Worksheet
CHILD SUPPORT WORKSHEET

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

DHS, ex rel., o/b/o

Brenda Jones
* Plaintiff,

vs.

John Jones
* Defendant.

Civil Action Case No.:

IV-D Case No.:

Comments for Court:

Date of Initial Child Support Order:

Initial Action

Modification

Mother: Plaintiff

Father: Defendant

Child Support Worksheet - Enter amounts/data in yellow fields only. Calculations will automatically display in the appropriate white fields.

Next to the numbers below, enter the Name and Birth Year of all children for whom child support is being determined in this case.

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Birth Year</th>
<th>Included</th>
<th></th>
<th>Name</th>
<th>Birth Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td>9.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
<td>11</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td></td>
<td>12</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Number of Children: 2

Noncustodial Parent

Mother

Father

Submitted by: Plaintiff

Nonparent Custodian

Lines 12 and 14 are enterable fields; all other fields will automatically calculate and display amounts.

<table>
<thead>
<tr>
<th></th>
<th>Mother</th>
<th>Father</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>$4,000.00</td>
<td>$7,500.00</td>
<td>$11,500.00</td>
</tr>
<tr>
<td>2.</td>
<td>$4,000.00</td>
<td>$7,500.00</td>
<td>$11,500.00</td>
</tr>
<tr>
<td>3.</td>
<td>34.78%</td>
<td>65.22%</td>
<td>100.00%</td>
</tr>
<tr>
<td>4.</td>
<td>$1,930.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>$871.25</td>
<td>$1,258.75</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>$129.85</td>
<td>$243.49</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>$801.10</td>
<td>$1,562.24</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>$373.33</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>$427.76</td>
<td>$1,562.24</td>
<td></td>
</tr>
</tbody>
</table>

The amount on Line 9 is the Presumptive Child Support Amount.
# CHILD SUPPORT WORKSHEET

10. **Deviations from Presumptive Child Support Amount**
   - Amounts from Schedule E, Line 14 will automatically display.
   - Deviation type(s) used: “Extraordinary Medical Expenses”
   - **Mother**: $ (32.61)  
   - **Father**: $ 32.61

11. **Subtotal (Line 9 plus Line 10)**
   - **Mother**: $ 395.15  
   - **Father**: $ 1,534.85

12. **Social Security Payments (excludes Supplemental Security Income (SSI))**
   - If a child receives Title II Social Security benefits as a dependent on a parent’s account, enter that monthly amount here in that parent’s column. If none, leave blank. *(See User Guide.)*
   - **Mother**: $  
   - **Father**: $ 

13. **Final Monthly Child Support Amount** (rounded to a whole number)
   - If the amount on Line 12 is equal to or greater than Line 11, the child support responsibility is met and no further obligation is owed.
   - **Mother**: $ 395.00  
   - **Father**: $ 1,535.00

**The amount on Line 13 is the Final Child Support Amount.**

## Uninsured Health Expenses

14. Carry down percentages from Line 3, enter percentages agreed to; or enter percentages otherwise ordered by the Court.
   - **Mother**: 35.00%  
   - **Father**: 65.00%

<table>
<thead>
<tr>
<th>Schedules</th>
<th>Attached</th>
<th>Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Gross Income</td>
<td>✗</td>
<td>=</td>
</tr>
<tr>
<td>B Adjusted Income</td>
<td>=</td>
<td>=</td>
</tr>
<tr>
<td>C Schedule C is not in use and is intentionally left blank</td>
<td>=</td>
<td>=</td>
</tr>
<tr>
<td>D Additional Expenses</td>
<td>=</td>
<td>=</td>
</tr>
<tr>
<td>E Deviations from Presumptive Amount</td>
<td>=</td>
<td>=</td>
</tr>
</tbody>
</table>

[Print Instructions for the Child Support Worksheet and Schedules]

---

**Names of Parties:** Brenda Jones vs. John Jones

**Submitted by:** Plaintiff  
**Today’s date:** 08/05/2019

**Case #**

---

**Version 6.5**
<table>
<thead>
<tr>
<th>Schedule A - Gross Income</th>
<th>(a) Mother</th>
<th>(b) Father</th>
<th>(c) Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a parent receives TANF, click in box. Check mark will appear: click again to remove check mark; otherwise leave blank. Do not include monthly TANF check amount as income.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use Schedule A to enter Gross Income of each parent. Enter amount/date in yellow fields only. Calculations will automatically display in the appropriate white fields.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Convert all amounts to a monthly average:

1. Salary and Wages (Do not include means-tested public assistance, such as TANF or food stamps) $4,000.00 $7,500.00
2. Commissions, Fees, Tips $ - $ -
3. Income From Self-Employment
4. Bonuses $ - $ -
5. Overtime Payments $ - $ -
6. Severance Pay $ - $ -
7. Recurring Income from Pensions or Retirement Plans $ - $ -
8. Interest Income $ - $ -
9. Income from Dividends $ - $ -
10. Trust Income $ - $ -
11. Income from Annuities $ - $ -
12. Capital Gains $ - $ -
13. Social Security Disability or Retirement Benefits received as income by a parent in this case. (Excludes SS or payments for children) $ - $ -
14. Federal Veterans' Disability Benefits $ - $ -
15. Worker's Compensation Benefits $ - $ -
16. Unemployment Benefits $ - $ -
17. Judgments from Personal Injury or Other Civil Cases $ - $ -
18. Gifts (cash or other gifts that can be converted to cash) $ - $ -
19. Prizes / Lottery Winnings $ - $ -
20. Alimony & maintenance from persons not in this case $ - $ -
21. Assets which are used for support of family $ - $ -
22. Fringe Benefits (if significantly reduce living expenses) $ - $ -
23. Any Other Income, including Imputed Income (Do not include means-tested public assistance) $ - $ -

**TOTAL GROSS MONTHLY INCOME**
24. Total will automatically display here, on Line 1 of Worksheet, and Line 1 of Schedule B. $4,000.00 $7,500.00 $11,500.00

Enter below explanations for the basis of Other Income, explain the basis for Other Income, including Imputed Income, as entered on Line 23 above for Mother and/or Father.

Mother

Father

Names of Parties: Brenda Jones vs. John Jones

Submitted by: Plaintiff

Today's date: 06/05/2019

Case #: Version 9.5
## Self-Employment Calculator

The Self-Employment Calculator is designed to help calculate the income from self-employment. It takes into account various income sources and expenses to determine the net income. The formula used is: 

\[
\text{Net Income} = \text{Business Income} - \text{Total Business Expenses}
\]

### Guidance
To calculate the net income from self-employment, follow these steps:

1. **Describe the Business**
   - Describe the business and its type (e.g., sole proprietorship, partnership, corporation, etc.).

2. **Gross Receipts**
   - For each type of business, enter the gross receipts for the period.

3. **Cost of Sales**
   - Subtract the cost of sales from the gross receipts to determine the gross profit.

4. **Business Income (per month)**
   - Enter the monthly business income.

5. **Business Expenses**
   - List and add all business expenses.

6. **Total Business Expenses**
   - Subtract the total business expenses from the business income to find the net income.

7. **Net Income**
   - The final result is the net income from self-employment.

### Example

**Mother**

- **Description of Business**

- **Gross Receipts (A)**: $0.00
- **Cost of Sales (B)**: $0.00
- **Gross Profit (A-B=C)**: $0.00

**Father**

- **Description of Business**

- **Gross Receipts (A)**: $0.00
- **Cost of Sales (B)**: $0.00
- **Gross Profit (A-B=C)**: $0.00

### Summary

- **Total Business Expenses**
- **Net Income**

---

**Names of Parties:** Brenda Jones vs. John Jones  
**Submitted by:** Plaintiff  
**Today’s Date:** 31/05/2019  
**Case #:**
**CHILD SUPPORT SCHEDULE B**
**ADJUSTED INCOME**

| Schedule B-Adjusted Income - Enter amounts/data in yellow fields only. Calculations will automatically display in the appropriate white fields. |
|---|---|
| (a) Mother | (b) Father |
| 1. Total Gross Monthly Income from Schedule A, Line 24 | $4,000.00 | $7,500.00 |

### Self Employment Tax Adjustment

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>(a)</th>
<th>(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Enter monthly Self-Employment Income on which parent paid Self-Employment Taxes for FICA &amp; Medicare</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>3.</td>
<td>FICA (Line 2 multiplied by .062)</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>4.</td>
<td>Medicare tax (Line 2 multiplied by 0.0145)</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>5.</td>
<td>Total of Lines 3 &amp; 4</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>6.</td>
<td>Line 5 subtracted from Line 1</td>
<td>$4,000.00</td>
<td>$7,500.00</td>
</tr>
</tbody>
</table>

### Adjustment for Preexisting Child Support Orders Being Paid for Other Children

Enter the required information and the amount actually paid monthly. (Do not include arrears payments.)

<table>
<thead>
<tr>
<th>Court Name</th>
<th>Court Case #</th>
<th>Child Name</th>
<th>Birth Year</th>
<th>Date of Initial Order</th>
<th>Preexisting Child Support Amount Paid by Mother</th>
<th>Preexisting Child Support Amount Paid by Father</th>
</tr>
</thead>
<tbody>
<tr>
<td>7(a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7(b)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7(c)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7(d)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8. Total Adjustment for Preexisting Child Support Orders for each parent $ - $ -

Line 8 is subtracted from Line 6. If a discretionary adjustment is being claimed for other qualified children living in the home, continue at Line 10; otherwise, the answer on Line 9 will automatically display on Line 2 of the **Child Support Worksheet**.

9. $4,000.00 $7,500.00
CHILD SUPPORT SCHEDULE B
ADJUSTED INCOME

Discretionary Adjustment to Income for Other Qualified Children Living in Parent’s Home

The Court has the discretion to consider an Adjustment to Income for qualified children under this section for the purpose of reducing a parent’s gross income, if failure to consider an adjustment would cause substantial hardship to the parent.

If the Court considers an Adjustment to Income under this section, then the Court must also consider whether this Adjustment to Income is in the best interest of the child(en) in this action.

Adjustment may be considered only for children who meet ALL FIVE of the following requirements:
A. The parent is legally responsible for the qualified child (Stepchildren do not qualify);
B. The qualified child lives in the parent’s home;
C. The parent is actually supporting the qualified child;
D. The qualified child is not subject to a preexisting child support order; and
E. The qualified child is not currently before the court to set, modify or enforce child support.

Adjustment for other QUALIFIED children pursuant to the five factors listed above

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>Birth Year</th>
<th>Enter Checkmark if Mother is Claiming Credit</th>
<th>Enter Checkmark if Father is Claiming Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>10(a)</td>
<td></td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Click the checkbox until a check mark appears to include QUALIFIED children for whom adjustment is claimed, and automatic calculation will display.

Enter a comment here explaining why you have included an Other Qualified Child in the Current Court Case.

Mother

Father

11. Amount from Line 6 for the parent(s) seeking adjustment and a Theoretical child support order.
   (a) Mother $ -  (b) Father $ -

12. Basic Child Support Obligation (from table) automatically displays for number of children on Line 10 and income on Line 11, for parent seeking the adjustment.
   (a) Mother $ -  (b) Father $ -

13. 75% of the amount on Line 12 for the parent seeking the adjustment.
    (a) Mother $ -  (b) Father $ -

14. If this adjustment is allowed, Line 13 will be subtracted from Line 9 and this amount will automatically display on Line 2 of the Worksheet.
    (a) Mother $ -  (b) Father $ -

Names of Parties: Brenda Jones vs. John Jones

Submitted by: Plaintiff

Today's date: 08/05/2019

Case #: 

Version 9.5

GEORGIA
### Child Support Schedule D

**ADDITIONAL EXPENSES**

<table>
<thead>
<tr>
<th>Schedule D-Additional Expenses</th>
<th>(a) Mother</th>
<th>(b)Father</th>
<th>(c) Nonparent Custodian</th>
<th>(d) Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Child Care Expenses necessary for parent's employment, education or vocational training. Monthly average amount paid by each Parent (or Nonparent Custodian) for child care for the children for whom support is being determined from all Supplemental Tables from Lines 7, 13 and 19.</td>
<td>$133.33</td>
<td>$ -</td>
<td>$ -</td>
<td>$133.33</td>
</tr>
<tr>
<td>2. Health Insurance Premiums Paid for the Children</td>
<td>$240.00</td>
<td>$ -</td>
<td>$ -</td>
<td>$240.00</td>
</tr>
<tr>
<td>Enter monthly amount paid or will be paid by each parent or Nonparent Custodian for health insurance. (If portion is unknown, prorate for children by dividing total premium by number of persons covered then multiply by number of covered children in this action.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Total Monthly Additional Expenses (Line 1 plus Line 2)</td>
<td>$373.33</td>
<td>$ -</td>
<td>$ -</td>
<td>$373.33</td>
</tr>
<tr>
<td>4. Pro Rata Share of Parents' Income (from Child Support Worksheet Line 3)</td>
<td>34.78%</td>
<td>65.22%</td>
<td></td>
<td>100.00%</td>
</tr>
<tr>
<td>5. Pro Rata Share of Additional Expenses. Amount in Column (d) of Line 3 is multiplied by percentages on Line 4. Results automatically display on Line 6 of Worksheet.</td>
<td>$129.85</td>
<td>$243.49</td>
<td></td>
<td>$373.33</td>
</tr>
</tbody>
</table>

### Supplemental Table 1

Use this table to calculate amounts for Line 1 Schedule D, children 1, 2 and 3.

For additional children use Supplemental Table 2, 3, and/or 4.

<table>
<thead>
<tr>
<th>Child Care Paid by Mother</th>
<th>Child 1</th>
<th>Child 2</th>
<th>Child 3</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louise</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Harry</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Total yearly amount during school year</td>
<td>$900.00</td>
<td>$ -</td>
<td>$ -</td>
<td>$900.00</td>
</tr>
<tr>
<td>3. Total yearly amount during summer break</td>
<td>$700.00</td>
<td>$ -</td>
<td>$ -</td>
<td>$700.00</td>
</tr>
<tr>
<td>4. Total yearly amount during school breaks</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>5. Total yearly amount of other child care (e.g. pre-school or child with disability)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>6. Total Yearly Amounts</td>
<td>$1,600.00</td>
<td>$ -</td>
<td>$ -</td>
<td>$1,600.00</td>
</tr>
<tr>
<td>7. Monthly Average (Divide Line 6 by 12 months)</td>
<td>$133.33</td>
<td>$ -</td>
<td>$ -</td>
<td>$133.33</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Child Care Paid by Father</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louise</td>
<td></td>
</tr>
<tr>
<td>Harry</td>
<td></td>
</tr>
<tr>
<td>8. Total yearly amount during school</td>
<td>$ -</td>
</tr>
<tr>
<td>9. Total yearly amount during summer break</td>
<td>$ -</td>
</tr>
<tr>
<td>10. Total yearly amount during other school breaks</td>
<td>$ -</td>
</tr>
<tr>
<td>11. Total yearly amount of other child care (e.g. pre-school or child with disability)</td>
<td>$ -</td>
</tr>
<tr>
<td>12. Total Yearly Amounts</td>
<td>$ -</td>
</tr>
<tr>
<td>13. Monthly Average (Divide Line 12 by 12 months)</td>
<td>$ -</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Child Care Paid by Nonparent Custodian</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louise</td>
<td></td>
</tr>
<tr>
<td>Harry</td>
<td></td>
</tr>
<tr>
<td>14. Total yearly amount during school</td>
<td>$ -</td>
</tr>
<tr>
<td>15. Total yearly amount summer break</td>
<td>$ -</td>
</tr>
<tr>
<td>16. Total yearly amount other school breaks</td>
<td>$ -</td>
</tr>
<tr>
<td>17. Total yearly amount of other child care (e.g. pre-school or child with disability)</td>
<td>$ -</td>
</tr>
<tr>
<td>18. Total Yearly Amounts</td>
<td>$ -</td>
</tr>
<tr>
<td>19. Monthly Average (Divide Line 18 by 12 months)</td>
<td>$ -</td>
</tr>
</tbody>
</table>

Names of Parties: Brenda Jones vs. John Jones

Submitted by: Plaintiff

Today's date: 08/05/2019

Case #

Version 9.5
## CHILD SUPPORT SCHEDULE E
### Deviation (Special Circumstances)

### Schedule E - Deviations and Special Circumstances

A. For each section completed, provide monthly amounts (annual amounts in certain areas) or other information as required. Enter amounts/data in yellow fields only. Calculations will automatically display in the appropriate white fields.

### Low Income Deviation

The Court or Jury has discretion to allow or not allow the noncustodial parent to receive a Low Income Deviation that will reduce the Presumptive Amount of Child Support. If Low Income Deviation does not apply in this case, skip this section and begin at Line 2a) of this Schedule.

#### Weighing Considerations Based Upon Sufficient Evidence:

When considering a Low Income Deviation, please read the statute at O.C.G.A. §19-6-15(4)(2)(B) or review the User Guide for the appropriate criteria for this deviation.

In weighing the income sources and expenses of both parents, and taking into account each parent’s basic child support obligation as adjusted by health insurance and work related child care costs –

> Can the noncustodial parent provide evidence sufficient to demonstrate no earning capacity? Or, does his/her pro rata share of the presumptive amount of child support create an extreme economic hardship for such parent?

> What will be the relative hardship that a reduction in the amount of child support would have on the custodial parent’s household? The needs of each parent? The needs of the child/ren for whom child support is being determined? The ability of the noncustodial parent to pay child support?

#### Note:

Low Income Deviation is entered as a positive number but treated as a subtraction when included with all other deviations. By use of this deviation, court or jury is not prohibited from granting an increase or decrease to the presumptive amount of child support by use of another deviation.

<table>
<thead>
<tr>
<th>To request Low Income Deviation, click on box at left, check mark will display White fields in Line 1a for Noncustodial Parent will become yellow in color and allow data entry. Uncheck box to remove request: Continue to Line 1a.</th>
<th>Court or Jury Allowable Deviations</th>
<th>Only the Court or Jury may enter an amount under column (i) or (ii).</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Mother</td>
<td>(b) Father</td>
<td>(c) Mother</td>
</tr>
<tr>
<td>1a.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enter &quot;Proposed Low Income Deviation amount&quot; as a POSITIVE NUMBER under noncustodial parent's column. Amount will be used unless Line 1b applies.</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>1b.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If amount entered in Line 1a will make final child support obligation less than minimum order amount allowed when Low Income Deviation is granted, new deviation amount will display in Line 1b and used in calculations. If entry in Line 1a results in amount equal to or greater than minimum order allowed, amount in Line 1a will automatically be used in the calculations.</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>DISCRETIONARY CHECK BOX FOR COURT OR JURY ONLY: Use to exclude or change deviation amount that displays in Line 1b. Enter &quot;Discretionary amount allowed by Court/Jury&quot; as a POSITIVE NUMBER under noncustodial parent's column. (See Bubble Box for details.)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Explanation for Requesting a Low Income Deviation:** Write in box below any additional explanation as to why the noncustodial parent should be granted a Low Income Deviation. (Questions at Boxes B, C and D must also be answered for this deviation.)

### High Income and Other Amounts

Enter a positive (+) or negative (-) dollar amount in the appropriate column for the noncustodial parent to increase or decrease the amount of child support. Enter only the amount of the deviation in the noncustodial parent’s column. Only amounts listed in the noncustodial parent’s column will affect the child support calculation.

#### Line 2:

| High Income - Combined Adjusted Income greater than $30,000/month from Child Support Worksheet | $ - |

**Instructions for this section:** Enter requested deviation amounts under the noncustodial parent column as a positive (+) number for an upward deviation or as a negative (-) number for a downward deviation. Do not enter the monthly amount of expenses in Lines 2(b)-10. Enter only amounts you want the court to consider as a requested deviation from the Presumptive Amount of Child Support. The specific and non-specific Deviation section does not represent a financial affidavit.

<table>
<thead>
<tr>
<th>Deviation Based on High Income</th>
<th>(a) Mother</th>
<th>(b) Father</th>
<th>(c) Mother</th>
<th>(d) Father</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
</tbody>
</table>

3. Other Health Managed Insurance (dental, vision)  
4. Life Insurance  
5. Child and Dependent Care Tax Credit  
6. Filial Related Travel Expenses  
7. Alimony PAID  
8. Mortgage (if Noncustodial Parent is providing cost of home where child resides)  
9. Permanent Plan or Foster Care Plan  
10. Other - Non-specific Deviations  
11. Deviation(s) will automatically display on this line. This is the recommended deviation based on the amounts entered above that will total with other deviations on Line 14 of this schedule.  

**FOR COURT OR JURY USE ONLY:** Check this box to override amounts entered in columns (a) and (b) for Mother and Father. Enter Court or Jury amount(s) in columns (c) and (d), which will then total with all other deviations.

---

Child Support Schedule E - CSC Standard Form  
NEW Child_Support_Worksheet_and_Schedules 9 2015v0.5  
Page 1 of 3
## Child Support Schedule E

**Deviation (Special Circumstances)**

### Extraordinary and Special Expenses - Complete Supplemental Tables

Enter amounts/data in yellow fields only. Calculations will automatically display in the appropriate white fields.

<table>
<thead>
<tr>
<th>(a) Mother</th>
<th>(b) Father</th>
<th>(c) Nonparent Custodian</th>
<th>(d) Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>12(a)</strong></td>
<td><strong>Extraordinary Educational Expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Total amounts from Line 9(a) of each Supplemental Table for Mother.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Total amounts from Line 9(b) of each Supplemental Table for Father.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Total amounts from Line 9(c) of each Supplemental Table for Nonparent Custodian.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td><strong>12(b)</strong></td>
<td><strong>Extraordinary Medical Expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Total amounts from Line 14(a) of each Supplemental Table for Mother.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Total amounts from Line 14(b) of each Supplemental Table for Father.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Total amounts from Line 14(c) of each Supplemental Table for Nonparent Custodian.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 50.00</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 50.00</td>
</tr>
<tr>
<td><strong>12(c)</strong></td>
<td><strong>Allowable Special Expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Amount from Line 28 of each Supplemental Table for Mother.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Amount from Line 29 of each Supplemental Table for Father.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;Amount from Line 30 of each Supplemental Table for Nonparent Custodian.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td><strong>12(d)</strong></td>
<td><strong>Total Extraordinary and Allowable Special Expenses. Lines 12(a), 12(b) and 12(c) added.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 50.00</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 50.00</td>
</tr>
<tr>
<td><strong>12(e)</strong></td>
<td><strong>Parent’s Pre-Rata Share of Income from Child Support Worksheet. Line 3.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>34.79%</td>
<td>65.22%</td>
<td>100.00%</td>
<td></td>
</tr>
<tr>
<td><strong>12(f)</strong></td>
<td><strong>Parent’s share of extraordinary/special expenses. Line 12(d) multiplied by percentages for each parent on Line 12(e).</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 17.39</td>
<td>$ 32.61</td>
<td>$ -</td>
<td>$ 50.00</td>
</tr>
<tr>
<td><strong>12(g)</strong></td>
<td><strong>Deviation for extraordinary/special expenses. Line 12(f) minus 12(d).</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ (32.61)</td>
<td>$ 32.61</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Parenting Time Deviation

Complete only if Parenting Time Deviation is being considered for Noncustodial Parent based on court ordered visitation.

13. Enter a monthly amount for the Parenting Time deviation; otherwise, leave the field blank. Amount may be entered as a positive (+) or negative (-) number.

| $ -        | $ -        |

### Total Allowable Deviation

14. **Total Allowable Deviations** on Lines 1(a) or 1(b), 11, 12(g), and 13, if any apply, automatically display here and on Line 10 of the Child Support Worksheet. Line 10.

(The total can be a negative number.)

| $ (32.61)  | $ 32.61    |

**Important Requirement About Deviations - No Deviations are permitted under the law unless all three questions below [B, C, and D] have been answered for each requested deviation.**

**B. Would the presumptive amount be unjust or inappropriate? Explain**

**C. Would deviation serve the best interests of the children for whom support is being determined? Explain**

**D. Would deviation seriously impair the ability of the Custodial Parent or Noncustodial Parent to maintain minimally adequate housing, food and clothing for the children being supported by the order and to provide other basic necessities? Explain**
**CHILD SUPPORT SCHEDULE E**

Deviation (Special Circumstances)

Supplemental Table 1. Use this table to calculate amount for Line 12 Schedule E, children 1, 2 and 3. For additional children use Supplemental Table 2, 3, or 4. Enter amounts/data in yellow fields only. Calculations will automatically display in the appropriate white fields.

<table>
<thead>
<tr>
<th>1.</th>
<th>Children’s Names (Names will automatically display)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Total yearly amount paid for Tuition, Room &amp; Board, Fees and Books</td>
</tr>
<tr>
<td>3.</td>
<td>Total yearly amount paid for Other Extraordinary Educational Expenses</td>
</tr>
<tr>
<td>4.</td>
<td>Total yearly amount paid for Tuition, Room &amp; Board, Fees and Books</td>
</tr>
<tr>
<td>5.</td>
<td>Total yearly amount paid for Other Extraordinary Educational Expenses</td>
</tr>
<tr>
<td>6.</td>
<td>Total yearly amount paid for Tuition, Room &amp; Board, Fees and Books</td>
</tr>
<tr>
<td>7.</td>
<td>Total yearly amount paid for Other Extraordinary Educational Expenses</td>
</tr>
<tr>
<td>8.</td>
<td>Total Yearly Amounts</td>
</tr>
<tr>
<td>9.</td>
<td>Monthly Average (Line 8 divided by 12 months)</td>
</tr>
<tr>
<td>9(a)</td>
<td>Mother’s monthly Extraordinary Educational Expenses</td>
</tr>
<tr>
<td>9(b)</td>
<td>Father’s monthly Extraordinary Educational Expenses</td>
</tr>
<tr>
<td>9(c)</td>
<td>Nonparent’s monthly Extraordinary Educational Expenses</td>
</tr>
<tr>
<td>10.</td>
<td>Total yearly amount paid for extraordinary medical expenses</td>
</tr>
<tr>
<td>11.</td>
<td>Total yearly amount paid for extraordinary medical expenses</td>
</tr>
<tr>
<td>12.</td>
<td>Total yearly amount paid for extraordinary medical expenses</td>
</tr>
<tr>
<td>13.</td>
<td>Total Yearly Amounts</td>
</tr>
<tr>
<td>14.</td>
<td>Monthly Average (Line 13 divided by 12 months)</td>
</tr>
<tr>
<td>14(a).</td>
<td>Mother’s monthly Extraordinary Medical Expenses</td>
</tr>
<tr>
<td>14(b).</td>
<td>Father’s monthly Extraordinary Medical Expenses</td>
</tr>
<tr>
<td>14(c).</td>
<td>Nonparent’s monthly Extraordinary Medical Expenses</td>
</tr>
</tbody>
</table>

**Extraordinary Educational Expenses**

<table>
<thead>
<tr>
<th>Paid by</th>
<th>Child 1</th>
<th>Child 2</th>
<th>Child 3</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>Father</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>Nonparent Custodian</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
</tbody>
</table>

**Extraordinary Medical Expenses**

<table>
<thead>
<tr>
<th>Paid by</th>
<th>Child 1</th>
<th>Child 2</th>
<th>Child 3</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother</td>
<td>$ -</td>
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</tr>
<tr>
<td>Father</td>
<td>$ -</td>
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</tr>
<tr>
<td>Nonparent Custodian</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
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</tr>
</tbody>
</table>

**Special Expenses for Child Rearing** (including, but not limited to summer camp, music or art lessons, band, clubs, athletics, etc.). Write brief description of expenses in yellow fields.

| 15. | Total yearly amount paid for: |
| 16. | Total yearly amount paid for: |
| 17. | Total yearly amount paid for: |
| 18. | Total Yearly Amounts (Lines 15, 16 & 17 added) |
| 19. | Monthly Average (Line 18 divided by 12 months) |

**7 Percent Test to Calculate Allowable Expenses**

<table>
<thead>
<tr>
<th>Paid by</th>
<th>Child 1</th>
<th>Child 2</th>
<th>Child 3</th>
<th>Totals</th>
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<td>Mother</td>
<td>$ -</td>
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<tr>
<td>Nonparent Custodian</td>
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</tbody>
</table>

Names of Parties: Brenda Jones vs. John Jones

Submitted by: Plaintiff

Today's date: 08/05/2019

Case #: Version 9.5

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GEORGIA

NEW Child Support Schedule E - CSC Standard Form

NEW_Child_Support_Worksheet_and_Schedules 9 2011v6.5 Page 3 of 3
RECENT DEVELOPMENTS IN DOMESTIC RELATIONS
RECENT DEVELOPMENTS IN DOMESTIC RELATIONS

By:

Jeremy J. Abernathy
Abernathy, Ditzel, Hendrick Bryce, LLC.
Marietta, Georgia

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“Based on_________?”
duress meaning: 1. threats used to force a person to do something. 2. threats used to force a person to do something. 3. threats used to force someone to do something.
Entitlement v. Compulsory

“You can’t make me do anything!”
Smith v. Smith
Hewlett v. Hewlett
Selvage v. Franklin
Grailer v. Jones

Tell me why, Ain't nothin but a mistake...
Brooks v. Lopez
O’Brien v. Lewis
“You said it!”
DOMESTIC RELATIONS LEGISLATIVE UPDATES

O.C.G.A. § 19-6-15/ CHILD SUPPORT

The child support statute is revised and corrected to define terms and terminology, grammar, and punctuation regarding child support guidelines. Furthermore, alimony is removed as a specific deviation in certain circumstances and certain adoption assistance benefits are excluded from gross income. Last, provisions relating to willful or voluntary unemployment or underemployment are clarified. Amends O.C.G.A. Section 19-6-15.

O.C.G.A. § 19-9-23/ COUNTERCLAIMS

A party may bring a counterclaim for contempt or enforcement of a child custody order or for modification of legal or physical custody in response to a complaint seeking a change of legal or physical custody. Additionally, the statute provides for a cross-motion or counterclaim for contempt or enforcement of a child custody order in response to a motion for contempt or enforcement of a custody order. Amends O.C.G.A. Sections 19-9-22 and 19-9-23.

O.C.G.A. §19-7-3.1/ EQUITABLE CAREGIVERS

This statute provides standing and adjudication for equitable caregivers of children and specifically outlines procedures and a pleading form to submit to the court to establish such equitable caregiver relationship. Enacts O.C.G.A. §19-7-3.1.

O.C.G.A. §30-4-5 / HANDICAPPED PERSONS

This statute provides that legally blind persons shall not be discriminated against by the courts, Department of Human Services, or child-placing agency in matters relating to child custody, guardianship, foster care, visitation, placement, or adoption. Amends O.C.G.A. Section 19-9-3 and enacts O.C.G.A. Section 30-4-5.
O.C.G.A. §§19-3-2 AND 19-3-30.1/ MINIMUM AGE TO MARRY

The minimum age of marriage for a child is changed from 16 to 17 years of age and requires any person who is 17 years of age to have been emancipated. Also, emancipated persons are required to present documentary proof of emancipation and to complete premarital education along with other conditions. Additionally, the law provides requirements and restrictions for filing a petition for emancipation for petitioners who desire to enter into a marriage.

Amends O.C.G.A. Sections 19-3-2, 19-3-30.1, 19-3-36, 19-3-43, 15-11-721, 15-11-723, and 15-11-725; repeals O.C.G.A. Section 19-3-37; enacts O.C.G.A. Section 19-3-41.1.

O.C.G.A. §19-7-5(E) AND (F)/ PROTECTING MILITARY CHILDREN ACT

This statute, the "Protecting Military Children Act," requires child welfare agencies to make efforts to determine whether a parent or guardian of a child who is the subject of abuse allegations is on active military duty and requires certain notifications to military installation family advocacy programs. Last, it provides for the reporting of child abuse to military law enforcement in certain situations and for immunity for such reporting. Amends O.C.G.A. Section 19-7-5.

DOMESTIC RELATIONS CASE LAW UPDATES:

ADOPTION/ TERMINATION OF PARENTAL RIGHTS


Woodall and his ex-wife (mother) divorced in 2013. The ex-wife (mother) married Johnson and Johnson petitioned to adopt his step-children. The testimony during trial was that the mother denied Woodall’s attempts to contact the minor children and that Woodall made child support payments on his arrearage. The trial court terminated Woodall’s parental rights and granted Johnson’s step-parent adoption.
The Court of Appeals reversed the trial court’s decision to terminate Woodall’s parenting rights based upon insufficient evidence of Woodall’s abandonment of parental duties.

ATTORNEY FEES


Brown (mother) filed a complaint to modify custody, child support and a request for attorney fees. Jackson (father) counterclaimed to modify visitation and also requested attorney fees. The trial court issued an order regarding custody and child support, but not attorney fees. Later, after a case disposition form was filed, Brown (mother) submitted a brief seeking fees which the trial court granted. Jackson (father) appealed.

The Court of Appeals vacated the judgement and remanded the case stating there was no statutory basis for the awarding of fees. (The Court of Appeals did not state that the brief, submitted after the case disposition form was filed, was untimely.)

ATTORNEY FEES

*Rowles v. Rowles, Case Nos. A19A0467; A19A0719, Court of Appeals of Georgia, June 28,2019*

The parties divorce (for the second time) and thereafter, the Husband filed a contempt action alleging that the Wife failed to follow the visitation provisions of their settlement agreement. The Husband filed a motion to set aside the divorce decree, contending that he signed the settlement agreement under duress. The basis of the Husband’s duress claim was that the Wife threatened to expose his extra-marital affair if he did not sign the settlement agreement.

The trial court granted the Husband’s motion to set aside in part (custody and visitation provisions), but denied the motion pertaining to financial division. The trial court granted the Husband sole legal and physical custody of the parties’ minor children and gave the Wife supervised visitation. Last, the trial court awarded the husband $112,189.10 in attorney fees.
The Court of Appeals affirmed that the husband’s motion to set aside, filed within three (3) years per O.C.G.A. §9-11-60, was timely filed. But, the Court of Appeals reversed the trial court’s granting of the motion to set aside because duress must be based upon the other party’s wrongful or unlawful acts. The Court of Appeals reasoned that the Husband’s own acts (the affair) placed him in the unfavorable bargaining position, and therefore could not be a basis for duress.

The attorney fees awarded per O.C.G.A. §19-6-2 was affirmed because the Court based the award on the parties’ financial positions. The attorney fees awarded per O.C.G.A. § 9-15-14(b) was vacated and remanded for further findings. While the Court, stated that the Mother alienated the children, refused to allow visitation, and made unfounded allegations of child abuse, the trial court did not make findings as to how the fees awarded were limited to such conduct.

CONTEMPT


The mother and father signed a settlement agreement that included visitation times for the father with his minor children. The mother filed a contempt alleging that father violated the visitation provisions of the settlement agreement by missing visitation times. The trial court held the father in contempt and the father appealed.

The Court of Appeals reversed in part, stating that the settlement agreement entitles, as opposed to compels, the father’s visitation with children.

FAMILY VIOLENCE PROTECTIVE ORDER


In accordance with O.C.G.A. § 19-13-3(c), the hearing on a petition for a family violence protective order must be held within 30 days after the petition is filed.
The parties may agree to an extension beyond thirty (30) days, but absent an agreement, the petition shall be dismissed if the hearing does not occur within thirty (30) days. (This rule applies even if bad weather causes a court date to be cancelled.)

GRANDPARENT VISITATION

_Elmore v. Clay, et al., Case No. A18A1524, Court of Appeals of Georgia, February 13, 2019._

Elmore filed a petition to adopt her step-daughter and terminate her step-daughter’s mother’s parental rights. The minor child’s grandparents intervened seeking visitation rights to the minor child. The trial court granted Elmore’s petition to adopt the minor child, terminated the mother’s parental rights and awarded grandparent visitation. Elmore appealed the granting of grandparent visitation.

According to O.C.G.A. § 19-7-3(c), grandparent visitation can be granted if the trial court finds by clear and convincing evidence that the health and welfare of the child would be harmed unless such visitation is granted and further, that the best interests of the child would be served by such visitation.

The trial court must consider the following factors: whether the child lived with the grandparents for six months or more; whether the grandparents provided financial support for the child for at least one year; whether there was an established visitation or child care pattern; and any other relevant circumstances. After considering these factors, the trial court is authorized, but not required, to find that harm to the child is reasonably likely if it denies the grandparent visitation. See, _Patten v. Ardis, 304 Ga. 140 (2018)._ The Court of Appeals stated that the trial court record was unclear regarding the basis for the trial court’s awarding of visitation. It was unclear whether the trial court awarded visitation based on harm or based on the foregoing statutory factors.
Consequently, the Court of Appeals vacated the trial court’s order, and remanded the case with instructions to the trial court to properly exercise its discretion.

GRANDPARENT VISITATION

_Hewlett v. Hewlett, Case No. A18A1821, Court of Appeals of Georgia, March 7, 2019._

The mother and maternal grandfather agreed that the minor child would be in the care of maternal grandfather. The maternal grandfather had temporary guardianship of the minor child for seven years, and then petitioned to adopt the minor child. The testimony at trial was that the mother was diagnosed with schizoaffective disorder, used drugs, entered into a diversion court, was homeless and incarcerated at particular times.

The mother completed the diversion court program, has been substance free and received mediation and counseling. The evidence presented was that the mother receives disability income, is bonded with the minor child and has maintained stable housing. Last, the evidence was that the mother regularly visited with the minor child on the weekends. The trial court terminated the mother’s parental rights and granted the grandparents’ adoption petition.

The Court of appeals reversed the trial court’s decision stating that the clear and convincing burden was not met in showing that the mother had failed to exercise parental care or control due to misconduct and inability, as set forth in the former O.C.G.A. §15-11-310(a).

LEGITIMATION/ PARENTING PLAN

_Selvage v. Franklin, Case No. A19A0730, Court of Appeals of Georgia, June 4, 2019._

Selvage (father) and Franklin (mother) had a child out of wedlock in 2008 and in 2009 Selvage plead guilty to domestic violence acts against Franklin in the child’s presence. A condition of Selvage’s probation was to have no contact with the mother and the minor child. In 2013, Selvage legitimated the minor child, but the trial court denied Selvage’s contact with the minor
child. In 2015, the mother allowed Selvage to visit the minor child but stopped the visits after they had a disagreement. In 2017, Selvage filed a modification petition seeking joint physical and legal custody, visitation and to establish child support. The mother opposed the petition. The trial court denied Selvage’s petition for modification in its entirety. Selvage requested findings of fact and conclusions of law prior to the trial.

The Court of Appeals remanded the case for the trial court to provide an order with more complete findings and conclusions in accordance with O.C.G.A. §§19-9-3(a)(8) and 9-11-52(a), in light of the gravity of the court’s decision “to deny all contact with the child.”

Additionally, the Court of Appeals remanded the case for the trial court to consider O.C.G.A. §19-9-7, which allows for visitation in cases involving domestic violence if the trial court finds that adequate provisions can be made for the safety of the child and mother.

The case was also remanded because the trial court did not address details of the parenting plan as required by O.C.G.A. §19-9-1.

Last, the Court of Appeals remanded the case to consider whether pursuant to O.C.G.A. §19-6-5, there was a substantial change in the financial status of the parties, or in the needs of the child, warranting a modification of child support, a right of the child.

MODIFICATION OF CHILD SUPPORT

*Grailer v. Jones, Case No. A18A2101, Court of Appeals of Georgia, March 6, 2019.*

The parties divorced in 2010 and agreed to share joint legal and physical custody of their minor children. Soon thereafter, the father filed a modification action, but ultimately the court dismissed the modification and granted the counterclaim. Grailer appealed.

The Court of Appeals reversed the trial court’s award of child support in the counterclaim because the trial court did not include a basis for the modification per O.C.G.A. § 19-6-15(k).
LEGITIMATION


The parties were in a same sex relationship for three years and Burnett took medical steps to bear a child and birthed twin girls in 2014. Hill was active and present during the pregnancy and birth of the minor children. Burnett and the children moved out of the parties’ shared residence in 2016, two years after the children’s birth. Hill filed a petition to legitimate and establish parental rights on the theory of implied rights, promissory estoppel and constitutional rights. Hill’s actions were dismissed by the trial court for lack of standing and Burnett was awarded attorney fees in the amount of $25,475.87 according to O.C.G.A. § 9-15-14(a). Hill appealed.

The Court of Appeals reversed the portion of attorney fees related to Hill’s request for custody and parenting time but affirmed the attorney fees related to the legitimation action, but affirmed attorney fees related to Hill’s action for legitimation because only a biological father may file a legitimation action in Georgia.

MODIFICATION OF CUSTODY

*Burnham v. Burnham, Case No. A19A0675, Court of Appeals of Georgia, June 4, 2019.*

The parties divorced in 2016 and agreed to share joint legal custody with the mother having primary physical custody. The parties further agreed to live within 120 miles of the marital residence. In 2017, the father filed a modification and based upon the mother moving to another county, but still within 120 miles of the marital residence. The mother filed a counterclaim to modify the father’s visitation. The trial court granted father’s petition to modify custody and awarded him primary physical custody. The mother appealed.
The Court of Appeals vacated and remanded for further factual findings because the trial court failed to first find that there is a material change in the circumstances before addressing what prospective custodial arrangement is in the children’s best interests.

**RES JUDICATA/ LEGITIMATION**

*Brooks v. Lopez, Case No. A19A0324, Court of Appeals of Georgia, June 11, 2019.*

The parties had a child born out of wedlock in 2008. The father signed the birth certificate and the child received the father’s last name. The parties eventually married, but divorced in 2011 and agreed to joint legal and physical custody of the minor child with the mother receiving primary physical custody. Later, the Lopez (mother) filed a modification of custody and contended that Brooks (father) was not the biological father. The court granted the mother’s motion for genetic testing and the father appealed, requesting a certificate of immediate review.

The Court of Appeals stated that the trial court erred by granting the motion for genetic testing because the issue of paternity was adjudicated in the divorce. Fraud nor mistake was plead during the divorce, so, Lopez (mother) is estopped from raising the issue again.

**VENUE/ MODIFICATION OF CUSTODY/ ADMISSIONS**

*O’Brien v. Lewis, Case No. A19A0502, Court of Appeals of Georgia, June 19, 2019.*

The parties shared joint legal custody and the mother (Lewis) was granted primary physical custody. The mother filed a petition to modify visitation and child support in DeKalb County, where the father (O’Brien) resided. The father then filed to modify custody and child support in Forsyth County. The mother dismissed her action in DeKalb county and the parties agreed to consolidate their case in Forsyth county. O’Brien moved to dismiss Lewis’ answer contending that O.C.G.A. §19-9-23 required Lewis to file her action in DeKalb county.
The Court of Appeals affirmed that Forsyth County was the appropriate venue because the parties consented to consolidate all litigation in Forsyth County.

**UCCJEA**


After the parties’ Florida divorce in 2006, Wertz (mother) was awarded primary physical custody of the parties’ children. Years later, the children lived with Marshall (father) in Georgia. Wertz remarried and she and her husband, a service member lived briefly in Colorado. In 2017, Marshall filed a modification of custody and admitted that Walker County Superior Court had jurisdiction. Six months thereafter, Wertz filed a dismissal per Georgia Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), contending that Florida still had jurisdiction. The motion to dismiss was denied.

The Court of Appeals affirmed the trial court based upon O.C.G.A. §24-8-821 stating that statements made in pleadings are admissions and Wertz’s admission that she no longer resided in Florida “conclusively divested” the Florida courts of jurisdiction.
PREPARING FOR THE MEDIATION AND PRESENTING THE MEDIATION
OK, Folks.
What's the problem here?

Judge Bryant Culpepper
Senior Judge, Macon Judicial Circuit
Urgent Legal Matters
Jekyll Island
August 31, 2019
THE CONSTITUTION OF THE STATE OF GEORGIA

SECTION IX.

GENERAL PROVISIONS

Paragraph I. Administration of the judicial system; uniform court rules; advice and consent of councils. The judicial system shall be administered as provided in this Paragraph. Not more than 24 months after the effective date hereof, and from time to time thereafter by amendment, the Supreme Court shall, with the advice and consent of the council of the affected class or classes of trial courts, by order adopt and publish uniform court rules and record-keeping rules which shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions. Each council shall be comprised of all of the judges of the courts of that class.

Paragraph II. Disposition of cases. The Supreme Court and the Court of Appeals shall dispose of every case at the term for which it is entered on the court's docket for hearing or at the next term.
The following considerations are directed to a lawyer who is about to take a case to a mediation. I’m assuming that an experienced and neutral mediator has been previously selected and that you, the lawyer, are ready to proceed to the mediation.

What do you do first?

Please consider the following.

Ask yourself what’s the Best Alternative To A Negotiated Settlement (BATNA)? And what’s the Worst Alternative To A Negotiated Settlement (WATNA)?

Have you told your client that they most likely will come out somewhere in the middle?

What can happen if you don’t get this case settled? Wasted time, expense, delay, more discovery, court costs, frustrated clients, phone calls, and other bad stuff.

The outcome at trial is ALWAYS unpredictable. Jurors who decide your case don’t want to be there and often decide on factors other than the facts and the law. Clients who insist on their “Day in Court” usually don’t know what they’re talking about.

The following comments regarding these steps are submitted to you as a lawyer for your consideration as you
prepare for your next mediation. This is a short and condensed list and are my thoughts learned from being a mediator in Macon and Middle Georgia for the past dozen years or so.

I have observed that many attorneys wait until the very last minute before a mediation to get ready for the event. Preparation is the key to success and a lawyer entrusted with a case going to mediation should be ready well in advance of the event.

A mediator needs to know as much as possible about your case and your contentions a few days BEFORE the mediation takes place. Advising the mediator of relevant information helps the mediator focus in advance on the circumstances giving rise to the dispute and the law pertaining to the issues involved.

Take advantage of the opportunity to educate your mediator about your client and your conclusions about how this matter may be resolved. Do it early enough so that your mediator can prepare.

The comments are basic common sense. Hopefully, they will help you to be successful.

Good luck seems to come more often to the prepared.
1 TO 2 WEEKS AHEAD

1. Be sure all stakeholders are available and are coming to the table. (The parties, lawyers, adjusters, etc.) Having the persons with the authority to settle is an absolute requirement.

2. Prepare a brief written memo to the mediator for his/her eyes only and send it to him/her at least a week ahead of the mediation. The memo should contain the following:
   1. A statement of the claim.
   2. The demands of the plaintiff and the responses of the defendants.
   3. Any liability issues and the law relating to each issue.
   4. Damages and defenses.
   5. Disputed facts.
   6. Facts agreed upon.
   7. Matters occurring after the cause of action arises. (Surgeries, bankruptcies, coverage issues, [you name it], etc.
   8. Matters particular to a party. (Unusual anger, hurt, embarrassment, mental problems, grief, health issues [you name it], etc.
   9. A simplified explanation, as far as possible, of any financial or accounting issues which may arise at the mediation.
  10. Issues affecting a settlement other than money. (Hurt feelings, business relationships
to be preserved, exchange or return of property, [you name it], etc.
11. Any coverage limit issues.
12. Previous release of other parties and the terms thereof.
13. Previously exchanged offers of settlement or demands made.
15. Any other relevant fact you feel the mediator needs to know about prior to the mediation.

3. Prepare your client for Mediation

Describe to him/her (until your client understands) how mediation works. Especially:
1. Confidentiality of negotiations.
2. Ability to control the outcome
3. No requirement that an agreement has to be reached.
4. No record being made
5. Mediator may not reveal anything told to him/her after the session is over.

Counsel your client on his/her demeanor.
1. Get the angry client to be calm.
2. Get the shy client to speak up.
3. Matters of dress, perfumes, smoking, profanity, etc.
4. Civility toward all.
5. If the client is going to give an opening statement, be sure to rehearse it beforehand.
1 WEEK TO THE DAY BEFORE THE MEDIATION

Contact the mediator’s office to be sure all is ready. Answer any questions he/she may have. Update the mediator on any resolution attempts, any expansion or narrowing of the issues, or any other relevant information, if any.

Consider what to bring with you to the mediation such as pictures, financial documents, computer, etc.

ANTICIPATE A SETTLEMENT. It’s a good idea to prepare a proposed settlement document ahead of time that can be filled in or modified at the end of the session to conform to the settlement.

MEDIATION DAY

1. Show up on time or earlier. Check the traffic on I-75 and give yourself enough time.
2. Get comfortable in the mediation office. Scout out the bathrooms, coffee, telephone, internet, water, etc.

It’s a good idea to meet with opposing counsel and the mediator before the first session starts to confirm whether the initial joint session will take place or whether the mediator will start with the first caucus session. Other “housekeeping” matters may be discussed as well.
THE PRESENTATION

While there are some exceptions, you can generally accept that the same skills and techniques that you use in advocating a client’s position in the courtroom will likely serve you well in an arbitration. The approach in a mediation is different from the courtroom. In a mediation you’re not trying to convince a jury or a judge. You’re trying to convince the other side.

Your job as well as the opposing counsel and the mediator is to convince the other parties and reach a compromise settlement of all of the issues in the case. All that remains is to prepare an appropriate document memorializing the agreement.

If there is no settlement, then the parties return to their previous positions and proceed with the litigation. The mediation is then treated as a settlement negation and is confidential.

The following attitudes will serve you well as you proceed with the mediation:
1. Patience.
2. Open mindedness.
3. Avoid a “Take it or Leave it” attitude.
4. Pay attention to issues not involving money.
   Sometimes, an apology goes a long way.
5. Be conciliatory towards and show respect for the other side.
Other considerations:
1. Don’t “ambush” the other side with previously undisclosed relevant matters.
2. Negotiate in good faith.
3. Don’t negotiate backwards.
4. Consider partial settlements with multiple defendants.
5. Watch out for hospital and Medicare lien issues.
6. Consider the various strengths and weaknesses of all the parties (venue, insurance company defendant, contributory negligence, preexisting conditions, impeachment evidence, drug and alcohol involvement)
7. Be sure your exhibits work properly.
8. Know your client’s background. (Criminal matters, previous litigation or claims, etc.)
10. Listening is to mediation as location is to real estate.
11. This is not a trial—Calm down!
13. Be imaginative. You can do things in a mediation that you can’t get a court to do.

CONGRATULATIONS!
YOU SETTLED YOUR CASE

Prepare the settlement documents. Nobody leaves the table until everyone signs the paper. Never.
Pay the mediator!

CONCLUDING REMARKS

Every lawsuit cannot be tried to a jury and shouldn’t be. Cases have long been settled by lawyers without a jury by negotiation and they will continue to do so. Using a “neutral” in a mediation is the reasonable manner of settling a case that can’t be resolved by the parties and counsel alone and is destined for litigation. ADR is now an integral part of the litigation process. It will continue to be. A lawyer needs to know how mediation works and be ready to use it at every opportunity.

Acknowledgement

The presenter appreciates the assistance of Judge Lamar Sizemore of Macon for his advice in the preparation of this presentation. Judge Sizemore is as good a mediator one can get.
ALTERNATIVE DISPUTE RESOLUTION RULES

The Georgia Constitution of 1983 mandates that the judicial branch of government provide "speedy, efficient, and inexpensive resolution of disputes and prosecutions." As part of a continuing effort to carry out this constitutional mandate the Supreme Court of Georgia established a Commission on Alternative Dispute Resolution under the joint leadership of the Chief Justice of the Georgia Supreme Court and the President of the State Bar of Georgia on September 26, 1990.

The Supreme Court charged the Commission to explore the feasibility of using court-annexed or court-referred alternative dispute resolution (ADR) processes to complement existing dispute resolution methods. The order creating the Commission directed that the Commission gather information, implement experimental pilot programs, and prepare recommendations for a statewide, comprehensive ADR system.

This court has now received the recommendations of the Commission and promulgates the following rules to establish a statewide plan for the use of alternative dispute mechanisms by the courts of Georgia.

I. DEFINITIONS.

The term Alternative Dispute Resolution (ADR) refers to any method other than litigation for resolution of disputes. A definition of some common ADR terms follows.

Neutral. The term "neutral" as used in these rules refers to an impartial person who facilitates discussions and dispute resolution between disputants in mediation, case evaluation or early neutral evaluation, and arbitration, or who presides over a summary jury trial or mini trial. Thus, mediators, case evaluators, and arbitrators are all classified as "neutrals."

Mediation. Mediation is a process in which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties upon their needs and interests rather than upon rights and positions. Although in court programs the parties may be ordered to attend a mediation session, any settlement is entirely voluntary. In the absence of settlement the parties lose none of their rights to a jury trial.

Arbitration. Arbitration differs from mediation in that an arbitrator or panel of arbitrators renders a decision after hearing an abbreviated version of the evidence. In non-binding arbitration, either party may demand a trial within a specified period. The essential difference between mediation and arbitration is that arbitration is a form of adjudication, whereas mediation is not.

Case Evaluation or Early Neutral Evaluation. Case evaluation or early neutral evaluation is a process in which a lawyer with expertise in the subject matter of the litigation acts as a neutral evaluator of the case. Each side presents a summary of its legal theories and evidence. The evaluator assesses the strength of each side’s case and assists the parties in narrowing the legal and factual issues in the case. This conference occurs early in the discovery process and is designed to “streamline” discovery and other pretrial aspects of the case. The early neutral evaluation of the case may also provide a basis for settlement discussions.

Multi-door Courthouse. The multi-door courthouse is a concept rather than a process. It is based on the premise that the justice system should make a wide range of dispute resolution processes available to disputants. In practice, skilled intake workers direct disputants to the most appropriate process or series of processes, considering such factors as the
relationship of the parties, the amount in controversy, anticipated length of trial, number of parties, and type of relief sought. Mediation, arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial, and various combinations of these ADR processes would all be available in the multi-door courthouse.

Summary Jury Trial. The summary jury trial is a non-binding abbreviated trial by mock jurors chosen from the jury pool. A judge or magistrate presides. Principals with authority to settle the case attend. The advisory jury verdict which results is intended to provide the starting point for settlement negotiations.

Mini Trial. The mini trial is similar to the summary jury trial in that it is an abbreviated trial usually presided over by a neutral. Attorneys present their best case to party representatives with authority to settle. Generally, no decision is announced by the neutral. After the hearing, the party representatives begin settlement negotiations, perhaps calling on the neutral for an opinion as to how a court might decide the case.

Settlement Week. During a settlement week there is a moratorium on litigation. Mediation is the ADR process most often used during settlement week. Appropriate cases are selected by the court and submitted to mediation. Lawyers and others who have undergone mediation training often act as volunteer mediators for those cases.

Court Program. The term "court program" encompasses the terms "court-connected," "court-annexed," or "court-referred" when used to refer to a court ADR program.

II. CENTRAL ORGANIZATION.
A. There is hereby created the Georgia Commission on Dispute Resolution.

1. The Georgia Commission on Dispute Resolution will consist of the current Chief Justice of the Georgia Supreme Court or the Chief Justice's designee, a judge of the Georgia Court of Appeals, a designee of the President of the State Bar of Georgia, three superior court judges, and two judges to be drawn from the other four classes of trial courts in Georgia. The remaining members of the Commission will be one member from the Georgia General Assembly, five members of the State Bar of Georgia, a trainer with an approved training program, a director of an approved court program, and two non-lawyer public members. All members of the Commission shall be appointed by the Georgia Supreme Court. The chair of the Commission and a chair-elect of the Commission shall be designated by the Georgia Supreme Court.

2. The Commission is charged with the following duties and responsibilities:

   a. To administer a statewide comprehensive ADR program;
   b. To oversee the development and ensure the quality of all court programs;
   c. To approve court programs;
   d. To develop guidelines for court programs;
   e. To develop criteria for training and qualifications of neutrals;
   f. To establish standards of conduct for neutrals;
   g. To establish and register with the Georgia Secretary of State a nonprofit organization, The Georgia Commission on Dispute Resolution, Inc. This corporation shall qualify at all times as a tax exempt organization under sections 501(a) and 501(c)(3) of the Internal Revenue Code. This corporation shall be governed by a board of directors made up of at least three and no more than five directors appointed by the Georgia Supreme Court in cooperation with the President of the State Bar of Georgia from members of the Georgia Commission on Dispute Resolution. This nonprofit organization shall be established for the sole purpose of

ADR Rules current as of 1.3.19
receiving and disbursing money from private grants and donations as a tax-exempt organization.

3. The first Commission will be appointed to serve terms as follows: the first term for three members will be one year, the first term for three members will be two years, the first term for four members will be three years, the first term for three members will be four years, the first term for three members will be five years. Thereafter, the term for Commission members will be five years. A Commission member shall not succeed himself or herself, except:

-- Commission members originally appointed to a term of two years or less would be eligible for reappointment to one additional five-year term; and
-- A Commission member appointed as Chair of the Commission during his or her term of service may serve the remainder of that original term and may continue to serve all or part of an additional five-year term as Chair. If the Chair’s service concludes prior to the end of his or her original five-year term, the member may serve the remainder of that original term after serving as Chair.

If the status of a Commission member chosen to represent a particular category changes during his or her term, the member may continue to serve out his or her term. All appointments are subject to continuing approval by the Georgia Supreme Court.

4. Members of the Commission shall receive no compensation for their services but shall be entitled to reimbursement for expenses and mileage for travel in connection with Commission business.

5. The Commission has jurisdiction:

a. To receive, investigate, and hear complaints about or arising out of approved court programs;
b. To receive, investigate, and hear complaints about approved training programs or any person responsible for conducting, administering, or promoting such training programs;
c. To receive, investigate, and hear complaints about neutrals registered with the Commission; and
d. To receive, investigate, and hear complaints about or arising out of ADR conducted by a registered neutral in any ADR setting.

B. There is hereby created the Georgia Office of Dispute Resolution under the Georgia Supreme Court.

1. The Georgia Office of Dispute Resolution will be administered by a director who will serve at the pleasure of the Commission and be directly accountable to the Commission. The director’s salary will be paid from the Office budget.

2. The Georgia Office of Dispute Resolution will implement the policies of the Commission. The responsibilities of the Georgia Office of Dispute Resolution will include, but will not be limited to, the following:

a. To serve as a resource for ADR education and research;
b. To provide technical assistance to new and existing court programs;
c. To develop the capability of providing training to neutrals in courts throughout the state;
d. To implement the Commission’s policies regarding qualification of neutrals and quality of programs;
e. To register neutrals and remove neutrals from the registry if necessary;
f. To collect statistics from court programs in order to monitor the effectiveness of various programs throughout the state.
III. FUNDING.

The funding of court programs is primarily a public responsibility. Funding for the Commission's work through the Georgia Office of Dispute Resolution will be through a combination of fees for registration and reregistration of neutrals, fees for review and approval of trainings, fees paid by approved local ADR programs, legislative appropriation, grants, and any other appropriate sources of revenue.

IV. COURT PROGRAMS.

The Georgia Supreme Court encourages every court in Georgia to consider the use of ADR processes to provide a system of justice which is more efficient and less costly in human and monetary terms. The Georgia Supreme Court strongly urges that courts with established mediation programs cooperate with courts seeking to establish new programs. Courts should assist new programs by providing information and by allowing mediator trainees from new programs to observe veteran mediators mediating in established programs for the purpose of completing training requirements.

Any court desiring to develop an ADR program shall apply to the Commission for approval by making its application to the Georgia Office of Dispute Resolution in accordance with rules and guidelines promulgated by the Commission. Applications for programs shall include the following:

1. A description of existing dispute resolution services and resources in the area.
2. A demonstration of need, coordination with existing social services, support of the bench and bar, and community support.
3. A description of the program.
4. A budget for the program.
5. A demonstration of the administrative capacity of the applicant.

Although existing court programs must be approved under these rules, the above requirements should not be construed to prevent existing dispute resolution programs from applying for approval. Review and action of the Commission will be accomplished as efficiently as possible, and every effort will be made to avoid imposing unnecessary burdens upon any court. Funding obtained through local collection of filing fee surcharges will be used for the administration and development of local programs and payment of staff. As specified in the Georgia Court-Connected Alternative Dispute Resolution Act (O.C.G.A. §§ 15-23-1 to 12), only local court programs that have been approved by and remain in good standing with the Commission on Dispute Resolution may collect local ADR filing fees. The Commission on Dispute Resolution reserves the right to request financial audits of the Boards of Trustees of the local Funds for the Administration of Alternative Dispute Resolution Programs to ensure that the local court program under a Board's supervision is in compliance with the requirements of the Georgia Court-Connected Alternative Dispute Resolution Act and these ADR Rules and appendices. Appropriate administrative fees may be charged by the Georgia Office of Dispute Resolution for technical assistance and training.

Neutrals serving in court programs must meet the requirements of the Georgia Commission on Dispute Resolution for registration. Although these requirements are threshold requirements for neutrals serving in court programs, courts are free to impose higher qualifications for neutrals who serve in their programs.

Uniform rules governing these programs appear as Appendix A to this rule.
Commentary: The Georgia Supreme Court strongly recommends that the program have a full-time administrator.

V. QUALIFICATION AND TRAINING OF NEUTRALS.

The qualification and training requirements for various kinds of neutrals differ according to the process or program involved. Requirements for qualification and training of neutrals will be established by the Georgia Commission on Dispute Resolution and subject to review by the Georgia Supreme Court. All training for neutrals in court programs will be in training programs approved by the Georgia Office of Dispute Resolution according to guidelines established by the Georgia Commission on Dispute Resolution. The Georgia Office of Dispute Resolution shall develop specific training programs for neutrals in accordance with requirements set by the Commission and subject to review by the Georgia Supreme Court.

Requirements for qualification and training of neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix B to this rule and will be published from time to time as amended. Ethical Standards for Neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix C to this rule and will be published from time to time as amended.

The Georgia Commission on Dispute Resolution will develop procedures to handle complaints against neutrals and ADR programs. The Georgia Commission on Dispute Resolution will have the authority to publish opinions resulting from the resolution of complaints and may, from time to time, publish advisory opinions as well.

Persons who have met the Commission’s criteria as to qualifications and training may apply to the Georgia Office of Dispute Resolution for registration as a neutral. The Commission may set the amount of a registration fee which will accompany each application. The Commission may provide for periodic renewal of registration. Neutrals who have been trained prior to the promulgation of these rules may apply to the Georgia Office of Dispute Resolution for registration.

VI. COMPENSATION OF NEUTRALS.

There shall be no uniform, state-wide compensation system at this time. Local courts will have the responsibility for developing and testing a variety of approaches to compensation consistent with guidelines that may be established by the Commission. However, every court program in which neutrals are compensated by the parties must provide ADR services free of charge to indigent parties. All compensated neutrals should contribute some pro bono hours to the program.

Commentary: Although the contribution of volunteers to ADR programs throughout the country is inestimable, the Georgia Supreme Court believes that the comprehensive system of statewide ADR services envisioned by these rules cannot be handled entirely by unpaid volunteers. This court is convinced that in order to build and maintain a statewide system of ADR services of the extent and quality desired, there must be mechanisms for compensating neutrals at appropriate levels. This court also believes that the Georgia ADR program will require a combination of volunteers, salaried in-house neutrals, and free market neutrals in order to meet the highly varied demands and circumstances of courts in urban, rural, and suburban areas.
VII. CONFIDENTIALITY AND IMMUNITY.

A. The Extent of Confidentiality:

Any statement made during a court-annexed or court-referred mediation or case evaluation or early neutral evaluation conference or as part of intake by program staff in preparation for a mediation, case evaluation or early neutral evaluation is confidential, not subject to disclosure, may not be disclosed by the neutral or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. Unless a court's ADR rules provide otherwise, the confidentiality herein applies to non-binding arbitration conferences as well. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is not subject to the confidentiality described above.

Any document or other evidence generated in connection with court-annexed or court-referred mediation or case evaluation, early neutral evaluation or, unless otherwise provided by court ADR rules, a non-binding arbitration, is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is discoverable unless the parties agree otherwise in writing. Otherwise discoverable material is not rendered immune from discovery by use in a mediation, case evaluation or early neutral evaluation or a non-binding arbitration.

Neither the neutral nor any observer present with permission of the parties in a court-annexed or court-referred ADR process may be subpoenaed or otherwise required to testify concerning a mediation or case evaluation or early neutral evaluation conference or, unless otherwise provided by court ADR rules, a non-binding arbitration, in any subsequent administrative or judicial proceeding. A neutral's notes or records are not subject to discovery. Notes and records of a court ADR program are not subject to discovery to the extent that such notes or records pertain to cases and parties ordered or referred by a court to the program.

B. Exceptions to Confidentiality:

Confidentiality on the part of program staff or the neutral does not extend to the issue of appearance. Confidentiality does not extend to a situation in which

a) there are threats of imminent violence to self or others; or

b) the mediator believes that a child is abused or that the safety of any party or third person is in danger.

Confidentiality does not extend to documents or communications relevant to legal claims or disciplinary complaints brought against a neutral or an ADR program and arising out of an ADR process. Documents of communications relevant to such claims or complaints may be revealed only to the extent necessary to protect the neutral or ADR program. Nothing in the above rule negates any statutory duty of a neutral to report information. Parties should be informed of limitations on confidentiality at the beginning of the conference. Collection of information necessary to monitor the quality of a program is not considered a breach of confidentiality.

C. Immunity:

No neutral in a court program shall be held liable for civil damages for any statement, action, omission or decision made in the course of any ADR process unless that statement, action, omission or decision is 1) grossly negligent and made with malice or 2) is in willful disregard of the safety or property of any party to the ADR process.
VIII. EDUCATION.

In order to educate the bar about the benefits of ADR and the specifics of ADR processes, each member of the State Bar of Georgia shall be required to complete a one-time mandatory three hour CLE credit in dispute resolution. The ADR continuing legal education requirement shall be completed before March 31, 1996. Lawyers admitted to the bar from July 31, 1995, to February 2, 2005, may satisfy this requirement by attending the Bridge-the-Gap seminar conducted by the Institute of Continuing Legal Education in Georgia. Lawyers admitted to the bar thereafter may satisfy this requirement by completing the State Bar of Georgia Transition Into Law Practice Program or a comparable program approved by the Commission on Continuing Lawyer Competency.

Lawyers who have completed a class essentially devoted to the study of ADR in law school are deemed to have satisfied the above requirement. Lawyers who have been trained as a neutral in a training which was approved for CLE credit or would now be eligible for CLE credit are deemed to have satisfied the above requirement. Lawyers who have previously taken an approved CLE seminar devoted to ADR are deemed to have satisfied the above requirement. The Georgia Commission on Dispute Resolution will review requests for exemption from the CLE requirement on the basis of law school course work.

The Georgia Supreme Court recommends that the program required for every new member of the State Bar of Georgia incorporate an introduction to ADR processes. This court further recommends that information concerning ADR be incorporated into CLE ethics and professionalism seminars. Sponsors and seminars designed to satisfy the ADR CLE requirement must be approved by the Commission on Continuing Lawyer Competency and the Georgia Commission on Dispute Resolution.
RECENT CHANGES TO IMMIGRATION POLICY (NOT FAKE NEWS!)

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I. FAMILY LAW IMMIGRATION

A. Immigrant Visa Appointments:

Immigrant visa appointments are scheduled at the United States Embassies overseas and created to determine if the intending immigrant is indeed eligible to receive permanent residence. The immigrant visa appointment is solely for the intending immigrant i.e., "beneficiary." Once the United States Embassy has approved the beneficiary's immigrant visa then an immigrant visa will be placed in the beneficiary's passport that will allow the individual to enter the United States. The beneficiary's permanent residence "alien card" will then be mailed to the beneficiary's address in the United States and therefore the beneficiary will have no further need to use the immigrant visa to depart and enter the United States.

1. Administrative Processing at United States Embassy/United States Consulates:

Usually after the beneficiary has been interviewed at United States Embassy has the authority to conduct further review/investigation prior to issuing an approval of the beneficiary's petition. This additional review process is known as "Administrative Processing." Recently the United States Embassies have been extending their administrative processing time on immigrant visa applications that should have been approved. The United States Embassy in Mexico has been extending their administrative processing times from a few months to as long as two years. The United States Embassy in Mexico's website state that the standard administrative processing time
is 6 months and that it can take longer. As such it is imperative that the beneficiaries and the beneficiary's families are aware that despite that the fact that the beneficiary should receive an approval there is a possibility that the beneficiary may be required to wait several months for a final decision.

While your case is under administrative processing what steps can you take to receive updates from the United States Embassy? At this time there is no process available that you can use to expedite the processing. The beneficiaries can receive application status at www.usvisa-info.com with their username and password. They can log in and click on “Check DS-160 status” and enter their DS-160 barcode number which contains 10 characters starting with AA0. Attorneys can make inquiries on the status of the case by using the attorney email system at: CBJLEGAL@state.gov. Attorneys can also work with the United States petitioner to contact the petitioner's local state congress person to reach out to the United States embassy. In recent months the only option that has proven effective is the attorney email to the United States Embassy and direct written correspondence to the United States Embassy.

2. Social Media Accounts: Recent the United States Department of State has confirmed that they will now be requesting that beneficiary disclose their social media account usernames on their immigrant visa application. This new change went into effect on May 25, 2019. The Administration has implemented a new rule that allows officials to demand five years' worth of social media profiles and 15 years of biographical information as part of a visa application. The new rule would require foreigners applying for a visa to include their social media usernames on

1https://mx.usembassy.gov/embassy-consulates/guadalajara/contact-the-visa-section-guadalajara/administrative-processing/
various platforms including Facebook, Twitter, or Instagram, as well as previous email addresses, phone numbers, international travel — all from the last five years.\(^2\) The State Department, which filed a notice of the proposed change estimates it will affect 14.71 million applicants, including those who apply as students, for business trips, or on vacation. The State Department has not specifically stated that social media content would be grounds for them deny application and so it remains to be seen if this change will have an adverse effect on applicants. In the interim, as a best practice tool, I have requested my client's social medial information and my firm performs quick review to see the client's content prior to submitting my client's application.

B. Naturalization Requirements:

1. Prior marriages: In recent months immigration officers have been making additional effort to delve into the details of the applicant's prior marriage(s) despite the fact that the applicant's marriage was terminated many years ago and Immigration had previously approved the applicant's application to remove conditions. (Attorney Byars will discuss a recent example where an N-400 was denied and subsequently approved at the N-336 interview).

2. Good Moral Character: One of the requirements for naturalization is good moral character (GMC). An applicant for naturalization must show that he or she has been, and continues to be, a person of good moral character. In general, the applicant must show good moral character during the five-year period immediately preceding his or her application for naturalization and up to the time of the Oath of Allegiance. Conduct prior to the five-year period may also impact whether the applicant meets the requirement. With regards to the latter

\(^2\)https://abcnews.go.com/Politics/us-set-request-years-social-media-history-visa/story?id=54106598
requirement immigration officers have been using the latter requirement to deny naturalization applications if they find any discrepancies in the applicant's N-400 application and the applicant's previous permanent resident application and/or the applicant's prior marriage. Be aware of this and prep your clients accordingly. (Emphasis on traffic citations, arrests, marital address history and/or applicant's immigration behavior outside of the United States).

C. Adjustment of Status Interviews:

1. Interview or Interrogations: Pursuant to the Immigration and National Act couples have the legal burden to show that it is "more likely than not" that they have a genuine marriage and not a sham marriage of convenience to obtain an immigration benefit. In the event that the couple is asked to return for a second interview the couple will most likely be treated as a fraudulent couple. Please note that in these circumstances your clients' legal burden has increased. In addition to the increased legal burden the possibility of your clients being asked to return for a second interview has dramatically increased. In some cases I have found that Immigration has scheduled my clients for a second interview simply because the first interviewing officer failed to conduct a thorough interview and thereby placed my clients in the unfair situation of being subjected to a higher legal burden without cause. This issue is most problematic for clients who are newlyweds and for foreign national spouses who have not received their employment authorization card prior to their interview.

D. Expedited Removals:

The expedited removal system was created in 1996 which gave authority to low-level immigration officers to quickly deport certain noncitizens who are undocumented or have committed fraud or misrepresentation. Immigration officials routinely use expedited removal to deport individuals who arrive at the United States border, as well as individuals who entered without authorization if they are apprehended within two weeks of arrival and within 100 miles
of the Canadian or Mexican border. On January 25, 2017, President Trump issued an executive order which directed the Department of Homeland Security (DHS) to dramatically expand the use of “expedited removal” to its full statutory extent. On July 22, 2019, the Department of Homeland Security announced that it would carry out the full expansion. As of July 23, 2019, expedited removal may be applied to individuals who are undocumented, or who have committed fraud or misrepresentation, and who are encountered within the entire United States and who have not been physically present in the United States for two years prior to apprehension. Please note that expedited removal cannot be used against United States citizens and lawful permanent residents' green card holders and asylum/refugee seekers.³

³ https://www.americanimmigrationcouncil.org/research/primer-expedited-removal
HOW VARIOUS EXECUTIVE ORDERS UNDER THE TRUMP ADMINISTRATION HAVE CHANGED THE PRACTICE OF BUSINESS LAW IMMIGRATION

The purpose of this essay is to provide an overview of the various Executive Orders issued during the Trump Administration. This essay will explain how United States Citizenship and Immigration Services’ (USCIS) chose to implement these Executive Orders through Policy Memorandums, citing the Memorandum as being “consistent with the goals of” a particular Executive Order.

**Executive Order 13768, Enhancing Public Safety in the Interior of the United States**

On January 25, 2017, the President signed Executive Order 13768, “Enhancing Public Safety in the Interior of the United States.” On June 28, 2018, United States Citizenship and Immigration Services issued “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.” The Memorandum provides specifically, “USCIS will issue an NTA where, upon issuance of an unfavorable decision on an application, petition, or benefit request, the alien is not lawfully present in the United States.” Immediately upon the publication of this Policy Memorandum, employers and employment based attorneys began advising their clients to plan on leaving after a request for evidence was received in order to avoid a possible denial. The consequences of a denial and NTA issuance puts an employee in an untenable position. The reason being if they wait for their court hearing, usually at least two to three years away, they will be subject to a bar to return to the U.S. If they leave

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2 “NTA” is the abbreviation of “Notice to Appear” which is the first notice a person receives to let them know that they are going to be placed in removal proceedings and they will be required at a place and time to appear before an immigration judge to explain how they are here in the United States.
before the court hearing, they risk receiving an Order in Absentia for failing to appear in Immigration Court, the legal result of this also being a 10 year bar to return to the US.

On February 26, 2019, USCIS issued a follow up memorandum to provide, “USCIS will not implement the June 28, 2018, NTA Policy Memo with respect to employment-based petitions at this time. Existing guidance for these case types will remain in effect.” Employers and immigration attorneys breathed a sigh of relief when this was issued, however, because the original Guidance does not distinguish between other denied cases and employment based cases, there is still a chance that this could change at any moment and possibly as soon as USCIS has the resources to handle it.

Executive Order 13780, “Protecting the Nation From
Foreign Terrorist Entry Into the United States”

On March 6, 2017, President Trump signed Executive Order 13780, “Protecting the Nation From Foreign Terrorist Entry Into the United States” also known and characterized by many as the “Visa Ban.” While this Order was enjoined from implementation twice before the last version in June, 2018 passed muster with the Supreme Court, a very tiny portion of this Order triggered a big change in business immigration. In the past, it was very rare for a business immigration candidate to have an in person interview except in certain unique circumstances. Typically, USCIS only conducted in person interviews for family based petitions and applications. The reason behind the family based interview is that it was often in part a test of the relationship between the parties, and

3 https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum
an in person interview was a logical way to allow USCIS to determine the legitimacy of the relationship.

Using the reasoning of “security,” in person interviews for all visa applicants are included as a part of the Executive Order described above. A typical employment based immigration process begins while a person is here on an H-1B or some other professional visa. It begins with the PERM process, where an employer must recruit for the position and demonstrate to the government that they were unable to find a similarly qualified individual. They must further prove that the employer has the ability to pay the employee’s salary that was prescribed by the Department of Labor. This process can take one-two years. The employee must then wait for there to be an available visa number available. Many employees must wait five to ten (India) years to take this last step of applying for the application for adjustment. In most cases, they must continue to renew their temporary visa status periodically, such as in the case of H-1B, every three years. Once they finally are eligible to file that Application for Adjustment, which should demonstrate that the applicant is in fact legally eligible to be a permanent resident, there is now an additional step of having the applicant appear for an interview. Often times the employment attorney is located in a different state so that if they wish for representation at the interview, they must either find local counsel or fly their attorney and incur that expense. No employer is required to be present and rarely is. It is a subtle additional hurdle for these applicants that wasn’t there before and can be quite stressful.
Buy American and Hire American Executive Order

On April 18, 2017, President Trump signed the Buy American and Hire American Executive Order. This Order resulted in many changes to the review of these various employment based visa processes. These processes always involved filing a petition with USCIS and submitting supporting documentation to demonstrate that the person was qualified for the visa, that the job was one for which the requirements applied, for example, an H-1B visa requires a position in a specialty occupation, and that the company had a legitimate need for this job to be filled by this person. As a result of the memorandum, without the legal regulations ever changing, the criteria and burden of proof as well as the requirements for documenting the case, have all become much higher and more burdensome. Further, requests for evidence and denials have increased significantly. USCIS published statistics where it is readily apparent that the approval rate of H-1Bs has decreased significantly since 2016. The reasoning in some denials has been clearly erroneous, causing many to turn to litigation to have these visas approved. However, employers are often unable to sustain the cost of litigation in these cases and many decide to simply abandon the case.

Several New Policy Memorandums issued by USCIS determined to be consistent with the implementation of the Hire American Buy American Executive Order are listed as follows:

August 9, 2017: Definition of “Affiliate” or “Subsidiary” for Purposes of Determining the H-1B ACWIA Fee. This basically expanded the definition of who was obligated to pay the fee by requiring companies to include in their employee count employees of affiliate and subsidiary companies as part of the count.

5 Id.
October 23, 2017: Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status. This memorandum greatly changed how cases have been adjudicated. Cases that were previously approved are now being reviewed as if it is the first time they are being filed. As this administration is scrutinizing cases and often holding the petition to a higher and very different standard than in the past, as well as requiring more and different (and sometimes not legally justified) documentation, the results have been inconsistent and caused a great deal of uncertainty to both companies and employees. The result has been candidates who have been here ten plus years and are waiting for their permanent resident cards are placed in the same standard of review and scrutiny as a brand new petition. This also provides a great deal more uncertainty to many families who have essentially settled here for many years.

November 20, 2017: TN Nonimmigrant Economists Are Defined by Qualifying Business Activity. This rule limited the definition for a qualifying TN to Economist and disallowed any other similarly situated positions to be permitted as eligible for the TN visa.  

December 29, 2017: L-1 Qualifying Relationships and Proxy Votes. This proclamation required any L-1 companies to determine if a qualifying relationship exists, USCIS officers examine ownership and control of the respective entities. In some cases, a petitioner may seek to establish control based on the use of proxy votes. Proxy votes are obtained when one or more equity holders irrevocably grant the ability to vote their equity to another equity holder, thereby effectively and legally giving the other equity holder “control” over the company or companies in question.

6 Id.
The new policy memorandum clarifies that when proxy votes are a determining factor in establishing control, the petitioner must now show the proxy votes are irrevocable from the time of filing through the time USCIS adjudicates the petition, along with evidence the relationship will continue during the approval period requested. Previous guidance did not address whether proxy votes must be irrevocable to establish control.7

Another change to the L-1A and L-1B process promised by USCIS is to enhance the current site visit program to further ensure the integrity of the immigration system. For example, USCIS is expanding its site visit program to include L-1B petitions. USCIS is initially focusing on employers petitioning for L-1B workers who will primarily work offsite at another company or organization’s location to ensure that they are complying with the requirements from the L-1 Visa Reform Act of 20048.

Feb 22, 2018: Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites. This memorandum explains that when H-1B beneficiaries are placed at third-party worksites, petitioners must demonstrate that they have specific and non-speculative qualifying assignments in a specialty occupation for that beneficiary for the entire time requested on the petition. While an H-1B petition may be approved for up to three years, USCIS will, in its discretion, generally limit the approval period to the length of time demonstrated that the beneficiary will be placed in non-speculative work and during which the petitioner will maintain

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8 https://www.uscis.gov/legal-resources/buy-american-hire-american-putting-american-workers-first
Surprisingly, this is simply a reiteration of an old rule. USCIS has always required the Petitioner to submit evidence from the end client of confirmation of the position. However, one recent change as a result of this memo has been that the Labor Condition Application (LCA) must now list the end client employer on the LCA itself. An LCA has several disclosures about the position and its requirements. The LCA must be posted at a public location at the place of employment for ten days. Further, where before they simply wanted confirmation of the position duties, duration of employment and that the position was a specialty occupation requiring a bachelor’s degree in a specific area, now USCIS is being encouraged to pursue more confidential information about the end client. The problem many sponsors are facing in these situations is that as a result of the enforcement focused climate, more and more end clients are refusing to provide letters to the sponsor to assist them in placing these employees, despite the unique knowledge that a particular employee offers to the end client company.

**Increased Worksite Enforcement as a form of Implementation of the Buy American Hire American Executive Order**

In June, 2018, U.S. Immigration and Customs Enforcement’s (ICE) Homeland Security Investigations (HSI) announced results of a two-phase nationwide operation in which I-9 audit notices were served to more than 5,200 businesses around the country since January. A notice of inspection (NOI) informs business owners that ICE is going to audit their hiring records to determine whether they are complying with existing law.

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From July 16 to 20, the second phase of the operation, HSI served 2,738 NOIs and made 32 arrests. During the first phase of the operation, Jan. 29 to March 30, 2018, HSI served 2,540 NOIs and made 61 arrests. HSI uses a three-pronged approach to worksite enforcement: compliance, from I-9 inspections, civil fines and referrals for debarment; enforcement, through the criminal arrest of employers and administrative arrest of unauthorized workers; and outreach, through the ICE Mutual Agreement between Government and Employers, or IMAGE program, to instill a culture of compliance and accountability.

From Oct. 1, 2017, through July 20, 2018, HSI opened 6,093 worksite investigations and made 675 criminal and 984 administrative worksite-related arrests, respectively. In fiscal year 2017 – October 2016 to September 2017 – HSI opened 1,716 worksite investigations; initiated 1,360 I-9 audits; and made 139 criminal arrests and 172 administrative arrests related to worksite enforcement.10

**Delays in Adjudication as a direct consequence of the Hire American Buy American Executive Order**

The publicly stated reasoning in support of the Hire American Buy American Order is security of the country and preventing fraud. The consequence of the above listed additional measures have resulted in not necessarily a safer country, but definitely an enormously exaggerated processing time for every case. Someone who is attempting to invest in the EB-5 program (a program which is required to result in the creation of ten jobs per investor), must wait 2-5 years to see any response to their application. Someone applying for permanent residence must wait a minimum of a year for a marriage case to be adjudicated and six months of that time without work authorization.

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because that is the current average processing time for the work authorization (which is ironically supposed to help that person get by because of the longer wait times on the permanent residence process). Processing times on average have doubled since 2014.\footnote{AILA President Marketa Lindt’s Written Testimony for July 16, 2019, Hearing on USCIS Processing Delays;}

In addition to the increase in Requests for Evidence being issued, priority has been placed on enforcement operations to take resources from USCIS where previously those resources were dedicated to adjudication of cases. Interviews for every employment based case also adds to the burden of USCIS to finalize cases. Finally, the emphasis on enforcement operations and the prioritization of resources has forced various companies to make other arrangements rather than await adjudication of their employees’ cases. These arrangements may include simply relocating the employee to another country or relocating their entire operation to another country, depending on the circumstances. It remains to be seen what the long term effects of the implementation of these new policies will be however, it does seem to be the strongest message from the White House is to say that fears of fraud and security breaches have outweighed the impact of the contributions of foreign talent and knowledge brought to this country by non U.S. citizens.
JUDGES’ PANEL DISCUSSION
A Brief History of the Chief Justice’s Commission on Professionalism

Karlise Y. Grier, Executive Director

The mission of the Chief Justice’s Commission on Professionalism is to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts and the public, and to fulfill their obligations to improve the law and legal system and to ensure access to that system.

After a series of meetings of key figures in Georgia’s legal community in 1988, in February of 1989, the Supreme Court of Georgia created the Chief Justice’s Commission on Professionalism (“Commission”), the first entity of this kind in the world created by a high court to address legal professionalism. In March of 1989, the Rules of the State Bar of Georgia were amended to lay out the purpose, members, powers and duties of the Commission. The brainchild of Justice Thomas Marshall and past Emory University President James Laney, they were joined by Justices Charles Weltner and Harold Clarke and then State Bar President A. James Elliott in forming the Commission. The impetus for this entity then and now is to address uncivil approaches to the practice of law, as many believe legal practice is departing from its traditional stance as a high calling – like medicine and the clergy – to a business.

The Commission carefully crafted a statement of professionalism, *A Lawyer’s Creed* and the *Aspirational Statement on Professionalism*, guidelines and standards addressing attorneys’ relationships with colleagues, clients, judges, law schools and the public, and retained its first executive director, Hulett “Bucky” Askew. Professionalism continuing legal education was mandated and programming requirements were developed by then assistant and second executive director Sally Evans Lockwood. During the 1990s, after the Commission conducted a series of convocations with the bench and bar to discern professionalism issues from
practitioners’ views, the State Bar instituted new initiatives, such as the Committee on Inclusion in the Profession (f/k/a Women and Minorities in the Profession Committee). Then the Commission sought the concerns of the public in a series of town hall meetings held around Georgia. Two concerns raised in these meetings were: lack of civility and the economic pressures of law practice. As a result, the State Bar of Georgia established the Law Practice Management Program.

Over the years, the Commission has worked with the State Bar to establish other programs that support professionalism ideals, including the Consumer Assistance Program and the Diversity Program. In 1993, under President Paul Kilpatrick, the State Bar’s Committee on Professionalism partnered with the Commission in establishing the first Law School Orientation on Professionalism Program for incoming law students held at every Georgia law school. At one time, this program had been replicated at more than forty U.S. law schools. It engages volunteer practicing attorneys, judges and law professors with law students in small group discussions of hypothetical contemporary professionalism and ethics situations.

In 1997, the Justice Robert Benham Community Service Awards Program was initiated to recognize members of the bench and bar who have combined a professional career with outstanding service to their communities around Georgia. The honorees are recognized for voluntary participation in community organizations, government-sponsored activities, youth programs, religious activities or humanitarian work outside of their professional practice or judicial duties. This annual program is now usually held at the State Bar Headquarters in Atlanta and in the past it has been co-sponsored by the Commission and the State Bar. The program generally attracts several hundred attendees who celebrate Georgia lawyers who are active in the community.

In 2006, veteran attorney and former law professor, Avarita L. Hanson became the third executive director. In addition to providing multiple CLE programs for local bars, government and law offices, she served as Chair of the ABA Consortium on Professionalism Initiatives, a group that informs and vets ideas of persons interested in development of professionalism programs. She authored the chapter on Reputation, in Paul Haskins, Ed., ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER, ABA Standing Committee on Professionalism, ABA Center for Professional Responsibility (July 2013) and recently added to the newly-released accompanying Instructor’s Manual (April 2017). Ms. Hanson retired in August 2017 after a distinguished career serving the Commission.

Today, the Commission, which meets three times per year, is under the direction and management of its fourth Executive Director, attorney Karlise Yvette Grier. The Commission continues to support and advise persons locally and nationally who are interested in professionalism programming. The Chief Justice of the Supreme Court of Georgia serves as
the Commission’s chair, and Chief Justice Harold D. Melton currently serves in this capacity. The Commission has twenty-two members representing practicing lawyers, the state appellate and trial courts, the federal district court, all Georgia law schools and the public. (See Appendix A). In addition to the Executive Director, the Commission staff includes Shamilla Jordan (Administrative Specialist). With its chair, members and staff, the Commission is well equipped to fulfill its mission and to inspire and develop programs to address today’s needs of the legal profession and those concerns on the horizon. (See Appendix B).

The Commission works through committees and working groups (Access to Justice, Finance and Personnel, Continuing Legal Education, Social Media/Awareness, Financial Resources, and Benham Awards Selection) in carrying out some of its duties. It also works with other state and national entities, such as the American Bar Association’s Center for Professional Responsibility and its other groups. To keep Georgia Bar members abreast of professionalism activities and issues, the Commission maintains a website at www.cjcpga.org. The Commission also provides content for the Professionalism Page in every issue of the Georgia Bar Journal. In 2018, the Commission engaged in a strategic planning process. As a result of that process, the Commission decided to focus on four priority areas for the next three to five years: 1) ensuring high quality professionalism CLE programming that complies with CJCP guidelines; 2) promoting the understanding and exercise of professionalism and emphasizing its importance to the legal system; 3) promoting meaningful access to the legal system and services; and 4) ensuring that CJCP resources are used effectively, transparently and consistent with the mission.

After 30 years, the measure of effectiveness of the Commission should ultimately rest in the actions, character and demeanor of every Georgia lawyer. Because there is still work to do, the Commission will continue to lead the movement and dialogue on legal professionalism.

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THE MEANING OF PROFESSIONALISM

The three ancient learned professions were the law, medicine, and ministry. The word profession comes from the Latin *professus*, meaning to have affirmed publicly. As one legal scholar has explained, “The term evolved to describe occupations that required new entrants to take an oath professing their dedication to the ideals and practices associated with a learned calling.”\(^1\) Many attempts have been made to define a profession in general and lawyer professionalism in particular. The most commonly cited is the definition developed by the late Dean Roscoe Pound of Harvard Law School:

> The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service - no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.\(^2\)

Thinking about professionalism and discussing the values it encompasses can provide guidance in the day-to-day practice of law. Professionalism is a wide umbrella of values encompassing competence, character, civility, commitment to the rule of law, to justice and to the public good. Professionalism calls us to be mindful of the lawyer’s roles as officer of the court, advocate, counselor, negotiator, and problem solver. Professionalism asks us to commit to improvement of the law, the legal system, and access to that system. These are the values that make us a profession enlisted in the service not only of the client but of the public good as well. While none of us achieves perfection in serving these values, it is the consistent aspiration toward them that defines a professional. The Commission encourages thought not only about the lawyer-client relationship central to the practice of law but also about how the legal profession can shape us as people and a society.

\(^1\) DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVERSIVE METHOD 39 (1994)

\(^2\) ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953)
BACKGROUND ON THE LEGAL PROFESSIONALISM MOVEMENT IN GEORGIA

In 1986, the American Bar Association ruefully reported that despite the fact that lawyers’ observance of the rules of ethics governing their conduct is sharply on the rise, lawyers’ professionalism, by contrast, may well be in steep decline:

[Although] lawyers have tended to take the rules more seriously because of an increased fear of disciplinary prosecutions and malpractice suits, . . . [they] have also tended to look at nothing but the rules; if conduct meets the minimum standard, lawyers tend to ignore exhortations to set their standards at a higher level.3

The ABA’s observation reflects a crucial distinction: while a canon of ethics may cover what is minimally required of lawyers, “professionalism” encompasses what is more broadly expected of them – both by the public and by the best traditions of the legal profession itself.

In response to these challenges, the State Bar of Georgia and the Supreme Court of Georgia embarked upon a long-range project – to raise the professional aspirations of lawyers in the state. Upon taking office in June 1988, then State Bar President A. James Elliott gave Georgia’s professionalism movement momentum when he placed the professionalism project at the top of his agenda. In conjunction with Chief Justice Marshall, President Elliott gathered 120 prominent judges and lawyers from around the state to attend the first Annual Georgia Convocation on Professionalism.

For its part, the Georgia Supreme Court took three important steps to further the professionalism movement in Georgia. First, at the first Convocation, the Supreme Court of Georgia announced and administered to those present a new Georgia attorney’s oath emphasizing the virtue of truthfulness, reviving language dating back to 1729. (See also Appendix C). Second, as a result of the first Convocation, in 1989, the Supreme Court of Georgia took two additional significant steps to confront the concerns and further the aspirations of the profession. First, it created the Chief Justice’s Commission on Professionalism (the “Commission”) and gave it a primary charge of ensuring that the practice of law in this state remains a high calling, enlisted in the service not only of the client, but of the public good as well. This challenging mandate was supplemented by the Court’s second step, that of amending the mandatory continuing legal education (CLE) rule to require all active Georgia

lawyers to complete one hour of Professionalism CLE each year [Rule 8-104 (B)(3) of the Rules and Regulations for the Organization and Government of the State Bar of Georgia and Regulation (4) thereunder].

**GENERAL PURPOSE OF CLE PROFESSIONALISM CREDIT**

Beginning in 1990, the Supreme Court of Georgia required all active Georgia lawyers to complete one hour of Professionalism CLE each year [Rule 8-104 (B)(3) of the Rules and Regulations for the Organization and Government of the State Bar of Georgia and Regulation (4) thereunder]. The one hour of Professionalism CLE is distinct from and in addition to the required ethics CLE. The general goal of the Professionalism CLE requirement is to create a forum in which lawyers, judges and legal educators can explore the meaning and aspirations of professionalism in contemporary legal practice and reflect upon the fundamental premises of lawyer professionalism – competence, character, civility, commitment to the rule of law, to justice, and to the public good. Building a community among the lawyers of this state is a specific goal of this requirement.

**DISTINCTION BETWEEN ETHICS AND PROFESSIONALISM**

The Supreme Court has distinguished between ethics and professionalism, to the extent of creating separate one-hour CLE requirements for each. The best explanation of the distinction between ethics and professionalism that is offered by former Chief Justice Harold Clarke of the Supreme Court of Georgia:

“. . . the idea [is] that ethics is a minimum standard which is required of all lawyers, while professionalism is a higher standard expected of all lawyers.”

Laws and the Rules of Professional Conduct establish minimal standards of consensus impropriety; they do not define the criteria for ethical behavior. In the traditional sense, persons are not “ethical” simply because they act lawfully or even within the bounds of an official code of ethics. People can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law or the code. Truly ethical people measure their conduct not by rules but by basic moral principles such as honesty, integrity and fairness.

The term “Ethics” is commonly understood in the CLE context to mean “the law of lawyering” and the rules by which lawyers must abide in order to remain in good standing before the bar. Legal Ethics CLE also includes malpractice avoidance. “Professionalism” harkens back to the traditional meaning of ethics discussed above. The Commission believes that lawyers should remember in counseling clients and determining their own behavior that the letter of the law is only a minimal threshold describing what is legally possible, while professionalism is meant to address the aspirations of the profession and how we as lawyers should behave.
Ethics discussions tend to focus on misconduct -- the negative dimensions of lawyering. **Professionalism discussions have an affirmative dimension -- a focus on conduct that preserves and strengthens the dignity, honor, and integrity of the legal system.**

As former Chief Justice Benham of the Supreme Court of Georgia says, “We should expect more of lawyers than mere compliance with legal and ethical requirements.”

**ISSUES AND TOPICS**

In March of 1990, the Chief Justice’s Commission adopted *A Lawyer’s Creed* (See Appendix D) and an *Aspirational Statement on Professionalism* (See Appendix E). These two documents should serve as the beginning points for professionalism discussions, not because they are to be imposed upon Georgia lawyers or bar associations, but because they serve as words of encouragement, assistance and guidance. These comprehensive statements may be utilized to frame discussions and remind lawyers about the basic tenets of our profession.

Karl N. Llewellyn, jurisprudential scholar who taught at Yale, Columbia, and the University of Chicago Law Schools, often cautioned his students:

> The lawyer is a man of many conflicts. More than anyone else in our society, he must contend with competing claims on his time and loyalty. You must represent your client to the best of your ability, and yet never lose sight of the fact that you are an officer of the court with a special responsibility for the integrity of the legal system. You will often find, brethren and sistern, that those professional duties do not sit easily with one another. You will discover, too, that they get in the way of your other obligations – to your conscience, your God, your family, your partners, your country, and all the other perfectly good claims on your energies and hearts. You will be pulled and tugged in a dozen directions at once. You must learn to handle those conflicts.4

The real issue facing lawyers as professionals is developing the capacity for critical and reflective judgment and the ability to “handle those conflicts,” described by Karl Llewellyn. A major goal of Professionalism CLE is to encourage introspection and dialogue about these issues.

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4 MARY ANN GLENDON, A NATION UNDER LAWYERS 17 (1994)
APPENDICES

A 2019-2020 COMMISSION MEMBERS

B MISSION STATEMENT

C OATH OF ADMISSION

D A LAWYER’S CREED

E ASPIRATIONAL STATEMENT ON PROFESSIONALISM

F SELECT PROFESSIONALISM PAGE ARTICLES
APPENDIX A

CHIEF JUSTICE’S COMMISSION ON PROFESSIONALISM

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CHIEF JUSTICE’S COMMISSION ON PROFESSIONALISM

2019-2020

Honorable Harold D. Melton
Chief Justice
Supreme Court of Georgia

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APPENDIX B

MISSION STATEMENT

The mission of the Chief Justice’s Commission on Professionalism is to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public and to fulfill their obligations to improve the law and the legal system and to ensure access to that system.

CALLING TO TASKS

The Commission seeks to foster among lawyers an active awareness of its mission by calling lawyers to the following tasks, in the words of former Chief Justice Harold Clarke:

1. To recognize that the reason for the existence of lawyers is to act as problem solvers performing their service on behalf of the client while adhering at all times to the public interest;

2. To utilize their special training and natural talents in positions of leadership for societal betterment;

3. To adhere to the proposition that a social conscience and devotion to the public interest stand as essential elements of lawyer professionalism.

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APPENDIX C

HISTORICAL INFORMATION ABOUT THE COMMISSION’S ROLES IN THE DEVELOPMENT OF THE CURRENT GEORGIA ATTORNEY OATH

In 1986, Emory University President James T. Laney delivered a lecture on “Moral Authority in the Professions.” While expressing concern about the decline in moral authority of all the professions, he focused on the legal profession because of the respect and confidence in which it has traditionally been held and because it has been viewed as serving the public in unique and important ways. Dr. Laney expressed the fear that the loss of moral authority has as serious a consequence for society at large as it does for the legal profession.

For its part, the Georgia Supreme Court took an important step to further the professionalism movement in Georgia. At the first convocation on professionalism, the Court announced and administered to those present a new Georgia attorney’s oath emphasizing the virtue of truthfulness, reviving language dating back to 1729. Reflecting the idea that the word “profession” derives from a root meaning “to avow publicly,” this new oath of admission to the State Bar of Georgia indicates that whatever other expectations might be made of lawyers, truth-telling is expected, always and everywhere, of every true professional. Since the convocation, the new oath has been administered to thousands of lawyers in circuits all over the state.

Attorney’s Oath

I, _____________, swear that I will truly and honestly, justly, and uprightly demean myself, according to the laws, as an attorney, counselor, and solicitor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God.

In 2002, at the request of then-State Bar President George E. Mundy, the Committee on Professionalism was asked to revise the Oath of Admission to make the wording more relevant to the current practice of law, while retaining the original language calling for lawyers to “truly and honestly, justly and uprightly” conduct themselves. The revision was approved by the Georgia Supreme Court in 2002.
APPENDIX C

OATH OF ADMISSION
TO THE STATE BAR OF GEORGIA

“I,___________________, swear that I will truly and honestly, justly and uprightly conduct myself as a member of this learned profession and in accordance with the Georgia Rules of Professional Conduct, as an attorney and counselor and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God.”

As revised by the Supreme Court of Georgia, April 20, 2002
APPENDIX D

A LAWYER’S CREED

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.
APPENDIX E

ASPIRATIONAL STATEMENT ON PROFESSIONALISM

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar’s efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court’s hope that Georgia’s lawyers, judges, and legal educators will use the following aspirational ideals to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools with each group working independently, but also jointly in that effort.
APPENDIX E

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

(a) To put fidelity to clients and, through clients, to the common good, before selfish interests.

(b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.

(c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.

(d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.

(e) To make the law, the legal system, and other dispute resolution processes available to all.

(f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.

(g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.

(h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.

(i) To practice law not as a business, but as a calling in the spirit of public service.
APPENDIX E

SPECIFIC ASPIRATIONAL IDEALS

As to clients, I will aspire:

(a) To expeditious and economical achievement of all client objectives.

(b) To fully informed client decision-making.
   As a professional, I should:
   (1) Counsel clients about all forms of dispute resolution;
   (2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
   (3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
   (4) Communicate promptly and clearly with clients; and,
   (5) Reach clear agreements with clients concerning the nature of the representation.

(c) To fair and equitable fee agreements.
   As a professional, I should:
   (1) Discuss alternative methods of charging fees with all clients;
   (2) Offer fee arrangements that reflect the true value of the services rendered;
   (3) Reach agreements with clients as early in the relationship as possible;
   (4) Determine the amount of fees by consideration of many factors and not just time spent by the attorney;
   (5) Provide written agreements as to all fee arrangements; and,
   (6) Resolve all fee disputes through the arbitration methods provided by the State Bar of Georgia.

(d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients that is the purpose of these obligations.

As to opposing parties and their counsel, I will aspire:

(a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties.
   As a professional, I should:
   (1) Notify opposing counsel in a timely fashion of any cancelled appearance;
APPENDIX E

(2) Grant reasonable requests for extensions or scheduling changes; and,
(3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

(b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice.

As a professional, I should:
(1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
(2) Be courteous and civil in all communications;
(3) Respond promptly to all requests by opposing counsel;
(4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
(5) Prepare documents that accurately reflect the agreement of all parties; and,
(6) Clearly identify all changes made in documents submitted by opposing counsel for review.

As to the courts, other tribunals, and to those who assist them, I will aspire:

(a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice.

As a professional, I should:
(1) Avoid non-essential litigation and non-essential pleading in litigation;
(2) Explore the possibilities of settlement of all litigated matters;
(3) Seek non-coerced agreement between the parties on procedural and discovery matters;
(4) Avoid all delays not dictated by a competent presentation of a client’s claims;
(5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and,
(6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.
APPENDIX E

(b) To model for others the respect due to our courts.
As a professional I should:
(1) Act with complete honesty;
(2) Know court rules and procedures;
(3) Give appropriate deference to court rulings;
(4) Avoid undue familiarity with members of the judiciary;
(5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
(6) Show respect by attire and demeanor;
(7) Assist the judiciary in determining the applicable law; and,
(8) Seek to understand the judiciary’s obligations of informed and impartial decision-making.

As to my colleagues in the practice of law, I will aspire:

(a) To recognize and to develop our interdependence;

(b) To respect the needs of others, especially the need to develop as a whole person; and,

(c) To assist my colleagues become better people in the practice of law and to accept their assistance offered to me.

As to our profession, I will aspire:

(a) To improve the practice of law.
As a professional, I should:
(1) Assist in continuing legal education efforts;
(2) Assist in organized bar activities; and,
(3) Assist law schools in the education of our future lawyers.

(b) To protect the public from incompetent or other wrongful lawyering.
As a professional, I should:
(1) Assist in bar admissions activities;
(2) Report violations of ethical regulations by fellow lawyers; and,
(3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.
APPENDIX E

As to the public and our systems of justice, I will aspire:

(a) To counsel clients about the moral and social consequences of their conduct.

(b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.

As a professional, I should ensure that any advertisement of my services:
(1) is consistent with the dignity of the justice system and a learned profession;
(2) provides a beneficial service to the public by providing accurate information about the availability of legal services;
(3) educates the public about the law and legal system;
(4) provides completely honest and straightforward information about my qualifications, fees, and costs; and,
(5) does not imply that clients’ legal needs can be met only through aggressive tactics.

(c) To provide the pro bono representation that is necessary to make our system of justice available to all.

(d) To support organizations that provide pro bono representation to indigent clients.

(e) To improve our laws and legal system by, for example:

   (1) Serving as a public official;
   (2) Assisting in the education of the public concerning our laws and legal system;
   (3) Commenting publicly upon our laws; and,
   (4) Using other appropriate methods of effecting positive change in our laws and legal system.
APPENDIX F

SELECT PROFESSIONALISM PAGE ARTICLES
Honoring Georgia’s Lawyers

I sincerely hope the Commission on Professionalism’s work will honor Georgia’s lawyers for what they do each day and will help each lawyer to become consummate professionals while they do the tireless and often thankless work of representing clients.

BY KARLISE Y. GRIER

In June of 2018, I was shaken to the core when I learned of the death of attorney Antonio Mari. I did not personally know Mari, a family law attorney who was murdered by a client’s ex-husband. I had, however, as a former family law attorney of almost 18 years, personally experienced the dynamics that caused his death: enmity, anger, retribution and a myriad of other vitriolic emotions directed at you as a lawyer (by opposing parties or clients) because you are striving to do your job to the best of your ability. I wanted to take a moment in this article to pay tribute to Mari and to honor the thousands of other Georgia lawyers who are just like him, men and women who toil in the trenches every day—putting their clients interests above their own personal well-being—as they strive to provide exemplary service and excellent representation. I also wanted to commend the wonderful professionalism example set by the Bartow County Bar Association, which stepped up in the midst of this horrible tragedy to divide up and take Mari’s cases and to help close down his law practice.1
According to the Daily Report, Mari was afraid of the pro se opposing party who ultimately killed him. Nevertheless, Mari fulfilled his legal obligations to his client and obtained a final divorce decree for the client less than two hours before his client’s ex-husband shot him to death. This balance of client interests versus personal interests is not always played out as dramatically as in Mari’s case, but it is always there. Do you go to your child’s soccer practice or do you first finish the brief that is due tomorrow? Do you take time to go for a walk or a run or do you take that early morning meeting with a client who can’t take time off from their work as an hourly employee? Do you tell the pro bono client you are meeting with they have to leave your office and reschedule (knowing they most likely won’t) because they reek of cigarette smoke and you have asthma? Do you file a motion to withdraw as told of whenever and hearts. You will often find, brethren and sistern, that those professional duties do not sit easily with one another. You will discover, too, that they get in the way of your other obligations—to your conscience, your God, your family, your partners, your country and all the other perfectly good claims on your energies and hearts. You will be pulled and tugged in a dozen directions at once. You must learn to handle those conflicts.4

I hope that, under my stewardship, the Chief Justice’s Commission on Professionalism will honor Georgia’s lawyers by ensuring CLE providers offer outstanding programming regarding professionalism concepts that give lawyers the opportunity to discuss the challenges (and sometimes joys) of practicing law. I look forward to continuing to recognize the amazing community service work of lawyers and judges at the Justice Robert Benham Awards for Community Service. I hope that the Commission’s convocations, such as the 2018 Convocation on Professionalism and the Global Community, will continue to explore cutting-edge issues in the legal profession. I hope the Commission’s work will help to embolden lawyers to stand courageously for the rule of law in our country and to provide guidance to lawyers on how to do so thoughtfully and with integrity. I look forward to the Commission’s continued partnership with the State Bar of Georgia Committee on Professionalism and with Georgia’s law schools as we strive to introduce law students to professionalism concepts during the Law School Orientations on Professionalism.

Too often, I think our profession focuses on the “bad” things for which lawyers may be known. I truly believe most lawyers are good, hard working men and women who want to do the best job they can for their clients in return for fair payment for their work. During my stewardship as executive director of the Commission, it is my goal to focus on and cultivate the good and the goodness in our profession that often happens without notice or comment. I am eager to help us all (myself included) grow to be the best professionals we can be. I sincerely hope the Commission’s work will honor Georgia’s lawyers for what they do each day and will help each lawyer to become consummate professionals while they do the tireless and often thankless work of representing clients.

Karlise Y. Grier
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Endnotes

2. See Id.
3. To learn more about how Georgia defines professionalism, see A Lawyer’s Creed and the Aspirational Statement on Professionalism at: http://cjcpga.org/lawyers-creed/ (last visited August 10, 2018).
The Importance of Lawyers Abandoning the Shame and Stigma of Mental Illness

One tenet of the Chief Justice's Commission on Professionalism's "A Lawyer's Creed" is "To my colleagues in the practice of law, I offer concern for your welfare." If you are aware of a colleague that may be experiencing difficulties, ask questions and offer to help them contact the Lawyer Assistance Program for help.

BY MICHELLE BARCLAY

January is the month when Robin Nash, my dear friend and lawyer colleague, godfather to my child, official for my brother's marriage and former director of the Barton Center at Emory University, left the world. Positive reminders of him are all around, including a child law and policy fellowship in his name, but January is a tough month.

Robin's suicide, 12 years ago, was a shock to me. As time passed and I heard stories about Robin from others who knew him and I learned more about suicide, I can see in hindsight the risk looming for him. Today, I think his death was possibly preventable.

In 2006, Robin wrote this essay about himself for Emory's website:

"Robin Nash, age 53, drew his first breath, attended college and law school and now works at Emory University. He loves to travel to places like Southeast Asia and the Middle East but he always returns home to Emory and his hometown of Decatur. Robin majored in Economics and Mathematics. He began his law practice in 1980 in Decatur surviving mostly on court appointed cases for mentally ill patients in commitment hearings.

His practice expanded to working with institutionalized developmentally delayed clients, special education cases, wills and estate litigation and representing banks in the hugely interesting area of commercial real estate closings.

In 1995, he was appointed as a juvenile court judge in DeKalb County. He resigned from the bench effective December 2005. He sold most of his personal belongings, paid off his remaining debts and moved overseas to think and travel. After thinking and traveling for three months, he returned to the active world of Decatur. He was appointed director of the Barton Clinic effective April 15, 2006."

When Robin came back from traveling, he told his friends—"I can be more impactful here."—which was and is true. Robin's impact continues today through the work of young lawyers serving as Robin Nash Fellows and through the lives of the thousands of mothers, fathers, daughters and sons he touched, helping people traumatized by child abuse, neglect, addiction and crime.

He was impactful in part because he had so much empathy for others.
well regarded and well loved. He was a person you could count on who did extraordinary things for others—helping a student obtain a TPO in the middle of the night to stop a stalker; quietly helping a refugee family get stable and connected to services; and of course, his consistent care of his friend Vinny. Vinny was a severely disabled adult Robin befriended and with whom he had a deep connection. Because he was a lawyer, Robin was able to help Vinny obtain full access to available medical services without being institutionalized.

So why did Robin leave? He lost his battle with mental illness. He masked it well and as a private person, did not share his struggles. His friends had some insight into his struggles but it was always complicated. While a judge, Robin was known for saying things like, “I am a manager of misery” or “I manage the competition not to serve the most vulnerable families and children.” But he also said, “Talk like this is just dark humor which is a useful coping mechanism for an emotionally draining job.”

I know today that a low serotonin level in his body was dangerous for his depression and that the medications he took waxed and waned in effectiveness. I also now know that he had not slept well for days before he acted. We’d had a work meeting the day before he died where he made a long ‘to do’ list. Who makes a long ‘to do’ list when one is contemplating suicide? Plenty of people. I have learned. I saw that ‘to do’ list on his table when I was in his apartment after his death.

What could have helped? Abandoning the shame and stigma of mental illness is a good start. I have been heartened by the social movement campaign, Time to Change, designed to help people speak up about mental illness. A safety plan shared with a reasonably wide network of people can also help. Antidepressant medications can help. Recent studies about anti-depression drugs “puts to bed the controversy on anti-depressants, clearly showing that these drugs do work in lifting mood and helping most people with depression.” Science is advancing better treatments at a rapid pace. And some experts advise that directly asking whether a person has considered killing themselves can open the door to intervention and saving a life.

Before becoming a lawyer, I worked as a nurse in a variety of settings at both Grady and Emory hospitals. I saw attempted suicides. I witnessed a number of those people who were grateful they were not successful. I saw safety plans work when enough people knew about the risks. Sometimes, medicines were changed, new treatments tried and I saw people get better.

I feel like with my background I could have and should have probed Robin more. But at the time, I thought I was respecting his privacy by not asking too many questions. Today I know that a person can be fine one day and then chemicals in their brain can wildly change within 24 hours, and they’re no longer ok. I learned that not sleeping can be deadly. I have also learned that just talking about it can help a person cope.

A book that has helped me is called “Stay: A History of Suicide and the Philosophies Against It,” by Jennifer Michael Hecht. If I had a second chance, I would try to use some of the arguments in that book, such as:

1. None of us can truly know what we mean to other people, and none of us can know what our future self will experience. History and philosophy ask us to remember these mysteries, to look around at friends, family, humanity, at the surprises life brings—the endless possibilities that living offers—and to persevere.

Of course, first I would have just asked about his mental health with love and listened. I still wish for that chance to try.

Afterword by Chief Justice’s Commission on Professionalism Executive Director Karli Yvette Grier: One tenet of the Chief Justice’s Commission on Professionalism’s “A Lawyer’s Creed” is “To my colleagues in the practice of law I am aware of a colleague that may be experiencing depression and they need help. I recommend that you take steps to help them contact the Lawyer Assistance Program”.

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Michelle and Andy Barclay are so grateful to the Emory University community for the grace and care that surrounded everyone, especially the students, when Robin died.

Michelle Barclay, J.D., has more than 20 years experience working in Georgia’s judicial branch. She is currently the division director of Communications, Children, Families, and the Courts within the Judicial Council of Georgia’s Administrative Office of the Courts. Before becoming a lawyer, she was a nurse for 10 years, specializing in ICU and trauma care. Her degrees include a Juris Doctor from Emory University School of Law, a Bachelor of Science in Nursing from Emory University and a Bachelor of Interdisciplinary Studies from Georgia State University. She is also co-founder along with her husband Andrew Barclay of the Barton Child Law and Policy Center at Emory University School of Law. She can be reached at 404-657-9219 or michelle.barclay@georgiacourts.gov.

Endnotes
1. https://twitter.com/TimeToChange
Promoting a Professional Culture of Respect and Safety #MeToo

In keeping with our professionalism aspirations, I challenge you to take a proactive, preventative approach to sexual harassment and to start the discussions... about things we as lawyers can do to promote a professional culture of respect and safety to prevent #MeToo.

BY KARLISE Y. GRIER

“There is no doubt that Marley was dead. This must be distinctly understood, or nothing wonderful can come of the story I am going to relate.”—Excerpt from: “A Christmas Carol” by Charles Dickens.

To borrow an idea from an iconic writer: There is no doubt that #MeToo testimonials are real. This must be distinctly understood, or nothing wonderful can come of the ideas I am going to share.

I start with this statement because when I co-presented on behalf of the Chief Justice’s Commission on Professionalism at a two-hour seminar on Ethics, Professionalism and Sexual
Harassment at the University of Georgia (UGA) in March 2018, it was clear to me that men and women, young and old, question some of the testimonials of sexual harassment that have recently come to light. For the purposes of starting a discussion about preventing future #MeToo incidents in the Georgia legal profession, I ask you to assume, arguendo, that sexual harassment does occur and to further assume, arguendo, that it occurs in Georgia among lawyers and judges.¹ Our attention and discussion must therefore turn to “How do we prevent it?” We won’t expend needless energy on “Is he telling the truth?” We won’t lament, “Why did she wait so long to come forward?”

First, I want to explain why I believe that sexual harassment in the legal profession is, in part, a professionalism issue. As Georgia lawyers, we have A Lawyer’s Creed and an Aspirational Statement on Professionalism that was approved by the Supreme Court of Georgia in 1990.² One tenet of A Lawyer’s Creed states: “To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.” Frankly, it is only a concern for the welfare of others that in many cases will prevent sexual harassment in the legal profession because of “gaps” in the law and in our ethics rules. For example, under federal law, sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees.³ According to a 2016 article on lawyer demographics, three out of four lawyers are working in a law firm that has two to five lawyers working for it.⁴ In Georgia, there are no state laws similar to Title VII’s statutory scheme.

There is currently nothing in Georgia’s Rules of Professional Conduct that explicitly prohibits sexual harassment of a lawyer by another lawyer.⁵ Moreover, it is my understanding that generally the Office of the General Counsel will not prosecute a lawyer for alleged lawyer-on-lawyer sexual harassment absent a misdemeanor or felony criminal conviction, involving rape, sexual assault, battery, moral turpitude and other similar criminal behavior.⁶ Other circumstances in which laws or ethics rules may not apply include sexual harassment of lawyers by clients or sexual harassment that occurs during professional events, such as bar association meetings or continuing education seminars.⁷

Former Georgia Chief Justice Harold Clarke described the distinction between ethics and professionalism as . . . the idea that ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers. Therefore, in the absence of laws and ethical rules to guide our behavior, professionalism aspirations call on Georgia lawyers to consider and implement a professional culture of respect and safety that ensures zero tolerance for behavior that gives rise to #MeToo testimonials.⁸


Former Georgia Chief Justice Harold Clarke described the distinction between ethics and professionalism as . . . the idea that ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers.
practical advice for legal employers to address or to prevent sexual harassment. Some of the suggestions included: establishing easy and inexpensive ways to detect sexual harassment, such as asking about it in anonymous employee surveys and/or exit interviews; not waiting for formal complaints before responding to known misconduct; and discussing the existence of sexual harassment openly.10 The federal judiciary’s working group on sexual harassment has many reforms that are currently underway, such as conducting a session on sexual harassment during the ethics training for newly appointed judges; reviewing the confidentiality provisions in several employee/law clerk handbooks to clarify that nothing in the provisions prevents the filing of a complaint; and clarifying the data that the judiciary collects about judicial misconduct complaints to add a category for any complaints filed relating to sexual misconduct.11 For those planning CLE or bar events, the American Bar Association Commission on Women in the Profession cautions lawyers to “be extremely careful about excessive use of alcohol in work/social settings.”12

During our continuing legal education seminar at UGA, one of the presenters, Erica Mason, who serves as president of the Hispanic National Bar Association (HNBA), shared that HNBA has developed a “HNBA Conference Code of Conduct” that states in part: “The HNBA is committed to providing a friendly, safe, supportive and harassment-free environment for all conference attendees and participants. . . . Anyone violating these rules may be sanctioned or expelled from the conference without a registration refund, at the discretion of HNBA Leadership.” Mason also shared that the HNBA has signs at all of its conferences that reiterate the policy and that provide clear instructions on how anyone who has been subjected to the harassment may report it. In short, you don’t have to track down a procedure or figure out what to do if you feel you have been harassed.

Overall, some of the takeaways from our sexual harassment seminar at UGA provide a good starting point for discussion about how we as lawyers should aspire to behave. Generally, our group agreed that women and men enjoy appropriate compliments on their new haircut or color, a nice dress or tie, or a general “You look nice today.” Admittedly, however, an employment lawyer might say that even this is not considered best practice.

Many of the seminar participants agreed on some practical tips, however. Think twice about running your fingers through someone’s hair or kissing a person on the check. Learn from others’ past mistakes and do not intentionally pat or “flick” someone on the buttocks even if you mean it as a joke and don’t intend for it to be offensive or inappropriate.14

In our professional friendships, we want to leave room for the true fairy-tale happily ever after endings, like that of Barack and Michelle, who met at work when she was an associate at a law firm and he was a summer associate at the same firm.15 We also need to ensure that our attempts to prevent sexual harassment do not become excuses for failing to mentor attorneys of the opposite sex.

Finally, just because certain behaviors may have been tolerated when you were a young associate, law clerk, etc., does not mean the behavior is tolerated or accepted today. Professionalism demands that we constantly consider and re-evaluate the rules that should govern our behavior in the absence of legal or ethical mandates. Our small group at UGA did not always agree on what was inappropriate conduct or on the best way to handle a situation. We did all agree that the conversation on sexual harassment was valuable and necessary.

So in keeping with our professionalism aspirations, I challenge you to take a proactive, preventative approach to sexual harassment and to start the discussions in your law firm, corporate legal department, court system and/or bar association about things we as lawyers can do to promote a professional culture of respect and safety to prevent #MeToo.

Endnotes


5. The Georgia Code of Judicial Conduct differs from the Georgia Rules of Professional Conduct in that Rule 2.3 (b) of the Code of Judicial Conduct specifically prohibits discrimination by a judge in the performance of his or her judicial duties. See https://
Convocation on Professionalism and the Global Community

The purpose of the Convocation was to model professionalism while discussing a high-conflict issue and to demonstrate the ways in which attorneys have implemented “A Lawyer’s Creed” and the “Aspirational Statement” in their work with the global community.

BY LESLIE E. STEWART

On Nov. 30, 2018, the Chief Justice’s Commission on Professionalism (the Commission) held its Convocation on Professionalism (the Convocation) at Atlanta’s Porsche Experience Center. This year, the Convocation theme was Professionalism and the Global Community, which focused on the professionalism values of competence, civility, character, and commitment to the rule of law and the public good. The purpose of the Convocation was to model professionalism while discussing a high-conflict issue and to demonstrate the ways in which attorneys have implemented “A Lawyer’s Creed” and the “Aspirational Statement” in their work with the global community. The event, which was sponsored by Squire Patton Boggs, Miller & Martin PLLC and Alston & Bird LLP, was well-received by the attendees. The speakers included an array of notables and dignitaries with ties to Georgia, beginning with Supreme Court of Georgia Chief Justice Harold D. Melton, who urged the attendees to demonstrate professionalism through service to their community, a key element of “A Lawyer’s Creed” and the “Aspirational Statement.”
The first panel, “Overview of the Global Community in Georgia,” was facilitated by Javier Díaz de León, Consul General of Mexico. Two judges, Hon. Meng H. Lim, Tallapoosa Circuit Superior Court, and Hon. Dax E. Lopez, DeKalb County State Court, spoke movingly about how their judicial careers have been influenced by their experiences of straddling two cultures. Abby Turano, deputy commissioner for International Relations, Georgia Department of Economic Development, explained how and why Georgia welcomes foreign businesses to Georgia.

The second panel, “A View from General Counsels of Companies Doing International Business,” was moderated by Shelby S. Guilbert Jr. from King & Spalding. The panelists, including Angus M. Haig, senior vice president and general counsel for Cox Automotive, and Ricardo Nuñez, senior vice president and general counsel for Schweitzer-Mauduit International, described their challenges and how core values affect their roles as international general counsels. Audrey Boone Tillman, executive vice president and general counsel for AFLAC, portrayed the challenges and successes of being a woman of color supervising attorneys in Japan. Joseph Folz, vice president, general counsel and secretary for Porsche Cars North America, shared his experiences working for a German-based company.

The third panel, “The Business Pros and Cons of Developing a Formal Working Relationship with an International Lawyer or Law Firm,” was facilitated by Petrina A. McDaniel from Squire Patton Boggs. Tricia “CK” Hoffler, principal at The CK Hoffler Firm, regaled the attendees with her vivid descriptions of being threatened by automatic gunfire as a result of a cultural miscalculation while she represented a unnamed government. Therese Pritchard, from Bryan Cave and Robert Tritt, Dentons US LLP, discussed the necessity of retaining competent local counsel in international cases.

The Convocation’s keynote speaker, Randolph “Randy” Evans, U.S. Ambassador to Luxembourg, described his humble beginnings in Georgia and how the values instilled in him by his family continue to influence the way in which he deals with his professional duties—of treating each person with respect and dignity.

After lunch, the next panel, “What Lawyers Need to Know about Labor Trafficking,” focused on the darker side of doing business in the global community. The moderator, Hon. Richard Story, judge, U.S. District Court, Northern District of Georgia, oversaw a lively discussion between Norm Brothers, senior vice president and general counsel for UPS; Susan Coppedge, former U.S. Ambassador-at-Large, the Office to Monitor and Combat Trafficking in Persons, and senior advisor to the Secretary of State (Ret.); and Jay Doyle of Lewis Brisbois Bisgaard & Smith LLP. This panel focused on the way in which government and private business have collaborated to combat the scourge of human trafficking.

The attendees were then treated to a presentation on “An Overview of Professionalism in Immigration Cases” by James McHenry, director of the Executive Office for Immigration Review at the Department of Justice, who unpacked the complex hearing procedures surrounding this timely topic.

The second afternoon panel, “Emerging Issues and Pro Bono Opportunities for Attorneys as a Result of Changes in Immigration Laws,” was moderated by Phil Sandick from Alston & Bird. The panelists were Audra Dial from Kilpatrick Townsend & Stockton, Jorge Andres Gavilanes from Kuck Baxter, Monica Khant, executive director of the Georgia Asylum and Immigration Network, and Willis Linton Miller from The Latin American Association. During this panel, the speakers touched on the need for pro bono assistance on these important cases due to an upsurge in work and the consequent burnout on the part of those working full time in this area.

The final panel of the day, “Ethics, Regulatory and Procedural Issues in International Practice,” was facilitated by Shelby R. Grubbs, from Miller & Martin. Along with Paula Frederick, general counsel of the State Bar of Georgia and Ben Greer Jr., retired partner at Alston & Bird, the presenters discussed the competing ethical standards that attorneys must negotiate in international work and the necessity of adhering to Georgia standards regardless of cultural or ethical differences.

The Convocation offered a marvelous opportunity for in-person attendees to learn about how the principles of professionalism impact our legal work in the global community. Commission member Hon. Carla McMillian, Court of Appeals of Georgia, tweeted throughout the day at @cjcpga in English and Spanish with the help of Commission member Maria F. Mackay, a Georgia certified interpreter who provided Spanish interpretations of the proceedings for McMillian to tweet. Commission advisor Jennifer Davis and Commission liaison Dee Dee Worley provided invaluable “behind the scenes” staff assistance for the event throughout the day. The Commission staff was grateful for the support of the Commission members and other Convocation contributors and planners who provided invaluable assistance for this immensely successful Convocation. More information about the Convocation and other upcoming Commission events, including the 20th Annual Justice Robert Benham Awards for Community Service, is available on the Commission’s website at www.cjcpga.org.

Leslie E. Stewart is a child welfare attorney and has served as a Supreme Court Fellow on Georgia’s Cold Case project since March 2009 and is also a contractor with the Chief Justice’s Commission on Professionalism.
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